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# SENATE COMMITTEE ON PUBLIC SAFETY

Senator Steven Bradford, Chair  
2021 - 2022 Regular

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**Bill No:** AB 2167                      **Hearing Date:** June 28, 2022  
**Author:** Kalra  
**Version:** May 19, 2022  
**Urgency:** No                                      **Fiscal:** No  
**Consultant:** SJ

**Subject:** *Crimes: alternatives to incarceration*

## HISTORY

**Source:** Friends Committee on Legislation of California  
Initiate Justice  
National Association of Social Workers, California Chapter

**Prior Legislation:** None

**Support:** California Attorneys for Criminal Justice; California Catholic Conference;  
California Public Defenders Association; Ella Baker Center for Human Rights;  
Essie Justice Group; Fresno Barrios Unidos; Los Angeles County District  
Attorney's Office; Smart Justice California

**Opposition:** None known

**Assembly Floor Vote:** 42 - 23

## PURPOSE

*The purpose of this bill is to require a court presiding over a criminal matter to consider alternatives to incarceration, including, without limitation, collaborative justice court programs, diversion, restorative justice, and probation.*

*Existing law* provides that the purpose of sentencing is public safety achieved through punishment, rehabilitation, and restorative justice. (Pen. Code, § 1170, subd. (a)(1).)

*Existing law* declares the Legislature's commitment to reducing recidivism among criminal offenders. (Pen. Code, § 3450, subd. (b)(1).)

*This bill* requires a court presiding over a criminal matter to consider alternatives to incarceration, including, without limitation, collaborative justice court programs, diversion, restorative justice, and probation.

*This bill* provides that the court has the discretion to determine the appropriate sentence according to relevant statutes and the sentencing rules of the Judicial Council.

*This bill* provides that it is the intent of the Legislature that the disposition of any criminal case use the least restrictive means available.

*This bill* includes uncodified findings and declarations.

## COMMENTS

### 1. Need For This Bill

According to the author:

On January 1, 2020, the Committee on Revision of the Penal Code was created to study and recommend statutory reforms to improve four areas of the California Penal Code, one of which was to “establish alternatives to incarceration that will aid in the rehabilitation of offenders.” In their 2021 report, the Committee noted the Penal Code currently “lacks a clear statement about when incarceration is appropriate, unlike federal and other states’ laws.”

Existing law contains numerous examples of mandatory minimum sentences, yet despite ongoing criminal justice reform efforts, there are very few sections that limit or discourage incarceration. This lack of clarity has put California behind other states such as Alabama, Arkansas, Minnesota, and Tennessee, which already require sentences to be the least restrictive means possible or only as severe as necessary. New York state law goes even further and explicitly states that the minimum amount of confinement should be imposed consistent with public safety, the gravity of the offense, and the rehabilitative needs of the defendant.

Overall, alternatives to incarceration can lead to reduced prison and jail costs, lower recidivism rates, and is one way to address harmful racial disparities in the criminal justice system. Alternatives include probation, community service, restorative justice, collaborative courts, and diversion programs.

According to the LAO, it costs about \$106,000 per year to incarcerate an individual in California prisons. This is in contrast to the cost of other alternatives to incarceration such as probation, which has remained the least costly form of supervision. In 2014, the cost to supervise a person on probation was about \$12 daily versus keeping someone in jail at \$106 per day or in prison at \$164 per day.

Furthermore, several case studies have pointed to evidence of diversion being an effective method in decreasing future convictions. According to the National Institute on Drug Abuse, “every dollar invested in addiction treatment programs yields a return of between \$4 to \$7 in reduced drug-related crimes, criminal justice costs, and theft.”

### 2. Committee on Revision of the Penal Code

The Committee on Revision of the Penal Code was established to study and recommend statutory reforms to the Penal Code relating to, among other things, alternatives to incarceration. (Gov. Code, § 8290.5, subd. (a)(3).) In its 2021 Annual Report, the Committee recommended “[a]dd[ing] a statement to the Penal Code that the disposition of any criminal case shall use the

least restrictive means possible, including but not limited to diversion, restorative justice, probation, or incarceration.” (Committee on the Revision of the Penal Code, 2021 Annual Report and Recommendations (Dec. 2021), p. 20

<[http://www.clrc.ca.gov/CRPC/Pub/Reports/CRPC\\_AR2021.pdf](http://www.clrc.ca.gov/CRPC/Pub/Reports/CRPC_AR2021.pdf)>.) The report indicated that “California can safely reduce the number of people behind bars by modifying the Penal Code to explicitly encourage more restraint in the use of incarceration. While the Penal Code has numerous sections that require judges to impose incarceration, it contains few statements limiting or discouraging its use.” (*Ibid.*) The Committee noted that the recommendation “can reduce our state’s reliance on incarceration while leaving judges with the option to incarcerate when necessary to protect public safety.” (*Id.* at p. 24.) This bill seeks to implement the Committee’s recommendation.

### 3. Argument in Support

According to the Los Angeles District Attorney’s Office:

Alternatives to incarceration and diversion programs have been repeatedly shown to not only be more effective, but can also lead to reduced prison and jail costs, lower recidivism rates, and are one way to address harmful racial disparities in the criminal justice system.

While AB 2167 requires the court presiding over a criminal matter to consider alternatives to incarceration, nothing in AB 2167 limits the discretion of the court to sentence a defendant to county jail or state prison when appropriate to protect public safety.

AB 2167 would align California with states like Alabama, Arkansas, Minnesota, Tennessee, and New York which have already adopted statutes requiring sentences only be as severe as necessary to ensure public safety.

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