

Assembly Bill 2167

Alternatives to Incarceration

Assembly Member Ash Kalra

SUMMARY

AB 2167 would encourage restraint in the overuse of incarceration by requiring courts to first consider other alternative options in sentencing decisions.

BACKGROUND

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 requires 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

¹ https://lao.ca.gov/policyareas/cj/6_cj_inmatecost

² http://www.ppic.org/content/pubs/jtf/JTF_ProbationJTF.pdf

³ Michael Mueller-Smith and Kevin T. Schnepel, Diversion in the Criminal Justice System, Rev. of Economic Studies 88(2), 883–936 (2021).

prisons.¹ 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.²

Furthermore, several case studies have pointed to evidence of diversion being an effective method in decreasing future convictions.³⁴ 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.”⁵

SOLUTION

AB 2167 would require courts presiding over a criminal matter to consider alternatives to incarceration which includes, but is not limited to, diversion programs, restorative justice, and probation. Furthermore, this bill states it is the intent of the Legislature that sentencing in a criminal case be the least restrictive means available.

AB 2167 also clarifies judges have full judicial discretion as to the final sentence and have the option to incarcerate when necessary to protect public safety.

SPONSORS

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⁴ Sherman, L. W., & Strang, H. (2007). *Restorative Justice: The Evidence*. The Smith Institute. Retrieved from www.iirp.edu/pdf/RJ_full_report.pdf

⁵ <https://nida.nih.gov/publications/principles-drug-addiction-treatment-research-based-guide-third-edition/frequently-asked-questions/drug-addiction-treatment-worth-its-cost>