

AMENDED IN ASSEMBLY JUNE 2, 2016

AMENDED IN SENATE APRIL 7, 2015

SENATE BILL

No. 266

**Introduced by Senator Block
(Coauthor: Senator Anderson)**

February 19, 2015

An act to *amend Sections 1170 and 1203 of, to amend, repeal, and add Section 4019 of, and to add and repeal Section 1203.35-~~of~~ of, the Penal Code, relating to crimes.*

LEGISLATIVE COUNSEL'S DIGEST

SB 266, as amended, Block. Probation and mandatory supervision: flash incarceration.

Existing law authorizes probation and mandatory supervision, which in each case is a period of time when a defendant is released from incarceration and is subject to specified conditions and supervision by county probation authorities.

This bill would, until January 1, ~~2021~~, 2022, allow a court to authorize the use of flash incarceration, as defined, to detain the offender in county jail for not more than 10 days for a violation of his or her conditions of probation or mandatory supervision, as specified. These provisions would not apply to persons convicted of certain drug possession offenses. *The bill would, until January 1, 2022, allow a person to receive credits earned for a period of flash incarceration pursuant to these provisions if his or her probation or mandatory supervision is revoked.*

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 *SECTION 1. The Legislature finds and declares all of the*
2 *following:*

3 *(a) Intermediate sanctions, including, but not limited to, flash*
4 *incarceration, balance holding offenders accountable for violations*
5 *of their conditions of supervision while focusing on shorter and*
6 *fewer disruptions from work, home, and programming.*

7 *(b) Strategies that combine evidence-based practices, including*
8 *structured decisionmaking matrices, provide tools needed to*
9 *respond to violations with a proportionately matched response*
10 *through graduated sanctions.*

11 *(c) The use of structured sanction and reward policies based*
12 *on evidence-based tools helps to maintain offender engagement*
13 *in programs and assists in the process of positive behavior change.*

14 *(d) The use of incentives can be a powerful tool in shaping client*
15 *behavior and promoting positive behavior change.*

16 *(e) Violations can be reduced when responses to noncompliant*
17 *behavior are swift, certain, and proportional to the client's*
18 *behavior.*

19 *SEC. 2. Section 1170 of the Penal Code, as amended by Section*
20 *1 of Chapter 378 of the Statutes of 2015, is amended to read:*

21 1170. (a) (1) The Legislature finds and declares that the
22 purpose of imprisonment for crime is punishment. This purpose
23 is best served by terms proportionate to the seriousness of the
24 offense with provision for uniformity in the sentences of offenders
25 committing the same offense under similar circumstances. The
26 Legislature further finds and declares that the elimination of
27 disparity and the provision of uniformity of sentences can best be
28 achieved by determinate sentences fixed by statute in proportion
29 to the seriousness of the offense as determined by the Legislature
30 to be imposed by the court with specified discretion.

31 (2) Notwithstanding paragraph (1), the Legislature further finds
32 and declares that programs should be available for inmates,
33 including, but not limited to, educational programs, that are
34 designed to prepare nonviolent felony offenders for successful
35 reentry into the community. The Legislature encourages the
36 development of policies and programs designed to educate and
37 rehabilitate nonviolent felony offenders. In implementing this
38 section, the Department of Corrections and Rehabilitation is

1 encouraged to give priority enrollment in programs to promote
2 successful return to the community to an inmate with a short
3 remaining term of commitment and a release date that would allow
4 him or her adequate time to complete the program.

5 (3) In any case in which the punishment prescribed by statute
6 for a person convicted of a public offense is a term of imprisonment
7 in the state prison or a term pursuant to subdivision (h) of any
8 specification of three time periods, the court shall sentence the
9 defendant to one of the terms of imprisonment specified unless
10 the convicted person is given any other disposition provided by
11 law, including a fine, jail, probation, or the suspension of
12 imposition or execution of sentence or is sentenced pursuant to
13 subdivision (b) of Section 1168 because he or she had committed
14 his or her crime prior to July 1, 1977. In sentencing the convicted
15 person, the court shall apply the sentencing rules of the Judicial
16 Council. The court, unless it determines that there are
17 circumstances in mitigation of the punishment prescribed, shall
18 also impose any other term that it is required by law to impose as
19 an additional term. Nothing in this article shall affect any provision
20 of law that imposes the death penalty, that authorizes or restricts
21 the granting of probation or suspending the execution or imposition
22 of sentence, or expressly provides for imprisonment in the state
23 prison for life, except as provided in paragraph (2) of subdivision
24 (d). In any case in which the amount of preimprisonment credit
25 under Section 2900.5 or any other law is equal to or exceeds any
26 sentence imposed pursuant to this chapter, except for the remaining
27 portion of mandatory supervision pursuant to subparagraph (B) of
28 paragraph (5) of subdivision (h), the entire sentence shall be
29 deemed to have been served, except for the remaining period of
30 mandatory supervision, and the defendant shall not be actually
31 delivered to the custody of the secretary or to the custody of the
32 county correctional administrator. The court shall advise the
33 defendant that he or she shall serve an applicable period of parole,
34 postrelease community supervision, or mandatory supervision,
35 and order the defendant to report to the parole or probation office
36 closest to the defendant's last legal residence, unless the in-custody
37 credits equal the total sentence, including both confinement time
38 and the period of parole, postrelease community supervision, or
39 mandatory supervision. The sentence shall be deemed a separate
40 prior prison term or a sentence of imprisonment in a county jail

1 under subdivision (h) for purposes of Section 667.5, and a copy
2 of the judgment and other necessary documentation shall be
3 forwarded to the secretary.

4 (b) When a judgment of imprisonment is to be imposed and the
5 statute specifies three possible terms, the choice of the appropriate
6 term shall rest within the sound discretion of the court. At least
7 four days prior to the time set for imposition of judgment, either
8 party or the victim, or the family of the victim if the victim is
9 deceased, may submit a statement in aggravation or mitigation. In
10 determining the appropriate term, the court may consider the record
11 in the case, the probation officer's report, other reports, including
12 reports received pursuant to Section 1203.03, and statements in
13 aggravation or mitigation submitted by the prosecution, the
14 defendant, or the victim, or the family of the victim if the victim
15 is deceased, and any further evidence introduced at the sentencing
16 hearing. The court shall select the term which, in the court's
17 discretion, best serves the interests of justice. The court shall set
18 forth on the record the reasons for imposing the term selected and
19 the court may not impose an upper term by using the fact of any
20 enhancement upon which sentence is imposed under any provision
21 of law. A term of imprisonment shall not be specified if imposition
22 of sentence is suspended.

23 (c) The court shall state the reasons for its sentence choice on
24 the record at the time of sentencing. The court shall also inform
25 the defendant that as part of the sentence after expiration of the
26 term he or she may be on parole for a period as provided in Section
27 3000 or 3000.08 or postrelease community supervision for a period
28 as provided in Section 3451.

29 (d) (1) When a defendant subject to this section or subdivision
30 (b) of Section 1168 has been sentenced to be imprisoned in the
31 state prison or county jail pursuant to subdivision (h) and has been
32 committed to the custody of the secretary or the county correctional
33 administrator, the court may, within 120 days of the date of
34 commitment on its own motion, or at any time upon the
35 recommendation of the secretary or the Board of Parole Hearings
36 in the case of state prison inmates, or the county correctional
37 administrator in the case of county jail inmates, recall the sentence
38 and commitment previously ordered and resentence the defendant
39 in the same manner as if he or she had not previously been
40 sentenced, provided the new sentence, if any, is no greater than

1 the initial sentence. The court resentencing under this subdivision
2 shall apply the sentencing rules of the Judicial Council so as to
3 eliminate disparity of sentences and to promote uniformity of
4 sentencing. Credit shall be given for time served.

5 (2) (A) (i) When a defendant who was under 18 years of age
6 at the time of the commission of the offense for which the
7 defendant was sentenced to imprisonment for life without the
8 possibility of parole has served at least 15 years of that sentence,
9 the defendant may submit to the sentencing court a petition for
10 recall and resentencing.

11 (ii) Notwithstanding clause (i), this paragraph shall not apply
12 to defendants sentenced to life without parole for an offense where
13 the defendant tortured, as described in Section 206, his or her
14 victim or the victim was a public safety official, including any law
15 enforcement personnel mentioned in Chapter 4.5 (commencing
16 with Section 830) of Title 3, or any firefighter as described in
17 Section 245.1, as well as any other officer in any segment of law
18 enforcement who is employed by the federal government, the state,
19 or any of its political subdivisions.

20 (B) The defendant shall file the original petition with the
21 sentencing court. A copy of the petition shall be served on the
22 agency that prosecuted the case. The petition shall include the
23 defendant's statement that he or she was under 18 years of age at
24 the time of the crime and was sentenced to life in prison without
25 the possibility of parole, the defendant's statement describing his
26 or her remorse and work towards rehabilitation, and the defendant's
27 statement that one of the following is true:

28 (i) The defendant was convicted pursuant to felony murder or
29 aiding and abetting murder provisions of law.

30 (ii) The defendant does not have juvenile felony adjudications
31 for assault or other felony crimes with a significant potential for
32 personal harm to victims prior to the offense for which the sentence
33 is being considered for recall.

34 (iii) The defendant committed the offense with at least one adult
35 codefendant.

36 (iv) The defendant has performed acts that tend to indicate
37 rehabilitation or the potential for rehabilitation, including, but not
38 limited to, availing himself or herself of rehabilitative, educational,
39 or vocational programs, if those programs have been available at

1 his or her classification level and facility, using self-study for
2 self-improvement, or showing evidence of remorse.

3 (C) If any of the information required in subparagraph (B) is
4 missing from the petition, or if proof of service on the prosecuting
5 agency is not provided, the court shall return the petition to the
6 defendant and advise the defendant that the matter cannot be
7 considered without the missing information.

8 (D) A reply to the petition, if any, shall be filed with the court
9 within 60 days of the date on which the prosecuting agency was
10 served with the petition, unless a continuance is granted for good
11 cause.

12 (E) If the court finds by a preponderance of the evidence that
13 the statements in the petition are true, the court shall hold a hearing
14 to consider whether to recall the sentence and commitment
15 previously ordered and to resentence the defendant in the same
16 manner as if the defendant had not previously been sentenced,
17 provided that the new sentence, if any, is not greater than the initial
18 sentence. Victims, or victim family members if the victim is
19 deceased, shall retain the rights to participate in the hearing.

20 (F) The factors that the court may consider when determining
21 whether to recall and resentence include, but are not limited to,
22 the following:

23 (i) The defendant was convicted pursuant to felony murder or
24 aiding and abetting murder provisions of law.

25 (ii) The defendant does not have juvenile felony adjudications
26 for assault or other felony crimes with a significant potential for
27 personal harm to victims prior to the offense for which the sentence
28 is being considered for recall.

29 (iii) The defendant committed the offense with at least one adult
30 codefendant.

31 (iv) Prior to the offense for which the sentence is being
32 considered for recall, the defendant had insufficient adult support
33 or supervision and had suffered from psychological or physical
34 trauma, or significant stress.

35 (v) The defendant suffers from cognitive limitations due to
36 mental illness, developmental disabilities, or other factors that did
37 not constitute a defense, but influenced the defendant's
38 involvement in the offense.

39 (vi) The defendant has performed acts that tend to indicate
40 rehabilitation or the potential for rehabilitation, including, but not

1 limited to, availing himself or herself of rehabilitative, educational,
2 or vocational programs, if those programs have been available at
3 his or her classification level and facility, using self-study for
4 self-improvement, or showing evidence of remorse.

5 (vii) The defendant has maintained family ties or connections
6 with others through letter writing, calls, or visits, or has eliminated
7 contact with individuals outside of prison who are currently
8 involved with crime.

9 (viii) The defendant has had no disciplinary actions for violent
10 activities in the last five years in which the defendant was
11 determined to be the aggressor.

12 (G) The court shall have the discretion to recall the sentence
13 and commitment previously ordered and to resentence the
14 defendant in the same manner as if the defendant had not
15 previously been sentenced, provided that the new sentence, if any,
16 is not greater than the initial sentence. The discretion of the court
17 shall be exercised in consideration of the criteria in subparagraph
18 (B). Victims, or victim family members if the victim is deceased,
19 shall be notified of the resentencing hearing and shall retain their
20 rights to participate in the hearing.

21 (H) If the sentence is not recalled, the defendant may submit
22 another petition for recall and resentencing to the sentencing court
23 when the defendant has been committed to the custody of the
24 department for at least 20 years. If recall and resentencing is not
25 granted under that petition, the defendant may file another petition
26 after having served 24 years. The final petition may be submitted,
27 and the response to that petition shall be determined, during the
28 25th year of the defendant's sentence.

29 (I) In addition to the criteria in subparagraph (F), the court may
30 consider any other criteria that the court deems relevant to its
31 decision, so long as the court identifies them on the record,
32 provides a statement of reasons for adopting them, and states why
33 the defendant does or does not satisfy the criteria.

34 (J) This subdivision shall have retroactive application.

35 (e) (1) Notwithstanding any other law and consistent with
36 paragraph (1) of subdivision (a), if the secretary or the Board of
37 Parole Hearings or both determine that a prisoner satisfies the
38 criteria set forth in paragraph (2), the secretary or the board may
39 recommend to the court that the prisoner's sentence be recalled.

1 (2) The court shall have the discretion to resentence or recall if
2 the court finds that the facts described in subparagraphs (A) and
3 (B) or subparagraphs (B) and (C) exist:

4 (A) The prisoner is terminally ill with an incurable condition
5 caused by an illness or disease that would produce death within
6 six months, as determined by a physician employed by the
7 department.

8 (B) The conditions under which the prisoner would be released
9 or receive treatment do not pose a threat to public safety.

10 (C) The prisoner is permanently medically incapacitated with
11 a medical condition that renders him or her permanently unable
12 to perform activities of basic daily living, and results in the prisoner
13 requiring 24-hour total care, including, but not limited to, coma,
14 persistent vegetative state, brain death, ventilator-dependency, loss
15 of control of muscular or neurological function, and that
16 incapacitation did not exist at the time of the original sentencing.

17 The Board of Parole Hearings shall make findings pursuant to
18 this subdivision before making a recommendation for resentence
19 or recall to the court. This subdivision does not apply to a prisoner
20 sentenced to death or a term of life without the possibility of parole.

21 (3) Within 10 days of receipt of a positive recommendation by
22 the secretary or the board, the court shall hold a hearing to consider
23 whether the prisoner's sentence should be recalled.

24 (4) Any physician employed by the department who determines
25 that a prisoner has six months or less to live shall notify the chief
26 medical officer of the prognosis. If the chief medical officer
27 concurs with the prognosis, he or she shall notify the warden.
28 Within 48 hours of receiving notification, the warden or the
29 warden's representative shall notify the prisoner of the recall and
30 resentencing procedures, and shall arrange for the prisoner to
31 designate a family member or other outside agent to be notified
32 as to the prisoner's medical condition and prognosis, and as to the
33 recall and resentencing procedures. If the inmate is deemed
34 mentally unfit, the warden or the warden's representative shall
35 contact the inmate's emergency contact and provide the information
36 described in paragraph (2).

37 (5) The warden or the warden's representative shall provide the
38 prisoner and his or her family member, agent, or emergency
39 contact, as described in paragraph (4), updated information
40 throughout the recall and resentencing process with regard to the

1 prisoner's medical condition and the status of the prisoner's recall
2 and resentencing proceedings.

3 (6) Notwithstanding any other provisions of this section, the
4 prisoner or his or her family member or designee may
5 independently request consideration for recall and resentencing
6 by contacting the chief medical officer at the prison or the
7 secretary. Upon receipt of the request, the chief medical officer
8 and the warden or the warden's representative shall follow the
9 procedures described in paragraph (4). If the secretary determines
10 that the prisoner satisfies the criteria set forth in paragraph (2), the
11 secretary or board may recommend to the court that the prisoner's
12 sentence be recalled. The secretary shall submit a recommendation
13 for release within 30 days in the case of inmates sentenced to
14 determinate terms and, in the case of inmates sentenced to
15 indeterminate terms, the secretary shall make a recommendation
16 to the Board of Parole Hearings with respect to the inmates who
17 have applied under this section. The board shall consider this
18 information and make an independent judgment pursuant to
19 paragraph (2) and make findings related thereto before rejecting
20 the request or making a recommendation to the court. This action
21 shall be taken at the next lawfully noticed board meeting.

22 (7) Any recommendation for recall submitted to the court by
23 the secretary or the Board of Parole Hearings shall include one or
24 more medical evaluations, a postrelease plan, and findings pursuant
25 to paragraph (2).

26 (8) If possible, the matter shall be heard before the same judge
27 of the court who sentenced the prisoner.

28 (9) If the court grants the recall and resentencing application,
29 the prisoner shall be released by the department within 48 hours
30 of receipt of the court's order, unless a longer time period is agreed
31 to by the inmate. At the time of release, the warden or the warden's
32 representative shall ensure that the prisoner has each of the
33 following in his or her possession: a discharge medical summary,
34 full medical records, state identification, parole or postrelease
35 community supervision medications, and all property belonging
36 to the prisoner. After discharge, any additional records shall be
37 sent to the prisoner's forwarding address.

38 (10) The secretary shall issue a directive to medical and
39 correctional staff employed by the department that details the
40 guidelines and procedures for initiating a recall and resentencing

1 procedure. The directive shall clearly state that any prisoner who
2 is given a prognosis of six months or less to live is eligible for
3 recall and resentencing consideration, and that recall and
4 resentencing procedures shall be initiated upon that prognosis.

5 (11) The provisions of this subdivision shall be available to an
6 inmate who is sentenced to a county jail pursuant to subdivision
7 (h). For purposes of those inmates, “secretary” or “warden” shall
8 mean the county correctional administrator and “chief medical
9 officer” shall mean a physician designated by the county
10 correctional administrator for this purpose.

11 (f) Notwithstanding any other provision of this section, for
12 purposes of paragraph (3) of subdivision (h), any allegation that
13 a defendant is eligible for state prison due to a prior or current
14 conviction, sentence enhancement, or because he or she is required
15 to register as a sex offender shall not be subject to dismissal
16 pursuant to Section 1385.

17 (g) A sentence to state prison for a determinate term for which
18 only one term is specified, is a sentence to state prison under this
19 section.

20 (h) (1) Except as provided in paragraph (3), a felony punishable
21 pursuant to this subdivision where the term is not specified in the
22 underlying offense shall be punishable by a term of imprisonment
23 in a county jail for 16 months, or two or three years.

24 (2) Except as provided in paragraph (3), a felony punishable
25 pursuant to this subdivision shall be punishable by imprisonment
26 in a county jail for the term described in the underlying offense.

27 (3) Notwithstanding paragraphs (1) and (2), where the defendant
28 (A) has a prior or current felony conviction for a serious felony
29 described in subdivision (c) of Section 1192.7 or a prior or current
30 conviction for a violent felony described in subdivision (c) of
31 Section 667.5, (B) has a prior felony conviction in another
32 jurisdiction for an offense that has all the elements of a serious
33 felony described in subdivision (c) of Section 1192.7 or a violent
34 felony described in subdivision (c) of Section 667.5, (C) is required
35 to register as a sex offender pursuant to Chapter 5.5 (commencing
36 with Section 290) of Title 9 of Part 1, or (D) is convicted of a crime
37 and as part of the sentence an enhancement pursuant to Section
38 186.11 is imposed, an executed sentence for a felony punishable
39 pursuant to this subdivision shall be served in state prison.

1 (4) Nothing in this subdivision shall be construed to prevent
2 other dispositions authorized by law, including pretrial diversion,
3 deferred entry of judgment, or an order granting probation pursuant
4 to Section 1203.1.

5 (5) (A) Unless the court finds that, in the interests of justice, it
6 is not appropriate in a particular case, the court, when imposing a
7 sentence pursuant to paragraph (1) or (2), shall suspend execution
8 of a concluding portion of the term for a period selected at the
9 court's discretion. *For any defendant whose term is suspended*
10 *pursuant to this paragraph prior to January 1, 2022, if the court*
11 *suspends execution of a concluding portion of the term, the court*
12 *may take a waiver from the defendant permitting flash*
13 *incarceration by the probation officer during that concluding*
14 *portion, pursuant to Section 1203.35.*

15 (B) The portion of a defendant's sentenced term that is
16 suspended pursuant to this paragraph shall be known as mandatory
17 supervision, and, unless otherwise ordered by the court, shall
18 commence upon release from physical custody or an alternative
19 custody program, whichever is later. During the period of
20 mandatory supervision, the defendant shall be supervised by the
21 county probation officer in accordance with the terms, conditions,
22 and procedures generally applicable to persons placed on probation,
23 for the remaining unserved portion of the sentence imposed by the
24 court. The period of supervision shall be mandatory, and may not
25 be earlier terminated except by court order. Any proceeding to
26 revoke or modify mandatory supervision under this subparagraph
27 shall be conducted pursuant to either subdivisions (a) and (b) of
28 Section 1203.2 or Section 1203.3. During the period when the
29 defendant is under that supervision, unless in actual custody related
30 to the sentence imposed by the court, the defendant shall be entitled
31 to only actual time credit against the term of imprisonment imposed
32 by the court. Any time period which is suspended because a person
33 has absconded shall not be credited toward the period of
34 supervision.

35 (6) The sentencing changes made by the act that added this
36 subdivision shall be applied prospectively to any person sentenced
37 on or after October 1, 2011.

38 (7) The sentencing changes made to paragraph (5) by the act
39 that added this paragraph shall become effective and operative on

1 January 1, 2015, and shall be applied prospectively to any person
2 sentenced on or after January 1, 2015.

3 (i) This section shall remain in effect only until January 1, 2017,
4 and as of that date is repealed, unless a later enacted statute, that
5 is enacted before that date, deletes or extends that date.

6 *SEC. 3. Section 1203 of the Penal Code is amended to read:*

7 1203. (a) As used in this code, “probation” means the
8 suspension of the imposition or execution of a sentence and the
9 order of conditional and revocable release in the community under
10 the supervision of a probation officer. As used in this code,
11 “conditional sentence” means the suspension of the imposition or
12 execution of a sentence and the order of revocable release in the
13 community subject to conditions established by the court without
14 the supervision of a probation officer. It is the intent of the
15 Legislature that both conditional sentence and probation are
16 authorized whenever probation is authorized in any code as a
17 sentencing option for infractions or misdemeanors.

18 (b) (1) Except as provided in subdivision (j), if a person is
19 convicted of a felony and is eligible for probation, before judgment
20 is pronounced, the court shall immediately refer the matter to a
21 probation officer to investigate and report to the court, at a specified
22 time, upon the circumstances surrounding the crime and the prior
23 history and record of the person, which may be considered either
24 in aggravation or mitigation of the punishment.

25 (2) (A) The probation officer shall immediately investigate and
26 make a written report to the court of his or her findings and
27 recommendations, including his or her recommendations as to the
28 granting or denying of probation and the conditions of probation,
29 if granted.

30 (B) Pursuant to Section 828 of the Welfare and Institutions
31 Code, the probation officer shall include in his or her report any
32 information gathered by a law enforcement agency relating to the
33 taking of the defendant into custody as a minor, which shall be
34 considered for purposes of determining whether adjudications of
35 commissions of crimes as a juvenile warrant a finding that there
36 are circumstances in aggravation pursuant to Section 1170 or to
37 deny probation.

38 (C) If the person was convicted of an offense that requires him
39 or her to register as a sex offender pursuant to Sections 290 to
40 290.023, inclusive, or if the probation report recommends that

1 registration be ordered at sentencing pursuant to Section 290.006,
2 the probation officer's report shall include the results of the
3 State-Authorized Risk Assessment Tool for Sex Offenders
4 (SARATSO) administered pursuant to Sections 290.04 to 290.06,
5 inclusive, if applicable.

6 (D) The probation officer may also include in the report his or
7 her recommendation of both of the following:

8 (i) The amount the defendant should be required to pay as a
9 restitution fine pursuant to subdivision (b) of Section 1202.4.

10 (ii) Whether the court shall require, as a condition of probation,
11 restitution to the victim or to the Restitution Fund and the amount
12 thereof.

13 (E) The report shall be made available to the court and the
14 prosecuting and defense attorneys at least five days, or upon request
15 of the defendant or prosecuting attorney nine days, prior to the
16 time fixed by the court for the hearing and determination of the
17 report, and shall be filed with the clerk of the court as a record in
18 the case at the time of the hearing. The time within which the report
19 shall be made available and filed may be waived by written
20 stipulation of the prosecuting and defense attorneys that is filed
21 with the court or an oral stipulation in open court that is made and
22 entered upon the minutes of the court.

23 (3) At a time fixed by the court, the court shall hear and
24 determine the application, if one has been made, or, in any case,
25 the suitability of probation in the particular case. At the hearing,
26 the court shall consider any report of the probation officer,
27 including the results of the SARATSO, if applicable, and shall
28 make a statement that it has considered the report, which shall be
29 filed with the clerk of the court as a record in the case. If the court
30 determines that there are circumstances in mitigation of the
31 punishment prescribed by law or that the ends of justice would be
32 served by granting probation to the person, it may place the person
33 on probation. If probation is denied, the clerk of the court shall
34 immediately send a copy of the report to the Department of
35 Corrections and Rehabilitation at the prison or other institution to
36 which the person is delivered.

37 (4) The preparation of the report or the consideration of the
38 report by the court may be waived only by a written stipulation of
39 the prosecuting and defense attorneys that is filed with the court
40 or an oral stipulation in open court that is made and entered upon

1 the minutes of the court, except that a waiver shall not be allowed
2 unless the court consents thereto. However, if the defendant is
3 ultimately sentenced and committed to the state prison, a probation
4 report shall be completed pursuant to Section 1203c.

5 (c) If a defendant is not represented by an attorney, the court
6 shall order the probation officer who makes the probation report
7 to discuss its contents with the defendant.

8 (d) If a person is convicted of a misdemeanor, the court may
9 either refer the matter to the probation officer for an investigation
10 and a report or summarily pronounce a conditional sentence. If
11 the person was convicted of an offense that requires him or her to
12 register as a sex offender pursuant to Sections 290 to 290.023,
13 inclusive, or if the probation officer recommends that the court,
14 at sentencing, order the offender to register as a sex offender
15 pursuant to Section 290.006, the court shall refer the matter to the
16 probation officer for the purpose of obtaining a report on the results
17 of the State-Authorized Risk Assessment Tool for Sex Offenders
18 administered pursuant to Sections 290.04 to 290.06, inclusive, if
19 applicable, which the court shall consider. If the case is not referred
20 to the probation officer, in sentencing the person, the court may
21 consider any information concerning the person that could have
22 been included in a probation report. The court shall inform the
23 person of the information to be considered and permit him or her
24 to answer or controvert the information. For this purpose, upon
25 the request of the person, the court shall grant a continuance before
26 the judgment is pronounced.

27 (e) Except in unusual cases where the interests of justice would
28 best be served if the person is granted probation, probation shall
29 not be granted to any of the following persons:

30 (1) Unless the person had a lawful right to carry a deadly
31 weapon, other than a firearm, at the time of the perpetration of the
32 crime or his or her arrest, any person who has been convicted of
33 arson, robbery, carjacking, burglary, burglary with explosives,
34 rape with force or violence, torture, aggravated mayhem, murder,
35 attempt to commit murder, trainwrecking, kidnapping, escape from
36 the state prison, or a conspiracy to commit one or more of those
37 crimes and who was armed with the weapon at either of those
38 times.

1 (2) Any person who used, or attempted to use, a deadly weapon
2 upon a human being in connection with the perpetration of the
3 crime of which he or she has been convicted.

4 (3) Any person who willfully inflicted great bodily injury or
5 torture in the perpetration of the crime of which he or she has been
6 convicted.

7 (4) Any person who has been previously convicted twice in this
8 state of a felony or in any other place of a public offense which,
9 if committed in this state, would have been punishable as a felony.

10 (5) Unless the person has never been previously convicted once
11 in this state of a felony or in any other place of a public offense
12 which, if committed in this state, would have been punishable as
13 a felony, any person who has been convicted of burglary with
14 explosives, rape with force or violence, torture, aggravated
15 mayhem, murder, attempt to commit murder, trainwrecking,
16 extortion, kidnapping, escape from the state prison, a violation of
17 Section 286, 288, 288a, or 288.5, or a conspiracy to commit one
18 or more of those crimes.

19 (6) Any person who has been previously convicted once in this
20 state of a felony or in any other place of a public offense which,
21 if committed in this state, would have been punishable as a felony,
22 if he or she committed any of the following acts:

23 (A) Unless the person had a lawful right to carry a deadly
24 weapon at the time of the perpetration of the previous crime or his
25 or her arrest for the previous crime, he or she was armed with a
26 weapon at either of those times.

27 (B) The person used, or attempted to use, a deadly weapon upon
28 a human being in connection with the perpetration of the previous
29 crime.

30 (C) The person willfully inflicted great bodily injury or torture
31 in the perpetration of the previous crime.

32 (7) Any public official or peace officer of this state or any city,
33 county, or other political subdivision who, in the discharge of the
34 duties of his or her public office or employment, accepted or gave
35 or offered to accept or give any bribe, embezzled public money,
36 or was guilty of extortion.

37 (8) Any person who knowingly furnishes or gives away
38 phencyclidine.

39 (9) Any person who intentionally inflicted great bodily injury
40 in the commission of arson under subdivision (a) of Section 451

1 or who intentionally set fire to, burned, or caused the burning of,
2 an inhabited structure or inhabited property in violation of
3 subdivision (b) of Section 451.

4 (10) Any person who, in the commission of a felony, inflicts
5 great bodily injury or causes the death of a human being by the
6 discharge of a firearm from or at an occupied motor vehicle
7 proceeding on a public street or highway.

8 (11) Any person who possesses a short-barreled rifle or a
9 short-barreled shotgun under Section 33215, a machinegun under
10 Section 32625, or a silencer under Section 33410.

11 (12) Any person who is convicted of violating Section 8101 of
12 the Welfare and Institutions Code.

13 (13) Any person who is described in subdivision (b) or (c) of
14 Section 27590.

15 (f) When probation is granted in a case which comes within
16 subdivision (e), the court shall specify on the record and shall enter
17 on the minutes the circumstances indicating that the interests of
18 justice would best be served by that disposition.

19 (g) If a person is not eligible for probation, the judge shall refer
20 the matter to the probation officer for an investigation of the facts
21 relevant to determination of the amount of a restitution fine
22 pursuant to subdivision (b) of Section 1202.4 in all cases where
23 the determination is applicable. The judge, in his or her discretion,
24 may direct the probation officer to investigate all facts relevant to
25 the sentencing of the person. Upon that referral, the probation
26 officer shall immediately investigate the circumstances surrounding
27 the crime and the prior record and history of the person and make
28 a written report to the court of his or her findings. The findings
29 shall include a recommendation of the amount of the restitution
30 fine as provided in subdivision (b) of Section 1202.4.

31 (h) If a defendant is convicted of a felony and a probation report
32 is prepared pursuant to subdivision (b) or (g), the probation officer
33 may obtain and include in the report a statement of the comments
34 of the victim concerning the offense. The court may direct the
35 probation officer not to obtain a statement if the victim has in fact
36 testified at any of the court proceedings concerning the offense.

37 (i) A probationer shall not be released to enter another state
38 unless his or her case has been referred to the Administrator of the
39 Interstate Probation and Parole Compacts, pursuant to the Uniform
40 Act for Out-of-State Probationer or Parolee Supervision (Article

1 3 (commencing with Section 11175) of Chapter 2 of Title 1 of Part
2 4) and the probationer has reimbursed the county that has
3 jurisdiction over his or her probation case the reasonable costs of
4 processing his or her request for interstate compact supervision.
5 The amount and method of reimbursement shall be in accordance
6 with Section 1203.1b.

7 (j) In any court where a county financial evaluation officer is
8 available, in addition to referring the matter to the probation officer,
9 the court may order the defendant to appear before the county
10 financial evaluation officer for a financial evaluation of the
11 defendant's ability to pay restitution, in which case the county
12 financial evaluation officer shall report his or her findings regarding
13 restitution and other court-related costs to the probation officer on
14 the question of the defendant's ability to pay those costs.

15 Any order made pursuant to this subdivision may be enforced
16 as a violation of the terms and conditions of probation upon willful
17 failure to pay and at the discretion of the court, may be enforced
18 in the same manner as a judgment in a civil action, if any balance
19 remains unpaid at the end of the defendant's probationary period.

20 (k) Probation shall not be granted to, nor shall the execution of,
21 or imposition of sentence be suspended for, any person who is
22 convicted of a violent felony, as defined in subdivision (c) of
23 Section 667.5, or a serious felony, as defined in subdivision (c) of
24 Section 1192.7, and who was on probation for a felony offense at
25 the time of the commission of the new felony offense.

26 (l) *For any person granted probation prior to January 1, 2022,*
27 *at the time the court imposes probation, the court may take a*
28 *waiver from the defendant permitting flash incarceration by the*
29 *probation officer, pursuant to Section 1203.35.*

30 **SECTION 1.**

31 *SEC. 4.* Section 1203.35 is added to the Penal Code, to read:

32 1203.35. (a) (1) In any case where the court grants probation
33 or imposes a sentence that includes mandatory supervision, the
34 ~~court may authorize the county probation officer~~ *department is*
35 *authorized* to use flash incarceration for any violation of the
36 conditions of probation or ~~mandatory supervision, supervision~~ if,
37 at the time of granting probation or ordering mandatory
38 supervision, the court obtains from the defendant a waiver to a
39 court hearing prior to the imposition of a period of flash
40 incarceration. The waiver shall authorize the probation officer, if

1 the person on probation or mandatory supervision does not agree
 2 to accept a recommended period of flash incarceration upon a
 3 finding of a violation, to address the alleged violation by filing a
 4 declaration or revocation request with the court. *The probation*
 5 *department shall notify the court, public defender, district attorney,*
 6 *and sheriff of each imposition of flash incarceration.*

7 (2) *Each county probation department shall develop a response*
 8 *matrix that establishes protocols for the imposition of graduated*
 9 *sanctions for violations of the conditions of probation to determine*
 10 *appropriate interventions to include the use of flash incarceration.*

11 (3) *A supervisor shall approve the term of flash incarceration*
 12 *prior to the imposition of flash incarceration.*

13 (4) *Probation shall not be denied for refusal to sign the waiver.*

14 (b) For purposes of this section, “flash incarceration” is a period
 15 of detention in a county jail due to a violation of an offender’s
 16 conditions of probation or mandatory supervision. The length of
 17 the detention period may range between one and 10 consecutive
 18 days. Shorter, but if necessary more frequent, periods of detention
 19 for violations of an offender’s conditions of probation or mandatory
 20 supervision shall appropriately punish an offender while preventing
 21 the disruption in a work or home establishment that typically arises
 22 from longer periods of detention. *In cases where there are multiple*
 23 *violations in a single incident, only one flash incarceration booking*
 24 *is authorized and may range between one and 10 consecutive days.*

25 (c) This section shall not apply to any defendant sentenced
 26 pursuant to Section 1210.1.

27 (d) This section shall remain in effect only until January 1, ~~2021,~~
 28 2022, and as of that date is repealed, unless a later enacted statute,
 29 that is enacted before January 1, ~~2021,~~ 2022, deletes or extends
 30 that date.

31 *SEC. 5. Section 4019 of the Penal Code is amended to read:*

32 4019. (a) The provisions of this section shall apply in all of
 33 the following cases:

34 (1) When a prisoner is confined in or committed to a county
 35 jail, industrial farm, or road ~~camp,~~ *camp* or any city jail, industrial
 36 farm, or road camp, including all days of custody from the date of
 37 arrest to the date on which the serving of the sentence commences,
 38 under a judgment of ~~imprisonment,~~ *or imprisonment or of a fine*
 39 *and imprisonment until the fine is paid in a criminal action or*
 40 *proceeding.*

1 (2) When a prisoner is confined in or committed to the county
2 jail, industrial farm, or road camp or any city jail, industrial farm,
3 or road camp as a condition of probation after suspension of
4 imposition of a sentence or suspension of execution of ~~sentenee,~~
5 *sentence* in a criminal action or proceeding.

6 (3) When a prisoner is confined in or committed to the county
7 jail, industrial farm, or road camp or any city jail, industrial farm,
8 or road camp for a definite period of time for contempt pursuant
9 to a ~~proceeding,~~ *proceeding* other than a criminal action or
10 proceeding.

11 (4) When a prisoner is confined in a county jail, industrial farm,
12 or road ~~camp,~~ *camp* or a city jail, industrial farm, or road camp
13 following arrest and prior to the imposition of sentence for a felony
14 conviction.

15 (5) When a prisoner is confined in a county jail, industrial farm,
16 or road ~~camp,~~ *camp* or a city jail, industrial farm, or road camp as
17 part of custodial sanction imposed following a violation of
18 postrelease community supervision or parole.

19 (6) When a prisoner is confined in a county jail, industrial farm,
20 or road ~~camp,~~ *camp* or a city jail, industrial farm, or road camp as
21 a result of a sentence imposed pursuant to subdivision (h) of
22 Section 1170.

23 (7) When a prisoner participates in a program pursuant to
24 Section 1203.016 or Section 4024.2. Except for prisoners who
25 have already been deemed eligible to receive credits for
26 participation in a program pursuant to Section 1203.016 prior to
27 January 1, 2015, this paragraph shall apply prospectively.

28 (b) Subject to the provisions of subdivision (d), for each four-day
29 period in which a prisoner is confined in or committed to a facility
30 as specified in this section, one day shall be deducted from his or
31 her period of confinement unless it appears by the record that the
32 prisoner has refused to satisfactorily perform labor as assigned by
33 the sheriff, chief of police, or superintendent of an industrial farm
34 or road camp.

35 (c) For each four-day period in which a prisoner is confined in
36 or committed to a facility as specified in this section, one day shall
37 be deducted from his or her period of confinement unless it appears
38 by the record that the prisoner has not satisfactorily complied with
39 the reasonable rules and regulations established by the sheriff,

1 chief of police, or superintendent of an industrial farm or road
2 camp.

3 (d) This section does not require the sheriff, chief of police, or
4 superintendent of an industrial farm or road camp to assign labor
5 to a prisoner if it appears from the record that the prisoner has
6 refused to satisfactorily perform labor as assigned or that the
7 prisoner has not satisfactorily complied with the reasonable rules
8 and regulations of the sheriff, chief of police, or superintendent of
9 any industrial farm or road camp.

10 (e) A deduction shall not be made under this section unless the
11 person is committed for a period of four days or longer.

12 (f) It is the intent of the Legislature that if all days are earned
13 under this section, a term of four days will be deemed to have been
14 served for every two days spent in actual custody.

15 (g) The changes in this section as enacted by the act that added
16 this subdivision shall apply to prisoners who are confined to a
17 county jail, city jail, industrial farm, or road camp for a crime
18 committed on or after the effective date of that act.

19 (h) The changes to this section enacted by the act that added
20 this subdivision shall apply prospectively and shall apply to
21 prisoners who are confined to a county jail, city jail, industrial
22 farm, or road camp for a crime committed on or after October 1,
23 2011. Any days earned by a prisoner prior to October 1, 2011,
24 shall be calculated at the rate required by the prior law.

25 (i) (1) This section shall not apply, and no credits may be
26 earned, for periods of flash incarceration imposed pursuant to
27 Section 3000.08 or 3454.

28 (2) *Credits earned pursuant to this section for a period of flash*
29 *incarceration pursuant to Section 1203.35 shall, if the person's*
30 *probation or mandatory supervision is revoked, count towards the*
31 *term to be served.*

32 (j) *This section shall remain in effect only until January 1, 2022,*
33 *and as of that date is repealed, unless a later enacted statute, that*
34 *is enacted before January 1, 2022, deletes or extends that date.*

35 SEC. 6. Section 4019 is added to the Penal Code, to read:

36 4019. (a) *The provisions of this section shall apply in all of*
37 *the following cases:*

38 (1) *When a prisoner is confined in or committed to a county*
39 *jail, industrial farm, or road camp or any city jail, industrial farm,*
40 *or road camp, including all days of custody from the date of arrest*

1 *to the date on which the serving of the sentence commences, under*
2 *a judgment of imprisonment or of a fine and imprisonment until*
3 *the fine is paid in a criminal action or proceeding.*

4 (2) *When a prisoner is confined in or committed to the county*
5 *jail, industrial farm, or road camp or any city jail, industrial farm,*
6 *or road camp as a condition of probation after suspension of*
7 *imposition of a sentence or suspension of execution of sentence in*
8 *a criminal action or proceeding.*

9 (3) *When a prisoner is confined in or committed to the county*
10 *jail, industrial farm, or road camp or any city jail, industrial farm,*
11 *or road camp for a definite period of time for contempt pursuant*
12 *to a proceeding other than a criminal action or proceeding.*

13 (4) *When a prisoner is confined in a county jail, industrial farm,*
14 *or road camp or a city jail, industrial farm, or road camp following*
15 *arrest and prior to the imposition of sentence for a felony*
16 *conviction.*

17 (5) *When a prisoner is confined in a county jail, industrial farm,*
18 *or road camp or a city jail, industrial farm, or road camp as part*
19 *of custodial sanction imposed following a violation of postrelease*
20 *community supervision or parole.*

21 (6) *When a prisoner is confined in a county jail, industrial farm,*
22 *or road camp or a city jail, industrial farm, or road camp as a*
23 *result of a sentence imposed pursuant to subdivision (h) of Section*
24 *1170.*

25 (7) *When a prisoner participates in a program pursuant to*
26 *Section 1203.016 or Section 4024.2. Except for prisoners who*
27 *have already been deemed eligible to receive credits for*
28 *participation in a program pursuant to Section 1203.016 prior to*
29 *January 1, 2015, this paragraph shall apply prospectively.*

30 (b) *Subject to the provisions of subdivision (d), for each four-day*
31 *period in which a prisoner is confined in or committed to a facility*
32 *as specified in this section, one day shall be deducted from his or*
33 *her period of confinement unless it appears by the record that the*
34 *prisoner has refused to satisfactorily perform labor as assigned*
35 *by the sheriff, chief of police, or superintendent of an industrial*
36 *farm or road camp.*

37 (c) *For each four-day period in which a prisoner is confined in*
38 *or committed to a facility as specified in this section, one day shall*
39 *be deducted from his or her period of confinement unless it appears*
40 *by the record that the prisoner has not satisfactorily complied with*

1 *the reasonable rules and regulations established by the sheriff,*
2 *chief of police, or superintendent of an industrial farm or road*
3 *camp.*

4 *(d) This section does not require the sheriff, chief of police, or*
5 *superintendent of an industrial farm or road camp to assign labor*
6 *to a prisoner if it appears from the record that the prisoner has*
7 *refused to satisfactorily perform labor as assigned or that the*
8 *prisoner has not satisfactorily complied with the reasonable rules*
9 *and regulations of the sheriff, chief of police, or superintendent*
10 *of any industrial farm or road camp.*

11 *(e) A deduction shall not be made under this section unless the*
12 *person is committed for a period of four days or longer.*

13 *(f) It is the intent of the Legislature that if all days are earned*
14 *under this section, a term of four days will be deemed to have been*
15 *served for every two days spent in actual custody.*

16 *(g) The changes in this section as enacted by the act that added*
17 *this subdivision shall apply to prisoners who are confined to a*
18 *county jail, city jail, industrial farm, or road camp for a crime*
19 *committed on or after the effective date of that act.*

20 *(h) The changes to this section enacted by the act that added*
21 *this subdivision shall apply prospectively and shall apply to*
22 *prisoners who are confined to a county jail, city jail, industrial*
23 *farm, or road camp for a crime committed on or after October 1,*
24 *2011. Any days earned by a prisoner prior to October 1, 2011,*
25 *shall be calculated at the rate required by the prior law.*

26 *(i) This section shall not apply, and no credits may be earned,*
27 *for periods of flash incarceration imposed pursuant to Section*
28 *3000.08 or 3454.*

29 *(j) This section shall become operative on January 1, 2022.*