

AMENDED IN ASSEMBLY JUNE 27, 2016

AMENDED IN ASSEMBLY JUNE 2, 2016

AMENDED IN SENATE APRIL 7, 2015

**SENATE BILL**

**No. 266**

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

February 19, 2015

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An act to amend ~~Sections 1170 and~~ *Section* 1203 of, to amend, repeal, and add Section 4019 of, and to add and repeal Section 1203.35 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, ~~2022~~, 2021, 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~~, 2021, 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 on~~  
12    ~~evidence-based tools helps to maintain offender engagement in~~  
13    ~~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 behavior.~~  
18    ~~SEC. 2.— Section 1170 of the Penal Code, as amended by Section~~  
19    ~~1 of Chapter 378 of the Statutes of 2015, is amended to read:~~  
20    ~~1170.— (a) (1) The Legislature finds and declares that the~~  
21    ~~purpose of imprisonment for crime is punishment. This purpose~~  
22    ~~is best served by terms proportionate to the seriousness of the~~  
23    ~~offense with provision for uniformity in the sentences of offenders~~  
24    ~~committing the same offense under similar circumstances. The~~  
25    ~~Legislature further finds and declares that the elimination of~~  
26    ~~disparity and the provision of uniformity of sentences can best be~~  
27    ~~achieved by determinate sentences fixed by statute in proportion~~  
28    ~~to the seriousness of the offense as determined by the Legislature~~  
29    ~~to be imposed by the court with specified discretion.~~  
30    ~~(2) Notwithstanding paragraph (1), the Legislature further finds~~  
31    ~~and declares that programs should be available for inmates,~~  
32    ~~including, but not limited to, educational programs, that are~~  
33    ~~designed to prepare nonviolent felony offenders for successful~~  
34    ~~reentry into the community. The Legislature encourages the~~  
35    ~~development of policies and programs designed to educate and~~

1 rehabilitate nonviolent felony offenders. In implementing this  
2 section, the Department of Corrections and Rehabilitation is  
3 encouraged to give priority enrollment in programs to promote  
4 successful return to the community to an inmate with a short  
5 remaining term of commitment and a release date that would allow  
6 him or her adequate time to complete the program.

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

1 mandatory supervision. The sentence shall be deemed a separate  
2 prior prison term or a sentence of imprisonment in a county jail  
3 under subdivision (h) for purposes of Section 667.5, and a copy  
4 of the judgment and other necessary documentation shall be  
5 forwarded to the secretary.

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

25 ~~(e) The court shall state the reasons for its sentence choice on~~  
26 ~~the record at the time of sentencing. The court shall also inform~~  
27 ~~the defendant that as part of the sentence after expiration of the~~  
28 ~~term he or she may be on parole for a period as provided in Section~~  
29 ~~3000 or 3000.08 or postrelease community supervision for a period~~  
30 ~~as provided in Section 3451.~~

31 ~~(d) (1) When a defendant subject to this section or subdivision~~  
32 ~~(b) of Section 1168 has been sentenced to be imprisoned in the~~  
33 ~~state prison or county jail pursuant to subdivision (h) and has been~~  
34 ~~committed to the custody of the secretary or the county correctional~~  
35 ~~administrator, the court may, within 120 days of the date of~~  
36 ~~commitment on its own motion, or at any time upon the~~  
37 ~~recommendation of the secretary or the Board of Parole Hearings~~  
38 ~~in the case of state prison inmates, or the county correctional~~  
39 ~~administrator in the case of county jail inmates, recall the sentence~~  
40 ~~and commitment previously ordered and resentence the defendant~~

1 in the same manner as if he or she had not previously been  
2 sentenced, provided the new sentence, if any, is no greater than  
3 the initial sentence. The court resentencing under this subdivision  
4 shall apply the sentencing rules of the Judicial Council so as to  
5 eliminate disparity of sentences and to promote uniformity of  
6 sentencing. Credit shall be given for time served.

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

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

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

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

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

36 (iii) The defendant committed the offense with at least one adult  
37 codefendant.

38 (iv) The defendant has performed acts that tend to indicate  
39 rehabilitation or the potential for rehabilitation, including, but not  
40 limited to, availing himself or herself of rehabilitative, educational,

1 or vocational programs, if those programs have been available at  
2 his or her classification level and facility, using self-study for  
3 self-improvement, or showing evidence of remorse.

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

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

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

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

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

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

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

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

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

1 ~~(vi) The defendant has performed acts that tend to indicate~~  
2 ~~rehabilitation or the potential for rehabilitation, including, but not~~  
3 ~~limited to, availing himself or herself of rehabilitative, educational,~~  
4 ~~or vocational programs, if those programs have been available at~~  
5 ~~his or her classification level and facility, using self-study for~~  
6 ~~self-improvement, or showing evidence of remorse.~~

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

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

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

23 ~~(H) If the sentence is not recalled, the defendant may submit~~  
24 ~~another petition for recall and resentencing to the sentencing court~~  
25 ~~when the defendant has been committed to the custody of the~~  
26 ~~department for at least 20 years. If recall and resentencing is not~~  
27 ~~granted under that petition, the defendant may file another petition~~  
28 ~~after having served 24 years. The final petition may be submitted,~~  
29 ~~and the response to that petition shall be determined, during the~~  
30 ~~25th year of the defendant's sentence.~~

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

36 ~~(J) This subdivision shall have retroactive application.~~

37 ~~(e) (1) Notwithstanding any other law and consistent with~~  
38 ~~paragraph (1) of subdivision (a), if the secretary or the Board of~~  
39 ~~Parole Hearings or both determine that a prisoner satisfies the~~

1 criteria set forth in paragraph (2), the secretary or the board may  
2 recommend to the court that the prisoner's sentence be recalled.

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

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

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

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

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

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

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

39 ~~(5) The warden or the warden's representative shall provide the~~  
40 ~~prisoner and his or her family member, agent, or emergency~~

1 ~~contact, as described in paragraph (4), updated information~~  
2 ~~throughout the recall and resentencing process with regard to the~~  
3 ~~prisoner's medical condition and the status of the prisoner's recall~~  
4 ~~and resentencing proceedings.~~

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

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

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

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

1     ~~(10) The secretary shall issue a directive to medical and~~  
2 ~~correctional staff employed by the department that details the~~  
3 ~~guidelines and procedures for initiating a recall and resentencing~~  
4 ~~procedure. The directive shall clearly state that any prisoner who~~  
5 ~~is given a prognosis of six months or less to live is eligible for~~  
6 ~~recall and resentencing consideration, and that recall and~~  
7 ~~resentencing procedures shall be initiated upon that prognosis.~~

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

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

20     ~~(g) A sentence to state prison for a determinate term for which~~  
21 ~~only one term is specified, is a sentence to state prison under this~~  
22 ~~section.~~

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

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

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

1 ~~186.11 is imposed, an executed sentence for a felony punishable~~  
2 ~~pursuant to this subdivision shall be served in state prison.~~

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

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

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

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

1 ~~(7) The sentencing changes made to paragraph (5) by the act~~  
2 ~~that added this paragraph shall become effective and operative on~~  
3 ~~January 1, 2015, and shall be applied prospectively to any person~~  
4 ~~sentenced on or after January 1, 2015.~~

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

8 ~~SEC. 3.~~

9 *SECTION 1.* Section 1203 of the Penal Code is amended to  
10 read:

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

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

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

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

1 are circumstances in aggravation pursuant to Section 1170 or to  
2 deny probation.

3 (C) If the person was convicted of an offense that requires him  
4 or her to register as a sex offender pursuant to Sections 290 to  
5 290.023, inclusive, or if the probation report recommends that  
6 registration be ordered at sentencing pursuant to Section 290.006,  
7 the probation officer's report shall include the results of the  
8 State-Authorized Risk Assessment Tool for Sex Offenders  
9 (SARATSO) administered pursuant to Sections 290.04 to 290.06,  
10 inclusive, if applicable.

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

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

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

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

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

1 Corrections and Rehabilitation at the prison or other institution to  
2 which the person is delivered.

3 (4) The preparation of the report or the consideration of the  
4 report by the court may be waived only by a written stipulation of  
5 the prosecuting and defense attorneys that is filed with the court  
6 or an oral stipulation in open court that is made and entered upon  
7 the minutes of the court, except that a waiver shall not be allowed  
8 unless the court consents thereto. However, if the defendant is  
9 ultimately sentenced and committed to the state prison, a probation  
10 report shall be completed pursuant to Section 1203c.

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

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

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

36 (1) Unless the person had a lawful right to carry a deadly  
37 weapon, other than a firearm, at the time of the perpetration of the  
38 crime or his or her arrest, any person who has been convicted of  
39 arson, robbery, carjacking, burglary, burglary with explosives,  
40 rape with force or violence, torture, aggravated mayhem, murder,

1 attempt to commit murder, trainwrecking, kidnapping, escape from  
2 the state prison, or a conspiracy to commit one or more of those  
3 crimes and who was armed with the weapon at either of those  
4 times.

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

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

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

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

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

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

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

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

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

1 (8) Any person who knowingly furnishes or gives away  
2 phencyclidine.

3 (9) Any person who intentionally inflicted great bodily injury  
4 in the commission of arson under subdivision (a) of Section 451  
5 or who intentionally set fire to, burned, or caused the burning of,  
6 an inhabited structure or inhabited property in violation of  
7 subdivision (b) of Section 451.

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

12 (11) Any person who possesses a short-barreled rifle or a  
13 short-barreled shotgun under Section 33215, a machinegun under  
14 Section 32625, or a silencer under Section 33410.

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

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

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

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

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

1 (i) A probationer shall not be released to enter another state  
2 unless his or her case has been referred to the Administrator of the  
3 Interstate Probation and Parole Compacts, pursuant to the Uniform  
4 Act for Out-of-State Probationer or Parolee Supervision (Article  
5 3 (commencing with Section 11175) of Chapter 2 of Title 1 of Part  
6 4) and the probationer has reimbursed the county that has  
7 jurisdiction over his or her probation case the reasonable costs of  
8 processing his or her request for interstate compact supervision.  
9 The amount and method of reimbursement shall be in accordance  
10 with Section 1203.1b.

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

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

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

30 (l) For any person granted probation prior to January 1, ~~2022~~,  
31 2021, at the time the court imposes probation, the court may take  
32 a waiver from the defendant permitting flash incarceration by the  
33 probation officer, pursuant to Section 1203.35.

34 ~~SEC. 4.~~

35 *SEC. 2.* Section 1203.35 is added to the Penal Code, to read:

36 1203.35. (a) (1) In any case where the court grants probation  
37 or imposes a sentence that includes mandatory supervision, the  
38 county probation department is authorized to use flash incarceration  
39 for any violation of the conditions of probation or mandatory  
40 supervision if, at the time of granting probation or ordering

1 mandatory supervision, the court obtains from the defendant a  
2 waiver to a court hearing prior to the imposition of a period of  
3 flash incarceration. ~~The waiver shall authorize the probation officer,  
4 if the person on probation or mandatory supervision does not agree  
5 to accept a recommended period of flash incarceration upon a  
6 finding of a violation, to address the alleged violation by filing a  
7 declaration or revocation request with the court. The probation  
8 department shall notify the court, public defender, district attorney,  
9 and sheriff of each imposition of flash incarceration. Probation  
10 shall not be denied for refusal to sign the waiver.~~

11 (2) Each county probation department shall develop a response  
12 matrix that establishes protocols for the imposition of graduated  
13 sanctions for violations of the conditions of probation to determine  
14 appropriate interventions to include the use of flash incarceration.

15 (3) A supervisor shall approve the term of flash incarceration  
16 prior to the imposition of flash incarceration.

17 ~~(4) Probation shall not be denied for refusal to sign the waiver.  
18 Upon a decision to impose a period of flash incarceration, the  
19 probation department shall notify the court, public defender,  
20 district attorney, and sheriff of each imposition of flash  
21 incarceration.~~

22 (5) *If the person on probation or mandatory supervision does  
23 not agree to accept a recommended period of flash incarceration,  
24 upon a determination that there has been a violation, the probation  
25 officer is authorized to address the alleged violation by filing a  
26 declaration or revocation request with the court.*

27 (b) For purposes of this section, “flash incarceration” is a period  
28 of detention in a county jail due to a violation of an offender’s  
29 conditions of probation or mandatory supervision. The length of  
30 the detention period may range between one and 10 consecutive  
31 days. Shorter, but if necessary more frequent, periods of detention  
32 for violations of an offender’s conditions of probation or mandatory  
33 supervision shall appropriately punish an offender while preventing  
34 the disruption in a work or home establishment that typically arises  
35 from longer periods of detention. In cases where there are multiple  
36 violations in a single incident, only one flash incarceration booking  
37 is authorized and may range between one and 10 consecutive days.

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

1 (d) This section shall remain in effect only until January 1, ~~2022~~,  
2 2021, and as of that date is repealed, unless a later enacted statute,  
3 that is enacted before January 1, ~~2022~~, 2021, deletes or extends  
4 that date.

5 ~~SEC. 5.~~

6 *SEC. 3.* Section 4019 of the Penal Code is amended to read:

7 4019. (a) The provisions of this section shall apply in all of  
8 the following cases:

9 (1) When a prisoner is confined in or committed to a county  
10 jail, industrial farm, or road camp or any city jail, industrial farm,  
11 or road camp, including all days of custody from the date of arrest  
12 to the date on which the serving of the sentence commences, under  
13 a judgment of imprisonment or of a fine and imprisonment until  
14 the fine is paid in a criminal action or proceeding.

15 (2) When a prisoner is confined in or committed to the county  
16 jail, industrial farm, or road camp or any city jail, industrial farm,  
17 or road camp as a condition of probation after suspension of  
18 imposition of a sentence or suspension of execution of sentence  
19 in a criminal action or proceeding.

20 (3) When a prisoner is confined in or committed to the county  
21 jail, industrial farm, or road camp or any city jail, industrial farm,  
22 or road camp for a definite period of time for contempt pursuant  
23 to a proceeding other than a criminal action or proceeding.

24 (4) When a prisoner is confined in a county jail, industrial farm,  
25 or road camp or a city jail, industrial farm, or road camp following  
26 arrest and prior to the imposition of sentence for a felony  
27 conviction.

28 (5) When a prisoner is confined in a county jail, industrial farm,  
29 or road camp or a city jail, industrial farm, or road camp as part  
30 of custodial sanction imposed following a violation of postrelease  
31 community supervision or parole.

32 (6) When a prisoner is confined in a county jail, industrial farm,  
33 or road camp or a city jail, industrial farm, or road camp as a result  
34 of a sentence imposed pursuant to subdivision (h) of Section 1170.

35 (7) When a prisoner participates in a program pursuant to  
36 Section 1203.016 or Section 4024.2. Except for prisoners who  
37 have already been deemed eligible to receive credits for  
38 participation in a program pursuant to Section 1203.016 prior to  
39 January 1, 2015, this paragraph shall apply prospectively.

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

8 (c) For each four-day period in which a prisoner is confined in  
9 or committed to a facility as specified in this section, one day shall  
10 be deducted from his or her period of confinement unless it appears  
11 by the record that the prisoner has not satisfactorily complied with  
12 the reasonable rules and regulations established by the sheriff,  
13 chief of police, or superintendent of an industrial farm or road  
14 camp.

15 (d) This section does not require the sheriff, chief of police, or  
16 superintendent of an industrial farm or road camp to assign labor  
17 to a prisoner if it appears from the record that the prisoner has  
18 refused to satisfactorily perform labor as assigned or that the  
19 prisoner has not satisfactorily complied with the reasonable rules  
20 and regulations of the sheriff, chief of police, or superintendent of  
21 any industrial farm or road camp.

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

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

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

31 (h) The changes to this section enacted by the act that added  
32 this subdivision shall apply prospectively and shall apply to  
33 prisoners who are confined to a county jail, city jail, industrial  
34 farm, or road camp for a crime committed on or after October 1,  
35 2011. Any days earned by a prisoner prior to October 1, 2011,  
36 shall be calculated at the rate required by the prior law.

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

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

5 (j) This section shall remain in effect only until January 1, ~~2022~~,  
6 2021, and as of that date is repealed, unless a later enacted statute,  
7 that is enacted before January 1, ~~2022~~, 2021, deletes or extends  
8 that date.

9 ~~SEC. 6.~~

10 *SEC. 4.* Section 4019 is added to the Penal Code, to read:

11 4019. (a) The provisions of this section shall apply in all of  
12 the following cases:

13 (1) When a prisoner is confined in or committed to a county  
14 jail, industrial farm, or road camp or any city jail, industrial farm,  
15 or road camp, including all days of custody from the date of arrest  
16 to the date on which the serving of the sentence commences, under  
17 a judgment of imprisonment or of a fine and imprisonment until  
18 the fine is paid in a criminal action or proceeding.

19 (2) When a prisoner is confined in or committed to the county  
20 jail, industrial farm, or road camp or any city jail, industrial farm,  
21 or road camp as a condition of probation after suspension of  
22 imposition of a sentence or suspension of execution of sentence  
23 in a criminal action or proceeding.

24 (3) When a prisoner is confined in or committed to the county  
25 jail, industrial farm, or road camp or any city jail, industrial farm,  
26 or road camp for a definite period of time for contempt pursuant  
27 to a proceeding other than a criminal action or proceeding.

28 (4) When a prisoner is confined in a county jail, industrial farm,  
29 or road camp or a city jail, industrial farm, or road camp following  
30 arrest and prior to the imposition of sentence for a felony  
31 conviction.

32 (5) When a prisoner is confined in a county jail, industrial farm,  
33 or road camp or a city jail, industrial farm, or road camp as part  
34 of custodial sanction imposed following a violation of postrelease  
35 community supervision or parole.

36 (6) When a prisoner is confined in a county jail, industrial farm,  
37 or road camp or a city jail, industrial farm, or road camp as a result  
38 of a sentence imposed pursuant to subdivision (h) of Section 1170.

39 (7) When a prisoner participates in a program pursuant to  
40 Section 1203.016 or Section 4024.2. Except for prisoners who

1 have already been deemed eligible to receive credits for  
2 participation in a program pursuant to Section 1203.016 prior to  
3 January 1, 2015, this paragraph shall apply prospectively.

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

11 (c) For each four-day period in which a prisoner is confined in  
12 or committed to a facility as specified in this section, one day shall  
13 be deducted from his or her period of confinement unless it appears  
14 by the record that the prisoner has not satisfactorily complied with  
15 the reasonable rules and regulations established by the sheriff,  
16 chief of police, or superintendent of an industrial farm or road  
17 camp.

18 (d) This section does not require the sheriff, chief of police, or  
19 superintendent of an industrial farm or road camp to assign labor  
20 to a prisoner if it appears from the record that the prisoner has  
21 refused to satisfactorily perform labor as assigned or that the  
22 prisoner has not satisfactorily complied with the reasonable rules  
23 and regulations of the sheriff, chief of police, or superintendent of  
24 any industrial farm or road camp.

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

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

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

34 (h) The changes to this section enacted by the act that added  
35 this subdivision shall apply prospectively and shall apply to  
36 prisoners who are confined to a county jail, city jail, industrial  
37 farm, or road camp for a crime committed on or after October 1,  
38 2011. Any days earned by a prisoner prior to October 1, 2011,  
39 shall be calculated at the rate required by the prior law.

1 (i) This section shall not apply, and no credits may be earned,  
2 for periods of flash incarceration imposed pursuant to Section  
3 3000.08 or 3454.

4 (j) This section shall become operative on January 1, ~~2022~~.  
5 2021.

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