AMENDED IN ASSEMBLY SEPTEMBER 1, 2021

AMENDED IN ASSEMBLY JULY 12, 2021

AMENDED IN ASSEMBLY JUNE 23, 2021

AMENDED IN SENATE APRIL 29, 2021

AMENDED IN SENATE APRIL 15, 2021

SENATE BILL No. 317

Introduced by Senator Stern

February 4, 2021

An act to amend Section 4019 of, and to repeal and add Section 1370.01 of, the Penal Code, relating to criminal procedure.

LEGISLATIVE COUNSEL'S DIGEST

SB 317, as amended, Stern. Competence to stand trial.

(1) Existing law prohibits a person from being tried or adjudged to punishment while that person is mentally incompetent. Existing law establishes a process by which a defendant's mental competency is evaluated and by which the defendant receives treatment, including, if applicable, antipsychotic medication, with the goal of returning the defendant to competency. Existing law suspends a criminal action pending restoration to competency.

This bill would repeal provisions regarding the restoration of competency for a person charged with a misdemeanor, or a violation of probation for a misdemeanor, including provisions regarding administration for antipsychotic medication. The bill would instead authorize the court to conduct an inquiry into a defendant's competency, as specified. The bill would authorize a court, upon finding the defendant incompetent to stand trial, to suspend the proceedings and take certain

actions, including granting diversion not to exceed one year or dismissing the charges, as specified.

(2) Existing law provides that a prisoner, who, for specified reasons, is confined in or committed to a county jail, industrial farm, or road camp, or a city jail, industrial farm, or road camp, shall, for each 4-day period of custody, have 2 days deducted from the prisoner's period of confinement, except as specified.

This bill would extend the application of conduct credits to persons confined in a state hospital or other mental health treatment facility pending their return of mental competency.

This bill would incorporate additional changes to Section 4019 of the Penal Code proposed by AB 1542 to be operative only if this bill and AB 1542 are enacted and this bill is enacted last.

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

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

~~SECTION 1. Section 1370.01 of the Penal Code is repealed.~~

SECTION 1. Section 1370.01 of the Penal Code is repealed.

~~1370.01. (a) (1) If the defendant is found mentally competent, the criminal process shall resume, the trial on the offense charged shall proceed, and judgment may be pronounced. If the defendant is found mentally incompetent, the trial, judgment, or hearing on the alleged violation shall be suspended until the person becomes mentally competent, and the court shall order that (A) in the meantime, the defendant be delivered by the sheriff to an available public or private treatment facility approved by the county mental health director that will promote the defendant's speedy restoration to mental competence, or placed on outpatient status as specified in this section, and (B) upon the filing of a certificate of restoration to competence, the defendant be returned to court in accordance with Section 1372. The court shall transmit a copy of its order to the county mental health director or the director's designee.~~

~~(2) If the defendant is found mentally incompetent, the court may make a finding that the defendant is an appropriate candidate for diversion pursuant to Chapter 2.8A (commencing with Section 1001.35) of Title 6, and may, if the defendant is eligible pursuant to Section 1001.36, grant diversion for a period not to exceed that set forth in paragraph (1) of subdivision (c). Upon the dismissal~~

of charges at the conclusion of the period of diversion, pursuant to subdivision (e) of Section 1001.36, a defendant shall no longer be deemed incompetent to stand trial pursuant to this section.

(3) Prior to making the order directing that the defendant be confined in a treatment facility or placed on outpatient status, the court shall proceed as follows:

(A) The court shall order the county mental health director or the director's designee to evaluate the defendant and to submit to the court within 15 judicial days of the order a written recommendation as to whether the defendant should be required to undergo outpatient treatment, or committed to a treatment facility. No person shall be admitted to a treatment facility or placed on outpatient status under this section without having been evaluated by the county mental health director or the director's designee. No person shall be admitted to a state hospital under this section.

(B) The court shall hear and determine whether the defendant, with advice of their counsel, consents to the administration of antipsychotic medication, and shall proceed as follows:

(i) If the defendant, with advice of their counsel, consents, the court order of commitment shall include confirmation that antipsychotic medication may be given to the defendant as prescribed by a treating psychiatrist pursuant to the defendant's consent. The commitment order shall also indicate that, if the defendant withdraws consent for antipsychotic medication, after the treating psychiatrist complies with the provisions of subparagraph (C), the defendant shall be returned to court for a hearing in accordance with this subdivision regarding whether antipsychotic medication shall be administered involuntarily.

(ii) If the defendant does not consent to the administration of medication, the court shall hear and determine whether any of the following is true:

(I) The defendant lacks capacity to make decisions regarding antipsychotic medication, the defendant's mental disorder requires medical treatment with antipsychotic medication, and, if the defendant's mental disorder is not treated with antipsychotic medication, it is probable that serious harm to the physical or mental health of the patient will result. Probability of serious harm to the physical or mental health of the defendant requires evidence that the defendant is presently suffering adverse effects to their

~~physical or mental health, or the defendant has previously suffered these effects as a result of a mental disorder and their condition is substantially deteriorating. The fact that a defendant has a diagnosis of a mental disorder does not alone establish probability of serious harm to the physical or mental health of the defendant.~~

~~(II) The defendant is a danger to others, in that the defendant has inflicted, attempted to inflict, or made a serious threat of inflicting substantial physical harm on another while in custody, or the defendant had inflicted, attempted to inflict, or made a serious threat of inflicting substantial physical harm on another that resulted in the defendant being taken into custody, and the defendant presents, as a result of mental disorder or mental defect, a demonstrated danger of inflicting substantial physical harm on others. Demonstrated danger may be based on an assessment of the defendant's present mental condition, including a consideration of past behavior of the defendant within six years prior to the time the defendant last attempted to inflict, inflicted, or threatened to inflict substantial physical harm on another, and other relevant evidence.~~

~~(III) The people have charged the defendant with a serious crime against the person or property; involuntary administration of antipsychotic medication is substantially likely to render the defendant competent to stand trial; the medication is unlikely to have side effects that interfere with the defendant's ability to understand the nature of the criminal proceedings or to assist counsel in the conduct of a defense in a reasonable manner; less intrusive treatments are unlikely to have substantially the same results; and antipsychotic medication is in the patient's best medical interest in light of their medical condition.~~

~~(iii) If the court finds any of the conditions described in clause (ii) to be true, the court shall issue an order authorizing the treatment facility to involuntarily administer antipsychotic medication to the defendant when and as prescribed by the defendant's treating psychiatrist. The court shall not order involuntary administration of psychotropic medication under subclause (III) of clause (ii) unless the court has first found that the defendant does not meet the criteria for involuntary administration of psychotropic medication under subclause (I) of clause (ii) and does not meet the criteria under subclause (II) of clause (ii).~~

~~(iv) In all cases, the treating hospital, facility, or program may administer medically appropriate antipsychotic medication prescribed by a psychiatrist in an emergency as described in subdivision (m) of Section 5008 of the Welfare and Institutions Code.~~

~~(v) Any report made pursuant to subdivision (b) shall include a description of any antipsychotic medication administered to the defendant and its effects and side effects, including effects on the defendant's appearance or behavior that would affect the defendant's ability to understand the nature of the criminal proceedings or to assist counsel in the conduct of a defense in a reasonable manner. During the time the defendant is confined in a treatment facility or placed on outpatient status, either the defendant or the people may request that the court review any order made pursuant to this subdivision. The defendant, to the same extent enjoyed by other patients in the treatment facility, shall have the right to contact the patients' rights advocate regarding the defendant's rights under this section.~~

~~(C) If the defendant consented to antipsychotic medication as described in clause (i) of subparagraph (B), but subsequently withdraws their consent, or, if involuntary antipsychotic medication was not ordered pursuant to clause (ii) of subparagraph (B), and the treating psychiatrist determines that antipsychotic medication has become medically necessary and appropriate, the treating psychiatrist shall make efforts to obtain informed consent from the defendant for antipsychotic medication. If informed consent is not obtained from the defendant, and the treating psychiatrist is of the opinion that the defendant lacks capacity to make decisions regarding antipsychotic medication as specified in subclause (I) of clause (ii) of subparagraph (B), or that the defendant is a danger to others as specified in subclause (II) of clause (ii) of subparagraph (B), the committing court shall be notified of this, including an assessment of the current mental status of the defendant and the opinion of the treating psychiatrist that involuntary antipsychotic medication has become medically necessary and appropriate. The court shall provide copies of the report to the prosecuting attorney and to the attorney representing the defendant and shall set a hearing to determine whether involuntary antipsychotic medication should be ordered in the manner described in subparagraph (B).~~

~~(4) When the court, after considering the placement recommendation of the county mental health director required in paragraph (3), orders that the defendant be confined in a public or private treatment facility, the court shall provide copies of the following documents which shall be taken with the defendant to the treatment facility where the defendant is to be confined:~~

~~(A) The commitment order, including a specification of the charges.~~

~~(B) A computation or statement setting forth the maximum term of commitment in accordance with subdivision (c).~~

~~(C) A computation or statement setting forth the amount of credit for time served, if any, to be deducted from the maximum term of commitment.~~

~~(D) State summary criminal history information.~~

~~(E) Any arrest reports prepared by the police department or other law enforcement agency.~~

~~(F) Any court-ordered psychiatric examination or evaluation reports.~~

~~(G) The county mental health director's placement recommendation report.~~

~~(5) A person subject to commitment under this section may be placed on outpatient status under the supervision of the county mental health director or the director's designee by order of the court in accordance with the procedures contained in Title 15 (commencing with Section 1600) except that where the term "community program director" appears the term "county mental health director" shall be substituted.~~

~~(6) (A) If the defendant is committed or transferred to a public or private treatment facility approved by the county mental health director, the court may, upon receiving the written recommendation of the county mental health director, transfer the defendant to another public or private treatment facility approved by the county mental health director. In the event of dismissal of the criminal charges before the defendant recovers competence, the person shall be subject to the applicable provisions of Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code. Where either the defendant or the prosecutor chooses to contest the order of transfer, a petition may be filed in the court for a hearing, which shall be held if the court determines that sufficient grounds exist. At the hearing, the prosecuting attorney~~

~~or the defendant may present evidence bearing on the order of transfer. The court shall use the same standards as are used in conducting probation revocation hearings pursuant to Section 1203.2.~~

~~(B) Prior to making an order for transfer under this section, the court shall notify the defendant, the attorney of record for the defendant, the prosecuting attorney, and the county mental health director or the director's designee.~~

~~(7) If, at any time after the court has declared a defendant incompetent to stand trial pursuant to this section, counsel for the defendant or a jail medical or mental health staff provider provides the court with substantial evidence that the defendant's psychiatric symptoms have changed to such a degree as to create a doubt in the mind of the judge as to the defendant's current mental incompetence, the court may appoint a psychiatrist or a licensed psychologist to opine as to whether the defendant has regained competence. The State Department of State Hospitals may conduct an evaluation of the defendant in county custody pursuant to Section 4335.2 of the Welfare and Institutions Code. If, in the opinion of an expert, the defendant has regained competence, the court shall proceed as if a certificate of restoration of competence has been returned pursuant to paragraph (1) of subdivision (a) of Section 1372, except that a presumption of competency shall not apply and a hearing shall be held to determine whether competency has been restored.~~

~~(b) Within 90 days of a commitment made pursuant to subdivision (a), the medical director of the treatment facility to which the defendant is confined shall make a written report to the court and the county mental health director or the director's designee, concerning the defendant's progress toward recovery of mental competence and whether the administration of antipsychotic medication remains necessary. If the defendant is in county custody, the State Department of State Hospitals may conduct a remote telehealth evaluation of the defendant pursuant to Section 4335.2 of the Welfare and Institutions Code and make a written report to the court concerning the defendant's progress toward recovery of mental competence and whether the administration of antipsychotic medication is necessary. Where the defendant is on outpatient status, the outpatient treatment staff shall make a written report to the county mental health director concerning the~~

~~defendant's progress toward recovery of mental competence. Within 90 days of placement on outpatient status, the county mental health director shall report to the court on this matter. If the defendant has not recovered mental competence, but the report discloses a substantial likelihood that the defendant will regain mental competence in the foreseeable future, the defendant shall remain in the treatment facility or on outpatient status. Thereafter, at six-month intervals or until the defendant becomes mentally competent, where the defendant is confined in a treatment facility, the medical director of the hospital or person in charge of the facility shall report in writing to the court and the county mental health director or a designee regarding the defendant's progress toward recovery of mental competence and whether the administration of antipsychotic medication remains necessary. If the defendant remains in county custody after the initial 90-day report, the State Department of State Hospitals may conduct a remote telehealth evaluation of the defendant pursuant to Section 4335.2 of the Welfare and Institutions Code and make a written report to the court concerning the defendant's progress toward recovery of mental competence and whether the administration of antipsychotic medication is necessary. Where the defendant is on outpatient status, after the initial 90-day report, the outpatient treatment staff shall report to the county mental health director on the defendant's progress toward recovery, and the county mental health director shall report to the court on this matter at six-month intervals. A copy of these reports shall be provided to the prosecutor and defense counsel by the court. If the report indicates that there is no substantial likelihood that the defendant will regain mental competence in the foreseeable future, the committing court shall order the defendant to be returned to the court for proceedings pursuant to paragraph (2) of subdivision (c). The court shall transmit a copy of its order to the county mental health director or the director's designee.~~

~~(c) (1) If, at the end of one year from the date of commitment or a period of commitment equal to the maximum term of imprisonment provided by law for the most serious offense charged in the misdemeanor complaint, whichever is shorter, the defendant has not recovered mental competence, the defendant shall be returned to the committing court. The court shall notify the county~~

~~mental health director or the director's designee of the return and of any resulting court orders.~~

~~(2) Whenever any defendant is returned to the court pursuant to subdivision (b) or paragraph (1) of this subdivision and it appears to the court that the defendant is gravely disabled, as defined in subparagraph (A) of paragraph (1) of subdivision (h) of Section 5008 of the Welfare and Institutions Code, the court shall order the conservatorship investigator of the county of commitment of the defendant to initiate conservatorship proceedings for the defendant pursuant to Chapter 3 (commencing with Section 5350) of Part 1 of Division 5 of the Welfare and Institutions Code. Any hearings required in the conservatorship proceedings shall be held in the superior court in the county that ordered the commitment. The court shall transmit a copy of the order directing initiation of conservatorship proceedings to the county mental health director or the director's designee and shall notify the county mental health director or the director's designee of the outcome of the proceedings.~~

~~(d) The criminal action remains subject to dismissal pursuant to Section 1385. If the criminal action is dismissed, the court shall transmit a copy of the order of dismissal to the county mental health director or the director's designee.~~

~~(e) If the criminal charge against the defendant is dismissed, the defendant shall be released from any commitment ordered under this section, but without prejudice to the initiation of any proceedings which may be appropriate under Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code.~~

SEC. 2. Section 1370.01 is added to the Penal Code, to read:

1370.01. (a) If the defendant is found mentally competent, the criminal process shall resume, and the trial on the offense charged or hearing on the alleged violation shall proceed.

(b) If the defendant is found mentally incompetent, the trial, judgment, or hearing on the alleged violation shall be suspended and the court may do either of the following:

(1) (A) Conduct a hearing, pursuant to Chapter 2.8A (commencing with Section 1001.35) of Title 6, and, if the court deems the defendant eligible, grant diversion pursuant to Section 1001.36 for a period not to exceed one year from the date the individual is accepted into diversion or the maximum term of

imprisonment provided by law for the most serious offense charged in the misdemeanor complaint, whichever is shorter.

(B) If the court opts to conduct a hearing pursuant to this paragraph, the hearing shall be held no later than 30 days after the finding of incompetence. If the hearing is delayed beyond 30 days, the court shall order the defendant to be released on their own recognizance pending the hearing.

(C) If the defendant performs satisfactorily on diversion ~~or mandatory treatment~~ pursuant to this section, at the end of the period of ~~diversion or mandatory treatment,~~ *diversion,* the court shall dismiss the criminal charges that were the subject of the criminal proceedings at the time of the initial ~~diversion or treatment.~~ *diversion.*

(D) If the court finds the defendant ineligible for diversion based on the circumstances set forth in subdivision *(b) or* (d) of Section 1001.36, the court may, after notice to the defendant, defense counsel, and the prosecution, hold a hearing to determine whether to do any of the following:

(i) Order modification of the treatment plan in accordance with a recommendation from the treatment provider.

(ii) Refer the defendant to assisted outpatient treatment pursuant to Section 5346 of the Welfare and Institutions Code. A referral to assisted outpatient treatment may only occur in a county where services are available pursuant to Section 5348 of the Welfare and Institutions Code, and the agency agrees to accept responsibility for treatment of the defendant. A hearing to determine eligibility for assisted outpatient treatment shall be held within 45 days after the date of the referral. If the hearing is delayed beyond 45 days, the court shall order the defendant, if confined in county jail, to be released on their own recognizance pending that hearing. If the defendant is accepted into assisted outpatient treatment, the charges shall be dismissed pursuant to Section 1385.

(iii) Refer the defendant to the county conservatorship investigator in the county of commitment for possible conservatorship proceedings for the defendant pursuant to Chapter 3 (commencing with Section 5350) of Part 1 of Division 5 of the Welfare and Institutions Code. A defendant shall only be referred to the conservatorship investigator if, based on the opinion of a qualified mental health expert, the defendant appears to be gravely disabled, as defined in subparagraph (A) of paragraph (1) of

subdivision (h) of Section 5008 of the Welfare and Institution Code. Any hearings required in the conservatorship proceedings shall be held in the superior court in the county of commitment. The court shall transmit a copy of the order directing initiation of conservatorship proceedings to the county mental health director or the director's designee and shall notify the county mental health director or their designee of the outcome of the proceedings. Before establishing a conservatorship, the public guardian shall investigate all available alternatives to conservatorship pursuant to Section 5354 of the Welfare and Institutions Code. If a petition is not filed within 60 days of the referral, the court shall order the defendant, if confined in county jail, to be released on their own recognizance pending conservatorship proceedings. If the outcome of the conservatorship proceedings results in the establishment of conservatorship, the charges shall be dismissed pursuant to Section 1385.

(2) Dismiss the charges pursuant to Section 1385. If the criminal action is dismissed, the court shall transmit a copy of the order of dismissal to the county mental health director or the director's designee.

(c) If the defendant is found mentally incompetent and is on a grant of probation for a misdemeanor offense, the court shall dismiss the pending revocation matter and may return the defendant to supervision. If the revocation matter is dismissed pursuant to this subdivision, the court may modify the terms and conditions of supervision to include appropriate mental health treatment.

(d) It is the intent of the Legislature that a defendant subject to the terms of this section receive mental health treatment in a treatment facility and not a jail. A term of four days will be deemed to have been served for every two days spent in actual custody against the maximum term of diversion. *A defendant not in actual custody shall otherwise receive day for day credit against the term of diversion from the date the defendant is accepted into diversion.* "Actual custody" has the same meaning as in Section 4019.

(e) This section shall apply only as provided in subdivision (b) of Section 1367.

SEC. 3. Section 4019 of the Penal Code, as amended by Section 3 of Chapter 44 of the Statutes of 2019, is amended to read:

4019. (a) This section applies in all of the following cases:

(1) When a prisoner is confined in or committed to a county jail, industrial farm, or road camp or a city jail, industrial farm, or road camp, including all days of custody from the date of arrest to the date when the sentence commences, under a judgment of imprisonment or of a fine and imprisonment until the fine is paid in a criminal action or proceeding.

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

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

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

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

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

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

(8) When a prisoner is confined in or committed to a state hospital or other mental health treatment facility, or to a county jail treatment facility, as defined in Section 1369.1, in proceedings pursuant to Chapter 6 (commencing with Section 1367) of Title 10 of Part 2.

(b) Subject to subdivision (d), for each four-day period in which a prisoner is confined in or committed to a facility as specified in this section, one day shall be deducted from the prisoner's period of confinement unless it appears by the record that the prisoner

has refused to satisfactorily perform labor as assigned by the sheriff, chief of police, or superintendent of an industrial farm or road camp.

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

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

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

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

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

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

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

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

(j) This section shall remain in effect only until January 1, 2023, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2023, deletes or extends that date.

SEC. 3.5. Section 4019 of the Penal Code, as amended by Section 3 of Chapter 44 of the Statutes of 2019, is amended to read:

4019. (a) This section applies in all of the following cases:

(1) When a prisoner is confined in or committed to a county jail, industrial farm, or road camp or a city jail, industrial farm, or road camp, including all days of custody from the date of arrest to the date when the sentence commences, under a judgment of imprisonment or of a fine and imprisonment until the fine is paid in a criminal action or proceeding.

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

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

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

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

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

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

(8) When a prisoner participates in a treatment program pursuant to Section 1203.44.

~~(8)~~

(9) When a prisoner is confined in or committed to a *state hospital or other mental health treatment facility, or to a* county jail treatment facility, as defined in Section 1369.1, in proceedings pursuant to Chapter 6 (commencing with Section 1367) of Title 10 of Part 2.

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

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

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

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

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

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

(h) The changes to this section enacted by the act that added this subdivision shall apply prospectively and shall apply to prisoners who are confined to a county jail, city jail, industrial farm, or road camp for a crime committed on or after October 1,

2011. Any days earned by a prisoner prior to October 1, 2011, shall be calculated at the rate required by the prior law.

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

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

(j) This section shall remain in effect only until January 1, 2023, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2023, deletes or extends that date.

SEC. 4. Section 4019 of the Penal Code, as amended by Section 4 of Chapter 44 of the Statutes of 2019, is amended to read:

4019. (a) This section applies in all of the following cases:

(1) When a prisoner is confined in or committed to a county jail, industrial farm, or road camp or a city jail, industrial farm, or road camp, including all days of custody from the date of arrest to the date when the sentence commences, under a judgment of imprisonment or of a fine and imprisonment until the fine is paid in a criminal action or proceeding.

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

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

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

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

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

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

(8) When a prisoner is confined in or committed to a state hospital or other mental health treatment facility, or to a county jail treatment facility, as defined in Section 1369.1, in proceedings pursuant to Chapter 6 (commencing with Section 1367) of Title 10 of Part 2.

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

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

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

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

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

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

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

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

(j) This section shall become operative on January 1, 2023.

SEC. 4.5. Section 4019 of the Penal Code, as amended by Section 4 of Chapter 44 of the Statutes of 2019, is amended to read:

4019. (a) This section applies in all of the following cases:

(1) When a prisoner is confined in or committed to a county jail, industrial farm, or road camp or a city jail, industrial farm, or road camp, including all days of custody from the date of arrest to the date when the sentence commences, under a judgment of imprisonment or of a fine and imprisonment until the fine is paid in a criminal action or proceeding.

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

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

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

(5) When a prisoner is confined in a county jail, industrial farm, or road camp or a city jail, industrial farm, or road camp as part

of custodial sanction imposed following a violation of postrelease community supervision or parole.

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

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

(8) When a prisoner participates in a treatment program pursuant to Section 1203.44.

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(9) When a prisoner is confined in or committed to a *state hospital or other mental health treatment facility, or to a* county jail treatment facility, as defined in Section 1369.1, in proceedings pursuant to Chapter 6 (commencing with Section 1367) of Title 10 of Part 2.

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

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

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

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

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

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

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

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

(j) This section shall become operative on January 1, 2023.

SEC. 5. Sections 3.5 and 4.5 of this bill incorporate amendments to Section 4019 of the Penal Code proposed by both this bill and Assembly Bill 1542. Those sections of this bill shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2022, (2) each bill amends Section 4019 of the Penal Code, and (3) this bill is enacted after Assembly Bill 1542, in which case Sections 3 and 4 of this bill shall not become operative.

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