

Senate Bill No. 1266

CHAPTER 644

An act to amend Section 4532 of, and to add Section 1170.05 to, the Penal Code, relating to inmates.

[Approved by Governor September 30, 2010. Filed with
Secretary of State September 30, 2010.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1266, Liu. Inmates: alternative custody.

Existing law provides a system of prisons under the Department of Corrections and Rehabilitation to house inmates committed to state prison for felonies.

This bill would authorize the Secretary of the Department of Corrections and Rehabilitation to offer a program under which female inmates, pregnant inmates, or inmates who, immediately prior to incarceration, were primary caregivers of dependent children, as defined, who are committed to state prison may be allowed to participate in a voluntary alternative custody program in lieu of confinement in state prison. The bill would define an alternative custody program to include confinement to a residential home, a residential drug or treatment program, or a transitional care facility that offers appropriate services. The bill would authorize the department to enter into contracts with county agencies, not-for-profit organizations, for-profit organizations, and others in order to promote alternative custody placements. The bill would require the department to determine the recidivism rate of each participant in an alternative custody program. The bill would, among other things, provide inmate eligibility criteria, authorize the secretary to prescribe rules and regulations for the program, including imposing certain inmate participation requirements, and authorize certain inmate compliance verification procedures. The bill would make the escape or attempted escape from this program a misdemeanor, thereby creating a state-mandated local program.

This bill would incorporate changes made by AB 1369 that would become operative if both bills are enacted and this bill is enacted after AB 1369.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

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

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

(a) The incarceration rate for female offenders has doubled over the last 20 years. As a result, California now has about 10,000 incarcerated women, which is more than any other state.

(b) Nearly 70 percent of female inmates are nonviolent offenders. Two-thirds of female inmates were convicted of property or drug-related crimes.

(c) While over half of the men in prison were incarcerated for violent crimes, only 30 percent of women were convicted of violence.

(d) Female inmates are more likely to be victims of violent crimes than to be the perpetrators. Four in 10 female inmates were physically or sexually abused before 18 years of age.

(e) Over two-thirds of women are classified as low risk by the prison classification system. However, women are often held in more secure environments than their custody classifications would warrant.

(f) Approximately 67 percent of incarcerated women are mothers, and many of them are single parents. Most of California's incarcerated mothers are the primary caregivers of dependent children and hope to return home to their children. While the vast majority of children of incarcerated men continue to live with their mothers, children of incarcerated women are more likely to end up living with other relatives or in foster care.

(g) Separating parents from children has a substantial impact on their futures. Children of inmates are much more likely than their peers to become incarcerated. Research suggests that mothers who are able to maintain a relationship with their children are less likely to return to prison. Research also demonstrates that a father's involvement in his child's life greatly improves the child's chances for success. Helping incarcerated fathers foster stronger connections with their children, where appropriate, can have positive effects for children. Strong family connections help to ensure that fathers stay out of prison once they are released.

(h) To break the cycle of incarceration, California must adopt policies that facilitate parenting and family reunification.

SEC. 2. Section 1170.05 is added to the Penal Code, to read:

1170.05. (a) Notwithstanding any other law, the Secretary of the Department of Corrections and Rehabilitation is authorized to offer a program under which female inmates, pregnant inmates, or inmates who were primary caregivers of dependent children immediately prior to incarceration, as specified in subdivision (c), who are not precluded by subdivision (d), and who have been committed to state prison may be allowed to participate in a voluntary alternative custody program as defined in subdivision (b) in lieu of their confinement in state prison. In order to qualify for the program an offender need not be confined in an institution under the jurisdiction of the Department of Corrections and Rehabilitation. Under this program, one day of participation in an alternative custody program shall be in lieu of one day of incarceration in the state prison. Participants in the

program shall receive any sentence reduction credits that they would have received had they served their sentence in the state prison, and shall be subject to denial and loss of credit pursuant to subdivision (a) of Section 2932. The department may enter into contracts with county agencies, not-for-profit organizations, for-profit organizations, and others in order to promote alternative custody placements.

(b) As used in this section, an alternative custody program shall include, but not be limited to, the following:

(1) Confinement to a residential home during the hours designated by the department.

(2) Confinement to a residential drug or treatment program during the hours designated by the department.

(3) Confinement to a transitional care facility that offers appropriate services.

(c) Except as provided by subdivision (d), female inmates, pregnant inmates, or inmates who were primary caregivers of dependent children immediately prior to incarceration sentenced to state prison for a determinate term of imprisonment pursuant to Section 1170, and only those persons, shall be eligible to participate in the alternative custody program authorized by this section.

(d) An inmate committed to the state prison who meets any of the following criteria shall not be eligible to participate in the alternative custody program:

(1) The person has a current or prior conviction for a violent felony as defined in Section 667.5.

(2) The person has a current or prior conviction for a serious felony as defined in Sections 1192.7 and 1192.8.

(3) The person has a current or prior conviction for an offense that requires the person to register as a sex offender as provided in Chapter 5.5 (commencing with Section 290) of Title 9 of Part 1.

(4) The person was screened by the department using a validated risk assessment tool and determined to pose a high risk to commit a violent offense.

(5) The person has a history, within the last 10 years, of escape from a facility while under juvenile or adult custody, including, but not limited to, any detention facility, camp, jail, or state prison facility.

(e) An alternative custody program shall include the use of electronic monitoring, global positioning system devices, or other supervising devices for the purpose of helping to verify a participant's compliance with the rules and regulations of the program. The devices shall not be used to eavesdrop or record any conversation, except a conversation between the participant and the person supervising the participant, in which case the recording of such a conversation is to be used solely for the purposes of voice identification.

(f) (1) In order to implement alternative custody for the population specified in subdivision (c), the department shall create, and the participant shall agree to and fully participate in, an individualized treatment and

rehabilitation plan of evidence-based programs and services that will aid in the successful reentry into society while he or she takes part in alternative custody.

(2) The department shall collaborate with local law enforcement and community-based programs that administer evidence-based practices in order to prevent recidivism among individuals placed in alternative custody and assist in reentry into society. Mandatory case management services shall be provided to support rehabilitation, and to track the progress and individualized treatment plan compliance of the inmate.

(3) For purposes of this section, “evidence-based practices” means supervision policies, procedures, programs, and practices demonstrated by scientific research to reduce recidivism among individuals under probation, parole, or postrelease supervision.

(g) The secretary shall prescribe reasonable rules and regulations under which the alternative custody program shall operate. The department shall adopt regulations necessary to effectuate this section, including emergency regulations as provided under Section 5058.3 and adopted pursuant to the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code). The participant shall be informed in writing that he or she shall comply with the rules and regulations of the program, including, but not limited to, the following rules:

(1) The participant shall remain within the interior premises of his or her residence during the hours designated by the secretary or his or her designee.

(2) The participant shall be subject to search and seizure by a peace officer at any time of the day or night, with or without cause. In addition, the participant shall admit any peace officer designated by the secretary or his or her designee into the participant’s residence at any time for purposes of verifying the participant’s compliance with the conditions of his or her detention. Prior to participation in the alternative custody program, all participants shall agree in writing to these terms and conditions.

(3) The secretary or his or her designee may immediately retake the participant into custody to serve the balance of his or her sentence if the electronic monitoring or supervising devices are unable for any reason to properly perform their function at the designated place of detention, if the participant fails to remain within the place of detention as stipulated in the agreement, or if the participant for any other reason no longer meets the established criteria under this section.

(h) Whenever a peace officer supervising a participant has reasonable suspicion to believe that the participant is not complying with the rules or conditions of the program, or that the electronic monitoring devices are unable to function properly in the designated place of confinement, the peace officer may, under general or specific authorization of the secretary or his or her designee, and without a warrant of arrest, retake the participant into custody to complete the remainder of the original sentence.

(i) Nothing in this section shall be construed to require the secretary or his or her designee to allow an inmate to participate in this program if it

appears from the record that the inmate has not satisfactorily complied with reasonable rules and regulations while in custody. An inmate shall be eligible for participation in an alternative custody program only if the secretary or his or her designee concludes that the inmate meets the criteria for program participation established under this section and that the inmate's participation is consistent with any reasonable rules and regulations prescribed by the secretary.

(1) The rules and regulations and administrative policies of the program shall be written and shall be given or made available to the participant upon assignment to the alternative custody program.

(2) The secretary or his or her designee shall have the sole discretion concerning whether to permit program participation as an alternative to custody in state prison. A risk and needs assessment shall be completed on each inmate to assist in the determination of eligibility for participation and the type of alternative custody.

(j) The secretary or his or her designee shall permit program participants to seek and retain employment in the community, attend psychological counseling sessions or educational or vocational training classes, participate in life skills or parenting training, utilize substance abuse treatment services, or seek medical and dental assistance based upon the participant's individualized treatment and release plan. Participation in other rehabilitative services and programs may be approved by the case manager if it is specified as a requirement of the inmate's individualized treatment and rehabilitative case plan. Willful failure of the program participant to return to the place of detention not later than the expiration of any period of time during which he or she is authorized to be away from the place of detention pursuant to this section, unauthorized departures from the place of detention, or tampering with or disabling, or attempting to tamper with or disable, an electronic monitoring device shall subject the participant to a return to custody pursuant to subdivisions (g) and (h). In addition, participants may be subject to forfeiture of credits pursuant to the provisions of Section 2932, or to discipline for violation of rules established by the secretary.

(k) (1) Notwithstanding any other law, the secretary or his or her designee shall provide the information specified in paragraph (2) regarding participants in an alternative custody program to the law enforcement agencies of the jurisdiction in which persons participating in an alternative custody program reside.

(2) The information required by paragraph (1) shall consist of the following:

(A) The participant's name, address, and date of birth.

(B) The offense committed by the participant.

(C) The period of time the participant will be subject to an alternative custody program.

(3) The information received by a law enforcement agency pursuant to this subdivision may be used for the purpose of monitoring the impact of an alternative custody program on the community.

(l) It is the intent of the Legislature that the alternative custody program established under this section maintain the highest public confidence, credibility, and public safety. In the furtherance of these standards, the secretary may administer an alternative custody program pursuant to written contracts with appropriate public agencies or entities to provide specified program services. No public agency or entity entering into a contract may itself employ any person who is in an alternative custody program. The department shall determine the recidivism rate of each participant in an alternative custody program.

(m) An inmate participating in this program must voluntarily agree to all of the provisions of the program in writing, including that he or she may be returned to confinement at any time with or without cause, and shall not be charged fees or costs for the program.

(n) The state shall retain responsibility for the medical, dental, and mental health needs of individuals participating in the alternative custody program.

(o) The secretary shall adopt emergency regulations specifically governing participants in this program.

(p) A person is a primary caregiver of a dependent child for purposes of this section if all of the following criteria are met:

(1) The child is the inmate's son, daughter, stepchild, adopted child, or foster child.

(2) The child is 17 years of age or less at the time of the inmate's placement into the alternative custody program.

(3) The child resided with the inmate for the majority of the year preceding the inmate's arrest.

(4) At the time the inmate was arrested, the inmate had physical custody of the child and was primarily responsible for the care and upbringing of the child.

(q) If any phrase, clause, sentence, or provision of this section or application thereof to any person or circumstance is held invalid, such invalidity shall not affect any other phrase, clause, sentence, or provision or application of this section, which can be given effect without the invalid phrase, clause, sentence, or provision or application and to this end the provisions of this section are declared to be severable.

SEC. 3. Section 4532 of the Penal Code is amended to read:

4532. (a) (1) Every prisoner arrested and booked for, charged with, or convicted of a misdemeanor, and every person committed under the terms of Section 5654, 5656, or 5677 of the Welfare and Institutions Code as an inebriate, who is confined in any county or city jail, prison, industrial farm, or industrial road camp, is engaged on any county road or other county work, is in the lawful custody of any officer or person, is employed or continuing in his or her regular educational program or authorized to secure employment or education away from the place of confinement, pursuant to the Cobey Work Furlough Law (Section 1208), is authorized for temporary release for family emergencies or for purposes preparatory to his or her return to the community pursuant to Section 4018.6, or is a participant in a home detention program pursuant to Section 1203.016, and who thereafter

escapes or attempts to escape from the county or city jail, prison, industrial farm, or industrial road camp or from the custody of the officer or person in charge of him or her while engaged in or going to or returning from the county work or from the custody of any officer or person in whose lawful custody he or she is, or from the place of confinement in a home detention program pursuant to Section 1203.016, is guilty of a felony and, if the escape or attempt to escape was not by force or violence, is punishable by imprisonment in the state prison for a determinate term of one year and one day, or in a county jail not exceeding one year.

(2) If the escape or attempt to escape described in paragraph (1) is committed by force or violence, the person is guilty of a felony, punishable by imprisonment in the state prison for two, four, or six years to be served consecutively, or in a county jail not exceeding one year. When the second term of imprisonment is to be served in a county jail, it shall commence from the time the prisoner otherwise would have been discharged from jail.

(3) A conviction of a violation of this subdivision, or a violation of subdivision (b) involving a participant of a home detention program pursuant to Section 1203.016, that is not committed by force or violence, shall not be charged as a prior felony conviction in any subsequent prosecution for a public offense.

(b) (1) Every prisoner arrested and booked for, charged with, or convicted of a felony, and every person committed by order of the juvenile court, who is confined in any county or city jail, prison, industrial farm, or industrial road camp, is engaged on any county road or other county work, is in the lawful custody of any officer or person, or is confined pursuant to Section 4011.9, is a participant in a home detention program pursuant to Section 1203.016, who escapes or attempts to escape from a county or city jail, prison, industrial farm, or industrial road camp or from the custody of the officer or person in charge of him or her while engaged in or going to or returning from the county work or from the custody of any officer or person in whose lawful custody he or she is, or from confinement pursuant to Section 4011.9, or from the place of confinement in a home detention program pursuant to Section 1203.016, is guilty of a felony and, if the escape or attempt to escape was not by force or violence, is punishable by imprisonment in the state prison for 16 months, two years, or three years, to be served consecutively, or in a county jail not exceeding one year.

(2) If the escape or attempt to escape described in paragraph (1) is committed by force or violence, the person is guilty of a felony, punishable by imprisonment in the state prison for a full term of two, four, or six years to be served consecutively to any other term of imprisonment, commencing from the time the person otherwise would have been released from imprisonment and the term shall not be subject to reduction pursuant to subdivision (a) of Section 1170.1, or in a county jail for a consecutive term not to exceed one year, that term to commence from the time the prisoner otherwise would have been discharged from jail.

(c) Notwithstanding any other law, every inmate who is a participant in an alternative custody program pursuant to Section 1170.05 who escapes or attempts to escape from the program is guilty of a misdemeanor.

(d) (1) Except in unusual cases where the interests of justice would best be served if the person is granted probation, probation shall not be granted to any person who is convicted of a felony offense under this section in that he or she escaped or attempted to escape from a secure main jail facility, from a court building, or while being transported between the court building and the jail facility.

(2) In any case in which a person is convicted of a violation of this section designated as a misdemeanor, he or she shall be confined in a county jail for not less than 90 days nor more than one year except in unusual cases where the interests of justice would best be served by the granting of probation.

(3) For the purposes of this subdivision, “main jail facility” means the facility used for the detention of persons pending arraignment, after arraignment, during trial, and upon sentence or commitment. The facility shall not include an industrial farm, industrial road camp, work furlough facility, or any other nonsecure facility used primarily for sentenced prisoners. As used in this subdivision, “secure” means that the facility contains an outer perimeter characterized by the use of physically restricting construction, hardware, and procedures designed to eliminate ingress and egress from the facility except through a closely supervised gate or doorway.

(4) If the court grants probation under this subdivision, it shall specify the reason or reasons for that order on the court record.

(5) Any sentence imposed under this subdivision shall be served consecutive to any other sentence in effect or pending.

(e) The willful failure of a prisoner, whether convicted of a felony or a misdemeanor, to return to his or her place of confinement no later than the expiration of the period that he or she was authorized to be away from that place of confinement, is an escape from that place of confinement. This subdivision applies to a prisoner who is employed or continuing in his or her regular educational program, authorized to secure employment or education pursuant to the Cobey Work Furlough Law (Section 1208), authorized for temporary release for family emergencies or for purposes preparatory to his or her return to the community pursuant to Section 4018.6, or permitted to participate in a home detention program pursuant to Section 1203.016. A prisoner convicted of a misdemeanor who willfully fails to return to his or her place of confinement under this subdivision shall be punished as provided in paragraph (1) of subdivision (a). A prisoner convicted of a felony who willfully fails to return to his or her place of confinement shall be punished as provided in paragraph (1) of subdivision (b).

SEC. 3.3. Section 4532 of the Penal Code is amended to read:

4532. (a) (1) Every prisoner arrested and booked for, charged with, or convicted of a misdemeanor, and every person committed under the terms of Section 5654, 5656, or 5677 of the Welfare and Institutions Code as an

inebriate, who is confined in any county or city jail, prison, industrial farm, or industrial road camp, is engaged on any county road or other county work, is in the lawful custody of any officer or person, is employed or continuing in his or her regular educational program or authorized to secure employment or education away from the place of confinement, pursuant to the Cobey Work Furlough Law (Section 1208), is authorized for temporary release for family emergencies or for purposes preparatory to his or her return to the community pursuant to Section 4018.6, or is a participant in a home detention program pursuant to Section 1203.016, and who thereafter escapes or attempts to escape from the county or city jail, prison, industrial farm, or industrial road camp or from the custody of the officer or person in charge of him or her while engaged in or going to or returning from the county work or from the custody of any officer or person in whose lawful custody he or she is, or from the place of confinement in a home detention program pursuant to Section 1203.016, is guilty of a felony and, if the escape or attempt to escape was not by force or violence, is punishable by imprisonment in the state prison for a determinate term of one year and one day, or in a county jail not exceeding one year.

(2) If the escape or attempt to escape described in paragraph (1) is committed by force or violence, the person is guilty of a felony, punishable by imprisonment in the state prison for two, four, or six years to be served consecutively, or in a county jail not exceeding one year. When the second term of imprisonment is to be served in a county jail, it shall commence from the time the prisoner otherwise would have been discharged from jail.

(3) A conviction of a violation of this subdivision, or a violation of subdivision (b) involving a participant of a home detention program pursuant to Section 1203.016, that is not committed by force or violence, shall not be charged as a prior felony conviction in any subsequent prosecution for a public offense.

(b) (1) Every prisoner arrested and booked for, charged with, or convicted of a felony, and every person committed by order of the juvenile court, who is confined in any county or city jail, prison, industrial farm, or industrial road camp, is engaged on any county road or other county work, is in the lawful custody of any officer or person, or is confined pursuant to Section 4011.9, is a participant in a home detention program pursuant to Section 1203.016, who escapes or attempts to escape from a county or city jail, prison, industrial farm, or industrial road camp or from the custody of the officer or person in charge of him or her while engaged in or going to or returning from the county work or from the custody of any officer or person in whose lawful custody he or she is, or from confinement pursuant to Section 4011.9, or from the place of confinement in a home detention program pursuant to Section 1203.016, is guilty of a felony and, if the escape or attempt to escape was not by force or violence, is punishable by imprisonment in the state prison for 16 months, two years, or three years, to be served consecutively, or in a county jail not exceeding one year.

(2) If the escape or attempt to escape described in paragraph (1) is committed by force or violence, the person is guilty of a felony, punishable

by imprisonment in the state prison for a full term of two, four, or six years to be served consecutively to any other term of imprisonment, commencing from the time the person otherwise would have been released from imprisonment and the term shall not be subject to reduction pursuant to subdivision (a) of Section 1170.1, or in a county jail for a consecutive term not to exceed one year, that term to commence from the time the prisoner otherwise would have been discharged from jail.

(c) Notwithstanding any other law, every prisoner who is a participant in an electronic monitoring program pursuant to Section 1203.018 or 1203.019 who willfully fails to comply with the prescribed rules and regulations of that program is guilty of a misdemeanor.

(d) Notwithstanding any other law, every inmate who is a participant in an alternative custody program pursuant to Section 1170.05 who escapes or attempts to escape from the program is guilty of a misdemeanor.

(e) (1) Except in unusual cases where the interests of justice would best be served if the person is granted probation, probation shall not be granted to any person who is convicted of a felony offense under this section in that he or she escaped or attempted to escape from a secure main jail facility, from a court building, or while being transported between the court building and the jail facility.

(2) In any case in which a person is convicted of a violation of this section designated as a misdemeanor, he or she shall be confined in a county jail for not less than 90 days nor more than one year except in unusual cases where the interests of justice would best be served by the granting of probation.

(3) For the purposes of this subdivision, “main jail facility” means the facility used for the detention of persons pending arraignment, after arraignment, during trial, and upon sentence or commitment. The facility shall not include an industrial farm, industrial road camp, work furlough facility, or any other nonsecure facility used primarily for sentenced prisoners. As used in this subdivision, “secure” means that the facility contains an outer perimeter characterized by the use of physically restricting construction, hardware, and procedures designed to eliminate ingress and egress from the facility except through a closely supervised gate or doorway.

(4) If the court grants probation under this subdivision, it shall specify the reason or reasons for that order on the court record.

(5) Any sentence imposed under this subdivision shall be served consecutive to any other sentence in effect or pending.

(f) The willful failure of a prisoner, whether convicted of a felony or a misdemeanor, to return to his or her place of confinement no later than the expiration of the period that he or she was authorized to be away from that place of confinement, is an escape from that place of confinement. This subdivision applies to a prisoner who is employed or continuing in his or her regular educational program, authorized to secure employment or education pursuant to the Cobey Work Furlough Law (Section 1208), authorized for temporary release for family emergencies or for purposes preparatory to his or her return to the community pursuant to Section 4018.6,

or permitted to participate in a home detention program pursuant to Section 1203.016. A prisoner convicted of a misdemeanor who willfully fails to return to his or her place of confinement under this subdivision shall be punished as provided in paragraph (1) of subdivision (a). A prisoner convicted of a felony who willfully fails to return to his or her place of confinement shall be punished as provided in paragraph (1) of subdivision (b).

(g) This section shall remain in effect only until January 1, 2015, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2015, deletes or extends that date.

SEC. 3.5. Section 4532 is added to the Penal Code, to read:

4532. (a) (1) Every prisoner arrested and booked for, charged with, or convicted of a misdemeanor, and every person committed under the terms of Section 5654, 5656, or 5677 of the Welfare and Institutions Code as an inebriate, who is confined in any county or city jail, prison, industrial farm, or industrial road camp, is engaged on any county road or other county work, is in the lawful custody of any officer or person, is employed or continuing in his or her regular educational program or authorized to secure employment or education away from the place of confinement, pursuant to the Cobey Work Furlough Law (Section 1208), is authorized for temporary release for family emergencies or for purposes preparatory to his or her return to the community pursuant to Section 4018.6, or is a participant in a home detention program pursuant to Section 1203.016, and who thereafter escapes or attempts to escape from the county or city jail, prison, industrial farm, or industrial road camp or from the custody of the officer or person in charge of him or her while engaged in or going to or returning from the county work or from the custody of any officer or person in whose lawful custody he or she is, or from the place of confinement in a home detention program pursuant to Section 1203.016, is guilty of a felony and, if the escape or attempt to escape was not by force or violence, is punishable by imprisonment in the state prison for a determinate term of one year and one day, or in a county jail not exceeding one year.

(2) If the escape or attempt to escape described in paragraph (1) is committed by force or violence, the person is guilty of a felony, punishable by imprisonment in the state prison for two, four, or six years to be served consecutively, or in a county jail not exceeding one year. When the second term of imprisonment is to be served in a county jail, it shall commence from the time the prisoner otherwise would have been discharged from jail.

(3) A conviction of a violation of this subdivision, or a violation of subdivision (b) involving a participant of a home detention program pursuant to Section 1203.016, that is not committed by force or violence, shall not be charged as a prior felony conviction in any subsequent prosecution for a public offense.

(b) (1) Every prisoner arrested and booked for, charged with, or convicted of a felony, and every person committed by order of the juvenile court, who is confined in any county or city jail, prison, industrial farm, or industrial road camp, is engaged on any county road or other county work, is in the

lawful custody of any officer or person, or is confined pursuant to Section 4011.9, is a participant in a home detention program pursuant to Section 1203.016, who escapes or attempts to escape from a county or city jail, prison, industrial farm, or industrial road camp or from the custody of the officer or person in charge of him or her while engaged in or going to or returning from the county work or from the custody of any officer or person in whose lawful custody he or she is, or from confinement pursuant to Section 4011.9, or from the place of confinement in a home detention program pursuant to Section 1203.016, is guilty of a felony and, if the escape or attempt to escape was not by force or violence, is punishable by imprisonment in the state prison for 16 months, two years, or three years, to be served consecutively, or in a county jail not exceeding one year.

(2) If the escape or attempt to escape described in paragraph (1) is committed by force or violence, the person is guilty of a felony, punishable by imprisonment in the state prison for a full term of two, four, or six years to be served consecutively to any other term of imprisonment, commencing from the time the person otherwise would have been released from imprisonment and the term shall not be subject to reduction pursuant to subdivision (a) of Section 1170.1, or in a county jail for a consecutive term not to exceed one year, that term to commence from the time the prisoner otherwise would have been discharged from jail.

(c) Notwithstanding any other law, every inmate who is a participant in an alternative custody program pursuant to Section 1170.05 who escapes or attempts to escape from the program is guilty of a misdemeanor.

(d) (1) Except in unusual cases where the interests of justice would best be served if the person is granted probation, probation shall not be granted to any person who is convicted of a felony offense under this section in that he or she escaped or attempted to escape from a secure main jail facility, from a court building, or while being transported between the court building and the jail facility.

(2) In any case in which a person is convicted of a violation of this section designated as a misdemeanor, he or she shall be confined in a county jail for not less than 90 days nor more than one year except in unusual cases where the interests of justice would best be served by the granting of probation.

(3) For the purposes of this subdivision, “main jail facility” means the facility used for the detention of persons pending arraignment, after arraignment, during trial, and upon sentence or commitment. The facility shall not include an industrial farm, industrial road camp, work furlough facility, or any other nonsecure facility used primarily for sentenced prisoners. As used in this subdivision, “secure” means that the facility contains an outer perimeter characterized by the use of physically restricting construction, hardware, and procedures designed to eliminate ingress and egress from the facility except through a closely supervised gate or doorway.

(4) If the court grants probation under this subdivision, it shall specify the reason or reasons for that order on the court record.

(5) Any sentence imposed under this subdivision shall be served consecutive to any other sentence in effect or pending.

(e) The willful failure of a prisoner, whether convicted of a felony or a misdemeanor, to return to his or her place of confinement no later than the expiration of the period that he or she was authorized to be away from that place of confinement, is an escape from that place of confinement. This subdivision applies to a prisoner who is employed or continuing in his or her regular educational program, authorized to secure employment or education pursuant to the Cobey Work Furlough Law (Section 1208), authorized for temporary release for family emergencies or for purposes preparatory to his or her return to the community pursuant to Section 4018.6, or permitted to participate in a home detention program pursuant to Section 1203.016. A prisoner convicted of a misdemeanor who willfully fails to return to his or her place of confinement under this subdivision shall be punished as provided in paragraph (1) of subdivision (a). A prisoner convicted of a felony who willfully fails to return to his or her place of confinement shall be punished as provided in paragraph (1) of subdivision (b).

(f) This section shall become operative January 1, 2015.

SEC. 4. Sections 3.3 and 3.5 of this bill incorporate amendments to Section 4532 of the Penal Code proposed by both this bill and AB 1369. Those sections shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2011, (2) each bill amends Section 4532 of the Penal Code, and (3) this bill is enacted after AB 1369, in which case Section 3 of this bill shall not become operative.

SEC. 5. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.