

ASSEMBLY BILL

No. 648

Introduced by Assembly Members Block and Fletcher

February 16, 2011

An act to amend Sections 4801, 4802, 4803, 4804, 4807, 4810, 4812, and 4813 of the Penal Code, relating to clemency.

LEGISLATIVE COUNSEL'S DIGEST

AB 648, as introduced, Block. Clemency.

The California Constitution authorizes the Governor to grant reprieves, pardons, or commutations after sentence has been entered, but prohibits the Governor from granting a pardon or commutation to a person twice convicted of a felony except on recommendation of the Supreme Court, 4 judges concurring. The California Constitution further requires the Governor to report to the Legislature each reprieve, pardon, and commutation stating the pertinent facts and reasons for granting it. Existing statutory law provides that at least 10 days before the Governor acts upon an application for a pardon, written notice of the intention to apply therefor, signed by the person applying, shall be served upon the district attorney of the county where the conviction was had, and proof, by affidavit, of the service is required to be presented to the Governor.

This bill would instead require, that at least 30 days before the Governor acts upon any application for a pardon or commutation, the application signed by the person applying to be served upon the district attorney of the county where the conviction was had. The bill would authorize the district attorney to submit a written recommendation to the Governor for or against pardon or commutation of sentence. The bill would further require the district attorney to notify the victim or victims of the crime or crimes related to the application and those

persons’ family members, and allow those persons to submit a recommendation to the Governor for or against pardon or commutation of sentence. By imposing additional duties on the district attorney, this bill would create a state-mandated local program.

Existing law requires the Governor, at the beginning of every session of the Legislature, to communicate to the Legislature, in addition to each case of reprieve or pardon, each commutation and include specified information in that communication.

This bill would instead require the Governor, at the beginning of every regular session of the Legislature, to file a written report with the Legislature and include the application for each reprieve, pardon, or commutation received by the Governor, or his or her predecessor in office, during the previous regular session of the Legislature, as specified, and require that the report be made available to the public. The bill would make other conforming changes.

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, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

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

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

1 SECTION 1. Section 4801 of the Penal Code is amended to
 2 read:
 3 4801. (a) ~~The Board of Prison Terms~~ *Board of Parole Hearings*
 4 may report to the Governor, from time to time, the names of any
 5 and all persons imprisoned in any state prison who, in its judgment,
 6 ought to have a commutation of sentence or be pardoned and set
 7 at liberty on account of good conduct, or unusual term of sentence,
 8 or any other cause, including evidence of intimate partner battering
 9 and its effects. For purposes of this section, “intimate partner
 10 battering and its effects” may include evidence of the nature and
 11 effects of physical, emotional, or mental abuse upon the beliefs,
 12 perceptions, or behavior of victims of domestic violence where it
 13 appears the criminal behavior was the result of that victimization.

1 (b) (1) ~~The Board of Prison Terms~~ *Board of Parole Hearings*,
2 in reviewing a prisoner's suitability for parole pursuant to Section
3 3041.5, shall consider any information or evidence that, at the time
4 of the commission of the crime, the prisoner had experienced
5 intimate partner battering, but was convicted of the offense prior
6 to the enactment of Section 1107 of the Evidence Code by Chapter
7 812 of the Statutes of 1991. The board shall state on the record the
8 information or evidence that it considered pursuant to this
9 subdivision, and the reasons for the parole decision. The board
10 shall annually report to the Legislature and the Governor on the
11 cases the board considered pursuant to this subdivision during the
12 previous year, including the board's decision and the findings of
13 its investigations of these cases.

14 (2) *The report for the Legislature to be submitted pursuant to*
15 *paragraph (1) shall be submitted pursuant to Section 9795 of the*
16 *Government Code.*

17 SEC. 2. Section 4802 of the Penal Code is amended to read:

18 4802. In the case of a person twice convicted of felony, the
19 application for pardon or commutation of sentence shall be made
20 directly to the Governor, who shall transmit all papers and
21 documents relied upon in support of and in opposition to the
22 application to the ~~Board of Prison Terms~~ *Board of Parole*
23 *Hearings*.

24 SEC. 3. Section 4803 of the Penal Code is amended to read:

25 4803. When an application is made to the Governor for pardon
26 or commutation of sentence, or when an application has been
27 referred to the ~~Board of Prison Terms, he or it~~ *Board of Parole*
28 *Hearings, the Governor or the board* may require the judge of the
29 court before which the conviction was had, or the district attorney
30 by whom the action was prosecuted, to furnish ~~him or it~~ *the*
31 *Governor or the board*, without delay, with a summarized
32 statement of the facts proved on the trial, and of any other facts
33 having reference to the propriety of granting or refusing said
34 application, together with his *or her* recommendation for or against
35 the granting of the same and his reason for such recommendation.

36 SEC. 4. Section 4804 of the Penal Code is amended to read:

37 4804. (a) At least ~~10~~ 30 days before the Governor acts upon
38 an application for a pardon *or commutation of sentence*, written
39 notice of the intention to apply therefor, signed by the person
40 applying, ~~must~~ *shall* be served upon the district attorney of the

1 county where the conviction was had, and proof, by affidavit, of
 2 the service ~~must~~ shall be presented to the Governor.

3 (b) *The district attorney may submit a written recommendation*
 4 *to the Governor for or against pardon or commutation of sentence.*

5 (c) *The district attorney shall notify the victim or victims of the*
 6 *crime or crimes related to the application and the victims' families*
 7 *who may also submit a recommendation to the Governor for or*
 8 *against pardon or commutation of sentence.*

9 SEC. 5. Section 4807 of the Penal Code is amended to read:

10 4807. ~~The Governor must, at the beginning of every session,~~
 11 ~~communicate to the Legislature in addition to each case of reprieve,~~
 12 ~~or pardon, as provided in Article V, Section 8, of the Constitution~~
 13 ~~of California, each commutation,~~ (a) *At the beginning of every*
 14 *regular session of the Legislature, the Governor shall file a written*
 15 *report with the Legislature, that shall include each application for*
 16 *each case of reprieve, pardon, or commutation received by the*
 17 *Governor, or his or her predecessor in office, during the*
 18 *immediately preceding regular session of the Legislature, stating*
 19 *the name of the person convicted, the crime of which he the person*
 20 *was convicted, the sentence and its date, the date of the*
 21 ~~commutation~~ *reprieve, pardon, or commutation and the reason for*
 22 *granting the same. The report shall be submitted in compliance*
 23 *with Section 9795 of the Government Code.*

24 (b) *Notwithstanding any other law, the written report filed with*
 25 *the Legislature pursuant to subdivision (a) shall be available to*
 26 *the public.*

27 SEC. 6. Section 4810 of the Penal Code is amended to read:

28 4810. (a) ~~The Board of Prison Terms~~ *Board of Parole Hearings*
 29 shall succeed to and shall exercise and perform all powers and
 30 duties granted to and imposed upon the Advisory Pardon Board
 31 by law.

32 (b) The Advisory Pardon Board is abolished.

33 (c) The report required of the ~~Board of Prison Terms~~ *Board of*
 34 *Parole Hearings* by Section 4814 may be included in the report
 35 of the department.

36 SEC. 7. Section 4812 of the Penal Code is amended to read:

37 4812. Upon request of the Governor, the ~~Board of Prison Terms~~
 38 *Board of Parole Hearings* shall investigate and report on all
 39 applications for reprieves, pardons and commutation of sentence
 40 and shall make such recommendations to the Governor with

1 reference thereto as to it may seem advisable. To that end the board
2 shall examine and consider all applications so referred and all
3 transcripts of judicial proceedings and all affidavits or other
4 documents submitted in connection therewith, and shall have power
5 to employ assistants and take testimony and to examine witnesses
6 under oath and to do any and all things necessary to make a full
7 and complete investigation of and concerning all applications
8 referred to it. Members of the board and its administrative officer
9 are, and each of them is, hereby authorized to administer oaths.

10 SEC. 8. Section 4813 of the Penal Code is amended to read:

11 4813. In the case of applications of persons twice convicted
12 of a felony, the ~~Board of Prison Terms~~ *Board of Parole Hearings*,
13 after investigation, shall transmit its written recommendation upon
14 such application to the Governor, together with all papers filed in
15 connection with the application.

16 SEC. 9. If the Commission on State Mandates determines that
17 this act contains costs mandated by the state, reimbursement to
18 local agencies and school districts for those costs shall be made
19 pursuant to Part 7 (commencing with Section 17500) of Division
20 4 of Title 2 of the Government Code.