

AMENDED IN ASSEMBLY APRIL 6, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

**ASSEMBLY BILL**

**No. 648**

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**Introduced by Assembly Members Block and Fletcher**

February 16, 2011

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An act to amend Sections 4801, 4802, 4803, ~~4804~~, 4807, 4810, 4812, and 4813 of, *and to add Section 4805 to*, the Penal Code, relating to clemency.

LEGISLATIVE COUNSEL'S DIGEST

AB 648, as amended, 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~~ *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 *for commutation of sentence* 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~~ *that includes each application that was granted* 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 Parole Hearings may report to the  
4 Governor, from time to time, the names of any and all persons  
5 imprisoned in any state prison who, in its judgment, ought to have  
6 a commutation of sentence or be pardoned and set at liberty on  
7 account of good conduct, or unusual term of sentence, or any other  
8 cause, including evidence of intimate partner battering and its  
9 effects. For purposes of this section, "intimate partner battering  
10 and its effects" may include evidence of the nature and effects of

1 physical, emotional, or mental abuse upon the beliefs, perceptions,  
2 or behavior of victims of domestic violence where it appears the  
3 criminal behavior was the result of that victimization.

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

17 (2) The report for the Legislature to be submitted pursuant to  
18 paragraph (1) shall be submitted pursuant to Section 9795 of the  
19 Government Code.

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

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

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

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

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

39 ~~4804. (a) At least 30 days before the Governor acts upon an~~  
40 ~~application for a pardon or commutation of sentence, written notice~~

1 of the intention to apply therefor, signed by the person applying,  
2 shall be served upon the district attorney of the county where the  
3 conviction was had, and proof, by affidavit, of the service shall be  
4 presented to the Governor.

5 ~~(b) The district attorney may submit a written recommendation  
6 to the Governor for or against pardon or commutation of sentence.~~

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

11 *SEC. 4. Section 4805 is added to the Penal Code, to read:*

12 *4805. (a) At least 30 days before the Governor acts upon an  
13 application for a commutation of sentence, written notice of the  
14 intention to apply therefor, signed by the person applying, shall  
15 be served upon the district attorney of the county where the  
16 conviction was had, and proof, by affidavit, of the service shall be  
17 presented to the Governor.*

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

20 *(c) The district attorney shall notify the victim or victims of the  
21 crime or crimes related to the application and the victims' families  
22 who may also submit a recommendation to the Governor for or  
23 against commutation of sentence.*

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

25 *4807. (a) At the beginning of every regular session of the  
26 Legislature, the Governor shall file a written report with the  
27 Legislature, that shall include each application that was granted  
28 for each case of reprieve, pardon, or commutation received by the  
29 Governor, or his or her predecessor in office, during the  
30 immediately preceding regular session of the Legislature, stating  
31 the name of the person convicted, the crime of which the person  
32 was convicted, the sentence and its date, the date of the reprieve,  
33 pardon, or commutation and the reason for granting the same. The  
34 report shall be submitted in compliance with Section 9795 of the  
35 Government Code.*

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

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

1 4810. (a) The Board of Parole Hearings shall succeed to and  
2 shall exercise and perform all powers and duties granted to and  
3 imposed upon the Advisory Pardon Board by law.

4 (b) The Advisory Pardon Board is abolished.

5 (c) The report required of the Board of Parole Hearings by  
6 Section 4814 may be included in the report of the department.

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

8 4812. Upon request of the Governor, the Board of Parole  
9 Hearings shall investigate and report on all applications for  
10 reprieves, pardons, and commutation of sentence and shall make  
11 such recommendations to the Governor with reference thereto as  
12 to it may seem advisable. To that end the board shall examine and  
13 consider all applications so referred and all transcripts of judicial  
14 proceedings and all affidavits or other documents submitted in  
15 connection therewith, and shall have power to employ assistants  
16 and take testimony and to examine witnesses under oath and to do  
17 any and all things necessary to make a full and complete  
18 investigation of and concerning all applications referred to it.  
19 Members of the board and its administrative officer are, and each  
20 of them is, hereby authorized to administer oaths.

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

22 4813. In the case of applications of persons twice convicted  
23 of a felony, the Board of Parole Hearings, after investigation, shall  
24 transmit its written recommendation upon such application to the  
25 Governor, together with all papers filed in connection with the  
26 application.

27 SEC. 9. If the Commission on State Mandates determines that  
28 this act contains costs mandated by the state, reimbursement to  
29 local agencies and school districts for those costs shall be made  
30 pursuant to Part 7 (commencing with Section 17500) of Division  
31 4 of Title 2 of the Government Code.

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