

Assembly Bill No. 648

Passed the Assembly August 29, 2011

Chief Clerk of the Assembly

Passed the Senate August 22, 2011

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2011, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Sections 4801, 4802, 4803, 4806, 4807, 4810, 4812, and 4813 of, and to add Section 4805 to, the Penal Code, relating to clemency.

LEGISLATIVE COUNSEL'S DIGEST

AB 648, 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 require that, except when there is imminent danger of the death of a person convicted or imprisoned, or when the term of imprisonment of the applicant is within 10 days of its expiration, at least 10 days before the Governor acts upon any application for a commutation, the application signed by the person applying 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 commutation of sentence. The bill would further require the district attorney to make reasonable efforts 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 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 that includes each application that was granted for each reprieve, pardon, or commutation by the Governor, or his or her predecessor in office, during the previous regular session of the Legislature, as specified, and would 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.

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

SECTION 1. Section 4801 of the Penal Code is amended to read:

4801. (a) The Board of Parole Hearings may report to the Governor, from time to time, the names of any and all persons imprisoned in any state prison who, in its judgment, ought to have a commutation of sentence or be pardoned and set at liberty on account of good conduct, or unusual term of sentence, or any other cause, including evidence of intimate partner battering and its effects. For purposes of this section, “intimate partner battering and its effects” may include evidence of the nature and effects of physical, emotional, or mental abuse upon the beliefs, perceptions, or behavior of victims of domestic violence where it appears the criminal behavior was the result of that victimization.

(b) (1) The Board of Parole Hearings, in reviewing a prisoner’s suitability for parole pursuant to Section 3041.5, shall consider any information or evidence that, at the time of the commission of the crime, the prisoner had experienced intimate partner

battering, but was convicted of the offense prior to the enactment of Section 1107 of the Evidence Code by Chapter 812 of the Statutes of 1991. The board shall state on the record the information or evidence that it considered pursuant to this subdivision, and the reasons for the parole decision. The board shall annually report to the Legislature and the Governor on the cases the board considered pursuant to this subdivision during the previous year, including the board's decision and the findings of its investigations of these cases.

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

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

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

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

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

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

4805. (a) At least 10 days before the Governor acts upon an application for a commutation of sentence, 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 shall be presented to the Governor.

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

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

SEC. 5. Section 4806 of the Penal Code is amended to read:

4806. The provisions of Sections 4804 and 4805 are not applicable:

(a) When there is imminent danger of the death of the person convicted or imprisoned.

(b) When the term of imprisonment of the applicant is within 10 days of its expiration.

SEC. 6. Section 4807 of the Penal Code is amended to read:

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

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

SEC. 7. Section 4810 of the Penal Code is amended to read:

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

(b) The Advisory Pardon Board is abolished.

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

SEC. 8. Section 4812 of the Penal Code is amended to read:

4812. Upon request of the Governor, the Board of Parole Hearings shall investigate and report on all applications for reprieves, pardons, and commutation of sentence and shall make such recommendations to the Governor with reference thereto as to it may seem advisable. To that end the board shall examine and

consider all applications so referred and all transcripts of judicial proceedings and all affidavits or other documents submitted in connection therewith, and shall have power to employ assistants and take testimony and to examine witnesses under oath and to do any and all things necessary to make a full and complete investigation of and concerning all applications referred to it. Members of the board and its administrative officer are, and each of them is, hereby authorized to administer oaths.

SEC. 9. Section 4813 of the Penal Code is amended to read:

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

SEC. 10. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

Approved _____, 2011

Governor