

**Introduced by Senator Harman
(Coauthor: Senator Hancock)**

February 18, 2011

An act to amend Sections 646.92, 679.03, 3043, 3058.8, and 11155 of the Penal Code, relating to corrections, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 852, as introduced, Harman. Corrections: victim notification.

Existing law requires the Department of Corrections and Rehabilitation, county sheriff, and director of the local department of corrections, upon request, to give notice, as specified, prior to the release from state prison or county jail, of any person convicted of specified offenses, or of any change in parole status or relevant change in parole location, or if the person absconds from supervision while on parole, to a victim of the offense and others, as specified. Existing law provides for this notice by telephone and certified mail, and requires those persons requesting notice to provide current address and telephone numbers, as specified.

This bill would authorize providing that notice by telephone, certified mail, or electronic mail, as specified.

Existing law requires the Department of Corrections and Rehabilitation to supply a form to designated agencies in order to enable persons to request and receive notification from the department of the release, escape, scheduled execution, or death of the violent offender. Existing law requires the agency to give the form to the victim, witness, or next of kin of the victim for completion, explain to that person or persons the right to be so notified, and forward the completed form to the department.

This bill would instead require the Department of Corrections and Rehabilitation to establish notification procedures and inform the designated agencies in order to enable persons requesting notice to request and receive notification from the department of the release, escape, scheduled execution, or death of the violent offender. The bill would require that agencies inform the victim, witness, or next of kin of the victim about the notification procedures and explain to that person or persons the right to be so notified. By imposing new duties on local law enforcement, this bill would impose a state-mandated local program.

Existing law, amended by Proposition 9, approved by the voters at the November 4, 2008, statewide general election, requires the Board of Parole Hearings to notify the victim, or next of kin of the victim, of any crime committed by a prisoner, of any hearing to review or consider the parole suitability or the setting of a parole date for that prisoner.

This bill would permit the victim, or next of kin of the victim, to receive that notice by telephone, electronic mail, or certified mail. The bill would provide that this act furthers the rights of victims of crimes for purposes of Proposition 9.

Existing law provides that as soon as placement of an inmate in any reentry or work furlough program is planned, but in no case less than 60 days prior to that placement, the Department of Corrections and Rehabilitation shall send written notice, if notice has been requested, to specified requesting parties, to the last address of the requesting party provided to the department.

This bill would authorize the notice to be sent to a victim or next of kin of a victim using the method of communication selected by the requesting party, and would require the department to send the notices to the last mailing address, electronic mail address, or telephone number provided to the department by the victim or next of kin of the victim.

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.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: 2/3. 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 646.92 of the Penal Code is amended to
2 read:
3 646.92. (a) (1) The Department of Corrections *and*
4 *Rehabilitation*, county sheriff, or director of the local department
5 of corrections shall give notice not less than 15 days prior to the
6 release from the state prison or a county jail of any person who is
7 convicted of violating Section 646.9 or convicted of a felony
8 offense involving domestic violence, as defined in Section 6211
9 of the Family Code, or any change in the parole status or relevant
10 change in the parole location of the convicted person, or if the
11 convicted person absconds from supervision while on parole, to
12 any person the court identifies as a victim of the offense, a family
13 member of the victim, or a witness to the offense by telephone
14 ~~and~~, *electronic mail, or certified mail* at his or her last known
15 address, upon request *and using the method of communication*
16 *selected by the requesting party*. A victim, family member, or
17 witness shall keep the ~~Department of Corrections department~~ or
18 county sheriff informed of his or her current ~~mailing address and~~
19 ~~telephone number~~ *contact information* to be entitled to receive
20 notice. A victim may designate another person for the purpose of
21 receiving notification. The ~~Department of Corrections department,~~
22 county sheriff, or director of the local department of corrections,
23 shall make reasonable attempts to locate a person who has
24 requested notification but whose ~~address and telephone number~~
25 ~~are~~ *contact information* is incorrect or not current. However, the
26 duty to keep the ~~Department of Corrections department~~ or county
27 sheriff informed of a current ~~mailing address and telephone number~~
28 *contact information* shall remain with the victim.
29 ~~Following~~
30 (2) *Following* notification by the department pursuant to Section
31 3058.61, in the event the victim had not originally requested
32 notification under this section, the sheriff or the chief of police, as
33 appropriate, shall make an attempt to advise the victim or, if the
34 victim is a minor, the parent or guardian of the victim, of the
35 victim's right to notification under this section.

1 (b) All information relating to any person who receives notice
 2 under this section shall remain confidential and shall not be made
 3 available to the person convicted of violating this section.

4 (c) For purposes of this section, “release” includes a release
 5 from the state prison or a county jail because time has been served,
 6 a release from the state prison or a county jail to parole or probation
 7 supervision, or an escape from an institution or reentry facility.

8 (d) ~~The Department of Corrections~~ *department* or county sheriff
 9 shall give notice of an escape from an institution or reentry facility
 10 of any person convicted of violating Section 646.9 or convicted
 11 of a felony offense involving domestic violence, as defined in
 12 Section 6211 of the Family Code, to the notice recipients described
 13 in subdivision (a).

14 (e) Substantial compliance satisfies the notification requirements
 15 of subdivision (a).

16 SEC. 2. Section 679.03 of the Penal Code, as amended by
 17 Section 65 of Chapter 178 of the Statutes of 2010, is amended to
 18 read:

19 679.03. (a) With respect to the conviction of a defendant
 20 involving a violent offense, as defined in Section 29905, the county
 21 district attorney, probation department, and victim-witness
 22 coordinator shall confer and establish an annual policy within
 23 existing resources to decide which one of their agencies shall
 24 inform each witness involved in the conviction who was threatened
 25 by the defendant following the defendant’s arrest and each victim
 26 or next of kin of the victim of that offense of the right to request
 27 and receive a notice pursuant to Section 3058.8 or 3605. If no
 28 agreement is reached, the presiding judge shall designate the
 29 appropriate county agency or department to provide this
 30 notification.

31 (b) The Department of Corrections *and Rehabilitation* shall
 32 ~~supply a form to~~ *establish notification procedures and inform* the
 33 agency designated pursuant to subdivision (a) in order to enable
 34 persons specified in subdivision (a) to request and receive
 35 notification from the department of the release, escape, scheduled
 36 execution, or death of the violent offender. That agency shall ~~give~~
 37 ~~the form to~~ *inform* the victim, witness, or next of kin of the victim
 38 ~~for completion, of the notification procedures and~~ explain to that
 39 person or persons the right to be so notified, ~~and forward the~~
 40 ~~completed form to the department.~~ The department or the Board

1 of ~~Prison Terms~~ *Parole Hearings* is responsible for notifying all
2 victims, witnesses, or next of kin of victims who request to be
3 notified of a violent offender's release or scheduled execution, as
4 provided by Sections 3058.8 and 3605.

5 (c) All information relating to any person receiving notice
6 pursuant to subdivision (b) shall remain confidential and is not
7 subject to disclosure pursuant to the California Public Records Act
8 (Chapter 3.5 (commencing with Section 6250) of ~~Title~~ *Division 7*
9 of ~~Division~~ *Title 1* of the Government Code).

10 SEC. 3. Section 3043 of the Penal Code is amended to read:

11 3043. (a) (1) Upon request, notice of any hearing to review
12 or consider the parole suitability or the setting of a parole date for
13 any prisoner in a state prison shall be ~~sent~~ *given by telephone,*
14 *certified mail, or electronic mail, using the method of*
15 *communication selected by the requesting party,* by the Board of
16 Parole Hearings at least 90 days before the hearing to any victim
17 of any crime committed by the prisoner, or to the next of kin of
18 the victim if the victim has died, to include the commitment crimes,
19 determinate term commitment crimes for which the prisoner has
20 been paroled, and any other felony crimes or crimes against the
21 person for which the prisoner has been convicted. The requesting
22 party shall keep the board apprised of his or her current ~~mailing~~
23 ~~address~~ *contact information in order to receive the notice.*

24 (2) No later than 30 days prior to the date selected for the
25 hearing, any person, other than the victim, entitled to attend the
26 hearing shall inform the board of his or her intention to attend the
27 hearing and the name and identifying information of any other
28 person entitled to attend the hearing who will accompany him or
29 her.

30 (3) No later than 14 days prior to the date selected for the
31 hearing, the board shall notify every person entitled to attend the
32 hearing confirming the date, time, and place of the hearing.

33 (b) (1) The victim, next of kin, members of the victim's family,
34 and two representatives designated as provided in paragraph (2)
35 of this subdivision have the right to appear, personally or by
36 counsel, at the hearing and to adequately and reasonably express
37 his, her, or their views concerning the prisoner and the case,
38 including, but not limited to the commitment crimes, determinate
39 term commitment crimes for which the prisoner has been paroled,
40 any other felony crimes or crimes against the person for which the

1 prisoner has been convicted, the effect of the enumerated crimes
2 on the victim and the family of the victim, the person responsible
3 for these enumerated crimes, and the suitability of the prisoner for
4 parole.

5 (2) Any statement provided by a representative designated by
6 the victim or next of kin may cover any subject about which the
7 victim or next of kin has the right to be heard including any
8 recommendation regarding the granting of parole. The
9 representatives shall be designated by the victim or, in the event
10 that the victim is deceased or incapacitated, by the next of kin.
11 They shall be designated in writing for the particular hearing prior
12 to the hearing.

13 (c) A representative designated by the victim or the victim's
14 next of kin for purposes of this section may be any adult person
15 selected by the victim or the family of the victim. The board shall
16 permit a representative designated by the victim or the victim's
17 next of kin to attend a particular hearing, to provide testimony at
18 a hearing, and to submit a statement to be included in the hearing
19 as provided in Section 3043.2, even though the victim, next of kin,
20 or a member of the victim's immediate family is present at the
21 hearing, and even though the victim, next of kin, or a member of
22 the victim's immediate family has submitted a statement as
23 described in Section 3043.2.

24 (d) The board, in deciding whether to release the person on
25 parole, shall consider the entire and uninterrupted statements of
26 the victim or victims, next of kin, immediate family members of
27 the victim, and the designated representatives of the victim or next
28 of kin, if applicable, made pursuant to this section and shall include
29 in its report a statement whether the person would pose a threat to
30 public safety if released on parole.

31 (e) In those cases where there are more than two immediate
32 family members of the victim who wish to attend any hearing
33 covered in this section, the board shall allow attendance of
34 additional immediate family members to include the following:
35 spouse, children, parents, siblings, grandchildren, and grandparents.

36 SEC. 4. Section 3058.8 of the Penal Code is amended to read:

37 3058.8. (a) At the time a notification is sent pursuant to
38 subdivision (a) of Section 3058.6, the Board of Parole Hearings
39 or the Department of Corrections and Rehabilitation, or the
40 designated agency responsible for notification, as the case may

1 be, shall also ~~send a notice to~~ *notify* persons described in Section
2 679.03 who have requested a notice informing those persons of
3 the fact that the person who committed the violent offense is
4 scheduled to be released from the Department of Corrections and
5 Rehabilitation or from the State Department of Mental Health,
6 including, but not limited to, conditional release, and specifying
7 the proposed date of release. Notice of the community in which
8 the person is scheduled to reside shall also be given if it is (1) in
9 the county of residence of a witness, victim, or family member of
10 a victim who has requested notification, or (2) within 100 miles
11 of the actual residence of a witness, victim, or family member of
12 a victim who has requested notification. If, after providing the
13 witness, victim, or next of kin with the notice, there is any change
14 in the release date or the community in which the person is to
15 reside, the board or department shall provide the witness, victim,
16 or next of kin with the revised information.

17 (b) In order to be entitled to receive the notice set forth in this
18 section, the requesting party shall keep the department or board
19 informed of his or her current ~~mailing address~~ *contact information*.

20 (c) The board or department, when sending out notices regarding
21 an offender's release on parole, shall use the information provided
22 by the requesting party ~~in the form completed~~ pursuant to
23 subdivision (b) of Section 679.03, unless that information is no
24 longer current. If the information is no longer current, the
25 department shall make a reasonable attempt to contact the person
26 and to notify him or her of the impending release.

27 SEC. 5. Section 11155 of the Penal Code is amended to read:

28 11155. (a) As soon as placement of an inmate in any reentry
29 or work furlough program is planned, but in no case less than 60
30 days prior to that placement, the Department of Corrections *and*
31 *Rehabilitation* shall ~~send written~~ *provide* notice, if notice has been
32 requested, to all of the following: (1) *written notice to* the chief of
33 police of the city, if any, in which the inmate will reside, if known,
34 or in which placement will be made, (2) *written notice to* the sheriff
35 of the county in which the inmate will reside, if known, or in which
36 placement will be made, and (3) *notice, as provided in subdivision*
37 *(d), to* the victim, if any, of the crime for which the inmate was
38 convicted or the next of kin of the victim if the crime was a
39 homicide, if the victim or the next of kin has submitted a request
40 for notice with the department. Information regarding victims or

1 next of kin requesting the notice, and the notice, shall be
2 confidential and not available to the inmate.

3 (b) In the event of an escape of an inmate from any facility
4 under the jurisdiction of the ~~Department of Corrections~~ *department*,
5 the department shall immediately notify, by the most reasonable
6 and expedient means available, the chief of police of the city, and
7 the sheriff of the county, in which the inmate resided immediately
8 prior to the inmate's arrest and conviction, and, if previously
9 requested, to the victim, if any, of the crime for which the inmate
10 was convicted, or to the next of kin of the victim if the crime was
11 a homicide. If the inmate is recaptured, the department shall send
12 written notice thereof to *the chief of police and the sheriff, and*
13 ~~notice to the persons designated in this subdivision~~ *victim, or next*
14 *of kin of the victim*, within 30 days after regaining custody of the
15 inmate.

16 (c) Except as provided in subdivision (d), the ~~Department of~~
17 ~~Corrections~~ *department* shall send the notices required by this
18 section to the last address provided to the department by the
19 requesting party. It is the responsibility of the requesting party to
20 provide the department with a current address.

21 (d) Whenever the department ~~sends~~ *provides* the notice required
22 by this section to a victim, *or next of kin of the victim*, it shall do
23 so by ~~return receipt mail~~ *telephone, certified mail, or electronic*
24 *mail, using the method of communication selected by the victim*
25 *or the next of kin of the victim*. In the event the ~~victim does not~~
26 ~~reside at the last address~~ *victim's or next of kin's contact*
27 *information* provided to the department *is no longer current*, the
28 department shall make a diligent, good faith effort to learn the
29 whereabouts of the victim in order to comply with these notification
30 requirements.

31 SEC. 6. If the Commission on State Mandates determines that
32 this act contains costs mandated by the state, reimbursement to
33 local agencies and school districts for those costs shall be made
34 pursuant to Part 7 (commencing with Section 17500) of Division
35 4 of Title 2 of the Government Code.

36 SEC. 7. The Legislature finds and declares that this act furthers
37 the rights of victims of crimes for purposes of Proposition 9, as
38 approved by the voters at the November 4, 2008, statewide general
39 election.

1 SEC. 8. This act is an urgency statute necessary for the
2 immediate preservation of the public peace, health, or safety within
3 the meaning of Article IV of the Constitution and shall go into
4 immediate effect. The facts constituting the necessity are:

5 In order for the Department of Corrections and Rehabilitation
6 to fully implement an automated victim notification system at the
7 earliest possible time, it is necessary that this act take effect
8 immediately.

O