



COMMISSION ON  
**TEACHER CREDENTIALING**  

---

*Ensuring Educator Excellence*

**CALIFORNIA'S LAWS AND RULES  
PERTAINING TO THE  
DISCIPLINE OF PROFESSIONAL  
CERTIFICATED PERSONNEL**

**2013**

## Commission on Teacher Credentialing



1900 Capitol Avenue  
Sacramento, CA 95811

(916) 445-0184

Mary Vixie Sandy  
Executive Director

Barnes, Kirsten	Non-Administrative Services Representative	2016
Blackburn, Constance	Teacher Representative	2016
Casallas, Erick	Teacher Representative	2013
Cooney, C. Michael	Public Representative	2013
Cuevas, Eddie	Teacher Representative	2015
Darling-Hammond, Linda	Faculty Member	2013
Gahagan, Charles	Teacher Representative	2016
Harris, Kathleen	Teacher Representative	2013
Jones, Mary	Administrative Services Representative	2015
Ramirez, Nancy	Public Representative	2013
Rodriguez, Ref	Public Representative	2016
Tiffany-Morales, Juliet	School Board Member	2016
Williamson, Alicia	Teacher Representative	2016
Zeiger, Richard	Designees, Superintendent of Public Instruction	Ongoing
Zumot, Michelle		
Vacant	Public Representative	
<b>Ex-Officio Members</b>		
Martin, Shane	Association of Independent California Colleges and Universities	
Sloan, Tine	University of California	
Young, Beverly	California State University	

**Published by,  
California Commission on  
Teacher Credentialing**

**Posted on the internet:**

**[www.ctc.ca.gov](http://www.ctc.ca.gov)**

## **VISION STATEMENT**

**All of California's diverse learners, preschool through grade 12, are inspired and prepared to achieve their highest potential by a well-prepared and exceptionally qualified educator workforce.**

## **MISSION STATEMENT**

**To inspire, educate and protect the students of California.**

**Nanette Rufo  
General Counsel**

**Michael Barth  
Assistant General Counsel  
(916) 324-5952**

**Editor  
Vanessa Whitnell**

**Production Coordinator  
Sherry Henderson**

# **PREFACE**

This publication is a collection of the statutes, regulations and leading case citations governing the issuance, denial, revocation, suspension, and other invalidation of credentials for reasons related to identification, moral character, and inappropriate conduct for credential applicants and holders. This publication does not deal with other aspects of education, professional preparation, or licensing of educators. Those matters are governed by other statutes and regulations and should be researched separately.

The relevant statutes and regulations are administered by the Commission on Teacher Credentialing and its statutory committee, the Committee of Credentials, in order to protect the public interest. Staff support is provided by the Division of Professional Practices. The Commission is authorized to deny the issuance of credentials to applicants who do not meet high character standards and to privately admonish, publicly reprove, suspend or revoke the credentials of persons who, subsequent to the receipt of credentials, fail to maintain high standards of professional fitness and conduct.

This screening, monitoring and disciplinary process represents continuous improvement in the positive identification, detection, and tracking of persons whose presence in the public schools represents potential harm to school children and/or the educational process. A substantial measure of due process protection is provided to credential holders.

Public school employers, parents and/or other private citizens may lodge complaints of misconduct or unfitness against credential holders and have these complaints investigated and judged on their merits. The investigative and deliberative processes are confidential until judgment is reached, in order to protect any persons who may be mistakenly or unjustly charged.

Questions about this process and rights available to complainants and credential applicants and holders may be directed to:

**CALIFORNIA COMMISSION ON TEACHER CREDENTIALING  
DIVISION OF PROFESSIONAL PRACTICES  
1900 CAPITOL AVENUE  
SACRAMENTO, CA 95814-4213  
(916) 322-4974**

**[WWW.CTC.CA.GOV](http://WWW.CTC.CA.GOV)**

# TABLE OF CONTENTS

Education Code	Pages 1 - 46
California Code of Regulations	Pages 47 - 61
Penal Code	Pages 62 - 94
Health and Safety Code	Pages 95 - 100
Government Code	Pages 101 - 103
Specific Offenses	Pages 104- 110

## EDUCATION CODE

<u>SECTION</u>		<u>PAGE</u>
44000.5	Adverse action definition.....	1
44001	Education Position.....	1
44002	Credential definition.....	1
44008	Effect of termination of probation and dismissal of accusation.....	1
44009	Conviction of specified crimes; definition.....	1
44010	"Sex offense" .....	2
44011	"Controlled substance offense" .....	3
44012	Admissibility of record of conviction.....	3
44030	Failure to make reports.....	4
44030.5	Superintendent Reporting Requirement .....	4
44230	Information; Maintenance for Public Record; Disclosure; Applications.....	4
44232	Contracts to Facilitate relocation.....	5
44237	Fingerprints; private school employees; criminal record information; list of teachers with revoked or suspended credentials.....	5
44240	Appointment and composition of committee of credentials: terms .....	8
44241	Functioning of committee: applicable sections .....	9
44242	Supervision of committee by Commission.....	9
44242.5	Presentation of allegations that may be grounds for denial, suspension or revocation of credential; jurisdiction of committee; investigation; probable cause determination; report of findings .....	9
44242.7	Time for presentation of allegation; adoption of regulations specifying recurring conduct.....	12
44243	Assignment of administrative duties .....	12
44244	Allegations of misconduct; procedures.....	12
44244.1	Adoption of committee's recommendation by Commission; notice; request for administrative hearing; private admonition proceedings .....	13
44245	Suspension or revocation; closed hearing.....	14
44246	Compliance with government code .....	14
44247	Reevaluation of application .....	14
44248	Unauthorized release of information.....	14
44320	Professional preparation programs; Certificate of Clearance.....	15
44332	Temporary certificates .....	15

Table of Contents

<u>SECTION</u>		<u>PAGE</u>
44332.5	Registration of certificates by certain districts; temporary certificate of clearance .....	16
44332.6	Criminal record summary; applicants for temporary certificate or temporary certificate of clearance convicted of violent or serious felony; certificate of rehabilitation and pardon .....	17
44334	Oath or Affirmation .....	18
44336	Health hazards .....	18
44337	Teachers with disabilities; training; hiring .....	18
44338	Teachers with disabilities; health and safety of others .....	19
44339	Identification and evidence of good moral character; disclosures not required; notice .....	19
44340	Identification cards .....	19
44341	Production of information; confidentiality; consent .....	20
44345	Denial of application .....	20
44346	Further grounds for denial; classes of applicants; rehabilitation .....	21
44346.1	Credentials; applicants convicted of violent or serious felony; certificate of rehabilitation and pardon.....	22
44346.5	Acquisition of criminal record; denial of cert. ....	23
44354	Administration of oath.....	24
44355	Validity until revoked, suspended or expired; credentials void ab initio; grounds .....	24
44360	Prohibited acts; violation.....	25
44361	Filing license, credential, or certificate issued to another person; misdemeanor; punishment .....	25
44362	Verification of facts necessary to establish qualifications; oath.....	26
44420	Failure to fulfill contract as ground for suspension of diplomas and certificates .....	26
44421	General grounds for private admonishment, public reproof, credential revocation or credential suspension by Commission.....	26
44421.1	Recruit of pupils as customers for certificated person's business; private admonishment or credential suspension or revocation .....	26
44421.5	False fiscal expenditure data reports; sanctions .....	27
44422	Immoral or unprofessional conduct, unfitness, disobedience; hearing by county board of education; report and recommendation; private admonishment, suspension or revocation by Commission.....	27
44423	Request for revocation as reason for revocation by Commission .....	27
44423.5	Out of state teacher licensing revocation .....	28
44423.6	Conditions of probation/sentencing grounds for revocation .....	28
44424	Conviction of crime; plea of nolo contendere; denial or termination of employment .....	29
44425	Conviction of sex or narcotic offense as grounds for revocation by Commission; plea of nolo contendere to sex offense .....	29
44425.5	Criminal insanity; final revocation for felony sex or controlled substance offenses or murder .....	31
44426	Determination as sexual psychopath as grounds for revocation by Commission .....	31
44427	Grounds for revocation or suspension by county board of education .....	32

Table of Contents

<b><u>SECTION</u></b>	<b><u>PAGE</u></b>
44433	Unauthorized departure from service as unprofessional conduct and ground for suspension by county board ..... 32
44434	Immoral and unprofessional conduct, profanity, Intemperance; unfitness as grounds for revocation..... 32
44435	Conviction of certain felonies as grounds for revocation by county board of education ..... 32
44436	Conviction of sex offense or controlled substance offense as grounds for revocation and suspension by county board ..... 32
44437	Determination as sexual psychopath as grounds for revocation and suspension by county board ..... 33
44438	Private admonition; expungement of records ..... 33
44439	Subversion of licensing examination or administration of examination ..... 33
44440	Withdrawal of application for credential, permit, or other certification documents without consent of Commission, authority of Commission to proceed ..... 34
44830.1	Felons; certificated positions; criminal record summary; fingerprints; confidentiality ..... 35
44830.2	Employment in multiple districts; fingerprints, criminal history ..... 37
44836	Employment of persons convicted of sex or controlled substance offenses ..... 39
44932	Grounds for dismissal of permanent employees; suspension of employees ..... 40
44933	Other grounds for dismissal or suspension; additional application of section ..... 41
44940	Leave of absence; certificated employee charged with mandatory or optional leave of absence offense; suspension of credentials; definitions ..... 41
44940.5	Compulsory leave of absence; procedures; extension of leave; compensation; bond or security; reports ..... 42
44942	Suspension or transfer of certificated employee on grounds of mental illness; examination; mandatory sick leave..... 43
44947	Requirements upon governing board on dismissal for certain crimes..... 45

**CALIFORNIA CODE OF REGULATIONS**

80028	Certificate of clearance ..... 47
80300	Definitions ..... 47
80301	Notice to applicants for issuance or renewal of credentials; Application for Character and Identification Clearance ..... 50
80302	Standards for investigation..... 51
80303	Reports of change in employment status..... 52
80304	Notice of sexual misconduct ..... 53
80306	Time for presentation of allegations ..... 53
80307	Disclosure of documents during investigation..... 53
80307.1	Investigation commences..... 53

## Table of Contents

<b><u>SECTION</u></b>		<b><u>PAGE</u></b>
80308	Preliminary review .....	53
80309	Medical and psychiatric guidelines.....	54
80309.1	Initial review .....	55
80310	Notice of meeting, formal review .....	55
80311	Request for Appearance .....	55
80312	Continuance .....	56
80313	Presence of material witnesses .....	56
80314	Action .....	56
80314.5	Notice of committee action.....	56
80315	Reconsideration .....	57
80316.5	Confidential report of investigation.....	57
80317	Administrative hearing.....	57
80320	Consent determinations .....	57
80331	Rules of conduct for professional educators .....	58
80332	Professional candor and honesty in letters or memoranda of employment recommendation.....	58
80333	Withdrawal from professional employment .....	59
80334	Unauthorized private gain or advantage .....	59
80335	Performance of unauthorized professional services .....	59
80336	Performance with impaired faculties .....	60
80337	Harassment and retaliation prohibited .....	61
80338	Discrimination prohibited.....	61
80412	Filing of mailing address .....	61

## **PENAL CODE**

118	Perjury defined .....	62
126	Punishment for perjury .....	62
290	Registration of sex offenders .....	62
290.5	Pardon or certificate of rehabilitation; relief from duty to register.....	63
291	School employees; arrest for sex offense; notice to school authorities.....	64
1000.3	Unsatisfactory performance by defendant, or engagement in criminal conduct .....	65
1000.4	Successful completion of program; disclosure of arrest.....	66
1000.5	Drug court program; operation of program; effect of defendant's performance .....	66
1001.5	Admissibility of statements made during diversion.....	67
1001.9	Successful completion of program; record; disclosure of arrest .....	67
1203.4	Discharged petitioner; change of plea; dismissal of charge.....	68
1210	Definition.....	70
1210.1	Probation; controlled substances.....	71
4852.01	Petition for certificate of rehabilitation and pardon .....	74
11105	Criminal records, probation/Criminal history Information.....	75
11105.2	Subsequent arrest notification service .....	86
11105.3	Records of convictions involving sex crimes, drug crimes or crimes of violence .....	87
11166	Mandated Reporters—Report; Duty; Time.....	89

Table of Contents

**HEALTH AND SAFETY CODE**

11357	Unauthorized possession; punishment; prior conviction; possession in school or on school grounds .....	95
11361	Adults employing or selling to minors; years of age; punishment .....	96
11361.5	Destruction of arrest and conviction records; applicable offenses; method; records not applicable; costs.....	96
11361.7	Accuracy, relevancy, timeliness and completeness of record subject to destruction; alteration of records; questions on prior criminal record; application of section .....	98
11590	Persons required to register .....	99
11591	School employee; arrest for controlled substance offense; notice to school authorities .....	100

**GOVERNMENT CODE**

<u>SECTION</u>		<u>PAGE</u>
11517	Contested case; original hearing; agency or administrative law judge .....	101
11521	Reconsideration.....	103
11522	Reinstatement of license or reduction of penalty .....	103

**APPENDICES**

Specific Offenses .....	104
-------------------------	-----

**EDUCATION**

**CODE**

## GENERAL PROVISIONS

### 44000.5

An "adverse action" means the denial of an application for a credential, a private admonition, or public reproof of a credential holder, or the suspension or revocation of a credential.

### ADVERSE ACTION DEFINITION

### 44001

"Education position" or "position requiring certification qualifications" includes every type of service for which certification qualifications are established by or pursuant to Sections 44000 to 44012, inclusive, Section 44065, and Chapter 2 (commencing with Section 44200) of this part.

### EDUCATION POSITION

### 44002

A "credential" includes a credential, certificate, life document, life diploma, permit, certificate of clearance, or waiver issued by the commission.

### CREDENTIAL DEFINITION

### 44008

(a) Except as provided in subdivision (b) of this section, a termination of probation and dismissal of an accusation or information pursuant to Section 1203.4 of the Penal Code shall not, for the purpose of this division, have any effect.

### EFFECT OF TERMINATION OF PROBATION AND DISMISSAL OF ACCUSATION

(b) Notwithstanding any other provision of this code, no person shall be denied a hearing solely on the basis that he has been convicted of a crime if he has obtained a certificate of rehabilitation under Section 4852.01 and following of the Penal Code, and if his probation has been terminated and the information or accusation has been dismissed pursuant to Section 1203.4 of the Penal Code.

### 44009

(a) A plea or verdict of guilty or finding of guilt by a court in a trial without a jury, or a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning of Sections 44242.5, 44345, 44346, 44346.1, 44424, and 44425, irrespective of a subsequent order for probation suspending the imposition of a sentence or an order under Section 1203.4 of the Penal Code allowing the withdrawal of the plea of guilty and entering a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusations or information.

### CONVICTION OF SPECIFIED CRIMES; DEFINITION

(b) The record of a narcotics offense, as defined in Section 44011, shall be sufficient proof of conviction of a crime involving moral turpitude for the purposes of Sections 44907 and 44923, and Sections 44932 to 44947, inclusive, relating to the dismissal of permanent employees.

**44009 (cont.)**

(c) A plea or verdict of guilty, or finding of guilt by a court in a trial without a jury, or a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning of Sections 44836 and 45123, irrespective of a subsequent order for probation suspending the imposition of a sentence or an order under Section 1203.4 of the Penal Code allowing the withdrawal of the plea of guilty and entering a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusations or information. The record of conviction shall be sufficient proof of conviction of a crime involving moral turpitude for the purposes of Section 44907 and Sections 44932 to 44947, inclusive, relating to the dismissal of permanent employees.

**44010****SEX OFFENSE**

"Sex offense", as used in Sections 44020, 44237, 44346, 44425, 44436, 44836 and 45123, means any one or more of the offenses listed below:

(a) Any offense defined in Section 220, 261, 261.5, 262, 264.1, 266, 266j, 267, 285, 286, 288, 288a, 288.5, 289, 311.1, 311.2, 311.3, 311.4, 311.10, 311.11, 313.1, 647b, 647.6, or former Section 647a, subdivision (a), (b), (c), or (d) of Section 243.4, subdivisions (a) or (d) Section 647 of the Penal Code.

(b) Any offense defined in former subdivision (5) of former Section 647 of the Penal Code repealed by Chapter 560 of the Statutes of 1961, or any offense defined in former subdivision (2) of former Section 311 of the Penal Code repealed by Chapter 2147 of the Statutes of 1961, if the offense defined in those sections was committed prior to September 15, 1961, to the same extent that an offense committed prior to that date was a sex offense for the purposes of this section prior to September 15, 1961.

(c) Any offense defined in Section 314 of the Penal Code committed on or after September 15, 1961.

(d) Any offense defined in former subdivision (1) of former Section 311 of the Penal Code repealed by Chapter 2147 of the Statutes of 1961 committed on or after September 7, 1955, and prior to September 15, 1961.

(e) Any offense involving lewd and lascivious conduct under Section 272 of the Penal Code committed on or after September 15, 1961.

(f) Any offense involving lewd and lascivious conduct under former Section 702 of the Welfare and Institutions Code repealed by Chapter 1616 of the Statutes of 1961, if that offense was committed prior to September 15, 1961, to the same extent that an offense committed prior to that date was a sex offense for the purposes of this section prior to September 15, 1961.

## 44010 (cont.)

- (g) Any offense defined in Section 286 or 288a of the Penal Code prior to the effective date of the amendment of either section enacted at the 1975-76 Regular Session of the Legislature committed prior to the effective date of the amendment.
- (h) Any attempt to commit any of the offenses specified in this section.
- (i) Any offense committed or attempted in any other state or against the laws of the United States which, if committed or attempted in this state, would have been punishable as one or more of the offenses specified in this section.
- (j) Any conviction for an offense resulting in the requirement to register as a sex offender pursuant to Section 290 of the Penal Code.
- (k) Commitment as a mentally disordered sex offender under former Article 1 (commencing with Section 6300) of Chapter 2 of Part 2 of the Welfare and Institutions Code, as repealed by Chapter 928 of the Statutes of 1981.

## 44011

"Controlled substance offense" as used in Sections 44346, 44425, 44436, 44836, and 45123 means any one or more of the following offenses:

- (a) Any offense in Sections 11350 to 11355, inclusive, 11361, 11366, 11368, 11377 to 11382, inclusive, and 11550 of the Health and Safety Code.
- (b) Any offense committed or attempted in any other state or against the laws of the United States which, if committed or attempted in this state, would have been punished as one or more of the above-mentioned offenses.
- (c) Any offense committed under former Sections 11500 to 11503, inclusive, 11557, 11715, and 11721 of the Health and Safety Code.
- (d) Any attempt to commit any of the above-mentioned offenses.

**CONTROLLED  
SUBSTANCE  
OFFENSE**

## 44012

Any record of conviction of any applicant for, or holder of, a certification document, shall, for the purposes of this division, be admissible in evidence in any civil action or administrative proceedings pertaining to the issuance, suspension or revocation of such certification document, any provision of law to the contrary notwithstanding.

**ADMISSIBILITY  
OF RECORD OF  
CONVICTION**

## **RIGHTS AND DUTIES**

### **44030**

Any principal, teacher, employee, or school officer of any elementary or secondary school who refuses or willfully neglects to make such reports as are required by law is guilty of a misdemeanor and is punishable by a fine of not more than one hundred dollars (\$100).

### **FAILURE TO MAKE REPORTS**

### **44030.5** (Eff. January 1, 2014)

(a) The superintendent of a school district or county office of education, or the administrator of a charter school, employing a person with a credential shall report any change in the employment status of the credentialholder to the commission not later than 30 days after the change in employment status, if the credentialholder, while working in a position requiring a credential, and as a result of an allegation of misconduct or while an allegation of misconduct is pending, is dismissed, is nonreelected, resigns, is suspended or placed on unpaid administrative leave for more than 10 days as a final adverse action, retires, or is otherwise terminated by a decision not to employ or reemploy.

### **SUPT. REPORTING REQUIREMENTS**

(b) For purposes of subdivision (a), a change of employment status due solely to unsatisfactory performance pursuant to paragraph (4) of subdivision (a) of Section 44932 or a reduction in force pursuant to Sections 44955 to 44958, inclusive, is not a result of an allegation of misconduct.

(c) The failure to make the report required by subdivision (a) is unprofessional conduct and may subject the superintendent of the school district or county office of education, or the administrator of a charter school, to adverse action by the commission.

(d) (1) Notwithstanding Section 44030, refusing or willfully neglecting to make the report required by subdivision (a) is a misdemeanor, punishable by a fine of not less than five hundred dollars (\$500) or more than one thousand dollars (\$1,000).

(2) All fines imposed pursuant to this subdivision are the personal responsibility of the superintendent of the school district or county office of education, or the administrator of a charter school, and may not be paid or reimbursed with public funds.

## **INFORMATION**

### **44230**

(a)(1) The commission shall maintain for public record, and may disclose, only the following information relating to the credentials, certificates, permits, or other documents that it issues: the document number, title, term of validity, subjects, authorizations, effective dates, renewal requirements, and restrictions. The commission may also disclose the last known business address of any applicant or credential holder.

### **INFORMATION MAINTENANCE FOR PUBLIC RECORD; DISCLOSURE; APPLICATIONS**

(2) Notwithstanding any other provision of law, except as provided for in Section 44248, no information, other than that set forth in paragraph (1),

### **44230 (cont.)**

may be disclosed by the commission absent an order from a court of competent jurisdiction.

(b) In order to expedite the application process for the benefit of applicants for credentials, certificates, permits, or other documents issued by the commission, the commission may receive from, or transmit to, the agency that submitted the application, either electronically or by printed copy, the information set forth in that application. For purposes of this subdivision, "agency" means a school district, county office of education, or institution of higher education having a commission-approved program of professional preparation.

### **44232**

The commission may enter into contracts with comparable agencies in other states in order to facilitate the relocation of qualified teachers from one state to another and to expedite other matters related to ascertaining qualifications of credentialed teachers and other educators.

**CONTRACTS TO FACILITATE RELOCATION**

### **44237**

(a) Every person, firm, association, partnership, or corporation offering or conducting private school instruction on the elementary or high school level shall require each applicant for employment in a position requiring contact with minor pupils who does not possess a valid credential issued by the commission or is not currently licensed by another state agency that requires a criminal record summary that directly relates to services provided in a facility described in this section and has background clearance criteria that meets or exceeds the requirements of this section, to submit two sets of fingerprints prepared for submittal by the employer to the Department of Justice for the purpose of obtaining criminal record summary information from the Department of Justice and the Federal Bureau of Investigation.

**FINGERPRINT;  
PRIVATE SCHOOL  
EMPLOYEES;  
CRIMINAL  
RECORD INFO;  
LIST OF  
TEACHERS  
WITH  
REV./SUSP.  
CREDENTIALS**

(b)(1) As used in this section, "employer" means every person, firm, association, partnership, or corporation offering or conducting private school instruction on the elementary or high school level.

(2) As use in this section, "employment" means the act of engaging the services of a person, who will have contact with pupils, to work in a position at a private school at the elementary or high school level on or after September 30, 1997, on a regular, paid full-time basis, regular, paid part-time basis, or paid full- or part-time seasonal basis.

(3) As used in this section, "applicant" means any person who is seriously being considered for employment by an employer.

(4) This section does not apply to a secondary school pupil working at the school he or she attends or a parent or legal guardian working exclusively with his or her children.

**44237 (cont.)**

(c)(1) Upon receiving the identification cards, the Department of Justice shall ascertain whether the applicant has been arrested or convicted of any crime insofar as that fact can be ascertained from information available to the Department of Justice and forward the information to the employer submitting the fingerprints no more than 15 working days after receiving the identification cards. The Department of Justice shall not forward information regarding criminal proceedings that did not result in a conviction but shall forward information on arrests pending adjudication.

(2) Upon implementation of an electronic fingerprinting system with terminals located statewide and managed by the Department of Justice, the Department of Justice shall ascertain the information required pursuant to this subdivision within three working days. If the Department of Justice cannot ascertain the information required pursuant to this subdivision within three working days, the Department of Justice shall notify the employer submitting the fingerprints that it cannot so ascertain the required information. This notification shall be delivered by telephone or e-mail to the employer submitting the fingerprints. If the employer submitting the fingerprints is notified by the Department of Justice that it cannot ascertain the required information about a person, the employer shall not employ that person until the Department of Justice ascertains that information.

(3) The Department of Justice shall review the criminal record summary it obtains from the Federal Bureau of Investigation to ascertain whether an applicant for employment has a conviction, or an

arrest pending final adjudication, for any sex offense, controlled substance offense, crime of violence, or serious or violent felony. The Department of Justice shall provide written notification to the private school employer only as to whether an applicant for employment has any convictions, or arrests pending final adjudication, for any of these crimes.

(d) An employer shall not employ a person until the Department of Justice completes its check of the state criminal history file as set forth in this section.

(e)(1) An employer shall not employ a person who has been convicted of a violent or serious felony or a person who would be prohibited from employment by a public school district pursuant to any provision of this code because of his or her conviction for any crime.

(2) A person who would be prohibited from employment by a private school pursuant to paragraph (1) may not, on or after July 1, 1999, own or operate a private school offering instruction on the elementary or high school level.

(f) An employer shall request subsequent arrest service from the Department of Justice as provided under Section 11105.2 of the Penal Code.

(g) This section applies to any violent or serious offense which, if committed in this state, would have been punishable as a violent or serious felony.

## **44237 (cont.)**

(h) For purposes of this section, a violent felony is any felony listed in subdivision (c) of Section 667.5 of the Penal Code and a serious felony is any felony listed in subdivision (c) of Section 1192.7 of the Penal Code.

(i) Notwithstanding subdivision (e), a person shall not be denied employment or terminated from employment solely on the basis that the person has been convicted of a violent or serious felony if the person has obtained a certificate of rehabilitation and pardon pursuant to Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3 of the Penal Code.

(j) Notwithstanding subdivision (e), a person shall not be denied employment or terminated from employment solely on the basis that the person has been convicted of a serious felony that is not also a violent felony if that person can prove to the sentencing court of the offense in question, by clear and convincing evidence, that he or she has been rehabilitated for the purposes of school employment for at least one year. If the offense in question occurred outside this state, then the person may seek a finding of rehabilitation from the court in the county in which he or she is a resident.

(k) The commission shall make available to each private school a listing of all credentialholders who have had final adverse action taken against their credential. The information shall be identical to that made available to public schools in the state. The commission shall also send on a quarterly basis a complete and updated list of all teachers who have had their teaching credentials revoked or suspended, excluding teachers who have had their credentials reinstated, or who are deceased.

(l) The Department of Justice may charge a reasonable fee to cover costs associated with the processing, reviewing, and supplying of the criminal record summary as required by this section. The fee shall not exceed the actual costs incurred by the Department of Justice.

(m) Where reasonable access to the statewide electronic fingerprinting network is available, the Department of Justice may mandate electronic submission of the fingerprints and related information required by this section.

(n) All information obtained from the Department of Justice is confidential. Agencies handling Department of Justice information shall ensure the following:

(1) A recipient shall not disclose its contents or provide copies of information.

(2) Information received shall be stored in a locked file separate from other files, and shall only be accessible to the custodian of records.

## 44237 (cont.)

(3) Information received shall be destroyed upon the hiring determination in accordance with subdivision (a) of Section 708 of Title 11 of the California Code of Regulations.

(4) Compliance with destruction, storage, dissemination, auditing, backgrounding, and training requirements as set forth in Sections 700 to 708, inclusive, of Title 11 of the California Code of Regulations and Section 11077 of the Penal Code governing the use and security of criminal offender record information is the responsibility of the entity receiving the information from the Department of Justice.

## COMMITTEE OF CREDENTIALS

### 44240

The commission shall appoint a Committee of Credentials, consisting of seven persons for terms fixed by the commission but not to exceed two years. The committee shall include:

- (a) One member who shall be a full-time certified classroom teacher in the public elementary schools with not less than five years' classroom experience.
- (b) One member who shall be a full-time certified classroom teacher in the public secondary schools with not less than five years' classroom experience.
- (c) One member who shall be a certified administrative employee in the public schools.
- (d) One member who shall be a member of the governing board of any school district. No person who is or has been employed in a certificated position in the public schools within the preceding five years shall be appointed as a school board member.
- (e) Three members who shall be representatives of the public. No person who is or has been employed in a certificated position in the public schools or who is or has been a member of any governing board of a school district or county board of education within the five years next preceding date of appointment shall be appointed as a public member.

The additional public members of the committee provided for in this section as amended during the 1977-78 Regular Session, shall be appointed by the commission as vacancies in the committee occur, consistent with the requirements of professional representation. Appointments to the Committee of Credentials shall reflect, to the extent feasible, the ethnic and cultural diversity of California public schools.

### APPOINTMENT AND COMPOSITION OF COMMITTEE OF CREDENTIALS; TERMS

**44241**

Sections 44215, 44216, 44217, 44218, 44220, and 44221 are applicable to the Committee of Credentials.

**44242**

The Committee of Credentials shall be under the direct supervision of the commission.

**44242.5** (amendments eff. January 1, 2014)

(a) Each allegation of an act or omission by an applicant for, or holder of, a credential for which he or she may be subject to an adverse action shall be presented to the Committee of Credentials.

(b) The committee has jurisdiction to commence an initial review upon receipt of any of the following:

(1) (A) Official records of the Department of Justice, of a law enforcement agency, of a state or federal court, and of any other agency of this state or another state.

(B) For purposes of subparagraph (A), "agency of this state" has the same meaning as that of "state agency" as set forth in Section 11000 of the Government Code.

(2) An affidavit or declaration signed by person or persons with personal knowledge of the acts alleged to constitute misconduct.

(3) (A) A statement from an employer notifying the commission that, as a result of, or while an allegation of misconduct is pending, a credential holder has been dismissed, nonreelected, suspended for more than 10 days, or placed pursuant to a final adverse employment action on unpaid administrative leave for more than 10 days, or has resigned or otherwise left employment.

(B) The employer shall provide the notice described in subparagraph (A) to the commission not later than 30 days after the dismissal, nonreelection, suspension, placement on unpaid administrative leave, resignation, or departure from employment of the employee.

(C) For purposes of subparagraphs (A) and (B), a change in status due solely to unsatisfactory performance pursuant to paragraph (4) of subdivision (a) of Section 44932 or a reduction in force pursuant to Sections 44955 to 44958, inclusive, is not a result of an allegation of misconduct.

**FUNCTIONING  
OF COMMITTEE;  
APPLICABLE  
SECTIONS**

**SUPERVISION OF  
COMMITTEE BY  
COMMISSION**

**PRESENTATION OF  
ALLEGATIONS  
THAT MAY BE  
GROUNDS FOR  
DENIAL,  
SUSPENSION OR  
REVOCAION  
OF CREDENTIAL;  
JURISDICTION OF  
COMMITTEE  
INVESTIGATION;  
PROBABLE CAUSE  
DETERMINATION  
REPORT OF  
FINDINGS**

**44242.5 (cont.)**

(4) A notice from an employer that a complaint was filed with the school district alleging sexual misconduct by a credential holder. Results of an investigation by the committee based on this paragraph shall not be considered for action by the committee unless there is evidence presented to the committee in the form of a written or oral declaration under penalty of perjury that confirms the personal knowledge of the declarant regarding the acts alleged to constitute misconduct.

(5) A notice from a school district, employer, public agency, or testing administrator of a violation of Section 44420, 44421.1, 44421.5, or 44439.

(6)(A) An affirmative response on an application submitted to the commission as to any conviction, adverse action on, or denial of, a license, or pending investigation into a criminal allegation or pending investigation of a noncriminal allegation of misconduct by a governmental licensing entity.

(B) Failure to disclose any matter set forth in subparagraph (A).

(c) An initial review commences on the date that the written notice is mailed to the applicant or credential holder that his or her fitness to hold a credential is under review. Upon commencement of a formal review pursuant to Section 44244, the committee shall investigate all alleged misconduct and the circumstances in mitigation and aggravation. The investigation shall include, but not be limited to, all of the following:

(1) Investigation of the fitness and competence of the applicant or credential holder to perform the duties authorized by the credential for which he or she has applied or that he or she presently holds.

(2) Preparation of a summary of the applicable law, a summary of the facts, contested and uncontested, and a summary of any circumstances in aggravation or mitigation of the allegation.

(3) Determination of probable cause for an adverse action on the credential. If the allegation is for unprofessional or immoral conduct, the committee, in any formal review conducted pursuant to Section 44244 to determine probable cause, shall permit the employer of the credential holder to be present while testimony is taken. If the allegation of unprofessional or immoral conduct involves sexual abuse, the employer shall be examined in the meeting for any relevant evidence relating to the sexual abuse.

(A) If the committee determines that probable cause for an adverse action does not exist, the committee shall terminate the investigation.

(B) If the committee determines that probable cause for an

## 44242.5 (cont.)

adverse action on the credential exists, upon receipt of a request from an applicant or a credential holder pursuant to Section 44244.1, the commission shall initiate an adjudicatory hearing, as prescribed by Chapter 5 (commencing with Section 11500) of Division 3 of Title 2 of the Government Code, by filing an accusation or statement of issues.

(d) The committee has jurisdiction to commence a formal review pursuant to Section 44244 upon receipt of any of the following:

(1)(A) Official records of a state or federal court that reflect a conviction or plea, including a plea of nolo contendere, to a criminal offense or official records of a state court that adjudge a juvenile to be a dependent of the court pursuant to Section 300 of the Welfare and Institutions Code due to allegations of sexual misconduct or physical abuse by a credential holder or applicant.

(B) Nothing in subparagraph (A) shall be construed to relieve the commission from the confidentiality provisions, notice, and due process requirements set forth in Section 827 of the Welfare and Institutions Code.

(2) An affidavit or declaration signed by a person or persons with personal knowledge of the acts alleged to constitute misconduct.

(3) A statement described in paragraph (3) of subdivision (b).

(4) Official records of a governmental licensing entity that reflect an administrative proceeding or investigation, otherwise authorized by law or regulation, which has become final.

(5) A notice described in paragraph (5) of subdivision (b).

(6) A response or failure to disclose, as described in paragraph (6) of subdivision (b).

(e)(1) Upon completion of its investigation, the committee shall report its actions and recommendations to the commission, including its findings as to probable cause, and if probable cause exists, its recommendations as to the appropriate adverse action.

(2) The findings shall be available, upon its request, to the employing or last known employing school district, or, if adverse action is recommended by the committee and the credential holder has not filed a timely appeal of the recommendation of the committee pursuant to Section 44244.1, upon a request made within five years of the date of the committee's recommendations to a school district providing verification that the credential holder has applied for employment in the district. The findings, for all purposes, shall remain confidential and limited to school district personnel in a direct supervisory capacity in relation to the person investigated. Any person who otherwise releases

## **44242.5 (cont.)**

findings received from the committee or the commission, absent a verified release signed by the person who is the subject of the investigation, shall be guilty of a misdemeanor.

(3) The findings shall not contain any information that reveals the identity of persons other than the person who is the subject of the investigation.

(f)(1) Except as provided in paragraph (2) and, notwithstanding subdivision (b), for purposes of determining whether jurisdiction exists under subdivision (b), the commission, in accordance with Section 44341, may make inquiries and requests for production of information and records only from the Department of Justice, a law enforcement agency, a state or federal court, and a licensing agency of this state or a licensing agency of another state.

(2) For purposes of determining whether jurisdiction exists, paragraph (1) does not apply to release of personnel records.

## **44242.7**

(a) Any allegation of an act or omission by the holder of a credential, except for an allegation that involves sexual misconduct with a minor or recurring conduct resulting in a pattern of misconduct, shall be presented to the Committee of Credentials for initial review within four years from the date of the alleged act or omission, or within one year from the date the act or omission should reasonably have been discovered.

(b) The commission shall adopt regulations specifying conduct that is considered recurring conduct that results in a pattern of misconduct as set forth in subdivision (a).

**TIME FOR  
PRESENTATION OF  
ALLEGATION;  
ADOPTION OF  
REGULATIONS  
SPECIFYING  
RECURRING  
CONDUCT**

## **44243**

(a) The commission may assign to the Committee of Credentials administrative duties as it may see fit relating to adverse actions concerning applicants and credential holders.

(b) The commission shall supervise the work of the committee and shall provide statements of policy relative to committee operation and procedures as it deems appropriate to do so.

**ASSIGNMENT OF  
ADMINISTRATIVE  
DUTIES**

## **44244**

(a) At least 30 days prior to any formal review of the Committee of Credentials at which the application of an applicant or credential of a holder is to be considered, the committee shall notify the applicant or holder of the specific allegations of misconduct that make the application or credential subject to adverse action. The

**ALLEGATIONS  
OF MISCONDUCT;  
PROCEDURES**

**44244 (cont.)**

notification shall be in ordinary and concise language and set forth the acts or omissions charged and the statutes or rules violated. Supplemental allegations of misconduct shall be sent to the holder or applicant at least 30 days prior to the formal review. The portions of the investigation of the original or supplemental allegations that constitute the basis for the allegations shall be open to inspection and copying by the holder or applicant and his or her attorney. The statement of the allegations shall inform the applicant or holder that the allegations, if true, are sufficient to cause his or her application or credential to be subject to adverse action.

(b)(1) The formal review shall be held no later than six months after the commencement of the initial review as set forth in subdivision (c) of Section 44242.5. The formal review shall determine either that no adverse action shall be taken or that the allegations are sufficient to cause his or her application or credential to be subject to adverse action.

(2) All testimony before the committee shall be verified under penalty of perjury by oath or affirmation. The chairperson of the committee may administer the oath or affirmation. The chairperson may designate staff to administer the oath or affirmation for statements taken during the investigation of allegations of misconduct.

(c) Notwithstanding subdivision (b), the chairperson of the commission may grant the committee an extension of time, not exceeding six months, when the committee demonstrates that additional time is necessary to complete its investigation or determination, as described in subdivision (b).

(d) The recommendation of the committee shall be in writing and a copy of the recommendation shall be delivered to the credentialholder or applicant personally or sent to him or her by certified mail within 14 days after the formal review, together with specific information relative to any appeal rights to which the credentialholder or applicant is entitled.

**44244.1**

(a)(1) A recommendation by the Committee of Credentials to take an adverse action may be adopted by the commission without further proceedings if, after service of notice of the committee recommendation pursuant to Section 44244, the credential holder or applicant fails to give notice of intent to request an administrative hearing or if he or she gives notice of intent not to request an administrative hearing within 30 days.

(2) For good cause shown, the commission may grant an additional 30 days for filing of a request for an administrative hearing.

**ADOPTION OF  
COMMITTEE'S  
RECOMMENDATIONS  
BY COMMISSION;  
NOTICE; REQUEST  
FOR  
ADMINISTRATIVE  
HEARING;  
PRIVATE  
ADMONITION  
PROCEEDINGS**

## **44244.1 (cont.)**

(b) The commission shall make no disclosures concerning private admonitions except as required by Section 44438.

## **44245**

(a) Notwithstanding any other provisions of law, all hearings and deliberations of the commission and Committee of Credentials to consider an adverse action or a reinstatement or reduction in penalty shall be closed sessions with only commission members, committee members, staff members, the credential holder or applicant whose application or credential is in issue, the counsel of the credential holder or applicant, and any material witnesses in attendance.

(b) All final actions taken pursuant to subdivision (a) shall be made public.

(c) Notwithstanding subdivision (b), disclosure of private admonitions shall be in accordance with Section 44438.

**SUSPENSION OR  
REVOCATION;  
CLOSED HEARING**

## **44246**

When a hearing is held to deny, suspend, or revoke a credential, the proceeding shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the commission shall have all the powers granted therein.

**COMPLIANCE  
WITH  
GOVERNMENT  
CODE**

## **44247**

Any applicant for the renewal certification document who is denied a renewal by the Committee of Credentials may request a reevaluation of his application by the commission.

**REEVALUATION  
OF APPLICATION**

## **44248**

(a) Any member of the commission, commission staff member, member or staff member of the Committee of Credentials, State Department of Education employee who releases or gives out information received at a commission or committee meeting or hearing or through the investigation of a certified employee without authorization of the commission or committee, is guilty of a misdemeanor.

(b) Any material witness or his or her representative who releases or gives out information received at a commission or committee meeting or hearing, or who releases or gives out information obtained as a result of direct involvement in the investigation of a certified employee, without authorization of the commission or committee, is guilty of a misdemeanor unless this information was known to the material witness or his or her representative prior to that meeting, hearing, or investigation.

**UNAUTHORIZED  
RELEASE OF  
INFORMATION**

## CERTIFICATES AND CREDENTIALS

### **44320** [Subsections (a) – (c) omitted for brevity]

(d) Prior to admission to either student teaching under any professional preparation program approved by the commission, or participation in a field experience program as described in Section 44324, a candidate for a credential shall obtain a certificate of clearance from the commission which shall be issued when the commission has verified the candidate's personal identification and health status. The fee for the certificate of clearance shall not exceed one-half of the regular fee for a credential and shall be deducted from the fee for the initial credential applied for by the certificate holder.

### **PROFESSIONAL PREPARATION PROGRAMS; CERTIFICATE OF CLEARANCE**

### **44332**

(a) Except where that service is provided by a school district authorized to register certification documents pursuant to Section 44332.5, each county or city and county board of education may issue temporary certificates for the purpose of authorizing salary payments to certified employees whose credential applications are being processed or to personnel employed in children's centers or other preschool educational programs whose permit applications are being processed. However, the individual must have demonstrated proficiency in basic reading, writing, and mathematic skills pursuant to the requirements of Section 44252.5. The applicant for the temporary certificate shall make a statement under oath that he or she has duly filed an application for a credential or permit together with the required fee and that, to the best of his or her knowledge, no reason exists why a certificate or permit should not be issued. The certificate or permit shall be valid for not more than one calendar year from the date of issuance.

### **TEMPORARY CERTIFICATES**

(b) The county or city and county board of education shall cancel the temporary certificate or permit immediately upon receipt of certification in writing from the commission that the applicant apparently does not possess adequate academic qualifications or apparently has a criminal record that would disqualify the applicant.

(c) A temporary certificate issued to a permit applicant is not valid beyond the time that the commission either issues or denies the originally requested permit. A temporary certificate issued to a credential applicant is not valid beyond the time that the commission provides written notification to the county or city and county board of education that the applicant apparently does not possess adequate qualifications, that the commission has received facts that may cause denial of the application, or issues or denies the originally requested credential.

(d) A county or city and county board of education may not issue a

## 44332 (cont.)

temporary certificate to an applicant whose teaching credential is revoked or suspended.

### 44332.5

(a) A school district that may issue warrants pursuant to Section 42647 may, at its discretion, provide for the registration of a valid certification or other document authorizing the holder to serve in a position requiring certification qualifications as an employee of the school district.

(b) During any period when summary criminal history information is not available from the Federal Bureau of Investigation, an applicant for an initial credential, certificate, or permit shall not be employed in a position requiring certification qualifications until he or she has met the minimum requirements for a temporary certificate of clearance. A temporary certificate of clearance or a credential, certificate, or permit authorizing service in the public schools shall be issued when the applicant has:

(1) Made full disclosure of all facts necessary to establish his or her true identity.

(2) Made a statement under penalty of perjury that he or she has not been convicted of a crime which would constitute grounds for the denial of the credential, permit, or certificate applied for.

An applicant shall not be required to disclose, and the Committee of Credentials shall not inquire into or consider, any acts or omissions not related to the applicant's fitness to teach or to perform other duties for which he or she is certificated, or that is related to his or her competence to perform the duties authorized by his or her credential.

(3) Paid to the Commission on Teacher Credentialing the amount of twelve dollars (\$12) or the fees or costs which have been or will be assessed by the Federal Bureau of Investigation for the issuance of its summary criminal history of the applicant when this information is once again made available to the commission. The fees authorized by this paragraph shall be applicable to all credentials, permits, and certificates which were applied for or issued after October 1, 1981.

(c) Upon receipt of a statement from the Federal Bureau of Investigation that it has no summary criminal history information on the applicant, or upon receipt of the summary criminal history information and clearance by the Committee of Credentials, a temporary certificate of clearance shall be converted to a regular certificate of clearance.

## REGISTRATION OF CERTIFICATES BY CERTAIN DISTRICTS; TEMPORARY CERTIFICATE OF CLEARANCE

## **44332.6**

(a)(1) Before issuing a temporary certificate pursuant to Section 44332, a county or city and county board of education shall obtain a criminal record summary about the applicant from the Department of Justice and shall not issue a temporary certificate if the applicant has been convicted of a violent or serious felony.

(2) Before issuing a temporary certificate of clearance pursuant to Section 44332.5, a school district shall obtain a criminal record summary about the applicant from the Department of Justice and shall not issue a temporary certificate of clearance if the applicant has been convicted of a violent or serious felony.

(b) This section applies to any violent or serious offense which, if committed in this state would have been punishable as a violent or serious felony.

(c) For purposes of this section, a violent felony is any felony listed in subdivision (c) of Section 667.5 of the Penal Code and a serious felony is any felony listed in subdivision (c) of Section 1192.7 of the Penal Code.

(d) Notwithstanding subdivision (a), a person shall not be denied a temporary certificate or a temporary certificate of clearance solely on the basis that he or she has been convicted of a violent or serious felony if the person has obtained a certificate of rehabilitation and pardon pursuant to Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3 of the Penal Code.

(e) Notwithstanding subdivision (a), a person shall not be denied a temporary certificate or a temporary certificate of clearance solely on the basis that the person has been convicted of a serious felony that is not also a violent felony, if that person can prove to the sentencing court of the offense in question, by clear and convincing evidence, that he or she has been rehabilitated for the purposes of school employment for at least one year. If the offense in question occurred outside this state, then the person may seek a finding of rehabilitation from the court in the school district in which he or she is a resident.

(f)(1) Notwithstanding paragraph (1) of subdivision (a), a county or city and county board of education may issue a temporary certificate to an employee currently and continuously employed by a school district within the county who is serving under a valid credential and has applied for a renewal of that credential or for an additional credential without obtaining a criminal record summary for that employee.

(2) Notwithstanding paragraph (2) of subdivision (a), a county or city and county board of education may issue a temporary certificate

**CRIMINAL  
RECORD  
SUMMARY;  
APPLICANTS FOR  
TEMPORARY  
CERTIFICATE OR  
TEMPORARY  
CERTIFICATE OF  
CLEARANCE  
CONVICTED OF  
VIOLENT OR  
SERIOUS  
FELONY;  
CERTIFICATE OF  
REHAB/PARDON**

**44332.6 (cont.)**

of clearance to an employee currently and continuously employed by a school district within the county who is serving under a valid credential and has applied for a renewal of that credential or for an additional credential without obtaining a criminal record summary for that employee.

**44334**

Except as provided in this code, no certification document shall be granted to any person unless and until he has subscribed to the following oath or affirmation: "I solemnly swear (or affirm) that I will support the Constitution of the United States of America, the Constitution of the State of California, and the laws of the United States and the State of California." The oath or affirmation shall be subscribed and certified or declared, pursuant to Section 2015.5 of the Code of Civil Procedure, and shall be filed with the commission. Any certificated person who is a citizen or subject of any country other than the United States, and who is employed in any capacity in any of the public schools of the state shall, before entering upon the discharge of his duties, subscribe to an oath to support the institutions and policies of the United States during the period of his sojourn within the state. Upon the violation of any of the terms of the oath or affirmation, the commission shall suspend or revoke the credential which has been issued.

**OATH OR  
AFFIRMATION****44336**

When required by the commission, the application for a certification document or the renewal thereof shall be accompanied by a certificate in such form as shall be prescribed by the commission, from a physician and surgeon licensed under the provisions of the Business and Professions Code or a physician assistant practicing in compliance with Chapter 7.7 (commencing with Section 3500) of Division 2 of the Business and Professions Code, showing that the applicant is free from any contagious and communicable disease or other disabling disease or defect unfitting the applicant to instruct or associate with children.

**HEALTH  
HAZARDS****44337**

No person otherwise qualified shall be denied the right to receive credentials from the commission, to receive training for the purpose of becoming a teacher, or to engage in practice teaching in any school, on the grounds he or she is an individual with a disability, nor shall any school district refuse to engage a teacher on such grounds, provided, that the teacher, with reasonable accommodations, is able to carry out the duties of the position for which he or she applies in the school district. "Disability," as used in this section, means (1) a physical or mental impairment that substantially limits one or more of the major life activities of the individual, (2) a record of such an impairment, or (3) being regarded as having such an impairment.

**TEACHERS WITH  
DISABILITIES;  
TRAINING; HIRING**

**44338**

No person otherwise qualified shall be denied the right to receive credentials issued by the commission, to receive training for the purpose of becoming a teacher, or to engage in practice teaching in any school, on the ground he or she is a person with a disability; provided, that the person does not pose a direct threat of substantial harm to the health or safety of other individuals.

**TEACHERS WITH  
DISABILITIES;  
HEALTH AND  
SAFETY OF  
OTHERS**

**44339**

(a) The commission shall adopt, in addition to any other regulations authorized by law, regulations requiring every applicant for a credential, or for the renewal of a credential, to submit reasonable evidence of identification and good moral character.

(b) The adopted rules and regulations shall specify that an applicant shall not be required to disclose, and the Committee of Credentials shall not inquire into or consider, any acts or omissions not related to the applicant's fitness to teach or perform other duties for which he or she is certificated, or which is related to his or her competence to perform the duties authorized by his or her credential.

(c) The adopted rules and regulations shall also prescribe the notice which shall be supplied to each applicant on the application form, which shall include the following information:

(1) The offenses which constitute grounds for the mandatory denial or revocation of a credential.

(2) The offenses for which the commission is authorized to deny or revoke a credential, depending upon the degree of rehabilitation or requalification demonstrated by the applicant.

(3) The standards under which the commission determines that it shall not investigate or pursue offenses which are not clearly related to an applicant's fitness or competence to teach or perform other certificated services.

**IDENTIFICATION  
AND EVIDENCE  
OF GOOD MORAL  
CHARACTER;  
DISCLOSURES  
NOT REQUIRED;  
NOTICE**

**44340**

Each applicant for a credential, or for the renewal of a credential, shall submit with his application duplicate personal identification cards provided by the commission upon which shall appear the legible fingerprints and a personal description of the applicant.

**IDENTIFICATION  
CARDS**

The commission is authorized to, and shall adopt such regulations as may in its judgment be necessary for the administration of this section.

## **44341**

(a)(1) For the purpose of ascertaining the moral character and true identity of the holder of a credential or an applicant for a credential or the renewal of a credential after jurisdiction to commence an initial review pursuant to subdivision (b) of Section 44242.5 has been established, the commission is authorized to require the production of information, records, reports, and other data from any public agency. For the purposes of determining whether jurisdiction exists, the commission is also authorized to require the limited production of records as set forth in subdivision (f) of Section 44242.5.

(2) This information shall be provided to the commission within 30 days of the request.

(3) The commission shall maintain the confidentiality of this information in accordance with Chapter 1 (commencing with Section 1798) of Title 1.8 of the Civil Code.

(b) Except for the situation prescribed in subdivision (d), every applicant for a credential or for the renewal of a credential shall be deemed to have given his or her consent for the securing of, and disclosure of, information to the commission for the sole purpose of ascertaining the moral character and true identity of the holder of a credential, the applicant for a credential, or a credential holder applying for the renewal of the credential.

(c) The Department of Justice shall furnish, upon application of the commission or its authorized representative, all information pertaining to any applicant of whom there is a record in its office except that information which may compromise or prejudice an ongoing criminal investigative matter may be withheld until the matter is completed.

(d) With the written consent of an applicant for a credential or a credential holder, the commission upon written request of any private school authority, shall release to that private school authority information and other data relative to the identification or fitness of any applicant for a teaching position in the private school so long as not otherwise prohibited by any other provision of law.

(e) Each application for a credential shall contain notice that the information provided by the applicant is subject to investigation for, and verification of, the applicant's moral character and true identity by means of review of information, records, reports, and other data from any agency or department of the state or any political subdivision of the state, whether chartered by the state or not, secured by the commission for these purposes.

**PRODUCTION OF  
INFORMATION;  
CONFIDENTIALITY;  
CONSENT**

## **44345**

The commission may deny any application for the issuance of a credential or for the renewal of a credential made by any applicant who falls under any of the following categories:

**DENIAL OF  
APPLICATION**

## **44345 (cont.)**

(a) Lacks the qualifications which are prescribed by law or regulations adopted by the commission pursuant thereto.

(b) Is physically or mentally so disabled as to be rendered unfit to perform the duties authorized by the credential for which he or she applies. However, the mere fact that an applicant has sought or received psychiatric treatment shall not be considered as preliminary evidence of mental disability and shall not provoke special scrutiny of such applicant's qualifications for a credential.

(c) Is addicted to the use of intoxicating beverages to excess.

(d) Is addicted to the use of controlled substances.

(e) Has committed any act involving moral turpitude.

(f) Has had a certification document revoked.

(g) Has intentionally practiced or attempted to practice any material deception or fraud in his or her application.

(h) Fails or refuses to furnish reasonable evidence of identification or good moral character.

(i) Has been convicted of any offense defined in subdivision 1 of Section 314 of the Penal Code prior to September 7, 1955.

Any denial pursuant to subdivisions (a) to (e), inclusive, shall be based upon reasons related to the applicant's fitness to teach or fitness to perform other duties for which that applicant is certificated, or competence to perform the duties which the credential would authorize the applicant to perform.

## **44346**

(a) The commission shall deny any application for the issuance of a credential or for the renewal of a credential made by any applicant who comes within any of the following classes:

(1) Has been determined to be a sexual psychopath under the provisions of Article 1 (commencing with Section 6300) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code or under similar provisions of law of any other state.

(2) Has been convicted of any sex offense, as defined in Section 44010.

(3) Has been convicted of a controlled substance offense, as defined in Section 44011.

**FURTHER  
GROUNDS  
FOR DENIAL;  
CLASSES OF  
APPLICANTS;  
REHABILITATION**

## **44346 (cont.)**

(4) Has been found to be insane through a criminal proceeding by a federal court or a court in this or any other state.

(b)(1) Notwithstanding paragraphs (2) and (3) of subdivision (a), no person shall be denied a credential solely on the basis that he or she has been convicted of a crime specified in paragraphs (2) and (3) of subdivision (a) if the person has obtained a certificate of rehabilitation and pardon pursuant to Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3 of the Penal Code, and if his or her probation has been terminated and the information or accusation has been dismissed pursuant to Section 1203.4 of the Penal Code.

(2) Notwithstanding any other law, the commission shall deny the application of any applicant who is required to register as a sex offender pursuant to either of the following:

(A) Section 290 of the Penal Code.

(B) A law of any other state or of the United States when the underlying offense, if committed or attempted in this state, would require registration as a sex offender under Section 290 of the Penal Code.

(c) Notwithstanding paragraph (3) of subdivision (a) or subdivision (b), the commission may issue a credential to a person convicted of a controlled substance offense as defined in Section 44011 if the commission determines from the evidence presented that the person has been rehabilitated for at least five years, or has received a certificate of rehabilitation and pardon pursuant to Chapter 3.5 (commencing with Section 4852.01) of Title 6 or Part 3 of the Penal Code, or if the accusation or information against the person has been dismissed and he or she has been released from all disabilities and penalties resulting from the offense pursuant to Section 1203.4 of the Penal Code.

(d) Notwithstanding paragraph (4) of subdivision (a), the commission may issue a credential to a person found to be insane through a criminal proceeding by a federal court or a court in this or any other state if the commission determines from the evidence presented that the person has been rehabilitated for at least five years.

### **44346.1**

(a) The commission shall deny any application for the issuance of a credential made by an applicant who has been convicted of a violent or serious felony or a crime set forth in subdivision (a) of Section 44424 or whose employment has been denied or terminated pursuant to Section 44830.1.

**DENIAL OF  
CREDENTIAL  
FOR CONVICTION  
OF VIOLENT OR  
SERIOUS  
FELONY;**

**44346.1 (cont.)**

**CERTIFICATE OF  
REHABILITATION  
AND PARDON**

(b) This section applies to any violent or serious offense which, if committed in this state, would have been punishable as a violent or serious felony.

(c) For purposes of this section, a violent felony is any felony listed in subdivision (c) of Section 667.5 of the Penal Code and a serious felony is any felony listed in subdivision (c) of Section 1192.7 of the Penal Code.

(d) Notwithstanding subdivision (a), the commission may, but is not required to, grant a credential to an applicant who has been convicted of a violent or serious felony if the person is eligible for, and has obtained, a certificate of rehabilitation and pardon pursuant to Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3 of the Penal Code.

**44346.5**

**ACQUISITION OF  
CRIMINAL RECORD;  
DENIAL OF CERT.**

(a) The Commission on Teacher Credentialing shall submit to the Department of Justice fingerprint images and related information required by the Department of Justice of all individuals, as described in subdivision (a) of Section 49024, for the purposes of obtaining information as to the existence and content of a record of state or federal convictions and state or federal arrests and also information as to the existence and content of a record of state or federal arrests for which the Department of Justice establishes that the individual is free on bail or on his or her own recognizance pending trial or appeal.

(b) When received, the Department of Justice shall forward to the Federal Bureau of Investigation requests for federal summary criminal history information received pursuant to this section. The Department of Justice shall review the information returned from the Federal Bureau of Investigation and compile and disseminate a response to the commission.

(c) The Department of Justice shall provide a state and federal level response to the commission pursuant to paragraph (1) of subdivision (p) of Section 11105 of the Penal Code.

(d) The commission shall request from the Department of Justice subsequent arrest notification service, as provided pursuant to Section 11105.2 of the Penal Code, for individuals described in subdivision (a) of Section 49024 of this code.

(e) The Department of Justice shall charge a fee sufficient to cover the cost of processing the request described in this section.

(f)(1) If a denial of an application for a certificate is due at least in part to the individual's state or federal criminal history record, the commission shall provide to the individual a copy of his or her criminal history record search response with the notice of the denial.

### **44346.5 (cont.)**

(2) The state or federal criminal history record search response shall not be modified or altered from its form or content as provided by the Department of Justice.

(3) The criminal history record search response shall be provided in such a manner as to protect the confidentiality and privacy of the individual's criminal history record and the criminal history record search response shall not be made available by the commission to any school district or county office of education.

(4) The commission shall retain a copy of the individual's criminal history record search response, and the date and the address to which it was sent. The commission shall make this information available upon request by the Department of Justice or the Federal Bureau of Investigation.

### **44354**

Any oath required of an applicant for a credential may be administered by any of the persons enumerated in Section 60, by such employees of the Department of Education as the Superintendent of Public Instruction may designate, and by such employee of the commission as the commission may designate.

### **ADMINISTRATION OF OATH**

### **44355**

(a) Except as provided in subdivision (b), all credentials regularly issued are valid until revoked, suspended, or expired as provided by law.

(b) A credential issued under either of the following circumstances is void and shall be deemed to be void from the date it was issued:

(1) A credential which would not have been issued but for a material deception or fraud committed by an applicant or by another in the applicant's behalf; or

(2) A credential which the commission had no lawful authority to issue and which would not have been issued but for some material mistake of law or fact by either or both the applicant and the commission.

(c) A notice that a credential is void pursuant to paragraph (1) or (2) of subdivision (b) shall be served upon the credential holder at his or her last known address as provided in Section 1013 of the Code of Civil Procedure. Within 30 days thereafter, such notice may be appealed to the commission only on the grounds that there was no fraud, material deception, or error and that the commission had the lawful authority to issue the credential on the facts stated in the application.

### **VALIDITY UNTIL REVOKED, SUSPENDED OR EXPIRED; CREDENTIALS VOID AB INITIO; GROUNDS**

## **PENALTIES FOR THE SUBMISSION OF FRAUDULENT DOCUMENTS**

### **44360**

Any person is guilty of a misdemeanor who, individually or in a representative or any other capacity, does any of the following:

- (a) Alters with fraudulent intent, or uses or attempts to use any altered diploma, certificate, transcript, affidavit, or any other evidence to be used in obtaining a credential or certificate authorizing service in the public schools.
- (b) Assumes any degree or title not conferred upon him or her in the manner and by the authority recognized in this chapter with intent to represent falsely that he or she has received that degree or title, or who willfully makes any false statement on any application for examination, license, credential, or certificate under this chapter.
- (c) Sells, barter, or offers to sell or barter, or purchase or procure directly or indirectly with the intent that it be fraudulently used, any license, credential, or permit authorizing service in the public schools, or any diploma, certificate, affidavit, transcript, or any other evidence required for use in connection with any application for, or the granting of any license, credential, or certificate authorizing service in, the public schools.
- (d) Performs or attempts to perform any teaching or other certified service in any public school under a false or assumed name, or under any name other than that inscribed by the commission on any license, credential, or certificate authorizing him or her to perform those services. This provision shall not apply to persons who, because of marriage or other good faith reasons, have given notice of a name change.
- (e) Refuses or willfully fails to surrender upon demand of the commission, his or her license, credential, or certificate authorizing teaching or service in the public schools upon revocation, suspension, or voiding of those documents under this chapter.

### **44361**

Every person filing for record or attempting to file for record the license, credential, or certificate issued to another person, falsely claiming himself or herself to be the person named in or entitled to the license, credential, or certificate, is guilty of a misdemeanor and, upon conviction thereof, shall be subject to imprisonment in the county jail for not more than one year.

**PROHIBITED  
ACTS;  
VIOLATION**

**FILING LICENSE,  
CREDENTIAL,  
OR CERTIFICATE  
ISSUED TO  
ANOTHER  
PERSON;  
MISDEMEANOR;  
PUNISHMENT**

## **44362**

Every fact necessary to establish the qualifications of an applicant for the issuance of any license, credential, or certificate authorizing the performance of services in the public schools shall be verified under penalty of perjury. An oath to this effect shall be displayed prominently on each application form, and shall be dated and subscribed by the applicant.

**VERIFICATION OF  
FACTS  
NECESSARY  
TO ESTABLISH  
QUALIFICATIONS;  
OATH**

## **REVOCAION AND SUSPENSION OF CERTIFICATION DOCUMENTS**

### **44420**

(a) If any person employed by a school district in a position requiring certification qualifications refuses, without good cause, to fulfill a valid contract of employment with the district or leave the service of the district without the consent of the superintendent, if any, or the governing board, of the district except in the manner provided for by law, the commission may, after proof of this fact is made to it, take an adverse action on the credential holder but may not suspend the credential for more than one year or revoke the credential.

**FAILURE TO  
FULFILL  
CONTRACT  
AS GROUND FOR  
SUSPENSION OF  
DIPLOMAS AND  
CERTIFICATES**

(b) If the credentials issued to the person by the commission have been subject to adverse action pursuant to subdivision (a), the commission may, if the credentials again become subject to suspension under this section, suspend the credentials for not more than two years.

(c) The commission shall investigate allegations brought under this section in accordance with Section 44242.5.

### **44421**

The Commission on Teacher Credentialing shall privately admonish, publicly reprove, revoke or suspend for immoral or unprofessional conduct, or for persistent defiance of, and refusal to obey, the laws regulating the duties of persons serving in the public school system, or for any cause that would have warranted the denial of an application for a credential or the renewal thereof, or for evident unfitness for service.

**GENERAL  
GROUNDS FOR  
PRIVATE  
ADMONISHMENT,  
PUBLIC REPROVAL,  
CREDENTIAL  
REVOCAION OR  
SUSPENSION BY  
COMMISSION**

### **44421.1**

(a) Notwithstanding Section 44421, the commission shall take an appropriate adverse action on any credential holder who knowingly and willfully uses school records of pupil data in connection with, or implicitly or explicitly attempts to recruit a pupil to be a customer for, any business owned by the credential holder or in which the

**RECRUIT OF  
PUPILS AS  
CUSTOMERS FOR  
CERTIFICATED  
PERSON'S  
BUSINESS;**

### **44421.1 (cont.)**

credential holder is an employee.

(b) The commission shall investigate allegations brought under this section in accordance with Section 44242.5.

**PRIVATE  
ADMONISHMENT  
OR CREDENTIAL  
SUSPENSION  
OR REVOCATION**

### **44421.5**

(a) Notwithstanding Section 44421, the commission shall take an appropriate adverse action on any credential holder who knowingly and willfully reports false fiscal expenditure data relative to the conduct of any educational program.

(b) The commission shall investigate allegations brought under this section in accordance with Section 44242.5.

**FALSE FISCAL  
EXPENDITURE  
DATA REPORTS;  
SANCTIONS**

### **44422**

Whenever the holder of a credential issued by the State Board of Education or the Commission on Teacher Credentialing is charged with immoral or unprofessional conduct or evident unfitness for service or persistent defiance of, and refusal to obey, the laws regulating the duties of his or her position, the commission in its discretion after notifying the person charged of its intention to do so, may require the county board of education of the county in which he or she is serving or has last served to give notice of, and conduct, a hearing of the charges in the manner prescribed by law for the hearing of charges for private admonition, or for the revocation or suspension of a certificate by a county board of education.

**IMMORAL OR  
UNPROFESSIONAL  
CONDUCT,  
UNFITNESS,  
DISOBEDIENCE;  
HEARING BY  
COUNTY BOARD  
OF EDUCATION;  
DISCIPLINE  
IMPOSED BY  
COMMISSION**

The county board of education, after the hearing, shall report to the commission its findings, and a summary of the evidence, and shall make a definite recommendation concerning the revocation or suspension of the credential.

Upon receipt of a copy of the findings, summary of evidence, and recommendation, the commission may privately admonish the holder of the credential, or suspend or revoke the credential for the causes stated, or order the charges dismissed.

### **44423**

(a) Whenever the holder of any credential issued by the commission requests in writing that the credential held by him or her be revoked, the commission shall revoke the credential.

(b) Notwithstanding a revocation pursuant to subdivision (a), the commission shall retain its authority to act under subdivision (b) of Section 44440.

**REQUEST FOR  
REVOCATION AS  
REASON FOR  
REVOCATION BY  
COMMISSION**

### **44423.5**

(a) The commission shall suspend the credential of a holder when it receives notice that another state has taken final action to revoke a credential or license authorizing the holder of the credential to perform any duty in the public schools of another state. The suspension shall not take effect until the commission verifies by reviewing documents as set forth in paragraph (4) of subdivision (d) of Section 44242.5 that the underlying acts of misconduct in the other state could result in a revocation of a credential in this state. The suspension shall remain in effect until the commission takes final action on a recommendation of the Committee of Credentials following a review in accordance with Sections 44242.5, 44242.7, 44244, 44244.1, and 44245.

(b) Nothing in this section is intended to require the commission to revoke the credential of an individual whose credential has been suspended pursuant to subdivision (a). The commission shall exercise its independent judgment in making a decision in each case.

### **OUT OF STATE TEACHER LICENSING REVOCATION**

### **44423.6**

(a)(1) The commission shall revoke the credential of a holder when it receives notice that the ability of the holder of the credential to associate with minors has been limited as a term or condition of probation or sentencing resulting from a criminal conviction in this state, another state, or the United States. The limitation shall include, but is not limited to, a prohibition of associating or contact with minors, or a prohibition of associating with minors unless under supervision or in the presence of another adult.

(2) Paragraph (1) shall not apply to a conviction based solely on violating an order as set forth in subdivision (a) of Section 273.6 of the Penal Code.

(b) The commission shall revoke the credential of a holder upon receipt of notice that the holder of the credential has been ordered to surrender a credential or certification document as a term or condition of probation or sentencing resulting from a criminal conviction in this state, another state, or the United States. The limitation shall include, but not be limited to, an order to surrender or self revoke a credential authorizing service in a public school.

(c) A person whose credential is revoked pursuant to this section shall not apply to the commission for reinstatement of the credential pursuant to Section 11522 of the Government Code until the terms or conditions imposed by the conviction, as described in subdivision (a) or (b) of this section, are lifted.

### **CONDITIONS OF PROBATION/ SENTENCING GROUNDS FOR REVOCATION**

## **44424**

(a) Upon the conviction of the holder of any credential issued by the State Board of Education or the Commission on Teacher Credentialing of a violation, or attempted violation, of a violent or serious felony as described in Section 44346.1, or of any one or more of Penal Code Sections 187 to 191, inclusive, 192 insofar as this section relates to voluntary manslaughter, 193, 194 to 217.1, inclusive, 220, 222, 244, 245, 261 to 267, inclusive, 273a, 273ab, 273d, 273f, 273g, 278, 285 to 288a, inclusive, 424, 425, 484 to 488, inclusive, insofar as these sections relate to felony convictions, 503 and 504, or of any offense involving lewd and lascivious conduct under Section 272 of the Penal Code, or any offense committed or attempted in any other state or against the laws of the United States which, if committed or attempted in this state, would have been punished as one or more of the offenses specified in this section, becoming final, the commission shall forthwith revoke the credential.

(b) Upon a plea of nolo contendere as a misdemeanor to one or more of the crimes set forth in subdivision (a), all credentials held by the respondent shall be suspended until a final disposition regarding those credentials is made by the commission. Any action that the commission is permitted to take following a conviction may be taken after the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence and the time for appeal has elapsed or the judgment of conviction has been affirmed on appeal, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code.

(c) The commission shall revoke a credential issued to a person whose employment has been denied or terminated pursuant to Section 44830.1.

(d) Notwithstanding subdivision (a), a credential shall not be revoked solely on the basis that the applicant or holder has been convicted of a violent or serious felony if the person has obtained a certificate of rehabilitation and pardon pursuant to Chapter 3.5 (commencing with section 4852.01) of Title 6 of Part 3 of the Penal Code.

**CONVICTION  
OF CRIME;  
PLEA OF NOLO  
CONTENDERE;  
DENIAL OR  
TERMINATION OF  
EMPLOYMENT**

## **44425**

(a) Whenever the holder of any credential issued by the state board or the Commission on Teacher Credentialing has been convicted of a sex offense, as defined in Section 44010, or controlled substance offense, as defined in Section 44011, the commission immediately shall suspend the credential. If the conviction is reversed and the holder is acquitted of the offense in a new trial or the charges against him or her are dismissed, the commission immediately shall terminate the suspension of the credential. When the conviction becomes final or when imposition of sentence is suspended, the commission immediately shall revoke the credential.

**CONVICTION  
OF SEX OR  
NARCOTIC OFFENSE  
AS GROUNDS FOR  
REVOCAATION BY  
COMMISSION;  
PLEA OF NOLO  
CONTENDERE  
TO SEX OFFENSE**

**44425 (cont.)**

(b)(1) Notwithstanding subdivision (a) and Section 44009, if the holder of a credential enters a plea of nolo contendere for a violation of subdivision (d) of Section 647 of the Penal Code, the commission of a sex offense as defined in Section 44010, all credentials held by the individual shall be suspended until a final disposition regarding those credentials is made by the commission. Any action that the commission is permitted to take following a conviction may be taken after the time for appeal has elapsed, the judgment of conviction has been confirmed on appeal, or when an order granting probation is made suspending the imposition of sentence and the time of appeal has elapsed or the judgment of conviction has been affirmed on appeal, irrespective of a subsequent order pursuant to Section 1203.4 of the Penal Code.

(2) The Legislature shall convene a working group of interested parties including, but not limited to, the commission, civil rights organizations, and organizations that represent teachers, administrators, county offices of education, school districts, school boards, and parents to study Sections 44010, 44011, and 44424, and to provide a report on its findings on or before December 1, 2009.

(c) Notwithstanding any other law, revocation shall be final without possibility of reinstatement of the credential if the conviction is for a felony sex offense, as defined in Section 44010, or a felony controlled substance offense, as defined in Section 44011, in which an element of the controlled substance offense is either the distribution to, or use of a controlled substance by, a minor.

(d)(1) Notwithstanding any other provision of law, the commission immediately shall suspend the credential of any holder who is required to register as a sex offender pursuant to either of the following:

(A) Section 290 of the Penal Code.

(B) A law of any other state or of the United States when the underlying offense, if committed in this state, would require registration as a sex offender pursuant to Section 290 of the Penal Code.

(2) If the conviction requiring registration as a sex offender is reversed on appeal and the holder is acquitted at a new trial or if the charges against the holder are dismissed as a result of the reversal, upon notice, the commission shall immediately reinstate the credential.

(3) The commission immediately shall revoke a credential based on a conviction requiring registration as a sex offender when the time for appeal has elapsed, the judgment of conviction has been affirmed on appeal, or an order granting probation is made suspending the imposition of sentence and the time for appeal has elapsed.

**44425 (cont.)**

(e) A credential holder whose credential has not been revoked pursuant to subdivision (a) as a result of a misdemeanor sex offense, as defined in Section 44010, that does not require registration as a sex offender as set forth in subdivision (c), may apply for reinstatement of his or her credential pursuant to Section 11522 of the Government Code if the accusation or information against the holder has been dismissed and he or she has been released from all disabilities and penalties resulting from the offense pursuant to Section 1203.4 of the Penal Code or the equivalent statute in another federal or state jurisdiction.

**44425.5**

Whenever the holder of any credential issued by the State Board of Education or the Commission on Teacher Credentialing is found to be insane, by a federal court or a court in this or any other state, the commission shall immediately revoke all credentials held by the person.

Notwithstanding any other provision of law, revocation shall be final without possibility of reinstatement of the credentials if the holder of the credential is charged with a felony sex offense, as defined in Section 44010, a felony controlled substance offense, as defined in Section 44011, in which an element of the controlled substance offense is either the distribution to, or use of a controlled substance by, a minor, or murder, as defined in Section 187 of the Penal Code, and, in response to the charge, the holder of the credential is found to be insane through a criminal proceeding by a federal court or a court in this or any other state.

**44426**

Whenever the holder of a credential issued by the State Board of Education or the Commission on Teacher Credentialing has been determined to be a sexual psychopath under the provisions of Article 1 (commencing with Section 6300) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code or under similar provisions of law of any other state, the commission shall forthwith suspend the credential. If the determination is reversed and the holder is determined not be a sexual psychopath in a new proceeding or the proceeding to determine whether he or she is a sexual psychopath is dismissed, the commission shall forthwith terminate the suspension of the credential. When the determination becomes final, the commission shall forthwith revoke the credential.

**CRIMINAL  
INSANITY; FINAL  
REVOCATION  
FOR FELONY SEX  
OR CONTROLLED  
SUBSTANCE  
OFFENSES OR  
MURDER**

**DETERMINATION  
AS SEXUAL  
PSYCHOPATH AS  
GROUNDS FOR  
REVOCATION BY  
COMMISSION**

**44427**

County boards of education may revoke or suspend, for immoral or unprofessional conduct, evident unfitness for teaching, or persistent defiance of, and refusal to obey the laws regulating the duties of, teachers, the certificates granted by them.

**GROUND  
FOR REVOCATION  
OR SUSPENSION BY  
COUNTY BOARD  
OF EDUCATION**

**44433**

If any teacher employed by a board of school trustees for a specified time, leaves the school before the expiration of the time, without the consent of the trustees, in writing, the teacher is guilty of unprofessional conduct, and the board of education of the county, upon receiving notice of the fact, may suspend the certificate of the teacher for the period of one year.

**UNAUTHORIZED  
DEPARTURE FROM  
SERVICE AS  
UNPROFESSIONAL  
CONDUCT AND  
GROUND FOR  
SUSPENSION BY  
COUNTY BOARD**

**44434**

Each city or city and county board of examination may for immoral and unprofessional conduct, profanity, intemperance, or evident unfitness for teaching, recommend to the city or city and county board of education, the revocation of any certificate previously granted by the board of education in the city or city and county.

**IMMORAL AND  
UNPROFESSIONAL  
CONDUCT,  
PROFANITY,  
INTEMPERANCE,  
UNFITNESS AS  
GROUND FOR  
REVOCATION**

**44435**

Upon the becoming final of the conviction of the holder of a certificate issued by a county board of education of a violation or attempted violation of any one or more of Penal Code sections 187 to 191, 192 insofar as said section relates to voluntary manslaughter, 193, 194 to 232, inclusive, 244, 245, 261 to 267, inclusive, 273a, 273f, 273g, 278, 285 to 288a, both inclusive, 424, 425, 484 to 488, both inclusive, insofar as said relate to grand theft, 503 and 504, or of Penal Code Section 272, the county board of education shall forthwith revoke the certificate.

**CONVICTION OF  
CERTAIN FELONIES  
AS GROUND FOR  
REVOCATION BY  
COUNTY BOARD  
OF EDUCATION**

**44436**

Whenever the holder of a certificate issued by a county board of education has been convicted of any sex offense as defined in Section 44010 or controlled substance offense as defined in Section 44011, the county board of education shall forthwith suspend the certificate. If the conviction is reversed and the holder is acquitted of the offense in a new trial or the charges against him or her are dismissed, the board shall forthwith terminate the suspension of the certificate. When the conviction becomes final or when imposition of sentence is suspended, the board shall forthwith revoke the certificate.

**CONVICTION OF  
SEX OFFENSE  
OR CONTROLLED  
SUBSTANCE  
OFFENSE AS  
GROUND FOR  
REVOCATION AND  
SUSPENSION BY  
COUNTY BOARD**

### **44437**

Whenever the holder of a certificate issued by a county board of education has been determined to be a sexual psychopath under the provisions of Article 1 (commencing with Section 6300), Chapter 2, Part 2, Division 6 of the Welfare and Institutions Code or under similar provisions of law of any other state, the county board of education shall forthwith suspend the certificate. If the determination is reversed and the holder is determined not to be a sexual psychopath in a new proceeding or the proceeding to determine whether he is a sexual psychopath is dismissed, the board shall forthwith terminate the suspension of the certificate. When the determination becomes final, the board shall forthwith revoke the certificate.

**DETERMINATION  
AS SEXUAL  
PSYCHOPATH AS  
GROUNDS FOR  
REVOCATION AND  
SUSPENSION BY  
COUNTY BOARD**

### **44438**

(a) "Private admonition," as used in this article and in Article 3 (commencing with Section 44240) of Chapter 2, is a warning, in writing, to the applicant or credential holder that states in ordinary and concise language the act or omission of the applicant or credential holder and further states that repetition of such act or omission may result in denial, suspension, or revocation of the credential.

**PRIVATE  
ADMONITION;  
EXPUNGEMENT OF  
RECORDS**

(b) The private admonition shall be included in the applicant's or credential holder's file, maintained by the commission.

(c) The applicant's or credential holder's employer at the time of admonition shall receive a copy of the admonition and shall not make such copy accessible or disclose the contents thereof, unless the applicant or credential holder consents, in writing, thereto.

(d) For purposes of Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code, the private admonition is deemed a personnel record within the meaning of subdivision (c) of Section 6254 of the Government Code.

(e) The commission and the applicant's or credential holder's employer shall expunge all records pertaining to the private admonition maintained in his or her files pursuant to subdivisions (b) and (c) at the expiration of three years, so long as there is no recurrence of such an offense.

### **44439**

The commission may take an adverse action on the ground that an applicant or credential holder has subverted or attempted to subvert any licensing examination or the administration of an examination, including, but not limited to:

**SUBVERSION  
OF LICENSING  
EXAMINATION OR  
ADMINISTRATION  
OF EXAMINATION**

(a) Conduct that violates the security of the examination materials;

**44439 (cont.)**

removing from the examination room any examination materials; the unauthorized xerographic, photographic, or other mechanical reproduction of any portion of the actual licensing examination; aiding by any means the unauthorized xerographic, photographic, or other mechanical reproduction of any portion of the actual licensing examination; paying or using professional or paid examination-takers for the purpose of reconstructing any portion of the licensing examination; obtaining examination questions or other examination material, except by specific authorization either before, during, or after an examination or use or purport to use any examination questions or materials which were improperly removed or taken from any examination for the purpose of instructing or preparing applicants for examinations; or selling, distributing, buying, receiving or having unauthorized possession of any portion of a future, current, or previously administered licensing examination.

(b) Conduct that violates the standard of examination administration; communicating with any other examinee during the administration of a licensing examination; copying answers from another examinee or permitting one's answers to be copied by another examinee; having in one's possession during the administration of the licensing examination any books, equipment, notes, written or printed materials, or data of any kind, other than the examination materials distributed, or otherwise authorized to be in one's possession during the examination; or impersonating any examinee or having an impersonator take the licensing examination on one's behalf.

(c) The commission shall investigate allegations brought under this section in accordance with Section 44242.5.

**44440**

(a) No applicant who is under review by the commission shall be allowed to withdraw his or her application for a credential without the written consent of the commission. The commission shall retain its authority over those applicants to proceed with the denial of the credential upon any ground provided by law, or to enter an order denying the credential upon any ground provided by law.

(b) The suspension or expiration of any credential, its surrender without the written consent of the commission, or a revocation pursuant to Section 44423 does not deprive the commission of its authority to do any of the following:

- (1) Institute or continue a disciplinary proceeding against the credential holder upon any ground provided by law.
- (2) Enter an order suspending or revoking the credential.
- (3) Issue a public reproof or private admonition to the credential holder.

**WITHDRAWAL  
OF APPLICATION  
FOR CREDENTIAL,  
PERMIT OR OTHER  
CERTIFICATION  
DOCUMENT  
WITHOUT CONSENT  
OF COMMISSION;  
AUTHORITY OF  
COMMISSION TO  
PROCEED**

## **RESIGNATIONS, DISMISSALS, AND TERMINATIONS OF EMPLOYEES**

### **44830.1**

(a) In addition to any other prohibition or provision, no person who has been convicted of a violent or serious felony shall be hired by a school district in a position requiring certification qualifications or supervising positions requiring certification qualifications. A school district shall not retain in employment a current certificated employee who has been convicted of a violent or serious felony, and who is a temporary employee, a substitute employee, or a probationary employee serving before March 15 of the employee's second probationary year. If any conviction is reversed and the formerly convicted person is acquitted of the offense in a new trial, or the charges are dismissed, this section does not prohibit his or her employment thereafter.

(b) This section applies to any violent or serious offense which, if committed in this state, would have been punishable as a violent or serious felony.

(c)(1) For purposes of this section, a violent felony is any felony listed in subdivision (c) of Section 667.5 of the Penal code and a serious felony is any felony listed in subdivision (c) of Section 1192.7 of the Penal Code.

(2) For purposes of this section, a plea of nolo contendere to a serious or violent felony constitutes a conviction.

(3) For purposes of this section, the term "school district" has the same meaning as defined in Section 41302.5.

(d) When the governing board of any school district requests a criminal record summary of a temporary, substitute, or probationary certificated employee, two fingerprint cards, bearing the legible rolled and flat impressions of the person's fingerprints together with a personal description and the fee, shall be submitted, by any means authorized by the Department of Justice, to the Department of Justice.

(e) When the Department of Justice ascertains that an individual who is an applicant for employment by a school district has been convicted of a violent or serious felony, or for purposes of implementing the prohibitions set forth in Section 44836, any sex offense, as defined in Section 44010, or any controlled substance offense, as defined in Section 44011, the department shall notify the school district of the criminal information pertaining to the applicant. The notification shall be delivered by telephone or electronic mail to the school district. The notification to the school district shall cease to be made once the statewide electronic fingerprinting network is

**FELONS;  
CERTIFICATED  
POSITIONS;  
CRIMINAL  
RECORD  
SUMMARY;  
FINGERPRINTS;  
CONFIDENTIALITY**

**44830.1 (cont.)**

returning responses within three working days. The Department of Justice shall send by first-class mail or electronic mail a copy of the criminal information to the Commission on Teacher Credentialing. The Department of Justice may charge a reasonable fee to cover the costs associated with processing, reviewing, and supplying the criminal record summary required by this section. In no event shall the fee exceed the actual costs incurred by the department.

(f) Notwithstanding subdivision (a), a person shall not be denied employment or terminated from employment solely on the basis that the person has been convicted of a violent or serious felony if the person has obtained a certificate of rehabilitation and pardon pursuant to Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3 of the Penal Code.

(g) Notwithstanding subdivision (f), a person shall not be denied employment or terminated from employment solely on the basis that the person has been convicted of a serious felony that is not also a violent felony if that person can prove to the sentencing court of the offense in question, by clear and convincing evidence, that he or she has been rehabilitated for the purposes of school employment for at least one year. If the offense in question occurred outside this state, then the person may seek a finding of rehabilitation from the court in the school district in which he or she is a resident.

(h) Notwithstanding any other provision of law, when the Department of Justice notifies a school district by telephone or electronic mail that a current temporary employee, substitute employee, or probationary employee serving before March 15 of the employee's second probationary year, has been convicted of a violent or serious felony, that employee shall immediately be placed on leave without pay. When the school district receives written electronic notification of the fact of conviction from the Department of Justice, the employee shall be terminated automatically and without regard to any other procedure for termination specified in this code or school district procedures unless the employee challenges the record of the Department of Justice and the Department of Justice withdraws in writing its notification to the school district. Upon receipt of written withdrawal of notification from the Department of Justice, the employee shall immediately be reinstated with full restoration of salary and benefits for the period of time from the suspension without pay to the reinstatement.

(i) An employer shall request subsequent arrest service from the Department of Justice as provided under Section 11105.2 of the Penal Code.

(j) Notwithstanding Section 47610, this section applies to a charter school.

## **44830.1 (cont.)**

(k) This section shall not apply to a certificated employee who applies to renew his or her credential when both of the following conditions have been met:

(1) The employee's original application for credential was accompanied by that person's fingerprints.

(2) The employee has either been continuously employed in one or more public school districts since the issuance or last renewal of his or her credential or his or her credential has not expired between renewals.

(l) Nothing in this section shall prohibit a county superintendent of schools from issuing a temporary certificate to any person described in paragraph (1) or (2) of subdivision (k).

(m) This section shall not prohibit a school district from hiring a certificated employee who became a permanent employee of another school district as of October 1, 1997.

(n) All information obtained from the Department of Justice is confidential. Every agency handling Department of Justice information shall ensure the following:

(1) No recipient may disclose its contents or provide copies of information.

(2) Information received shall be stored in a locked file separate from other files, and shall only be accessible to the custodian of records.

(3) Information received shall be destroyed upon the hiring determination in accordance with subdivision (a) of Section 708 of Title 11 of the California Code of Regulations.

(4) Compliance with destruction, storage, dissemination, auditing, backgrounding, and training requirements as set forth in Sections 700 through 708 inclusive, of Title 11 of the California Code of Regulations and Section 11077 of the Penal Code governing the use and security of criminal offender record information is the responsibility of the entity receiving the information from the Department of Justice.

## **44830.2**

(a) For situations in which a person is an applicant for employment, or is employed on a part-time or substitute basis, in a position requiring certification qualifications in multiple school districts within a county or within contiguous counties, the districts may agree among themselves to designate, a single district, or a county superintendent may agree to act on behalf of participating districts within the county or contiguous

**EMPLOYMENT  
IN MULTIPLE  
DISTRICTS;  
FINGERPRINTS  
CRIMINAL  
HISTORY**

**44830.2 (cont.)**

counties, for the purposes of performing the following functions:

- (1) Sending fingerprints to the Department of Justice.
  - (2) Receiving reports of convictions of serious and violent felonies.
  - (3) Reviewing criminal history records and reports of subsequent arrests from the Department of Justice.
  - (4) Maintaining common lists of persons eligible for employment.
- (b) The school district or county superintendent serving in the capacity authorized in subdivision (a) shall be considered the employer for purposes of subdivisions (a), (d), and (g) of Section 44830.1.
- (c) Upon receipt from the Department of Justice of a report of conviction of a serious or violent felony, the designated school district or county superintendent shall communicate that fact to the participating districts and remove the affected employee from the common list of persons eligible for employment.
- (d) Upon receipt from the Department of Justice of a criminal history record or report of subsequent arrest for any person on a common list of persons eligible for employment, the designated school district or county superintendent shall give notice to the superintendent of any participating district or a person designated in writing by that superintendent, that the report is available for inspection on a confidential basis by the superintendent or authorized designee, at the office of the designated school district or county superintendent, for a period of 30 days following receipt of notice, to enable the employing school district to determine whether the employee meets that district's criteria for continued employment. The designated school district or county superintendent shall not release a copy of that information to any participating district or any other person, shall retain or dispose of the information in the manner required by law after all participating districts have had an opportunity to inspect it in accordance with this section, and shall maintain a record of all persons to whom the information has been shown that shall be available to the Department of Justice to monitor compliance with the requirements of confidentiality contained in this section.
- (e) Any agency processing Department of Justice responses pursuant to this section shall submit an interagency agreement to the Department of Justice to establish authorization to submit and receive information pursuant to this section.
- (f) All information obtained from the Department of Justice is confidential. Every agency handling Department of Justice information shall ensure the following:

## **44830.2 (cont.)**

(1) No recipient may disclose its contents or provide copies of information.

(2) Information received shall be stored in a locked file separate from other files, and shall only be accessible to the custodian of records.

(3) Information received shall be destroyed upon the hiring determination in accordance with subdivision (a) of Section 708 of Title 11 of the California Code of Regulations.

(4) Compliance with destruction, storage, dissemination, auditing, backgrounding, and training requirements as set forth in Sections 700 through 708, inclusive, of Title 11 of the California Code of Regulations and Section 11077 of the Penal Code governing the use and security of criminal offender record information is the responsibility of the entity receiving the information from the Department of Justice.

## **44836**

(a)(1) The governing board of a school district shall not employ or retain in employment persons in public school service who have been convicted, or who have been convicted following a plea of nolo contendere to charges, of any sex offense as defined in Section 44010.

(2) If a person's conviction of a sex offense as defined in Section 44010 is reversed and the person is acquitted of the offense in a new trial or the charges against him or her are dismissed, this section does not prohibit his or her employment thereafter. If the dismissal was pursuant to Section 1203.4 of the Penal Code and the victim of the sex offense was a minor, this section does prohibit the person's employment.

(b)(1) The governing board of a school district also shall not employ or retain in employment persons in public school service who have been convicted of any controlled substance offense as defined in Section 44011.

(2) If a person's conviction for a controlled substance offense as defined in Section 44011 is reversed and the person is acquitted of the offense in a new trial or the charges against him or her are dismissed, this section does not prohibit his or her employment thereafter.

(c) Notwithstanding subdivision (b), the governing board of a school district may employ a person convicted of a controlled substance offense in a position requiring certification qualifications

## **EMPLOYMENT OF PERSONS CONVICTED OF SEX OFFENSES OR CONTROLLED SUBSTANCE OFFENSES**

## 44836 (cont.)

if that person holds an appropriate credential issued by the Commission on Teacher Credentialing.

## 44932

(a) No permanent employee shall be dismissed except for one or more of the following causes:

- (1) Immoral or unprofessional conduct.
- (2) Commission, aiding, or advocating the commission of acts of criminal syndicalism, as prohibited by Chapter 188 of the Statutes of 1919, or in any amendment thereof.
- (3) Dishonesty.
- (4) Unsatisfactory performance.
- (5) Evident unfitness for service.
- (6) Physical or mental condition unfitting him or her to instruct or associate with children.
- (7) Persistent violation of or refusal to obey the school laws of the state or reasonable regulations prescribed for the government of the public schools by the State Board of Education or by the governing board of the school district employing him or her.
- (8) Conviction of a felony or of any crime involving moral turpitude.
- (9) Violation of Section 51530 or conduct specified in Section 1028 of the Government Code, added by Chapter 1418 of the Statutes of 1947.
- (10) Knowing membership by the employee in the Communist Party.
- (11) Alcoholism or other drug abuse which makes the employee unfit to instruct or associate with children.

(b) The governing board of a school district may suspend without pay for a specific period of time on grounds of unprofessional conduct a permanent certificated employee or, in a school district with an average daily attendance of less than 250 pupils, a probationary employee, pursuant to the procedures specified in Sections 44933, 44934, 44935, 44936, 44937, 44943, and 44944. This authorization shall not apply to any school district which has adopted a collective bargaining agreement pursuant to subdivision (b) of Section 3543.2 of the Government Code.

**GROUNDS  
FOR  
DISMISSAL  
OF PERMANENT  
EMPLOYEES;  
SUSPENSION OF  
EMPLOYEES**

### **44933**

A permanent employee may be dismissed or suspended on grounds of unprofessional conduct consisting of acts or omissions other than those specified in Section 44932, but any such charge shall specify instances of behavior deemed to constitute unprofessional conduct. This section shall also apply to the suspension of probationary employees in a school district with an average daily attendance of less than 250 pupils.

**OTHER GROUNDS  
FOR DISMISSAL  
OR SUSPENSION;  
ADDITIONAL  
APPLICATION OF  
SECTION**

### **44940**

(a) For purposes of this section, "charged with a mandatory leave of absence offense" is defined to mean charged by complaint, information, or indictment filed in a court of competent jurisdiction with the commission of any sex offense as defined in Section 44010, or with the commission of any offense involving aiding or abetting the unlawful sale, use, or exchange to minors of controlled substances listed in Schedule I, II, or III, as contained in Section 11054, 11055, and 11056 of the Health and Safety Code, with the exception of marijuana, mescaline, peyote, or tetrahydrocannabinols.

**LEAVE OF  
ABSENCE;  
CERTIFICATED  
EMPLOYEE  
CHARGED WITH  
MANDATORY OR  
OPTIONAL LEAVE  
OF ABSENCE  
OFFENSE;  
SUSPENSION OF  
CREDENTIALS;  
DEFINITIONS**

(b) For purposes of this section, "charged with an optional leave of absence offense" is defined to mean a charge by complaint, information, or indictment filed in a court of competent jurisdiction with the commission of any controlled substance offense as defined in Section 44011 or 87011, or a violation or attempted violation of Section 187 of the Penal Code, or Sections 11357 to 11361, inclusive, 11363, 11364, or 11370.1 of the Health and Safety Code, insofar as these sections relate to any controlled substances except marijuana, mescaline, peyote, or tetrahydrocannabinols.

(c) For purposes of this section and Section 44940.5, the term "school district" includes county offices of education.

(d)(1) Whenever any certificated employee of a school district is charged with a mandatory leave of absence offense, as defined in subdivision (a), upon being informed that a charge has been filed, the governing board of the school district shall immediately place the employee on compulsory leave of absence. The duration of the leave of absence shall be until a time not more than 10 days after the date of entry of the judgment in the proceedings. No later than 10 days after receipt of the complaint, information, or indictment described by subdivision (a), the school district shall forward a copy to the Commission on Teacher Credentialing.

(2) Upon receiving a copy of a complaint, information, or indictment described in subdivision (a) and forwarded by a school district, the Commission on Teacher Credentialing shall automatically suspend the employee's teaching or service credential. The duration of the suspension shall be until a time not

**44940 (cont.)**

more than 10 days after the date of entry of the judgment in the proceedings.

(e)(1) Whenever any certificated employee of a school district is charged with an optional leave of absence offense as defined in subdivision (b), the governing board of the school district may immediately place the employee upon compulsory leave in accordance with the procedure in this section and Section 44940.5. If any certificated employee is charged with an offense deemed to fall into both the mandatory and the optional leave of absence categories, as defined in subdivisions (a) and (b), that offense shall be treated as a mandatory leave of absence offense for purposes of this section. No later than 10 days after receipt of the complaint, information, or indictment described by subdivision (a), the school district shall forward a copy to the Commission on Teacher Credentialing.

(2) Upon receiving a copy of a complaint, information, or indictment described in subdivision (a) and forwarded by a school district, the Commission on Teacher Credentialing shall automatically suspend the employee's teaching or service credential. The duration of the suspension shall be until a time not more than 10 days after the date of entry of the judgment in the proceedings.

**44940.5**

A certificated employee placed on compulsory leave of absence pursuant to Section 44940, and a classified employee placed on compulsory leave of absence pursuant to Section 45304 shall be subject to the following procedures:

(a) The governing board of the school district may extend the compulsory leave of absence of the employee beyond the initial period specified in Section 44940 or 45304, whichever is applicable, by giving notice to the employee within 10 days after the entry of judgment in the proceedings that the employee will be dismissed at the expiration of 30 days from the date of service of the notice, unless the employee demands a hearing as provided in this article.

(b) An employee placed upon compulsory leave of absence pursuant to this section shall continue to be paid his or her regular salary during the period of his or her compulsory leave of absence if and during that time he or she furnishes to the school district a suitable bond, or other security acceptable to the governing board, as a guarantee that the employee will repay to the school district the amount of salary so paid to him or her during the period of the compulsory leave of absence in case the employee is convicted of the charges, or fails or refuses to return to service following an acquittal of the offense or dismissal of the charges. If the employee is acquitted of the offense, or the charges

**COMPULSORY  
LEAVE OF ABSENCE;  
PROCEDURES;  
EXTENSION OF  
LEAVE;  
COMPENSATION;  
BOND OR  
SECURITY;  
REPORTS**

## 44940.5 (cont.)

against the employee are dismissed, the school district shall reimburse the employee for the cost of the bond upon his or her return to service in the school district.

(c) If the employee does not elect to furnish bond, or other security acceptable to the governing board of the district, and if the employee is acquitted of the offense, or the charges against him or her are dismissed without his or her guilt being established, the school district shall pay to the employee his or her full compensation for the period of the compulsory leave of absence upon his or her return to service in the school district. If the charges against the employee are dismissed as a result of the employee's successful completion of a drug diversion program, upon the employee's return to service in the school district, the school district, at the employee's election, shall pay to the employee any accrued leave, and differential pay pursuant to Sections 44977, 45195, and 45196, for up to the length of the employee's compulsory leave of absence.

(d) An action taken pursuant to this section by a governing board shall be reported immediately to the Commission on Teacher Credentialing. The commission shall give priority to the investigation and resolution of these cases.

## 44942

(a) Any certificated employee may be suspended or transferred to other duties by the governing board if the board has reasonable cause to believe that the employee is suffering from mental illness of such a degree as to render him or her incompetent to perform his or her duties.

(b) The governing board shall immediately, upon any suspension or transfer under this section, give to the employee a written statement of the facts giving rise to the board's belief, and an opportunity to appear before the board within 10 days to explain or refute the charges.

(c) If, after the employee's appearance before the board, the board decides to continue the suspension or transfer, or if the employee chooses not to appear before the board, the employee shall then be offered, in writing, the opportunity of being examined by a panel consisting of three persons who are either psychiatrists or psychologists, at least one of whom shall be a psychiatrist, selected by him or her from a list of psychiatrists and psychologists to be provided by the board. To assist the panel in making its determination, the governing board shall supply to the panel, prior to the date scheduled for the examination, a list of the duties of the position from which the employee was suspended or transferred. The employee shall continue to receive his or her regular salary and all other benefits of employment during the period dating from his or her

**SUSPENSION OR  
TRANSFER OF  
CERTIFICATED  
EMPLOYEE ON  
GROUNDS OF  
MENTAL  
ILLNESS;  
EXAMINATION;  
MANDATORY SICK  
LEAVE**

**44942 (cont.)**

suspension to the filing of the report of the panel with the governing board.

(d) The examination shall be conducted at school district expense within 15 days of any suspension or transfer ordered under this section. The employee shall submit to the examination, but shall be entitled to be represented by a psychiatrist, psychologist licensed under Chapter 6.6 (commencing with Section 2900) of Division 2 of the Business and Professions Code, or physician of his or her own choice, and any report of the psychiatrist, psychologist, or physician selected by him or her shall be filed with the panel at the request of the employee.

A written report of the panel on the examination of the suspended or transferred employee shall be submitted to the governing board no later than 10 days after completion of the examination. A copy shall be supplied to the employee upon request. The report shall contain a finding on whether the employee is suffering from mental illness of such a degree as to render him or her incompetent to perform his or her duties.

(e) If a majority of the panel conclude that the employee should be permitted to return to his or her duties, no written record of the suspension or of the determination of the panel shall be retained, and in all respects any written record concerning the employee shall appear as it did before the suspension was made.

(f) If a majority of the panel find in the panel's report that the employee is suffering from mental illness of such a degree as to render him or her incompetent to perform his or her duties, the governing board may, upon receipt of the report, place the employee on mandatory sick leave of absence. Any mandatory sick leave of absence imposed under this section shall not exceed two years, during which period the employee shall be entitled to sick leave and hospital and medical benefits that he or she accrued during his or her employment by the governing board but only to the extent of that accrual.

(g) Any employee placed on mandatory sick leave of absence pursuant to this section may, in writing, immediately demand a hearing. Upon receipt of that written demand, the governing board shall file a complaint in the superior court of the county in which the school district, or the major part thereof, is located, setting forth the charges against the employee and asking that the court inquire into the charges and determine whether or not the charges are true, and, if true, whether they constitute sufficient grounds for placing the employee on mandatory sick leave of absence, and for a judgment pursuant to its findings.

(h) If the court finds that the employee was not, at the time of the suspension, incompetent to perform his or her assigned duties and should not have been placed on mandatory sick leave of absence, the

## **44942 (cont.)**

employee shall be immediately reinstated to the same or a substantially similar position with full back salary, and any written record of the suspension or transfer or any report of the panel shall be destroyed.

(i) If the court confirms the placing of the employee on mandatory sick leave, or if the employee does not seek a hearing, then, upon written request of the employee made not earlier than six months nor later than two years after the date he or she was placed on mandatory sick leave of absence, a new panel consisting of three persons who are either psychiatrists or psychologists, at least one of whom shall be a psychiatrist, shall be convened by, and at the expense of, the governing board to review its original conclusion. If the original conclusion is not changed by the new panel as a result of such review, the employee shall be continued on the mandatory sick leave of absence, except that when the employee's total period of absence exceeds two years, the governing board shall either rescind its action and reinstate the employee to the same or a substantially similar position, or shall serve the employee with a notice of intention to dismiss him or her, and proceed according to Section 44943.

(j) If a majority of the new panel concludes in its report, or any subsequent review thereof, that the suspended employee or employee on mandatory sick leave of absence should be permitted to return to his or her duties, or if the court so concludes, the governing board shall take immediate action to restore the employee to the position from which he or she was suspended or transferred or to a substantially similar position.

(k) Every hearing and action by or before the governing board pursuant to this section shall be in executive session, and no decision, action, or occurrence therein shall be made public, unless the employee so requests in writing.

(l) Nothing in this section shall be construed to supersede Section 44949.

## **44947**

If an employee is dismissed for immoral conduct or conviction of a felony or crime involving moral turpitude, the governing board shall transmit to the Commission on Teacher Credentialing and to the county board of education which issued the certificate under which the employee was serving at the time of his dismissal, a copy of the reporter's transcript of the hearing accompanied by a request that any certificate issued by the county board of education to the employee be revoked if the employee is not reinstated upon appeal.

## **REQUIREMENTS UPON GOVERNING BOARD ON DISMISSAL FOR CERTAIN CRIMES**

**44947 (cont.)**

**ACTIVITIES  
SUPERVISOR  
CLEARANCE  
CERTIFICATE;  
REQUIREMENTS**

(a) Prior to assuming a paid or volunteer position to work with pupils in a pupil activity program sponsored by a school district, all noncertificated candidates shall obtain an Activity Supervisor Clearance Certificate from the Commission on Teacher Credentialing pursuant to subdivision (f) of Section 44258.7.

(b) A pupil activity program sponsored by a school district includes, but is not limited to, scholastic programs, interscholastic programs, and extracurricular activities sponsored by a school district or school booster club, including, but not limited to, cheer team, drill team, dance team, and marching band.

(c) Volunteer supervisors for breakfast, lunch, or other nutritional periods pursuant to Sections 44814 and 44815, and nonteaching volunteer aides, as defined in Section 35021, under the immediate supervision and direction of certificated personnel of the district, shall not be required to obtain an Activity Supervisor Clearance Certificate. For purposes of this section, a nonteaching volunteer aide includes a parent volunteering in a classroom or on a field trip or a community member providing noninstructional services.

(d) Candidates may be issued a temporary certificate in accordance with Sections 44332 and 44332.5 while the application is being processed.

(e) This section does not apply to a candidate who is required by the school district to clear a Department of Justice and Federal Bureau of Investigation criminal background check prior to beginning the paid or volunteer activities described in subdivision (a).

(f) This section shall become operative on July 1, 2010.

# **CODE OF REGULATIONS**

## COMMITTEE OF CREDENTIALS GENERAL PROVISIONS

### 80028

### CERTIFICATE OF CLEARANCE

A Certificate of Clearance is a document, issued by the Commission, which verifies that the holder meets personal qualifications necessary to obtain a regular California teaching or services credential. Each candidate for an initial credential shall, prior to admission to student teaching under any professional preparation program approved by the Commission, obtain a Certificate of Clearance. No less than 60 working days prior to admission to student teaching, the candidate shall submit the following materials to the Commission:

- (a) A completed application via the online application system.
- (b) One-half of the credential issuance/reissuance or renewal fee specified in Section 80487(a)(1) unless otherwise established by law. The fee shall apply toward the initial credential.
- (c) Verification of completion of livescan.

The Certificate of Clearance shall be issued for a period of five years when the Commission has verified that the candidate meets personal qualifications necessary to obtain a regular California teaching or services credential.

### 80300

### DEFINITIONS

- (a) "Adverse action" is a denial, a private admonition, public reproof, suspension or a revocation of one or more credentials.
- (b) "Aggravating factor" is an event or circumstance which demonstrates that a greater degree of adverse action for an act of professional misconduct is needed to adequately protect the public, schoolchildren or the profession. Aggravating factors may include, but are not limited to, the following:
  - (1) a prior record of adverse action including the nature and extent of that record;
  - (2) that the misconduct evidences multiple acts of wrongdoing or demonstrates a pattern of misconduct;
  - (3) that the misconduct was surrounded by or followed by bad faith, dishonesty or other violation of the laws governing educators;
  - (4) that the misconduct significantly harmed a child entrusted to the care of a credential holder or applicant, significantly harmed the public or the educational system;

## 80300 (cont.)

(5) that the holder or applicant demonstrated indifference toward the consequence of the misconduct, which includes failure to comply with known court orders; or

(6) that the holder or applicant had prior notice, warnings or reprimands for similar conduct from any reliable source.

(c) "Applicant" is an individual applying for a credential, permit, waiver or other certification document issued by the Commission on Teacher Credentialing.

(d) "Commission" is the Commission on Teacher Credentialing or a predecessor agency.

(e) "Committee" is the Committee of Credentials.

(f) "Confidential investigative report" is a summary of applicable law and relevant facts, as well as information regarding aggravating and mitigating factors, prepared and presented to the Committee pursuant to Education Code section 44242.5(c)(2).

(g) "Credential" is any credential, certificate, life document, life diploma, permit, certificate of clearance, or waiver, or other document which authorizes the holder to perform services which require certification and was issued by the Commission.

(h) "Complainant" is the person or persons filing a statement pursuant to Education Code section 44242.5(b)(2), or an employer filing a notice pursuant to Education Code section 44242.5(b)(3), or (4).

(i) "Denial" is refusal to grant a credential to an applicant whose conduct comes within the provisions of Education Code sections 44435 or 44346.

(j) "Employer" is the entity which contracts with or otherwise engages a holder or applicant for the performance of educational services.

(k) "Formal review" is the meeting held pursuant to Education Code section 44244.

(l) "Holder" is an individual possessing a credential, permit, waiver or other certification document issued by the Commission.

(m) "Mitigating factor" is an event or circumstance which demonstrates that the public, schoolchildren and the profession would be adequately protected by a more lenient degree of adverse action or no adverse action whatsoever. Mitigating factors may include, but are not limited to, the following factors:

## 80300 (cont.)

(1) absence of any prior record of adverse action over many years of educational service, coupled with present misconduct which is not deemed most serious;

(2) lack of harm to the person who is the object of the misconduct;

(3) emotional or physical difficulties suffered by the holder or applicant which substantially contributed to the misconduct; provided that the difficulties were not the product of illegal conduct by the credential holder or applicant, such as illegal drug or substance abuse; and further provided that the credential holder or applicant has established through clear and convincing evidence that he or she no longer has such difficulties;

(4) a demonstration of good character of the applicant or holder attested to by references from the educational community or the general community from individuals aware of the extent of the applicant's or holder's misconduct;

(5) objective action taken by the applicant or holder, spontaneously demonstrating remorse at the time of the misconduct, and recognition of the wrongdoing which is designed to timely make amends for the consequences of the misconduct;

(6) the proximity or remoteness in time relative to the seriousness of the misconduct; or

(7) the nature and extent of subsequent rehabilitation.

(n) "Private admonition" is an adverse action defined and governed by Education Code section 44438.

(o) "Probable cause" is reasonable grounds for belief in the existence of facts warranting adverse action.

(p) "Public reproof" is a public warning from the Commission that conduct is not appropriate for a credential holder or applicant. Following a public reproof, commission of the same or similar conduct may result in more serious adverse action. It is issued only when adequate to appropriately protect the public, schoolchildren and the profession.

(q) "Recurring conduct" is behavior involving the exercise of consistently poor judgment or misconduct.

(r) "Revocation" is the termination of an individual's ability to work in a position requiring certification. Once effective, the revocation continues unless the individual is reinstated by the Commission.

## 80300 (cont.)

(s) "Sexual misconduct" is:

(1) acts or conduct, directed at a minor which a reasonable person would believe to be motivated by sexual interest;

(2) acts or conduct defined in Education Code section 44010 whether or not the applicant or holder was convicted or arrested; or

(3) the proliferation or distribution of child pornography or the exploitation of any minor through the use of any pornography by a credential holder or applicant. "Pornography" consists of the acts defined in Part 1, Title 9, Chapters 7.5 and 7.6 of the Penal Code, commencing with section 311.

(t) "Suspension" is the temporary inactivation of a credential for a specified period of time. A suspension may be stayed on conditions of probation or may be an actual suspension or may be both. If an actual suspension, the credential holder may not work in a position requiring a credential during the period of actual suspension.

(1) A "stayed suspension" may be issued for a specified period of time only if the stay and performance of specified rehabilitative or probationary duties by the credential holder during the period of the stay is deemed consistent with the purposes of professional discipline.

(2) An "actual suspension" may be issued for a specified period of time. Actual suspensions imposed for one year or longer shall require presentation of sufficient proof to the Commission of the credential holder's rehabilitation, or present fitness to perform the duties authorized by the credential before the suspension may terminate.

## 80301

(a) An applicant for issuance or renewal of a credential shall not be required to disclose, and the Committee of Credentials shall not inquire into or consider, any acts or omissions not related to his or her fitness or competence to perform the duties authorized by his or her credential.

(b) Each applicant for initial issuance of a credential shall submit a completed Application for Credential Authorizing Public School Service form as specified in §80001 on which he or she will set forth evidence of identification and good moral character which shall be used for the sole purpose of determining the applicant's eligibility for a credential, Certificate of Clearance, or Activity Supervisor Clearance Certificate.

**NOTICE TO  
APPLICANTS  
FOR ISSUANCE  
OR RENEWAL  
OF  
CREDENTIALS;  
APPLICATION  
FOR  
CHARACTER AND  
IDENTIFICATION  
CLEARANCE**

## 80301 (cont.)

(c) The Application for Credential Authorizing Public School Service form as specified in §80001 shall include, but not be limited to, the following information for applicants:

(1) That the Commission is prohibited from issuing to or renewing the credential of any person convicted of any sex offense listed under Education Code Section 44010; or any narcotics offense listed under Education Code Section 44011; or who has been determined to be a mentally disordered sex offender; or that if a person holds a credential and has been convicted of any offense listed in Education Code Section 44424, such credential must be revoked.

## 80302

### STANDARDS FOR INVESTIGATION

(a) The Committee, in conducting its investigation, shall determine the relationship between the alleged misconduct and the applicant's or holder's fitness, competence, or ability to effectively perform the duties authorized by the credential. Such relationship may be based on facts which include, but are not limited to, the following:

- (1) The likelihood that the conduct may have adversely affected students, fellow teachers, or the educational community, and the degree of such adversity anticipated;
- (2) The proximity or remoteness in time of the conduct;
- (3) The type of credential held or applied for by the person involved;
- (4) The extenuating or aggravating circumstances surrounding the conduct;
- (5) The praiseworthiness or blameworthiness of the motives resulting in the conduct;
- (6) The likelihood of the recurrence of the questioned conduct;
- (7) The extent to which disciplinary action may inflict an adverse impact or chilling effect upon the constitutional rights of the person involved, or other certified persons;
- (8) The publicity or notoriety given to the conduct.

(b) If the Committee finds no relationship between the alleged misconduct and the applicant's or holder's fitness, competence or ability to effectively perform the duties authorized by the credential the Committee shall close the investigation.

**80303**

**REPORTS OF  
CHANGE IN  
EMPLOYMENT  
STATUS**

(a) Whenever a credential holder, working in a position requiring a credential:

(1) is dismissed or nonreelected;

(2) resigns;

(3) is suspended or placed on unpaid administrative leave as a final adverse employment action for more than 10 days;

(4) retires; or

(5) is otherwise terminated by a decision not to employ or re-employ; as a result of an allegation of misconduct or while an allegation of misconduct is pending, the superintendent of the employing school district shall report the change in employment status to the Commission not later than 30 days after the employment action.

(b) The report shall contain all known information about each alleged act of misconduct.

(c) The report shall be made to the Commission regardless of any proposed or actual agreement, settlement, or stipulation not to make such a report. The report shall also be made if allegations served on the holder are withdrawn in consideration of the holder's resignation, retirement, or other failure to contest the truth of the allegations.

(d) Failure to make a report required under this section constitutes unprofessional conduct. The Committee may investigate any superintendent who holds a credential who fails to file reports required by this section.

(e) The superintendent of an employing school district shall, in writing, inform a credential holder of the content of this regulation whenever that credential holder, working in a position requiring a credential, is dismissed, nonreelected, resigns, is suspended or placed on unpaid administrative leave as a final adverse employment action for more than ten days, retires or is otherwise terminated by a decision not to employ or re-employ as a result of an allegation of misconduct or while an allegation of misconduct is pending. Failure to comply with this subdivision by a superintendent of schools constitutes unprofessional conduct which shall be investigated by the Committee of Credentials.

**80304**

(a) A notice filed pursuant to Education Code section 44242.5(b)(4) alleging sexual misconduct shall contain all of the following information:

- (1) name of the holder alleged to have engaged in misconduct;
- (2) name, age and address of each victim of the alleged misconduct;
- (3) a summary of all information known to the employer regarding the alleged misconduct; and
- (4) a summary of the action, if any, taken at the district level by the employer in response to the complaint of sexual misconduct.

**NOTICE OF  
SEXUAL  
MISCONDUCT**

**80306**

(a) With the exceptions set forth in Education Code section 44242.7(a), an allegation of an act or omission by a credential holder shall be presented to the Committee within four years from the date of the alleged act or omission, or within one year from the date the act or omission should reasonably have been discovered by the Commission.

(b) For purposes of Education Code section 44242.7(a), a matter is presented to the Committee when the credential holder or applicant is notified that the matter is set for initial review by the Committee.

**TIME FOR  
PRESENTATION  
OF ALLEGATIONS**

**80307**

(a) Upon receipt of a written request, the Committee shall disclose to the credential holder or applicant or his or her attorney only those portions of the investigation file as authorized by Education Code section 44244(a).

(b) Disclosure of documents pursuant to subsection (a) may be provided at any time subsequent to the commencement of the initial review pursuant to Education Code section 44242.5(c).

**DISCLOSURE OF  
DOCUMENTS  
DURING  
INVESTIGATION**

**80307.1**

An investigation is commenced on the date respondent is first notified, in writing, that his or her fitness to hold a credential is under initial review.

**INVESTIGATION  
COMMENCES**

**80308**

(a) If the Committee receives information about an applicant or holder, the Committee may conduct a preliminary review of the information prior to commencing an investigation. At the preliminary review, the Committee may either determine to end the review or instruct staff to set the matter for initial review at a later meeting.

**PRELIMINARY  
REVIEW**

## 80308 (cont.)

(b) A credential holder's personnel records shall not be obtained without written notification to the holder.

(c) No contact shall be made by any Commission staff members with anyone except the complainant prior to opening the investigation.

**NOTE:** Pursuant to court order, the Commission has jurisdiction to conduct an investigation, including requests for information to public agencies, only upon receipt of relevant information as specified within and pursuant to Education Code section 44242.5. Unless the Commission receives such information as specified in section 44242.5, it may not proceed to investigate, including the undertaking of a preliminary review pursuant to section 80308.

## 80309

(a) The Committee shall not initiate an administrative hearing solely on the grounds that an applicant or licensee is suffering from a contagious and communicable disease or other disease or defect of mind or body unless probable cause appears from the evidence that:

(1) The condition of the applicant or licensee constitutes a health hazard to students or persons with whom he or she must associate in carrying out the duties authorized by the credential applied for or held; or

(2) Because of the said disease or defect the applicant or licensee is unable to perform the duties authorized by the credential applied for or held.

(b) Any denial, suspension, or revocation of a credential pursuant to this section shall be limited in duration to the period of actual disability; and the credential shall be granted or reissued upon presentation of satisfactory evidence that such disability no longer exists.

(c) Where it appears from the evidence that an applicant or licensee is, or has been within one year, under psychiatric treatment as a condition of probation imposed by a court as a result of the commission of acts or omissions which also constitute probable cause for private admonition, denial, suspension, or revocation of a credential; or where the evidence shows that an applicant or licensee has committed acts or omissions which, but for the reasonably probable existence of some mental defect or disability, would constitute cause for disciplinary action, the Committee of Credentials may require and the applicant or licensee shall submit to an examination by a designated board certified licensed psychiatrist who shall prepare his expert opinion with respect to whether the applicant or licensee is able to perform the duties

## MEDICAL AND PSYCHIATRIC GUIDELINES

## **80309 (cont.)**

authorized by the credential applied for or held; and if not so able, the probable duration and severity of the disability. Such examination shall be at the expense of the Commission.

Refusal or willful failure of an applicant or licensee to submit to such examination within 30 days after service of such request by registered mail shall constitute cause for denial of the application for issuance or renewal of a credential, and any revocation or suspension of a credential shall not be limited by the provisions of subsection 2 (b) above.

### **80309.1**

#### **INITIAL REVIEW**

(a) Prior to issuance of a notice of meeting pursuant to section 80310 the Committee shall conduct an initial review of the matter based upon written information.

(b) Notification of the initial review shall be provided to the holder or applicant only.

(c) When the matter is set for initial review by the Committee the staff shall provide written notification to the applicant or holder and offer the applicant or holder a reasonable opportunity to provide written information to the Committee prior to the Committee meeting. All written statements by the applicant or holder provided to the Committee shall be verified under penalty of perjury.

(d) Staff shall submit a confidential investigative report to the Committee.

### **80310**

#### **NOTICE OF MEETING, FORMAL REVIEW**

(a) The notice of meeting required by Education Code section 44244(a), shall be sent to the address of record of the holder or applicant. In its discretion, the Committee may also send the notice to the last known address of the holder or applicant. However, it is the responsibility of the holder or applicant to notify the Commission of any change in his or her address of record. The notice to the holder or applicant shall contain a confidential investigative report.

(b) A copy of the notice, without the confidential investigative report, shall be sent to any complainant and all known educational employers.

### **80311**

#### **REQUEST FOR APPEARANCE**

(a) No later than 20 days prior to formal review before the Committee pursuant to section 80310, the holder or applicant may request an opportunity to personally appear before the Committee during the formal review to respond, under oath, to questions from the Committee.

(b) Upon receipt of a request for an appearance, staff shall schedule a

## **80311 (cont.)**

specific day and time to appear before the Committee during the formal review. Staff shall also notify all complainants and the last known employer, of the scheduled appearance. This notice shall state that the complainant and/or employer may also appear to offer relevant testimony before the Committee.

(c) If the holder or applicant is unable to appear before the Committee at the scheduled time, the Committee shall conduct the meeting, as noticed pursuant to section 80310, without an appearance. The Committee may grant a continuance if an emergency situation exists.

## **80312**

A matter set for review by the Committee may be continued only upon written request and in compelling and verifiable situations. As part of the written request for a continuance the respondent must submit a written waiver of time and a showing that there will be no harm to the public in the event the continuance is granted. A request for a continuance must be received at the Commission no later than 10 days prior to the date set for review by the Committee.

### **CONTINUANCE**

## **80313**

(a) Any person determined by the Committee of Credentials to be a material witness in a particular case shall be permitted to be present to provide testimony during formal review by the Committee, and shall be examined for rebuttal evidence, if any.

(b) Whether a witness is called shall be at the sole discretion of the Committee of Credentials.

(c) The order of witness testimony shall be determined by the Committee of Credentials.

(d) A minor witness (persons under 18 years of age) may have one support person present during their testimony. No support will be allowed for adult witnesses, except the representative designated by the applicant or holder under investigation.

### **PRESENCE OF MATERIAL WITNESSES**

## **80314**

A quorum of the Committee must be present to consider any action, and at least four members must concur to take any action.

### **ACTION**

## **80314.5**

A written copy of the recommendation and findings of the Committee together with a notice of appeal rights available shall be sent by registered mail to the holder's or applicant's last known address within 14 days after the meeting or hearing at which the recommendation is made. Unless the recommendation involves private admonition, as provided in Section 44438 of the Education Code, a copy of the said recommendation, but not the findings, unless

### **NOTICE OF COMMITTEE ACTION**

## 80314.5 (cont.)

otherwise provided by law, shall be mailed to all complainants and parties requesting notice of the Committee's decision in the case. Such recommendation, but not the findings, unless otherwise provided by law, shall also be made available to members of the public upon request.

## 80315

(a) A holder, applicant, complainant or employer may request, in writing, that the Committee reconsider its recommended decision. The request must be received by the Commission no later than 30 days after personal service or mailing notice of the Committee's recommendation. The request for reconsideration shall also contain new and different evidence which may materially affect the findings of the Committee.

(b) When a recommendation of the Committee is presented to the Commission pursuant to Education Code section 44244.1, the Commission may adopt the recommendation or request the Committee to reconsider its action, decision, or recommendation. Upon request of the Commission, the Committee shall reconsider its action, decision, or recommendation.

(c) A member of the Committee may participate in the reconsideration of a matter even though he or she was not present during the original consideration of the matter if the interested parties agree, or if the member reviews a transcript or tape recording of the proceedings and all other documents and evidentiary materials before the Committee.

## RECONSIDER- ATION

## 80316.5

Where the confidential investigative report shows that the allegations are groundless the file shall be sealed.

## CONFIDENTIAL REPORT OF INVESTIGATION

## 80317

The credential holder or applicant may, within thirty (30) days after personal service or the mailing of notice of the Committee's recommendation, request an administrative hearing by giving written notice to the Commission. The administrative hearing is a trial de novo. Any prayer contained in an Accusation or Statement of Issues shall request "appropriate adverse action according to evidence."

## ADMINISTRATIVE HEARING

## 80320

At any time after the Committee has determined that a Statement of Issues or an Accusation shall be filed against a respondent, but before a final determination of the matter has been made by the Commission, the respondent may propose and the Committee may recommend to the Commission a settlement upon terms which sufficiently provide for the protection of the public, schoolchildren and the profession.

## CONSENT DETERMINATIONS

## 80331

### **RULES OF CONDUCT FOR PROFESSIONAL EDUCATORS**

(a) These rules are binding upon every person holding a credential or any license to perform educational services under the jurisdiction of the Commission on Teacher Credentialing, and the consequences of any willful breach may be revocation or suspension of the credential, or license, or private admonition of the holder.

(b) Nothing in these rules is intended to limit or supersede any provision of law relating to the duties and obligations of certificated persons or to the consequences of the violation of such duties and obligations. The prohibition of certain conduct in these rules is not to be interpreted as approval of conduct not specifically cited.

(c) These rules may be cited and referred to as "Rules of Conduct for Professional Educators."

(d) The Commission shall complete a study of the effect of these rules and present its findings to the Governor, the Legislature, and the State Board of Education no later than September 1, 1989.

(e) As used in these rules:

(1) "Certificated person" means any person who holds a certificate, permit, credential, or other license authorizing the performance of teaching or education-related service in grades K through 12 in California public schools.

(2) "Professional employment" means the performance for compensation of teaching or other education-related employment in a position for which certification requirements are set by law.

(3) "Confidential information" means information which was provided to the certificated person solely for the purpose of facilitating his/her performance of professional services for or on behalf of the person or employer providing such information.

## 80332

### **PROFESSIONAL CANDOR AND HONESTY IN LETTERS OR MEMORANDA OF EMPLOYMENT RECOMMENDATION**

(a) A certificated person shall not write or sign any letter or memorandum which intentionally omits significant facts, or which states as facts matters which the writer does not know of his/her own knowledge to be true relating to the professional qualifications or personal fitness to perform certificated services of any person whom the writer knows will use the letter or memorandum to obtain professional employment nor shall he/she agree to provide a positive letter of recommendation which misrepresents facts as a condition of resignation or for withdrawing action against the employing agency.

(b) This rule has no application to statements identified in the letter or memorandum as personal opinions of the writer but does apply to

## 80332 (cont.)

unqualified statements as fact that which the writer does not know to be true or to statements as fact that which the writer knows to be untrue.

## 80333

(a) A certificated person shall not abandon professional employment without good cause.

(b) "Good cause" includes but is not necessarily limited to circumstances not caused by or under the voluntary control of the certificated person.

### WITHDRAWAL FROM PROFESSIONAL EMPLOYMENT

## 80334

A certificated person shall not:

(a) Use for his/her own private gain or advantage or to prejudice the rights or benefits of another person any confidential information relating to students or fellow professionals;

(b) Use for his/her own private gain or advantage the time, facilities, equipment, or supplies which is the property of his/her employer without the express or clearly implied permission of his/her employer;

(c) Accept any compensation or benefit or thing of value other than his/her regular compensation for the performance of any service which he/she is required to render in the course and scope of his/her certificated employment. This rule shall not restrict performance of any overtime or supplemental services at the request of the school employer; nor shall it apply to or restrict the acceptance of gifts or tokens of minimal value offered and accepted openly from students, parents or other persons in recognition or appreciation of service.

### UNAUTHORIZED PRIVATE GAIN OR ADVANTAGE

## 80335

A certificated person shall not, after July 1, 1989:

(a) Knowingly, accept an assignment to perform professional services if he or she does not possess a credential authorizing the service to be performed; unless he or she has first exhausted any existing local remedies to correct the situation, has then notified the county superintendent of schools in writing of the incorrect assignment, and the county superintendent of schools has made a determination, within 45 days of receipt of the notification, that the assignment was caused by extraordinary circumstances which make correction impossible, pursuant to the procedures referred to in Education Code Section 44258.9(g) (2) and (3).

### PERFORMANCE OF UNAUTHORIZED PROFESSIONAL SERVICES

## 80335 (cont.)

(b) Knowingly and willfully assign or require a subordinate certificated person to perform any professional service which the subordinate is not authorized to perform by his or her credential or which is not approved by appropriate governing board authorization, unless he or she has made reasonable attempts to correct the situation but has been unsuccessful, and has notified the county superintendent of schools of those attempts, and the county superintendent of schools has determined, within 45 days of being notified of the assignment, that the assignment was caused by extraordinary circumstances which make correction impossible.

(c) Neither (a) nor (b) shall be applicable in a situation where extraordinary circumstances make the correction of the misassignment impossible.

(d) There shall be no adverse action taken against a certificated person under this rule for actions attributable to circumstances beyond his or her control.

(e) Effective October 20, 1993, no adverse action described in Title 5, California Code of Regulations, section 80331(a) shall be imposed for violation of this provision prior to review and attempted disposition pursuant to Title 5, California Code of Regulations, sections 80339 through 80339.6.

## 80336

(a) A certificated person shall not:

(1) Perform or attempt to perform any duties or services authorized by his or her credential during any period in which he or she knows or is in possession of facts showing that his or her mental or intellectual faculties are substantially impaired for any reason, including but not limited to use of alcohol or any controlled substance.

(2) Assign or require or permit a subordinate certificated person to perform any duties authorized by his or her credential during any period in which the superior certificated person knows of his or her own knowledge or is in possession of facts showing that the subordinate certificated person's mental or intellectual faculties are substantially impaired for any reason, including but not limited to use of alcohol or any controlled substance.

(b) For the purpose of this rule, substantial impairment means a visible inability to perform the usual and customary duties of the position in a manner that does not represent a danger to pupils, employees, or school property. It does not include or mean inability attributable to lack of, or inadequate, professional preparation or education.

## PERFORMANCE WITH IMPAIRED FACULTIES

**80337**

No certificated person shall directly or indirectly use or threaten to use any official authority or influence in any manner whatsoever which tends to discourage, restrain, interfere with, coerce, or discriminate against any subordinate or any certificated person who in good faith reports, discloses, divulges, or otherwise brings to the attention of the governing board of a school district, the Commission on Teacher Credentialing or any other public agency authorized to take remedial action, any facts or information relative to actual or suspected violation of any law regulating the duties of persons serving in the public school system, including but not limited to these rules of professional conduct.

**HARASSMENT  
AND RETALIATION  
PROHIBITED**

**80338**

A certificated person shall not, without good cause, in the course and scope of his or her certificated employment and solely because of race, color, creed, gender, national origin, handicapping condition or sexual orientation, refuse or fail to perform certificated services for any person.

**DISCRIMINATION  
PROHIBITED**

**80412**

(a) Every person applying for, holding, or to whom is issued, a credential, shall file with the Commission his or her present mailing address and shall notify the Commission in writing of any change therein.

**FILING OF  
MAILING ADDRESS**

(b) Such filing of address and notice of change therein shall be made in writing and delivered, or forwarded by mail, postage prepaid, to the office of the Commission on Teacher Credentialing.

**PENAL CODE**

## PERJURY AND SUBORNATION OF PERJURY

### 118

#### PERJURY DEFINED

(a) Every person who, having taken an oath that he or she will testify, declare, depose, or certify truly before any competent tribunal, officer, or person, in any of the cases in which the oath may by law of the State of California be administered, willfully and contrary to the oath, states as true any material matter which he or she knows to be false, and every person who testifies, declares, deposes, or certifies under penalty of perjury in any of the cases in which the testimony, declarations, depositions, or certification is permitted by law of the State of California under penalty of perjury and willfully states as true any material matter which he or she knows to be false, is guilty of perjury.

This subdivision is applicable whether the statement, or the testimony, declaration, deposition, or certification is made or subscribed within or without the State of California.

(b) No person shall be convicted of perjury where proof of falsity rests solely upon contradiction by testimony of a single person other than the defendant. Proof of falsity may be established by direct or indirect evidence.

### 126

#### PUNISHMENT FOR PERJURY

Perjury is punishable by imprisonment pursuant to subdivision (h) of Section 1170 for two, three or four years.

## REPORTING OF ARRESTS FOR SEX OFFENSES

### 290

#### REGISTRATION OF SEX OFFENDERS

(a) Sections 290 to 290.024, inclusive, shall be known and may be cited as the Sex Offender Registration Act. All references to "the Act" in those sections are to the Sex Offender Registration Act.

(b) Every person described in subdivision (c), for the rest of his or her life while residing in California, or while attending school or working in California, as described in Sections 290.002 and 290.01, shall be required to register with the chief of police of the city in which he or she is residing, or the sheriff of the county if he or she is residing in an unincorporated area or city that has no police department, and, additionally, with the chief of police of a campus of the University of California, the California State University, or community college if he or she is residing upon the campus or in any of its facilities, within five working days of coming into, or changing his or her residence within, any city, county, or city and county, or campus in which he or she temporarily resides, and shall be required to register thereafter in accordance with the Act.

## 290 (cont.)

(c) The following persons shall be required to register:

Any person who, since July 1, 1944, has been or is hereafter convicted in any court in this state or in any federal or military court of a violation of Section 187 committed in the perpetration, or an attempt to perpetrate, rape or any act punishable under Section 286, 288, 288a, or 289, Section 207 or 209 committed with intent to violate Section 261, 286, 288, 288a, or 289, Section 220, except assault to commit mayhem, subdivision (b) and (c) of Section 236.1, Section 243.4, paragraph (1), (2), (3), (4), or (6) of subdivision (a) of Section 261, paragraph (1) of subdivision (a) of Section 262 involving the use of force or violence for which the person is sentenced to the state prison, Section 264.1, 266, or 266c, subdivision (b) of Section 266h, subdivision (b) of Section 266i, Section 266j, 267, 269, 285, 286, 288, 288a, 288.3, 288.4, 288.5, 288.7, 289, or 311.1, subdivision (b), (c), or (d) of Section 311.2, Section 311.3, 311.4, 311.10, 311.11, or 647.6, former Section 647a, subdivision (c) of Section 653f, subdivision 1 or 2 of Section 314, any offense involving lewd or lascivious conduct under Section 272, or any felony violation of Section 288.2; any statutory predecessor that includes all elements of one of the above-mentioned offenses; or any person who since that date has been or is hereafter convicted of the attempt or conspiracy to commit any of the above-mentioned offenses.

### 290.5

(a)(1) A person required to register under Section 290 for an offense not listed in paragraph (2), upon obtaining a certificate of rehabilitation under Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3, shall be relieved of any further duty to register under Section 290 if he or she is not in custody, on parole, or on probation.

(2) A person required to register under Section 290, upon obtaining a certificate of rehabilitation under Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3, shall not be relieved of the duty to register under Section 290, or of the duty to register under Section 290 for any offense subject to that section of which he or she is convicted in the future, if his or her conviction is for one of the following offenses:

- (A) Section 207 or 209 committed with the intent to violate Section 261, 286, 288, 288a, or 289.
- (B) Section 220, except assault to commit mayhem.
- (C) Section 243.4, provided that the offense is a felony.
- (D) Paragraph (1), (2), (3), (4), or (6) of subdivision (a) of Section 261.
- (E) Section 264.1.
- (F) Section 266, provided that the offense is a felony.
- (G) Section 266c, provided that the offense is a felony.
- (H) Section 266j.
- (I) Section 267.

**PARDON OR  
CERTIFICATE OF  
REHABILITATION;  
RELIEF FROM  
DUTY TO  
REGISTER**

## 290.5 (cont.)

(J) Section 269.

(K) Paragraph (1) of subdivision (b) of Section 286, provided that the offense is a felony.

(L) Paragraph (2) of subdivision (b) of, or subdivision (c), (d), (f), (g), (i), (j), or (k) of, Section 286.

(M) Section 288.

(N) Paragraph (1) of subdivision (b) of Section 288a, provided that the offense is a felony.

(O) Paragraph (2) of subdivision (b) of, or subdivision (c), (d), (f), (g), (i), (j), or (k) of, Section 288a.

(P) Section 288.5.

(Q) Subdivision (a), (b), (d), (e), (f), (g), or (h) of Section 289, provided that the offense is a felony.

(R) Subdivision (i) or (j) of Section 289.

(S) Section 647.6.

(T) The attempted commission of any of the offenses specified in this paragraph.

(U) The statutory predecessor of any of the offenses specified in this paragraph.

(V) Any offense which, if committed or attempted in this state, would have been punishable as one or more of the offenses specified in this paragraph.

(b)(1) Except as provided in paragraphs (2) and (3), a person described in paragraph (2) of subdivision (a) shall not be relieved of the duty to register until that person has obtained a full pardon as provided in Chapter 1 (commencing with Section 4800) or Chapter 3 (commencing with Section 4850) of Title 6 of Part 3.

(2) This subdivision does not apply to misdemeanor violations of Section 647.6.

(3) The court, upon granting a petition for a certificate of rehabilitation pursuant to Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3, if the petition was granted prior to January 1, 1998, may relieve a person of the duty to register under Section 290 for a violation of Section 288 or 288.5, provided that the person was granted probation pursuant to subdivision (c) of Section 1203.066, has complied with the provisions of Section 290 for a continuous period of at least 10 years immediately preceding the filing of the petition, and has not been convicted of a felony during that period.

## 291

Every sheriff, chief of police, or the Commissioner of the California Highway Patrol, upon the arrest for any of the offenses enumerated in Section 290, subdivision (a) of Section 261, or Section 44010 of the Education Code, of any school employee, shall, provided that he or she knows that the arrestee is a school employee, do either of the following:

**SCHOOL  
EMPLOYEES;  
ARREST FOR  
SEX OFFENSE;  
NOTICE TO  
SCHOOL  
AUTHORITIES**

## 291 (cont.)

(a) If the school employee is a teacher in any of the public schools of this state, the sheriff, chief of police, or Commissioner of the California Highway Patrol shall immediately notify by telephone the superintendent of schools of the school district employing the teacher and shall immediately give written notice of the arrest to the Commission on Teacher Credentialing and to the superintendent of schools in the county where the person is employed. Upon receipt of the notice, the county superintendent of schools and the Commission on Teacher Credentialing shall immediately notify the governing board of the school district employing the person.

(b) If the school employee is a nonteacher in any of the public schools of this state, the sheriff, chief of police, or Commissioner of the California Highway Patrol shall immediately notify by telephone the superintendent of schools of the school district employing the nonteacher and shall immediately give written notice of the arrest to the governing board of the school district employing the person.

## SPECIAL PROCEEDINGS IN NARCOTICS AND DRUG ABUSE CASES

### 1000.3

If it appears to the prosecuting attorney, the court, or the probation department that the defendant is performing unsatisfactorily in the assigned program, or that the defendant is not benefiting from education, treatment, or rehabilitation, or that the defendant is convicted of a misdemeanor that reflects the defendant's propensity for violence, or the defendant is convicted of a felony, or the defendant has engaged in criminal conduct rendering him or her unsuitable for deferred entry of judgment, the prosecuting attorney, the court on its own, or the probation department may make a motion for entry of judgment.

After notice to the defendant, the court shall hold a hearing to determine whether judgment should be entered.

If the court finds that the defendant is not performing satisfactorily in the assigned program, or that the defendant is not benefiting from education, treatment, or rehabilitation, or the court finds that the defendant has been convicted of a crime as indicated above, or that the defendant has engaged in criminal conduct rendering him or her unsuitable for deferred entry of judgment, the court shall render a finding of guilt to the charge or charges pled, enter judgment, and schedule a sentencing hearing as otherwise provided in this code.

If the defendant has performed satisfactorily during the period in which deferred entry of judgment was granted, at the end of that

### UNSATISFACTORY PERFORMANCE BY DEFENDANT, OR ENGAGEMENT IN CRIMINAL CONDUCT

### 1000.3 (cont.)

period, the criminal charge or charges shall be dismissed.

Prior to dismissing the charge or charges or rendering a finding of guilt and entering judgment, the court shall consider the defendant's ability to pay and whether the defendant has paid a diversion restitution fee pursuant to Section 1001.90, if ordered, and has met his or her financial obligation to the program, if any. As provided in Section 1203.1b, the defendant shall reimburse the probation department for the reasonable cost of any program investigation or progress report filed with the court as directed pursuant to Sections 1000.1 and 1000.2.

### 1000.4

(a) Any record filed with the Department of Justice shall indicate the disposition in those cases deferred pursuant to this chapter. Upon successful completion of a deferred entry of judgment program, the arrest upon which the judgment was deferred shall be deemed to have never occurred. The defendant may indicate in response to any question concerning his or her prior criminal record that he or she was not arrested or granted deferred entry of judgment for the offense, except as specified in subdivision (b). A record pertaining to an arrest resulting in successful completion of a deferred entry of judgment program shall not, without the defendant's consent, be used in any way that could result in the denial of any employment, benefit, license, or certificate.

(b) The defendant shall be advised that, regardless of his or her successful completion of the deferred entry of judgment program, the arrest upon which the judgment was deferred may be disclosed by Department of Justice in response to any peace officer application request and that notwithstanding subdivision (a), this section does not relieve him or her of the obligation to disclose the arrest in response to any direct question contained in any questionnaire or application for a position as a peace officer, as defined in Section 830.

### 1000.5

(a) The presiding judge of the superior court, or a judge designated by the presiding judge, together with the district attorney and the public defender, may agree in writing to establish and conduct a preguilty plea drug court program pursuant to the provisions of this chapter, wherein criminal proceedings are suspended without a plea of guilty for designated defendants. The drug court program shall include a regimen of graduated sanctions and rewards, individual and group therapy, urine analysis testing commensurate with treatment needs, close court monitoring and supervision of progress, educational or vocational counseling as appropriate, and other requirements as agreed to by the presiding judge or his or her designee, the district

**SUCCESSFUL  
COMPLETION OF  
PROGRAM;  
DISCLOSURE  
OF ARREST**

**DRUG COURT  
PROGRAM;  
OPERATION OF  
PROGRAM  
EFFECT OF  
DEFENDANT'S  
PERFORMANCE**

## **1000.5 (cont.)**

attorney, and the public defender. If there is no agreement in writing for a preguilty plea program by the presiding judge or his or her designee, the district attorney, and the public defender, the program shall be operated as a deferred entry of judgment program as provided in this chapter.

(b) The provisions of Section 1000.3 and Section 1000.4 regarding satisfactory and unsatisfactory performance in a program shall apply to preguilty plea programs. If the court finds that (1) the defendant is not performing satisfactorily in the assigned program, (2) the defendant is not benefiting from education, treatment, or rehabilitation, (3) the defendant has been convicted of a crime specified in Section 1000.3, or (4) the defendant has engaged in criminal conduct rendering him or her unsuitable for the preguilty plea program, the court shall reinstate the criminal charge or charges. If the defendant has performed satisfactorily during the period of the preguilty plea program, at the end of that period, the criminal charge or charges shall be dismissed and the provisions of Section 1000.4 shall apply.

## **1001.5**

No statement, or information procured therefrom, made by the defendant in connection with the determination of his or her eligibility for diversion, and no statement, or information procured therefrom, made by the defendant, subsequent to the granting of diversion or while participating in such program, and no information contained in any report made with respect thereto, and no statement or other information concerning the defendant's participation in such program shall be admissible in any action or proceeding. However, if a divertee is recommended for termination for cause, information regarding his or her participation in such program may be used for purposes of the termination proceedings.

### **ADMISSIBILITY OF STATEMENTS MADE DURING DIVERSION**

## **1001.9**

(a) Any record filed with the Department of Justice shall indicate the disposition in those cases diverted pursuant to this chapter. Upon successful completion of a diversion program, the arrest upon which the diversion was based shall be deemed to have never occurred. The divertee may indicate in response to any question concerning his or her prior criminal record that he or she was not arrested or diverted for the offense, except as specified in subdivision (b). A record pertaining to an arrest resulting in successful completion of a diversion program shall not, without the divertee's consent, be used in any way that could result in the denial of any employment, benefit, license, or certificate.

### **SUCCESSFUL COMPLETION OF PROGRAM; RECORD; DISCLOSURE OF ARREST**

(b) The divertee shall be advised that, regardless of his or her successful completion of diversion, the arrest upon which the diversion was based may be disclosed by the Department of

## 1001.9 (cont.)

Justice in response to any peace officer application request and that, notwithstanding subdivision (a), this section does not relieve him or her of the obligation to disclose the arrest in response to any direct question contained in any questionnaire or application for a position as a peace officer, as defined in Section 830.

## JUDGMENT

### 1203.4

(a)(1) In any case in which a defendant has fulfilled the conditions of probation for the entire period of probation, or has been discharged prior to the termination of the period of probation, or in any other case in which a court, in its discretion and the interests of justice, determines that a defendant should be granted the relief available under this section, the defendant shall, at any time after the termination of the period of probation, if he or she is not then serving a sentence for any offense, on probation for any offense, or charged with the commission of any offense, be permitted by the court to withdraw his or her plea of guilty or plea of nolo contendere and enter a plea of not guilty; or, if he or she has been convicted after a plea of not guilty, the court shall set aside the verdict of guilty; and, in either case, the court shall thereupon dismiss the accusations or information against the defendant and except as noted below, he or she shall thereafter be released from all penalties and disabilities resulting from the offense of which he or she has been convicted, except as provided in Section 13555 of the Vehicle Code. The probationer shall be informed, in his or her probation papers, of this right and privilege and his or her right, if any, to petition for a certificate of rehabilitation and pardon. The probationer may make the application and change of plea in person or by attorney, or by the probation officer authorized in writing. However, in any subsequent prosecution of the defendant for any other offense, the prior conviction may be pleaded and proved and shall have the same effect as if probation had not been granted or the accusation or information dismissed. The order shall state, and the probationer shall be informed, that the order does not relieve him or her of the obligation to disclose the conviction in response to any direct question contained in any questionnaire or application for public office, for licensure by any state or local agency, or for contracting with the California State Lottery Commission.

(2) Dismissal of an accusation or information pursuant to this section does not permit a person to own, possess, or have in his or her custody or control any firearm or prevent his or her conviction under Chapter 2 (commencing with Section 29800) of Division 9 of Title 4 of Part 6.

(3) Dismissal of an accusation or information underlying a conviction pursuant to this section does not permit a person prohibited from holding public office as a result of that conviction to hold public

**DISCHARGED  
PETITIONER;  
CHANGE OF  
PLEA; DISMISSAL  
OF CHARGE**

**1203.4 (cont.)**

office.

(4) This subdivision shall apply to all applications for relief under this section which are filed on or after November 23, 1970.

(b) Subdivision (a) of this section does not apply to any misdemeanor that is within the provisions of Section 42002.1 of the Vehicle Code, to any violation of subdivision (c) of Section 286, Section 288, subdivision (c) of Section 288a, Section 288.5, or subdivision (j) of Section 289, any felony conviction pursuant to subdivision (d) of Section 261.5, or to any infraction.

(c)(1) Except as provided in paragraph (2), subdivision (a) does not apply to a person who receives a notice to appear or is otherwise charged with a violation of an offense described in subdivisions (a) to (e), inclusive, of Section 12810 of the Vehicle Code.

(2) If a defendant who was convicted of a violation listed in paragraph (1) petitions the court, the court in its discretion and in the interests of justice, may order the relief provided pursuant to subdivision (a) to that defendant.

(d) A person who petitions for a change of plea or setting aside of a verdict under this section may be required to reimburse the court for the actual costs of services rendered, whether or not the petition is granted and the records are sealed or expunged, at a rate to be determined by the court not to exceed one hundred fifty dollars (\$150), and to reimburse the county for the actual costs of services rendered, whether or not the petition is granted and the records are sealed or expunged, at a rate to be determined by the county board of supervisors not to exceed one hundred fifty dollars (\$150), and to reimburse any city for the actual costs of services rendered, whether or not the petition is granted and the records are sealed or expunged, at a rate to be determined by the city council not to exceed one hundred fifty dollars (\$150). Ability to make this reimbursement shall be determined by the court using the standards set forth in paragraph (2) of subdivision (g) of Section 987.8 and shall not be a prerequisite to a person's eligibility under this section. The court may order reimbursement in any case in which the petitioner appears to have the ability to pay, without undue hardship, all or any portion of the costs for services established pursuant to this subdivision.

(e)(1) Relief shall not be granted under this section unless the prosecuting attorney has been given 15 days' notice of the petition for relief. The probation officer shall notify the prosecuting attorney when a petition is filed, pursuant to this section.

(2) It shall be presumed that the prosecuting attorney has received notice if proof of service is filed with the court.

(f) If, after receiving notice pursuant to subdivision (e), the prosecuting

## 1203.4 (cont.)

attorney fails to appear and object to a petition for dismissal, the prosecuting attorney may not move to set aside or otherwise appeal the grant of that petition.

(g) Notwithstanding the above provisions or any other provision of law, the Governor shall have the right to pardon a person convicted of a violation of subdivision (c) of Section 286, Section 288, subdivision (c) of Section 288a, Section 288.5, or subdivision (j) of Section 289, if there are extraordinary circumstances.

## DEFINITIONS

### 1210

As used in Sections 1210.1 and 3063.1 of this code, and Division 10.8 (commencing with Section 11999.4) of the Health and Safety Code, the following definitions apply:

(a) The term "nonviolent drug possession offense" means the unlawful personal use, possession for personal use, or transportation for personal use of any controlled substance identified in Section 11054, 11055, 11056, 11057 or 11058 of the Health and Safety Code, or the offense of being under the influence of a controlled substance in violation of Section 11550 of the Health and Safety Code. The term "nonviolent drug possession offense" does not include the possession for sale, production, or manufacturing of any controlled substance and does not include violations of Section 4573.6 or 4573.8.

(b) The term "drug treatment program" or "drug treatment" means a state licensed or certified community drug treatment program, which may include one or more of the following: drug education, outpatient services, narcotic replacement therapy, residential treatment, detoxification services, and aftercare services. The term "drug treatment program" or "drug treatment" includes a drug treatment program operated under the direction of the Veterans Health Administration of the Department of Veterans Affairs or a program specified in Section 8001. That type of program shall be eligible to provide drug treatment services without regard to the licensing or certification provisions required by this subdivision. The term "drug treatment program" or "drug treatment" does not include drug treatment programs offered in a prison or jail facility.

(c) The term "successful completion of treatment" means that a defendant who has had drug treatment imposed as a condition of probation has completed the prescribed course of drug treatment as recommended by the treatment provider and ordered by the court and, as a result, there is reasonable cause to believe that the defendant will not abuse controlled substances in the future. Completion of treatment shall not require cessation of narcotic replacement therapy.

(d) The term "misdemeanor not related to the use of drugs" means a misdemeanor that does not involve (1) the simple possession or use of

**1210 (cont.)**

drugs or drug paraphernalia, being present where drugs are used, or failure to register as a drug offender, or (2) any activity similar to those listed in (1).

**PROBATION; CONTROLLED SUBSTANCES****1210.1 [Subsections (f) – (g) are omitted for brevity]**

(a) Notwithstanding any other provision of law, and except as provided in subdivision (b), any person convicted of a nonviolent drug possession offense shall receive probation. As a condition of probation the court shall require participation in and completion of an appropriate drug treatment program. The court shall impose appropriate drug testing as a condition of probation. The court may also impose, as a condition of probation, participation in vocational training, family counseling, literacy training and/or community service. A court may not impose incarceration as an additional condition of probation. Aside from the limitations imposed in this subdivision, the trial court is not otherwise limited in the type of probation conditions it may impose. Probation shall be imposed by suspending the imposition of sentence. No person shall be denied the opportunity to benefit from the provisions of the Substance Abuse and Crime Prevention Act of 2000 based solely upon evidence of a co-occurring psychiatric or developmental disorder. To the greatest extent possible, any person who is convicted of, and placed on probation pursuant to this section for a nonviolent drug possession offense shall be monitored by the court through the use of a dedicated court calendar and the incorporation of a collaborative court model of oversight that includes close collaboration with treatment providers and probation, drug testing commensurate with treatment needs, and supervision of progress through review hearings.

In addition to any fine assessed under other provisions of law, the trial judge may require any person convicted of a nonviolent drug possession offense who is reasonably able to do so to contribute to the cost of his or her own placement in a drug treatment program.

(b) Subdivision (a) shall not apply to any of the following:

(1) Any defendant who previously has been convicted of one or more violent or serious felonies as defined in subdivision (c) of Section 667.5 or subdivision (c) of Section 1192.7, respectively, unless the nonviolent drug possession offense occurred after a period of five years in which the defendant remained free of both prison custody and the commission of an offense that results in a felony conviction other than a nonviolent drug possession offense, or a misdemeanor conviction involving physical injury or the threat of physical injury to another person.

(2) Any defendant who, in addition to one or more nonviolent drug possession offenses, has been convicted in the same proceeding of a

**1210.1 (cont.)**

misdemeanor not related to the use of drugs or any felony.

(3) Any defendant who, while armed with a deadly weapon, with the intent to use the same as a deadly weapon, unlawfully possesses or is under the influence of any controlled substance identified in Section 11054, 11055, 11056, 11057, or 11058 of the Health and Safety Code.

(4) Any defendant who refuses drug treatment as a condition of probation.

(5) Any defendant who has two separate convictions for nonviolent drug possession offenses, has participated in two separate courses of drug treatment pursuant to subdivision (a), and is found by the court, by clear and convincing evidence, to be unamenable to any and all forms of available drug treatment, as defined in subdivision (b) of Section 1210. Notwithstanding any other provision of law, the trial court shall sentence that defendant to 30 days in jail.

(c)(1) Any defendant who has previously been convicted of at least three non-drug-related felonies for which the defendant has served three separate prison terms within the meaning of subdivision (b) of Section 667.5 shall be presumed eligible for treatment under subdivision (a). The court may exclude the defendant from treatment under subdivision (a) where the court, pursuant to the motion of the prosecutor or its own motion, finds that the defendant poses a present danger to the safety of others and would not benefit from a drug treatment program. The court shall, on the record, state its findings, the reasons for those findings.

(2) Any defendant who has previously been convicted of a misdemeanor or felony at least five times within the prior 30 months shall be presumed to be eligible for treatment under subdivision (a). The court may exclude the defendant from treatment under subdivision (a) if the court, pursuant to the motion of the prosecutor, or on its own motion, finds that the defendant poses a present danger to the safety of others or would not benefit from a drug treatment program. The court shall, on the record, state its findings and the reasons for those findings.

(d) Within seven days of an order imposing probation under subdivision (a), the probation department shall notify the drug treatment provider designated to provide drug treatment under subdivision (a). Within 30 days of receiving that notice, the treatment provider shall prepare a treatment plan and forward it to the probation department for distribution to the court and counsel. The treatment provider shall provide to the probation department standardized treatment progress reports, with minimum data elements as determined by the department, including all drug testing results. At a minimum, the reports shall be provided to the court every 90 days, or more frequently, as the court directs.

**1210.1 (cont.)**

(1) If at any point during the course of drug treatment the treatment provider notifies the probation department and the court that the defendant is unamenable to the drug treatment being provided, but may be amenable to other drug treatments or related programs, the probation department may move the court to modify the terms of probation, or on its own motion, the court may modify the terms of probation after a hearing to ensure that the defendant receives the alternative drug treatment or program.

(2) If at any point during the course of drug treatment the treatment provider notifies the probation department and the court that the defendant is unamenable to the drug treatment provided and all other forms of drug treatment programs pursuant to subdivision (b) of Section 1210, the probation department may move to revoke probation. At the revocation hearing, if it is proved that the defendant is unamenable to all drug treatment programs pursuant to subdivision (b) of Section 1210, the court may revoke probation.

(3) Drug treatment services provided by subdivision (a) as a required condition of probation may not exceed 12 months, unless the court makes a finding supported by the record, that the continuation of treatment services beyond 12 months is necessary for drug treatment to be successful. If that finding is made, the court may order up to two six-month extensions of treatment services. The provision of treatment services under the Substance Abuse and Crime Prevention Act of 2000 shall not exceed 24 months.

(e)(1) At any time after completion of drug treatment and the terms of probation, the court shall conduct a hearing, and if the court finds that the defendant successfully completed drug treatment, and substantially complied with the conditions of probation, including refraining from the use of drugs after the completion of treatment, the conviction on which the probation was based shall be set aside and the court shall dismiss the indictment, complaint, or information against the defendant. In addition, except as provided in paragraphs (2) and (3), both the arrest and the conviction shall be deemed never to have occurred. The defendant may additionally petition the court for a dismissal of charges at any time after completion of the prescribed course of drug treatment. Except as provided in paragraph (2) or (3), the defendant shall thereafter be released from all penalties and disabilities resulting from the offense of which he or she has been convicted.

(2) Dismissal of an indictment, complaint, or information pursuant to paragraph (1) does not permit a person to own, possess, or have in his or her custody or control any firearm capable of being concealed upon the person or prevent his or her conviction under Chapter 2 (commencing with Section 29800) of Division 9 of Title 4 of Part 6.

(3) Except as provided below, after an indictment, complaint, or information is dismissed pursuant to paragraph (1), the defendant may indicate in response to any question concerning his or her prior

**1210.1 (cont.)**

criminal record that he or she was not arrested or convicted for the offense. Except as provided below, a record pertaining to an arrest or conviction resulting in successful completion of a drug treatment program under this section may not, without the defendant's consent, be used in any way that could result in the denial of any employment, benefit, license, or certificate.

Regardless of his or her successful completion of drug treatment, the arrest and conviction on which the probation was based may be recorded by the Department of Justice and disclosed in response to any peace officer application request or any law enforcement inquiry. Dismissal of an information, complaint, or indictment under this section does not relieve a defendant of the obligation to disclose the arrest and conviction in response to any direct question contained in any questionnaire or application for public office, for a position as a peace officer as defined in Section 830, for licensure by any state or local agency, for contracting with the California State Lottery, or for purposes of serving on a jury.

**RESTORATION OF RIGHTS****4852.01**

(a) Any person convicted of a felony who has been released from a state prison or other state penal institution or agency in California, whether discharged on completion of the term for which he or she was sentenced or released on parole prior to May 13, 1943, who has not been incarcerated in a state prison or other state penal institution or agency since his or her release and who presents satisfactory evidence of a three-year residence in this state immediately prior to the filing of the petition for a certificate of rehabilitation and pardon provided for by this chapter, may file the petition pursuant to the provisions of this chapter.

(b) Any person convicted of a felony who, on May 13, 1943, was confined in a state prison or other institution or agency to which he or she was committed and any person convicted of a felony after that date who is committed to a state prison or other institution or agency may file a petition for a certificate of rehabilitation and pardon pursuant to the provisions of this chapter.

(c) Any person convicted of a felony or any person who is convicted of a misdemeanor violation of any sex offense specified in Section 290, the accusatory pleading of which has been dismissed pursuant to Section 1203.4, may file a petition for certificate of rehabilitation and pardon pursuant to the provisions of this chapter if the petitioner has not been incarcerated in any prison, jail, detention facility, or other penal institution or agency since the dismissal of the accusatory pleading and is not on probation for the commission of any other felony, and the petitioner presents satisfactory evidence of five years residence in this state prior to the filing of the petition.

**PETITION FOR  
CERTIFICATE OF  
REHABILITATION  
AND PARDON**

## **4852.01 (cont.)**

(d) This chapter shall not apply to persons serving a mandatory life parole, persons committed under death sentences, persons convicted of a violation of subdivision (c) of Section 286, Section 288, subdivision (c) of Section 288a, Section 288.5, or subdivision (j) of Section 289, or persons in the military service.

(e) Notwithstanding the above provisions or any other provision of law, the Governor shall have the right to pardon a person convicted of a violation of subdivision (c) of Section 286, Section 288, subdivision (c) of Section 288a, Section 288.5, or subdivision (j) of Section 289, if there are extraordinary circumstances.

## **CRIMINAL RECORDS, PROBATION 11105**

### **CRIMINAL HISTORY INFORMATION**

(a)(1) The Department of Justice shall maintain state summary criminal history information.

(2) As used in this section:

(A) "State summary criminal history information" means the master record of information compiled by the Attorney General pertaining to the identification and criminal history of any person, such as name, date of birth, physical description, fingerprints, photographs, dates of arrests, arresting agencies and booking numbers, charges, dispositions, and similar data about the person.

(B) "State summary criminal history information" does not refer to records and data compiled by criminal justice agencies other than the Attorney General, nor does it refer to records of complaints to or investigations conducted by, or records of intelligence information or security procedures of, the office of the Attorney General and the Department of Justice.

(b) The Attorney General shall furnish state summary criminal history information to any of the following, if needed in the course of their duties, provided that when information is furnished to assist an agency, officer, or official of state or local government, a public utility, or any other entity, in fulfilling employment, certification, or licensing duties, Chapter 1321 of the Statutes of 1974 and Section 432.7 of the Labor Code shall apply:

(1) The courts of the state.

(2) Peace officers of the state, as defined in Section 830.1, subdivisions (a) and (e) of Section 830.2, subdivision (a) of Section 830.3, subdivisions (a) and (b) of Section 830.5, and subdivision (a) of Section 830.31.

(3) District attorneys of the state.

**11105 (cont.)**

(4) Prosecuting city attorneys of any city within the state.

(5) City attorneys pursuing civil gang injunctions pursuant to Section 186.22a, or drug abatement actions pursuant to Section 3479 or 3480 of the Civil Code, or Section 11571 of the Health and Safety Code.

(6) Probation officers of the state.

(7) Parole officers of the state.

(8) A public defender or attorney of record when representing a person in proceedings upon a petition for a certificate of rehabilitation and pardon pursuant to Section 4852.08.

(9) A public defender or attorney of record when representing a person in a criminal case, or a parole, mandatory supervision pursuant to paragraph (5) of subdivision (h) of Section 1170, or postrelease community supervision revocation or revocation extension proceeding, and if authorized access by statutory or decisional law.

(10) Any agency, officer, or official of the state if the criminal history information is required to implement a statute or regulation that expressly refers to specific criminal conduct applicable to the subject person of the state summary criminal history information, and contains requirements or exclusions, or both, expressly based upon that specified criminal conduct. The agency, officer, or official of the state authorized by this paragraph to receive state summary criminal history information may also transmit fingerprint images and related information to the Department of Justice to be transmitted to the Federal Bureau of Investigation.

(11) Any city or county, city and county, district, or any officer or official thereof if access is needed in order to assist that agency, officer, or official in fulfilling employment, certification, or licensing duties, and if the access is specifically authorized by the city council, board of supervisors, or governing board of the city, county, or district if the criminal history information is required to implement a statute, ordinance, or regulation that expressly refers to specific criminal conduct applicable to the subject person of the state summary criminal history information, and contains requirements or exclusions, or both, expressly based upon that specified criminal conduct. The city or county, city and county, district, or the officer or official thereof authorized by this paragraph may also transmit fingerprint images and related information to the Department of Justice to be transmitted to the Federal Bureau of Investigation.

(12) The subject of the state summary criminal history information under procedures established under Article 5 (commencing with Section 11120).

(13) Any person or entity when access is expressly authorized by

**11105 (cont.)**

statute if the criminal history information is required to implement a statute or regulation that expressly refers to specific criminal conduct applicable to the subject person of the state summary criminal history information, and contains requirements or exclusions, or both, expressly based upon that specified criminal conduct.

(14) Health officers of a city, county, city and county, or district when in the performance of their official duties enforcing Section 120175 of the Health and Safety Code.

(15) Any managing or supervising correctional officer of a county jail or other county correctional facility.

(16) Any humane society, or society for the prevention of cruelty to animals, for the specific purpose of complying with Section 14502 of the Corporations Code for the appointment of humane officers.

(17) Local child support agencies established by Section 17304 of the Family Code. When a local child support agency closes a support enforcement case containing summary criminal history information, the agency shall delete or purge from the file and destroy any documents or information concerning or arising from offenses for or of which the parent has been arrested, charged, or convicted, other than for offenses related to the parent's having failed to provide support for minor children, consistent with the requirements of Section 17531 of the Family Code.

(18) County child welfare agency personnel who have been delegated the authority of county probation officers to access state summary criminal history information pursuant to Section 272 of the Welfare and Institutions Code for the purposes specified in Section 16504.5 of the Welfare and Institutions Code. Information from criminal history records provided pursuant to this subdivision shall not be used for any purposes other than those specified in this section and Section 16504.5 of the Welfare and Institutions Code. When an agency obtains records obtained both on the basis of name checks and fingerprint checks, final placement decisions shall be based only on the records obtained pursuant to the fingerprint check.

(19) The court of a tribe, or court of a consortium of tribes, that has entered into an agreement with the state pursuant to Section 10553.1 of the Welfare and Institutions Code. This information may be used only for the purposes specified in Section 16504.5 of the Welfare and Institutions Code and for tribal approval or tribal licensing of foster care or adoptive homes. Article 6 (commencing with Section 11140) shall apply to officers, members, and employees of a tribal court receiving criminal record offender information pursuant to this section.

**11105 (cont.)**

(20) Child welfare agency personnel of a tribe or consortium of tribes that has entered into an agreement with the state pursuant to Section 10553.1 of the Welfare and Institutions Code and to whom the state has delegated duties under paragraph (2) of subdivision (a) of Section 272 of the Welfare and Institutions Code. The purposes for use of the information shall be for the purposes specified in Section 16504.5 of the Welfare and Institutions Code and for tribal approval or tribal licensing of foster care or adoptive homes. When an agency obtains records on the basis of name checks and fingerprint checks, final placement decisions shall be based only on the records obtained pursuant to the fingerprint check. Article 6 (commencing with Section 11140) shall apply to child welfare agency personnel receiving criminal record offender information pursuant to this section.

(21) An officer providing conservatorship investigations pursuant to Sections 5351, 5354, and 5356 of the Welfare and Institutions Code.

(22) A court investigator providing investigations or reviews in conservatorships pursuant to Section 1826, 1850, 1851, or 2250.6 of the Probate Code.

(23) A person authorized to conduct a guardianship investigation pursuant to Section 1513 of the Probate Code.

(24) A humane officer pursuant to Section 14502 of the Corporations Code for the purposes of performing his or her duties.

(c) The Attorney General may furnish state summary criminal history information and, when specifically authorized by this subdivision, federal level criminal history information upon a showing of a compelling need to any of the following, provided that when information is furnished to assist an agency, officer, or official of state or local government, a public utility, or any other entity in fulfilling employment, certification, or licensing duties, Chapter 1321 of the Statutes of 1974 and Section 432.7 of the Labor Code shall apply:

(1) Any public utility, as defined in Section 216 of the Public Utilities Code, that operates a nuclear energy facility when access is needed in order to assist in employing persons to work at the facility, provided that, if the Attorney General supplies the data, he or she shall furnish a copy of the data to the person to whom the data relates.

(2) To a peace officer of the state other than those included in subdivision (b).

(3) To an illegal dumping enforcement officer as defined in subdivision (j) of Section 830.7.

(4) To a peace officer of another country.

(5) To public officers, other than peace officers, of the United States,

**11105 (cont.)**

other states, or possessions or territories of the United States, provided that access to records similar to state summary criminal history information is expressly authorized by a statute of the United States, other states, or possessions or territories of the United States if the information is needed for the performance of their official duties.

(6) To any person when disclosure is requested by a probation, parole, or peace officer with the consent of the subject of the state summary criminal history information and for purposes of furthering the rehabilitation of the subject.

(7) The courts of the United States, other states, or territories or possessions of the United States.

(8) Peace officers of the United States, other states, or territories or possessions of the United States.

(9) To any individual who is the subject of the record requested if needed in conjunction with an application to enter the United States or any foreign nation.

(10)(A)(i) Any public utility, as defined in Section 216 of the Public Utilities Code, or any cable corporation as defined in subparagraph (B), if receipt of criminal history information is needed in order to assist in employing current or prospective employees, contract employees, or subcontract employees who, in the course of their employment may be seeking entrance to private residences or adjacent grounds. The information provided shall be limited to the record of convictions and any arrest for which the person is released on bail or on his or her own recognizance pending trial.

(ii) If the Attorney General supplies the data pursuant to this paragraph, the Attorney General shall furnish a copy of the data to the current or prospective employee to whom the data relates.

(iii) Any information obtained from the state summary criminal history is confidential and the receiving public utility or cable corporation shall not disclose its contents, other than for the purpose for which it was acquired. The state summary criminal history information in the possession of the public utility or cable corporation and all copies made from it shall be destroyed not more than 30 days after employment or promotion or transfer is denied or granted, except for those cases where a current or prospective employee is out on bail or on his or her own recognizance pending trial, in which case the state summary criminal history information and all copies shall be destroyed not more than 30 days after the case is resolved.

(iv) A violation of this paragraph is a misdemeanor, and shall give the current or prospective employee who is injured by the violation a cause of action against the public utility or cable corporation to recover damages proximately caused by the violations. Any public utility's or

**11105 (cont.)**

cable corporation's request for state summary criminal history information for purposes of employing current or prospective employees who may be seeking entrance to private residences or adjacent grounds in the course of their employment shall be deemed a "compelling need" as required to be shown in this subdivision.

(v) Nothing in this section shall be construed as imposing any duty upon public utilities or cable corporations to request state summary criminal history information on any current or prospective employees.

(B) For purposes of this paragraph, "cable corporation" means any corporation or firm that transmits or provides television, computer, or telephone services by cable, digital, fiber optic, satellite, or comparable technology to subscribers for a fee.

(C) Requests for federal level criminal history information received by the Department of Justice from entities authorized pursuant to subparagraph (A) shall be forwarded to the Federal Bureau of Investigation by the Department of Justice. Federal level criminal history information received or compiled by the Department of Justice may then be disseminated to the entities referenced in subparagraph (A), as authorized by law.

(D)(i) Authority for a cable corporation to request state or federal level criminal history information under this paragraph shall commence July 1, 2005.

(ii) Authority for a public utility to request federal level criminal history information under this paragraph shall commence July 1, 2005.

(11) To any campus of the California State University or the University of California, or any four year college or university accredited by a regional accreditation organization approved by the United States Department of Education, if needed in conjunction with an application for admission by a convicted felon to any special education program for convicted felons, including, but not limited to, university alternatives and halfway houses. Only conviction information shall be furnished. The college or university may require the convicted felon to be fingerprinted, and any inquiry to the department under this section shall include the convicted felon's fingerprints and any other information specified by the department.

(12) To any foreign government, if requested by the individual who is the subject of the record requested, if needed in conjunction with the individual's application to adopt a minor child who is a citizen of that foreign nation. Requests for information pursuant to this paragraph shall be in accordance with the process described in Sections 11122 to 11124, inclusive. The response shall be provided to the foreign government or its designee and to the individual who requested the information.

**11105 (cont.)**

(d) Whenever an authorized request for state summary criminal history information pertains to a person whose fingerprints are on file with the Department of Justice and the department has no criminal history of that person, and the information is to be used for employment, licensing, or certification purposes, the fingerprint card accompanying the request for information, if any, may be stamped "no criminal record" and returned to the person or entity making the request.

(e) Whenever state summary criminal history information is furnished as the result of an application and is to be used for employment, licensing, or certification purposes, the Department of Justice may charge the person or entity making the request a fee that it determines to be sufficient to reimburse the department for the cost of furnishing the information. In addition, the Department of Justice may add a surcharge to the fee to fund maintenance and improvements to the systems from which the information is obtained. Notwithstanding any other law, any person or entity required to pay a fee to the department for information received under this section may charge the applicant a fee sufficient to reimburse the person or entity for this expense. All moneys received by the department pursuant to this section, Sections 11105.3 and 26190, and former Section 13588 of the Education Code shall be deposited in a special account in the General Fund to be available for expenditure by the department to offset costs incurred pursuant to those sections and for maintenance and improvements to the systems from which the information is obtained upon appropriation by the Legislature.

(f) Whenever there is a conflict, the processing of criminal fingerprints and fingerprints of applicants for security guard or alarm agent registrations or firearms qualification permits submitted pursuant to Section 7583.9, 7583.23, 7596.3, or 7598.4 of the Business and Professions Code shall take priority over the processing of other applicant fingerprints.

(g) It is not a violation of this section to disseminate statistical or research information obtained from a record, provided that the identity of the subject of the record is not disclosed.

(h) It is not a violation of this section to include information obtained from a record in (1) a transcript or record of a judicial or administrative proceeding or (2) any other public record if the inclusion of the information in the public record is authorized by a court, statute, or decisional law.

(i) Notwithstanding any other law, the Department of Justice or any state or local law enforcement agency may require the submission of fingerprints for the purpose of conducting summary criminal history information checks that are authorized by law.

(j) The state summary criminal history information shall include any finding of mental incompetence pursuant to Chapter 6 (commencing with Section 1367) of Title 10 of Part 2 arising out of a complaint charging a

## 11105 (cont.)

felony offense specified in Section 290.

(k)(1) This subdivision shall apply whenever state or federal summary criminal history information is furnished by the Department of Justice as the result of an application by an authorized agency or organization and the information is to be used for peace officer employment or certification purposes. As used in this subdivision, a peace officer is defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2.

(2) Notwithstanding any other provision of law, whenever state summary criminal history information is initially furnished pursuant to paragraph (1), the Department of Justice shall disseminate the following information:

(A) Every conviction rendered against the applicant.

(B) Every arrest for an offense for which the applicant is presently awaiting trial, whether the applicant is incarcerated or has been released on bail or on his or her own recognizance pending trial.

(C) Every arrest or detention, except for an arrest or detention resulting in an exoneration, provided however that where the records of the Department of Justice do not contain a disposition for the arrest, the Department of Justice first makes a genuine effort to determine the disposition of the arrest.

(D) Every successful diversion.

(E) Every date and agency name associated with all retained peace officer or nonsworn law enforcement agency employee preemployment criminal offender record information search requests.

(l)(1) This subdivision shall apply whenever state or federal summary criminal history information is furnished by the Department of Justice as the result of an application by a criminal justice agency or organization as defined in Section 13101, and the information is to be used for criminal justice employment, licensing, or certification purposes.

(2) Notwithstanding any other provision of law, whenever state summary criminal history information is initially furnished pursuant to paragraph (1), the Department of Justice shall disseminate the following information:

(A) Every conviction rendered against the applicant.

(B) Every arrest for an offense for which the applicant is presently awaiting trial, whether the applicant is incarcerated or has been released on bail or on his or her own recognizance pending trial.

(C) Every arrest for an offense for which the records of the Department of Justice do not contain a disposition or did not result in a

**11105 (cont.)**

conviction, provided that the Department of Justice first makes a genuine effort to determine the disposition of the arrest. However, information concerning an arrest shall not be disclosed if the records of the Department of Justice indicate or if the genuine effort reveals that the subject was exonerated, successfully completed a diversion or deferred entry of judgment program, or the arrest was deemed a detention.

(D) Every date and agency name associated with all retained peace officer or nonsworn law enforcement agency employee preemployment criminal offender record information search requests.

(m)(1) This subdivision shall apply whenever state or federal summary criminal history information is furnished by the Department of Justice as the result of an application by an authorized agency or organization pursuant to Section 1522, 1568.09, 1569.17, or 1596.871 of the Health and Safety Code, or any statute that incorporates the criteria of any of those sections or this subdivision by reference, and the information is to be used for employment, licensing, or certification purposes.

(2) Notwithstanding any other provision of law, whenever state summary criminal history information is initially furnished pursuant to paragraph (1), the Department of Justice shall disseminate the following information:

(A) Every conviction of an offense rendered against the applicant.

(B) Every arrest for an offense for which the applicant is presently awaiting trial, whether the applicant is incarcerated or has been released on bail or on his or her own recognizance pending trial.

(C) Every arrest for an offense for which the Department of Social Services is required by paragraph (1) of subdivision (a) of Section 1522 of the Health and Safety Code to determine if an applicant has been arrested. However, if the records of the Department of Justice do not contain a disposition for an arrest, the Department of Justice shall first make a genuine effort to determine the disposition of the arrest.

(3) Notwithstanding the requirements of the sections referenced in paragraph (1) of this subdivision, the Department of Justice shall not disseminate information about an arrest subsequently deemed a detention or an arrest that resulted in either the successful completion of a diversion program or exoneration.

(n)(1) This subdivision shall apply whenever state or federal summary criminal history information, to be used for employment, licensing, or certification purposes, is furnished by the Department of Justice as the result of an application by an authorized agency, organization, or individual pursuant to any of the following:

(A) Paragraph (9) of subdivision (c), when the information is to be used by a cable corporation.

## 11105 (cont.)

(B) Section 11105.3 or 11105.4.

(C) Section 15660 of the Welfare and Institutions Code.

(D) Any statute that incorporates the criteria of any of the statutory provisions listed in subparagraph (A), (B), or (C), or of this subdivision, by reference.

(2) With the exception of applications submitted by transportation companies authorized pursuant to Section 11105.3, and notwithstanding any other provision of law, whenever state summary criminal history information is initially furnished pursuant to paragraph (1), the Department of Justice shall disseminate the following information:

(A) Every conviction rendered against the applicant for a violation or attempted violation of any offense specified in subdivision (a) of Section 15660 of the Welfare and Institutions Code. However, with the exception of those offenses for which registration is required pursuant to Section 290, the Department of Justice shall not disseminate information pursuant to this subdivision unless the conviction occurred within 10 years of the date of the agency's request for information or the conviction is over 10 years old but the subject of the request was incarcerated within 10 years of the agency's request for information.

(B) Every arrest for a violation or attempted violation of an offense specified in subdivision (a) of Section 15660 of the Welfare and Institutions Code for which the applicant is presently awaiting trial, whether the applicant is incarcerated or has been released on bail or on his or her own recognizance pending trial.

(o)(1) This subdivision shall apply whenever state or federal summary criminal history information is furnished by the Department of Justice as the result of an application by an authorized agency or organization pursuant to Section 379 or 550 of the Financial Code, or any statute that incorporates the criteria of either of those sections or this subdivision by reference, and the information is to be used for employment, licensing, or certification purposes.

(2) Notwithstanding any other provision of law, whenever state summary criminal history information is initially furnished pursuant to paragraph (1), the Department of Justice shall disseminate the following information:

(A) Every conviction rendered against the applicant for a violation or attempted violation of any offense specified in Section 550 of the Financial Code.

(B) Every arrest for a violation or attempted violation of an offense specified in Section 550 of the Financial Code for which the applicant is presently awaiting trial, whether the applicant is incarcerated or has been released on bail or on his or her own recognizance pending trial.

**11105 (cont.)**

(p)(1) This subdivision shall apply whenever state or federal criminal history information is furnished by the Department of Justice as the result of an application by an agency, organization, or individual not defined in subdivision (k), (l), (m), (n), or (o), or by a transportation company authorized pursuant to Section 11105.3, or any statute that incorporates the criteria of that section or this subdivision by reference, and the information is to be used for employment, licensing, or certification purposes.

(2) Notwithstanding any other provisions of law, whenever state summary criminal history information is initially furnished pursuant to paragraph (1), the Department of Justice shall disseminate the following information:

(A) Every conviction rendered against the applicant.

(B) Every arrest for an offense for which the applicant is presently awaiting trial, whether the applicant is incarcerated or has been released on bail or on his or her own recognizance pending trial.

(q) All agencies, organizations, or individuals defined in subdivisions (k), (l), (m), (n), (o), and (p) may contract with the Department of Justice for subsequent notification pursuant to Section 11105.2. This subdivision shall not supersede sections that mandate an agency, organization, or individual to contract with the Department of Justice for subsequent notification pursuant to Section 11105.2.

(r) Nothing in this section shall be construed to mean that the Department of Justice shall cease compliance with any other statutory notification requirements.

(s) The provisions of Section 50.12 of Title 28 of the Code of Federal Regulations are to be followed in processing federal criminal history information.

(t) Whenever state or federal summary criminal history information is furnished by the Department of Justice as the result of an application by an authorized agency, organization, or individual defined in subdivisions (k) to (p), inclusive, and the information is to be used for employment, licensing, or certification purposes, the authorized agency, organization, or individual shall expeditiously furnish a copy of the information to the person to whom the information relates if the information is a basis for an adverse employment, licensing, or certification decision. When furnished other than in person, the copy shall be delivered to the last contact information provided by the applicant.

## **11105.2**

(a) The Department of Justice may provide subsequent state or federal arrest or disposition notification to any entity authorized by state or federal law to receive state or federal summary criminal history information to assist in fulfilling employment, licensing, certification duties, or the duties of approving relative caregivers and nonrelative extended family members, upon the arrest or disposition of any person whose fingerprints are maintained on file at the Department of Justice or the Federal Bureau of Investigation as the result of an application for licensing, employment, certification, or approval. Nothing in this section shall authorize the notification of a subsequent disposition pertaining to a disposition that does not result in a conviction, unless the department has previously received notification of the arrest and has previously lawfully notified a receiving entity of the pending status of that arrest. When the department supplies subsequent arrest or disposition notification to a receiving entity, the entity shall, at the same time, expeditiously furnish a copy of the information to the person to whom it relates if the information is a basis for an adverse employment, licensing, or certification decision. When furnished other than in person, the copy shall be delivered to the last contact information provided by the applicant.

(b) For purposes of this section, "approval" means those duties described in subdivision (d) of Section 309 of the Welfare and Institutions Code for approving the home of a relative caregiver or of a nonrelative extended family member for placement of a child supervised by the juvenile court.

(c) Any entity, other than a law enforcement agency employing peace officers as defined in Section 830.1, subdivisions (a) and (e) of Section 830.2, subdivision (a) of Section 830.3, subdivisions (a) and (b) of Section 830.5, and subdivision (a) of Section 830.31, shall enter into a contract with the Department of Justice in order to receive notification of subsequent state or federal arrests or dispositions for licensing, employment, or certification purposes.

(d) Any entity which submits the fingerprints of applicants for licensing, employment, certification, or approval to the Department of Justice for the purpose of establishing a record of the applicant to receive notification of subsequent state or federal arrests or dispositions shall immediately notify the department when the employment of the applicant is terminated, when the applicant's license or certificate is revoked, when the applicant may no longer renew or reinstate the license or certificate, or when a relative caregiver's or nonrelative extended family member's approval is terminated. The Department of Justice shall terminate state or federal subsequent notification on any applicant upon the request of the licensing, employment, certifying, or approving authority.

(e) Any entity receiving a notification of a state or federal subsequent arrest or disposition for a person unknown to the entity, or for a person no longer employed by the entity, or no longer eligible to renew the

## 11105.2 (cont.)

certificate or license for which subsequent notification service was established shall immediately return the subsequent notification to the Department of Justice, informing the department that the entity is no longer interested in the applicant. The entity shall not record or otherwise retain any information received as a result of the subsequent notice.

(f) Any entity that submits the fingerprints of an applicant for employment, licensing, certification, or approval to the Department of Justice for the purpose of establishing a record at the department or the Federal Bureau of Investigation to receive notification of subsequent arrest or disposition shall immediately notify the department if the applicant is not subsequently employed, or if the applicant is denied licensing certification, or approval.

(g) An entity that fails to provide the Department of Justice with notification as set forth in subdivisions (c), (d), and (e) may be denied further subsequent notification service.

(h) Notwithstanding subdivisions (c), (d), and (f), subsequent notification by the Department of Justice and retention by the employing agency shall continue as to retired peace officers listed in subdivision (c) of Section 830.5.

## 11105.3

(a) Notwithstanding any other law, a human resource agency or an employer may request from the Department of Justice records of all convictions or any arrest pending adjudication involving the offenses specified in subdivision (a) of Section 15660 of the Welfare and Institutions Code of a person who applies for a license, employment or volunteer position, in which he or she would have supervisory or disciplinary power over a minor or any person under his or her care. The department shall furnish the information to the requesting employer and shall also send a copy of the information to the applicant.

(b) Any request for records under subdivision (a) shall include the applicant's fingerprints, which may be taken by the requester, and any other data specified by the department. The request shall be on a form approved by the department, and the department may charge a fee to be paid by the employer, human resource agency, or applicant for the actual cost of processing the request. However, no fee shall be charged to a nonprofit organization. Requests received by the department for federal level criminal offender record information shall be forwarded to the Federal Bureau of Investigation by the department to be searched for any record of arrests or convictions.

(c)(1) Where a request pursuant to this section reveals that a

## RECORDS OF CONVICTIONS INVOLVING SEX CRIMES, DRUG CRIMES, OR CRIMES OF VIOLENCE

**11105.3 (cont.)**

prospective employee or volunteer has been convicted of a violation or attempted violation of Section 220, 261.5, 262, 273a, 273d, or 273.5, or any sex offense listed in Section 290, except for the offense specified in subdivision (d) of Section 243.4, and where the agency or employer hires the prospective employee or volunteer, the agency or employer shall notify the parents or guardians of any minor who will be supervised or disciplined by the employee or volunteer. A conviction for a violation or attempted violation of an offense committed outside the State of California shall be included in this notice if the offense would have been a crime specified in this subdivision if committed in California. The notice shall be given to the parents or guardians with whom the child resides, and shall be given at least 10 days prior to the day that the employee or volunteer begins his or her duties or tasks. Notwithstanding any other provision of law, any person who conveys or receives information in good faith and in conformity with this section is exempt from prosecution under Section 11142 or 11143 for that conveying or receiving of information. Notwithstanding subdivision (d), the notification requirements of this subdivision shall apply as an additional requirement of any other provision of law requiring criminal record access or dissemination of criminal history information.

(2) The notification requirement pursuant to paragraph (1) shall not apply to a misdemeanor conviction for violating Section 261.5 or to a conviction for violating Section 262 or 273.5. Nothing in this paragraph shall preclude an employer from requesting records of convictions for violating Section 261.5, 262, or 273.5 from the Department of Justice pursuant to this section.

(d) Nothing in this section supersedes any law requiring criminal record access or dissemination of criminal history information. In any conflict with another statute, dissemination of criminal history information shall be pursuant to the mandatory statute. This subdivision applies to, but is not limited to, requirements pursuant to Article 1 (commencing with Section 1500) of Chapter 3 of, and Chapter 3.2 (commencing with Section 1569) and Chapter 3.4 (commencing with Section 1596.70) of, Division 2 of, and Section 1522 of, the Health and Safety Code, and Sections 8712, 8811, and 8908 of the Family Code.

(e) The department may adopt regulations to implement the provisions of this section as necessary.

(f) As used in this section, "employer" means any nonprofit corporation or other organization specified by the Attorney General which employs or uses the services of volunteers in positions in which the volunteer or employee has supervisory or disciplinary power over a child or children.

(g) As used in this section, "human resource agency" means a

### 11105.3 (cont.)

public or private entity, excluding any agency responsible for licensing of facilities pursuant to the California Community Care Facilities Act (Chapter 3 (commencing with Section 1500)), the California Residential Care Facilities for the Elderly Act (Chapter 3.2 (commencing with Section 1569)), Chapter 3.01 (commencing with Section 1568.01), and the California Child Day Care Facilities Act (Chapter 3.4 (commencing with Section 1596.70)) of Division 2 of the Health and Safety Code, responsible for determining the character and fitness of a person who is:

(1) Applying for a license, employment, or as a volunteer within the human services field that involves the care and security of children, the elderly, the handicapped, or the mentally impaired.

(2) Applying to be a volunteer who transports individuals impaired by drugs or alcohol.

(3) Applying to adopt a child or to be a foster parent.

(h) Except as provided in subdivision (c), any criminal history information obtained pursuant to this section is confidential and no recipient shall disclose its contents other than for the purpose for which it was acquired.

## CHILD ABUSE AND NEGLECT REPORTING ACT

### 11166

(a) Except as provided in subdivision (d), and in Section 11166.05, a mandated reporter shall make a report to an agency specified in Section 11165.9 whenever the mandated reporter, in his or her professional capacity or within the scope of his or her employment, has knowledge of or observes a child whom the mandated reporter knows or reasonably suspects has been the victim of child abuse or neglect. The mandated reporter shall make an initial report by telephone to the agency immediately or as soon as is practicably possible, and shall prepare and send, fax, or electronically transmit a written followup report within 36 hours of receiving the information concerning the incident. The mandated reporter may include with the report any nonprivileged documentary evidence the mandated reporter possesses relating to the incident.

(1) For purposes of this article, "reasonable suspicion" means that it is objectively reasonable for a person to entertain a suspicion, based upon facts that could cause a reasonable person in a like position, drawing, when appropriate, on his or her training and experience, to suspect child abuse or neglect. "Reasonable suspicion" does not require certainty that child abuse or neglect has occurred nor does it require a specific medical indication of child abuse or neglect; any "reasonable suspicion" is sufficient. For purposes of this article, the pregnancy of a minor does not, in and of

**REPORT;  
DUTY;  
TIME**

## 11166 (cont.)

itself, constitute a basis for a reasonable suspicion of sexual abuse.

(2) The agency shall be notified and a report shall be prepared and sent, faxed, or electronically transmitted even if the child has expired, regardless of whether or not the possible abuse was a factor contributing to the death, and even if suspected child abuse was discovered during an autopsy.

(3) Any report made by a mandated reporter pursuant to this section shall be known as a mandated report.

(b) If after reasonable efforts a mandated reporter is unable to submit an initial report by telephone, he or she shall immediately or as soon as is practicably possible, by fax or electronic transmission, make a one-time automated written report on the form prescribed by the Department of Justice, and shall also be available to respond to a telephone followup call by the agency with which he or she filed the report. A mandated reporter who files a one-time automated written report because he or she was unable to submit an initial report by telephone is not required to submit a written followup report.

(1) The one-time automated written report form prescribed by the Department of Justice shall be clearly identifiable so that it is not mistaken for a standard written followup report. In addition, the automated one-time report shall contain a section that allows the mandated reporter to state the reason the initial telephone call was not able to be completed. The reason for the submission of the one-time automated written report in lieu of the procedure prescribed in subdivision (a) shall be captured in the Child Welfare Services/Case Management System (CWS/CMS). The department shall work with stakeholders to modify reporting forms and the CWS/CMS as is necessary to accommodate the changes enacted by these provisions.

(2) This subdivision shall not become operative until the CWS/CMS is updated to capture the information prescribed in this subdivision.

(3) This subdivision shall become inoperative three years after this subdivision becomes operative or on January 1, 2009, whichever occurs first.

(4) On the inoperative date of these provisions, a report shall be submitted to the counties and the Legislature by the State Department of Social Services that reflects the data collected from automated one-time reports indicating the reasons stated as to why the automated one-time report was filed in lieu of the initial telephone report.

(5) Nothing in this section shall supersede the requirement that a

**11166 (cont.)**

mandated reporter first attempt to make a report via telephone, or that agencies specified in Section 11165.9 accept reports from mandated reporters and other persons as required.

(c) Any mandated reporter who fails to report an incident of known or reasonably suspected child abuse or neglect as required by this section is guilty of a misdemeanor punishable by up to six months confinement in a county jail or by a fine of one thousand dollars (\$1,000) or by both that imprisonment and fine. If a mandated reporter intentionally conceals his or her failure to report an incident known by the mandated reporter to be abuse or severe neglect under this section, the failure to report is a continuing offense until an agency specified in Section 11165.9 discovers the offense.

(d)(1) A clergy member who acquires knowledge or a reasonable suspicion of child abuse or neglect during a penitential communication is not subject to subdivision (a). For the purposes of this subdivision, "penitential communication" means a communication, intended to be in confidence, including, but not limited to, a sacramental confession, made to a clergy member who, in the course of the discipline or practice of his or her church, denomination, or organization, is authorized or accustomed to hear those communications, and under the discipline, tenets, customs, or practices of his or her church, denomination, or organization, has a duty to keep those communications secret.

(2) Nothing in this subdivision shall be construed to modify or limit a clergy member's duty to report known or suspected child abuse or neglect when the clergy member is acting in some other capacity that would otherwise make the clergy member a mandated reporter.

(3)(A) On or before January 1, 2004, a clergy member or any custodian of records for the clergy member may report to an agency specified in Section 11165.9 that the clergy member or any custodian of records for the clergy member, prior to January 1, 1997, in his or her professional capacity or within the scope of his or her employment, other than during a penitential communication, acquired knowledge or had a reasonable suspicion that a child had been the victim of sexual abuse that the clergy member or any custodian of records for the clergy member did not previously report the abuse to an agency specified in Section 11165.9. The provisions of Section 11172 shall apply to all reports made pursuant to this paragraph.

(B) This paragraph shall apply even if the victim of the known or suspected abuse has reached the age of majority by the time the required report is made.

(C) The local law enforcement agency shall have jurisdiction to investigate any report of child abuse made pursuant to this paragraph even if the report is made after the victim has reached

**11166 (cont.)**

the age of majority.

(e)(1) Any commercial film, photographic print, or image processor who has knowledge of or observes, within the scope of his or her professional capacity or employment, any film, photograph, videotape, negative, slide, or any representation of information, data, or an image, including, but not limited to, any film, filmstrip, photograph, negative, slide, photocopy, videotape, video laser disc, computer hardware, computer software, computer floppy disk, data storage medium, CD-ROM, computer-generated equipment, or computer-generated image depicting a child under 16 years of age engaged in an act of sexual conduct, shall immediately, or as soon as practically possible, telephonically report the instance of suspected abuse to the law enforcement agency located in the county in which the images are seen. Within 36 hours of receiving the information concerning the incident, the reporter shall prepare and send, fax, or electronically transmit a written followup report of the incident with a copy of the image or material attached.

(2) Any commercial computer technician who has knowledge of or observes, within the scope of his or her professional capacity or employment, any representation of information, data, or an image, including, but not limited, to any computer hardware, computer software, computer file, computer floppy disk, data storage medium, CD-ROM, computer-generated equipment, or computer-generated image that is retrievable in perceivable form and that is intentionally saved, transmitted, or organized on an electronic medium, depicting a child under 16 years of age engaged in an act of sexual conduct, shall immediately, or as soon as practicably possible, telephonically report the instance of suspected abuse to the law enforcement agency located in the county in which the images or material are seen. As soon as practicably possible after receiving the information concerning the incident, the reporter shall prepare and send, fax, or electronically transmit a written followup report of the incident with a brief description of the images or materials.

(3) For purposes of this article, "commercial computer technician" includes an employee designated by an employer to receive reports pursuant to an established reporting process authorized by subparagraph (B) of paragraph (41) of subdivision (a) of Section 11165.7.

(4) As used in this subdivision, "electronic medium" includes, but is not limited to, a recording, CD-ROM, magnetic disk memory, magnetic tape memory, CD, DVD, thumbdrive, or any other computer hardware or media.

(5) As used in this subdivision, "sexual conduct" means any of the following:

(A) Sexual intercourse, including genital-genital, oral-genital,

## 11166 (cont.)

anal-genital, or oral-anal, whether between persons of the same or opposite sex or between humans and animals.

(B) Penetration of the vagina or rectum by any object.

(C) Masturbation for the purpose of sexual stimulation of the viewer.

(D) Sadomasochistic abuse for the purpose of sexual stimulation of the viewer.

(E) Exhibition of the genitals, pubic, or rectal areas of any person for the purpose of sexual stimulation of the viewer.

(f) Any mandated reporter who knows or reasonably suspects that the home or institution in which a child resides is unsuitable for the child because of abuse or neglect of the child shall bring the condition to the attention of the agency to which, and at the same time as, he or she makes a report of the abuse or neglect pursuant to subdivision (a).

(g) Any other person who has knowledge of or observes a child whom he or she knows or reasonably suspects has been a victim of child abuse or neglect may report the known or suspected instance of child abuse or neglect to an agency specified in Section 11165.9. For purposes of this section, "any other person" includes a mandated reporter who acts in his or her private capacity and not in his or her professional capacity or within the scope of his or her employment.

(h) When two or more persons, who are required to report, jointly have knowledge of a known or suspected instance of child abuse or neglect, and when there is agreement among them, the telephone report may be made by a member of the team selected by mutual agreement and a single report may be made and signed by the selected member of the reporting team. Any member who has knowledge that the member designated to report has failed to do so shall thereafter make the report.

(i)(1) The reporting duties under this section are individual, and no supervisor or administrator may impede or inhibit the reporting duties, and no person making a report shall be subject to any sanction for making the report. However, internal procedures to facilitate reporting and apprise supervisors and administrators of reports may be established provided that they are not inconsistent with this article.

(2) The internal procedures shall not require any employee required to make reports pursuant to this article to disclose his or

**11166 (cont.)**

her identity to the employer.

(3) Reporting the information regarding a case of possible child abuse or neglect to an employer, supervisor, school principal, school counselor, coworker, or other person shall not be a substitute for making a mandated report to an agency specified in Section 11165.9.

(j) A county probation or welfare department shall immediately, or as soon as practicably possible, report by telephone, fax, or electronic transmission to the law enforcement agency having jurisdiction over the case, to the agency given the responsibility for investigation of cases under Section 300 of the Welfare and Institutions Code, and to the district attorney's office every known or suspected instance of child abuse or neglect, as defined in Section 11165.6, except acts or omissions coming within subdivision (b) of Section 11165.2, or reports made pursuant to Section 11165.13 based on risk to a child which relates solely to the inability of the parent to provide the child with regular care due to the parent's substance abuse, which shall be reported only to the county welfare or probation department. A county probation or welfare department also shall send, fax, or electronically transmit a written report thereof within 36 hours of receiving the information concerning the incident to any agency to which it makes a telephone report under this subdivision.

(k) A law enforcement agency shall immediately, or as soon as practicably possible, report by telephone, fax, or electronic transmission to the agency given responsibility for investigation of cases under Section 300 of the Welfare and Institutions Code and to the district attorney's office every known or suspected instance of child abuse or neglect reported to it, except acts or omissions coming within subdivision (b) of Section 11165.2, which shall be reported only to the county welfare or probation department. A law enforcement agency shall report to the county welfare or probation department every known or suspected instance of child abuse or neglect reported to it which is alleged to have occurred as a result of the action of a person responsible for the child's welfare, or as the result of the failure of a person responsible for the child's welfare to adequately protect the minor from abuse when the person responsible for the child's welfare knew or reasonably should have known that the minor was in danger of abuse. A law enforcement agency also shall send, fax, or electronically transmit a written report thereof within 36 hours of receiving the information concerning the incident to any agency to which it makes a telephone report under this subdivision.

**HEALTH AND  
SAFETY CODE**

# MARIJUANA

## 11357

(a) Except as authorized by law, every person who possesses any concentrated cannabis shall be punished by imprisonment in the county jail for a period of not more than one year or by a fine of not more than five hundred dollars (\$500), or by both such fine and imprisonment, or shall be punished by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code.

(b) Except as authorized by law, every person who possesses not more than 28.5 grams of marijuana, other than concentrated cannabis, is guilty of an infraction punishable by a fine of not more than one hundred dollars (\$100).

(c) Except as authorized by law, every person who possesses more than 28.5 grams of marijuana, other than concentrated cannabis, shall be punished by imprisonment in a county jail for a period of not more than six months or by a fine of not more than five hundred dollars (\$500), or by both such fine and imprisonment.

(d) Except as authorized by law, every person 18 years of age or over who possesses not more than 28.5 grams of marijuana, other than concentrated cannabis, upon the grounds of, or within, any school providing instruction in kindergarten or any of grades 1 through 12 during hours the school is open for classes or school-related programs is guilty of a misdemeanor and shall be punished by a fine of not more than five hundred dollars (\$500), or by imprisonment in a county jail for a period of not more than 10 days, or both.

(e) Except as authorized by law, every person under the age of 18 who possesses not more than 28.5 grams of marijuana, other than concentrated cannabis, upon the grounds of, or within, any school providing instruction in kindergarten or any of grades 1 through 12 during hours the school is open for classes or school-related programs is guilty of a misdemeanor and shall be subject to the following dispositions:

(1) A fine of not more than two hundred fifty dollars (\$250), upon a finding that a first offense has been committed.

(2) A fine of not more than five hundred dollars (\$500), or commitment to a juvenile hall, ranch, camp, forestry camp, or secure juvenile home for a period of not more than 10 days, or both, upon a finding that a second or subsequent offense has been committed.

**UNAUTHORIZED  
POSSESSION;  
PUNISHMENT;  
PRIOR  
CONVICTION;  
POSSESSION IN  
SCHOOL OR ON  
SCHOOL GROUNDS**

## **11361**

(a) Every person 18 years of age or over who hires, employs, or uses a minor in unlawfully transporting, carrying, selling, giving away, preparing for sale, or peddling any marijuana, who unlawfully sells, or offers to sell, any marijuana to a minor under 14 years of age, or who induces a minor to use marijuana in violation of law shall be punished by imprisonment in the state prison for a period of three, five, or seven years.

(b) Every person 18 years of age or over who furnishes, administers, or gives, or offers to furnish, administer, or give, any marijuana to a minor 14 years of age or older shall be punished by imprisonment in the state prison for a period of three, four, or five years.

## **11361.5**

(a) Records of any court of this state, any public or private agency that provides services upon referral under Section 1000.2 of the Penal Code, or of any state agency pertaining to the arrest or conviction of any person for a violation of subdivision (b), (c), (d), or (e) of Section 11357 or subdivision (b) of Section 11360, shall not be kept beyond two years from the date of the conviction, or from the date of the arrest if there was no conviction, except with respect to a violation of subdivision (e) of Section 11357 the records shall be retained until the offender attains the age of 18 years at which time the records shall be destroyed as provided in this section. Any court or agency having custody of the records shall provide for the timely destruction of the records in accordance with subdivision (c). The requirements of this subdivision do not apply to records of any conviction occurring prior to January 1, 1976, or records of any arrest not followed by a conviction occurring prior to that date.

(b) This subdivision applies only to records of convictions and arrests not followed by conviction occurring prior to January 1, 1976, for any of the following offenses:

(1) Any violation of Section 11357 or a statutory predecessor thereof.

(2) Unlawful possession of a device, contrivance, instrument, or paraphernalia used for unlawfully smoking marijuana, in violation of Section 11364, as it existed prior to January 1, 1976, or a statutory predecessor thereof.

(3) Unlawful visitation or presence in a room or place in which marijuana is being unlawfully smoked or used, in violation of Section 11365, as it existed prior to January 1, 1976, or a statutory predecessor thereof.

(4) Unlawfully using or being under the influence of marijuana, in violation of Section 11550, as it existed prior to January 1, 1976, or a

### **ADULTS EMPLOYING OR SELLING TO MINORS; PUNISHMENTS**

### **DESTRUCTION OF ARREST AND CONVICTION RECORDS; APPLICABLE OFFENSES; METHOD; RECORDS NOT APPLICABLE; COSTS**

**11361.5 (cont.)**

statutory predecessor thereof.

Any person subject to an arrest or conviction for those offenses may apply to the Department of Justice for destruction of records pertaining to the arrest or conviction if two or more years have elapsed since the date of the conviction, or since the date of the arrest if not followed by a conviction. The application shall be submitted upon a form supplied by the Department of Justice and shall be accompanied by a fee, which shall be established by the department in an amount which will defray the cost of administering this subdivision and costs incurred by the state under subdivision (c), but which shall not exceed thirty-seven dollars and fifty cents (\$37.50). The application form may be made available at every local police or sheriff's department and from the Department of Justice and may require that information which the department determines is necessary for purposes of identification.

The department may request, but not require, the applicant to include a self-administered fingerprint upon the application. If the department is unable to sufficiently identify the applicant for purposes of this subdivision without the fingerprint or without additional fingerprints, it shall so notify the applicant and shall request the applicant to submit any fingerprints which may be required to effect identification, including a complete set if necessary, or, alternatively, to abandon the application and request a refund of all or a portion of the fee submitted with the application, as provided in this section. If the applicant fails or refuses to submit fingerprints in accordance with the department's request within a reasonable time which shall be established by the department, or if the applicant requests a refund of the fee, the department shall promptly mail a refund to the applicant at the address specified in the application or at any other address which may be specified by the applicant. However, if the department has notified the applicant that election to abandon the application will result in forfeiture of a specified amount which is a portion of the fee, the department may retain a portion of the fee which the department determines will defray the actual costs of processing the application, provided the amount of the portion retained shall not exceed ten dollars (\$10).

Upon receipt of a sufficient application, the Department of Justice shall destroy records of the department, if any, pertaining to the arrest or conviction in the manner prescribed by subdivision (c) and shall notify the Federal Bureau of Investigation, the law enforcement agency which arrested the applicant, and, if the applicant was convicted, the probation department which investigated the applicant and the Department of Motor Vehicles, of the application.

(c) Destruction of records of arrest or conviction pursuant to subdivision (a) or (b) shall be accomplished by permanent obliteration of all entries or notations upon the records pertaining to the arrest or conviction, and the record shall be prepared again so that it appears

**11361.5 (cont.)**

that the arrest or conviction never occurred. However, where (1) the only entries upon the record pertain to the arrest or conviction and (2) the record can be destroyed without necessarily effecting the destruction of other records, then the document constituting the record shall be physically destroyed.

(d) Notwithstanding subdivision (a) or (b), written transcriptions of oral testimony in court proceedings and published judicial appellate reports are not subject to this section. Additionally, no records shall be destroyed pursuant to subdivision (a) if the defendant or a codefendant has filed a civil action against the peace officers or law enforcement jurisdiction which made the arrest or instituted the prosecution and if the agency which is the custodian of those records has received a certified copy of the complaint in the civil action, until the civil action has finally been resolved. Immediately following the final resolution of the civil action, records subject to subdivision (a) shall be destroyed pursuant to subdivision (c) if more than two years have elapsed from the date of the conviction or arrest without conviction.

**11361.7**

(a) Any record subject to destruction or permanent obliteration pursuant to Section 11361.5, or more than two years of age, or a record of a conviction for an offense specified in subdivision (a) or (b) of Section 11361.5 which became final more than two years previously, shall not be considered to be accurate, relevant, timely, or complete for any purposes by any agency or person. The provisions of this subdivision shall be applicable for purposes of the Privacy Act of 1974 (5 U.S.C. Section 552a) to the fullest extent permissible by law, whenever any information or record subject to destruction or permanent obliteration under Section 11361.5 was obtained by any state agency, local public agency, or any public or private agency that provides services upon referral under Section 1000.2 of the Penal Code, and is thereafter shared with or disseminated to any agency of the federal government.

(b) No public agency shall alter, amend, assess, condition, deny, limit, postpone, qualify, revoke, surcharge, or suspend any certificate, franchise, incident, interest, license, opportunity, permit, privilege, right, or title of any person because of an arrest or conviction for an offense specified in subdivision (a) or (b) of Section 11361.5, or because of the facts or events leading to such an arrest or conviction, on or after the date the records of such arrest or conviction are required to be destroyed by subdivision (a) of Section 11361.5, or two years from the date of such conviction or arrest without conviction with respect to arrests and convictions occurring prior to January 1, 1976. As used in this subdivision, "public agency" includes, but is not limited to, any state, county, city and county, city, public or constitutional corporation or

**ACCURACY,  
RELEVANCY,  
TIMELINESS AND  
COMPLETENESS OF  
RECORD SUBJECT  
TO DESTRUCTION;  
ALTERATION OF  
RECORDS;  
QUESTIONS ON  
PRIOR CRIMINAL  
RECORD;  
APPLICATION OF  
SECTION**

**11361.7 (cont.)**

entity, district, local or regional political subdivision, or any department, division, bureau, office, board, commission or other agency thereof.

(c) Any person arrested or convicted for an offense specified in subdivision (a) or (b) of Section 11361.5 may, two years from the date of such a conviction, or from the date of the arrest if there was no conviction, indicate in response to any question concerning his prior criminal record that he was not arrested or convicted for such offense.

(d) The provisions of this section shall be applicable without regard to whether destruction or obliteration of records has actually been implemented pursuant to Section 11361.5.

**REGISTRATION OF CONTROLLED SUBSTANCE OFFENDERS****11590**

(a) Except as provided in subdivisions (c) and (d), any person who is convicted in the State of California of any offense defined in Section 11350, 11351, 11351.5, 11352, 11353, 11353.5, 11353.7, 11354, 11355, 11357, 11358, 11359, 11360, 11361, 11363, 11366, 11366.5, 11366.6, 11368, 11378, 11378.5, 11379, 11379.5, 11379.6, 11380, 11380.5, 11383, or 11550, or subdivision (a) of Section 11377, or any person who is discharged or paroled from a penal institution where he or she was confined because of the commission of any such offense, or any person who is convicted in any other state of any offense which, if committed or attempted in this state, would have been punishable as one or more of the above-mentioned offenses, shall within 30 days of his or her coming into any county or city, or city and county in which he or she resides or is temporarily domiciled for that length of time, register with the chief of police of the city in which he or she resides or the sheriff of the county if he or she resides in an unincorporated area.

For persons convicted of an offense defined in Section 11377, 11378, 11379, or 11380, this subdivision shall apply only to offenses involving controlled substances specified in paragraph (12) of subdivision (d) of Section 11054 and paragraph (2) of subdivision (d) of Section 11055, and to analogs of these substances, as defined in Section 11401. For persons convicted of an offense defined in Section 11379 or 11379.5, this subdivision shall not apply if the conviction was for transporting, offering to transport, or attempting to transport a controlled substance.

(b) Any person who is convicted in any federal court of any offense which, if committed or attempted in this state would have been punishable as one or more of the offenses enumerated in subdivision (a) shall within 30 days of his or her coming into any county or city, or city and county in which he or she resides or is temporarily domiciled for that length of

**PERSONS  
REQUIRED  
TO REGISTER**

**11590 (cont.)**

time, register with the chief of police of the city in which he or she resides or the sheriff of the county if he or she resides in an unincorporated area.

(c) This section does not apply to a conviction of a misdemeanor under Section 11357, 11360, or 11377.

(d) The registration requirements imposed by this section for the conviction of offenses defined in Section 11353.7, 11366.5, 11366.6, 11377, 11378, 11378.5, 11379, 11379.5, 11379.6, 11380, 11380.5, or 11383, shall apply to any person who commits any of those offenses on and after January 1, 1990.

**11591**

Every sheriff, chief of police, or the Commissioner of the California Highway Patrol, upon the arrest for any of the controlled substance offenses enumerated in Section 11590, or Section 11364, insofar as that section relates to paragraph (12) of subdivision (d) of Section 11054, of any school employee, shall, provided that he or she knows that the arrestee is a school employee, do one of the following:

**SCHOOL  
EMPLOYEE;  
ARREST FOR  
CONTROLLED  
SUBSTANCE  
OFFENSE;  
NOTICE TO  
SCHOOL  
AUTHORITIES**

(a) If the school employee is a teacher in any of the public schools of this state, the sheriff, chief of police, or Commissioner of the California Highway Patrol shall immediately notify by telephone the superintendent of schools of the school district employing the teacher and shall immediately give written notice of the arrest to the Commission on Teacher Credentialing and to the superintendent of schools in the county where the person is employed. Upon receipt of the notice, the county superintendent of schools and the Commission on Teacher Credentialing shall immediately notify the governing board of the school district employing the person.

(b) If the school employee is a nonteacher in any of the public schools of this state, the sheriff, chief of police, or Commissioner of the California Highway Patrol shall immediately notify by telephone the superintendent of schools of the school district employing the nonteacher and shall immediately give written notice of the arrest to the governing board of the school district employing the person.

(c) If the school employee is a teacher in any private school of this state, the sheriff, chief of police, or Commissioner of the California Highway Patrol shall immediately notify by telephone the private school authority employing the teacher and shall immediately give written notice of the arrest to the private school authority employing the teacher.

**GOVERNMENT**

**CODE**

## ADMINISTRATIVE ADJUDICATION

### 11517

(a) A contested case may be originally heard by the agency itself and subdivision (b) shall apply. Alternatively, at the discretion of the agency, an administrative law judge may originally hear the case alone and subdivision (c) shall apply.

(b) If a contested case is originally heard before an agency itself, all of the following provisions apply:

(1) An administrative law judge shall be present during the consideration of the case and, if requested, shall assist and advise the agency in the conduct of the hearing.

(2) No member of the agency who did not hear the evidence shall vote on the decision.

(3) The agency shall issue its decision within 100 days of submission of the case.

(c)(1) If a contested case is originally heard by an administrative law judge alone, he or she shall prepare within 30 days after the case is submitted to him or her a proposed decision in a form that may be adopted by the agency as the final decision in the case. Failure of the administrative law judge to deliver a proposed decision within the time required does not prejudice the rights of the agency in the case. Thirty days after receipt by the agency of the proposed decision, a copy of the proposed decision shall be filed by the agency as a public record and a copy shall be served by the agency on each party and his or her attorney. The filing and service is not an adoption of a proposed decision by the agency.

(2) Within 100 days of receipt by the agency of the administrative law judge's proposed decision, the agency may act as prescribed in subparagraphs (A) to (E), inclusive. If the agency fails to act as prescribed in subparagraphs (A) to (E), inclusive, within 100 days of receipt of the proposed decision, the proposed decision shall be deemed adopted by the agency. The agency may do any of the following:

(A) Adopt the proposed decision in its entirety.

(B) Reduce or otherwise mitigate the proposed penalty and adopt the balance of the proposed decision.

(C) Make technical or other minor changes in the proposed decision adopt it as the decision. Action by the agency under this paragraph is limited to a clarifying change or a change of a similar

### CONTESTED CASE; ORIGINAL HEARING; AGENCY OR ADMINISTRATIVE LAW JUDGE

**11517 (cont.)**

nature that does not affect the factual or legal basis of the proposed decision.

(D) Reject the proposed decision and refer the case to the same administrative law judge if reasonably available, otherwise to another administrative law judge, to take additional evidence. If the case is referred to an administrative law judge pursuant to this subparagraph, he or she shall prepare a revised proposed decision, as provided in paragraph (1), based upon the additional evidence and the transcript and other papers that are part of the record of the prior hearing. A copy of the revised proposed decision shall be furnished to each party and his or her attorney as prescribed in this subdivision.

(E) Reject the proposed decision, and decide the case upon the record, including the transcript, or upon an agreed statement of the parties, with or without taking additional evidence. By stipulation of the parties, the agency may decide the case upon the record without including the transcript. If the agency acts pursuant to this subparagraph, all of the following provisions apply:

(i) A copy of the record shall be made available to the parties. The agency may require payment of fees covering direct costs of making the copy.

(ii) The agency itself shall not decide any case provided for in this subdivision without affording the parties the opportunity to present either oral or written argument before the agency itself. If additional oral evidence is introduced before the agency itself, no agency member may vote unless the member heard the additional oral evidence.

(iii) The authority of the agency itself to decide the case under this subdivision includes authority to decide some but not all issues in the case.

(iv) If the agency elects to proceed under this subparagraph, the agency shall issue its final decision not later than 100 days after rejection of the proposed decision. If the agency elects to proceed under this subparagraph, and has ordered a transcript of the proceedings before the administrative law judge, the agency shall issue its final decision not later than 100 days after receipt of the transcript. If the agency finds that a further delay is required by special circumstance, it shall issue an order delaying the decision for no more than 30 days and specifying the reasons therefore. The order shall be subject to judicial review pursuant to Section 11523.

(d) The decision of the agency shall be filed immediately by the agency as a public record and a copy shall be served by the agency on each party and his or her attorney.

**11521****RECONSIDERATION**

(a) The agency itself may order a reconsideration of all or part of the case on its own motion or on petition of any party. The agency shall notify a petitioner of the time limits for petitioning for reconsideration. The power to order a reconsideration shall expire 30 days after the delivery or mailing of a decision to respondent, or on the date set by the agency itself as the effective date of the decision if that date occurs prior to the expiration of the 30-day period or at the termination of a stay of not to exceed 30 days which the agency may grant for the purpose of filing an application for reconsideration. If additional time is needed to evaluate a petition for reconsideration filed prior to the expiration of any of the applicable periods, an agency may grant a stay of that expiration for no more than 10 days, solely for the purpose of considering the petition. If no action is taken on a petition within the time allowed for ordering reconsideration, the petition shall be deemed denied.

(b) The case may be reconsidered by the agency itself on all the pertinent parts of the record and such additional evidence and argument as may be permitted, or may be assigned to an administrative law judge. A reconsideration assigned to an administrative law judge shall be subject to the procedure provided in Section 11517. If oral evidence is introduced before the agency itself, no agency member may vote unless he or she heard the evidence.

**11522****REINSTATEMENT  
OF LICENSE  
OR REDUCTION  
OF PENALTY**

A person whose license has been revoked or suspended may petition the agency for reinstatement or reduction of penalty after a period of not less than one year has elapsed from the effective date of the decision or from the date of the denial of a similar petition. The agency shall give notice to the Attorney General of the filing of the petition and the Attorney General and the petitioner shall be afforded an opportunity to present either oral or written argument before the agency itself. The agency itself shall decide the petition, and the decision shall include the reasons therefore, and any terms and conditions that the agency reasonably deems appropriate to impose as a condition of reinstatement. This section shall not apply if the statutes dealing with the particular agency contain different provisions for reinstatement or reduction of penalty.

# **SPECIFIC OFFENSES**

## **Criminal Offenses Requiring Denial, Suspension, or Revocation of Teaching Credentials**

**\*Please note:** This chart is intended for guidance only. It is important and necessary to look up the designated code sections to confirm current status and applicability.

**Table 1 – Enumerated Crimes and Violent/Serious Felonies**  
See Education Code §§44424 and 44346.1 and Penal Code §§667.5(c), 1192.7(c), and 1192.8.

<b>Penal Code Section</b>	<b>Descriptions</b>	<b>Enumerated Crimes<sup>1</sup></b>	<b>Violent Felonies<sup>2</sup></b>	<b>Serious Felonies<sup>3</sup></b>
136.1	Intimidation of witness and victims		√ (see PC 186.22)	√
186.22	Any <i>felony</i> offense, which would also constitute a <i>felony</i> violation of section 186.22 (participation in criminal street gang)			√
187 – 191	Murder	√	√	√
187/664	Attempted murder	√	√	√
191.5	Gross vehicular manslaughter while intoxicated			√ <sup>4</sup>
192(a)	Voluntary manslaughter	√	√	√
192(c)(1)	Vehicular manslaughter			√ <sup>4</sup>
192.5(a), (b), or (c)	Vehicular manslaughter while operating vessel			√ <sup>4</sup>
193	Manslaughter	√		
194	Death of victim within 3 years and a day	√		
203	Mayhem	√	√	√
205	Aggravated mayhem	√	√	√
206	Torture	√		
207	Kidnapping	√	√	√
208	Kidnapping – victim under 14	√	√	√
209	Kidnapping for ransom or to commit other crimes	√	√	√
209.5	Kidnapping during carjacking	√	√	√
210	Pose as kidnapper to extort	√		
210.5	Taking hostages; false imprisonment	√		
211	Robbery	√	√	√
212.5	Robbery	√	√	√
214	Train robbery	√		
215(a)	Carjacking	√	√	√
217.1	Assault on public officials/peace officers	√		√ Must be with a deadly weapon

<sup>1</sup>**Enumerated crimes** are listed in Education Code §44424 and include misdemeanors except as otherwise noted.

<sup>2</sup>**Violent felonies** are listed in Penal Code §667.5(c).

<sup>3</sup>**Serious felonies** are listed in Penal Code §§1192.7(c) and 1192.8.

<sup>4</sup>This offense is only a serious felony when it involves the personal infliction of great bodily injury on a person other than an accomplice or when it involves the personal use of a dangerous/deadly weapon. Penal Code §1192.8.

Penal Code Section	Descriptions	Enumerated Crimes <sup>1</sup>	Violent Felonies <sup>2</sup>	Serious Felonies <sup>3</sup>
220	Assault w/intent to commit mayhem, rape, sodomy, and oral copulation	√	√	√
222	Administering stupefying drugs during felony	√		
244	Assault w/caustic chemicals	√		√
245	Assault w/deadly weapon or by force likely to produce great bodily injury	√		√
245.2	Assault w/deadly weapon/force on driver			√
245.3	Assault w/deadly weapon/force on custodial officer			√
245.5	Assault w/deadly weapon/force on school employee			√
246	Shooting at inhabited building or vehicle			√
261	Rape	√	√ Only as defined in 261(a)(2) or (6)	√
261.5	Unlawful sexual intercourse w/minor (statutory rape)	√		
261.9	Solicitation of prostitute under 18 years of age	√		
262	Rape of spouse	√	√ Only as defined in 262(a)(1) or (4)	
264.1	Voluntarily acting in concert with another to commit an act in §§261, 262, or 289	√	√	√
265	Abduction of woman for marriage or defilement	√		
266	Entice minor female into prostitution, etc.	√		
266a	Take person into prostitution w/o consent	√		
266b	Take person for illicit relations	√		
266c	Inducing consent of sexual act by fraud or fear	√		
266d	Receive money for cohabitation placement	√		
266e	Purchase a person to work as prostitute	√		
266f	Sell person for immoral purpose	√		
266g	Place wife in brothel	√		
266h	Pimping/pimping a minor	√		
266i	Pandering/pandering with a minor	√		
266j	Procure a child under 14 years for lewd or lascivious acts	√		
267	Abduct minor for prostitution	√		
272	Contributing to the delinquency of a minor	√ Must involve lewd and lasc. conduct		
273a	Willful cruelty to child	√		
273ab	Assault resulting in death to child under 8	√		
273d	Corporal punishment or injury to child	√		
273f	Sending minor to immoral place	√		
273g	Immoral acts before child	√		
278	Child stealing	√		
285	Incest	√		
286	Sodomy	√	√ Only as defined in 286(c) or (d)	√
286.5	Sexual assault on animal	√		
288	Lewd or lascivious acts	√	√ Only as defined in 288(a) or (b)	√ Only on a child under 14 years

Penal Code Section	Descriptions	Enumerated Crimes <sup>1</sup>	Violent Felonies <sup>2</sup>	Serious Felonies <sup>3</sup>
288.2	Harmful matter sent w/intent to seduce minor	√		
288.3	Contacts minor with the intent to commit specified Offenses	√		
288.4	Arrangement of meeting with minor for lewd/lascivious behavior	√		
288.5	Continuous sexual abuse of child under 14	√	√	√
288.7	Sexual acts with child 10 years or younger	√		
288a	Oral copulation	√	√ Only as defined in 288a(c) or (d)	√
289(a) or (j)	Forcible acts of sexual penetration		√	√ 289(a) only
422	Making criminal threats			√
424	Embezzlement by public officer	√		
425	Failure to pay public money	√		
451	Arson		√ Only 451(a) or (b)	√
459	Burglary in the first degree, as defined in 460(a)		√ <sup>5</sup>	√
484	Theft of personal property (felony only)	√		
484b	Diversion of funds (felony only)	√		
484c	Obtain money by false voucher (felony only)	√		
484e	Theft of access card (felony only)	√		
484f	Forge access card (felony only)	√		
484g	Fraudulent use of access card (felony only)	√		
484h	Access card offenses by retailer (felony only)	√		
484i	Possess access card equipment (felony only)	√		
484j	Publication of access card number w/intent to defraud (felony only)	√		
484.1	False representation to pawnbroker (felony only)	√		
485	Theft: Appropriate lost property (felony only)	√		
487	Grand theft (felony only)	√		√ only if it involves firearm
487a	Grand theft: animal carcass (felony only)	√		
487b	Grand theft: convert real property (felony only)	√		
487c	Petty theft: convert real property (felony only)	√		
487d	Grand theft: gold dust, mining equip (felony only)	√		
487e	Grand theft: dog (felony only)	√		
487f	Petty theft: dog (felony only)	√		
487g	Theft: animal for sale/research (felony only)	√		
487h	Grand theft: cargo (felony only)	√		
487i	Defrauding housing program (felony only)	√		
487j	Grand theft: copper materials (felony only)	√		
488	Petty theft (felony only)	√		
503	Embezzlement	√		
504	Embezzlement	√		
518	Extortion		√	
666	When the underlying offense is any of PC 484-488 inclusive (felony only)			

<sup>5</sup>This offense is a violent felony if “it is charged and proved that another person, other than an accomplice, was present in the residence during the commission of the burglary.” See Penal Code § 667.5(c)(21).

Penal Code Section	Descriptions	Enumerated Crimes <sup>1</sup>	Violent Felonies <sup>2</sup>	Serious Felonies <sup>3</sup>
4500	Assault w/force by a prisoner			√
4501	Assault w/deadly weapon by a prisoner			√
4503	Holding of hostages by a prisoner			√
11418(b) or (c)	Using weapons of mass destruction		√	√
12022.53	Commit felony w/use of firearm		√	√
18740	Exploding a destructive device w/intent to injure; (not applicable to possession only)			√
18745	Exploding a destructive device w/intent to murder		√	√
18750	Exploding a destructive device causing bodily inj.		√	√
18755	Exploding a destructive device causing death, mayhem, or great bodily injury		√	√
26100(c) or (d)	Discharge of firearm from vehicle			√
H&S 1105(d)(2) & (f)(1)(A); H&S 11100(a)	Providing or offering illegal drugs to minor: specifically heroin, cocaine, PCP, meth as described in H&S §1105(d)(2) or (f)(1)(A); H&S §11100(a).			√
Vehicle Code § 2800.3	Death or serious bodily inj. to any person other than an accomplice resulting from willful flight			√ <sup>4</sup>
Vehicle Code § 23104(b)	Reckless driving that causes great bodily injury to another person other than an accomplice			√ <sup>4</sup>
Vehicle Code § 23153	DUI causing great bodily injury to another person other than an accomplice		√	√ <sup>4</sup>
Various	<b>Any attempt</b> to commit an enumerated crime or a violent/serious felony. See Ed. Code §44424.	√	√	√ Not assault
Various	<b>Any conspiracy</b> to commit a serious felony			√
Various	<b>Any offense committed or attempted in any other state or against the laws of the United States</b> which, if committed or attempted in this state, would have been punished as one or more enumerated offenses, violent felonies, or serious felonies	√	√	√
Various	Any felony punishable by death or life imprisonment in the state prison		√	√
Various	Any felony where the defendant personally uses a dangerous or deadly weapon			√
Various	Any felony where the defendant personally uses a charged firearm		√	√
Various	Any felony where the defendant personally inflicts great bodily injury on a person other than an accomplice		√	√
Various	Assault w/intent to commit rape or robbery			√

**Table 2 – Sex Offenses**  
**See Education Code §§44010, 44346, and 44425.**

Penal Code Section	Descriptions	See Education Code §44010, Subdivision:
220	Assault with intent to commit rape	(a)
243.4(a)(b)(c)(d)	Sexual battery	
261	Rape	
261.5	Unlawful sexual intercourse with minor (statutory rape)	
262	Rape of spouse	
264.1	Rape in concert with another person	
266	Entice minor female for prostitution/etc.	
266j	Providing or transporting child under 16 for purpose of lewd or lascivious act	
267	Abduct minor for prostitution	
272	(On or after 9/15/61) Contributing to the delinquency of a minor (must involve lewd and lasc. conduct).	
285	Incest	(a)
286	Sodomy	(a), (g)
288	Lewd or lascivious acts with child (up to age 15)	(a)
288a	Oral copulation	(a), (g)
288.5	Continuous sexual abuse of a child	(a)
289	Forcible act of sexual penetration	(a)
290	Registration as a sex offender and for any conviction resulting in requirement to register as a sex offender	(j) Ed. Code §44425(d)
Former 311(1)	(After 9/7/55 but before 9/15/61) Formerly indecent exposure	(d)
Former 311(2)	(Before 9/15/61) Formerly procuring another's lewd exposure or thoughts	(b)
311.1	Sent or brought into state for sale or distribution; matter depicting sexual conduct by minor	(a)
311.2	Sending or bringing into state for sale or distribution; matter depicting sexual conduct by minor; transaction with minor	
311.3	Sexual exploitation of child	
311.4	Employment or use of minor to perform prohibited acts	
311.10	Advertising for sale or distribution obscene matter depicting a person under the age of 18 years engaging in or simulating sexual conduct	
311.11	Possession or control of matter depicting minor engaging or simulating sexual conduct	
313.1	Distribute harmful matter to minors	
314	(On or after 9/15/61) Indecent exposure	(c)
647(a)	Disorderly conduct: solicit lewd act	(a)
647(d)	Disorderly conduct: loiter in or about toilet for purpose of lewd conduct	
Former 647a	(Before 9/15/61) Formerly annoy/molest children	
647b	Loitering about adult schools; molesting of pupils	
Former 647(5)	(Before 9/15/61) Formerly vagrancy	
647.6	Annoy/molest children	(a)
Various	<b>Any attempt</b> to commit any of the above-mentioned offenses	(h)
Various	Any commission or attempt in another state or against the laws of the United States which, if committed in California, would have been punishable as one or more of the above-mentioned offenses.	(i) Ed. Code §44425(d)
Former Wel & Inst §702	(Prior to 9/15/61) Formerly lewd and lascivious conduct	(f)
Former Wel & Inst §6300	Commitment as a mentally disordered sex offender under former Article 1 (commencing with §6300) of Chapter 2 of Part 2 of the Welfare & Institutions Code, repealed by Chapter 928 of the Statutes of 1981.	(k)

**Table 3 – Controlled Substance Offenses  
See Education Code §§44011, 44346, and 44425.**

Health & Safety Code Section	Descriptions	See Education Code §44011, Subdivision:	
11350	Possession of designated controlled substances	(a)	
11351	Possession/purchase for sale of designated controlled substances		
11351.5	Possession of cocaine base for sale		
11352	Transportation/etc. designated controlled substances		
11352.1	Dispensing or furnishing drugs without a license		
11352.5	Sale of heroin		
11353	Adult induces/etc. minor to violate controlled substance provisions		
11353.1	Violation of 11353 by an adult on certain property; minors		
11353.4	Multiple violations of 11353 by an adult; involving minor under 14 yrs		
11353.5	Sale/etc. of controlled substance by adult on certain property; minors		
11353.6	Juvenile Drug Trafficking and Schoolyard Act: Violation of or conspiracy to commit certain controlled substance offenses; certain property; minors; enhancement of punishment.		
11353.7	Adult preparing for sale; sale or gift of controlled subst. to minor in public parks		
11354	Minor induces/etc. another minor to violate controlled substance provisions		
11355	Sale/etc. of substance in lieu of controlled substance		
11361	Employment of minor to transport/sell/etc. controlled substances		
11366	Open/maintain place to sell/etc. controlled substance		
11368	Forged or altered narcotic prescription		
11377	Possession of controlled substance		
11378	Possession of controlled substance for sale		
11378.5	Possession of phencyclidine for sale		
11379	Transportation/etc. of controlled substance		
11379.2	Possession for sale or sale of ketamine		
11379.5	Transportation/etc. of phencyclidine		
11379.6	Manufacture/etc. of controlled substances		
11379.7	Violation of specified controlled substance offenses near child under 16; specified controlled substance violations causing gbi to child under 16.		
11379.8	Violation of 11379.6(a) with specified controlled substances by quantity		
11379.9	Causing death or great bodily injury of another person; meth; phen		
11380	Use/etc. of minor by an adult to violate controlled substance provisions		(a)
11380.1	Violation of 11380 with specified controlled substances; enhancement of sentence		
11380.7	Additional penalty for trafficking near drug treatment center/homeless shelter		
11382	Sale/etc. of substance in lieu of controlled substance		
11550	Use/under the influence of controlled substance	(b)	
Various	<b>Any offense committed or attempted in any other state or against the laws of the United States</b> which, if committed or attempted in this state, would have been punished as one or more of the above-mentioned offenses.		
11500	(Former section) Unlawful possession of a controlled substance	(c)	
11500.5	(Former section) Unlawful possession of controlled substance for sale		
11501	(Former section) Unlawful transportation of controlled substance		
11502	(Former section) Inducing minor’s violation of controlled substance provisions		
11502.1	(Former section) Inducing minor’s violation of controlled substance provisions		

Health & Safety Code Section	Descriptions	See Education Code §44011, Subdivision:
11503	(Former section) Unlawful sale, transportation, etc. of controlled substance	
11557	(Former section) Operating or maintaining place for dispensing controlled substance	(c)
11715	(Former section) Forging or altering prescription	
11721	(Former section) Prohibited use or being under influence of controlled substance	
Various	<b>Any attempt</b> to commit any of the above-mentioned offenses	(d)