

---

# 6B

## Action

### *Legislative Committee*

### Bill Analysis

---

**Executive Summary:** Staff will present an analysis of AB 898 (Lee) which impacts the Commission's work. The analysis will summarize current law, describe the bill's provisions, and recommend amendments.

**Recommended Action:** Staff recommends that the Commission take an *Oppose Unless Amended* position on this bill.

**Presenter:** Sasha Horwitz, Government Relations & Public Affairs Manager,  
Administrative Services Division

### Strategic Plan Goal

#### ***III. Communication and Engagement***

- e) Advise the Governor, Legislature, and other policy makers regarding issues affecting the quality, preparation, certification, and discipline of the education workforce.

---

---

## Bill Analysis

---

---

### [AB 898 \(Lee\) - Criminal records: automatic conviction record relief](#)

**Introduced:** February 17, 2021

**Last Amended:** April 5, 2021

**Status:** Passed Senate Public Safety (5-0)

**Sponsor:** California Public Defenders Association

#### **Summary**

AB 898 requires the Department of Justice (DOJ) to electronically submit notice of conviction record relief to both the transferring court and any subsequent receiving court in cases where probation has been transferred from one county to another. The bill prohibits any disclosure of these records, except to the person whose conviction was granted relief or a criminal justice agency. This prohibition applies to the Commission.

#### **Background**

The Commission has a statutorily mandated duty to determine if an applicant for a teaching credential has been convicted of crimes that bar entry into the teaching profession. The Commission is also required to review all convictions regardless of relief to determine whether an applicant or credential holder is fit to hold a license to serve California schoolchildren.

The relevant Education Code (EC) sections establishing the Commission's authority are as follows:

- EC sections 44424, 44425, 44346.1 identify the "mandatory" crimes, which prohibit an individual from obtaining a license in all cases.
- EC sections 44008 and 44009 indicate that relief pursuant to Penal Code section 1203.4 and receipt of a Certificate of Rehabilitation do not have any effect on the Commission's statutory authority requiring a fitness review.
- EC section 44012 provides that any record of conviction is admissible, any provision of law to the contrary notwithstanding.
- EC section 44010 defines sex offenses and EC section 44011 defines controlled substance offenses.
- EC sections 44345, 44346, and 44421 establish the grounds for adverse actions.
- EC section 44242.5 mandates the Committee of Credentials to review *each* act or omission by a credential applicant or credential holder and sets forth the Committee's jurisdictional grounds, which includes all convictions.

In 2020, California established an automatic relief process requiring the DOJ to review its criminal justice databases on a weekly basis. The DOJ must identify persons who are eligible for relief and withhold their arrest records or criminal conviction records from disclosure and grant

relief to an eligible person without requiring a petition or motion to be filed on the person's behalf.

In analyzing the new automatic process, the Commission has identified provisions that conflict with its existing mandate to review all criminal offenses including cases where relief was granted. In 2020, the State amended Penal Code section 11105 to address an unintended conflict caused by the new measure. Additionally, Assemblymember Reyes, who carried a related bill, included amendments to avoid creating a new conflict with the Commission's existing mandate.

Staff continues to work with Legislators and other stakeholders to ensure the automatic record relief process and related legislation does not prevent the Commission from accessing information necessary to exercise its responsibility to review every applicant and license holder for professional fitness for licensure.

### **Analysis**

If enacted, AB 898 will prohibit a superior court from disseminating records to the Commission where a conviction has been dismissed pursuant to 1203.4 et seq. Without the ability to access conviction information, the Commission cannot fulfill its legal duty to evaluate whether prospective or current educators with convictions are fit to serve in the public schools. Misdemeanor offenses such as the following must be reviewed in all cases:

- Annoying or Molesting a Child
- Possession of Child Pornography
- Sexual Battery
- Misdemeanor DUI with injury
- Vehicular Manslaughter with alcohol but without gross negligence

Additionally, because so many criminal cases are pleaded down from more serious charges in order to get a conviction, it is vital that the Commission have access to the actual court records to determine whether the individual in question is fit to be licensed to work with children. The Commission's review of educator fitness is based on the underlying facts of each offense, not just the criminal conviction itself. Moreover, the Commission will still be mandated to investigate these cases to determine fitness, but without court records of prior convictions it will be much more difficult to do so.

### **Proposed Amendments**

Staff recommends that the Commission take an *Oppose Unless Amended* position on the measure unless clarifying amendments are added to ensure that the Commission is able to review superior court records (which contain proof of conviction that is relevant to educator licensure, regardless of 1203.4 et al. relief) in making determinations of an educator's professional fitness for licensure.

Penal Code 1203.425 is amended to read:

[...]

(a) (3) (A) Commencing July 1, 2022, and subject to an appropriation in the annual Budget Act, on a monthly basis, the department shall electronically submit a notice to the superior court having jurisdiction over the criminal case, informing the court of all cases for which a complaint was filed in that jurisdiction and for which relief was granted pursuant to this section. Commencing on August 1, 2022, for any record retained by the court pursuant to Section 68152 of the Government Code, except as provided in paragraph (4), the court shall not disclose information concerning a conviction granted relief pursuant to this section or Section 1203.4, 1203.4a, 1203.41, or 1203.42, to any person or entity, in any format, except to the person whose conviction was granted relief or a criminal justice agency, as defined in Section 851.92, **or the Commission on Teacher Credentialing.**

(B) If probation is transferred pursuant to Section 1203.9, the department shall electronically submit a notice as provided in subparagraph (A) to both the transferring court and any subsequent receiving court. The electronic notice shall be in a mutually agreed upon format.

(C) If a receiving court reduces a felony to a misdemeanor pursuant to subdivision (b) of Section 17, or dismisses a conviction pursuant to law, including, but not limited to, Section 1203.4, 1203.4a, 1203.41, 1203.42, 1203.43, or 1203.49, it shall furnish a disposition report to the department with the original case number and CII number from the transferring court. The department shall electronically submit a notice to the superior court that sentenced the defendant. If probation is transferred multiple times, the department shall electronically submit a notice to all other involved courts. The electronic notice shall be in a mutually agreed upon format.

(D) If a court receives notification from the department pursuant to subparagraph (B), the court shall update its records to reflect the reduction or dismissal. If a court receives notification that a case was dismissed pursuant to this section or Section 1203.4, 1203.4a, 1203.41, or 1203.42, the court shall update its records to reflect the dismissal and shall not disclose information concerning a conviction granted relief to any person or entity, in any format, except to the person whose conviction was granted relief or a criminal justice agency, as defined in Section 851.92, **or the Commission on Teacher Credentialing.**

[...]

#### **Prior Legislation**

[AB 1076 \(Ting, 2018\) Criminal records: automatic relief](#) created new procedures for automatic expungement of certain criminal history records and created Penal Code section 1203.425.

[SB 118 \(Committee on Budget and Fiscal Review, 2020\) Public Safety](#) included cleanup language to Penal Code section 11105 ensuring that the Commission continues to have access to conviction information regardless of expungement relief.

[AB 2147 \(Reyes, 2020\) Convictions: expungement: incarcerated individual hand crews](#) included language clarifying that applicants for licensure by the Commission who received expungement relief after having served in the California Conservation Camp Program (inmate firefighters) must continue to disclose criminal history to the Commission.

### **Reason for Suggested Position**

Without the requested amendment, the Commission will be prohibited from obtaining records from a Superior Court, records that are required to investigate all applicants or credential holders with convictions as to their fitness for licensure. The Commission will still be mandated to review all convictions of an applicant or holder, but without access to those records, the Commission will likely fail to carry out its statutory mandate.