

Introduced by Senator Margett
(Principal coauthor: Assembly Member Spitzer)

January 15, 2008

An act to amend Sections 44009, 44242.5, 44424, and 44425 of the Education Code, relating to teacher credentialing.

LEGISLATIVE COUNSEL'S DIGEST

SB 1105, as introduced, Margett. Teacher credentialing: criminal convictions.

(1) Under existing law, upon a plea of nolo contendere to a misdemeanor charge for violation, or attempted violation, of a violent or serious felony, or other specified offenses, all credentials held by the person that have been issued by the State Board of Education or the Commission on Teacher Credentialing are suspended until a final disposition regarding those credentials is made by the Commission on Teacher Credentialing. Any action that the commission is permitted to take following a conviction may be taken after the judgment is final, as specified.

This bill would delete those provisions.

(2) Under existing law, upon a plea of nolo contendere to a sex offense, as specified, all credentials held by the person that have been issued by the State Board of Education or the Commission on Teacher Credentialing are suspended until a final disposition regarding those credentials is made by the Commission on Teacher Credentialing. Any action that the commission is permitted to take following a conviction may be taken after the judgment is final, as specified.

This bill would delete those provisions.

(3) Under existing law, a plea or verdict of guilty by a court is deemed to be a conviction for purposes of provisions of law that require the

Commission on Teacher Credentialing and the county board of education to suspend a credential issued by the State Board of Education or the commission whenever the holder has been convicted of any sex offense or controlled substance offense. 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 suspension of the credential will be terminated. When the conviction becomes final or when imposition of sentence is suspended, the credential will be revoked.

This bill would expand these provisions to include a plea or verdict of guilty by a court and a conviction following a plea of nolo contendere as a conviction for purposes of provisions of law that require the Commission on Teacher Credentialing and the county board of education to suspend, terminate the suspension of, or revoke a credential whenever the holder has been convicted of any sex offense or controlled substance offense. This definition of “conviction” would also apply to other provisions concerning the procedure to be used by the Committee on Credentials upon receipt of allegations of conduct by an applicant for, or holder of, a credential, affecting the right to a credential, and grounds for the Commission on Teacher Credentialing to deny an application for the issuance of a credential or an application for the renewal of a credential.

(4) Under existing law, 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. Upon completion of an investigation, if adverse action is recommended to the Commission on Teacher Credentialing, the findings of the committee are available upon request within one year from the date that the committee makes its recommendation to a school district providing verification that the credential holder has applied for employment in the district.

This bill would delete the requirement that the request for the findings by a school district providing verification that the credential holder has applied for employment in the district must be made within one year from the date that the committee makes its recommendation.

(5) Because this bill would increase the duties of local officials, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

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

1 SECTION 1. Section 44009 of the Education Code is amended
2 to read:

3 44009. (a) A plea or verdict of guilty or finding of guilt by a
4 court in a trial without a jury, *or a conviction following a plea of*
5 *nolo contendere* is deemed to be a conviction within the meaning
6 of Sections 44242.5, 44345, 44346, 44346.1, 44424, 44425, and
7 44436, irrespective of a subsequent order for probation suspending
8 the imposition of a sentence or an order under Section 1203.4 of
9 the Penal Code allowing the withdrawal of the plea of guilty and
10 entering a plea of not guilty, or setting aside the verdict of guilty,
11 or dismissing the accusations or information. ~~The~~

12 (b) The record of a narcotics offense, as defined in Section
13 44011, shall be sufficient proof of conviction of a crime involving
14 moral turpitude for the purposes of Sections ~~44892~~, 44907; and
15 44923, and Sections 44932 to 44947, inclusive, relating to the
16 dismissal of permanent employees.

17 ~~(b)~~

18 (c) A plea or verdict of guilty, or finding of guilt by a court in
19 a trial without a jury, or a conviction following a plea of nolo
20 contendere is deemed to be a conviction within the meaning of
21 Section 44836 and 45123, irrespective of a subsequent order for
22 probation suspending the imposition of a sentence or an order
23 under Section 12033.4 of the Penal Code allowing the withdrawal
24 of the plea of guilty and entering a plea of not guilty, or setting
25 aside the verdict of guilty, or dismissing the accusations or
26 information. The record of conviction shall be sufficient proof of
27 conviction of a crime involving moral turpitude for the purposes
28 of Sections ~~44892~~, Section 44907; and Sections 44932 to 44947,
29 inclusive, relating to the dismissal of permanent employees.

30 SEC. 2. Section 44242.5 of the Education Code is amended to
31 read:

1 44242.5. (a) Each allegation of an act or omission by an
2 applicant for, or holder of, a credential for which he or she may
3 be subject to an adverse action shall be presented to the Committee
4 of Credentials.

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

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

10 (B) For purposes of paragraph (A), “agency of this state” has
11 the same meaning as that of “state agency” as set forth in Section
12 11000 of the Government Code.

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

15 (3) (A) A statement from an employer notifying the commission
16 that, as a result of, or while an allegation of misconduct is pending,
17 a credential holder has been dismissed, nonreelected, suspended
18 for more than 10 days, or placed pursuant to a final adverse
19 employment action on unpaid administrative leave for more than
20 10 days, or has resigned or otherwise left employment.

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

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

34 (5) A notice from a school district, employer, public agency, or
35 testing administrator of a violation of Section 44420, 44421.1,
36 44421.5, or 44439.

37 (6) (A) An affirmative response on ~~any an~~ application submitted
38 to the commission as to any conviction, adverse action on, or denial
39 of, ~~any a~~ license, or pending investigation into ~~any a~~ criminal

1 allegation or pending investigation of ~~any~~ a noncriminal allegation
2 of misconduct by a governmental licensing entity.

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

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

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

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

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

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

29 (B) If the committee determines that probable cause for an
30 adverse action on the credential exists, upon receipt of a request
31 from an applicant or a credential holder pursuant to Section
32 44244.1, the commission shall initiate an adjudicatory hearing, as
33 prescribed by Chapter 5 (commencing with Section 11500) of
34 Division 3 of Title 2 of the Government Code, by filing an
35 accusation or statement of issues.

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

38 (1) (A) Official records of ~~any~~ a state or federal court that
39 reflect a conviction or plea, including a plea of nolo contendere,
40 to ~~any~~ a criminal offense or official records of ~~any~~ a state court

1 that adjudge a juvenile to be a dependent of the court pursuant to
2 Section 300 of the Welfare and Institutions Code due to allegations
3 of sexual misconduct or physical abuse by a credential holder or
4 applicant.

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

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

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

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

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

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

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

23 (2) The findings shall be available, upon its request, to the
24 employing or last known employing school district, or, where
25 adverse action is recommended by the committee and a request is
26 ~~made within one year from the date the committee makes a~~
27 ~~recommendation, to~~ by a school district providing verification that
28 the credential holder has applied for employment in the district.
29 The findings ~~shall~~, for all purposes, *shall* remain confidential and
30 limited to school district personnel in a direct supervisory capacity
31 in relation to the person investigated. Any person who otherwise
32 releases findings received from the committee or the commission,
33 absent a verified release signed by the person who is the subject
34 of the investigation, shall be guilty of a misdemeanor.

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

38 (f) (1) Except as provided in paragraph (2) and, notwithstanding
39 subdivision (b), for purposes of determining whether jurisdiction
40 exists under subdivision (b), the commission ~~may~~, in accordance

1 with Section 44341, *may* make inquiries and requests for
2 production of information and records only from the Department
3 of Justice, ~~any~~ a law enforcement agency, ~~any~~ a state or federal
4 court, and ~~any~~ a licensing agency of this state or ~~any~~ a licensing
5 agency of another state.

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

8 SEC. 3. Section 44424 of the Education Code is amended to
9 read:

10 44424. (a) Upon the conviction of the holder of any credential
11 issued by the State Board of Education or the Commission on
12 Teacher Credentialing of a violation, or attempted violation, of a
13 violent or serious felony as described in Section 44346.1, or any
14 one or more of Penal Code Sections 187 to 191, inclusive, 192
15 insofar as this section relates to voluntary manslaughter, 193, 194
16 to 217.1, inclusive, 220, 222, 244, 245, 261 to 267, inclusive, 273a,
17 273ab, 273d, 273f, 273g, 278, 285 to 288a, inclusive, 424, 425,
18 484 to 488, inclusive, insofar as these sections relate to felony
19 convictions, 503 and 504, or of ~~any~~ an offense involving lewd and
20 lascivious conduct under Section 272 of the Penal Code, or ~~any~~
21 an offense committed or attempted in any other state or against
22 the laws of the United States which, if committed or attempted in
23 this state, would have been punished as one or more of the offenses
24 specified in this section, becoming final, the commission shall
25 forthwith revoke the credential.

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

37 ~~(c)~~

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

1 ~~(d)~~

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

8 SEC. 4. Section 44425 of the Education Code is amended to
9 read:

10 44425. (a) Whenever the holder of ~~any~~ a credential issued by
11 the ~~State Board of Education~~ *state board* or the Commission on
12 Teacher Credentialing has been convicted of ~~any~~ a sex offense, as
13 defined in Section 44010, or controlled substance offense, as
14 defined in Section 44011, the commission *immediately* shall
15 ~~forthwith~~ suspend the credential. If the conviction is reversed and
16 the holder is acquitted of the offense in a new trial or the charges
17 against him or her are dismissed, the commission *immediately*
18 shall ~~forthwith~~ terminate the suspension of the credential. When
19 the conviction becomes final or when imposition of sentence is
20 suspended, the commission *immediately* shall ~~forthwith~~ revoke
21 the credential.

22 (b) Notwithstanding any other law, revocation shall be final
23 without possibility of reinstatement of the credential if the
24 conviction is for a felony sex offense, as defined in Section 44010,
25 or a felony controlled substance offense, as defined in Section
26 44011, in which an element of the controlled substance offense is
27 either the distribution to, or use of a controlled substance by, a
28 minor.

29 ~~(c) Upon a plea of nolo contendere to any sex offense specified~~
30 ~~in Section 44010, which plea does not constitute a conviction~~
31 ~~pursuant to Section 1016 of the Penal Code, all credentials held~~
32 ~~by the respondent shall be suspended until a final disposition~~
33 ~~regarding those credentials is made by the commission. Any action~~
34 ~~that the commission is permitted to take following a conviction~~
35 ~~may be taken after the time for appeal has elapsed, or the judgment~~
36 ~~of conviction has been affirmed on appeal, or when an order~~
37 ~~granting probation is made suspending the imposition of sentence~~
38 ~~and the time for appeal has elapsed or the judgment of conviction~~
39 ~~has been affirmed on appeal, irrespective of a subsequent order~~
40 ~~under Section 1203.4 of the Penal Code.~~

~~(d)~~

(c) (1) Notwithstanding any other provision of law, the commission ~~shall~~ 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 ~~shall~~ 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.

SEC. 5. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.