

AMENDED IN ASSEMBLY MAY 2, 1996  
AMENDED IN ASSEMBLY MARCH 27, 1996

CALIFORNIA LEGISLATURE—1995-96 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2738**

**Introduced by Assembly Member Kevin Murray**

February 22, 1996

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An act to amend Section 44237 of, and to add Section 44020 to, the Education Code, relating to private school employees.

LEGISLATIVE COUNSEL'S DIGEST

AB 2738, as amended, K. Murray. Private school employees.

Existing law prohibits the provisions related to the requirement that every person, firm, association, partnership, or corporation offering or conducting private school instruction on the elementary or high school level require each new employee having contact with minor pupils and not possessing a valid California state teaching credential, or not currently licensed by another state agency that requires a criminal record summary, to submit 2 sets of fingerprints to the Department of Justice for the purpose of obtaining a criminal record summary from the department and the Federal Bureau of Investigation, from being construed to prohibit the employment of any person based upon his or her criminal record.

This bill would ~~delete this prohibition. The bill would~~ require every person, firm, association, partnership, or

corporation offering or conducting private school instruction on the elementary or high school level to notify, in writing, the parents or guardians who reside with each pupil of that school whenever that school hires an employee who, in the course of his or her employment, will come in contact with minor pupils and who has been convicted of a sex offense, as defined, ~~or a controlled substance offense, as defined.~~

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

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

1 SECTION 1. Section 44020 is added to the Education  
2 Code, to read:

3 44020. Every person, firm, association, partnership, or  
4 corporation offering or conducting private school  
5 instruction on the elementary or high school level shall  
6 notify, in writing, the parents or guardians who reside  
7 with each pupil of that school whenever that school hires  
8 an employee who, in the course of his or her employment,  
9 will come in contact with minor pupils and who has been  
10 convicted of a sex offense, as defined in Section 44010, ~~or~~  
11 ~~a controlled substance offense, as defined in Section~~  
12 ~~44011.~~

13 SEC. 2. Section 44237 of the Education Code is  
14 amended to read:

15 44237. (a) Commencing October 1, 1985, every  
16 person, firm, association, partnership, or corporation  
17 offering or conducting private school instruction on the  
18 elementary or high school level shall require each new  
19 employee having contact with minor pupils and not  
20 possessing a valid California state teaching credential, or  
21 not currently licensed by another state agency that  
22 requires a criminal record summary, to submit on or  
23 before the first day of his or her employment, two sets of  
24 fingerprints to the Department of Justice for the purpose  
25 of obtaining a criminal record summary from the  
26 Department of Justice and the Federal Bureau of  
27 Investigation. This requirement is a condition of  
28 employment. It is the intent of the Legislature under this



1 section to assist in the employment decision. *This section*  
2 *shall not be construed, however, to prohibit the*  
3 *employment of any person based upon his or her criminal*  
4 *record.*

5 (b) The Department of Justice shall furnish a criminal  
6 record summary to the employer designated by a new  
7 employee submitting fingerprints pursuant to  
8 subdivision (a). The criminal record summary shall  
9 contain only arrests resulting in a conviction and arrests  
10 pending final adjudication. The criminal record summary  
11 furnished to the employer shall be maintained by the  
12 employer in a secured file separate from personnel files,  
13 and shall be maintained in accordance with regulations  
14 for Criminal Offender Record Information Security as  
15 specified in Subchapter 7 (commencing with Section  
16 700) of Chapter 1 of Title 11 of the California  
17 Administrative Code.

18 (c) The Department of Justice shall review the  
19 criminal record summary it obtains from the Federal  
20 Bureau of Investigation to ascertain whether or not a new  
21 employee has a conviction record or an arrest pending  
22 final adjudication for any sex offense, controlled  
23 substance offense, or crime of violence. The Department  
24 of Justice shall provide written notification to the private  
25 school employer only as to whether or not a new  
26 employee has any convictions or arrests pending final  
27 adjudication for any of those crimes, but shall not provide  
28 information identifying any offense for which an  
29 employee was convicted or arrested.

30 (d) The employer may request subsequent arrest  
31 service from the Department of Justice as is provided  
32 under Section 11105.2 of the Penal Code.

33 (e) As used in this section, the following terms shall  
34 have the following definitions:

35 (1) "Crime of violence" means a conviction for any of  
36 the offenses specified in subdivision (c) of Section 667.5  
37 of the Penal Code, or a violation or attempted violation  
38 of Chapter 8 (commencing with Section 236) or Chapter  
39 9 (commencing with Section 240) of Title 8 of Part 1 of the  
40 Penal Code.



1 An out-of-state conviction for any violation or  
2 attempted violation of any crime prescribed in this  
3 paragraph shall also be deemed a crime of violence.

4 (2) “Controlled substance offense” means a felony  
5 conviction for a violation or attempted violation of  
6 Division 10 (commencing with Section 11000) of the  
7 Health and Safety Code.

8 An out-of-state conviction for any violation or  
9 attempted violation of any crime prescribed in this  
10 paragraph shall also be deemed a crime of violence.

11 (3) “Employer” means every person, firm, association,  
12 partnership, or corporation offering or conducting  
13 private school instruction on the elementary or high  
14 school level.

15 (4) “New employee” means any person hired to work  
16 in a private school on or after July 1, 1985, on a regular,  
17 paid full-time, or regular, paid part-time, basis who will  
18 have contact with minor pupils.

19 (5) “Sex offense” means a conviction for any violation  
20 or attempted violation of Section 220, 261, 261.5, 264, 266,  
21 266j, 267, 273a, 273d, 285, 286, 288, 289, 311.2, 311.3, 311.4,  
22 313.1, 314, 647b, or 647d of the Penal Code, or former  
23 Section 647a of the Penal Code, or commitment as a  
24 mentally disordered sex offender under former Article 1  
25 (commencing with Section 6300) of Chapter 2 of Part 2  
26 of the Welfare and Institutions Code as repealed by  
27 Chapter 928 of the Statutes of 1981.

28 An out-of-state conviction for any violation or  
29 attempted violation of any crime prescribed in this  
30 paragraph shall also be deemed a sex offense.

31 (f) Any new employee who wishes to have his or her  
32 employer consider information relevant to his or her  
33 criminal record, such as evidence of rehabilitation, shall  
34 be responsible for submitting these facts or  
35 documentation to his or her employer.

36 (g) The Commission on Teacher Credentialing shall  
37 send on a monthly basis to each private school a list of all  
38 teachers who have had their state teaching credential  
39 revoked or suspended. The list shall be identical to the list  
40 compiled for public schools in the state. The commission



1 shall also send on a quarterly basis a complete and  
2 updated list of all teachers who have had their teaching  
3 credentials revoked or suspended, excluding teachers  
4 who have had their credentials reinstated, or who are  
5 deceased.

6 (h) The Department of Justice may charge each  
7 applicant for a criminal record summary a reasonable fee  
8 to cover costs associated with the processing, reviewing,  
9 and supplying of the criminal record summary as  
10 required by this section. In no event, shall the fee exceed  
11 the actual costs incurred by the department.

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