

AMENDED IN SENATE SEPTEMBER 5, 1997

AMENDED IN SENATE JULY 18, 1997

AMENDED IN SENATE JULY 7, 1997

AMENDED IN SENATE JUNE 25, 1997

AMENDED IN SENATE JUNE 18, 1997

AMENDED IN ASSEMBLY MAY 29, 1997

CALIFORNIA LEGISLATURE—1997–98 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1612**

---

---

**Introduced by Assembly Members Alby and Ortiz**

**(Coauthors: Assembly Members Ackerman, Aguiar, Alquist, Aroner, Ashburn, Baca, Baldwin, Battin, Baugh, Bordonaro, Bowler, Brewer, Brown, Bustamante, Campbell, Cardenas, Cardoza, Cunneen, Davis, Ducheny, Escutia, Figueroa, Firestone, Frusetta, Gallegos, Goldsmith, Granlund, Havice, Honda, House, Kaloogian, Keeley, Knox, Kuehl, Kuykendall, Leach, Lempert, Leonard, Machado, Martinez, Mazzoni, Migden, Miller, Morrissey, Morrow, Napolitano, Olberg, Oller, Pacheco, Papan, Perata, Poochigian, Prenter, Pringle, Richter, Runner, Scott, Shelley, Strom-Martin, Sweeney, Takasugi, Thomson, Torlakson, Villaraigosa, Vincent, Washington, Wayne, Wildman, and Woods)**

**(Coauthors: Senators Alpert, Calderon, Costa, Dills, Greene, Hayden, Haynes, Hughes, Karnette, Kelley, Knight, Leslie, McPherson, Monteith, O'Connell, and Rainey)**

May 22, 1997

---

---

An act to add Sections 44332.6, 44346.1, 44830.1, and 45122.1 to the Education Code, relating to school employees, ~~making an appropriation therefor~~, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 1612, as amended, Alby. School employees.

(1) Existing law authorizes a county or city and county board of education to issue temporary certificates, valid for not more than one calendar year, for the purpose of authorizing salary payments to certified employees whose teaching credential applications are being processed or to personnel employed in children's centers or other preschool educational programs whose permit applications are being processed. Existing law also authorizes the issuance of a temporary certificate of clearance, as specified.

This bill would require a county or city and county board of education to obtain a criminal record summary about the applicant from the Department of Justice before issuing a temporary certificate and would prohibit the issuance of a temporary certificate if the applicant has been convicted of a violent or serious felony, as defined. The bill would also require a school district to obtain a criminal record summary about the applicant from the Department of Justice before issuing a temporary certificate of clearance and would prohibit the issuance of a temporary certificate of clearance if the applicant has been convicted of a violent or serious felony, as defined.

(2) Existing law requires the Commission on Teacher Credentialing to deny an application for the issuance of a credential or for the renewal of a credential made by an applicant who has been determined to be a sexual psychopath, as specified, has been convicted of any sex offense, as defined, has been convicted of any controlled substance offense, as defined, or has been found to be insane through a criminal proceeding, as specified.

This bill would require the commission to deny any application for the issuance of a credential made by an applicant who has been convicted of a violent or serious



felony, as defined, and to revoke any credential issued to a person whose employment has been terminated by a school district because the person has been convicted of a violent or serious felony, as defined.

(3) Existing law requires the governing board of a school district to require each person to be employed, or employed, in a position not requiring certification qualifications to have fingerprint cards prepared by a local public law enforcement agency, requires that agency to transmit the cards to the Department of Justice, and requires the Department of Justice to ascertain whether the applicant or employee has been arrested or convicted of any crime and to furnish all information of which it has a record and which pertains to the person whose fingerprints were transmitted. Existing law authorizes the exemption from these provisions of substitute and temporary employees, employed for less than a school year.

Existing law requires the Commission on Teacher Credentialing to adopt rules and regulations requiring every applicant for a credential or the renewal of a credential to submit reasonable evidence of identification and good moral character. The adopted rules and regulations are required to include, among other things, the offenses that constitute grounds for the mandatory denial or revocation of a credential. Existing law requires each applicant for a teaching credential or the renewal of a teaching credential to submit with his or her application duplicate personal identification cards with his or her fingerprints. Existing law authorizes the Commission on Teacher Credentialing to require the production of information, records, reports, and other data from any public agency.

This bill would prohibit, as specified, school districts, as defined to also include county offices of education and the state special schools, from employing any individual, whether in a certificated or classified position, who has been convicted of a violent or serious felony, as defined. The bill would prohibit, as specified, a school district from retaining in employment a current certificated or classified employee who has been convicted of a violent or serious felony, and who is a temporary, substitute, or probationary employee, as



specified. The bill would also apply this prohibition to charter schools. The bill would require the Department of Justice to directly notify the school district, as specified, when an individual who is an applicant for employment, regarding the criminal information of the applicant. The bill would require the Department of Justice to forward a copy of that information to the Commission on Teacher Credentialing when the individual is an applicant for a position requiring certification qualifications. To the extent these provisions would operate to impose new duties on local education entities, this bill would impose a state-mandated local program.

~~(4) The bill would appropriate \$5,000,000 from the General Fund to the Department of Justice for the purposes of implementing an electronic fingerprinting system with terminals located statewide, as specified, and managed through the Department of Justice. The bill would require the Department of Justice to implement and manage an electronic fingerprinting system with terminals located statewide upon an appropriation by the Legislature for that purpose. The bill would specify that terminals may be provided to state agencies and local governments that are authorized statutorily to receive confidential criminal history information. The bill would require the Department of Justice to develop guidelines for the purpose of approving applications submitted by state agencies and local governments for the receipt of a terminal. The bill would require the Department of Justice to report, as specified, to the Legislature on the status of implementing the provisions of this act.~~

(5) This bill would provide that it will become operative only if AB 1610 of the 1997–98 Regular Session is enacted.

(6) 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, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.



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.

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

Vote: <sup>2</sup>/<sub>3</sub>. Appropriation: **yes** *no*. Fiscal committee: **yes**. State-mandated local program: **yes**.

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

1 SECTION 1. Section 44332.6 is added to the  
2 Education Code, to read:

3 44332.6. (a) (1) Before issuing a temporary  
4 certificate pursuant to Section 44332, a county or city and  
5 county board of education shall obtain a criminal record  
6 summary about the applicant from the Department of  
7 Justice and shall not issue a temporary certificate if the  
8 applicant has been convicted of a violent or serious  
9 felony.

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

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

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

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



1 SEC. 2. Section 44346.1 is added to the Education  
2 Code, to read:

3 44346.1. (a) The commission shall deny any  
4 application for the issuance of a credential made by an  
5 applicant who has been convicted of a violent or serious  
6 felony and shall revoke any credential issued to a person  
7 whose employment has been denied employment or  
8 terminated pursuant to Section 44830.1.

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

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

16 (d) Notwithstanding subdivision (a), a person shall  
17 not be denied a credential nor shall a credential be  
18 revoked solely on the basis that the applicant or holder  
19 has been convicted of a violent or serious felony if the  
20 person has obtained a certificate of rehabilitation and  
21 pardon pursuant to Chapter 3.5 (commencing with  
22 Section 4852.01) of Title 6 of Part 3 of the Penal Code.

23 SEC. 3. Section 44830.1 is added to the Education  
24 Code, to read:

25 44830.1. (a) In addition to any other prohibition or  
26 provision, no person who has been convicted of a violent  
27 or serious felony shall be employed by a school district in  
28 a position requiring certification qualifications or  
29 supervising positions requiring certification  
30 qualifications. A school district shall not retain in  
31 employment a current certificated employee who has  
32 been convicted of a violent or serious felony, and who is  
33 a temporary employee, a substitute employee, or a  
34 probationary employee serving before March 15 of the  
35 employee's second probationary year.

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

39 (c) (1) For purposes of this section, a violent felony is  
40 any felony listed in subdivision (c) of Section 667.5 of the



1 Penal Code and a serious felony is any felony listed in  
2 subdivision (c) of Section 1192.7 of the Penal Code.

3 (2) For purposes of this section, the term “school  
4 district” has the same meaning as defined in Section  
5 41302.5.

6 (d) When the Department of Justice ascertains that an  
7 individual who is an applicant for employment by a school  
8 district has been convicted of a violent or serious felony,  
9 the department shall notify the school district of the  
10 criminal information pertaining to the applicant. The  
11 notification shall be delivered by telephone and shall be  
12 confirmed in writing and delivered to the school district  
13 by first-class mail. The Department of Justice also shall  
14 send by first-class mail a copy of the criminal information  
15 to the Commission on Teacher Credentialing.

16 (e) Notwithstanding subdivision (a), a person shall not  
17 be denied employment or terminated from employment  
18 solely on the basis that the person has been convicted of  
19 a violent or serious felony if the person has obtained a  
20 certificate of rehabilitation and pardon pursuant to  
21 Chapter 3.5 (commencing with Section 4852.01) of Title  
22 6 of Part 3 of the Penal Code.

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

34 (g) Notwithstanding any other provision of law, when  
35 the Department of Justice notifies a school district by  
36 telephone that a current temporary employee, substitute  
37 employee, or probationary employee serving before  
38 March 15 of the employee’s second probationary year, has  
39 been convicted of a violent or serious felony, that  
40 employee shall immediately be placed on leave without



1 pay. When the school district receives written  
2 notification of the fact of conviction from the  
3 Department of Justice, the employee shall be terminated  
4 automatically and without regard to any other procedure  
5 for termination specified in this code or school district  
6 procedures unless the employee challenges the record of  
7 the Department of Justice and the Department of Justice  
8 withdraws in writing its notification to the school district.  
9 Upon receipt of written withdrawal of notification from  
10 the Department of Justice, the employee shall  
11 immediately be reinstated with full restoration of salary  
12 and benefits for the period of time from the suspension  
13 without pay to the reinstatement.

14 (h) Notwithstanding Section 47610, this section  
15 applies to a charter school.

16 SEC. 4. Section 45122.1 is added to the Education  
17 Code, to read:

18 45122.1. (a) In addition to any other prohibition or  
19 provision, no person who has been convicted of a violent  
20 or serious felony shall be employed by a school district  
21 pursuant to this chapter. A school district shall not retain  
22 in employment a current classified employee who has  
23 been convicted of a violent or serious felony, and who is  
24 a temporary, substitute, or a probationary employee who  
25 has not attained permanent status.

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

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

33 (2) For purposes of this section, the term “school  
34 district” has the same meaning as defined in Section  
35 41302.5.

36 (d) When the Department of Justice ascertains that an  
37 individual who is an applicant for employment by a school  
38 district has been convicted of a violent or serious felony,  
39 the department shall notify the school district of the  
40 criminal information pertaining to the applicant. The



1 notification shall be delivered by telephone and shall be  
2 confirmed in writing and delivered to the school district  
3 by first-class mail.

4 (e) Notwithstanding subdivision (a), a person shall not  
5 be denied employment or terminated from employment  
6 solely on the basis that the person has been convicted of  
7 a violent or serious felony if the person has obtained a  
8 certificate of rehabilitation and pardon pursuant to  
9 Chapter 3.5 (commencing with Section 4852.01) of Title  
10 6 of Part 3 of the Penal Code.

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

22 (g) Notwithstanding any other provision of law, when  
23 the Department of Justice notifies a school district by  
24 telephone that a current temporary, substitute, or  
25 probationary employee who has not attained permanent  
26 status, has been convicted of a violent or serious felony,  
27 that employee shall immediately be placed on leave  
28 without pay. When the school district receives written  
29 notification of the fact of conviction from the  
30 Department of Justice, the employee shall be terminated  
31 automatically and without regard to any other procedure  
32 for termination specified in this code or school district  
33 procedures unless the employee challenges the record of  
34 the Department of Justice and the Department of Justice  
35 withdraws in writing its notification to the school district.  
36 Upon receipt of written withdrawal of notification from  
37 the Department of Justice, the employee shall  
38 immediately be reinstated with full restoration of salary  
39 and benefits for the period of time from the suspension  
40 without pay to the reinstatement.



1 (h) Notwithstanding Section 47610, this section  
2 applies to a charter school.

3 ~~SEC. 5. The sum of five million dollars (\$5,000,000) is~~  
4 ~~hereby appropriated from the General Fund to the~~  
5 ~~Department of Justice for the purposes of implementing~~  
6 ~~an electronic fingerprinting system with terminals~~  
7 ~~located statewide and managed by the Department of~~  
8 ~~Justice. The statewide terminals shall be used to facilitate~~  
9 ~~electronic fingerprinting of all individuals required by~~  
10 ~~law to obtain a criminal history background check as a~~  
11 ~~condition of employment, licensing, or certification. One~~  
12 ~~terminal shall be located in the district office of each of~~  
13 ~~the three school districts that have both the largest~~  
14 ~~average daily attendance and a school district police~~  
15 ~~department.~~

16 *SEC. 5. (a) Upon an appropriation by the*  
17 *Legislature for the purposes of this section, the*  
18 *Department of Justice shall implement and manage an*  
19 *electronic fingerprinting system with terminals located*  
20 *statewide. The statewide terminals shall be used to*  
21 *facilitate electronic fingerprinting of all individuals*  
22 *required by law to obtain a criminal history background*  
23 *check as a condition of employment, licensing, or*  
24 *certification.*

25 *(b) Of any amount appropriated by the Legislature*  
26 *prior to January 1, 1998, for the purposes of this section,*  
27 *one million dollars (\$1,000,000) shall be utilized for the*  
28 *purchase of the equipment, including printers and the*  
29 *necessary software, to provide eligible employers with*  
30 *the capability of electronically receiving the results of*  
31 *criminal history background checks from the*  
32 *Department of Justice. If the amount appropriated is less*  
33 *than two million dollars (\$2,000,000), then an amount not*  
34 *to exceed 50 percent of the appropriation shall be used for*  
35 *the purpose of this section. These funds shall be expended*  
36 *not sooner than March 15, 1998, and not sooner than 30*  
37 *days after notification in writing from the Director of*  
38 *Finance to the chairperson of the Joint Legislative*  
39 *Budget Committee detailing an expenditure plan for the*  
40 *funds. Any funds not identified by the expenditure plan*



1 for the purpose of purchasing equipment pursuant to this  
2 subdivision shall be used for the purchase of additional  
3 terminals as required by subdivision (a) and subject to  
4 the provisions of this act.

5 SEC. 6. (a) The terminals to be purchased pursuant  
6 to Section 5 may only be provided to state agencies and  
7 local governments that have the statutory authority to  
8 receive confidential criminal history information.

9 (b) Any state agency or local government that is  
10 provided with a terminal pursuant to this act shall  
11 maintain and operate the terminal as a condition of  
12 receipt.

13 (c) Within 60 days of enactment of this act, the  
14 Department of Justice shall develop guidelines for the  
15 approval process for applicant agencies seeking terminals  
16 that prioritizes the applications according to, but not  
17 limited to, the following criteria:

18 (1) School districts and county offices of education.

19 (2) If the agency applying for terminals is an employer  
20 that is required by statute to obtain criminal history  
21 background checks of employees, the expected number  
22 of applicants seeking fingerprinting services.

23 (3) Agencies that serve multiple employers.

24 (4) The expected availability of the terminal by the  
25 applicant agency, including proposed days and hours of  
26 operation.

27 (5) Proper geographic representation throughout the  
28 state.

29 (d) In addition, as a condition of receiving a terminal  
30 pursuant to this act, each applicant agency shall include  
31 with its application an identification of the resources,  
32 including staffing and facility space, that would be  
33 committed to the maintenance and operation of the  
34 terminal.

35 (e) Notwithstanding subdivision (c) and upon request  
36 of each of the three school districts that have both the  
37 largest average daily attendance and a school district  
38 police department, at least one terminal shall be located  
39 in the district office of each of those school districts.



1 (f) As a condition of receiving a terminal, a state  
2 agency or local government shall waive any rights it  
3 otherwise may have to submit a claim to the state for  
4 reimbursement of the maintenance and operating costs  
5 of the terminal.

6 SEC. 7. On or before March 15, 1998, the Department  
7 of Justice is to report to the chairperson of the Joint  
8 Legislative Budget Committee and the chairpersons of  
9 the fiscal committees of the Legislature on the status of  
10 implementing the provisions of this act. The report shall  
11 include, but not be limited to, the following:

12 (a) The number, location, and cost of all terminals  
13 installed, or expected to be installed, for submitting  
14 fingerprints to the Department of Justice pursuant to this  
15 act.

16 (b) The estimated number, including potential  
17 locations, and cost of the necessary equipment and  
18 software for employers, as provided by this act, to  
19 electronically receive criminal history information from  
20 the Department of Justice.

21 (c) What additional resources, if any, including  
22 equipment, software, staffing, and maintenance may be  
23 necessary to complete the provisions of this act.

24 ~~SEC. 6.—~~

25 SEC. 8. This act shall become operative only if  
26 Assembly Bill 1610 of the 1997–98 Regular Session is  
27 enacted.

28 ~~SEC. 7.—~~

29 SEC. 9. Notwithstanding Section 17610 of the  
30 Government Code, if the Commission on State Mandates  
31 determines that this act contains costs mandated by the  
32 state, reimbursement to local agencies and school  
33 districts for those costs shall be made pursuant to Part 7  
34 (commencing with Section 17500) of Division 4 of Title  
35 2 of the Government Code. If the statewide cost of the  
36 claim for reimbursement does not exceed one million  
37 dollars (\$1,000,000), reimbursement shall be made from  
38 the State Mandates Claims Fund.

39 Notwithstanding Section 17580 of the Government  
40 Code, unless otherwise specified, the provisions of this act



1 shall become operative on the same date that the act  
2 takes effect pursuant to the California Constitution.

3 ~~SEC. 8.~~

4 *SEC. 10.* This act is an urgency statute necessary for  
5 the immediate preservation of the public peace, health,  
6 or safety within the meaning of Article IV of the  
7 Constitution and shall go into immediate effect. The facts  
8 constituting the necessity are:

9 In order to protect the safety of pupils and school  
10 employees, it is necessary for this act to take effect  
11 immediately.

O

