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AMENDED IN ASSEMBLY MARCH 25, 1998

CALIFORNIA LEGISLATURE—1997–98 REGULAR SESSION

ASSEMBLY BILL

No. 2102

Introduced by Assembly Members Alby and Ortiz
(Coauthors: Assembly Members Aguiar, Bordonaro, Bowler,
Cardenas, Cunneen, Gallegos, Knox, Leach, Machado,
Margett, Morrissey, Oller, Runner, Scott, and
Strom-Martin)

(Coauthors: Senators Monteith, Solis, and Watson)

February 18, 1998

An act to amend Sections 44237, 44332.6, 44830.1, 44836, 45125, and 45125.1 of, and to add Sections 33192, 33193, 44830.2, 45125.01, and 45125.2 to, the Education Code, relating to

school employees, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 2102, as amended, Alby. School employees.

(1) Existing law requires every person, firm, association, partnership, or corporation offering or conducting private school instruction on the elementary or high school level to require each applicant for employment in a position requiring contact with minor pupils who does not possess a valid California state teaching credential, or is 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 of Justice and the Federal Bureau of Investigation.

This bill would extend this requirement to each applicant for employment in a position requiring contact with minor pupils, who does not possess a valid services credential issued by the Commission on Teacher Credentialing. The bill would make those provisions inapplicable to a secondary school pupil working at the school he or she attends. The bill would require the Department of Justice to review the criminal record summary it obtains from the Federal Bureau of Investigation to ascertain whether the applicant has a conviction, or arrest pending final adjudication, for a sex offense, controlled substance offense, crime of violence, or serious or violent felony and to notify the private school employer only as to whether the applicant has any convictions, or arrests pending final adjudication, for those crimes. The bill would require a private school employer to request subsequent arrest service from the Department of Justice.

(2) Existing law requires a county or city and county board of education to obtain a criminal record summary about an applicant before issuing the applicant a temporary certificate or temporary certificate of clearance and prohibits those entities from issuing either certificate if the applicant has been convicted of a violent or serious felony.



This bill would authorize a county or city and county board of education to issue those temporary certificates without obtaining a criminal record summary for current employees in certain circumstances.

(3) Existing law prohibits school districts, as defined also to include county offices of education and the state special schools, from employing any individual in a certificated position who has been convicted of a violent or serious felony, as defined. Existing law applies this prohibition also to charter schools. Existing law requires the Department of Justice, when the department ascertains an individual who is an applicant for employment by a school district and has been convicted of a violent or serious felony, to notify the school district of that information for purposes of implementing the prohibition against hiring certificated employees who have been convicted of those crimes. Existing law authorizes the Department of Justice, at the request of a school district, to forward an applicant's fingerprints to the Federal Bureau of Investigation.

This bill would exempt a person from the employment prohibition if the person's conviction is reversed and the person is acquitted of the offense in a new trial or the charges are dismissed. The bill would provide that a plea of nolo contendere to a serious or violent felony constitutes a conviction. The bill would require the Department of Justice, for purposes of a school district's implementation of a prohibition against hiring certificated employees who have been convicted of certain sex offenses and controlled substance offenses, to also notify a school district of criminal information pertaining to an applicant who has been convicted of those offenses. The bill would delete the Department of Justice's authority to forward to the Federal Bureau of Investigation the fingerprints of an applicant for employment in a certificated position. The bill would require a school district to request subsequent arrest service from the Department of Justice, thereby imposing a state-mandated local program.

(4) Existing law exempts a person from the prohibition against hiring certificated employees who have been convicted of certain sex offenses and controlled substance



offenses if the conviction is reversed and the person is acquitted of the offense in a new trial or the charges against the person are dismissed.

This bill would provide that the above exemption does not apply to a person who has been convicted of a sex offense if the charges were dismissed pursuant to specified provisions and the victim of the sex offense was a minor.

(5) Existing law requires the governing board of a school district to require each person to be employed in a position not requiring certification to transmit fingerprint cards to the Department of Justice and requires the department to ascertain whether the applicant or employee has been arrested or convicted of a crime and to furnish that information to the school board. Existing law authorizes the Department of Justice, at the request of a school district, to forward to the Federal Bureau of Investigation the fingerprints of an applicant for employment in a position not requiring certification qualifications. Under existing law, the governing board of a school district is prohibited from employing a person in a position not requiring certification until the Department of Justice performs the required background check.

This bill would make the prohibition against a governing board employing a person in a position not requiring certification until the Department of Justice performs a background check inapplicable when a school district determines that an emergency or exceptional situation exists and that a delay would endanger pupil health or safety. The bill would require a school district to request the Department of Justice to forward to the Federal Bureau of Investigation the fingerprints of an applicant in the case of certain applicants and to request subsequent arrest service from the Department of Justice, thereby imposing a state-mandated local program.

(6) This bill would authorize a county superintendent or school district, in situations involving multiple school districts, to agree among themselves to designate a single district or the county superintendent to act on behalf of the participating districts within the county to submit fingerprints to the Department of Justice, receive and review criminal history



information, and maintain common lists of persons eligible for employment.

(7) Existing law requires, except as provided, that the employees of any entity that has a contract with a school district, as defined, to provide janitorial, administrative, landscape, transportation, food-related, or similar services who may have any contact with pupils to submit or have submitted their fingerprints in a manner authorized by the Department of Justice.

This bill would, instead, make those provisions applicable to any entity that has a contract with a school district, or a person, firm, association, partnership, or corporation offering or conducting private school instruction on the elementary or high school level or a charter school, to provide school and classroom janitorial, schoolsite administrative, schoolsite grounds and landscape maintenance, pupil transportation, or schoolsite food-related services. The bill would require an entity providing services related to the construction of school facilities to ensure the safety of pupils by certain means and would exempt an entity providing these services from the fingerprinting requirements, if these means are utilized.

(8) This bill would also make various changes to the procedures required when submitting, processing, and receiving fingerprint information under the law affected by the bill, including provisions concerning related fees and confidentiality of the records.

(9) 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.

(10) This bill would incorporate changes in Section 44237 of the Education Code proposed by AB 1392, to be operative



only if AB 1392 and this bill are enacted and become effective on or before January 1, 1999, and this bill is enacted last.

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

Vote: ²/₃. 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 33192 is added to the Education
2 Code, to read:

3 33192. (a) Except as provided in subdivisions (b) and
4 (c), if the employees of any entity that has a contract with
5 a private school to provide any of the following services
6 may have any contact with pupils, those employees shall
7 submit or have submitted their fingerprints in a manner
8 authorized by the Department of Justice together with a
9 fee determined by the Department of Justice to be
10 sufficient to reimburse the department for its costs
11 incurred in processing the application:

- 12 (1) School and classroom janitorial.
- 13 (2) Schoolsite administrative.
- 14 (3) Schoolsite grounds and landscape maintenance.
- 15 (4) Pupil transportation.
- 16 (5) Schoolsite food-related.

17 (b) This section shall not apply to an entity providing
18 any of the services listed in subdivision (a) to a private
19 school in an emergency or exceptional situation, such as
20 when pupil health or safety is endangered or when
21 repairs are needed to make school facilities safe and
22 habitable.

23 (c) This section shall not apply to an entity providing
24 any of the services listed in subdivision (a) to a private
25 school when the private school determines that the
26 employees of the entity will have limited contact with
27 pupils. In determining whether a contract employee has
28 limited contact with pupils, the private school shall
29 consider the totality of the circumstances, including
30 factors such as the length of time the contractors will be
31 on school grounds, whether pupils will be in proximity



1 with the site where the contractors will be working, and
2 whether the contractors will be working by themselves or
3 with others. If a private school has made this
4 determination, the private school shall take appropriate
5 steps to protect the safety of any pupils that may come in
6 contact with these employees.

7 (d) A private school may determine, on a case-by-case
8 basis, to require an entity providing schoolsite services
9 other than those listed in subdivision (a) or those
10 described in Section ~~45125.2~~ 33193 and the entity's
11 employees to comply with the requirements of this
12 section, unless the private school determines that the
13 employees of the entity will have limited contact with
14 pupils. In determining whether a contract employee will
15 have limited contact with pupils, the private school shall
16 consider the totality of the circumstances, including
17 factors such as the length of time the contractors will be
18 on school grounds, whether pupils will be in proximity
19 with the site where the contractors will be working, and
20 whether the contractors will be working by themselves or
21 with others. If a private school makes this determination,
22 the private school shall take appropriate steps to protect
23 the safety of any pupils that may come in contact with
24 these employees. If a private school requires an entity
25 providing services other than those listed in subdivision
26 (a) and its employees to comply with the requirements
27 of this section, the Department of Justice shall comply
28 with subdivision (e).

29 (e) (1) The Department of Justice shall ascertain
30 whether the individual whose fingerprints were
31 submitted to it pursuant to subdivision (a) has been
32 arrested or convicted of any crime insofar as that fact can
33 be ascertained from information available to the
34 department. Upon implementation of an electronic
35 fingerprinting system with terminals located statewide
36 and managed by the Department of Justice, the
37 department shall ascertain the information required
38 pursuant to this section within three working days. When
39 the Department of Justice ascertains that an individual
40 whose fingerprints were submitted to it pursuant to



1 subdivision (a) has a pending criminal proceeding for a
2 felony as defined in Section 45122.1 or has been convicted
3 of a felony as defined in Section 45122.1, the department
4 shall notify the employer designated by the individual of
5 that fact. The notification shall be delivered by telephone
6 or electronic mail to the employer.

7 (2) The Department of Justice, at its discretion, may
8 notify the private school in instances when the employee
9 is defined as having a pending criminal proceeding
10 described in Section 45122.1 or has been convicted of a
11 felony as defined in Section 45122.1.

12 (3) The Department of Justice may forward one copy
13 of the fingerprints to the Federal Bureau of Investigation
14 to verify any record of previous arrests or convictions of
15 the applicant. The Department of Justice shall review the
16 criminal record summary it obtains from the Federal
17 Bureau of Investigation and shall notify the employer
18 only as to whether or not an applicant has any convictions
19 or arrests pending adjudication for offenses which, if
20 committed in California, would have been punishable as
21 a violent or serious felony. The Department of Justice
22 shall not provide any specific offense information
23 received from the Federal Bureau of Investigation. The
24 Department of Justice shall provide written notification
25 to the contract employer only concerning whether an
26 applicant for employment has any conviction or arrest
27 pending final adjudication for any of those crimes, as
28 specified in Section 45122.1, but shall not provide any
29 information identifying any offense for which an existing
30 employee was convicted or has an arrest pending final
31 adjudication.

32 (f) An entity having a contract as specified in
33 subdivision (a) and an entity required to comply with this
34 section pursuant to subdivision (d) shall not permit an
35 employee to come in contact with pupils until the
36 Department of Justice has ascertained that the employee
37 has not been convicted of a felony as defined in Section
38 45122.1.

39 (1) This prohibition does not apply to an employee
40 solely on the basis that the employee has been convicted



1 of a felony if the employee has obtained a certificate of
2 rehabilitation and pardon pursuant to Chapter 3.5
3 (commencing with Section 4852.01) of Title 6 of Part 3 of
4 the Penal Code.

5 (2) This prohibition does not apply to an employee
6 solely on the basis that the employee has been convicted
7 of a serious felony that is not also a violent felony if that
8 employee can prove to the sentencing court of the
9 offense in question, by clear and convincing evidence,
10 that he or she has been rehabilitated for the purposes of
11 schoolsite employment for at least one year. If the offense
12 in question occurred outside this state, then the person
13 may seek a finding of rehabilitation from the court having
14 jurisdiction where he or she is resident.

15 (g) An entity having a contract as specified in
16 subdivision (a) and an entity required to comply with this
17 section pursuant to subdivision (d) shall certify in writing
18 to the private school that neither the employer nor any
19 of its employees who are required by this section to
20 submit or have their fingerprints submitted to the
21 Department of Justice and who may come in contact with
22 pupils have been convicted of a felony as defined in
23 Section 45122.1.

24 (h) An entity having a contract as specified in
25 subdivision (a) on the effective date of the act adding this
26 section and an entity required to comply with this section
27 pursuant to subdivision (d) by a private school with
28 which it has a contract on the effective date of the act
29 adding this section shall complete the requirements of
30 this section within 90 days of that date.

31 (i) For purposes of this section, “private school” means
32 a person, firm, association, partnership, or corporation
33 offering or conducting private school instruction on the
34 elementary or high school level.

35 (j) Where reasonable access to the statewide
36 electronic fingerprinting network is available, the
37 Department of Justice may request electronic submission
38 of the fingerprint cards and other information required
39 by this section.



1 SEC. 2. Section 33193 is added to the Education Code,
2 to read:

3 33193. (a) A private school contracting with an
4 entity for the construction, reconstruction, rehabilitation,
5 or repair of a school facility where the employees of the
6 entity will have contact, other than limited contact, with
7 pupils shall ensure the safety of the pupils by one or more
8 of the following methods:

9 (1) The installation of a physical barrier at the worksite
10 to limit contact with pupils.

11 (2) Continual supervision and monitoring of all
12 employees of the entity by an employee of the entity
13 whom the Department of Justice has ascertained has not
14 been convicted of a violent or serious felony. For purposes
15 of this paragraph, an employee of the entity may submit
16 his or her fingerprints to the Department of Justice
17 pursuant to subdivision (a) of Section 33192 and the
18 department shall comply with subdivision (d) of Section
19 33192.

20 (3) Surveillance of employees of the entity by school
21 personnel.

22 (b) An entity that contracts with a private school for
23 the construction, reconstruction, rehabilitation, or repair
24 of a school facility is not required to comply with the
25 requirements of Section 33192 if one or more of the
26 methods described in subdivision (a) is utilized.

27 (c) This section shall not apply to an entity providing
28 construction, reconstruction, rehabilitation, or repair
29 services to a school district in an emergency or
30 exceptional situation, such as when pupil health or safety
31 is endangered or when repairs are needed to make school
32 facilities safe and habitable.

33 (d) (1) For purposes of this section, “private school”
34 means a person, firm, association, partnership, or
35 corporation offering or conducting private school
36 instruction on the elementary or high school level.

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



1 SEC. 3. Section 44237 of the Education Code is
2 amended to read:

3 44237. (a) Every person, firm, association,
4 partnership, or corporation offering or conducting
5 private school instruction on the elementary or high
6 school level shall require each applicant for employment
7 in a position requiring contact with minor pupils who
8 does not possess a valid credential issued by the
9 Commission on Teacher Credentialing or is not currently
10 licensed by another state agency that requires a criminal
11 record summary that directly relates to services provided
12 in a facility described in this section and has background
13 clearance criteria that meets or exceeds the requirements
14 of this section, to submit two sets of fingerprints prepared
15 for submittal by the employer to the Department of
16 Justice for the purpose of obtaining criminal record
17 summary information from the Department of Justice
18 and the Federal Bureau of Investigation.

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

23 (2) As used in this section, “employment” means the
24 act of engaging the services of a person, who will have
25 contact with pupils, to work in a position at a private
26 school at the elementary or high school level on or after
27 September 30, 1997, on a regular, paid full-time basis,
28 regular, paid part-time basis, or paid full- or part-time
29 seasonal basis.

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

33 (4) This section does not apply to a secondary school
34 pupil working at the school he or she attends.

35 (c) (1) Upon receiving the identification cards, the
36 Department of Justice shall ascertain whether the
37 applicant has been arrested or convicted of any crime
38 insofar as that fact can be ascertained from information
39 available to the department and forward the information
40 to the employer submitting the fingerprints no more than



1 15 working days after receiving the identification cards.
2 The Department of Justice shall not forward information
3 regarding criminal proceedings that did not result in a
4 conviction but shall forward information on arrests
5 pending adjudication.

6 (2) Upon implementation of an electronic
7 fingerprinting system with terminals located statewide
8 and managed by the Department of Justice, the
9 Department of Justice shall ascertain the information
10 required pursuant to this subdivision within three
11 working days. If the Department of Justice cannot
12 ascertain the information required pursuant to this
13 subdivision within three working days, the department
14 shall notify the employer submitting the fingerprints that
15 it cannot so ascertain the required information. This
16 notification shall be delivered by telephone or electronic
17 mail to the employer submitting the fingerprints. If the
18 employer submitting the fingerprints is notified by the
19 Department of Justice that it cannot ascertain the
20 required information about a person, the employer may
21 not employ that person until the Department of Justice
22 ascertains that information.

23 (3) The Department of Justice shall review the
24 criminal record summary it obtains from the Federal
25 Bureau of Investigation to ascertain whether an applicant
26 for employment has a conviction, or an arrest pending
27 final adjudication, for any sex offense, controlled
28 substance offense, crime of violence, or serious or violent
29 felony. The Department of Justice shall provide written
30 notification to the private school employer only as to
31 whether an applicant for employment has any
32 convictions, or arrests pending final adjudication, for any
33 of these crimes.

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

37 (e) A person, firm, association, partnership, or
38 corporation offering or conducting private school
39 instruction on the elementary or high school level shall



1 not employ a person who has been convicted of a violent
2 or serious felony.

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

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

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

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

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

31 (k) The Commission on Teacher Credentialing shall
32 send on a monthly basis to each private school a list of all
33 teachers who have had their state teaching credential
34 revoked or suspended. The list shall be identical to the list
35 compiled for public schools in the state. The commission
36 shall also send on a quarterly basis a complete and
37 updated list of all teachers who have had their teaching
38 credentials revoked or suspended, excluding teachers
39 who have had their credentials reinstated, or who are
40 deceased.



1 (l) The Department of Justice may charge a
2 reasonable fee to cover costs associated with the
3 processing, reviewing, and supplying of the criminal
4 record summary as required by this section. In no event
5 shall the fee exceed the actual costs incurred by the
6 department.

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

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

15 (1) No recipient shall disclose its contents or provide
16 copies of information.

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

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

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

32 SEC. 4. Section 44237 of the Education Code is
33 amended to read:

34 44237. (a) Every person, firm, association,
35 partnership, or corporation offering or conducting
36 private school instruction on the elementary or high
37 school level shall require each applicant for employment
38 in a position requiring contact with minor pupils who
39 does not possess a valid credential issued by the
40 Commission on Teacher Credentialing or is not currently



1 licensed by another state agency that requires a criminal
2 record summary that directly relates to services provided
3 in a facility described in this section and has background
4 clearance criteria that meets or exceeds the requirements
5 of this section, to submit two sets of fingerprints prepared
6 for submittal by the employer to the Department of
7 Justice for the purpose of obtaining criminal record
8 summary information from the Department of Justice
9 and the Federal Bureau of Investigation.

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

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

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

24 (4) This section does not apply to a secondary school
25 pupil working at the school he or she attends or a parent
26 or legal guardian working ~~with his or her child in a home~~
27 ~~study program~~ *exclusively with his or her children.*

28 (c) (1) Upon receiving the identification cards, the
29 Department of Justice shall ascertain whether the
30 applicant has been arrested or convicted of any crime
31 insofar as that fact can be ascertained from information
32 available to the department and forward the information
33 to the employer submitting the fingerprints no more than
34 15 working days after receiving the identification cards.
35 The Department of Justice shall not forward information
36 regarding criminal proceedings that did not result in a
37 conviction but shall forward information on arrests
38 pending adjudication.

39 (2) Upon implementation of an electronic
40 fingerprinting system with terminals located statewide



1 and managed by the Department of Justice, the
2 Department of Justice shall ascertain the information
3 required pursuant to this subdivision within three
4 working days. If the Department of Justice cannot
5 ascertain the information required pursuant to this
6 subdivision within three working days, the department
7 shall notify the employer submitting the fingerprints that
8 it cannot so ascertain the required information. This
9 notification shall be delivered by telephone or electronic
10 mail to the employer submitting the fingerprints. If the
11 employer submitting the fingerprints is notified by the
12 Department of Justice that it cannot ascertain the
13 required information about a person, the employer may
14 not employ that person until the Department of Justice
15 ascertains that information.

16 (3) The Department of Justice shall review the
17 criminal record summary it obtains from the Federal
18 Bureau of Investigation to ascertain whether an applicant
19 for employment has a conviction, or an arrest pending
20 final adjudication, for any sex offense, controlled
21 substance offense, crime of violence, or serious or violent
22 felony. The Department of Justice shall provide written
23 notification to the private school employer only as to
24 whether an applicant for employment has any
25 convictions, or arrests pending final adjudication, for any
26 of these crimes.

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

30 (e) (1) A person, firm, association, partnership, or
31 corporation offering or conducting private school
32 instruction on the elementary or high school level shall
33 not employ a person who has been convicted of a violent
34 or serious felony or a person *who* would be prohibited
35 from employment by a public school district pursuant to
36 any provision of this code because of his or her conviction
37 for any crime.

38 (2) A person who would be prohibited from
39 employment by a private school pursuant to paragraph
40 (1) may not, on or after July 1, 1999, own or operate a



1 private school offering instruction on the elementary or
2 high school level.

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

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

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

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

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

31 (k) The Commission on Teacher Credentialing shall
32 send on a monthly basis to each private school a list of all
33 teachers who have had their state teaching credential
34 revoked or suspended. The list shall be identical to the list
35 compiled for public schools in the state. The commission
36 shall also send on a quarterly basis a complete and
37 updated list of all teachers who have had their teaching
38 credentials revoked or suspended, excluding teachers
39 who have had their credentials reinstated, or who are
40 deceased.



1 (l) The Department of Justice may charge a
2 reasonable fee to cover costs associated with the
3 processing, reviewing, and supplying of the criminal
4 record summary as required by this section. In no event
5 shall the fee exceed the actual costs incurred by the
6 department.

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

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

15 (1) No recipient shall disclose its contents or provide
16 copies of information.

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

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

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

32 SEC. 5. Section 44332.6 of the Education Code is
33 amended to read:

34 44332.6. (a) (1) Before issuing a temporary
35 certificate pursuant to Section 44332, a county or city and
36 county board of education shall obtain a criminal record
37 summary about the applicant from the Department of
38 Justice and shall not issue a temporary certificate if the
39 applicant has been convicted of a violent or serious
40 felony.



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

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

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

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

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

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



1 (2) Notwithstanding paragraph (2) of subdivision (a),
 2 a county or city and county board of education may issue
 3 a temporary certificate of clearance to an employee
 4 currently and continuously employed by a school district
 5 within the county who is serving under a valid credential
 6 and has applied for a renewal of that credential or for an
 7 additional credential without obtaining a criminal record
 8 summary for that employee.

9 SEC. 6. Section 44830.1 of the Education Code is
 10 amended to read:

11 44830.1. (a) In addition to any other prohibition or
 12 provision, no person who has been convicted of a violent
 13 or serious felony shall be hired by a school district in a
 14 position requiring certification qualifications or
 15 supervising positions requiring certification
 16 qualifications. A school district shall not retain in
 17 employment a current certificated employee who has
 18 been convicted of a violent or serious felony, and who is
 19 a temporary employee, a substitute employee, or a
 20 probationary employee serving before March 15 of the
 21 employee’s second probationary year. If any conviction is
 22 reversed and the formerly convicted person is acquitted
 23 of the offense in a new trial, or the charges are dismissed,
 24 this section does not prohibit his or her employment
 25 thereafter.

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, a plea of nolo
 34 contendere to a serious or violent felony constitutes a
 35 conviction.

36 (3) For purposes of this section, the term “school
 37 district” has the same meaning as defined in Section
 38 41302.5.

39 (d) When the governing board of any school district
 40 requests a criminal record summary of a temporary,



1 substitute, or probationary certificated employee, two
2 fingerprint cards, bearing the legible rolled and flat
3 impressions of the person's fingerprints together with a
4 personal description and the fee, shall be submitted, by
5 any means authorized by the Department of Justice, to
6 the Department of Justice.

7 (e) When the Department of Justice ascertains that an
8 individual who is an applicant for employment by a school
9 district has been convicted of a violent or serious felony,
10 or for purposes of implementing the prohibitions set forth
11 in Section 44836, any sex offense, as defined in Section
12 44010, or any controlled substance offense, as defined in
13 Section 44011, the department shall notify the school
14 district of the criminal information pertaining to the
15 applicant. The notification shall be delivered by
16 telephone or electronic mail to the school district. The
17 notification to the school district shall cease to be made
18 once the statewide electronic fingerprinting network is
19 returning responses within three working days. The
20 Department of Justice shall send by first-class mail or
21 electronic mail a copy of the criminal information to the
22 Commission on Teacher Credentialing. The Department
23 of Justice may charge a reasonable fee to cover the costs
24 associated with processing, reviewing, and supplying the
25 criminal record summary required by this section. In no
26 event shall the fee exceed the actual costs incurred by the
27 department.

28 (f) Notwithstanding subdivision (a), a person shall not
29 be denied employment or terminated from employment
30 solely on the basis that the person has been convicted of
31 a violent or serious felony if the person has obtained a
32 certificate of rehabilitation and pardon pursuant to
33 Chapter 3.5 (commencing with Section 4852.01) of Title
34 6 of Part 3 of the Penal Code.

35 (g) Notwithstanding subdivision (f), a person shall not
36 be denied employment or terminated from employment
37 solely on the basis that the person has been convicted of
38 a serious felony that is not also a violent felony if that
39 person can prove to the sentencing court of the offense
40 in question, by clear and convincing evidence, that he or



1 she has been rehabilitated for the purposes of school
2 employment for at least one year. If the offense in
3 question occurred outside this state, then the person may
4 seek a finding of rehabilitation from the court in the
5 school district in which he or she is a resident.

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

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

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

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

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

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



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

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

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

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

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

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

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

30 SEC. 7. Section 44830.2 is added to the Education
31 Code, to read:

32 44830.2. (a) For situations in which a person is an
33 applicant for employment, or is employed on a part-time
34 or substitute basis, in a position requiring certification
35 qualifications in multiple school districts within a county
36 or within contiguous counties, the districts may agree
37 among themselves to designate a single district, or a
38 county superintendent may agree to act on behalf of
39 participating districts within the county or contiguous



1 counties, for the purposes of performing the following
2 functions:

- 3 (1) Sending fingerprints to the Department of Justice.
- 4 (2) Receiving reports of convictions of serious and
5 violent felonies.
- 6 (3) Reviewing criminal history records and reports of
7 subsequent arrests from the Department of Justice.
- 8 (4) Maintaining common lists of persons eligible for
9 employment.

10 (b) The school district or county superintendent
11 serving in the capacity authorized in subdivision (a) shall
12 be considered the employer for purposes of subdivisions
13 (a), (d), and (g) of Section 44830.1.

14 (c) Upon receipt from the Department of Justice of a
15 report of conviction of a serious or violent felony, the
16 designated school district or county superintendent shall
17 communicate that fact to the participating districts and
18 remove the affected employee from the common list of
19 persons eligible for employment.

20 (d) Upon receipt from the Department of Justice of a
21 criminal history record or report of subsequent arrest for
22 any person on a common list of persons eligible for
23 employment, the designated school district or county
24 superintendent shall give notice to the superintendent of
25 any participating district or a person designated in
26 writing by that superintendent, that the report is
27 available for inspection on a confidential basis by the
28 superintendent or authorized designee, at the office of
29 the designated school district or county superintendent,
30 for a period of 30 days following receipt of notice, to
31 enable the employing school district to determine
32 whether the employee meets that district's criteria for
33 continued employment. The designated school district or
34 county superintendent shall not release a copy of that
35 information to any participating district or any other
36 person, shall retain or dispose of the information in the
37 manner required by law after all participating districts
38 have had an opportunity to inspect it in accordance with
39 this section, and shall maintain a record of all persons to
40 whom the information has been shown that shall be



1 available to the Department of Justice to monitor
2 compliance with the requirements of confidentiality
3 contained in this section.

4 (e) Any agency processing Department of Justice
5 responses pursuant to this section shall submit an
6 interagency agreement to the Department of Justice to
7 establish authorization to submit and receive information
8 pursuant to this section.

9 (f) All information obtained from the Department of
10 Justice is confidential. Every agency handling
11 Department of Justice information shall ensure the
12 following:

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

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

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

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

30 SEC. 8. Section 44836 of the Education Code is
31 amended to read:

32 44836. (a) (1) The governing board of a school
33 district shall not employ or retain in employment persons
34 in public school service who have been convicted, or who
35 have been convicted following a plea of nolo contendere
36 to charges, of any sex offense as defined in Section 44010.

37 (2) If a person's conviction of a sex offense as defined
38 in Section 44010 is reversed and the person is acquitted of
39 the offense in a new trial or the charges against him or her
40 are dismissed, this section does not prohibit his or her



1 employment thereafter. If the dismissal was pursuant to
2 Section 1203.4 of the Penal Code and the victim of the sex
3 offense was a minor, this section does prohibit the
4 person's employment.

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

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

14 (c) Notwithstanding subdivision (b), the governing
15 board of a school district may employ a person convicted
16 of a controlled substance offense in a position requiring
17 certification qualifications if that person holds an
18 appropriate credential issued by the Commission on
19 Teacher Credentialing.

20 SEC. 9. Section 45125 of the Education Code is
21 amended to read:

22 45125. (a) (1) Except as provided in Section
23 45125.01, the governing board of any school district shall
24 require each person to be employed in a position not
25 requiring certification qualifications, except a secondary
26 school pupil employed in a temporary or part-time
27 position by the governing board of the school district
28 having jurisdiction over the school attended by the pupil,
29 to have two fingerprint cards bearing the legible rolled
30 and flat impressions of the person's fingerprints together
31 with a personal description of the applicant prepared by
32 a local public law enforcement agency having jurisdiction
33 in the area of the school district, which agency shall
34 transmit the cards, together with the fee required by
35 subdivision (f), to the Department of Justice; except that
36 any district, or districts with a common board, may
37 process the fingerprint cards if the district so elects.

38 (2) As used in this section, "local public law
39 enforcement agency" includes any school district and as
40 used in Section 45126 requires the Department of Justice



1 to provide to any school district, upon application,
2 information pertaining only to applicants for
3 employment by the district, including applicants who are
4 employees of another district.

5 (b) (1) Upon receiving the fingerprint cards, the
6 Department of Justice shall ascertain whether the
7 applicant has been arrested or convicted of any crime
8 insofar as that fact can be ascertained from information
9 available to the department and forward the information
10 to the employing agency submitting the applicant's
11 fingerprints no more than 15 working days after receiving
12 the fingerprint cards. The Department of Justice shall not
13 forward records of criminal proceedings that did not
14 result in a conviction but shall forward information on
15 arrests pending adjudication.

16 (2) Upon implementation of an electronic
17 fingerprinting system with terminals located statewide
18 and managed by the Department of Justice, the
19 Department of Justice shall ascertain the information
20 required pursuant to this subdivision within three
21 working days. If the Department of Justice cannot
22 ascertain the information required pursuant to this
23 subdivision within three working days, the department
24 shall notify the school district that it cannot so ascertain
25 the required information. This notification shall be
26 delivered by telephone or electronic mail to the school
27 district. If a school district is notified by the Department
28 of Justice that it cannot ascertain the required
29 information about a person, the school district may not
30 employ that person until the Department of Justice
31 ascertains that information.

32 (3) In the case of a person to be employed in a position
33 not requiring certification qualifications who is described
34 in subparagraph (A) or (B), the school district shall
35 request the Department of Justice to forward one copy of
36 the fingerprint cards to the Federal Bureau of
37 Investigation for the purpose of obtaining any record of
38 previous convictions of the applicant.



1 (A) The person has not resided in the State of
2 California for at least one year immediately preceding the
3 person's application for employment.

4 (B) The person has resided for more than one year, but
5 less than seven years, in the State of California and the
6 Department of Justice has ascertained that the person
7 was convicted of a sex offense where the victim was a
8 minor or a drug offense where an element of the offense
9 is either the distribution to, or the use of a controlled
10 substance by, a minor.

11 (c) The governing board of a school district shall not
12 employ a person until the Department of Justice
13 completes its check of the state criminal history file as set
14 forth in this section and Sections 45125.5 and 45126, except
15 that this subdivision does not apply to secondary school
16 pupils who are to be employed in a temporary or
17 part-time position by the governing board of the school
18 district having jurisdiction over the school they attend.

19 (d) The governing board of each district shall
20 maintain a list indicating the number of current
21 employees, except secondary school pupils employed in
22 a temporary or part-time position by the governing board
23 of the school district having jurisdiction over the school
24 they attend, who have not completed the requirements
25 of this section. The Department of Justice shall process
26 these cards within 30 working days of their receipt and
27 any cards in its possession on the date of the amendment
28 of this section by Assembly Bill 1610 of the 1997-98
29 Regular Session within 30 working days of that date.
30 School districts that have previously submitted
31 identification cards for current employees to either the
32 Department of Justice or the Federal Bureau of
33 Investigation shall not be required to further implement
34 the provisions of this section as it applies to those
35 employees.

36 (e) A plea or verdict of guilty or a finding of guilt by
37 a court in a trial without a jury or forfeiture of bail is
38 deemed to be a conviction within the meaning of this
39 section, irrespective of a subsequent order under the
40 provisions of Section 1203.4 of the Penal Code allowing



1 the withdrawal of the plea of guilty and entering of a plea
2 of not guilty, or setting aside the verdict of guilty, or
3 dismissing the accusations or information.

4 (f) (1) The school district shall provide the means
5 whereby the fingerprint cards may be completed and
6 may charge a fee determined by the Department of
7 Justice to be sufficient to reimburse the department for
8 the costs incurred in processing the application. The
9 amount of the fee shall be forwarded to the Department
10 of Justice with the required copies of applicant's
11 fingerprint cards. The governing board may collect a
12 reasonable fee payable to the local public law
13 enforcement agency taking the fingerprints and
14 completing the data on the fingerprint cards. In no event
15 shall the fee exceed the actual costs incurred by the
16 agency.

17 (2) The additional fees shall be transmitted to the city
18 or county treasury. If an applicant is subsequently hired
19 by the board within 30 days of the application, the fee may
20 be reimbursed to the applicant. Funds not reimbursed to
21 applicants shall be credited to the general fund of the
22 district. If the fingerprint cards forwarded to the
23 Department of Justice are those of a person already in the
24 employ of the governing board, the district shall pay the
25 fee required by this section, which fee shall be a proper
26 charge against the general fund of the district, and no fee
27 shall be charged the employee.

28 (g) This section applies to substitute and temporary
29 employees regardless of length of employment.

30 (h) Subdivision (c) of this section shall not apply to a
31 person to be employed if a school district determines that
32 an emergency or an exceptional situation exists, and that
33 a delay in filling the position in which the person would
34 be employed would endanger pupil health or safety.

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



1 (j) A school district shall request subsequent arrest
2 service from the Department of Justice as provided under
3 Section 11105.2 of the Penal Code.

4 (k) All information obtained from the Department of
5 Justice is confidential. Each agency handling
6 Department of Justice information shall ensure the
7 following:

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

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

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

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

25 SEC. 10. Section 45125.01 is added to the Education
26 Code, to read:

27 45125.01. (a) For situations in which a person is an
28 applicant for employment, or is employed on a part-time
29 or substitute basis, in a position not requiring certification
30 qualifications in multiple school districts within a county
31 or within contiguous counties, the districts may agree
32 among themselves to designate a single district, or a
33 county superintendent may agree to act on behalf of
34 participating districts within the county or contiguous
35 counties, for the purposes of performing the following
36 duties:

37 (1) Sending fingerprints to the Department of Justice.

38 (2) Receiving reports of convictions of serious and
39 violent felonies, criminal history records and reports of
40 subsequent arrests from the Department of Justice.



1 (3) Maintaining common lists of persons eligible for
2 employment.

3 (b) The school district or county superintendent
4 serving in the capacity authorized in subdivision (a) shall
5 be considered the employer for purposes of subdivisions
6 (a) and (f) of Section 45125.

7 (c) Upon receipt from the Department of Justice of a
8 report of conviction of a serious or violent felony, the
9 designated school district or county superintendent shall
10 communicate that fact to the participating districts and
11 remove the affected employee from the common list of
12 persons eligible for employment.

13 (d) Upon receipt from the Department of Justice of a
14 criminal history record or report of subsequent arrest for
15 any person on a common list of persons eligible for
16 employment, the designated school district or county
17 superintendent shall give notice to the superintendent of
18 any participating district or a person designated in
19 writing by that superintendent, that the report is
20 available for inspection on a confidential basis by the
21 superintendent or authorized designee, at the office of
22 the designated school district or county superintendent,
23 for a period of 30 days following receipt of notice to enable
24 the employing school district to determine whether the
25 employee meets that district's criteria for continued
26 employment. The designated school district or county
27 superintendent shall not release a copy of that
28 information to any participating district or any other
29 person, shall retain or dispose of the information in the
30 manner required by law after all participating districts
31 have had an opportunity to inspect it in accordance with
32 this section, and shall maintain a record of all persons to
33 whom the information has been shown that shall be
34 available to the Department of Justice to monitor
35 compliance with the requirements of confidentiality
36 contained in this section.

37 (e) Any agency processing Department of Justice
38 responses pursuant to this section shall submit an
39 interagency agreement to the Department of Justice to



1 establish authorization to submit and receive information
 2 pursuant to this section.

3 (f) All information obtained from the Department of
 4 Justice is confidential. Every agency handling
 5 Department of Justice information shall ensure the
 6 following:

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

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

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

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

24 SEC. 11. Section 45125.1 of the Education Code is
 25 amended to read:

26 45125.1. (a) Except as provided in subdivisions (b)
 27 and (c), if the employees of any entity that has a contract
 28 with a school district, as defined in Section 41302.5, to
 29 provide any of the following services may have any
 30 contact with pupils, those employees shall submit or have
 31 submitted their fingerprints in a manner authorized by
 32 the Department of Justice together with a fee
 33 determined by the Department of Justice to be sufficient
 34 to reimburse the department for its costs incurred in
 35 processing the application:

- 36 (1) School and classroom janitorial.
- 37 (2) Schoolsite administrative.
- 38 (3) Schoolsite grounds and landscape maintenance.
- 39 (4) Pupil transportation.
- 40 (5) Schoolsite food-related.



1 (b) This section shall not apply to an entity providing
2 any of the services listed in subdivision (a) to a school
3 district in an emergency or exceptional situation, such as
4 when pupil health or safety is endangered or when
5 repairs are needed to make school facilities safe and
6 habitable.

7 (c) This section shall not apply to an entity providing
8 any of the services listed in subdivision (a) to a school
9 district when the school district determines that the
10 employees of the entity will have limited contact with
11 pupils. In determining whether a contract employee has
12 limited contact with pupils, the school district shall
13 consider the totality of the circumstances, including
14 factors such as the length of time the contractors will be
15 on school grounds, whether pupils will be in proximity
16 with the site where the contractors will be working, and
17 whether the contractors will be working by themselves or
18 with others. If a school district has made this
19 determination, the school district shall take appropriate
20 steps to protect the safety of any pupils that may come in
21 contact with these employees.

22 (d) A school district may determine, on a case-by-case
23 basis, to require an entity providing schoolsite services
24 other than those listed in subdivision (a) or those
25 described in Section 45125.2 and the entity's employees
26 to comply with the requirements of this section, unless
27 the school district determines that the employees of the
28 entity will have limited contact with pupils. In
29 determining whether a contract employee will have
30 limited contact with pupils, the school district shall
31 consider the totality of the circumstances, including
32 factors such as the length of time the contractors will be
33 on school grounds, whether pupils will be in proximity
34 with the site where the contractors will be working, and
35 whether the contractors will be working by themselves or
36 with others. If a school district makes this determination,
37 the school district shall take appropriate steps to protect
38 the safety of any pupils that may come in contact with
39 these employees. If a school district requires an entity
40 providing services other than those listed in subdivision



1 (a) and its employees to comply with the requirements
2 of this section, the Department of Justice shall comply
3 with subdivision.

4 (e) (1) The Department of Justice shall ascertain
5 whether the individual whose fingerprints were
6 submitted to it pursuant to subdivision (a) has been
7 arrested or convicted of any crime insofar as that fact can
8 be ascertained from information available to the
9 department. Upon implementation of an electronic
10 fingerprinting system with terminals located statewide
11 and managed by the Department of Justice, the
12 department shall ascertain the information required
13 pursuant to this section within three working days. When
14 the Department of Justice ascertains that an individual
15 whose fingerprints were submitted to it pursuant to
16 subdivision (a) has a pending criminal proceeding for a
17 felony as defined in Section 45122.1 or has been convicted
18 of a felony as defined in Section 45122.1, the department
19 shall notify the employer designated by the individual of
20 that fact. The notification shall be delivered by telephone
21 or electronic mail to the employer.

22 (2) The Department of Justice, at its discretion, may
23 notify the school district in instances when the employee
24 is defined as having a pending criminal proceeding
25 described in Section 45122.1 or has been convicted of a
26 felony as defined in Section 45122.1.

27 (3) The Department of Justice may forward one copy
28 of the fingerprints to the Federal Bureau of Investigation
29 to verify any record of previous arrests or convictions of
30 the applicant. The Department of Justice shall review the
31 criminal record summary it obtains from the Federal
32 Bureau of Investigation and shall notify the employer
33 only as to whether or not an applicant has any convictions
34 or arrests pending adjudication for offenses which, if
35 committed in California, would have been punishable as
36 a violent or serious felony. The Department of Justice
37 shall not provide any specific offense information
38 received from the Federal Bureau of Investigation. The
39 Department of Justice shall provide written notification
40 to the contract employer only concerning whether an



1 applicant for employment has any conviction or arrest
2 pending final adjudication for any of those crimes, as
3 specified in Section 45122.1, but shall not provide any
4 information identifying any offense for which an existing
5 employee was convicted or has an arrest pending final
6 adjudication.

7 (f) An entity having a contract as specified in
8 subdivision (a) and an entity required to comply with this
9 section pursuant to subdivision (d) shall not permit an
10 employee to come in contact with pupils until the
11 Department of Justice has ascertained that the employee
12 has not been convicted of a felony as defined in Section
13 45122.1.

14 (1) This prohibition does not apply to an employee
15 solely on the basis that the employee has been convicted
16 of a felony if the employee has obtained a certificate of
17 rehabilitation and pardon pursuant to Chapter 3.5
18 (commencing with Section 4852.01) of Title 6 of Part 3 of
19 the Penal Code.

20 (2) This prohibition does not apply to an employee
21 solely on the basis that the employee has been convicted
22 of a serious felony that is not also a violent felony if that
23 employee can prove to the sentencing court of the
24 offense in question, by clear and convincing evidence,
25 that he or she has been rehabilitated for the purposes of
26 schoolsite employment for at least one year. If the offense
27 in question occurred outside this state, then the person
28 may seek a finding of rehabilitation from the court in the
29 school district in which he or she is resident.

30 (g) An entity having a contract as specified in
31 subdivision (a) and an entity required to comply with this
32 section pursuant to subdivision (d) shall certify in writing
33 to the school district that neither the employer nor any
34 of its employees who are required by this section to
35 submit or have their fingerprints submitted to the
36 Department of Justice and who may come in contact with
37 pupils have been convicted of a felony as defined in
38 Section 45122.1.

39 (h) An entity having a contract as specified in
40 subdivision (a) on the effective date of this section and an



1 entity required to comply with this section pursuant to
2 subdivision (d) by a school district with which it has a
3 contract on the effective date of the amendments made
4 to this section during the 1997–98 Regular Session shall
5 complete the requirements of this section within 90 days
6 of that date.

7 (i) For purposes of this section, a charter school shall
8 be deemed to be a school district.

9 (j) Where reasonable access to the statewide
10 electronic fingerprinting network is available, the
11 Department of Justice may mandate electronic
12 submission of the fingerprint cards and other information
13 required by this section.

14 SEC. 12. Section 45125.2 is added to the Education
15 Code, to read:

16 45125.2. (a) A school district contracting with an
17 entity for the construction, reconstruction, rehabilitation,
18 or repair of a school facility where the employees of the
19 entity will have contact, other than limited contact, with
20 pupils shall ensure the safety of the pupils by one or more
21 of the following methods:

22 (1) The installation of a physical barrier at the worksite
23 to limit contact with pupils.

24 (2) Continual supervision and monitoring of all
25 employees of the entity by an employee of the entity
26 whom the Department of Justice has ascertained has not
27 been convicted of a violent or serious felony. For purposes
28 of this paragraph, an employee of the entity may submit
29 his or her fingerprints to the Department of Justice
30 pursuant to subdivision (a) of Section 45125.1 and the
31 department shall comply with subdivision (d) of Section
32 45125.1.

33 (3) Surveillance of employees of the entity by school
34 personnel.

35 (b) An entity that contracts with a school district for
36 the construction, reconstruction, rehabilitation, or repair
37 of a school facility is not required to comply with the
38 requirements of Section 45125.1 if one or more of the
39 methods described in subdivision (a) is utilized.



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

5 (d) This section shall not apply to an entity providing
6 construction, reconstruction, rehabilitation, or repair
7 services to a school district in an emergency or
8 exceptional situation, such as when pupil health or safety
9 is endangered or when repairs are needed to make school
10 facilities safe and habitable.

11 SEC. 13. Section 4 of this bill incorporates
12 amendments to Section 44237 of the Education Code
13 proposed by both this bill and AB 1392. It shall only
14 become operative if (1) both bills are enacted and
15 become effective on or before January 1, 1999, but this bill
16 becomes operative first, (2) each bill amends Section
17 44237 of the Education Code, and (3) this bill is enacted
18 after AB 1392, in which case Section 44237 of the
19 Education Code, as amended by Section 3 of this bill, shall
20 remain operative only until the operative date of AB 1392,
21 at which time Section 4 of this bill shall become operative.

22 SEC. 14. This act is an urgency statute necessary for
23 the immediate preservation of the public peace, health,
24 or safety within the meaning of Article IV of the
25 Constitution and shall go into immediate effect. The facts
26 constituting the necessity are:

27 To protect the safety and well-being of pupils in public
28 and private schools in the state, it is necessary that this act
29 take effect immediately.

30 SEC. 15. Notwithstanding Section 17610 of the
31 Government Code, if the Commission on State Mandates
32 determines that this act contains costs mandated by the
33 state, reimbursement to local agencies and school
34 districts for those costs shall be made pursuant to Part 7
35 (commencing with Section 17500) of Division 4 of Title
36 2 of the Government Code. If the statewide cost of the
37 claim for reimbursement does not exceed one million
38 dollars (\$1,000,000), reimbursement shall be made from
39 the State Mandates Claims Fund.



1 Notwithstanding Section 17580 of the Government
2 Code, unless otherwise specified, the provisions of this act
3 shall become operative on the same date that the act
4 takes effect pursuant to the California Constitution.

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