



COMMISSION ON  
**TEACHER CREDENTIALING**  

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*Ensuring Educator Excellence*

**CALIFORNIA'S LAWS AND RULES  
PERTAINING TO THE  
DISCIPLINE OF PROFESSIONAL  
CERTIFICATED PERSONNEL**

**2007**

# Commission on Teacher Credentialing



1900 Capitol Avenue  
Sacramento, CA 95814

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## **VISION STATEMENT**

To ensure that those who educate the children of this state are academically and professionally prepared.

**Published by,  
California Commission on  
Teacher Credentialing**

## **MISSION STATEMENT**

To assure the fully prepared and effective educators all students deserve and our Communities require. The Commission will carry out its statutory mandates by:

**Posted on the internet:**

**[www.ctc.ca.gov](http://www.ctc.ca.gov)**

- **Conducting regulatory and certification activities**
- **Developing preparation and performance standards in alignment with state adopted academic content standards**
- **Proposing policies in credential related areas**
- **Conducting research and assessment**
- **Monitoring fitness-related conduct and imposing credential discipline**
- **Communicating its efforts and activities to the public**

**Editor  
Carolyn Allwardt**

**Production Coordinator  
Brenda Rutledge**

# FOREWORD

This booklet is a collection of the most frequently cited provisions of the California Education Code, Code of Regulations, Penal, Health and Safety, and Government Code sections that govern the imposition of adverse action and professional discipline against California credential applicants and holders. It is not intended to be used in place of official law publications. Any conflicts in legal authority should be resolved in favor of official legal publications.

Last updated in 2005, this booklet now reflects legislative revisions through the 2007 legislative session.

Substantive authority to impose professional discipline is conferred upon the Commission on Teacher Credentialing by Articles 8 and 9 of Chapter 2 of Part 25 of Division 3 of Title 2 of the Education Code, also cited as the "Teacher Preparation and Licensing Act of 1970 as amended" or the "Ryan Act."

Procedural standards governing the imposition of professional discipline are set forth in Article 3 of Chapter 2 commencing at Section 44240 of the Education Code. Section 44246 expressly requires compliance with the Administrative Procedures Act [Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code] whenever a hearing is held to deny, suspend, or revoke a credential.

These statutory provisions are further clarified by the Administrative Regulations of the Commission on Teacher Credentialing in Chapter 3 of Part VIII of Title 5 of the California Code of Regulations commencing with Section 80300.

An understanding of the statutes and regulations governing teacher discipline would be incomplete without reference to the 1969 landmark decision of the California State Supreme Court in *Morrison v. State Board of Education* 1 Cal.3d 214; 82 Cal. Rptr. 175, which held that in order for revocation of a credential to be upheld, the conduct of the holder must indicate professional unfitness; that is, there must be a "nexus" between the holder's conduct and his or her ability to perform the duties associated with the credential held. The Morrison standards articulated by the Supreme Court in *Morrison* have been codified by the Commission on Teacher Credentialing in Section 80302 of Title 5 of the California Code of Regulations.

The appropriate evidentiary standard in professional licensing cases was articulated in 1982 in *Ettinger v. Board of Medical Quality Assurance* 135 Cal.App.3d 853, which held that the necessary level of proof to be required at the administrative level in order to revoke or level in order to revoke or suspend a license should be "clear and convincing to a reasonable certainty", and not merely a "preponderance of the evidence."

# PREFACE

This publication is a collection of the statutes, regulations and leading case citations governing the issuance, denial, revocation, suspension, and other invalidation of credentials for reasons related to identification, moral character, and inappropriate conduct for credential applicants and holders. This publication does not deal with other aspects of education, professional preparation, or licensing of educators. Those matters are governed by other statutes and regulations and should be researched separately.

The relevant statutes and regulations are administered by the Commission on Teacher Credentialing and its statutory committee, the Committee of Credentials, in order to protect the public interest. Staff support is provided by the Division of Professional Practices. The Commission is authorized to deny the issuance of credentials to applicants who do not meet high character standards and to privately admonish, publicly reprove, suspend or revoke the credentials of persons who, subsequent to the receipt of credentials, fail to maintain high standards of professional fitness and conduct.

This screening, monitoring and disciplinary process represents continuous improvement in the positive identification, detection, and tracking of persons whose presence in the public schools represents potential harm to school children and/or the educational process. A substantial measure of due process protection is provided to credential holders.

Public school employers, parents and/or other private citizens may lodge complaints of misconduct or unfitness against credential holders and have these complaints investigated and judged on their merits. The investigative and deliberative processes are confidential until judgment is reached, in order to protect any persons who may be mistakenly or unjustly charged.

Questions about this process and rights available to complainants and credential applicants and holders may be directed to:

**CALIFORNIA COMMISSION ON TEACHER CREDENTIALING  
DIVISION OF PROFESSIONAL PRACTICES  
1900 CAPITOL AVENUE  
SACRAMENTO, CA 95814-4213  
(916) 445-0243**

**[WWW.CTC.CA.GOV](http://WWW.CTC.CA.GOV)**

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**EDUCATION**

**CODE**

## GENERAL PROVISIONS

<b>44000.5</b>	<b>Adverse Action Definition</b>
<b>44002</b>	<b>Credential Definition</b>
<b>44008</b>	<b>Effect of termination of probation and dismissal of accusation</b>
<b>44009</b>	<b>Conviction of specified crimes; definition</b>
<b>44010</b>	<b>Sex offense</b>
<b>44011</b>	<b>Controlled Substance Offense</b>
<b>44012</b>	<b>Admissibility of record of conviction</b>

### **44000.5**

An “adverse action” means the denial of an application for a credential, a private admonition, or public reproof of a credential holder, or the suspension or revocation of a credential.

### **ADVERSE ACTION DEFINITION**

### **44002**

A “credential” includes a credential, certificate, life document, life diploma, permit, certificate of clearance, or waiver issued by the commission.

### **CREDENTIAL DEFINITION**

### **44008**

(a) Except as provided in subdivision (b) of this section, a termination of probation and dismissal of an accusation or information pursuant to Section 1203.4 of the Penal Code shall not, for the purpose of this division, have any effect.

### **EFFECT OF TERMINATION OF PROBATION AND DISMISSAL OF ACCUSATION**

(b) Notwithstanding any other provision of this code, no person shall be denied a hearing solely on the basis that he has been convicted of a crime if he has obtained a certificate of rehabilitation under Section 4852.01 and following of the Penal Code, and if his probation has been terminated and the information or accusation has been dismissed pursuant to Section 1203.4 of the Penal Code.

### **44009**

(a) A plea or verdict of guilty or finding of guilt by a court in a trial without a jury is deemed to be a conviction within the meaning of Sections 44425 and 44436, irrespective of a subsequent order for probation suspending the imposition of a sentence or an order under Section 1203.4 of the Penal Code allowing the withdrawal of the plea of guilty and entering a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusations or information. The record of a narcotics offense, as defined in Section 44011, shall be sufficient proof of conviction of a crime involving moral turpitude for the purposes of Sections 44892, 44907, and 44923, and Sections 44932 to 44947, inclusive, relating to the dismissal of permanent employees.

### **CONVICTION OF SPECIFIED CRIMES; DEFINITION**

Education Code  
**44009 (cont.)**

(b) A plea or verdict of guilty, or finding of guilt by a court in a trial without a jury, or a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning of Section 44836 and 45123, irrespective of a subsequent order for probation suspending the imposition of a sentence or an order under Section 1203.4 of the Penal Code allowing the withdrawal of the plea of guilty and entering a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusations or information. The record of conviction shall be sufficient proof of conviction of a crime involving moral turpitude for the purposes of Sections 44892, 44907, and Sections 44932 to 44947, inclusive, relating to the dismissal of permanent employees.

**44010**

**SEX OFFENSE**

"Sex offense", as used in Sections 44020, 44237, 44346, 44425, 44436, 44836 and 45123, means any one or more of the offenses listed below:

(a) Any offense defined in Section 220, 261, 261.5, 262, 264.1, 266, 266j, 267, 285, 286, 288, 288a, 288.5, 289, 311.1, 311.2, 311.3, 311.4, 311.10, 311.11, 313.1, 647b, 647.6, or former Section 647a, subdivision (a), (b), (c), or (d) of Section 243.4, subdivisions (a) or (d) Section 647 of the Penal Code.

(b) Any offense defined in former subdivision (5) of former Section 647 of the Penal Code repealed by Chapter 560 of the Statutes of 1961, or any offense defined in former subdivision (2) of former Section 311 of the Penal Code repealed by Chapter 2147 of the Statutes of 1961, if the offense defined in those sections was committed prior to September 15, 1961, to the same extent that an offense committed prior to that date was a sex offense for the purposes of this section prior to September 15, 1961.

(c) Any offense defined in Section 314 of the Penal Code committed on or after September 15, 1961.

(d) Any offense defined in former subdivision (1) of former Section 311 of the Penal Code repealed by Chapter 2147 of the Statutes of 1961 committed on or after September 7, 1955, and prior to September 15, 1961.

(e) Any offense involving lewd and lascivious conduct under Section 272 of the Penal Code committed on or after September 15, 1961.

(f) Any offense involving lewd and lascivious conduct under former Section 702 of the Welfare and Institutions Code repealed by Chapter 1616 of the Statutes of 1961, if that offense was committed prior to September 15, 1961, to the same extent that an offense

## 44010 (cont.)

committed prior to that date was a sex offense for the purposes of this section prior to September 15, 1961.

(g) Any offense defined in Section 286 or 288a of the Penal Code prior to the effective date of the amendment of either section enacted at the 1975-76 Regular Session of the Legislature committed prior to the effective date of the amendment.

(h) Any attempt to commit any of the offenses specified in this section.

(i) Any offense committed or attempted in any other state or against the laws of the United States which, if committed or attempted in this state, would have been punishable as one or more of the offenses specified in this section.

(j) Any conviction for an offense resulting in the requirement to register as a sex offender pursuant to Section 290 of the Penal Code.

(k) Commitment as a mentally disordered sex offender under former Article 1 (commencing with Section 6300) of Chapter 2 of Part 2 of the Welfare and Institutions Code, as repealed by Chapter 928 of the Statutes of 1981.

## 44011

"Controlled substance offense" as used in Sections 44346, 44425, 44436, 44836, and 45123 means any one or more of the following offenses:

(a) Any offense in Sections 11350 to 11355, inclusive, 11361, 11366, 11368, 11377 to 11382, inclusive, and 11550 of the Health and Safety Code.

(b) Any offense committed or attempted in any other state or against The laws of the United States which, if committed or attempted in this state, would have been punished as one or more of the above-mentioned offenses.

(c) Any offense committed under former Sections 11500 to 11503, inclusive, 11557, 11715, and 11721 of the Health and Safety Code.

(d) Any attempt to commit any of the above-mentioned offenses.

**CONTROLLED  
SUBSTANCE  
OFFENSE**

## 44012

Any record of conviction of any applicant for, or holder of, a certification document, shall, for the purposes of this division, be admissible in evidence in any civil action or administrative proceedings pertaining to the issuance, suspension or revocation of such certification document, any provision of law to the contrary notwithstanding.

**ADMISSIBILITY  
OF RECORD OF  
CONVICTION**

## **RIGHTS AND DUTIES**

### **44030**

Any principal, teacher, employee, or school officer of any elementary or secondary school who refuses or willfully neglects to make such reports as are required by law is guilty of a misdemeanor and is punishable by a fine of not more than one hundred dollars (\$100).

**FAILURE TO  
MAKE REPORTS**

## **INFORMATION**

### **44230**

(a)(1) The commission shall maintain for public record, and may disclose, only the following information relating to the credentials, certificates, permits, or other documents that it issues: the document number, title, term of validity, subjects, authorizations, effective dates, renewal requirements, and restrictions. The commission may also disclose the last known business address of any applicant or credential holder.

**INFORMATION;  
MAINTENANCE  
FOR PUBLIC  
RECORD;  
DISCLOSURE;  
APPLICATIONS**

(2) Notwithstanding any other provision of law, except as provided for in section 44248, no information, other than that set forth in paragraph (1), may be disclosed by the commission absent an order from a court of competent jurisdiction.

(b) In order to expedite the application process for the benefit of applicants for credentials, certificates, permits, or other documents issued by the commission, the commission may receive from, or transmit to, the agency that submitted the application, either electronically or by printed copy, the information set forth in that application. For purposes of this subdivision, "agency" means a school district, county office of education, or institution of higher education having a commission-approved program of professional preparation.

## **CRIMINAL RECORD SUMMARY**

### **44237**

(a) Every person, firm, association, partnership, or corporation offering or conducting private school instruction on the elementary or high school level shall require each applicant for employment in a position requiring contact with minor pupils who does not possess a valid credential issued by the Commission on Teacher Credentialing or is not currently licensed by another state agency that requires a criminal record summary that directly relates to services provided in a facility described in this section and has background clearance criteria that meets or exceeds the requirements of this section, to submit two sets of prints prepared for submittal by the employer to the Department of Justice for the purpose of obtaining criminal record summary information from the Department of Justice and

**FINGERPRINT;  
PRIVATE SCHOOL  
EMPLOYEES;  
CRIMINAL  
RECORD INFO;  
LIST OF  
TEACHERS  
WITH  
REVOKED OR  
SUSPENDED  
CREDENTIALS**

### **44237 (cont.)**

the Federal Bureau of Investigation.

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

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

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

(4) This section does not apply to a secondary school pupil working at the school he or she attends or a parent or legal guardian working exclusively with his or her children.

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

(2) Upon implementation of an electronic fingerprinting system with terminals located statewide and managed by the Department of Justice, the Department of Justice shall ascertain the information required pursuant to this subdivision within three working days. If the Department of Justice cannot ascertain the information required pursuant to this subdivision within three working days, the department shall notify the employer submitting the fingerprints that it cannot so ascertain the required information. This notification shall be delivered by telephone or electronic mail to the employer submitting the fingerprints. If the employer submitting the fingerprints is notified by the Department of Justice that it cannot ascertain the required information about a person, the employer may not employ that person until the Department of Justice ascertains that information.

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

**44237 (cont.)**



## Education Code

adjudication, for any of these crimes.

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

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

(2) A person who would be prohibited from employment by a private school pursuant to paragraph (1) may not, on or after July 1, 1999, own or operate a private school offering instruction on the elementary or high school level.

(f) An employer shall request subsequent arrest service from the Department of Justice as provided under [Section 11105.2 of the Penal Code](#).

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

(h) For purposes of this section, a violent felony is any felony listed in subdivision (c) of [Section 667.5 of the Penal Code](#) and a serious felony is any felony listed in subdivision (c) of [Section 1192.7 of the Penal Code](#).

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

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

(k) The Commission on Teacher Credentialing shall send on a monthly basis to each private school a list of all teachers who have had their state teaching credential revoked or suspended. The list

**44237 (cont.)**

shall be identical to the list compiled for public schools in the state. The commission shall also send on a quarterly basis a complete and updated list of all teachers who have had their teaching credentials revoked or suspended, excluding teachers who have had their credentials reinstated, or who are deceased.

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

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

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

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

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

(3) Information received shall be destroyed upon the hiring determination in accordance with subdivision (a) of [Section 708 of Title 11 of the California Code of Regulations](#).

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

## COMMITTEE OF CREDENTIALS

<b>44240</b>	<b>Appointment and composition of Committee of Credentials: terms</b>
<b>44241</b>	<b>Functioning of committee: applicable sections</b>
<b>44242</b>	<b>Supervision of committee by commission</b>
<b>44242.5</b>	<b>Presentation of allegations that may be grounds for denial, suspension or</b>

Education Code

	<b>revocation of credential; jurisdiction of committee; investigation; probable cause determination; report of findings</b>
<b>44242.7</b>	<b>Time for presentation of allegation; adoption of regulations specifying recurring conduct</b>
<b>44243</b>	<b>Assignment of administrative duties</b>
<b>44244</b>	<b>Allegations of misconduct; procedures</b>
<b>44244.1</b>	<b>Adoption of committee's recommendations by commission; notice; request for administrative hearing; private admonition proceedings</b>
<b>44245</b>	<b>Suspension or revocation; closed hearing</b>
<b>44246</b>	<b>Compliance with Government Code</b>
<b>44247</b>	<b>Reevaluation of application</b>
<b>44248</b>	<b>Unauthorized release of information</b>

**44240**

The commission shall appoint a Committee of Credentials, consisting of seven persons for terms fixed by the commission but not to exceed two years. The committee shall include:

- (a) One member who shall be a full-time certified classroom teacher in the public elementary schools with not less than five years' classroom experience.
- (b) One member who shall be a full-time certified classroom teacher in the public secondary schools with not less than five years' classroom experience.
- (c) One member who shall be a certified administrative employee in the public schools.
- (d) One member who shall be a member of the governing board of any school district. No person who is or has been employed in a certificated position in the public schools within the preceding five years shall be appointed as a school board member.
- (e) Three members who shall be representatives of the public. No person who is or has been employed in a certificated position in the public schools or who is or has been a member of any governing board of a school district or county board of education within the five years next preceding date of appointment shall be appointed as a public member.

The additional public members of the committee provided for in this

**44240 (cont.)**

**APPOINTMENT  
AND  
COMPOSITION  
OF  
COMMITTEE OF  
CREDENTIALS;  
TERMS**

section as amended during the 1977-78 Regular Session, shall be appointed by the commission as vacancies in the committee occur, consistent with the requirements of professional representation. Appointments to the Committee of Credentials shall reflect, to the extent feasible, the ethnic and cultural diversity of California public schools.

**44241**

Sections 44215, 44216, 44217, 44218, 44220, and 44221 are applicable to the Committee of Credentials.

**44242**

The Committee of Credentials shall be under the direct supervision of the commission.

**44242.5**

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

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

(1)(A) Official records of the Department of Justice, of any law Enforcement agency, of any state or federal court, and of any other agency of this state or another state.

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

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

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

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

**44242.5 (cont.)**

**FUNCTIONING OF COMMITTEE; APPLICABLE SECTIONS**

**SUPERVISION OF COMMITTEE BY COMMISSION**

**PRESENTATION OF ALLEGATIONS THAT MAY BE GROUNDS FOR DENIAL, SUSPENSION OR REVOCATION OF CREDENTIAL; JURISDICTION OF COMMITTEE; INVESTIGATION; PROBABLE CAUSE DETERMINATION; REPORT OF FINDINGS**

## Education Code

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

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

(6)(A) An affirmative response on any application submitted to the commission as to any conviction, adverse action on, or denial of, any license, or pending investigation into any criminal allegation or pending investigation of any noncriminal allegation of misconduct by a governmental licensing entity.

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

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

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

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

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

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

(B) If the committee determines that probable cause for an adverse action on the credential exists, upon receipt of a request from an applicant or a credential holder pursuant to Section 44244.1, the commission shall initiate an adjudicatory hearing, as prescribed by Chapter 5 (commencing

**44242.5 (cont.)**

with Section 11500) of Division 3 of Title 2 of the Government Code, by filing an accusation or statement of issues.

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

(1)(A) Official records of any state or federal court that reflect a conviction or plea, including a plea of nolo contendere, to any criminal offense or official records of any state court that adjudge a juvenile to be a dependent of the court pursuant to Section 300 of the Welfare and Institutions Code due to allegations of sexual misconduct or physical abuse by a credential holder or applicant.

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

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

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

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

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

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

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

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

## **44242.5 (cont.)**

## Education Code

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

(f)(1) Except as provided in paragraph (2) and, notwithstanding subdivision (b), for purposes of determining whether jurisdiction exists under subdivision (b), the commission may, in accordance with Section 44341, make inquiries and requests for production of information and records only from the Department of Justice, any law enforcement agency, any state or federal court, and any licensing agency of this state or any licensing agency of another state.

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

### **44242.7**

(a) Any allegation of an act or omission by the holder of a credential, except for an allegation that involves sexual misconduct with a minor or recurring conduct resulting in a pattern of misconduct, shall be presented to the Committee of Credentials for initial review within four years from the date of the alleged act or omission, or within one year from the date the act or omission should reasonably have been discovered.

(b) The commission shall adopt regulations specifying conduct that is considered recurring conduct that results in a pattern of misconduct as set forth in subdivision (a).

**TIME FOR  
PRESENTATION OF  
ALLEGATION;  
ADOPTION OF  
REGULATIONS  
SPECIFYING  
RECURRING  
CONDUCT**

### **44243**

(a) The commission may assign to the Committee of Credentials administrative duties as it may see fit relating to adverse actions concerning applicants and credential holders.

(b) The commission shall supervise the work of the committee and shall provide statements of policy relative to committee operation and procedures as it deems appropriate to do so.

**ASSIGNMENT OF  
ADMINISTRATIVE  
DUTIES**

### **44244**

(a) At least 30 days prior to any formal review of the Committee of Credentials at which the application of an applicant or credential of a holder is to be considered, the committee shall notify the applicant or holder of the specific allegations of misconduct that make the application or credential subject to adverse action. The notification shall be in ordinary and concise language and set forth the acts or omissions charged and the statutes or rules

**ALLEGATIONS  
OF MISCONDUCT;  
PROCEDURES**

### **44244 (cont.)**

violated. Supplemental allegations of misconduct shall be sent to the holder or applicant at least 30 days prior to the formal review. The portions of the investigation of the original or supplemental allegations that constitute the basis for the allegations shall be open to inspection and copying by the holder or applicant and his or her attorney. The statement of the allegations shall inform the applicant or holder that the allegations, if true, are sufficient to cause his or her application or credential to be subject to adverse action.

(b)(1) The formal review shall be held no later than six months after the commencement of the initial review as set forth in subdivision (c) of Section 44242.5. The formal review shall determine either that no adverse action shall be taken or that the allegations are sufficient to cause his or her application or credential to be subject to adverse action.

(2) All testimony before the committee shall be verified under penalty of perjury by oath or affirmation. The chairperson of the committee may administer the oath or affirmation. The chairperson may designate staff to administer the oath or affirmation for statements taken during the investigation of allegations of misconduct.

(c) Notwithstanding subdivision (b), the chairperson of the commission may grant the committee an extension of time, not exceeding six months, when the committee demonstrates that additional time is necessary to complete its investigation or determination, as described in subdivision (b).

(d) The recommendation of the committee shall be in writing and a copy of the recommendation shall be delivered to the credential holder or applicant personally or sent to him or her by certified mail within 14 days after the formal review, together with specific information relative to any appeal rights to which the credential holder or applicant is entitled.

#### **44244.1**

(a)(1) A recommendation by the Committee of Credentials to take an adverse action may be adopted by the commission without further proceedings if, after service of notice of the committee recommendation pursuant to Section 44244, the credential holder or applicant fails to give notice of intent to request an administrative hearing or if he or she gives notice of intent not to request an administrative hearing within 30 days.

(2) For good cause shown, the commission may grant an additional 30 days for filing of a request for an administrative hearing.

**ADOPTION OF  
COMMITTEE'S  
RECOMMENDATIONS  
BY COMMISSION;  
NOTICE; REQUEST  
FOR  
ADMINISTRATIVE  
HEARING;  
PRIVATE  
ADMONITION  
PROCEEDINGS**

#### **44244.1 (cont.)**



## Education Code

(b) The commission shall make no disclosures concerning private admonitions except as required by Section 44438.

### **44245**

(a) Notwithstanding any other provisions of law, all hearings and deliberations of the commission and Committee of Credentials to consider an adverse action or a reinstatement or reduction in penalty shall be closed sessions with only commission members, committee members, staff members, the credential holder or applicant whose application or credential is in issue, the counsel of the credential holder or applicant, and any material witnesses in attendance.

(b) All final actions taken pursuant to subdivision (a) shall be made public.

(c) Notwithstanding subdivision (b), disclosure of private admonitions shall be in accordance with Section 44438.

### **SUSPENSION OR REVOCATION; CLOSED HEARING**

### **44246**

When a hearing is held to deny, suspend, or revoke a credential, the proceeding shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the commission shall have all the powers granted therein.

### **COMPLIANCE WITH GOVERNMENT CODE**

### **44247**

Any applicant for the renewal certification document who is denied a renewal by the Committee of Credentials may request a reevaluation of his application by the commission.

### **REEVALUATION OF APPLICATION**

### **44248**

(a) Any member of the commission, commission staff member, member or staff member of the Committee of Credentials, State Department of Education employee who releases or gives out information received at a commission or committee meeting or hearing or through the investigation of a certified employee without authorization of the commission or committee, is guilty of a misdemeanor.

(b) Any material witness or his or her representative who releases or gives out information received at a commission or committee meeting or hearing, or who releases or gives out information obtained as a result of direct involvement in the investigation of a certified employee, without authorization of the commission or committee, is guilty of a misdemeanor unless this

### **UNAUTHORIZED RELEASE OF INFORMATION**

### **44248 (cont.)**

information was known to the material witness or his or her representative prior to that meeting, hearing, or investigation.

## CERTIFICATES AND CREDENTIALS

44320	Professional preparation programs; certificate of clearance.
44332	Temporary certificates
44332.5	Registration of certificates by certain districts; temporary certificate of clearance;
44332.6	Criminal record summary; applicants for temporary certificate or temporary certificate of clearance convicted of violent or serious felony; certificate of rehabilitation and pardon
44334	Oath or affirmation
44336	Health hazards
44337	Teachers with disabilities; training; hiring
44338	Teachers with disabilities; health and safety of others
44339	Identification and evidence of good moral character; disclosures not required; notice
44340	Identification cards
44341	Production of information; confidentiality; consent
44345	Denial of application
44346	Further grounds for denial; classes of applicants; rehabilitation
44346.1	Denial of credential for conviction of violent or serious felony; certificate of rehabilitation and pardon
44354	Administration of oath
44355	Validity until revoked, suspended or expired; credentials void ab initio; grounds

### **44320** [Subsections (a) – (c) omitted for brevity]

(d) Prior to admission to either student teaching under any professional preparation program approved by the commission, or participation in a field experience program as described in Section 44324, a candidate for a credential shall obtain a certificate of clearance from the commission which shall be issued when the commission has verified the candidate's personal identification and health status. The fee for the certificate of clearance shall not exceed one-half of the regular fee for a credential and shall be deducted from the fee for the initial credential applied for by the certificate holder.

**PROFESSIONAL  
PREPARATION  
PROGRAMS;  
CERTIFICATE OF  
CLEARANCE**

### **44332**

**TEMPORARY**

## Education Code

(a) Except where that service is provided by a school district authorized to register certification documents pursuant to Section 44332.5, each county or city and county board of education may issue temporary certificates for the purpose of authorizing salary payments to certified employees whose credential applications are being processed or to personnel employed in children's centers or other preschool educational programs whose permit applications are being processed. However, the individual must have demonstrated proficiency in basic reading, writing, and mathematics pursuant to the requirements of Section 44252.5. The applicant for the temporary certificate shall make a statement under oath that he or she has duly filed an application for a credential or permit together with the required fee and that, to the best of his or her knowledge, no reason exists why a certificate or permit should not be issued. The certificate or permit shall be valid for not more than one calendar year from the date of issuance.

(b) The county or city and county board of education shall cancel the temporary certificate or permit immediately upon receipt of certification in writing from the commission that the applicant apparently does not possess adequate academic qualifications or apparently has a criminal record that would disqualify the applicant.

(c) A temporary certificate issued to a permit applicant is not valid beyond the time that the commission either issues or denies the originally requested permit. A temporary certificate issued to a credential applicant is not valid beyond the time that the commission provides written notification to the county or city and county board of education that the applicant apparently does not possess adequate qualifications, that the commission has received facts that may cause denial of the application, or issues or denies the originally requested credential.

(d) A county or city and county board of education may not issue a temporary certificate to an applicant whose teaching credential is revoked or suspended.

## **44332.5**

(a) A school district which may issue warrants pursuant to Section 42647 may, at its discretion, provide for the registration of any valid certification or other document authorizing the holder thereof to serve in a position requiring certification qualifications as an employee of the school district.

(b) During any period when summary criminal history information is not available from the Federal Bureau of Investigation, no applicant for an initial credential, certificate, or permit shall be employed in a position requiring certification qualifications until he or she has met the minimum requirements for a temporary

## **44332.5 (cont.)**

## **CERTIFICATES**

## **REGISTRATION OF CERTIFICATES BY CERTAIN DISTRICTS; TEMPORARY CERTIFICATE OF CLEARANCE**

certificate of clearance. A temporary certificate of clearance or a credential, certificate, or permit authorizing service in the public schools shall be issued when the applicant has:

(1) Made full disclosure of all facts necessary to establish his or her true identity.

(2) Made a statement under penalty of perjury that he or she has not been convicted of a crime which would constitute grounds for the denial of the credential, permit, or certificate applied for.

An applicant shall not be required to disclose, and the Committee of Credentials shall not inquire into or consider, any acts or omissions not related to the applicant's fitness to teach or to perform other duties for which he or she is certificated, or which is related to his or her competence to perform the duties authorized by his or her credential.

(3) Paid to the Commission on Teacher Credentialing the amount of twelve dollars (\$12) or the fees or costs which have been or will be assessed by the Federal Bureau of Investigation for the issuance of its summary criminal history of the applicant when this information is once again made available to the commission. The fees authorized by this paragraph shall be applicable to all credentials, permits, and certificates which were applied for or issued after October 1, 1981.

(c) Upon receipt of a statement from the Federal Bureau of Investigation that it has no summary criminal history information on the applicant, or upon receipt of the summary criminal history information and clearance by the Committee of Credentials, a temporary certificate of clearance shall be converted to a regular certificate of clearance.

### **44332.6**

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

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

### **44332.6 (cont.)**

**CRIMINAL  
RECORD  
SUMMARY;  
APPLICANTS FOR  
TEMPORARY  
CERTIFICATE OR  
TEMPORARY  
CERTIFICATE OF  
CLEARANCE  
CONVICTED OF  
VIOLENT OR  
SERIOUS  
FELONY;**

## Education Code

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

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

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

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

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

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

## **44334**

Except as provided in this code, no certification document shall be granted to any person unless and until he has subscribed to the following oath or affirmation: "I solemnly swear (or affirm) that I will support the Constitution of the United States of America, the Constitution of the State of California, and the laws of the

## **44334 (cont.)**

## **CERTIFICATE OF REHABILITATION AND PARDON**

## **OATH OR AFFIRMATION**

United States and the State of California." The oath or affirmation shall be subscribed and certified or declared, pursuant to Section 2015.5 of the Code of Civil Procedure, and shall be filed with the commission. Any certificated person who is a citizen or subject of any country other than the United States, and who is employed in any capacity in any of the public schools of the state shall, before entering upon the discharge of his duties, subscribe to an oath to support the institutions and policies of the United States during the period of his sojourn within the state. Upon the violation of any of the terms of the oath or affirmation, the commission shall suspend or revoke the credential which has been issued.

**44336**

When required by the commission, the application for a certification document or the renewal thereof shall be accompanied by a certificate in such form as shall be prescribed by the commission, from a physician and surgeon licensed under the provisions of the Business and Professions Code showing that the applicant is free from any contagious and communicable disease or other disabling disease or defect unfitting the applicant to instruct or associate with children.

**HEALTH  
HAZARDS**

**44337**

No person otherwise qualified shall be denied the right to receive credentials from the commission, to receive training for the purpose of becoming a teacher, or to engage in practice teaching in any school, on the grounds he or she is an individual with a disability, nor shall any school district refuse to engage a teacher on such grounds, provided, that the teacher, with reasonable accommodations, is able to carry out the duties of the position for which he or she applies to the school district. "Disability," as used in this section, means (1) a physical or mental impairment that substantially limits one or more of the major life activities of the individual, (2) a record of such an impairment, or (3) being regarded as having such an impairment.

**TEACHERS WITH  
DISABILITIES;  
TRAINING; HIRING**

**44338**

No person otherwise qualified shall be denied the right to receive credentials issued by the commission, to receive training for the purpose of becoming a teacher, or to engage in practice teaching in any school, on the ground he or she is a person with a disability; provided, that the person does not pose a direct threat of substantial harm to the health or safety of other individuals.

**TEACHERS WITH  
DISABILITIES;  
HEALTH AND  
SAFETY OF  
OTHERS**

**44339**

(a) The commission shall adopt, in addition to any other regulations authorized by law, regulations requiring every applicant for a credential, or for the renewal of a credential, to submit reasonable evidence of

**IDENTIFICATION  
AND EVIDENCE  
OF GOOD MORAL  
CHARACTER;**

**44339 (cont.)**

## Education Code

identification and good moral character.

(b) The adopted rules and regulations shall specify that an applicant shall not be required to disclose, and the Committee of Credentials shall not inquire into or consider, any acts or omissions not related to the applicant's fitness to teach or perform other duties for which he or she is certificated, or which is related to his or her competence to perform the duties authorized by his or her credential.

(c) The adopted rules and regulations shall also prescribe the notice which shall be supplied to each applicant on the application form, which shall include the following information:

(1) The offenses which constitute grounds for the mandatory denial or revocation of a credential.

(2) The offenses for which the commission is authorized to deny or revoke a credential, depending upon the degree of rehabilitation or requalification demonstrated by the applicant.

(3) The standards under which the commission determines that it shall not investigate or pursue offenses which are not clearly related to an applicant's fitness or competence to teach or perform other certificated services.

### **44340**

Each applicant for a credential, or for the renewal of a credential, shall submit with his application duplicate personal identification cards provided by the commission upon which shall appear the legible fingerprints and a personal description of the applicant.

The commission is authorized to, and shall adopt such regulations as may in its judgment be necessary for the administration of this section.

### **44341**

(a)(1) For the purpose of ascertaining the moral character and true identity of the holder of a credential or an applicant for a credential or the renewal of a credential after jurisdiction to commence an initial review pursuant to subdivision (b) of Section 44242.5 has been established, the commission is authorized to require the production of information, records, reports, and other data from any public agency. For the purposes of determining whether jurisdiction exists, the commission is also authorized to require the limited production of records as set forth in subdivision (f) of Section 44242.5.

### **44341 (cont.)**

**DISCLOSURES  
NOT REQUIRED;  
NOTICE**

**IDENTIFICATION  
CARDS**

**PRODUCTION OF  
INFORMATION;  
CONFIDENTIALITY;  
CONSENT**

(2) This information shall be provided to the commission within 30 days of the request.

(3) The commission shall maintain the confidentiality of this information in accordance with Chapter 1 (commencing with Section 1798) of Title 1.8 of the Civil Code.

(b) Except for the situation prescribed in subdivision (d), every applicant for a credential or for the renewal of a credential shall be deemed to have given his or her consent for the securing of, and disclosure of, information to the commission for the sole purpose of ascertaining the moral character and true identity of the holder of a credential, the applicant for a credential, or a credential holder applying for the renewal of the credential.

(c) The Department of Justice shall furnish, upon application of the commission or its authorized representative, all information pertaining to any applicant of whom there is a record in its office except that information which may compromise or prejudice an ongoing criminal investigative matter may be withheld until the matter is completed.

(d) With the written consent of an applicant for a credential or a credential holder, the commission upon written request of any private school authority, shall release to that private school authority information and other data relative to the identification or fitness of any applicant for a teaching position in the private school so long as not otherwise prohibited by any other provision of law.

(e) Each application for a credential shall contain notice that the Information provided by the applicant is subject to investigation for, and verification of, the applicant's moral character and true identity by means of review of information, records, reports, and other data from any agency or department of the state or any political subdivision of the state, whether chartered by the state or not, secured by the commission for these purposes.

## **44345**

The commission may deny any application for the issuance of a credential or for the renewal of a credential made by any applicant who falls under any of the following categories:

(a) Lacks the qualifications which are prescribed by law or regulations adopted by the commission pursuant thereto.

(b) Is physically or mentally so disabled as to be rendered unfit to perform the duties authorized by the credential for which he or she applies. However, the mere fact that an applicant has sought or received psychiatric treatment shall not be considered as preliminary

## **44345 (cont.)**

## **DENIAL OF APPLICATION**



## Education Code

evidence of mental disability and shall not provoke special scrutiny of such applicant's qualifications for a credential.

(c) Is addicted to the use of intoxicating beverages to excess.

(d) Is addicted to the use of controlled substances.

(e) Has committed any act involving moral turpitude.

(f) Has had a certification document revoked.

(g) Has intentionally practiced or attempted to practice any material deception or fraud in his or her application.

(h) Fails or refuses to furnish reasonable evidence of identification or good moral character.

(i) Has been convicted of any offense defined in subdivision 1 of Section 314 of the Penal Code prior to September 7, 1955.

Any denial pursuant to subdivisions (a) to (e), inclusive, shall be based upon reasons related to the applicant's fitness to teach or fitness to perform other duties for which that applicant is certificated, or competence to perform the duties which the credential would authorize the applicant to perform.

## **44346**

(a) The commission shall deny any application for the issuance of a credential or for the renewal of a credential made by any applicant who comes within any of the following classes:

(1) Has been determined to be a sexual psychopath under the provisions of Article 1 (commencing with Section 6300) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code or under similar provisions of law of any other state.

(2) Has been convicted of any sex offense, as defined in Section 44010.

(3) Has been convicted of a controlled substance offense, as defined in Section 44011.

(4) Has been found to be insane through a criminal proceeding by a federal court or a court in this or any other state.

(b)(1) Notwithstanding paragraphs (2) and (3) of subdivision (a), no person shall be denied a credential solely on the basis that he or she has been convicted of a crime specified in paragraphs (2) and (3) of subdivision (a) if the person has obtained a certificate of rehabilitation and pardon pursuant to Chapter 3.5 (commencing

## **44346 (cont.)**

**FURTHER  
GROUNDS  
FOR DENIAL;  
CLASSES OF  
APPLICANTS;  
REHABILITATION**

with Section 4852.01) of Title 6 of Part 3 of the Penal Code, and if his or her probation has been terminated and the information or accusation has been dismissed pursuant to Section 1203.4 of the Penal Code.

(2) Notwithstanding any other law, the commission shall deny the application of any applicant who is required to register as a sex offender pursuant to either of the following:

(A) Section 290 of the Penal Code.

(B) A law of any other state or of the United States when the underlying offense, if committed or attempted in this state, would require registration as a sex offender under Section 290 of the Penal Code.

(c) Notwithstanding paragraph (3) of subdivision (a) or subdivision (b), the commission may issue a credential to a person convicted of a controlled substance offense as defined in Section 44011 if the commission determines from the evidence presented that the person has been rehabilitated for at least five years, or has received a certificate of rehabilitation and pardon pursuant to Chapter 3.5 (commencing with Section 4852.01) of Title 6 or Part 3 of the Penal Code, or if the accusation or information against the person has been dismissed and he or she has been released from all disabilities and penalties resulting from the offense pursuant to Section 1203.4 of the Penal Code.

(d) Notwithstanding paragraph (4) of subdivision (a), the commission may issue a credential to a person found to be insane through a criminal proceeding by a federal court or a court in this or any other state if the commission determines from the evidence presented that the person has been rehabilitated for at least five years.

### **44346.1**

(a) The commission shall deny any application for the issuance of a credential made by an applicant who has been convicted of a violent or serious felony or a crime set forth in subdivision (a) of Section 44424 or whose employment has been denied or terminated pursuant to Section 44830.1.

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

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

### **44346.1 (cont.)**

**DENIAL OF  
CREDENTIAL  
FOR CONVICTION  
OF VIOLENT OR  
SERIOUS  
FELONY;  
CERTIFICATE OF  
REHABILITATION  
AND PARDON**

## Education Code

is any felony listed in subdivision (c) of Section 1192.7 of the Penal Code.

(d) Notwithstanding subdivision (a), the commission may, but is not required to, grant a credential to an applicant who has been convicted of a violent or serious felony if the person is eligible for, and has obtained, a certificate of rehabilitation and pardon pursuant to Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3 of the Penal Code.

### **44354**

Any oath required of an applicant for a credential may be administered by any of the persons enumerated in Section 60, by such employees of the Department of Education as the Superintendent of Public Instruction may designate, and by such employee of the commission as the commission may designate.

### **ADMINISTRATION OF OATH**

### **44355**

(a) Except as provided in subdivision (b), all credentials regularly issued are valid until revoked, suspended, or expired as provided by law.

(b) A credential issued under either of the following circumstances is void and shall be deemed to be void from the date it was issued:

(1) A credential which would not have been issued but for a material deception or fraud committed by an applicant or by another in the applicant's behalf; or

(2) A credential which the commission had no lawful authority to issue and which would not have been issued but for some material mistake of law or fact by either or both the applicant and the commission.

(c) A notice that a credential is void pursuant to paragraph (1) or (2) of subdivision (b) shall be served upon the credential holder at his or her last known address as provided in Section 1013 of the Code of Civil Procedure. Within 30 days thereafter, such notice may be appealed to the commission only on the grounds that there was no fraud, material deception, or error and that the commission had the lawful authority to issue the credential on the facts stated in the application.

### **VALIDITY UNTIL REVOKED, SUSPENDED OR EXPIRED; CREDENTIALS VOID AB INITIO; GROUNDS**

## **PENALTIES FOR THE SUBMISSION OF FRAUDULENT DOCUMENTS**

- 44360**            **Prohibited acts; violation**
- 44361**            **Filing license, credential, or certificate issued to another person; misdemeanor; punishment**
- 44362**            **Verification of facts necessary to establish qualifications; oath**

**44360**

Any person is guilty of a misdemeanor who, individually or in a representative or any other capacity, does any of the following:

**PROHIBITED  
ACTS;  
VIOLATION**

- (a) Alters with fraudulent intent, or uses or attempts to use any altered diploma, certificate, transcript, affidavit, or any other evidence to be used in obtaining a credential or certificate authorizing service in the public schools.
- (b) Assumes any degree or title not conferred upon him or her in the manner and by the authority recognized in this chapter with intent to represent falsely that he or she has received that degree or title, or who willfully makes any false statement on any application for examination, license, credential, or certificate under this chapter.
- (c) Sells, barter, or offers to sell or barter, or purchase or procure directly or indirectly with the intent that it be fraudulently used, any license, credential, or permit authorizing service in the public schools, or any diploma, certificate, affidavit, transcript, or any other evidence required for use in connection with any application for, or the granting of any license, credential, or certificate authorizing service in, the public schools.
- (d) Performs or attempts to perform any teaching or other certified service in any public school under a false or assumed name, or under any name other than that inscribed by the commission on any license, credential, or certificate authorizing him or her to perform those services. This provision shall not apply to persons who, because of marriage or other good faith reasons, have given notice of a name change.
- (e) Refuses or willfully fails to surrender upon demand of the commission, his or her license, credential, or certificate authorizing teaching or service in the public schools upon revocation, suspension, or voiding of those documents under this chapter.

**44361**

Every person filing for record or attempting to file for record the license, credential, or certificate issued to another person, falsely claiming

**FILING LICENSE,  
CREDENTIAL,  
OR CERTIFICATE**

## Education Code

himself or herself to be the person named in or entitled to the license credential, or certificate, is guilty of a misdemeanor and, upon conviction thereof, shall be subject to imprisonment in the county jail for not more than one year.

**ISSUED TO  
ANOTHER  
PERSON;  
MISDEMEANOR;  
PUNISHMENT**

## **44362**

Every fact necessary to establish the qualifications of an applicant for the issuance of any license, credential, or certificate authorizing the performance of services in the public schools shall be verified under penalty of perjury. An oath to this effect shall be displayed prominently on each application form, and shall be dated and subscribed by the applicant.

**VERIFICATION OF  
FACTS  
NECESSARY  
TO ESTABLISH  
QUALIFICATIONS;  
OATH**

## **REVOCATION AND SUSPENSION OF CERTIFICATION DOCUMENTS**

- |                |   |
|----------------|---|
| <b>44420</b>   | <b>Failure to fulfill contract as ground for suspension of diplomas and certificates</b>  |
| <b>44421</b>   | <b>General grounds for private admonishment, public reproof, credential revocation or suspension by commission</b>                        |
| <b>44421.1</b> | <b>Recruit of pupils as customers for certificated person's business; private admonishment or credential suspension or revocation</b>     |
| <b>44421.5</b> | <b>False fiscal expenditure data reports; sanctions</b>   |
| <b>44422</b>   | <b>Immoral or unprofessional conduct, unfitness, disobedience; hearing by county board of education; discipline imposed by commission</b> |
| <b>44423</b>   | <b>Request for revocation as reason for revocation by commission</b>  |
| <b>44424</b>   | <b>Conviction of crime; plea of nolo contendere; denial or termination of employment</b>  |
| <b>44425</b>   | <b>Conviction of sex or narcotic offense as grounds for revocation by commission; plea of nolo contendere to sex offense</b>              |
| <b>44425.5</b> | <b>Criminal insanity; final revocation for felony sex or controlled substance offenses or murder</b>                                      |
| <b>44426</b>   | <b>Determination as sexual psychopath</b>   |

- 44427** as grounds for revocation by commission  
**Grounds for revocation or suspension by county board of education**
- 44433** Unauthorized departure from service as unprofessional conduct and grounds for suspension by county board
- 44434** Immoral and unprofessional conduct, profanity, intemperance, unfitness as grounds for recommendation for revocation
- 44435** Conviction of certain felonies as grounds for revocation by county board of education
- 44436** Conviction of sex offense or controlled substance offense as grounds for revocation and suspension by county board
- 44437** Determination as sexual psychopath as grounds for revocation and suspension by county board
- 44438** Private admonition, expungement of records
- 44439** Subversion of licensing examination or administration of examination
- 44440** Withdrawal of application for credential, permit or other certification document without consent of the commission; authority of commission to proceed

**44420**

(a) If any person employed by a school district in a position requiring certification qualifications refuses, without good cause, to fulfill a valid contract of employment with the district or leave the service of the district without the consent of the superintendent, if any, or the governing board, of the district except in the manner provided for by law, the commission may, after proof of this fact is made to it, take an adverse action on the credential holder but may not suspend the credential for more than one year or revoke the credential.

**FAILURE TO FULFILL CONTRACT AS GROUND FOR SUSPENSION OF DIPLOMAS AND CERTIFICATES**

**44420 (cont.)**

(b) If the credentials issued to the person by the commission have

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been subject to adverse action pursuant to subdivision (a), the commission may, if the credentials again become subject to suspension under this section, suspend the credentials for not more than two years.

(c) The commission shall investigate allegations brought under this section in accordance with Section 44242.5.

### **44421**

The Commission for Teacher Preparation and Licensing shall privately admonish, publicly reprove, revoke or suspend for immoral or unprofessional conduct, or for persistent defiance of, and refusal to obey, the laws regulating the duties of persons serving in the public school system, or for any cause which would have warranted the denial of an application for a credential or the renewal thereof, or for evident unfitness for service.

#### **44421.1**

(a) Notwithstanding Section 44421, the commission shall take an appropriate adverse action on any credential holder who knowingly and willfully uses school records of pupil data in connection with, or implicitly or explicitly attempts to recruit a pupil to be a customer for, any business owned by the credential holder or in which the credential holder is an employee.

(b) The commission shall investigate allegations brought under this section in accordance with Section 44242.5.

#### **44421.5**

(a) Notwithstanding Section 44421, the commission shall take an appropriate adverse action on any credential holder who knowingly and willfully reports false fiscal expenditure data relative to the conduct of any educational program.

(b) The commission shall investigate allegations brought under this section in accordance with Section 44242.5.

### **44422**

Whenever the holder of any credential issued by the State Board Education or the Commission for Teacher Preparation and Licensing is charged with immoral or unprofessional conduct or evident unfitness for service or persistent defiance of, and refusal to obey, the laws

#### **44422 (cont.)**

regulating the duties of his position, the commission in its discretion

**GENERAL  
GROUNDS FOR  
PRIVATE  
ADMONISHMENT,  
PUBLIC REPROVAL,  
CREDENTIAL  
REVOCATION OR  
SUSPENSION BY  
COMMISSION**

**RECRUIT OF  
PUPILS AS  
CUSTOMERS FOR  
CERTIFICATED  
PERSON'S  
BUSINESS;  
PRIVATE  
ADMONISHMENT  
OR CREDENTIAL  
SUSPENSION  
OR REVOCATION**

**FALSE FISCAL  
EXPENDITURE  
DATA REPORTS;  
SANCTIONS**

**IMMORAL OR  
UNPROFESSIONAL  
CONDUCT,  
UNFITNESS,  
DISOBEDIENCE;**

**HEARING BY**

after notifying the person charged of its intention to do so, may require the county board of education of the county in which he is serving or has last served to give notice of, and conduct, a hearing of the charges in the manner prescribed by law for the hearing of charges for private admonition, or for the revocation or suspension of a certificate by a county board of education.

**COUNTY BOARD OF EDUCATION; DISCIPLINE IMPOSED BY COMMISSION**

The county board of education, after the hearing, shall report to the commission its findings, and a summary of the evidence, and shall make a definite recommendation concerning the revocation or suspension of the credential.

Upon receipt of a copy of the findings, summary of evidence, and recommendation, the commission may privately admonish the holder of the credential, or suspend or revoke the credential for the causes stated or order the charges dismissed.

**44423**

(a) Whenever the holder of any credential issued by the commission requests in writing that the credential held by him or her be revoked, the commission shall revoke the credential.

**REQUEST FOR REVOCATION AS REASON FOR REVOCATION BY COMMISSION**

(b) Notwithstanding a revocation pursuant to subdivision (a), the commission shall retain its authority to act under subdivision (b) of Section 44440.

**44424**

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

**CONVICTION OF CRIME; PLEA OF NOLO CONTENDERE; DENIAL OR TERMINATION OF EMPLOYMENT**

(b) Upon a plea of nolo contendere as a misdemeanor to one or more of the crimes set forth in subdivision (a), all credentials held by the respondent shall be suspended until a final disposition regarding those

**44424 (cont.)**

credentials is made by the commission. Any action that the commission



## Education Code

is permitted to take following a conviction may be taken after the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence and the time for appeal has elapsed or the judgment of conviction has been affirmed on appeal, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code.

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

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

## **44425**

(a) Whenever the holder of any credential issued by the State Board of Education or the Commission on Teacher Credentialing has been convicted of any sex offense as defined in Section 44010, or controlled substance offense as defined in Section 44011, the commission shall forthwith suspend the credential. If the conviction is reversed and the holder is acquitted of the offense in a new trial or the charges against him or her are dismissed, the commission shall forthwith terminate the suspension of the credential. When the conviction becomes final or when imposition of sentence is suspended, the commission shall forthwith revoke the credential.

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

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

**CONVICTION  
OF SEX OR  
NARCOTIC OFFENSE  
AS GROUNDS FOR  
REVOCATION BY  
COMMISSION;  
PLEA OF NOLO  
CONTENDERE  
TO SEX OFFENSE**

## **44425 (cont.)**

subsequent order under the provisions of Section 1203.4 of the Penal Code.

(d)(1) Notwithstanding any other provision of law, the commission shall immediately suspend the credential of any holder who is required to register as a sex offender pursuant to either of the following:

(A) Section 290 of the Penal Code.

(B) A law of any other state or of the United States when the underlying offense, if committed in this state, would require registration as a sex offender pursuant to Section 290 of the Penal Code.

(2) If the conviction requiring registration as a sex offender is reversed on appeal and the holder is acquitted at a new trial or if the charges against the holder are dismissed as a result of the reversal, upon notice, the commission shall immediately reinstate the credential.

(3) The commission shall immediately revoke a credential based on a conviction requiring registration as a sex offender when the time for appeal has elapsed, the judgment of conviction has been affirmed on appeal, or an order granting probation is made suspending the imposition of sentence and the time for appeal has elapsed.

### **44425.5**

Whenever the holder of any credential issued by the State Board of Education or the Commission on Teacher Credentialing is found to be insane, by a federal court or a court in this or any other state, the commission shall immediately revoke all credentials held by the person.

Notwithstanding any other provision of law, revocation shall be final without possibility of reinstatement of the credentials if the holder of the credential is charged with a felony sex offense, as defined in Section 44010, a felony controlled substance offense, as defined in Section 44011, in which an element of the controlled substance offense is either the distribution to, or use of a controlled substance by, a minor, or murder, as defined in Section 187 of the Penal Code, and, in response to the charge, the holder of the credential is found to be insane through a criminal proceeding by a federal court or a court in this or any other state.

**CRIMINAL  
INSANITY; FINAL  
REVOCATION  
FOR FELONY SEX  
OR CONTROLLED  
SUBSTANCE  
OFFENSES OR  
MURDER**

### **44426**

Whenever the holder of any credential issued by the State Board of

**DETERMINATION  
AS SEXUAL**

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Education or the Commission for Teacher Preparation and Licensing has been determined to be a sexual psychopath under the provisions of Article 1 (commencing with Section 6300) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code or under similar provisions of law of any other state, the commission shall forthwith suspend the credential. If the determination is reversed and the holder is determined not be a sexual psychopath in a new proceeding or the proceeding to determine whether he is a sexual psychopath is dismissed, the commission shall forthwith terminate the suspension of the credential. When the determination becomes final, the commission shall forthwith revoke the credential.

## **PSYCHOPATH AS GROUNDS FOR REVOCATION BY COMMISSION**

### **44427**

County boards of education may revoke or suspend, for immoral or unprofessional conduct, evident unfitness for teaching, or persistent defiance of, and refusal to obey the laws regulating the duties of, teachers, the certificates granted by them.

## **GROUNDS FOR REVOCATION OR SUSPENSION BY COUNTY BOARD OF EDUCATION**

### **44433**

If any teacher employed by a board of school trustees for a specified time, leaves the school before the expiration of the time, without the consent of the trustees, in writing, the teacher is guilty of unprofessional conduct, and the board of education of the county, upon receiving notice of the fact, may suspend the certificate of the teacher for the period of one year.

## **UNAUTHORIZED DEPARTURE FROM SERVICE AS UNPROFESSIONAL CONDUCT AND GROUNDS FOR SUSPENSION BY COUNTY BOARD**

### **44434**

Each city or city and county board of examination may for immoral and unprofessional conduct, profanity, intemperance, or evident unfitness for teaching, recommend to the city or city and county board of education, the revocation of any certificate previously granted by the board of education in the city or city and county.

## **IMMORAL AND UNPROFESSIONAL CONDUCT, PROFANITY, INTEMPERANCE, UNFITNESS AS GROUNDS FOR REVOCATION**

### **44435**

Upon the becoming final of the conviction of the holder of a certificate issued by a county board of education of a violation or attempted violation of any one or more of Penal Code sections 187 to 191, 192 insofar as said section relates to voluntary manslaughter, 193, 194 to 232, inclusive, 244, 245, 261 to 267, inclusive, 273a, 273f, 273g, 278, 285 to 288a, both inclusive, 424, 425, 484 to 488, both inclusive, insofar as said sections relate to grand theft, 503 and 504, or of Penal Code

## **CONVICTION OF CERTAIN FELONIES AS GROUNDS FOR REVOCATION BY COUNTY BOARD OF EDUCATION**

### **44435 (cont.)**

Section 272, the county board of education shall forthwith revoke the

certificate.

**44436**

Whenever the holder of a certificate issued by a county board of education has been convicted of any sex offense as defined in Section 44010 or controlled substance offense as defined in Section 44011, the county board of education shall forthwith suspend the certificate. If the conviction is reversed and the holder is acquitted of the offense in a new trial or the charges against him or her are dismissed, the board shall forthwith terminate the suspension of the certificate. When the conviction becomes final or when imposition of sentence is suspended, the board shall forthwith revoke the certificate.

**CONVICTION OF SEX OFFENSE OR CONTROLLED SUBSTANCE OFFENSE AS GROUNDS FOR REVOCATION AND SUSPENSION BY COUNTY BOARD**

**44437**

Whenever the holder of a certificate issued by a county board of education has been determined to be a sexual psychopath under the provisions of Article 1 (commencing with Section 6300), Chapter 2, Part 2, Division 6 of the Welfare and Institutions Code or under similar provisions of law of any other state, the county board of education shall forthwith suspend the certificate. If the determination is reversed and the holder is determined not to be a sexual psychopath in a new proceeding or the proceeding to determine whether he is a sexual psychopath is dismissed, the board shall forthwith terminate the suspension of the certificate. When the determination becomes final, the board shall forthwith revoke the certificate.

**DETERMINATION AS SEXUAL PSYCHOPATH AS GROUNDS FOR REVOCATION AND SUSPENSION BY COUNTY BOARD**

**44438**

(a) "Private admonition," as used in this article and in Article 3 (commencing with Section 44240) of Chapter 2, is a warning, in writing, to the applicant or credential holder that states in ordinary and concise language the act or omission of the applicant or credential holder and further states that repetition of such act or omission may result in denial, suspension, or revocation of the credential.

**PRIVATE ADMONITION; EXPUNGEMENT OF RECORDS**

(b) The private admonition shall be included in the applicant's or credential holder's file, maintained by the commission.

(c) The applicant's or credential holder's employer at the time of admonition shall receive a copy of the admonition and shall not make such copy accessible or disclose the contents thereof, unless the applicant or credential holder consents, in writing, thereto.

(d) For purposes of Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code, the private

**44438 (cont.)**

admonition is deemed a personnel record within the meaning of

Education Code

subdivision (c) of Section 6254 of the Government Code.

(e) The commission and the applicant's or credential holder's employer shall expunge all records pertaining to the private admonition maintained in his or her files pursuant to subdivisions (b) and (c) at the expiration of three years, so long as there is no recurrence of such an offense.

**44439**

The commission may take an adverse action on the ground that an applicant or credential holder has subverted or attempted to subvert any licensing examination or the administration of an examination, including, but not limited to:

(a) Conduct which violates the security of the examination materials; removing from the examination room any examination materials; the unauthorized xerographic, photographic, or other mechanical reproduction of any portion of the actual licensing examination; aiding by any means the unauthorized xerographic, photographic, or other mechanical reproduction of any portion of the actual licensing examination; paying or using professional or paid examination-takers for the purpose of reconstructing any portion of the licensing examination; obtaining examination questions or other examination material, except by specific authorization either before, during, or after an examination or use or purport to use any examination questions or materials which were improperly removed or taken from any examination for the purpose of instructing or preparing applicants for examinations; or selling, distributing, buying, receiving or having unauthorized possession of any portion of a future, current, or previously administered licensing examination.

(b) Conduct that violates the standard of examination administration; communicating with any other examinee during the administration of a licensing examination; copying answers from another examinee or permitting one's answers to be copied by another examinee; having in one's possession during the administration of the licensing examination any books, equipment, notes, written or printed materials, or data of any kind, other than the examination materials distributed, or otherwise authorized to be in one's possession during the examination; or impersonating any examinee or having an impersonator take the licensing examination on one's behalf.

(c) The commission shall investigate allegations brought under this section in accordance with Section 44242.5.

**SUBVERSION  
OF LICENSING  
EXAMINATION OR  
ADMINISTRATION  
OF EXAMINATION**

**44440**

(a) No applicant who is under review by the commission shall be allowed to withdraw his or her application for a credential without the

**WITHDRAWAL  
OF APPLICATION  
FOR CREDENTIAL,**

written consent of the commission. The commission shall retain its authority over those applicants to proceed with the denial of the credential upon any ground provided by law, or to enter an order denying the credential upon any ground provided by law.

**PERMIT OR OTHER  
CERTIFICATION  
DOCUMENT  
WITHOUT CONSENT  
OF COMMISSION;  
AUTHORITY OF  
COMMISSION TO  
PROCEED**

(b) The suspension or expiration of any credential, its surrender without the written consent of the commission, or a revocation pursuant to Section 44423 does not deprive the commission of its authority to do any of the following:

- (1) Institute or continue a disciplinary proceeding against the credential holder upon any ground provided by law.
- (2) Enter an order suspending or revoking the credential.
- (3) Issue a public reproof or private admonition to the credential holder.

## **RESIGNATIONS, DISMISSALS, AND TERMINATIONS OF EMPLOYEES**

- 44830.1** Felons; certificated positions; criminal record summary; fingerprints; confidentiality
- 44830.2** Employment in multiple districts; fingerprints, criminal history record, etc.
- 44836** Employment of persons convicted of sex offenses or controlled substance offenses
- 44932** Grounds for dismissal of permanent employees; suspension of employees
- 44933** Other grounds for dismissal or suspension; additional application of section
- 44940** Leave of absence; certificated employee charged with mandatory or optional leave of absence offense; suspension of credentials; definitions
- 44940.5** Compulsory leave of absence; procedures; extension of leave; compensation; bond or security; reports
- 44942** Suspension or transfer of certificated employee on grounds of mental illness; examination; mandatory sick leave
- 44947** Requirements upon governing board on dismissal for certain crimes

### **44830.1**

(a) In addition to any other prohibition or provision, no person who has been convicted of a violent or serious felony shall be hired by a

**FELONS;  
CERTIFICATED  
POSITIONS;**

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school district in a position requiring certification qualifications or supervising positions requiring certification qualifications. A school district shall not retain in employment a current certificated employee who has been convicted of a violent or serious felony, and who is a temporary employee, a substitute employee, or a probationary employee serving before March 15 of the employee's second probationary year. If any conviction is reversed and the formerly convicted person is acquitted of the offense in a new trial, or the charges are dismissed, this section does not prohibit his or her employment thereafter.

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

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

(2) For purposes of this section, a plea of nolo contendere to a serious or violent felony constitutes a conviction.

(3) For purposes of this section, the term "school district" has the same meaning as defined in Section 41302.5.

(d) When the governing board of any school district requests a criminal record summary of a temporary, substitute, or probationary certificated employee, two fingerprint cards, bearing the legible rolled and flat impressions of the person's fingerprints together with a personal description and the fee, shall be submitted, by any means authorized by the Department of Justice, to the Department of Justice.

(e) When the Department of Justice ascertains that an individual who is an applicant for employment by a school district has been convicted of a violent or serious felony, or for purposes of implementing the prohibitions set forth in Section 44836, any sex offense, as defined in Section 44010, or any controlled substance offense, as defined in Section 44011, the department shall notify the school district of the criminal information pertaining to the applicant. The notification shall be delivered by telephone or electronic mail to the school district. The notification to the school district shall cease to be made once the statewide electronic fingerprinting network is returning responses within three working days. The Department of Justice shall send by first-class mail or electronic mail a copy of the criminal information to the Commission on Teacher Credentialing.

## **44830.1 (cont.)**

The Department of Justice may charge a reasonable fee to cover the costs associated with processing, reviewing, and supplying the criminal record summary required by this section. In no event shall the fee exceed the actual costs incurred by the department.

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

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

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

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

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

## **44830.1 (cont.)**



## Education Code

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

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

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

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

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

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

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

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

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

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

## **44830.2**

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

**EMPLOYMENT  
IN MULTIPLE  
DISTRICTS;  
FINGERPRINTS  
CRIMINAL  
HISTORY**

## **44830.2 (cont.)**

counties, for the purposes of performing the following functions:

- (1) Sending fingerprints to the Department of Justice.
  - (2) Receiving reports of convictions of serious and violent felonies.
  - (3) Reviewing criminal history records and reports of subsequent arrests from the Department of Justice.
  - (4) Maintaining common lists of persons eligible for employment.
- (b) The school district or county superintendent serving in the capacity authorized in subdivision (a) shall be considered the employer for purposes of subdivisions (a), (d), and (g) of Section 44830.1.
- (c) Upon receipt from the Department of Justice of a report of conviction of a serious or violent felony, the designated school district or county superintendent shall communicate that fact to the participating districts and remove the affected employee from the common list of persons eligible for employment.
- (d) Upon receipt from the Department of Justice of a criminal history record or report of subsequent arrest for any person on a common list of persons eligible for employment, the designated school district or county superintendent shall give notice to the superintendent of any participating district or a person designated in writing by that superintendent, that the report is available for inspection on a confidential basis by the superintendent or authorized designee, at the office of the designated school district or county superintendent, for a period of 30 days following receipt of notice, to enable the employing school district to determine whether the employee meets that district's criteria for continued employment. The designated school district or county superintendent shall not release a copy of that information to any participating district or any other person, shall retain or dispose of the information in the manner required by law after all participating districts have had an opportunity to inspect it in accordance with this section, and shall maintain a record of all persons to whom the information has been shown that shall be available to the Department of Justice to monitor compliance with the requirements of confidentiality contained in this section.
- (e) Any agency processing Department of Justice responses pursuant to this section shall submit an interagency agreement to the Department of Justice to establish authorization to submit and receive information pursuant to this section.

## **44830.2 (cont.)**

## Education Code

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

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

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

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

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

## **44836**

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

(2) If a person's conviction of a sex offense as defined in Section 44010 is reversed and the person is acquitted of the offense in a new trial or the charges against him or her are dismissed, this section does not prohibit his or her employment thereafter. If the dismissal was pursuant to Section 1203.4 of the Penal Code and the victim of the sex offense was a minor, this section does prohibit the person's employment.

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

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

## **44836 (cont.)**

## **EMPLOYMENT OF PERSONS CONVICTED OF SEX OFFENSES OR CONTROLLED SUBSTANCE OFFENSES**

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

**44932**

(a) No permanent employee shall be dismissed except for one or more of the following causes:

- (1) Immoral or unprofessional conduct.
- (2) Commission, aiding, or advocating the commission of acts of criminal syndicalism, as prohibited by Chapter 188 of the Statutes of 1919, or in any amendment thereof.
- (3) Dishonesty.
- (4) Unsatisfactory performance.
- (5) Evident unfitness for service.
- (6) Physical or mental condition unfitting him or her to instruct or associate with children.
- (7) Persistent violation of or refusal to obey the school laws of the state or reasonable regulations prescribed for the government of the public schools by the State Board of Education or by the governing board of the school district employing him or her.
- (8) Conviction of a felony or of any crime involving moral turpitude.
- (9) Violation of Section 51530 or conduct specified in Section 1028 of the Government Code, added by Chapter 1418 of the Statutes of 1947.
- (10) Knowing membership by the employee in the Communist Party.
- (11) Alcoholism or other drug abuse which makes the employee unfit to instruct or associate with children.

(b) The governing board of a school district may suspend without pay for a specific period of time on grounds of unprofessional conduct a permanent certificated employee or, in a school district with an average daily attendance of less than 250 pupils, a probationary employee, pursuant to the procedures specified in

**44932 (cont.)**

**GROUNDS  
FOR  
DISMISSAL  
OF PERMANENT  
EMPLOYEES;  
SUSPENSION OF  
EMPLOYEES**

## Education Code

Sections 44933, 44934, 44935, 44936, 44937, 44943, and 44944. This authorization shall not apply to any school district which has adopted a collective bargaining agreement pursuant to subdivision (b) of Section 3543.2 of the Government Code.

### **44933**

A permanent employee may be dismissed or suspended on grounds of unprofessional conduct consisting of acts or omissions other than those specified in Section 44932, but any such charge shall specify instances of behavior deemed to constitute unprofessional conduct. This section shall also apply to the suspension of probationary employees in a school district with an average daily attendance of less than 250 pupils.

### **44940**

(a) For purposes of this section, "charged with a mandatory leave of absence offense" is defined to mean charged by complaint, information, or indictment filed in a court of competent jurisdiction with the commission of any sex offense as defined in Section 44010, or with the commission of any offense involving aiding or abetting the unlawful sale, use, or exchange to minors of controlled substances listed in Schedule I, II, or III, as contained in Section 11054, 11055, and 11056 of the Health and Safety Code, with the exception of marijuana, mescaline, peyote, or tetrahydrocannabinols.

(b) For purposes of this section, "charged with an optional leave of absence offense" is defined to mean a charge by complaint, information, or indictment filed in a court of competent jurisdiction with the commission of any controlled substance offense as defined in Section 44011 or 87011, or a violation or attempted violation of Section 187 of the Penal Code, or Sections 11357 to 11361, inclusive, 11363, 11364, or 11370.1 of the Health and Safety Code, insofar as these sections relate to any controlled substances except marijuana, mescaline, peyote, or tetrahydrocannabinols.

(c) For purposes of this section and Section 44940.5, the term "school district" includes county offices of education.

(d)(1) Whenever any certificated employee of a school district is charged with a mandatory leave of absence offense, as defined in subdivision (a), upon being informed that a charge has been filed, the governing board of the school district shall immediately place the employee on compulsory leave of absence. The duration of the leave of absence shall be until a time not more than 10 days after the date of entry of the judgment in the proceedings. No later than 10 days after receipt of the complaint, information, or

### **44940 (cont.)**

**OTHER GROUNDS  
FOR DISMISSAL  
OR SUSPENSION;  
ADDITIONAL  
APPLICATION OF  
SECTION**

**LEAVE OF  
ABSENCE;  
CERTIFICATED  
EMPLOYEE  
CHARGED WITH  
MANDATORY OR  
OPTIONAL LEAVE  
OF ABSENCE  
OFFENSE;  
SUSPENSION OF  
CREDENTIALS;  
DEFINITIONS**

indictment described by subdivision (a), the school district shall forward a copy to the Commission on Teacher Credentialing.

(2) Upon receiving a copy of a complaint, information, or indictment described in subdivision (a) and forwarded by a school district, the Commission on Teacher Credentialing shall automatically suspend the employee's teaching or service credential. The duration of the suspension shall be until a time not more than 10 days after the date of entry of the judgment in the proceedings.

(e)(1) Whenever any certificated employee of a school district is charged with an optional leave of absence offense as defined in subdivision (b), the governing board of the school district may immediately place the employee upon compulsory leave in accordance with the procedure in this section and Section 44940.5. If any certificated employee is charged with an offense deemed to fall into both the mandatory and the optional leave of absence categories, as defined in subdivisions (a) and (b), that offense shall be treated as a mandatory leave of absence offense for purposes of this section. No later than 10 days after receipt of the complaint, information, or indictment described by subdivision (a), the school district shall forward a copy to the Commission on Teacher Credentialing.

(2) Upon receiving a copy of a complaint, information, or indictment described in subdivision (a) and forwarded by a school district, the Commission on Teacher Credentialing shall automatically suspend the employee's teaching or service credential. The duration of the suspension shall be until a time not more than 10 days after the date of entry of the judgment in the proceedings.

**44940.5**

Any certificated employee placed on compulsory leave of absence pursuant to Section 44940 and any classified employee placed on compulsory leave of absence pursuant to Section 45304 shall be subject to the following procedures:

(a) The governing board of the school district may extend the compulsory leave of absence of the employee beyond the initial period specified in Section 44940 or 45304, whichever is applicable, by giving notice to the employee within 10 days after the entry of judgment in the proceedings that the employee will be dismissed at the expiration of 30 days from the date of service of the notice, unless the employee demands a hearing as provided in this article.

**COMPULSORY  
LEAVE OF ABSENCE;  
PROCEDURES;  
EXTENSION OF  
LEAVE;  
COMPENSATION;  
BOND OR  
SECURITY;  
REPORTS**

**44940.5 (cont.)**

## Education Code

(b) Any employee placed upon compulsory leave of absence pursuant to this section shall continue to be paid his or her regular salary during the period of his or her compulsory leave of absence if and during that time he or she furnishes to the school district a suitable bond, or other security acceptable to the governing board, as a guarantee that the employee will repay to the school district the amount of salary so paid to him or her during the period of the compulsory leave of absence in case the employee is convicted of the charges, or fails or refuses to return to service following an acquittal of the offense or dismissal of the charges. If the employee is acquitted of the offense, or the charges against the employee are dismissed, the school district shall reimburse the employee for the cost of the bond upon his or her return to service in the school district.

(c) If the employee does not elect to furnish bond, or other security acceptable to the governing board of the district, and if the employee is acquitted of the offense, or the charges against him or her are dismissed, the school district shall pay to the employee his or her full compensation for the period of the compulsory leave of absence upon his or her return to service in the school district.

(d) Any action taken pursuant to this section by a governing board shall be reported immediately to the Commission for Teacher Preparation and Licensing. The commission shall give priority to the investigation and resolution of these cases.

## **44942**

(a) Any certificated employee may be suspended or transferred to other duties by the governing board if the board has reasonable cause to believe that the employee is suffering from mental illness of such a degree as to render him or her incompetent to perform his or her duties.

(b) The governing board shall immediately, upon any suspension or transfer under this section, give to the employee a written statement of the facts giving rise to the board's belief, and an opportunity to appear before the board within 10 days to explain or refute the charges.

(c) If, after the employee's appearance before the board, the board decides to continue the suspension or transfer, or if the employee chooses not to appear before the board, the employee shall then be offered, in writing, the opportunity of being examined by a panel consisting of three persons who are either psychiatrists or psychologists, at least one of whom shall be a psychiatrist, selected by him or her from a list of psychiatrists and psychologists to be provided by the board. To assist the panel in making its determination, the governing board shall supply to the panel, prior to the date scheduled for the examination, a list of the duties of the position from which the employee was suspended or transferred. The

**SUSPENSION OR  
TRANSFER OF  
CERTIFICATED  
EMPLOYEE ON  
GROUNDS OF  
MENTAL  
ILLNESS;  
EXAMINATION;  
MANDATORY SICK  
LEAVE**

## **44942 (cont.)**

employee shall continue to receive his or her regular salary and all other benefits of employment during the period dating from his or her suspension to the filing of the report of the panel with the governing board.

(d) The examination shall be conducted at school district expense within 15 days of any suspension or transfer ordered under this section. The employee shall submit to the examination, but shall be entitled to be represented by a psychiatrist, psychologist licensed under Chapter 6.6 (commencing with Section 2900) of Division 2 of the Business and Professions Code, or physician of his or her own choice, and any report of the psychiatrist, psychologist, or physician selected by him or her shall be filed with the panel at the request of the employee.

A written report of the panel on the examination of the suspended or transferred employee shall be submitted to the governing board no later than 10 days after completion of the examination. A copy shall be supplied to the employee upon request. The report shall contain a finding on whether the employee is suffering from mental illness of such a degree as to render him or her incompetent to perform his or her duties.

(e) If a majority of the panel conclude that the employee should be permitted to return to his or her duties, no written record of the suspension or of the determination of the panel shall be retained, and in all respects any written record concerning the employee shall appear as it did before the suspension was made.

(f) If a majority of the panel find in their report that the employee is suffering from mental illness of such a degree as to render him or her incompetent to perform his or her duties, the governing board may, upon receipt of the report, place the employee on mandatory sick leave of absence. Any mandatory sick leave of absence imposed under this section shall not exceed two years, during which period the employee shall be entitled to sick leave and hospital and medical benefits that he or she accrued during his or her employment by the governing board but only to the extent of such accrual.

(g) Any employee placed on mandatory sick leave of absence pursuant to this section may, in writing, immediately demand a hearing. Upon receipt of that written demand, the governing board shall file a complaint in the superior court of the county in which the school district, or the major part thereof, is located, setting forth the charges against the employee and asking that the court inquire into the charges and determine whether or not the charges are true, and, if true, whether they constitute sufficient ground for placing the employee on mandatory sick leave of absence, and for a judgment pursuant to its findings.

**44942 (cont.)**



## Education Code

(h) If the court finds that the employee was not, at the time of the suspension, incompetent to perform his or her assigned duties and should not have been placed on mandatory sick leave of absence, the employee shall be immediately reinstated to the same or a substantially similar position with full back salary, and any written record of the suspension or transfer or any report of the panel shall be destroyed.

(i) If the court confirms the placing of the employee on mandatory sick leave, or if the employee does not seek a hearing, then, upon written request of the employee made not earlier than six months nor later than two years after the date he or she was placed on mandatory sick leave of absence, a new panel consisting of three persons who are either psychiatrists or psychologists, at least one of whom shall be a psychiatrist, shall be convened by, and at the expense of, the governing board to review its original conclusion. If the original conclusion is not changed by the new panel as a result of such review, the employee shall be continued on the mandatory sick leave of absence, except that when the employee's total period of absence exceeds two years, the governing board shall either rescind its action and reinstate the employee to the same or a substantially similar position, or shall serve the employee with a notice of intention to dismiss him or her, and proceed according to Section 44943.

(j) If a majority of the new panel concludes in its report, or any subsequent review thereof, that the suspended employee or employee on mandatory sick leave of absence should be permitted to return to his or her duties, or if the court so concludes, the governing board shall take immediate action to restore the employee to the position from which he or she was suspended or transferred or to a substantially similar position.

(k) Every hearing and action by or before the governing board pursuant to this section shall be in executive session, and no decision, action, or occurrence therein shall be made public, unless the employee so requests in writing.

(l) Nothing in this section shall be construed to supersede Section 44949.

## **44947**

If an employee is dismissed for immoral conduct or conviction of a felony or crime involving moral turpitude, the governing board shall transmit to the Commission on Teacher Credentialing and to the county board of education which issued the certificate under which the employee was serving at the time of his dismissal, a copy of the reporter's transcript of the hearing accompanied by a request that any certificate issued by the county board of education to the employee be revoked if the employee is not reinstated upon appeal.

## **REQUIREMENTS UPON GOVERNING BOARD ON DISMISSAL FOR CERTAIN CRIMES**

# **CODE OF REGULATIONS**

## **COMMITTEE OF CREDENTIALS GENERAL PROVISIONS**

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<b>80302</b>	<b>Standards for investigation</b>
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<b>80311</b>	<b>Request for appearance</b>
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<b>80315</b>	<b>Reconsideration</b>
<b>80316.5</b>	<b>Confidential report of investigation</b>
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<b>80331</b>	<b>Rules of conduct for professional educators</b>
<b>80332</b>	<b>Professional candor and honesty in letters or memoranda of employment recommendation</b>
<b>80333</b>	<b>Withdrawal from professional employment</b>
<b>80334</b>	<b>Unauthorized private gain or advantage</b>
<b>80335</b>	<b>Performance of unauthorized professional services</b>
<b>80336</b>	<b>Performance with impaired faculties</b>
<b>80337</b>	<b>Harassment and retaliation prohibited</b>
<b>80338</b>	<b>Discrimination prohibited</b>
<b>80412</b>	<b>Filing of mailing address</b>
<b>80028</b>	<b>Certificate of clearance</b>

### **80300**

### **DEFINITIONS**

(a) "Adverse action" is a denial, a private admonition, public reproof, suspension or a revocation of one or more credentials.

(b) "Aggravating factor" is an event or circumstance which demonstrates that a greater degree of adverse action for an act of professional misconduct is needed to adequately protect the public, schoolchildren or the profession. Aggravating factors may include, but are not limited to, the following:

- (1) a prior record of adverse action including the nature and

## **80300 (cont.)**

extent of that record;

(2) that the misconduct evidences multiple acts of wrongdoing or demonstrates a pattern of misconduct;

(3) that the misconduct was surrounded by or followed by bad faith, dishonesty or other violation of the laws governing educators;

(4) that the misconduct significantly harmed a child entrusted to the care of a credential holder or applicant, significantly harmed the public or the educational system;

(5) that the holder or applicant demonstrated indifference toward the consequence of the misconduct, which includes failure to comply with known court orders; or

(6) that the holder or applicant had prior notice, warnings or reprimands for similar conduct from any reliable source.

(c) "Applicant" is an individual applying for a credential, permit, waiver or other certification document issued by the Commission on Teacher Credentialing.

(d) "Commission" is the Commission on Teacher Credentialing or a predecessor agency.

(e) "Committee" is the Committee of Credentials.

(f) "Confidential investigative report" is a summary of applicable law and relevant facts, as well as information regarding aggravating and mitigating factors, prepared and presented to the Committee pursuant to Education Code section 44242.5(c)(2).

(g) "Credential" is any credential, certificate, life document, life diploma, permit, certificate of clearance, or waiver, or other document which authorizes the holder to perform services which require certification and was issued by the Commission.

(h) "Complainant" is the person or persons filing a statement pursuant to Education Code section 44242.5(b)(2), or an employer filing a notice pursuant to Education Code section 44242.5(b)(3), or (4).

(i) "Denial" is refusal to grant a credential to an applicant whose conduct comes within the provisions of Education Code sections 44435 or 44346.

(j) "Employer" is the entity which contracts with or otherwise engages a holder or applicant for the performance of educational services.

## 80300 (cont.)

(k) "Formal review" is the meeting held pursuant to Education Code section 44244.

(l) "Holder" is an individual possessing a credential, permit, waiver or other certification document issued by the Commission.

(m) "Mitigating factor" is an event or circumstance which demonstrates that the public, schoolchildren and the profession would be adequately protected by a more lenient degree of adverse action or no adverse action whatsoever. Mitigating factors may include, but are not limited to, the following factors:

(1) absence of any prior record of adverse action over many years of educational service, coupled with present misconduct which is not deemed most serious;

(2) lack of harm to the person who is the object of the misconduct;

(3) emotional or physical difficulties suffered by the holder or applicant which substantially contributed to the misconduct; provided that the difficulties were not the product of illegal conduct by the credential holder or applicant, such as illegal drug or substance abuse; and further provided that the credential holder or applicant has established through clear and convincing evidence that he or she no longer has such difficulties;

(4) a demonstration of good character of the applicant or holder attested to by references from the educational community or the general community from individuals aware of the extent of the applicant's or holder's misconduct;

(5) objective action taken by the applicant or holder, spontaneously demonstrating remorse at the time of the misconduct, and recognition of the wrongdoing which is designed to timely make amends for the consequences of the misconduct;

(6) the proximity or remoteness in time relative to the seriousness of the misconduct; or

(7) the nature and extent of subsequent rehabilitation.

(n) "Private admonition" is an adverse action defined and governed by Education Code section 44438.

(o) "Probable cause" is reasonable grounds for belief in the existence of facts warranting adverse action.

## **80300 (cont.)**

(p) "Public reproof" is a public warning from the Commission that conduct is not appropriate for a credential holder or applicant. Following a public reproof, commission of the same or similar conduct may result in more serious adverse action. It is issued only when adequate to appropriately protect the public, schoolchildren and the profession.

(q) "Recurring conduct" is behavior involving the exercise of consistently poor judgment or misconduct.

(r) "Revocation" is the termination of an individual's ability to work in a position requiring certification. Once effective, the revocation continues unless the individual is reinstated by the Commission.

(s) "Sexual misconduct" is:

(1) acts or conduct, directed at a minor which a reasonable person would believe to be motivated by sexual interest;

(2) acts or conduct defined in Education Code section 44010 whether or not the applicant or holder was convicted or arrested; or

(3) the proliferation or distribution of child pornography or the exploitation of any minor through the use of any pornography by a credential holder or applicant. "Pornography" consists of the acts defined in Part 1, Title 9, Chapters 7.5 and 7.6 of the Penal Code, commencing with section 311.

(t) "Suspension" is the temporary inactivation of a credential for a specified period of time. A suspension may be stayed on conditions of probation or may be an actual suspension or may be both. If an actual suspension, the credential holder may not work in a position requiring a credential during the period of actual suspension.

(1) A "stayed suspension" may be issued for a specified period of time only if the stay and performance of specified rehabilitative or probationary duties by the credential holder during the period of the stay is deemed consistent with the purposes of professional discipline.

(2) An "actual suspension" may be issued for a specified period of time. Actual suspensions imposed for one year or longer shall require presentation of sufficient proof to the Commission of the credential holder's rehabilitation, or present fitness to perform the duties authorized by the credential before the suspension may terminate.

## **80301**

(a) An applicant for issuance or renewal of a credential shall not be required to disclose, and the Committee of Credentials shall not inquire into or consider, any acts or omissions not related to his or her fitness or competence to perform the duties authorized by his or her credential.

(b) Each applicant for initial issuance of a credential shall submit a completed Application for Character and Identification Clearance on a form adopted by the Commission on which he or she will set forth evidence of identification and good moral character which shall be used for the sole purpose of determining the applicant's eligibility for a credential or Certificate of Clearance.

(c) The Application for Character and Identification Clearance shall include, but not be limited to, the following information for applicants:

(1) That the Commission is prohibited from issuing to or renewing the credential of any person convicted of any sex offense listed under Education Code Section 44010; or any narcotics offense listed under Education Code Section 44011; or who has been determined to be a mentally disordered sex offender; or that if a person holds a credential and has been convicted of any offense listed in Education Code Section 44424, such credential must be revoked.

## **NOTICE TO APPLICANTS FOR ISSUANCE OR RENEWAL OF CREDENTIALS; APPLICATION FOR CHARACTER AND IDENTIFICATION CLEARANCE**

## **80302**

(a) The Committee, in conducting its investigation, shall determine the relationship between the alleged misconduct and the applicant's or holder's fitness, competence, or ability to effectively perform the duties authorized by the credential. Such relationship may be based on facts which include, but are not limited to, the following:

(1) The likelihood that the conduct may have adversely affected students, fellow teachers, or the educational community, and the degree of such adversity anticipated;

(2) The proximity or remoteness in time of the conduct;

(3) The type of credential held or applied for by the person involved;

(4) The extenuating or aggravating circumstances surrounding the conduct;

(5) The praiseworthiness or blameworthiness of the motives resulting in the conduct;

(6) The likelihood of the recurrence of the questioned conduct;

(7) The extent to which disciplinary action may inflict an adverse impact or chilling effect upon the constitutional rights of the person involved, or other certified persons;

## **STANDARDS FOR INVESTIGATION**

## 80302 (cont.)

(8) The publicity or notoriety given to the conduct.

(b) If the Committee finds no relationship between the alleged misconduct and the applicant's or holder's fitness, competence or ability to effectively perform the duties authorized by the credential the Committee shall close the investigation.

## 80303

(a) Whenever a credential holder, working in a position requiring a credential:

(1) is dismissed or nonreelected;

(2) resigns;

(3) is suspended or placed on unpaid administrative leave as a final adverse employment action for more than 10 days;

(4) retires; or

(5) is otherwise terminated by a decision not to employ or re-employ; as a result of an allegation of misconduct or while an allegation of misconduct is pending, the superintendent of the employing school district shall report the change in employment status to the Commission not later than 30 days after the employment action.

(b) The report shall contain all known information about each alleged act of misconduct.

(c) The report shall be made to the Commission regardless of any proposed or actual agreement, settlement, or stipulation not to make such a report. The report shall also be made if allegations served on the holder are withdrawn in consideration of the holder's resignation, retirement, or other failure to contest the truth of the allegations.

(d) Failure to make a report required under this section constitutes unprofessional conduct. The Committee may investigate any superintendent who holds a credential who fails to file reports required by this section.

(e) The superintendent of an employing school district shall, in writing, inform a credential holder of the content of this regulation whenever that credential holder, working in a position requiring a credential, is dismissed, nonreelected, resigns, is suspended or placed on unpaid administrative leave as a final adverse employment action for more than ten days, retires or is otherwise

## REPORTS OF CHANGE IN EMPLOYMENT STATUS



terminated by a decision not to employ or re-employ as a result of

an allegation of misconduct or while an allegation of misconduct is pending. Failure to comply with this subdivision by a superintendent of schools constitutes unprofessional conduct which shall be investigated by the Committee of Credentials.

### **80304**

(a) A notice filed pursuant to Education Code section 44242.5(b)(4) alleging sexual misconduct shall contain all of the following information:

(1) name of the holder alleged to have engaged in misconduct;

(2) name, age and address of each victim of the alleged misconduct;

(3) a summary of all information known to the employer regarding the alleged misconduct; and

(4) a summary of the action, if any, taken at the district level by the employer in response to the complaint of sexual misconduct.

### **NOTICE OF SEXUAL MISCONDUCT**

### **80306**

(a) With the exceptions set forth in Education Code section 44242.7(a), an allegation of an act or omission by a credential holder shall be presented to the Committee within four years from the date of the alleged act or omission, or within one year from the date the act or omission should reasonably have been discovered by the Commission.

(b) For purposes of Education Code section 44242.7(a), a matter is presented to the Committee when the credential holder or applicant is notified that the matter is set for initial review by the Committee.

### **TIME FOR PRESENTATION OF ALLEGATIONS**

### **80307**

(a) Upon receipt of a written request, the Committee shall disclose to the credential holder or applicant or his or her attorney only those portions of the investigation file as authorized by Education Code section 44244(a).

(b) Disclosure of documents pursuant to subsection (a) may be provided at any time subsequent to the commencement of the initial review pursuant to Education Code section 44242.5(c).

### **DISCLOSURE OF DOCUMENTS DURING INVESTIGATION**

### **80307.1**

An investigation is commenced on the date respondent is first notified, in writing, that his or her fitness to hold a credential is under initial review.

### **INVESTIGATION COMMENCES**

## 80308

## PRELIMINARY REVIEW

(a) If the Committee receives information about an applicant or holder, the Committee may conduct a preliminary review of the information prior to commencing an investigation. At the preliminary review, the Committee may either determine to end the review or instruct staff to set the matter for initial review at a later meeting.

(b) A credential holder's personnel records shall not be obtained without written notification to the holder.

(c) No contact shall be made by any Commission staff members with anyone except the complainant prior to opening the investigation.

**NOTE:** Pursuant to court order, the Commission has jurisdiction to conduct an investigation, including requests for information to public agencies, only upon receipt of relevant information as specified within and pursuant to Education Code section 44242.5. Unless the Commission receives such information as specified in section 44242.5, it may not proceed to investigate, including the undertaking of a preliminary review pursuant to section 80308.

## 80309

## MEDICAL AND PSYCHIATRIC GUIDELINES

(a) The Committee shall not initiate an administrative hearing solely on the grounds that an applicant or licensee is suffering from a contagious and communicable disease or other disease or defect of mind or body unless probable cause appears from the evidence that:

(1) The condition of the applicant or licensee constitutes a health hazard to students or persons with whom he or she must associate in carrying out the duties authorized by the credential applied for or held; or

(2) Because of the said disease or defect the applicant or licensee is unable to perform the duties authorized by the credential applied for or held.

(b) Any denial, suspension, or revocation of a credential pursuant to this section shall be limited in duration to the period of actual disability; and the credential shall be granted or reissued upon presentation of satisfactory evidence that such disability no longer exists.

(c) Where it appears from the evidence that an applicant or licensee is, or has been within one year, under psychiatric treatment as a condition of probation imposed by a court as a result of the commission of acts or omissions which also constitute probable cause for private admonition, denial, suspension, or revocation of a credential; or where the evidence shows that an applicant or licensee has committed acts or omissions which, but for the

## **80309 (cont.)**

reasonably probable existence of some mental defect or disability, would constitute cause for disciplinary action, the Committee of Credentials may require and the applicant or licensee shall submit to an examination by a designated board certified licensed psychiatrist who shall prepare his expert opinion with respect to whether the applicant or licensee is able to perform the duties authorized by the credential applied for or held; and if not so able, the probable duration and severity of the disability. Such examination shall be at the expense of the Commission.

Refusal or willful failure of an applicant or licensee to submit to such examination within 30 days after service of such request by registered mail shall constitute cause for denial of the application for issuance or

renewal of a credential, and any revocation or suspension of a credential shall not be limited by the provisions of subsection 2 (b) above.

### **80309.1**

(a) Prior to issuance of a notice of meeting pursuant to section 80310 the Committee shall conduct an initial review of the matter based upon written information.

(b) Notification of the initial review shall be provided to the holder or applicant only.

(c) When the matter is set for initial review by the Committee the staff shall provide written notification to the applicant or holder and offer the applicant or holder a reasonable opportunity to provide written information to the Committee prior to the Committee meeting. All written statements by the applicant or holder provided to the Committee shall be verified under penalty of perjury.

(d) Staff shall submit a confidential investigative report to the Committee.

### **INITIAL REVIEW**

## **80310**

(a) The notice of meeting required by Education Code section 44244(a) shall be sent to the address of record of the holder or applicant. In its discretion, the Committee may also send the notice to the last known address of the holder or applicant. However, it is the responsibility of the holder or applicant to notify the Commission of any change in his or her address of record. The notice to the holder or applicant shall contain a confidential investigative report.

(b) A copy of the notice, without the confidential investigative report, shall be sent to any complainant and all known educational employers.

### **NOTICE OF MEETING, FORMAL REVIEW**

### **80311**

### **REQUEST FOR APPEARANCE**

(a) No later than 20 days prior to formal review before the Committee pursuant to section 80310, the holder or applicant may request an opportunity to personally appear before the Committee during the formal review to respond, under oath, to questions from the Committee.

(b) Upon receipt of a request for an appearance, staff shall schedule a specific day and time to appear before the Committee during the formal review. Staff shall also notify all complainants and the last known employer, of the scheduled appearance. This notice shall state that the complainant and/or employer may also appear to offer relevant testimony before the Committee.

(c) If the holder or applicant is unable to appear before the Committee at the scheduled time, the Committee shall conduct the meeting, as noticed pursuant to section 80310, without an appearance. The Committee may grant a continuance if an emergency situation exists.

### **80312**

### **CONTINUANCE**

A matter set for review by the Committee may be continued only upon written request and in compelling and verifiable situations. As part of the written request for a continuance the respondent must submit a written waiver of time and a showing that there will be no harm to the public in the event the continuance is granted. A request for a continuance must be received at the Commission no later than 10 days prior to the date set for review by the Committee.

### **80313**

### **PRESENCE OF MATERIAL WITNESSES**

(a) Any person determined by the Committee of Credentials to be a material witness in a particular case shall be permitted to be present to provide testimony during formal review by the Committee and shall be examined for rebuttal evidence, if any.

(b) Whether a witness is called shall be at the sole discretion of the Committee of Credentials.

(c) The order of witness testimony shall be determined by the Committee of Credentials.

(d) A minor witness (persons under 18 years of age) may have one support person present during their testimony. No support will be allowed for adult witnesses, except the representative designated by the applicant or holder under investigation.

### **80314**

### **ACTION**

A quorum of the Committee must be present to consider any action, and at least four members must concur to take any action.

### **80314.5**

A written copy of the recommendation and findings of the Committee together with a notice of appeal rights available shall be sent by registered mail to the holder's or applicant's last known address within 14 days after the meeting or hearing at which the recommendation is made. Unless the recommendation involves private admonition, as provided in Section 44438 of the Education Code, a copy of the said recommendation, but not the findings, unless otherwise provided by law, shall be mailed to all complainants and parties requesting notice of the Committee's decision in the case. Such recommendation, but not the findings, unless otherwise provided by law, shall also be made available to members of the public upon request.

### **NOTICE OF COMMITTEE ACTION**

### **80315**

(a) A holder, applicant, complainant or employer may request, in writing, that the Committee reconsider its recommended decision. The request must be received by the Commission no later than 30 days after personal service or mailing notice of the Committee's recommendation. The request for reconsideration shall also contain new and different evidence which may materially affect the findings of the Committee.–

### **RECONSIDER- ATION**

(b) When a recommendation of the Committee is presented to the Commission pursuant to Education Code section 44244.1, the Commission may adopt the recommendation or request the Committee to reconsider its action, decision, or recommendation. Upon request of the Commission, the Committee shall reconsider its action, decision, or recommendation.

(c) A member of the Committee may participate in the reconsideration of a matter even though he or she was not present during the original consideration of the matter if the interested parties agree, or if the member reviews a transcript or tape recording of the proceedings and all other documents and evidentiary materials before the Committee.

### **80316.5**

Where the confidential investigative report shows that the allegations are groundless the file shall be sealed.

### **CONFIDENTIAL REPORT OF INVESTIGATION**

### **80317**

The credential holder or applicant may, within thirty (30) days after personal service or the mailing of notice of the Committee's recommendation, request an administrative hearing by giving written notice to the Commission. The administrative hearing is a trial de novo. Any prayer contained in an Accusation or Statement of Issues shall request "appropriate adverse action according to evidence."

### **ADMINISTRATIVE HEARING**

## **80320**

At any time after the Committee has determined that a Statement of Issues or an Accusation shall be filed against a respondent, but before a final determination of the matter has been made by the Commission, the respondent may propose and the Committee may recommend to the Commission a settlement upon terms which sufficiently provide for the protection of the public, schoolchildren and the profession. -

## **CONSENT DETERMINATIONS**

# **CHAPTER 3 OF PART VIII OF TITLE 5 CCR**

**(effective February 3, 1989)**

## **80331**

(a) These rules are binding upon every person holding a credential or any license to perform educational services under the jurisdiction of the Commission on Teacher Credentialing, and the consequences of any willful breach may be revocation or suspension of the credential, or license, or private admonition of the holder.

## **RULES OF CONDUCT FOR PROFESSIONAL EDUCATORS**

(b) Nothing in these rules is intended to limit or supersede any provision of law relating to the duties and obligations of certificated persons or to the consequences of the violation of such duties and obligations. The prohibition of certain conduct in these rules is not to be interpreted as approval of conduct not specifically cited.

(c) These rules may be cited and referred to as "Rules of Conduct for Professional Educators."

(d) The Commission shall complete a study of the effect of these rules and present its findings to the Governor, the Legislature, and the State Board of Education no later than September 1, 1989.

(e) As used in these rules:

(1) "Certificated person" means any person who holds a certificate, permit, credential, or other license authorizing the performance of teaching or education-related service in grades K through 12 in California public schools.

(2) "Professional employment" means the performance for compensation of teaching or other education-related employment in a position for which certification requirements are set by law.

(3) "Confidential information" means information which was provided to the certificated person solely for the purpose of facilitating his/her performance of professional services for or on behalf of the person or employer providing such information.

**80332**

(a) A certificated person shall not write or sign any letter or memorandum which intentionally omits significant facts, or which states as facts matters which the writer does not know of his/her own knowledge to be true relating to the professional qualifications or personal fitness to perform certificated services of any person whom the writer knows will use the letter or memorandum to obtain professional employment nor shall he/she agree to provide a positive letter of recommendation which misrepresents facts as a condition of resignation or for withdrawing action against the employing agency.

(b) This rule has no application to statements identified in the letter or memorandum as personal opinions of the writer but does apply to unqualified statements as fact which the writer does not know to be true or to statements as fact which the writer knows to be untrue.

**PROFESSIONAL  
CANDOR AND  
HONESTY IN  
LETTERS OR  
MEMORANDA OF  
EMPLOYMENT  
RECOMMENDATION**

**80333**

(a) A certificated person shall not abandon professional employment without good cause.

(b) "Good cause" includes but is not necessarily limited to circumstances not caused by or under the voluntary control of the certificated person.

**WITHDRAWAL  
FROM  
PROFESSIONAL  
EMPLOYMENT**

**80334**

A certificated person shall not:

(a) Use for his/her own private gain or advantage or to prejudice the rights or benefits of another person any confidential information relating to students or fellow professionals;

(b) Use for his/her own private gain or advantage the time, facilities, equipment, or supplies which is the property of his/her employer without the express or clearly implied permission of his/her employer;

(c) Accept any compensation or benefit or thing of value other than his/her regular compensation for the performance of any service which he/she is required to render in the course and scope of his/her certificated employment. This rule shall not restrict performance of any overtime or supplemental services at the request of the school employer; nor shall it apply to or restrict the acceptance of gifts or tokens of minimal value offered and accepted openly from students, parents or other persons in recognition or appreciation of service.

**UNAUTHORIZED  
PRIVATE GAIN  
OR ADVANTAGE**

## **80335**

A certificated person shall not, after July 1, 1989:

(a) Knowingly, accept an assignment to perform professional services if he or she does not possess a credential authorizing the service to be performed; unless he or she has first exhausted any existing local remedies to correct the situation, has then notified the county superintendent of schools in writing of the incorrect assignment, and the county superintendent of schools has made a determination, within 45 days of receipt of the notification, that the assignment was caused by extraordinary circumstances which make correction impossible, pursuant to the procedures referred to in Education Code Section 44258.9(g) (2) and (3).

(b) Knowingly and willfully assign or require a subordinate certificated person to perform any professional service which the subordinate is not authorized to perform by his or her credential or which is not approved by appropriate governing board authorization, unless he or she has made reasonable attempts to correct the situation but has been unsuccessful, and has notified the county superintendent of schools of those attempts, and the county superintendent of schools has determined, within 45 days of being notified of the assignment, that the assignment was caused by extraordinary circumstances which make correction impossible.

(c) Neither (a) nor (b) shall be applicable in a situation where extraordinary circumstances make the correction of the misassignment impossible.

(d) There shall be no adverse action taken against a certificated person under this rule for actions attributable to circumstances beyond his or her control.

(e) Effective October 20, 1993, no adverse action described in Title 5, California Code of Regulations, section 80331(a) shall be imposed for violation of this provision prior to review and attempted disposition pursuant to Title 5, California Code of Regulations, section 80339 through 80339.6.

## **80336**

(a) A certificated person shall not:

(1) Perform or attempt to perform any duties or services authorized by his or her credential during any period in which he or she knows or is in possession of facts showing that his or her mental or intellectual faculties are substantially impaired for any reason, including but not limited to use of alcohol or any controlled substance.

## **PERFORMANCE OF UNAUTHORIZED PROFESSIONAL SERVICES**

## **PERFORMANCE WITH IMPAIRED FACULTIES**



## **80336 (cont.)**

(2) Assign or require or permit a subordinate certificated person to perform any duties authorized by his or her credential during any period in which the superior certificated person knows of his or her own knowledge or is in possession of facts showing that the subordinate certificated person's mental or intellectual faculties are substantially impaired for any reason, including but not limited to use of alcohol or any controlled substance.

(b) For the purpose of this rule, substantial impairment means a visible inability to perform the usual and customary duties of the position in a manner that does not represent a danger to pupils, employees, or school property. It does not include or mean inability attributable to lack of, or inadequate, professional preparation or education.

## **80337**

No certificated person shall directly or indirectly use or threaten to use any official authority or influence in any manner whatsoever which tends to discourage, restrain, interfere with, coerce, or discriminate against any subordinate or any certificated person who in good faith reports, discloses, divulges, or otherwise brings to the attention of the governing board of a school district, the Commission on Teacher Credentialing or any other public agency authorized to take remedial action, any facts or information relative to actual or suspected violation of any law regulating the duties of persons serving in the public school system, including but not limited to these rules of professional conduct.

## **HARASSMENT AND RETALIATION PROHIBITED**

## **80338**

A certificated person shall not, without good cause, in the course and scope of his or her certificated employment and solely because of race, color, creed, gender, national origin, handicapping condition or sexual orientation, refuse or fail to perform certificated services for any person.

## **DISCRIMINATION PROHIBITED**

## **80412**

(a) Every person applying for, holding, or to whom is issued, a credential, shall file with the Commission his or her present mailing address and shall notify the Commission in writing of any change therein.

(b) Such filing of address and notice of change therein shall be made in writing and delivered, or forwarded by mail, postage prepaid, to the office of the Commission on Teacher Credentialing.

## **FILING OF MAILING ADDRESS**

## 80028

## CERTIFICATE OF CLEARANCE

Certificate of Clearance is a document, issued by the Commission, which verifies that the holder meets personal and health qualifications necessary to obtain a regular California teaching or services credential.

(a) Each candidate for an initial credential shall, prior to admission to student teaching under any professional preparation program approved by the Commission, obtain a Certificate of Clearance in accordance with (1) or (2) below.

(1) No less than 60 working days prior to admission to student teaching, the candidate shall submit the following materials to the Commission:

(A) Completed application form.

(B) One-half of the credential issuance/reissuance or renewal fee specified in Section 80487(a)(1) unless otherwise established by law. The fee shall apply toward the initial credential if the Certificate of Clearance accompanies the credential application.

(C) Duplicate personal identification cards as specified in Section 80442 including appropriate fees specified in Section 80487 (a) (b) and 80487(a) (7) or by law.

The Certificate of Clearance shall be issued when the Commission has verified the candidate's personal and health status.

(2) At any time prior to admission to student teaching, the candidate shall submit the following materials to the dean/director of teacher education or the chief campus officer of the institution of higher education at which such admission is sought:

(A) All materials as specified in (A), (B) and (C) of subsection (a)(1) of this section.

(B) An affidavit attesting to the identification and personal and health qualifications of the candidate, completed and signed, under penalty of perjury, by the candidate.

The dean/director of teacher education or chief campus officer of the institution shall complete and sign, under penalty of perjury, an affidavit stating as follows: "I am the dean/director of teacher education or the chief campus officer at the above institution of higher education. I have personally examined the identification documents of this applicant and know that he/she is in fact the person he/she represents himself/herself to be. I have personally interviewed the candidate and explained to him/her the very serious consequences of any concealment or falsification of his/her identity or fitness. I hereby certify under penalty of perjury that the foregoing is true and correct."

The dean/director of teacher education or chief campus officer of the

## **80028 (cont.)**

institution shall forward all materials to the Commission and will retain copies of all materials submitted. Copies of these materials shall serve in lieu of actual issuance of the Certificate of Clearance and shall authorize admission to student teaching.

The Certificate of Clearance shall be issued when the Commission has verified the candidate's personal and health status.

(b) Each potential candidate for an initial credential may, prior to admission to any professional preparation program approved by the Commission, obtain a Certificate of Clearance.

Application for the Certificate of Clearance shall be submitted to the Commission and shall include all materials specified in (A), (B), and (C) of subsection (a)(1) of this section.

The Certificate of Clearance shall be issued when the Commission has verified the potential candidate's personal and health status.

Except as provided in Subsection (a), institutions and local education agencies should not construe this as an authorization or direction to require this clearance of all students.

**PENAL CODE**

## PERJURY AND SUBORNATION OF PERJURY

118	Perjury defined
126	Punishment for perjury

### 118

### PERJURY DEFINED

(a) Every person who, having taken an oath that he or she will testify, declare, depose, or certify truly before any competent tribunal, officer, or person, in any of the cases in which the oath may by law of the State of California be administered, willfully and contrary to the oath, states as true any material matter which he or she knows to be false, and every person who testifies, declares, deposes, or certifies under penalty of perjury in any of the cases in which the testimony, declarations, depositions, or certification is permitted by law of the State of California under penalty of perjury and willfully states as true any material matter which he or she knows to be false, is guilty of perjury.

This subdivision is applicable whether the statement, or the testimony, declaration, deposition or certification is made or subscribed within or without the State of California.

(b) No person shall be convicted of perjury where proof of falsity rests solely upon contradiction by testimony of a single person other than the defendant. Proof of falsity may be established by direct or indirect evidence.

### 126

### PUNISHMENT FOR PERJURY

Perjury is punishable by imprisonment in the state prison for two, three or four years.

## REPORTING OF ARRESTS FOR SEX OFFENSES

290	Registration of sex offenders
290.5	Pardon or certificate of rehabilitation; relief from duty to register
291	School employees; arrest for sex offense; notice to school authorities

### 290 [ Subsections (g) – (r) omitted for brevity]

### REGISTRATION OF SEX OFFENDERS

(a)(1)(A) Every person described in paragraph (2), for the rest of his or her life while residing in California, or while attending school or working in California, as described in subparagraph (G), shall be required to register with the chief of police of the city in which he or she is residing, or the sheriff of the county if he or she is residing in an unincorporated area or city that has no police department, and, additionally, with the chief of police of a campus of the University of California, the California State University, or

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community college if he or she is residing upon the campus or in any of its facilities, within five working days of coming into, or changing his or her residence within, any city, county, or city and county, or campus in which he or she temporarily resides.

(B) If the person who is registering has more than one Residence address at which he or she regularly resides, he or she Shall register in accordance with subparagraph (A) in each of the jurisdictions in which he or she regularly resides, regardless of the number of days or nights spent there. If all of the addresses are within the same jurisdiction, the person shall provide the registering authority with all of the addresses where he or she regularly resides.

(C) Every person described in paragraph (2), for the rest of his or her life while living as a transient in California shall be required to register, as follows:

(i) A transient must register, or reregister if the person has previously registered, within five working days from release from incarceration, placement or commitment, or release on probation, pursuant to paragraph (1) of subdivision (a), except that if the person previously registered as a transient less than 30 days from the date of his or her release from incarceration, he or she does not need to reregister as a transient until his or her next required 30-day update of registration. If a transient is not physically present in any one jurisdiction for five consecutive working days, he or she must register in the jurisdiction in which he or she is physically present on the fifth working day following release, pursuant to paragraph (1) of subdivision (a). Beginning on or before the 30th day following initial registration upon release, a transient must reregister no less than once every 30 days thereafter. A transient shall register with the chief of police of the city in which he or she is physically present within that 30-day period, or the sheriff of the county if he or she is physically present in an unincorporated area or city that has no police department, and additionally, with the chief of police of a campus of the University of California, the California State University, or community college if he or she is physically present upon the campus or in any of its facilities. A transient must reregister no less than once every 30 days regardless of the length of time he or she has been physically present in the particular jurisdiction in which he or she reregisters. If a transient fails to reregister within any 30-day period, he or she may be prosecuted in any jurisdiction in which he or she is physically present.

(ii) A transient who moves to a residence shall have five working days within which to register at that address, in accordance with subparagraph (A) of paragraph (1) of subdivision (a). A person registered at a residence address in accordance with subparagraph (A)

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of paragraph (1) of subdivision (a), who becomes transient shall have five working days within which to reregister as a transient in accordance with clause (i).

(iii) Beginning on his or her first birthday following registration, a transient shall register annually, within five working days of his or her birthday, to update his or her registration with the entities described in clause (i). A transient shall register in whichever jurisdiction he or she is physically present on that date. At the 30-day updates and the annual update, a transient shall provide current information as required on the Department of Justice annual update form, including the information described in subparagraphs (A) to (C), inclusive, of paragraph (2) of subdivision (e), and the information specified in clause (iv).

(iv) A transient shall, upon registration and reregistration, provide current information as required on the Department of Justice registration forms, and shall also list the places where he or she sleeps, eats, works, frequents, and engages in leisure activities. If a transient changes or adds to the places listed on the form during the 30-day period, he or she does not need to report the new place or places until the next required reregistration.

(v) Failure to comply with the requirement of reregistering every 30 days following initial registration pursuant to clause (i) of this subparagraph shall be punished in accordance with paragraph (6) of subdivision (g). Failure to comply with any other requirement of this section shall be punished in accordance with either paragraph (1) or (2) of subdivision (g).

(vi) A transient who moves out of state shall inform, in person, the chief of police in the city in which he or she is physically present, or the sheriff of the county if he or she is physically present in an unincorporated area or city that has no police department, within five working days, of his or her move out of state. The transient shall inform that registering agency of his or her planned destination, residence or transient location out of state, and any plans he or she has to return to California, if known. The law enforcement agency shall, within three days after receipt of this information, forward a copy of the change of location information to the Department of Justice. The department shall forward appropriate registration data to the law enforcement agency having local jurisdiction of the new place of residence or location.

(vii) For purposes of this section, "transient" means a person who has no residence. "Residence" means one or more addresses at which a person regularly resides, regardless of the number of days or nights spent there, such as a shelter or structure that can be located by a street address, including, but not limited to, houses, apartment buildings, motels, hotels, homeless shelters, and recreational and

## 290 (cont.)

other vehicles.

(viii) The transient registrant's duty to update his or her registration no less than every 30 days shall begin with his or her second transient update following the date this subdivision became effective.

(D) Beginning on his or her first birthday following registration or change of address, the person shall be required to register annually, within five working days of his or her birthday, to update his or her registration with the entities described in subparagraph (A). At the annual update, the person shall provide current information as required on the Department of Justice annual update form, including the information described in subparagraphs (A) to (C), inclusive, of paragraph (2) of subdivision (e).

(E) In addition, every person who has ever been adjudicated a sexually violent predator, as defined in Section 6600 of the Welfare and Institutions Code, shall, after his or her release from custody, verify his or her address no less than once every 90 days and place of employment, including the name and address of the employer, in a manner established by the Department of Justice.

(F) No entity shall require a person to pay a fee to register or update his or her registration pursuant to this section. The registering agency shall submit registrations, including annual updates or changes of address, directly into the Department of Justice Violent Crime Information Network (VCIN). The registering agency shall give the registrant a copy of the completed Department of Justice form each time the person registers or reregisters, including at the annual update.

(G) Persons required to register in their state of residence who are out-of-state residents employed, or carrying on a vocation in California on a full-time or part-time basis, with or without compensation, for more than 14 days, or for an aggregate period exceeding 30 days in a calendar year, shall register in accordance with subparagraph (A). Persons described in paragraph (2) who are out-of-state residents enrolled in any educational institution in California, as defined in Section 22129 of the Education Code, on a full-time or part-time basis, shall register in accordance with subparagraph (A). The place where the out-of-state resident is located, for purposes of registration, shall be the place where the person is employed, carrying on a vocation, or attending school. The out-of-state resident subject to this subparagraph shall, in addition to the information required pursuant to subdivision (e), provide the registering authority with the name of his or her place of employment or the name of the school attended in California, and his or her address or location in his or her state of residence. The registration requirement for persons subject to this subparagraph



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shall become operative on November 25, 2000. The terms "employed or carries on a vocation" include employment whether or not financially compensated, volunteered, or performed for government or educational benefit.

(2) The following persons shall be required to register pursuant to paragraph (1):

(A) Any person who, since July 1, 1944, has been or is hereafter convicted in any court in this state or in any federal or military court of a violation of Section 187 committed in the perpetration, or an attempt to perpetrate, rape or any act punishable under Section 286, 288, 288a, or 289, Section 207 or 209 committed with intent to violate Section 261, 286, 288, 288a, or 289, Section 220, except assault to commit mayhem, Section 243.4, paragraph (1), (2), (3), (4), or (6) of subdivision (a) of Section 261, or paragraph (1) of subdivision (a) of Section 262 involving the use of force or violence for which the person is sentenced to the state prison, Section 264.1, 266, or 266c, subdivision (b) of Section 266h, subdivision (b) of Section 266i, Section 266j, 267, 269, 285, 286, 288, 288a, 288.3, 288.5, 288.7, or 289, Section 311.1, subdivision (b), (c), or (d) of Section 311.2, Section 311.3, 311.4, 311.10, 311.11, or 647.6, former Section 647a, subdivision (c) of Section 653f, subdivision 1 or 2 of Section 314, any offense involving lewd or lascivious conduct under Section 272, or any felony violation of Section 288.2; or any statutory predecessor that includes all elements of one of the above-mentioned offenses; or any person who since that date has been or is hereafter convicted of the attempt or conspiracy to commit any of the above-mentioned offenses.

(B) Any person who, since July 1, 1944, has been or hereafter is released, discharged, or paroled from a penal institution where he or she was confined because of the commission or attempted commission of one of the offenses described in subparagraph (A).

(C) Any person who, since July 1, 1944, has been or hereafter is determined to be a mentally disordered sex offender under Article 1 (commencing with Section 6300) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code or any person who has been found guilty in the guilt phase of a trial for an offense for which registration is required by this section but who has been found not guilty by reason of insanity in the sanity phase of the trial.

(D) (i) Any person who, since July 1, 1944, has been, or is hereafter convicted in any other court, including any state, federal, or military court, of any offense that, if committed or attempted in this state, would have been punishable as one or more of the offenses described in subparagraph (A), including offenses in which the person was a principal, as defined in Section 31.

## 290 (cont.)

(ii) Any person ordered by any other court, including any state, federal, or military court, to register as a sex offender for any offense, if the court found at the time of conviction or sentencing that the person committed the offense as a result of sexual compulsion or for purposes of sexual gratification.

(iii) (I) Except as provided in sub-clause (II), any person who would be required to register while residing in the state of conviction for a sex offense committed in that state.

(II) Notwithstanding subclause (I), a person convicted in another state of an offense similar to one of the following offenses who is required to register in the state of conviction shall not be required to register in California unless the out-of-state offense contains all of the elements of a registerable California offense described in subparagraph (A):

(aa) Indecent exposure, pursuant to Section 314.

(ab) Unlawful sexual intercourse, pursuant to Section 261.5.

(ac) Incest, pursuant to Section 285.

(ad) Sodomy, pursuant to Section 286, or oral copulation, pursuant to Section 288a, provided that the offender notifies the Department of Justice that the sodomy or oral copulation conviction was for conduct between consenting adults, as described in subparagraph (G) and the department is able, upon the exercise of reasonable diligence, to verify that fact.

(ae) Pimping, pursuant to Section 266h, or pandering, pursuant to Section 266i.

(E) Any person ordered by any court to register pursuant to this section for any offense not included specifically in this section if the court finds at the time of conviction or sentencing that the person committed the offense as a result of sexual compulsion or for purposes of sexual gratification. The court shall state on the record the reasons for its findings and the reasons for requiring registration.

(F) Any person required to register pursuant to any provision of this section, regardless of whether the person's conviction has been dismissed pursuant to Section 1203.4, unless the person obtains a certificate of rehabilitation and is entitled to relief from registration pursuant to Section 290.5.

**290.5**

(a)(1) A person required to register under Section 290 for an offense not listed in paragraph (2), upon obtaining a certificate of rehabilitation under Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3, shall be relieved of any further duty to register under Section 290 if he or she is not in custody, on parole, or on probation.

(2) A person required to register under Section 290, upon obtaining a certificate of rehabilitation under Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3, shall not be relieved of the duty to register under Section 290, or of the duty to register under Section 290 for any offense subject to that section of which he or she is convicted in the future, if his or her conviction is for one of the following offenses:

(A) Section 207 or 209 committed with the intent to violate Section 261, 286, 288, 288a, or 289.

(B) Section 220, except assault to commit mayhem.

(C) Section 243.4, provided that the offense is a felony.

(D) Paragraph (1), (2), (3), (4), or (6) of subdivision (a) of Section 261.

(E) Section 264.1.

(F) Section 266, provided that the offense is a felony.

(G) Section 266c, provided that the offense is a felony.

(H) Section 266j.

(I) Section 267.

(J) Section 269.

(K) Paragraph (1) of subdivision (b) of Section 286, provided that the offense is a felony.

(L) Paragraph (2) of subdivision (b) of, or subdivision (c), (d), (f), (g), (i), (j), or (k) of, Section 286.

(M) Section 288.

(N) Paragraph (1) of subdivision (b) of Section 288a, provided that the offense is a felony.

(O) Paragraph (2) of subdivision (b) of, or subdivision (c), (d), (f), (g), (i), (j), or (k) of, Section 288a.

(P) Section 288.5.

(Q) Subdivision (a), (b), (d), (e), (f), (g), or (h) of Section 289, provided that the offense is a felony.

(R) Subdivision (i) or (j) of Section 289.

(S) Section 647.6.

(T) The attempted commission of any of the offenses specified in this paragraph.

(U) The statutory predecessor of any of the offenses specified in this paragraph.

(V) Any offense which, if committed or attempted in this state, would have been punishable as one or more of the offenses specified in this paragraph.

**PARDON OR  
CERTIFICATE OF  
REHABILITATION;  
RELIEF FROM  
DUTY TO  
REGISTER**

## 290.5 (cont.)

(b)(1) Except as provided in paragraphs (2) and (3), a person described in paragraph (2) of subdivision (a) shall not be relieved of the duty to register until that person has obtained a full pardon as provided in Chapter 1 (commencing with Section 4800) or Chapter 3 (commencing with Section 4850) of Title 6 of Part 3.

(2) This subdivision does not apply to misdemeanor violations of Section 647.6.

(3) The court, upon granting a petition for a certificate of rehabilitation pursuant to Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3, if the petition was granted prior to January 1, 1998, may relieve a person of the duty to register under Section 290 for a violation of Section 288 or 288.5, provided that the person was granted probation pursuant to subdivision (c) of Section 1203.066, has complied with the provisions of Section 290 for a continuous period of at least 10 years immediately preceding the filing of the petition, and has not been convicted of a felony during that period.

## 291

Every sheriff, chief of police, or the Commissioner of the California Highway Patrol, upon the arrest for any of the offenses enumerated in Section 290, subdivision (a) of Section 261, or Section 44010 of the Education Code of any school employee, shall, provided that he or she knows that the arrestee is a school employee, do either of the following:

(a) If the school employee is a teacher in any of the public schools of this state, the sheriff, chief of police, or Commissioner of the California Highway Patrol shall immediately notify by telephone the superintendent of schools of the school district employing the teacher and shall immediately give written notice of the arrest to the Commission on Teacher Credentialing and to the superintendent of schools in the county where the person is employed. Upon receipt of the notice, the county superintendent of schools and the Commission on Teacher Credentialing shall immediately notify the governing board of the school district employing the person.

(b) If the school employee is a nonteacher in any of the public schools of this state, the sheriff, chief of police, or Commissioner of the California Highway Patrol shall immediately notify by telephone the superintendent of schools of the school district employing the nonteacher and shall immediately give written notice of the arrest to the governing board of the school district employing the person.

**SCHOOL  
EMPLOYEES;  
ARREST FOR  
SEX OFFENSE;  
NOTICE TO  
SCHOOL  
AUTHORITIES**

## **SPECIAL PROCEEDINGS IN NARCOTICS AND DRUG ABUSE CASES**

- 1000.3**      **Unsatisfactory performance by defendant, or engagement in criminal conduct**
- 1000.4**      **Successful completion of program; disclosure of arrest**
- 1000.5**      **Drug court program; operation of program; effect of defendant's performance**
- 1001.5**      **Admissibility of statements made during diversion program**
- 1001.9**      **Successful completion of program; record; disclosure of arrest**

### **1000.3**

If it appears to the prosecuting attorney, the court, or the probation department that the defendant is performing unsatisfactorily in the assigned program, or that the defendant is not benefiting from education, treatment, or rehabilitation, or that the defendant is convicted of a misdemeanor that reflects the defendant's propensity for violence, or the defendant is convicted of a felony, or the defendant has engaged in criminal conduct rendering him or her unsuitable for deferred entry of judgment, the prosecuting attorney, the court on its own, or the probation department may make a motion for entry of judgment.

After notice to the defendant, the court shall hold a hearing to determine whether judgment should be entered. If the court finds that the defendant is not performing satisfactorily in the assigned program, or that the defendant is not benefiting from education, treatment, or rehabilitation, or the court finds that the defendant has been convicted of a crime as indicated above, or that the defendant has engaged in criminal conduct rendering him or her unsuitable for deferred entry of judgment, the court shall render a finding of guilt to the charge or charges pled, enter judgment, and schedule a sentencing hearing as otherwise provided in this code.

If the defendant has performed satisfactorily during the period in which deferred entry of judgment was granted, at the end of that period, the criminal charge or charges shall be dismissed.

Prior to dismissing the charge or charges or rendering a finding of guilt and entering judgment, the court shall consider the defendant's ability to pay and whether the defendant has paid a diversion restitution fee pursuant to Section 1001.90, if ordered, and has met his or her financial obligation to the program, if any. As provided in

### **UNSATISFACTORY PERFORMANCE BY DEFENDANT, OR ENGAGEMENT IN CRIMINAL CONDUCT**

### **1000.3 (cont.)**

Section 1203.1b, the defendant shall reimburse the probation department for the reasonable cost of any program investigation or progress report filed with the court as directed pursuant to Sections 1000.1 and 1000.2.

### **1000.4**

(a) Any record filed with the Department of Justice shall indicate the disposition in those cases deferred pursuant to this chapter. Upon successful completion of a deferred entry of judgment program, the arrest upon which the judgment was deferred shall be deemed to have never occurred. The defendant may indicate in response to any question concerning his or her prior criminal record that he or she was not arrested or granted deferred entry of judgment for the offense, except as specified in subdivision (b). A record pertaining to an arrest resulting in successful completion of a deferred entry of judgment program shall not, without the defendant's consent, be used in any way that could result in the denial of any employment, benefit, license, or certificate.

(b) The defendant shall be advised that, regardless of his or her successful completion of the deferred entry of judgment program, the arrest upon which the judgment was deferred may be disclosed by Department of Justice in response to any peace officer application request and that notwithstanding subdivision (a), this section does not relieve him or her of the obligation to disclose the arrest in response to any direct question contained in any questionnaire or application for a position as a peace officer, as defined in Section 830.

### **1000.5**

(a) The presiding judge of the superior court, or a judge designated by the presiding judge, together with the district attorney and the public defender, may agree in writing to establish and conduct a preguilty plea drug court program pursuant to the provisions of this chapter, wherein criminal proceedings are suspended without a plea of guilty for designated defendants. The drug court program shall include a regimen of graduated sanctions and rewards, individual and group therapy, urine analysis testing commensurate with treatment needs, close court monitoring and supervision of progress, educational or vocational counseling as appropriate, and other requirements as agreed to by the presiding judge or his or her designee, the district attorney, and the public defender. If there is no agreement in writing for a preguilty plea program by the presiding judge or his or her designee, the district attorney, and the public defender, the program shall be operated as a deferred entry of judgment program as provided in this chapter.

**SUCCESSFUL  
COMPLETION OF  
PROGRAM;  
DISCLOSURE  
OF ARREST**

**DRUG COURT  
PROGRAM;  
OPERATION OF  
PROGRAM  
EFFECT OF  
DEFENDANT'S  
PERFORMANCE**

## 1000.5 (cont.)

(b) The provisions of Section 1000.3 and Section 1000.4 regarding satisfactory and unsatisfactory performance in a program shall apply to preguilty plea programs. If the court finds that (1) the defendant is not performing satisfactorily in the assigned program, (2) the defendant is not benefiting from education, treatment, or rehabilitation, (3) the defendant has been convicted of a crime specified in Section 1000.3, or (4) the defendant has engaged in criminal conduct rendering him or her unsuitable for the preguilty plea program, the court shall reinstate the criminal charge or charges. If the defendant has performed satisfactorily during the period of the preguilty plea program, at the end of that period, the criminal charge or charges shall be dismissed and the provisions of Section 1000.4 shall apply.

## 1001.5

No statement, or information procured therefrom, made by the defendant in connection with the determination of his or her eligibility for diversion, and no statement, or information procured therefrom, made by the defendant, subsequent to the granting of diversion or while participating in such program, and no information contained in any report made with respect thereto, and no statement or other information concerning the defendant's participation in such program shall be admissible in any action or proceeding. However, if a divertee is recommended for termination for cause, information regarding his or her participation in such program may be used for purposes of the termination proceedings.

### **ADMISSIBILITY OF STATEMENTS MADE DURING DIVERSION**

## 1001.9

(a) Any record filed with the Department of Justice shall indicate the disposition in those cases diverted pursuant to this chapter. Upon successful completion of a diversion program, the arrest upon which the diversion was based shall be deemed to have never occurred. The divertee may indicate in response to any question concerning his or her prior criminal record that he or she was not arrested or diverted for the offense, except as specified in subdivision (b). A record pertaining to an arrest resulting in successful completion of a diversion program shall not, without the divertee's consent, be used in any way that could result in the denial of any employment, benefit, license, or certificate.

### **SUCCESSFUL COMPLETION OF PROGRAM; RECORD; DISCLOSURE OF ARREST**

(b) The divertee shall be advised that, regardless of his or her successful completion of diversion, the arrest upon which the diversion was based may be disclosed by the Department of Justice in response to any peace officer application request and that notwithstanding subdivision (a), this section does not relieve him or her of the obligation to disclose the arrest in response to any

## **1001.9 (cont.)**

direct question contained in any questionnaire or application for a position as a peace officer, as defined in Section 830.

## **PLEA 1016(3)**

Nolo contendere, subject to the approval of the court. The court shall ascertain whether the defendant completely understands that a plea of nolo contendere shall be considered the same as a plea of guilty and that, upon a plea of nolo contendere, the court shall find the defendant guilty. The legal effect of such a plea, to a crime punishable as a felony, shall be the same as that of a plea of guilty for all purposes. In cases other than those punishable as felonies, the plea and any admissions required by the court during any inquiry it makes as to the voluntariness of, and factual basis for, the plea may not be used against the defendant as an admission in any civil suit based upon or growing out of the act upon which the criminal prosecution is based.

**EFFECT OF  
PLEA OF NOLO  
CONTENDERE  
(Some material  
omitted for brevity)**

## **JUDGMENT 1203.4**

(a) In any case in which a defendant has fulfilled the conditions of probation for the entire period of probation, or has been discharged prior to the termination of the period of probation, or in any other case in which a court, in its discretion and the interests of justice, determines that a defendant should be granted the relief available under this section, the defendant shall, at any time after the termination of the period of probation, if he or she is not then serving a sentence for any offense, on probation for any offense, or charged with the commission of any offense, be permitted by the court to withdraw his or her plea of guilty or plea of nolo contendere and enter a plea of not guilty; or, if he or she has been convicted after a plea of not guilty, the court shall set aside the verdict of guilty; and, in either case, the court shall thereupon dismiss the accusations or information against the defendant and except as noted below, he or she shall thereafter be released from all penalties and disabilities resulting from the offense of which he or she has been convicted, except as provided in Section 13555 of the Vehicle Code. The probationer shall be informed, in his or her probation papers, of this right and privilege and his or her right, if any, to petition for a certificate of rehabilitation and pardon. The probationer may make the application and change of plea in person or by attorney, or by the probation officer authorized in writing. However, in any subsequent prosecution of the defendant for any other offense, the prior conviction may be pleaded and proved and shall have the same effect as if probation had not been granted or the accusation or information dismissed. The order shall state, and the probationer shall be informed, that the order does not relieve him or

**DISCHARGED  
PETITIONER;  
CHANGE OF  
PLEA; DISMISSAL  
OF CHARGE**



## 1203.4 (cont.)

her of the obligation to disclose the conviction in response to any direct question contained in any questionnaire or application for public office, for licensure by any state or local agency, or for contracting with the California State Lottery.

Dismissal of an accusation or information pursuant to this section does not permit a person to own, possess, or have in his or her custody or control any firearm or prevent his or her conviction under Section 12021. Except as provided in Section 290.5, the dismissal of an accusation or information pursuant to this section shall not relieve a person who is convicted of a sex offense for which registration is required under Section 290 from the duty to register under that section. This subdivision shall apply to all applications for relief under this section which are filed on or after November 23, 1970.

(b) Subdivision (a) of this section does not apply to any misdemeanor that is within the provisions of subdivision (b) of Section 42001 of the Vehicle Code, to any violation of subdivision (c) of Section 286, Section 288, subdivision (c) of Section 288a, Section 288.5, or subdivision (j) of Section 289, any felony conviction pursuant to subdivision (d) of Section 261.5, or to any infraction.

(c) A person who petitions for a change of plea or setting aside of a verdict under this section may be required to reimburse the county for the actual cost of services rendered, whether or not the petition is granted and the records are sealed or expunged, at a rate to be determined by the county board of supervisors not to exceed one hundred twenty dollars (\$120), and to reimburse any city for the actual cost of services rendered, whether or not the petition is granted and the records are sealed or expunged, at a rate to be determined by the city council not to exceed one hundred twenty dollars (\$120). Ability to make this reimbursement shall be determined by the court using the standards set forth in paragraph (2) of subdivision (g) of Section 987.8 and shall not be a prerequisite to a person's eligibility under this section. The court may order reimbursement in any case in which the petitioner appears to have the ability to pay, without undue hardship, all or any portion of the cost for services established pursuant to this subdivision.

(d) No relief shall be granted under this section unless the prosecuting attorney has been given 15 days' notice of the petition for relief. The probation officer shall notify the prosecuting attorney when a petition is filed, pursuant to this section. It shall be presumed that the prosecuting attorney has received notice if proof of service is filed with the court.

## 1203.4 (cont.)

(e) If, after receiving notice pursuant to subdivision (d), the prosecuting attorney fails to appear and object to a petition for dismissal, the prosecuting attorney may not move to set aside or otherwise appeal the grant of that petition.

(f) Notwithstanding the above provisions or any other provision of law, the Governor shall have the right to pardon a person convicted of a violation of subdivision (c) of Section 286, Section 288, subdivision (c) of Section 288a, Section 288.5, or subdivision (j) of Section 289, if there are extraordinary circumstances.

## 1210

As used in Sections 1210.1 and 3063.1 of this code, and Division 10.8 (commencing with [Section 11999.4](#)) of the [Health and Safety Code](#), the following definitions apply:

(a) The term "nonviolent drug possession offense" means the unlawful personal use, possession for personal use, or transportation for personal use of any controlled substance identified in [Section 11054, 11055, 11056, 11057 or 11058 of the Health and Safety Code](#), or the offense of being under the influence of a controlled substance in violation of [Section 11550 of the Health and Safety Code](#). The term "nonviolent drug possession offense" does not include the possession for sale, production, or manufacturing of any controlled substance and does not include violations of Section 4573.6 or 4573.8.

(b) The term "drug treatment program" or "drug treatment" means a state licensed or certified community drug treatment program, which may include one or more of the following: drug education, outpatient services, narcotic replacement therapy, residential treatment, detoxification services, and aftercare services. The term "drug treatment program" or "drug treatment" includes a drug treatment program operated under the direction of the Veterans Health Administration of the Department of Veterans Affairs or a program specified in Section 8001. That type of program shall be eligible to provide drug treatment services without regard to the licensing or certification provisions required by this subdivision. The term "drug treatment program" or "drug treatment" does not include drug treatment programs offered in a prison or jail facility.

(c) The term "successful completion of treatment" means that a defendant who has had drug treatment imposed as a condition of probation has completed the prescribed course of drug treatment as recommended by the treatment provider and ordered by the court and, as a result, there is reasonable cause to believe that the defendant will not abuse controlled substances in the future. Completion of treatment shall not require cessation of narcotic replacement therapy.

## DEFINITIONS

**1210 (cont.)**

(d) The term "misdemeanor not related to the use of drugs" means a misdemeanor that does not involve (1) the simple possession or use of drugs or drug paraphernalia, being present where drugs are used, or failure to register as a drug offender, or (2) any activity similar to those listed in (1).

**PROBATION; CONTROLLED SUBSTANCES****1210.1 [Subsections (e) – (g) are omitted for brevity]**

(a) Notwithstanding any other provision of law, and except as provided in subdivision (b), any person convicted of a nonviolent drug possession offense shall receive probation. As a condition of probation the court shall require participation in and completion of an appropriate drug treatment program. The court shall impose appropriate drug testing as a condition of probation. The court may also impose, as a condition of probation, participation in vocational training, family counseling, literacy training and/or community service. A court may not impose incarceration as an additional condition of probation. Aside from the limitations imposed in this subdivision, the trial court is not otherwise limited in the type of probation conditions it may impose. Probation shall be imposed by suspending the imposition of sentence. No person shall be denied the opportunity to benefit from the provisions of the Substance Abuse and Crime Prevention Act of 2000 based solely upon evidence of a co-occurring psychiatric or developmental disorder. To the greatest extent possible, any person who is convicted of, and placed on probation pursuant to this section for a nonviolent drug possession offense shall be monitored by the court through the use of a dedicated court calendar and the incorporation of a collaborative court model of oversight that includes close collaboration with treatment providers and probation, drug testing commensurate with treatment needs, and supervision of progress through review hearings.

In addition to any fine assessed under other provisions of law, the trial judge may require any person convicted of a nonviolent drug possession offense who is reasonably able to do so to contribute to the cost of his or her own placement in a drug treatment program.

(b) Subdivision (a) shall not apply to any of the following:

(1) Any defendant who previously has been convicted of one or more violent or serious felonies as defined in subdivision (c) of Section 667.5 or subdivision (c) of Section 1192.7, respectively, unless the nonviolent drug possession offense occurred after a period of five years in which the defendant remained free of both prison custody and the commission of an offense that results in a felony conviction other than a nonviolent drug possession offense, or a misdemeanor conviction involving physical injury or the threat of physical injury to another person.

## 1210.1 (cont.)

(2) Any defendant who, in addition to one or more nonviolent drug possession offenses, has been convicted in the same proceeding of a misdemeanor not related to the use of drugs or any felony.

(3) Any defendant who, while armed with a deadly weapon, with the intent to use the same as a deadly weapon, unlawfully possesses or is under the influence of any controlled substance identified in [Section 11054](#), [11055](#), [11056](#), [11057](#), or [11058 of the Health and Safety Code](#).

(4) Any defendant who refuses drug treatment as a condition of probation.

(5) Any defendant who has two separate convictions for nonviolent drug possession offenses, has participated in two separate courses of drug treatment pursuant to subdivision (a), and is found by the court, by clear and convincing evidence, to be unamenable to any and all forms of available drug treatment, as defined in subdivision (b) of Section 1210. Notwithstanding any other provision of law, the trial court shall sentence that defendant to 30 days in jail.

(c)(1) Any defendant who has previously been convicted of at least three non-drug-related felonies for which the defendant has served three separate prison terms within the meaning of subdivision (b) of Section 667.5 shall be presumed eligible for treatment under subdivision (a). The court may exclude such a defendant from treatment under subdivision (a) where the court, pursuant to the motion of the prosecutor or its own motion, finds that the defendant poses a present danger to the safety of others and would not benefit from a drug treatment program. The court shall, on the record, state its findings, the reasons for those findings.

(2) Any defendant who has previously been convicted of a misdemeanor or felony at least five times within the prior 30 months shall be presumed to be eligible for treatment under subdivision

(a). The court may exclude such a defendant from treatment under subdivision (a) if the court, pursuant to the motion of the prosecutor, or on its own motion, finds that the defendant poses a present danger to the safety of others or would not benefit from a drug treatment program. The court shall, on the record, state its findings and the reasons for those findings.

(d) Within seven days of an order imposing probation under subdivision (a), the probation department shall notify the drug treatment provider designated to provide drug treatment under subdivision (a). Within 30 days of receiving that notice, the treatment provider shall prepare a treatment plan and forward it to the probation department for distribution to the court and counsel. The treatment provider shall provide to the probation department standardized treatment progress reports, with minimum data elements as determined by the department, including all drug testing results. At a minimum, the reports shall be provided to the court every 90 days, or more frequently, as the court directs.

## 1210.1 (cont.)

(1) If at any point during the course of drug treatment the treatment provider notifies the probation department and the court that the defendant is unamenable to the drug treatment being provided, but may be amenable to other drug treatments or related programs, the probation department may move the court to modify the terms of probation, or on its own motion, the court may modify the terms of probation after a hearing to ensure that the defendant receives the alternative drug treatment or program.

(2) If at any point during the course of drug treatment the treatment provider notifies the probation department and the court that the defendant is unamenable to the drug treatment provided and all other forms of drug treatment programs pursuant to subdivision (b) of Section 1210, the probation department may move to revoke probation. At the revocation hearing, if it is proved that the defendant is unamenable to all drug treatment programs pursuant to subdivision (b) of Section 1210, the court may revoke probation.

(3) Drug treatment services provided by subdivision (a) as a required condition of probation may not exceed 12 months, unless the court makes a finding supported by the record, that the continuation of treatment services beyond 12 months is necessary for drug treatment to be successful. If such a finding is made, the court may order up to two six-month extensions of treatment services. The provision of treatment services under the Substance Abuse and Crime Prevention Act of 2000 shall not exceed 24 months

(e)(1) At any time after completion of drug treatment and the terms of probation, the court shall conduct a hearing, and if the court finds that the defendant successfully completed drug treatment, and substantially complied with the conditions of probation, including refraining from the use of drugs after the completion of treatment, the conviction on which the probation was based shall be set aside and the court shall dismiss the indictment, complaint, or information against the defendant. In addition, except as provided in paragraphs (2) and (3), both the arrest and the conviction shall be deemed never to have occurred. The defendant may additionally petition the court for a dismissal of charges at any time after completion of the prescribed course of drug treatment. Except as provided in paragraph (2) or (3), the defendant shall thereafter be released from all penalties and disabilities resulting from the offense of which he or she has been convicted.

(2) Dismissal of an indictment, complaint, or information pursuant to paragraph (1) does not permit a person to own, possess, or have in his or her custody or control any firearm capable of being concealed upon the person or prevent his or her conviction under Section 12021.

(3) Except as provided below, after an indictment, complaint, or information is dismissed pursuant to paragraph (1), the defendant may indicate in response to any question concerning

## **1210.1 (cont.)**

his or her prior criminal record that he or she was not arrested or convicted for the offense. Except as provided below, a record pertaining to an arrest or conviction resulting in successful completion of a drug treatment program under this section may not, without the defendant's consent, be used in any way that could result in the denial of any employment, benefit, license, or certificate.

Regardless of his or her successful completion of drug treatment, the arrest and conviction on which the probation was based may be recorded by the Department of Justice and disclosed in response to any peace officer application request or any law enforcement inquiry. Dismissal of an information, complaint, or indictment under this section does not relieve a defendant of the obligation to disclose the arrest and conviction in response to any direct question contained in any questionnaire or application for public office, for a position as a peace officer as defined in Section 830, for licensure by any state or local agency, for contracting with the California State Lottery, or for purposes of serving on a jury.

## **RESTORATION OF RIGHTS**

### **4852.01**

(a) Any person convicted of a felony who has been released from a state prison or other state penal institution or agency in California, whether discharged on completion of the term for which he or she was sentenced or released on parole prior to May 13, 1943, who has not been incarcerated in a state prison or other state penal institution or agency since his or her release and who presents satisfactory evidence of a three-year residence in this state immediately prior to the filing of the petition for a certificate of rehabilitation and pardon provided for by this chapter, may file the petition pursuant to the provisions of this chapter.

(b) Any person convicted of a felony who, on May 13, 1943, was confined in a state prison or other institution or agency to which he or she was committed and any person convicted of a felony after that date who is committed to a state prison or other institution or agency may file a petition for a certificate of rehabilitation and pardon pursuant to the provisions of this chapter.

(c) Any person convicted of a felony or any person who is convicted of a misdemeanor violation of any sex offense specified in Section 290, the accusatory pleading of which has been dismissed pursuant to Section 1203.4, may file a petition for certificate of rehabilitation and pardon pursuant to the provisions of this chapter if the petitioner has not been incarcerated in any prison, jail, detention facility, or other penal institution or agency since the dismissal of the

### **PETITION FOR CERTIFICATE OF REHABILITATION AND PARDON**

**4852.01 (cont.)**

accusatory pleading and is not on probation for the commission of any other felony, and the petitioner presents satisfactory evidence of five years residence in this state prior to the filing of the petition.

(d) This chapter shall not apply to persons serving a mandatory life parole, persons committed under death sentences, persons convicted of a violation of subdivision (c) of Section 286, Section 288, subdivision (c) of Section 288a, Section 288.5, or subdivision (j) of Section 289, or persons in the military service.

(e) Notwithstanding the above provisions or any other provision of law, the Governor shall have the right to pardon a person convicted of a violation of subdivision (c) of Section 286, Section 288, subdivision (c) of Section 288a, Section 288.5, or subdivision (j) of Section 289, if there are extraordinary circumstances.

**CRIMINAL RECORDS, PROBATION**

- 11105.2      Subsequent arrest notification service**
- 11105.3      Records of conviction involving sex crimes, drug crimes, or crimes of violence**

**11105.2**

(a) The Department of Justice may provide subsequent arrest notification to any agency authorized by Section 11105 to receive state summary criminal history information to assist in fulfilling employment, licensing, certification duties, or the duties of approving relative caregivers and nonrelative extended family members, upon the arrest of any person whose fingerprints are maintained on file at the Department of Justice as the result of an application for licensing, employment, certification, or approval. The notification shall consist of a current copy of the person's state summary criminal history transcript.

(b) For purposes of this section, "approval" means those duties described in subdivision (d) of [Section 309 of the Welfare and Institutions Code](#) for approving the home of a relative caregiver or of a nonrelative extended family member for placement of a child supervised by the juvenile court.

(c) Any agency, other than a law enforcement agency employing peace officers as defined in Section 830.1, subdivisions (a) and (e) of Section 830.2, subdivision (a) of Section 830.3, subdivisions (a) and (b) of Section 830.5, and subdivision (a) of Section 830.31, shall enter into a contract with the Department of Justice in order to receive notification

**SUBSEQUENT  
ARREST  
NOTIFICATION  
SERVICE**

## 11105.2 (cont.)

of subsequent arrests for licensing, employment, or certification purposes.

(d) Any agency which submits the fingerprints of applicants for licensing, employment, certification, or approval to the Department of Justice for the purpose of establishing a record of the applicant to receive notification of subsequent arrests shall immediately notify the department when the employment of the applicant is terminated, when the applicant's license or certificate is revoked, when the applicant may no longer renew or reinstate the license or certificate, or when a relative caregiver's or nonrelative extended family member's approval is terminated. The Department of Justice shall terminate subsequent arrest notification on any applicant upon the request of the licensing, employment, certifying, or approving authority.

(e) Any agency receiving a notification of subsequent arrest for a person unknown to the agency, or for a person no longer employed by the agency, or no longer eligible to renew the certificate or license for which subsequent arrest notification service was established shall immediately return the subsequent arrest notification to the Department of Justice, informing the department that the agency is no longer interested in the applicant. The agency shall not record or otherwise retain any information received as a result of the subsequent arrest notice.

(f) Any agency which submits the fingerprints of an applicant for employment, licensing, certification, or approval to the Department of Justice for the purpose of establishing a record at the department to receive notification of subsequent arrest shall immediately notify the department if the applicant is not subsequently employed, or if the applicant is denied licensing certification, or approval.

(g) An agency which fails to provide the Department of Justice with notification as set forth in subdivisions (c), (d), and (e) may be denied further subsequent arrest notification service.

(h) Notwithstanding subdivisions (c), (d), and (f), subsequent arrest notification by the Department of Justice and retention by the employing agency shall continue as to retired peace officers listed in subdivision (c) of Section 830.5.

## 11105.3

(a) Notwithstanding any other law, a human resource agency or an employer may request from the Department of Justice records of all convictions or any arrest pending adjudication involving the offenses specified in subdivision (a) of section 15660 of the Welfare and Institutions Code of a person who applies for a license, employment or volunteer position, in which he or she would have supervisory or disciplinary power over a

**RECORDS OF  
CONVICTIONS  
INVOLVING SEX  
CRIMES, DRUG  
CRIMES, OR  
CRIMES OF  
VIOLENCE**



### 11105.3 (cont.)

minor or any person under his or her care. The department shall furnish the information to the requesting employer and shall also send a copy of the information to the applicant.

(b) Any request for records under subdivision (a) shall include the applicant's fingerprints, which may be taken by the requester, and any other data specified by the department. The request shall be on a form approved by the department, and the department may charge a fee to be paid by the employer, human resource agency, or applicant for the actual cost of processing the request. However, no fee shall be charged to a nonprofit organization. Requests received by the department for federal level criminal offender record information shall be forwarded to the Federal Bureau of Investigation by the department to be searched for any record of arrests or convictions.

(c) (1) Where a request pursuant to this section reveals that a prospective employee or volunteer has been convicted of a violation or attempted violation of Section 220, 261.5, 262, 273a, 273d, or 273.5, or any sex offense listed in Section 290, except for the offense specified in subdivision (d) of Section 243.4, and where the agency or employer hires the prospective employee or volunteer, the agency or employer shall notify the parents or guardians of any minor who will be supervised or disciplined by the employee or volunteer. A conviction for a violation or attempted violation of an offense committed outside the State of California shall be included in this notice if the offense would have been a crime specified in this subdivision if committed in California. The notice shall be given to the parents or guardians with whom the child resides, and shall be given at least 10 days prior to the day that the employee or volunteer begins his or her duties or tasks. Notwithstanding any other provision of law, any person who conveys or receives information in good faith and in conformity with this section is exempt from prosecution under Section 11142 or 11143 for that conveying or receiving of information. Notwithstanding subdivision (d), the notification requirements of this subdivision shall apply as an additional requirement of any other provision of law requiring criminal record access or dissemination of criminal history information.

(2) The notification requirement pursuant to paragraph (1) shall not apply to a misdemeanor conviction for violating Section 261.5 or to a conviction for violating Section 262 or 273.5. Nothing in this paragraph shall preclude an employer from requesting records of convictions for violating Section 261.5, 262, or 273.5 from the Department of Justice pursuant to this section.

(d) Nothing in this section supersedes any law requiring criminal record access or dissemination of criminal history information. In any conflict with another statute, dissemination of criminal history

## 11105.3 (cont.)

information shall be pursuant to the mandatory statute. This subdivision applies to, but is not limited to, requirements pursuant to Article 1 (commencing with Section 1500) of Chapter 3 of, and Chapter 3.2 (commencing with Section 1569) and Chapter 3.4 (commencing with Section 1596.70) of, Division 2 of, and [Section 1522 of, the Health and Safety Code](#), and [Sections 8712, 8811, and 8908 of the Family Code](#).

(e) The department may adopt regulations to implement the provisions of this section as necessary.

(f) As used in this section, "employer" means any nonprofit corporation or other organization specified by the Attorney General which employs or uses the services of volunteers in positions in which the volunteer or employee has supervisory or disciplinary power over a child or children.

(g) As used in this section, "human resource agency" means a public or private entity, excluding any agency responsible for licensing of facilities pursuant to the California Community Care Facilities Act (Chapter 3 (commencing with Section 1500)), the California Residential Care Facilities for the Elderly Act (Chapter 3.2 (commencing with Section 1569)), Chapter 3.01 (commencing with Section 1568.01), and the California Child Day Care Facilities Act (Chapter 3.4 (commencing with Section 1596.70)) of Division 2 of the Health and Safety Code, responsible for determining the character and fitness of a person who is:

(1) Applying for a license, employment, or as a volunteer within the human services field that involves the care and security of children, the elderly, the handicapped, or the mentally impaired.

(2) Applying to be a volunteer who transports individuals impaired by drugs or alcohol.

(3) Applying to adopt a child or to be a foster parent.

(h) Except as provided in subdivision (c), any criminal history information obtained pursuant to this section is confidential and no recipient shall disclose its contents other than for the purpose for which it was acquired.

## CHILD ABUSE AND NEGLECT REPORTING ACT

### 11166

(a) Except as provided in subdivision (d), and in Section 11166.05, a mandated reporter shall make a report to an agency specified in Section 11165.9 whenever the mandated reporter, in his

**REPORT;  
DUTY; TIME**

## 11166 (cont.)

or her professional capacity or within the scope of his or her employment, has knowledge of or observes a child whom the mandated reporter knows or reasonably suspects has been the victim of child abuse or neglect. The mandated reporter shall make an initial report to the agency immediately or as soon as is practicably possible by telephone and the mandated reporter shall prepare and send, fax, or electronically transmit a written followup report thereof within 36 hours of receiving the information concerning the incident. The mandated reporter may include with the report any nonprivileged documentary evidence the mandated reporter possesses relating to the incident.

(1) For the purposes of this article, "reasonable suspicion" means that it is objectively reasonable for a person to entertain a suspicion, based upon facts that could cause a reasonable person in a like position, drawing, when appropriate, on his or her training and experience, to suspect child abuse or neglect. For the purpose of this article, the pregnancy of a minor does not, in and of itself, constitute a basis for a reasonable suspicion of sexual abuse.

(2) The agency shall be notified and a report shall be prepared and sent, faxed, or electronically transmitted even if the child has expired, regardless of whether or not the possible abuse was a factor contributing to the death, and even if suspected child abuse was discovered during an autopsy.

(3) Any report made by a mandated reporter pursuant to this section shall be known as a mandated report.

(b) If after reasonable efforts a mandated reporter is unable to submit an initial report by telephone, he or she shall immediately or as soon as is practicably possible, by fax or electronic transmission, make a one-time automated written report on the form prescribed by the Department of Justice, and shall also be available to respond to a telephone followup call by the agency with which he or she filed the report. A mandated reporter who files a one-time automated written report because he or she was unable to submit an initial report by telephone is not required to submit a written followup report.

(1) The one-time automated written report form prescribed by the Department of Justice shall be clearly identifiable so that it is not mistaken for a standard written followup report. In addition, the automated one-time report shall contain a section that allows the mandated reporter to state the reason the initial telephone call was not able to be completed. The reason for the submission of the one-time automated written report in lieu of the procedure prescribed in subdivision (a) shall be captured in the Child Welfare Services/Case Management System (CWS/CMS). The department shall work with stakeholders to modify reporting forms and the CWS/CMS as is

## **11166 (cont.)**

necessary to accommodate the changes enacted by these provisions.

(2) This subdivision shall not become operative until the CWS/CMS is updated to capture the information prescribed in this subdivision.

(3) This subdivision shall become inoperative three years after this subdivision becomes operative or on January 1, 2009, which ever occurs first.

(4) On the inoperative date of these provisions, a report shall be submitted to the counties and the Legislature by the Department of Social Services that reflects the data collected from automated one-time reports indicating the reasons stated as to why the automated one-time report was filed in lieu of the initial telephone report.

(5) Nothing in this section shall supersede the requirement that a mandated reporter first attempt to make a report via telephone, or that agencies specified in Section 11165.9 accept reports from mandated reporters and other persons as required.

(c) Any mandated reporter who fails to report an incident of known or reasonably suspected child abuse or neglect as required by this section is guilty of a misdemeanor punishable by up to six months confinement in a county jail or by a fine of one thousand dollars (\$1,000) or by both that imprisonment and fine. If a mandated reporter intentionally conceals his or her failure to report an incident known by the mandated reporter to be abuse or severe neglect under this section, the failure to report is a continuing offense until an agency specified in Section 11165.9 discovers the offense.

(d) (1) A clergy member who acquires knowledge or a reasonable suspicion of child abuse or neglect during a penitential communication is not subject to subdivision (a). For the purposes of this subdivision, "penitential communication" means a communication, intended to be in confidence, including, but not limited to, a sacramental confession, made to a clergy member who, in the course of the discipline or practice of his or her church, denomination, or organization, is authorized or accustomed to hear those communications, and under the discipline, tenets, customs, or practices of his or her church, denomination, or organization, has a duty to keep those communications secret.

(2) Nothing in this subdivision shall be construed to modify or limit a clergy member's duty to report known or suspected child abuse or neglect when the clergy member is acting in some other capacity that would otherwise make the clergy member a mandated reporter.

(3) (A) On or before January 1, 2004, a clergy member or any custodian of records for the clergy member may report to an agency

## 11166 (cont.)

specified in Section 11165.9 that the clergy member or any custodian of records for the clergy member, prior to January 1, 1997, in his or her professional capacity or within the scope of his or her employment, other than during a penitential communication, acquired knowledge or had a reasonable suspicion that a child had been the victim of sexual abuse that the clergy member or any custodian of records for the clergy member did not previously report the abuse to an agency specified in Section 11165.9. The provisions of Section 11172 shall apply to all reports made pursuant to this paragraph.

(B) This paragraph shall apply even if the victim of the known or suspected abuse has reached the age of majority by the time the required report is made.

(C) The local law enforcement agency shall have jurisdiction to investigate any report of child abuse made pursuant to this paragraph even if the report is made after the victim has reached the age of majority.

(e) Any commercial film and photographic print processor who has knowledge of or observes, within the scope of his or her professional capacity or employment, any film, photograph, videotape, negative, or slide depicting a child under the age of 16 years engaged in an act of sexual conduct, shall report the instance of suspected child abuse to the law enforcement agency having jurisdiction over the case immediately, or as soon as practicably possible, by telephone and shall prepare and send, fax, or electronically transmit a written report of it with a copy of the film, photograph, videotape, negative, or slide attached within 36 hours of receiving the information concerning the incident. As used in this subdivision, "sexual conduct" means any of the following:

(1) Sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex or between humans and animals.

(2) Penetration of the vagina or rectum by any object.

(3) Masturbation for the purpose of sexual stimulation of the viewer.

(4) Sadomasochistic abuse for the purpose of sexual stimulation of the viewer.

(5) Exhibition of the genitals, pubic, or rectal areas of any person for the purpose of sexual stimulation of the viewer.

(f) Any mandated reporter who knows or reasonably suspects that the home or institution in which a child resides is unsuitable for the child because of abuse or neglect of the child shall bring the

## **11166 (cont.)**

condition to the attention of the agency to which, and at the same time as, he or she makes a report of the abuse or neglect pursuant to subdivision (a).

(g) Any other person who has knowledge of or observes a child whom he or she knows or reasonably suspects has been a victim of child abuse or neglect may report the known or suspected instance of child abuse or neglect to an agency specified in Section 11165.9.

(h) When two or more persons, who are required to report, jointly have knowledge of a known or suspected instance of child abuse or neglect, and when there is agreement among them, the telephone report may be made by a member of the team selected by mutual agreement and a single report may be made and signed by the selected member of the reporting team. Any member who has knowledge that the member designated to report has failed to do so shall thereafter make the report.

(i) (1) The reporting duties under this section are individual, and no supervisor or administrator may impede or inhibit the reporting duties, and no person making a report shall be subject to any sanction for making the report. However, internal procedures to facilitate reporting and apprise supervisors and administrators of reports may be established provided that they are not inconsistent with this article.

(2) The internal procedures shall not require any employee required to make reports pursuant to this article to disclose his or her identity to the employer.

(3) Reporting the information regarding a case of possible child abuse or neglect to an employer, supervisor, school principal, school counselor, coworker, or other person shall not be a substitute for making a mandated report to an agency specified in Section 11165.9.

(j) A county probation or welfare department shall immediately, or as soon as practicably possible, report by telephone, fax, or electronic transmission to the law enforcement agency having jurisdiction over the case, to the agency given the responsibility for investigation of cases under Section 300 of the Welfare and Institutions Code, and to the district attorney's office every known or suspected instance of child abuse or neglect, as defined in Section 11165.6, except acts or omissions coming within subdivision (b) of Section 11165.2, or reports made pursuant to Section 11165.13 based on risk to a child which relates solely to the inability of the parent to provide the child with regular care due to the parent's substance abuse, which shall be reported only to the county welfare or probation department. A county probation or welfare department also shall send, fax, or electronically transmit a written report thereof within 36 hours of receiving the information concerning the

**11166 (cont.)**

incident to any agency to which it makes a telephone report under this subdivision.

(k) A law enforcement agency shall immediately, or as soon as practicably possible, report by telephone, fax, or electronic transmission to the agency given responsibility for investigation of cases under Section 300 of the Welfare and Institutions Code and to the district attorney's office every known or suspected instance of child abuse or neglect reported to it, except acts or omissions coming within subdivision (b) of Section 11165.2, which shall be reported only to the county welfare or probation department. A law enforcement agency shall report to the county welfare or probation department every known or suspected instance of child abuse or neglect reported to it which is alleged to have occurred as a result of the action of a person responsible for the child's welfare, or as the result of the failure of a person responsible for the child's welfare to adequately protect the minor from abuse when the person responsible for the child's welfare knew or reasonably should have known that the minor was in danger of abuse. A law enforcement agency also shall send, fax, or electronically transmit a written report thereof within 36 hours of receiving the information concerning the incident to any agency to which it makes a telephone report under this subdivision.

**HEALTH AND  
SAFETY CODE**



# MARIJUANA

11357	<b>Unauthorized possession; punishment; prior conviction; possession in school or on school grounds</b>
11361	<b>Adults employing or selling to minors; punishments</b>
11361.5	<b>Destruction of arrest and conviction records; applicable offenses; method; records not applicable; costs</b>
11361.7	<b>Accuracy, relevancy, timeliness and completeness of record subject to destruction; alteration of records; questions on prior criminal record; application of section</b>

## 11357

(a) Except as authorized by law, every person who possesses any concentrated cannabis shall be punished by imprisonment in the county jail for a period of not more than one year or by a fine of not more than five hundred dollars (\$500), or by both such fine and imprisonment, or shall be punished by imprisonment in the state prison.

(b) Except as authorized by law, every person who possesses not more than 28.5 grams of marijuana, other than concentrated cannabis, is guilty of a misdemeanor and shall be punished by a fine of not more than one hundred dollars (\$100). Notwithstanding other provisions of law, if such person has been previously convicted three or more times of an offense described in this subdivision during the two-year period immediately preceding the date of commission of the violation to be charged, the previous convictions shall also be charged in the accusatory pleading and, if found to be true by the jury upon a jury trial or by the court upon a court trial or if admitted by the person, the provisions of [Sections 1000.1 and 1000.2 of the Penal Code](#) shall be applicable to him, and the court shall divert and refer him for education, treatment, or rehabilitation, without a court hearing or determination or the concurrence of the district attorney, to an appropriate community program which will accept him. If the person is so diverted and referred he shall not be subject to the fine specified in this subdivision. If no community program will accept him, the person shall be subject to the fine specified in this subdivision. In any case in which a person is arrested for a violation of this subdivision and does not demand to be taken before a magistrate, such person shall be released by the arresting officer upon presentation of satisfactory evidence of identity and giving his written promise to appear in court, as provided in [Section 853.6 of the Penal Code](#), and shall not be subjected to booking.

(c) Except as authorized by law, every person who possesses more than 28.5 grams of marijuana, other than concentrated cannabis, shall

**UNAUTHORIZED  
POSSESSION;  
PUNISHMENT;  
PRIOR  
CONVICTION;  
POSSESSION IN  
SCHOOL OR ON  
SCHOOL  
GROUNDS**

Health and Safety Code

**11357 (cont.)**

be punished by imprisonment in the county jail for a period of not more than six months or by a fine of not more than five hundred dollars (\$500), or by both such fine and imprisonment.

(d) Except as authorized by law, every person 18 years of age or over who possesses not more than 28.5 grams of marijuana, other than concentrated cannabis, upon the grounds of, or within, any school providing instruction in kindergarten or any of grades 1 through 12 during hours the school is open for classes or school-related programs is guilty of a misdemeanor and shall be punished by a fine of not more than five hundred dollars (\$500), or by imprisonment in the county jail for a period of not more than 10 days, or both.

(e) Except as authorized by law, every person under the age of 18 who possesses not more than 28.5 grams of marijuana, other than concentrated cannabis, upon the grounds of, or within, any school providing instruction in kindergarten or any of grades 1 through 12 during hours the school is open for classes or school-related programs is guilty of a misdemeanor and shall be subject to the following dispositions:

(1) A fine of not more than two hundred fifty dollars (\$250), upon a finding that a first offense has been committed.

(2) A fine of not more than five hundred dollars (\$500), or commitment to a juvenile hall, ranch, camp, forestry camp, or secure juvenile home for a period of not more than 10 days, or both, upon a finding that a second or subsequent offense has been committed.

**11361**

(a) Every person 18 years of age or over who hires, employs, or uses a minor in unlawfully transporting, carrying, selling, giving away, preparing or sale, or peddling any marijuana, who unlawfully sells, or offers to sell, any marijuana to a minor under 14 years of age, or who induces a minor to use marijuana in violation of law shall be punished by imprisonment in the state prison for a period of three, five, or seven years.

(b) Every person 18 years of age or over who furnishes, administers, or gives, or offers to furnish, administer, or give, any marijuana to a minor 14 years of age or older shall be punished by imprisonment in the state prison for a period of three, four, or five years.

**ADULTS  
EMPLOYING OR  
SELLING TO  
MINORS;  
PUNISHMENTS**

**11361.5**

(a) Records of any court of this state, any public or private agency that provides services upon referral under Section 1000.2 of the Penal Code, or of any state agency pertaining to the arrest or conviction of any person for a violation of subdivision (b), (c), (d), or (e) of Section 11357 or subdivision (b) of Section 11360, shall not be kept beyond two years from the date of the conviction, or from the date of the arrest if there was no conviction, except with respect to a violation of subdivision (e) of Section 11357 the records shall be retained until the offender attains the age of 18 years at which time the records shall be destroyed as provided in this section. Any court or agency having custody of the records shall provide for the timely destruction of the records in accordance with subdivision (c). The requirements of this subdivision do not apply to records of any conviction occurring prior to January 1, 1976, or records of any arrest not followed by a conviction occurring prior to that date.

(b) This subdivision applies only to records of convictions and arrests not followed by conviction occurring prior to January 1, 1976, for any of the following offenses:

(1) Any violation of Section 11357 or a statutory predecessor thereof.

(2) Unlawful possession of a device, contrivance, instrument, or paraphernalia used for unlawfully smoking marijuana, in violation of Section 11364, as it existed prior to January 1, 1976, or a statutory predecessor thereof.

(3) Unlawful visitation or presence in a room or place in which marijuana is being unlawfully smoked or used, in violation of Section 11365, as it existed prior to January 1, 1976, or a statutory predecessor thereof.

(4) Unlawfully using or being under the influence of marijuana, in violation of Section 11550, as it existed prior to January 1, 1976, or a statutory predecessor thereof.

Any person subject to an arrest or conviction for those offenses may apply to the Department of Justice for destruction of records pertaining to the arrest or conviction if two or more years have elapsed since the date of the conviction, or since the date of the arrest if not followed by a conviction. The application shall be submitted upon a form supplied by the Department of Justice and shall be accompanied by a fee, which shall be established by the department in an amount which will defray the cost of administering this subdivision and costs incurred by the state under subdivision (c), but which shall not exceed thirty-seven dollars and fifty cents (\$37.50).

**DESTRUCTION  
OF ARREST AND  
CONVICTION  
RECORDS;  
APPLICABLE  
OFFENSES;  
METHOD;  
RECORDS NOT  
APPLICABLE;  
COSTS**

**11361.5 (cont.)**

The application form may be made available at every local police or sheriff's department and from the Department of Justice and may require that information which the department determines is necessary for purposes of identification. The department may request, but not require, the applicant to include a self-administered fingerprint upon the application. If the department is unable to sufficiently identify the applicant for purposes of this subdivision without the fingerprint or without additional fingerprints, it shall so notify the applicant and shall request the applicant to submit any fingerprints which may be required to effect identification, including a complete set if necessary, or, alternatively, to abandon the application and request a refund of all or a portion of the fee submitted with the application, as provided in this section. If the applicant fails or refuses to submit fingerprints in accordance with the department's request within a reasonable time which shall be established by the department, or if the applicant requests a refund of the fee, the department shall promptly mail a refund to the applicant at the address specified in the application or at any other address which may be specified by the applicant. However, if the department has notified the applicant that election to abandon the application will result in forfeiture of a specified amount which is a portion of the fee, the department may retain a portion of the fee which the department determines will defray the actual costs of processing the application, provided the amount of the portion retained shall not exceed ten dollars (\$10).

Upon receipt of a sufficient application, the Department of Justice shall destroy records of the department, if any, pertaining to the arrest or conviction in the manner prescribed by subdivision (c) and shall notify the Federal Bureau of Investigation, the law enforcement agency which arrested the applicant, and, if the applicant was convicted, the probation department which investigated the applicant and the Department of Motor Vehicles, of the application.

(c) Destruction of records of arrest or conviction pursuant to subdivision (a) or (b) shall be accomplished by permanent obliteration of all entries or notations upon the records pertaining to the arrest or conviction, and the record shall be prepared again so that it appears that the arrest or conviction never occurred. However, where (1) the only entries upon the record pertain to the arrest or conviction and (2) the record can be destroyed without necessarily effecting the destruction of other records, then the document constituting the record shall be physically destroyed.

(d) Notwithstanding subdivision (a) or (b), written transcriptions of oral testimony in court proceedings and published judicial appellate reports are not subject to this section. Additionally, no records shall be destroyed pursuant to subdivision (a) if the defendant or a codefendant has filed a civil action against the peace officers or law enforcement jurisdiction which made the arrest or instituted the prosecution and if the agency which is the custodian of those records

## 11361.5 (cont.)

has received a certified copy of the complaint in the civil action, until the civil action has finally been resolved. Immediately following the final resolution of the civil action, records subject to subdivision (a) shall be destroyed pursuant to subdivision (c) if more than two years have elapsed from the date of the conviction or arrest without conviction.

## 11361.7

(a) Any record subject to destruction or permanent obliteration pursuant to Section 11361.5, or more than two years of age, or a record of a conviction for an offense specified in subdivision (a) or (b) of Section 11361.5 which became final more than two years previously, shall not be considered to be accurate, relevant, timely, or complete for any purposes by any agency or person. The provisions of this subdivision shall be applicable for purposes of the Privacy Act of 1974 (5 U.S.C. Section 552a) to the fullest extent permissible by law, whenever any information or record subject to destruction or permanent obliteration under Section 11361.5 was obtained by any state agency, local public agency, or any public or private agency that provides services upon referral under Section 1000.2 of the Penal Code, and is thereafter shared with or disseminated to any agency of the federal government.

(b) No public agency shall alter, amend, assess, condition, deny, limit, postpone, qualify, revoke, surcharge, or suspend any certificate, franchise, incident, interest, license, opportunity, permit, privilege, right, or title of any person because of an arrest or conviction for an offense specified in subdivision (a) or (b) of Section 11361.5, or because of the facts or events leading to such an arrest or conviction, on or after the date the records of such arrest or conviction are required to be destroyed by subdivision (a) of Section 11361.5, or two years from the date of such conviction or arrest without conviction with respect to arrests and convictions occurring prior to January 1, 1976. As used in this subdivision, "public agency" includes, but is not limited to, any state, county, city and county, city, public or constitutional corporation or entity, district, local or regional political subdivision, or any department, division, bureau, office, board, commission or other agency thereof.

(c) Any person arrested or convicted for an offense specified in subdivision (a) or (b) of Section 11361.5 may, two years from the date of such a conviction, or from the date of the arrest if there was no conviction, indicate in response to any question concerning his prior criminal record that he was not arrested or convicted for such offense.

**ACCURACY,  
RELEVANCY,  
TIMELINESS AND  
COMPLETENESS OF  
RECORD SUBJECT  
TO DESTRUCTION;  
ALTERATION OF  
RECORDS;  
QUESTIONS ON  
PRIOR CRIMINAL  
RECORD;  
APPLICATION OF  
SECTION**

**11361.7 (cont.)**

(d) The provisions of this section shall be applicable without regard to whether destruction or obliteration of records has actually been implemented pursuant to Section 11361.5.

**REGISTRATION OF CONTROLLED SUBSTANCE OFFENDERS**

<b>11590</b>	<b>Persons required to register</b>
<b>11591</b>	<b>School employee; arrest for controlled substance offense; notice to school authorities</b>

**11590**

(a) Except as provided in subdivisions (c) and (d), any person who is convicted in the State of California of any offense defined in Section 11350, 11351, 11351.5, 11352, 11353, 11353.5, 11353.7, 11354, 11355, 11357, 11358, 11359, 11360, 11361, 11363, 11366, 11366.5, 11366.6, 11368, 11378, 11378.5, 11379, 11379.5, 11379.6, 11380, 11380.5, 11383, or 11550, or subdivision (a) of Section 11377, or any person who is discharged or paroled from a penal institution where he or she was confined because of the commission of any such offense, or any person who is convicted in any other state of any offense which, if committed or attempted in this state, would have been punishable as one or more of the above-mentioned offenses, shall within 30 days of his or her coming into any county or city, or city and county in which he or she resides or is temporarily domiciled for that length of time, register with the chief of police of the city in which he or she resides or the sheriff of the county if he or she resides in an unincorporated area.

**PERSONS  
REQUIRED  
TO REGISTER**

For persons convicted of an offense defined in Section 11377, 11378, 11379, or 11380, this subdivision shall apply only to offenses involving controlled substances specified in paragraph (12) of subdivision (d) of Section 11054 and paragraph (2) of subdivision (d) of Section 11055, and to analogs of these substances, as defined in Section 11401. For persons convicted of an offense defined in Section 11379 or 11379.5, this subdivision shall not apply if the conviction was for transporting, offering to transport, or attempting to transport a controlled substance.

(b) Any person who is convicted in any federal court of any offense which, if committed or attempted in this state would have been punishable as one or more of the offenses enumerated in subdivision (a) shall within 30 days of his or her coming into any county or city, or city and county in which he or she resides or is temporarily domiciled for that length of time, register with the chief of police of the city in which he or she resides or the sheriff of the county if he or she resides in an unincorporated area.

## 11590 (cont.)

(c) This section does not apply to a conviction of a misdemeanor under Section 11357, 11360, or 11377.

(d) The registration requirements imposed by this section for the conviction of offenses defined in Section 11353.7, 11366.5, 11366.6, 11377, 11378, 11378.5, 11379, 11379.5, 11379.6, 11380, 11380.5, or 11383, shall apply to any person who commits any of those offenses on and after January 1, 1990.

## 11591

Every sheriff, chief of police, or the Commissioner of the California Highway Patrol, upon the arrest for any of the controlled substance offenses enumerated in Section 11590, or Section 11364, insofar as that section relates to paragraph (12) of subdivision (d) of Section 11054, of any school employee, shall, provided that he or she knows that the arrestee is a school employee, do one of the following:

(a) If the school employee is a teacher in any of the public schools of this state, the sheriff, chief of police, or Commissioner of the California Highway Patrol shall immediately notify by telephone the superintendent of schools of the school district employing the teacher and shall immediately give written notice of the arrest to the Commission on Teacher Credentialing and to the superintendent of schools in the county where the person is employed. Upon receipt of the notice, the county superintendent of schools and the Commission on Teacher Credentialing shall immediately notify the governing board of the school district employing the person.

(b) If the school employee is a nonteacher in any of the public schools of this state, the sheriff, chief of police, or Commissioner of the California Highway Patrol shall immediately notify by telephone the superintendent of schools of the school district employing the nonteacher and shall immediately give written notice of the arrest to the governing board of the school district employing the person.

(c) If the school employee is a teacher in any private school of this state, the sheriff, chief of police, or Commissioner of the California Highway Patrol shall immediately notify by telephone the private school authority employing the teacher and shall immediately give written notice of the arrest to the private school authority employing the teacher.

**SCHOOL  
EMPLOYEE;  
ARREST FOR  
CONTROLLED  
SUBSTANCE  
OFFENSE;  
NOTICE TO  
SCHOOL  
AUTHORITIES**

**GOVERNMENT**

**CODE**



## ADMINISTRATIVE ADJUDICATION

11517	Contested case; original hearing; agency or administrative law judge
11521	Reconsideration
11522	Reinstatement of license or reduction of penalty

### 11517

(a) A contested case may be originally heard by the agency itself and subdivision (b) shall apply. Alternatively, at the discretion of the agency, an administrative law judge may originally hear the case alone and subdivision (c) shall apply:

(b) If a contested case is originally heard before an agency itself, all of the following provisions apply:

(1) An administrative law judge shall be present during the consideration of the case and, if requested, shall assist and advise the agency in the conduct of the hearing.

(2) No member who did not hear the evidence shall vote on the decision.

(3) The agency shall issue its decision within 100 days of submission of the case.

(c)(1) If a contested case is originally heard by an administrative law judge alone, he or she shall prepare within 30 days after the case is submitted to him or her a proposed decision in a form that may be adopted by the agency as the final decision in the case. Failure of the administrative law judge to deliver a proposed decision within the time required does not prejudice the rights of the agency in the case. Thirty days after receipt by the agency of the proposed decision, a copy of the proposed decision shall be filed by the agency as a public record and a copy shall be served by the agency on each party and his or her attorney. The filing and service is not an adoption of a proposed decision by the agency.

(2) Within 100 days of receipt by the agency of the administrative law judge's proposed decision, the agency may act as prescribed in subparagraphs (A) to (E), inclusive. If the agency fails to act as prescribed in subparagraphs (A) to (E), inclusive, within 100 days of receipt of the proposed decision, the proposed

### CONTESTED CASE; ORIGINAL HEARING; AGENCY OR ADMINISTRATIVE LAW JUDGE

## 11517 (cont.)

decision shall be deemed adopted by the agency.  
The agency may do any of the following:

(A) Adopt the proposed decision in its entirety.

(B) Reduce or otherwise mitigate the proposed penalty and adopt the balance of the proposed decision.

(C) Make technical or other minor changes in the proposed decision adopt it as the decision. Action by the agency under this paragraph is limited to a clarifying change or a change of a similar nature that does not affect the factual or legal basis of the proposed decision.

(D) Reject the proposed decision and refer the case to the same administrative law judge if reasonably available, otherwise to another administrative law judge, to take additional evidence. If the case is referred to an administrative law judge pursuant to this subparagraph, he or she shall prepare a revised proposed decision, as provided in paragraph (1), based upon the additional evidence and the transcript and other papers that are part of the record of the prior hearing. A copy of the revised proposed decision shall be furnished to each party and his or her attorney as prescribed in this subdivision.

(E) Reject the proposed decision, and decide the case upon the record, including the transcript, or upon an agreed statement of the parties, with or without taking additional evidence. By stipulation of the parties, the agency may decide the case upon the record without including the transcript. If the agency acts pursuant to this subparagraph, all of the following provisions apply:

(i) A copy of the record shall be made available to the parties. The agency may require payment of fees covering direct costs of making the copy.

(ii) The agency itself shall not decide any case provided for in this subdivision without affording the parties the opportunity to present either oral or written argument before the agency itself. If additional oral evidence is introduced before the agency itself,

**11517 (cont.)**

no agency member may vote unless the member heard the additional oral evidence.

(iii) The authority of the agency itself to decide the case under this subdivision includes authority to decide some but not all issues in the case.

(iv) If the agency elects to proceed under this subparagraph, the agency shall issue its final decision not later than 100 days after rejection of the proposed decision. If the agency elects to proceed under this subparagraph, and has ordered a transcript of the proceedings before the administrative law judge, the agency shall issue its final decision not later than 100 days after receipt of the transcript. If the agency finds that a further delay is required by special circumstance, it shall issue an order delaying the decision for no more than 30 days and specifying the reasons therefore. The order shall be subject to judicial review pursuant to Section 11523.

(d) The decision of the agency shall be filed immediately by the agency as a public record and a copy shall be served by the agency on each party and his or her attorney.

**11521**

(a) The agency itself may order a reconsideration of all or part of the case on its own motion or on petition of any party. The agency shall notify a petitioner of the time limits for petitioning for reconsideration. The power to order a reconsideration shall expire 30 days after the delivery or mailing of a decision to respondent, or on the date set by the agency itself as the effective date of the decision if that date occurs prior to the expiration of the 30-day period or at the termination of a stay of not to exceed 30 days which the agency may grant for the purpose of filing an application for reconsideration. If additional time is needed to evaluate a petition for reconsideration filed prior to the expiration of any of the applicable periods, an agency may grant a stay of that expiration for no more than 10 days, solely for the purpose of considering the petition. If no action is taken on a petition within the time allowed for ordering reconsideration, the petition shall be deemed denied.

(b) The case may be reconsidered by the agency itself on all the pertinent parts of the record and such

**RECONSIDERATION**

## **11521 (cont.)**

additional evidence and argument as may be permitted, or may be assigned to an administrative law judge. A reconsideration assigned to an administrative law judge shall be subject to the procedure provided in Section 11517. If oral evidence is introduced before the agency itself, no agency member may vote unless he or she heard the evidence.

## **11522**

A person whose license has been revoked or suspended may petition the agency for reinstatement or reduction of penalty after a period of not less than one year has elapsed from the effective date of the decision or from the date of the denial of a similar petition.

The agency shall give notice to the Attorney General of the filing of the petition and the Attorney General and the petitioner shall be afforded an opportunity to present either oral or written argument before the agency itself. The agency itself shall decide the petition, and the decision shall include the reasons therefore, and any terms and conditions that the agency reasonably deems appropriate to impose as a condition of reinstatement. This section shall not apply if the statutes dealing with the particular agency contain different provisions for reinstatement or reduction of penalty.

## **REINSTATEMENT OF LICENSE OR REDUCTION OF PENALTY**

# **SPECIFIC OFFENSES**

## Criminal Offenses Requiring Denial or Revocation of Teaching Credentials

**Table 1 – Enumerated Crimes and Violent/Serious Felonies  
in Education Code Sections 44346.1 and 44424**

Penal Code sections	Descriptions	Enumerated Crimes <sup>1</sup>	Violent Felonies <sup>2</sup>	Serious Felonies <sup>3</sup>
136.1	Intimidation of witness and victims		√	√
186.22	Any felony offense, which would also constitute a violation of section 186.22 (participation in criminal street gang)			√
187 – 191	Murder	√	√	√
187/664	Attempted murder	√	√	√
191.5	Gross vehicular manslaughter while intoxicated			√ <sup>4</sup>
192(a)	Voluntary manslaughter	√	√	√
192(c)(1) or (3)	Vehicular manslaughter			√ <sup>4</sup>
192.5(a) or (c)	Vehicular manslaughter while operating vessel			√ <sup>4</sup>
193	Manslaughter	√		
194	Death of victim within 3 years and a day	√		
203	Mayhem	√	√	√
205	Aggravated mayhem	√	√	√
206	Torture	√		
207	Kidnapping	√	√	√
208	Kidnapping – victim under 14	√	√	√
209	Kidnapping for ransom or to commit other crimes	√	√	√
209.5	Kidnapping during carjacking	√	√	√
210	Pose as kidnapper to extort	√		
210.5	Taking hostages	√		
211	Robbery	√	√	√
212.5	Robbery	√	√	√
214	Train robbery	√		
215(a)	Carjacking	√	√	√
217.1	Assault on public officials	√		
220	Assault w/intent to commit mayhem, rape, sodomy, and oral copulation	√	√	√
222	Administering stupefying drugs during felony	√		
224	Assault w/caustic chemicals	√		√

<sup>1</sup>Enumerated crimes are listed in Education Code § 44424 and includes misdemeanors except as otherwise noted.

<sup>2</sup>Violent felonies are listed in Penal code § 667.5(c).

<sup>3</sup>Serious felonies are listed in Penal Code §§ 1192.7(c) and 1192.8.

<sup>4</sup>The offense is only a serious felony when it involves the personal infliction of great bodily injury on any person other than an accomplice, or the personal use of a dangerous or deadly weapon within the meaning of Penal Code §§ 1192.7(c)(8) or (23).

Penal Code sections	Descriptions	Enumerated Crimes <sup>1</sup>	Violent Felonies <sup>2</sup>	Serious Felonies <sup>3</sup>
245	Assault w/deadly weapon or by the means of force likely to produce great bodily injury	√		√
245.2	Assault w/deadly weapon/force on driver			√
245.3	Assault w/deadly weapon/force on custodial Officer			√
245.5	Assault w/deadly weapon/force on school Employee			√
246	Shooting at inhabited dwelling			√
261	Rape	√	√ <sup>5</sup>	√
261.5	Unlawful sexual intercourse w/minor (statutory Rape)	√		
262	Rape of spouse	√	√ <sup>6</sup>	
264.1	Voluntarily acting in concert with another... to commit an act in §§ 261, 262, or 289	√	√	√
265	Abduct women for marriage, etc.	√		
266	Entice minor female for prostitution, etc.	√		
266a	Take person for prostitution w/o consent	√		
266b	Take person for illicit relations	√		
266c	Inducing consent of sexual act by fraud or fear	√		
266d	Receive money for cohabitation placement	√		
266e	Purchase a person to work as prostitute	√		
266f	Sell person for immoral purpose	√		
266g	Place wife in brothel	√		
266h	Pimping/pimping a minor	√		
266i	Pandering/pandering with a minor	√		
266j	Procure a child under 14 years for lewd or lascivious acts	√		
267	Abduct minor for prostitution	√		
272	Contributing to the delinquency of a minor (involving lewd or lascivious conduct)	√		
273a	Willful cruelty to child	√		
273ab	Assault resulting in death to child	√		
273d	Corporal punishment or injury to child	√		
273f	Sending minor to immoral place	√		
273g	Immoral acts before child	√		
278	Child stealing	√		
285	Incest	√		
286	Sodomy	√	√	√
286.5	Sexual assault on animal	√		
288	Lewd or lascivious acts	√	√ <sup>7</sup> √	√ <sup>6</sup>
288a	Oral copulation	√	√	√
288.2	Harmful matter sent w/intent to seduce minor	√		
288.5	Continuous sexual abuse of child	√	√	√
289(a)	Forcible acts of sexual penetration		√	√
422	Making criminal threats			√

<sup>5</sup>Includes only violations of Penal Code §§ 261(a)(2) or (6).

<sup>6</sup>Includes only violations of Penal Code §§262(a)(1) or (a)(4).

<sup>7</sup>Includes only offenses involving a child under 14 years.

Penal Code sections	Descriptions	Enumerated Crimes <sup>1</sup>	Violent Felonies <sup>2</sup>	Serious Felonies <sup>3</sup>
424	Embezzlement by public officer	√		
425	Failure to pay public money	√		
451	Arson			√
451(a) or (b)	Arson		√	
459	Burglary in the first degree, as defined in 460(a)		√ <sup>8</sup>	√
484	Theft of personal property (felony only)	√		
484b	Diversion of funds (felony only)	√		
484c	Obtain money by false voucher (felony only)	√		
484e	Theft of access card (felony only)	√		
484f	Forge access card (felony only)	√		
484g	Fraudulent use of access card (felony only)	√		
484h	Access card offenses by retailer (felony only)	√		
484i	Possess access card equipment (felony only)	√		
484j	Publication of access card number w/intent to defraud (felony only)	√		
484.1	False representation to pawnbroker (felony only)	√		
485	Theft: Appropriate lost property (felony only)	√		
487	Grand theft (felony only)	√		√ <sup>9</sup>
487a	Grand theft: animal carcass (felony only)	√		
487b	Grand theft: convert real property (felony only)	√		
487d	Grand theft: gold dust, mining equip (felony only)	√		
487e	Grand theft: dog (felony only)	√		
487g	Grand theft: animal for sale/research (felony only)	√		
503	Embezzlement	√		
504	Embezzlement	√		
518	Extortion		√	
4500	Assault w/force by a prisoner			√
4501	Assault w/deadly weapon by a prisoner			√
4503	Holding of hostages by a prisoner			√
11418(b) or (c)	Using weapons of mass destruction		√	√
12022.53	Commit felony w/use of firearm		√	√
12034(c) or (d)	Discharge of firearm from vehicle			√
12303.3	Exploding a destructive device w/intent to injure			√
12308	Use of destructive device w/intent to murder		√	√
12309	Exploding destructive device		√	√
12310	Exploding destructive device		√	√
H & S § 11055(d)(2) & (f)(1)(A)	Providing illegal drugs			√
H & S § 11100(a)	Providing illegal drugs			√

<sup>8</sup>The offense is a violent felony if “it is charged and proved that another person, other than an accomplice, was present in the residence during the commission of the burglary.” See Penal Code § 487(d)(2).

<sup>9</sup>Includes only grand theft involving a firearm – Penal Code § 487(d)(2).



Penal Code sections	Descriptions	Enumerated Crimes <sup>1</sup>	Violent Felonies <sup>2</sup>	Serious Felonies <sup>3</sup>
Vehicle Code § 2800.3	Willful flight			√ <sup>4</sup>
Vehicle Code § 23104(b)	Reckless driving			√ <sup>4</sup>
Vehicle Code § 23153	DUI			√ <sup>4</sup>
Various	<b>Any attempt</b> to commit an enumerated crime, a violent felony, or a serious felony	√	√	√ <sup>10</sup>
Various	<b>Any conspiracy</b> to commit a serious felony			√
Various	<b>Any offense committed or attempted in any other state or against the laws of the United States</b> which, if committed or attempted in this state, would have been punished as one or more enumerated offenses, violent felonies, or serious felonies <sup>11</sup>	√	√	√
Various	Any felony punishable by death or life imprisonment in the state prison		√	√
Various	Any felony where the defendant personally uses a dangerous or deadly weapon, or a firearm		√	√
Various	Any felony where the defendant personally inflicts great bodily injury on those other than accomplices		√	√
Various	Assault w/intent to commit rape			√
Various	Assault w/intent to commit robbery			√
Various	Attempt to commit felony punishable by death or life imprisonment			√
Various	Felony w/personal use of dangerous/deadly weapon			√
Various	Grand theft involving firearm			√

<sup>10</sup>Other than assault – see Penal Code § 1192.7(39).

<sup>11</sup>See Education Code §§ 44424(a), 44346.1(b).

**Table 2 – Sex Offenses**

Penal Code Section	Descriptions	See Education Code § 44010, subsection:
220	Assault to commit rape	(a)
243.4(a)(b)(c)	Sexual battery	
261	Rape	
261.5	Unlawful sexual intercourse with minor (statutory rape)	
262	Rape of spouse by force/fear/threat	
264.1	Aiding and abetting rape	
266	Entice minor female for prostitution/etc.	
266j	Providing or transporting child under 16 for purpose of lewd or lascivious act	
267	Abduct minor for prostitution	(e)
272	(On or after 9/15/61) Contributing to the delinquency of a minor involving lewd or lascivious conduct	
285	Incest	(a)
286	Sodomy	(a), (g)
288	Lewd or lascivious acts with child under 14 years	(a)
288a	Oral copulation	(a), (g)
289	Penetration by foreign object	(a)
290	Registration as a sex offender and for any conviction resulting in requirement to register as a sex offender	(j) Ed. Code §44425(d)
311(1)	(After 9/7/55 but before 9/15/61) Indecent exposure	(d)
311(2)	(Before 9/15/61) Procuring another’s lewd exposure or excitation lewd thoughts	(b)
311.1	Sent or brought into state for sale or distribution, matter depicting sexual conduct by minor	(a)
311.2	Sending or bringing into state for sale or distribution, matter depicting sexual conduct by minor; transaction with minor	
311.3	Sexual exploitation of child	
311.4	Employment or use of minor to perform prohibited acts	
311.10	Advertising for sale or distribution obscene matter depicting a person under the age of 18 years engaging in or simulating sexual conduct	
311.11	Possession or control of matter depicting minor engaging or simulating sexual conduct	
313.1	Distribute harmful matter to minors	
314	(On or after 9/15/61) Indecent exposure	(c)
647(a)	Disorderly conduct: solicit lewd act	(a)
647(d)	Disorderly conduct: loiter in or about toilet	
647a	(Before 12/31/87) Annoy/molest children	
647b	Loitering about adult schools; molesting of pupils	(b)
647(5)	(Before 9/15/61) Vagrancy, lewd: solicitation of homosexual activity	
647.6	(After 1/1/88) Annoy/molest children	(a)
Various	<b>Any attempt</b> to commit any of the above-mentioned offenses	(h)
Various	Any commission or attempt in another state or against the laws of the United States, which if committed in California would have been punishable as one or more of the above-mentioned offenses. [Including § 290 per Ed. Code § 44425(d)]	(i) Ed. Code § 44425(d)
Wel & Inst § 702	(Prior to 9/15/61) Lewd and lascivious conduct	(f)
Wel & Inst § 6300	Commitment as a mentally disordered sex offender under former article 1 (commencing with § 6300) of Chapter 2 of Part 2 of the Welfare & Institutions Code, repealed by Chapter 928 of the statutes of 1981.	(k)

**Table 3 – Controlled Substance Offenses**

Health & Safety Code Sections	Descriptions	See Education Code § 44011, subsection:	
11350	Possession of designated controlled substances	(a)	
11351	Possession/purchase of designated controlled substances for sale		
11351.5	Possession of cocaine for sale		
11352	Transportation/etc. designated controlled substances		
11352.1	Dispensing or furnishing drugs without a license		
11352.5	Sale of heroin		
11353	Adult induces/etc. minor to violate controlled substance provisions		
11353.1	Violation of 11353 by an adult near other minors		
11353.4	Multiple violations of 11353 by an adult; involving minor under 14 yrs		
11353.5	Sale/etc. of controlled substance by adult to a minor under 14 yrs and near other minors		
11354	Minor induces/etc. another minor to violate controlled substance provisions		
11355	Sale/etc. of substance in lieu of controlled substance		
11361	Employment of minor under 14 yrs to transport/sell/etc.		
11366	Open/maintain place to sell/etc. controlled substance		
11368	Forged or altered narcotic prescription		
11377	Possession of controlled substance		
11378	Possession of controlled substance for sale		
11378.5	Possession of phencyclidine for sale		
11379	Transportation/etc. of controlled substance		
11379.2	Possession for sale, or sale of ketamine		
11379.5	Transportation/etc. of phencyclidine		
11379.6	Manufacture/etc. of controlled substances		
11379.7	Violation of specified offenses near child under 16		
11379.8	Violation of 11379.6 with specified controlled substances		
11379.9	Causing death or great bodily injury of another person		
11380	Use/etc. of minor by an adult to violate controlled substance provisions		(a)
11380.1	Violation of 11380 with specified controlled substances		
11380.5	Furnishing/etc. minor with specified controlled substances		
11382	Sale/etc. of substance in lieu of controlled substance		
11550	Use/under the influence of controlled substance		(b)
Various	<b>Any offense committed or attempted in any other state or against the laws of the United States</b> which, if committed or attempted in this state, would have been punished as one or more of the above-mentioned offenses.		(b)
11500	(Former section) Unlawful possession of a controlled substance	(c)	
11500.5	(Former section) Unlawful possession of controlled substance for sale		
11501	(Former section) Unlawful transportation of controlled substance		
11502	(Former section) Inducing minor’s violation of controlled substance provisions		
11502.1	(Former section) Inducing minor’s violation of controlled substance provisions		
11503	(Former section) Unlawful sale, transportation, etc. of controlled substance		
11557	(Former section) Operating or maintaining place for dispensing Controlled substance		
11715	(Former section) Forging or altering prescription		
11721	(Former section) Prohibited use or being under influence of controlled substance		
Various	<b>Any attempt</b> to commit any of the above-mentioned offenses		(d)