

AMENDED IN ASSEMBLY MARCH 27, 2007

CALIFORNIA LEGISLATURE—2007—08 REGULAR SESSION

ASSEMBLY BILL

No. 939

Introduced by Assembly Member Soto

February 22, 2007

An act to ~~amend Sections 44830.1 and 45122.1 of the Education Code, relating to school employment.~~ *add Section 60851.2 to the Education Code, relating to academic assessment.*

LEGISLATIVE COUNSEL'S DIGEST

AB 939, as amended, Soto. ~~Schools: employment: disqualifications.~~
Academic assessment: high school exit examination: tutoring.

Existing law requires each pupil completing grade 12 to successfully pass the high school exit examination as a condition of receiving a diploma of graduation or a condition of graduation from high school, unless the pupil is otherwise exempted.

This bill would require the State Department of Education to provide online or in-person tutoring regarding preparation for the high school exit examination to an individual who meets specified criteria, upon his or her request, until that individual passes the examination or reaches 22 years of age, whichever occurs first. The individual would be permitted to take the high school exit examination at any administration of the examination with advance notice to the department.

~~Existing law prohibits a school district from hiring or retaining in employment a person who has been convicted of a violent or serious felony, except if that person has obtained a certificate of rehabilitation and pardon or as otherwise specified, or a specified sexual offense. The Department of Justice is required to notify a school district if it discovers that an employee has been convicted of a qualifying offense. Upon~~

receipt of that notice, an employee is immediately suspended without pay, and, upon receipt of written electronic notification, an employee is terminated, unless the department withdraws its notification.

This bill also would prohibit a school district from hiring or retaining in employment a person who has been convicted of a felony involving animal cruelty, except if that person has obtained a certificate of rehabilitation and pardon, and would make additional conforming changes to existing law. A school district would be authorized to ask applicants for employment whether they have been convicted of a violent or serious felony, a felony involving animal cruelty, or a specified sex offense in order to comply with the provisions prohibiting the employment of a person convicted of one of those offenses.

By requiring a school district to remove from employment any individual currently employed by the district who has been convicted of a felony involving animal cruelty for an act committed on or after January 1, 2008, a state-mandated local program would be imposed.

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

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

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

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

- 1 SECTION 1. Section 60851.2 is added to the Education Code,
- 2 to read:
- 3 60851.2. (a) The department shall provide online or in-person
- 4 tutoring regarding preparation for the high school exit examination
- 5 to a qualified individual, upon his or her request, including the
- 6 type of tutoring sought, until that individual passes the examination
- 7 or reaches 22 years of age, whichever occurs first. A qualified
- 8 individual is a person who meets all of the following criteria:
- 9 (1) Has taken the examination administered pursuant to Section
- 10 60851.
- 11 (2) Has not passed at least one section of the examination.

1 (3) *Has been denied a diploma of graduation from high school*
2 *based solely on the failure to pass the examination.*

3 (b) *The individual neither is required to be enrolled in school*
4 *nor to have maintained continuous enrollment in school in order*
5 *to be eligible for tutoring pursuant to subdivision (a).*

6 (c) *An individual receiving tutoring pursuant to subdivision (a)*
7 *may elect to take the high school exit examination at any*
8 *administration of the examination with advance notice to the*
9 *department that is of a sufficient length of time prior to the*
10 *administration for the department to make arrangements for that*
11 *individual to take the examination.*

12 ~~SECTION 1. Section 44830.1 of the Education Code is~~
13 ~~amended to read:~~

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

27 ~~(b) This section applies to any violent or serious offense that,~~
28 ~~if committed in this state, would have been punishable as a violent~~
29 ~~or serious felony. This section also applies to any offense involving~~
30 ~~cruelty to an animal that, if committed in this state, would have~~
31 ~~been punishable as a felony, as described in subparagraph (B) of~~
32 ~~paragraph (1) of subdivision (c).~~

33 ~~(c) (1) (A) For purposes of this section, a violent felony is a~~
34 ~~felony listed in subdivision (c) of Section 667.5 of the Penal Code,~~
35 ~~a serious felony is a felony listed in subdivision (c) of Section~~
36 ~~1192.7 of the Penal Code.~~

37 ~~(B) For purposes of this section, a felony involving animal~~
38 ~~cruelty is any felony involving an act of cruelty to an animal that~~
39 ~~is expressly prohibited pursuant to Section 597 of the Penal Code~~
40 ~~or any other provision of Title 14 (commencing with Section 594)~~

1 of Part 1 of the Penal Code and that was committed on or after
2 January 1, 2008.

3 (2) For purposes of this section, a plea of nolo contendere to a
4 serious or violent felony, or a felony involving animal cruelty,
5 constitutes a conviction.

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

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

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

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

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

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

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

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

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

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

39 ~~(2) The employee has either been continuously employed in~~
40 ~~one or more public school districts since the issuance or last~~

1 renewal of his or her credential or his or her credential has not
 2 expired between renewals.

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

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

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

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

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

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

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

27 (o) A school district may ask applicants for employment whether
 28 they have been convicted of a violent or serious felony, a felony
 29 involving animal cruelty, or a sex offense, as defined in Section
 30 44010, in order to comply with this section or Section 44836.

31 SEC. 2. Section 45122.1 of the Education Code is amended to
 32 read:

33 45122.1. (a) In addition to any other prohibition or provision,
 34 no person who has been convicted of a violent or serious felony,
 35 or a felony involving animal cruelty, shall be employed by a school
 36 district pursuant to this chapter. A school district shall not retain
 37 in employment a current classified employee who has been
 38 convicted of a violent or serious felony, or a felony involving
 39 animal cruelty, and who is a temporary, substitute, or a
 40 probationary employee who has not attained permanent status.

1 ~~(b) This section applies to any violent or serious offense that,~~
2 ~~if committed in this state, would have been punishable as a violent~~
3 ~~or serious felony. This section also applies to any offense involving~~
4 ~~cruelty to an animal that, if committed in this state, would have~~
5 ~~been punishable as a felony, as described in subparagraph (B) of~~
6 ~~paragraph (1) of subdivision (e).~~

7 ~~(e) (1) (A) For purposes of this section, a violent felony is a~~
8 ~~felony listed in subdivision (c) of Section 667.5 of the Penal Code~~
9 ~~and a serious felony is a felony listed in subdivision (c) of Section~~
10 ~~1192.7 of the Penal Code.~~

11 ~~(B) For purposes of this section, a felony involving animal~~
12 ~~cruelty is any felony involving an act of cruelty to an animal that~~
13 ~~is expressly prohibited pursuant to Section 597 of the Penal Code~~
14 ~~or any other provision of Title 14 (commencing with Section 594)~~
15 ~~of Part 1 of the Penal Code and that was committed on or after~~
16 ~~January 1, 2008.~~

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

19 ~~(d) When the Department of Justice ascertains that an individual~~
20 ~~who is an applicant for employment by a school district has been~~
21 ~~convicted of a violent or serious felony, or a felony involving~~
22 ~~animal cruelty, the department shall notify the school district of~~
23 ~~the criminal information pertaining to the applicant. The~~
24 ~~notification shall be delivered by telephone and shall be confirmed~~
25 ~~in writing and delivered to the school district by first-class mail.~~

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

33 ~~(f) Notwithstanding subdivision (e), a person shall not be denied~~
34 ~~employment or terminated from employment solely on the basis~~
35 ~~that the person has been convicted of a serious felony that is not~~
36 ~~also a violent felony or a felony involving animal cruelty if that~~
37 ~~person can prove to the sentencing court of the offense in question,~~
38 ~~by clear and convincing evidence, that he or she has been~~
39 ~~rehabilitated for the purposes of school employment for at least~~
40 ~~one year. If the offense in question occurred outside this state, then~~

1 the person may seek a finding of rehabilitation from the court in
2 the school district in which he or she is a resident.

3 (g) Notwithstanding any other provision of law, when the
4 Department of Justice notifies a school district by telephone that
5 a current temporary, substitute, or probationary employee who has
6 not attained permanent status, has been convicted of a violent or
7 serious felony, or a felony involving animal cruelty, that employee
8 shall immediately be placed on leave without pay. When the school
9 district receives written notification of the fact of conviction from
10 the Department of Justice, the employee shall be terminated
11 automatically and without regard to any other procedure for
12 termination specified in this code or school district procedures
13 unless the employee challenges the record of the Department of
14 Justice and the Department of Justice withdraws in writing its
15 notification to the school district. Upon receipt of written
16 withdrawal of notification from the Department of Justice, the
17 employee shall immediately be reinstated with full restoration of
18 salary and benefits for the period of time from the suspension
19 without pay to the reinstatement.

20 (h) Notwithstanding Section 47610, this section applies to a
21 charter school.

22 (i) A school district may ask applicants for employment whether
23 they have been convicted of a violent or serious felony, a felony
24 involving animal cruelty, or a sex offense, as defined in Section
25 44010, in order to comply with this section or Section 45123.

26 SEC. 3. If the Commission on State Mandates determines that
27 this act contains costs mandated by the state, reimbursement to
28 local agencies and school districts for those costs shall be made
29 pursuant to Part 7 (commencing with Section 17500) of Division
30 4 of Title 2 of the Government Code.