

AMENDED IN ASSEMBLY JUNE 3, 1997

CALIFORNIA LEGISLATURE—1997-98 REGULAR SESSION

ASSEMBLY BILL

No. 1223

Introduced by Assembly Member Strom-Martin

February 28, 1997

An act to amend Section ~~11105.3~~ of the Penal Code, relating to parks and recreation.

LEGISLATIVE COUNSEL'S DIGEST

AB 1223, as amended, Strom-Martin. Public park and recreational facilities: employees and volunteers: criminal record requests: fees.

Existing

(1) Existing law prohibits a city, county, city and county, or special district from hiring a person for employment, or hiring a volunteer to perform services, at specified park and recreational facilities, in a position having supervisory or disciplinary authority over any minor, if the person has been convicted of certain criminal offenses. The local agency may screen a prospective employee or volunteer for their criminal background by requesting from the Department of Justice records of all convictions and of any arrests pending adjudication involving those specified offenses. Existing law authorizes the department to charge a fee for the actual cost of processing such a request, excepting nonprofit organizations.

This bill would *instead require the local agency to perform that screening, thereby imposing a state-mandated local*

program. The bill would require the local agency request for records to be on a form approved by the Department of Justice and would prohibit the department from charging ~~that~~ any fee to ~~such a~~ the local agency for requesting ~~those~~ the records of a prospective volunteer pursuant to those provisions.

(2) 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 no reimbursement is required by this act for a specified reason.

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

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

1 ~~SECTION 1. Section 11105.3 of the Penal Code is~~
 2 SECTION 1. Section 5164 of the Public Resources
 3 Code is amended to read:
 4 5164. (a) A county or city or city and county or
 5 special district shall not hire a person for employment ~~at,~~
 6 or hire a volunteer to perform services ~~at,~~ at a county or
 7 city or city and county or special district operated park,
 8 playground, recreational center, or beach used for
 9 recreational purposes, in a position having supervisory or
 10 disciplinary authority over any minor, if the person has
 11 been convicted of any offense specified in paragraph (1)
 12 of subdivision (g) of Section 11105.3 of the Penal Code, or
 13 any offense specified in paragraph (3) of subdivision (g)
 14 of Section 11105.3 of the Penal Code. However, this
 15 section shall not apply to a misdemeanor conviction
 16 under paragraph (3) of subdivision (g) of Section 11105.3
 17 of the Penal Code; unless the person has a total of three
 18 or more misdemeanor or felony convictions specified in
 19 Section 11105.3 of the Penal Code within the immediately
 20 preceding 10-year period.
 21 (b) To give effect to this section, a county or city or city
 22 and county or special district ~~may~~ shall screen, pursuant
 23 to Section 11105.3 of the Penal Code, any such prospective



1 employee or volunteer *having supervisory or disciplinary*
2 *authority over any minor* for ~~their~~ the person's criminal
3 background. *Local agency requests for records pursuant*
4 *to this subdivision shall include the prospective*
5 *employee's or volunteer's fingerprints, which may be*
6 *taken by the local agency, and any other data specified by*
7 *the Department of Justice. The request shall be made on*
8 *a form approved by the Department of Justice. No fee*
9 *shall be charged to the local agency for requesting the*
10 *records of a prospective volunteer pursuant to this*
11 *subdivision.*

12 *SEC. 2. No reimbursement is required by this act*
13 *pursuant to Section 6 of Article XIII B of the California*
14 *Constitution because a local agency or school district has*
15 *the authority to levy service charges, fees, or assessments*
16 *sufficient to pay for the program or level of service*
17 *mandated by this act, within the meaning of Section 17556*
18 *of the Government Code.*

19 *Notwithstanding Section 17580 of the Government*
20 *Code, unless otherwise specified, the provisions of this act*
21 *shall become operative on the same date that the act*
22 *takes effect pursuant to the California Constitution.*

23 *amended to read:*

24 ~~11105.3. (a) Notwithstanding any other law, a human~~
25 ~~resource agency or an employer may request from the~~
26 ~~Department of Justice records of all convictions or any~~
27 ~~arrest pending adjudication involving the offenses~~
28 ~~specified in subdivision (g) of a person who applies for a~~
29 ~~license, employment, or volunteer position, in which he~~
30 ~~or she would have supervisory or disciplinary power over~~
31 ~~a minor or any person under his or her care. The~~
32 ~~department shall furnish the information to the~~
33 ~~requesting employer and shall also send a copy of the~~
34 ~~information to the applicant.~~

35 ~~(b) Any request for records under subdivision (a) shall~~
36 ~~include the applicant's fingerprints, which may be taken~~
37 ~~by the requester, and any other data specified by the~~
38 ~~department. The request shall be on a form approved by~~
39 ~~the department, and the department may charge a fee to~~
40 ~~be paid by the employer, human resource agency, or~~



1 applicant for the actual cost of processing the request.
2 However, no fee shall be charged a city, county, city and
3 county, or special district that requests records pursuant
4 to Section 5164 of the Public Resources Code or a
5 nonprofit organization. The department shall destroy an
6 application within six months after the requested
7 information is sent to the employer and applicant.

8 (c) Nothing in this section supersedes any law
9 requiring criminal record access or dissemination of
10 criminal history information. In the case of any conflict
11 with another statute, the dissemination of criminal
12 history information shall be pursuant to the mandatory
13 statute. This subdivision applies to, but is not limited to,
14 requirements pursuant to Article 1 (commencing with
15 Section 1500) of Chapter 3 of, and Chapter 3.2
16 (commencing with Section 1569) and Chapter 3.4
17 (commencing with Section 1596.70) of, Division 2 of, and
18 Section 1522 of, the Health and Safety Code, and Sections
19 8712, 8811, and 8908 of the Family Code.

20 (d) The department may adopt regulations to
21 implement this section as necessary.

22 (e) As used in this section, “employer” means any
23 nonprofit corporation or other organization specified by
24 the Attorney General which employs persons or uses the
25 services of volunteers in positions in which the volunteer
26 or employee has supervisory or disciplinary power over
27 a child or children.

28 (f) As used in this section, “human resource agency”
29 means a public or private entity, excluding any agency
30 responsible for the licensing of facilities pursuant to the
31 California Community Care Facilities Act (Chapter 3
32 (commencing with Section 1500)), the California
33 Residential Care Facilities for the Elderly Act (Chapter
34 3.2 (commencing with Section 1569)), Chapter 3.01
35 (commencing with Section 1568.01)), and the California
36 Child Day Care Facilities Act (Chapter 3.4 (commencing
37 with Section 1596.70)) of Division 2 of the Health and
38 Safety Code, responsible for determining the character
39 and fitness of a person who is (1) applying for a license,
40 employment, or as a volunteer within the human services



1 field that involves the care and security of children, the
2 elderly, the handicapped, or the mentally impaired, or
3 (2) applying to adopt a child or to be a foster parent.

4 (g) Records of the following offenses shall be furnished
5 as provided in subdivision (a):

6 (1) Violations or attempted violations of Section 220,
7 261, 261.5, 262, 266, 266j, 267, 272, 273a, 273d, 273.5,
8 Sections 285 to 289, inclusive, Section 311.2, 311.3, 311.4,
9 311.10, 311.11, 314, 647.6, former Section 647a, or
10 subdivision (a) or (d) of Section 647, or commitment as
11 a mentally disordered sex offender under former Article
12 1 (commencing with Section 6300) of Chapter 2 of Part
13 2 of Division 6 of the Welfare and Institutions Code.

14 (2) Any crime described in the California Uniform
15 Controlled Substances Act (Division 10 (commencing
16 with Section 11000) of the Health and Safety Code),
17 provided that, except as otherwise provided in
18 subdivision (c), no record of a misdemeanor conviction
19 shall be transmitted to the requester unless the subject of
20 the request has a total of three or more misdemeanor or
21 felony convictions defined in this section within the
22 immediately preceding 10-year period.

23 (3) Any felony or misdemeanor conviction within 10
24 years of the date of the employer's request under
25 subdivision (a), for a violation or attempted violation of
26 Chapter 3 (commencing with Section 207), Section 211 or
27 215, wherein it is charged and proved that the defendant
28 personally used a deadly or dangerous weapon, as
29 provided in subdivision (b) of Section 12022, in the
30 commission of that offense, Section 217.1, Chapter 8
31 (commencing with Section 236), Chapter 9
32 (commencing with Section 240), and for a violation of any
33 of the offenses specified in subdivision (c) of Section
34 667.5, provided that no record of a misdemeanor
35 conviction shall be transmitted to the requester unless
36 the subject of the request has a total of three or more
37 misdemeanor or felony convictions defined in this section
38 within the immediately preceding 10-year period.

39 (4) A conviction for a violation or attempted violation
40 of an offense committed outside this state shall be



1 ~~furnished if the offense would have been a crime as~~
2 ~~defined in this section if committed in this state.~~
3 (h) ~~Any criminal history information obtained~~
4 ~~pursuant to this section is confidential and no recipient~~
5 ~~shall disclose its contents other than for the purpose for~~
6 ~~which it was acquired.~~

