ITEM 4

TEST CLAIM
FINAL STAFF ANALYSIS

Public Resources Code Section 5164, Subdivisions (b) (1) and (2),
Statutes 2001, Chapter 777

Local Recreational Areas: Background Screenings
(01-TC-11)

City of Los Angeles, Claimant

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Hearing Date: December 9, 2005
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EXECUTIVE SUMMARY

Claimant filed the test claim in February 2002. The test claim statute prohibits a city, county or special district from hiring a volunteer or employee for positions having supervisory or disciplinary authority over any minor at specified local agency recreational areas if the employee or volunteer has been convicted of specified crimes. It also requires these prospective volunteers or employees to be screened according to a stated procedure.

For reasons stated in the analysis, staff finds that the test claim statute imposes a reimbursable state-mandated program on local agencies within the meaning of article XIII B, section 6 of the California Constitution and Government Code sections 17514 and 17556 for the following activities:

- Requiring each local agency to have each prospective employee or volunteer who would have supervisory or disciplinary authority over minors to complete an application that inquires as to whether or not the prospective employee or volunteer has been convicted of any offense specified in Public Resources Code section 5164, subdivision (a). (Pub. Res. Code, § 5164, subd. (b)(1)). This means that local agencies must perform the one-time activity of revising and printing job applications that inquire as to the applicants' criminal history.
- Screening, pursuant to Penal Code section 11105.3, prospective employees and volunteers who would have supervisory or disciplinary authority over minors. The screening procedure for these individuals requires submitting the following to Department of Justice (DOJ): (1) the prospective employee's or volunteer's fingerprints, (2) any other data specified by DOJ on a DOJ-approved form, (3) for prospective employees only, paying the DOJ's fingerprint processing fee (no fee is required for a prospective volunteer).[1] (Pub. Res. Code, § 5164, subds. (b)(1) & (b)(2)).

Staff recommends that the Commission adopt this analysis and approve the test claim for the activities listed above.

[1] Public Resources Code section 5164, subdivision (b)(2).

STAFF ANALYSIS

Claimant

City of Los Angeles

Chronology

02/08/02	Claimant files test claim with the Commission[2]
03/11/02	Department of Justice submits a statement of non-response[3]
05/03/02	Department of Finance files comments on test claim with the Commission[4]
10/11/05	Commission staff issues draft staff analysis[5]
11/01/05	Claimant submits comments on the draft staff analysis[6]
11/14/05	Commission issues final staff analysis and proposed Statement of Decision

Background

Public Resources Code section 5164 was enacted in 1993 (Stats. 1993, ch. 972) to prohibit a city, county or special district from hiring a volunteer or employee for positions having supervisory or disciplinary authority over any minor at specified local agency recreational areas if the employee or volunteer has been convicted of specified crimes. Section 5164 was enacted because of a volunteer coach's 1992 conviction for kidnapping and molesting a boy who was coached at Hoover Recreation Center in Los Angeles County. The coach was a registered sex offender whose background had not been inquired about by the recreation center.[7] The Legislature's response was to enact section 5164.

The test claim statute (Stats. 2001, ch. 777, Assem. Bill No. 351)[8] amended Public Resources Code section 5164 as follows (changes marked in strikeout and underline).

> (a) A county or city or city and county or special district shall not hire a person for employment, or hire a volunteer to perform services, at a county or city or city and county or special district operated park, playground, recreational center, or beach used for recreational purposes, in a position having supervisory or disciplinary authority over any minor if ~~the~~ that person has been convicted of any offense specified in paragraph (1) of subdivision ~~(g)~~ (h) of Section 11105.3 of the Penal Code, or any offense specified in paragraph

[2] Exhibit A.

[3] Exhibit C.

[4] Exhibit B.

[5] Exhibit E.

[6] Exhibit F.

[7] Assembly Committee on Local Government, Analysis of Assembly Bill 1663, as amended April 12, 1993 (1993-1994 Reg. Sess.), page 2 (Exhibit D).

[8] Section 5164 has been amended since the test claim filing by Statutes 2004, chapter 184, but the amendments are not part of this analysis.

(3) of subdivision ~~(g)~~ (h) of Section 11105.3 of the Penal Code. However, this section shall not apply to a misdemeanor conviction under paragraph (3) of subdivision ~~(g)~~ (h) of Section 11105.3 of the Penal Code unless ~~the~~ that person has a total of three or more misdemeanor or felony convictions specified in Section 11105.3 of the Penal Code within the immediately preceding 10-year period.

(b) (1) To give effect to this section, a county or city or city and county or special district ~~may~~ shall require each such prospective employee or volunteer to complete an application that inquires as to whether or not that individual has been convicted of any offense specified in subdivision (a). The county or city or city and county or special district shall screen, pursuant to Section 11105.3 of the Penal Code, any such prospective employee or volunteer having supervisory or disciplinary authority over any minor, for ~~the~~ that person's criminal background.

(b) (2) Any local agency requests for Department of Justice records pursuant to this subdivision shall include the prospective employee's or volunteer's fingerprints, which may be taken by the local agency,[9] and any other data specified by the Department of Justice. The request shall be made on a form approved by the Department of Justice. No fee shall be charged to the local agency for requesting the records of a prospective volunteer pursuant to the subdivision.

Penal Code section 11105.3, subdivision (h)(3), (now Pub. Res. Code, § 5164 subd. (a)(2))[10] listed the crimes for which to screen prospective employees or volunteers who would have supervisory or disciplinary authority over minors as follows:

- Assault with intent to commit rape, sodomy, oral copulation, rape in concert with another, lascivious acts upon a child, or penetration of genitals or anus with a foreign object (Pen. Code, § 220)
- Unlawful sexual intercourse with a person under 18 (Pen. Code, § 261.5)
- Spousal rape (Pen. Code, § 262)
- Willful harm or injury to a child (Pen. Code, § 273a)
- Corporal punishment or injury of child (Pen. Code, § 273d)
- Willful infliction of corporal injury (Pen. Code, § 273.5)
- Sex offenses for which registration is required (Pen. Code, § 290) except the sexual battery offense in Penal Code 243.4, subdivision (d).

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[9] If the local agency takes the fingerprints, it may charge a fee not to exceed $10 (Pen. Code, § 13300, subd. (e)). Other entities may charge more; see <http://ag.ca.gov/fingerprints/publications/contact.htm> [as of August 18, 2005] (Exhibit D).

[10] Former Penal Code section 11105.3, subdivision (h)(3), was amended by Statutes 2004, chapter 184, and moved to Public Resources Code section 5164, subdivision (a)(2).

- Any felony or misdemeanor conviction within 10 years of the date of the employer's request if the person has a total of three or more misdemeanor or felony convictions within the immediately preceding 10-year period.[11]

Although Statutes 2004, chapter 184 amended the list of crimes for which to screen prospective employees or volunteers who would have supervisory or disciplinary authority over minors (see footnote 5), that amendment is not part of this test claim or this analysis.

Claimant's Position

Claimant City of Los Angeles contends that the test claim legislation constitutes a reimbursable state-mandated program pursuant to article XIII B, section 6 of the California Constitution and Government Code section 17514. Claimant requests reimbursement for the costs of screening employees in accordance with section 11105.3 of the Penal Code. According to claimant's test claim:

> An individual can be screened by requesting the Department of Justice [DOJ] to furnish any criminal history record it has on a prospective employee or volunteer. Such a request necessitates taking the fingerprints of the individual and submitting the fingerprints to the DOJ for processing. The DOJ does not charge a fee to fulfill the request for the record of each prospective volunteer. The DOJ charges a fee of $32.00 to fulfill the request for the record of each prospective employee. [¶]...[¶]
>
> As of November 2001, the City of Los Angeles Department of Recreation and Parks has hired 122 employees whose fingerprints had to be processed by the DOJ pursuant to Section 5164 of the Public Resources Code at a cost to the City of $3904.00. It is estimated that the City will incur a total cost of approximately

[11] Statutes 2004, chapter 184, amended this provision as follows: "(B) Any felony or misdemeanor conviction specified in subparagraph (C) within 10 years of the date of the employer's request. (C) Any felony conviction that is over 10 years old, if the subject of the request was incarcerated within 10 years of the employer's request, for a violation or attempted violation of any of the offenses specified in Chapter 3 (commencing with Section 207) of Title 8 of part 1 of the Penal Code, Section 211 or 215 of the Penal Code, wherein it is charged and proved that the defendant personally used a deadly or dangerous weapon, as provided in subdivision (b) of Section 12022 of the Penal Code, in the commission of that offense, Section 217.1 of the Penal Code, Section 236 of the Penal Code, any of the offenses specified in Chapter 9 (commencing with Section 240) of Title 8 of Part 1 of the Penal Code, or any of the offenses specified in subdivision (c) of Section 667.5 of the Penal Code, provided that no record of a misdemeanor conviction shall be transmitted to the requester unless the subject of the request has a total of three or more misdemeanor convictions, or a combined total of three or more misdemeanor and felony convictions, for violations listed in this section within the 10-year period immediately preceding the employer's request or has been incarcerated for any of those convictions within the preceding 10 years."

$32,000 to achieve compliance with the Code during this current fiscal year (07/01/2001 to 06/30/2002).[12]

The claim includes a declaration certifying that the costs stated are true and correct.[13] Claimant concurred with the draft staff analysis.[14]

State Agency Positions

The Department of Finance (DOF) and Department of Justice (DOJ) each filed comments on the test claim. DOF, in a letter received May 3, 2002, states that, "as a result of our review, we have concluded that the statute may have resulted in costs mandated by the state."[15]

The DOJ, in a letter received March 11, 2002, states that the test claim statute "does not modify DOJ processing procedures. As such, the DOJ is submitting a statement of non-response to the Commission on State Mandates."[16]

No state agency filed comments on the draft staff analysis.

Discussion

The courts have found that article XIII B, section 6 of the California Constitution[17] recognizes the state constitutional restrictions on the powers of local government to tax and spend.[18] "Its purpose is to preclude the state from shifting financial responsibility for carrying out governmental functions to local agencies, which are 'ill equipped' to assume increased financial responsibilities because of the taxing and spending limitations that articles XIII A and XIII B

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[12] Exhibit A. A claimant must incur at least $1000 in costs to file a test claim with the Commission or a reimbursement claim with the State Controller's Office (Gov. Code, § 17564, subd. (a)).

[13] Exhibit A.

[14] Exhibit F.

[15] Exhibit B.

[16] Exhibit C.

[17] Article XIII B, section 6, subdivision (a), (as amended by Proposition 1A in 2004) provides:

> (a) Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the State shall provide a subvention of funds to reimburse that local government for the costs of the program or increased level of service, except that the Legislature may, but need not, provide a subvention of funds for the following mandates: (1) Legislative mandates requested by the local agency affected. (2) Legislation defining a new crime or changing an existing definition of a crime. (3) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975.

[18] *Department of Finance v. Commission on State Mandates (Kern High School Dist.)* (2003) 30 Cal.4th 727, 735.

impose."[19] A test claim statute or executive order may impose a reimbursable state-mandated program if it orders or commands a local agency or school district to engage in an activity or task.[20]

In addition, the required activity or task must be new, constituting a "new program," or it must create a "higher level of service" over the previously required level of service.[21]

The courts have defined a "program" subject to article XIII B, section 6, of the California Constitution, as one that carries out the governmental function of providing public services, or a law that imposes unique requirements on local agencies or school districts to implement a state policy, but does not apply generally to all residents and entities in the state.[22] To determine if the program is new or imposes a higher level of service, the test claim legislation must be compared with the legal requirements in effect immediately before the enactment of the test claim legislation.[23] A "higher level of service" occurs when the new "requirements were intended to provide an enhanced service to the public."[24]

Finally, the newly required activity or increased level of service must impose costs mandated by the state.[25]

The Commission is vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6.[26] In making its decisions, the Commission must strictly construe article XIII B, section 6 and not apply it as an "equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities."[27]

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[19] *County of San Diego v. State of California (County of San Diego)*(1997) 15 Cal.4th 68, 81.

[20] *Long Beach Unified School Dist. v. State of California* (1990) 225 Cal.App.3d 155, 174.

[21] *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 878 (*San Diego Unified School Dist.)*; *Lucia Mar Unified School District v. Honig* (1988) 44 Cal.3d 830, 835-836 (*Lucia Mar*).

[22] *San Diego Unified School Dist., supra,* 33 Cal.4th 859, 874, (reaffirming the test set out in *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56; *Lucia Mar, supra,* 44 Cal.3d 830, 835.)

[23] *San Diego Unified School Dist., supra,* 33 Cal.4th 859, 878; *Lucia Mar, supra*, 44 Cal.3d 830, 835.

[24] *San Diego Unified School Dist., supra,* 33 Cal.4th 859, 878.

[25] *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487; *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1265, 1284 (*County of Sonoma*); Government Code sections 17514 and 17556.

[26] *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551, 17552.

[27] *County of Sonoma, supra,* 84 Cal.App.4th 1265, 1280, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

Issue 1: Is the test claim legislation subject to article XIII B, section 6 of the California Constitution?

The first issue is whether the test claim statute imposes state-mandated activities on local agencies. Staff finds that it does.

The test claim statute states that the local agency "shall require each such prospective employee or volunteer to complete an application that inquires as to whether or not that individual has been convicted of any offense specified in subdivision (a)."[28] The offenses inquired after include assault with intent to commit specified sexual acts upon a child (Pen. Code, § 220), unlawful sexual intercourse with a person under 18 (Pen. Code, § 261.5), spousal rape (Pen. Code, § 262), willful harm or injury to a child (Pen. Code, § 273a), corporal punishment or injury of child (Pen. Code, § 273d), willful infliction of corporal injury (Pen. Code, § 273.5), sex offenses for which registration is required (Pen. Code, § 290) except the sexual battery offense in Penal Code 243.4, subdivision (d), or any felony or misdemeanor conviction within 10 years of the date of the employer's request if the person has a total of three or more misdemeanor or felony convictions within the immediately preceding 10-year period.

The test claim statute also states that the local agency "shall screen, pursuant to Section 11105.3 of the Penal Code, any such prospective employee or volunteer having supervisory or disciplinary authority over any minor, for that person's criminal background."[29]

Both of these activities are mandatory because the statutory language uses the word "shall."[30] "[The local agency] *shall* require each prospective employee or volunteer to complete an application ... [The local agency] *shall* screen ... any such prospective employee or volunteer...." [Emphasis added.] Therefore, staff finds that the test claim statute imposes state-mandated activities on local agencies to: (1) require prospective employees or volunteers to complete an application that inquires into their criminal histories, and (2) effect criminal background screenings, pursuant to Penal Code section 11105.3, for prospective employees or volunteers having supervisory or disciplinary authority over minors.

Subdivision (b)(2) of section 5164, which preceded the test claim statute, states that the local agency, when requesting DOJ records, "shall include the prospective employee's or volunteer's fingerprints, ... and any other data specified by the Department of Justice. The request shall be made on a form approved by the Department of Justice."[31] Even though this provision was in preexisting law, the test claim statute amendment to subdivision (b)(1), which required local agencies to screen potential employees and volunteers, makes the (b)(2) screening procedures a requirement. Therefore, the screening procedure (except for taking fingerprints) in subdivision (b)(2) also imposes a state-mandated activity on local agencies.

Although the test claim statute requires the local agency to submit fingerprints to DOJ, the local agency is not required to take them. Subdivision (b)(2) of the test claim statute requires the local

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[28] Public Resources Code section 5164, subdivision (b)(1).

[29] *Ibid.*

[30] Public Resources Code section 15 states, "'Shall' is mandatory and 'may' is permissive."

[31] Public Resources Code section 5164, subdivision (b)(2).

agency to submit the fingerprints, but states that they "may be taken by the local agency." If the local agency takes the fingerprints, it may charge a fee not to exceed $10, and other entities may charge more.[32] Since whether the local agency takes the fingerprints is permissive, and the prints may be taken by the local agency or another entity at the expense of the prospective employee or volunteer, staff finds that taking fingerprints is not a state-mandated activity and therefore, not subject to article XIII B, section 6.

The second issue is whether the test claim legislation constitutes a program within the meaning of article XIII B, section 6. Staff finds that it does.

In order for the test claim legislation to be subject to article XIII B, section 6 of the California Constitution, it must constitute a "program," defined as a program that carries out the governmental function of providing a service to the public, *or* laws which, to implement a state policy, impose unique requirements on local governments and do not apply generally to all residents and entities in the state.[33] Only one of these findings is necessary to trigger article XIII B, section 6.[34]

The test claim statute requires local agencies to require prospective employees or volunteers who have supervisory or disciplinary authority over minors to complete an application that inquires as to their criminal histories, and requires screening specified employees or volunteers in order to protect the public from those convicted of specified crimes. These activities are peculiarly governmental public safety, crime prevention functions administered by local agencies as a service to the public. The primary purpose of these activities is to protect children who participate in youth recreational programs. Moreover, the test claim legislation imposes unique requirements on local agencies that do not apply generally to all residents and entities of the state. Therefore, staff finds the test claim statutes constitute a "program" within the meaning of article XIII B, section 6.

Issue 2: Does the test claim legislation impose a new program or higher level of service on local agencies within the meaning of article XIII B, section 6 of the California Constitution?

To determine if the "program" is new or imposes a higher level of service, a comparison must be made between the test claim legislation and the legal requirements in effect immediately before enacting the test claim legislation.[35] Each activity is discussed separately.

Application: Subdivision (b)(1) of the test claim statute states that the local agency shall require each prospective employee or volunteer "to complete an application that inquires as to whether or not the individual has been convicted of any offense specified ...."

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[32] Penal code section 13300, subdivision (e). As to other entities' ability to charge more, see <http://ag.ca.gov/fingerprints/ publications/contact.htm> [as of August 18, 2005] (Exhibit D).

[33] *County of Los Angeles, supra,* 43 Cal.3d 46, 56.

[34] *Carmel Valley Fire Protection Dist.* (1987) 190 Cal.App.3d 521, 537.

[35] *San Diego Unified School Dist., supra,* 33 Cal.4th 859, 878; *Lucia Mar, supra,* 44 Cal.3d 830, 835.

Prior law prohibited a local agency from hiring an individual convicted of an offense specified in Penal Code section 11105.3 subdivision (h)(1) and (h)(3).[36] There was no previous requirement, however, for prospective employees or volunteers to complete an application that inquires after their criminal histories. Therefore, staff finds that requiring prospective employees or volunteers to complete an application that inquires after their criminal histories is a new program or higher level of service.

Screening employees: Subdivision (b)(1) of the test claim statute states, "The [local agency] ... shall screen, pursuant to Section 11105.3 of the Penal Code, any such prospective employee or volunteer having supervisory or disciplinary authority over any minor, for that person's criminal background." The screening procedure of section 11105.3 is stated in subdivision (b) as follows:

> 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 [DOJ]. 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. ...[37]

As to the DOJ fee, the test claim statute states that no fee is required for a prospective volunteer.[38]

Likewise, subdivision (b)(2) of the test claim statute states, "Any local agency requests for Department of Justice records pursuant to this subdivision shall include the prospective employee's or volunteer's fingerprints, which may be taken by the local agency, and any other data specified by the Department of Justice. The request shall be made on a form approved by the Department of Justice."

Subdivision (b)(2) predates the test claim statute, so if the local agency elected to screen a prospective employee or volunteer, the local agency was required to comply with the procedure in (b)(2). As discussed above, however, enactment of the test claim statute made the screening mandatory for local agencies. Therefore, as a new requirement, staff finds that local agency screening of employees or volunteers for positions having supervisory or disciplinary authority over minors is a new program or higher level of service. The screening procedure outlined in Penal Code section 11105.3 and subdivision (b)(2) of the test claim statute requires forwarding to DOJ the following: (1) the prospective employee's or volunteer's fingerprints, (2) any other data specified by DOJ on a DOJ form, and (3) DOJ's fingerprint processing fee[39] (except that no fee is required for a prospective volunteer).[40]

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[36] The offenses are now listed in Public Resources Code section 5164 subdivision (a)(2).

[37] Penal Code section 11105.3, subdivision (b). The current DOJ fee is $32. See <http://www.ag.ca.gov/fingerprints/forms/fees.pdf> [as of October 3, 2005] (Exhibit D).

[38] Public Resources Code section 5164, subdivision (b)(2).

[39] Penal Code section 11105.3, subdivision (b).

[40] Public Resources Code section 5164, subdivision (b)(2).

Issue 3: Does the test claim statute impose "costs mandated by the state" within the meaning of Government Code sections 17514 and 17556?

In order for the test claim statute's activities to impose a reimbursable state-mandated program under article XIII B, section 6 of the California Constitution, the activities must impose increased costs mandated by the state.[41] In addition, no statutory exceptions as listed in Government Code section 17556 can apply. Government Code section 17514 defines "costs mandated by the state" as follows:

> [A]ny increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, which mandates a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution.

In its test claim, claimant states that it "hired 122 employees whose fingerprints had to be processed by the DOJ pursuant to Section 5164 of the Public Resources Code at a cost to the City of $3904.00. It is estimated that the City will incur a total cost of approximately $32,000 to achieve compliance with the Code during this current fiscal year (07/01/2001 to 06/30/2002)." Therefore, the claimant has shown costs sufficient to state a claim.[42]

The final issue is whether the test claim statute imposes costs mandated by the state within the meaning of Government Code sections 17556 and 17514.

The test claim statute requires local agencies to:

- Require each prospective employee or volunteer who would have disciplinary or supervisory over minors "to complete an application that inquires as to whether or not the individual has been convicted of any offense specified ...."
- Screen, pursuant to Penal Code section 11105.3, prospective employees or volunteers who would have supervisory or disciplinary authority over minors. Penal Code section 11105.3 outlines the screening procedure: "The request [for fingerprint processing] 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." As stated above, the screening procedure consists of forwarding to DOJ the following:
    1. the prospective employee's or volunteer's fingerprints;
    2. any other data specified by DOJ on a DOJ form, and;

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[41] *Kern High School Dist., supra,* 30 Cal. 4th 727, 736; *Lucia Mar Unified School Dist., supra,* 44 Cal.3d 830, 835; Government Code section 17514.

[42] The claimant must incur a minimum of $1000 to file a claim. Government Code section 17564, subdivision (a).

- For prospective employees only, paying DOJ's fingerprint processing fee[43] (no fee is required for a prospective volunteer).[44]

Applications: Requiring local agencies to require each prospective employee or volunteer who would have supervisory or disciplinary authority over minors to complete an application that inquires as to whether or not the prospective employee or volunteer has been convicted of any offense specified in Public Resources Code section 5164, subdivision (a),[45] is a new state-mandated activity, and none of the exceptions in Government Code section 17556 to finding costs mandated by the state apply to it. In order to comply, local agencies must revise and print job applications that inquire as to the applicants' criminal history. This would be a one-time activity. Therefore, staff finds that this one-time activity imposes "costs mandated by the state" within the meaning of Government Code sections 17514.

Screening Employees: The issue is whether local agencies that request the background screenings from DOJ have the authority to charge a fee to prospective employees within the meaning of Government Code section 17556, subdivision (d), or have offsetting savings within the meaning of Government Code section 17556, subdivision (e).

In interpreting a statute, the Commission, like a court, focuses on its plain meaning.

> [W]e look to the intent of the Legislature in enacting the law, being careful to give the statute's words their plain, commonsense meaning. If the language of the statute is not ambiguous, the plain meaning controls and resort to extrinsic sources to determine the Legislature's intent is unnecessary.[46]

Public Resources Code section 5164 states that the local agency "shall screen, pursuant to Section 11105.3 of the Penal Code, any ... prospective employee or volunteer ... ." According to Penal Code section 11105.3, DOJ's fee for screening may be paid by "the employer, human resource agency, or applicant for the actual cost of processing the request."[47] The fee authority in 11105.3 is authority for a fingerprint-processing fee granted to DOJ.

The plain meaning of section 11105.3, however, does not grant the local agency fee authority for this screening, nor does it expressly grant the local agency authority to pass on the cost of the DOJ- screening to a prospective employee.

The legislative history of Public Resources Code section 5164 indicates that when section 5164 was enacted (Stats. 1993, ch. 972), the Legislature intended that local agencies have fee authority

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[43] Penal Code section 11105.3, subdivision (b).

[44] Public Resources Code section 5164, subdivision (b)(2).

[45] These offenses were listed in former Penal Code section 11105.3 prior to Statutes 2004, chapter 184.

[46] *In re Jennings* (2004) 34 Cal. 4th 254, 263 (Exhibit D).

[47] Penal Code section 11105.3, subdivision (b), as amended by Statutes 1992, chapter 1227. Prior to this amendment, section 11105.3 stated that DOJ may charge a fee to be paid by "the requester."

for the background screening,[48] even though this original statute made the screening provision permissive (and prohibited hiring an employee or volunteer who had been convicted of specified crimes). However, neither the plain meaning of section 5164, nor section 11105.3 of the Penal Code support this stated legislative intention.

Therefore, staff finds that the test claim statute imposes "costs mandated by the state" within the meaning of Government Code sections 17514 and 17556 for the activity of screening prospective employees by submitting to DOJ the required fingerprints, form(s), and fee paid by the local agency. Reimbursement would not be required if the DOJ fingerprint processing fee were paid by the applicant rather than the local agency because the local agency would not incur the cost.

Local agencies do not incur costs for submitting fingerprints of prospective volunteers to DOJ because Public Resources Code section 5164, subdivision (b)(2) precludes the DOJ fee for volunteers. Thus, as to prospective volunteers that must be screened, staff finds that the local agencies do not incur DOJ-imposed fingerprint processing costs, and therefore are not subject to costs mandated by the state for screening prospective volunteers.

Conclusion

Staff finds that the test claim statute imposes a reimbursable state-mandated program on local agencies within the meaning of article XIII B, section 6 of the California Constitution and Government Code sections 17514 and 17556 for the following activities:

- Requiring each local agency to have each prospective employee or volunteer who would have supervisory or disciplinary authority over minors to complete an application that inquires as to whether or not the prospective employee or volunteer has been convicted of any offense specified in Public Resources Code section 5164, subdivision (a). (Pub. Res. Code, § 5164, subd. (b)(1)). This means that local agencies must perform the one-time activity of revising and printing job applications that inquire as to the applicants' criminal history.
- Screening, pursuant to Penal Code section 11105.3, prospective employees and volunteers who would have supervisory or disciplinary authority over minors. The screening procedure for these individuals requires submitting the following to DOJ: (1) the prospective employee's or volunteer's fingerprints, (2) any other data specified by DOJ on a DOJ-approved form, (3) for prospective employees only, paying the DOJ's fingerprint processing fee (no fee is required for a prospective volunteer).[49] (Pub. Res. Code, § 5164, subds. (b)(1) & (b)(2)).

Recommendation

Staff recommends that the Commission adopt this analysis and approve the test claim.

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[48] Senate Committee on Appropriations, Analysis of Assembly Bill 1663, as amended August 18, 1993 (1993-1994 Reg. Sess.), page 1 (Exhibit D).

[49] Public Resources Code section 5164, subdivision (b)(2).

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EXHIBIT A

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Claim No. 01-TC-11

TEST CLAIM FORM

Local Agency or School District Submitting Claim

CITY OF LOS ANGELES, DEPARTMENT OF RECREATION AND PARKS

Contact Person

VERONICA VELA

Telephone No.

213) 473-6970 493-6952

Address

200 NORTH MAIN STREET #1360 LOS ANGELES, CA 90012

Representative Organization to be Notified

This test claim alleges the existence of a reimbursable state mandated program within the meaning of section 17514 of the Government Code and section 6, article XIIIB of the California Constitution. This test claim is filed pursuant to section 17551(a) of the Government Code.

Identify specific section(s) of the chaptered bill or executive order alleged to contain a mandate, including the particular statutory code section(s) within the chaptered bill, if applicable.

Local Recreational Areas: Background Screenings

subdivision (b) (1) and (b) (2) of Public Resources Code, section 5164

IMPORTANT: PLEASE SEE INSTRUCTIONS AND FILING REQUIREMENTS FOR COMPLETING A TEST CLAIM ON THE REVERSE SIDE.

Name and Title of Authorized Representative

HAROLD T. FUJITA, Personnel Director

Telephone No.

(213) 473-6954

Signature of Authorized Representative

Harold T. Fujita

Date

1/9/02

NARRATIVE DESCRIBING ALLEGED MANDATE

Prior to October 2001, Section 5164 of the Public Resources Code provided an agency such as the City of Los Angeles Department of Recreation and Parks with the authority to screen an individual for the purpose of ensuring that it did not hire a person as an employee or volunteer, at its recreational facilities, who would have authority over any minor and who had a criminal background specific to Section 11105.3 of the Penal Code. (An individual can be screened by requesting the Department of Justice to furnish any criminal history record it has on a prospective employee or volunteer. Such a request necessitates taking the fingerprints of the individual and submitting the fingerprints to the DOJ for processing. The DOJ does not charge a fee to fulfill the request for the record of each prospective volunteer. The DOJ charges a fee of $32.00 to fulfill the request for the record of each prospective employee.)

Governor Gray Davis' approval of Assembly Bill No. 351 in October of 2001 amended Section 5164 of the Public Resources Code to require, rather than authorize, an agency such as the City of Los Angeles Department of Recreation and Parks to screen specific prospective employees or volunteers for their criminal background.

It is contended that Section 5164 of the Public Resources Code, as amended, has imposed a unique requirement on local governments operating recreational facilities that does not apply generally to all entities operating recreational facilities within the state. In other words, Section 5164 of the Public Resources Code, as amended, imposes a new program upon local government ("program" is used herein as it was defined by County of Los Angeles v. State of California (1987) 43 Cal.3d 46 and as affirmed in definition by City of Sacramento v. State of California (1990) 50 Cal.3d 51).

As of November of 2001, the City of Los Angeles Department of Recreation and Parks has hired 122 employees whose fingerprints had to be processed by the DOJ pursuant to Section 5164 of the Public Resources Code at a cost to the City of $3904.00. It is estimated that the City will incur a total cost of approximately $32,000 to achieve compliance with the Code during this current fiscal year (07/01/2001 to 06/30/2002).

At this time, no state constitutional provisions, federal statutes or executive orders, or court decisions, other than those already referenced above, that would impact the alleged mandate are known to the City of Los Angeles Department of Recreation and Parks.

DECLARATION

By my signature, I do hereby certify, under penalty of perjury, that the cost incurred by the City to comply with Section 5164 of the Public Resources Code as stated in the attached "Narrative Describing Alleged Mandate" is true and correct. I am willing and able to testify to the matter.

Veronica Vela

VERONICA VELA, Chief Clerk
City of Los Angeles
Department of Recreation & Parks

1-9-02

Date

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

SECTION 1. Section 5164 of the Public Resources Code is amended to read:

5164. (a) A county or city or city and county or special district shall not hire a person for employment, or hire a volunteer to perform services, at a county or city or city and county or special district operated park, playground, recreational center, or beach used for recreational purposes, in a position having supervisory or disciplinary authority over any minor, if that person has been convicted of any offense specified in paragraph (1) of subdivision (h) of Section 11105.3 of the Penal Code, or any offense specified in paragraph (3) of subdivision (h) of Section 11105.3 of the Penal Code. However, this section shall not apply to a misdemeanor conviction under paragraph (3) of subdivision (h) of Section 11105.3 of the Penal Code unless that person has a total of three or more misdemeanor or felony convictions specified in Section 11 105.3 of the Penal Code within the immediately preceding 10-year period.

(b) (1) To give effect to this section, a county or city or city and county or special district shall require each such prospective employee or volunteer to complete an application that inquires as to whether or not that individual has been convicted of any offense specified in subdivision (a). The county or city or city and county or special district shall screen, pursuant to Section 11105.3 of the Penal Code, any such prospective employee or volunteer, having supervisory or disciplinary authority over any minor, for that person's criminal background.

(2) Any local agency requests for Department of Justice records pursuant to this subdivision shall include the prospective employee's or volunteer's fingerprints, which may be taken by the local agency, and any other data specified by the Department of Justice. The request shall be made on a form approved by the Department of Justice. No fee shall be charged to the local agency for requesting the records of a prospective volunteer pursuant to this subdivision.

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

Assembly Bill No. 351

CHAPTER 777

An act to amend Section 5164 of the Public Resources Code, relating to parks and recreation.

[Approved by Governor October 12, 2001. Filed with Secretary of State October 13, 2001.]

LEGISLATIVE COUNSEL'S DIGEST

AB 351, La Suer. Local recreational areas: personnel: prior criminal convictions.

(1) Existing law prohibits a county or city or city and county or special district, in connection with the operation of a park, playground, recreational center, or beach used for recreational purposes, from hiring for employment or as a volunteer any person in a position having supervisory or disciplinary authority over any minor, if the person has been convicted of specified crimes, and authorizes a county, city, city and county, or special district to screen, in accordance with specified law, any such prospective employee or volunteer for their criminal background.

This bill would require a county or city or city and county or special district to require that each such prospective employee or volunteer complete an application that inquires as to whether or not that individual has been convicted of any of those specified crimes, and would require, instead of authorize, each of those entities to screen any such prospective employee or volunteer, having supervisory or disciplinary authority over any minor, for that person's criminal background. The bill would also make a technical, correcting change. By imposing a new duty on local agencies implementing its provisions, the bill would impose a state-mandated local program.

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

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

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 (h) 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 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 a nonprofit organization. The department shall destroy an application within six months after the requested information is sent to the employer and applicant.

(c) (1) Where a request pursuant to this section reveals that a prospective employee or volunteer has been convicted of an offense specified in paragraph (1) of subdivision (h), 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. 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 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 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, or (2) applying to adopt a child or to be a foster parent.

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

(1) Violations or attempted violations 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.

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

(3) Any felony or misdemeanor conviction within 10 years of the date of the employer's request under subdivision (a) or any felony conviction that is over 10 years old if the subject of the request was incarcerated within 10 years of the employer's request, for a violation or attempted violation of Chapter 3 (commencing with Section 207), Section 211 or 215, wherein it is charged and proved that the defendant personally used a deadly or dangerous weapon, as provided in subdivision (b) of Section 12022, in the commission of that offense, Section 217.1, Chapter 8 (commencing with Section 236), Chapter 9 (commencing with Section 240), and for a violation of any of the offenses specified in subdivision (c) of Section 667.5, provided that no record of a misdemeanor conviction shall be transmitted to the requester unless the subject of the request has a total of three or more misdemeanor or felony convictions defined in this section within the immediately preceding 10-year period or has been incarcerated for any of those convictions within the preceding 10 years.

(4) A conviction for a violation or attempted violation of an offense committed outside the State of California shall be furnished if the offense would have been a crime as defined in this section if committed in California.

(i) 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 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 (h) 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 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 a nonprofit organization. The department shall destroy an application within six months after the requested information is sent to the employer and applicant.

(c) (1) Where a request pursuant to this section reveals that a prospective employee or volunteer has been convicted of an offense specified in paragraph (1) of subdivision (h), 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. 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 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 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, or (2) applying to adopt a child or to be a foster parent.

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

(1) Violations or attempted violations 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.

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

(3) Any felony or misdemeanor conviction within 10 years of the date of the employer's request under subdivision (a) or any felony conviction that is over 10 years old if the subject of the request was incarcerated within 10 years of the employer's request, for a violation or attempted violation of Chapter 3 (commencing with Section 207), Section 211 or 215, wherein it is charged and proved that the defendant personally used a deadly or dangerous weapon, as provided in subdivision (b) of Section 12022, in the commission of that offense, Section 217.1, Chapter 8 (commencing with Section 236), Chapter 9 (commencing with Section 240), and for a violation of any of the offenses specified in subdivision (c) of Section 667.5, provided that no record of a misdemeanor conviction shall be transmitted to the requester unless the subject of the request has a total of three or more misdemeanor or felony convictions defined in this section within the immediately preceding 10-year period or has been incarcerated for any of those convictions within the preceding 10 years.

(4) A conviction for a violation or attempted violation of an offense committed outside the State of California shall be furnished if the offense would have been a crime as defined in this section if committed in California.

(i) 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.

DEPARTMENT OF FINANCE
915 L STREET ■ SACRAMENTO CA ■ 95814-3706 ■ WWW.DOF.CA.GOV
GRAY DAVIS, GOVERNOR

May 1, 2002

RECEIVED
MAY 03 2002
COMMISSION ON
STATE MANDATES

Ms. Paula Higashi
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

Dear Ms Higashi:

As requested in your letter of February 19, 2002, the Department of Finance (Finance) has reviewed the test claim submitted by the City of Los Angeles (claimant) asking the Commission to determine whether specified costs incurred under Chapter No. 777, Statutes of 2001 (AB 351, La Suer), are reimbursable State mandated costs (Claim No. CSM-01-TC-11, "Local Recreation Areas; Background Screenings"). Commencing with page one of the test claim, the claimant has identified the following new duty, which it asserts is a reimbursable State mandate:

- Local agencies are required to screen specified prospective employees or volunteers through the Department of Justice.

As a result of our review, we have concluded that the statute may have resulted in costs mandated by the State. If the Commission reaches the same conclusion at its hearing on the matter, the nature and extent of the specific activities required can be addressed in the parameters and guidelines which will then have to be developed for the program.

As required by the Commission's regulations, we are including a "Proof of Service" indicating that the parties included on the mailing list which accompanied your March 21, 2002, letter have been provided with copies of this letter via either United States Mail or, in the case of other State agencies, Interagency Mail Service.

If you have any questions regarding this letter, please contact Matt Paulin, Principal Program Budget Analyst at (916) 322-2263 or Tom Lutzenberger, State Mandates Claims Coordinator for Finance, at (916) 445-8913.

Sincerely,

Connie Squires
Program Budget Manager

Attachments

Attachment A

DECLARATION OF MATT PAULIN
DEPARTMENT OF FINANCE
CLAIM NO. CSM-01-TC-11

1. I am currently employed by the State of California, Department of Finance (Finance), am familiar with the duties of Finance, and am authorized to make this declaration on behalf of Finance.

2. We concur that the Chapter No. 777, Statutes of 2001 (AB 351, La Suer), sections relevant to this claim are accurately quoted in the test claim submitted by claimants and, therefore, we do not restate them in this declaration.

3. Attachment B is a true copy of Finance's analysis of AB 351 prior to its enactment as Chapter No. 777, Statutes of 2001, (AB 351, La Suer).

I certify under penalty of perjury that the facts set forth in the foregoing are true and correct of my own knowledge except as to the matters therein stated as information or belief and, as to those matters, I believe them to be true.

5/1/02

Matt Paulin
Principal Program Budget Analyst
Sacramento, CA

Date

PROOF OF SERVICE

Test Claim Name: Local Recreation Areas; Background Screenings
Test Claim Number: CSM-01-TC-11

I, the undersigned, declare as follows:

I, Evelyn McClain, am employed in the County of Sacramento, State of California, I am 18 years of age or older and not a party to the within entitled cause; my business address is 915 L Street, 8 Floor, Sacramento, CA 95814.

On May 1, 2002, I served the attached recommendation of the Department of Finance in said cause, by facsimile to the Commission on State Mandates and by placing a true copy thereof: (1) to claimants and non-State agencies enclosed in a sealed envelope with postage thereon fully prepaid in the United States Mail at Sacramento, California; and (2) to State agencies in the normal pickup location at 915 L Street, 8th Floor, for Interagency Mail Service, addressed as follows:

A-16
Ms. Paula Higashi, Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814
Facsimile No. 445-0278

B-8
State Controller's Office
Division of Accounting & Reporting
Attention: William Ashby
3301 C Street, Room 500
Sacramento, CA 95816

B-29
Legislative Analyst's Office
Attention Marianne O'Malley
925 L Street, Suite 1000
Sacramento, CA 95814

SB 90 Service
C/O David M. Griffiths & Associates
Attention: Allan Burdick
4320 Auburn Boulevard, Suite 200
Sacramento, CA 95841

County of Los Angeles
Department of Auditor-Controller
Kenneth Hahn Hall of Administration
Attention: Leonard Kaye
500 West Temple Street, Suite 525
Los Angeles, CA 90012

County of San Bernardino
Office of Auditor / Controller / Recorder
Attention: Marcia Faulkner
222 West Hospitality Lane, Fourth Floor
San Bernardino, CA 92415 - 0018

Wellhouse and Associates
Attention: David Wellhouse
9175 Kiefer Boulevard, Suite 121
Sacramento, CA 95826

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on May 1, 2002, at Sacramento, California.

Evelyn McClain

EXHIBIT C

BILL LOCKYER
Attorney General

State of California
DEPARTMENT OF JUSTICE

BUREAU OF CRIMINAL IDENTIFICATION AND INFORMATION
4949 BROADWAY
P.O. BOX 903417
SACRAMENTO, CA 94203-4170
Public: (916) 227-2222

Facsimile: (916) 737-2129
(916) 227-3857

March 7, 2002

Shirley Opie
Assistant Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

RE: 01-TC-11

Dear Ms. Opie:

The Department of Justice (DOJ) has reviewed the test claim submitted by the City of Los Angeles Department of Recreation and Parks concerning Public Resources Code section 5164.

Though Public Resources Code section 5164 was amended by Chapter 777, Statues of 2001, the change does not modify DOJ processing procedures. As such, the DOJ is submitting a statement of non-response to the Commission on State Mandates.

Also, please revise my mailing list information as follows:

Room G111;
Telephone Number 916-227-3857.

Sincerely,

J Basco for
GARY COOPER, Bureau Chief
Bureau of Criminal Identification and Information

For BILL LOCKYER
Attorney General

BILL ANALYSIS

AB 1663

Date of Hearing: April 14, 1993

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT

Sam Farr, Chair

AB 1663 (Napolitano) - As Amended April 12, 1993

ASSEMBLY ACTIONS:

COMMITTEE	L. GOV.	VOTE>	COMMITTEE	PUB. S.	VOTE>
Ayes: >			Ayes: >		
Nays: >			Nays: >		
COMMITTEE	W. & M.	VOTE>	COMMITTEE		VOTE
Ayes: >					
Nays: >					

SUBJECT: Prohibits city or county employment of persons convicted of certain offenses.

DIGEST

Existing law:

1) Allows a human resources agency or employer to request Department of Justice records of all convictions or any arrest involving any sex crimes, drug crimes or crimes of violence 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 minor or any person under their care.

2) Forbids school districts from hiring convicted child molesters as school bus drivers, and certified and classified employees. Convicted child molesters may not be granted a teaching credential by the state.

3) Requires people who are employed in connection with a park, playground, recreational center, or beach used for recreational purposes by a city or county and are in contact with children have on file with the city or county a certificate showing them to be free of tuberculosis.

This bill prohibits a county or city from employing persons or hiring volunteers at a county or city operated park, playground, recreational center or beach in a supervisory or disciplinary position of authority over any minor, if that person has been convicted of a sex offense or crime of violence. In addition, this bill requires a county or city to screen those prospective employees or volunteers for their criminal background.

- continued -

AB 1663

FISCAL EFFECT

State-mandated local program; fee disclaimer.

COMMENTS

1) Background.

According to the sponsor, on November 24, 1992, Leonard Houston was convicted of kidnapping and molesting a 13 year old boy whom he coached at Hoover Recreation Center in Los Angeles County. Mr. Houston had twice before been convicted of child molestation, serving three years at Patton State Hospital and seven years in state prison, and was a registered child molester. The Hoover Recreation Center made no inquiry into the background of Mr. Houston. This bill attempts to respond to this situation.

Should local agencies be required to request criminal background records on prospective employees or volunteers who work with minors when existing law already gives them that option if they deem it necessary?

2) Technical Considerations.

This bill contains a state-mandated cost disclaimer that allows a local agency to levy a fee to pay for the service being mandated. However, it is unclear at what level the fee or service charges to be levied would be set and who would be responsible for payment of the mandated cost of this bill.

SUPPORT	OPPOSITION
District Attorney of Los Angeles County	None on file.

SPONSOR: š

- continued -

APPLICANT LIVE SCAN
Fingerprint Services
Locations and Hours of Operation

Below is a listing where Live Scan fingerprinting services are available to the public. This list is updated as additional information is received. However, applicants are encouraged to contact the Live Scan providers in advance to verify their current operating hours, fees, etc.

Please Note:
- Applicants must present a valid photo identification to the Live Scan Operator. Expired identification cards will not be accepted.
- Rolling fees vary from location to location and cover only the operator's cost for rolling the fingerprint images. Additional processing fees are required for the State (DOJ) and Federal (FBI) level criminal history record checks. Other fees may also be required (i.e., license fees).

***Live Scan Providers** - Please note: Due to an increase in Live Scan Provider listings, the department will be standardizing the information that appears here.*

Alameda Alpine Amador Butte Calaveras Colusa Contra Costa Del Norte El Dorado Fresno Glenn Humboldt
Imperial Inyo Kern Kings Lake Lassen Los Angeles Madera Marin Mariposa Mendocino Merced Modoc Mono
Monterey Napa Nevada Orange Placer Plumas Riverside Sacramento San Benito San Bernardino San Diego
San Francisco San Joaquin San Luis Obispo San Mateo Santa Barbara Santa Clara Santa Cruz Shasta Sierra Siskiyou
Solano Sonoma Stanislaus Sutter Tehama Trinity Tulare Tuolumne Ventura Yolo Yuba
MOBILE SERVICES LOCATIONS

LEGEND: **Wlk**=Walk-Ins

Page revised: September 29, 2005.

ALAMEDA COUNTY

Location	Hours	Rolling Fee	Acceptable Forms of Payment
Alameda Alameda Police Dept. 1555 Oak Street Alameda, CA 94501 Contact: (510) 337-8433	M-Th (12-4pm) **Appt. only** Th (5-9pm) **Appt. only** Sat (12-4pm) **Appt. only**	$21.00 for Residents $52 for Non-Residents	Cash Checks
Castro Valley Castro Valley Adult School 4430 Alma Ave. Castro Valley, CA 94546	T, W, TH (9am-6pm) **Appt. only** F, Sat (9-11:30am) **Appt. only**	$20.00	Cash Cashier's Check Credit Cards Money Orders

SACRAMENTO COUNTY

Location	Hours	Rolling Fee	Acceptable Forms of Payment
Carmichael FingerPrinTech 5800 Madison Avenue Suite U2 (Corner of Manzanita) Carmichael, CA 95608 Contact: (916) 366-3624	M-F (10am-4:30pm) **Wlk** No appointment necessary. Usually no waiting. E-mail address: info@fingerprintech.com	$18.00	Cash Cashier's Checks ATM Company Checks Money Orders Amex Discover MasterCard Visa
Citrus Heights Citrus Heights Police Dept. 6315 Fountain Square Citrus Heights, CA 95621 Contact: (916) 727-4923	M-F (8am-4pm) **Appt. only** Closed holidays	$12.00	Cash Checks MasterCard Visa
Folsom Folsom Police Dept. 46 Natoma Street Folsom, CA 95630 Contact: (916) 565-6864	T, Th (9am-5pm) **Appt. only**	$10.00	Cash Checks
Rancho Cordova FingerPrinTech 10453 Old Placerville Road Rancho Cordova, CA 95827 Contact: (916) 366-3624	M-F (9am-5pm) **Wlk** No appointment necessary. Usually no waiting. E-mail address: info@fingerprintech.com	$18.00	Cash Cashier's Checks Company Checks Money Orders Amex ATM Discover MasterCard Visa
Sacramento A-24 Hour Mobile Notary and Fingerprinting Service 1721 Eastern Ave., Suite 14 Sacramento, CA 95864 Contact: (916) 974-3511 or (800) 536-7233	M-Sun (6am-9pm) **Appt. only** Mobile service in Sacramento County. Also available statewide for large groups. E-mail address: riguthertz@yahoo.com	$25.00	Cash Cashier's Checks Check MasterCard Visa American Express Discover
Sacramento	M-F (9am-5pm) Appt. or	$16.00	Cash

Comnetix 9616 Micron Ave., Suite 750 Sacramento, CA 95827 Contact: (916) 361-9631	**Walk-ins** Sat (9am-1pm) **Appt. or Walk-ins** Mobile service available for 10 or more. Card scanning services available. Call for appointment. E-mail address: john.whitmer@comnetix.com		Cashier's Checks Checks Credit Cards Money Orders
Sacramento Dept. of Justice 4949 Broadway Sacramento, CA 95820 Contact: (916) 227-3354	M-F (7:30am-3:30pm) Closed State holidays Due to high volume, it is recommended you arrive prior to 2pm to insure fingerprinting service.	$10.00	Cash Checks MasterCard Visa
Sacramento Identix ID Services 320 Capitol Mall, 1st Floor Sacramento, CA 95814 Contact: 1 (800) 315-4507	M-F (9am-4pm) **Appt. only** Same day service available at most locations. Mobile services available for groups over 20. Call to schedule an appointment.	$18.00	Checks Credit Cards Billing Accounts No Cash Please
Sacramento Identix ID Services 2525 Natomas Park Drive Sacramento, CA 98533 Contact: 1 (800) 315-4507	M-F (9am-4pm) **Appt. only** Same day service available at most locations. Mobile services available for groups over 20. Call to schedule an appointment.	$18.00	Checks Credit Cards Billing Accounts No Cash Please
Sacramento Sacramento City Schools Police The Serna Center, First Floor 5735 47th Avenue Sacramento, CA 95824 FAX: (916) 643-9451 Contact: (916) 643-7449	M-F (9am-6pm) **Wlk** Closed from 12-1pm. Walk-ins encouraged and usually no waiting. E-mail address: mvincema@sac-city.k12.ca.us/all	$12.00	Cash Personal Checks Money Orders No Credit Cards
Sacramento Sacramento Co. Sheriff's Dept. 2500 Marconi Ave., Suite 100 Sacramento, CA 95821 Contact: (916) 876-5757	M-F (9am-12:30pm, 1-4pm) **Wlk**	$12.00	Checks Money Orders No Cash
Sacramento Sacramento Co. Sheriff's Dept. 10361 Rockingham Drive Sacramento, CA 95827 Contact: (916) 875-9654	M-F (9am-12:30pm, 1-4pm) **Wlk** Closed holidays.	$12.00	Checks Money Orders No Cash

Sacramento Sacramento Co. Sheriff's Dept. - South Station 7000 65th Street Sacramento, CA 95823 Contact: (916) 876-8338	M-F (9am-12:30pm, 1-4pm) **Wlk**	$12.00	Personal Checks Money Orders No Cash
Sacramento Sacramento Police Dept. 5770 Freeport Blvd. Sacramento, CA 95822 Contact: (916) 433-0780 Back to List of Counties. Mobile Services Locations.	M-F **Appt. only** Appointment only Please call (916) 433-0780 to schedule an appointment	$12.00	Cash Checks accepted from Sacramento residents only.
SAN BENITO COUNTY			

Fingerprint Processing Fees

(September 2004 / Subject To Change)

	State CORI Fee		Federal CORI Fee			Application Fee	
	Hard Card	Electronic	General	Volunteer	CACI	Initial	Renewal
Employment/Volunteer:							
Criminal Justice (sworn and non-sworn)	$ 32	$ 32	$ 0	$ 0	N/A	N/A	N/A
General	$ 32	$ 32	$ 24	$ 18	N/A	N/A	N/A
Human Resource Agency (non-profit)	$ 10	$ 0	$ 24	N/A	N/A	N/A	N/A
Human Resource Agency (profit)	$ 32	$ 32	$ 24	N/A	N/A	N/A	N/A
Human Resource Agency Volunteer (non-profit)	$ 10	$ 10	N/A	$ 18	N/A	N/A	N/A
Human Resource Agency Volunteer (profit)	$ 32	$ 32	N/A	$ 18	N/A	N/A	N/A
In-Home Support Services	$ 32	$ 32	N/A	N/A	N/A	N/A	N/A
Parks and Recreation Volunteer	$ 10	$ 10	N/A	$ 18	N/A	N/A	N/A
Certificate/Licenses/Permits:							
Check Cashier	$ 32	$ 32	N/A	N/A	N/A	$ 50	$ 50
Department of Social Services: CCLD							
Child Day Care Volunteer (small/home)	$ 10	$ 10	N/A	$ 18	$ 10	N/A	N/A
Child Day/Residential Care Employee (small/home)	$ 10	$ 10	$ 24	N/A	$ 15	N/A	N/A
Adult Day/Residential Care	$ 52	$ 42	$ 24	N/A	N/A	N/A	N/A
Child Day/Residential Care Employee (large/facility)	$ 52	$ 42	$ 24	N/A	$ 15	N/A	N/A
Child Day Care Volunteer (large/facility)	$ 52	$ 42	N/A	$ 18	$ 15	N/A	N/A
Fingerprint Roller	$ 32	$ 32	$ 24	N/A	N/A	$ 25	N/A
License/Permit with Firearm	$ 32	$ 32	$ 24	N/A	N/A	$ 28	N/A
License/Permit without Firearm	$ 32	$ 32	$ 24	N/A	N/A	N/A	N/A
Secondhand Dealer/Pawnbroker	$ 32	$ 32	N/A	N/A	N/A	$ 195	$ 10
Other:							
Applicant Expedite Service	N/A	N/A	N/A	N/A	N/A	$ 10	N/A
Application for Visa/Immigration	$ 32	$ 32	N/A	N/A	N/A	N/A	N/A
Emergency Child Placement	$ 0	$ 0	$ 24	N/A	$ 0	N/A	N/A
Pensioner/Adoption	$ 32	$ 32	$ 24	N/A	$ 15	N/A	N/A
Record Review	$ 25	$ 25	N/A	N/A	N/A	N/A	N/A
Trustline Registry	$ 32	$ 32	$ 24	N/A	$ 15	N/A	N/A

N/A: Not Applicable

CACI: Child Abuse Central Index

H

Briefs and Other Related Documents

Supreme Court of California
In re Michael Lee JENNINGS on Habeas Corpus.
No. S115009.

Aug. 23, 2004.

Background: Defendant was convicted in the Superior Court, Sacramento County, No. 00M07614, Gail D. Ohanesian, J., of statutory misdemeanor offense of purchasing an alcoholic beverage for a person under 21 who thereafter proximately caused great bodily injury. Defendant appealed. The Superior Court, Appellate Division, affirmed and certified the case for transfer to the Court of Appeal. The Court of Appeal declined certification. Defendant petitioned for writ of habeas corpus. The Supreme Court issued an order to show cause on the petition, returnable to the Court of Appeal. The Court of Appeal denied the writ of habeas corpus, ruling that the statute did not require defendant's knowledge that the person for whom he purchased the alcohol was under age 21.

Holdings: The Supreme Court, Werdegar, J., held that:
(1) statute prohibiting the purchasing of alcohol for an underage person did not require proof of knowledge or intent on the part of defendant to establish a violation, and
(2) defendant was entitled to raise a mistake of fact defense concerning
the person's age.
Petition for writ of habeas corpus granted, and case remanded to superior court.

Opinion, 131 Cal.Rptr.2d 233, superseded.

West Headnotes

[1] **Statutes** 181(1)
361k181(1) Most Cited Cases

[1] **Statutes** 188
361k188 Most Cited Cases
To determine the meaning of a statute, the court looks to the intent of the Legislature in enacting the law, being careful to give the statute's words their plain, commonsense meaning.

[2] **Statutes** 188
361k188 Most Cited Cases

[2] **Statutes** 214
361k214 Most Cited Cases
If the language of a statute is not ambiguous, the plain meaning controls and resort to extrinsic sources to determine the Legislature's intent is unnecessary.

[3] **Statutes** 208
361k208 Most Cited Cases

[3] **Statutes** 223.1
361k223.1 Most Cited Cases
In interpreting a statutory code section, the court must interpret the section in context with the entire statute and the statutory scheme.

[4] **Intoxicating Liquors** 159(1)
223k159(1) Most Cited Cases
Statute prohibiting the furnishing of alcohol to an underage person applies to any situation in which an individual purchases alcoholic beverages for an underage person. West's Ann.Cal.Bus. & Prof.Code § 25658(c).

[5] **Statutes** 184
361k184 Most Cited Cases
(Formerly 361k217.2, 361k190)
Where the words of the statute are clear, the court may not add to or alter them to accomplish a purpose that does not appear on the face of the statute or from its legislative history.

[6] **Intoxicating Liquors** 159(2)
223k159(2) Most Cited Cases
To obtain a conviction under statute prohibiting the furnishing of alcohol to an underage person, the People need not prove the offender knew the person to whom he or she furnished, sold, or gave an alcoholic beverage was in fact not yet 21 years old. West's Ann.Cal.Bus. & Prof.Code § 25658(a).

[7] **Criminal Law** 20
110k20 Most Cited Cases

[7] **Criminal Law** 23

110k23 Most Cited Cases
So basic is the requirement that there must be a union of act and wrongful intent or criminal negligence, that it is an invariable element of every crime unless excluded expressly or by necessary implication.

[8] **Criminal Law** 21
110k21 Most Cited Cases
For certain types of penal laws, often referred to as public welfare offenses,
the Legislature does not intend that any proof of scienter or wrongful intent be necessary for conviction; such offenses generally are based upon the violation of statutes which are purely regulatory in nature and involve widespread injury to the public.

[9] **Criminal Law** 21
110k21 Most Cited Cases

[9] **Criminal Law** 23
110k23 Most Cited Cases
In determining whether a penal statute requires that the prosecution prove some form of guilty intent, knowledge, or criminal negligence, courts commonly take into account:(1) the legislative history and context; (2) any general provision on mens rea or strict liability crimes; (3) the severity of the punishment provided for the crime; (4) the seriousness of harm to the public that may be expected to follow from the forbidden conduct; (5) the defendant's opportunity to ascertain the true facts; (6) the difficulty prosecutors would have in proving a mental state for the crime; and (7) the number of prosecutions to be expected under the statute.

[10] **Courts** 89
106k89 Most Cited Cases
An opinion is not authority for propositions not considered.

[11] **Intoxicating Liquors** 159(2)
223k159(2) Most Cited Cases
Statute prohibiting the purchasing of alcohol for an underage person does not require proof of knowledge or intent on the part of defendant to establish a violation; the legislative history and context of the statute, along with the seriousness of the harm to the public, demonstrate that no knowledge that the accused knew that the person was under 21 years of age should be imposed. West's Ann.Cal.Bus. & Prof.Code § 25658(c).

[12] **Statutes** 223.1
361k223.1 Most Cited Cases
Where a statute, with reference to one subject contains a given provision, the omission of such provision from a similar statute concerning a related subject is significant to show that a different legislative intent existed with reference to the different statutes.

[13] **Criminal Law** 20
110k20 Most Cited Cases
For crimes which impose severe punishment, the usual presumption that a defendant must know the facts that make his or her conduct illegal should apply.

[14] **Criminal Law** 33
110k33 Most Cited Cases
Although the People, in a prosecution for purchasing alcohol for an underage person who thereafter caused great bodily injury or death, did not have to prove that defendant knew the person was under 21 years of age, defendant was entitled to raise a mistake of fact defense concerning the person's age. West's Ann.Cal.Bus. & Prof.Code § 25658(c).
See 2 Witkin & Epstein, Cal. Criminal Law (3d ed. 2000) Crimes Against Public Peace and Welfare, § 291; Cal. Jur. 3d, Alcoholic Beverages, § 55.

[15] **Criminal Law** 33
110k33 Most Cited Cases
As a general matter, a mistake of fact defense is not available unless the mistake disproves an element of the offense.

*****647 **908 *258** Rothschild, Wishek & Sands, Kelly Lynn Babineau and M. Bradley Wishek, Sacramento, for Petitioner Michael Lee Jennings.

Bill Lockyer, Attorney General, Manuel M. Medeiros, State Solicitor General, Robert R. Anderson, Chief Assistant Attorney General, Jo Graves, Assistant Attorney General, Carlos A. Martinez, Mathew Chan, Janet Neeley, David Andrew Eldridge, Stephen G. Herndon and Rachelle A. Newcomb, Deputy ***259** Attorneys General; Robert A. Ryan, Jr., County Counsel, and James G. Wright, Deputy County Counsel, for Respondent State of California.

WERDEGAR, J.

Petitioner invited some guests to his home and served them alcoholic beverages. One of the guests, only 19 years old, after leaving the party caused an automobile accident resulting in serious injury. Charged with violating Business and Professions

Code [FN1] section 25658, subdivision (c) (section 25658(c)), which prohibits the purchase of an alcoholic beverage for someone under 21 years old who, after drinking, proximately causes death or great bodily injury, petitioner sought to defend against the charge by claiming he did not know his guest was under the legal drinking age and in fact believed he was over 21 years old. The trial court and two levels of appellate courts ruled that because knowledge of age is not an element of the crime, a mistake of fact as to age is not a defense. We agree the People need not prove knowledge of age to establish a violation of section 25658(c), but we conclude petitioner was entitled to defend against the charge by claiming a mistake of fact as to age. Accordingly, we reverse the judgment.

FN1. All further statutory references are to the Business and Professions Code unless otherwise stated.

FACTS [FN2]

FN2. Petitioner waived his right to a jury trial and submitted his case on the police report. The facts are drawn largely from that report.

On May 30, 2000, petitioner Michael Jennings, a supervisor for Armor Steel Company in Rio Linda, invited coworkers Charles Turpin, Curtis Fosnaugh, Daniel Smith and Donald Szalay to his home to view a videotape demonstrating some new machinery the company was to obtain. Szalay stopped at a convenience store and bought a 12-pack of beer to bring to the gathering. At petitioner's direction, his wife went to a store and purchased another 12-pack of beer. The five men sat in the garage and drank beer.

Some time later, the men went into the house where they watched the videotape and drank more beer. Around 6:00 p.m., the party broke up. Fosnaugh left driving a white Ford pickup truck. Turpin then left driving his Volkswagen Beetle, accompanied by Smith. Fosnaugh stopped at a stop sign at the intersection of E Street and 20th Street in Rio Linda. Turpin, intending to overtake and pass Fosnaugh on the left without stopping at the intersection, drove on the wrong side of the ***648 road. By his own estimate, Turpin was driving around 55 miles per hour. Unaware of Turpin's intention to pass on the left, Fosnaugh attempted to make a left turn, resulting in a major collision and serious injuries to Turpin, Smith and Fosnaugh.

*260 Turpin, who had to be pried from his car with the Jaws of Life, told police responding to the scene that he drank about seven beers between 4:00 and 6:00 p.m. The results of a preliminary alcohol screening test indicated Turpin had a blood-alcohol concentration of .124 percent. Later at the hospital, a blood test determined Turpin's blood-alcohol concentration to be .16 percent. Turpin was 19 years old. Fosnaugh was 20 years old.

Petitioner was charged with violating section 25658(c), purchasing alcohol for someone under 21 years old who consumes it and "thereby proximately causes great bodily injury or death to himself, herself, or any other person." The People moved in limine to exclude evidence that petitioner was unaware Turpin was not yet 21 years of age. Petitioner opposed the motion and made an offer of proof that he was ignorant of Turpin's age. Specifically, petitioner alleged that a few weeks before the accident, he was with several coworkers drinking beer in front of a local **909 market after work when a police officer arrived and confronted Turpin, who was holding a beer. Petitioner alleged he heard Turpin tell the officer he was 22 years old. In addition, petitioner alleged that, although he was Turpin's supervisor, he did not process Turpin's employment application (which did not, in any event, have a space for the applicant's age), and Turpin's employment file did not have a photocopy of his driver's license.

The trial court granted the People's motion, ruling that section 25658(c) was a strict liability offense and ignorance of Turpin's age was not a defense. Petitioner then submitted the case on the police report subject to a reservation of the right to challenge on appeal the correctness of the trial court's evidentiary ruling. The trial court found petitioner guilty as charged. The court sentenced him to six months in jail, with sentence suspended and probation granted on conditions including service of 60 days in jail.

DISCUSSION

A. Background

The regulation of alcoholic beverages in this country has taken a long and twisting path (see U.S. Const., 18th Amend. [prohibiting "the manufacture, sale, or transportation of intoxicating liquors" within the U.S.]; *id.*, 21 st Amend. [repealing the 18th Amend.]), but regulation has now devolved to the states, who "enjoy broad power under § 2 of the Twenty-first Amendment to regulate the importation and use of intoxicating liquor within their borders." [*Capital*

Cities Cable, Inc. v. Crisp (1984) 467 U.S. 691, 712, 104 S.Ct. 2694, 81 L.Ed.2d 580.) One active area of California's regulation of alcoholic beverages concerns underage drinkers. No citation to authority is necessary to establish that automobile accidents by underage drinkers lead to the injuries ***261** and deaths of thousands of people in this country every year. Nevertheless, the statistics are sobering. "In 2002, 24% of drivers ages 15 to 20 who died in motor vehicle crashes had been drinking alcohol." (http:// www.cdc.gov/ncipc/factsheets/drving.htm [as of Aug. 23, 2004].)" Analysis of data from 1991--1997 found that, consistently, more than one in three teens reported they had ridden with a driver who had been drinking alcohol in the past month. One in six reported having driven after drinking alcohol within the same one-month time period." *****649** (http:// www.cdc.gov/ncipc/factsheets/teenmvh.htm [as of Aug. 23, 2004].) "In 2002, 25 percent of 16--20-year-old passenger vehicle drivers fatally injured in crashes had high blood alcohol concentrations (0.08 percent or more). Teenage drivers with BACs in the 0.05-0.08 percent range are far more likely than sober teenage drivers to be killed in single-vehicle crashes--17 times more likely for males, 7 times more likely for females. At BACs of 0.08-0.10, risks are even higher, 52 times for males, 15 times for females." (http://www.hwysafety.org/safety--factsqanda/underage.htm [as of Aug. 23, 2004].)

Given these facts, that our laws shield young people from the dangers of excess alcohol consumption is no surprise. Our state Constitution establishes the legal drinking age at 21, three years past the age of legal majority (see, e.g., Cal. Const., art. II, § 2 [must be at least 18 years old to vote]; Fam.Code, § 6500 [a "minor" is one under 18 years old]; Prob.Code, § 3901, subd. (a) ["adult" defined as one "who has attained the age of 18 years"]), both for purchases and personal consumption at on-sale premises. (Cal. Const., art. XX, § 22.) The "likely purpose" of this constitutional provision "is to protect such persons from exposure to the 'harmful influences' associated with the consumption of such beverages." (*Provigo Corp. v. Alcoholic Beverage Control Appeals Bd.* (1994) 7 Cal.4th 561, 567, 28 Cal.Rptr.2d 638, 869 P.2d 1163.)

The Legislature has implemented this constitutional mandate in a number of ways. For example, section 25658, subdivision (a) (§ 25658(a)) makes it a misdemeanor to sell or furnish an alcoholic beverage to any person under the age of 21 years. Section 25658, subdivision (b) makes it a misdemeanor for an underage person to buy alcohol or consume an alcoholic beverage in any on-sale premises. Under a new law enacted in 2003, a parent who permits his or her minor child to drink an intoxicating beverage can under ****910** some circumstances be guilty of a misdemeanor. (§ 25658.2.) [FN3]

> FN3. Section 25658.2 provides: "(a) A parent or legal guardian who knowingly permits his or her child, or a person in the company of the child, or both, who are under the age of 18 years, to consume an alcoholic beverage or use a controlled substance at the home of the parent or legal guardian is guilty of [a] misdemeanor if all of the following occur:
> "(1) As the result of the consumption of an alcoholic beverage or use of a controlled substance at the home of the parent or legal guardian, the child or other underage person has a blood-alcohol concentration of 0.05 percent or greater, as measured by a chemical test, or is under the influence of a controlled substance.
> "(2) The parent knowingly permits that child or other underage person, after leaving the parent's or legal guardian's home, to drive a vehicle.
> "(3) That child or underage person is found to have caused a traffic collision while driving the vehicle."

***262** Of course, an underage person creates a potentially deadly situation when he or she drives after imbibing. Addressing that situation, the Legislature has provided penalties for persons under the age of 21 who drive with a blood-alcohol concentration much less than that prohibited for persons over 21 years old. For example, the Legislature has enacted what has been termed a "zero tolerance" law (*Coniglio v. Department of Motor Vehicles* (1995) 39 Cal.App.4th 666, 673, 46 Cal.Rptr.2d 123), making it unlawful for a person under 21 years old to operate a motor vehicle with as little as a 0.01 percent blood-alcohol concentration as measured by a preliminary alcohol screening device (Veh.Code, § § 23136, 13390). Violation of this law carries civil penalties. An underage person *****650** who drives with a 0.05 percent blood-alcohol concentration is subject to a one-year loss of driving privileges as well as other administrative liabilities (*id.*, § § 23140, 13202.5, subds. (a) & (d)(4), 13352.6; see also *id.*, § 23224 [possession of alcoholic beverages by an underage driver].) A driver 21 years old or older, by contrast, is not subject to criminal penalties until his or her blood-

alcohol concentration rises to 0.08 percent or more. (*Id.*, § 23152, subd. (b).) Irrespective of his or her blood-alcohol concentration, of course, a person of any age is subject to criminal penalties if he or she drives while "under the influence of any alcoholic beverage." (*Id.*, § 23152, subd. (a).)

Specifically addressing the circumstance where an individual purchases alcohol for an underage person, section 25658(c) makes such purchase punishable where the underage person, as a consequence of consuming the alcohol, causes great bodily injury or death to anyone. Though just a misdemeanor, the offense is punishable by imprisonment in a county jail for a minimum of six months, by a fine of up to $1,000, or both. (§ 25658, subd. (e)(3).)

Section 25658(c) does not explicitly require that the offender have knowledge, intent, or some other mental state when purchasing the alcoholic beverage, and this lacuna forms the basis of the present dispute. The question is whether we should construe the statute to require some mental state as a necessary element of the crime. Preliminary to that question is a determination of what acts the section prohibits, for if petitioner's actions did not violate section 25658(c), his knowledge or mental state would be irrelevant.

*263 B. What Acts Does Section 25658(c) Prohibit?

[1][2][3] To determine the meaning of section 25658(c), we look to the intent of the Legislature in enacting the law, "being careful to give the statute's words their plain, commonsense meaning. [Citation.] If the language of the statute is not ambiguous, the plain meaning controls and resort to extrinsic sources to determine the Legislature's intent is unnecessary." (*Kavanaugh v. West Sonoma County Union High School Dist.* (2003) 29 Cal.4th 911, 919, 129 Cal.Rptr.2d 811, 62 P.3d 54.) Additionally, we must interpret section 25658(c) in context with the entire statute and the statutory scheme. (*Renee J. v. Superior Court* (2001) 26 Cal.4th 735, 743, 110 Cal.Rptr.2d 828, 28 P.3d 876.)

[4] Section 25658(c) provides in full: "Any person who violates subdivision (a) by purchasing an alcoholic beverage for a person under the age of 21 years and the person under the age of 21 years thereafter consumes the alcohol and thereby proximately causes great bodily injury or death to himself, **911 herself, or any other person, is guilty of a misdemeanor." Subdivision (a), in turn, states that "every person who sells, furnishes, gives, or causes to be sold, furnished, or given away, any alcoholic beverage to any person under the age of 21 years is guilty of a misdemeanor." Consequently, subdivision (c) prohibits the selling, furnishing or giving away of alcohol to an underage person, but only in the circumstance therein specified, namely, by "purchasing" such beverage "for" an underage person. Only persons who (1) furnish or give away alcoholic beverages, (2) by purchasing such beverages, (3) for an underage person can be guilty of violating section 25658(c).

Section 25658(c) plainly embraces the situation in which an underage person, loitering in front of a liquor store, asks an approaching adult to buy alcoholic beverages for him or her, commonly known as the "shoulder tap" situation (see ***651 *Yu v. Alcoholic Bev. etc. Appeals Bd.* (1992) 3 Cal.App.4th 286, 293, 4 Cal.Rptr.2d 280 [describing how "minors tap adults on the shoulder" as they enter a market and "get them to buy liquor for the minors"]) or, more colloquially, "shoulder tapping" (http://www.urbandictionary.com/define.php?term=shoulder+tapping [as of Aug. 23, 2004]). In such situations, that the buyer "*purchas* [*ed*] an alcoholic beverage *for* a person under the age of 21 years" (italics added) in violation of section 25658(c) is not open to doubt. Used in this sense, the statutory phrase "purchas[e]... for" means the offender must stand in the shoes of the underage person and act as a buyer by proxy; the word "for" in this case means "in place of." (Webster's 3d New Internat. Dict. (2002) p. 886, col. 2 [giving example of definition 5a: "go to the store [for] me"].)

*264 That the Legislature's attention was focused on the phenomenon of shoulder tapping when it enacted section 25658(c) is clear from the legislative history. (*In re J.W.* (2002) 29 Cal.4th 200, 211, 126 Cal.Rptr.2d 897, 57 P.3d 363 ["To determine the purpose of legislation, a court may consult contemporary legislative committee analyses of that legislation, which are subject to judicial notice"].) Subdivision (c) of section 25658 began as Assembly Bill No.2029 (1997-1998 Reg. Sess.), introduced by Assemblyman Keeley on February 18, 1998. When the bill was introduced in the Assembly Committee on Public Safety on April 14, 1998, the author's comments were incorporated into the bill's analysis: " 'Last July, a tragedy occurred in the district I represent which brought to my attention the high level of access that minors have to alcohol. Three minors died in a drunk driving accident, in which the driver, a minor, had consumed alcohol that was purchased for him by an adult. The adult served 30 days in a county jail and the driver of the car is

serving an eight-year sentence in state prison. [¶] According to the United Way, nationwide, 62% of 12th graders have been drunk. In Santa Cruz County alone, 95% of 11th graders say that they could easily obtain alcohol if they wanted to. *One of the top ways in which minors gain access to alcohol is by 'shoulder tapping,' or asking an adult, often in front of a liquor store, to purchase alcohol for a minor.* [¶] *Adults who do this must be held responsible for their actions.* The intention of [Assembly Bill No.] 2029 is to provide an effective deterrent to adults who are irresponsible enough to buy alcohol for minors.' " (Assem. Com. on Public Safety, Analysis of Assem. Bill No.2029 (1997-1998 Reg. Sess.) Apr. 14, 1998, italics added.) The Superintendent of the San Lorenzo Unified School District provided a similar argument in support of the bill. (*Ibid.*) Assemblyman Keeley's statement was later included in the state Senate's bill analysis. (Sen. Com. on Public Safety, Analysis of Assem. Bill No. 1204 (1997-1998 Reg. Sess.) June 23, 1998.) [FN4] No contrary statements of intent appear in any of the legislative history of these bills.

> FN4. By this time, Assembly Bill No.2029 had been incorporated into Assembly Bill No. 1204 for technical procedural reasons.

Whether the statute is limited to the shoulder tap situation or embraces other circumstances is a more difficult question. The archetypal shoulder tap scenario involves strangers, a request from an underage person, a business establishment that sells alcohol, and no intent on the buyer's part to **912 share in drinking the purchased beverage. But does the statute apply when, for example, a parent, without solicitation, goes to a grocery store and buys ***652 beer for her underage son? In that hypothetical situation, as apparently in the instant case, no actual request to purchase the alcohol is made. Or does the statute apply when an adult attending a baseball game announces he is going to the concession stand and at the request of an underage friend brings him back a beer? Although that situation involves a request to purchase, the *265 participants (as in this case) are not strangers. Further, does section 25658(c) apply if an adult purchases beer for himself but days later gives one to an underage guest? In that case, no intent to purchase for a third party exists at the time of sale, but the purchaser later provides the alcohol to an underage person. Finally, does the statute apply to the social party host who purchases alcoholic beverages generally for a party but not for any particular guest? In that situation, the host certainly purchased the beverages for the party, [FN5] but did he do so for a particular underage guest?

> FN5. In fact, party guest Szalay purchased some of the beer, and petitioner's wife purchased the remainder, at petitioner's request. Presumably petitioner's culpability as a purchaser of intoxicating beverages flows from his status as an aider and abettor, an issue we need not decide here inasmuch as he essentially entered a "slow plea" of guilty by submitting the case on the police report.

[5] In resolving the meaning of section 25658(c), we must be careful not to add requirements to those already supplied by the Legislature. (*Robert F. Kennedy Medical Center v. Belshé* (1996) 13 Cal.4th 748, 756, 55 Cal.Rptr.2d 107, 919 P.2d 721.) "Where the words of the statute are clear, we may not add to or alter them to accomplish a purpose that does not appear on the face of the statute or from its legislative history." (*Burden v. Snowden* (1992) 2 Cal.4th 556, 562, 7 Cal.Rptr.2d 531, 828 P.2d 672.) Here, although the Legislature was focused on the shoulder tap scenario, the language of section 25658(c) is not so limited. Section 25658(c) imposes no requirement that the underage person make a request to a proxy to buy alcohol, nor that the two principal actors be unknown to each other. Nor is there a statutory requirement that the underage person wait outside the place of sale or that the buyer have no intention to share the beverage. The statute requires only that the offender "purchas[e]" an alcoholic beverage "for" an underage person. That event can occur in a variety of settings. In short, section 25658(c) embraces more than merely shoulder tapping.

Nevertheless, some limits are apparent when we consider section 25658(c) together with section 25658(a). (See *Renee J. v. Superior Court, supra*, 26 Cal.4th at p. 743, 110 Cal.Rptr.2d 828, 28 P.3d 876.) As indicated, subdivision (a) of section 25658 sweeps more broadly than does subdivision (c), criminalizing the selling, furnishing, or giving of alcoholic beverages "*to* any person under the age of 21" (italics added), whereas subdivision (c) criminalizes the violation of subdivision (a) "by purchasing an alcoholic beverage *for* a person under the age of 21 years" (italics added). Viewing together these two subdivisions of the same statute, it is apparent the acts prohibited by subdivision (c) involve a subset of the universe of possible situations in which one might violate subdivision (a). The Legislature's use of the phrase "purchas[e] ... for" delineates a smaller group

of prohibited actions by identifying specific goal-directed behavior by the purchaser of alcoholic beverages, involving an identified and particular *266 underage person. In other words, to violate section 25658(c), one must not only *furnish* alcohol *to* an underage person, one must *purchase* the alcohol *for* that person.

***653 Although section 25658(a) clearly embraces the social party host (because such persons furnish or give away alcoholic beverages to their guests), the generalized actions of the typical social party host, providing libations for his or her guests, do not run afoul of the more specific section 25658(c) because, as a general matter, such hosts cannot be said to have purchased alcohol "for" any particular guest. [FN6] Although a social host could be said **913 to have purchased alcoholic beverages for every one of his or her guests, such an interpretation would be unreasonable, as in that case, "purchase for" would mean the same as "furnish to," blurring the distinction between the two subdivisions. As used in section 25658(c), the term "for" is "used as a function word to indicate the person ... that something is to be delivered to." (Webster's 3d New Internat. Dict., *supra*, p. 886, col. 2 [giving example of definition 3d: "any letters [for] me"].)

> FN6. We thus disagree with the People's position, stated at oral argument, that to ensure one does not violate section 25658(c), a social host can simply choose not to serve alcoholic beverages.

In light of the plain meaning of the statutory language, we conclude section 25658(c) applies to any situation in which an individual purchases alcoholic beverages for an underage person. This includes, but is not limited to, the buyer-by-proxy and shoulder tap scenarios. We now consider whether section 25658(c), so interpreted, requires proof of some mental state such as knowledge of age.

C. Knowledge of Age

1. *Section 25658(a)*

[6] Because section 25658(c) describes a subset of actions prohibited by section 25658(a), [FN7] if subdivision (a) requires the People to prove a violator knew the age of the person to whom alcohol was furnished, such proof would also be required to show a violation of subdivision (c). Conversely, if subdivision (a) is a strict liability offense, lacking any knowledge requirement, that fact would weigh heavily in our determination whether subdivision (c) requires proof of knowledge. We thus consider whether section 25658(a) requires such proof. We conclude it does not.

> FN7. Of course, subdivision (c) has the additional requirement that the underage person actually consume the alcohol "and thereby proximately causes great bodily injury or death to himself, herself, or any other person." Strictly speaking, then, subdivision (c) is not a lesser included offense of subdivision (a).

[7] *267 For criminal liability to attach to an action, the standard rule is that "there must exist a union, or joint operation of act and intent, or criminal negligence." (Pen.Code, § 20.) "[T]he requirement that, for a criminal conviction, the prosecution prove some form of guilty intent, knowledge, or criminal negligence is of such long standing and so fundamental to our criminal law that penal statutes will often be construed to contain such an element despite their failure expressly to state it. 'Generally, " '[t]he existence of a mens rea is the rule of, rather than the exception to, the principles of Anglo-American criminal jurisprudence.' ..." [Citation.] In other words, there must be a union of act and wrongful intent, or criminal negligence. [Citations.] "So basic is this requirement that it is an invariable element of every crime unless excluded expressly or by necessary implication." ' " (*In re Jorge M.* (2000) 23 Cal.4th 866, 872, 98 Cal.Rptr.2d 466, 4 P.3d 297 (*Jorge M.*); see 1 Witkin & Epstein, Cal.Criminal Law (3d ed. 2000) Elements, § 1, pp. 198-199.)

The prevailing trend in the law is against imposing criminal liability without ***654 proof of some mental state where the statute does not evidence the Legislature's intent to impose strict liability. (*People v. Simon* (1995) 9 Cal.4th 493, 521, 37 Cal.Rptr.2d 278, 886 P.2d 1271; *Liparota v. United States* (1985) 471 U.S. 419, 426, 105 S.Ct. 2084, 85 L.Ed.2d 434 [extension of strict liability crimes disfavored]; see 1 Witkin & Epstein, Cal.Criminal Law, *supra*, Elements, § 18, p. 223 [examples given of strict liability crimes are not "indicative of a trend. Indeed, the opposite appears to be true"].)

[8] "Equally well recognized, however, is that for certain types of penal laws, often referred to as public welfare offenses, the Legislature does not intend that any proof of scienter or wrongful intent be necessary for conviction. 'Such offenses generally are based upon the violation of statutes which are purely

regulatory in nature and involve widespread injury to the public. [Citation.] "Under many statutes enacted for the protection of the public health and safety, e.g., traffic and food and drug regulations, criminal sanctions are relied upon even if there is no wrongful intent. These offenses usually involve light penalties and no moral obloquy or damage to reputation. Although criminal sanctions are relied upon, the primary purpose of the statutes is regulation rather than **914 punishment or correction. The offenses are not crimes in the orthodox sense, and wrongful intent is not required in the interest of enforcement." ' " (*Jorge M., supra,* 23 Cal.4th at p. 872, 98 Cal.Rptr.2d 466, 4 P.3d 297.) [FN8] *268 Alcohol-related offenses, such as driving with a prohibited blood-alcohol concentration (*Ostrow v. Municipal Court* (1983) 149 Cal.App.3d 668, 197 Cal.Rptr. 40) and employment of a minor at an establishment selling alcoholic beverages (*Kirby v. Alcoholic Bev. etc. App. Bd.* (1968) 267 Cal.App.2d 895, 73 Cal.Rptr. 352), have been found to constitute such public welfare offenses.

> FN8. Examples of public welfare offenses for which criminal liability attaches in the absence of any mens rea include improperly labeling and storing hazardous waste (Health & Saf.Code, § 25190; see *People v. Matthews* (1992) 7 Cal.App.4th 1052, 1057-1058, 9 Cal.Rptr.2d 348), sale of mislabeled motor oil (Bus. & Prof.Code, § 13480; *People v. Travers* (1975) 52 Cal.App.3d 111, 124 Cal.Rptr. 728), sale of food contaminated with fecal matter (*People v. Schwartz* (1937) 70 P.2d 1017, 28 Cal.App.2d Supp. 775), sale of shortweighted food (*In re Marley* (1946) 29 Cal.2d 525, 175 P.2d 832), and use of an unlicensed poison (*Aantex Pest Control Co. v. Structural Pest Control Bd.* (1980) 108 Cal.App.3d 696, 166 Cal.Rptr. 763).

[9] We found in *Jorge M., supra,* 23 Cal.4th 866, 98 Cal.Rptr.2d 466, 4 P.3d 297, a "useful" analytical framework "where the legislative intent is not readily discerned from the text [of the law] itself." (*Id.* at p. 873, 98 Cal.Rptr.2d 466, 4 P.3d 297.) We there explained that "courts have commonly taken into account ...:(1) the legislative history and context; (2) any general provision on mens rea or strict liability crimes; (3) the severity of the punishment provided for the crime ('Other things being equal, the greater the possible punishment, the more likely some fault is required'); (4) the seriousness of harm to the public that may be expected to follow from the forbidden conduct; (5) the defendant's opportunity to ascertain the true facts ('The harder to find out the truth, the more likely the legislature meant to require fault in not knowing'); (6) the difficulty prosecutors would have in proving a mental state for the crime ('The greater the difficulty, the more likely it is that the legislature intended to relieve the prosecution of that burden so that the law could be effectively enforced'); [and] (7) the number of prosecutions to be expected under the statute ('The fewer the expected prosecutions, ***655 the more likely the legislature meant to require the prosecuting officials to go into the issue of fault')." (*Ibid.*)

We need not address all of the *Jorge M.* factors because section 25658(a) falls easily into the category of crimes courts historically have determined to be public welfare offenses for which proof of knowledge or criminal intent is unnecessary. First, the statute does not expressly require a mental state. More to the point, the statute is closely akin to those public welfare offenses that " 'are purely regulatory in nature and involve widespread injury to the public.' " (*Jorge M., supra,* 23 Cal.4th at p. 872, 98 Cal.Rptr.2d 466, 4 P.3d 297.) Like those offenses, section 25658(a) is more regulatory than penal, addressed more to the public welfare than to the individual punishment of the transgressor. As one court has opined when addressing the purpose of section 25658: "[I]t may be assumed that the provisions prohibiting certain transactions with minors are designed to protect them from harmful influences." (*Lacabanne Properties, Inc. v. Dept. Alcoholic Bev. Control* (1968) 261 Cal.App.2d 181, 188, 67 Cal.Rptr. 734; accord, *Provigo Corp. v. Alcoholic Beverage Control Appeals Bd., supra,* 7 Cal.4th at p. 567, 28 Cal.Rptr.2d 638, 869 P.2d 1163.)

*269 The statute's goal of avoiding a broader societal harm rather than imposing individual punishment is illustrated by the light penalties prescribed for its violation. Violation of section 25658(a) imposes a $250 fine, between 24 and 32 hours of community service, or a combination thereof. (§ 25658, subd. (e)(1).) For a first offense involving a minor and not simply an underage person, the penalty is a $1,000 fine and at least 24 hours of community service. (*Id.*, subd. (e)(2).) No violation of section 25658(a) results in incarceration of any length. Thus, as for other public welfare offenses, section 25658(a) " ' "involve[s] light penalties and no moral obloquy or damage to reputation. Although criminal sanctions are relied upon, the primary purpose of the statutes is regulation rather than punishment or correction." ' "

**915(*Jorge M., supra,* 23 Cal.4th at p. 872, 98 Cal.Rptr.2d 466, 4 P.3d 297.) The light penalties for violating section 25658(a) strongly suggest the Legislature has dispensed with any requirement that the People prove knowledge or some other criminal intent.

[10] Petitioner argues section 25658(a) must be interpreted to require knowledge of age despite any explicit statutory requirement, citing *Brockett v. Kitchen Boyd Motor Co.* (1972) 24 Cal.App.3d 87, 100 Cal.Rptr. 752. *Brockett* concerned civil, not criminal, liability. In passing, it stated about section 25658(a): "If one *wilfully* disobeys the law and *knowingly* furnishes liquor to a minor *with knowledge* that the minor is going to drive a vehicle on the public highways, as alleged in this case, he must face the consequences." (*Brockett, supra,* at p. 93, 100 Cal.Rptr. 752, italics added.) Not addressed in *Brockett* is whether one must face the same consequences absent such intent or knowledge. An opinion, of course, is not authority for propositions not considered. (*Flannery v. Prentice* (2001) 26 Cal.4th 572, 581, 110 Cal.Rptr.2d 809, 28 P.3d 860.) In any event, *Brockett* relied extensively on *Vesely v. Sager* (1971) 5 Cal.3d 153, 95 Cal.Rptr. 623, 486 P.2d 151, which subsequently was statutorily overruled. (See Bus. & Prof.Code, § 25602, subd. (c); Civ.Code, § 1714, subd. (b).)

More on point is *Provigo Corp. v. Alcoholic Beverage Control Appeals Bd., supra,* 7 Cal.4th at page 569, 28 Cal.Rptr.2d 638, 869 P.2d 1163, where this court held as to seller-licensees that "the laws against sales to minors [citing Cal. Const., art. XX, § 22; Bus. & Prof.Code, § 25658(a)] can be violated *despite* the seller's (or its ***656** agents') lack of knowledge of the purchaser's minority." *Provigo,* then, at least suggests section 25658(a) also does not require proof of knowledge or intent by other persons who provide alcohol to underage persons. We conclude that to obtain a conviction under section 25658(a), the People need not prove the offender knew the person to whom he or she furnished, sold or gave an alcoholic beverage was in fact not yet 21 years old.

*270 2. *Section 25658(c)*

[11] Whether subdivision (c) of section 25658 dispenses with a proof of knowledge requirement is a more complex question. Unlike with subdivision (a), three factors mentioned in *Jorge M., supra,* 23 Cal.4th at page 873, 98 Cal.Rptr.2d 466, 4 P.3d 297--the legislative history and context of the statute, the severity of the punishment, and the seriousness of the harm to the public--have substantial application in the analysis for subdivision (c). Nevertheless, we similarly conclude the People need not prove knowledge or intent to establish a violation of subdivision (c).

First and foremost, the legislative history of section 25658(c) strongly suggests the Legislature intended to impose guilt without a showing the offender knew the age of the person for whom alcohol was purchased. As discussed, *ante,* section 25658(c) was an amendment to the existing statute, responding to an incident in Santa Cruz County in which someone over 21 years old purchased alcoholic beverages for an underage person who thereafter became intoxicated and crashed his car, killing three minors. As originally proposed, Assembly Bill No.2029 would have proscribed "furnish[ing]" an alcoholic beverage to a "minor" if the minor then caused death or great bodily injury. This original version of the bill made the new crime punishable as either a felony or a misdemeanor, commonly called a wobbler. (Assem. Bill No.2029 (1997-1998 Reg. Sess.) as introduced Feb. 18, 1998.) The bill was amended in the Assembly to substitute the phrase "purchasing ... for" in the place of "furnishing ... to." The amendment also deleted reference to a "minor" and replaced it with "a person under the age of 21 years." That the crime could be a felony punishable in state prison remained unchanged. (Assem. Amend. to Assem. Bill No.2029 (1997-1998 Reg. Sess.) Mar. 26, 1998.)

The bill was then referred to the Assembly Committee on Public Safety. Comments to the bill include this telling one: "*This bill requires little or no intent on the part of the purchaser of alcohol for underage persons.* There is no requirement that GBI [great bodily injury] or death be foreseeable to the **916 purchaser, other than the general knowledge that alcohol can sometimes lead to dangerous situations. As is stated above, a commercial vendor is only found civilly liable and guilty of a misdemeanor if he or she sells to an obviously intoxicated minor. [¶] *Should this bill be amended to provide that the purchaser must know, or reasonably should have known, that GBI was a likely result of the purchase of the alcohol for the underage person?* " (Assem. Com. on Public Safety, Analysis of Amend. to Assem. Bill No.2029 (1997-1998 Reg. Sess.) Apr. 14, 1998, italics added, underscoring in original.)

*271 Before the full Assembly a week later, Assembly Bill No.2029 was again amended.

Proposed section 25658(c) was then to read in pertinent part: "Any person who violates subdivision (a) by purchasing an alcoholic beverage for a person under the age of 21 years and the person under the age of 21 years thereafter consumes the alcohol and thereby proximately causes great bodily injury to himself, herself, or ***657 any other person is guilty of a public offense punishable by imprisonment in a county jail not to exceed one year or in state prison. *In order to be punishable by imprisonment in the state prison pursuant to this subdivision:* [¶] *(1) The purchaser shall have known or reasonably should have known that the person for whom he or she was purchasing was under the age of 21 years* ...." (Assem. Amend. to Assem. Bill No.2029 (1997-1998 Reg. Sess.) Apr. 21, 1998, italics added.)

As the Legislative Counsel's Digest for this proposed amendment explained, "[t]he bill would require that to be punishable as a felony the purchaser must have known or reasonably should have known that the person for whom he or she was purchasing was under the age of 21 years ...." (Legis. Counsel's Dig., Assem. Bill No.2029 (1997-1998 Reg. Sess.) Apr. 21, 1998.)

The substance of Assembly Bill No.2029 was then added to Assembly Bill No. 1204, then before the state Senate. (Sen. Amend. to Assem. Bill No. 1204 (1997-1998 Reg. Sess.) June 3, 1998.) In the Senate Committee on Public Safety, a question was raised concerning the foreseeability of the injury caused by the underage drinker. "As the opposition notes, this provision would provide a potential prison sentence for an act not directly caused by the person. A 21 year old college student who gives a 20 year old friend a beer could be subject to an increased misdemeanor penalty if that 20 year old friend were to trip down a flight of stairs after drinking the beer and breaks his/her arm." (Sen. Com. on Public Safety, Analysis of Amend. to Assem. Bill No. 1204 (1997-1998 Reg. Sess.) June 3, 1998.) "SHOULD WE PUNISH ONE PERSON FOR THE UNFORESEEABLE SUBSEQUENT BEHAVIOR OF ANOTHER BECAUSE THE FIRST PERSON COMMITTED AN OFFENSE?" (*Ibid.*)

Although a concern was raised in the Senate committee about the foreseeability of the injury, no question was raised about the felony provision or its requirement that the offender knew or should have known the age of the person for whom he was buying alcohol. Nevertheless, Assembly Bill No. 1204 was thereafter amended to delete the felony option together with its intent requirement, leaving section 25658(c) as a misdemeanor provision only, with no explicit intent requirement. (Sen. Amend. to Assem. Bill *272 No. 1204 (1997-1998 Reg. Sess.) June 30, 1998.) It was this version that was eventually passed, enrolled, sent to the Governor, and signed into law. [FN9]

FN9. As the Court of Appeal explained: "The substance of [Assembly Bill No.] 1204 was then incorporated into a related bill proceeding through the Senate, [Senate Bill No.] 1696, to ensure that its provisions would not be super[s]eded if both bills were enacted and [Senate Bill No.] 1696 was chaptered last. (Legis. Counsel's Dig., Sen. Bill No. 1696, Stats. 1998 (1997--1998 Reg. Sess.).) ([Senate Bill] 1696) In fact, that is what happened. [Assembly Bill No.] 1204 was chaptered on September 14, 1998. [Senate Bill] 1696 was chaptered on September 18, 1998. Section 25658 was amended to include subdivision (c) by Senate Bill 1696."

The Court of Appeal below reasoned: "A review of this history shows that the Legislature considered incorporating an express mental state element into the statute when the subdivision could be prosecuted as a felony. It may be inferred that the Legislature intended the misdemeanor to be a strict liability statute when it deleted the felony provision **917 without moving the requirement of a specific mental state into the remaining misdemeanor portion of subdivision (c)." While this inference is ***658 strong, petitioner contends the appellate court's view of the legislative history is simplistic because it fails to view the totality of the legislative history, which indicates a legislative concern with not only the potential offender's knowledge of the drinker's age, but also with his or her subjective awareness of the foreseeability of the harm caused by the drinker.

As our recitation of the legislative history demonstrates, the Legislature was, at various points, concerned *both* with the possibility that one could be convicted of a felony under the new law even though unaware of the age of the person for whom alcohol was bought *and* with the possibility the purchaser could be convicted although unaware the drinker intended to become intoxicated or to drive. But that the Legislature may have entertained multiple concerns about the proposed law does not undermine the obvious inference that in deleting the felony option, with its attached intent requirement, the Legislature intended to leave the new crime a

misdemeanor only, with no intent requirement.

Interpretation of section 25658(c) as a strict liability offense is bolstered by a consideration of other statutes addressing related issues, all of which appear in the same portion of the Business and Professions Code as does section 25658. (See art. 3 ["Women and Minors"], ch. 16 ["Regulatory Provisions"], div. 9 ["Alcoholic Beverages"].) For example, section 25658.2, subdivision (a) provides: "A parent or legal guardian who *knowingly* permits his or her child ... under the age of 18 years, to consume an alcoholic beverage ... at the home of the parent or legal guardian [under certain conditions] is guilty of [a] misdemeanor." (Italics added.) Similarly, section 25657, subdivision (b) provides: "In any place of business where alcoholic beverages are *273 sold to be consumed upon the premises, to employ or *knowingly permit* anyone to loiter in or about said premises for the purpose of begging or soliciting any patron or customer of, or visitor in, such premises to purchase any alcoholic beverages for the one begging or soliciting [is guilty of a misdemeanor]." (Italics added.) Finally, section 25659.5, subdivision (d) provides: "Any purchaser of keg beer who *knowingly* provides false information as required by subdivision (a) is guilty of a misdemeanor." (Italics added.)

[12] Because the wording of these statutes shows the Legislature if it wishes knows how to express its intent that knowledge be an element of an offense, the absence of such a requirement in section 25658(c) indicates it intended no such requirement. (*People v. Murphy* (2001) 25 Cal.4th 136, 159, 105 Cal.Rptr.2d 387, 19 P.3d 1129.) "It is a settled rule of statutory construction that where a statute, with reference to one subject contains a given provision, the omission of such provision from a similar statute concerning a related subject is significant to show that a different legislative intent existed with reference to the different statutes." (*People v. Norwood* (1972) 26 Cal.App.3d 148, 156, 103 Cal.Rptr. 7.) In sum, the legislative history and context of section 25658(c) tilts heavily in favor of criminal liability without proof of knowledge or intent.

[13] The second factor we find significant is the severity of the punishment. (*Jorge M., supra*, 23 Cal.4th at p. 873, 98 Cal.Rptr.2d 466, 4 P.3d 297.) The greater the punishment for a particular crime, the more likely the Legislature intended to require the state to prove an offender acted with some culpable mental state. "For crimes which impose severe punishment, '... the usual presumption that a defendant must know the facts that make his conduct illegal should apply.' (***659*Staples v. United States* [(1994)] 511 U.S. [600,] 619, [114 S.Ct. 1793, 128 L.Ed.2d 608].)" (*People v. Coria* (1999) 21 Cal.4th 868, 878, 89 Cal.Rptr.2d 650, 985 P.2d 970.) For example, we reasoned in *Jorge M.* that the "Legislature's choice of potential felony [rather than misdemeanor] punishment ... reinforces the presumption expressed by [Penal Code] section 20 and suggests that correspondingly strong evidence of legislative intent is required to exclude mens rea from the offense." (*Jorge M., supra*, at p. 880, 98 Cal.Rptr.2d 466, 4 P.3d 297.)

Section 25658(c) is punishable as a misdemeanor, not a felony. In general, punishment **918 for a misdemeanor cannot exceed confinement in a county jail for up to six months, a fine not to exceed $1,000, or both. (peN.codE, § 19.) the maximum confinement for a misdemeanor is one year in jail. (*Id.*, § 19.2.) A violation of section 25658(c), though not a felony, provides for a punishment greater than that prescribed for the typical misdemeanor because a violator "shall be punished by imprisonment in a county jail *for a minimum term of *274 six months* not to exceed one year, by a fine not exceeding one thousand dollars ($1,000), or by both imprisonment and fine." (§ 25658, subd. (e)(3), italics added.)

Although the heightened penalty tends to distinguish section 25658(c) from the ordinary misdemeanor and suggests we should imply a mental element to this crime, a higher than normal penalty does not necessarily preclude a crime from being a public welfare offense; the severity of the punishment is, instead, a factor in the overall calculus in determining whether proof of a mental element must be implied. Here, the punishment falls somewhere in the middle, greater than that prescribed for the typical misdemeanor, but less than that for the typical wobbler or felony.

In addition to the potential length of possible incarceration, petitioner contends the reputational injury and personal disgrace he will suffer should his conviction for violating section 25658(c) be allowed to stand are factors relevant to determining the severity of the punishment. We agree. Discussing this issue, Justice Traynor opined for this court: "Under many statutes enacted for the protection of the public health and safety, e.g., traffic and food and drug regulations, criminal sanctions are relied upon even if there is no wrongful intent. *These offenses usually involve light penalties and no moral obloquy or damage to reputation.* Although criminal sanctions are relied upon, the primary purpose of the

statutes is regulation rather than punishment or correction. The offenses are not crimes in the orthodox sense, and wrongful intent is not required in the interest of enforcement." (*People v. Vogel* (1956) 46 Cal.2d 798, 801, fn. 2, 299 P.2d 850, italics added (*Vogel*), quoted in *Jorge M., supra*, 23 Cal.4th at p. 872, 98 Cal.Rptr.2d 466, 4 P.3d 297.) At issue in *Vogel* was the crime of bigamy. Justice Traynor further explained: "The severe penalty for bigamy [then up to a $5,000 fine, confinement in county jail, or in state prison for up to 10 years], *the serious loss of reputation conviction entails,* the infrequency of the offense, and the fact that it has been regarded for centuries as a crime involving moral turpitude, make it extremely unlikely that the Legislature meant to include the morally innocent to make sure the guilty did not escape." (*Vogel, supra*, at p. 804, 299 P.2d 850, fn. omitted, italics added.)

More recently, the Court of Appeal addressed the question whether the crime of misdemeanor animal cruelty (Pen.Code, § 597f, subd. (a)) required a showing of either civil or criminal negligence. (*People v. Speegle* (1997) 53 Cal.App.4th 1405, 62 Cal.Rptr.2d 384.) The court found the ***660** reputational injury associated with the criminal mistreatment and neglect of animals to justify the higher, criminal negligence standard. "In our society, those who mistreat animals are the deserved object of obloquy, and their conduct is wrongful of itself and not just as a matter of legislative declaration." (*Id.* at p. 1415, 62 Cal.Rptr.2d 384.)

***275** Like the bigamist in *Vogel, supra*, 46 Cal.2d 798, 299 P.2d 850, and the defendant who kept, neglected, and starved 200 poodles in *People v. Speegle, supra*, 53 Cal.App.4th 1405, 62 Cal.Rptr.2d 384, a person who purchases alcoholic beverages for an underage person, enabling that person to become intoxicated and to cause "great bodily injury or death," may expect severe censure from the general public. That drunk drivers, and especially underage drunk drivers, cause death and destruction on our highways is common knowledge, and anyone contributing to that societal tragedy would suffer significant reputational injury. Considering the heightened misdemeanor penalty together with the societal condemnation a violator of section 25658 (c) would encounter, we conclude the severity of the punishment weighs in favor of requiring some intent element for section 25658(c).

The third factor we find particularly pertinent is the seriousness of the harm or injury ****919** to the public. (*Jorge M., supra*, 23 Cal.4th at p. 873, 98 Cal.Rptr.2d 466, 4 P.3d 297.) The more serious and widespread the expected harm from the prohibited conduct, the more likely the Legislature intended to create a public welfare offense for which no proof of knowledge or intent is required. We explained the significance of this factor in *Jorge M.*: "The AWCA [Assault Weapons Control Act] is a remedial law aimed at protecting the public against a highly serious danger to life and safety. The Legislature presumably intended that the law be effectively enforceable, i.e., that its enforcement would actually result in restricting the number of assault weapons in the hands of criminals and the mentally ill. In interpreting the law to further the legislative intent, therefore, we should strive to avoid any construction that would significantly undermine its enforceability. This is not to suggest this court would or should read any element out of a criminal statute simply to ease the People's burden of proof. But, when a crime's statutory definition does not expressly include any scienter element, the fact the Legislature intended the law to remedy a serious and widespread public safety threat militates against the conclusion it also intended impliedly to include in the definition a scienter element especially burdensome to prove." (*Id.* at pp. 880-881, 98 Cal.Rptr.2d 466, 4 P.3d 297.)

The harm that section 25658(c) aims to avoid is the death and great bodily injury of underage drivers, their passengers and other collateral victims. Unlike section 25658(a), which criminalizes the mere furnishing, selling or giving of alcohol to an underage person, section 25658(c) includes two additional and significant elements: consumption of the beverage and serious injury or death. One may fairly conclude the law addresses a "serious and widespread public safety threat." (*Jorge M., supra*, 23 Cal.4th at p. 881, 98 Cal.Rptr.2d 466, 4 P.3d 297.) Implying an intent or knowledge requirement would necessarily undermine the statute's enforceability and reduce its effectiveness in reducing the *276 number of deaths and injuries associated with underage drinking. We conclude this factor militates against inferring an intent requirement for section 25658(c).

Considering these factors together, we find the legislative history of section 25658(c), its context, and the seriousness of ***661** the harm to the public particularly persuasive in demonstrating that no knowledge of age requirement should be imposed. Although the public obloquy for violation of the statute and the minimum of six months in jail for its violation result in a more severe penalty than normal for a misdemeanor offense, section 25658(c) remains a misdemeanor, not a felony nor even a wobbler. On

balance, we are convinced the legislative history provides the strongest evidence of legislative intent. That history indicates the Legislature intended that a conviction of violating section 25658(c) does not require a showing the offender had knowledge of the imbiber's age or other criminal intent. Accordingly, although the People must prove an accused "purchas[ed]" an alcoholic beverage "for" an underage person, the People need not also prove the accused knew that person was under 21 years of age.

D. The Mistake of Fact as to Age Defense

[14] Although the People need not prove knowledge of age in order to establish a violation of section 25658(c), the question remains whether petitioner was entitled to raise a mistake of fact defense concerning Turpin's age. The Penal Code sets forth the broad outlines of the mistake of fact defense. Section 26 of that code provides: "All persons are capable of committing crimes except [¶] ... [¶] Persons who committed the act or made the omission charged under an ignorance or mistake of fact, which disproves any criminal intent." Thus, for example, in a case where a defendant was convicted of murder for shooting his wife, but claimed he honestly believed the gun was not loaded, the trial court erred by refusing to instruct the jury that a person who entertains "an honest and reasonable belief in the existence of certain facts and circumstances which, if true, would make such act and omission lawful, is not guilty of a crime." **920(*People v. Goodman* (1970) 8 Cal.App.3d 705, 709, 87 Cal.Rptr. 665.) [FN10] Similarly, in a case where a defendant, charged with forcible rape and kidnapping, claimed a reasonable belief that the victim consented, we held the jury should have been instructed on a mistake of fact because, if a reasonable yet mistaken belief in consent was proved, the accused would not "possess the wrongful intent that is a *277 prerequisite under Penal Code section 20 to a conviction of either kidnapping ... or rape by means of force or threat." (*People v. Mayberry* (1975) 15 Cal.3d 143, 155, 125 Cal.Rptr. 745, 542 P.2d 1337.)

> FN10. *People v. Goodman, supra,* 8 Cal.App.3d 705, 87 Cal.Rptr. 665, was disapproved on another ground in *People v. Beagle* (1972) 6 Cal.3d 441, 451-452, 99 Cal.Rptr. 313, 492 P.2d 1.

[15] As a general matter, however, a mistake of fact defense is not available unless the mistake disproves an element of the offense. (*People v. Parker* (1985) 175 Cal.App.3d 818, 822, 223 Cal.Rptr. 284; 1 Witkin & Epstein, Cal.Criminal Law, *supra,* Defenses, § 39, p. 372.) Thus, in *Parker,* the defendant illegally entered a structure allegedly believing it was a commercial building. Because the building was in fact a residence, he was charged with and convicted of first degree burglary. (Pen.Code, § 459.) On appeal, the appellate court rejected his argument that the trial court had erred by failing to instruct the jury that his mistaken belief the building was an uninhabited structure constituted an affirmative defense. (*Parker, supra,* at p. 821, 223 Cal.Rptr. 284.) The appellate court reasoned that because the prosecution was not required to prove a defendant knew the building entered was a residential one in order to convict of ***662** burglary, "ignorance concerning the residential nature of a building does not render a defendant's unlawful entry into it with a felonious intent innocent conduct." (*Id.* at pp. 822-823, 223 Cal.Rptr. 284.)

Of course, murder (*People v. Goodman, supra,* 8 Cal.App.3d 705, 87 Cal.Rptr. 665), rape (*People v. Mayberry, supra,* 15 Cal.3d 143, 125 Cal.Rptr. 745, 542 P.2d 1337) and burglary (*People v. Parker, supra,* 175 Cal.App.3d 818, 223 Cal.Rptr. 284) all require proof of criminal intent, whereas public welfare offenses such as a violation of section 25658(c) do not. We addressed the mistake of fact defense for public welfare offenses in *People v. McClennegen* (1925) 195 Cal. 445, 234 P. 91, which involved a joint prosecution of several defendants for violating the state's antisyndicalism statute. It was alleged the defendants conspired to effect a change in the "industrial ownership and control in the existing economic and social system" and to "effect political changes in this state and in the United States of America by means and methods denounced by [the antisyndicalism] act." (*Id.* at p. 448, 234 P. 91.) Although we ultimately found the antisyndicalism act did not establish a public welfare crime, we discussed the mental state required for such offenses, which we denoted "statutory crimes." "The commission of various acts are made punishable under our criminal procedure, even though the doer be ignorant of the fact that the doing of the act constitutes an offense. *A mistake of fact, or a want of intent, is not in every case a sufficient defense for the violation of a criminal statute.* Statutes enacted for the protection of public morals, public health, and the public peace and safety are apt illustrations of the rule just announced. [Citations.] ... [¶] '... [T]herefore if a criminal intent is not an essential element of a statutory *278 crime, it is not necessary to prove any intent in order to justify a conviction. Whether a criminal intent or guilty knowledge is a necessary element of a

statutory offense is a matter of construction to be determined from the language of the statute, in view of its manifest purpose and design. There are many instances in recent times where the Legislature in the exercise of the police power has prohibited, under penalty, the performance of a specific act. The doing of the inhibited act constitutes the crime, and the moral turpitude or purity of the motive by which it was prompted *and knowledge or ignorance of its criminal character are immaterial circumstances on the question of guilt.* The only fact to be determined in these cases is whether the defendant did the act. In the interest of the public the burden is placed upon the actor of ascertaining at his peril whether his deed is within the prohibition of any criminal statute.' " **921(*Id.* at pp. 469-470, 234 P. 91, italics added.) In other words, for public welfare offenses for which intent need not be proved, a mistake of fact defense was unavailable.

People v. Schwartz, supra, 70 P.2d 1017, 28 Cal.App.2d Supp. 775, illustrates the point. That case involved the sale of impure or adulterated food, a public welfare offense. The court there explained that the defendant "does not need to engage in that business; but if he does engage in that business the law will not permit him to evade his responsibility to the public, declared by law, *by pleading ignorance* of the quality or contents of that which he may lawfully sell only if it is pure." (*Id.* at p. 778, 70 P.2d 1017, italics added.) Similarly, in *People v. Bickerstaff* (1920) 46 Cal.App. 764, 190 P. 656, a case involving the sale of a beverage with greater than 1 percent alcohol, "it is not a defense for the defendant to prove that he did not know the liquor sold by him contained the prohibited ***663 amount of alcohol." (*Id.* at p. 771, 190 P. 656.)

Notwithstanding the foregoing, the modern trend is to require proof of some criminal intent or knowledge in order to secure a criminal conviction. (*People v. Simon, supra,* 9 Cal.4th at p. 521, 37 Cal.Rptr.2d 278, 886 P.2d 1271.) *Vogel, supra,* 46 Cal.2d 798, 299 P.2d 850, is illustrative. In *Vogel,* the defendant was charged with bigamy in violation of Penal Code section 281, which at that time provided that "[e]very person having a husband or wife living, who marries any other person ... is guilty of bigamy." The trial court rejected the defendant's proffered evidence that he reasonably believed his first wife had divorced him, citing *People v. Kelly* (1939) 32 Cal.App.2d 624, 625, 90 P.2d 605, which held that "[a] second marriage under an erroneous assumption that the first marriage has been annulled or dissolved is not a defense to a charge of bigamy."

The *Vogel* court agreed the People need not establish the defendant knew he was still married to his first wife, but need only prove he was in fact still *279 married to her. Nevertheless, we concluded the defendant was entitled to raise a mistake of fact as an affirmative defense, explaining that he would not be "guilty of bigamy, if he had a bona fide and reasonable belief that facts existed that left him free to remarry." (*Vogel, supra,* 46 Cal.2d at p. 801, 299 P.2d 850; see also *People v. Stuart* (1956) 47 Cal.2d 167, 302 P.2d 5 [mistake of fact defense available to charge of selling adulterated drug]; *In re Marley, supra,* 29 Cal.2d at p. 530, 175 P.2d 832 [suggesting but not deciding mistake of fact defense available to charge of shortweighting].)

Most notable, perhaps, of this line of cases is *People v. Hernandez* (1964) 61 Cal.2d 529, 39 Cal.Rptr. 361, 393 P.2d 673. In that case, the defendant was charged with statutory rape (now called unlawful sexual intercourse; see Pen.Code, § 261.5), a crime that does not require proof the defendant knew the prosecutrix's age. The defendant claimed "he had in good faith a reasonable belief that the prosecutrix was 18 years or more of age" (*Hernandez, supra,* at p. 530, 39 Cal.Rptr. 361, 393 P.2d 673), whereas in fact she was 17 years nine months old. Since the 19th century the law had made the defense of mistake of fact as to age unavailable for this crime. (*People v. Ratz* (1896) 115 Cal. 132, 134-135, 46 P. 915.) In an example of an opinion's venerability offering it no protection, this court overruled *Ratz* and held the defendant was entitled to raise a defense of mistake of fact. Citing Penal Code section 20 and *Vogel, supra,* 46 Cal.2d 798, 299 P.2d 850, we stated: "We are persuaded that the reluctance to accord to a charge of statutory rape the defense of a lack of criminal intent has no greater justification than in the case of other statutory crimes, where the Legislature has made identical provision with respect to intent. ' "At common law an honest and reasonable belief in the existence of circumstances, which, if true, would make the act for which the person is indicted an innocent act, has always been held to be a good defense.... [I]t has never been suggested that these exceptions do not equally apply to the case of statutory offenses unless they are excluded expressly or by necessary implication." ' " (*Hernandez, supra,* at pp. 535-536, 39 Cal.Rptr. 361, 393 P.2d 673.)

These cases follow the modern trend away from imposing strict liability for criminal offenses and to require some showing of knowledge **922 or criminal intent, even if only criminal negligence.

(See *Jorge M., supra,* 23 Cal.4th at p. 887, 98 Cal.Rptr.2d 466, 4 P.3d 297 ["the People bear the burden of proving the defendant *knew or should have known* the firearm ***664** possessed the characteristics bringing it within the" Assault Weapons Control Act].) In addition to interpreting statutory language to require some showing of criminal intent, as we did in *Jorge M.*, we may permit a conviction absent evidence of knowledge, but allow a defendant to raise a mistake of fact in his defense, as in *Vogel, supra,* 46 Cal.2d 798, 299 P.2d 850, and *People v. Hernandez, supra,* 61 Cal.2d 529, 39 Cal.Rptr. 361, 393 P.2d 673. Although by *280 tradition (and due process) the People often have the burden to prove knowledge or intent, shifting the burden to the defendant to prove his lack of guilty or criminal intent is in some cases also permissible. Thus, for example, addressing the crime of bigamy in *Vogel,* we explained that "guilty knowledge" was " formerly a part of the definition of bigamy [but] was omitted from [Penal Code] section 281 *to reallocate the burden of proof on that issue* in a bigamy trial. Thus, the prosecution makes a prima facie case upon proof that the second marriage was entered into while the first spouse was still living [citations], and his bona fide and reasonable belief that facts existed that left the defendant free to remarry is a defense to be proved by the defendant." *(Vogel, supra,* at pp. 802-803, 299 P.2d 850, italics added, fn. omitted; see also *People v. Taylor* (2001) 93 Cal.App.4th 933, 952-953, 114 Cal.Rptr.2d 23 (conc. & dis. opn. of Morrison, J.) [suggesting the same reallocation of the burden of proving intent in a prosecution for possession of a cane sword in violation of Pen.Code, § 12020, subd. (a) (1)].)

As in *Vogel, supra,* 46 Cal.2d 798, 299 P.2d 850, we conclude that, although the prosecution need not prove an offender's knowledge of age in order to establish a violation of section 25658(c), petitioner was entitled to raise an affirmative defense, for which he would bear the burden of proof, that he honestly and reasonably believed Turpin was at least 21 years old. Recognizing the viability of a mistake of fact defense is consistent with the modern trend away from strict liability for criminal offenses as well as with Penal Code section 20 and the statutory scheme of which Business and Professions Code section 25658(c) is but a part. Article 3, chapter 16, division 9 of the Business and Professions Code contains both section 25658(c) and 25660, and the two statutes must be construed together. *(Renee J. v. Superior Court, supra,* 26 Cal.4th at p. 743, 110 Cal.Rptr.2d 828, 28 P.3d 876.) Section 25660, relating to licensees, provides in pertinent part: "Proof that the defendant-licensee, or his employee or agent, *demanded, was shown and acted in reliance upon such [described] bona fide evidence* [of majority and identity] in any transaction, employment, use or permission forbidden by Sections 25658, 25663 or 25665 *shall be a defense* to any criminal prosecution therefor or to any proceedings for the suspension or revocation of any license based thereon." (Italics added.) Section 25660 thus specifically authorizes licensees to raise a mistake of fact defense as to the age of a customer to whom alcohol was sold or served. "Although a violation of section 25658 can occur despite the seller's lack of knowledge that the purchaser is under the age of 21, the seller's liability is not absolute because 'the Legislature has furnished a procedure whereby he may protect himself, namely, ... section 25660 [allowing the seller to rely on bona fide evidence of majority and identity].' " *(Provigo Corp. v. Alcoholic Beverage Control Appeals Bd., supra,* 7 Cal.4th at pp. 564-565, 28 Cal.Rptr.2d 638, 869 P.2d 1163.)

*281 Does section 25660 suggest the Legislature's intent to permit a similar defense to nonlicensees? We hold that it does. A contrary conclusion would lead to an absurd ***665** result (see, e.g., *In re J. W., supra,* 29 Cal.4th at p. 210, 126 Cal.Rptr.2d 897, 57 P.3d 363; *City of Cotati v. Cashman* (2002) 29 Cal.4th 69, 77, 124 Cal.Rptr.2d 519, 52 P.3d 695), to wit, while licensees, who may serve alcoholic beverages to dozens or even hundreds of customers in a single night, can demand, check and act in reliance on bona fide evidence of identity and age and thereby enter a safe harbor, protected from criminal liability, a nonlicensee who serves alcoholic beverages only occasionally and to just a few persons, and who similarly demands, checks **923 and acts in reliance on bona fide evidence of identity and age, and may honestly and reasonably believe the person for whom he or she purchased alcohol was over 21 years old, would, absent a mistake of fact defense be subject to criminal liability, punishable by a minimum of six months in jail. (§ § 25658(c), 25658, subd. (e)(3).) The Legislature could not have intended this disparity of treatment.

We conclude the trial court erred in refusing petitioner's offer to prove he honestly and reasonably believed Turpin was over 21 years old.

CONCLUSION

We reach the following conclusions: (1) Section 25658(c) is not limited to the shoulder tap scenario, but applies whenever an offender *purchases* alcoholic beverages *for* an underage person; (2) section

25658(c) does not apply in the typical social party host situation, because the host does not purchase alcohol for any particular guest; (3) the prosecution need not prove an offender knew (or should have known) the age of the person to whom he or she furnished alcohol in order to prove a violation of section 25658(a); (4) the prosecution need not prove an offender knew (or should have known) the age of the person for whom he or she purchased alcohol in order to prove a violation of section 25658(c); and (5) a person charged with violating section 25658(c) may defend against the charge by claiming an honest and reasonable belief that the person for whom he or she purchased alcohol was 21 years of age or older. The defendant bears the burden of proof for this affirmative defense.

Because the trial court refused to admit evidence that petitioner believed Turpin was over 21 years old, it erred. The judgment of the Court of Appeal denying the petition for writ of habeas corpus is reversed and the cause remanded to that court. The Court of Appeal is directed to grant the petition for a writ of habeas corpus, vacate the judgment of the Sacramento County Superior Court in *People v. Michael Lee Jennings*, No. 00M07614, and remand the case to the superior court for further proceedings. The clerk of the ***282** Court of Appeal is directed to remit a certified copy of this opinion to the superior court for filing, and respondent shall serve another copy thereof on the prosecuting attorney in conformity with Penal Code section 1382, subdivision (a)(2). (See *In re Gay* (1998) 19 Cal.4th 771, 830, 80 Cal.Rptr.2d 765, 968 P.2d 476.)

WE CONCUR: GEORGE, C.J., KENNARD, BAXTER, CHIN, BROWN and MORENO, JJ.

34 Cal.4th 254, 95 P.3d 906, 17 Cal.Rptr.3d 645, 04 Cal. Daily Op. Serv. 7765, 2004 Daily Journal D.A.R. 10,456

Briefs and Other Related Documents (Back to top)

- 2003 WL 23873441 (Appellate Petition, Motion and Filing) Petitioner's Reply Brief on the Merits (Sep. 22, 2003)Original Image of this Document (PDF)

- S115009 (Docket) (Apr. 08, 2003)

END OF DOCUMENT

Committee Report for 1993 California Assembly Bill No. 1663, 1993-94 Regular Session

Date of Hearing: August 23, 1993

Appropriations Committee Fiscal Summary

Hearing Date: 8/23/93 AB 1663 (Napolitano)

Amended: 8/18/93 Policy Vote: L Gov 6-0

Consultant: Happy Chastain

BILL SUMMARY: AB 1663 would prohibit a city, county or special district from hiring an employee or volunteer who has been convicted of certain sex crimes.

Fiscal Impact (in thousands)

Major Provisions	1993-94	1994-95	1995-96	Fund
Background checks	Indeterminable	costs, offset by fees		Local

STAFF COMMENTS: Existing law does not require local officials to conduct background checks on prospective employees. School districts are prohibited from hiring convicted child molesters for certain types of employment. By law, locals may request the Department of Justice to conduct a background check on prospective employees or volunteers.

This bill would not be considered a state mandate because the local would have the ability to charge a fee for the background check. However, the Attorney General indicates under **Penal Code 11105.3** locals may request background checks and the DOJ must supply this information at no cost. The Attorney General expressed a concern about the workload this bill would mandate, with no way to recoup costs. There is currently a three-month waiting period for these background checks to be conducted due to the workload. This waiting period could be a major stumbling block to locals who are considering individuals for summer employment in parks and recreation area.

STAFF NOTES the bill should be amended to include cities and counties (regional parks).

Senate Committee on Appropriations

Comm. Rep. CA A.B. 1663

Committee Report for 1993 California Assembly Bill No. 1663, 1993-94 Regular Session

END OF DOCUMENT

STATE OF CALIFORNIA ARNOLD SCHWARZENEGGER, *Governor*

COMMISSION ON STATE MANDATES
980 NINTH STREET, SUITE 300
SACRAMENTO, CA 95814
PHONE: (916) 323-3562
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October 11, 2005

Harold T. Fujita
City of Los Angeles
Department of Recreation and Parks
200 North Main Street, Suite 1360
Los Angeles, CA 90012

And Affected Parties and State Agencies (See Enclosed Mailing List)

Re: **Local Recreational Areas: Background Screenings**, *01-TC-11*
City of Los Angeles - Department of Recreation and Parks, Claimant
Statutes 2001, Chapter 777
Public Resources Code, Section 5164; Subdivision (b)(1) and (b)(2).

Dear Mr. Fujita:

The draft staff analysis for this test claim is enclosed for your review and comment.

Written Comments

Any party or interested person may file written comments on the draft staff analysis by **November 1, 2005**. You are advised that the Commission's regulations require comments filed with the Commission to be simultaneously served on other interested parties on the mailing list, and to be accompanied by a proof of service on those parties. If you would like to request an extension of time to file comments, please refer to section 1183.01, subdivision (c)(1), of the Commission's regulations.

Hearing

This test claim is set for hearing on Friday, **December 9, 2005**, at 10:30 a.m. in Room 126 of the State Capitol, Sacramento, California. The final staff analysis will be issued approximately three weeks before the hearing. Please let us know in advance if you or a representative of your agency will testify at the hearing, and if other witnesses will appear. If you would like to request postponement of the hearing, please refer to section 1183.01, subdivision (c)(2), of the Commission's regulations.

If you have any questions on the above, please contact Eric Feller, Commission Counsel, at (916) 323-8221.

Sincerely,

PAULA HIGASHI
Executive Director

Enc. Draft Staff Analysis

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Hearing Date: December 9, 2005
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ITEM ___

TEST CLAIM
DRAFT STAFF ANALYSIS

Public Resources Code Section 5164, Subdivisions (b) (1) and (2),
Statutes 2001, Chapter 777

Local Recreational Areas: Background Screenings (01-TC-11)

City of Los Angeles, Claimant

EXECUTIVE SUMMARY

STAFF WILL INSERT THE EXECUTIVE SUMMARY IN THE FINAL ANALYSIS.

STAFF ANALYSIS

Claimant

City of Los Angeles

Chronology

02/08/02	Claimant files test claim with the Commission
03/11/02	Department of Justice submits a statement of non-response
05/03/02	Department of Finance files comments on test claim with the Commission
10/11/05	Commission staff issues draft staff analysis

Background

Public Resources Code section 5164 was enacted in 1993 (Stats. 1993, ch. 972) to prohibit a city, county or special district from hiring a volunteer or employee for positions having supervisory or disciplinary authority over any minor at specified local agency recreational areas if the employee or volunteer has been convicted of specified crimes. Section 5164 was enacted because of a volunteer coach's 1992 conviction for kidnapping and molesting a boy who was coached at Hoover Recreation Center in Los Angeles County. The coach was a registered sex offender whose background had not been inquired about by the recreation center.[1] The Legislature reacted by enacting section 5164.

The test claim statute (Stats. 2001, ch. 777, Assem. Bill No. 351)[2] amended Public Resources Code section 5164 as follows (marked in strikeout and underline).

> (a) A county or city or city and county or special district shall not hire a person for employment, or hire a volunteer to perform services, at a county or city or city and county or special district operated park, playground, recreational center, or beach used for recreational purposes, in a position having supervisory or disciplinary authority over any minor if ~~the~~ that person has been convicted of any offense specified in paragraph (1) of subdivision ~~(g)~~ (h) of Section 11105.3 of the Penal Code, or any offense specified in paragraph (3) of subdivision ~~(g)~~ (h) of Section 11105.3 of the Penal Code. However, this section shall not apply to a misdemeanor conviction under paragraph (3) of subdivision ~~(g)~~ (h) of Section 11105.3 of the Penal Code unless ~~the~~ that person has a total of three or more misdemeanor or felony convictions specified in Section 11105.3 of the Penal Code within the immediately preceding 10-year period.
>
> (b) (1) To give effect to this section, a county or city or city and county or special district ~~may~~ shall require each such prospective employee or volunteer to complete an application that inquires as to whether or not that individual has

[1] Assembly Committee on Local Government, Analysis of Assembly Bill No. 1663, as amended April 12, 1993 (1993-1994 Reg. Sess.), page 2.

[2] Section 5164 has been amended since the test claim filing by Statutes 2004, chapter 184, but the amendments are not part of this analysis.

been convicted of any offense specified in subdivision (a). The county or city or city and county or special district shall screen, pursuant to Section 11105.3 of the Penal Code, any such prospective employee or volunteer having supervisory or disciplinary authority over any minor, for ~~the~~ that person's criminal background.

(b) (2) Any local agency requests for Department of Justice records pursuant to this subdivision shall include the prospective employee's or volunteer's fingerprints, which may be taken by the local agency,[3] and any other data specified by the Department of Justice. The request shall be made on a form approved by the Department of Justice. No fee shall be charged to the local agency for requesting the records of a prospective volunteer pursuant to the subdivision.

Penal Code section 11105.3, subdivision (h)(3), (now Pub. Res. Code, § 5164 subd. (a)(2))[4] listed the crimes for which to screen prospective employees or volunteers who would have supervisory or disciplinary authority over minors as follows:

- Assault with intent to commit rape, sodomy, oral copulation, rape in concert with another, lascivious acts upon a child, or penetration of genitals or anus with a foreign object (Pen. Code, § 220)
- Unlawful sexual intercourse with a person under 18 (Pen. Code, § 261.5)
- Spousal rape (Pen. Code, § 262)
- Willful harm or injury to a child (Pen. Code, § 273a)
- Corporal punishment or injury of child (Pen. Code, § 273d)
- Willful infliction of corporal injury (Pen. Code, § 273.5)
- Sex offenses for which registration is required (Pen. Code, § 290) except the sexual battery offense in Penal Code 243.4, subdivision (d).
- Any felony or misdemeanor conviction within 10 years of the date of the employer's request if the person has a total of three or more misdemeanor or felony convictions within the immediately preceding 10-year period.[5]

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[3] If the local agency takes the fingerprints, it may charge a fee not to exceed $10 (Pen. Code, § 13300, subd. (e)). Other entities may charge more; see <http://ag.ca.gov/fingerprints/publications/contact.htm> [as of August 18, 2005].

[4] Former Penal Code section 11105.3, subdivision (h)(3), was amended by Statutes 2004, chapter 184, and moved to Public Resources Code section 5164, subdivision (a)(2).

[5] Statutes 2004, chapter 184, amended this provision as follows: "(B) Any felony or misdemeanor conviction specified in subparagraph (C) within 10 years of the date of the employer's request. (C) Any felony conviction that is over 10 years old, if the subject of the request was incarcerated within 10 years of the employer's request, for a violation or attempted violation of any of the offenses specified in Chapter 3 (commencing with Section 207) of Title 8

Although Statutes 2004, chapter 184 amended the list of crimes for which to screen prospective employees or volunteers who would have supervisory or disciplinary authority over minors (see footnote 5), that amendment is not part of this test claim or this analysis.

Claimant's Position

Claimant City of Los Angeles contends that the test claim legislation constitutes a reimbursable state-mandated program pursuant to article XIII B, section 6 of the California Constitution and Government Code section 17514. Claimant requests reimbursement for the costs of screening employees in accordance with section 11105.3 of the Penal Code. According to claimant's test claim:

> An individual can be screened by requesting the Department of Justice [DOJ] to furnish any criminal history record it has on a prospective employee or volunteer. Such a request necessitates taking the fingerprints of the individual and submitting the fingerprints to the DOJ for processing. The DOJ does not charge a fee to fulfill the request for the record of each prospective volunteer. The DOJ charges a fee of $32.00 to fulfill the request for the record of each prospective employee. [¶]...[¶]
>
> As of November 2001, the City of Los Angeles Department of Recreation and Parks has hired 122 employees whose fingerprints had to be processed by the DOJ pursuant to Section 5164 of the Public Resources Code at a cost to the City of $3904.00. It is estimated that the City will incur a total cost of approximately $32,000 to achieve compliance with the Code during this current fiscal year (07/01/2001 to 06/30/2002).[6]

The claim includes a declaration certifying that the costs stated are true and correct.

State Agency Positions

The Department of Finance, in a letter received May 3, 2002, states that, "as a result of our review, we have concluded that the statute may have resulted in costs mandated by the state."

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of part 1 of the Penal Code, Section 211 or 215 of the Penal Code, wherein it is charged and proved that the defendant personally used a deadly or dangerous weapon, as provided in subdivision (b) of Section 12022 of the Penal Code, in the commission of that offense, Section 217.1 of the Penal Code, Section 236 of the Penal Code, any of the offenses specified in Chapter 9 (commencing with Section 240) of Title 8 of Part 1 of the Penal Code, or any of the offenses specified in subdivision (c) of Section 667.5 of the Penal Code, provided that no record of a misdemeanor conviction shall be transmitted to the requester unless the subject of the request has a total of three or more misdemeanor convictions, or a combined total of three or more misdemeanor and felony convictions, for violations listed in this section within the 10-year period immediately preceding the employer's request or has been incarcerated for any of those convictions within the preceding 10 years."

[6] A claimant must incur at least $1000 in costs to file a test claim with the Commission or a reimbursement claim with the State Controller's Office (Gov. Code, § 17564, subd. (a)).

The Department of Justice (DOJ), in a letter received March 11, 2002, states that the test claim statute "does not modify DOJ processing procedures. As such, the DOJ is submitting a statement of non-response to the Commission on State Mandates."

Discussion

The courts have found that article XIII B, section 6 of the California Constitution[7] recognizes the state constitutional restrictions on the powers of local government to tax and spend.[8] "Its purpose is to preclude the state from shifting financial responsibility for carrying out governmental functions to local agencies, which are 'ill equipped' to assume increased financial responsibilities because of the taxing and spending limitations that articles XIII A and XIII B impose."[9] A test claim statute or executive order may impose a reimbursable state-mandated program if it orders or commands a local agency or school district to engage in an activity or task.[10]

In addition, the required activity or task must be new, constituting a "new program," or it must create a "higher level of service" over the previously required level of service.[11]

The courts have defined a "program" subject to article XIII B, section 6, of the California Constitution, as one that carries out the governmental function of providing public services, or a law that imposes unique requirements on local agencies or school districts to implement a state policy, but does not apply generally to all residents and entities in the state.[12] To determine if the program is new or imposes a higher level of service, the test claim legislation must be compared with the legal requirements in effect immediately before the enactment of the test claim

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[7] Article XIII B, section 6, subdivision (a), (as amended by Proposition 1A in 2004) provides:

> (a) Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the State shall provide a subvention of funds to reimburse that local government for the costs of the program or increased level of service, except that the Legislature may, but need not, provide a subvention of funds for the following mandates: (1) Legislative mandates requested by the local agency affected. (2) Legislation defining a new crime or changing an existing definition of a crime. (3) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975.

[8] *Department of Finance v. Commission on State Mandates (Kern High School Dist.)* (2003) 30 Cal.4th 727, 735.

[9] *County of San Diego v. State of California (County of San Diego)*(1997) 15 Cal.4th 68, 81.

[10] *Long Beach Unified School Dist. v. State of California* (1990) 225 Cal.App.3d 155, 174.

[11] *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 878 (*San Diego Unified School Dist.)*; *Lucia Mar Unified School District v. Honig* (1988) 44 Cal.3d 830, 835-836 (*Lucia Mar*).

[12] *San Diego Unified School Dist., supra,* 33 Cal.4th 859, 874, (reaffirming the test set out in *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56; *Lucia Mar, supra,* 44 Cal.3d 830, 835.)

legislation.[13] A "higher level of service" occurs when the new "requirements were intended to provide an enhanced service to the public."[14]

Finally, the newly required activity or increased level of service must impose costs mandated by the state.[15]

The Commission is vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6.[16] In making its decisions, the Commission must strictly construe article XIII B, section 6 and not apply it as an "equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities."[17]

Issue 1: Is the test claim legislation subject to article XIII B, section 6 of the California Constitution?

The first issue is whether the test claim statute imposes state-mandated activities on local agencies. Staff finds that it does.

The test claim statute states that the local agency "shall require each such prospective employee or volunteer to complete an application that inquires as to whether or not that individual has been convicted of any offense specified in subdivision (a)."[18] The offenses inquired after include assault with intent to commit specified sexual acts upon a child (Pen. Code, § 220), unlawful sexual intercourse with a person under 18 (Pen. Code, § 261.5), spousal rape (Pen. Code, § 262), willful harm or injury to a child (Pen. Code, § 273a), corporal punishment or injury of child (Pen. Code, § 273d), willful infliction of corporal injury (Pen. Code, § 273.5), sex offenses for which registration is required (Pen. Code, § 290) except the sexual battery offense in Penal Code 243.4, subdivision (d), or any felony or misdemeanor conviction within 10 years of the date of the employer's request if the person has a total of three or more misdemeanor or felony convictions within the immediately preceding 10-year period.

The test claim statute also states that the local agency "shall screen, pursuant to Section 11105.3 of the Penal Code, any such prospective employee or volunteer having supervisory or disciplinary authority over any minor, for that person's criminal background."[19]

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[13] *San Diego Unified School Dist., supra,* 33 Cal.4th 859, 878; *Lucia Mar, supra*, 44 Cal.3d 830, 835.

[14] *San Diego Unified School Dist., supra,* 33 Cal.4th 859, 878.

[15] *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487; *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1265, 1284 (*County of Sonoma*); Government Code sections 17514 and 17556.

[16] *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551, 17552.

[17] *County of Sonoma, supra,* 84 Cal.App.4th 1265, 1280, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

[18] Public Resources Code section 5164, subdivision (b)(1).

[19] *Ibid.*

Both of these activities are mandatory because the statutory language uses the word "shall."[20] "[The local agency] *shall* require each prospective employee or volunteer to complete an application ... [The local agency] *shall* screen ... any such prospective employee or volunteer...." [Emphasis added.] Therefore, staff finds that the test claim statute imposes state-mandated activities on local agencies to: (1) require prospective employees or volunteers to complete an application that inquires into their criminal histories, and (2) effect criminal background screenings, pursuant to Penal Code section 11105.3, for prospective employees or volunteers having supervisory or disciplinary authority over minors.

Subdivision (b)(2) of the statute, which preceded the test claim statute, states that the local agency, when requesting DOJ records, "shall include the prospective employee's or volunteer's fingerprints, ... and any other data specified by the Department of Justice. The request shall be made on a form approved by the Department of Justice."[21] Even though this provision was in preexisting law, the test claim statute amendment to subdivision (b)(1), which required local agencies to screen potential employees and volunteers, makes the (b)(2) screening procedures a requirement. Therefore, the screening procedure (except for taking fingerprints) in subdivision (b)(2) also imposes a state-mandated activity on local agencies.

Although the test claim statute requires the local agency to submit fingerprints to DOJ, the local agency is not required to take them. Subdivision (b)(2) of the test claim statute requires the local agency to submit the fingerprints, but states that they "may be taken by the local agency." If the local agency takes the fingerprints, it may charge a fee not to exceed $10, and other entities may charge more.[22] Since whether the local agency takes the fingerprints is permissive, and the prints may be taken by the local agency or another entity at the expense of the prospective employee or volunteer, staff finds that taking fingerprints is not a state-mandated activity and therefore, not subject to article XIII B, section 6.

The second issue is whether the test claim legislation constitutes a program within the meaning of article XIII B, section 6. Staff finds that it does.

In order for the test claim legislation to be subject to article XIII B, section 6 of the California Constitution, it must constitute a "program," defined as a program that carries out the governmental function of providing a service to the public, *or* laws which, to implement a state policy, impose unique requirements on local governments and do not apply generally to all residents and entities in the state.[23] Only one of these findings is necessary to trigger article XIII B, section 6.[24]

The test claim statute requires local agencies to require prospective employees or volunteers who have supervisory or disciplinary authority over minors to complete an application that inquires as

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[20] Public Resources Code section 15 states, "'Shall' is mandatory and 'may' is permissive."

[21] Public Resources Code section 5164, subdivision (b)(2).

[22] Penal code section 13300, subdivision (e). As to other entities' ability to charge more, see <http://ag.ca.gov/fingerprints/ publications/contact.htm> [as of August 18, 2005].

[23] *County of Los Angeles, supra,* 43 Cal.3d 46, 56.

[24] *Carmel Valley Fire Protection Dist.* (1987) 190 Cal.App.3d 521, 537.

to their criminal histories, and requires screening specified employees or volunteers in order to protect the public from those convicted of specified crimes. These activities are peculiarly governmental public safety, crime prevention functions administered by local agencies as a service to the public, primarily to protect children who participate in youth recreational programs. Moreover, the test claim legislation imposes unique requirements on local agencies that do not apply generally to all residents and entities of the state. Therefore, staff finds the test claim statutes constitute a "program" within the meaning of article XIII B, section 6.

Issue 2: Does the test claim legislation impose a new program or higher level of service on local agencies within the meaning of article XIII B, section 6 of the California Constitution?

To determine if the "program" is new or imposes a higher level of service, a comparison must be made between the test claim legislation and the legal requirements in effect immediately before enacting the test claim legislation.[25] Each activity is discussed separately.

Application: Subdivision (b)(1) of the test claim statute states that the local agency shall require each prospective employee or volunteer "to complete an application that inquires as to whether or not the individual has been convicted of any offense specified ...."

Prior law prohibited a local agency from hiring an individual convicted of an offense specified in Penal Code section 11105.3 subdivision (h)(1) and (h)(3).[26] There was no previous requirement, however, for prospective employees or volunteers to complete an application that inquires after their criminal histories. Therefore, staff finds that requiring prospective employees or volunteers to complete an application that inquires after their criminal histories is a new program or higher level of service.

Screening employees: Subdivision (b)(1) of the test claim statute states, "The [local agency] ... shall screen, pursuant to Section 11105.3 of the Penal Code, any such prospective employee or volunteer having supervisory or disciplinary authority over any minor, for that person's criminal background." The screening procedure of Section 11105.3 is stated in subdivision (b) as follows:

> 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 [DOJ]. 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. ...[27]

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[25] *San Diego Unified School Dist., supra,* 33 Cal.4th 859, 878; *Lucia Mar, supra,* 44 Cal.3d 830, 835.

[26] The offenses are now listed in Public Resources Code section 5164 subdivision (a)(2).

[27] Penal Code section 11105.3, subdivision (b). The current DOJ fee is $32. See <http://www.ag.ca.gov/fingerprints/forms/fees.pdf> as of October 3, 2005.

As to the DOJ fee, the test claim statute states that no fee is required for a prospective volunteer.[28]

Likewise, subdivision (b)(2) of the test claim statute states, "Any local agency requests for Department of Justice records pursuant to this subdivision shall include the prospective employee's or volunteer's fingerprints, which may be taken by the local agency, and any other data specified by the Department of Justice. The request shall be made on a form approved by the Department of Justice."

Subdivision (b)(2) predates the test claim statute, so if the local agency elected to screen a prospective employee or volunteer, the local agency was required to comply with the procedure in (b)(2). As discussed above, however, enactment of the test claim statute made the screening mandatory for local agencies rather than voluntary. Therefore, as a new requirement, staff finds that local agency screening of employees or volunteers for positions having supervisory or disciplinary authority over minors is a new program or higher level of service. The screening procedure outlined in Penal Code section 11105.3 and subdivision (b)(2) of the test claim statute requires forwarding to DOJ the following: (1) the prospective employee's or volunteer's fingerprints, (2) any other data specified by DOJ on a DOJ form, and (3) DOJ's fingerprint processing fee[29] (except that no fee is required for a prospective volunteer).[30]

Issue 3: Does the test claim statute impose "costs mandated by the state" within the meaning of Government Code sections 17514 and 17556?

In order for the test claim statute's activities to impose a reimbursable state-mandated program under article XIII B, section 6 of the California Constitution, the activities must impose increased costs mandated by the state.[31] In addition, no statutory exceptions as listed in Government Code section 17556 can apply. Government Code section 17514 defines "costs mandated by the state" as follows:

> [A]ny increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, which mandates a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution.

In its test claim, claimant states that it "hired 122 employees whose fingerprints had to be processed by the DOJ pursuant to Section 5164 of the Public Resources Code at a cost to the City of $3904.00. It is estimated that the City will incur a total cost of approximately $32,000 to

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[28] Public Resources Code section 5164, subdivision (b)(2).

[29] Penal Code section 11105.3, subdivision (b).

[30] Public Resources Code section 5164, subdivision (b)(2).

[31] *Kern High School Dist., supra,* 30 Cal. 4th 727, 736; *Lucia Mar Unified School Dist., supra,* 44 Cal.3d 830, 835; Government Code section 17514.

achieve compliance with the Code during this current fiscal year (07/01/2001 to 06/30/2002)." Therefore, the claimant has shown costs sufficient to state a claim.[32]

The final issue is whether the test claim statute imposes costs mandated by the state within the meaning of Government Code sections 17556 and 17514.

The test claim statute requires local agencies to:

- Require each prospective employee or volunteer who would have disciplinary or supervisory over minors "to complete an application that inquires as to whether or not the individual has been convicted of any offense specified ...."
- Screen, pursuant to Penal Code section 11105.3, prospective employees or volunteers who would have supervisory or disciplinary authority over minors. Penal Code section 11105.3 outlines the screening procedure: "The request [for fingerprint processing] shall be on a form approved by the department, and the department my charge a fee to be paid by the employer, human resource agency, or applicant for the actual cost of processing the request." As stated above, the screening procedure consists of forwarding to DOJ the following:
    1. the prospective employee's or volunteer's fingerprints;
    2. any other data specified by DOJ on a DOJ form, and;
- For prospective employees only, paying DOJ's fingerprint processing fee[33] (no fee is required for a prospective volunteer).[34]

Applications: As to including criminal history on job applications, revising and printing job applications that inquire as to the applicants' criminal history would be a one-time activity. Requiring local agencies to require each prospective employee or volunteer who would have supervisory or disciplinary authority over minors to complete an application that inquires as to whether or not the prospective employee or volunteer has been convicted of any offense specified in Public Resources Code section 5164, subdivision (a),[35] is a new state-mandated activity, and none of the exceptions in Government Code section 17556 to finding costs mandated by the state apply to this activity. Therefore, staff finds that this one-time activity imposes "costs mandated by the state" within the meaning of Government Code sections 17514.

Screening Employees: The issue is whether local agencies that request the background screenings from DOJ have the authority to charge a fee to prospective employees within the meaning of Government Code section 17556, subdivision (d), or have offsetting savings within the meaning of Government Code section 17556, subdivision (e).

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[32] The claimant must incur a minimum of $1000 to file a claim. Government Code section 17564, subdivision (a).

[33] Penal Code section 11105.3, subdivision (b).

[34] Public Resources Code section 5164, subdivision (b)(2).

[35] These offenses were listed in former Penal Code section 11105.3 prior to Statutes 2004, chapter 184.

In interpreting a statute, the Commission, like a court, focuses on its plain meaning.

> [W]e look to the intent of the Legislature in enacting the law, being careful to give the statute's words their plain, commonsense meaning. If the language of the statute is not ambiguous, the plain meaning controls and resort to extrinsic sources to determine the Legislature's intent is unnecessary. [36]

Public Resources Code section 5164 states that the local agency "shall screen, pursuant to Section 11105.3 of the Penal Code, any ... prospective employee or volunteer ... ." According to Penal Code section 11105.3, DOJ's fee for screening may be paid by "the employer, human resource agency, or applicant for the actual cost of processing the request."[37] The fee authority in 11105.3 is authority for a fingerprint-processing fee granted to DOJ.

The plain meaning of section 11105.3, however, does not grant the local agency fee authority for this screening, nor does it expressly grant the local agency authority to pass on the cost of the DOJ- screening to a prospective employee.

The legislative history of Public Resources Code section 5164 (Stats. 1993, ch. 972) indicates that when section 5164 was enacted, the Legislature intended that local agencies have fee authority for the background screening,[38] even though this original statute made the screening provision permissive (while it prohibited hiring an employee or volunteer who had been convicted of specified crimes). However, neither the plain meaning of section 5164, nor section 11105.3 of the Penal Code support this stated Legislative intention.

Therefore, staff finds that the test claim statute imposes "costs mandated by the state" within the meaning of Government Code sections 17514 and 17556 for the activity of screening prospective employees by submitting to DOJ the required fingerprints, form(s), and fee paid by the local agency. Reimbursement would not be required if the DOJ fingerprint processing fee were paid by the applicant rather than the local agency because the local agency would not incur the cost.

Local agencies do not incur costs for submitting fingerprints of prospective volunteers to DOJ because Public Resources Code section 5164, subdivision (b)(2) precludes the DOJ fee for volunteers. Thus, as to prospective volunteers that must be screened, staff finds that the local agencies do not incur DOJ-imposed fingerprint processing costs, and therefore are not subject to costs mandated by the state for screening prospective volunteers.

Conclusion

Staff finds that the test claim statute imposes a reimbursable state-mandated program on local agencies within the meaning of article XIII B, section 6 of the California Constitution and Government Code sections 17514 and 17556 for the following activities:

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[36] *In re Jennings* (2004) 34 Cal. 4th 254, 263.

[37] Penal Code section 11105.3, subdivision (b), as amended by Statutes 1992, chapter 1227. Prior to this amendment, section 11105.3 stated that DOJ may charge a fee to be paid by "the requester."

[38] Senate Committee on Appropriations, Analysis of Assembly Bill No. 1663, as amended August 18, 1993 (1993-1994 Reg. Sess.), page 1.

- Requiring each local agency to have each prospective employee or volunteer who have supervisory or disciplinary authority over minors to complete an application that inquires as to whether or not the prospective employee or volunteer has been convicted of any offense specified in Public Resources Code section 5164, subdivision (a). (Pub. Res. Code, § 5164, subd. (b)(1)).
- Screening, pursuant to Penal Code section 11105.3, prospective employees and volunteers that have supervisory or disciplinary authority over minors. The screening procedure for these individuals requires submitting the following to DOJ: (1) the prospective employee's or volunteer's fingerprints, (2) any other data specified by DOJ on a DOJ-approved form, (3) for prospective employees only, paying the DOJ's fingerprint processing fee (no fee is required for a prospective volunteer).[39] (Pub. Res. Code, § 5164, subds. (b)(1) & (b)(2)).

Recommendation

Staff recommends that the Commission adopt this analysis and approve the test claim.

[39] Public Resources Code section 5164, subdivision (b)(2).

Original List Date: 2/19/2002
Last Updated: 6/8/2005
List Print Date: 10/11/2005
Claim Number: 01-TC-11
Issue: Local Recreational Areas: Background Screenings

Mailing Information: Draft Staff Analysis

Mailing List

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HAROLD T. FUJITA
DIRECTOR OF HUMAN RESOURCES

November 1, 2005

Paula Higashi, Executive Director
Commission on State Mandates
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Re: **Local Recreational Areas: Background Screenings**, *01-TC-11*
City of Los Angeles - Department of Recreation and Parks, Claimant
Statutes 2001, Chapter 777
Public Resources Code, Section 5164; Subdivision (b)(1) and (b)(2)

Dear Ms. Higashi:

Thank you for your letter dated October 11, 2005, and for the opportunity to review, and comment on, the draft staff analysis for this test claim. I found the draft staff analysis to be both comprehensive and articulate. The Department of Recreation and Parks concurs with the discussion and conclusion set forth therein.

Please be advised that I am in the process of making plans to attend the hearing that has been set for this test claim on Friday, December 9, 2005. I will call your office as soon as I have finalized my travel plans.

Thank you for your attention to this matter.

Sincerely,

HAROLD T. FUJITA
Director of Human Resources