

REPORT OF GENERAL MANAGER

NO. 04-131

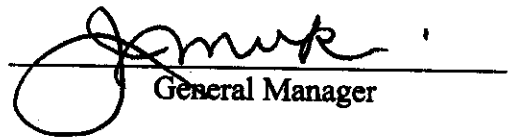
DATE April 22, 2004

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BOARD OF RECREATION AND PARK COMMISSIONERS

SUBJECT: APPEND THE POLICY PROHIBITING THE HIRE OF EMPLOYEES OR VOLUNTEERS ARRESTED OR CONVICTED OF SPECIFIC PENAL CODE OFFENSES IN POSITIONS THAT WILL DIRECT, OR HAVE ROUTINE CONTACT WITH, MINORS

K. Chan	_____	J. Kolb	_____
J. Combs	_____	F. Mok	_____
*H. Fujita	_____	G. Stigile	_____


General Manager

Approved _____

Disapproved _____

Withdrawn _____

RECOMMENDATION:

That the Board append the policy prohibiting the hire of employees or volunteers that will direct, or have routine contact with, minors for the purpose of providing the Department of Recreation and Parks' Human Resources Division with the discretion to deem offenses not specifically addressed by Public Resources Code §5164 as disqualifying.

SUMMARY:

On March 7, 2003, the Board approved the adoption of a policy consistent with California Public Resources Code §5164 (see attached Board Report). That section of the Code prohibits the Department of Recreation and Parks as a local government agency from hiring, for employment or as a volunteer, any person in a position having authority over minors if the person has been convicted of any specified crime(s). In addition, it requires the Department of Recreation and Parks to screen any such prospective employee or volunteer for their criminal background. Requesting Department of Justice (DOJ) criminal history records by submitting the prospective employee's or volunteer's fingerprints to the DOJ for a criminal history record check is encouraged as a means of fulfilling this requirement.

The DOJ sends criminal history records it finds regarding full-time and part-time employment candidates directly to the City's Personnel Department. The DOJ also notifies the City's Personnel Department of the subsequent arrest or conviction of existing full-time and part-time employees. The Personnel Department then informs the Department's Human Resources Division accordingly as it is responsible for directing or coordinating any administrative action that may result.

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The DOJ sends any criminal history records it finds regarding candidates who have applied to participate in the Department's Volunteer Program directly to the Human Resources Division. The DOJ also notifies the Human Resources Division directly of the subsequent arrest or conviction of existing volunteers. The Human Resources Division then determines if a volunteer candidate will be permitted to participate in the Volunteer Program, or if an existing volunteer will be permitted to continue participating in the Volunteer Program. Currently, there are 12,340 active volunteers registered in RAP's Volunteer Program.

To better protect minors entrusted to RAP, the Human Resources Division requires the ability to exercise its discretion in determining what offenses, not specifically addressed by Public Resources Code §5164, should disqualify an individual from employment as an employee or volunteer in positions that will direct, or have routine contact with, minors. Therefore, it is recommended that the policy be appended to provide staff this discretion.

Prepared by Harold T. Fujita.

Attachment

APPROVED
MAY 07 2003

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NO. 03-148

DATE May 7, 2003

**BOARD OF RECREATION
and PARK COMMISSIONERS**

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BOARD OF RECREATION AND PARK COMMISSIONERS

SUBJECT: ADOPTION OF POLICY PROHIBITING THE HIRE OF AN EMPLOYEE OR VOLUNTEER CONVICTED OF SPECIFIC PENAL CODE OFFENSES IN A POSITION THAT WILL DIRECT, OR HAVE ROUTINE CONTACT WITH, MINORS

J. Combs _____
A. Coroalles _____
H. Fujita _____

J. Kolb _____
J. Duggan _____
B. Lukehart _____


General Manager

Approved Disapproved _____ Withdrawn _____

RECOMMENDATION:

It is recommended that the Board:

1. Adopt a policy that the Department of Recreation and Parks shall not hire an employee or volunteer in a position that will direct, or have routine contact with, minors whenever the prospective employee or volunteer has been arrested or convicted for specific Penal Code offenses (as set forth in the summary).
2. Instruct management and staff of the Department of Recreation and Parks' Human Resources Division to ensure the consistent administration of this policy, including the fingerprinting of any prospective employee or volunteer for the purpose of conducting a background check of that prospective employee or volunteer.

SUMMARY:

Section 5164 of the California Public Resources Code prohibits the Department of Recreation and Parks as a local government agency from hiring, for employment or as a volunteer, any person in a position having authority over minors if the person has been convicted of specified crimes as delineated on the following pages. In addition, it requires the Department of Recreation and Parks to screen any such prospective employee or volunteer for their criminal background. Requesting Department of Justice (DOJ) criminal history records by submitting the prospective employee's or volunteer's fingerprints to the DOJ is encouraged as a means of fulfilling this requirement.

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Pursuant to Public Resources Code §5164, the Department of Recreation and Parks should not hire an employee or volunteer in a position that will direct, or have routine contact with, minors if the prospective employee or volunteer has been previously convicted of any of the following Penal Code (PC) offenses:

- PC 220 Assault with intent to commit rape, sodomy, or oral copulation**
- PC 243.4 Sexual battery against an individual who is unlawfully restrained, institutionalized, or disabled**
- PC 261 Rape**
- PC 261.5 Sexual intercourse with a minor**
- PC 262 Spousal rape**
- PC 266 Procuring, assignation, or seduction of a female minor**
- PC 266c Use of fear or threat to obtain consent to engage in sexual conduct**
- PC 266h(b) Pimping**
- PC 266i(b) Pandering**
- PC 266j Providing or transporting child under 16 for purpose of lewd or lascivious act**
- PC 267 Abduction of minor for prostitution**
- PC 269 Aggravated sexual assault**
- PC 273a Child abuse/neglect**
- PC 273d Child cruelty**
- PC 273.5 Inflicting corporal injury on spouse, former spouse, cohabitant, former cohabitant, or the mother or father of his or her child**
- PC 285 Incest**
- PC 286 Sodomy**

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- PC 288 Lewd act on child under 14
- PC 288a Oral copulation
- PC 288.2 Distributing harmful material for the purpose of seducing a minor
- PC 288.5 Continuous sexual abuse of a child
- PC 289 Sexual penetration
- PC 311.2(b),(c), and (d)
Distribution of obscene material depicting minors
- PC 311.3 Sexual Exploitation of Children
- PC 311.4 Using a minor in the production of obscene material
- PC 311.10 Advertising obscene material for sale or distribution that depicts a minor engaging in or simulating sexual conduct
- PC 311.11 Possession or control of obscene material that depicts a minor engaging in or simulating sexual conduct
- PC 314 Indecent exposure
- PC 647.6 Child molestation (formerly PC 647a)
- PC 653f(c) Soliciting another to commit rape, sodomy, or oral copulation by force or violence

In addition, pursuant to Public Resources Code §5164, the Department of Recreation and Parks should not hire an employee or volunteer in a position that will direct, or have routine contact with, minors if the prospective employee or volunteer has a felony conviction, or a total of three or more misdemeanor convictions within the last 10 years, for any of the following PC offenses:

- PC 207 Kidnaping
- PC 209 Kidnaping for ransom or to commit robbery, rape, spousal rape, oral copulation, sodomy, or sexual penetration

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- PC 209.5 Kidnaping during the commission of a carjacking**
- PC 210 Representing oneself as a kidnaper to obtain ransom**
- PC 211 Robbery accomplished through the use of a deadly or dangerous weapon**
- PC 215 Carjacking accomplished through the use of a deadly or dangerous weapon**
- PC 217.1 Assault upon the President, Vice President, Governors, justices, judges, former judges, judicial officers, government department heads, elected officials, mayors, city council members, county supervisors, sheriffs, district attorneys, prosecutors, assistant prosecutors, former prosecutors, former assistant prosecutors, public defenders, assistant public defenders, former public defenders, former assistant public defenders, chiefs of police, peace officers, jurors, or the immediate family of any of these officials, in retaliation for or to prevent the performance of the victim's official duties**
- PC 236 False imprisonment**
- PC 240 Assault**
- PC 241 Assault against Peace Officer**
- PC 242/243 Battery**
- PC 244 Assaults with Caustic Chemicals**
- PC 245 Assault with Deadly Weapon**
- PC 246 Discharge of Firearm at Occupied Building or Vehicle**
- PC 247 Discharge of Firearm at Unoccupied Building or Vehicle**
- PC 248 Use of Light to interfere with operation of aircraft**

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PC 667.5 Violent felony related to:

- Murder or voluntary manslaughter
- Mayhem
- Rape
- Sodomy by force or fear
- Oral copulation by force or fear
- Lewd acts on a child under 14
- Robbery
- Arson
- Attempted murder
- Kidnapping
- Continuous sexual abuse of a child
- Carjacking
- Extortion
- First degree burglary

It is recommended that it also be the policy of the Department of Recreation and Parks not to hire an employee or volunteer in a position that will direct, or have routine contact with, minors whenever the prospective employee or volunteer has been arrested, and has a case pending, for any offense(s) that would bar the Department from hiring the prospective employee or volunteer pursuant to Public Resource Code §5164. The prospective employee or volunteer may request to be reconsidered for hire at such time that the outcome of any court case(s) resulting from his/her arrest(s) are final.

Prepared by Harold T. Fujita.