

AMENDED IN SENATE AUGUST 31, 2015
AMENDED IN ASSEMBLY APRIL 16, 2015
AMENDED IN ASSEMBLY MARCH 26, 2015
CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 303

Introduced by Assembly Member Gonzalez

February 12, 2015

An act to amend Section 4030 of, and to add Section 4031 to, the Penal Code, relating to searches.

LEGISLATIVE COUNSEL'S DIGEST

AB 303, as amended, Gonzalez. Searches: county jails.

Existing law establishes a statewide policy strictly limiting strip and body cavity searches of prearrest detainees arrested for infraction or misdemeanor offenses and of minors detained prior to a detention hearing on the grounds that he or she is alleged to have committed a misdemeanor or infraction offense. Existing law provides that if a person is arrested and taken into custody, that person may be subjected to patdown searches, metal detector searches, and thorough clothing searches in order to discover and retrieve concealed weapons and contraband substances prior to being placed in a booking cell. Existing law requires, among other things, that all persons conducting or otherwise present during a strip search or visual or physical body cavity search to be of the same sex as the person being searched, except for physicians or licensed medical personnel. Under existing law, a person who knowingly and willfully authorizes or conducts a strip, visual, or physical body cavity search in violation of the prescribed provisions is guilty of a misdemeanor.

This bill would additionally require that all persons within sight of the inmate during a strip search or visual or physical body cavity search be of the same sex as the person being searched, except for physicians or licensed medical personnel. The bill would extend the protections regarding the manner in which a strip search is conducted to all ~~juvenile inmates~~ *minors held in a juvenile detention facility*. By expanding the definition of a crime, creating a new crime, and imposing additional requirements on local law enforcement, this bill would create a state-mandated local program.

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

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

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

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

1 SECTION 1. Section 4030 of the Penal Code is amended to
2 read:
3 4030. (a) (1) The Legislature finds and declares that law
4 enforcement policies and practices for conducting strip or body
5 cavity searches of detained persons vary widely throughout
6 California. Consequently, some people have been arbitrarily
7 subjected to unnecessary strip and body cavity searches after arrests
8 for minor misdemeanor and infraction offenses. Some present
9 search practices violate state and federal constitutional rights to
10 privacy and freedom from unreasonable searches and seizures.
11 ¶
12 (2) *It* is the intent of the Legislature in enacting this section to
13 protect the state and federal constitutional rights of the people of
14 California by establishing a statewide policy strictly limiting strip
15 and body cavity searches.
16 (b) The provisions of this section shall apply only to
17 prearrest detainees arrested for infraction or misdemeanor

1 offenses and to any minor detained prior to a detention hearing on
 2 the grounds that he or she is a person described in Section 300,
 3 601, or 602 of the Welfare and Institutions Code alleged to have
 4 committed a misdemeanor or infraction offense. The provisions
 5 of this section shall not apply to ~~any~~ a person in the custody of the
 6 ~~Director~~ Secretary of the Department of Corrections and
 7 Rehabilitation or the Director of the ~~Youth Authority~~ Division of
 8 Juvenile Justice in the Department of Corrections and
 9 Rehabilitation.

10 (c) As used in this section the following definitions shall apply:

11 (1) "Body cavity" only means the stomach or rectal cavity of
 12 a person, and vagina of a female person.

13 (2) "Physical body cavity search" means physical intrusion
 14 into a body cavity for the purpose of discovering any object
 15 concealed in the body cavity.

16 ~~(e) As used in this section and Section 4031, "strip~~

17 (3) "Stripsearch" means a search which requires a person to
 18 remove or arrange some or all of his or her clothing so as to permit
 19 a visual inspection of the underclothing, breasts, buttocks, or
 20 genitalia of such person.

21 ~~(d) As used in this section and Section 4031:~~

22 (1) ~~"Body cavity" only means the stomach or rectal cavity of a~~
 23 ~~person, and vagina of a female person.~~

24 ~~(2)~~

25 (4) "Visual body cavity search" means visual inspection of a
 26 body cavity.

27 (3) ~~"Physical body cavity search" means physical intrusion into~~
 28 ~~a body cavity for the purpose of discovering any object concealed~~
 29 ~~in the body cavity.~~

30 ~~(e)~~

31 (d) Notwithstanding any other ~~provision~~ of law, including
 32 Section 40304.5 of the Vehicle Code, when a person is arrested
 33 and taken into custody, that person may be subjected to patdown
 34 searches, metal detector searches, and thorough clothing searches
 35 in order to discover and retrieve concealed weapons and contraband
 36 substances prior to being placed in a booking cell.

37 ~~(f) No~~

38 (e) A person arrested and held in custody on a misdemeanor or
 39 infraction offense, except those involving weapons, controlled
 40 substances or violence ~~nor any substances, or violence, or a minor~~

1 detained prior to a detention hearing on the grounds that he or she
 2 is a person described in Section 300, 601 or 602 of the Welfare
 3 and Institutions Code, except for those minors alleged to have
 4 committed felonies or offenses involving weapons, controlled
 5 ~~substances~~ *substances*, or violence, shall *not* be subjected to a strip
 6 search or visual body cavity search prior to placement in the general
 7 jail population, unless a peace officer has determined there is
 8 reasonable ~~suspicion~~ *suspicion*, based on specific and articulable
 9 ~~facts~~ *facts*, to believe ~~such that~~ that person is concealing a weapon or
 10 contraband, and a strip search will result in the discovery of the
 11 weapon or contraband. ~~No~~ A strip search or visual body cavity
 12 ~~search or both may~~ *search, or both, shall not* be conducted without
 13 the prior written authorization of the supervising officer on duty.
 14 The authorization shall include the specific and articulable facts
 15 and circumstances upon which the reasonable suspicion
 16 determination was made by the supervisor.

17 ~~(g)~~

18 (f) (1) Except pursuant to the provisions of paragraph (2), ~~no~~
 19 a person arrested and held in custody on a misdemeanor or
 20 infraction offense not involving weapons, controlled ~~substances~~
 21 *substances*, or violence, shall *not* be confined in the general jail
 22 population unless all of the following are true:

23 (A) The person is not cited and released.

24 (B) The person is not released on his or her own recognizance
 25 pursuant to Article 9 (commencing with Section 1318) of Chapter
 26 1 of Title 10 of Part 2.

27 (C) The person is not able to post bail within a reasonable ~~time~~
 28 *time*, not less than three hours.

29 (2) ~~No~~ A person ~~may~~ *shall not* be housed in the general jail
 30 population prior to release pursuant to the provisions of paragraph
 31 (1) unless a documented emergency exists and there is no
 32 reasonable alternative to ~~such that~~ placement. ~~Such~~ *The* person
 33 shall be placed in the general population only upon prior written
 34 authorization documenting the specific facts and circumstances of
 35 the emergency. The written authorization shall be signed by the
 36 uniformed supervisor of the facility or by a uniformed watch
 37 commander. ~~Any~~ A person confined in the general jail population
 38 pursuant to paragraph (1) shall retain all rights to release on
 39 citation, his or her own recognizance, or bail ~~which~~ *that* were
 40 preempted as a consequence of the emergency.

1 ~~(h) No~~
2 (g) A person arrested on a misdemeanor or infraction offense,
3 ~~nor any~~ or a minor described in subdivision (b), shall *not* be
4 subjected to a physical body cavity search except under the
5 authority of a search warrant issued by a magistrate specifically
6 authorizing the physical body cavity search.

7 ~~(i)~~
8 (h) A copy of the prior written authorization required by
9 subdivisions (e) and (f) and ~~(g)~~ and the search warrant required
10 by subdivision ~~(h)~~ (g) shall be placed in the agency's records and
11 made available, on request, to the person searched or his or her
12 authorized representative. With regard to ~~any strip, visual or body~~
13 *a strip search or visual or physical body cavity* search, the time,
14 ~~date~~ *date*, and place of the search, the name and sex of the person
15 conducting the ~~search~~ *search*, and a statement of the results of the
16 search, including a list of ~~any~~ items removed from the person
17 searched, shall be recorded in the agency's records and made
18 available, upon request, to the person searched or his or her
19 authorized representative.

20 ~~(j)~~
21 (i) Persons conducting a strip search or a visual body cavity
22 search shall not touch the breasts, buttocks, or genitalia of the
23 person being searched.

24 ~~(k)~~
25 (j) A physical body cavity search shall be conducted under
26 sanitary conditions, and only by a physician, nurse practitioner,
27 registered nurse, licensed vocational ~~nurse~~ *nurse*, or emergency
28 medical technician Level II licensed to practice in this state. ~~Any~~
29 A physician engaged in providing health care to detainees and
30 inmates of the facility may conduct physical body cavity searches.

31 ~~(l) All persons~~
32 (k) A person conducting or otherwise present or within sight of
33 the inmate during a strip search or visual or physical body cavity
34 search shall be of the same sex as the person being searched, except
35 for physicians or licensed medical personnel.

36 ~~(m)~~
37 (l) All strip, visual, and physical body cavity searches shall be
38 conducted in an area of privacy so that the search cannot be
39 observed by persons not participating in the search. Persons are
40 considered to be participating in the search if their official duties

1 relative to search procedure require them to be present at the time
 2 the search is conducted.

3 ~~(n)~~

4 (m) A person who knowingly and willfully authorizes or
 5 conducts a ~~strip, visual, strip search or visual~~ or physical body
 6 cavity search in violation of this section is guilty of a misdemeanor.

7 ~~(o)~~

8 (n) Nothing in this section shall be construed as limiting ~~any~~
 9 ~~the~~ common law or statutory rights of ~~any a~~ person regarding ~~any~~
 10 ~~an~~ action for damages or injunctive relief, or as precluding the
 11 prosecution under another ~~provision of law of any a~~ peace officer
 12 or other person who has violated this section.

13 ~~(p)~~

14 (o) Any person who suffers damage or harm as a result of a
 15 violation of this section may bring a civil action to recover actual
 16 damages, or one thousand dollars (\$1,000), whichever is greater.
 17 In addition, the court may, in its discretion, award punitive
 18 damages, equitable relief as it deems necessary and proper, and
 19 costs, including reasonable attorney’s fees.

20 SEC. 2. Section 4031 is added to the Penal Code, to read:

21 4031. (a) This section applies to all minors detained *in a*
 22 *juvenile detention center* on the grounds that he or she is a person
 23 described in Section 300, 601, or 602 of the Welfare and
 24 Institutions Code, and all minors adjudged a ward of the court *and*
 25 *held in a juvenile detention center* on the grounds he or she is a
 26 person described in Section 300, 601, or 602 of the Welfare and
 27 Institutions Code.

28 (b) Persons conducting a strip search or a visual body cavity
 29 search shall not touch the breasts, buttocks, or genitalia of the
 30 person being searched.

31 (c) A physical body cavity search shall be conducted under
 32 sanitary conditions, and only by a physician, nurse practitioner,
 33 registered nurse, licensed vocational ~~nurse nurse~~, or emergency
 34 medical technician Level II licensed to practice in this state. ~~Any~~
 35 ~~A~~ physician engaged in providing health care to ~~detainees~~
 36 *detainees, wards, and inmates* of the facility may conduct physical
 37 body cavity searches.

38 ~~All persons~~ *A person* conducting or otherwise present or
 39 within sight of the inmate during a strip search or visual or physical

1 body cavity search shall be of the same sex as the person being
2 searched, except for physicians or licensed medical personnel.

3 (e) All ~~strip, visual, strip searches and visual~~ and physical body
4 cavity searches shall be conducted in an area of privacy so that the
5 search cannot be observed by persons not participating in the
6 search. Persons are considered to be participating in the search if
7 their official duties relative to search procedure require them to
8 be present at the time the search is conducted.

9 (f) A person who knowingly and willfully authorizes or conducts
10 a ~~strip, visual, strip searches and visual~~ or physical body cavity
11 search in violation of this section is guilty of a misdemeanor.

12 (g) Nothing in this section shall be construed as limiting ~~any~~
13 ~~the~~ common law or statutory rights of ~~any~~ a person regarding ~~any~~
14 ~~an~~ action for damages or injunctive relief, or as precluding the
15 prosecution under another ~~provision~~ of law of ~~any~~ a peace officer
16 or other person who has violated this section.

17 (h) Any person who suffers damage or harm as a result of a
18 violation of this section may bring a civil action to recover actual
19 damages, or one thousand dollars (\$1,000), whichever is greater.
20 In addition, the court may, in its discretion, award punitive
21 damages, equitable relief as it deems necessary and proper, and
22 costs, including reasonable attorney’s fees.

23 (i) *This section does not limit the protections granted by Section*
24 *4030 to individuals described in subdivision (b) of that section.*

25 SEC. 3. No reimbursement is required by this act pursuant to
26 Section 6 of Article XIII B of the California Constitution for certain
27 costs that may be incurred by a local agency or school district
28 because, in that regard, this act creates a new crime or infraction,
29 eliminates a crime or infraction, or changes the penalty for a crime
30 or infraction, within the meaning of Section 17556 of the
31 Government Code, or changes the definition of a crime within the
32 meaning of Section 6 of Article XIII B of the California
33 Constitution.

34 However, if the Commission on State Mandates determines that
35 this act contains other costs mandated by the state, reimbursement
36 to local agencies and school districts for those costs shall be made
37 pursuant to Part 7 (commencing with Section 17500) of Division
38 4 of Title 2 of the Government Code.

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