

ASSEMBLY BILL

No. 1705

Introduced by Assembly Member Rodriguez

January 25, 2016

An act to amend Section 4030 of the Penal Code, relating to jails.

LEGISLATIVE COUNSEL'S DIGEST

AB 1705, as introduced, Rodriguez. Jails: searches.

Existing law generally prohibits strip searches and body cavity searches of prearrest detainees arrested for infraction or misdemeanor offenses. Existing law allows a person who has been arrested and taken into custody to 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.

This bill would also allow law enforcement personnel to subject a person who is arrested and taken into custody to a body scanner search for those weapons or substances.

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

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

1 subjected to unnecessary strip and body cavity searches after arrests
2 for minor misdemeanor and infraction offenses. Some present
3 search practices violate state and federal constitutional rights to
4 privacy and freedom from unreasonable searches and seizures.

5 (2) It is the intent of the Legislature in enacting this section to
6 protect the state and federal constitutional rights of the people of
7 California by establishing a statewide policy strictly limiting strip
8 and body cavity searches.

9 (b) The provisions of this section shall apply only to
10 prearrest detainees arrested for infraction or misdemeanor
11 offenses and to any minor detained prior to a detention hearing on
12 the grounds that he or she is a person described in Section 300,
13 601, or 602 of the Welfare and Institutions Code alleged to have
14 committed a misdemeanor or infraction offense. The provisions
15 of this section shall not apply to a person in the custody of the
16 Secretary of the Department of Corrections and Rehabilitation or
17 the Director of the Division of Juvenile Justice in the Department
18 of Corrections and Rehabilitation.

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

20 (1) “Body cavity” only means the stomach or rectal cavity of a
21 person, and vagina of a female person.

22 (2) “Physical body cavity search” means physical intrusion into
23 a body cavity for the purpose of discovering any object concealed
24 in the body cavity.

25 (3) “Strip search” means a search which requires a person to
26 remove or arrange some or all of his or her clothing so as to permit
27 a visual inspection of the underclothing, breasts, buttocks, or
28 genitalia of such person.

29 (4) “Visual body cavity search” means visual inspection of a
30 body cavity.

31 (d) Notwithstanding any other law, including Section 40304.5
32 of the Vehicle Code, ~~when~~ *if* a person is arrested and taken into
33 custody, that person may be subjected to patdown searches, metal
34 detector searches, *body scanners*, 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 (e) A person arrested and held in custody on a misdemeanor or
38 infraction offense, except those involving weapons, controlled
39 substances, or violence, or a minor detained prior to a detention
40 hearing on the grounds that he or she is a person described in

1 Section 300, 601 or 602 of the Welfare and Institutions Code,
2 except for those minors alleged to have committed felonies or
3 offenses involving weapons, controlled substances, or violence,
4 shall not be subjected to a strip search or visual body cavity search
5 prior to placement in the general jail population, unless a peace
6 officer has determined there is reasonable suspicion, based on
7 specific and articulable facts, to believe that person is concealing
8 a weapon or contraband, and a strip search will result in the
9 discovery of the weapon or contraband. A strip search or visual
10 body cavity search, or both, shall not be conducted without the
11 prior written authorization of the supervising officer on duty. The
12 authorization shall include the specific and articulable facts and
13 circumstances upon which the reasonable suspicion determination
14 was made by the supervisor.

15 (f) (1) Except pursuant to the provisions of paragraph (2), a
16 person arrested and held in custody on a misdemeanor or infraction
17 offense not involving weapons, controlled substances, or violence,
18 shall not be confined in the general jail population unless all of
19 the following are true:

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

21 (B) The person is not released on his or her own recognizance
22 pursuant to Article 9 (commencing with Section 1318) of Chapter
23 1 of Title 10 of Part 2.

24 (C) The person is not able to post bail within a reasonable time,
25 not less than three hours.

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

38 (g) A person arrested on a misdemeanor or infraction offense,
39 or a minor described in subdivision (b), shall not be subjected to
40 a physical body cavity search except under the authority of a search

1 warrant issued by a magistrate specifically authorizing the physical
2 body cavity search.

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

14 (i) Persons conducting a strip search or a visual body cavity
15 search shall not touch the breasts, buttocks, or genitalia of the
16 person being searched.

17 (j) A physical body cavity search shall be conducted under
18 sanitary conditions, and only by a physician, nurse practitioner,
19 registered nurse, licensed vocational nurse, or emergency medical
20 technician Level II licensed to practice in this state. A physician
21 engaged in providing health care to detainees and inmates of the
22 facility may conduct physical body cavity searches.

23 (k) A person conducting or otherwise present or within sight of
24 the inmate during a strip search or visual or physical body cavity
25 search shall be of the same sex as the person being searched, except
26 for physicians or licensed medical personnel.

27 (l) All strip, visual, and physical body cavity searches shall be
28 conducted in an area of privacy so that the search cannot be
29 observed by persons not participating in the search. Persons are
30 considered to be participating in the search if their official duties
31 relative to search procedure require them to be present at the time
32 the search is conducted.

33 (m) A person who knowingly and willfully authorizes or
34 conducts a strip search or visual or physical body cavity search in
35 violation of this section is guilty of a misdemeanor.

36 (n) ~~Nothing in this section shall be construed as limiting~~ *This*
37 *section does not limit* the common law or statutory rights of a
38 person regarding an action for damages or injunctive relief, or as
39 ~~precluding~~ *preclude* the prosecution under another law of a peace
40 officer or other person who has violated this section.

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

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