

**Introduced by Committee on Public Safety (Senators Hancock
(Chair), Anderson, Leno, Liu, McGuire, Monning, and Stone)**

March 10, 2015

An act to amend Sections 384a, 849, 4030, and 4504 of the Penal Code, and to repeal Section 1403 of the Welfare and Institutions Code, relating to public safety.

LEGISLATIVE COUNSEL'S DIGEST

SB 795, as introduced, Committee on Public Safety. Public Safety Omnibus.

(1) Existing law, when a person is arrested without a warrant, requires the person, if not otherwise released and without unnecessary delay, to be taken before the nearest or most accessible magistrate in the county in which the offense is triable, unless certain exemptions apply, including that the person was arrested for intoxication only and no further proceedings are desirable.

This bill would exempt a person from the requirement of, without unnecessary delay, being taken before the nearest or most accessible magistrate in the county in which the offense is triable if the person is arrested for driving under the influence of alcohol or drugs and the person is delivered to a hospital for medical treatment that prohibits immediate delivery before a magistrate.

(2) Existing law establishes a statewide policy strictly limiting strip and body cavity searches of prearrangement 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.

This bill would provide that if a person is arrested and taken into custody that person may also be subjected to a body scanner search.

(3) Existing law, the Interstate Compact for Juveniles, adopted by this state and effective until January 1, 2016, establishes an interstate commission of the compacting states to, among other things, oversee, supervise, and coordinate the interstate movement of juveniles.

This bill would delete the repeal date of these provisions, and would thereby extend the operation of the provisions indefinitely.

(4) This bill would make other technical, nonsubstantive changes.

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

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

1 SECTION 1. Section 384a of the Penal Code is amended to
 2 read:
 3 384a. ~~Every person who within the State of California~~
 4 *(a) (1) A person shall not willfully or negligently cuts, destroys,*
 5 *mutilates, or removes any tree or shrub, or fern or herb or bulb or*
 6 *cactus or flower, or huckleberry or redwood greens, or portion of*
 7 *any tree or shrub, or fern or herb or bulb or cactus or flower, or*
 8 *huckleberry or redwood greens, cut, destroy, mutilate, or remove*
 9 *plant material that is growing upon state or county highway*
 10 *rights-of-way, or who removes leaf mold thereon, except that the*
 11 *provisions of this section shall not be construed to apply to any*
 12 *employee of the state or of any political subdivision thereof*
 13 *engaged in work upon any state, county, or public road or highway*
 14 *while performing work under the supervision of the state or of any*
 15 *political subdivision thereof, and every person who willfully or*
 16 *negligently cuts, destroys, mutilates, or removes any tree or shrub,*
 17 *or fern or herb or bulb or cactus or flower, or huckleberry or*
 18 *redwood greens, or portions of any tree or shrub, or fern or herb*
 19 *or bulb or cactus or flower, or huckleberry or redwood greens,*
 20 *growing upon public land or upon land not his or her own, or leaf*
 21 *mold on the surface of public land, or upon land not his or her*
 22 *own, without a written permit from the owner of the land signed*
 23 *by the owner or the owner's authorized agent, and every person*
 24 *who knowingly sells, offers, or exposes for sale, or transports for*

1 sale, any tree or shrub, or fern or herb or bulb or cactus or flower,
2 or huckleberry or redwood greens, or portion of any tree or shrub,
3 or fern or herb or bulb or cactus or flower, or huckleberry or
4 redwood greens, or leaf mold, so cut or removed from state or
5 county highway rights-of-way, or removed from public land or
6 from land not owned by the person who cut or removed the same
7 without the written permit from the owner of the land, signed by
8 the owner or the owner's authorized agent, is guilty of a
9 misdemeanor and upon conviction thereof shall be punished by a
10 fine of not more than one thousand dollars (\$1,000), by
11 imprisonment in a county jail for not more than six months, or by
12 both fine and imprisonment. *rights-of-way.*

13 (2) A person shall not willfully or negligently cut, destroy,
14 mutilate, or remove plant material that is growing upon public
15 land or upon land that is not his or hers without a written permit
16 from the owner of the land, signed by the owner of the land or the
17 owner's authorized agent, as provided in subdivision (c).

18 (3) A person shall not knowingly sell, offer or expose for sale,
19 or transport for sale plant material that is cut or removed in
20 violation of this subdivision.

21 (b) For purposes of this section, "plant material" means a tree,
22 shrub, fern, herb, bulb, cactus, flower, huckleberry, or redwood
23 green, or a portion of any of those, or the leaf mold on those plants.
24 "Plant material" does not include a tree, shrub, fern, herb, bulb,
25 cactus, flower, or greens declared by law to be a public nuisance.

26 The

27 (c) (1) ~~The~~ written permit required ~~under this section~~ by
28 *paragraph (2) of subdivision (a)* shall be signed by the landowner,
29 or the landowner's authorized agent, and acknowledged before a
30 notary public, or other person authorized by law to take
31 acknowledgments. The permit shall contain the number and species
32 of trees and amount of ~~shrubs or ferns or herbs or bulbs or cacti~~
33 ~~or flowers, or huckleberry or redwood greens, or portions of any~~
34 ~~tree or shrub,~~ *plant material*, and shall contain the legal description
35 of the real property as usually found in deeds and conveyances of
36 the land on which cutting or ~~removal, or both,~~ *removal* shall take
37 place. One copy of the permit shall be filed in the office of the
38 sheriff of the county in which the land described in the permit is
39 located. The permit shall be filed prior to *the* commencement of
40 cutting ~~of the trees or shrub or fern or herb or bulb or cactus or~~

1 ~~flower or huckleberry or redwood green or portions of any tree or~~
2 ~~shrub or removal of plant material~~ authorized by the permit. ~~The~~

3 (2) ~~The permit required by this section need not be notarized or~~
4 ~~filed with the office of the sheriff of the county where trees are to~~
5 ~~be removed when five or less trees or when five or less pounds of~~
6 ~~shrubs or boughs are to be cut or removed.~~

7 ~~Any~~

8 (d) A county or state fire ~~warden, or warden~~; personnel of the
9 Department of Forestry and Fire Protection, as designated by the
10 Director of Forestry and Fire ~~Protection, and Protection~~; personnel
11 of the United States Forest Service, as designated by the Regional
12 Forester, Region 5, of the United States Forest ~~Service, Service~~;
13 or ~~any~~ a peace officer of the State of California, may enforce the
14 provisions of this section and may confiscate any and all ~~such~~
15 ~~shrubs, trees, ferns or herbs or bulbs or cacti or flowers, or~~
16 ~~huckleberry or redwood greens or leaf mold, or parts thereof~~ *plant*
17 *material* unlawfully cut or removed or knowingly sold, offered,
18 or exposed or transported for sale as provided in this section.

19 ~~This section does not apply to any tree or shrub, or fern or herb~~
20 ~~or bulb or cactus or flower, or greens declared by law to be a public~~
21 ~~nuisance.~~

22 ~~This~~

23 (e) ~~This section does not apply to the any of the following:~~

24 (1) ~~An employee of the state or of a political subdivision of the~~
25 ~~state who is engaged in work upon a state, county, or public road~~
26 ~~or highway while performing work under the supervision of the~~
27 ~~state or a political subdivision of the state.~~

28 (2) ~~A person engaged in the necessary cutting or trimming of~~
29 ~~any trees, shrubs, or ferns or herbs or bulbs or cacti or flowers, or~~
30 ~~greens if done~~ *plant material* for the purpose of protecting or
31 maintaining an electric powerline, telephone line, or other property
32 of a public utility.

33 ~~This section does not apply to persons~~

34 (3) ~~A person engaged in logging operations, or in suppressing~~
35 ~~fires: operations or fire suppression.~~

36 (f) ~~A violation of this section shall be a misdemeanor, punishable~~
37 ~~by a fine of not more than one thousand dollars (\$1,000), by~~
38 ~~imprisonment in a county jail for not more than six months, or by~~
39 ~~both that fine and imprisonment.~~

40 SEC. 2. Section 849 of the Penal Code is amended to read:

1 849. (a) When an arrest is made without a warrant by a peace
2 officer or private person, the person arrested, if not otherwise
3 released, ~~shall,~~ *and* without unnecessary delay, *shall* be taken
4 before the nearest or most accessible magistrate in the county in
5 which the offense is triable, and a complaint stating the charge
6 against the arrested person shall be laid before ~~such~~ *the* magistrate.

7 (b) ~~Any~~ A peace officer may release from custody, instead of
8 taking ~~such~~ *the* person before a magistrate, ~~any~~ a person arrested
9 without a warrant ~~whenever~~ *in the following circumstances:*

10 (1) ~~He or she~~ *The officer* is satisfied that there are insufficient
11 grounds for making a criminal complaint against the person
12 arrested.

13 (2) The person arrested was arrested for intoxication only, and
14 no further proceedings are desirable.

15 (3) The person was arrested only for being under the influence
16 of a controlled substance or drug and ~~such~~ *the* person is delivered
17 to a facility or hospital for treatment and no further proceedings
18 are desirable.

19 (4) *The person was arrested for driving under the influence of*
20 *alcohol or drugs and the person is delivered to a hospital for*
21 *medical treatment that prohibits immediate delivery before a*
22 *magistrate.*

23 (c) ~~Any~~ *The* record of arrest of a person released pursuant to
24 paragraphs (1) and (3) of subdivision (b) shall include a record of
25 release. Thereafter, ~~such~~ *the* arrest shall not be deemed an arrest,
26 but a detention only.

27 SEC. 3. Section 4030 of the Penal Code is amended to read:

28 4030. (a) (1) The Legislature finds and declares that law
29 enforcement policies and practices for conducting strip or body
30 cavity searches of detained persons vary widely throughout
31 California. Consequently, some people have been arbitrarily
32 subjected to unnecessary strip and body cavity searches after arrests
33 for minor misdemeanor and infraction offenses. Some present
34 search practices violate state and federal constitutional rights to
35 privacy and freedom from unreasonable searches and seizures.

36 ~~It~~

37 (2) *It* is the intent of the Legislature in enacting this section to
38 protect the state and federal constitutional rights of the people of
39 California by establishing a statewide policy strictly limiting strip
40 and body cavity searches.

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

12 ~~(e) As used in this section, “strip search” means a search which~~
 13 ~~requires a person to remove or arrange some or all of his or her~~
 14 ~~clothing so as to permit a visual inspection of the underclothing,~~
 15 ~~breasts, buttocks, or genitalia of such person.~~

16 ~~(d)~~

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

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

20 ~~(2) “Visual body cavity search” means visual inspection of a~~
 21 ~~body cavity.~~

22 ~~(3)~~

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

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

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

32 ~~(e)~~

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

40 ~~(f) No person~~

1 (e) A person arrested and held in custody on a misdemeanor or
 2 infraction offense, except those involving weapons, controlled
 3 ~~substances or violence nor any~~ *substances, or violence, or a* minor
 4 detained prior to a detention hearing on the grounds that he or she
 5 is a person described in Section 300, 601 or 602 of the Welfare
 6 and Institutions Code, except for those minors alleged to have
 7 committed felonies or offenses involving weapons, controlled
 8 ~~substances~~ *substances*, or violence, shall *not* be subjected to a strip
 9 search or visual body cavity search prior to placement in the general
 10 jail population, unless a peace officer has determined there is
 11 reasonable ~~suspicion~~ *suspicion*, based on specific and articulable
 12 ~~facts~~ *facts*, to believe ~~such~~ *that* that person is concealing a weapon or
 13 ~~contraband~~, *contraband* and a strip search will result in the
 14 discovery of the weapon or contraband. ~~No~~ A strip search or visual
 15 body cavity ~~search or both~~ *may search, or both, shall not* be
 16 conducted without the prior written authorization of the supervising
 17 officer on duty. The authorization shall include the specific and
 18 articulable facts and circumstances upon which the reasonable
 19 suspicion determination was made by the supervisor.

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

- 26 (i) The person is not cited and released.
- 27 (ii) The person is not released on his or her own recognizance
 28 pursuant to Article 9 (commencing with Section 1318) of Chapter
 29 1 of Title 10 of Part 2.
- 30 (iii) The person is not able to post bail within a reasonable ~~time~~
 31 *time*, not less than three hours.

32 (2) ~~No~~ A person ~~may~~ *shall not* be housed in the general jail
 33 population prior to release pursuant to the provisions of paragraph
 34 (1) unless a documented emergency exists and there is no
 35 reasonable alternative to ~~such~~ *that* placement. ~~Such~~ *The* person
 36 shall be placed in the general population only upon prior written
 37 authorization documenting the specific facts and circumstances of
 38 the emergency. The written authorization shall be signed by the
 39 uniformed supervisor of the facility or by a uniformed watch
 40 commander. ~~Any~~ A person confined in the general jail population

1 pursuant to paragraph (1) shall retain all rights to release on
 2 citation, his or her own recognizance, or bail—~~which~~ *that* were
 3 preempted as a consequence of the emergency.

4 ~~(h) No~~

5 (g) A person arrested on a misdemeanor or infraction offense,
 6 ~~nor any~~ or a minor described in subdivision (b), shall *not* be
 7 subjected to a physical body cavity search except under the
 8 authority of a search warrant issued by a magistrate specifically
 9 authorizing the physical body cavity search.

10 ~~(i)~~

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

22 ~~(j)~~

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

26 ~~(k)~~

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

33 ~~(l) All persons~~

34 (k) A *person* conducting or otherwise present during a strip
 35 search or visual or physical body cavity search shall be of the same
 36 sex as the person being searched, except for physicians or licensed
 37 medical personnel.

38 ~~(m)~~

39 (l) All strip, ~~visual~~ *visual*, and physical body cavity searches
 40 shall be conducted in an area of privacy so that the search cannot

1 be observed by persons not participating in the search. Persons are
2 considered to be participating in the search if their official duties
3 relative to search procedure require them to be present at the time
4 the search is conducted.

5 ~~(n)~~

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

9 ~~(o)~~

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

15 ~~(p)~~

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

22 SEC. 4. Section 4504 of the Penal Code is amended to read:

23 4504. For purposes of this chapter:

24 (a) A person is deemed confined in a “state prison” if he *or she*
25 is confined in any of the prisons and institutions specified in
26 Section 5003 by order made pursuant to law, including, but not
27 limited to, commitments to the Department of Corrections ~~or the~~
28 ~~Department of the Youth Authority, and Rehabilitation or the~~
29 *Department of Corrections and Rehabilitation, Division of Juvenile*
30 *Justice*, regardless of the purpose of ~~such~~ *the* confinement and
31 regardless of the validity of the order directing ~~such~~ *the*
32 confinement, until a judgment of a competent court setting aside
33 ~~such~~ *the* order becomes final.

34 (b) A person is deemed “confined in” a prison although, at the
35 time of the offense, he *or she* is temporarily outside its walls or
36 bounds for the purpose of serving on a work ~~detail or~~ *detail*, for
37 the purpose of confinement in a local correctional institution
38 pending ~~trial~~ *trial*, or for any other purpose for which a prisoner
39 may be allowed temporarily outside the walls or bounds of the

1 ~~prison, but a~~ *prison*. A prisoner who has been released on parole
2 is not deemed “confined in” a prison for purposes of this chapter.

3 SEC. 5. Section 1403 of the Welfare and Institutions Code is
4 repealed.

5 ~~1403. This chapter shall remain in effect only until January 1,~~
6 ~~2016, and as of that date is repealed, unless a later enacted statute,~~
7 ~~that is enacted before January 1, 2016, deletes or extends that date.~~

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9

10 CORRECTIONS: _____

11 Text—Pages 4 and 6.

12 _____