

AMENDED IN SENATE JUNE 1, 2015

SENATE BILL

No. 795

**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 amended, 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. (a) (1) A person shall not willfully or negligently cut,
4 destroy, mutilate, or remove plant material that is growing upon
5 state or county highway rights-of-way.

6 (2) A person shall not willfully or negligently cut, destroy,
7 mutilate, or remove plant material that is growing upon public land
8 or upon land that is not his or hers without a written permit from
9 the owner of the land, signed by the owner of the land or the
10 owner’s authorized agent, as provided in subdivision (c).

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

14 (b) For purposes of this section, “plant material” means a tree,
15 shrub, fern, herb, bulb, cactus, flower, huckleberry, or redwood
16 green, or a portion of any of those, or the leaf mold on those plants.
17 “Plant material” does not include a tree, shrub, fern, herb, bulb,
18 cactus, flower, or greens declared by law to be a public nuisance.

19 (c) (1) The written permit required by paragraph (2) of
20 subdivision (a) shall be signed by the landowner, or the
21 landowner’s authorized agent, and acknowledged before a notary
22 public, or other person authorized by law to take acknowledgments.

1 The permit shall contain the number and species of trees and
2 amount of plant material, and shall contain the legal description
3 of the real property as usually found in deeds and conveyances of
4 the land on which cutting or removal shall take place. One copy
5 of the permit shall be filed in the office of the sheriff of the county
6 in which the land described in the permit is located. The permit
7 shall be filed prior to the commencement of cutting or removal of
8 plant material authorized by the permit.

9 (2) The permit required by this section need not be notarized
10 or filed with the sheriff when five or less pounds of shrubs or
11 boughs are to be cut or removed.

12 (d) A county or state fire warden; personnel of the Department
13 of Forestry and Fire Protection, as designated by the Director of
14 Forestry and Fire Protection; personnel of the United States Forest
15 Service, as designated by the Regional Forester, Region 5, of the
16 United States Forest Service; or a peace officer of the State of
17 California, may enforce the provisions of this section and may
18 confiscate any and all plant material unlawfully cut or removed
19 or knowingly sold, offered, or exposed or transported for sale as
20 provided in this section.

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

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

26 (2) A person engaged in the necessary cutting or trimming of
27 plant material for the purpose of protecting or maintaining an
28 electric powerline, telephone line, or other property of a public
29 utility.

30 (3) A person engaged in logging operations or fire suppression.

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

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

36 849. (a) When an arrest is made without a warrant by a peace
37 officer or private person, the person arrested, if not otherwise ~~and~~
38 *released, shall*, without unnecessary delay, ~~shall~~ be taken before
39 the nearest or most accessible magistrate in the county in which

1 the offense is triable, and a complaint stating the charge against
2 the arrested person shall be laid before the magistrate.

3 (b) A peace officer may release from custody, instead of taking
4 the person before a magistrate, a person arrested without a warrant
5 in the following circumstances:

6 (1) The officer is satisfied that there are insufficient grounds
7 for making a criminal complaint against the person arrested.

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

10 (3) The person was arrested only for being under the influence
11 of a controlled substance or drug and the person is delivered to a
12 facility or hospital for treatment and no further proceedings are
13 desirable.

14 (4) The person was arrested for driving under the influence of
15 alcohol or drugs and the person is delivered to a hospital for
16 medical treatment that prohibits immediate delivery before a
17 magistrate.

18 (c) The record of arrest of a person released pursuant to
19 paragraphs (1) and (3) of subdivision (b) shall include a record of
20 release. Thereafter, the arrest shall not be deemed an arrest, but a
21 detention only.

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

23 4030. (a) (1) The Legislature finds and declares that law
24 enforcement policies and practices for conducting strip or body
25 cavity searches of detained persons vary widely throughout
26 California. Consequently, some people have been arbitrarily
27 subjected to unnecessary strip and body cavity searches after arrests
28 for minor misdemeanor and infraction offenses. Some present
29 search practices violate state and federal constitutional rights to
30 privacy and freedom from unreasonable searches and seizures.

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

35 (b) The provisions of this section shall apply only to
36 ~~prearrangement~~ *prearrestment* detainees arrested for infraction
37 or misdemeanor offenses and to any minor detained prior to a
38 detention hearing on the grounds that he or she is a person
39 described in Section 300, 601, or 602 of the Welfare and
40 Institutions Code alleged to have committed a misdemeanor or

1 infraction offense. The provisions of this section shall not apply
2 to a person in the custody of the Secretary of the Department of
3 Corrections and Rehabilitation or the Director of the Division of
4 Juvenile Justice in the Department of Corrections and
5 Rehabilitation.

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

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

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

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

16 (4) “Visual body cavity search” means visual inspection of a
17 body cavity.

18 (d) Notwithstanding any other law, including Section 40304.5
19 of the Vehicle Code, when a person is arrested and taken into
20 custody, that person may be subjected to patdown searches, metal
21 detector searches, body scanners, and thorough clothing searches
22 in order to discover and retrieve concealed weapons and contraband
23 substances prior to being placed in a booking cell.

24 (e) A person arrested and held in custody on a misdemeanor or
25 infraction offense, except those involving weapons, controlled
26 substances, or violence, or a minor detained prior to a detention
27 hearing on the grounds that he or she is a person described in
28 Section 300, 601 or 602 of the Welfare and Institutions Code,
29 except for those minors alleged to have committed felonies or
30 offenses involving weapons, controlled substances, or violence,
31 shall not be subjected to a strip search or visual body cavity search
32 prior to placement in the general jail population, unless a peace
33 officer has determined there is reasonable suspicion, based on
34 specific and articulable facts, to believe that person is concealing
35 a weapon or contraband and a strip search will result in the
36 discovery of the weapon or contraband. A strip search or visual
37 body cavity search, or both, shall not be conducted without the
38 prior written authorization of the supervising officer on duty. The
39 authorization shall include the specific and articulable facts and

1 circumstances upon which the reasonable suspicion determination
2 was made by the supervisor.

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

8 (i) The person is not cited and released.

9 (ii) The person is not released on his or her own recognizance
10 pursuant to Article 9 (commencing with Section 1318) of Chapter
11 1 of Title 10 of Part 2.

12 (iii) The person is not able to post bail within a reasonable time,
13 not less than three hours.

14 (2) A person shall not be housed in the general jail population
15 prior to release pursuant to the provisions of paragraph (1) unless
16 a documented emergency exists and there is no reasonable
17 alternative to that placement. The person shall be placed in the
18 general population only upon prior written authorization
19 documenting the specific facts and circumstances of the emergency.
20 The written authorization shall be signed by the uniformed
21 supervisor of the facility or by a uniformed watch commander. A
22 person confined in the general jail population pursuant to paragraph
23 (1) shall retain all rights to release on citation, his or her own
24 recognizance, or bail that were preempted as a consequence of the
25 emergency.

26 (g) A person arrested on a misdemeanor or infraction offense,
27 or a minor described in subdivision (b), shall not be subjected to
28 a physical body cavity search except under the authority of a search
29 warrant issued by a magistrate specifically authorizing the physical
30 body cavity search.

31 (h) A copy of the prior written authorization required by
32 subdivisions (e) and (f) and the search warrant required by
33 subdivision (g) shall be placed in the agency's records and made
34 available, on request, to the person searched or his or her authorized
35 representative. With regard to a strip, visual, or body search, the
36 time, date, and place of the search, the name and sex of the person
37 conducting the search, and a statement of the results of the search,
38 including a list of items removed from the person searched, shall
39 be recorded in the agency's records and made available, upon

1 request, to the person searched or his or her authorized
2 representative.

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

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

12 (k) A person conducting or otherwise present during a strip
13 search or visual or physical body cavity search shall be of the same
14 sex as the person being searched, except for physicians or licensed
15 medical personnel.

16 (l) All strip, visual, and physical body cavity searches shall be
17 conducted in an area of privacy so that the search cannot be
18 observed by persons not participating in the search. Persons are
19 considered to be participating in the search if their official duties
20 relative to search procedure require them to be present at the time
21 the search is conducted.

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

25 (n) Nothing in this section shall be construed as limiting the
26 common law or statutory rights of a person regarding an action
27 for damages or injunctive relief, or as precluding the prosecution
28 under another law of a peace officer or other person who has
29 violated this section.

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

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

37 4504. For purposes of this chapter:

38 (a) A person is deemed confined in a "state prison" if he or she
39 is confined in any of the prisons and institutions specified in
40 Section 5003 by order made pursuant to law, including, but not

1 limited to, commitments to the Department of Corrections and
2 Rehabilitation or the Department of Corrections and Rehabilitation,
3 Division of Juvenile Justice, regardless of the purpose of the
4 confinement and regardless of the validity of the order directing
5 the confinement, until a judgment of a competent court setting
6 aside the order becomes final.

7 (b) A person is deemed “confined in” a prison although, at the
8 time of the offense, he or she is temporarily outside its walls or
9 bounds for the purpose of serving on a work detail, for the purpose
10 of confinement in a local correctional institution pending trial, or
11 for any other purpose for which a prisoner may be allowed
12 temporarily outside the walls or bounds of the prison. A prisoner
13 who has been released on parole is not deemed “confined in” a
14 prison for purposes of this chapter.

15 SEC. 5. Section 1403 of the Welfare and Institutions Code is
16 repealed.