

AMENDED IN ASSEMBLY JUNE 18, 2015

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 Section 1031 of the Government Code, to amend Sections 384a, 849, 4030, and 4504 of, and to amend and renumber Section 4131.5 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 1031 of the Government Code is amended*  
2     *to read:*

3     1031. Each class of public officers or employees declared by  
4     law to be peace officers shall meet all of the following minimum  
5     standards:

6     (a) Be a citizen of the United States or a permanent resident  
7     alien who is eligible for and has applied for citizenship, except as  
8     provided in Section 2267 of the Vehicle Code.

9     (b) Be at least 18 years of age.

10    (c) Be fingerprinted for purposes of search of local, state, and  
11    national fingerprint files to disclose a criminal record.

12    (d) Be of good moral character, as determined by a thorough  
13    background investigation.

14    (e) Be a high school graduate, pass the General Education  
15    Development Test ~~indicating~~ *or other high school equivalency test*  
16    *approved by the State Department of Education that indicates high*  
17    school graduation level, pass the California High School  
18    Proficiency Examination, or have attained a two-year, four-year,  
19    or advanced degree from an accredited college or university. The  
20    high school shall be either a United States public school, an

1 accredited United States Department of Defense high school, or  
2 an accredited or approved public or nonpublic high school. Any  
3 accreditation or approval required by this ~~paragraph~~ *subdivision*  
4 shall be from a state or local government educational agency using  
5 local or state government approved accreditation, licensing,  
6 registration, or other approval standards, a regional accrediting  
7 association, an accrediting association recognized by the Secretary  
8 of the United States Department of Education, an accrediting  
9 association holding full membership in the National Council for  
10 Private School Accreditation (NCPSA), an organization holding  
11 full membership in the ~~Commission on International and~~  
12 ~~Trans-Regional Accreditation (CITA)~~, *AdvancED*, an organization  
13 holding full membership in the Council for American Private  
14 Education (CAPE), or an accrediting association recognized by  
15 the National Federation of Nonpublic School State Accrediting  
16 Associations (NFSSAA).

17 (f) Be found to be free from any physical, emotional, or mental  
18 condition that might adversely affect the exercise of the powers  
19 of a peace officer.

20 (1) Physical condition shall be evaluated by a licensed physician  
21 and surgeon.

22 (2) Emotional and mental condition shall be evaluated by either  
23 of the following:

24 (A) A physician and surgeon who holds a valid California  
25 license to practice medicine, has successfully completed a  
26 postgraduate medical residency education program in psychiatry  
27 accredited by the Accreditation Council for Graduate Medical  
28 Education, and has at least the equivalent of five full-time years  
29 of experience in the diagnosis and treatment of emotional and  
30 mental disorders, including the equivalent of three full-time years  
31 accrued after completion of the psychiatric residency program.

32 (B) A psychologist licensed by the California Board of  
33 Psychology who has at least the equivalent of five full-time years  
34 of experience in the diagnosis and treatment of emotional and  
35 mental disorders, including the equivalent of three full-time years  
36 accrued postdoctorate.

37 The physician and surgeon or psychologist shall also have met  
38 any applicable education and training procedures set forth by the  
39 California Commission on Peace Officer Standards and Training

1 designed for the conduct of preemployment psychological  
2 screening of peace officers.

3 (g) This section shall not be construed to preclude the adoption  
4 of additional or higher standards, including age.

5 ~~(h) This section shall become operative on January 1, 2005.~~

6 **SECTION 1.**

7 *SEC. 2.* Section 384a of the Penal Code is amended to read:

8 384a. (a) (1) A person shall not willfully or negligently cut,  
9 destroy, mutilate, or remove plant material that is growing upon  
10 state or county highway rights-of-way.

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

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

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

24 (c) (1) The written permit required by paragraph (2) of  
25 subdivision (a) shall be signed by the landowner, or the  
26 landowner's authorized agent, and acknowledged before a notary  
27 public, or other person authorized by law to take acknowledgments.  
28 The permit shall contain the number and species of trees and  
29 amount of plant material, and shall contain the legal description  
30 of the real property as usually found in deeds and conveyances of  
31 the land on which cutting or removal shall take place. One copy  
32 of the permit shall be filed in the office of the sheriff of the county  
33 in which the land described in the permit is located. The permit  
34 shall be filed prior to the commencement of cutting or removal of  
35 plant material authorized by the permit.

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

39 (d) A county or state fire warden; personnel of the Department  
40 of Forestry and Fire Protection, as designated by the Director of

1 Forestry and Fire Protection; personnel of the United States Forest  
2 Service, as designated by the Regional Forester, Region 5, of the  
3 United States Forest Service; or a peace officer of the State of  
4 California, may enforce the provisions of this section and may  
5 confiscate any and all plant material unlawfully cut or removed  
6 or knowingly sold, offered, or exposed or transported for sale as  
7 provided in this section.

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

9 (1) An employee of the state or of a political subdivision of the  
10 state who is engaged in work upon a state, county, or public road  
11 or highway while performing work under the supervision of the  
12 state or a political subdivision of the state.

13 (2) A person engaged in the necessary cutting or trimming of  
14 plant material for the purpose of protecting or maintaining an  
15 electric powerline, telephone line, or other property of a public  
16 utility.

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

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

22 ~~SEC. 2.~~

23 *SEC. 3.* Section 849 of the Penal Code is amended to read:

24 849. (a) When an arrest is made without a warrant by a peace  
25 officer or private person, the person arrested, if not otherwise  
26 released, shall, without unnecessary delay, be taken before the  
27 nearest or most accessible magistrate in the county in which the  
28 offense is triable, and a complaint stating the charge against the  
29 arrested person shall be laid before the magistrate.

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

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

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

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

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

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

9 ~~SEC. 3.~~

10 *SEC. 4.* Section 4030 of the Penal Code is amended to read:

11 4030. (a) (1) The Legislature finds and declares that law  
12 enforcement policies and practices for conducting strip or body  
13 cavity searches of detained persons vary widely throughout  
14 California. Consequently, some people have been arbitrarily  
15 subjected to unnecessary strip and body cavity searches after arrests  
16 for minor misdemeanor and infraction offenses. Some present  
17 search practices violate state and federal constitutional rights to  
18 privacy and freedom from unreasonable searches and seizures.

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

23 (b) The provisions of this section shall apply only to  
24 prearrest detainees arrested for infraction or misdemeanor  
25 offenses and to any minor detained prior to a detention hearing on  
26 the grounds that he or she is a person described in Section 300,  
27 601, or 602 of the Welfare and Institutions Code alleged to have  
28 committed a misdemeanor or infraction offense. The provisions  
29 of this section shall not apply to a person in the custody of the  
30 Secretary of the Department of Corrections and Rehabilitation or  
31 the Director of the Division of Juvenile Justice in the Department  
32 of Corrections and Rehabilitation.

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

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

36 (2) "Physical body cavity search" means physical intrusion into  
37 a body cavity for the purpose of discovering any object concealed  
38 in the body cavity.

39 (3) "Strip search" means a search that requires a person to  
40 remove or arrange some or all of his or her clothing so as to permit

1 a visual inspection of the underclothing, breasts, buttocks, or  
2 genitalia of that person.

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

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

11 (e) A person arrested and held in custody on a misdemeanor or  
12 infraction offense, except those involving weapons, controlled  
13 substances, or violence, or a minor detained prior to a detention  
14 hearing on the grounds that he or she is a person described in  
15 Section 300, 601 or 602 of the Welfare and Institutions Code,  
16 except for those minors alleged to have committed felonies or  
17 offenses involving weapons, controlled substances, or violence,  
18 shall not be subjected to a strip search or visual body cavity search  
19 prior to placement in the general jail population, unless a peace  
20 officer has determined there is reasonable suspicion, based on  
21 specific and articulable facts, to believe that person is concealing  
22 a weapon or contraband and a strip search will result in the  
23 discovery of the weapon or contraband. A strip search or visual  
24 body cavity search, or both, shall not be conducted without the  
25 prior written authorization of the supervising officer on duty. The  
26 authorization shall include the specific and articulable facts and  
27 circumstances upon which the reasonable suspicion determination  
28 was made by the supervisor.

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

34 (i)

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

36 (ii)

37 (B) The person is not released on his or her own recognizance  
38 pursuant to Article 9 (commencing with Section 1318) of Chapter  
39 1 of Title 10 of Part 2.

40 (iii)

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

3 (2) A person shall not be housed in the general jail population  
4 prior to release pursuant to the provisions of paragraph (1) unless  
5 a documented emergency exists and there is no reasonable  
6 alternative to that placement. The person shall be placed in the  
7 general population only upon prior written authorization  
8 documenting the specific facts and circumstances of the emergency.  
9 The written authorization shall be signed by the uniformed  
10 supervisor of the facility or by a uniformed watch commander. A  
11 person confined in the general jail population pursuant to paragraph  
12 (1) shall retain all rights to release on citation, his or her own  
13 recognizance, or bail that were preempted as a consequence of the  
14 emergency.

15 (g) A person arrested on a misdemeanor or infraction offense,  
16 or a minor described in subdivision (b), shall not be subjected to  
17 a physical body cavity search except under the authority of a search  
18 warrant issued by a magistrate specifically authorizing the physical  
19 body cavity search.

20 (h) A copy of the prior written authorization required by  
21 subdivisions (e) and (f) and the search warrant required by  
22 subdivision (g) shall be placed in the agency's records and made  
23 available, on request, to the person searched or his or her authorized  
24 representative. With regard to a strip, visual, or body search, the  
25 time, date, and place of the search, the name and sex of the person  
26 conducting the search, and a statement of the results of the search,  
27 including a list of items removed from the person searched, shall  
28 be recorded in the agency's records and made available, upon  
29 request, to the person searched or his or her authorized  
30 representative.

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

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



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

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

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

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

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

25 *SEC. 5. Section 4131.5 of the Penal Code is amended and*  
26 *renumbered to read:*

27 ~~4131.5.~~

28 *243.15.* Every person confined in, sentenced to, or serving a  
29 sentence in, a city or county jail, industrial farm, or industrial road  
30 camp in this state, who commits a battery upon the person of any  
31 individual who is not himself or herself a person confined or  
32 sentenced therein, is guilty of a public offense and is ~~is-punishable~~  
33 *subject to punishment* by imprisonment pursuant to subdivision  
34 (h) of Section 1170, or in a county jail for not more than one year.

35 ~~SEC. 4.~~

36 *SEC. 6.* 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.~~

16 *SEC. 7.* Section 1403 of the Welfare and Institutions Code is  
17 repealed.