

AMENDED IN ASSEMBLY JUNE 29, 2015

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, *to amend Section 5008 of the Public Resources 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 requires the Department of Parks and Recreation to protect the state park system and the state vehicular recreation area and trail system from damage and to preserve the peace therein. Existing law provides that a person who violates the rules and regulations established by the department is guilty of a misdemeanor and, upon conviction, shall be punished by imprisonment, as specified, except that at the time a particular action is commenced, the judge may, considering the recommendation of the prosecuting attorney, reduce the charged offense from a misdemeanor to an infraction. Existing law also requires that a person who is convicted of the offense after that reduction be punished by a fine of not less than \$10 nor more than \$1,000.*

This bill would instead make a person who violates those rules and regulations guilty of either a misdemeanor, punishable as provided under existing law, or an infraction, punishable by a fine of not more than \$1,000. The bill would delete the mandatory minimum fine.

(3)

(4) 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)

(5) 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 or other high school equivalency test approved
16 by the State Department of Education that indicates high school
17 graduation level, pass the California High School Proficiency
18 Examination, or have attained a two-year, four-year, or advanced
19 degree from an accredited college or university. The high school
20 shall be either a United States public school, an accredited United
21 States Department of Defense high school, or an accredited or
22 approved public or nonpublic high school. Any accreditation or
23 approval required by this subdivision shall be from a state or local
24 government educational agency using local or state government
25 approved accreditation, licensing, registration, or other approval
26 standards, a regional accrediting association, an accrediting
27 association recognized by the Secretary of the United States
28 Department of Education, an accrediting association holding full
29 membership in the National Council for Private School
30 Accreditation (NCPSA), an organization holding full membership
31 in AdvancED, an organization holding full membership in the
32 Council for American Private Education (CAPE), or an accrediting
33 association recognized by the National Federation of Nonpublic
34 School State Accrediting Associations (NFNSSAA).

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

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

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

5 (A) A physician and surgeon who holds a valid California
6 license to practice medicine, has successfully completed a
7 postgraduate medical residency education program in psychiatry
8 accredited by the Accreditation Council for Graduate Medical
9 Education, and has at least the equivalent of five full-time years
10 of experience in the diagnosis and treatment of emotional and
11 mental disorders, including the equivalent of three full-time years
12 accrued after completion of the psychiatric residency program.

13 (B) A psychologist licensed by the California Board of
14 Psychology who has at least the equivalent of five full-time years
15 of experience in the diagnosis and treatment of emotional and
16 mental disorders, including the equivalent of three full-time years
17 accrued postdoctorate.

18 The physician and surgeon or psychologist shall also have met
19 any applicable education and training procedures set forth by the
20 California Commission on Peace Officer Standards and Training
21 designed for the conduct of preemployment psychological
22 screening of peace officers.

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

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

26 384a. (a) (1) A person shall not willfully or negligently cut,
27 destroy, mutilate, or remove plant material that is growing upon
28 state or county highway rights-of-way.

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

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

37 (b) For purposes of this section, "plant material" means a tree,
38 shrub, fern, herb, bulb, cactus, flower, huckleberry, or redwood
39 green, or a portion of any of those, or the leaf mold on those plants.

1 “Plant material” does not include a tree, shrub, fern, herb, bulb,
2 cactus, flower, or greens declared by law to be a public nuisance.

3 (c) (1) The written permit required by paragraph (2) of
4 subdivision (a) shall be signed by the landowner, or the
5 landowner’s authorized agent, and acknowledged before a notary
6 public, or other person authorized by law to take acknowledgments.
7 The permit shall contain the number and species of trees and
8 amount of plant material, and shall contain the legal description
9 of the real property as usually found in deeds and conveyances of
10 the land on which cutting or removal shall take place. One copy
11 of the permit shall be filed in the office of the sheriff of the county
12 in which the land described in the permit is located. The permit
13 shall be filed prior to the commencement of cutting or removal of
14 plant material authorized by the permit.

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

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

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

28 (1) An employee of the state or of a political subdivision of the
29 state who is engaged in work upon a state, county, or public road
30 or highway while performing work under the supervision of the
31 state or a political subdivision of the state.

32 (2) A person engaged in the necessary cutting or trimming of
33 plant material for the purpose of protecting or maintaining an
34 electric powerline, telephone line, or other property of a public
35 utility.

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

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

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

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

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

11 (1) The officer is satisfied that there are insufficient grounds
12 for making a criminal complaint against the person 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 the person is delivered to a
17 facility or hospital for treatment and no further proceedings are
18 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) 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, the arrest shall not be deemed an arrest, but a
26 detention only.

27 SEC. 4. 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 (2) It is the intent of the Legislature in enacting this section to
37 protect the state and federal constitutional rights of the people of
38 California by establishing a statewide policy strictly limiting strip
39 and body cavity searches.

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

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

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

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

17 (3) “Strip search” means a search that 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 that person.

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

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

29 (e) A person arrested and held in custody on a misdemeanor or
30 infraction offense, except those involving weapons, controlled
31 substances, or violence, or a minor detained prior to a detention
32 hearing on the grounds that he or she is a person described in
33 Section 300, 601 or 602 of the Welfare and Institutions Code,
34 except for those minors alleged to have committed felonies or
35 offenses involving weapons, controlled substances, or violence,
36 shall not be subjected to a strip search or visual body cavity search
37 prior to placement in the general jail population, unless a peace
38 officer has determined there is reasonable suspicion, based on
39 specific and articulable facts, to believe that person is concealing
40 a weapon or contraband and a strip search will result in the

1 discovery of the weapon or contraband. A strip search or visual
2 body cavity search, or both, shall not be conducted without the
3 prior written authorization of the supervising officer on duty. The
4 authorization shall include the specific and articulable facts and
5 circumstances upon which the reasonable suspicion determination
6 was made by the supervisor.

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

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

13 (B) The person is not released on his or her own recognizance
14 pursuant to Article 9 (commencing with Section 1318) of Chapter
15 1 of Title 10 of Part 2.

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

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

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

35 (h) A copy of the prior written authorization required by
36 subdivisions (e) and (f) and the search warrant required by
37 subdivision (g) shall be placed in the agency's records and made
38 available, on request, to the person searched or his or her authorized
39 representative. With regard to a strip, visual, or body search, the
40 time, date, and place of the search, the name and sex of the person

1 conducting the search, and a statement of the results of the search,
2 including a list of items removed from the person searched, shall
3 be recorded in the agency's records and made available, upon
4 request, to the person searched or his or her authorized
5 representative.

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

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

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

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

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

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

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

39 SEC. 5. Section 4131.5 of the Penal Code is amended and
40 renumbered to read:

1 243.15. Every person confined in, sentenced to, or serving a
2 sentence in, a city or county jail, industrial farm, or industrial road
3 camp in this state, who commits a battery upon the person of any
4 individual who is not himself or herself a person confined or
5 sentenced therein, is guilty of a public offense and is subject to
6 punishment by imprisonment pursuant to subdivision (h) of Section
7 1170, or in a county jail for not more than one year.

8 SEC. 6. Section 4504 of the Penal Code is amended to read:
9 4504. For purposes of this chapter:

10 (a) A person is deemed confined in a “state prison” if he or she
11 is confined in any of the prisons and institutions specified in
12 Section 5003 by order made pursuant to law, including, but not
13 limited to, commitments to the Department of Corrections and
14 Rehabilitation or the Department of Corrections and Rehabilitation,
15 Division of Juvenile Justice, regardless of the purpose of the
16 confinement and regardless of the validity of the order directing
17 the confinement, until a judgment of a competent court setting
18 aside the order becomes final.

19 (b) A person is deemed “confined in” a prison although, at the
20 time of the offense, he or she is temporarily outside its walls or
21 bounds for the purpose of serving on a work detail, for the purpose
22 of confinement in a local correctional institution pending trial, or
23 for any other purpose for which a prisoner may be allowed
24 temporarily outside the walls or bounds of the prison. A prisoner
25 who has been released on parole is not deemed “confined in” a
26 prison for purposes of this chapter.

27 *SEC. 7. Section 5008 of the Public Resources Code is amended*
28 *to read:*

29 5008. (a) The department shall protect the state park system
30 and the state vehicular recreation area and trail system from damage
31 and preserve the peace therein.

32 (b) The director may designate any officer or employee of the
33 department as a peace officer. The primary duties of the peace
34 officer shall be the enforcement of this division, Sections 4442
35 and 4442.5, the rules and regulations of the department, Chapter
36 5 (commencing with Section 650) of Division 3 of the Harbors
37 and Navigation Code, the rules and regulations of the ~~Department~~
38 *Division of Boating and Waterways, Waterways within the*
39 *department, Chapter 2 (commencing with Section 9850) of*
40 *Division 3.5 of the Vehicle Code, and Division 16.5 (commencing*

1 with Section 38000) of the Vehicle Code and to arrest persons for
 2 the commission of public offenses within the property under its
 3 jurisdiction. The authority and powers of the peace officer shall
 4 be limited to those conferred by law upon peace officers listed in
 5 Section 830.2 of the Penal Code.

6 (c) The department shall protect property included in the
 7 California recreational trail system and the property included in
 8 the recreational trail system under Section 6 of Chapter 1234 of
 9 the Statutes of 1980 from damage and preserve the peace therein.
 10 The primary duties of any officer or employee designated a peace
 11 officer under this section shall include enforcement of the rules
 12 and regulations established by the department ~~under subdivision~~
 13 ~~(l) of Section 6 of Chapter 1234 of the Statutes of 1980~~ and the
 14 arrest of persons for the commission of public offenses within the
 15 property included in the recreational trail system under Section 6
 16 of Chapter 1234 of the Statutes of 1980.

17 (d) Any person who violates the rules and regulations established
 18 by the department is guilty of a ~~misdemeanor and upon conviction~~
 19 ~~shall be punished~~ *either a misdemeanor, punishable by*
 20 *imprisonment in the county jail not exceeding 90 days, or by a*
 21 *fine not exceeding one thousand dollars (\$1,000), or by both that*
 22 *fine and imprisonment, except that at the time a particular action*
 23 *is commenced, the judge may, considering the recommendation*
 24 *of the prosecuting attorney, reduce the charged offense from a*
 25 *misdemeanor to an infraction. Any person convicted of the offense*
 26 *after such a reduction shall be punished by a fine of not less than*
 27 *ten dollars (\$10) nor imprisonment, or an infraction punishable*
 28 *by a fine of not more than one thousand dollars (\$1,000).*

29 ~~SEC. 7.~~

30 *SEC. 8.* Section 1403 of the Welfare and Institutions Code is
 31 repealed.

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