

AMENDED IN ASSEMBLY JULY 15, 2015

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)~~

~~(2) 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.

~~(4)~~

~~(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.

~~(5)~~

~~(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 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).

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

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

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

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

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

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

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

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

29 384a. (a) (1) A person shall not willfully or negligently cut,
30 destroy, mutilate, or remove plant material that is growing upon
31 state or county highway rights-of-way.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

31 ~~SEC. 4. Section 4030 of the Penal Code is amended to read:~~

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

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

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

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

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

18 ~~(2) “Physical body cavity search” means physical intrusion into~~
19 ~~a body cavity for the purpose of discovering any object concealed~~
20 ~~in the body cavity.~~

21 ~~(3) “Strip search” means a search that requires a person to~~
22 ~~remove or arrange some or all of his or her clothing so as to permit~~
23 ~~a visual inspection of the underclothing, breasts, buttocks, or~~
24 ~~genitalia of that person.~~

25 ~~(4) “Visual body cavity search” means visual inspection of a~~
26 ~~body cavity.~~

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

33 ~~(e) A person arrested and held in custody on a misdemeanor or~~
34 ~~infraction offense, except those involving weapons, controlled~~
35 ~~substances, or violence, or a minor detained prior to a detention~~
36 ~~hearing on the grounds that he or she is a person described in~~
37 ~~Section 300, 601 or 602 of the Welfare and Institutions Code,~~
38 ~~except for those minors alleged to have committed felonies or~~
39 ~~offenses involving weapons, controlled substances, or violence,~~
40 ~~shall not be subjected to a strip search or visual body cavity search~~

1 prior to placement in the general jail population, unless a peace
2 officer has determined there is reasonable suspicion, based on
3 specific and articulable facts, to believe that person is concealing
4 a weapon or contraband and a strip search will result in the
5 discovery of the weapon or contraband. A strip search or visual
6 body cavity search, or both, shall not be conducted without the
7 prior written authorization of the supervising officer on duty. The
8 authorization shall include the specific and articulable facts and
9 circumstances upon which the reasonable suspicion determination
10 was made by the supervisor.

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

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

17 (B) The person is not released on his or her own recognizance
18 pursuant to Article 9 (commencing with Section 1318) of Chapter
19 1 of Title 10 of Part 2.

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

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

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

39 (h) A copy of the prior written authorization required by
40 subdivisions (e) and (f) and the search warrant required by

1 subdivision (g) shall be placed in the agency's records and made
2 available, on request, to the person searched or his or her authorized
3 representative. With regard to a strip, visual, or body search, the
4 time, date, and place of the search, the name and sex of the person
5 conducting the search, and a statement of the results of the search,
6 including a list of items removed from the person searched, shall
7 be recorded in the agency's records and made available, upon
8 request, to the person searched or his or her authorized
9 representative.

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

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

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

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

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

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

37 (o) Any person who suffers damage or harm as a result of a
38 violation of this section may bring a civil action to recover actual
39 damages, or one thousand dollars (\$1,000), whichever is greater.
40 In addition, the court may, in its discretion, award punitive

1 ~~damages, equitable relief as it deems necessary and proper, and~~
2 ~~costs, including reasonable attorney’s fees.~~

3 ~~SEC. 5.~~

4 *SEC. 4.* Section 4131.5 of the Penal Code is amended and
5 renumbered to read:

6 243.15. Every person confined in, sentenced to, or serving a
7 sentence in, a city or county jail, industrial farm, or industrial road
8 camp in this state, who commits a battery upon the person of any
9 individual who is not himself or herself a person confined or
10 sentenced therein, is guilty of a public offense and is subject to
11 punishment by imprisonment pursuant to subdivision (h) of Section
12 1170, or in a county jail for not more than one year.

13 ~~SEC. 6.~~

14 *SEC. 5.* Section 4504 of the Penal Code is amended to read:

15 4504. For purposes of this chapter:

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

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

33 ~~SEC. 7.~~

34 *SEC. 6.* Section 5008 of the Public Resources Code is amended
35 to read:

36 5008. (a) The department shall protect the state park system
37 and the state vehicular recreation area and trail system from damage
38 and preserve the peace therein.

39 (b) The director may designate any officer or employee of the
40 department as a peace officer. The primary duties of the peace

1 officer shall be the enforcement of this division, Sections 4442
2 and 4442.5, the rules and regulations of the department, Chapter
3 5 (commencing with Section 650) of Division 3 of the Harbors
4 and Navigation Code, the rules and regulations of the Division of
5 Boating and Waterways within the department, Chapter 2
6 (commencing with Section 9850) of Division 3.5 of the Vehicle
7 Code, and Division 16.5 (commencing with Section 38000) of the
8 Vehicle Code and to arrest persons for the commission of public
9 offenses within the property under its jurisdiction. The authority
10 and powers of the peace officer shall be limited to those conferred
11 by law upon peace officers listed in Section 830.2 of the Penal
12 Code.

13 (c) The department shall protect property included in the
14 California recreational trail system and the property included in
15 the recreational trail system under Section 6 of Chapter 1234 of
16 the Statutes of 1980 from damage and preserve the peace therein.
17 The primary duties of any officer or employee designated a peace
18 officer under this section shall include enforcement of the rules
19 and regulations established by the department and the arrest of
20 persons for the commission of public offenses within the property
21 included in the recreational trail system under Section 6 of Chapter
22 1234 of the Statutes of 1980.

23 (d) Any person who violates the rules and regulations established
24 by the department is guilty of either a misdemeanor, punishable
25 by imprisonment in the county jail not exceeding 90 days, or by
26 a fine not exceeding one thousand dollars (\$1,000), or by both that
27 fine and imprisonment, or an infraction punishable by a fine of
28 not more than one thousand dollars (\$1,000).

29 ~~SEC. 8.~~

30 *SEC. 7.* Section 1403 of the Welfare and Institutions Code is
31 repealed.

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