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AB-1705 Jails: searches. (2015-2016)

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Assembly Bill No. 1705

CHAPTER 162

An act to amend Section 4030 of the Penal Code, relating to jails.

[Approved by Governor August 22, 2016. Filed with Secretary of State August 22, 2016.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1705, Rodriguez. Jails: searches.

Existing law generally prohibits strip searches and body cavity searches of prearrest detainees arrested for infraction or misdemeanor offenses. Existing law allows a person who has been arrested and taken into custody to 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 also allow law enforcement personnel to subject a person who is arrested and taken into custody to a body scanner search for those weapons or substances. The bill would require an agency utilizing a body scanner to endeavor to avoid knowingly using a body scanner to scan a woman who is pregnant. The bill would require a person within sight of the visual display of a body scanner depicting the body during a scan to be of the same sex as the person being scanned, except for physicians or licensed medical personnel.

Vote: majority Appropriation: no Fiscal Committee: no Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 4030 of the Penal Code is amended to read:

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

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

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

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

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

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

(3) "Strip search" means a search which requires a person to remove or arrange some or all of his or her clothing so as to permit a visual inspection of the underclothing, breasts, buttocks, or genitalia of such person.

(4) "Visual body cavity search" means visual inspection of a body cavity.

(d) (1) Notwithstanding any other law, including Section 40304.5 of the Vehicle Code, if a person is arrested and taken into custody, that person may be subjected to patdown searches, metal detector searches, body scanners, and thorough clothing searches in order to discover and retrieve concealed weapons and contraband substances prior to being placed in a booking cell.

(2) An agency that utilizes a body scanner pursuant to this subdivision shall endeavor to avoid knowingly using a body scanner to scan a woman who is pregnant.

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

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

(A) The person is not cited and released.

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

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

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

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

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

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

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

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

(2) A person within sight of the visual display of a body scanner depicting the body during a scan shall be of the same sex as the person being scanned, except for physicians or licensed medical personnel.

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

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

(n) This section does not limit the common law or statutory rights of a person regarding an action for damages or injunctive relief, or preclude the prosecution under another law of a peace officer or other person who has violated this section.

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