

AMENDED IN ASSEMBLY MARCH 26, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 303

Introduced by Assembly Member Gonzalez

February 12, 2015

An act to amend Section ~~1203.2~~ 4030 of the Penal Code, relating to ~~supervised persons~~ searches.

LEGISLATIVE COUNSEL'S DIGEST

AB 303, as amended, Gonzalez. ~~Supervised persons~~ Searches: county jails.

Existing law establishes a statewide policy strictly limiting strip and body cavity searches of prearrest 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. Existing law requires all persons conducting or otherwise present during a strip search or visual or physical body cavity search to be of the same sex as the person being searched, except for physicians or licensed medical personnel. Under existing law, a person who knowingly and willfully authorizes or conducts a strip, visual, or physical body cavity search in violation of the prescribed provisions is guilty of a misdemeanor.

This bill would additionally require that all persons within sight of the inmate during a strip search or visual or physical body cavity search be of the same sex as the person being searched, except for physicians

or licensed medical personnel. By expanding the definition of a crime and imposing additional requirements on local law enforcement, this bill would create a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

~~Existing law allows a probation officer, parole officer, or peace officer to arrest a person without warrant or other process during the period that a person is released on probation, conditional sentence or summary probation, or mandatory supervision, or when the person is subject to revocation of postrelease community supervision or parole supervision, if the officer has probable cause to believe that the supervised person is violating the terms of his or her supervision. Under existing law, the revocation of supervision, summary or otherwise, serves to toll the running of the period of supervision.~~

~~This bill would make technical, nonsubstantive changes to those provisions.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ yes.
State-mandated local program: ~~no~~ yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 4030 of the Penal Code is amended to
- 2 read:
- 3 4030. (a) The Legislature finds and declares that law
- 4 enforcement policies and practices for conducting strip or body
- 5 cavity searches of detained persons vary widely throughout
- 6 California. Consequently, some people have been arbitrarily
- 7 subjected to unnecessary strip and body cavity searches after arrests
- 8 for minor misdemeanor and infraction offenses. Some present
- 9 search practices violate state and federal constitutional rights to
- 10 privacy and freedom from unreasonable searches and seizures.

1 It is the intent of the Legislature in enacting this section to protect
2 the state and federal constitutional rights of the people of California
3 by establishing a statewide policy strictly limiting strip and body
4 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 any person in the custody of the
12 Director of the Department of Corrections or the Director of the
13 Youth Authority.

14 (c) As used in this section, “strip search” means a search which
15 requires a person to remove or arrange some or all of his or her
16 clothing so as to permit a visual inspection of the underclothing,
17 breasts, buttocks, or genitalia of such person.

18 (d) As used in this section:

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

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

23 (3) “Physical body cavity search” means physical intrusion into
24 a body cavity for the purpose of discovering any object concealed
25 in the body cavity.

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

32 (f) No person arrested and held in custody on a misdemeanor
33 or infraction offense, except those involving weapons, controlled
34 substances or violence nor any minor detained prior to a detention
35 hearing on the grounds that he or she is a person described in
36 Section 300, 601 or 602 of the Welfare and Institutions Code,
37 except for those minors alleged to have committed felonies or
38 offenses involving weapons, controlled substances or violence,
39 shall be subjected to a strip search or visual body cavity search
40 prior to placement in the general jail population, unless a peace

1 officer has determined there is reasonable suspicion based on
2 specific and articulable facts to believe such person is concealing
3 a weapon or contraband, and a strip search will result in the
4 discovery of the weapon or contraband. No strip search or visual
5 body cavity search or both may be conducted without the prior
6 written authorization of the supervising officer on duty. The
7 authorization shall include the specific and articulable facts and
8 circumstances upon which the reasonable suspicion determination
9 was made by the supervisor.

10 (g) (1) Except pursuant to the provisions of paragraph (2), no
11 person arrested and held in custody on a misdemeanor or infraction
12 offense not involving weapons, controlled substances or violence,
13 shall be confined in the general jail population unless all of the
14 following are true:

15 (i)

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

17 (ii)

18 (B) The person is not released on his or her own recognizance
19 pursuant to Article 9 (commencing with Section 1318) of Chapter
20 1 of Title 10 of Part 2.

21 (iii)

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

24 (2) No person may be housed in the general jail population prior
25 to release pursuant to the provisions of paragraph (1) unless a
26 documented emergency exists and there is no reasonable alternative
27 to such placement. Such person shall be placed in the general
28 population only upon prior written authorization documenting the
29 specific facts and circumstances of the emergency. The written
30 authorization shall be signed by the uniformed supervisor of the
31 facility or by a uniformed watch commander. Any person confined
32 in the general jail population pursuant to paragraph (1) shall retain
33 all rights to release on citation, his or her own recognizance, or
34 bail which were preempted as a consequence of the emergency.

35 (h) No person arrested on a misdemeanor or infraction offense,
36 nor any minor described in subdivision (b), shall be subjected to
37 a physical body cavity search except under the authority of a search
38 warrant issued by a magistrate specifically authorizing the physical
39 body cavity search.

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

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

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

21 (l) All persons conducting or otherwise present *or within sight*
22 *of the inmate* during a strip search or visual or physical body cavity
23 search shall be of the same sex as the person being searched, except
24 for physicians or licensed medical personnel.

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

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

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

39 (p) Any person who suffers damage or harm as a result of a
40 violation of this section may bring a civil action to recover actual

1 damages, or one thousand dollars (\$1,000), whichever is greater.
2 In addition, the court may, in its discretion, award punitive
3 damages, equitable relief as it deems necessary and proper, and
4 costs, including reasonable attorney's fees.

5 *SEC. 2. No reimbursement is required by this act pursuant to*
6 *Section 6 of Article XIII B of the California Constitution for certain*
7 *costs that may be incurred by a local agency or school district*
8 *because, in that regard, this act creates a new crime or infraction,*
9 *eliminates a crime or infraction, or changes the penalty for a crime*
10 *or infraction, within the meaning of Section 17556 of the*
11 *Government Code, or changes the definition of a crime within the*
12 *meaning of Section 6 of Article XIII B of the California*
13 *Constitution.*

14 *However, if the Commission on State Mandates determines that*
15 *this act contains other costs mandated by the state, reimbursement*
16 *to local agencies and school districts for those costs shall be made*
17 *pursuant to Part 7 (commencing with Section 17500) of Division*
18 *4 of Title 2 of the Government Code.*

19 ~~SECTION 1. Section 1203.2 of the Penal Code is amended to~~
20 ~~read:~~

21 ~~1203.2. (a) At any time during the period of supervision of a~~
22 ~~person (1) released on probation under the care of a probation~~
23 ~~officer pursuant to this chapter, (2) released on conditional sentence~~
24 ~~or summary probation not under the care of a probation officer,~~
25 ~~(3) placed on mandatory supervision pursuant to subparagraph (B)~~
26 ~~of paragraph (5) of subdivision (h) of Section 1170, (4) subject to~~
27 ~~revocation of postrelease community supervision pursuant to~~
28 ~~Section 3455, or (5) subject to revocation of parole supervision~~
29 ~~pursuant to Section 3000.08, if any probation officer, parole officer,~~
30 ~~or peace officer has probable cause to believe that the supervised~~
31 ~~person is violating any term or condition of his or her supervision,~~
32 ~~the officer may, without warrant or other process and at any time~~
33 ~~until the final disposition of the case, rearrest the supervised person~~
34 ~~and bring him or her before the court or the court may, in its~~
35 ~~discretion, issue a warrant for his or her rearrest. Upon rearrest,~~
36 ~~or upon the issuance of a warrant for rearrest the court may revoke~~
37 ~~and terminate the supervision of the person if the interests of justice~~
38 ~~so require and the court, in its judgment, has reason to believe~~
39 ~~from the report of the probation or parole officer or otherwise that~~
40 ~~the person has violated any of the conditions of his or her~~

1 supervision, has become abandoned to improper associates or a
2 vicious life, or has subsequently committed other offenses,
3 regardless of whether he or she has been prosecuted for those
4 offenses. However, the court shall not terminate parole pursuant
5 to this section. Supervision shall not be revoked for failure of a
6 person to make restitution imposed as a condition of supervision
7 unless the court determines that the defendant has willfully failed
8 to pay and has the ability to pay. Restitution shall be consistent
9 with a person's ability to pay. The revocation, summary or
10 otherwise, shall serve to toll the running of the period of
11 supervision.

12 (b) (1) Upon its own motion or upon the petition of the
13 supervised person, the probation or parole officer, or the district
14 attorney, the court may modify, revoke, or terminate supervision
15 of the person pursuant to this subdivision, except that the court
16 shall not terminate parole pursuant to this section. The court in the
17 county in which the person is supervised has jurisdiction to hear
18 the motion or petition, or for those on parole, either the court in
19 the county of supervision or the court in the county in which the
20 alleged violation of supervision occurred. A person supervised on
21 parole or postrelease community supervision pursuant to Section
22 3455 may not petition the court pursuant to this section for early
23 release from supervision, and a petition under this section shall
24 not be filed solely for the purpose of modifying parole. This section
25 does not prohibit the court in the county in which the person is
26 supervised or in which the alleged violation of supervision occurred
27 from modifying a person's parole when acting on the court's own
28 motion or a petition to revoke parole. The court shall give notice
29 of its motion, and the probation or parole officer or the district
30 attorney shall give notice of his or her petition to the supervised
31 person, his or her attorney of record, and the district attorney or
32 the probation or parole officer, as the case may be. The supervised
33 person shall give notice of his or her petition to the probation or
34 parole officer and notice of any motion or petition shall be given
35 to the district attorney in all cases. The court shall refer its motion
36 or the petition to the probation or parole officer. After the receipt
37 of a written report from the probation or parole officer, the court
38 shall read and consider the report and either its motion or the
39 petition and may modify, revoke, or terminate the supervision of

1 the supervised person upon the grounds set forth in subdivision
2 (a) if the interests of justice so require.

3 (2) The notice required by this subdivision may be given to the
4 supervised person upon his or her first court appearance in the
5 proceeding. Upon the agreement by the supervised person in
6 writing to the specific terms of a modification or termination of a
7 specific term of supervision, any requirement that the supervised
8 person make a personal appearance in court for the purpose of a
9 modification or termination shall be waived. Prior to the
10 modification or termination and waiver of appearance, the
11 supervised person shall be informed of his or her right to consult
12 with counsel, and if indigent the right to secure court appointed
13 counsel. If the supervised person waives his or her right to counsel
14 a written waiver shall be required. If the supervised person consults
15 with counsel and thereafter agrees to a modification, revocation,
16 or termination of the term of supervision and waiver of personal
17 appearance, the agreement shall be signed by counsel showing
18 approval for the modification or termination and waiver.

19 (c) Upon any revocation and termination of probation the court
20 may, if the sentence has been suspended, pronounce judgment for
21 any time within the longest period for which the person might have
22 been sentenced. However, if the judgment has been pronounced
23 and the execution thereof has been suspended, the court may revoke
24 the suspension and order that the judgment shall be in full force
25 and effect. In either case, the person shall be delivered over to the
26 proper officer to serve his or her sentence, less any credits herein
27 provided for.

28 (d) In any case of revocation and termination of probation,
29 including, but not limited to, cases in which the judgment has been
30 pronounced and the execution thereof has been suspended, upon
31 the revocation and termination, the court may, in lieu of any other
32 sentence, commit the person to the Department of Corrections and
33 Rehabilitation, Division of Juvenile Facilities if he or she is
34 otherwise eligible for that commitment.

35 (e) If probation has been revoked before the judgment has been
36 pronounced, the order revoking probation may be set aside for
37 good cause upon motion made before pronouncement of judgment.
38 If probation has been revoked after the judgment has been
39 pronounced, the judgment and the order which revoked the
40 probation may be set aside for good cause within 30 days after the

1 court has notice that the execution of the sentence has commenced.
2 If an order setting aside the judgment, the revocation of probation,
3 or both is made after the expiration of the probationary period, the
4 court may again place the person on probation for that period and
5 with those terms and conditions as it could have done immediately
6 following conviction.

7 (f) As used in this section, the following definitions shall apply:

8 (1) “Court” means a judge, magistrate, or revocation hearing
9 officer described in Section 71622.5 of the Government Code.

10 (2) “Probation officer” means a probation officer as described
11 in Section 1203 or an officer of the agency designated by the board
12 of supervisors of a county to implement postrelease community
13 supervision pursuant to Section 3451.

14 (3) “Supervised person” means a person who satisfies any of
15 the following:

16 (A) He or she is released on probation subject to the supervision
17 of a probation officer.

18 (B) He or she is released on conditional sentence or summary
19 probation not under the care of a probation officer.

20 (C) He or she is subject to mandatory supervision pursuant to
21 subparagraph (B) of paragraph (5) of subdivision (h) of Section
22 1170.

23 (D) He or she is subject to revocation of postrelease community
24 supervision pursuant to Section 3455.

25 (E) He or she is subject to revocation of parole pursuant to
26 Section 3000.08.

27 (g) This section does not affect the authority of the supervising
28 agency to impose intermediate sanctions, including flash
29 incarceration, to persons supervised on parole pursuant to Section
30 3000.8 or postrelease community supervision pursuant to Part 3
31 (commencing with Section 3450) of Title 2.05.