
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Loni Hancock, Chair

2015 - 2016 Regular

Bill No: AB 303 **Hearing Date:** June 9, 2015
Author: Gonzalez
Version: April 16, 2015
Urgency: No **Fiscal:** Yes
Consultant: JRD

Subject: *Searches: County Jails*

HISTORY

Source: Author

Prior Legislation: AB 1367 (Waters) – Chapter 35, Statutes of 1984.

Support: American Civil Liberties Union; California Attorneys for Criminal Justice; California Public Defenders Association; L.A. County Probation Officers Union; Legal Services for Prisoners with Children; Orange County Employees Association; Riverside Sheriffs' Association; State Coalition of Probation Organizations; Youth Law Center

Opposition: None Known

Assembly Floor Vote: 77 - 0

PURPOSE

The purpose of this legislation is to require that during a strip search or body cavity search of a juvenile, all persons within sight be of the same sex as the person being searched, except for physicians or licensed medical personnel, as specified.

Existing law makes legislative findings and declarations 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. (Penal Code § 4030(a).)

Existing law states 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. (Penal Code § 4030(a).)

Existing law provides that all persons conducting or otherwise present 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. (Penal Code § 4030(l).)

Existing law provides that the provisions these specified searches shall apply only to pre-arraignment 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 specified sections of the Welfare and Institutions Code alleged to have committed a misdemeanor or infraction offense. The provisions of this section shall not apply to any person in the custody of the Director of the Department of Corrections or the Director of the Youth Authority. (Penal Code § 4030(b).)

Existing law defines:

- “Strip search” as 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. (Penal Code § 4030(c).)
- “Body cavity” as the stomach or rectal cavity of a person, and vagina of a female person. (Penal Code § 4030(d)(1).)
- “Visual body cavity search” as the visual inspection of a body cavity. (Penal Code § 4030(d)(2).)
- “Physical body cavity search” as the physical intrusion into a body cavity for the purpose of discovering any object concealed in the body cavity. (Penal Code § 4030(d)(3).)

Existing law states that when a person is arrested and taken into custody, that person may be subjected to pat-down 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. (Penal Code § 4030(e).)

Existing law provides that no person arrested and held in custody on a misdemeanor or infraction offense, except those involving weapons, controlled substances or violence nor any minor detained prior to a detention hearing on the grounds that he or she is a person described in specified sections of the Welfare and Institutions Code, except for those minors alleged to have committed felonies or offenses involving weapons, controlled substances or violence, shall 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 such person is concealing a weapon or contraband, and a strip search will result in the discovery of the weapon or contraband. No strip search or visual body cavity search or both may 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. (Penal Code § 4030(f).)

Existing law provides that no person arrested on a misdemeanor or infraction offense, nor any minor, shall 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. (Penal Code § 4030(h).)

Existing law provides that persons conducting a strip search or a visual body cavity search shall not touch the breasts, buttocks, or genitalia of the person being searched. (Penal Code § 4030(j).)

Existing law states that 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. Any physician engaged in providing health care to detainees and inmates of the facility may conduct physical body cavity searches. (Penal Code § 4030(k).)

Existing law provides that 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. (Penal Code § 4030(m).)

Existing law states that a person who knowingly and willfully authorizes or conducts a strip, visual or physical body cavity search in violation of this section is guilty of a misdemeanor. (Penal Code § 4030(n).)

Existing law states that nothing in this section shall be construed as limiting any common law or statutory rights of any person regarding any action for damages or injunctive relief, or as precluding the prosecution under another provision of law of any peace officer or other person who has violated this section. (Penal Code § 4030(o).)

Existing law states that 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. (Penal Code § 4030(p).)

This bill states that all persons conducting or otherwise present or within sight of the juvenile during a strip search or visual or physical body cavity search must be of the same sex as the person being searched, except for physicians or licensed medical personnel.

This bill authorizes any person who suffers damage or harm as a result of a violation of this section to 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.

RECEIVERSHIP/OVERCROWDING CRISIS AGGRAVATION

For the past eight years, this Committee has scrutinized legislation referred to its jurisdiction for any potential impact on prison overcrowding. Mindful of the United States Supreme Court ruling and federal court orders relating to the state's ability to provide a constitutional level of health care to its inmate population and the related issue of prison overcrowding, this Committee has applied its "ROCA" policy as a content-neutral, provisional measure necessary to ensure that the Legislature does not erode progress in reducing prison overcrowding.

On February 10, 2014, the federal court ordered California to reduce its in-state adult institution population to 137.5% of design capacity by February 28, 2016, as follows:

- 143% of design bed capacity by June 30, 2014;
- 141.5% of design bed capacity by February 28, 2015; and,
- 137.5% of design bed capacity by February 28, 2016.

In February of this year the administration reported that as “of February 11, 2015, 112,993 inmates were housed in the State’s 34 adult institutions, which amounts to 136.6% of design bed capacity, and 8,828 inmates were housed in out-of-state facilities. This current population is now below the court-ordered reduction to 137.5% of design bed capacity.” (Defendants’ February 2015 Status Report In Response To February 10, 2014 Order, 2:90-cv-00520 KJM DAD PC, 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (fn. omitted).

While significant gains have been made in reducing the prison population, the state now must stabilize these advances and demonstrate to the federal court that California has in place the “durable solution” to prison overcrowding “consistently demanded” by the court. (Opinion Re: Order Granting in Part and Denying in Part Defendants’ Request For Extension of December 31, 2013 Deadline, NO. 2:90-cv-0520 LKK DAD (PC), 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (2-10-14). The Committee’s consideration of bills that may impact the prison population therefore will be informed by the following questions:

- Whether a proposal erodes a measure which has contributed to reducing the prison population;
- Whether a proposal addresses a major area of public safety or criminal activity for which there is no other reasonable, appropriate remedy;
- Whether a proposal addresses a crime which is directly dangerous to the physical safety of others for which there is no other reasonably appropriate sanction;
- Whether a proposal corrects a constitutional problem or legislative drafting error; and
- Whether a proposal proposes penalties which are proportionate, and cannot be achieved through any other reasonably appropriate remedy.

COMMENTS

1. Need for This Legislation

According to the author:

Under existing law, all persons conducting a strip search must be of the same sex as the person being searched, except for physicians or licensed medical personnel. Unfortunately, there have been some cases where officers of the opposite sex are within sight of the person being strip searched, causing distress among detainees.

Last year, the Youth Law Center filed a formal complaint to the U.S. Department of Justice on the excessive use of pepper spray in San Diego. According to report, one of the incidents presented involved a girl who was in suicide watch and refused to strip because a male staffer was within sight during the search. Due to the guidelines established by the local department of probation, the girl

was pepper sprayed immediately as she would not follow orders. She was pepper sprayed four times until she finally gave up.

The lack of guidance and a potential loophole in current law have led to officers' use of pepper spray on inmates who correctly object to the presence of opposite sex personnel during strip searches. One way to reduce confrontation between officers and inmates is to clarify that no person present or "within sight" of the inmate can be of the opposite sex during these procedures. According to reports, it appears that the prohibition against officers of the opposite sex being "present" could be plausibly denied because of the term's lack of a definition.

While the "present" standard for strip searches existing in current law is vague and prone to abuse, AB 303 will clarify who can and cannot be "within sight" of an inmate being stripped search in order to prevent cases like the ones seen in San Diego County.

By adding "within sight" of the victim, the bill closes a loophole where a probation officer conducting the strip search was of the same sex as the victim but all other officers present or visible to the inmate were not. The bill is limited to Juvenile Detention Centers in California.

2. Effect of Legislation

On April 2, 2012, the Supreme Court upheld the validity of strip searches by jail officials for even minor offenses when a person is being placed in the general population. (*Florence v. Board of Chosen Freeholders of County of Burlington*, 2012 US Lexis 2712.) The Court, however, did not directly address the issue of strip searches before a person's detention is reviewed by a judicial officer. (*Id.*)

California law regulates when and how strip searches occur in local detention facilities. The provision, which was passed in 1984, has the codified legislative intent to strictly limit strip and body cavity searches. The provisions of the law apply only to adult and juvenile pre-arraignment detainees arrested for infractions or misdemeanors. This bill maintains the existing practice of permitting strip searches of inmates prior to them entering the general population and simply specifies that all persons within view of the search must also be of the same gender. According to those in support, this modification, while small, will make a significant difference to those persons being searched and will not impose a significant burden on law enforcement agencies conducting these searches.

3. Argument in Support

According to the California Public Defenders Association:

Current law requires that any strip search, physical body cavity search, or visual body cavity search of an arrestee be conducted by a person of the same sex as the arrestee, and only in the presence of others of the same sex as the arrestee. AB 303 would amend Penal Code section 4030 to also require that when such searches are conducted, any person "within sight of the inmate" be of the same sex as the person being searched. The new requirement will maintain current exceptions for physicians or licensed medical personnel. Penal Code section 4030

applies only to prearrangement detainees, including minors, arrested for infraction or misdemeanor cases.

CPDA supports the goal of AB 303, which is to ensure that such searches are conducted in a manner that helps to minimize, at least in some measure, the indignity suffered by those arrested for low-level offenses.

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