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## **SENATE COMMITTEE ON PUBLIC SAFETY**

**Senator Loni Hancock, Chair**

**2015 - 2016 Regular**

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**Bill No:** AB 1705      **Hearing Date:** June 28, 2016

**Author:** Rodriguez

**Version:** June 8, 2016

**Urgency:** No

**Consultant:** JRD

**Fiscal:** No

**Subject: *Jails: Searches***

### **FOR VOTE ONLY**

### **HISTORY**

**Source:** California State Sheriffs' Association

**Prior Legislation:** SB 795 (Committee on Public Safety) – Chapter 499, Statutes of 2015  
AB 303 (Gonzalez) – Chapter 464, Statutes of 2015

**Support:** California Peace Officers' Association; California Police Chiefs Association; California State Association of Counties; Association for Los Angeles Deputy Sheriffs; Los Angeles County Sheriff's Department; Los Angeles Police Protective League; Los Angeles Professional Peace Officers Association; Orange County Board of Supervisors; Peace Officers Research Association of California; Riverside Sheriffs Association

**Opposition:** American Civil Liberties Union; California Attorneys for Criminal Justice; Legal Services for Prisoners with Children

**Assembly Floor Vote:** 60 - 4

### **PURPOSE**

***The purpose of this bill is to authorize law enforcement to use a body scanner to search a person arrested for the commission of any misdemeanor or infraction and taken into custody, as specified.***

*Existing law* states legislative intent 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 after arrests for minor misdemeanor and infraction offenses. (Penal Code § 4030(a)(2).)

*Existing law* states that when a person is arrested and taken into custody for a misdemeanor or infraction, 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(d).)

*Existing law* provides that no arrestee held in custody for a misdemeanor or infraction, except for those involving weapons, controlled substances or violence shall be subjected to a strip search or 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 that a strip search will result in the discovery of the weapon or contraband. (Penal Code § 4030(e).)

*Existing law* allows a strip search or body cavity search without reasonable suspicion based on specific and articulable facts if a person is arrested on a misdemeanor or infraction involving weapons, controlled substances, or violence. (Penal Code § 4030 (e).)

*Existing law* requires the supervising officer on duty to authorize a strip search or *visual* body cavity search. (Pena Code § 4030(e).)

*Existing law* prohibits a person arrested and held in custody for a misdemeanor or infraction not involving weapons, controlled substances, or violence from being confined in the general jail population unless the person is not cited and released, is not released on his or her own recognizance, and is not able to post bail within a reasonable time, not less than three hours. (Penal Code§ 4030(f).)

*Existing law* prohibits law enforcement from subjecting a person arrested and held in custody for a misdemeanor or infraction to a *physical* body cavity search without obtaining a search warrant. (Penal Code § 4030(h).)

*Existing law* states that when a detainee is being subjected to a strip search or a body cavity search, the person conducting the search, as well as persons present or within sight of the detainee, must be of the same sex as the detainee being searched. (Penal Code § 4030(k).)

*Existing law* defines “strip search,” “physical body cavity search,” and “visual body cavity search” as specified. (Penal Code § 4030(c).)

*This bill* would 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.

*This bill* provides that an agency that utilizes a body scanner shall endeavor to avoid knowingly using a body scanner to scan a woman who is pregnant.

*This bill* provides that 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.

#### RECEIVERSHIP/OVERCROWDING CRISIS AGGRAVATION

For the past several 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 December of 2015 the administration reported that as “of December 9, 2015, 112,510 inmates were housed in the State’s 34 adult institutions, which amounts to 136.0% of design bed capacity, and 5,264 inmates were housed in out-of-state facilities. The current population is 1,212 inmates below the final court-ordered population benchmark of 137.5% of design bed capacity, and has been under that benchmark since February 2015.” (Defendants’ December 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).) One year ago, 115,826 inmates were housed in the State’s 34 adult institutions, which amounted to 140.0% of design bed capacity, and 8,864 inmates were housed in out-of-state facilities. (Defendants’ December 2014 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 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 Bill

According to the author:

Body scanners are non-invasive devices that efficiently search individuals for unauthorized substances or weapons, often times reducing the need for additional and otherwise intrusive search procedures such as patdowns and full clothing searches. The same principle of security is used in airports across the country to screen for unauthorized devices or paraphernalia. AB 1705 would authorize law enforcement to utilize this time-saving and effective technology to screen individuals who have been taken into custody.

## 2. Effect of Legislation

In *Florence v. Board of Chosen Freeholders of County of Burlington* (2012) 566 U.S. \_\_, 132 S.Ct. 1510, the Supreme Court, in a 5-4 decision, held that the strip searches for inmates entering the general population of a prison do not violate the Fourth Amendment. The Court explicitly refused to limit the authority to use strip searches only to situations in which a specific individual gave officers a reason to consider that prisoner to be dangerous or likely to be carrying a concealed weapon or drugs. The Court upheld the validity of strip searches by jail officials for even minor offenses. The Court concluded that a prisoner's likelihood of possessing contraband based on the severity of the current offense or an arrestee's criminal history is too difficult to determine effectively.

Under California law, a person arrested for a minor misdemeanor or infraction and taken into custody is subject to pat down searches, metal detector searches, and thorough clothing searches in order to discover contraband before being placed in a booking cell. But the Legislature declared its intent to strictly limit strip and body cavity searches on adult and juvenile pre-arraignement detainees arrested for infractions or misdemeanors. Thus, existing state law regulates when and how strip searches occur in local detention facilities for this population. A person arrested for a misdemeanor not involving weapons, controlled substances, or violence cannot as a matter of course be subjected to a strip search or body cavity search before being placed in the general population. Strip-searches or body-cavity searches on these persons require some individualized suspicion.

This bill permits a person arrested for any misdemeanor or infraction to be subject to a body-scanner search.

## 3. 2015 Public Safety Omnibus Bill

Senate Bill 795 (Committee on Public Safety, of 2015), originally included a provision authorizing the use of body scanners on a person arrested before placing that person in a booking cell. This provision was in the bill when it passed out of the Senate with no “no” votes and was deleted from the bill in the Assembly.

## 4. Argument in Support

The California State Sheriffs Association states:

Existing law, Penal Code Section 4030, establishes a statewide policy strictly limiting the use of strip and cavity searches for pre-arrainment detainees arrested for infraction and misdemeanor offenses, due to their intrusive nature. The statute specifically states that a person who is arrested and taken into custody may be subjected to pat down searches, metal detector searches, and thorough clothing searches in order to discover and retrieve concealed weapons and contraband.

The constant flow of contraband is of great concern for correctional facilities and can present a safety hazard for the individual, staff, and other inmates. The use of body scanners is a more efficient, effective, and less invasive means of assessing if an individual is harboring weapons or contraband substances than many other methods currently authorized under state law. Body scanning technology can

detect contraband hidden inside and on a person's body in less time than conventional search methods and is currently successfully used in many correctional facilities nationwide. While current law does not restrict the use of this technology, it has yet to be updated to specifically authorize law enforcement personnel to subject individuals who have been arrested and booked to this type of search.

## 5. Argument in Opposition

The American Civil Liberties Union states:

The Legislature carefully put strict limits on strip searches and visual body cavity searches in order to protect and respect Californians state and federal constitutional rights to privacy and freedom from unreasonable searches and seizures. Expanding the law to include body scanners triggers these same rights.

Body scanners have been the focus of much public debate in recent years. Chief among the concerns raised by critics are those related to the images produced by the scanners, as certain body scanners have the ability to produce strikingly graphic images of the searched person's body under the person's clothes. This type of body scanner, one that displays a person's soft tissue, or naked body, is essentially a virtual strip search, permitting those viewing the image to see the searched person's private body parts, including the size and shape of the person's breasts and genitals....

Without limits to ensure that inmates who are subjected to a virtual strip search as described above are afforded the same types of protections as those subject to a traditional strip search or visual body cavity search, we fear that the privacy and unreasonable search and seizure concerns so carefully addressed by Legislatures past may resurface.

-- END --