

BILL ANALYSIS

C.S.H.B. 4071
By: Burrows
Criminal Jurisprudence
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested parties observe that body cavity searches are among the most intrusive searches recognized by law and are reserved for limited and extenuating instances. Typically, the parties continue, these searches are conducted solely after arrest and upon intake. However, in relatively recent incidents, these searches were conducted prior to arrest without a warrant and with little to no regard for hygienic practices. The parties point to a specific incident in which individuals under suspicion of drug possession were taken to hospitals and subjected to intrusive medical procedures aimed at finding drugs in the suspects' body cavities, procedures for which the individuals then received medical bills. The parties further contend that, while the Department of Public Safety has subsequently clarified its policy to prohibit these searches without a warrant, codifying the policy in law is necessary for uniformity across all law enforcement agencies. C.S.H.B. 4071 seeks to address this contention.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 4071 amends the Code of Criminal Procedure to prohibit a peace officer from conducting a body cavity search of a person during a period in which the officer is detaining the person unless the officer first obtains a search warrant authorizing the body cavity search. The bill conditions the admissibility of evidence obtained by a peace officer conducting a body cavity search of a person during a traffic stop on there being evidence of compliance with the search warrant requirement. The bill requires a body cavity search to be conducted in a private, sanitary place and in accordance with medically recognized, hygienic practices. The bill establishes that a peace officer who obtains protected health information in the course of conducting such a body cavity search is subject to the same confidentiality requirements and penalties as a covered entity under Health and Safety Code provisions relating to medical records privacy. The bill makes a law enforcement agency that employs a peace officer who conducts such a search liable for any medical expenses incident to the search. The bill exempts from application of its provisions a body cavity search conducted pursuant to an investigation of border crime or conducted on a person after the person is arrested, including any time during which the person is confined awaiting trial or after conviction of a criminal offense.

EFFECTIVE DATE

September 1, 2015.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 4071 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

HOUSE COMMITTEE SUBSTITUTE

No equivalent provision.

SECTION 1. This Act may be cited as The Angel Law.

SECTION 1. Chapter 18, Code of Criminal Procedure, is amended by adding Article 18.24 to read as follows:

SECTION 2. Chapter 18, Code of Criminal Procedure, is amended by adding Article 18.24 to read as follows:

Art. 18.24. BODY CAVITY SEARCH.

Art. 18.24. BODY CAVITY SEARCH DURING INVESTIGATIVE DETENTION.

(a) In this article, "body cavity search" means an inspection that is conducted of a person's anal or vaginal cavity in any manner.

(a) In this article, "body cavity search" means an inspection that is conducted of a person's anal or vaginal cavity in any manner, including by visual inspection, digital probing, x-ray, enema, or colonoscopy.

(b) Notwithstanding any other law, a peace officer may not conduct a body cavity search of a person arrested or detained during the investigation of a criminal offense unless a magistrate has issued a search warrant pursuant to this chapter authorizing the body cavity search.

(b) Notwithstanding any other law and except as otherwise provided by this article, a peace officer may not conduct a body cavity search of a person during a period in which the officer is detaining the person unless the officer first obtains a search warrant pursuant to this chapter authorizing the body cavity search.

(c) A body cavity search described by Subsection (b) must be conducted:

- (1) in a private, sanitary place; and
- (2) in accordance with medically recognized, hygienic practices.

(d) A peace officer who obtains protected health information in the course of conducting a body cavity search under this article is subject to the same confidentiality requirements and penalties as a covered entity under Chapter 181, Health and Safety Code. For purposes of this subsection, "protected health information" has the meaning assigned by the Health Insurance Portability and Accountability Act and Privacy Standards, as that term is defined by Section 181.001, Health and Safety Code.

(c) A person who is not arrested and charged with an offense arising out of evidence obtained incident to a body cavity search shall not be held responsible for medical expenses incident to the body cavity search.

(e) A law enforcement agency that employs a peace officer who conducts a body cavity search described by Subsection (b) is liable for any medical expenses incident to the search.

(f) Evidence of compliance with Subsection (b) is a condition precedent to the admissibility of evidence obtained by a peace officer conducting a body cavity search of a person during a traffic stop.

(g) This article does not apply to a body cavity search:

(1) conducted pursuant to an investigation of border crime, as that term is defined by Section 772.0071, Government Code; or

(2) conducted on a person after the person is arrested, including any time during which the person is confined awaiting trial or after conviction of a criminal offense.

SECTION 2. This Act takes effect November 1, 2015.

SECTION 3. This Act takes effect September 1, 2015.