

## **BILL ANALYSIS**

C.S.H.B. 103  
By: Dutton  
Homeland Security & Public Safety  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Interested parties note that the United States Constitution protects against unreasonable searches and seizures but contend that state law generally preventing law enforcement from conducting searches without a proper search warrant does not sufficiently protect against constitutional violations. C.S.H.B. 103 seeks to address this issue by expanding the circumstances under which a peace officer is prohibited from conducting warrantless body cavity searches.

### **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. 103 amends the Code of Criminal Procedure to expand the circumstances under which a peace officer is prohibited from conducting a body cavity search without a search warrant from during a traffic stop to any time other than when a person is confined in or committed to a penal institution or held in a place of detention and to remove statutory language excluding a pat-down from the types of inspections considered to be a body cavity search. The bill defines "penal institution" as a confinement facility operated by or under a contract with any division of the Texas Department of Criminal Justice or the Texas Juvenile Justice Department, a juvenile secure pre-adjudication or post-adjudication facility operated by or under a local juvenile probation department, or a county or municipal jail and defines "place of detention" as a police station or other building that is a place of operation for a law enforcement agency and is owned or operated by the agency for the purpose of detaining persons in connection with the suspected violation of a penal law.

### **EFFECTIVE DATE**

September 1, 2017.

### **COMPARISON OF ORIGINAL AND SUBSTITUTE**

While C.S.H.B. 103 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

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

Art. 18.24. BODY CAVITY SEARCH OF CERTAIN PERSONS [~~DURING TRAFFIC STOP~~]. (a) In this article:

(1) "Body [~~body~~] cavity search" means an inspection that is conducted of a person's anal or vaginal cavity in any manner [~~but the term does not include a pat-down~~].

(2) "Penal institution" means a confinement facility operated by or under a contract with any division of the Texas Department of Criminal Justice, a confinement facility operated by or under contract with the Texas Juvenile Justice Department, or a juvenile secure pre-adjudication or post-adjudication facility operated by or under a local juvenile probation department, or a county jail.

(b) Notwithstanding any other law, a peace officer may not conduct a body cavity search of a person other than a person confined in or committed to a penal institution [~~during a traffic stop~~] unless the officer first obtains a search warrant pursuant to this chapter authorizing the body cavity search.

SECTION 2. This Act takes effect September 1, 2017.

HOUSE COMMITTEE SUBSTITUTE

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

Art. 18.24. BODY CAVITY SEARCH OF CERTAIN PERSONS [~~DURING TRAFFIC STOP~~]. (a) In this article:

(1) "Body [~~body~~] cavity search" means an inspection that is conducted of a person's anal or vaginal cavity in any manner [~~but the term does not include a pat-down~~].

(2) "Penal institution" means a confinement facility operated by or under a contract with any division of the Texas Department of Criminal Justice, a confinement facility operated by or under contract with the Texas Juvenile Justice Department, a juvenile secure pre-adjudication or post-adjudication facility operated by or under a local juvenile probation department, or a county or municipal jail.

(3) "Place of detention" means a police station or other building that is a place of operation for a law enforcement agency, including a municipal police department or county sheriff's department, and is owned or operated by the law enforcement agency for the purpose of detaining persons in connection with the suspected violation of a penal law.

(b) Notwithstanding any other law, a peace officer may not conduct a body cavity search of a person other than a person confined in or committed to a penal institution or held in a place of detention [~~during a traffic stop~~] unless the officer first obtains a search warrant pursuant to this chapter authorizing the body cavity search.

SECTION 2. Same as introduced version.