

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-4005/P1dn

PJH:med:rs

February 9, 2012

Jeff,

Please review this draft to ensure that it is consistent with your intent. As we discussed, this draft does not refer to the possibility of searches as a “condition” of probation, parole, or release to extended supervision; instead, the draft simply includes the possibility of searches as part of the release. I am not sure whether, when determining whether these provisions pass constitutional muster, a court would prefer that an offender affirmatively choose to accept this possibility as a condition of his or her freedom from incarceration. As we discussed, it might be sufficient for an offender to receive and acknowledge “notice” of this possibility when he or she is released.

This draft does require reasonable suspicion of a crime or violation of a condition in order for a search to be justified, however. For that reason, this draft does not include the prohibition against searches that are arbitrary, capricious, or harassing.

This draft contains the same language for people who are placed on probation as for people who are released from incarceration to parole or extended supervision. Please also note that this draft includes the same provisions regarding the possibility of a search for persons released to parole or to extended supervision under various circumstances, including as part of a risk reduction or challenge incarceration sentence, as part of a substance abuse program, or when the person reaches his or her mandatory release date or is released to parole on a special action. If you do not want to include any of these provisions, please let me know.

This draft has an initial applicability provision, but not a delayed effective date. Please let me know if you want to delay the effective date of this bill and, as we discussed, if you would like to authorize or require the Department of Corrections to promulgate rules under the newly created statutes.

Please let me know if you have any questions or would like changes to the draft. When it meets your approval, I will redraft it into introducible form.

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