

AMENDED IN SENATE JUNE 13, 2002

AMENDED IN SENATE MARCH 11, 2002

AMENDED IN SENATE FEBRUARY 25, 2002

AMENDED IN ASSEMBLY MARCH 27, 2001

CALIFORNIA LEGISLATURE—2001-02 REGULAR SESSION

ASSEMBLY BILL

No. 1590

Introduced by Assembly Member Simitian

February 23, 2001

~~An act to amend Sections 422, 537c, 594, 594.1, 594.2, 594.6, 594.7, 594.8, 1538.5, and 12020 of, and to add Section 594.05 to, the Penal Code, relating to crime criminal procedure.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 1590, as amended, Simitian. ~~Crime~~ *Criminal procedure: search or seizure hearing.*

Existing law provides with respect to a preliminary examination in a criminal case that the magistrate shall, upon motion of either party, exclude all potential and actual witnesses who have not been examined.

Existing law also authorizes either party to challenge the exclusion of any person under this provision and requires the magistrate, upon motion of either party, to hold a hearing, on the record, to determine if the person sought to be excluded is, in fact, a person excludable under this provision.

This bill would apply these provisions to a hearing held pursuant to a motion to return property or suppress evidence obtained as the result of a search or seizure.

~~Existing law provides that any person who threatens in writing, verbally, or via an electronic communication device, to commit a crime which will result in death or great bodily injury, as specified, shall be punished by imprisonment in the county jail not to exceed one year, or by imprisonment in the state prison.~~

~~This bill would expand this provision to also include threats made by nonverbal conduct intended by the actor to be a substitute for oral or written verbal communication.~~

~~Existing law provides that any person who buys, sells, or has in his or her possession personal property from which the serial number has been removed is punishable by imprisonment in a county jail for up to 6 months if the value of the property does not exceed \$400.~~

~~This bill would provide that the punishment for buying, selling, or possessing personal property from which the serial number has been removed would be imprisonment in the state prison or in a county jail not exceeding one year.~~

~~Existing law, as amended by an initiative statute, provides that every person who maliciously defaces, damages, or destroys real or personal property is guilty of vandalism. Existing law also provides that it is unlawful to furnish aerosol paint capable of defacing property to a minor.~~

~~This bill would recast these provisions and also provide that it would be unlawful to furnish a minor with acid. This bill would make it unlawful to possess acid with the intent to commit vandalism or graffiti.~~

~~Under existing law, a defendant may move for the return of property or to suppress as evidence any tangible or intangible thing obtained as a result of a search or seizure based on specified grounds. Existing law allows a court to hold a hearing on the defendant's motion, but it does not specify whether the prosecution or defense investigator may be present in the courtroom during the hearing while other witnesses are testifying.~~

~~This bill would specify that during a hearing on a motion to suppress or return evidence, the prosecution or defense investigator may be present in the courtroom during the hearing while other witnesses are testifying.~~

~~Existing law defines brass knuckles and shurikens as metal weapons that are unlawful to manufacture, sell, or possess.~~



~~This bill would change the definitions of these weapons to include like weapons made of any material, including metal, plastic, wood or paper products, or composites. Because this bill would change the definition of a crime, it would impose a state-mandated local program.~~

~~The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that no reimbursement is required by this act for a specified reason.~~

~~This bill would amend an initiative statute and in accordance with its provisions would require a 2/3 vote for enactment by the Legislature.~~

~~Vote: 2/3 majority. Appropriation: no. Fiscal committee: yes no. State-mandated local program: yes no.~~

The people of the State of California do enact as follows:

1 SECTION 1. ~~This act shall be known as, and may be cited as,~~
2 ~~the Omnibus Crime Prevention Act of 2002.~~

3 SEC. 1.5. ~~Section 422 of the Penal Code is amended to read:~~

4 422. ~~Any person who willfully threatens to commit a crime~~
5 ~~which will result in death or great bodily injury to another person,~~
6 ~~with the specific intent that the statement, made verbally, in~~
7 ~~writing, by nonverbal conduct intended by the actor to be a~~
8 ~~substitute for oral or written verbal expression, or by means of an~~
9 ~~electronic communication device, is to be taken as a threat, even~~
10 ~~if there is no intent of actually carrying it out, which, on its face~~
11 ~~and under the circumstances in which it is made, is so unequivocal,~~
12 ~~unconditional, immediate, and specific as to convey to the person~~
13 ~~threatened, a gravity of purpose and an immediate prospect of~~
14 ~~execution of the threat, and thereby causes that person reasonably~~
15 ~~to be in sustained fear for his or her own safety or for his or her~~
16 ~~immediate family's safety, shall be punished by imprisonment in~~
17 ~~the county jail not to exceed one year, or by imprisonment in the~~
18 ~~state prison.~~

19 For the purposes of this section, "immediate family" means any
20 spouse, whether by marriage or not, parent, child, any person
21 related by consanguinity or affinity within the second degree, or
22 any other person who regularly resides in the household, or who,
23 within the prior six months, regularly resided in the household.



1 ~~“Electronic communication device” includes, but is not limited~~
2 ~~to, telephones, cellular telephones, computers, video recorders,~~
3 ~~fax machines, or pagers. “Electronic communication” has the~~
4 ~~same meaning as the term defined in Subsection 12 of Section~~
5 ~~2510 of Title 18 of the United States Code.~~

6 ~~SEC. 2.—Section 537e of the Penal Code is amended to read:~~

7 ~~537e.—(a) Any person who knowingly buys, sells, receives,~~
8 ~~disposes of, conceals, or has in his or her possession any personal~~
9 ~~property from which the manufacturer’s serial number,~~
10 ~~identification number, electronic serial number, or any other~~
11 ~~distinguishing number or identification mark has been removed,~~
12 ~~defaced, covered, altered, or destroyed, is guilty of a public~~
13 ~~offense, punishable as follows:~~

14 ~~(1) If the value of the property does not exceed four hundred~~
15 ~~dollars (\$400), by imprisonment in a county jail not exceeding one~~
16 ~~year.~~

17 ~~(2) If the value of the property exceeds four hundred dollars~~
18 ~~(\$400), by imprisonment in the state prison, or by imprisonment~~
19 ~~in a county jail not exceeding one year.~~

20 ~~(b) For purposes of this subdivision, “personal property”~~
21 ~~includes, but is not limited to, the following:~~

22 ~~(1) Any television, radio, recorder, phonograph, telephone,~~
23 ~~piano, or any other musical instrument or sound equipment.~~

24 ~~(2) Any washing machine, sewing machine, vacuum cleaner,~~
25 ~~or other household appliance or furnishings.~~

26 ~~(3) Any typewriter, adding machine, dictaphone, or any other~~
27 ~~office equipment or furnishings.~~

28 ~~(4) Any computer or any computer component, including the~~
29 ~~frame, chassis, or casing.~~

30 ~~(5) Any tool or similar device, including any technical or~~
31 ~~scientific equipment.~~

32 ~~(6) Any bicycle, exercise equipment, or any other~~
33 ~~entertainment or recreational equipment.~~

34 ~~(7) Any electrical or mechanical equipment, contrivance,~~
35 ~~material, or piece of apparatus or equipment, or any component~~
36 ~~part thereof.~~

37 ~~(8) Any clock, watch, watch case, or watch movement.~~

38 ~~(9) Any vehicle or vessel, or any component part thereof.~~

39 ~~(c) When property described in subdivision (b) comes into the~~
40 ~~custody of a peace officer it shall become subject to the provision~~



1 of Chapter 12 (commencing with Section 1407) of Title 10 of Part
2 2, relating to the disposal of stolen or embezzled property.
3 Property subject to this section shall be considered stolen or
4 embezzled property for the purposes of that chapter, and prior to
5 being disposed of, shall have an identification mark imbedded or
6 engraved in, or permanently affixed to it.

7 (d) This section does not apply to those cases or instances
8 where any of the changes or alterations enumerated in subdivision
9 (a) have been customarily made or done as an established practice
10 in the ordinary and regular conduct of business, by the original
11 manufacturer, or by his or her duly appointed direct representative,
12 or under specific authorization from the original manufacturer.

13 SEC. 3.—Section 594 of the Penal Code is amended to read:

14 594. (a) Every person who maliciously commits any of the
15 following acts with respect to any real or personal property not his
16 or her own, in cases other than those specified by state law, is guilty
17 of vandalism:

18 (1) Damages.

19 (2) Destroys.

20 Whenever a person violates this subdivision with respect to real
21 property, vehicles, signs, fixtures, furnishings, or property
22 belonging to any public entity, as defined by Section 811.2 of the
23 Government Code, or the federal government, it shall be a
24 permissive inference that the person neither owned the property
25 nor had the permission of the owner to damage or destroy the
26 property.

27 (b) (1) If the amount of damage or destruction is four hundred
28 dollars (\$400) or more, vandalism is punishable by imprisonment
29 in the state prison or in a county jail not exceeding one year, or by
30 a fine of not more than ten thousand dollars (\$10,000), or if the
31 amount of damage or destruction is ten thousand dollars (\$10,000)
32 or more, by a fine of not more than fifty thousand dollars
33 (\$50,000), or by both that fine and imprisonment.

34 (2) (A) If the amount of damage or destruction is less than four
35 hundred dollars (\$400), vandalism is punishable by imprisonment
36 in a county jail not exceeding one year, or by a fine of not more than
37 one thousand dollars (\$1,000), or by both that fine and
38 imprisonment.

39 (B) If the amount of damage or destruction is less than four
40 hundred dollars (\$400), and the defendant has been previously



1 ~~convicted of vandalism or affixing graffiti or other inscribed~~
2 ~~material under Section 594, 594.3, 594.4, 640.5, 640.6, or 640.7,~~
3 ~~vandalism is punishable by imprisonment in a county jail for not~~
4 ~~more than one year, or by a fine of not more than five thousand~~
5 ~~dollars (\$5,000), or by both that fine and imprisonment.~~

6 ~~(e) If a minor is personally unable to pay a fine levied for acts~~
7 ~~prohibited by this section, the parent of that minor shall be liable~~
8 ~~for payment of the fine. A court may waive payment of the fine,~~
9 ~~or any part thereof, by the parent upon a finding of good cause.~~

10 ~~(d) This section shall become operative on January 1, 2002.~~

11 ~~SEC. 4. Section 594.05 is added to the Penal Code, to read:~~

12 ~~594.05. (a) Every person who maliciously defaces with~~
13 ~~graffiti or other inscribed material any real or personal property~~
14 ~~not his or her own, in cases other than those specified by state law,~~
15 ~~is guilty of vandalism. Whenever a person violates this subdivision~~
16 ~~with respect to real property, vehicles, signs, fixtures, furnishings,~~
17 ~~or property belonging to any public entity, as defined by Section~~
18 ~~811.2 of the Government Code, or the federal government, it shall~~
19 ~~be a permissive inference that the person neither owned the~~
20 ~~property nor had the permission of the owner to deface the~~
21 ~~property.~~

22 ~~(b) (1) If the amount of defacement is four hundred dollars~~
23 ~~(\$400) or more, vandalism is punishable by imprisonment in the~~
24 ~~state prison or in a county jail not exceeding one year, or by a fine~~
25 ~~of not more than ten thousand dollars (\$10,000), or if the amount~~
26 ~~of defacement is ten thousand dollars (\$10,000) or more, by a fine~~
27 ~~of not more than fifty thousand dollars (\$50,000), or by both that~~
28 ~~imprisonment and fine.~~

29 ~~(2) (A) If the amount of defacement is less than four hundred~~
30 ~~dollars (\$400), vandalism is punishable by imprisonment in a~~
31 ~~county jail not exceeding one year, or by a fine of not more than~~
32 ~~one thousand dollars (\$1,000), or by both that fine and~~
33 ~~imprisonment.~~

34 ~~(B) If the amount of defacement is less than four hundred~~
35 ~~dollars (\$400), and the defendant has been previously convicted of~~
36 ~~vandalism or affixing graffiti or other inscribed material under~~
37 ~~Section 594, 594.3, 594.4, 640.5, 640.6, or 640.7, vandalism is~~
38 ~~punishable by imprisonment in a county jail for not more than one~~
39 ~~year, or by a fine of not more than five thousand dollars (\$5,000),~~
40 ~~or by both that fine and imprisonment.~~



1 ~~(c) Upon conviction of any person under this section for acts of~~
2 ~~vandalism consisting of defacing property with graffiti or other~~
3 ~~inscribed materials, the court may, in addition to any punishment~~
4 ~~imposed under subdivision (b), order the defendant to clean up,~~
5 ~~repair, or replace the damaged property himself or herself, or order~~
6 ~~the defendant, and his or her parents or guardians if the defendant~~
7 ~~is a minor, to keep the damaged property or another specified~~
8 ~~property in the community free of graffiti for up to one year.~~
9 ~~Participation of a parent or guardian is not required under this~~
10 ~~subdivision if the court deems this participation to be detrimental~~
11 ~~to the defendant, or if the parent or guardian is a single parent who~~
12 ~~must care for young children.~~

13 ~~(d) If a minor is personally unable to pay a fine levied for acts~~
14 ~~prohibited by this section, the parent of that minor shall be liable~~
15 ~~for payment of the fine. A court may waive payment of the fine,~~
16 ~~or any part thereof, by the parent upon a finding of good cause.~~

17 ~~(e) As used in this section, the term “graffiti or other inscribed~~
18 ~~material” includes any unauthorized inscription, word, figure,~~
19 ~~mark, or design, that is written, marked, etched, scratched, drawn,~~
20 ~~or painted on real or personal property.~~

21 ~~(f) The court may order any person ordered to perform~~
22 ~~community service or graffiti removal pursuant to paragraph (1)~~
23 ~~of subdivision (e) to undergo counseling.~~

24 ~~SEC. 5. Section 594.1 of the Penal Code is amended to read:~~

25 ~~594.1. (a) (1) It shall be unlawful for any person, firm, or~~
26 ~~corporation, except a parent or legal guardian, to sell or give or in~~
27 ~~any way furnish to another person, who is in fact under the age of~~
28 ~~18 years, any acid or aerosol container of paint that is capable of~~
29 ~~defacing property without first obtaining bona fide evidence of~~
30 ~~majority and identity.~~

31 ~~(2) For purposes of this subdivision, “bona fide evidence of~~
32 ~~majority and identity” is any document evidencing the age and~~
33 ~~identity of an individual which has been issued by a federal, state,~~
34 ~~or local governmental entity, and includes, but is not limited to, a~~
35 ~~motor vehicle operator’s license, a registration certificate issued~~
36 ~~under the federal Selective Service Act, or an identification card~~
37 ~~issued to a member of the armed forces.~~

38 ~~(3) This subdivision shall not apply to the furnishing of six~~
39 ~~ounces or less of an acid or aerosol container of paint to a minor~~



1 for the minor's use or possession under the supervision of the
2 minor's parent, guardian, instructor, or employer.

3 (4) Aerosol containers of paint, acid or related substances may
4 be furnished for use in school-related activities that are part of the
5 instructional program when used under controlled and supervised
6 situations within the classroom or on the site of a supervised
7 project. These containers or substances may not leave the
8 supervised site and shall be inventoried by the instructor. This use
9 shall comply with Section 32060 of the Education Code regarding
10 the safe use of toxic art supplies in schools.

11 (b) It shall be unlawful for any person under the age of 18 years
12 to purchase acid or an aerosol container of paint that is capable of
13 defacing property.

14 (c) Every retailer selling or offering for sale in this state acid or
15 aerosol containers of paint capable of defacing property shall post
16 in a conspicuous place a sign in letters at least three-eighths of an
17 inch high stating: "Any person who maliciously defaces real or
18 personal property with acid or paint is guilty of vandalism which
19 is punishable by a fine, imprisonment, or both."

20 (d) It is unlawful for any person to carry on his or her person
21 and in plain view to the public acid or an aerosol container of paint
22 while in any posted public facility, park, playground, swimming
23 pool, beach, or recreational area, other than a highway, street,
24 alley, or way, unless he or she has first received valid authorization
25 from the governmental entity which has jurisdiction over the
26 public area.

27 As used in this subdivision, "posted" means a sign placed in a
28 reasonable location or locations stating it is a misdemeanor to
29 possess acid or a spray can of paint in that public facility, park,
30 playground, swimming pool, beach, or recreational area without
31 valid authorization.

32 (e) (1) It is unlawful for any person under the age of 18 years
33 to possess acid or an aerosol container of paint for the purpose of
34 defacing property while on any public highway, street, alley, or
35 way, or other public place, regardless of whether that person is or
36 is not in any automobile, vehicle, or other conveyance.

37 (2) As a condition of probation for any violation of this
38 subdivision, the court may order a defendant convicted of a
39 violation of this subdivision to perform community service as
40 follows:



1 ~~(A) For a first conviction under this subdivision, community~~
2 ~~service not to exceed 100 hours over a period not to exceed 90 days~~
3 ~~during a time other than his or her hours of school attendance or~~
4 ~~employment.~~

5 ~~(B) If the person has a prior conviction under this subdivision,~~
6 ~~community service not to exceed 200 hours over a period of 180~~
7 ~~days during a time other than his or her hours of school attendance~~
8 ~~or employment.~~

9 ~~(C) If the person has two prior convictions under this~~
10 ~~subdivision, community service not to exceed 300 hours over a~~
11 ~~period not to exceed 240 days during a time other than his or her~~
12 ~~hours of school attendance or employment.~~

13 ~~(f) Violation of any provision of this section is a misdemeanor.~~
14 ~~Upon conviction of any person under this section, the court may,~~
15 ~~in addition to any other punishment imposed, if the jurisdiction has~~
16 ~~adopted a graffiti abatement program as defined in subdivision (f)~~
17 ~~of Section 594, order the defendant, and his or her parents or~~
18 ~~guardians if the defendant is a minor, to keep the damaged property~~
19 ~~or another specified property in the community free of graffiti, as~~
20 ~~follows:~~

21 ~~(1) For a first conviction under this section, for 90 days.~~

22 ~~(2) If the defendant has a prior conviction under this section, for~~
23 ~~180 days.~~

24 ~~(3) If the defendant has two or more prior convictions under~~
25 ~~this section, for 240 days.~~

26 ~~Participation of a parent or guardian is not required under this~~
27 ~~subdivision if the court deems this participation to be detrimental~~
28 ~~to the defendant, or if the parent or guardian is a single parent who~~
29 ~~must care for young children.~~

30 ~~(g) The court may order any person ordered to perform~~
31 ~~community service or graffiti removal pursuant to subdivision (e)~~
32 ~~or (f) to undergo counseling.~~

33 ~~SEC. 6.—Section 594.2 of the Penal Code is amended to read:~~

34 ~~594.2.—(a) Every person who possesses a masonry or glass~~
35 ~~drill bit, a carbide drill bit, a glass cutter, a grinding stone, an awl,~~
36 ~~a chisel, a carbide scribe, an aerosol paint container, a felt tip~~
37 ~~marker, any acid capable of defacing, damaging, or destroying~~
38 ~~property or any other marking substance with the intent to commit~~
39 ~~vandalism or graffiti, is guilty of a misdemeanor.~~



1 ~~(b) As a condition of probation for any violation of this section,~~
2 ~~the court may order the defendant to perform community service~~
3 ~~not to exceed 90 hours during a time other than his or her hours of~~
4 ~~school attendance or employment.~~

5 ~~(e) For the purposes of this section:~~

6 ~~(1) “Felt tip marker” means any broad-tipped marker pen with~~
7 ~~a tip exceeding three eighths of one inch in width, or any similar~~
8 ~~implement containing an ink that is not water soluble.~~

9 ~~(2) “Marking substance” means any substance or implement,~~
10 ~~other than aerosol paint containers and felt tip markers, that could~~
11 ~~be used to draw, spray, paint, etch, or mark.~~

12 ~~SEC. 7.—Section 594.6 of the Penal Code is amended to read:~~

13 ~~594.6. (a) Every person who, having been convicted of~~
14 ~~vandalism or affixing graffiti or other inscribed material under~~
15 ~~Section 594, 594.05, 594.3, 594.4, or 640.7, or any combination~~
16 ~~of these offenses, may be ordered by the court as a condition of~~
17 ~~probation to perform community service not to exceed 300 hours~~
18 ~~over a period not to exceed 240 days during a time other than his~~
19 ~~or her hours of school attendance or employment. Nothing in this~~
20 ~~subdivision shall limit the court from ordering the defendant to~~
21 ~~perform a longer period of community service if a longer period~~
22 ~~of community service is authorized under other provisions of law.~~

23 ~~(b) In lieu of the community service that may be ordered~~
24 ~~pursuant to subdivision (a), the court may order the defendant, and~~
25 ~~his or her parents or guardians if the defendant is a minor, as a~~
26 ~~condition of probation, to keep a specified property in the~~
27 ~~community free of graffiti for up to one year. Participation of a~~
28 ~~parent or guardian is not required under this subdivision if the~~
29 ~~court deems this participation to be detrimental to the defendant,~~
30 ~~or if the parent or guardian is a single parent who must care for~~
31 ~~young children.~~

32 ~~(c) The court may order any person ordered to perform~~
33 ~~community service or graffiti removal pursuant to subdivision (a)~~
34 ~~or (b) to undergo counseling.~~

35 ~~SEC. 8.—Section 594.7 of the Penal Code is amended to read:~~

36 ~~594.7. Notwithstanding subdivision (b) of Section 594, every~~
37 ~~person who, having been convicted previously of a violation of~~
38 ~~Section 595, 594.05, or of vandalism under Section 594 for~~
39 ~~maliciously defacing with graffiti or other inscribed material any~~
40 ~~real or personal property not his or her own on two separate~~



1 occasions and having been incarcerated pursuant to a sentence, a
2 conditional sentence, or a grant of probation for at least one of the
3 convictions, is subsequently convicted of vandalism under Section
4 594, shall be punished by imprisonment in a county jail not
5 exceeding one year, or in the state prison.

6 ~~SEC. 9.~~ Section 594.8 of the Penal Code is amended to read:

7 ~~594.8. (a) Any person convicted of possession of a~~
8 ~~destructive implement with intent to commit graffiti or willfully~~
9 ~~affixing graffiti under Section 594, 594.05, 594.2, 640.5, 640.6, or~~
10 ~~640.7, where the offense was committed when he or she was under~~
11 ~~the age of 18 years, shall perform not less than 24 hours of~~
12 ~~community service during a time other than his or her hours of~~
13 ~~school attendance or employment. One parent or guardian shall be~~
14 ~~present at the community service site for at least one-half of the~~
15 ~~hours of community service required under this section unless~~
16 ~~participation by the parent, guardian, or foster parent is deemed by~~
17 ~~the court to be inappropriate or potentially detrimental to the child.~~

18 ~~(b) In lieu of the community service required pursuant to~~
19 ~~subdivision (a), the court may order the defendant, and his or her~~
20 ~~parents or guardians if the defendant is a minor, to keep a specified~~
21 ~~property in the community free of graffiti for at least 60 days.~~
22 ~~Participation of a parent or guardian is not required under this~~
23 ~~subdivision if the court deems this participation to be detrimental~~
24 ~~to the defendant, or if the parent or guardian is a single parent who~~
25 ~~must care for young children.~~

26 ~~(c) The court may order any person ordered to perform~~
27 ~~community service or graffiti removal pursuant to subdivision (a)~~
28 ~~or (b) to undergo counseling.~~

29 ~~SEC. 10.~~

30 *SECTION 1.* Section 1538.5 of the Penal Code is amended to
31 read:

32 1538.5. (a) (1) A defendant may move for the return of
33 property or to suppress as evidence any tangible or intangible thing
34 obtained as a result of a search or seizure on either of the following
35 grounds:

36 (A) The search or seizure without a warrant was unreasonable.

37 (B) The search or seizure with a warrant was unreasonable
38 because any of the following apply:

39 (i) The warrant is insufficient on its face.



1 (ii) The property or evidence obtained is not that described in
2 the warrant.

3 (iii) There was not probable cause for the issuance of the
4 warrant.

5 (iv) The method of execution of the warrant violated federal or
6 state constitutional standards.

7 (v) There was any other violation of federal or state
8 constitutional standards.

9 (2) A motion pursuant to paragraph (1) shall be made in writing
10 and accompanied by a memorandum of points and authorities and
11 proof of service. The memorandum shall list the specific items of
12 property or evidence sought to be returned or suppressed and shall
13 set forth the factual basis and the legal authorities that demonstrate
14 why the motion should be granted.

15 (b) When consistent with the procedures set forth in this section
16 and subject to the provisions of Section 170 to 170.6, inclusive, of
17 the Code of Civil Procedure, the motion should first be heard by
18 the magistrate who issued the search warrant if there is a warrant.

19 (c) (1) Whenever a search or seizure motion is made in the
20 municipal or superior court as provided in this section, the judge
21 or magistrate shall receive evidence on any issue of fact necessary
22 to determine the motion. ~~At the hearing on a search and seizure~~
23 ~~motion, the investigating officer or the investigator for the~~
24 ~~defendant may be present in the courtroom while another witness~~

25 (2) *While a witness is under examination during a hearing*
26 *pursuant to a search or seizure motion, the judge or magistrate*
27 *shall, upon motion of either party, do any of the following:*

28 (A) *Exclude all potential and actual witnesses who have not*
29 *been examined.*

30 (B) *Order the witnesses not to converse with each other until*
31 *they are all examined.*

32 (C) *Order, where feasible, that the witnesses be kept separated*
33 *from each other until they are all examined.*

34 (D) *Hold a hearing, on the record, to determine if the person*
35 *sought to be excluded is, in fact, a person excludable under this*
36 *section.*

37 (3) *Either party may challenge the exclusion of any person*
38 *under paragraph (2).*

39 (4) *Paragraph (2) does not apply to the investigating officer or*
40 *the investigator for the defendant, nor does it apply to officers*



1 *having custody of persons brought before the court.* is under
2 investigation.

3 (d) If a search or seizure motion is granted pursuant to the
4 proceedings authorized by this section, the property or evidence
5 shall not be admissible against the movant at any trial or other
6 hearing unless further proceedings authorized by this section,
7 Section 871.5, 1238, or 1466 are utilized by the people.

8 (e) If a search or seizure motion is granted at a trial, the property
9 shall be returned upon order of the court unless it is otherwise
10 subject to lawful detention. If the motion is granted at a special
11 hearing, the property shall be returned upon order of the court only
12 if, after the conclusion of any further proceedings authorized by
13 this section, Section 1238 or 1466, the property is not subject to
14 lawful detention or if the time for initiating the proceedings has
15 expired, whichever occurs last. If the motion is granted at a
16 preliminary hearing, the property shall be returned upon order of
17 *the* court after 10 days unless the property is otherwise subject to
18 lawful detention or unless, within that time, further proceedings
19 authorized by this section, Section 871.5 or 1238 are utilized; if
20 they are utilized, the property shall be returned only if, after the
21 conclusion of the proceedings, the property is no longer subject to
22 lawful detention.

23 (f) (1) If the property or evidence relates to a felony offense
24 initiated by a complaint, the motion shall be made in the superior
25 court only upon filing of an information, except that the defendant
26 may make the motion at the preliminary hearing in the municipal
27 court or in the superior court in a county in which there is no
28 municipal court, but the motion shall be restricted to evidence
29 sought to be introduced by the people at the preliminary hearing.

30 (2) The motion may be made at the preliminary examination
31 only if, at least five court days before the date set for the
32 preliminary examination, the defendant has filed and personally
33 served on the people a written motion accompanied by a
34 memorandum of points and authorities as required by paragraph
35 (2) of subdivision (a). At the preliminary examination, the
36 magistrate may grant the defendant a continuance for the purpose
37 of filing the motion and serving the motion upon the people, at
38 least five court days before resumption of the examination, upon
39 a showing that the defendant or his or her attorney of record was



1 not aware of the evidence or was not aware of the grounds for
2 suppression before the preliminary examination.

3 (3) Any written response by the people to the motion described
4 in paragraph (2) shall be filed with the court and personally served
5 on the defendant or his or her attorney of record at least two court
6 days prior to the hearing at which the motion is to be made.

7 (g) If the property or evidence relates to a misdemeanor
8 complaint, the motion shall be made in the municipal court or in
9 the superior court in a county in which there is no municipal court
10 before trial and heard prior to trial at a special hearing relating to
11 the validity of the search or seizure. If the property or evidence
12 relates to a misdemeanor filed together with a felony, the
13 procedure provided for a felony in this section and Sections 1238
14 and 1539 shall be applicable.

15 (h) If, prior to the trial of a felony or misdemeanor, opportunity
16 for this motion did not exist or the defendant was not aware of the
17 grounds for the motion, the defendant shall have the right to make
18 this motion during the course of trial in the municipal or superior
19 court.

20 (i) If the property or evidence obtained relates to a felony
21 offense initiated by complaint and the defendant was held to
22 answer at the preliminary hearing, or if the property or evidence
23 relates to a felony offense initiated by indictment, the defendant
24 shall have the right to renew or make the motion in the superior
25 court at a special hearing relating to the validity of the search or
26 seizure which shall be heard prior to trial and at least 10 court days
27 after notice to the people, unless the people are willing to waive a
28 portion of this time. Any written response by the people to the
29 motion shall be filed with the court and personally served on the
30 defendant or his or her attorney of record at least two court days
31 prior to the hearing, unless the defendant is willing to waive a
32 portion of this time. If the offense was initiated by indictment or
33 if the offense was initiated by complaint and no motion was made
34 at the preliminary hearing, the defendant shall have the right to
35 fully litigate the validity of a search or seizure on the basis of the
36 evidence presented at a special hearing. If the motion was made at
37 the preliminary hearing, unless otherwise agreed to by all parties,
38 evidence presented at the special hearing shall be limited to the
39 transcript of the preliminary hearing and to evidence that could not
40 reasonably have been presented at the preliminary hearing, except



1 that the people may recall witnesses who testified at the
2 preliminary hearing. If the people object to the presentation of
3 evidence at the special hearing on the grounds that the evidence
4 could reasonably have been presented at the preliminary hearing,
5 the defendant shall be entitled to an in camera hearing to determine
6 that issue. The superior court shall base its ruling on all evidence
7 presented at the special hearing and on the transcript of the
8 preliminary hearing, and the findings of the magistrate shall be
9 binding on the superior court as to evidence or property not
10 affected by evidence presented at the special hearing. After the
11 special hearing is held in the superior court, any review thereafter
12 desired by the defendant prior to trial shall be by means of an
13 extraordinary writ of mandate or prohibition filed within 30 days
14 after the denial of his or her motion at the special hearing.

15 (j) If the property or evidence relates to a felony offense
16 initiated by complaint and the defendant's motion for the return of
17 the property or suppression of the evidence at the preliminary
18 hearing is granted, and if the defendant is not held to answer at the
19 preliminary hearing, the people may file a new complaint or seek
20 an indictment after the preliminary hearing, and the ruling at the
21 prior hearing shall not be binding in any subsequent proceeding,
22 except as limited by subdivision (p). In the alternative, the people
23 may move to reinstate the complaint, or those parts of the
24 complaint for which the defendant was not held to answer,
25 pursuant to Section 871.5. If the property or evidence relates to a
26 felony offense initiated by complaint and the defendant's motion
27 for the return or suppression of the property or evidence at the
28 preliminary hearing is granted, and if the defendant is held to
29 answer at the preliminary hearing, the ruling at the preliminary
30 hearing shall be binding upon the people unless, upon notice to the
31 defendant and the court in which the preliminary hearing was held
32 and upon the filing of an information, the people, within 15 days
33 after the preliminary hearing, request in the superior court a special
34 hearing, in which case the validity of the search or seizure shall be
35 relitigated de novo on the basis of the evidence presented at the
36 special hearing, and the defendant shall be entitled, as a matter of
37 right, to a continuance of the special hearing for a period of time
38 up to 30 days. The people may not request relitigation of the
39 motion at a special hearing if the defendant's motion has been
40 granted twice. If the defendant's motion is granted at a special



1 hearing in the superior court, the people, if they have additional
2 evidence relating to the motion and not presented at the special
3 hearing, shall have the right to show good cause at the trial why the
4 evidence was not presented at the special hearing and why the prior
5 ruling at the special hearing should not be binding, or the people
6 may seek appellate review as provided in subdivision (o), unless
7 the court, prior to the time the review is sought, has dismissed the
8 case pursuant to Section 1385. If the case has been dismissed
9 pursuant to Section 1385, or if the people dismiss the case on their
10 own motion after the special hearing, the people may file a new
11 complaint or seek an indictment after the special hearing, and the
12 ruling at the special hearing shall not be binding in any subsequent
13 proceeding, except as limited by subdivision (p). If the property or
14 evidence seized relates solely to a misdemeanor complaint, and the
15 defendant made a motion for the return of property or the
16 suppression of evidence in the municipal court or superior court
17 in a county in which there is no municipal court prior to trial, both
18 the people and defendant shall have the right to appeal any decision
19 of that court relating to that motion to the superior court of the
20 county in which the municipal or superior court is located, in
21 accordance with the California Rules of Court provisions
22 governing appeals to the appellate division in criminal cases. If the
23 people prosecute review by appeal or writ to decision, or any
24 review thereof, in a felony or misdemeanor case, it shall be binding
25 upon them.

26 (k) If the defendant's motion to return property or suppress
27 evidence is granted and the case is dismissed pursuant to Section
28 1385, or the people appeal in a misdemeanor case pursuant to
29 subdivision (j), the defendant shall be released pursuant to Section
30 1318 if he or she is in custody and not returned to custody unless
31 the proceedings are resumed in the trial court and he or she is
32 lawfully ordered by the court to be returned to custody.

33 If the defendant's motion to return property or suppress
34 evidence is granted and the people file a petition for writ of
35 mandate or prohibition pursuant to subdivision (o) or a notice of
36 intention to file ~~such~~ a petition, the defendant shall be released
37 pursuant to Section 1318, unless (1) he or she is charged with a
38 capital offense in a case where the proof is evident and the
39 presumption great, or (2) he or she is charged with a noncapital
40 offense defined in Chapter 1 (commencing with Section 187) of



1 Title 8 of Part 1, and the court orders that the defendant be
2 discharged from actual custody upon bail.

3 (l) If the defendant's motion to return property or suppress
4 evidence is granted, the trial of a criminal case shall be stayed to
5 a specified date pending the termination in the appellate courts of
6 this state of the proceedings provided for in this section, Section
7 871.5, 1238, or 1466 and, except upon stipulation of the parties,
8 pending the time for the initiation of these proceedings. Upon the
9 termination of these proceedings, the defendant shall be brought
10 to trial as provided by Section 1382, and, subject to the provisions
11 of Section 1382, whenever the people have sought and been denied
12 appellate review pursuant to subdivision (o), the defendant shall
13 be entitled to have the action dismissed if he or she is not brought
14 to trial within 30 days of the date of the order that is the last denial
15 of the petition. Nothing contained in this subdivision shall prohibit
16 a court, at the same time as it rules upon the search and seizure
17 motion, from dismissing a case pursuant to Section 1385 when the
18 dismissal is upon the court's own motion and is based upon an
19 order at the special hearing granting the defendant's motion to
20 return property or suppress evidence. In a misdemeanor case, the
21 defendant shall be entitled to a continuance of up to 30 days if he
22 or she intends to file a motion to return property or suppress
23 evidence and needs this time to prepare for the special hearing on
24 the motion. In case of an appeal by the defendant in a misdemeanor
25 case from the denial of the motion, he or she shall be entitled to bail
26 as a matter of right, and, in the discretion of the trial or appellate
27 court, may be released on his or her own recognizance pursuant to
28 Section 1318. In the case of an appeal by the defendant in a
29 misdemeanor case from the denial of the motion, the trial court
30 may, in its discretion, order or deny a stay of further proceedings
31 pending disposition of the appeal.

32 (m) The proceedings provided for in this section, and Sections
33 871.5, 995, 1238, and 1466 shall constitute the sole and exclusive
34 remedies prior to conviction to test the unreasonableness of a
35 search or seizure where the person making the motion for the
36 return of property or the suppression of evidence is a defendant in
37 a criminal case and the property or thing has been offered or will
38 be offered as evidence against him or her. A defendant may seek
39 further review of the validity of a search or seizure on appeal from
40 a conviction in a criminal case notwithstanding the fact that the



1 judgment of conviction is predicated upon a plea of guilty. Review
2 on appeal may be obtained by the defendant provided that at some
3 stage of the proceedings prior to conviction he or she has moved
4 for the return of property or the suppression of the evidence.

5 (n) This section establishes only the procedure for suppression
6 of evidence and return of property, and does not establish or alter
7 any substantive ground for suppression of evidence or return of
8 property. Nothing contained in this section shall prohibit a person
9 from making a motion, otherwise permitted by law, to return
10 property, brought on the ground that the property obtained is
11 protected by the free speech and press provisions of the United
12 States and California Constitutions. Nothing in this section shall
13 be construed as altering (1) the law of standing to raise the issue
14 of an unreasonable search or seizure; (2) the law relating to the
15 status of the person conducting the search or seizure; (3) the law
16 relating to the burden of proof regarding the search or seizure; (4)
17 the law relating to the reasonableness of a search or seizure
18 regardless of any warrant that may have been utilized; or (5) the
19 procedure and law relating to a motion made pursuant to Section
20 871.5 or 995, or the procedures that may be initiated after the
21 granting or denial of ~~such~~ a motion.

22 (o) Within 30 days after a defendant's motion is granted at a
23 special hearing in the superior court in a felony case, the people
24 may file a petition for writ of mandate or prohibition in the court
25 of appeal, seeking appellate review of the ruling regarding the
26 search or seizure motion. If the trial of a criminal case is set for a
27 date that is less than 30 days from the granting of a defendant's
28 motion at a special hearing in the superior court in a felony case,
29 the people, if they have not filed ~~such~~ a petition and wish to
30 preserve their right to file a petition, shall file in the superior court
31 on or before the trial date or within 10 days after the special
32 hearing, whichever occurs last, a notice of intention to file a
33 petition and shall serve a copy of the notice upon the defendant.

34 (p) If a defendant's motion to return property or suppress
35 evidence in a felony matter has been granted twice, the people may
36 not file a new complaint or seek an indictment in order to relitigate
37 the motion or relitigate the matter de novo at a special hearing in
38 the superior court as otherwise provided by subdivision (j), unless
39 the people discover additional evidence relating to the motion that
40 was not reasonably discoverable at the time of the second



1 suppression hearing. Relitigation of the motion shall be heard by
2 the same judge who granted the motion at the first hearing if the
3 judge is available.

4 (q) The amendments to this section enacted in the 1997 portion
5 of the 1997–98 Regular Session of the Legislature shall apply to
6 all criminal proceedings conducted on or after January 1, 1998.

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**All matter omitted in this version of the
bill appears in the bill as amended in the
Senate March 11, 2002 (JR 11)**

