

AMENDED IN SENATE APRIL 2, 2002

SENATE BILL

No. 1980

Introduced by Senator McPherson

February 22, 2002

An act to ~~amend Section 1524 of~~ *add Section 1524.3 to the Penal Code, relating to ~~search warrants~~ court orders.*

LEGISLATIVE COUNSEL'S DIGEST

SB 1980, as amended, McPherson. ~~Search warrants- Court orders.~~

Existing law authorizes a court or magistrate to issue a warrant for the search of a place and the seizure of property or things identified in the warrant where there is probable cause to believe that specified grounds exist. Federal law requires a provider of electronic communication service or a remote computing service to disclose to a governmental entity the name, address, local and long distance telephone connection records, and other billing, payment, service, and calling records, of a subscriber to or customer of the service when the governmental entity uses, among other means, a warrant, a court order, an administrative subpoena authorized by a federal or state statute, or a federal or state grand jury or trial subpoena. Federal law provides similar requirements for the collection of the contents of stored communications in the possession of a provider of electronic communication service or a remote computing service, with specified consumer notice requirements. State law provides for a warrant procedure for the acquisition of these records.

This bill would provide state procedures, similar to those described in federal law, for a governmental entity to gather similar specified records, not including the contents of stored communications, from a provider of electronic communication service or a remote computing

service by court order, or by grand jury or trial subpoena. This bill would specify that no notice need be given to a subscriber or customer by a governmental entity receiving records pursuant to these procedures, and would provide a standard for the issuance of a court order for these records. It would also provide for motions to quash, or modify an order under these provisions in specified circumstances, and would require a provider of wire or electronic communication services or a remote computing service to preserve records and evidence on request of a governmental entity as provided.

~~Existing law specifies the grounds upon which a search warrant may be issued.~~

~~This bill would make a technical, nonsubstantive change to those provisions.~~

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

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

1 ~~SECTION 1.—Section 1524 of the Penal Code is amended to~~
2 *SECTION 1. Section 1524.3 is added to the Penal Code, to*
3 *read:*
4 *1524.3. (a) A provider of electronic communication service*
5 *or remote computing service, as used in Chapter 121 (commencing*
6 *with Section 2701) of Title 18 of the United States Code, shall*
7 *disclose to a governmental prosecuting or investigating agency,*
8 *the name, address, local and long distance telephone toll billing*
9 *records, telephone number or other subscriber number or identity,*
10 *and length of service of a subscriber to or customer of that service,*
11 *and the types of services the subscriber or customer utilized, when*
12 *the governmental entity uses a grand jury or trial subpoena, or a*
13 *court order authorized in subdivision (c).*
14 *(b) A governmental entity receiving subscriber records or*
15 *information under this section is not required to provide notice to*
16 *a subscriber or customer.*
17 *(c) A court order for disclosure under subdivision (a) may be*
18 *issued by any magistrate and shall issue only if the governmental*
19 *entity offers specific and articulable facts showing that there are*
20 *reasonable grounds to believe that the information or records*
21 *sought are relevant and material to an ongoing criminal*
22 *investigation.*



1 (d) A court issuing an order pursuant to this section, on a
2 motion made promptly by the service provider, may quash or
3 modify the order, if the information or records requested are
4 unusually voluminous in nature or compliance with the order
5 otherwise would cause an undue burden on the provider.

6 (e) A provider of wire or electronic communication services or
7 a remote computing service, upon the request of a governmental
8 entity, shall take all necessary steps to preserve records and other
9 evidence in its possession pending the issuance of a court order or
10 other process. Records shall be retained for a period of 90 days,
11 which shall be extended for an additional 90-day period upon a
12 renewed request by the governmental entity.

13 ~~read:~~

14 ~~1524. (a) A search warrant may be issued upon any of the~~
15 ~~following grounds:~~

16 ~~(1) When the property was stolen or embezzled.~~

17 ~~(2) When the property or things were used as the means of~~
18 ~~committing a felony.~~

19 ~~(3) When the property or things are in the possession of any~~
20 ~~person with the intent to use it as a means of committing a public~~
21 ~~offense, or in the possession of another to whom he or she may~~
22 ~~have delivered it for the purpose of concealing it or preventing its~~
23 ~~being discovered.~~

24 ~~(4) When the property or things to be seized consist of any item~~
25 ~~or constitute any evidence that tends to show a felony has been~~
26 ~~committed, or tends to show that a particular person has committed~~
27 ~~a felony.~~

28 ~~(5) When the property or things to be seized consist of evidence~~
29 ~~that tends to show that sexual exploitation of a child, in violation~~
30 ~~of Section 311.3, or possession of matter depicting sexual conduct~~
31 ~~of a person under the age of 18 years, in violation of Section~~
32 ~~311.11, has occurred or is occurring.~~

33 ~~(6) When there is a warrant to arrest a person.~~

34 ~~(b) The property or things or person or persons described in~~
35 ~~subdivision (a) may be taken on the warrant from any place, or~~
36 ~~from any person in whose possession the property or things may~~
37 ~~be.~~

38 ~~(c) Notwithstanding subdivision (a) or (b), no search warrant~~
39 ~~shall issue for any documentary evidence in the possession or~~
40 ~~under the control of any person, who is a lawyer as defined in~~



1 ~~Section 950 of the Evidence Code, a physician as defined in~~
2 ~~Section 990 of the Evidence Code, a psychotherapist as defined in~~
3 ~~Section 1010 of the Evidence Code, or a clergyman as defined in~~
4 ~~Section 1030 of the Evidence Code, and who is not reasonably~~
5 ~~suspected of engaging or having engaged in criminal activity~~
6 ~~related to the documentary evidence for which a warrant is~~
7 ~~requested unless the following procedure has been complied with:~~

8 (1) ~~At the time of the issuance of the warrant the court shall~~
9 ~~appoint a special master in accordance with subdivision (d) to~~
10 ~~accompany the person who will serve the warrant. Upon service~~
11 ~~of the warrant, the special master shall inform the party served of~~
12 ~~the specific items being sought and that the party shall have the~~
13 ~~opportunity to provide the items requested. If the party, in the~~
14 ~~judgment of the special master, fails to provide the items~~
15 ~~requested, the special master shall conduct a search for the items~~
16 ~~in the areas indicated in the search warrant.~~

17 (2) ~~If the party who has been served states that an item or items~~
18 ~~should not be disclosed, they shall be sealed by the special master~~
19 ~~and taken to court for a hearing.~~

20 ~~At the hearing the party searched shall be entitled to raise any~~
21 ~~issues that may be raised pursuant to Section 1538.5 as well as a~~
22 ~~claim that the item or items are privileged, as provided by law. The~~
23 ~~hearing shall be held in the superior court. The court shall provide~~
24 ~~sufficient time for the parties to obtain counsel and make any~~
25 ~~motions or present any evidence. The hearing shall be held within~~
26 ~~three days of the service of the warrant unless the court makes a~~
27 ~~finding that the expedited hearing is impracticable. In that case the~~
28 ~~matter shall be heard at the earliest possible time.~~

29 (3) ~~The warrant shall, whenever practicable, be served during~~
30 ~~normal business hours. In addition, the warrant shall be served~~
31 ~~upon a party who appears to have possession or control of the items~~
32 ~~sought. If after reasonable efforts, the party serving the warrant is~~
33 ~~unable to locate the person, the special master shall seal and return~~
34 ~~to the court for determination by the court any item that appears~~
35 ~~to be privileged as provided by law.~~

36 (d) ~~As used in this section, a “special master” is an attorney~~
37 ~~who is a member in good standing of the California State Bar and~~
38 ~~who has been selected from a list of qualified attorneys that is~~
39 ~~maintained by the State Bar particularly for the purposes of~~
40 ~~conducting the searches described in this section. These attorneys~~



1 shall serve without compensation. A special master shall be
2 considered a public employee, and the governmental entity that
3 caused the search warrant to be issued shall be considered the
4 employer of the special master and the applicable public entity, for
5 purposes of Division 3.6 (commencing with Section 810) of Title
6 1 of the Government Code, relating to claims and actions against
7 public entities and public employees. In selecting the special
8 master the court shall make every reasonable effort to ensure that
9 the person selected has no relationship with any of the parties
10 involved in the pending matter. Any information obtained by the
11 special master shall be confidential and shall not be divulged
12 except in direct response to inquiry by the court.

13 In any case in which the magistrate determines that, after
14 reasonable efforts have been made to obtain a special master, a
15 special master is not available and would not be available within
16 a reasonable period of time, the magistrate may direct the party
17 seeking the order to conduct the search in the manner described in
18 this section in lieu of the special master.

19 (e) Any search conducted pursuant to this section by a special
20 master may be conducted in a manner that permits the party
21 serving the warrant or his or her designee to accompany the special
22 master as he or she conducts his or her search. However, that party
23 or his or her designee shall not participate in the search or examine
24 any of the items being searched by the special master, except upon
25 agreement of the party upon whom the warrant has been served.

26 (f) As used in this section, “documentary evidence” includes,
27 but is not limited to, writings, documents, blueprints, drawings,
28 photographs, computer printouts, microfilms, X rays, files,
29 diagrams, ledgers, books, tapes, audio and video recordings, films
30 or papers of any type or description.

31 (g) No warrant shall issue for any item or items described in
32 Section 1070 of the Evidence Code.

