

ASSEMBLY BILL

No. 2986

Introduced by Assembly Member Benoit

February 20, 2004

An act to amend Section 1534 of, and to add Section 1534.5 to, the Penal Code, relating to search warrants.

LEGISLATIVE COUNSEL'S DIGEST

AB 2986, as introduced, Benoit. Search warrants: confidentiality.

Existing law provides for the issuance of a search warrant upon a magistrate's satisfaction that grounds exist, or that there is probable cause to believe that they exist, supported by affidavit or other statement under oath. Existing law provides that the documents and records of the court relating to a search warrant, if the warrant has been executed, are open to the public as a judicial record after the execution and return of the warrant or the expiration of a 10-day period after issuance.

This bill would require those records to remain closed to the public until the earliest of any of several specified events or one year if, at the time of application, the affiant submits a supplemental affidavit stating that opening the documents and records to the public will interfere with or prejudice an ongoing investigation. The bill would permit access to these records to a person from whom property was seized, after a hearing at which a court has balanced competing interests and found in favor of that access, subject to reasonable court conditions that may include a prohibition on further disclosure. It would specify that existing discovery provisions apply to the release of this information to a defendant in a criminal case, and that the bill does not affect other applicable sources of privilege or confidentiality, as specified.

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

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

1 SECTION 1. Section 1534 of the Penal Code is amended to
 2 read:

3 1534. (a) A search warrant shall be executed and returned
 4 within 10 days after date of issuance. A warrant executed within
 5 the 10-day period shall be deemed to have been timely executed
 6 and no further showing of timeliness need be made. After the
 7 expiration of 10 days, the warrant, unless executed, is void. The
 8 documents and records of the court relating to the warrant need not
 9 be open to the public until the execution and return of the warrant
 10 or the expiration of the 10-day period after issuance. Thereafter,
 11 *except as provided in Section 1534.5*, if the warrant has been
 12 executed, the documents and records shall be open to the public as
 13 a judicial record.

14 (b) If a duplicate original search warrant has been executed, the
 15 peace officer who executed the warrant shall enter the exact time
 16 of its execution on its face.

17 (c) A search warrant may be made returnable before the issuing
 18 magistrate or his court.

19 SEC. 2. Section 1534.5 is added to the Penal Code, to read:

20 1534.5. (a) If, at the time of applying for issuance of a search
 21 warrant, the affiant submits a separate affidavit to the magistrate
 22 stating that opening to the public the documents and records of the
 23 court relating to the warrant will interfere with or prejudice an
 24 ongoing investigation, the magistrate shall order that all such
 25 documents and records remain closed to inspection by the public
 26 until the earliest of the following:

27 (1) The commencement of a preliminary hearing during which
 28 any of the seized property will be or is introduced into evidence.

29 (2) The return of an indictment based on any of the seized
 30 property.

31 (3) The commencement of a trial during which any of the
 32 seized property will be or is introduced into evidence.

33 (4) One year from the date of issuance of the warrant.

34 (b) Notwithstanding subparagraph (a), a person from whom
 35 property was seized pursuant to the search warrant may apply to



1 the court for an order granting him or her access to the documents
2 and records of the court relating to the warrant at any time. A copy
3 of this motion shall be served upon both the affiant, in care of his
4 or her agency, and the district attorney for the county in which the
5 warrant was executed, in accordance with the Rules of Court. At
6 the hearing on this motion the court shall weigh the interests of the
7 moving party in obtaining access against the interests of the affiant
8 and the prosecution in maintaining confidentiality. If the court
9 grants access to the moving party, the court may condition that
10 access by prohibiting the moving party from making further
11 disclosure of the documents, or by imposing whatever other
12 reasonable conditions the court deems appropriate.

13 (c) Notwithstanding subparagraph (a), any person against
14 whom criminal charges are filed based in whole or in part upon
15 evidence seized pursuant to a search warrant shall be provided
16 access by the prosecution to the documents and records of the court
17 relating to the warrant as part of the process of providing discovery
18 pursuant to Chapter 10 (commencing with Section 1054) of Title
19 6.

20 (d) Nothing in this section shall limit the ability of the court to
21 order documents and records sealed as privileged or confidential
22 under any other provision of law, including, but not limited to,
23 Sections 1040 to 1042, inclusive, of the Evidence Code, Rule
24 243.1 of the Rules of Court, or the decision of the California
25 Supreme Court in *People v. Hobbs* (1994) 7 Cal.4th 948.

