

AMENDED IN ASSEMBLY APRIL 1, 2004

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2986**

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**Introduced by Assembly Member Benoit**

February 20, 2004

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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 amended, 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 *or any time thereafter*, the affiant submits a supplemental affidavit ~~stating~~ *setting forth facts demonstrating* that opening the documents and records to the public will interfere with or prejudice an ongoing investigation, *and the court so finds*. 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 *or her* 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 *or any time thereafter*, the affiant submits a separate  
22 affidavit to the magistrate ~~stating~~ *setting forth facts demonstrating*  
23 that opening to the public the documents and records of the court  
24 relating to the warrant will interfere with or prejudice an ongoing  
25 investigation, *and the magistrate so finds, then* the magistrate shall  
26 order that all such documents and records remain closed to  
27 inspection by the public until the earliest of the following:

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

30 (2) ~~The return of~~ *If an indictment based on any of the seized*  
31 ~~property has been found following the presentation to the grand~~  
32 *jury of evidence seized pursuant to the warrant, 10 days after*



1 *delivery of the grand jury transcript to the defendant or the*  
2 *defendant's attorney pursuant to Section 938.1.*

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

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

6 (b) Notwithstanding ~~subparagraph~~ *subdivision* (a), a person  
7 from whom property was seized pursuant to the search warrant  
8 may apply to the court for an order granting him or her access to  
9 the documents and records of the court relating to the warrant at  
10 any time. A copy of this motion shall be served upon both the  
11 affiant, in care of his or her agency, and the district attorney for the  
12 county in which the warrant was executed, in accordance with the  
13 Rules of Court. At the hearing on this motion the court shall weigh  
14 the interests of the moving party in obtaining access against the  
15 interests of the affiant and the prosecution in maintaining  
16 confidentiality. If the court grants access to the moving party, the  
17 court may condition that access by prohibiting the moving party  
18 from making further disclosure of the documents, or by imposing  
19 whatever other reasonable conditions the court deems appropriate.

20 (c) Notwithstanding ~~subparagraph~~ *subdivision* (a), any person  
21 against whom criminal charges are filed based in whole or in part  
22 upon evidence seized pursuant to a search warrant shall be  
23 provided access by the prosecution to the documents and records  
24 of the court relating to the warrant as part of the process of  
25 providing discovery pursuant to Chapter 10 (commencing with  
26 Section 1054) of Title 6.

27 (d) Nothing in this section shall limit the ability of the court to  
28 order documents and records sealed as privileged or confidential  
29 under any other provision of law, including, but not limited to,  
30 Sections 1040 to 1042, inclusive, of the Evidence Code, Rule  
31 243.1 of the Rules of Court, or the decision of the California  
32 Supreme Court in *People v. Hobbs* (1994) 7 Cal.4th 948.

