

ASSEMBLY BILL

No. 789

**Introduced by Assembly Member De Leon
(Coauthor: Assembly Member Torres)**

February 26, 2009

An act to amend Section 1524 of the Penal Code, relating to search warrants.

LEGISLATIVE COUNSEL'S DIGEST

AB 789, as introduced, De Leon. Search warrants.

Existing law establishes various grounds for the issuance of a search warrant.

This bill would additionally authorize issuance of a search warrant when the property or things to be seized include a firearm that is owned by, or in the possession of, or in the custody or control of, a person who is subject to the prohibitions regarding firearms pursuant to protective orders, as specified.

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 read:
- 3 1524. (a) A search warrant may be issued upon any of the
- 4 following grounds:
- 5 (1) When the property was stolen or embezzled.
- 6 (2) When the property or things were used as the means of
- 7 committing a felony.

1 (3) When the property or things are in the possession of any
2 person with the intent to use them as a means of committing a
3 public offense, or in the possession of another to whom he or she
4 may have delivered them for the purpose of concealing them or
5 preventing them from being discovered.

6 (4) When the property or things to be seized consist of any item
7 or constitute any evidence that tends to show a felony has been
8 committed, or tends to show that a particular person has committed
9 a felony.

10 (5) When the property or things to be seized consist of evidence
11 that tends to show that sexual exploitation of a child, in violation
12 of Section 311.3, or possession of matter depicting sexual conduct
13 of a person under the age of 18 years, in violation of Section
14 311.11, has occurred or is occurring.

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

16 (7) When a provider of electronic communication service or
17 remote computing service has records or evidence, as specified in
18 Section 1524.3, showing that property was stolen or embezzled
19 constituting a misdemeanor, or that property or things are in the
20 possession of any person with the intent to use them as a means
21 of committing a misdemeanor public offense, or in the possession
22 of another to whom he or she may have delivered them for the
23 purpose of concealing them or preventing their discovery.

24 (8) When the property or things to be seized include an item or
25 any evidence that tends to show a violation of Section 3700.5 of
26 the Labor Code, or tends to show that a particular person has
27 violated Section 3700.5 of the Labor Code.

28 (9) *When the property or things to be seized include a firearm*
29 *that is owned by, or in the possession of, or in the custody or*
30 *control of, a person who is subject to the prohibitions regarding*
31 *firearms pursuant to Section 6389 of the Family Code.*

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

36 (c) Notwithstanding subdivision (a) or (b), no search warrant
37 shall issue for any documentary evidence in the possession or
38 under the control of any person who is a lawyer as defined in
39 Section 950 of the Evidence Code, a physician as defined in Section
40 990 of the Evidence Code, a psychotherapist as defined in Section

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

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

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

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

27 (C) If an item or items are taken to court for a hearing, any
28 limitations of time prescribed in Chapter 2 (commencing with
29 Section 799) of Title 3 of Part 2 shall be tolled from the time of
30 the seizure until the final conclusion of the hearing, including any
31 associated writ or appellate proceedings.

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

39 (d) (1) As used in this section, a “special master” is an attorney
40 who is a member in good standing of the California State Bar and

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

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

22 (e) Any search conducted pursuant to this section by a special
23 master may be conducted in a manner that permits the party serving
24 the warrant or his or her designee to accompany the special master
25 as he or she conducts his or her search. However, that party or his
26 or her designee may not participate in the search nor shall he or
27 she examine any of the items being searched by the special master
28 except upon agreement of the party upon whom the warrant has
29 been served.

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

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

37 (h) Notwithstanding any other law, no claim of attorney work
38 product as described in Chapter 4 (commencing with Section
39 2018.010) of Title 4 of Part 4 of the Code of Civil Procedure shall
40 be sustained where there is probable cause to believe that the

1 lawyer is engaging or has engaged in criminal activity related to
2 the documentary evidence for which a warrant is requested unless
3 it is established at the hearing with respect to the documentary
4 evidence seized under the warrant that the services of the lawyer
5 were not sought or obtained to enable or aid anyone to commit or
6 plan to commit a crime or a fraud.

7 (i) Nothing in this section is intended to limit an attorney's
8 ability to request an in camera hearing pursuant to the holding of
9 the Supreme Court of California in *People v. Superior Court (Laff)*
10 (2001) 25 Cal.4th 703.

11 (j) In addition to any other circumstance permitting a magistrate
12 to issue a warrant for a person or property in another county, when
13 the property or things to be seized consist of any item or constitute
14 any evidence that tends to show a violation of Section 530.5, the
15 magistrate may issue a warrant to search a person or property
16 located in another county if the person whose identifying
17 information was taken or used resides in the same county as the
18 issuing court.