

AMENDED IN ASSEMBLY MAY 21, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

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 amended, 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.

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

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

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

12 (5) When the property or things to be seized consist of evidence
13 that tends to show that sexual exploitation of a child, in violation
14 of Section 311.3, or possession of matter depicting sexual conduct
15 of a person under the age of 18 years, in violation of Section
16 311.11, has occurred or is occurring.

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

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

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

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

34 (b) The property, things, 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 Section
2 990 of the Evidence Code, a psychotherapist as defined in Section
3 1010 of the Evidence Code, or a member of the clergy as defined
4 in 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 requested,
15 the special master shall conduct a search for the items in the areas
16 indicated in the search warrant.

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

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

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

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

(d) (1) As used in this section, a “special master” is an attorney who is a member in good standing of the California State Bar and who has been selected from a list of qualified attorneys that is maintained by the State Bar particularly for the purposes of conducting the searches described in this section. These attorneys shall serve without compensation. A special master shall be considered a public employee, and the governmental entity that caused the search warrant to be issued shall be considered the employer of the special master and the applicable public entity, for purposes of Division 3.6 (commencing with Section 810) of Title 1 of the Government Code, relating to claims and actions against public entities and public employees. In selecting the special master, the court shall make every reasonable effort to ensure that the person selected has no relationship with any of the parties involved in the pending matter. Any information obtained by the special master shall be confidential and may not be divulged except in direct response to inquiry by the court.

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

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

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

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

(h) Notwithstanding any other law, no claim of attorney work product as described in Chapter 4 (commencing with Section

2018.010) of Title 4 of Part 4 of the Code of Civil Procedure shall be sustained where there is probable cause to believe that the lawyer is engaging or has engaged in criminal activity related to the documentary evidence for which a warrant is requested unless it is established at the hearing with respect to the documentary evidence seized under the warrant that the services of the lawyer were not sought or obtained to enable or aid anyone to commit or plan to commit a crime or a fraud.

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

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

SEC. 2. It is the intent of the Legislature in enacting this act to address the holding in People v. Sweig (2008) 167 Cal.App.4th 1145 and the court's suggestion that the Legislature "address the statutory flaw" highlighted in that case. It is not the intent of the Legislature to authorize the seizure of any firearms not owned by, or in the possession of, or under the custody or control of, any person not subject to the provisions of Section 6389 of the Family Code.