

AMENDED IN SENATE JUNE 18, 2009

AMENDED IN ASSEMBLY MAY 21, 2009

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

**ASSEMBLY BILL**

**No. 789**

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

February 26, 2009

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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:

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

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

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

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

13 (5) When the property or things to be seized consist of evidence  
14 that tends to show that sexual exploitation of a child, in violation  
15 of Section 311.3, or possession of matter depicting sexual conduct  
16 of a person under the age of 18 years, in violation of Section  
17 311.11, has occurred or is occurring.

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

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

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

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

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

39 (c) Notwithstanding subdivision (a) or (b), no search warrant  
40 shall issue for any documentary evidence in the possession or

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

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

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

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

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

35 (3) The warrant shall, whenever practicable, be served during  
36 normal business hours. In addition, the warrant shall be served  
37 upon a party who appears to have possession or control of the  
38 items sought. If, after reasonable efforts, the party serving the  
39 warrant is unable to locate the person, the special master shall seal

1 and return to the court, for determination by the court, any item  
2 that appears to be privileged as provided by law.

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

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

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

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

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

1 (h) Notwithstanding any other law, no claim of attorney work  
2 product as described in Chapter 4 (commencing with Section  
3 2018.010) of Title 4 of Part 4 of the Code of Civil Procedure shall  
4 be sustained where there is probable cause to believe that the  
5 lawyer is engaging or has engaged in criminal activity related to  
6 the documentary evidence for which a warrant is requested unless  
7 it is established at the hearing with respect to the documentary  
8 evidence seized under the warrant that the services of the lawyer  
9 were not sought or obtained to enable or aid anyone to commit or  
10 plan to commit a crime or a fraud.

11 (i) Nothing in this section is intended to limit an attorney's  
12 ability to request an in camera hearing pursuant to the holding of  
13 the Supreme Court of California in *People v. Superior Court (Laff)*  
14 (2001) 25 Cal.4th 703.

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

23 SEC. 2. ~~It is the intent of the Legislature in enacting this act~~  
24 ~~to address the holding in *People v. Sweig* (2008) 167 Cal.App.4th~~  
25 ~~1145 and the court's suggestion that the Legislature "address the~~  
26 ~~statutory flaw" highlighted in that case. It is not the intent of the~~  
27 ~~Legislature in enacting this act to authorize the seizure of any~~  
28 ~~firearms not owned by, or in the possession of, or under the custody~~  
29 ~~or control of, any person not subject to the provisions of Section~~  
30 ~~6389 of the Family Code.~~