

AMENDED IN SENATE AUGUST 17, 2009

AMENDED IN SENATE JUNE 18, 2009

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~~ *specified* 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:

1 1524. (a) A search warrant may be issued upon any of the
2 following grounds:

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

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

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

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

15 (5) When the property or things to be seized consist of evidence
16 that tends to show that sexual exploitation of a child, in violation
17 of Section 311.3, or possession of matter depicting sexual conduct
18 of a person under the age of 18 years, in violation of Section
19 311.11, has occurred or is occurring.

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

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

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

33 (9) When the property or things to be seized include a firearm
34 that is owned by, or in the possession of, or in the custody or
35 control of, a person who is subject to the prohibitions regarding
36 firearms pursuant to Section 6389 of the Family Code, *if a*
37 *prohibited firearm is possessed, owned, in the custody of, or*
38 *controlled by a person against whom a protective order has been*
39 *issued pursuant to Section 6218 of the Family Code, the person*

1 *has been lawfully served with that order, and the person has failed*
2 *to relinquish the firearm as required by law..*

3 (b) The property, things, person, or persons described in
4 subdivision (a) may be taken on the warrant from any place, or
5 from any person in whose possession the property or things may
6 be.

7 (c) Notwithstanding subdivision (a) or (b), no search warrant
8 shall issue for any documentary evidence in the possession or
9 under the control of any person who is a lawyer as defined in
10 Section 950 of the Evidence Code, a physician as defined in Section
11 990 of the Evidence Code, a psychotherapist as defined in Section
12 1010 of the Evidence Code, or a member of the clergy as defined
13 in Section 1030 of the Evidence Code, and who is not reasonably
14 suspected of engaging or having engaged in criminal activity
15 related to the documentary evidence for which a warrant is
16 requested unless the following procedure has been complied with:

17 (1) At the time of the issuance of the warrant, the court shall
18 appoint a special master in accordance with subdivision (d) to
19 accompany the person who will serve the warrant. Upon service
20 of the warrant, the special master shall inform the party served of
21 the specific items being sought and that the party shall have the
22 opportunity to provide the items requested. If the party, in the
23 judgment of the special master, fails to provide the items requested,
24 the special master shall conduct a search for the items in the areas
25 indicated in the search warrant.

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

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

38 (C) If an item or items are taken to court for a hearing, any
39 limitations of time prescribed in Chapter 2 (commencing with
40 Section 799) of Title 3 of Part 2 shall be tolled from the time of

1 the seizure until the final conclusion of the hearing, including any
2 associated writ or appellate proceedings.

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

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

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

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

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

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

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

18 (i) Nothing in this section is intended to limit an attorney’s
19 ability to request an in camera hearing pursuant to the holding of
20 the Supreme Court of California in *People v. Superior Court (Laff)*
21 (2001) 25 Cal.4th 703.

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

30 SEC. 2. It is not the intent of the Legislature in enacting this
31 act to authorize the seizure of any firearms not owned by, or in the
32 possession of, or under the custody or control of, any person not
33 subject to the provisions of Section 6389 of the Family Code.