

AMENDED IN SENATE AUGUST 26, 2009

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 specified prohibitions regarding firearms pursuant to protective orders, as specified.

This bill would incorporate additional changes to Section 1524 of the Penal Code proposed by A.B. 532, to become operative if this bill is enacted after A.B. 532.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 1524 of the Penal Code is amended to read:

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

(1) When the property was stolen or embezzled.

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

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

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

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

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

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

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

(9) 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 Section 6389 of the Family Code, if a

1 prohibited firearm is possessed, owned, in the custody of, or
2 controlled by a person against whom a protective order has been
3 issued pursuant to Section 6218 of the Family Code, the person
4 has been lawfully served with that order, and the person has failed
5 to relinquish the firearm as required by ~~law~~. *law*.

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

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

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

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

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

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

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

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

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

36 (e) Any search conducted pursuant to this section by a special
37 master may be conducted in a manner that permits the party serving
38 the warrant or his or her designee to accompany the special master
39 as he or she conducts his or her search. However, that party or his
40 or her designee may not participate in the search nor shall he or

1 she examine any of the items being searched by the special master
2 except upon agreement of the party upon whom the warrant has
3 been served.

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

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

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

21 (i) Nothing in this section is intended to limit an attorney’s
22 ability to request an in camera hearing pursuant to the holding of
23 the Supreme Court of California in *People v. Superior Court (Laff)*
24 (2001) 25 Cal.4th 703.

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

33 *SEC. 1.5. Section 1524 of the Penal Code is amended to read:*

34 1524. (a) A search warrant may be issued upon any of the
35 following grounds:

- 36 (1) When the property was stolen or embezzled.
37 (2) When the property or things were used as the means of
38 committing a felony.
39 (3) When the property or things are in the possession of any
40 person with the intent to use them as a means of committing a

1 public offense, or in the possession of another to whom he or she
2 may have delivered them for the purpose of concealing them or
3 preventing them from being discovered.

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

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

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

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

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

26 (9) *When the property or things to be seized include a firearm*
27 *or any other deadly weapon at the scene of, or at the premises*
28 *occupied or under the control of the person arrested in connection*
29 *with, a domestic violence incident involving a threat to human life*
30 *or a physical assault as provided in subdivision (b) of Section*
31 *12028.5. This section does not affect warrantless seizures otherwise*
32 *authorized by subdivision (b) of Section 12028.5.*

33 (10) *When the property or things to be seized include a firearm*
34 *or any other deadly weapon that is owned by, or in the possession*
35 *of, or in the custody or control of, a person described in subdivision*
36 *(a) of Section 8102 of the Welfare and Institutions Code.*

37 (11) *When the property or things to be seized include a firearm*
38 *that is owned by, or in the possession of, or in the custody or*
39 *control of, a person who is subject to the prohibitions regarding*
40 *firearms pursuant to Section 6389 of the Family Code, if a*

1 *prohibited firearm is possessed, owned, in the custody of, or*
2 *controlled by a person against whom a protective order has been*
3 *issued pursuant to Section 6218 of the Family Code, the person*
4 *has been lawfully served with that order, and the person has failed*
5 *to relinquish the firearm as required by law.*

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

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

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

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

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

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

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

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

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

36 (e) Any search conducted pursuant to this section by a special
37 master may be conducted in a manner that permits the party serving
38 the warrant or his or her designee to accompany the special master
39 as he or she conducts his or her search. However, that party or his
40 or her designee may not participate in the search nor shall he or

1 she examine any of the items being searched by the special master
2 except upon agreement of the party upon whom the warrant has
3 been served.

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

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

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

21 (i) Nothing in this section is intended to limit an attorney’s
22 ability to request an in camera hearing pursuant to the holding of
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25 (j) In addition to any other circumstance permitting a magistrate
26 to issue a warrant for a person or property in another county, when
27 the property or things to be seized consist of any item or constitute
28 any evidence that tends to show a violation of Section 530.5, the
29 magistrate may issue a warrant to search a person or property
30 located in another county if the person whose identifying
31 information was taken or used resides in the same county as the
32 issuing court.

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

37 SEC. 3. *Section 1.5 of this bill incorporates amendments to*
38 *Section 1524 of the Penal Code proposed by both this bill and AB*
39 *532. It shall only become operative if (1) both bills are enacted*
40 *and become effective on or before January 1, 2010, (2) each bill*

- 1 *amends Section 1524 of the Penal Code, and (3) this bill is enacted*
- 2 *after AB 532, in which case Section 1 of this bill shall not become*
- 3 *operative.*