

Assembly Bill No. 2505

CHAPTER 98

An act to amend Section 1526 of the Penal Code, relating to warrants.

[Approved by Governor July 15, 2010. Filed with
Secretary of State July 15, 2010.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2505, Audra Strickland. Warrants: electronic signature: computer server transmission.

Existing law establishes various grounds for the issuance of a search warrant. Existing law requires a search warrant to be issued upon probable cause, supported by affidavit, naming or describing the person to be searched or searched for, and particularly describing the property, thing, or things and the place to be searched.

Under existing law, a magistrate may examine a person seeking a warrant under oath and is required to take a signed affidavit or affidavits. Under existing law, an oath may be made to a magistrate using a telephone and facsimile transmission equipment or by using a telephone and electronic mail and the affiant may sign the affidavit using a digital signature. Existing law requires the magistrate to cause the warrant, supporting affidavit, and attachments to be printed if received by electronic mail, and to return them to the court to be open to the public once the warrant is executed and returned. Existing law also provides that a magistrate may authorize a "duplicate original" for a remote affiant which, after its execution, is also required to be returned.

This bill would allow an oath to be made using, in addition, a telephone and computer server, and would allow the affiant's signature to be in the form of an electronic signature. This bill would delete the requirement that the magistrate cause the warrant, supporting affidavit, and attachments to be printed if received by electronic mail or computer server, and would, in cases with fax, electronic mail, or server affidavits, delete the requirement that the magistrate return the printed documents to the court, leaving only the "duplicate original" to be returned by the remote affiant. This bill would allow the magistrate to sign the warrant using a digital signature or electronic signature if electronic mail or computer server is used.

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

SECTION 1. Section 1526 of the Penal Code is amended to read:

1526. (a) The magistrate, before issuing the warrant, may examine on oath the person seeking the warrant and any witnesses the person may

produce, and shall take his or her affidavit or their affidavits in writing, and cause the affidavit or affidavits to be subscribed by the party or parties making them.

(b) In lieu of the written affidavit required in subdivision (a), the magistrate may take an oral statement under oath under one of the following conditions:

(1) The oath shall be made under penalty of perjury and recorded and transcribed. The transcribed statement shall be deemed to be an affidavit for the purposes of this chapter. In these cases, the recording of the sworn oral statement and the transcribed statement shall be certified by the magistrate receiving it and shall be filed with the clerk of the court. In the alternative in these cases, the sworn oral statement shall be recorded by a certified court reporter and the transcript of the statement shall be certified by the reporter, after which the magistrate receiving it shall certify the transcript which shall be filed with the clerk of the court.

(2) The oath is made using telephone and facsimile transmission equipment, telephone and electronic mail, or telephone and computer server, as follows:

(A) The oath is made during a telephone conversation with the magistrate, whereafter the affiant shall sign his or her affidavit in support of the application for the search warrant. The affiant's signature shall be in the form of a digital signature or electronic signature if electronic mail or computer server is used for transmission to the magistrate. The proposed search warrant and all supporting affidavits and attachments shall then be transmitted to the magistrate utilizing facsimile transmission equipment, electronic mail, or computer server.

(B) The magistrate shall confirm with the affiant the receipt of the search warrant and the supporting affidavits and attachments. The magistrate shall verify that all the pages sent have been received, that all pages are legible, and that the affiant's signature, digital signature, or electronic signature is acknowledged as genuine.

(C) If the magistrate decides to issue the search warrant, he or she shall:

(i) Sign the warrant. The magistrate's signature may be in the form of a digital signature or electronic signature if electronic mail or computer server is used for transmission to the magistrate.

(ii) Note on the warrant the exact date and time of the issuance of the warrant.

(iii) Indicate on the warrant that the oath of the affiant was administered orally over the telephone.

The completed search warrant, as signed by the magistrate, shall be deemed to be the original warrant.

(D) The magistrate shall transmit via facsimile transmission equipment, electronic mail, or computer server, the signed search warrant to the affiant who shall telephonically acknowledge its receipt. The magistrate shall then telephonically authorize the affiant to write the words "duplicate original" on the copy of the completed search warrant transmitted to the affiant and this document shall be deemed to be a duplicate original search warrant.

The duplicate original warrant and any affidavits or attachments in support thereof shall be returned as provided in Section 1534.

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