

AMENDED IN SENATE AUGUST 7, 2012
AMENDED IN ASSEMBLY APRIL 25, 2012
AMENDED IN ASSEMBLY MARCH 29, 2012
CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 2055

Introduced by Assembly Member Fuentes

February 23, 2012

An act to amend Sections 1524 and 1534 of the Penal Code, relating to search warrants.

LEGISLATIVE COUNSEL'S DIGEST

AB 2055, as amended, Fuentes. Search warrants: tracking devices.

Existing law prohibits, with exceptions, the use of an electronic tracking device to determine the location or movement of a person. Under existing law a violation of these provisions is a misdemeanor. Existing law states that these provisions do not apply to the lawful use of an electronic tracking device by a law enforcement agency. Existing decisional law, in the case of *U.S. v. Jones*, holds that the attachment of a Global Positioning System (GPS) tracking device to a vehicle and the use of the device to track the vehicle is a search within the meaning of the Fourth Amendment to the United States Constitution.

Existing law states the grounds upon which a search warrant may be issued, including 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.

This bill would allow a search warrant to be issued when the information to be received from the use of a tracking device constitutes

evidence that tends to show a felony has been committed or is being committed, tends to show that a particular person has committed a felony or is committing a felony, or will assist in locating an individual that has committed or is committing a felony. *The bill would state that these provisions shall not be construed as creating a cause of action against any foreign or California corporation for providing location information.* The bill would require that a tracking device search warrant issued pursuant to these provisions identify the person or property to be tracked, and specify a reasonable time that the device may be used, not to exceed 30 days, plus extensions, as provided. The bill would require that the warrant be executed within 10 days, as provided.

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.
- 6 (2) When the property or things were used as the means of
- 7 committing a felony.
- 8 (3) When the property or things are in the possession of any
- 9 person with the intent to use them as a means of committing a
- 10 public offense, or in the possession of another to whom he or she
- 11 may have delivered them for the purpose of concealing them or
- 12 preventing them from being discovered.
- 13 (4) When the property or things to be seized consist of any item
- 14 or constitute any evidence that tends to show a felony has been
- 15 committed, or tends to show that a particular person has committed
- 16 a felony.
- 17 (5) When the property or things to be seized consist of evidence
- 18 that tends to show that sexual exploitation of a child, in violation
- 19 of Section 311.3, or possession of matter depicting sexual conduct
- 20 of a person under the age of 18 years, in violation of Section
- 21 311.11, has occurred or is occurring.
- 22 (6) When there is a warrant to arrest a person.
- 23 (7) When a provider of electronic communication service or
- 24 remote computing service has records or evidence, as specified in

1 Section 1524.3, showing that property was stolen or embezzled
2 constituting a misdemeanor, or that property or things are in the
3 possession of any person with the intent to use them as a means
4 of committing a misdemeanor public offense, or in the possession
5 of another to whom he or she may have delivered them for the
6 purpose of concealing them or preventing their discovery.

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

11 (9) When the property or things to be seized include a firearm
12 or any other deadly weapon at the scene of, or at the premises
13 occupied or under the control of the person arrested in connection
14 with, a domestic violence incident involving a threat to human life
15 or a physical assault as provided in Section 18250. This section
16 does not affect warrantless seizures otherwise authorized by Section
17 18250.

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

22 (11) When the property or things to be seized include a firearm
23 that is owned by, or in the possession of, or in the custody or
24 control of, a person who is subject to the prohibitions regarding
25 firearms pursuant to Section 6389 of the Family Code, if a
26 prohibited firearm is possessed, owned, in the custody of, or
27 controlled by a person against whom a protective order has been
28 issued pursuant to Section 6218 of the Family Code, the person
29 has been lawfully served with that order, and the person has failed
30 to relinquish the firearm as required by law.

31 (12) When the information to be received from the use of a
32 tracking device constitutes evidence that tends to show a felony
33 has been committed or is being committed, tends to show that a
34 particular person has committed a felony or is committing a felony,
35 or will assist in locating an individual who has committed or is
36 committing a felony. A tracking device search warrant issued
37 pursuant to this paragraph shall be executed in a manner meeting
38 the requirements specified in subdivision (b) of Section 1534.

39 (b) The property, things, person, or persons described in
40 subdivision (a) may be taken on the warrant from any place, or

1 from any person in whose possession the property or things may
2 be.

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

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

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

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

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

39 (3) The warrant shall, whenever practicable, be served during
40 normal business hours. In addition, the warrant shall be served

1 upon a party who appears to have possession or control of the
2 items sought. If, after reasonable efforts, the party serving the
3 warrant is unable to locate the person, the special master shall seal
4 and return to the court, for determination by the court, any item
5 that appears to be privileged as provided by law.

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

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

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

37 (f) As used in this section, “documentary evidence” includes,
38 but is not limited to, writings, documents, blueprints, drawings,
39 photographs, computer printouts, microfilms, X-rays, files,

1 diagrams, ledgers, books, tapes, audio and video recordings, films,
2 and papers of any type or description.

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

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

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

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

27 (k) *This section shall not be construed to create a cause of action*
28 *against any foreign or California corporation, its officers,*
29 *employees, agents, or other specified persons for providing location*
30 *information.*

31 SEC. 2. Section 1534 of the Penal Code is amended to read:

32 1534. (a) A search warrant shall be executed and returned
33 within 10 days after date of issuance. A warrant executed within
34 the 10-day period shall be deemed to have been timely executed
35 and no further showing of timeliness need be made. After the
36 expiration of 10 days, the warrant, unless executed, is void. The
37 documents and records of the court relating to the warrant need
38 not be open to the public until the execution and return of the
39 warrant or the expiration of the 10-day period after issuance.

1 Thereafter, if the warrant has been executed, the documents and
2 records shall be open to the public as a judicial record.

3 (b) (1) A tracking device search warrant issued pursuant to
4 paragraph (12) of subdivision (a) of Section 1524 shall identify
5 the person or property to be tracked and shall specify a reasonable
6 length of time, not to exceed 30 days from the date the warrant is
7 issued, that the device may be used. The court may, for good cause,
8 grant one or more extensions for the time that the device may be
9 used, with each extension lasting for a reasonable length of time,
10 not to exceed 30 days. The search warrant shall command the
11 officer to execute the warrant by installing a tracking device or
12 serving a warrant on a third-party possessor of the tracking data.
13 The officer shall perform any installation authorized by the warrant
14 during the daytime unless the magistrate, for good cause, expressly
15 authorizes installation at another time. Execution of the warrant
16 shall be completed no later than 10 days immediately after the date
17 of issuance. A warrant executed within this 10-day period shall be
18 deemed to have been timely executed and no further showing of
19 timeliness need be made. After the expiration of 10 days, the
20 warrant shall be void, unless it has been executed.

21 (2) An officer executing a tracking device search warrant shall
22 not be required to knock and announce his or her presence before
23 executing the warrant.

24 (3) No later than 10 calendar days after the use of the tracking
25 device has ended, the officer executing the warrant shall file a
26 return to the warrant.

27 (4) No later than 10 calendar days after the use of the tracking
28 device has ended, the officer who executed the tracking device
29 warrant shall serve a copy of the warrant on the person who was
30 tracked or whose property was tracked. Upon the request of a
31 government agency, the magistrate may, for good cause, delay
32 service of a copy of the warrant.

33 (5) The magistrate's order permitting the installation of a
34 tracking device may authorize the installation and its use only
35 within the State of California, provided the tracking device is
36 installed within the State of California.

37 ~~(5)~~

38 (6) As used in this section, "tracking device" means any
39 electronic or mechanical device that permits the tracking of the
40 movement of a person or object.

1 ~~(6)~~

2 (7) As used in this section, “daytime” means the hours between
3 6 a.m. and 10 p.m. according to local time.

4 (c) If a duplicate original search warrant has been executed, the
5 peace officer who executed the warrant shall enter the exact time
6 of its execution on its face.

7 (d) A search warrant may be made returnable before the issuing
8 magistrate or his or her court.

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