

AMENDED IN SENATE AUGUST 22, 2012

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**

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**Introduced by Assembly Member Fuentes**

February 23, 2012

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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 *that either a felony, a misdemeanor violation of the Fish and Game Code, or a misdemeanor violation of the Public Resources Code* has been committed or is being committed, tends to show that a particular person has committed ~~a felony that act~~ or is committing ~~a felony that act~~, or will assist in locating an individual that has committed or is committing ~~a felony that act~~. 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

1 of a person under the age of 18 years, in violation of Section  
2 311.11, has occurred or is occurring.

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

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

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

16 (9) When the property or things to be seized include a firearm  
17 or any other deadly weapon at the scene of, or at the premises  
18 occupied or under the control of the person arrested in connection  
19 with, a domestic violence incident involving a threat to human life  
20 or a physical assault as provided in Section 18250. This section  
21 does not affect warrantless seizures otherwise authorized by Section  
22 18250.

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

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

36 (12) When the information to be received from the use of a  
37 tracking device constitutes evidence that tends to show *that either*  
38 *a felony, a misdemeanor violation of the Fish and Game Code, or*  
39 *a misdemeanor violation of the Public Resources Code* has been  
40 committed or is being committed, tends to show that a particular

1 person has committed a felony, *a misdemeanor violation of the*  
2 *Fish and Game Code, or a misdemeanor violation of the Public*  
3 *Resources Code, or is committing a felony, a misdemeanor*  
4 *violation of the Fish and Game Code, or a misdemeanor violation*  
5 *of the Public Resources Code, or will assist in locating an*  
6 individual who has committed or is committing a felony, *a*  
7 *misdemeanor violation of the Fish and Game Code, or a*  
8 *misdemeanor violation of the Public Resources Code. A tracking*  
9 device search warrant issued pursuant to this paragraph shall be  
10 executed in a manner meeting the requirements specified in  
11 subdivision (b) of Section 1534.

12 (b) The property, things, person, or persons described in  
13 subdivision (a) may be taken on the warrant from any place, or  
14 from any person in whose possession the property or things may  
15 be.

16 (c) Notwithstanding subdivision (a) or (b), no search warrant  
17 shall issue for any documentary evidence in the possession or  
18 under the control of any person who is a lawyer as defined in  
19 Section 950 of the Evidence Code, a physician as defined in Section  
20 990 of the Evidence Code, a psychotherapist as defined in Section  
21 1010 of the Evidence Code, or a member of the clergy as defined  
22 in Section 1030 of the Evidence Code, and who is not reasonably  
23 suspected of engaging or having engaged in criminal activity  
24 related to the documentary evidence for which a warrant is  
25 requested unless the following procedure has been complied with:

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

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

38 (B) At the hearing, the party searched shall be entitled to raise  
39 any issues that may be raised pursuant to Section 1538.5 as well  
40 as a claim that the item or items are privileged, as provided by

1 law. The hearing shall be held in the superior court. The court shall  
2 provide sufficient time for the parties to obtain counsel and make  
3 any motions or present any evidence. The hearing shall be held  
4 within three days of the service of the warrant unless the court  
5 makes a finding that the expedited hearing is impracticable. In that  
6 case the matter shall be heard at the earliest possible time.

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

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

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

36 (2) In any case in which the magistrate determines that, after  
37 reasonable efforts have been made to obtain a special master, a  
38 special master is not available and would not be available within  
39 a reasonable period of time, the magistrate may direct the party

1 seeking the order to conduct the search in the manner described  
2 in this section in lieu of the special master.

3 (e) Any search conducted pursuant to this section by a special  
4 master may be conducted in a manner that permits the party serving  
5 the warrant or his or her designee to accompany the special master  
6 as he or she conducts his or her search. However, that party or his  
7 or her designee may not participate in the search nor shall he or  
8 she examine any of the items being searched by the special master  
9 except upon agreement of the party upon whom the warrant has  
10 been served.

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

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

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

28 (i) Nothing in this section is intended to limit an attorney’s  
29 ability to request an in camera hearing pursuant to the holding of  
30 the Supreme Court of California in *People v. Superior Court (Laff)*  
31 (2001) 25 Cal.4th 703.

32 (j) In addition to any other circumstance permitting a magistrate  
33 to issue a warrant for a person or property in another county, when  
34 the property or things to be seized consist of any item or constitute  
35 any evidence that tends to show a violation of Section 530.5, the  
36 magistrate may issue a warrant to search a person or property  
37 located in another county if the person whose identifying  
38 information was taken or used resides in the same county as the  
39 issuing court.

1 (k) This section shall not be construed to create a cause of action  
2 against any foreign or California corporation, its officers,  
3 employees, agents, or other specified persons for providing location  
4 information.

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

6 1534. (a) A search warrant shall be executed and returned  
7 within 10 days after date of issuance. A warrant executed within  
8 the 10-day period shall be deemed to have been timely executed  
9 and no further showing of timeliness need be made. After the  
10 expiration of 10 days, the warrant, unless executed, is void. The  
11 documents and records of the court relating to the warrant need  
12 not be open to the public until the execution and return of the  
13 warrant or the expiration of the 10-day period after issuance.  
14 Thereafter, if the warrant has been executed, the documents and  
15 records shall be open to the public as a judicial record.

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

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

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

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

7 ~~(5) The magistrate's order permitting the installation of a~~  
8 ~~tracking device may authorize the installation and its use only~~  
9 ~~within the State of California, provided the tracking device is~~  
10 ~~installed within the State of California. An officer installing a~~  
11 ~~device authorized by a tracking device search warrant may install~~  
12 ~~and use the device only within California.~~

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

16 (7) As used in this section, "daytime" means the hours between  
17 6 a.m. and 10 p.m. according to local time.

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

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