

ASSEMBLY BILL

No. 39

Introduced by Assembly Member Medina

December 1, 2014

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

LEGISLATIVE COUNSEL'S DIGEST

AB 39, as introduced, Medina. Search warrants: electronic submission.

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.

Existing law authorizes a magistrate, before issuing a warrant, to examine on oath the person seeking the warrant and requires the magistrate to take his or her affidavit in writing. Existing law authorizes the magistrate, in lieu of a written affidavit, to take an oral statement under oath using a telephone and facsimile transmission equipment, by using a telephone and electronic mail, or by using a telephone and computer server. Existing law requires, if one of those means is utilized, that the oath be made during a telephone conversation with the magistrate, after which the affiant signs the affidavit and sends the proposed search warrant and all supporting affidavits and attachments to the magistrate. Existing law also requires, if one of those means is utilized, the affiant to telephonically acknowledge the receipt of the signed search warrant and designates the completed search warrant, as signed by the magistrate, as the original warrant and the completed

search warrant, as signed by the magistrate and received by the affiant, as the duplicate original warrant.

This bill would instead require an affiant to first sign his or her affidavit and send the proposed search warrant and all supporting affidavits and attachments to the magistrate, after which the affiant would make his or her oath during a telephone conversation with the magistrate. The bill would also delete the requirement that the affiant telephonically acknowledge receipt of the signed search warrant and would designate the completed search warrant, signed by the magistrate and received by the affiant, as the original warrant.

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 1526 of the Penal Code is amended to
2 read:

3 1526. (a) The magistrate, before issuing the warrant, may
4 examine on oath the person seeking the warrant and any witnesses
5 the person may produce, and shall take his or her affidavit or their
6 affidavits in writing, and cause the affidavit or affidavits to be
7 subscribed by the party or parties making them.

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

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

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

24 (A) The oath is made during a telephone conversation with the
25 magistrate, ~~whereafter~~ *after* the affiant ~~shall sign~~ *has signed* his

1 or her affidavit in support of the application for the search ~~warrant.~~
2 ~~warrant and transmitted the proposed search warrant and all~~
3 ~~supporting affidavits and documents to the magistrate.~~ The affiant's
4 signature ~~shall~~ *may* be in the form of a digital signature or
5 electronic signature if electronic mail or computer server is used
6 for transmission to the magistrate. ~~The proposed search warrant~~
7 ~~and all supporting affidavits and attachments shall then be~~
8 ~~transmitted to the magistrate utilizing facsimile transmission~~
9 ~~equipment, electronic mail, or computer server.~~

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

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

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

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

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

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

28 (D) The magistrate shall transmit via facsimile transmission
29 equipment, electronic mail, or computer server, the signed search
30 warrant to the affiant ~~who shall telephonically acknowledge its~~
31 ~~receipt.~~ ~~The magistrate shall then telephonically authorize the~~
32 ~~affiant to write the words "duplicate original" on the copy of the~~
33 ~~completed search warrant transmitted to the affiant and this~~
34 ~~document shall be deemed to be a duplicate original search warrant.~~
35 ~~The duplicate affiant.~~ *The completed search warrant, as signed*
36 *by the magistrate and received by the affiant, shall be deemed to*
37 *be the original warrant.* *The original warrant and any affidavits*

- 1 or attachments in support thereof shall be returned as provided in
- 2 Section 1534.

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