

ASSEMBLY BILL

No. 539

Introduced by Assembly Member Levine

February 23, 2015

An act to amend Section 1524 of the Penal Code, relating to search warrants.

LEGISLATIVE COUNSEL'S DIGEST

AB 539, as introduced, Levine. Search warrants.

Existing law provides that a search warrant may only 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 also states the grounds upon which a search warrant may be issued, including, among other grounds, when a sample of the blood of a person constitutes evidence that tends to show a violation of specified laws prohibiting driving a vehicle while under the influence of alcohol or drugs, the person from whom the sample is being sought has refused an officer's request to submit to, or has failed to complete, a blood test, as specified, and the sample will be drawn from the person in a reasonable, medically approved manner.

Existing law prohibits a person from operating a vessel or manipulating water skis, an aquaplane, or similar device while under the influence of drugs or alcohol or when the person is addicted to drugs, as specified. Existing law defines a "vessel" for purposes of these provisions to include a watercraft or other artificial contrivance used or capable of being used as a means of transportation on water, except as specified.

This bill would authorize the issuance of a search warrant on the grounds that (1) a sample of the blood of a person constitutes evidence that tends to show a violation of specified laws prohibiting, among other crimes, the operation of a vessel, or manipulating water skis, an aquaplane, or a similar device, while under the influence of alcohol or drugs, (2) the person from whom the sample is being sought has refused an officer’s request to submit to, or has failed to complete, a blood test, as specified, and (3) the sample will be drawn from the person in a reasonable, medically approved manner.

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, as amended by
2 Section 1 of Chapter 872 of the Statutes of 2014, is amended to
3 read:
4 1524. (a) A search warrant may be issued upon any of the
5 following grounds:
6 (1) When the property was stolen or embezzled.
7 (2) When the property or things were used as the means of
8 committing a felony.
9 (3) When the property or things are in the possession of any
10 person with the intent to use them as a means of committing a
11 public offense, or in the possession of another to whom he or she
12 may have delivered them for the purpose of concealing them or
13 preventing them from being discovered.
14 (4) When the property or things to be seized consist of any item
15 or constitute any evidence that tends to show a felony has been
16 committed, or tends to show that a particular person has committed
17 a felony.
18 (5) When the property or things to be seized consist of evidence
19 that tends to show that sexual exploitation of a child, in violation
20 of Section 311.3, or possession of matter depicting sexual conduct
21 of a person under 18 years of age, in violation of Section 311.11,
22 has occurred or is occurring.
23 (6) When there is a warrant to arrest a person.
24 (7) When a provider of electronic communication service or
25 remote computing service has records or evidence, as specified in
26 Section 1524.3, showing that property was stolen or embezzled

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

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

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

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

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

30 (12) When the information to be received from the use of a
31 tracking device constitutes evidence that tends to show that either
32 a felony, a misdemeanor violation of the Fish and Game Code, or
33 a misdemeanor violation of the Public Resources Code has been
34 committed or is being committed, tends to show that a particular
35 person has committed a felony, a misdemeanor violation of the
36 Fish and Game Code, or a misdemeanor violation of the Public
37 Resources Code, or is committing a felony, a misdemeanor
38 violation of the Fish and Game Code, or a misdemeanor violation
39 of the Public Resources Code, or will assist in locating an
40 individual who has committed or is committing a felony, a

1 misdemeanor violation of the Fish and Game Code, or a
2 misdemeanor violation of the Public Resources Code. A tracking
3 device search warrant issued pursuant to this paragraph shall be
4 executed in a manner meeting the requirements specified in
5 subdivision (b) of Section 1534.

6 (13) When a sample of the blood of a person constitutes
7 evidence that tends to show a violation of Section 23140, 23152,
8 or 23153 of the Vehicle Code and the person from whom the
9 sample is being sought has refused an officer's request to submit
10 to, or has failed to complete, a blood test as required by Section
11 23612 of the Vehicle Code, and the sample will be drawn from
12 the person in a reasonable, medically approved manner. This
13 paragraph is not intended to abrogate a court's mandate to
14 determine the propriety of the issuance of a search warrant on a
15 case-by-case basis.

16 (14) Beginning January 1, 2016, the property or things to be
17 seized are firearms or ammunition or both that are owned by, in
18 the possession of, or in the custody or control of a person who is
19 the subject of a gun violence restraining order that has been issued
20 pursuant to Division 3.2 (commencing with Section 18100) of
21 Title 2 of Part 6, if a prohibited firearm or ammunition or both is
22 possessed, owned, in the custody of, or controlled by a person
23 against whom a gun violence restraining order has been issued,
24 the person has been lawfully served with that order, and the person
25 has failed to relinquish the firearm as required by law.

26 (15) (A) *When all of the following apply:*

27 (i) *A sample of the blood of a person constitutes evidence that*
28 *tends to show a violation of subdivision (b), (c), (d), (e), or (f) of*
29 *Section 655 of the Harbors and Navigation Code.*

30 (ii) *The person from whom the sample is being sought has refused*
31 *an officer's request to submit to, or has failed to complete, a blood*
32 *test as required by Section 655.1 of the Harbors and Navigation*
33 *Code.*

34 (iii) *The sample will be drawn from the person in a reasonable,*
35 *medically approved manner.*

36 (B) *This paragraph is not intended to abrogate a court's*
37 *mandate to determine the propriety of the issuance of a search*
38 *warrant on a case-by-case basis.*

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.