

AMENDED IN SENATE JUNE 23, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

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 amended, 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.

This bill would incorporate changes to Section 1524 of the Penal Code proposed by both this bill and AB 1104, which would become operative only if both bills are enacted and become effective on or before January 1, 2016, and this bill is chaptered last.

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.

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

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

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

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

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

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

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

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

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

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

30 (15) (A) When all of the following apply:

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

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

38 (iii) The sample will be drawn from the person in a reasonable,
39 medically approved manner.

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

4 (b) The property, things, person, or persons described in
5 subdivision (a) may be taken on the warrant from any place, or
6 from any person in whose possession the property or things may
7 be.

8 (c) Notwithstanding subdivision (a) or (b), no search warrant
9 shall issue for any documentary evidence in the possession or
10 under the control of any person who is a lawyer as defined in
11 Section 950 of the Evidence Code, a physician as defined in Section
12 990 of the Evidence Code, a psychotherapist as defined in Section
13 1010 of the Evidence Code, or a member of the clergy as defined
14 in Section 1030 of the Evidence Code, and who is not reasonably
15 suspected of engaging or having engaged in criminal activity
16 related to the documentary evidence for which a warrant is
17 requested unless the following procedure has been complied with:

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

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

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

39 (C) If an item or items are taken to court for a hearing, any
40 limitations of time prescribed in Chapter 2 (commencing with

1 Section 799) of Title 3 of Part 2 shall be tolled from the time of
2 the seizure until the final conclusion of the hearing, including any
3 associated writ or appellate proceedings.

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

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

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

34 (e) Any search conducted pursuant to this section by a special
35 master may be conducted in a manner that permits the party serving
36 the warrant or his or her designee to accompany the special master
37 as he or she conducts his or her search. However, that party or his
38 or her designee may not participate in the search nor shall he or
39 she examine any of the items being searched by the special master

1 except upon agreement of the party upon whom the warrant has
2 been served.

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

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

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

20 (i) Nothing in this section is intended to limit an attorney’s
21 ability to request an in camera hearing pursuant to the holding of
22 the Supreme Court of California in *People v. Superior Court (Laff)*
23 (2001) 25 Cal.4th 703.

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

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

36 *SEC. 1.5. Section 1524 of the Penal Code is amended to read:*

37 1524. (a) A search warrant may be issued upon any of the
38 following grounds:

39 (1) When the property was stolen or embezzled.

1 (2) When the property or things were used as the means of
2 committing a felony.

3 (3) When the property or things are in the possession of any
4 person with the intent to use them as a means of committing a
5 public offense, or in the possession of another to whom he or she
6 may have delivered them for the purpose of concealing them or
7 preventing them from being discovered.

8 (4) When the property or things to be seized consist of ~~any an~~
9 item or constitute ~~any~~ evidence that tends to show a felony has
10 been committed, or tends to show that a particular person has
11 committed a felony.

12 (5) When the property or things to be seized consist of evidence
13 that tends to show that sexual exploitation of a child, in violation
14 of Section 311.3, or possession of matter depicting sexual conduct
15 of a person under 18 years of age, in violation of Section 311.11,
16 has occurred or is occurring.

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

18 (7) When a provider of electronic communication service or
19 remote computing service has records or evidence, as specified in
20 Section 1524.3, showing that property was stolen or embezzled
21 constituting a misdemeanor, or that property or things are in the
22 possession of any person with the intent to use them as a means
23 of committing a misdemeanor public offense, or in the possession
24 of another to whom he or she may have delivered them for the
25 purpose of concealing them or preventing their discovery.

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

30 (9) When the property or things to be seized include a firearm
31 or ~~any~~ other deadly weapon at the scene of, or at the premises
32 occupied or under the control of the person arrested in connection
33 with, a domestic violence incident involving a threat to human life
34 or a physical assault as provided in Section 18250. This section
35 does not affect warrantless seizures otherwise authorized by Section
36 18250.

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

1 (11) When the property or things to be seized include a firearm
2 that is owned by, or in the possession of, or in the custody or
3 control of, a person who is subject to the prohibitions regarding
4 firearms pursuant to Section 6389 of the Family Code, if a
5 prohibited firearm is possessed, owned, in the custody of, or
6 controlled by a person against whom a protective order has been
7 issued pursuant to Section 6218 of the Family Code, the person
8 has been lawfully served with that order, and the person has failed
9 to relinquish the firearm as required by law.

10 (12) When the information to be received from the use of a
11 tracking device constitutes evidence that tends to show that either
12 a felony, a misdemeanor violation of the Fish and Game Code, or
13 a misdemeanor violation of the Public Resources Code has been
14 committed or is being committed, tends to show that a particular
15 person has committed a felony, a misdemeanor violation of the
16 Fish and Game Code, or a misdemeanor violation of the Public
17 Resources Code, or is committing a felony, a misdemeanor
18 violation of the Fish and Game Code, or a misdemeanor violation
19 of the Public Resources Code, or will assist in locating an
20 individual who has committed or is committing a felony, a
21 misdemeanor violation of the Fish and Game Code, or a
22 misdemeanor violation of the Public Resources Code. A tracking
23 device search warrant issued pursuant to this paragraph shall be
24 executed in a manner meeting the requirements specified in
25 subdivision (b) of Section 1534.

26 (13) When a sample of the blood of a person constitutes
27 evidence that tends to show a violation of Section 23140, 23152,
28 or 23153 of the Vehicle Code and the person from whom the
29 sample is being sought has refused an officer's request to submit
30 to, or has failed to complete, a blood test as required by Section
31 23612 of the Vehicle Code, and the sample will be drawn from
32 the person in a reasonable, medically approved manner. This
33 paragraph is not intended to abrogate a court's mandate to
34 determine the propriety of the issuance of a search warrant on a
35 case-by-case basis.

36 (14) Beginning January 1, 2016, the property or things to be
37 seized are firearms or ammunition or both that are owned by, in
38 the possession of, or in the custody or control of a person who is
39 the subject of a gun violence restraining order that has been issued
40 pursuant to Division 3.2 (commencing with Section 18100) of

1 Title 2 of Part 6, if a prohibited firearm or ammunition or both is
2 possessed, owned, in the custody of, or controlled by a person
3 against whom a gun violence restraining order has been issued,
4 the person has been lawfully served with that order, and the person
5 has failed to relinquish the firearm as required by law.

6 *(15) When the property or things to be seized are controlled*
7 *substances or a device, contrivance, instrument, or paraphanelia*
8 *used for unlawfully using or administering a controlled substance*
9 *pursuant to the authority described in Section 11472 of the Health*
10 *and Safety Code.*

11 *(16) (A) When all of the following apply:*

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

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

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

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

24 (b) The property, things, person, or persons described in
25 subdivision (a) may be taken on the warrant from any place, or
26 from any person in whose possession the property or things may
27 be.

28 (c) Notwithstanding subdivision (a) or (b), no search warrant
29 shall issue for any documentary evidence in the possession or
30 under the control of any person who is a lawyer as defined in
31 Section 950 of the Evidence Code, a physician as defined in Section
32 990 of the Evidence Code, a psychotherapist as defined in Section
33 1010 of the Evidence Code, or a member of the clergy as defined
34 in Section 1030 of the Evidence Code, and who is not reasonably
35 suspected of engaging or having engaged in criminal activity
36 related to the documentary evidence for which a warrant is
37 requested unless the following procedure has been complied with:

38 (1) At the time of the issuance of the warrant, the court shall
39 appoint a special master in accordance with subdivision (d) to
40 accompany the person who will serve the warrant. Upon service

1 of the warrant, the special master shall inform the party served of
2 the specific items being sought and that the party shall have the
3 opportunity to provide the items requested. If the party, in the
4 judgment of the special master, fails to provide the items requested,
5 the special master shall conduct a search for the items in the areas
6 indicated in the search warrant.

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

10 (B) At the hearing, the party searched shall be entitled to raise
11 any issues that may be raised pursuant to Section 1538.5 as well
12 as a claim that the item or items are privileged, as provided by
13 law. The hearing shall be held in the superior court. The court shall
14 provide sufficient time for the parties to obtain counsel and make
15 ~~any~~ motions or present ~~any~~ evidence. The hearing shall be held
16 within three days of the service of the warrant unless the court
17 makes a finding that the expedited hearing is impracticable. In that
18 ~~case~~ *case*, the matter shall be heard at the earliest possible time.

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

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

31 (d) (1) As used in this section, a “special master” is an attorney
32 who is a member in good standing of the California State Bar and
33 who has been selected from a list of qualified attorneys that is
34 maintained by the State Bar particularly for the purposes of
35 conducting the searches described in this section. These attorneys
36 shall serve without compensation. A special master shall be
37 considered a public employee, and the governmental entity that
38 caused the search warrant to be issued shall be considered the
39 employer of the special master and the applicable public entity,
40 for purposes of Division 3.6 (commencing with Section 810) of

1 Title 1 of the Government Code, relating to claims and actions
2 against public entities and public employees. In selecting the
3 special master, the court shall make every reasonable effort to
4 ensure that the person selected has no relationship with any of the
5 parties involved in the pending matter. ~~Any information~~
6 *Information* obtained by the special master shall be confidential
7 and may not be divulged except in direct response to inquiry by
8 the court.

9 (2) In any case in which the magistrate determines that, after
10 reasonable efforts have been made to obtain a special master, a
11 special master is not available and would not be available within
12 a reasonable period of time, the magistrate may direct the party
13 seeking the order to conduct the search in the manner described
14 in this section in lieu of the special master.

15 (e) Any search conducted pursuant to this section by a special
16 master may be conducted in a manner that permits the party serving
17 the warrant or his or her designee to accompany the special master
18 as he or she conducts his or her search. However, that party or his
19 or her designee may not participate in the search nor shall he or
20 she examine any of the items being searched by the special master
21 except upon agreement of the party upon whom the warrant has
22 been served.

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

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

30 (h) Notwithstanding any other law, no claim of attorney work
31 product as described in Chapter 4 (commencing with Section
32 2018.010) of Title 4 of Part 4 of the Code of Civil Procedure shall
33 be sustained where there is probable cause to believe that the
34 lawyer is engaging or has engaged in criminal activity related to
35 the documentary evidence for which a warrant is requested unless
36 it is established at the hearing with respect to the documentary
37 evidence seized under the warrant that the services of the lawyer
38 were not sought or obtained to enable or aid anyone to commit or
39 plan to commit a crime or a fraud.

1 (i) Nothing in this section is intended to limit an attorney's
2 ability to request an ~~in-camera~~ *in-camera* hearing pursuant to the
3 holding of the Supreme Court of California in *People v. Superior*
4 *Court (Laff)* (2001) 25 Cal.4th 703.

5 (j) In addition to any other circumstance permitting a magistrate
6 to issue a warrant for a person or property in another county, when
7 the property or things to be seized consist of any item or constitute
8 any evidence that tends to show a violation of Section 530.5, the
9 magistrate may issue a warrant to search a person or property
10 located in another county if the person whose identifying
11 information was taken or used resides in the same county as the
12 issuing court.

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

17 *SEC. 2. Section 1.5 of this bill incorporates amendments to*
18 *Section 1524 of the Penal Code proposed by both this bill and*
19 *Assembly Bill 1104. It shall only become operative if (1) both bills*
20 *are enacted and become effective on or before January 1, 2016,*
21 *(2) each bill amends Section 1524 of the Penal Code, and (3) this*
22 *bill is enacted after Assembly Bill 1104, in which case Section 1*
23 *of this bill shall not become operative.*