

AMENDED IN SENATE AUGUST 26, 2009

AMENDED IN SENATE JUNE 26, 2009

AMENDED IN ASSEMBLY APRIL 13, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 532

Introduced by Assembly Member Lieu

February 25, 2009

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

LEGISLATIVE COUNSEL'S DIGEST

AB 532, as amended, Lieu. Search warrants: firearms.

Existing law establishes various grounds for the issuance of a search warrant.

This bill would additionally authorize issuance of a search warrant when the property or things to be seized include a firearm or any other deadly weapon that is owned by, or in the possession of, or in the custody or control of, a person who has been detained or apprehended for examination of his or her mental condition, as specified. The bill would also authorize issuance of a search warrant when the property or things to be seized include a firearm or any other deadly weapon at the scene of, or at the premises occupied or under the control of the person arrested in connection with, a domestic violence incident involving a threat to human life or a physical assault, as specified.

The bill would also state that it is not the intent of the Legislature in enacting the measure to authorize the seizure of firearms in specified circumstances.

This bill would incorporate additional changes to Section 1524 of the Penal Code proposed by AB 789, to become operative if this bill is enacted after AB 789.

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
25 Section 1524.3, showing that property was stolen or embezzled
26 constituting a misdemeanor, or that property or things are in the
27 possession of any person with the intent to use them as a means
28 of committing a misdemeanor public offense, or in the possession
29 of another to whom he or she may have delivered them for the
30 purpose of concealing them or preventing their discovery.
31 (8) When the property or things to be seized include an item or
32 any evidence that tends to show a violation of Section 3700.5 of

1 the Labor Code, or tends to show that a particular person has
2 violated Section 3700.5 of the Labor Code.

3 (9) When the property or things to be seized include a firearm
4 or any other deadly weapon at the scene of, or at the premises
5 occupied or under the control of the person arrested in connection
6 with, a domestic violence incident involving a threat to human life
7 or a physical assault as provided in subdivision (b) of Section
8 12028.5. *This section does not affect warrantless seizures otherwise*
9 *authorized by subdivision (b) of Section 12028.5.*

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

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

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

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

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

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

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

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

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

(2) In any case in which the magistrate determines that, after reasonable efforts have been made to obtain a special master, a

1 special master is not available and would not be available within
2 a reasonable period of time, the magistrate may direct the party
3 seeking the order to conduct the search in the manner described
4 in this section in lieu of the special master.

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

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

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

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

30 (i) Nothing in this section is intended to limit an attorney’s
31 ability to request an in camera hearing pursuant to the holding of
32 the Supreme Court of California in *People v. Superior Court (Laff)*
33 (2001) 25 Cal.4th 703.

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

1 information was taken or used resides in the same county as the
2 issuing court.

3 *SEC. 1.5. Section 1524 of the Penal Code is amended to 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 the age of 18 years, in violation of Section
22 311.11, 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
27 constituting a misdemeanor, or that property or things are in the
28 possession of any person with the intent to use them as a means
29 of committing a misdemeanor public offense, or in the possession
30 of another to whom he or she may have delivered them for the
31 purpose of concealing them or preventing their discovery.

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

36 (9) *When the property or things to be seized include a firearm*
37 *or any other deadly weapon at the scene of, or at the premises*
38 *occupied or under the control of the person arrested in connection*
39 *with, a domestic violence incident involving a threat to human life*
40 *or a physical assault as provided in subdivision (b) of Section*

12028.5. This section does not affect warrantless seizures otherwise authorized by subdivision (b) of Section 12028.5.

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

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

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

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

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

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

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

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

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

25 (d) (1) As used in this section, a “special master” is an attorney
26 who is a member in good standing of the California State Bar and
27 who has been selected from a list of qualified attorneys that is
28 maintained by the State Bar particularly for the purposes of
29 conducting the searches described in this section. These attorneys
30 shall serve without compensation. A special master shall be
31 considered a public employee, and the governmental entity that
32 caused the search warrant to be issued shall be considered the
33 employer of the special master and the applicable public entity,
34 for purposes of Division 3.6 (commencing with Section 810) of
35 Title 1 of the Government Code, relating to claims and actions
36 against public entities and public employees. In selecting the
37 special master, the court shall make every reasonable effort to
38 ensure that the person selected has no relationship with any of the
39 parties involved in the pending matter. Any information obtained

1 by the special master shall be confidential and may not be divulged
2 except in direct response to inquiry by the court.

3 (2) In any case in which the magistrate determines that, after
4 reasonable efforts have been made to obtain a special master, a
5 special master is not available and would not be available within
6 a reasonable period of time, the magistrate may direct the party
7 seeking the order to conduct the search in the manner described
8 in this section in lieu of the special master.

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

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

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

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

34 (i) Nothing in this section is intended to limit an attorney’s
35 ability to request an in camera hearing pursuant to the holding of
36 the Supreme Court of California in *People v. Superior Court (Laff)*
37 (2001) 25 Cal.4th 703.

38 (j) In addition to any other circumstance permitting a magistrate
39 to issue a warrant for a person or property in another county, when
40 the property or things to be seized consist of any item or constitute

1 any evidence that tends to show a violation of Section 530.5, the
2 magistrate may issue a warrant to search a person or property
3 located in another county if the person whose identifying
4 information was taken or used resides in the same county as the
5 issuing court.

6 SEC. 2. It is not the intent of the Legislature in enacting this
7 act to authorize the seizure of any firearms not owned by, or in the
8 possession of, or under the custody or control of, any person not
9 subject to the provisions of Section 12028.5 of the Penal Code or
10 Section 8102 of the Welfare and Institutions Code.

11 SEC. 3. *Section 1.5 of this bill incorporates amendments to*
12 *Section 1524 of the Penal Code proposed by both this bill and AB*
13 *789. It shall only become operative if (1) both bills are enacted*
14 *and become effective on or before January 1, 2010, (2) each bill*
15 *amends Section 1524 of the Penal Code, and (3) this bill is enacted*
16 *after AB 789, in which case Section 1 of this bill shall not become*
17 *operative.*