

AMENDED IN SENATE MAY 20, 2013

AMENDED IN SENATE MAY 16, 2013

AMENDED IN SENATE APRIL 25, 2013

SENATE BILL

No. 717

Introduced by Senators DeSaulnier and Correa

February 22, 2013

An act to amend Section 1524 of the Penal Code, relating to search warrants, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 717, as amended, DeSaulnier. Search warrants: driving under the influence.

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 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, or when there is a warrant to arrest a person.

This bill would additionally authorize the issuance of a search warrant to authorize a blood draw or sample of other bodily fluids from a person in a reasonable, medically approved manner when the sample constitutes evidence that tends to show that the person has violated specified provisions related to driving under the influence, and the person has refused an officer's request to submit to, or has failed to complete, a ~~chemical test or tests~~ *blood test*, as specified.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: 2/3. 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 18 years of age, in violation of Section 311.11,
21 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 Section 18250. This section
8 does not affect warrantless seizures otherwise authorized by Section
9 18250.

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

23 (12) When the information to be received from the use of a
24 tracking device constitutes evidence that tends to show that either
25 a felony, a misdemeanor violation of the Fish and Game Code, or
26 a misdemeanor violation of the Public Resources Code has been
27 committed or is being committed, tends to show that a particular
28 person has committed a felony, a misdemeanor violation of the
29 Fish and Game Code, or a misdemeanor violation of the Public
30 Resources Code, or is committing a felony, a misdemeanor
31 violation of the Fish and Game Code, or a misdemeanor violation
32 of the Public Resources Code, or will assist in locating an
33 individual who has committed or is committing a felony, a
34 misdemeanor violation of the Fish and Game Code, or a
35 misdemeanor violation of the Public Resources Code. A tracking
36 device search warrant issued pursuant to this paragraph shall be
37 executed in a manner meeting the requirements specified in
38 subdivision (b) of Section 1534.

39 (13) When a sample of the blood or other bodily fluid of a
40 person constitutes evidence that tends to show a violation of

1 Section 23140, 23152, or 23153 of the Vehicle Code and the person
2 from whom the sample is being sought has refused an officer's
3 request to submit to, or has failed to complete, a ~~chemical test or~~
4 ~~tests pursuant to~~ *blood test as required by* Section 23612 of the
5 Vehicle Code, and the sample will be drawn from the person in a
6 reasonable, medically approved manner.

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

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

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

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

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

1 makes a finding that the expedited hearing is impracticable. In that
2 case the matter shall be heard at the earliest possible time.

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

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

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

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

38 (e) Any search conducted pursuant to this section by a special
39 master may be conducted in a manner that permits the party serving
40 the warrant or his or her designee to accompany the special master

1 as he or she conducts his or her search. However, that party or his
2 or her designee may not participate in the search nor shall he or
3 she examine any of the items being searched by the special master
4 except upon agreement of the party upon whom the warrant has
5 been served.

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

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

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

23 (i) Nothing in this section is intended to limit an attorney’s
24 ability to request an in camera hearing pursuant to the holding of
25 the Supreme Court of California in *People v. Superior Court (Laff)*
26 (2001) 25 Cal.4th 703.

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

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

39 SEC. 2. This act is an urgency statute necessary for the
40 immediate preservation of the public peace, health, or safety within

1 the meaning of Article IV of the Constitution and shall go into
2 immediate effect. The facts constituting the necessity are:
3 In order to ensure the public is protected from persons driving
4 under the influence at the earliest possible time, it is necessary that
5 this act take effect immediately.

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