
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Loni Hancock, Chair

2015 - 2016 Regular

Bill No: AB 1104 **Hearing Date:** June 16, 2015
Author: Rodriguez
Version: April 23, 2015
Urgency: No **Fiscal:** No
Consultant: MK

Subject: *Search Warrants*

HISTORY

Source: California State Sheriffs' Association

Prior Legislation: None

Support: The Association of Deputy District Attorneys; Association for Los Angeles Deputy Sheriffs; California Association of Code Enforcement Officers; California College and University Police Chiefs Association; The California District Attorneys Association; California Fraternal Order of Police; California Narcotic Officers Association; California Peace Officers' Association; California Police Chiefs Association; California State Association of Counties; Crime Victims United of California; Long Beach Police Officers Association; Los Angeles County Professional Peace Officers Association; Los Angeles County District Attorney's Office; Los Angeles County Sheriff's Department; Los Angeles Police Protective League; Peace Officers Research Association of California; The Riverside Sheriffs Association; Rural County Representatives of California; Santa Ana Police Officers Association; San Bernardino County Sheriff; San Diego County Sheriff's Department; Sacramento County Deputy Sheriffs' Association

Opposition: California Public Defenders Association; Legal Services for Prisoners with Children

Assembly Floor Vote: 76 - 0

PURPOSE

The purpose of this bill is to clarify in the Penal Code that a search warrant may be issued when the property or things to be seized are controlled substances or any device, contrivance, instrument, or paraphernalia used for unlawfully using or administering a controlled substance, as provided in existing provisions of law in the Health and Safety Code.

The US Constitution provides that "the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly

describing the place to be searched an the persons or things to be seized.” (4th Amendment of the U.S. Constitution.)

The California Constitution provides that “the right of the people to be secure in their persons, houses, papers and effects against unreasonable seizures and searches may not be violated; and a warrant may not issue except on probable cause, supported by oath or affirmation, particularly describing the place to be searched and the persons and things to be seized.” (Article I, Section 13 of the California Constitution.)

Existing law defines a “search warrant” as an order in writing in the name of the People, signed by a magistrate, directed to a peace officer, commanding him or her to search for a person or persons, a thing or things, or personal property, and in the case of a thing or things or personal property, bring the same before the magistrate. (Penal Code § 1523.)

Existing law provides that a search warrant may be issued upon any of the following grounds:

- 1) When the property was stolen or embezzled;
- 2) When the property or things were used as the means of committing a felony;
- 3) When the property or things are in the possession of any person with the intent to use them as a means of committing a public offense, or in the possession of another to whom he or she may have delivered them for the purpose of concealing them or preventing them from being discovered;
- 4) 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;
- 5) When the property or things to be seized consist of evidence that tends to show that sexual exploitation of a child, or possession of matter depicting sexual conduct of a person under the age of 18 years, has occurred or is occurring;
- 6) When there is a warrant to arrest a person;
- 7) When a provider of electronic communication service or remote computing service has records or evidence, showing that property was stolen or embezzled constituting a misdemeanor, or that property or things are in the possession of any person with the intent to use them as a means of committing a misdemeanor public offense, or in the possession of another to whom he or she may have delivered them for the purpose of concealing them or preventing their discovery;
- 8) When the property to be seized includes evidence of a violation of specified Labor Code sections;
- 9) When the property to be seized includes a firearm or deadly weapon or any other deadly weapon at the scene of a domestic violence offense;
- 10) When the property to be seized includes a firearm or deadly weapon owned by a person apprehended because of his or her mental condition;
- 11) When the property to be seized is a firearm in possession of a person prohibited under the family code; 1) When the information to be received from the use of a tracking device under shows a specified violation of the Fish and Game Code or Public Resources Code;
- 12) When a sample of blood would show evidence of a DUI; or,
- 13) Starting January 1, 2016, when the property to be seized is a firearm owned by a person subject to a gun violence restraining order. (Penal Code § 1524(a).)

Existing law provides that controlled substances and any device, contrivance, instrument, or paraphernalia used for unlawfully using or administering a controlled substance, which are

possessed in violation of this division, may be seized by any peace officer and in the aid of such seizure a search warrant may be issued as prescribed by law. Health and Safety Code § 11472)

This bill clarifies in the Penal Code that a search warrant may be issued when the property or things to be seized are controlled substances or any device, contrivance, instrument, or paraphernalia used for unlawfully using or administering a controlled substance, as provided in existing provisions of law in the Health and Safety Code.

COMMENTS

1. Need for This Bill

According to the author:

Under existing law, Penal Code 1524, Section (a)(4), it is unclear when a law enforcement officer can seek a search warrant for controlled substances.

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

(4) 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.

Specifically, AB 1104 would reference in Penal Code the provision in Health and Safety Code, Section 11472, which authorizes a search warrant for controlled substances.

HSC 11472 Controlled substances and any device, contrivance, instrument, or paraphernalia used for unlawfully using or administering a controlled substance, which are possessed in violation of this division, may be seized by any peace officer and in the aid of such seizure a search warrant may be issued as prescribed by law.

AB 1104 would clarify that a search warrant for controlled substances is already authorized in the Health and Safety Code by referencing such provision in Penal Code.

2. Search Warrants

Both the United States and the California constitution's guarantee the right of all persons to be secure from unreasonable searches and seizures. (U.S. Const., amend. IV; Cal. Const., art. 1, sec. 13.) This protection applies to all unreasonable government intrusions into legitimate expectations of privacy. (*United States v. Chadwick* (1977) 433 U.S. 1, 7, overruled on other grounds by *California v. Acevedo* (1991) 500 U.S. 565.) In general, a search is not valid unless it is conducted pursuant to a warrant. A search warrant may not be issued without probable cause. "Reasonable and probable cause exists if a man of ordinary care and prudence would be led to conscientiously entertain an honest and strong suspicion that the accused is guilty." (*People v. Alvarado* (1967) 250 Cal.App.2d 584, 591.) The mere reasonableness of a search, assessed in light of the surrounding circumstances, is not a substitute for the warrant required by the Constitution. (*Arkansas v. Sanders* (1979) 442 U.S. 753, 758, overruled on other grounds by

California v. Acevedo, supra.) There are exceptions to the warrant requirement, but the burden of establishing an exception is on the party seeking one. (*Arkansas v. Sanders* (1979) 442 U.S. 753, 760, overruled on other grounds by *California v. Acevedo*, supra.)

In California, Penal Code section 1524 provides the statutory grounds for the issuance of warrants. Under these provisions, a search warrant may be issued "[w]hen property or things were used as the means to commit a felony." (Pen. Code, § 1524, subd. (a)(2).) There are other enumerated circumstances that authorize a search warrant regardless of whether the crime was a felony or misdemeanor, such as "[w]hen the property subject to search was stolen or embezzled." (Pen. Code, § 1524, subd. (a)(1).) Additionally, Penal Code section 1524 provides that a search warrant may be issued "[w]hen the property or things are in the possession of any person with the intent to use them as a means of committing a public offense. . . ." (Pen. Code, § 1524, subd. (a)(3).) A "public offense" is defined as crimes which include felonies, misdemeanors, and infractions. (Pen. Code, § 16.) When the mere possession of such property is not violation of law, this provision requires a showing of specific intent to use such property to commit public offense before a warrant may be issued. However, when possession itself is declared unlawful by statute, such is the case for controlled substances, it is not necessary to show specific intent, possession itself being public offense. (*Dunn v. Municipal Court for Eureka Judicial Dist.* (1963) 220 Cal App 2d 858.)

The Health and Safety code also states that controlled substances or paraphernalia "may be seized by any peace officer and in the aid of such seizure a search warrant may be issued as prescribed by law." (Health & Saf. Code, § 11472.) However, because Penal Code section 1524 is relied upon as the statute that provides direction on when warrants may be issued, this bill adds a cross- reference to Health and Safety Code section 11472 to provide clarity to agencies on when they may seek a warrant.

3. Argument in Support

According to the sponsor the California State Sheriffs' Association:

Because California law is constantly changing, both due to legislative and judicial action, it often becomes necessary to update and clarify statutes so it is clear to law enforcement and court officers, as well as the Californians who are governed by them, what the state of the law is.

It has come to our attention that the authority to seek and obtain search warrants for controlled substance possession offenses as described in Health and Safety Code may be unclear and in the spirit of the above precepts, AB 1104 will merely clarify this existing authority by inserting an unambiguous cross-reference in Penal Code Section 1524, the existing California law that generally describes the situations in which search warrants may issue.

4. Argument in Opposition

According to the California Public Defenders Association:

Health and Safety Code authorizes a peace officer to seize the listed items, and provides that in the aid of such seizure a search warrant may be issued as prescribed by law.

In other words, if a search warrant issues as prescribed by Penal Code section 1524, and in executing it an officer finds any of the listed items, the officer can seize them.

But existing law, that is, existing Penal Code section 1524, does not currently authorize a search warrant to issue solely for those listed items, and nor does Health and Safety Code section 11472.

This is a subtle but important point. It is illustrated by *People v. Superior Court (Morton)* (1984) 151 Cal.App.3d 899. In that case, drug paraphernalia, which is an item listed in Health and Safety Code section 11472, was seized, and there was a search warrant. But the warrant in that case was not issued just because those items were possessed, and it was not issued under authority of Health and Safety Code section 11472.

On the contrary, the *Morton* court stated, at 151 Cal.App.3d at 901, that the 'warrants recited that there was probable cause to believe that described property "is possessed ... with the intent to use it as a means of committing ... a violation of ... Section 11364.7."' (Section 11364.7 outlaws possession of drug paraphernalia with intent to deliver them to another person to use drugs.)

Thus, the warrant in issued by authority of Penal Code section 1524, subdivision (a)(3), authorizing a search warrant when the property is possessed 'with the intent to use them as a means of committing a public offense.' It was not authorized by Health and Safety Code section 11472.

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