

**Introduced by Senator Kopp**

January 3, 1996

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

LEGISLATIVE COUNSEL'S DIGEST

SB 1369, as introduced, Kopp. Search warrants: violations of the Political Reform Act of 1974.

Existing law specifies the grounds and conditions upon which a search warrant may be issued.

This bill would provide that a search warrant may be issued when the property or things to be seized consist of evidence that tends to show that a criminal violation of the Political Reform Act of 1974 has been committed or tends to show that a particular person has committed it.

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
- 2 amended to read:
- 3 1524. (a) A search warrant may be issued upon any
- 4 of the following grounds:
- 5 (1) When the property was stolen or embezzled.
- 6 (2) When the property or things were used as the
- 7 means of committing a felony.
- 8 (3) When the property or things are in the possession
- 9 of any person with the intent to use it as a means of



1 committing a public offense, or in the possession of  
2 another to whom he or she may have delivered it for the  
3 purpose of concealing it or preventing its being  
4 discovered.

5 (4) When the property or things to be seized consist of  
6 any item or constitutes any evidence which tends to show  
7 a felony has been committed, or tends to show that a  
8 particular person has committed a felony.

9 (5) When the property or things to be seized consist of  
10 evidence which tends to show that sexual exploitation of  
11 a child, in violation of Section 311.3, has occurred or is  
12 occurring.

13 (6) *When the property or things to be seized consist of*  
14 *evidence that tends to show that a criminal violation of*  
15 *the Political Reform Act of 1974, Title 9 (commencing*  
16 *with Section 81000) of the Government Code, has been*  
17 *committed or tends to show that a particular person has*  
18 *committed it.*

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

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

34 (1) At the time of the issuance of the warrant the court  
35 shall appoint a special master in accordance with  
36 subdivision (d) to accompany the person who will serve  
37 the warrant. Upon service of the warrant, the special  
38 master shall inform the party served of the specific items  
39 being sought and that the party shall have the  
40 opportunity to provide the items requested. If the party,



1 in the judgment of the special master, fails to provide the  
2 items requested, the special master shall conduct a search  
3 for the items in the areas indicated in the search warrant.

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

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

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

26 (d) As used in this section, a “special master” is an  
27 attorney who is a member in good standing of the  
28 California State Bar and who has been selected from a list  
29 of qualified attorneys which is maintained by the State  
30 Bar particularly for the purposes of conducting the  
31 searches described in this section. These attorneys shall  
32 serve without compensation. A special master shall be  
33 considered a public employee, and the governmental  
34 entity which caused the search warrant to be issued shall  
35 be considered the employer of the special master and the  
36 applicable public entity, for purposes of Division 3.6  
37 (commencing with Section 810) of Title 1 of the  
38 Government Code, relating to claims and actions against  
39 public entities and public employees. In selecting the  
40 special master the court shall make every reasonable



1 effort to insure that the person selected has no  
2 relationship with any of the parties involved in the  
3 pending matter. Any information obtained by the special  
4 master shall be confidential and shall not be divulged  
5 except in direct response to inquiry by the court.

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

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

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

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

