

AMENDED IN ASSEMBLY APRIL 29, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 1310

Introduced by Assembly Member Gatto

February 27, 2015

An act to amend Sections 786 and ~~1524~~ 1524.3 of the Penal Code, relating to disorderly conduct.

LEGISLATIVE COUNSEL'S DIGEST

AB 1310, as amended, Gatto. Disorderly conduct: unlawful distribution of image.

Existing law makes it a misdemeanor to look through a hole or opening, into, or to view, by means of any instrumentality, the interior of an area in which an occupant has a reasonable expectation of privacy with the intent to invade the privacy of that person. Existing law makes it a misdemeanor to record another person under or through the clothing worn by that person, without the consent or knowledge of the person, under circumstances in which the person has a reasonable expectation of privacy. Existing law makes it a misdemeanor to secretly record another person in a state of full or partial undress without the consent or knowledge of that person, in an area in which that person has a reasonable expectation of privacy. Existing law makes it a misdemeanor to intentionally distribute an image of the intimate body part or parts of another person, or an image of the person depicted engaging in specified sexual acts, under circumstances in which the persons agree or understand that the image remain private, the person distributing the image knows or should know that distribution of the image will cause serious emotional distress, and the person depicted suffers that distress.

Existing law establishes the proper jurisdictions of a criminal action for unauthorized use, retention, or transfer of personal identifying information to include the county where the theft occurred, the county in which the victim resided at the time of the offense, or the county where the information was used for an illegal purpose. ~~Existing law authorizes issuance of a search warrant on various grounds, including when the property or things to be seized consist of evidence that tends to show possession of matter depicting sexual conduct of a person under 18 years of age.~~

This bill would apply those jurisdictional ~~and search warrant~~ provisions to the misdemeanors described above.

Existing law details procedures for a governmental entity to gather specified records from a provider of electronic communication service or a remote computing service by search warrant. Existing law specifies that no notice is required to be given to a subscriber or customer by a governmental entity receiving records pursuant to these procedures.

This bill would additionally authorize a governmental entity to use those procedures to gather the contents of communications between the subscriber and the service provider. The bill would require a search warrant used under those procedures to be limited to only that information necessary to achieve the objective of the warrant, as specified. The bill would require information obtained through the execution of a search warrant pursuant that is unrelated to the objective of the warrant to be sealed and not be subject to further review without an order from the court. The bill would require the governmental entity to provide a specified notice to the customer or subscriber upon receipt of the requested records. The bill would authorize a delay of that notice in 90-day increments if there is reason to believe notification would may have an adverse effect, as defined.

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 786 of the Penal Code is amended to
2 read:

3 786. (a) ~~When~~*If* property taken in one jurisdictional territory
4 by burglary, carjacking, robbery, theft, or embezzlement has been
5 brought into another, or when property is received in one
6 jurisdictional territory with the knowledge that it has been stolen

1 or embezzled and the property was stolen or embezzled in another
2 jurisdictional territory, the jurisdiction of the offense is in any
3 competent court within either jurisdictional territory, or any
4 contiguous jurisdictional territory if the arrest is made within the
5 contiguous territory, the prosecution secures on the record the
6 defendant's knowing, voluntary, and intelligent waiver of the right
7 of vicinage, and the defendant is charged with one or more property
8 crimes in the arresting territory.

9 (b) (1) The jurisdiction of a criminal action for unauthorized
10 use, retention, or transfer of personal identifying information, as
11 defined in subdivision (b) of Section 530.55, shall also include the
12 county where the theft of the personal identifying information
13 occurred, the county in which the victim resided at the time the
14 offense was committed, or the county where the information was
15 used for an illegal purpose. If multiple offenses of unauthorized
16 use of personal identifying information, either all involving the
17 same defendant or defendants and the same personal identifying
18 information belonging to the one person, or all involving the same
19 defendant or defendants and the same scheme or substantially
20 similar activity, occur in multiple jurisdictions, then any of those
21 jurisdictions is a proper jurisdiction for all of the offenses.
22 Jurisdiction also extends to all associated offenses connected
23 together in their commission to the underlying identity theft offense
24 or identity theft offenses.

25 (2) When charges alleging multiple offenses of unauthorized
26 use of personal identifying information occurring in multiple
27 territorial jurisdictions are filed in one county pursuant to this
28 section, the court shall hold a hearing to consider whether the
29 matter should proceed in the county of filing, or whether one or
30 more counts should be severed. The district attorney filing the
31 complaint shall present evidence to the court that the district
32 attorney in each county where any of the charges could have been
33 filed has agreed that the matter should proceed in the county of
34 filing. In determining whether all counts in the complaint should
35 be joined in one county for prosecution, the court shall consider
36 the location and complexity of the likely evidence, where the
37 majority of the offenses occurred, whether or not the offenses
38 involved substantially similar activity or the same scheme, the
39 rights of the defendant and the people, and the convenience of, or
40 hardship to, the victim and witnesses.

(3) When an action for unauthorized use, retention, or transfer of personal identifying information is filed in the county in which the victim resided at the time the offense was committed, and no other basis for the jurisdiction applies, the court, upon its own motion or the motion of the defendant, shall hold a hearing to determine whether the county of the victim's residence is the proper venue for trial of the case. In ruling on the matter, the court shall consider the rights of the parties, the access of the parties to evidence, the convenience to witnesses, and the interests of justice.

(c) (1) The jurisdiction of a criminal action for conduct specified in subdivision (j) of Section 647 shall also include the county in which the offense occurred, the county in which the victim resided at the time the offense was committed, or the county in which the intimate image was used for an illegal purpose. If multiple offenses of unauthorized distribution of an intimate image, either all involving the same defendant or defendants and the same intimate image belonging to the one person, or all involving the same defendant or defendants and the same scheme or substantially similar activity, occur in multiple jurisdictions, then any of those jurisdictions is a proper jurisdiction for all of the offenses. Jurisdiction also extends to all associated offenses connected together in their commission to the underlying unauthorized distribution of an intimate image.

(2) When charges alleging multiple offenses of unauthorized distribution of an intimate image occurring in multiple territorial jurisdictions are filed in one county pursuant to this section, the court shall hold a hearing to consider whether the matter should proceed in the county of filing, or whether one or more counts should be severed. The district attorney filing the complaint shall present evidence to the court that the district attorney in each county where any of the charges could have been filed has agreed that the matter should proceed in the county of filing. In determining whether all counts in the complaint should be joined in one county for prosecution, the court shall consider the location and complexity of the likely evidence, where the majority of the offenses occurred, whether the offenses involved substantially similar activity or the same scheme, the rights of the defendant and the people, and the convenience of, or hardship to, the victim and witnesses.

(3) When an action for unauthorized distribution of an intimate image is filed in the county in which the victim resided at the time the offense was committed, and no other basis for the jurisdiction applies, the court, upon its own motion or the motion of the defendant, shall hold a hearing to determine whether the county of the victim's residence is the proper venue for trial of the case. In ruling on the matter, the court shall consider the rights of the parties, the access of the parties to evidence, the convenience to witnesses, and the interests of justice.

(d) This section does not alter victims' rights under Section 530.6.

~~SEC. 2. Section 1524 of the Penal Code is amended to read:~~

~~1524. (a) 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, in violation of Section 311.3, or possession of matter depicting sexual conduct of a person under 18 years of age, in violation of Section 311.11, or conduct in violation of subdivision (j) of Section 647, 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, as specified in Section 1524.3, 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~~

1 of another to whom he or she may have delivered them for the
2 purpose of concealing them or preventing their discovery.

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

7 (9) ~~When the property or things to be seized include a firearm~~
8 ~~or any other deadly weapon at the scene of, or at the premises~~
9 ~~occupied or under the control of the person arrested in connection~~
10 ~~with, a domestic violence incident involving a threat to human life~~
11 ~~or a physical assault as provided in Section 18250. This section~~
12 ~~does not affect warrantless seizures otherwise authorized by Section~~
13 ~~18250.~~

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

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

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

1 ~~executed in a manner meeting the requirements specified in~~
2 ~~subdivision (b) of Section 1534.~~

3 ~~(13) When a sample of the blood of a person constitutes~~
4 ~~evidence that tends to show a violation of Section 23140, 23152,~~
5 ~~or 23153 of the Vehicle Code and the person from whom the~~
6 ~~sample is being sought has refused an officer's request to submit~~
7 ~~to, or has failed to complete, a blood test as required by Section~~
8 ~~23612 of the Vehicle Code, and the sample will be drawn from~~
9 ~~the person in a reasonable, medically approved manner. This~~
10 ~~paragraph is not intended to abrogate a court's mandate to~~
11 ~~determine the propriety of the issuance of a search warrant on a~~
12 ~~case-by-case basis.~~

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

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

27 ~~(c) Notwithstanding subdivision (a) or (b), a search warrant~~
28 ~~shall not issue for any documentary evidence in the possession or~~
29 ~~under the control of any person who is a lawyer as defined in~~
30 ~~Section 950 of the Evidence Code, a physician as defined in Section~~
31 ~~990 of the Evidence Code, a psychotherapist as defined in Section~~
32 ~~1010 of the Evidence Code, or a member of the clergy as defined~~
33 ~~in Section 1030 of the Evidence Code, and who is not reasonably~~
34 ~~suspected of engaging or having engaged in criminal activity~~
35 ~~related to the documentary evidence for which a warrant is~~
36 ~~requested unless the following procedure has been complied with:~~

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

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

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

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

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

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

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

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

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

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

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

26 (g) A warrant shall not issue for any item or items described in
27 Section 1070 of the Evidence Code.

28 (h) Notwithstanding any other law, a claim of attorney work
29 product as described in Chapter 4 (commencing with Section
30 2018.010) of Title 4 of Part 4 of the Code of Civil Procedure shall
31 not be sustained if there is probable cause to believe that the lawyer
32 is engaging or has engaged in criminal activity related to the
33 documentary evidence for which a warrant is requested unless it
34 is established at the hearing with respect to the documentary
35 evidence seized under the warrant that the services of the lawyer
36 were not sought or obtained to enable or aid anyone to commit or
37 plan to commit a crime or a fraud.

38 (i) This section is not intended to limit an attorney’s ability to
39 request an in camera hearing pursuant to the holding of the

1 ~~Supreme Court of California in People v. Superior Court (Laff)~~
2 ~~(2001) 25 Cal.4th 703.~~

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

11 ~~(k) This section does not create a cause of action against any~~
12 ~~foreign or California corporation, its officers, employees, agents,~~
13 ~~or other specified persons for providing location information.~~

14 *SEC. 2. Section 1524.3 of the Penal Code is amended to read:*

15 1524.3. (a) A provider of electronic communication service
16 or remote computing service, as used in Chapter 121 (commencing
17 with Section 2701) of Title 18 of the United States Code, shall
18 disclose to a governmental prosecuting or investigating agency
19 the name, address, local and long distance telephone toll billing
20 records, telephone number or other subscriber number or identity,
21 and length of service of a subscriber to or customer of that service,
22 *and the types of services the subscriber or customer utilized, and*
23 *the contents of communication originated by or addressed to the*
24 *service provider* when the governmental entity is granted a search
25 warrant pursuant to paragraph (7) of subdivision (a) of Section
26 1524.

27 *(b) The search warrant shall be limited to only that information*
28 *necessary to achieve the objective of the warrant, including by*
29 *specifying the target individuals or accounts, the applications or*
30 *services, the types of information, and the time periods covered,*
31 *as appropriate.*

32 *(c) Information obtained through the execution of a search*
33 *warrant pursuant to this section that is unrelated to the objective*
34 *of the warrant shall be sealed and not be subject to further review*
35 *without an order from the court.*

36 ~~(b)~~

37 *(d) (1) A governmental entity receiving subscriber records or*
38 *information under this section is not required to shall provide*
39 *notice to a subscriber or customer upon receipt of the requested*
40 *records. The notification may be delayed by the court, in*

1 increments of 90 days, upon a showing that there is reason to
2 believe that notification of the existence of the search warrant may
3 have an adverse result.

4 (2) An “adverse result” for purposes of paragraph (1) means
5 any of the following:

6 (A) Endangering the life or physical safety of an individual.

7 (B) Flight from prosecution.

8 (C) Tampering or destruction of evidence.

9 (D) Intimidation of a potential witness.

10 (E) Otherwise seriously jeopardizing an investigation or unduly
11 delaying a trial.

12 (e) Upon the expiration of the period of delay for the
13 notification, the governmental entity shall, by regular mail or
14 email, provide a copy of the process or request and a notice, to
15 the subscriber or customer. The notice shall accomplish all of the
16 following:

17 (1) State the nature of the law enforcement inquiry with
18 reasonable specificity.

19 (2) Inform the subscriber or customer that information
20 maintained for the subscriber or customer by the service provider
21 named in the process or request was supplied to or requested by
22 the governmental entity, and the date upon which the information
23 was supplied, and the request was made.

24 (3) Inform the subscriber or customer that notification to the
25 subscriber or customer was delayed, and which court issued the
26 order pursuant to which the notification was delayed.

27 (4) Provide a copy of the written inventory of the property that
28 was taken that was provided to the court pursuant to Section 1537.

29 ~~(e)~~

30 (f) A court issuing a search warrant pursuant to paragraph (7)
31 of subdivision (a) of Section 1524, on a motion made promptly by
32 the service provider, may quash or modify the warrant if the
33 information or records requested are unusually voluminous in
34 nature or compliance with the warrant otherwise would cause an
35 undue burden on the provider.

36 ~~(d)~~

37 (g) A provider of wire or electronic communication services or
38 a remote computing service, upon the request of a peace officer,
39 shall take all necessary steps to preserve records and other evidence
40 in its possession pending the issuance of a search warrant or a

1 request in writing and an affidavit declaring an intent to file a
2 warrant to the provider. Records shall be retained for a period of
3 90 days, which shall be extended for an additional 90-day period
4 upon a renewed request by the peace officer.

5 (e)

6 (h) No cause of action shall be brought against any provider,
7 its officers, employees, or agents for providing information,
8 facilities, or assistance in good faith compliance with a search
9 warrant.

O