
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Aisha Wahab, Chair

2023 - 2024 Regular

Bill No: SB 64 **Hearing Date:** March 28, 2023
Author: Umberg
Version: January 4, 2023
Urgency: No **Fiscal:** No
Consultant: MK

Subject: *Hate crimes: search warrants*

HISTORY

Source: California District Attorneys Association

Prior Legislation: AB 539 (Acosta) Chapter 342, Statutes 2017
AB 539 (Levine), Chapter 118, Statutes of 2015
AB 1104 (Rodriguez), Chapter 124, Statutes of 2015
AB 1310 (Gatto), Ch. 643, Stats. 2015
SB 178 (Leno), Ch. 651, Stats. 2015
AB 1014 (Skinner), Ch. 872, Stats. 2014
SB 717 (DeSaulnier), Chapter 317, Statutes of 2013

Support: Center for The Study of Hate & Extremism - California State University, San Bernardino; City and County of San Francisco; London Breed, Mayor of San Francisco; Los Angeles County Sheriff's Department; The Arc and United Cerebral Palsy California Collaboration

Opposition: None known

PURPOSE

Existing law governs search warrants, including the grounds upon which a search warrant may be issued. (Pen. Code, § 1523 et seq.)

Existing law defines a “search warrant” as a written order 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. (Pen. Code, § 1523.)

Existing law authorizes a search warrant to 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 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.
- 9) When the property or things to be seized include an item or any evidence that tends to show a violation of the Labor Code, as specified.
- 10) 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.
- 11) 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.
- 12) 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 under specified provisions of the Family Code.
- 13) When the information to be received from the use of a tracking device constitutes evidence that tends to show that either a felony or a misdemeanor violation of the Fish and Game Code, or a misdemeanor violation of the Public Resources Code.
- 14) When a sample of the blood of a person constitutes evidence that tends to show a violation of misdemeanor driving under the influence and the person from whom the sample is being sought has refused an officer's request to submit to, or has failed to complete, a blood test.

- 15) When the property or things to be seized are firearms or ammunition or both that are owned by, in the possession of, or in the custody or control of a person who is the subject of a gun violence restraining order. This final provision does not go into effect until January 1, 2016.
- 16) When the property or things to be seized are controlled substances or a device, contrivance, instrument or paraphernalia used for unlawfully administering a controlled substance as provided.
- 17) When the warrant is for a blood sample of a person that tends to show a violation related to the operation of a vessel, or manipulating water skis, an aquaplane, or a similar device, while under the influence of alcohol or drugs.
- 18) When the property or things to be seized consist of evidence that tends to show that a violation of the crime of disorderly conduct related to invasion of privacy has occurred or is occurring. (Pen. Code, § 1524, subd. (a).)

Existing law provides that a search warrant cannot be issued but 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. (Pen. Code, § 1525.)

Existing law requires a magistrate to issue a search warrant if he or she is satisfied of the existence of the grounds of the application or that there is probable cause to believe their existence. (Pen. Code, § 1528, subd. (a).)

Existing law provides that a hate crime means a criminal act committed in whole or part because of one or more of the following actual or perceived characteristics of the victim:

- Disability
- Gender
- Nationality
- Race or ethnicity
- Religion
- Sexual orientation
- Association with one of the above. (Pen. Code, § 422.55)

Existing law provides that no person shall by threat of force, willfully injure, intimidate, interfere with, oppress or threaten any other person in the free exercise or enjoyment of any right or privilege secured by the Constitution or laws of this state or the United States because of the actual or perceived characteristics of the victim. A violation is a misdemeanor (Pen. Code, § 422.6, subd. (a))

Existing law provides that no person, whether or not acting under color of law, shall knowingly deface, damage, or destroy the real or personal property of any other person for the purpose of intimidating or interfering with the free exercise or enjoyment of any right or privilege secured by the secured by the Constitution or laws of this state or the United States because of the actual or perceived characteristics of the victim. A violation is a misdemeanor (Pen. Code, § 422.6, subd. (b))

This bill further allows a search warrant when the property or things to be seized consists of evidence that tends to show that a hate crime under Penal Code Section 422.6 has occurred or is occurring.

COMMENTS

1. Need for This Bill

According to the author:

In recent years, the number of hate crimes that have occurred in major U.S. cities has drastically risen as a result of factors such as the COVID-19 pandemic, racial justice protests, etc. From 2020 to 2021, California recorded the highest surge in reported hate crimes since the aftermath of the 9/11 terrorist attacks. A California Department of Justice report noted the increase in the number of cases filed for prosecution involving hate crime charges as well. One challenge authorities face with hate crimes involves the lack of reporting. SB 64 will allow a Court to issue a search warrant when the property or things to be seized consists of evidence that tends to show that a misdemeanor hate crime has occurred or is occurring. Currently under existing law, many hate crimes can be classified as misdemeanors, thus making the search warrant procedure inapplicable. Current procedures pose threats against the collection of evidence in the case that a hate crime has occurred. SB 64 would fix this by allowing the utilization of search warrant procedures in misdemeanor hate crimes to further examine suspects' information, such as social media feeds or computer files, which can make a difference in determining whether a suspect is guilty of a hate crime or innocent.

2. Fourth Amendment and Search Warrant Requirements

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.)

This bill would expand that statutory authority for search warrants by allowing law enforcement to obtain a search warrant on the grounds that the property or things to be seized consists of evidence that tends to show that a violation of Penal Code Section 422.6 (interference with the civil rights of an individual because of their status in a protected class) has occurred or is occurring.

3. Argument in Support

In support the City and County of San Francisco States:

In San Francisco, we have seen a significant increase in reported hate crimes over the past several years. In fact, in 2021, there were 114 reported hate crimes, with 60 cases reported against Asian victims alone. While reported hate crimes in 2022 went down when compared to 2021, we are aware that underreporting of these types of prejudice-fueled crimes is highly likely and the number of actual incidents is much higher than the reported number.

One of the reasons that hate-fueled incidents are so damaging is because while the hate is directed at a particular individual, the harm is felt by the entire community that shares the characteristic or perceived trait, such as one's religion, race, or sexual orientation. For example, when there was an individual who entered one of our Jewish synagogues and fired a gun, the entire community suffered. That is why we must remain vigilant and creative about how we address these crimes. Firing a gun may be classified as a misdemeanor if there is no actual injury or if the bullet was a blank. As a result, the search warrant procedure and collection of evidence to make a case against this individual could potentially be impacted under current law.

Your legislation, SB 64, would allow for a court to issue a search warrant in cases of misdemeanor hate crimes. All requests for search warrants would undergo judicial review, but these changes would allow the search warrant procedure to apply to potential hate-fueled crimes that are ultimately charged as misdemeanors. Regardless of the classification of the crime under the law, the injury and the damage will have been done to the targeted community and justice demands that we pursue accountability for individuals who commit these types of hateful acts. SB 64 is a tool to help us do exactly that and I urge the legislature to pass this legislation.

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