

OFFICE OF THE CHIEF OF POLICE

NOTICE

1.14

November 4, 2020

TO: All Department Personnel

FROM: Chief of Police

SUBJECT: ASSEMBLY BILL 2655 – INVASION OF PRIVACY: FIRST RESPONDERS – ENACTED; AND, SEARCH WARRANT AND AFFIDAVIT (AFFIDAVIT) – REVISED

On September 28, 2020, Governor Newsom signed into law Assembly Bill (AB) 2655. Effective January 1, 2021, this law becomes effective and makes it a misdemeanor for “...*A first responder, operating under color of authority, who responds to the scene of an accident or crime and captures the photographic image of a deceased person by any means, including but not limited to, by use of a personal electronic device or a device belonging to their employing agency, for any purpose other than an official law enforcement purpose or a genuine public interest.*” This Bill also authorizes a search warrant to be issued when the property or things to be seized consists of evidence that tends to show that a first responder has engaged or is engaging in the crime established by this Bill.

The purpose of this Notice is to formally notify Department personnel of this new law. Department personnel are also reminded that, as per Department Manual Section 3/405, Confidential Nature of Department Records, Reports, and Information, all official files, documents, records, reports, photographs, images, recordings and information held by the Department or in the custody or control of an employee of the Department shall be regarded as confidential. Employees shall not disclose or permit the disclosure or use of such files, documents, reports, records, photographs, images, recordings or information except as required in the performance of their official duties. The unauthorized use of information obtained through employment with the Department can subject the employee to possible disciplinary action and/or criminal prosecution. This includes information obtained from manually stored records, as well as information obtained from automated records.

Note: Photographs, images and recordings include, but are not limited to, images such as mug shots, in-car video footage, digital interviews, audio or video recordings, etc.

This Notice also revises the Search Warrant and Affidavit (Affidavit) form, in order to add a box that includes the search warrant provision of AB 2655 pertaining to lawfully seizable evidence. The revised Search Warrant and Affidavit (Affidavit) form is attached for immediate use and duplication, and is available in E-Forms on the Department’s Local Area Network. The use, completion, and distribution of this form remain the same.

All Department Personnel

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As part of the inherent nature of Law Enforcement, Department personnel are faced with sensitive and at times, difficult circumstances. Unfortunately, many of these circumstances are devastating to members of the community. As in all aspects of their duties, it is imperative that Department personnel, to every extent possible, show dignity and respect to all people in these instances.

If you have any questions regarding this Notice, please contact the Office of Constitutional Policing and Policy, at (213) 486-8730.

A handwritten signature in black ink, appearing to read 'MICHEL R. MOORE', with a stylized flourish at the end.

MICHEL R. MOORE
Chief of Police

Attachment

DISTRIBUTION "D"

STATE of CALIFORNIA, COUNTY of LOS ANGELES
SEARCH WARRANT and AFFIDAVIT
(AFFIDAVIT)

_____, Affiant, swears under oath that the facts expressed by him/her in the attached and incorporated **Statement of Probable Cause** are true and that based thereon he/she has probable cause to believe and does believe that the property described below are lawfully seizable pursuant to Penal Code Section 1524, as indicated below, and is now located at the locations set forth below. Wherefore, Affiant requests that this Search Warrant be issued.

HOBBS SEALING REQUESTED: YES NO
NIGHT SEARCH REQUESTED: YES NO

 (Signature of Affiant)

(SEARCH WARRANT)

THE PEOPLE OF THE STATE OF CALIFORNIA TO ANY SHERIFF, POLICEMAN OR PEACE OFFICER IN THE COUNTY OF LOS ANGELES: proof by affidavit, having been this day made before me by

(Name of Affiant) _____ that there is probable cause to believe that the property described herein may be found at the locations set forth herein and that it is lawfully seizable pursuant to Penal Code Section 1524, as indicated below by " X "(s):

- When the property was stolen or embezzled;
- When the property or things were used as the means of committing a felony;
- 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 that person may have delivered them for the purpose of concealing them or preventing them from being discovered;
- When the property or things to be seized consist of an item or constitute evidence that tends to show a felony has been committed, or tends to show that a particular person has committed a felony;
- 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, has occurred or is occurring;
- When there is a warrant to arrest a person;
- 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 of another to whom that person may have delivered them for the purpose of concealing them or preventing their discovery;
- When the property or things to be seized include an item or evidence that tends to show a violation of Section 3700.5 of the Labor Code, or tends to show that a particular person has violated Section 3700.5 of the Labor Code;
- When the property or things to be seized include a firearm or 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 as provided in Section 18250. This section does not affect warrantless seizures otherwise authorized by Section 18250;
- When the property or things to be seized include a firearm or 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;
- 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 pursuant to Section 6389 of the Family Code, if a prohibited firearm is possessed, owned, in the custody of, or controlled by a person against whom a protective order has been issued pursuant to Section 6218 of the Family Code, the person has been lawfully served with that order, and the person has failed to relinquish the firearm as required by law;
- When the information to be received from the use of a tracking device constitutes evidence that tends to show that either a felony, a misdemeanor violation of the Fish and Game Code, or a misdemeanor violation of the Public

Resources Code has been committed or is being committed, tends to show that a particular person has committed a felony, a misdemeanor violation of the Fish and Game Code, or a misdemeanor violation of the Public Resources Code, or is committing a felony, a misdemeanor violation of the Fish and Game Code, or a misdemeanor violation of the Public Resources Code, or will assist in locating an individual who has committed or is committing a felony, a misdemeanor violation of the Fish and Game Code, or a misdemeanor violation of the Public Resources Code. A tracking device search warrant issued pursuant to this paragraph shall be executed in a manner meeting the requirements specified in subdivision (b) of Section 1534;

- When a sample of the blood of a person constitutes evidence that tends to show a violation of Section 23140, 23152, or 23153 of the Vehicle Code 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 as required by Section 23612 of the Vehicle Code, and the sample will be drawn from the person in a reasonable, medically approved manner. This paragraph is not intended to abrogate a court's mandate to determine the propriety of the issuance of a search warrant on a case-by-case basis;
- Beginning January 1, 2016, 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 that has been issued pursuant to Division 3.2 (commencing with Section 18100) of Title 2 of Part 6, if a prohibited firearm or ammunition or both is possessed, owned, in the custody of, or controlled by a person against whom a gun violence restraining order has been issued, the person has been lawfully served with that order, and the person has failed to relinquish the firearm as required by law;
- Beginning January 1, 2018, 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 pursuant to Section 29800 or 29805, and the court has made a finding pursuant to subdivision (c) of Section 29810 that the person has failed to relinquish the firearm as required by law;
- When the property or things to be seized are controlled substances or a device, contrivance, instrument, or paraphernalia used for unlawfully using or administering a controlled substance pursuant to the authority described in Section 11472 of the Health and Safety Code. When all of the following apply:
- A sample of the blood of a person constitutes evidence that tends to show a violation of subdivision (b), (c), (d), (e); or, of Section 655 of the Harbors and Navigation Code.
 - 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 as required by Section 655.1 of the Harbors and Navigation Code.
 - The sample will be drawn from the person in a reasonable, medically approved manner.
- This paragraph is not intended to abrogate a court's mandate to determine the propriety of the issuance of a search warrant on a case-by-case basis.
- When the property or things to be seized consists of evidence that tends to show that a violation of paragraph (1), (2), or (3) of subdivision (j) of Section 647 has occurred or is occurring;
- When the property or things to be seized are data, from a recording device installed by the manufacturer of a motor vehicle, that constitutes evidence that tends to show the commission of a felony or misdemeanor offense involving a motor vehicle, resulting in death or serious bodily injury to any person. The data accessed by a warrant pursuant to this paragraph shall not exceed the scope of the data that is directly related to the offense for which the warrant is issued;
- For the purposes of this paragraph, "recording device" has the same meaning as defined in subdivision (b) of Section 9951 of the Vehicle Code. The scope of the data accessible by a warrant issued pursuant to this paragraph shall be limited to the information described in subdivision (b) of Section 9951 of the Vehicle Code;
 - For the purposes of this paragraph, "serious bodily injury" has the same meaning as defined in paragraph (4) of subdivision (f) of Section 243 of the Penal Code.
- When the property or things to be seized consists of evidence that tends to show that a violation of Section 647.9 has occurred or is occurring. Evidence to be seized pursuant to this paragraph shall be limited to evidence of a violation of Section 647.9 and shall not include evidence of a violation of a departmental rule or guideline that is not a public offense under California law;
- The property, things, person, or persons described in subdivision (a) may be taken on the warrant from any place, or from any person in whose possession the property or things may be;
 - Notwithstanding subdivision (a) or (b), a search warrant shall not be issued for any documentary evidence in the possession or under the control of any person who is a lawyer as defined in Section 950 of the

Evidence Code, a physician as defined in Section 990 of the Evidence Code, a psychotherapist as defined in Section 1010 of the Evidence Code, or a member of the clergy as defined in Section 1030 of the Evidence Code, and who is not reasonably suspected of engaging or having engaged in criminal activity related to the documentary evidence for which a warrant is requested unless the following procedure has been complied with;

- At the time of the issuance of the warrant, the court shall appoint a special master in accordance with subdivision (d) to accompany the person who will serve the warrant. Upon service of the warrant, the special master shall inform the party served of the specific items being sought and that the party shall have the opportunity to provide the items requested. If the party, in the judgment of the special master, fails to provide the items requested, the special master shall conduct a search for the items in the areas indicated in the search warrant;
- If the party who has been served states that an item or items should not be disclosed, they shall be sealed by the special master and taken to court for a hearing;
- At the hearing, the party searched shall be entitled to raise any issues that may be raised pursuant to Section 1538.5 as well as a claim that the item or items are privileged, as provided by law. The hearing shall be held in the superior court. The court shall provide sufficient time for the parties to obtain counsel and make motions or present evidence. The hearing shall be held within three days of the service of the warrant unless the court makes a finding that the expedited hearing is impracticable. In that case, the matter shall be heard at the earliest possible time;
- If an item or items are taken to court for a hearing, any limitations of time prescribed in Chapter 2 (commencing with Section 799) of Title 3 of Part 2 shall be tolled from the time of the seizure until the final conclusion of the hearing, including any associated writ or appellate proceedings;
- The warrant shall, whenever practicable, be served during normal business hours. In addition, the warrant shall be served upon a party who appears to have possession or control of the items sought. If, after reasonable efforts, the party serving the warrant is unable to locate the person, the special master shall seal and return to the court, for determination by the court, any item that appears to be privileged as provided by law;
- As used in this section, a "special master" is an attorney who is a member in good standing of the California State Bar and who has been selected from a list of qualified attorneys that is maintained by the State Bar particularly for the purposes of conducting the searches described in this section. These attorneys shall serve without compensation. A special master shall be considered a public employee, and the governmental entity that caused the search warrant to be issued shall be considered the employer of the special master and the applicable public entity, for purposes of Division 3.6 (commencing with Section 810) of Title 1 of the Government Code, relating to claims and actions against public entities and public employees. In selecting the special master, the court shall make every reasonable effort to ensure that the person selected has no relationship with any of the parties involved in the pending matter. Information obtained by the special master shall be confidential and may not be divulged except in direct response to inquiry by the court;
- In any case in which the magistrate determines that, after reasonable efforts have been made to obtain a special master, a special master is not available and would not be available within a reasonable period of time, the magistrate may direct the party seeking the order to conduct the search in the manner described in this section in lieu of the special master;
- Any search conducted pursuant to this section by a special master may be conducted in a manner that permits the party serving the warrant or that party's designee to accompany the special master as the special master conducts the search. However, that party or that party's designee may not participate in the search nor shall they examine any of the items being searched by the special master except upon agreement of the party upon whom the warrant has been served;
- As used in this section, "documentary evidence" includes, but is not limited to, writings, documents, blueprints, drawings, photographs, computer printouts, microfilms, X-rays, files, diagrams, ledgers, books, tapes, audio and video recordings, films, and papers of any type or description;
- No warrant shall issue for any item or items described in Section 1070 of the Evidence Code;
- Notwithstanding any other law, no claim of attorney work product as described in Chapter 4 (commencing with Section 2018.010) of Title 4 of Part 4 of the Code of Civil Procedure shall be sustained where there is probable cause to believe that the lawyer is engaging or has engaged in criminal activity related to the documentary evidence for which a warrant is requested unless it is established at the hearing with respect to the documentary evidence seized under the warrant that the services of the lawyer were not sought or obtained to enable or aid anyone to commit or plan to commit a crime or a fraud;

- o Nothing in this section is intended to limit an attorney's ability to request an in-camera hearing pursuant to the holding of the Supreme Court of California in People v. Superior Court (Laff) (2001) 25 Cal.4th 703;
- o In addition to any other circumstance permitting a magistrate to issue a warrant for a person or property in another county, when the property or things to be seized consist of any item or constitute evidence that tends to show a violation of Section 530.5, the magistrate may issue a warrant to search a person or property located in another county if the person whose identifying information was taken or used resides in the same county as the issuing court;
- o This section shall not be construed to create a cause of action against any foreign or California corporation, its officers, employees, agents, or other specified persons for providing location information.

You are Therefore COMMANDED to SEARCH: (premises, vehicles, persons)

For the FOLLOWING PROPERTY:

AND TO SEIZE IF FOUND and bring it forthwith before me, or this court, at the courthouse of this court. This **Search Warrant** and incorporated **Affidavit** were sworn to and subscribed before me on this _____ day of _____, 20____, at _____ A.M. / P.M. Wherefore, I find probable cause for the issuance of this Search Warrant and do issue it.

HOBBS SEALING APPROVED: YES NO
NIGHT SEARCH APPROVED: YES NO

(Signature of Magistrate)
Judge of the Superior Court, _____ Judicial District.

STATE of CALIFORNIA, COUNTY of LOS ANGELES
SEARCH WARRANT and AFFIDAVIT

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