



**JACKIE LACEY**  
**DISTRICT ATTORNEY**

LOS ANGELES COUNTY DISTRICT ATTORNEY'S OFFICE

# **ONE MINUTE BRIEF**

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**NUMBER:** 2015-02    **DATE:** 02-17-15    **BY:** Devallis Rutledge    **TOPIC:** Misdemeanor Search Warrants

**ISSUE:** Are search warrants available in *misdemeanor* cases, or only in *felony* cases?

A persistent misunderstanding in California is that search warrants are limited to felony investigations and may not be obtained in misdemeanor cases. This is incorrect for at least two reasons: (1) **statutory authorization** extends to misdemeanors in most kinds of cases; and (2) magistrates have **inherent constitutional authority** to issue search warrants based on sworn probable cause to believe seizable property may be found at the target location, without regard to the classification of the crime of which that property may be evidence.

- PC § 1524 sets forth a total of 15 specific authorizations for the issuance of search warrants. Only 2 of those categories (the second and fourth listed) are expressly limited to felonies; some **expressly** authorize warrants in **misdemeanor** cases; some apply to **both** felonies and misdemeanors; and some also include **infractions** and **non-criminal** conduct:

1. PC § 1524(a)(1)—stolen/embezzled property—from **misdemeanor** or **felony** theft.
2. PC § 1524(a)(2)—instrumentality used to commit a **felony**.
3. PC § 1524(a)(3)—instrumentalities of an intended “public offense”—which includes **felonies, misdemeanors** and **infractions** (PC § 16).
4. PC § 1524(a)(4)—evidence of a **felony**, or ID of a **felon**.
5. PC § 1524(a)(5)—evidence of certain sex offenses—one **misdemeanor**, one **felony**.
6. PC § 1524(a)(6)—to serve an arrest warrant—for a **misdemeanor** or a **felony**.
7. PC § 1524(a)(7)—specified computer records, expressly in **misdemeanor** cases.

8. PC § 1524(a)(8)—evidence of a **misdemeanor** Labor Code violation.
9. PC § 1524(a)(9)—firearm/weapon in a DV case, **misdemeanor** or **felony**.
10. PC § 1524(a)(10)—firearm/weapon from mental detainee—**any crime**, or **none**.
11. PC § 1524(a)(11)—firearm after restraining order—**any crime**, or **none**.
12. PC § 1524(a)(12)—GPS tracker, including **misdemeanor** F&G and PRC violations.
13. PC § 1524(a)(13)—blood draw in **misdemeanor** DUI cases.
14. PC § 1524(a)(14)—firearm/ammo from restrained person (effective 1-1-16).
15. PC § 1524(j)—evidence of PC § 530.5 violations (identity theft)—which would include the **misdemeanor** violation of § 530.5(c)(1).

- Courts have **inherent constitutional authority** to issue search warrants, without dependence on enabling statutes. *People v. Bittaker* (1989) 48 Cal.3d 1046, 1070-71; *People v. Superior Court (Laff)* (2001) 25 Cal.4<sup>th</sup> 703, 713. “*The power to issue a search warrant is a common law power in America....*” *US v. Torres* (7<sup>th</sup> Cir. 1984) 751 F.2d 875, 879. “*A court of general jurisdiction has inherent power to issue a search warrant within the limits set forth in the Fourth Amendment.*” *US v. Falls* (8<sup>th</sup> Cir. 1994) 34 F.3d 674, 678.

California magistrates have historically exercised this inherent authority to issue, for example, *Ramey* warrants, *Steagald* warrants, and *Jones* warrants (for GPS tracking), long before those kinds of warrants were statutorily authorized.

If a magistrate issues a search warrant that complies with the requirements of the Fourth Amendment, evidence obtained within the scope of that warrant will not be inadmissible merely because the warrant does not fit neatly within a specific statutory authorization. See, e.g., *Bowling v. Rector* (10<sup>th</sup> Cir. 2009) 584 F.3d 956, 966. This is because “[T]he question ... is not whether the search was authorized by state law. The question is whether the search was reasonable under the Fourth Amendment.” *Cooper v. California* (1967) 386 US 58, 61; accord, *People v. Robinson* (2010) 47 Cal.4<sup>th</sup> 1104, 1119.

**BOTTOM LINE: Search warrants may be issued by California magistrates in misdemeanor cases as authorized by statute, and by virtue of inherent judicial authority in furtherance of the Fourth Amendment.**

(Emphases added in quoted material.)

This information was current as of publication date. It is not intended as legal advice. It is recommended that readers check for subsequent developments, and consult legal advisors to ensure currency after publication. Local policies and procedures regarding application should be observed.