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## SENATE COMMITTEE ON PUBLIC SAFETY

Senator Loni Hancock, Chair

2015 - 2016 Regular

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**Bill No:** AB 539                      **Hearing Date:** June 9, 2015  
**Author:** Levine  
**Version:** February 23, 2015  
**Urgency:** No                              **Fiscal:** No  
**Consultant:** MK

**Subject:** *Search Warrants*

### HISTORY

Source: California State Sheriffs' Association

Prior Legislation: SB 717 (DeSaulnier) Ch. 317, Stats. 2013

Support: California Association of Harbor Masters and Port Captains; California District Attorneys Association; California Police Chiefs Association; California Yacht Brokers Association; Judicial Council of California; Marina Recreation Association; National Marine Manufacturers Association; Peace Officers Research Association of California; Recreational Boaters of California; Sacramento County Deputy Sheriffs' Association; Worldwide Boaters Safety Group

Opposition: Taxpayers for Improving Public Safety

Assembly Floor Vote: 79 - 0

### PURPOSE

***The purpose of this bill is to authorize the issuance of a search warrant to compel a blood draw from a person suspected of operating a boat while under the influence of alcohol or drugs.***

*The US Constitution* provides that “the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized.” (4<sup>th</sup> Amendment of the U.S. Constitution.)

*The California Constitution* provides that “the right of the people to be secure in their persons, houses, papers and effects against unreasonable seizures and searches may not be violated; and a warrant may not be issued except on probable cause, supported by oath or affirmation, particularly describing the place to be searched and the persons and things to be seized.” (Article I, Section 13 of the California Constitution.)

*Existing law* provides that a search warrant may be issued upon any of the following grounds:

- 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 he or she 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 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;
- 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;
- When there is a warrant to arrest a person;
- 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;
- When the property to be seized includes evidence of a violation of specified Labor Code sections;
- When the property to be seized includes a firearm or deadly weapon or any other deadly weapon at the scene of a domestic violence offense;
- When the property to be seized includes a firearm or deadly weapon owned by a person apprehended because of his or her mental condition;
- When the property to be seized is a firearm in possession of a person prohibited under the family code;
- When the information to be received from the use of a tracking device under shows a specified violation of the Fish and Game Code or Public Resources Code;
- When a sample of blood would show evidence of a DUI; or,
- Starting January 1, 2016, when the property to be seized is a firearm owned by a person subject to a gun violence restraining order. (Penal Code § 1524(a).)

*Existing law* defines a “search warrant” as an order in writing 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. (Penal Code § 1523.)

*Existing law* prohibits a person from operating a vessel or manipulate water skis, an aquaplane, or a similar device while under the influence of an alcoholic beverage, any drug, or the combined influence of an alcoholic beverage and any drug. (Harbors & Navigations Code, § 655(b).)

*Existing law* prohibits a person from operating any recreational vessel or manipulating any water skis, aquaplane, or similar device if the person has an alcohol concentration of 0.08 percent or more in his or her blood. (Harbors & Navigations Code, § 655 (c).)

*Existing law* prohibits a person from operating any vessel other than a recreational vessel if the person has an alcohol concentration of 0.04 percent or more in his or her blood. (Harbors & Navigations Code, § 655(d).)

*Existing law* permits a peace officer who arrests a person for boating under the influence to ask that person to submit to chemical testing of his or her blood, breath, or urine for the purpose of determining the drug or alcohol content of the blood. (Harbors & Navigations Code, § 655.1.)

*Existing case law* provides “that in drunk-driving investigations, the natural dissipation of alcohol in the bloodstream does not constitute an exigency in every case sufficient to justify conducting a blood test without a warrant. ... In those drunk-driving investigations where police officers can reasonably obtain a warrant before a blood sample can be drawn without significantly undermining the efficacy of the search, the Fourth Amendment mandates that they do so.” (*Missouri v. McNeely* (2013) 133 S. Ct. 1552)

*This bill* permits the issuance of a search warrant when all of the following apply:

- A blood sample constitutes evidence that tends to show a violation of specified sections of the Harbors and Navigation Code relating to the operation of a marine vessel while under the influence of drugs or alcohol;
- 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; and,
- The sample will be drawn from the person in a reasonable, medically approved manner.

*This bill* states that these provisions are not intended to abrogate the court's duty to determine the propriety of issuing a search warrant on a case-by-case basis.

#### RECEIVERSHIP/OVERCROWDING CRISIS AGGRAVATION

For the past eight years, this Committee has scrutinized legislation referred to its jurisdiction for any potential impact on prison overcrowding. Mindful of the United States Supreme Court ruling and federal court orders relating to the state’s ability to provide a constitutional level of health care to its inmate population and the related issue of prison overcrowding, this Committee

has applied its “ROCA” policy as a content-neutral, provisional measure necessary to ensure that the Legislature does not erode progress in reducing prison overcrowding.

On February 10, 2014, the federal court ordered California to reduce its in-state adult institution population to 137.5% of design capacity by February 28, 2016, as follows:

- 143% of design bed capacity by June 30, 2014;
- 141.5% of design bed capacity by February 28, 2015; and,
- 137.5% of design bed capacity by February 28, 2016.

In February of this year the administration reported that as “of February 11, 2015, 112,993 inmates were housed in the State’s 34 adult institutions, which amounts to 136.6% of design bed capacity, and 8,828 inmates were housed in out-of-state facilities. This current population is now below the court-ordered reduction to 137.5% of design bed capacity.”( Defendants’ February 2015 Status Report In Response To February 10, 2014 Order, 2:90-cv-00520 KJM DAD PC, 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (fn. omitted).

While significant gains have been made in reducing the prison population, the state now must stabilize these advances and demonstrate to the federal court that California has in place the “durable solution” to prison overcrowding “consistently demanded” by the court. (Opinion Re: Order Granting in Part and Denying in Part Defendants’ Request For Extension of December 31, 2013 Deadline, NO. 2:90-cv-0520 LKK DAD (PC), 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (2-10-14). The Committee’s consideration of bills that may impact the prison population therefore will be informed by the following questions:

- Whether a proposal erodes a measure which has contributed to reducing the prison population;
- Whether a proposal addresses a major area of public safety or criminal activity for which there is no other reasonable, appropriate remedy;
- Whether a proposal addresses a crime which is directly dangerous to the physical safety of others for which there is no other reasonably appropriate sanction;
- Whether a proposal corrects a constitutional problem or legislative drafting error; and
- Whether a proposal proposes penalties which are proportionate, and cannot be achieved through any other reasonably appropriate remedy.

## COMMENTS

### 1. Need for This Bill

According to the author:

Existing law fails to grant the statutory authority to law enforcement to seek and obtain a search warrant when a person suspected of operating a marine vessel under the influence of drugs and/or alcohol refuses to submit to, or fails to complete, a blood test.

Unfortunately, boating under the influence is a serious public safety problem. Intoxicated boaters have caused devastating accidents.

Studies indicate alcohol use is the leading known contributing factor in fatal boating accidents. According to a report by the California State Parks Division of Boating and Waterways, from 2009-2013, 32% of all boating related fatalities in the state involved alcohol.

AB 539 helps improve boating safety by allowing law enforcement to obtain a search warrant to test the blood of a person suspected of operating a marine vessel while under the influence of drugs and/or alcohol.

## **2. Warrant for Misdemeanor DUI While Boating**

On April 17, 2013 the U.S. Supreme Court released its decision on *Missouri v. McNeely* holding that “in drunk-driving investigations, the natural dissipation of alcohol in the bloodstream does not constitute an exigency in every case sufficient to justify conducting a blood test without a warrant.” (*Missouri v. McNeely* (2013) 133 S. Ct. 1552) At that time California law only allowed a warrant to obtain evidence of a felony, which causes a problem since most DUI convictions are misdemeanors. In order to address the situation that may have hindered the prosecution of DUIs, SB 717 (DeSaulnier), Chapter 317, Statutes 2013, was an urgency provision, that allowed a warrant to issue for a blood draw in a DUI when the person refuses to consent to the blood draw and when no exigent circumstance exists. This bill would also allow a warrant for a person suspected of DUI while boating when the person refused to submit to an officer’s request to submit to a blood test and the sample will be drawn in a reasonable medically approved manner.

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