

## **BILL ANALYSIS**

S.B. 244  
By: Williams  
Criminal Jurisprudence  
Committee Report (Unamended)

### **BACKGROUND AND PURPOSE**

According to Article 18.01(b), Code of Criminal Procedure, a sworn affidavit filed for a search warrant is public information if the warrant is executed. As interpreted by the Texas courts, this provision requires executed search warrant affidavits to be made immediately available to the public. Certain circumstances may demonstrate a compelling interest in temporarily sealing these affidavits from public disclosure, such as circumstances where revelation of the information necessary to obtain a warrant could result in the destruction of evidence or other tampering that could negatively impact an on going investigation.

As proposed, S.B. 244 authorizes a district or appellate court to seal an affidavit when there is a compelling state interest for doing so, for a specified time period. The bill provides that an order sealing an affidavit may not prohibit the disclosure of certain information or affect certain rights of a defendant.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

### **ANALYSIS**

Senate Bill 244 provides that an attorney representing the state in the prosecution of felonies is allowed to request a district judge or the judge of an appellate court to seal an affidavit presented under Article 18.01(b), Code of Criminal Procedure. The judge is allowed to order the affidavit sealed if the attorney establishes a compelling state interest in that the public disclosure of the affidavit would jeopardize the safety of a victim, witness, or confidential informant or cause the destruction of evidence, or that the affidavit contains information obtained from a court-ordered wire-tap that has not expired at the time the state's attorney requests the sealing of the affidavit. The bill provides that an order sealing the affidavit expires on the 31<sup>st</sup> day after the date on which the search warrant for which the affidavit was presented is executed, but the state's attorney may request and a judge may grant one 30-day extension of the original order if the request is made before the first order expires and upon a new finding of compelling state interest. On the expiration of either the original order or an extension, the bill states that the affidavit must be unsealed.

S.B. 244 also provides that an order to seal an affidavit may not prohibit the disclosure of information relating to the contents of a search warrant, the return of a search warrant, or the inventory of property taken pursuant to a search warrant, or affect the right of a defendant to discover the contents of an affidavit.

The bill amends Article 18.01(b), Code of Criminal Procedure, to except as provided by Article 18.011, Code of Criminal Procedure, that the affidavit is public information if executed.

Makes application of Article 18.01(b), Code of Criminal Procedure, as amended by this Act, prospective.

### **EFFECTIVE DATE**

September 1, 2007.

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