

AN ACT

relating to the temporary sealing of certain affidavits on which search warrants are based.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subsection (b), Article 18.01, Code of Criminal Procedure, is amended to read as follows:

(b) No search warrant shall issue for any purpose in this state unless sufficient facts are first presented to satisfy the issuing magistrate that probable cause does in fact exist for its issuance. A sworn affidavit setting forth substantial facts establishing probable cause shall be filed in every instance in which a search warrant is requested. Except as provided by Article 18.011, the [The] affidavit is public information if executed, and the magistrate's clerk shall make a copy of the affidavit available for public inspection in the clerk's office during normal business hours.

SECTION 2. Chapter 18, Code of Criminal Procedure, is amended by adding Article 18.011 to read as follows:

Art. 18.011. SEALING OF AFFIDAVIT. (a) An attorney representing the state in the prosecution of felonies may request a district judge or the judge of an appellate court to seal an affidavit presented under Article 18.01(b). The judge may order the affidavit sealed if the attorney establishes a compelling state interest in that:

1 (1) public disclosure of the affidavit would
2 jeopardize the safety of a victim, witness, or confidential
3 informant or cause the destruction of evidence; or

4 (2) the affidavit contains information obtained from a
5 court-ordered wiretap that has not expired at the time the attorney
6 representing the state requests the sealing of the affidavit.

7 (b) An order sealing an affidavit under this section expires
8 on the 31st day after the date on which the search warrant for which
9 the affidavit was presented is executed. After an original order
10 sealing an affidavit is issued under this article, an attorney
11 representing the state in the prosecution of felonies may request,
12 and a judge may grant, before the 31st day after the date on which
13 the search warrant for which the affidavit was presented is
14 executed, on a new finding of compelling state interest, one 30-day
15 extension of the original order.

16 (c) On the expiration of an order issued under Subsection
17 (b) and any extension, the affidavit must be unsealed.

18 (d) An order issued under this section may not:

19 (1) prohibit the disclosure of information relating to
20 the contents of a search warrant, the return of a search warrant, or
21 the inventory of property taken pursuant to a search warrant; or

22 (2) affect the right of a defendant to discover the
23 contents of an affidavit.

24 SECTION 3. This Act applies only to an affidavit that is
25 presented under Subsection (b), Article 18.01, Code of Criminal
26 Procedure, as amended by this Act, on or after the effective date of
27 this Act. An affidavit that is presented before the effective date

1 of this Act is covered by the law in effect at the time the affidavit
2 was presented, and the former law is continued in effect for that
3 purpose.

4 SECTION 4. This Act takes effect September 1, 2007.

President of the Senate

Speaker of the House

I hereby certify that S.B. No. 244 passed the Senate on
March 29, 2007, by the following vote: Yeas 29, Nays 1.

Secretary of the Senate

I hereby certify that S.B. No. 244 passed the House on
May 15, 2007, by the following vote: Yeas 135, Nays 5, two
present not voting.

Chief Clerk of the House

Approved:

Date

Governor