

By: Williams, et al.

S.B. No. 244

A BILL TO BE ENTITLED

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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, in 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.