

By: Williams

S.B. No. 244

A BILL TO BE ENTITLED

AN ACT

1  
2 relating to the temporary sealing of certain affidavits on which  
3 search warrants are based.

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

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

7 (b) No search warrant shall issue for any purpose in this  
8 state unless sufficient facts are first presented to satisfy the  
9 issuing magistrate that probable cause does in fact exist for its  
10 issuance. A sworn affidavit setting forth substantial facts  
11 establishing probable cause shall be filed in every instance in  
12 which a search warrant is requested. Except as provided by Article  
13 18.011, the [The] affidavit is public information if executed, and  
14 the magistrate's clerk shall make a copy of the affidavit available  
15 for public inspection in the clerk's office during normal business  
16 hours.

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

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

1           (1) public disclosure of the affidavit would  
2 jeopardize the safety of a confidential informant or adversely  
3 affect a continuing investigation; 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:

13           (1) on a new finding of compelling state interest, a  
14 30-day extension of the original order; and

15           (2) during the extension, on another finding of  
16 compelling state interest, one additional 30-day extension.

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

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

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

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

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

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

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