

By: Castro

H.B. No. 430

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the authority of certain magistrates to issue certain
3 search warrants.

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

5 SECTION 1. Articles 18.01(c), (d), and (i), Code of
6 Criminal Procedure, are amended to read as follows:

7 (c) A search warrant may not be issued under Article
8 18.02(10) [~~pursuant to Subdivision (10) of Article 18.02 of this~~
9 ~~code~~] unless the sworn affidavit required by Subsection (b) [~~of~~
10 ~~this article~~] sets forth sufficient facts to establish probable
11 cause: (1) that a specific offense has been committed, (2) that the
12 specifically described property or items that are to be searched
13 for or seized constitute evidence of that offense or evidence that a
14 particular person committed that offense, and (3) that the property
15 or items constituting evidence to be searched for or seized are
16 located at or on the particular person, place, or thing to be
17 searched. Except as provided by Subsections (d) and (i) [~~of this~~
18 ~~article~~], only a magistrate who is an attorney licensed by the state
19 [~~judge of a municipal court of record or county court who is an~~
20 ~~attorney licensed by the State of Texas, statutory county court,~~
21 ~~district court, the Court of Criminal Appeals, or the Supreme~~
22 ~~Court~~] may issue warrants under Article 18.02(10) [~~pursuant to~~
23 ~~Subdivision (10), Article 18.02 of this code~~].

24 (d) Only the specifically described property or items set

1 forth in a search warrant issued under Article 18.02(10)
2 [~~Subdivision (10) of Article 18.02 of this code~~] or property,
3 items, or contraband enumerated in Articles 18.02(1)-(9) or (12)
4 [~~Subdivisions (1) through (9) or in Subdivision (12) of Article~~
5 ~~18.02 of this code~~] may be seized. A subsequent search warrant may
6 be issued under Article 18.02(10) [~~pursuant to Subdivision (10) of~~
7 ~~Article 18.02 of this code~~] to search the same person, place, or
8 thing subjected to a prior search under Article 18.02(10)
9 [~~Subdivision (10) of Article 18.02 of this code~~] only if the
10 subsequent search warrant is issued by a magistrate other than the
11 magistrate who issued the prior search warrant [~~judge of a district~~
12 ~~court, a court of appeals, the court of criminal appeals, or the~~
13 ~~supreme court~~].

14 (i) In a county that does not have a magistrate [~~judge of a~~
15 ~~municipal court of record who is an attorney licensed by the state,~~
16 ~~a county court judge~~] who is an attorney licensed by the state, [~~or~~
17 ~~a statutory county court judge,~~] any magistrate may issue a search
18 warrant under Article 18.02(10) or (12) [~~Subdivision (10) or~~
19 ~~Subdivision (12) of Article 18.02 of this code~~]. This subsection
20 is not applicable to a subsequent search warrant under Article
21 18.02(10) [~~Subdivision (10) of Article 18.02 of this code~~].

22 SECTION 2. The change in law made by this Act applies only
23 to a search warrant that is issued on or after the effective date of
24 this Act. A search warrant that is issued before the effective date
25 of this Act is governed by the law in effect on the date the warrant
26 was issued, and that law is continued in effect for that purpose.

27 SECTION 3. This Act takes effect September 1, 2009.