

BILL ANALYSIS

C.S.H.B. 1439
By: Lucio III
Criminal Jurisprudence
Committee Report (Substituted)

BACKGROUND AND PURPOSE

When a request is made for an arrest warrant, an affidavit supporting the probable cause for the issuance of the warrant is attached to the request. Often, the evidence supporting the arrest warrant names confidential informants, victims, witnesses, or the materials that may constitute evidence in the case. Current law provides for the temporary sealing of an affidavit attached to a search warrant for reasons establishing a compelling state interest, such as protecting confidential informants, victims, or witnesses. Interested parties contend that on occasion there is also a compelling state interest to prevent a complaint associated with an arrest warrant from being publicly disclosed. C.S.H.B. 1439 seeks to address this issue.

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

C.S.H.B. 1439 amends the Code of Criminal Procedure to authorize an attorney representing the state in the prosecution of felonies to request a district judge or the judge of an appellate court to seal a complaint related to an arrest warrant. The bill authorizes the judge to order the complaint sealed if the attorney establishes, as a compelling state interest, that public disclosure of the complaint would jeopardize the safety of a victim, witness, or confidential informant or cause the destruction of material that may constitute evidence in the case.

C.S.H.B. 1439 sets an order sealing a complaint to expire on the 31st day after the date on which the arrest warrant for which the complaint was presented is executed. The bill authorizes a judge, on request by an attorney representing the state in the prosecution of felonies, to grant a single 30-day extension of the original order on a new finding of the previously described compelling state interest and requires a request for an extension to be made before the original order expires. The bill requires the complaint to be unsealed on the expiration of the issued order and any extension. The bill prohibits an order sealing a complaint from prohibiting the disclosure of information relating to the contents of an arrest warrant or affecting the right of a defendant to discover the contents of the complaint.

C.S.H.B. 1439 makes any complaint presented to a magistrate in support of the issuance of an arrest warrant public information and requires the magistrate's clerk to make a copy of the complaint available for public inspection in the clerk's office during normal business hours beginning immediately when the warrant is executed. The bill requires the magistrate's clerk to make a copy of a complaint or affidavit that has been sealed under the bill's provisions available for public inspection only after the complaint or affidavit is unsealed. The bill authorizes a person to request the magistrate's clerk to provide copies of the complaint on payment of the cost of providing the copies.

EFFECTIVE DATE

September 1, 2013.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 1439 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and highlighted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

SECTION 1. Chapter 15, Code of Criminal Procedure, is amended by adding Article 15.052 to read as follows:

Art. 15.052. SEALING OF COMPLAINT.

(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 a complaint made in accordance with Article 15.05. The judge may order the complaint sealed if the attorney establishes a compelling state interest in that:

(1) public disclosure of the complaint would jeopardize the safety of a victim, witness, or confidential informant or cause the destruction of material that may constitute evidence in the case; or

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

(b) An order sealing a complaint under this article expires on the 31st day after the date on which the arrest warrant for which the complaint was presented is executed.

(c) On request by an attorney representing the state in the prosecution of felonies, a judge may grant a single 30-day extension of the original order on a new finding of compelling state interest. A request for an extension must be made before the original order expires.

(d) On the expiration of an order issued under Subsection (b) and any extension, the complaint must be unsealed.

(e) An order issued under this article may not:

(1) prohibit the disclosure of information relating to the contents of an arrest warrant; or

(2) affect the right of a defendant to

HOUSE COMMITTEE SUBSTITUTE

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(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 a complaint made in accordance with Article 15.05. The judge may order the complaint sealed if the attorney establishes, as a compelling state interest, that public disclosure of the complaint would jeopardize the safety of a victim, witness, or confidential informant or cause the destruction of material that may constitute evidence in the case.

(b) An order sealing a complaint under this article expires on the 31st day after the date on which the arrest warrant for which the complaint was presented is executed.

(c) On request by an attorney representing the state in the prosecution of felonies, a judge may grant a single 30-day extension of the original order on a new finding of the compelling state interest described in Subsection (a). A request for an extension must be made before the original order expires.

(d) On the expiration of an order issued under Subsection (b) and any extension, the complaint must be unsealed.

(e) An order issued under this article may not:

(1) prohibit the disclosure of information relating to the contents of an arrest warrant; or

(2) affect the right of a defendant to

discover the contents of the complaint.

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SECTION 2. Article 15.26, Code of Criminal Procedure, is amended.

SECTION 2. Same as introduced version.

SECTION 3. This Act applies only to a complaint or affidavit that is presented on or after the effective date of this Act. A complaint or affidavit that is presented before the effective date of this Act is governed by the law in effect at the time the complaint or affidavit was presented, and the former law is continued in effect for that purpose.

SECTION 3. Same as introduced version.

SECTION 4. This Act takes effect September 1, 2013.

SECTION 4. Same as introduced version.