

BILL ANALYSIS

Senate Research Center
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H.B. 326
By: Wu et al. (Hall)
Criminal Justice
5/20/2015
Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

H.B. 326 amends current law relating to information provided by electronic means in support of the issuance of a search warrant.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Article 18.01, Code of Criminal Procedure, by adding Subsection (b-1), as follows:

(b-1)(1) Authorizes a magistrate, for purposes of this article, to consider information communicated by telephone or other reliable electronic means in determining whether to issue a search warrant. Authorizes the magistrate to examine an applicant for a search warrant and any person on whose testimony the application is based. Requires the applicant or other person to be placed under oath before the examination.

(2) Requires the magistrate to acknowledge the attestation in writing on the affidavit if an applicant for a search warrant attests to the contents of an affidavit submitted by reliable electronic means. Requires the magistrate, if the magistrate considers additional testimony or exhibits, to:

(A) ensure that the testimony is recorded verbatim by an electronic recording device, by a court reporter, or in writing;

(B) ensure that any recording or reporter's notes are transcribed and that the transcription is certified as accurate and is preserved;

(C) sign, certify the accuracy of, and preserve any other written record; and

(D) ensure that the exhibits are preserved.

(3) Requires an applicant for a search warrant who submits information as authorized by this subsection to prepare a proposed duplicate original of the warrant and to read or otherwise transmit its contents verbatim to the magistrate. Requires a magistrate to enter into an original search warrant the contents of a proposed duplicate original that are read to the magistrate. Provides that the transmission received by the magistrate may serve as the original search warrant if the applicant transmits the contents by reliable electronic means.

(4) Authorizes the magistrate to modify a search warrant that is submitted as described by Subdivision (3). Requires the magistrate, if the magistrate modifies the warrant, to:

(A) transmit the modified version to the applicant by reliable electronic means; or

(B) file the modified original and direct the applicant to modify the proposed duplicate original accordingly.

(5) Requires a magistrate who issues a search warrant for which information is provided by telephone or reliable electronic means to:

(A) sign the original documents;

(B) enter the date and time of issuance on the warrant; and

(C) transmit the warrant by reliable electronic means to the applicant or direct the applicant to sign the judge's name and enter the date and time on the duplicate original.

(6) Provides that evidence obtained pursuant to a search warrant for which information was provided in accordance with this subsection is not subject to suppression on the ground that issuing the warrant in compliance with this subsection was unreasonable under the circumstances, absent a finding of bad faith.

SECTION 2. Provides that the change in law made by this Act applies only to a search warrant that is issued on or after the effective date of this Act. Makes application of this Act prospective.

SECTION 3. Effective date: September 1, 2015.