

BILL ANALYSIS

C.S.H.B. 326
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Criminal Jurisprudence
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Currently, a law enforcement officer presents certain information to support the issuance of a search warrant to a magistrate by physically walking to the magistrate and presenting the information or by sending a fax of the information to the magistrate. However, this traditional practice presents logistical difficulties for large counties and jurisdictions. Interested parties note that federal rules allow an officer to provide information in person, by fax, by e-mail, or by phone and that Texas would benefit from modernizing its warrant process to reflect advances in technology. C.S.H.B. 326 seeks to address this concern.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

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. 326 amends the Code of Criminal Procedure to authorize a magistrate to consider information communicated by telephone or other reliable electronic means in determining whether to issue a search warrant. The bill authorizes the magistrate to examine an applicant for a search warrant and any person on whose testimony the application is based and requires the applicant or other person to be placed under oath before the examination. The bill requires the magistrate, if an applicant for a search warrant attests to the contents of an affidavit submitted by reliable electronic means, to acknowledge the attestation in writing on the affidavit. The bill requires a magistrate who considers additional testimony or exhibits to ensure that the testimony is recorded verbatim by an electronic recording device, by a court reporter, or in writing; to ensure that any recording or reporter's notes are transcribed and that the transcription is certified as accurate and is preserved; to sign, certify the accuracy of, and preserve any other written record; and to ensure that the exhibits are preserved.

C.S.H.B. 326 requires an applicant for a search warrant who submits information as authorized by the bill's provisions to prepare a proposed duplicate original of the warrant and to read or otherwise transmit its contents verbatim to the magistrate. The bill requires a magistrate to enter into an original search warrant the contents of a proposed duplicate original that are read to the magistrate and, if the applicant transmits the contents by reliable electronic means, authorizes the transmission received by the magistrate to serve as the original search warrant. The bill authorizes the magistrate to modify such a submitted search warrant and requires a magistrate who modifies such a warrant to transmit the modified version to the applicant by reliable electronic means or to file the modified original and direct the applicant to modify the proposed

duplicate original accordingly. The bill requires a magistrate who issues a search warrant for which information is provided by telephone or reliable electronic means to sign the original documents, to enter the date and time of issuance on the warrant, and to 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.

C.S.H.B. 326 establishes that evidence obtained pursuant to a search warrant for which information was provided in accordance with the bill's provisions is not subject to suppression on the ground that issuing the warrant in compliance with the bill's provisions was unreasonable under the circumstances, absent a finding of bad faith.

EFFECTIVE DATE

September 1, 2015.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 326 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

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

(b)(1) 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 provided [filed] in every instance in which a search warrant is requested.

(2) For purposes of this article, a magistrate may accept a sworn statement that is provided by telephone or other appropriate and reliable means of wire or electronic communication.

A magistrate or the magistrate's designee shall fully document a sworn affidavit provided by telephone. A magistrate or the magistrate's designee may electronically record and preserve any statement communicated orally under this subdivision.

HOUSE COMMITTEE SUBSTITUTE

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

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

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

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

(4) The magistrate may modify a search warrant that is submitted as described by Subdivision (3). If the magistrate modifies the warrant, the magistrate must:

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

(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) 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.

(3) Except as provided by Article 18.011, 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. 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. A search warrant that was issued before the effective date of this Act is governed by the law in effect on the date the warrant was issued, and the former law is continued in effect for that purpose.

SECTION 3. This Act takes effect September 1, 2015.

SECTION 2. Same as introduced version.

SECTION 3. Same as introduced version.