

By: Moody

H.B. No. 3335

A BILL TO BE ENTITLED

AN ACT

relating to extending the length of time for which an affidavit establishing probable cause for a search warrant may be sealed.

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

SECTION 1. Article 18.011, Code of Criminal Procedure, is amended by amending Subsections (a) and (b) and adding Subsections (b-1), (b-2), and (b-3) to read as follows:

(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 an affidavit presented under Article 18.01(b). The judge may order the affidavit sealed if the attorney establishes a compelling state interest in that:

(1) public disclosure of the affidavit would jeopardize the safety of a victim, witness, or confidential informant or cause the destruction of evidence; ~~or~~

(2) the suspect has not been apprehended or indicted and the affidavit contains information that, if released, may jeopardize the state's ability to apprehend the suspect or continue the investigation of the offense; or

(3) the affidavit 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 affidavit.

(b) Except as provided by Subsections (b-1) and (b-2), an ~~An~~ order sealing an affidavit under this article ~~[section]~~

1 expires on the 31st day after the date on which the search warrant
2 for which the affidavit was presented is executed.

3 (b-1) After an original order sealing an affidavit is issued
4 under this article, an attorney representing the state in the
5 prosecution of felonies may request, and a judge may grant, before
6 the 31st day after the date on which the search warrant for which
7 the affidavit was presented is executed, on a new finding of
8 compelling state interest under Subsection (a), one 30-day
9 extension of the original order.

10 (b-2) After a 30-day extension is granted under Subsection
11 (b-1), an attorney representing the state in the prosecution of
12 felonies may request, and a judge may grant before the expiration of
13 the extension on a new finding of compelling state interest under
14 Subsection (a), an order sealing the affidavit until the earliest
15 of:

16 (1) the apprehension of the suspect;
17 (2) the indictment of the suspect; or
18 (3) the expiration of all limitations periods for all
19 offenses with which the suspect could be charged as determined by
20 the judge and stated in the order at the time the order sealing the
21 affidavit is entered.

22 (b-3) For orders granted under Subsection (b-2):

23 (1) the court shall create and the court clerk shall
24 make publicly accessible a notation that an order sealing an
25 affidavit under Subsection (b-2) has been entered; and

26 (2) any interested person may file with the court a
27 motion to reconsider that order.

1 SECTION 2. Article 18.011, Code of Criminal Procedure, as
2 amended by this Act, applies only to an affidavit initially sealed
3 under that article on or after the effective date of this Act. An
4 affidavit sealed under Article 18.011, Code of Criminal Procedure,
5 before the effective date of this Act is governed by the law in
6 effect on the date the affidavit was sealed, and the former law is
7 continued in effect for that purpose.

8 SECTION 3. This Act takes effect immediately if it receives
9 a vote of two-thirds of all the members elected to each house, as
10 provided by Section 39, Article III, Texas Constitution. If this
11 Act does not receive the vote necessary for immediate effect, this
12 Act takes effect September 1, 2019.