

SUBJECT: Establishing procedures to use telephone, email to request search warrant

COMMITTEE: Criminal Jurisprudence — committee substitute recommended

VOTE: 6 ayes — Herrero, Moody, Hunter, Leach, Shaheen, Simpson

1 nay — Canales

WITNESSES: For — (*Registered, but did not testify*: Melinda Smith, Combined Law Enforcement Associations of Texas; Steve Dye, Grand Prairie Police Department; Justin Wood, Harris County District Attorney's Office; Bill Lewis, Mothers Against Drunk Driving; Deanna L. Kuykendall, Texas Municipal Courts Association; Lon Craft and Heath Wester, Texas Municipal Police Association; Julie Wheeler, Travis County Commissioners Court)

Against — None

On — David Gonzalez, Texas Criminal Defense Lawyers Association; (*Registered, but did not testify*: Shannon Edmonds, Texas District and County Attorneys Association)

BACKGROUND: Code of Criminal Procedure, sec. 18.01(b) governs the issuance of search warrants. The section prohibits the issuance of a search warrant unless sufficient facts are first presented to satisfy the issuing magistrate that probable cause exists for the issuance.

DIGEST: CSHB 326 would allow magistrates to consider information communicated by telephone or other reliable electronic means when determining whether to issue a search warrant. The bill would establish procedures for accepting information and issuing search warrants under these circumstances.

Magistrates could examine, under oath, applicants for search warrants and persons on whose testimony the application was based. If an applicant for a warrant attested to information in an affidavit submitted by reliable

electronic means, magistrates would have to acknowledge so in writing on the affidavit.

If a magistrate considered additional testimony or exhibits, the magistrate would have to ensure that the testimony was recorded, notes were transcribed, written records were certified as accurate, and exhibits were preserved.

Applicants submitting information by telephone would have to prepare a proposed duplicate original of the warrant and transmit its contents to the magistrate. A transmission by reliable electronic means would serve as the original search warrant. The bill also would establish procedures for modifying warrants submitted in such a manner.

Magistrates issuing warrants by the means allowed in the bill would have to sign the original search warrant, record the date and time of issuance, and transmit the warrant to the applicant or direct the applicant to sign for the judge.

Evidence acquired through search warrants obtained under the bill would not be subject to suppression on the grounds that issuing the warrant was unreasonable under the circumstance unless there was a finding of bad faith.

The bill would take effect, September 1, 2015, and would apply only to search warrants issued on or after that date.

**SUPPORTERS
SAY:**

CSHB 326 would help modernize the process for requesting search warrants. Currently, peace officers generally must physically hand a judge a request for a search warrant. Sometimes this can be difficult, especially late at night or in large counties where officers could be 50 or more miles from a judge.

The bill would address this problem by bringing the warrant request process up to date to allow the use of commonly used technology to present requests for warrants. Under the bill, peace officers and

prosecutors could use the telephone or other electronic means, such as email, to submit requests. This would be in line with federal rules that allow phone and email requests for warrants and would echo a discussion in a Court of Criminal Appeals decision about requesting warrants.

The bill would establish procedures and safeguards to protect the integrity of the warrant process. The process would be carefully recorded, documented, and preserved. The bill would track the provisions of the federal rule governing requests for warrants to ensure that well-known standards were in place to govern the procedure.

OPPONENTS
SAY:

While CSHB 326 would track many provisions in federal rules relating to requesting search warrants by phone or electronic means, it would deviate in some ways from federal rules that could cause confusion. For example, the bill would require judges to ensure that certain exhibits were *preserved*, while the federal rule requires that exhibits be *filed*. It is unclear what preserving exhibits would mean and how such exhibits would be accessed. This could lead to varying treatment of exhibits by different judges or peace officers. It would be best to more closely track the federal rule because it has been tested and is well understood.