

## **BILL ANALYSIS**

Senate Research Center

C.S.S.B. 919  
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Criminal Justice  
4/9/1999  
Committee Report (Substituted)

### **DIGEST**

Currently, every executed search warrant affidavit is immediately accessible to the public. An affidavit sets forth facts to establish probable cause and must be filed to request a search warrant. Laying out all evidence uncovered during the course of an investigation, the information is available to the public, possibly, before the offender is identified or apprehended. Texas is the only state that makes the affidavits public information.

Sealing affidavits protects the integrity of ongoing investigations. To continue to make government documents available, a search warrant affidavit remains accessible to the public, unless a party can show a compelling state interest to temporarily seal the affidavit. C.S.S.B. 919 would authorize a district or appellate court to seal an affidavit when there is a compelling state interest.

### **PURPOSE**

As proposed, C.S.S.B. 919 authorizes a court to temporarily seal a search warrant affidavit.

### **RULEMAKING AUTHORITY**

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

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Article 18.01(b), Code of Criminal Procedure, to provide that an affidavit is public information if executed, except as provided by Article 18.011.

SECTION 2. Amends Chapter 18, Code of Criminal Procedure, by adding Article 18.011, as follows:

#### Art. 18.011. SEALING OF SEARCH WARRANT AFFIDAVIT

Sec. 1. REQUEST TO SEAL AFFIDAVIT. Authorizes an attorney representing the state in the prosecution of felonies to request a district judge to seal a search warrant affidavit presented under Article 18.01(b). Authorizes the affidavit to be sealed only in accordance with this article.

Sec. 2. STANDARD FOR SEALING. Sets forth conditions that will allow for the affidavit to be sealed.

Sec. 3. TEMPORARY SEALING ORDER. Authorizes a temporary order sealing a search warrant affidavit to issue on a written motion showing certain compelling needs for sealing. Sets forth time constraints and conditions for a temporary sealing order. Authorizes the court to modify or withdraw any temporary order by party motion or intervenor at a hearing. Provides that issuance of a temporary order does not reduce the state's burden of proof for an extended sealing order at the hearing. Requires the state to post certain notices regarding the temporary sealed order.

Sec. 4. EXTENDED SEALING ORDER. Authorizes a court to enter an order extending the sealing of the affidavit for an additional period. Prohibits the state from extending a sealing order unless the state posts notice in which extending the search warrant by a certain date. Sets forth information required in the notice, and requires the state to file the notice with the clerk of the court in which the case is pending and with the clerk of the court of criminal appeals. Requires a public hearing to be held in court as soon as practicable and requires the state to prove that the

facts in Section 2 do exist. Authorizes any party to participate in the hearing and any nonparty to intervene to participate in the proceedings on payment of the fee required for filing. Authorizes the court to inspect the search warrant, but not an affidavit supporting or opposing sealing. Authorizes the court to determine a motion relating to sealing or unsealing an affidavit in accordance with certain rules, except that any intervenor may file and serve affidavits within a certain number of days before the hearing.

Sec. 5. WRITTEN MOTION. Authorizes a temporary search warrant affidavit or an extended order to be sealed only by the state's written motion which is open to public inspection.

Sec. 6. ORDERS. Authorizes a motion related to temporary or extended sealing or unsealing of the affidavit to be decided only by written order. Requires the order to be open to public inspection and to state certain information regarding the case and affidavit. Prohibits the order from being included in any judgment or other order, but to be a separate document. Provides that failure of the state or court to comply with this section does not affect any party's right to appeal. Requires the affidavit to be unsealed on the expiration of a sealed order, unless the order is extended. Prohibits the order from certain actions.

Sec. 7. CONTINUING JURISDICTION. Authorizes any person to intervene as a matter of right at any time before or after judgment to unseal a search warrant affidavit. Provides that the issuing court retains continuing jurisdiction to enforce, alter, or vacate the order. Prohibits the order from being reconsidered on any motion, unless a material circumstance has changed that affects the order. Provides that the circumstances do not have to be related to the case.

Sec. 8. APPEAL. Provides that any of the preceding orders are considered to be severed from the case. Provides that an appeal is not moot if during its pendency a sealing order expires before its terms. Provides that an appeal does not extend the duration of a temporary or extending sealing order beyond the period provided in this article. Authorizes the appellate court to abate the appeal and order the trial to direct that further public notice be given, to hold further hearings, or to make additional findings. Establishes that error in sealing or unsealing the affidavit does not constitute reversible error affecting the final judgment of a conviction. Provides that an appellate court may enter into a remedy regarding the affidavit only to reverse, vacate, or modify the sealing or unsealing order.

SECTION 3. Effective date: September 1, 1999.  
Makes application of this Act prospective.

### **SUMMARY OF COMMITTEE CHANGES**

#### SECTION 2.

Amends Article 18.011, Code of Criminal Procedure, by adding Sections 1-8 regarding conditions and procedures for sealing or unsealing a search warrant affidavit or temporary affidavit, and appealing the affidavit. Adds text that requires a search warrant affidavit to be sealed only in accordance with article. Delete a proposed provision authorizing an attorney to request sealed orders. Deletes proposed conditions for sealing the order.