

BILL ANALYSIS

Senate Research Center
80R3700 JPL-D

S.B. 244
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Criminal Justice
3/17/2007
As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

According to Article 18.01(b), Code of Criminal Procedure, a sworn affidavit filed for a search warrant is public information if the warrant is executed. As interpreted by the Texas courts, this provision requires executed search warrant affidavits to be made immediately available to the public. Certain circumstances may demonstrate a compelling interest in temporarily sealing these affidavits from public disclosure, such as circumstances where revelation of the information necessary to obtain a warrant could result in the destruction of evidence or other tampering that could negatively impact an ongoing investigation.

As proposed, S.B. 244 authorizes a district or appellate court to seal an affidavit when there is a compelling state interest for doing so, for a specified time period. The bill prohibits an order sealing an affidavit from affecting the disclosure of certain information or affecting certain rights of a defendant.

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(b), Code of Criminal Procedure, to make a conforming change.

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

Art. 18.011. SEALING OF AFFIDAVIT. (a) Authorizes a felony prosecutor to request a district judge or judge of an appellate court to seal an affidavit for a search warrant (affidavit) presented under Art. 18.01(b). Authorizes the judge to order the affidavit sealed if the prosecutor establishes a compelling state interest that public disclosure would jeopardize the safety of a confidential informant or adversely affect a continuing investigation, or the affidavit contains information from an unexpired court-ordered wiretap.

(b) Provides that an order sealing an affidavit expires 31 days after execution of the related search warrant. Authorizes the prosecutor to request, and the judge to grant, a 30-day extension of the original order and one additional 30-day extension upon findings of compelling state interest.

(c) Requires that the affidavit be unsealed after expiration of the order and any extensions.

(d) Prohibits an order issued under this subsection from prohibiting the disclosure of information relating to the contents of a search warrant, the return of a search warrant, the inventory or property taken with a search warrant, or affecting the right of a defendant to discover the affidavit's contents.

SECTION 3. Makes application of Article 18.01(b), Code of Criminal Procedure, as amended by this Act, prospective.

SECTION 4. Effective date: September 1, 2007.