

BILL ANALYSIS

Senate Research Center
77R1275 GWK-F

S.B. 120
By: Wentworth
Jurisprudence
2/20/2001
Committee Report (Amended)

DIGEST AND PURPOSE

Currently, a search warrant affidavit becomes public information once it has been executed. As proposed, S.B. 120 allows the presiding judicial officer to temporarily seal a search warrant affidavit when that judge finds a compelling state interest to do so. The proposed bill specifically lists the circumstances in which a judge may order an affidavit sealed.

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 Subsection (b), Article 18.01, Code of Criminal Procedure, to provide that an affidavit that is presented to a magistrate in order to obtain a search warrant is public information if executed, except as provided by Article 18.011. Makes a nonsubstantive change.

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 only under Article 18.01(b).

Sec. 2. STANDARD FOR SEALING. Authorizes that a search warrant affidavit be sealed only under certain circumstances.

Sec. 3. TEMPORARY SEALING ORDER. Authorizes a temporary order sealing a search warrant affidavit by issuing a written motion showing compelling need from specific facts shown by the affidavit, if certain conditions exist. Provides that a temporary sealing order expires three days after execution of the search warrant, unless extended as provided by this article, and authorizes the court to extend the temporary order once for not more than 10 days, provided that the state post notice in the manner provided by Section 4(b), and authorizes the court to modify or withdraw any temporary order on motion by any party or intervenor at a hearing conducted as soon as practicable. Provides that issuance of a temporary order does not reduce the state's burden of proof for an extended sealing order at the hearing as required by Section 4(d). Requires the state, not later than the third business day after execution of the search warrant, to post where meetings of county governmental bodies are required to be posted, copies of certain documents relating to the search warrant.

Sec. 4. EXTENDED SEALING ORDER. Authorizes the court, after motion, notice, and hearing to enter an order extending the sealing of the affidavit for an additional period of not more than 60 days. Prohibits the state from moving to extend a sealing order unless the state posts public notice, regarding certain information about the motion for extension before the fourth day after the

execution of the search warrant. Requires the state to file a verified copy of the posted notice with the clerks of court of criminal appeals and the court where the case is pending, immediately after posting the notice as specified under Subsection (b). Requires a public hearing on a motion for extended sealing to be held in court as soon as practicable, but not less than 10 days after the date on which the motion is filed and notice is posted. Requires the state, at the hearing, to prove by a preponderance of the evidence the existence of facts described by Section 2. Authorizes any party to participate in the hearing, and authorizes a nonparty to intervene as a matter of right for the limited purpose of participating in the proceedings on payment of the fee required for filing a plea in intervention. Authorizes the court to inspect a search warrant affidavit in camera, but not an affidavit supporting or opposing sealing. Authorizes the court to determine a motion relating to sealing or unsealing of a affidavit in accordance with the procedures prescribed by Rule 120a, Texas Rules of Civil Procedure, except that any intervenor may file and serve affidavits three days before the hearing on the motion for extended sealing.

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

Sec. 6. ORDERS. Authorizes a motion relating to temporary or extended sealing or unsealing of a search warrant affidavit to be decided only by written order, and includes certain information. Requires that the order be open to public inspection. Prohibits the order from being included in any judgment or other order, and requires it to be a separate document in the case. Provides that the failure of the state or the court to comply with this section does not affect any party's right to appeal. Requires the affidavit to be unsealed after the expiration of a sealing order, unless the order is extended. Prohibits the order issued under this article from prohibiting or affecting the right of a defendant to obtain a copy of the affidavit.

Sec. 7. CONTINUING JURISDICTION. Authorizes any person to intervene at any time before or after judgment to unseal a search warrant affidavit, and provides that the court that issues a sealing order retains continuing jurisdiction to enforce, alter, or vacate that order. Prohibits the reconsideration on motion to seal or unseal a search warrant affidavit by a party or intervenor who had actual notice of the hearing to reconsider, unless there is a showing of changed circumstances materially affecting the order, not necessarily related.

Sec. 8. APPEAL. Provides that any order or portion of an order or judgment relating to the temporary or extended sealing or unsealing of a search warrant affidavit is considered to be severed from the case and final judgment, and authorizes an appeal by any party or intervenor who participated in the hearing preceding the issuance of the order. Provides that an appeal is not moot if it expires during court proceedings. Provides that an appeal does not extend a seal order. Authorizes the appellate court to abate the appeal and order the trial court to post public notice regarding further hearing, or to make additional findings. Provides that a conviction is not affected by an error of sealing or unsealing an affidavit. Provides that the only remedy an appellate court may enter to correct an error in the sealing or unsealing of a warrant affidavit is to reverse, vacate, or modify the sealing or unsealing order.

SECTION 3. Effective date: September 1, 2001.

Makes application of the Act prospective.

SUMMARY OF COMMITTEE CHANGES

Differs from As Filed version by clarifying the right of a defendant to obtain a copy of the affidavit in SECTION 2 (Section 6).

Differs from As Filed version by specifying that a search warrant affidavit may be sealed only on a factual showing, rather than showing, of certain information in SECTION 2 (Section 2).