

## **BILL ANALYSIS**

Senate Research Center  
86R13978 TSS-D

S.B. 1269  
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Criminal Justice  
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### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

S.B. 1269 gives courts greater flexibility to seal affidavits submitted to obtain a search warrant when releasing them may jeopardize an ongoing investigation.

To obtain a search warrant, a prosecutor must file an affidavit with the court that contains sufficient facts to establish probable cause. Currently, a judge may seal a search warrant affidavit if the prosecutor "establishes a compelling state interest" that either (1) public disclosure would jeopardize the safety of a victim, witness, or informant or cause the destruction of evidence; or (2) the affidavit contains information obtained from an ongoing court-ordered wiretap. If granted, the order to seal is only valid for 30 days, although it may be extended for one additional 30-day period.

Many complicated cases can take months to solve, and if suspects learn the basis for a search warrant by obtaining an affidavit, it could jeopardize the prosecutor's case. And the two grounds that currently allow a court to seal an affidavit are very specific and may not adequately protect an ongoing investigation.

S.B. 1269 adds a third possible grounds for sealing an affidavit. Under this new provision, a court could seal an affidavit if the prosecutor "establishes a compelling state interest in that...the suspect has not been apprehended or indicated 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."

Additionally, S.B. 1269 allows a judge to grant a second extension beyond the current 60-day period, allowing the affidavit to remain sealed until the earliest of (1) the suspect's apprehension, (2) the suspect's indictment, or (3) all relevant statutes of limitation expire as set out in the order to seal. If a court grants this request, the clerk must make a public notation in the record so that any interested person may file a motion to reconsider it.

As proposed, S.B. 1269 amends current law relating to extending the length of time for which an affidavit establishing probable cause for a search warrant may be 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 Article 18.011, Code of Criminal Procedure, by amending Subsections (a) and (b) and adding Subsections (b-1), (b-2), and (b-3), as follows:

- (a) Authorizes a district judge or the judge of an appellate court to order an affidavit sealed if an attorney representing the state in the prosecution of felonies establishes a compelling state interest in certain circumstances including that 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. Makes nonsubstantive changes.

(b) Provides that, except as provided by Subsections (b-1) and (b-2), an order sealing an affidavit under this article, rather than under this section, expires on the 31st day after the date on which the search warrant for which the affidavit was presented is executed.

(b-1) Creates this subsection from existing text and authorizes an attorney representing the state in the prosecution of felonies, to request, and a judge to grant, after an original order sealing an affidavit is issued under this article, before the 31st day after the date on which the search warrant for which the affidavit was presented is executed, on a new finding of compelling state interest under Subsection (a), one 30-day extension of the original order.

(b-2) Authorizes an attorney representing the state in the prosecution of felonies to request after a 30-day extension is granted under Subsection (b-1), and authorizes a judge to grant before the expiration of the extension on a finding of compelling state interest under Subsection (a), an order sealing the affidavit until the earliest of:

(1) the apprehension of the suspect;

(2) the indictment of the suspect; or

(3) the expiration of all limitations periods for all offenses with which the suspect could be charged as determined by the judge and stated in the order at the time the order sealing the affidavit is entered.

(b-3) Provides that for orders granted under Subsection (b-2):

(1) the court is required to create and the court clerk is required to make publicly accessible a notation that an order sealing an affidavit under Subsection (b-2) has been entered; and

(2) any interested person is authorized to file with the court a motion to reconsider that order.

SECTION 2. Makes application of this act prospective.

SECTION 3. Effective date: upon passage or September 1, 2019