

SUBJECT: Service and return of a subpoena by mail in a criminal proceeding

COMMITTEE: Criminal Jurisprudence — committee substitute recommended

VOTE: 8 ayes — Place, Talton, Farrar, Greenberg, Nixon, Pickett, Pitts, Solis
0 nays
1 absent — Hudson

WITNESSES: For — Sheriff Dan Smith, Sheriff’s Association Legislative Committee
Against — None
On — Lon Curtis, Texas District and County Attorneys Association

BACKGROUND: Code of Criminal Procedure art. 24.04 requires subpoenas for criminal proceedings to be served by reading the subpoena in the hearing of the witness or by delivering a copy to the witness.

DIGEST: HB 941 would amend Code of Criminal Procedure art. 24.04 to allow the serving of the subpoena by certified mail, return receipt requested, to the last known address of a witness unless:

- the applicant for the subpoena requested in writing that the subpoena not be served by mail; or
- the proceeding for which the witness was being subpoenaed was set to begin within seven days after the date the subpoena would be mailed.

The deliverer of a subpoena that was read or delivered would have to show the date and time of delivery, or, for a mailed subpoena, the return receipt. Officers would be required to use due diligence to locate and serve the witness if a mailed subpoena was returned undelivered.

The bill would take effect immediately if approved by a two-thirds vote of the membership of each house.

SUPPORTERS SAY: Personal delivery of subpoenas to witnesses in criminal cases can be costly and time-consuming for law enforcement personnel. HB 941 would allow officers a more efficient way to deliver subpoenas.

The signature on a return receipt would provide verification that the individual had in fact been served with the subpoena. The deadline requiring mailing at least seven days before a proceeding would be another safeguard. An applicant for a subpoena could veto sending the subpoena by mail if the applicant had any reservations about serving it in that manner.

Using the U.S. mail system to serve subpoenas would be less intrusive on the lives of witnesses, and would be more discreet.

OPPONENTS SAY: The provision that "if a mailed subpoena is returned undelivered, the officer shall use due diligence to locate and serve the witness" is unnecessary. Constables and other peace officers are professional and already subscribe to the highest standard for delivery of subpoenas; they would treat mailed subpoenas that were returned like any others.

Mailing subpoenas for criminal proceedings could cost counties and municipalities more, in light of high cost for certified letters with a return receipt.

NOTES: The committee substitute added the two exceptions for when mailed subpoenas may be used.