

- SUBJECT:** Allowing digital signatures on criminal court documents
- COMMITTEE:** Judicial Affairs — favorable, with amendment
- VOTE:** 7 ayes — Thompson, Hartnett, Capelo, Deshotel, Hinojosa, Shields, Uresti
0 nays
2 absent — Garcia, Jim Solis
- WITNESSES:** For — Jim Pruitt, County Criminal Courts of Dallas County; Jim Allison, County Judges and Commissioners Association of Texas; Craig Pardue, Dallas County; Scott Forbes, Mayor and City Council of Houston
Against — None
On — None
- BACKGROUND:** Digital signatures are signatures produced on computer that can be transmitted electronically. The Legislature last session authorized use of digital signatures in court proceedings, but did not specify that they could be used in the criminal courts. Digital signatures can be produced in several ways on a variety of devices, ranging from signatures generated on computer to signatures generated on hand-held, electronic, signature-sensitive, recording devices commonly referred to as “etch-a-sketch,” or other optical or digital imaging devices.
- DIGEST:** HB 806, as amended, would authorize use of digital signatures in criminal proceedings. It would amend the Code of Criminal Procedure by adding Article 2.26, which would consider an electronically-transmitted document issued or received by a court in a criminal matter to be signed if a digital signature was included with this document. A digital signature would be defined as an electronic identifier intended by the person creating it to have the same force as a signature made by hand.

HB 806 also would amend Code of Criminal Procedure, Article 45.021 to allow a notice or citation issued by a law enforcement officer to be created by electronic means, including digital imaging. A document with a signature of

anyone, including a judge, clerk of court, or defendant, that was signed electronically would satisfy a statutory requirement for a signature.

HB 806 would not preclude any symbol from being considered a valid signature under other sections of law, including the Business Code, sec 1.201(39), which defines signatures made by symbol under that code.

Digital signatures would be subject to criminal laws dealing with fraud and computer crimes as listed in Penal Code, chapters 32 and 33, respectively.

HB 806 would take immediate effect if finally approved by a two-thirds record vote of the membership in each house.

**SUPPORTERS
SAY:**

HB 806 would improve efficiency and save time in the criminal courts by specifically authorizing use of digital signatures on documents.

For example, criminal courts currently require the signatures of an investigating officer and magistrate for a probable cause affidavit to be issued. After such an affidavit is issued, it must physically be carried to the district attorney's office for further action against the person named. HB 806 would allow the magistrate signing the affidavit to have the documents transmitted electronically to the district attorney's office. The digital signature included with the affidavit would be considered a valid signature. This would allow the district attorney to begin preparing a formal charge against a criminal defendant sooner.

Although the Legislature authorized use of digital signatures two years ago, the Code of Criminal Procedure does not specifically do so. Judges and court officials already use digital signatures in civil cases. But criminal court judges have been reluctant to do so for fear of having orders overturned. HB 806 would provide formal statutory authorization for use of this emerging technology.

HB 806 also would provide statutory authority for police officers to issue traffic tickets using a hand-held, "etch-a-sketch" device. Under this system, a police officer would require a motorist stopped for a traffic violation to sign electronically on this hand-held device.

After the signature was recorded, the machine would issue a copy of the

signed citation to the motorist. No carbon copies would be needed. At the end of the day, the police officer would plug the “etch-a-sketch” device into a computer to generate copies of the day’s citations. Such a method would result in less paperwork and better use of the police officer’s time.

The bill would make digital signatures in criminal proceedings specifically subject to criminal laws dealing with fraud and computer crimes. Thus, the integrity of the signature system would be protected.

**OPPONENTS
SAY:**

Most, if not all of computers, used for digital signatures would not be connected to a network outside of the court system. Allowing digital signatures for criminal proceeding and citations could pose risks because an experienced computer hacker potentially could break into an unsecured computer system and forge a needed signature.

NOTES:

The committee amendment would allow a law enforcement officer to issue a citation created by digital means and allow digital signatures to satisfy statutory requirements.