SUBJECT: Clearing bad check warrants with district attorney in Dallas County

COMMITTEE: Criminal Jurisprudence —favorable, without amendment

VOTE: 7 ayes — Keel, Riddle, Pena, Denny, Escobar, Hodge, Raymond

                0 nays

                2 absent — P. Moreno, Reyna

WITNESSES: For — Nicholas P. Cariotis, Barry Dyson, Dallas County District
                Attorney; Craig Pardue, Dallas County; John Rolater, Dallas County
                District Attorney.

                Against — None

                On — Shannon Edmonds, Texas District and County Attorneys
                Association.

BACKGROUND: Penal Code, sec. 32.41, prohibits the issuance of a bad check. It is a class
                C misdemeanor, punishable by a maximum fine of $500, to write a check
                knowing that there are not sufficient funds in the bank account to cover the
                amount of the check. If the check is for a child support payment, the
                penalty is a class B misdemeanor, punishable by a maximum of 180 days
                in jail and/or a fine not to exceed $2,000.

                Under Code of Criminal Procedure, art. 45, a justice or judge may issue a
                warrant for an arrest upon the filing of a sworn complaint or affidavit
                showing probable cause. This section also lays out the requirements for a
                filed complaint or formal charge of a crime.

DIGEST: HB 2885 would amend Code of Criminal Procedure, art. 45.014(d), to
                require a justice or judge to get the approval of the district attorney before
                issuing a warrant for the issuance of a bad check in a county with a
                population of more than 2 million that does not have a county attorney
                (Dallas County).

                The bill also would amend art. 45.019 to require complaints to be
                approved by the district attorney in Dallas County (counties with a

populations of more than 2 million that did not have a county attorney), regardless of whether a collection proceeding were initiated by the district attorney.

The bill would take effect on September 1, 2005, and would apply only to a complaint or warrant filed after that date.

SUPPORTERS
SAY:

HB 2885 would help protect victims of identity theft from further victimization by unnecessary criminal actions while streamlining the process of pursuing identity theft claims. The bill would apply only to Dallas County and would serve as a pilot project that eventually could spread throughout the state once it proved successful.

Identity theft is one of the fastest-growing crimes in the country. According to the Federal Trade Commission, Texas ranks fourth in the nation in identify theft crimes and Dallas ranks seventh among U.S. cities.

Most identity theft crimes start with a check that is stolen or counterfeit. In Dallas, bad check cases can be filed with the district attorney or with a justice of the peace. When a bad check claim is filed by the merchant with the district attorney, the case is reviewed by law enforcement before a warrant is issued. However, if the case is filed with the justice of the peace, it is reviewed by a civilian clerk who may issue a warrant without investigation. As a result, police inadvertently may arrest victims who have had a checkbook or identification stolen.

HB 2885 would reduce significantly the number of arrests of innocent victims of identity theft. The district attorney has a database that tracks all claims of stolen checks and IDs. Before issuing a warrant, the JP would notify the district attorney, who could determine whether the individual had reported an identity theft. If so, a warrant would not be issued.

The bill also would make resolving identity theft claims easier for victims. If an offender writes bad checks with a victim's checkbook or uses the victim's identification to write bad checks throughout the city, the victim now must go to numerous justice courts to clear the victim's name. By requiring the JP to contact the DA before issuing a warrant, the bill would enable the DA to consolidate all bad check cases into one database. The identity theft victim then could simply contact the DA, instead of each JP court, to clear the victim's name.

The purpose of this bill is not to force JPs to relinquish control of bad check cases to the district attorney. JPs still would handle all bad check cases. The goal simply would be to reorganize the handling of identity theft problems to make it more efficient and effective and to reduce the possibility of arresting the victim.

OPPONENTS
SAY:

This bill is unnecessary. Justices of the peace can ask a peace officer to investigate a bad check claim before issuing a warrant to ensure that a victim of identity theft is not arrested. The real effect of this bill would be to consolidate control of the handling of bad check issues in the district attorney's office.