SUBJECT: Penalizing counties for denying access to arrest and warrant information

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

VOTE: 6 ayes — Keel, Riddle, Denny, Escobar, Hodge, Reyna

0 nays

3 absent — Pena, P. Moreno, Raymond

WITNESSES: For — Scott Henson, ACLU of Texas

Against — None

BACKGROUND: Under Code of Criminal Procedure (CCP), chaps. 15 and 18, arrest and search warrants and probable cause affidavits presented to a magistrate to support the issuance of warrants or affidavits are public information. Immediately upon execution of a warrant or affidavit, a magistrate's clerk must make available for public inspection a copy of the warrant and affidavit at the clerk's office during normal business hours. A person may request that the clerk provide copies of these records after paying the copying costs.

DIGEST: HB 47 would amend CCP, chaps. 15 and 18 to impose a $1,000 civil penalty on counties when a magistrate's clerk fails to make available to the public information regarding arrests and search warrants and affidavits. The attorney general could sue to collect the penalty, which would be deposited in the general revenue fund.

The bill would take effect September 1, 2005.

SUPPORTERS SAY: HB 47 would strengthen and enforce the existing requirement for counties to grant access to documentation about arrests and searches. Some counties have denied information to the public, and in some cases large numbers of documents have been withheld, suggesting the documents may have been concealed rather than misplaced or incorrectly filed.

The Code of Criminal Procedure has granted standard custodianship of these warrants and affidavits to the clerk of the magistrate under which they were executed. Counties are required by statute to copy these records and make them available beginning immediately when the warrant is executed. Procedures for obtaining these records already are clear in statute, and HB 47 would help strengthen compliance with those procedures.

Enforcement would be by civil penalty rather than a criminal misdemeanor. The attorney general has the expertise in enforcing the Public Information Act to ensure compliance.

OPPONENTS SAY:

HB 47 would unfairly stigmatize magistrate's clerks, blemishing their records for failure to comply with a vague law they had no intention of violating. Counties want to comply with law, but confusing requirements sometimes make it difficult to respond promptly to requests for information. Current law says warrants and affidavits are to be filed with "the clerk of the magistrate," not in a specific location, and this wording creates a confusing system. The clerk of the magistrate may not be the clerk of the corresponding misdemeanor or felony court. In larger counties, discovering which magistrate has the warrant and affidavit can be difficult when police departments use multiple magistrates to sign warrants. Also, the law is unclear on how quickly a clerk must produce the requested records, with the Public Information Act permitting 10 business days for processing requests.

OTHER OPPONENTS SAY:

A $1,000 penalty would too little to force compliance. Counties could choose to pay the fine rather than grant access to public records, if the attorney general chose to enforce the penalty.