

**SUBJECT:** Allowing the electronic filing of indictments in criminal cases

**COMMITTEE:** Criminal Jurisprudence — favorable, without amendment

**VOTE:** 5 ayes — Keel, Riddle, Escobar, Pena, Reyna  
0 nays  
4 absent — Denny, Hodge, P. Moreno, Raymond

**SENATE VOTE:** On final passage, April 21 — 31-0, on Local and Uncontested Calendar

**WITNESSES:** (*On companion bill, HB 1778:*)  
For — John Cramer, J.D. Granger, Tarrant County District Attorney's Office  
  
Against — None

**BACKGROUND:** Code of Criminal Procedure, Art. 21.01, defines an "indictment" as a written statement of a grand jury accusing a person of a criminal offense. Art. 21.20 defines an "information" as a written statement charging a defendant with an offense.  
  
Government Code, ch. 51, subch. I, requires the Texas Supreme Court to adopt rules and procedures to regulate electronic filing of court documents. The statutes allow documents to be filed electronically only if a court has established a system for receiving the filings and the system has been approved by the Supreme Court. Under sec. 51.807, courts may adopt local rules to govern the transmission and receipt of electronic documents and to recognize those documents as the original record for evidentiary purposes.

**DIGEST:** SB 611 would authorize indictments, informations, complaints, or other charging instruments or related documents in criminal cases to be filed with a judge or clerk in an electronic form. Judges and clerks would be authorized to receive these electronic documents if :

- the document complied with requirements applied to a hard-copy

document;

- the court clerk had the means electronically to store the document for the time period required by law;
- the judge or clerk was able to reproduce a hard-copy form of the document on demand; and
- the clerk could display or otherwise make the document available in electronic form to the public for free.

Those filing and receiving documents would have to handle the electronic document as required by the current law in ch. 51 of the Government Code, which details procedures for handling electronic filing, including requirements such as the recipient of a document transmitting an acknowledgement that a document was received.

Indictments or other charging instruments would be exempt from the requirement that the documents be endorsed by a natural person. The requirement of an oath for one of these documents would be satisfied if all or part of the document was sworn to and the electronic form stated which part of the form was sworn to and the name of the person administering the oath.

The collection of fees for the provision of services by clerks would not be affected by SB 611.

Clerks and courts also could issue an electronic capias for the failure to appear in court, pay a fine, or comply with a court order.

Electronically preserved documents would have the same legal significance and admissibility as if they were a hard copies. If a party opposed admission of a document on the grounds that it had been materially altered, the proponent of the document would have to disprove the allegation by a preponderance of the evidence.

Electronically transmitted documents would be considered written documents for Code of Criminal Procedure purposes.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2005.

#### SUPPORTERS

SB 611 would increase the efficiency of the criminal justice system by

SAY:

removing an obstacle to implementing a paperless file system for prosecuting offenses. Currently, the Government Code and other statutes allow many documents to be filed electronically and establish procedures for these filings. However, because the Penal Code and Code of Criminal Procedure refer to indictments as "written" documents, these still must be filed on paper. SB 611 would allow indictments to be filed electronically and establish requirements for these documents.

SB 611 would allow the Tarrant County District Attorney's office to complete its transition to a paperless case filing system and allow other prosecutors' offices to reduce their paperwork. The Tarrant County office has been working on the transition to a paperless system for about three years. Under the system, items are sent electronically to court clerks. Prosecutors and defense attorneys have electronic access to offense reports, affidavits, and photos. This has reduced paperwork in the office and made the job of both prosecutors and defense lawyers easier. Defense lawyers no longer have to check out their clients' files and copy them. Once they have access, they can open the electronic file from their own office. However, because of the restrictions in current law, clerks must receive written indictments and scan them into their electronic system.

SB 611 would ensure that indictments and other documents met all current requirements for electronic filing of documents. The bill would protect public access to indictments, which are public information, by specifically requiring that the public have the same access to the electronic documents that it has to hard-copy ones.

SB 611 would not require any jurisdiction to implement an electronic system or require any entity to file electronic indictments. The bill would allow prosecutors' offices to streamline their work and take advantage of technology if they desired.

Oversight of local jurisdictions' electronic filing procedures would continue to ensure they were fair. The Supreme Court would continue to have authority to oversee electronic filing of court documents, and under the Rules of Judicial Administration the Supreme Court would have to request the advice of the Court of Criminal Appeals before adopting rules affecting the administration of criminal justice.

OPPONENTS  
SAY:

No apparent opposition.

NOTES:

The companion bill, HB 1778 by P. King, was reported favorably, as substituted, by the House Criminal Jurisprudence Committee on April 13.