

- SUBJECT:** Electronic delivery of certain documents in a criminal case
- COMMITTEE:** Criminal Jurisprudence —favorable, without amendment
- VOTE:** 8 ayes — Herrero, Carter, Canales, Hughes, Leach, Moody, Schaefer, Toth
0 nays
1 absent — Burnam
- WITNESSES:** For — Jim Jackson and Craig Pardue, Dallas County; (*Registered, but did not testify*: Rebecca Bernhardt, Texas Defender Service; John Dahill, Texas Conference of Urban Counties; Gary Fitzsimmons, Dallas County District Clerk; Mark Mendez, Tarrant County)
Against — None
- BACKGROUND:** Code of Criminal Procedure, art. 11.07 governs the procedure for filing an application for a writ of habeas corpus after a final conviction in a felony case with a penalty other than death. The clerk of the convicting court must forward a copy of the application to the attorney representing the state by certified mail, return receipt requested, or by personal service.
- Art. 11.071 governs procedure for filing an application for a writ of habeas corpus after a judgment imposing the death penalty. The clerk of the convicting court must forward a copy of the application to the attorney representing the state by certified mail, return receipt requested.
- Art. 11.072 governs procedure for filing an application for a writ of habeas corpus after an order or judgment of conviction ordering community supervision. The clerk of the court imposing community supervision, at the time an order denying relief or including findings of fact and conclusions of law is entered by the court, must send a copy of that order to the applicant and to the state by certified mail, return receipt requested.
- Art. 38.41 governs a certificate of analysis used to establish the results of a laboratory analysis of physical evidence conducted by or for a law enforcement agency in a criminal case. Such a certificate must be provided

to the opposing party by fax, hand delivery, or certified mail, return receipt requested, and any written objection to the certificate filed by the opposing party must be provided to the offering party by fax, hand delivery, or certified mail, return receipt requested.

Art. 38.42 governs an affidavit used to establish the chain of custody of physical evidence in a criminal case. Such an affidavit must be provided to the opposing party by fax, hand delivery, or certified mail, return receipt requested, and any written objection to the certificate filed by the opposing party must be provided to the offering party by fax, hand delivery, or certified mail, return receipt requested.

DIGEST:

HB 996 would allow the following legal documents to be delivered by secure electronic mail, in addition to the current acceptable delivery methods:

- a copy of an application for a writ of habeas corpus that the clerk of the court must send under Code of Criminal Procedure, art.11.07, sec. 3(b), or art. 11.071, sec. 6(c);
- a copy of a court's order in response to a habeas corpus application that the clerk of the court must send under art 11.072, sec. 7(b);
- a copy of a certificate of analysis or a written objection provided under art. 38.41, sec. 4; and
- a copy of a chain of custody affidavit or a written objection provided under art. 38.42, sec. 4.

This 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, 2013, and would apply only to legal documents delivered, filed, or served on or after that date.

**SUPPORTERS
SAY:**

HB 996 would improve efficiency and delivery of certain court documents and would save resources. With secure e-mail delivery, documents would arrive at their destinations faster and with less cost than with traditional delivery methods. Dallas County alone would save about \$40,000 per year in postage costs. Delivering electronic documents would also improve ease of transportation and access. The recipients of these documents could access them on their iPads or Kindles instead of carrying around cumbersome, lengthy paper documents and could perform word searches on them. If a paper copy were desired in addition to the electronic copy, one could be printed by the recipient. The https protocol by which these

documents would be delivered is standard and acceptable for electronic delivery of documents in all branches of federal and state government.

E-filing of all criminal legal documents is a major undertaking and potentially controversial. This bill would allow electronic delivery of a small set of certain non-controversial documents as a first step toward the ultimate goal of allowing e-filing of all criminal legal documents.

**OPPONENTS
SAY:**

HB 996 should apply to a larger number of documents. Allowing electronic delivery of the small number of documents specified in this bill is a good first step, but Texas needs to move toward e-filing of criminal cases and a broader range of legal documents than the small number of documents affected by this bill.

NOTES:

The companion bill, SB 354 by West, passed unanimously out of the Senate April 4 on the local and uncontested calendar and was referred to the House Committee on Criminal Jurisprudence on April 8.