

**SUBJECT:** Making arrest warrants available for public inspection

**COMMITTEE:** Criminal Jurisprudence — committee substitute recommended

**VOTE:** 9 ayes — Keel, Riddle, Ellis, Denny, Dunnam, Hodge, P. Moreno, Pena, Talton  
0 nays

**WITNESSES:** For — Ann del Llano, ACLU of Texas; Ken Whalen, Texas Daily Newspaper Association, Texas Press Association  
  
Against — Jim Hamlin, Dallas County District Clerk, County and District Clerks Association of Texas; Gail Turley, County and District Clerks Association of Texas

**BACKGROUND:** Criminal Code, Art. 2.09 designates certain office holders as magistrates, including justices of the supreme court, appellate court judges, district court judges, magistrates appointed by certain district court judges in specific counties, county judges, judges of county courts of law or county criminal courts, statutory probate code judges, justices of the peace, mayors, and municipal court judges.

Under Art. 2.10, it is a magistrate's duty to preserve the peace by the use of all lawful means, issue all process intended to help prevent or suppress crime, and cause the arrest of offenders by lawful means. Art. 2.21 specifies the duties of district or county court clerks in criminal proceedings, including receiving and filing all papers.

Art. 15.26 requires an officer executing an arrest warrant to inform the accused under what authority the arrest is made. The officer does not need to have the warrant in his or her possession at the time of the arrest but must inform the defendant of the offense charged and of the fact that a warrant has been issued. Upon request, the officer must show the warrant to the defendant as soon as possible.

Art. 15.17 requires the officer making the arrest to take the defendant before a magistrate as soon as possible. The magistrate must inform the defendant in

clear language of the accusation filed against him or her and of any affidavit filed in the court.

**DIGEST:**

CSHB 13 would specify that a warrant of arrest, and an affidavit supporting issuance of the warrant, was public information. Immediately upon execution of the warrant, the magistrate's clerk would have to make available for public inspection a copy of the warrant and affidavit at the clerk's office during normal business hours. A person could request that the clerk provide copies of the warrant and affidavit after paying the copying costs.

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, 2003.

**SUPPORTERS  
SAY:**

CSHB 13 would clarify that the magistrate's clerk is the custodian of any arrest warrant and supporting affidavit signed by the magistrate. It would eliminate inconsistency among counties as to who should keep such documents. A person would know exactly where to find an arrest warrant or affidavit regardless of what county it was in. This bill would systematize the keeping of such records so that all counties followed the same procedure.

The bill would not create any additional duties for clerks. Current law states clearly that it is the clerk's responsibility to receive and file all papers relating to a criminal proceeding. Although requiring magistrates' clerks to keep such records could create additional paperwork for clerks, their paperwork problems should not supercede the fundamental right to know why a person has been arrested.

A law enforcement agency is not a proper custodian for records of a judicial proceeding. These records should be maintained by the magistrate's clerk so they are available for inspection in the future and included in the historical record.

**OPPONENTS  
SAY:**

CSHB 13 could make it more difficult to find a warrant and affidavit in a larger county. In some counties, the law enforcement agency conducting the arrest keeps the warrant and affidavit. A person wishing to obtain a copy of warrant simply obtains it from the agency that made the arrest, instead of having to determine which magistrate issued the warrant. Discovering which

magistrate had the warrant and affidavit could be difficult in counties where police departments use multiple magistrates to sign warrants.

The bill would create an administrative burden for clerks. In some counties, a magistrate's clerk does not know necessarily when a warrant has been served, or even signed. In some instances, a warrant might not have a cause number, in which case the clerk would have no way to file or track it.

**NOTES:**

The substitute modifies the original version of the bill by removing a requirement that an arresting officer show a copy of a supporting affidavit to the defendant as soon as possible. Also, the substitute adds the provision allowing a person to request copies of the warrant and affidavit upon paying the copying costs.