

SUBJECT: Venue for prosecution of certain misapplication of property crimes

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

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

WITNESSES: For — Ken Sparks
Against — None

BACKGROUND: Penal Code, sec. 32.45 states that if a person deals with funds held as a trustee or other fiduciary contrary to an agreement or legal responsibility, the person has committed misapplication of fiduciary property or property of a financial institution. Property Code, sec. 162.031 states that if a contractor or other individual receiving payment for a construction project retains, uses, disburses, or otherwise diverts these funds without fully paying all workers involved on the construction project, the contractor has committed misapplication of construction trust funds.

Because the Code of Criminal Procedure does not state a venue for these specific crimes, they are prosecuted, according to the general venue statute, in the county in which the offense takes place. In these cases, the misapplication of funds often occurs in a county in which a bank operates at which the funds were diverted, which often is not the same county where the defendant or the victim of the crime resides or works.

DIGEST: HB 2294 would allow a crime involving misapplication of property held as a fiduciary or property of a financial institution to be prosecuted in either the county in which the offender misapplied the property or in any other county through or into which the offender removed the property.

Misapplication of construction trust funds would be prosecuted in the county where the construction project was located.

The bill would take effect September 1, 2005, and would apply only to offenses occurring on or after this date.

**SUPPORTERS
SAY:**

By establishing alternative venues for cases of misapplication of property held as a fiduciary or property of a financial institution, HB 2294 would facilitate prosecution of these offenses and would ease the burden on victims. As things stand, these cases often must be prosecuted in a county where neither the victim nor the defendant lives simply because the bank where the diversion of funds occurred is located in that county. This burdens the local prosecutor with a case for which all the other evidence lies out of county, and may compel the victim to travel to testify. Given the opportunity, the most appropriate county for prosecution should be the one where the greatest motivation exists to make the victim whole. HB 2294 would allow for more efficient and potentially less costly prosecution of these cases and would align the venue for misapplication of property with that which is permissible under the venue statute for other forms of theft.

It makes sense for prosecution of misapplication of construction trust funds to occur in the county where the construction project is located. This would be the county in which the contractor had chosen to enter into the construction agreement, the subcontractors had agreed to perform construction jobs, and people had witnessed the construction activities. It is a burden and increases costs when it is necessary to move evidence, including witnesses and exhibits, to another location for trial purposes.

**OPPONENTS
SAY:**

Although HB 2294 would facilitate the prosecution of misapplication of property offenses, it also would be appropriate to extend venue to the county in which a fiduciary was appointed to serve. For example, if a court in Travis County appointed an individual executor of an estate, the executor could set up all relevant accounts in a different county. Should the executor misapply the funds, it would be appropriate to allow the case to be prosecuted in Travis County where the executor was appointed, because the judge familiar with the case as well as other interested parties reside there.