

BILL ANALYSIS

C.S.S.B. 1465
By: Lindsay
Judicial Affairs
Committee Report (Substituted)

BACKGROUND AND PURPOSE

C.S.S.B. 1465 allows the judges of the district courts of Harris County that give preference to criminal cases, with the consent and approval of the commissioners court, to appoint criminal law magistrates to perform duties associated with the administration of drug courts as authorized by the bill.

RULEMAKING AUTHORITY

It is the committee’s opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

SECTION 1. Amends Chapter 54, Government Code, by adding Subchapter X, as follows:

SUBCHAPTER X. CRIMINAL LAW MAGISTRATES IN HARRIS COUNTY

Sec. 54.1201. DEFINITIONS. Defines “drug court”.

Sec. 54.1202. APPOINTMENT.

- (a) Authorizes the judges of the district courts of Harris County that give preference to criminal cases, with the consent and approval of the commissioners court of Harris County to appoint the number of magistrates set by the commissioners court to perform the duties associated with the administration of drug courts and acceptance and sentencing on agreed plea bargains as authorized by this subchapter.
- (b) Requires each magistrate’s appointment to be made with the approval of the judges described in Subsection (a).
- (c) Requires each magistrate to serve equally in the courts of those judges, if the number of magistrates is less than the number of the appointing judges.

Sec. 54.1203. QUALIFICATIONS. Requires a magistrate to be a resident of this state and of Harris County and have been licensed to practice law in this state for at least four years.

Sec. 54.1204. COMPENSATION. Provides that a magistrate is entitled to the salary determined by the commissioners court of Harris County.

Sec. 54.1205. JUDICIAL IMMUNITY. Provides that a magistrate has the same judicial immunity as a district judge.

Sec. 54.1206. TERMINATION OF SERVICES. Authorizes the services of a magistrate to be terminated by a majority vote of the appointing judges of the district courts of Harris County that give preference to criminal cases.

Sec. 54.1207. PROCEEDINGS THAT MAY BE REFERRED.

- (a) Authorizes a judge to refer to a magistrate a criminal case for drug court proceedings and any criminal case involving an agreed plea bargain.
- (b) Prohibits a magistrate from presiding over a contested trial on the merits, regardless of whether the trial is before a jury.

Sec. 54.1208. ORDER OF REFERRAL.

- (a) Requires a judge or board of judges trying criminal cases to issue an order of referral specifying the magistrate's duties, in order to refer one or more cases to a drug court magistrate accepting an agreed plea bargain.
- (b) Authorizes an order of referral to limit the powers of the magistrate and direct the magistrate to report on specific issues and perform particular acts; set the time and place for the hearing; provide a date for filing the magistrate's findings; designate proceedings for more than one case over which the magistrate shall preside; direct the magistrate to call the court's docket; and set forth general powers and limitations of authority of the magistrate applicable to any case referred.

Sec. 54.1209. POWERS.

- (a) Authorizes a magistrate to whom a drug court case is referred to take certain actions, except as limited by an order of referral.
- (b) Authorizes a magistrate to whom an agreed plea bargain is referred to take certain actions, except as limited by an order of referral.
- (c) Prohibits a magistrate from entering a ruling on any issue of law or fact if that ruling could result in dismissal or require dismissal of a pending criminal prosecution, but authorizes the magistrate to make findings, conclusions, and recommendations on those issues.

Sec. 54.1210. RECORD OF PROCEEDINGS. Requires the court, at the request of a party, to provide that the proceedings before the magistrate be recorded.

Sec. 54.1211. WITNESS.

- (a) Provides that a witness who appears before a magistrate and is sworn is subject to the penalties for perjury provided by law.
- (b) Authorizes a supervising judge or judges to issue attachment against and to fine or imprison a witness whose failure to appear after being summoned or whose refusal to answer questions has been certified to the court.

Sec. 54.1212. PAPERS TRANSMITTED TO THE JUDGE. Requires the magistrate, at the conclusion of the proceedings, to transmit to the referring court any papers relating to the case, including the magistrate's findings, conclusions, orders, recommendations, or other action taken.

Sec. 54.1213. JUDICIAL ACTION.

- (a) Authorizes the supervising judge or judges of a drug court to modify, correct, reject, reverse, or recommit for further information any action taken by the magistrate.
- (b) Provides that if the supervising judge does not modify, correct, reject, reverse, or recommit an action of the magistrate, the action becomes the decree of the court.
- (c) Requires the supervising judge or judges, at the conclusion of each term during which the services of a magistrate are used, to enter a decree on the minutes of the referring court adopting the actions of the magistrate of which the court approves.

Sec. 54.1214. CRIMINAL LAW MAGISTRATES.

- (a) Authorizes the judge, if a criminal law magistrate appointed under this subchapter is absent or unable to serve, to appoint another criminal law magistrate to serve for the absent magistrate.
- (b) Provides that a criminal law magistrate serving for another magistrate under this section has the powers and shall perform the duties of the magistrate for whom the alternate is serving.

SECTION 2. Effective date: September 1, 2003.

EFFECTIVE DATE

September 1, 2003.

COMPARISON OF ORIGINAL TO SUBSTITUTE

The substitute adds a provision defining “drug court.”

The substitute replaces references to negotiated pleas with references to agreed plea bargain recommendations in several sections of the bill.