

By: Lindsay

S.B. No. 1465

A BILL TO BE ENTITLED

AN ACT

relating to the establishment of criminal law magistrates in Harris County.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 54, Government Code, is amended by adding Subchapter X to read as follows:

SUBCHAPTER X. CRIMINAL LAW MAGISTRATES IN HARRIS COUNTY

Sec. 54.1201. APPOINTMENT. (a) 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, may 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 negotiated pleas as authorized by this subchapter.

(b) Each magistrate's appointment must be made with the approval of the majority of the judges described in Subsection (a).

(c) If the number of magistrates is less than the number of the appointing judges, each magistrate shall serve equally in the courts of those judges.

Sec. 54.1202. QUALIFICATIONS. A magistrate must:

- (1) be a resident of this state and of Harris County;
- and
- (2) have been licensed to practice law in this state for at least four years.

1       Sec. 54.1203. COMPENSATION. A magistrate is entitled to  
2 the salary determined by the Commissioners Court of Harris County.

3       Sec. 54.1204. JUDICIAL IMMUNITY. A magistrate has the same  
4 judicial immunity as a district judge.

5       Sec. 54.1205. TERMINATION OF SERVICES. The services of a  
6 magistrate may be terminated by a majority vote of the appointing  
7 judges of the district courts of Harris County that give preference  
8 to criminal cases.

9       Sec. 54.1206. PROCEEDINGS THAT MAY BE REFERRED. (a) A  
10 judge may refer to a magistrate:

11           (1) a criminal case for drug court proceedings; and

12           (2) a criminal case involving a negotiated plea.

13       (b) A magistrate may not preside over a contested trial on  
14 the merits, regardless of whether the trial is before a jury.

15       Sec. 54.1207. ORDER OF REFERRAL. (a) To refer one or more  
16 cases to a drug court magistrate or a magistrate accepting a  
17 negotiated plea, a judge or board of judges trying criminal cases  
18 must issue an order of referral specifying the magistrate's duties.

19       (b) An order of referral may:

20           (1) limit the powers of the magistrate and direct the  
21 magistrate to report on specific issues and perform particular  
22 acts;

23           (2) set the time and place for the hearing;

24           (3) provide a date for filing the magistrate's  
25 findings;

26           (4) designate proceedings for more than one case over  
27 which the magistrate shall preside;

1           (5) direct the magistrate to call the court's docket;

2 and

3           (6) set forth general powers and limitations of  
4 authority of the magistrate applicable to any case referred.

5           Sec. 54.1208. POWERS. (a) Except as limited by an order of  
6 referral, a magistrate to whom a drug court case is referred may:

7           (1) conduct hearings;

8           (2) hear evidence;

9           (3) compel production of relevant evidence;

10          (4) rule on admissibility of evidence;

11          (5) issue summons for the appearance of witnesses;

12          (6) examine witnesses;

13          (7) swear witnesses for hearings;

14          (8) make findings of fact on evidence;

15          (9) formulate conclusions of law;

16          (10) rule on preliminary motions;

17          (11) recommend the rulings, orders, or judgment to be  
18 made in a case;

19          (12) regulate proceedings in a hearing;

20          (13) in a case:

21                  (A) accept a negotiated plea of guilty;

22                  (B) enter a finding of guilt and impose or  
23 suspend sentence; or

24                  (C) defer adjudication of guilt; and

25          (14) perform any act and take any measure necessary  
26 and proper for the efficient performance of the drug court and the  
27 duties required by the order of referral.

1           (b) Except as limited by an order of referral, a magistrate  
2 to whom a negotiated plea is referred may:

3           (1) in a case:

4                   (A) accept a negotiated plea;

5                   (B) enter a finding of guilt and impose or  
6 suspend sentence; or

7                   (C) defer adjudication of guilt; and

8           (2) perform any act and take any measure necessary and  
9 proper for the efficient performance of the duties required by the  
10 order of referral.

11           (c) A magistrate may not enter a ruling on any issue of law  
12 or fact if that ruling could result in dismissal or require  
13 dismissal of a pending criminal prosecution, but the magistrate may  
14 make findings, conclusions, and recommendations on those issues.

15           Sec. 54.1209. RECORD OF PROCEEDINGS. At the request of a  
16 party the court shall provide that the proceedings before the  
17 magistrate be recorded.

18           Sec. 54.1210. WITNESS. (a) A witness who appears before a  
19 magistrate and is sworn is subject to the penalties for perjury  
20 provided by law.

21           (b) A supervising judge or judges may issue attachment  
22 against and may fine or imprison a witness whose failure to appear  
23 after being summoned or whose refusal to answer questions has been  
24 certified to the court.

25           Sec. 54.1211. PAPERS TRANSMITTED TO THE JUDGE. At the  
26 conclusion of the proceedings, a magistrate shall transmit to the  
27 referring court any papers relating to the case, including the

1 magistrate's findings, conclusions, orders, recommendations, or  
2 other action taken.

3 Sec. 54.1212. JUDICIAL ACTION. (a) The supervising judge  
4 or judges of a drug court may modify, correct, reject, reverse, or  
5 recommit for further information any action taken by the  
6 magistrate.

7 (b) If the supervising judge or judges do not modify,  
8 correct, reject, reverse, or recommit an action of the magistrate,  
9 the action becomes the decree of the court.

10 (c) At the conclusion of each term during which the services  
11 of a magistrate are used, the supervising judge or judges shall  
12 enter a decree on the minutes of the referring court adopting the  
13 actions of the magistrate of which the court approves.

14 Sec. 54.1213. CRIMINAL LAW MAGISTRATES. (a) If a criminal  
15 law magistrate appointed under this subchapter is absent or unable  
16 to serve, the judge referring the case may appoint another criminal  
17 law magistrate to serve for the absent magistrate.

18 (b) A criminal law magistrate serving for another  
19 magistrate under this section has the powers and shall perform the  
20 duties of the magistrate for whom he is serving.

21 SECTION 2. This Act takes effect September 1, 2003.