

By: Lindsay

S.B. No. 1465

Substitute the following for S.B. No. 1465:

By: Hartnett

C.S.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. DEFINITIONS. In this chapter, "drug court" has the meaning assigned by Section 469.001, Health and Safety Code.

Sec. 54.1202. 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 agreed plea bargains 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. 54.1203. QUALIFICATIONS. A magistrate must:

(1) be a resident of this state and of Harris County;

1 and

2 (2) have been licensed to practice law in this state
3 for at least four years.

4 Sec. 54.1204. COMPENSATION. A magistrate is entitled to
5 the salary determined by the Commissioners Court of Harris County.

6 Sec. 54.1205. JUDICIAL IMMUNITY. A magistrate has the same
7 judicial immunity as a district judge.

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

12 Sec. 54.1207. PROCEEDINGS THAT MAY BE REFERRED. (a) A
13 judge may refer to a magistrate:

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

15 (2) a criminal case involving an agreed plea bargain
16 recommendation as to punishment or an agreed recommendation for a
17 presentence investigation report in which the plea will be accepted
18 by the magistrate and the sentence determined by the judge.

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

21 Sec. 54.1208. ORDER OF REFERRAL. (a) To refer one or more
22 cases to a drug court magistrate or a magistrate accepting an agreed
23 plea bargain recommendation, a judge or board of judges trying
24 criminal cases must issue an order of referral specifying the
25 magistrate's duties.

26 (b) An order of referral may:

27 (1) limit the powers of the magistrate and direct the

1 magistrate to report on specific issues and perform particular
2 acts;

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

4 (3) provide a date for filing the magistrate's
5 findings;

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

8 (5) direct the magistrate to call the court's docket;
9 and

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

12 Sec. 54.1209. POWERS. (a) Except as limited by an order of
13 referral, a magistrate to whom a drug court case is referred may:

14 (1) conduct hearings;

15 (2) hear evidence;

16 (3) compel production of relevant evidence;

17 (4) rule on admissibility of evidence;

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

19 (6) examine witnesses;

20 (7) swear witnesses for hearings;

21 (8) make findings of fact on evidence;

22 (9) formulate conclusions of law;

23 (10) rule on preliminary motions;

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

26 (12) regulate proceedings in a hearing;

27 (13) in a case referred under Section 54.1207(a)(1):

1 (A) accept an agreed plea of guilty or an agreed
2 plea bargain recommendation;

3 (B) enter a finding of guilt and impose or
4 suspend sentence under an agreed plea bargain recommendation; or

5 (C) defer adjudication of guilt under an agreed
6 plea bargain recommendation; and

7 (14) perform any act and take any measure necessary
8 and proper for the efficient performance of the drug court or the
9 duties required by the order of referral.

10 (b) Except as limited by an order of referral, a magistrate
11 to whom an agreed plea bargain recommendation is referred may:

12 (1) in a case referred under Section 54.1207(a)(2):

13 (A) accept an agreed plea bargain recommendation
14 related to punishment;

15 (B) accept an agreed recommendation for a
16 presentence investigation report in which the plea will be accepted
17 by the magistrate and the sentence determined by the judge;

18 (C) enter a finding of guilt and impose or
19 suspend sentence under an agreed plea bargain recommendation; or

20 (D) defer adjudication of guilt under an agreed
21 plea bargain recommendation; and

22 (2) perform any act and take any measure necessary and
23 proper for the efficient performance of the duties required by the
24 order of referral.

25 (c) A magistrate may not enter a ruling on any issue of law
26 or fact if that ruling could result in dismissal or require
27 dismissal of a pending criminal prosecution, but the magistrate may

1 make findings, conclusions, and recommendations on those issues.

2 Sec. 54.1210. RECORD OF PROCEEDINGS. At the request of a
3 party, the court shall provide that the proceedings before the
4 magistrate be recorded.

5 Sec. 54.1211. WITNESS. (a) A witness who appears before a
6 magistrate and is sworn is subject to the penalties for perjury
7 provided by law.

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

12 Sec. 54.1212. PAPERS TRANSMITTED TO THE JUDGE. At the
13 conclusion of the proceedings, a magistrate shall transmit to the
14 referring court any papers relating to the case, including the
15 magistrate's findings, conclusions, orders, recommendations, or
16 other action taken.

17 Sec. 54.1213. JUDICIAL ACTION. (a) The supervising judge
18 or judges of a drug court may modify, correct, reject, reverse, or
19 recommit for further information any action taken by the
20 magistrate.

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

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

1 Sec. 54.1214. CRIMINAL LAW MAGISTRATES. (a) If a criminal
2 law magistrate appointed under this subchapter is absent or unable
3 to serve, the judge referring the case may appoint another criminal
4 law magistrate to serve for the absent magistrate.

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

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