

By: Puente

H.B. No. 2109

A BILL TO BE ENTITLED

AN ACT

relating to additional criminal law magistrates in Bexar County.

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

SECTION 1. Subchapter N, Chapter 54, Government Code, is amended by adding Section 54.900 to read as follows:

Sec. 54.900. APPLICABILITY OF SUBCHAPTER. The provisions of this subchapter apply only to a criminal law magistrate in Bexar County who is appointed under this subchapter.

SECTION 2. Chapter 54, Government Code, is amended by adding Subchapter AA to read as follows:

SUBCHAPTER AA. ADDITIONAL CRIMINAL LAW MAGISTRATES IN BEXAR COUNTY

Sec. 54.1301. APPLICABILITY OF SUBCHAPTER. The provisions of this subchapter apply only to a criminal law magistrate in Bexar County who is appointed under this subchapter.

Sec. 54.1302. APPOINTMENT; PRESIDING MAGISTRATE. (a) The judges of the district courts of Bexar County that give preference to criminal cases and the judges of the county courts at law of Bexar County that give preference to criminal cases, with the consent and approval of the Commissioners Court of Bexar County, may:

(1) appoint the number of magistrates set by the commissioners court to perform the duties authorized by this subchapter; and

(2) select one magistrate appointed under Subdivision

1 (1) to serve as the presiding magistrate to supervise the other
2 magistrates appointed under that subdivision.

3 (b) Each magistrate's appointment, as well as the selection
4 of the presiding magistrate, must be made with the approval of
5 two-thirds of the judges described by Subsection (a).

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

9 Sec. 54.1303. QUALIFICATIONS. To be eligible for
10 appointment as a magistrate, a person must:

11 (1) be a resident of this state; and

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

14 Sec. 54.1304. COMPENSATION. (a) A magistrate is entitled
15 to the salary determined by the Commissioners Court of Bexar
16 County.

17 (b) The magistrate's salary is paid from the county fund
18 available for payment of officers' salaries.

19 Sec. 54.1305. JUDICIAL IMMUNITY. A magistrate has the same
20 judicial immunity as a district judge.

21 Sec. 54.1306. CLERK. The magistrates appointed under this
22 subchapter may appoint a person to serve as clerk. The clerk shall
23 maintain the records from cases referred from district courts,
24 county courts at law, and, if authorized under Section 54.1309,
25 municipal courts, subject to Section 54.1314.

26 Sec. 54.1307. TERMINATION OF SERVICES. (a) A magistrate
27 who serves a single court serves at the will of the judge.

1 (b) The services of a magistrate who serves more than one
2 court may be terminated by a majority vote of the appointing judges.

3 Sec. 54.1308. PROCEEDINGS THAT MAY BE REFERRED. (a) Except
4 as provided by Subsection (b), a judge described by Section
5 54.1302(a) may refer to a magistrate any criminal case the judge
6 considers necessary and proper, including a criminal case for drug
7 court proceedings.

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

10 Sec. 54.1309. CERTAIN MUNICIPAL COURT PROCEEDINGS THAT MAY
11 BE REFERRED. (a) A municipality that has any portion of the
12 municipality's territory located within the boundaries of Bexar
13 County may:

14 (1) enter into an interlocal agreement with Bexar
15 County providing for the referral of cases from the municipal
16 courts of that municipality to a magistrate appointed under this
17 subchapter; and

18 (2) by ordinance, authorize the municipal court judges
19 to refer cases pending in the municipal courts to a magistrate
20 appointed under this subchapter.

21 (b) A municipal court judge who is authorized to refer a
22 case to a magistrate as provided by Subsection (a) may refer one or
23 more cases to a magistrate in the manner provided by Section
24 54.1310. The magistrate to whom the case is referred may exercise
25 any power conferred on the magistrate under Section 54.1311, except
26 as limited by the order of referral.

27 Sec. 54.1310. ORDER OF REFERRAL. (a) To refer one or more

1 cases to a magistrate, a judge must issue an order of referral
2 specifying the magistrate's duties.

3 (b) An order of referral may:

4 (1) limit the powers of the magistrate and direct the
5 magistrate to report on specific issues, perform particular acts,
6 or receive and report on evidence only;

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

8 (3) prescribe a closing date for the hearing;

9 (4) provide a date for filing the magistrate's
10 findings;

11 (5) designate proceedings for more than one case over
12 which the magistrate shall preside;

13 (6) direct the magistrate to call the court's docket;
14 and

15 (7) set forth general powers and limitations of
16 authority of the magistrate applicable to any case referred.

17 Sec. 54.1311. POWERS. (a) Except as limited by an order of
18 referral, a magistrate to whom a case is referred may:

19 (1) perform the duties of a magistrate under the Code
20 of Criminal Procedure;

21 (2) conduct hearings;

22 (3) hear evidence;

23 (4) compel production of relevant evidence;

24 (5) rule on admissibility of evidence;

25 (6) issue summons for the appearance of witnesses;

26 (7) examine witnesses;

27 (8) swear witnesses for hearings;

- 1 (9) make findings of fact on evidence;
2 (10) formulate conclusions of law;
3 (11) rule on preliminary motions;
4 (12) recommend the rulings, orders, or judgment to be
5 made in a case;
6 (13) regulate proceedings in a hearing;
7 (14) set bonds; and
8 (15) accept an agreed plea of guilty or nolo
9 contendere or an agreed plea bargain recommendation.

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

14 Sec. 54.1312. COURT REPORTER. At the request of a party in
15 a case that is referred from a court of record, the court shall
16 provide a court reporter to record the proceedings before the
17 magistrate.

18 Sec. 54.1313. 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 referring court may issue attachment against and may
22 fine or imprison a witness whose failure to appear after being
23 summoned or whose refusal to answer questions has been certified to
24 the court.

25 Sec. 54.1314. PAPERS TRANSMITTED TO 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. 54.1315. JUDICIAL ACTION. (a) A referring court may
4 modify, correct, reject, reverse, or recommit for further
5 information any action taken by the magistrate.

6 (b) If the court does not modify, correct, reject, reverse,
7 or recommit an action of the magistrate, the action becomes the
8 decree of the court.

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

13 Sec. 54.1316. COSTS OF MAGISTRATE. The court shall
14 determine if the nonprevailing party is able to defray the costs of
15 the magistrate. If the court determines that the nonprevailing
16 party is able to pay those costs, the court shall tax the
17 magistrate's fees as costs against the nonprevailing party.

18 SECTION 3. Article 2.09, Code of Criminal Procedure, is
19 amended to read as follows:

20 Art. 2.09. WHO ARE MAGISTRATES. Each of the following
21 officers is a magistrate within the meaning of this Code: The
22 justices of the Supreme Court, the judges of the Court of Criminal
23 Appeals, the justices of the Courts of Appeals, the judges of the
24 District Court, the magistrates appointed by the judges of the
25 district courts of Bexar County, Dallas County, or Tarrant County
26 that give preference to criminal cases, the criminal law hearing
27 officers for Harris County appointed under Subchapter L, Chapter

1 54, Government Code, the criminal law hearing officers for Cameron
2 County appointed under Subchapter BB, Chapter 54, Government Code,
3 the magistrates appointed by the judges of the district courts of
4 Lubbock County, Nolan County, or Webb County, the magistrates
5 appointed by the judges of the criminal district courts of Dallas
6 County or Tarrant County, the masters appointed by the judges of the
7 district courts and the county courts at law that give preference to
8 criminal cases in Jefferson County, the magistrates appointed by
9 the judges of the district courts and the statutory county courts of
10 Brazos County or Williamson County, the magistrates appointed by
11 the judges of the district courts and statutory county courts that
12 give preference to criminal cases in Travis County or Bexar County,
13 the county judges, the judges of the county courts at law, judges of
14 the county criminal courts, the judges of statutory probate courts,
15 the associate judges appointed by the judges of the statutory
16 probate courts under Subchapter G, Chapter 54, Government Code, the
17 justices of the peace, and the mayors and recorders and the judges
18 of the municipal courts of incorporated cities or towns.

19 SECTION 4. This Act takes effect immediately if it receives
20 a vote of two-thirds of all the members elected to each house, as
21 provided by Section 39, Article III, Texas Constitution. If this
22 Act does not receive the vote necessary for immediate effect, this
23 Act takes effect September 1, 2007.