1                                          AN ACT

2 relating to the appointment and duties of criminal magistrates for

3 certain courts in Nueces County.

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

5         SECTION 1.  Article 2.09, Code of Criminal Procedure, is

6 amended to read as follows:

7         Art. 2.09.  WHO ARE MAGISTRATES. Each of the following

8 officers is a magistrate within the meaning of this Code:  The

9 justices of the Supreme Court, the judges of the Court of Criminal

10 Appeals, the justices of the Courts of Appeals, the judges of the

11 District Court, the magistrates appointed by the judges of the

12 district courts of Bexar County, Dallas County, or Tarrant County

13 that give preference to criminal cases, the criminal law hearing

14 officers for Harris County appointed under Subchapter L, Chapter

15 54, Government Code, the criminal law hearing officers for Cameron

16 County appointed under Subchapter BB, Chapter 54, Government Code,

17 the magistrates appointed by the judges of the district courts of

18 Lubbock County, Nolan County, or Webb County, the magistrates

19 appointed by the judges of the criminal district courts of Dallas

20 County or Tarrant County, the masters appointed by the judges of the

21 district courts and the county courts at law that give preference to

22 criminal cases in Jefferson County, the magistrates appointed by

23 the judges of the district courts and the statutory county courts of

24 Brazos County, Nueces County, or Williamson County, the magistrates

appointed by the judges of the district courts and statutory county courts that give preference to criminal cases in Travis County, the county judges, the judges of the county courts at law, judges of the county criminal courts, the judges of statutory probate courts, the associate judges appointed by the judges of the statutory probate courts under Subchapter G, Chapter 54, Government Code, the justices of the peace, and the mayors and recorders and the judges of the municipal courts of incorporated cities or towns.

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

SUBCHAPTER FF. CRIMINAL LAW MAGISTRATES IN NUECES COUNTY

Sec. 54.1781. APPLICATION. This subchapter applies to the district courts and the county courts at law in Nueces County.

Sec. 54.1782. APPOINTMENT; COMPENSATION. (a) The Commissioners Court of Nueces County shall set the number of magistrates needed to perform the duties authorized by this subchapter.

(b) A magistrate shall be paid a salary determined by the Commissioners Court of Nueces County.

(c) The judges of the district courts who wish to use the services of a magistrate may jointly appoint the magistrates that will assist their courts. The judges of the county courts at law who wish to use the services of a magistrate may jointly appoint the magistrates that will assist their courts. A judge who uses the services of a magistrate may determine the extent to which those services are used in the judge's court.

(d) On agreement between the judges of the district courts

1  and the judges of the county courts at law who wish to use the

2  services of a magistrate, a magistrate may serve in both those

3  district courts and those county courts at law.  A magistrate

4  serving in both the district courts and the county courts at law

5  shall spend half the magistrate's time in the district courts and

6  half in the county courts at law.

7  (e)  If the number of magistrates is less than the number of

8  the judges who wish to use the services of a magistrate, each

9  magistrate shall serve equally in the courts of those judges.

10  (f)  A magistrate serves a one-year term, unless the

11  magistrate is terminated under Section 54.1789.

12  (g)  A magistrate may be employed on a full-time or part-time

13  basis.  A court served by the magistrate shall determine the

14  magistrate's work schedule.

15  Sec. 54.1783.  ELIGIBILITY FOR APPOINTMENT.  In determining

16  whom to appoint as a magistrate under this subchapter, the judges of

17  the district courts or the judges of the county courts at law, as

18  applicable, shall consider persons who:

19  (1)  are licensed to practice law in this state;

20  (2)  reside in Nueces County;

21  (3)  have at least 10 years of active experience in

22  criminal law practice; and

23  (4)  exhibit judicial temperaments.

24  Sec. 54.1784.  JUDICIAL IMMUNITY.  A magistrate has the same

25  judicial immunity as a district judge or judge of a county court at

26  law, as applicable.

27  Sec. 54.1785.  STAFF FOR MAGISTRATE.  (a)  The clerk of a

1 court a magistrate serves shall provide a clerk for the magistrate.

2 (b) A sheriff's deputy shall attend a proceeding conducted

3 by a magistrate and act as a bailiff.

4 Sec. 54.1786. PROCEEDINGS THAT MAY BE REFERRED. A judge who

5 appoints a magistrate under Section 54.1782 may refer to the

6 magistrate any criminal case for proceedings involving:

7 (1) arraignment of defendants;

8 (2) a negotiated plea of guilty or no contest;

9 (3) sentencing for a negotiated plea of guilty or no

10 contest;

11 (4) ordering of community service;

12 (5) a pretrial motion;

13 (6) an examining trial;

14 (7) a bond forfeiture suit;

15 (8) issuance of capias;

16 (9) issuance of arrest and search warrants;

17 (10) setting of bonds;

18 (11) a motion to increase or decrease a bond;

19 (12) a hearing on a protective order;

20 (13) a motion to grant, modify, revoke, or extend

21 community supervision or to proceed to an adjudication;

22 (14) a pretrial diversion;

23 (15) civil commitment matters under Subtitle C, Title

24 7, Health and Safety Code;

25 (16) an agreed recommendation for a presentence

26 investigation report for determination of a sentence; and

27 (17) any other matter the judge considers necessary

1 and proper.

2 Sec. 54.1787. POWERS. Except as limited by an order of

3 referral, a magistrate to whom a case is referred may:

4 (1) conduct hearings;

5 (2) hear evidence;

6 (3) compel production of relevant evidence;

7 (4) rule on admissibility of evidence;

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

9 (6) examine witnesses;

10 (7) swear witnesses for hearings;

11 (8) make findings of fact on evidence;

12 (9) formulate conclusions of law;

13 (10) rule on pretrial motions;

14 (11) recommend the rulings, orders, or judgment to be

15 made in a case;

16 (12) regulate proceedings in a hearing;

17 (13) in any case referred under Section 54.1786:

18 (A) accept a negotiated plea of guilty;

19 (B) enter a finding of guilt and impose or

20 suspend sentence; or

21 (C) defer adjudication of guilt; and

22 (14) do 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 Sec. 54.1788. DISMISSAL. A magistrate appointed under this

26 chapter may not dismiss a case.

27 Sec. 54.1789. TERMINATION OF SERVICES. Regardless of

1 whether a magistrate serves in both the district courts and the

2 county courts at law or whether the magistrate serves in only one of

3 those types of courts, the magistrate's service with respect to a

4 particular type of court may be terminated only on a majority vote

5 of the judges of that type of court who appointed the magistrate

6 under Section 54.1782, or their successors.

7 Sec. 54.1790. ABSENCE OF MAGISTRATE. (a) If a magistrate

8 appointed under this subchapter is absent or unable to serve, the

9 local administrative judge of the type of court with respect to

10 which the magistrate served may appoint a temporary magistrate to

11 serve for the absent magistrate.

12 (b) A temporary magistrate serving for another magistrate

13 under this section has the powers and shall perform the duties of

14 the magistrate for whom the temporary magistrate is serving.

15 Sec. 54.1791. RECORD OF PROCEEDINGS. A criminal proceeding

16 in a magistrate court shall be recorded by a good quality electronic

17 audio or videotape recording device, unless the defendant requests

18 that a court reporter be present. The record shall be retained by

19 the clerk of the court as required by law.

20 Sec. 54.1792. PAPERS TRANSMITTED TO JUDGE. At the

21 conclusion of the proceedings, a magistrate shall transmit to the

22 referring court as soon as possible any papers relating to the case,

23 including the magistrate's findings, conclusions, orders,

24 recommendations, or other action taken.

25 Sec. 54.1793. JUDICIAL ACTION. (a) The judge of the court

26 in which the case is pending may modify, correct, reject, reverse,

27 or recommit for further information any action taken by the

1 magistrate.

2 (b) If the supervising judge or judges do not modify,

3 correct, reject, reverse, or recommit an action of the magistrate

4 within the time required by law, the action becomes the order,

5 judgment, or decree of the court.

6 Sec. 54.1794. PRETRIAL DIVERSION. As a condition for a

7 defendant to enter any pretrial diversion program or the functional

8 equivalent that may be operated in Nueces County, a defendant must

9 file in the court in which the charges are pending a sworn waiver of

10 the defendant's right to a speedy trial under the United States

11 Constitution and other law and a motion requesting the court to

12 approve the waiver without a hearing. If the court approves the

13 waiver, the defendant is eligible for consideration for acceptance

14 into a pretrial diversion or equivalent program.

15 SECTION 3. This Act takes effect September 1, 2007.

H.B. No. 4107

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   President of the Senate             Speaker of the House

     I certify that H.B. No. 4107 was passed by the House on May 4, 2007, by the following vote:  Yeas 144, Nays 0, 2 present, not voting; and that the House concurred in Senate amendments to H.B. No. 4107 on May 25, 2007, by the following vote:  Yeas 139, Nays 0, 2 present, not voting.

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         Chief Clerk of the House

     I certify that H.B. No. 4107 was passed by the Senate, with amendments, on May 23, 2007, by the following vote:  Yeas 31, Nays 0.

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         Secretary of the Senate

APPROVED: _____

         Date

_____

        Governor