

By: Herrero

H.B. No. 4107

A BILL TO BE ENTITLED

AN ACT

1  
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

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

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

11 SUBCHAPTER FF. CRIMINAL LAW MAGISTRATES IN NUECES COUNTY

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

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

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

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

27 (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 give priority to a retired or former judge, as  
19 those terms are defined by Section 74.041. If no retired or former  
20 judge desires to be appointed, the appointing judges shall consider  
21 for appointment persons who:

- 22 (1) are licensed to practice law in this state;  
23 (2) reside in Nueces County;  
24 (3) have at least 10 years of active experience in  
25 criminal law practice; and  
26 (4) exhibit judicial temperaments.

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

1 judicial immunity as a district judge or judge of a county court at  
2 law, as applicable.

3 Sec. 54.1785. STAFF FOR MAGISTRATE. (a) The clerk of a  
4 court a magistrate serves shall provide a clerk for the magistrate.

5 (b) A sheriff's deputy shall attend a proceeding conducted  
6 by a magistrate and act as a bailiff.

7 Sec. 54.1786. PROCEEDINGS THAT MAY BE REFERRED. A judge who  
8 appoints a magistrate under Section 54.1782 may refer to the  
9 magistrate any criminal case for proceedings involving:

- 10 (1) arraignment of defendants;
- 11 (2) a negotiated plea of guilty or no contest;
- 12 (3) sentencing for a negotiated plea of guilty or no  
13 contest;
- 14 (4) ordering of community service;
- 15 (5) a pretrial motion;
- 16 (6) an examining trial;
- 17 (7) a bond forfeiture suit;
- 18 (8) issuance of capias;
- 19 (9) issuance of arrest and search warrants;
- 20 (10) setting of bonds;
- 21 (11) a motion to increase or decrease a bond;
- 22 (12) a hearing on a protective order;
- 23 (13) a motion to grant, modify, revoke, or extend  
24 community supervision or to proceed to an adjudication;
- 25 (14) a pretrial diversion;
- 26 (15) civil commitment matters under Subtitle C, Title  
27 7, Health and Safety Code;

1           (16) an agreed recommendation for a presentence  
2 investigation report for determination of a sentence; and

3           (17) any other matter the judge considers necessary  
4 and proper.

5           Sec. 54.1787. POWERS. Except as limited by an order of  
6 referral, a magistrate to whom a 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 pretrial 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 any case referred under Section 54.1786:

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) do any act and take any measure necessary and  
26 proper for the efficient performance of the duties required by the  
27 order of referral.

1       Sec. 54.1788. DISMISSAL. A magistrate appointed under this  
2 chapter may not dismiss a case.

3       Sec. 54.1789. TERMINATION OF SERVICES. Regardless of  
4 whether a magistrate serves in both the district courts and the  
5 county courts at law or whether the magistrate serves in only one of  
6 those types of courts, the magistrate's service with respect to a  
7 particular type of court may be terminated only on a majority vote  
8 of the judges of that type of court who appointed the magistrate  
9 under Section 54.1782, or their successors.

10       Sec. 54.1790. ABSENCE OF MAGISTRATE. (a) If a magistrate  
11 appointed under this subchapter is absent or unable to serve, the  
12 local administrative judge of the type of court with respect to  
13 which the magistrate served may appoint a temporary magistrate to  
14 serve for the absent magistrate.

15       (b) A temporary magistrate serving for another magistrate  
16 under this section has the powers and shall perform the duties of  
17 the magistrate for whom the temporary magistrate is serving.

18       Sec. 54.1791. RECORD OF PROCEEDINGS. A criminal proceeding  
19 in a magistrate court shall be recorded by a good quality electronic  
20 audio or videotape recording device, unless the defendant requests  
21 that a court reporter be present. The record shall be retained by  
22 the clerk of the court as required by law.

23       Sec. 54.1792. PAPERS TRANSMITTED TO JUDGE. At the  
24 conclusion of the proceedings, a magistrate shall transmit to the  
25 referring court as soon as possible any papers relating to the case,  
26 including the magistrate's findings, conclusions, orders,  
27 recommendations, or other action taken.

1       Sec. 54.1793. JUDICIAL ACTION. (a) The judge of the court  
2 in which the case is pending may modify, correct, reject, reverse,  
3 or recommit for further information any action taken by the  
4 magistrate.

5       (b) If the supervising judge or judges do not modify,  
6 correct, reject, reverse, or recommit an action of the magistrate  
7 within the time required by law, the action becomes the order,  
8 judgment, or decree of the court.

9       Sec. 54.1794. PRETRIAL DIVERSION. As a condition for a  
10 defendant to enter any pretrial diversion program or the functional  
11 equivalent that may be operated in Nueces County, a defendant must  
12 file in the court in which the charges are pending a sworn waiver of  
13 the defendant's right to a speedy trial under the United States  
14 Constitution and other law and a motion requesting the court to  
15 approve the waiver without a hearing. If the court approves the  
16 waiver, the defendant is eligible for consideration for acceptance  
17 into a pretrial diversion or equivalent program.

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