

By: Wentworth

S.B. No. 1297

Substitute the following for S.B. No. 1297:

By: Hartnett

C.S.S.B. No. 1297

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 54.9001 to read as follows:

Sec. 54.9001. 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) The term of appointment of a magistrate under this
7 section may not exceed two years, subject to Section 54.1307.

8 (d) If the number of magistrates appointed under this
9 section is less than the number of the appointing judges, each judge
10 described by Subsection (a) shall have equal access to the services
11 of the magistrates appointed under this section.

12 Sec. 54.1303. QUALIFICATIONS. To be eligible for
13 appointment as a magistrate under this subchapter, a person must:

14 (1) be a resident of Bexar County; and

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

17 Sec. 54.1304. COMPENSATION. (a) A magistrate appointed
18 under this subchapter is entitled to the salary determined by the
19 Commissioners Court of Bexar County.

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

22 Sec. 54.1305. JUDICIAL IMMUNITY. A magistrate appointed
23 under this subchapter has the same judicial immunity as a district
24 judge.

25 Sec. 54.1306. CLERK. (a) The district clerk shall perform
26 the statutory duties described by Section 51.303 with respect to
27 all cases and matters referred to the magistrates appointed under

1 this subchapter from the district courts, county courts at law,
2 and, if authorized under Section 54.1309, municipal courts, subject
3 to Subsection (b).

4 (b) At the conclusion of a proceeding, the district clerk
5 shall transmit to the referring court any papers relating to the
6 case or matter referred to a magistrate appointed under this
7 subchapter, including the magistrate's findings, conclusions,
8 orders, recommendations, or other action taken, except when the
9 magistrate is performing the duties of a magistrate under the Code
10 of Criminal Procedure.

11 Sec. 54.1307. TERMINATION OF SERVICES. The services of a
12 magistrate appointed under this subchapter may be terminated by a
13 majority vote of the appointing judges.

14 Sec. 54.1308. PROCEEDINGS THAT MAY BE REFERRED. (a) Except
15 as provided by Subsection (b), a judge described by Section
16 54.1302(a) may refer to a magistrate appointed under this
17 subchapter any criminal cases or matters the judge considers
18 necessary and proper, including a criminal case for drug court
19 proceedings.

20 (b) A magistrate appointed under this subchapter may not
21 preside over a contested trial on the merits, regardless of whether
22 the trial is before a jury.

23 (c) A person in custody who is brought before a magistrate
24 appointed under this subchapter in a proceeding referred under this
25 section must be in the custody of a jailer who is certified by the
26 Commission on Law Enforcement Officer Standards and Education and
27 appointed by the county sheriff. The person in custody must remain

1 in the custody of the jailer until the person is released from
2 custody or the custody of the person is transferred in accordance
3 with a court order.

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

8 (1) enter into an interlocal agreement with Bexar
9 County providing for the referral of cases from the municipal
10 courts of that municipality to a magistrate appointed under this
11 subchapter; and

12 (2) by ordinance, authorize one or more municipal
13 court judges to refer cases pending in the municipal courts to a
14 magistrate appointed under this subchapter.

15 (b) A municipal court judge who is authorized to refer a
16 case to a magistrate as provided by Subsection (a) may refer one or
17 more cases to a magistrate in the manner provided by Section
18 54.1310. The magistrate to whom the case is referred may exercise
19 any power conferred on the magistrate under Section 54.1311, except
20 as limited by the order of referral.

21 Sec. 54.1310. ORDER OF REFERRAL. (a) To refer one or more
22 criminal cases or matters to a magistrate appointed under this
23 subchapter, a judge must issue an order of referral specifying the
24 magistrate's duties.

25 (b) An order of referral may relate to a single case or to a
26 specified type of criminal cases or matters.

27 (c) An order of referral may:

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

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

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

6 (4) provide a date for filing the magistrate's
7 findings;

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

10 (6) direct the magistrate to call the court's docket;
11 and

12 (7) set forth general powers and limitations of
13 authority of the magistrate applicable to any cases or matters
14 referred.

15 (d) Any magistrate appointed under this subchapter may
16 carry out the duties specified in an order of referral issued under
17 this subchapter.

18 Sec. 54.1311. POWERS. (a) Except as limited by an order of
19 referral, a magistrate appointed under this subchapter may:

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

22 (2) conduct hearings;

23 (3) hear evidence;

24 (4) compel production of relevant evidence;

25 (5) rule on admissibility of evidence;

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

27 (7) examine witnesses;

- 1 (8) swear witnesses for hearings;
2 (9) make findings of fact on evidence;
3 (10) formulate conclusions of law;
4 (11) rule on preliminary motions;
5 (12) recommend the rulings, orders, or judgment to be
6 made in a case;
7 (13) regulate proceedings in a hearing;
8 (14) set bonds;
9 (15) in any case referred from a municipal court as
10 authorized by Section 54.1309:
11 (A) accept a plea of guilty or nolo contendere;
12 (B) enter a finding of guilt, impose or suspend a
13 sentence, and establish conditions of community supervision;
14 (C) defer adjudication of guilt and establish
15 conditions of community supervision; or
16 (D) dismiss the case; and
17 (16) perform any act and take any measure necessary
18 and proper for the efficient performance of the duties required by
19 the order of referral.
20 (b) Except when performing the duties of a magistrate under
21 the Code of Criminal Procedure or as provided by Subsection
22 (a)(15)(D), a magistrate appointed under this subchapter may not
23 enter a ruling on any issue of law or fact if that ruling could
24 result in dismissal or require dismissal of a pending criminal
25 prosecution, but the magistrate may make findings, conclusions, and
26 recommendations on those issues, subject to Section 54.1314.
27 Sec. 54.1312. COURT REPORTER. The court shall provide a

1 court reporter to record the proceedings before a magistrate
2 appointed under this subchapter if:

3 (1) the appointment of a court reporter is required by
4 other law; or

5 (2) a party to a case involving an offense that is a
6 Class B misdemeanor or higher category of offense requests the
7 appointment of a court reporter, unless the magistrate appointed
8 under this subchapter is performing the duties of a magistrate
9 under the Code of Criminal Procedure.

10 Sec. 54.1313. WITNESS. (a) A witness who appears before a
11 magistrate appointed under this subchapter and is sworn is subject
12 to the penalties for perjury provided by law.

13 (b) A referring court may issue attachment against and may
14 fine or imprison a witness whose failure to appear after being
15 summoned or whose refusal to answer questions has been certified to
16 the court.

17 Sec. 54.1314. JUDICIAL ACTION. (a) Unless otherwise
18 prohibited by law and except when a magistrate appointed under this
19 subchapter is performing the duties of a magistrate under the Code
20 of Criminal Procedure, a referring court may modify, correct,
21 reject, reverse, or recommit for further information any action
22 taken by the magistrate.

23 (b) If the court does not modify, correct, reject, reverse,
24 or recommit an action of the magistrate, the action becomes the
25 decree of the court.

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

1 Art. 2.09. WHO ARE MAGISTRATES. Each of the following
2 officers is a magistrate within the meaning of this Code: The
3 justices of the Supreme Court, the judges of the Court of Criminal
4 Appeals, the justices of the Courts of Appeals, the judges of the
5 District Court, the magistrates appointed by the judges of the
6 district courts of Bexar County, Dallas County, or Tarrant County
7 that give preference to criminal cases, the criminal law hearing
8 officers for Harris County appointed under Subchapter L, Chapter
9 54, Government Code, the criminal law hearing officers for Cameron
10 County appointed under Subchapter BB, Chapter 54, Government Code,
11 the magistrates appointed by the judges of the district courts of
12 Lubbock County, Nolan County, or Webb County, the magistrates
13 appointed by the judges of the criminal district courts of Dallas
14 County or Tarrant County, the masters appointed by the judges of the
15 district courts and the county courts at law that give preference to
16 criminal cases in Jefferson County, the magistrates appointed by
17 the judges of the district courts and the statutory county courts of
18 Brazos County or Williamson County, the magistrates appointed by
19 the judges of the district courts and statutory county courts that
20 give preference to criminal cases in Travis County or Bexar County,
21 the county judges, the judges of the county courts at law, judges of
22 the county criminal courts, the judges of statutory probate courts,
23 the associate judges appointed by the judges of the statutory
24 probate courts under Subchapter G, Chapter 54, Government Code, the
25 justices of the peace, and the mayors and recorders and the judges
26 of the municipal courts of incorporated cities or towns.

27 SECTION 4. This Act takes effect immediately if it receives

C.S.S.B. No. 1297

1 a vote of two-thirds of all the members elected to each house, as
2 provided by Section 39, Article III, Texas Constitution. If this
3 Act does not receive the vote necessary for immediate effect, this
4 Act takes effect September 1, 2007.