By: Wentworth   S.B. No. 1297

A BILL TO BE ENTITLED

1   AN ACT

2 relating to additional criminal law magistrates in Bexar County.

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

4   SECTION 1. Subchapter N, Chapter 54, Government Code, is

5 amended by adding Section 54.900 to read as follows:

6   Sec. 54.900. APPLICABILITY OF SUBCHAPTER. The provisions

7 of this subchapter apply only to a criminal law magistrate in Bexar

8 County who is appointed under this subchapter.

9   SECTION 2. Chapter 54, Government Code, is amended by

10 adding Subchapter AA to read as follows:

11 SUBCHAPTER AA. ADDITIONAL CRIMINAL LAW MAGISTRATES IN BEXAR COUNTY

12   Sec. 54.1301. APPLICABILITY OF SUBCHAPTER. The provisions

13 of this subchapter apply only to a criminal law magistrate in Bexar

14 County who is appointed under this subchapter.

15   Sec. 54.1302. APPOINTMENT; PRESIDING MAGISTRATE. (a) The

16 judges of the district courts of Bexar County that give preference

17 to criminal cases and the judges of the county courts at law of

18 Bexar County that give preference to criminal cases, with the

19 consent and approval of the Commissioners Court of Bexar County,

20 may:

21   (1) appoint the number of magistrates set by the

22 commissioners court to perform the duties authorized by this

23 subchapter; and

24   (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.