

1-1 By: Wentworth S.B. No. 1297
1-2 (In the Senate - Filed March 7, 2007; March 19, 2007, read
1-3 first time and referred to Committee on Jurisprudence;
1-4 April 10, 2007, reported adversely, with favorable Committee
1-5 Substitute by the following vote: Yeas 5, Nays 0; April 10, 2007,
1-6 sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 1297 By: Wentworth

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to additional criminal law magistrates in Bexar County.
1-11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:
1-12 SECTION 1. Subchapter N, Chapter 54, Government Code, is
1-13 amended by adding Section 54.900 to read as follows:
1-14 Sec. 54.900. APPLICABILITY OF SUBCHAPTER. The provisions
1-15 of this subchapter apply only to a criminal law magistrate in Bexar
1-16 County who is appointed under this subchapter.
1-17 SECTION 2. Chapter 54, Government Code, is amended by
1-18 adding Subchapter AA to read as follows:
1-19 SUBCHAPTER AA. ADDITIONAL CRIMINAL LAW MAGISTRATES IN BEXAR COUNTY
1-20 Sec. 54.1301. APPLICABILITY OF SUBCHAPTER. The provisions
1-21 of this subchapter apply only to a criminal law magistrate in Bexar
1-22 County who is appointed under this subchapter.
1-23 Sec. 54.1302. APPOINTMENT; PRESIDING MAGISTRATE. (a) The
1-24 judges of the district courts of Bexar County that give preference
1-25 to criminal cases and the judges of the county courts at law of
1-26 Bexar County that give preference to criminal cases, with the
1-27 consent and approval of the Commissioners Court of Bexar County,
1-28 may:
1-29 (1) appoint the number of magistrates set by the
1-30 commissioners court to perform the duties authorized by this
1-31 subchapter; and
1-32 (2) select one magistrate appointed under Subdivision
1-33 (1) to serve as the presiding magistrate to supervise the other
1-34 magistrates appointed under that subdivision.
1-35 (b) Each magistrate's appointment, as well as the selection
1-36 of the presiding magistrate, must be made with the approval of
1-37 two-thirds of the judges described by Subsection (a).
1-38 (c) The term of appointment of a magistrate under this
1-39 section may not exceed two years, subject to Section 54.1307.
1-40 (d) If the number of magistrates appointed under this
1-41 section is less than the number of the appointing judges, each judge
1-42 described by Subsection (a) shall have equal access to the services
1-43 of the magistrates appointed under this section.
1-44 Sec. 54.1303. QUALIFICATIONS. To be eligible for
1-45 appointment as a magistrate under this subchapter, a person must:
1-46 (1) be a resident of Bexar County; and
1-47 (2) have been licensed to practice law in this state
1-48 for at least four years.
1-49 Sec. 54.1304. COMPENSATION. (a) A magistrate appointed
1-50 under this subchapter is entitled to the salary determined by the
1-51 Commissioners Court of Bexar County.
1-52 (b) The magistrate's salary is paid from the county fund
1-53 available for payment of officers' salaries.
1-54 Sec. 54.1305. JUDICIAL IMMUNITY. A magistrate appointed
1-55 under this subchapter has the same judicial immunity as a district
1-56 judge.
1-57 Sec. 54.1306. CLERK. (a) The district clerk shall perform
1-58 the statutory duties described by Section 51.303 with respect to
1-59 all cases and matters referred to the magistrates appointed under
1-60 this subchapter from the district courts, county courts at law,
1-61 and, if authorized under Section 54.1309, municipal courts, subject
1-62 to Subsection (b).
1-63 (b) At the conclusion of a proceeding, the district clerk

2-1 shall transmit to the referring court any papers relating to the
 2-2 case or matter referred to a magistrate appointed under this
 2-3 subchapter, including the magistrate's findings, conclusions,
 2-4 orders, recommendations, or other action taken, except when the
 2-5 magistrate is performing the duties of a magistrate under the Code
 2-6 of Criminal Procedure.

2-7 Sec. 54.1307. TERMINATION OF SERVICES. The services of a
 2-8 magistrate appointed under this subchapter may be terminated by a
 2-9 majority vote of the appointing judges.

2-10 Sec. 54.1308. PROCEEDINGS THAT MAY BE REFERRED.
 2-11 (a) Except as provided by Subsection (b), a judge described by
 2-12 Section 54.1302(a) may refer to a magistrate appointed under this
 2-13 subchapter any criminal cases or matters the judge considers
 2-14 necessary and proper, including a criminal case for drug court
 2-15 proceedings.

2-16 (b) A magistrate appointed under this subchapter may not
 2-17 preside over a contested trial on the merits, regardless of whether
 2-18 the trial is before a jury.

2-19 Sec. 54.1309. CERTAIN MUNICIPAL COURT PROCEEDINGS THAT MAY
 2-20 BE REFERRED. (a) A municipality that has any portion of the
 2-21 municipality's territory located within the boundaries of Bexar
 2-22 County may:

2-23 (1) enter into an interlocal agreement with Bexar
 2-24 County providing for the referral of cases from the municipal
 2-25 courts of that municipality to a magistrate appointed under this
 2-26 subchapter; and

2-27 (2) by ordinance, authorize one or more municipal
 2-28 court judges to refer cases pending in the municipal courts to a
 2-29 magistrate appointed under this subchapter.

2-30 (b) A municipal court judge who is authorized to refer a
 2-31 case to a magistrate as provided by Subsection (a) may refer one or
 2-32 more cases to a magistrate in the manner provided by Section
 2-33 54.1310. The magistrate to whom the case is referred may exercise
 2-34 any power conferred on the magistrate under Section 54.1311, except
 2-35 as limited by the order of referral.

2-36 Sec. 54.1310. ORDER OF REFERRAL. (a) To refer one or more
 2-37 criminal cases or matters to a magistrate appointed under this
 2-38 subchapter, a judge must issue an order of referral specifying the
 2-39 magistrate's duties.

2-40 (b) An order of referral may relate to a single case or to a
 2-41 specified type of criminal cases or matters.

2-42 (c) An order of referral may:
 2-43 (1) limit the powers of the magistrate and direct the
 2-44 magistrate to report on specific issues, perform particular acts,
 2-45 or receive and report on evidence only;

2-46 (2) set the time and place for the hearing;
 2-47 (3) prescribe a closing date for the hearing;
 2-48 (4) provide a date for filing the magistrate's
 2-49 findings;

2-50 (5) designate proceedings for more than one case over
 2-51 which the magistrate shall preside;

2-52 (6) direct the magistrate to call the court's docket;
 2-53 and

2-54 (7) set forth general powers and limitations of
 2-55 authority of the magistrate applicable to any cases or matters
 2-56 referred.

2-57 (d) Any magistrate appointed under this subchapter may
 2-58 carry out the duties specified in an order of referral issued under
 2-59 this subchapter.

2-60 Sec. 54.1311. POWERS. (a) Except as limited by an order
 2-61 of referral, a magistrate appointed under this subchapter may:

2-62 (1) perform the duties of a magistrate under the Code
 2-63 of Criminal Procedure;

2-64 (2) conduct hearings;

2-65 (3) hear evidence;

2-66 (4) compel production of relevant evidence;

2-67 (5) rule on admissibility of evidence;

2-68 (6) issue summons for the appearance of witnesses;

2-69 (7) examine witnesses;

3-1 (8) swear witnesses for hearings;
3-2 (9) make findings of fact on evidence;
3-3 (10) formulate conclusions of law;
3-4 (11) rule on preliminary motions;
3-5 (12) recommend the rulings, orders, or judgment to be
3-6 made in a case;
3-7 (13) regulate proceedings in a hearing;
3-8 (14) set bonds;
3-9 (15) in any case referred from a municipal court as
3-10 authorized by Section 54.1309:
3-11 (A) accept a plea of guilty or nolo contendere;
3-12 (B) enter a finding of guilt, impose or suspend a
3-13 sentence, and establish conditions of community supervision;
3-14 (C) defer adjudication of guilt and establish
3-15 conditions of community supervision; or
3-16 (D) dismiss the case; and
3-17 (16) perform any act and take any measure necessary
3-18 and proper for the efficient performance of the duties required by
3-19 the order of referral.
3-20 (b) Except when performing the duties of a magistrate under
3-21 the Code of Criminal Procedure or as provided by Subsection
3-22 (a)(15)(D), a magistrate appointed under this subchapter may not
3-23 enter a ruling on any issue of law or fact if that ruling could
3-24 result in dismissal or require dismissal of a pending criminal
3-25 prosecution, but the magistrate may make findings, conclusions, and
3-26 recommendations on those issues, subject to Section 54.1314.
3-27 Sec. 54.1312. COURT REPORTER. The court shall provide a
3-28 court reporter to record the proceedings before a magistrate
3-29 appointed under this subchapter if:
3-30 (1) the appointment of a court reporter is required by
3-31 other law; or
3-32 (2) a party to a case involving an offense that is a
3-33 Class B misdemeanor or higher category of offense requests the
3-34 appointment of a court reporter, unless the magistrate appointed
3-35 under this subchapter is performing the duties of a magistrate
3-36 under the Code of Criminal Procedure.
3-37 Sec. 54.1313. WITNESS. (a) A witness who appears before a
3-38 magistrate appointed under this subchapter and is sworn is subject
3-39 to the penalties for perjury provided by law.
3-40 (b) A referring court may issue attachment against and may
3-41 fine or imprison a witness whose failure to appear after being
3-42 summoned or whose refusal to answer questions has been certified to
3-43 the court.
3-44 Sec. 54.1314. JUDICIAL ACTION. (a) Unless otherwise
3-45 prohibited by law and except when a magistrate appointed under this
3-46 subchapter is performing the duties of a magistrate under the Code
3-47 of Criminal Procedure, a referring court may modify, correct,
3-48 reject, reverse, or recommit for further information any action
3-49 taken by the magistrate.
3-50 (b) If the court does not modify, correct, reject, reverse,
3-51 or recommit an action of the magistrate, the action becomes the
3-52 decree of the court.
3-53 SECTION 3. Article 2.09, Code of Criminal Procedure, is
3-54 amended to read as follows:
3-55 Art. 2.09. WHO ARE MAGISTRATES. Each of the following
3-56 officers is a magistrate within the meaning of this Code: The
3-57 justices of the Supreme Court, the judges of the Court of Criminal
3-58 Appeals, the justices of the Courts of Appeals, the judges of the
3-59 District Court, the magistrates appointed by the judges of the
3-60 district courts of Bexar County, Dallas County, or Tarrant County
3-61 that give preference to criminal cases, the criminal law hearing
3-62 officers for Harris County appointed under Subchapter L, Chapter
3-63 54, Government Code, the criminal law hearing officers for Cameron
3-64 County appointed under Subchapter BB, Chapter 54, Government Code,
3-65 the magistrates appointed by the judges of the district courts of
3-66 Lubbock County, Nolan County, or Webb County, the magistrates
3-67 appointed by the judges of the criminal district courts of Dallas
3-68 County or Tarrant County, the masters appointed by the judges of the
3-69 district courts and the county courts at law that give preference to

4-1 criminal cases in Jefferson County, the magistrates appointed by
4-2 the judges of the district courts and the statutory county courts of
4-3 Brazos County or Williamson County, the magistrates appointed by
4-4 the judges of the district courts and statutory county courts that
4-5 give preference to criminal cases in Travis County or Bexar County,
4-6 the county judges, the judges of the county courts at law, judges of
4-7 the county criminal courts, the judges of statutory probate courts,
4-8 the associate judges appointed by the judges of the statutory
4-9 probate courts under Subchapter G, Chapter 54, Government Code, the
4-10 justices of the peace, and the mayors and recorders and the judges
4-11 of the municipal courts of incorporated cities or towns.

4-12 SECTION 4. This Act takes effect immediately if it receives
4-13 a vote of two-thirds of all the members elected to each house, as
4-14 provided by Section 39, Article III, Texas Constitution. If this
4-15 Act does not receive the vote necessary for immediate effect, this
4-16 Act takes effect September 1, 2007.

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