

BILL ANALYSIS

Senate Research Center
81R3803 KFF-D

H.B. 1722
By: Castro, Gutierrez (Uresti)
Criminal Justice
5/17/2009
Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Current law does not explicitly authorize Bexar County magistrates to accept pleas on Class C misdemeanor or felony cases or to issue evidentiary search warrants for property or items constituting evidence of an offense or showing that a person committed an offense. Searching for an eligible judge to sign an evidentiary warrant in the middle of the night can often cost law enforcement officials important time during which the evidence may be lost or destroyed. Providing this authority to magistrates would increase the number of available judges during overnight hours and assist law enforcement officials in executing timely searches.

H.B. 1722 amends current law relating to the proceedings that may be referred to and the powers of a criminal law magistrate in Bexar County.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 54.906, Government Code, by amending Subsection (a) and adding Subsection (c), as follows:

(a) Authorizes a judge to refer to a magistrate any criminal case for proceedings involving the issuance of search warrants, including a search warrant under Article 18.02(10) (relating to a search warrant being issued to search for and seize property or items constituting evidence of an offense), Code of Criminal Procedure, notwithstanding Article 18.01(c) (relating to prohibiting a search warrant from being issued pursuant to Article 18.02 (10)), Code of Criminal Procedure; a plea of guilty or nolo contendere from a defendant charged with a felony, a Class C misdemeanor, or any misdemeanor if the defendant is charged with both misdemeanor and felony offenses; and any other matter the judge considers necessary and proper. Deletes existing text relating to including a negotiated plea of guilty before the court.

(c) Provides that Subsection (a)(5) (relating to the issuance of search warrants) does not apply to the issuance of a subsequent search warrant under Article 18.02(10), Code of Criminal Procedure.

SECTION 2. Amends Section 54.908, Government Code, as follows:

Sec. 54.908. POWERS. (a) Authorizes a magistrate to whom a case is referred, except as limited by an order of referral, to accept a plea of guilty or nolo contendere, rather than for a misdemeanor, from a defendant charged with a felony, a Class C misdemeanor, or any misdemeanor if the defendant is charged with both misdemeanor and felony offenses, rather than both misdemeanor and felony offenses; notwithstanding Article 18.01(c), Code of Criminal Procedure, issue a search warrant under Article 18.02(10), Code of Criminal Procedure; and do any act and take any measure necessary and proper for the efficient performance of the duties required by the order of referral. Makes nonsubstantive changes.

(b) Provides that a magistrate does not have authority under Subsection (a)(14) (relating to issuing a search warrant under Article 18.02(10)), to issue a subsequent search warrant under Article 18.02(10), Code of Criminal Procedure.

SECTION 3. Effective date: upon passage or September 1, 2009.