

## **BILL ANALYSIS**

Senate Research Center

H.B. 3856  
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Jurisprudence  
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Engrossed

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

Travis County has seven district judges with jurisdiction over criminal matters who handle a large caseload. They are assisted by a criminal magistrate appointed by the judges. Subchapter Q (Criminal Law Magistrates in Travis County), Chapter 54 (Masters; Magistrates; Referees; Associate Judges), Government Code, which was first passed in 1991, sets forth the qualifications, powers, and duties of the criminal magistrate. This bill modernizes many of the provisions of that subchapter and conforms it with the criminal law magistrate statutes of other counties.

H.B. 3856 amends current law relating to the proceedings that may be referred to and the powers of a criminal law magistrate in Travis 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 54.976, Government Code, by amending Subsections (a) and (b) and adding Subsection (d), as follows:

- (a) Authorizes a judge to refer to a magistrate any criminal case or matter relating to a criminal case for proceedings involving certain items, including a writ of habeas corpus, rather than a postconviction writ of habeas corpus; setting, setting conditions, modifying, revoking, and surrendering of bonds, including surety bonds; an issue of competency or a civil commitment under Chapter 46 (Insanity as Defense), 46B (Incompetency to Stand Trial), or 46C (Insanity Defense), Code of Criminal Procedure, with or without a jury; a motion to modify community supervision; specialty court proceedings, including drug court proceedings, veteran's court proceedings, and driving while intoxicated court proceedings; an expunction or a petition for nondisclosure; an occupational driver's license; a waiver of extradition; and the issuance of subpoenas and orders requiring the production of medical records, including records relating to mental health or substance abuse treatment.
- (b) Authorizes a magistrate to select a jury. Prohibits a magistrate from presiding over a contested criminal trial on the merits, regardless of whether the trial is before a jury.
- (d) Authorizes a judge to refer to a magistrate proceedings involving a grand jury, including issuance of grand jury subpoenas, receipt of grand jury reports on behalf of a district judge, the granting of a grand jury request to recess, motions to compel testimony, and discharge of a grand jury at the end of a term. Prohibits a magistrate from impaneling a grand jury.

SECTION 2. Amends Section 54.977, Government Code, by amending Subsection (a) and adding Subsection (c), as follows:

(a) Requires a judge, to refer one or more cases or matters to a magistrate, to issue an order of referral specifying the magistrate's duties.

(c) Authorizes a judge to issue a general order of referral authorizing the magistrate to act on certain types of matters without requiring an order for each referral. Provides that items that may be in the general order of referral include waivers of extradition, search warrants, bench warrants, grand jury subpoenas, subpoenas and orders requiring the production of medical records, including records relating to mental health and substance abuse treatment, and records and other matters relating to the grand jury.

SECTION 3. Amends Section 54.978, Government Code, as follows:

Sec. 54.978. POWERS. (a) Authorizes a magistrate to whom a case or matter related to a criminal case is referred, except as limited by an order of referral, to perform certain actions, including, notwithstanding Article 18.01(c) (relating to prohibiting a search warrant from being issued under certain conditions), Code of Criminal Procedure, issue a search warrant under Article 18.02(10) (relating to property or items, except the personal writings by the accused, constituting evidence of an offense or constituting evidence tending to show that a particular person committed an offense), Code of Criminal Procedure, and, notwithstanding Article 18.01(h) (relating to authorizing a warrant to only be issued by certain individuals), Code of Criminal Procedure, issue a search warrant under Article 18.02(12) (relating to certain contraband subject to forfeiture), Code of Criminal Procedure.

(b) Authorizes a magistrate to sign a motion to dismiss submitted by an attorney representing the state on cases referred to the magistrate or on dockets called by the magistrate, and to consider unadjudicated cases at sentencing under Section 12.45 (Admission of Unadjudicated Offense), Penal Code.

(c) Provides that a magistrate has all of the powers of a magistrate under the laws of this state and may administer an oath for any purpose.

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

(e) Defines, in this subsection, "pen register," "ESN reader," "trap and trace device," and "mobile tracking device." Authorizes a magistrate to:

(1) notwithstanding Section 2(a) (relating to authorizing a prosecutor with jurisdiction in a county within a judicial district described by this subsection to file an application for the installation and use of a pen register, ESN reader, trap and trace device, or similar equipment that combines the function of a pen register and a trap and trace device with a district judge in the judicial district), Article 18.21 (Pen Registers and Trap and Trace Devices; Access to Stored Communications; Mobile Tracking Devices), Code of Criminal Procedure, issue an order under Section 2 (Application and Order), Article 18.21, Code of Criminal Procedure, for the installation and use of:

(A) a pen register;

(B) an ESN reader;

(C) a trap and trace device; or

(D) equipment that combines the function of a pen register and a trap and trace device;

(2) issue an order to obtain access to stored communications under Section 5 (Court Order to Obtain Access to Stored Communications), Article 18.21, Code of Criminal Procedure; and

(3) notwithstanding Section 14(a) (relating to authorizing a district judge to issue an order for the installation and use of a mobile tracking device in the certain judicial districts), Article 18.21, Code of Criminal Procedure, issue an order for the installation and use of a mobile tracking device under Section 14 (Mobile Tracking Devices), Article 18.21, Code of Criminal Procedure.

SECTION 4. Makes application of this Act prospective.

SECTION 5. Effective date: upon passage or September 1, 2011.