

BILL ANALYSIS

H.B. 3856
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Judiciary & Civil Jurisprudence
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Travis County has a number of district judges with jurisdiction over criminal matters who handle a large caseload. These judges are assisted by a criminal magistrate appointed by those judges. The judges have sought to expand magistrate responsibilities as the criminal court dockets have grown but there are limitations on the powers and duties of the magistrate. Interested parties assert that a criminal law magistrate should be allowed more duties and responsibilities in Travis County in an effort to increase efficiency and to maximize the number of cases disposed. The parties note that such changes would allow the magistrate to be of better service to law enforcement officers seeking authorization for search warrants.

H.B. 3856 seeks to make statutory changes relating to the proceedings that may be referred to a criminal law magistrate in Travis County and to the powers of such a magistrate.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

H.B. 3856 amends the Government Code, in a provision authorizing a judge to refer to a Travis County magistrate any criminal case for certain proceedings, authorizes the judge to refer matters relating to a criminal case as well. The bill, in that same provision, adds specified matters to the list of matters that may be referred to a magistrate. The bill, in that same provision, removes from an authorized proceeding the specification that a writ of habeas corpus so referred is a postconviction writ of habeas corpus.

H.B. 3856 authorizes such a magistrate in Travis County to select a jury. The bill authorizes a judge to refer to such a magistrate in Travis County 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. The bill prohibits such a magistrate from impaneling a grand jury.

H.B. 3856 authorizes a judge to issue a general order of referral authorizing a Travis County magistrate to act on certain types of matters without requiring an order for each referral. The bill authorizes items that may be in the general order of referral to include the following: 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.

H.B. 3856 authorizes a Travis County magistrate to whom a case or matter related to a criminal case is referred to issue a search warrant for 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 or issue a search warrant for contraband subject to forfeiture. The bill authorizes a Travis County 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 authorizes such a magistrate to consider unadjudicated cases at sentencing under provisions of the Penal Code. The bill gives such a magistrate all the powers of a magistrate under the laws of Texas and authorizes such a magistrate to administer an oath for any purpose. The bill specifies that such a magistrate does not have authority to issue a subsequent search warrant under certain provisions of the Code of Criminal Procedure.

H.B. 3856 authorizes a Travis County magistrate to issue an order for the installation and use of the following: a pen register; an ESN reader; a trap and trace device; or equipment that combines the function of a pen register and a trap and trace device. The bill authorizes a Travis County magistrate to issue an order to obtain access to stored communications and issue an order for the installation and use of a mobile tracking device under provisions of the Code of Criminal Procedure. The bill provides for the definitions of "pen register," "ESN reader," "trap and trace device," and "mobile tracking device" by reference to the Code of Criminal Procedure. The bill makes conforming changes.

EFFECTIVE DATE

On passage, or, if the bill does not receive the necessary vote, September 1, 2011.