

By: McClendon

H.B. No. 3034

A BILL TO BE ENTITLED

1 AN ACT  
2 relating to the authority of certain magistrates to issue certain  
3 search warrants.

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

5 SECTION 1. Articles 18.01(c) and (i), Code of Criminal  
6 Procedure, are amended to read as follows:

7 (c) A search warrant may not be issued under Article  
8 18.02(10) unless the sworn affidavit required by Subsection (b)  
9 sets forth sufficient facts to establish probable cause: (1) that a  
10 specific offense has been committed, (2) that the specifically  
11 described property or items that are to be searched for or seized  
12 constitute evidence of that offense or evidence that a particular  
13 person committed that offense, and (3) that the property or items  
14 constituting evidence to be searched for or seized are located at or  
15 on the particular person, place, or thing to be searched. Except as  
16 provided by Subsections (d) [~~7-(i)7~~] and (j), any magistrate [~~only a~~  
17 ~~judge of a municipal court of record or a county court who is an~~  
18 ~~attorney licensed by the State of Texas, a statutory county court~~  
19 ~~judge, a district court judge, a judge of the Court of Criminal~~  
20 ~~Appeals, including the presiding judge, or a justice of the Supreme~~  
21 ~~Court of Texas, including the chief justice,~~] may issue warrants  
22 under Article 18.02(10).

23 (i) In a county that does not have a judge of a municipal  
24 court of record who is an attorney licensed by the state, a county

1 court judge who is an attorney licensed by the state, or a statutory  
2 county court judge, any magistrate may issue a search warrant under  
3 Article 18.02(12) [~~Subdivision (10) or Subdivision (12) of Article~~  
4 ~~18.02 of this code. This subsection is not applicable to a~~  
5 ~~subsequent search warrant under Subdivision (10) of Article 18.02~~  
6 ~~of this code~~].

7 SECTION 2. Section 54.906(a), Government Code, is amended  
8 to read as follows:

9 (a) A judge may refer to a magistrate any criminal case for  
10 proceedings involving:

- 11 (1) a bond forfeiture;
- 12 (2) a pretrial motion;
- 13 (3) a postconviction writ of habeas corpus;
- 14 (4) an examining trial;
- 15 (5) the issuance of search warrants, including a  
16 search warrant under Article 18.02(10), Code of Criminal  
17 Procedure [~~, notwithstanding Article 18.01(c), Code of Criminal~~  
18 ~~Procedure~~];
- 19 (6) the setting of bonds;
- 20 (7) the arraignment of defendants; and
- 21 (8) any other matter the judge considers necessary and  
22 proper, including a negotiated plea of guilty before the court.

23 SECTION 3. Section 54.908(a), Government Code, is amended  
24 to read as follows:

25 (a) Except as limited by an order of referral, a magistrate  
26 to whom a case is referred may:

- 27 (1) conduct hearings;

- 1 (2) hear evidence;
- 2 (3) compel production of relevant evidence;
- 3 (4) rule on admissibility of evidence;
- 4 (5) issue summons for the appearance of witnesses;
- 5 (6) examine witnesses;
- 6 (7) swear witnesses for hearings;
- 7 (8) make findings of fact on evidence;
- 8 (9) formulate conclusions of law;
- 9 (10) rule on a pretrial motion;
- 10 (11) recommend the rulings, orders, or judgment to be  
11 made in a case;
- 12 (12) regulate proceedings in a hearing;
- 13 (13) accept a plea of guilty for a misdemeanor from a  
14 defendant charged with both misdemeanor and felony offenses;
- 15 (14) [~~notwithstanding Article 18.01(c), Code of~~  
16 ~~Criminal Procedure,~~] issue a search warrant under Article  
17 18.02(10), Code of Criminal Procedure; and
- 18 (15) do any act and take any measure necessary and  
19 proper for the efficient performance of the duties required by the  
20 order of referral.

21 SECTION 4. The change in law made by this Act applies only  
22 to a search warrant that is issued on or after the effective date of  
23 this Act. A search warrant that was issued before the effective date  
24 of this Act is governed by the law in effect on the date the warrant  
25 was issued, and the former law is continued in effect for that  
26 purpose.

27 SECTION 5. This Act takes effect immediately if it receives

H.B. No. 3034

1 a vote of two-thirds of all the members elected to each house, as  
2 provided by Section 39, Article III, Texas Constitution. If this  
3 Act does not receive the vote necessary for immediate effect, this  
4 Act takes effect September 1, 2011.