

By: Naishtat

H.B. No. 3856

A BILL TO BE ENTITLED

AN ACT

relating to the proceedings that may be referred to and the powers of a criminal law magistrate in Travis County.

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

SECTION 1. Section 54.976, Government Code, is amended by amending Subsections (a) and (b) and adding Subsection (d) to read as follows:

(a) A judge may refer to a magistrate any criminal case or matter relating to a criminal case for proceedings involving:

(1) a negotiated plea of guilty or no contest and sentencing;

(2) a pretrial motion;

(3) an examining trial;

(4) a [~~postconviction~~] writ of habeas corpus;

(5) a bond forfeiture suit;

(6) issuance of search warrants;

(7) setting, setting conditions, modifying, revoking, and surrendering of bonds, including surety bonds;

(8) arraignment of defendants;

(9) a motion to increase or decrease a bond;

(10) a motion to revoke community supervision or to proceed to an adjudication;

(11) an issue of competency or a civil commitment under Chapter 46, 46B, or 46C, Code of Criminal Procedure, with or

1 without a jury; ~~and~~

2 (12) a motion to modify community supervision;

3 (13) specialty court proceedings, including drug  
4 court proceedings, veteran's court proceedings, and driving while  
5 intoxicated court proceedings;

6 (14) an expunction or a petition for nondisclosure;

7 (15) an occupational driver's license;

8 (16) a waiver of extradition;

9 (17) the issuance of subpoenas and orders requiring  
10 the production of medical records, including records relating to  
11 mental health or substance abuse treatment; and

12 (18) any other matter the judge considers necessary  
13 and proper.

14 (b) A magistrate may select a jury. A magistrate may not  
15 preside over a contested criminal trial on the merits, regardless  
16 of whether the trial is before a jury.

17 (d) A judge may refer to a magistrate proceedings involving  
18 a grand jury, including issuance of grand jury subpoenas, receipt  
19 of grand jury reports on behalf of a district judge, the granting of  
20 a grand jury request to recess, motions to compel testimony, and  
21 discharge of a grand jury at the end of a term. A magistrate may not  
22 impanel a grand jury.

23 SECTION 2. Section 54.977, Government Code, is amended by  
24 amending Subsection (a) and adding Subsection (c) to read as  
25 follows:

26 (a) To refer one or more cases or matters to a magistrate, a  
27 judge must issue an order of referral specifying the magistrate's

1 duties.

2 (c) A judge may issue a general order of referral  
3 authorizing the magistrate to act on certain types of matters  
4 without requiring an order for each referral. Items that may be in  
5 the general order of referral include:

6 (1) waivers of extradition;

7 (2) search warrants;

8 (3) bench warrants;

9 (4) grand jury subpoenas;

10 (5) subpoenas and orders requiring the production of  
11 medical records, including records relating to mental health and  
12 substance abuse treatment; and

13 (6) records and other matters relating to the grand  
14 jury.

15 SECTION 3. Section 54.978, Government Code, is amended to  
16 read as follows:

17 Sec. 54.978. POWERS. (a) Except as limited by an order of  
18 referral, a magistrate to whom a case or matter related to a  
19 criminal case is referred may:

20 (1) conduct hearings;

21 (2) hear evidence;

22 (3) compel production of relevant evidence;

23 (4) rule on admissibility of evidence;

24 (5) issue summons for the appearance of witnesses;

25 (6) examine witnesses;

26 (7) swear witnesses for hearings;

27 (8) make findings of fact on evidence;

- 1           (9)   formulate conclusions of law;
- 2           (10)  rule on pretrial motions;
- 3           (11)  recommend the rulings, orders, or judgment to be  
4 made in a case;
- 5           (12)  regulate proceedings in a hearing;
- 6           (13)  in any case referred under Section 54.976(a)(1):
- 7                (A)  accept a negotiated plea of guilty;
- 8                (B)  enter a finding of guilt and impose or  
9 suspend sentence; or
- 10               (C)  defer adjudication of guilty; ~~and~~
- 11           (14)  notwithstanding Article 18.01(c), Code of  
12 Criminal Procedure, issue a search warrant under Article 18.02(10),  
13 Code of Criminal Procedure;
- 14           (15)  notwithstanding Article 18.01(h), Code of  
15 Criminal Procedure, issue a search warrant under Article 18.02(12),  
16 Code of Criminal Procedure; and
- 17           (16)  do any act and take any measure necessary and  
18 proper for the efficient performance of the duties required by the  
19 order of referral.
- 20           (b)  A magistrate may not enter a ruling on any issue of law  
21 or fact if that ruling could result in dismissal or require  
22 dismissal of a pending criminal prosecution, but the magistrate may  
23 make findings, conclusions, and recommendations on those issues. A  
24 magistrate may sign a motion to dismiss submitted by an attorney  
25 representing the state on cases referred to the magistrate or on  
26 dockets called by the magistrate, and may consider unadjudicated  
27 cases at sentencing under Section 12.45, Penal Code.

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

3       (d) A magistrate does not have authority under Subsection  
4 (a)(14) to issue a subsequent search warrant under Article  
5 18.02(10), Code of Criminal Procedure.

6       (e) In this subsection, "pen register," "ESN reader," "trap  
7 and trace device," and "mobile tracking device" have the meanings  
8 assigned by Section 18.21, Code of Criminal Procedure. A  
9 magistrate may:

10       (1) notwithstanding Section 2(a), Article 18.21, Code  
11 of Criminal Procedure, issue an order under Section 2, Article  
12 18.21, Code of Criminal Procedure, for the installation and use of:

13               (A) a pen register;

14               (B) an ESN reader;

15               (C) a trap and trace device; or

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

18       (2) issue an order to obtain access to stored  
19 communications under Section 5, Article 18.21, Code of Criminal  
20 Procedure; and

21       (3) notwithstanding Section 14(a), Article 18.21,  
22 Code of Criminal Procedure, issue an order for the installation and  
23 use of a mobile tracking device under Section 14, Article 18.21,  
24 Code of Criminal Procedure.

25       SECTION 4. The changes in law made by this Act apply to a  
26 cause of action referred to a magistrate on or after the effective  
27 date of this Act. A cause of action referred to a magistrate before

1 the effective date of this Act is governed by the law in effect  
2 immediately before that date, and that law is continued in effect  
3 for that purpose.

4 SECTION 5. This Act takes effect immediately if it receives  
5 a vote of two-thirds of all the members elected to each house, as  
6 provided by Section 39, Article III, Texas Constitution. If this  
7 Act does not receive the vote necessary for immediate effect, this  
8 Act takes effect September 1, 2011.