

1-1 By: Naishtat (Senate Sponsor - Watson) H.B. No. 3856  
1-2 (In the Senate - Received from the House May 13, 2011;  
1-3 May 13, 2011, read first time and referred to Committee on  
1-4 Jurisprudence; May 21, 2011, reported favorably by the following  
1-5 vote: Yeas 5, Nays 0; May 21, 2011, sent to printer.)

1-6 A BILL TO BE ENTITLED  
1-7 AN ACT

1-8 relating to the proceedings that may be referred to and the powers  
1-9 of a criminal law magistrate in Travis County.

1-10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-11 SECTION 1. Section 54.976, Government Code, is amended by  
1-12 amending Subsections (a) and (b) and adding Subsection (d) to read  
1-13 as follows:

1-14 (a) A judge may refer to a magistrate any criminal case or  
1-15 matter relating to a criminal case for proceedings involving:

1-16 (1) a negotiated plea of guilty or no contest and  
1-17 sentencing;

1-18 (2) a pretrial motion;

1-19 (3) an examining trial;

1-20 (4) a [~~postconviction~~] writ of habeas corpus;

1-21 (5) a bond forfeiture suit;

1-22 (6) issuance of search warrants;

1-23 (7) setting, setting conditions, modifying, revoking,  
1-24 and surrendering of bonds, including surety bonds;

1-25 (8) arraignment of defendants;

1-26 (9) a motion to increase or decrease a bond;

1-27 (10) a motion to revoke community supervision or to  
1-28 proceed to an adjudication;

1-29 (11) an issue of competency or a civil commitment  
1-30 under Chapter 46, 46B, or 46C, Code of Criminal Procedure, with or  
1-31 without a jury; [and]

1-32 (12) a motion to modify community supervision;

1-33 (13) specialty court proceedings, including drug  
1-34 court proceedings, veteran's court proceedings, and driving while  
1-35 intoxicated court proceedings;

1-36 (14) an expunction or a petition for nondisclosure;

1-37 (15) an occupational driver's license;

1-38 (16) a waiver of extradition;

1-39 (17) the issuance of subpoenas and orders requiring  
1-40 the production of medical records, including records relating to  
1-41 mental health or substance abuse treatment; and

1-42 (18) any other matter the judge considers necessary  
1-43 and proper.

1-44 (b) A magistrate may select a jury. A magistrate may not  
1-45 preside over a contested criminal trial on the merits, regardless  
1-46 of whether the trial is before a jury.

1-47 (d) A judge may refer to a magistrate proceedings involving  
1-48 a grand jury, including issuance of grand jury subpoenas, receipt  
1-49 of grand jury reports on behalf of a district judge, the granting of  
1-50 a grand jury request to recess, motions to compel testimony, and  
1-51 discharge of a grand jury at the end of a term. A magistrate may not  
1-52 impanel a grand jury.

1-53 SECTION 2. Section 54.977, Government Code, is amended by  
1-54 amending Subsection (a) and adding Subsection (c) to read as  
1-55 follows:

1-56 (a) To refer one or more cases or matters to a magistrate, a  
1-57 judge must issue an order of referral specifying the magistrate's  
1-58 duties.

1-59 (c) A judge may issue a general order of referral  
1-60 authorizing the magistrate to act on certain types of matters  
1-61 without requiring an order for each referral. Items that may be in  
1-62 the general order of referral include:

1-63 (1) waivers of extradition;

1-64 (2) search warrants;

2-1                   (3) bench warrants;  
2-2                   (4) grand jury subpoenas;  
2-3                   (5) subpoenas and orders requiring the production of  
2-4 medical records, including records relating to mental health and  
2-5 substance abuse treatment; and  
2-6                   (6) records and other matters relating to the grand  
2-7 jury.

2-8           SECTION 3. Section 54.978, Government Code, is amended to  
2-9 read as follows:

2-10           Sec. 54.978. POWERS. (a) Except as limited by an order of  
2-11 referral, a magistrate to whom a case or matter related to a  
2-12 criminal case is referred may:

2-13                   (1) conduct hearings;  
2-14                   (2) hear evidence;  
2-15                   (3) compel production of relevant evidence;  
2-16                   (4) rule on admissibility of evidence;  
2-17                   (5) issue summons for the appearance of witnesses;  
2-18                   (6) examine witnesses;  
2-19                   (7) swear witnesses for hearings;  
2-20                   (8) make findings of fact on evidence;  
2-21                   (9) formulate conclusions of law;  
2-22                   (10) rule on pretrial motions;  
2-23                   (11) recommend the rulings, orders, or judgment to be  
2-24 made in a case;  
2-25                   (12) regulate proceedings in a hearing;  
2-26                   (13) in any case referred under Section 54.976(a)(1):  
2-27                           (A) accept a negotiated plea of guilty;  
2-28                           (B) enter a finding of guilt and impose or  
2-29 suspend sentence; or  
2-30                           (C) defer adjudication of guilty; [and]  
2-31                   (14) notwithstanding Article 18.01(c), Code of  
2-32 Criminal Procedure, issue a search warrant under Article 18.02(10),  
2-33 Code of Criminal Procedure;  
2-34                   (15) notwithstanding Article 18.01(h), Code of  
2-35 Criminal Procedure, issue a search warrant under Article 18.02(12),  
2-36 Code of Criminal Procedure; and  
2-37                   (16) do any act and take any measure necessary and  
2-38 proper for the efficient performance of the duties required by the  
2-39 order of referral.

2-40           (b) A magistrate may not enter a ruling on any issue of law  
2-41 or fact if that ruling could result in dismissal or require  
2-42 dismissal of a pending criminal prosecution, but the magistrate may  
2-43 make findings, conclusions, and recommendations on those issues. A  
2-44 magistrate may sign a motion to dismiss submitted by an attorney  
2-45 representing the state on cases referred to the magistrate or on  
2-46 dockets called by the magistrate, and may consider unadjudicated  
2-47 cases at sentencing under Section 12.45, Penal Code.

2-48           (c) A magistrate has all of the powers of a magistrate under  
2-49 the laws of this state and may administer an oath for any purpose.

2-50           (d) A magistrate does not have authority under Subsection  
2-51 (a)(14) to issue a subsequent search warrant under Article  
2-52 18.02(10), Code of Criminal Procedure.

2-53           (e) In this subsection, "pen register," "ESN reader," "trap  
2-54 and trace device," and "mobile tracking device" have the meanings  
2-55 assigned by Section 18.21, Code of Criminal Procedure. A  
2-56 magistrate may:

2-57                   (1) notwithstanding Section 2(a), Article 18.21, Code  
2-58 of Criminal Procedure, issue an order under Section 2, Article  
2-59 18.21, Code of Criminal Procedure, for the installation and use of:  
2-60                           (A) a pen register;  
2-61                           (B) an ESN reader;  
2-62                           (C) a trap and trace device; or  
2-63                           (D) equipment that combines the function of a pen  
2-64 register and a trap and trace device;  
2-65                   (2) issue an order to obtain access to stored  
2-66 communications under Section 5, Article 18.21, Code of Criminal  
2-67 Procedure; and  
2-68                   (3) notwithstanding Section 14(a), Article 18.21,  
2-69 Code of Criminal Procedure, issue an order for the installation and

3-1 use of a mobile tracking device under Section 14, Article 18.21,  
3-2 Code of Criminal Procedure.

3-3 SECTION 4. The changes in law made by this Act apply to a  
3-4 cause of action referred to a magistrate on or after the effective  
3-5 date of this Act. A cause of action referred to a magistrate before  
3-6 the effective date of this Act is governed by the law in effect  
3-7 immediately before that date, and that law is continued in effect  
3-8 for that purpose.

3-9 SECTION 5. This Act takes effect immediately if it receives  
3-10 a vote of two-thirds of all the members elected to each house, as  
3-11 provided by Section 39, Article III, Texas Constitution. If this  
3-12 Act does not receive the vote necessary for immediate effect, this  
3-13 Act takes effect September 1, 2011.

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