

By: Reynolds

H.B. No. 4735

A BILL TO BE ENTITLED

AN ACT

relating to the creation of magistrates in Fort Bend County.

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

SECTION 1. Article 2.09, Code of Criminal Procedure, is amended to read as follows:

Art. 2.09. WHO ARE MAGISTRATES. Each of the following officers is a magistrate within the meaning of this Code: The justices of the Supreme Court, the judges of the Court of Criminal Appeals, the justices of the Courts of Appeals, the judges of the District Court, the magistrates appointed by the judges of the district courts of Bexar County, Dallas County, or Tarrant County that give preference to criminal cases, the criminal law hearing officers for Harris County appointed under Subchapter L, Chapter 54, Government Code, the criminal law hearing officers for Cameron County appointed under Subchapter BB, Chapter 54, Government Code, the magistrates or associate judges appointed by the judges of the district courts of Lubbock County, Nolan County, or Webb County, the magistrates appointed by the judges of the criminal district courts of Dallas County or Tarrant County, the associate judges appointed by the judges of the district courts and the county courts at law that give preference to criminal cases in Jefferson County, the associate judges appointed by the judges of the district courts and the statutory county courts of Brazos County, Nueces County, or Williamson County, the magistrates appointed by the judges of the

1 district courts and statutory county courts that give preference to
2 criminal cases in Travis County, the criminal magistrates appointed
3 by the Brazoria County Commissioners Court, the criminal
4 magistrates appointed by the Burnet County Commissioners Court, the
5 county judges, the judges of the county courts at law, judges of the
6 county criminal courts, the judges of statutory probate courts, the
7 associate judges appointed by the judges of the statutory probate
8 courts under Chapter 54A, Government Code, the associate judges
9 appointed by the judge of a district court under Chapter 54A,
10 Government Code, the magistrates appointed under Subchapter JJ,
11 Chapter 54, Government Code, the magistrates appointed by the Fort
12 Bend County Commissioners Court [as added by H.B. No. 2132, Acts of
13 the 82nd Legislature, Regular Session, 2011], the justices of the
14 peace, and the mayors and recorders and the judges of the municipal
15 courts of incorporated cities or towns.

16 SECTION 2. Chapter 54, Government Code, is amended by
17 adding Subchapter NN to read as follows:

18 SUBCHAPTER NN. MAGISTRATES IN FORT BEND COUNTY

19 Sec. 54.2301. AUTHORIZATION; APPOINTMENT; TERMINATION;
20 ELIMINATION. (a) The Commissioners Court of Fort Bend County by
21 majority vote may appoint one or more part-time or full-time
22 magistrates to perform the duties authorized by this subchapter.

23 (b) An order appointing a magistrate must be signed by the
24 county judge of Fort Bend County, and the order must state:

25 (1) the magistrate's name; and

26 (2) the date the magistrate's employment begins.

27 (c) A magistrate may be terminated by a majority vote of the

1 Commissioners Court of Fort Bend County.

2 (d) An authorized magistrate's position may be eliminated
3 on a majority vote of the Commissioners Court of Fort Bend County.

4 Sec. 54.2302. QUALIFICATIONS; OATH OF OFFICE. (a) To be
5 eligible for appointment as a magistrate, a person must:

6 (1) be a citizen of the United States;

7 (2) have resided in Fort Bend County for at least the
8 four years preceding the person's appointment; and

9 (3) have been licensed to practice law in this state
10 for at least four years.

11 (b) A magistrate appointed under Section 54.2301 must take
12 the constitutional oath of office required of appointed officers of
13 this state.

14 Sec. 54.2303. COMPENSATION. A magistrate is entitled to
15 the compensation set by the Commissioners Court of Fort Bend
16 County. The compensation shall be paid from the general fund of the
17 county.

18 Sec. 54.2304. JUDICIAL IMMUNITY. A magistrate has the same
19 judicial immunity as a district judge.

20 Sec. 54.2305. PROCEEDING THAT MAY BE REFERRED. (a) The
21 judge of a district court or county court at law or a justice of the
22 peace may refer to a magistrate any case or matter relating to a
23 case for proceedings involving:

24 (1) a negotiated plea of guilty or no contest and
25 sentencing before the court;

26 (2) a bond forfeiture, remittitur, and related
27 proceedings;

- 1 (3) a pretrial motion;
- 2 (4) a writ of habeas corpus;
- 3 (5) an examining trial;
- 4 (6) an occupational driver's license;
- 5 (7) a petition for an order of expunction under
6 Chapter 55, Code of Criminal Procedure;
- 7 (8) an asset forfeiture hearing as provided by Chapter
8 59, Code of Criminal Procedure;
- 9 (9) a petition for an order of nondisclosure of
10 criminal history record information or an order of nondisclosure of
11 criminal history record information that does not require a
12 petition provided by Subchapter E-1, Chapter 411;
- 13 (10) a motion to modify or revoke community
14 supervision or to proceed with an adjudication of guilt;
- 15 (11) setting conditions, modifying, revoking, and
16 surrendering of bonds, including surety bonds;
- 17 (12) specialty court proceedings;
- 18 (13) a waiver of extradition;
- 19 (14) selection of a jury; and
- 20 (15) any other matter the judge or justice of the peace
21 considers necessary and proper.

22 (b) A judge may refer to a magistrate a civil case arising
23 out of Chapter 59, Code of Criminal Procedure, for any purpose
24 authorized by that chapter, including issuing orders, accepting
25 agreed judgments, enforcing judgments, and presiding over a case on
26 the merits if a party has not requested a jury trial.

27 (c) A magistrate may accept a plea of guilty from a

1 defendant charged with misdemeanor, felony, or both misdemeanor and
2 felony offenses.

3 (d) If the magistrate is acting as an associate judge under
4 Section 54.2316, the magistrate may hear any case referred under
5 Section 54A.106.

6 (e) A magistrate may not preside over a criminal trial on
7 the merits, regardless of whether the trial is before a jury.

8 (f) A magistrate may not hear any jury trial on the merits.

9 Sec. 54.2306. ORDER OF REFERRAL. (a) To refer one or more
10 cases to a magistrate, a judge or justice of the peace must issue an
11 order of referral specifying the magistrate's duties.

12 (b) An order of referral may:

13 (1) limit the powers of the magistrate and direct the
14 magistrate to report only on specific issues, perform particular
15 acts, or receive and report on evidence only;

16 (2) set the time and place for the hearing;

17 (3) prescribe a closing date for the hearing;

18 (4) provide a date for filing the magistrate's
19 findings;

20 (5) designate proceedings for more than one case over
21 which the magistrate shall preside;

22 (6) direct the magistrate to call the court's docket;

23 and

24 (7) set forth general powers and limitations of
25 authority of the magistrate applicable to any case referred.

26 Sec. 54.2307. POWERS. (a) Except as limited by an order of
27 referral, a magistrate to whom a case is referred may:

- 1 (1) conduct hearings;
- 2 (2) hear evidence;
- 3 (3) compel production of relevant evidence in civil or
4 criminal matters;
- 5 (4) rule on disputes regarding civil discovery;
- 6 (5) rule on admissibility of evidence;
- 7 (6) issue summons for the appearance of witnesses;
- 8 (7) examine witnesses;
- 9 (8) swear witnesses for hearings;
- 10 (9) make findings of fact on evidence;
- 11 (10) formulate conclusions of law;
- 12 (11) rule on a pretrial motion;
- 13 (12) recommend the rulings, orders, or judgment to be
14 made in a case;
- 15 (13) regulate proceedings in a hearing;
- 16 (14) accept a plea of guilty from a defendant charged
17 with misdemeanor, felony, or both misdemeanor and felony offenses;
- 18 (15) select a jury;
- 19 (16) accept a negotiated plea on a probation
20 revocation;
- 21 (17) conduct a contested probation revocation
22 hearing;
- 23 (18) sign a dismissal in a misdemeanor case;
- 24 (19) enter an order of dismissal or nonsuit on
25 agreement of the parties in a civil case;
- 26 (20) in any case referred under Section 54.2305(a)(1),
27 accept a negotiated plea of guilty or no contest and:

1 (A) enter a finding of guilt and impose or
2 suspend the sentence; or

3 (B) defer adjudication of guilt;

4 (21) conduct initial juvenile detention hearings if
5 approved by the juvenile board of Fort Bend County; and

6 (22) perform any act and take any measure necessary
7 and proper for the efficient performance of the duties required by
8 the order of referral.

9 (b) A magistrate may sign a motion to dismiss submitted by
10 an attorney representing the state on cases referred to the
11 magistrate, or on dockets called by the magistrate, and may
12 consider unadjudicated cases at sentencing under Section 12.45,
13 Penal Code.

14 (c) Except as provided by Sections 54.2305(e) and (f), a
15 magistrate has all of the powers of a magistrate under the laws of
16 this state and may administer an oath for any purpose.

17 Sec. 54.2308. FORFEITURES. Bail bonds and personal bonds
18 may be forfeited by the magistrate court in the manner provided by
19 Chapter 22, Code of Criminal Procedure, and those forfeitures shall
20 be filed with:

21 (1) the district clerk if associated with a felony
22 case;

23 (2) the county clerk if associated with a Class A or
24 Class B misdemeanor case; or

25 (3) the same justice court clerk associated with the
26 Class C misdemeanor case in which the bond was originally filed.

27 Sec. 54.2309. COSTS. (a) When the district clerk is the

1 clerk under this subchapter, the district clerk shall charge the
2 same court costs for cases filed in, transferred to, or assigned to
3 the magistrate court that are charged in the district courts.

4 (b) When the county clerk is the clerk under this
5 subchapter, the county clerk shall charge the same court costs for
6 cases filed in, transferred to, or assigned to the magistrate court
7 that are charged in the county courts.

8 (c) When a justice clerk is the clerk under this subchapter,
9 the justice clerk shall charge the same court costs for cases filed
10 in, transferred to, or assigned to the magistrate court that are
11 charged in the justice courts.

12 Sec. 54.2310. CLERK. (a) The district clerk serves as
13 clerk of the magistrate court, except that:

14 (1) after a Class A or Class B misdemeanor is filed in
15 the county court at law and assigned to the magistrate court, the
16 county clerk serves as clerk for that misdemeanor case; and

17 (2) after a Class C misdemeanor is filed in a justice
18 court and assigned to the magistrate court, the originating justice
19 court clerk serves as clerk for that misdemeanor case.

20 (b) The district clerk shall establish a docket and keep the
21 minutes for the cases filed in or transferred to the magistrate
22 court. The district clerk shall perform any other duties that local
23 administrative rules require in connection with the implementation
24 of this subchapter. The local administrative judge shall ensure
25 that the duties required under this subsection are performed. To
26 facilitate the duties associated with serving as the clerk of the
27 magistrate court, the district clerk and the deputies of the

1 district clerk may serve as deputy justice clerks and deputy county
2 clerks at the discretion of the district clerk.

3 (c) The clerk of the case shall include as part of the record
4 on appeal a copy of the order and local administrative rule under
5 which a magistrate court acted.

6 Sec. 54.2311. COURT REPORTER. At the request of a party,
7 the court shall provide a court reporter to record the proceedings
8 before the magistrate.

9 Sec. 54.2312. WITNESS. (a) A witness who appears before a
10 magistrate and is sworn is subject to the penalties for perjury
11 provided by law.

12 (b) A referring court may issue attachment against and may
13 fine or imprison a witness whose failure to appear after being
14 summoned or whose refusal to answer questions has been certified to
15 the court.

16 Sec. 54.2313. PAPERS TRANSMITTED TO JUDGE. At the
17 conclusion of the proceedings, a magistrate shall transmit to the
18 referring court any papers relating to the case, including the
19 magistrate's findings, conclusions, orders, recommendations, or
20 other action taken.

21 Sec. 54.2314. COSTS OF MAGISTRATE. The court shall
22 determine if the nonprevailing party is able to defray the costs of
23 the magistrate. If the court determines the nonprevailing party is
24 able to pay those costs, the court shall assess the magistrate's
25 costs against the nonprevailing party.

26 Sec. 54.2315. JUDICIAL ACTION. (a) A referring court may
27 modify, correct, reject, reverse, or recommit for further

1 information any action taken by the magistrate.

2 (b) If the court does not modify, correct, reject, reverse,
3 or recommit an action of the magistrate, the action becomes the
4 decree of the court.

5 (c) At the conclusion of each term during which the services
6 of a magistrate are used, the referring court shall enter a decree
7 on the minutes adopting the actions of the magistrate of which the
8 court approves.

9 Sec. 54.2316. MAGISTRATE AS ASSOCIATE JUDGE. A magistrate
10 appointed under this subchapter may act as a civil associate judge
11 under Subchapter B, Chapter 54A. To the extent of any conflict with
12 this subchapter, a magistrate acting as an associate judge shall
13 comply with provisions regarding the appointment, termination,
14 referral of cases, powers, duties, and immunities of associate
15 judges under Subchapter B, Chapter 54A.

16 SECTION 3. This Act takes effect September 1, 2019.