

BILL ANALYSIS

Senate Research Center
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S.B. 1297
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Magistration follows arrest as the second step in the criminal justice process. Currently, the City of San Antonio manages the joint central magistration facility used by local law enforcement in Bexar County. In order to assist with the criminal caseload, the City of San Antonio and Bexar County are discussing the assumption of magistration duties by Bexar County.

As proposed, S.B. 1297 authorizes the judges of the district courts and county courts at law of Bexar County that give preference to criminal cases with the consent and approval of the Commissioners Court of Bexar County, to appoint the number of magistrates set by the commissioners court. S.B. 1297 requires a municipality to enter into an interlocal agreement with Bexar County in order for municipal court judges to refer matters to the additional magistrates, and provides the qualifications, compensation, and duties of the magistrates.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to any state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subchapter N, Chapter 54, Government Code, by adding Section 54.900, as follows:

Sec. 54.900. APPLICABILITY OF SUBCHAPTER. Provides that the provisions of this subchapter apply only to a criminal law magistrate in Bexar County who is appointed under this subchapter (Criminal Law Magistrates in Bexar County).

SECTION 2. Amends Chapter 54, Government Code, by adding Subchapter AA, as follows:

SUBCHAPTER AA. ADDITIONAL CRIMINAL LAW MAGISTRATES IN BEXAR COUNTY

Sec. 54.1301. APPLICABILITY OF SUBCHAPTER. Provides that the provisions of this subchapter apply only to a criminal law magistrate in Bexar county who is appointed under this subchapter.

Sec. 54.1302. APPOINTMENT; PRESIDING MAGISTRATE. (a) Authorizes the judges of the district courts of Bexar County and the judges of the county courts at law of Bexar County that give preference to criminal cases, with the consent and approval of the Commissioners Court of Bexar County, to appoint the number of magistrates set by the commissioners court to perform the duties authorized by this subchapter, and to select one appointed magistrate to serve as the presiding magistrate to supervise the other appointed magistrates.

(b) Requires each magistrate's appointment, and the selection of the presiding judge, to be made with the approval of two-thirds of the judges described by Subsection (a).

(c) Requires each magistrate, if the number of magistrates is less than the number of the appointing judges, to serve equally in the courts of those judges.

Sec. 54.1303. QUALIFICATIONS. Sets forth the eligibility requirements for appointment as a magistrate.

Sec. 54.1304. COMPENSATION. (a) Entitles a magistrate to the salary determined by the Commissioners Court of Bexar County.

(b) Provides that the magistrate's salary is paid from the county fund available for payment of officers' salaries.

Sec. 54.1305. JUDICIAL IMMUNITY. Provides that a magistrate has the same judicial immunity as a district judge.

Sec. 54.1306. CLERK. Authorizes the magistrates appointed under this subchapter to appoint a person to serve as clerk. Requires the clerk to maintain the records from cases referred from district courts, county courts at law, and, if authorized under Section 54.1309, municipal courts, subject to Section 54.1314.

Sec. 54.1307. TERMINATION OF SERVICES. (a) Provides that a magistrate who serves a single court serves at the will of the judge.

(b) Authorizes the services of a magistrate who serves more than one court to be terminated by a majority vote of the appointing judges.

Sec. 54.1308. PROCEEDINGS THAT MAY BE REFERRED. (a) Authorizes a judge described by Section 54.1302(a), except as provided by Subsection (b), to refer to a magistrate any criminal case the judge considers necessary and proper, including a criminal case for drug court proceedings.

(b) Prohibits a magistrate from presiding over a contested trial on the merits, regardless of whether the trial is before a jury.

Sec. 54.1309. CERTAIN MUNICIPAL COURT PROCEEDINGS THAT MAY BE REFERRED. (a) Authorizes a municipality that has any portion of the municipality's territory located within the boundaries of Bexar County to enter into an interlocal agreement with Bexar County providing for the referral of cases from the municipal courts of that municipality to a magistrate appointed under this subchapter, and by ordinance to authorize the municipal court judges to refer cases pending in the municipal courts to a magistrate appointed under this subchapter.

(b) Authorizes a municipal court judge who is authorized to refer a case to a magistrate as provided by Subsection (a) to refer one or more cases to a magistrate in the manner provided by Section 54.1310. Authorizes the magistrate to whom the case is referred to exercise any power conferred on the magistrate under Section 54.1311, except as limited by the order of referral.

Sec. 54.1310. ORDER OF REFERRAL. (a) Requires a judge to issue an order of referral specifying the magistrate's duties, when referring one or more cases to a magistrate.

(b) Authorizes an order of referral to prescribe certain matters.

Sec. 54.1311. POWERS. (a) Authorizes a magistrate to whom a case is referred, except as limited by an order of referral, to perform certain duties.

(b) Prohibits a magistrate from entering a ruling on any issue of law or fact if that ruling could result in dismissal or require dismissal of a pending criminal prosecution, but the magistrate is authorized to make findings, conclusions, and recommendations on those issues.

Sec. 54.1312. COURT REPORTER. Requires the court, on request of a party in a case that is referred from a court of record, to provide a court reporter to record the proceedings before the magistrate.

Sec. 54.1313. WITNESS. (a) Provides that a witness that appears before a magistrate and is sworn is subject to the penalties for perjury provided by law.

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

Sec. 54.1314. PAPERS TRANSMITTED TO JUDGE. Requires a magistrate at the conclusion of the proceedings to transmit to the referring court any papers relating to the case, including the magistrate's findings, conclusions, orders, recommendations, or other action taken.

Sec. 54.1315. JUDICIAL ACTION. (a) Authorizes a referring court to modify, correct, reject, reverse, or recommit for further information any action taken by the magistrate.

(b) Provides that if the court does not modify, correct, reject, reverse, or recommit an action of the magistrate, the action becomes the decree of the court.

(c) Requires the referring court to enter a decree on the minutes adopting the actions of the magistrate of which court approves at the conclusion of each term during which the services of a magistrate are used.

Sec. 54.1316. COSTS OF MAGISTRATE. Requires the court to determine if the non-prevailing party is able to defray the costs of the magistrate. Requires the court to tax the magistrate's fees as costs against the non-prevailing party, if the court determines that the non-prevailing party is able to pay those costs.

SECTION 3. Amends Article 2.09, Code of Criminal Procedure, as follows:

Art. 2.09. WHO ARE MAGISTRATES. Includes the magistrates appointed by the judges of the district courts and statutory county courts that give preference to criminal cases in Bexar County to the list of persons who are magistrates under this code.

SECTION 4. Effective date: upon passage or September 1, 2007.