

By: Hinojosa

S.B. No. 1961

A BILL TO BE ENTITLED

AN ACT

relating to the appointment and duties of criminal magistrates for certain courts in Hidalgo 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, Hidalgo County,

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

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

19 SUBCHAPTER MM. CRIMINAL LAW MAGISTRATES IN HIDALGO COUNTY

20 Sec. 54.2101. APPLICATION. This subchapter applies to the  
21 district courts and the county courts at law in Hidalgo County.

22 Sec. 54.2102. APPOINTMENT; COMPENSATION. (a) The  
23 Commissioners Court of Hidalgo County shall set the number of  
24 magistrates needed to perform the duties authorized by this  
25 subchapter.

26 (b) A magistrate shall be paid a salary determined by the  
27 Commissioners Court of Hidalgo County.

1        (c) The judges of the district courts who wish to use the  
2 services of a magistrate may jointly appoint the magistrates that  
3 will assist their courts. The judges of the county courts at law  
4 who wish to use the services of a magistrate may jointly appoint the  
5 magistrates that will assist their courts. A judge who uses the  
6 services of a magistrate may determine the extent to which those  
7 services are used in the judge's court.

8        (d) On agreement between the judges of the district courts  
9 and the judges of the county courts at law who wish to use the  
10 services of a magistrate, a magistrate may serve in both those  
11 district courts and those county courts at law. A magistrate  
12 serving in both the district courts and the county courts at law  
13 shall spend half the magistrate's time in the district courts and  
14 half in the county courts at law.

15        (e) If the number of magistrates is less than the number of  
16 the judges who wish to use the services of a magistrate, each  
17 magistrate shall serve equally in the courts of those judges.

18        (f) A magistrate serves a one-year term, unless the  
19 magistrate is terminated under Section 54.2109.

20        (g) A magistrate may be employed on a full-time or part-time  
21 basis. A court served by the magistrate shall determine the  
22 magistrate's work schedule.

23        Sec. 54.2103. ELIGIBILITY FOR APPOINTMENT. In determining  
24 whom to appoint as a magistrate under this subchapter, the judges of  
25 the district courts or the judges of the county courts at law, as  
26 applicable, shall give priority to a retired or former judge, as  
27 those terms are defined by Section [74.041](#). If no retired or former

judge desires to be appointed, the appointing judges shall consider  
for appointment persons who:

- (1) are licensed to practice law in this state;
- (2) reside in Hidalgo County;
- (3) have at least 10 years of active experience in  
criminal law practice; and
- (4) exhibit judicial temperaments.

Sec. 54.2104. JUDICIAL IMMUNITY. A magistrate has the same  
judicial immunity as a district judge or judge of a county court at  
law, as applicable.

Sec. 54.2105. STAFF FOR MAGISTRATE. (a) The clerk of a  
court a magistrate serves shall provide a clerk for the magistrate.

(b) A sheriff's deputy shall attend a proceeding conducted  
by a magistrate and act as a bailiff.

Sec. 54.2106. PROCEEDINGS THAT MAY BE REFERRED. A judge who  
appoints a magistrate under Section 54.2102 may refer to the  
magistrate any criminal case for proceedings involving:

- (1) arraignment of defendants;
- (2) a negotiated plea of guilty or no contest;
- (3) sentencing for a negotiated plea of guilty or no  
contest;
- (4) ordering of community service;
- (5) a pretrial motion;
- (6) an examining trial;
- (7) a bond forfeiture suit;
- (8) issuance of capias;
- (9) issuance of arrest and search warrants;

- 1           (10) setting of bonds;
- 2           (11) a motion to increase or decrease a bond;
- 3           (12) a hearing on a protective order;
- 4           (13) a motion to grant, modify, revoke, or extend  
5 community supervision or to proceed to an adjudication;
- 6           (14) a pretrial diversion;
- 7           (15) civil commitment matters under Subtitle C, Title  
8 7, Health and Safety Code;
- 9           (16) an agreed recommendation for a presentence  
10 investigation report for determination of a sentence; and
- 11           (17) any other matter the judge considers necessary  
12 and proper.

13           Sec. 54.2107. POWERS. Except as limited by an order of  
14 referral, a magistrate to whom a case is referred may:

- 15           (1) conduct hearings;
- 16           (2) hear evidence;
- 17           (3) compel production of relevant evidence;
- 18           (4) rule on admissibility of evidence;
- 19           (5) issue summons for the appearance of witnesses;
- 20           (6) examine witnesses;
- 21           (7) swear witnesses for hearings;
- 22           (8) make findings of fact on evidence;
- 23           (9) formulate conclusions of law;
- 24           (10) rule on pretrial motions;
- 25           (11) recommend the rulings, orders, or judgment to be  
26 made in a case;
- 27           (12) regulate proceedings in a hearing;

1           (13) in any case referred under Section 54.2106:

2                   (A) accept a negotiated plea of guilty;

3                   (B) enter a finding of guilt and impose or  
4 suspend sentence; or

5                   (C) defer adjudication of guilt; and

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

9           Sec. 54.2108. DISMISSAL. A magistrate appointed under this  
10 subchapter may not dismiss a case.

11           Sec. 54.2109. TERMINATION OF SERVICES. Regardless of  
12 whether a magistrate serves in both the district courts and the  
13 county courts at law or whether the magistrate serves in only one of  
14 those types of courts, the magistrate's service with respect to a  
15 particular type of court may be terminated only on a majority vote  
16 of the judges of that type of court who appointed the magistrate  
17 under Section 54.2102, or their successors.

18           Sec. 54.2110. ABSENCE OF MAGISTRATE. (a) If a magistrate  
19 appointed under this subchapter is absent or unable to serve, the  
20 local administrative judge of the type of court with respect to  
21 which the magistrate served may appoint a temporary magistrate to  
22 serve for the absent magistrate.

23           (b) A temporary magistrate serving for another magistrate  
24 under this section has the powers and shall perform the duties of  
25 the magistrate for whom the temporary magistrate is serving.

26           Sec. 54.2111. RECORD OF PROCEEDINGS. A criminal proceeding  
27 in a magistrate court shall be recorded by a good quality electronic

1 audio or videotape recording device, unless the defendant requests  
2 that a court reporter be present. The record shall be retained by  
3 the clerk of the court as required by law.

4 Sec. 54.2112. PAPERS TRANSMITTED TO JUDGE. At the  
5 conclusion of the proceedings, a magistrate shall transmit to the  
6 referring court as soon as possible any papers relating to the case,  
7 including the magistrate's findings, conclusions, orders,  
8 recommendations, or other action taken.

9 Sec. 54.2113. JUDICIAL ACTION. (a) The judge of the court  
10 in which the case is pending may modify, correct, reject, reverse,  
11 or recommit for further information any action taken by the  
12 magistrate.

13 (b) If the supervising judge or judges do not modify,  
14 correct, reject, reverse, or recommit an action of the magistrate  
15 within the time required by law, the action becomes the order,  
16 judgment, or decree of the court.

17 Sec. 54.2114. PRETRIAL DIVERSION. As a condition for a  
18 defendant to enter any pretrial diversion program or the functional  
19 equivalent that may be operated in Hidalgo County, a defendant must  
20 file in the court in which the charges are pending a sworn waiver of  
21 the defendant's right to a speedy trial under the United States  
22 Constitution and other law and a motion requesting the court to  
23 approve the waiver without a hearing. If the court approves the  
24 waiver, the defendant is eligible for consideration for acceptance  
25 into a pretrial diversion or equivalent program.

26 SECTION 3. This Act takes effect September 1, 2015.