

## **BILL ANALYSIS**

Senate Research Center  
76R5491 MLS-D

C.S.S.B. 294  
By: Harris  
Jurisprudence  
2/9/1999  
Committee Report (Substituted)

### **DIGEST**

Currently, Texas courts do not have probate masters. Both criminal and family courts have satisfied the need to conduct hearings while a judge is in a jury trial by appointing magistrates and masters. C.S.S.B. 294 creates procedures for the appointment, termination, and administration of the role of a probate master to increase the efficiency of operation for probate courts.

### **PURPOSE**

As proposed, C.S.S.B. 294 creates the office of probate master for the statutory probate court, and provides regulation for its administration.

### **RULEMAKING AUTHORITY**

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

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Chapter 54, Government Code, by adding Subchapter G, as follows:

#### **SUBCHAPTER G. PROBATE MASTERS**

Sec. 54.601. DEFINITION. Defines “statutory probate court” (SP court).

Sec. 54.602. APPLICATION. Provides that this subchapter does not apply to the SP courts of Dallas County.

Sec. 54.603. APPOINTMENT. Authorizes the SP court judge to appoint a probate master (PM) for the SP court. Authorizes the commissioners court to determine the number of and authorize the appointment of PMs. Requires the PM’s appointment to have the unanimous approval of all the judges under whom the PM serves, if that PM serves more than one court. Requires the PM to meet certain qualifications. Authorizes a PM appointed under this subchapter to serve as a master appointed under Section 574.0085, Health and Safety Code.

Sec. 54.604. TERMINATION OF PROBATE MASTER. Provides that a PM serving a single court serves at the will of that court’s judge. Provides that a PM serving multiple courts can only be terminated by a majority of the judges of all the courts the PM serves. Authorizes either of the judges a dual-court-serving PM serves to terminate that PM’s employment. Sets forth conditions of a PM appointment termination.

Sec. 54.605. COMPENSATION. Entitles a PM to compensation as determined by the appointing judge and the commissioners court. Prohibits a PM’s salary from exceeding that of an appointing judge. Sets forth the method of payment of a PM’s compensation.

Sec. 54.606. OATH. Requires a PM to take the required constitutional oath of office.

Sec. 54.607. MAGISTRATE. Provides that a PM appointed under this subchapter is a magistrate.

Sec. 54.608. **CASES THAT MAY BE REFERRED.** Authorizes a judge to refer any aspect of a suit, including any matter ancillary to the suit, to a PM. Authorizes the judge to refer a trial to a PM, and entitles a party to file a written objection to this action. Describes a trial on the merits. Requires a party to file an objection regarding a PM hearing a trial by the 10th day after notification. Requires the referring court to hear the trial on the merits if an objection to the PM is filed. Requires a matter to be tried by the referring court, unless all parties provide written consent of a PM hearing a contested trial. Provides that when there is concurrent jurisdiction between a referring and a district court, any order made by a PM is void if the parties do not consent in writing to the PM's authority. Requires the PM to refer certain trials back to the referring court if a jury trial is demanded and a jury fee is paid.

Sec. 54.609. **ORDER OF REFERRAL.** Requires certain actions of the judge of a referring court when referring a case to a PM. Authorizes the judge of the referring court to limit the power or duties of a PM.

Sec. 54.610. **POWERS OF PROBATE MASTER.** Authorizes a PM to take certain actions.

Sec. 54.611. **ATTENDANCE OF BAILIFF.** Authorizes the referring court to require a bailiff to attend a hearing conducted by a PM.

Sec. 54.612. **COURT REPORTER.** Provides that a court reporter is not required during a PM hearing. Sets forth provisions regarding the preservation of hearing records.

Sec. 54.613. **WITNESS.** Provides that a witness who appears before a PM is subject to the penalties for perjury provided by law. Authorizes a referring court to impose penalties on a witness who takes certain actions.

Sec. 54.614. **REPORT.** Sets forth an outline of a PM's report. Requires a PM to prepare a written report as directed by the referring court. Requires the PM to provide notice of the substance of the report to certain parties after a hearing, and sets forth the format of the notice. Requires the PM to certify the mailing date of the notification, and notice is considered on the third day after the date of mailing. Requires the PM to send all papers related to a case to the referring court after the hearing.

Sec. 54.615. **NOTICE OF RIGHT TO APPEAL.** Requires a PM to give all parties notice of the right of appeal to the judge of the referring court. Sets forth the format of the notice.

Sec. 54.616. **ORDER OF COURT.** Provides that the content of a PM report has the same power as an order of the referring court, except for orders for incarceration or appointment of a receiver. Provides that if there is no appeal to the referring court, the PM's report becomes the order of the referring court.

Sec. 54.617. **JUDICIAL ACTION ON A MASTER'S REPORT.** Authorizes the referring court to take certain actions, unless a party files a written notice of appeal.

Sec. 54.618. **APPEAL TO REFERRING COURT.** Authorizes a party to appeal a PM report and sets forth the required deadline for filing such an appeal. Requires an appeal to be made in writing and specify the PM conclusions which are objected. Authorizes the parties to take certain actions in the process of the appeal. Requires notice of an appeal to be given in the manner provided by Rule 21a, Texas Rules of Civil Procedure. Sets forth provisions for multiple appeals. Requires the referring court to hold a hearing on all appeals by the 30th day after the initial appeal. Authorizes parties to waive the right of appeal before the start of a hearing. Authorizes the waiver to be in writing or on the record.

Sec. 54.619. **APPELLATE REVIEW.** Provides that the right to appeal to a court of appeals or the supreme court is not deprived from one who fails to appeal to the referring court. Sets forth the controlling date for the purposes of appeal.

Sec. 54.620. **IMMUNITY.** Provides that a PM appointed under this subchapter has the

immunity of a probate judge.

SECTION 2. Amends Article 2.09, Code of Criminal Procedure, to provide that masters appointed by judges of the statutory probate courts under Chapter 54G, Government Code, are magistrates within the meaning of the Code of Criminal Procedure.

SECTION 3. Effective date: September 1, 1999.

SECTION 4. Emergency clause.

### **SUMMARY OF COMMITTEE CHANGES**

SECTION 1.

Amends Section 54.602, Government Code, to provide that this subchapter does not apply to the SP courts of Dallas County, rather than court.