

**BILL ANALYSIS**

Senate Research Center  
77R4240 KLA-F

S.B. 1434  
By: Ogden  
Jurisprudence  
4/19/2001  
As Filed

**DIGEST AND PURPOSE**

Current law authorizes the Brazos County Commissioners Court to fund family law masters and juvenile court referees. As proposed, S.B. 1434 authorizes the funding of criminal law magistrates and makes provisions for the employment of a magistrate to handle preliminary and uncontested matters and free the courts for contested cases.

**RULEMAKING AUTHORITY**

This bill does not expressly 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 T, as follows:

**SUBCHAPTER T. MAGISTRATES IN BRAZOS COUNTY**

Sec. 54.1041. APPOINTMENT. (a) Authorizes the judges of the district courts and county courts at law in Brazos County, with the consent and approval of the Commissioners Court of Brazos County, to jointly appoint one or more magistrates to perform the duties authorized by this subchapter.

(b) Authorizes the judges to authorize one or more magistrates to share service with more than one court.

(c) Requires a magistrate's appointment, if a magistrate serves more than one court, to be made with the unanimous approval of all the judges under whom the magistrate serves.

Sec. 54.1042. QUALIFICATIONS. Sets forth conditions of eligibility for appointment as a magistrate.

Sec. 54.1043. COMPENSATION. (a) Entitles a magistrate to the salary determined by the Commissioners Court of Brazos County.

(b) Prohibits a magistrate's total compensation from all government sources from exceeding an amount equal to \$1,000 less than the total compensation from all government sources paid to a judge of a county court at law in Brazos County.

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

Sec. 54.1044. JUDICIAL IMMUNITY. Provides that a magistrate has the same judicial immunity as a district judge.

Sec. 54.1045. TERMINATION OF EMPLOYMENT. (a) Provides that a magistrate who serves a single court serves at the will of the judge of that court.

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

(c) Requires the appropriate judges, in order to terminate a magistrate's employment, to sign a written order of termination. Sets forth statements that are required to be included in the order.

Sec. 54.1046. PROCEEDINGS THAT MAY BE REFERRED. (a) Authorizes a judge of a court who is authorized to refer criminal cases by the Commissioners Court of Brazos County to refer to a magistrate any criminal case for proceedings involving certain elements.

(b) Authorizes a judge of a court designated as a juvenile court to refer to a magistrate any matter the court is authorized to refer to a referee under Title 3 (Juvenile Justice Code), Family Code.

(c) Authorizes a judge of a court having family law jurisdiction to refer to a magistrate any matter that may be referred to a master appointed under the Family Code or this chapter.

(d) Authorizes a judge of a court who is authorized by the Commissioners Court of Brazos County to refer mental health cases to refer to a magistrate any matter that may be referred to a magistrate or referee under Title 7C (Texas Mental Health Code), Health and Safety Code.

(e) Authorizes a judge of a court who is authorized by the Commissioners Court of Brazos County to refer civil cases other than a case described by Subsection (c) or (d) to refer to a magistrate a civil case for proceedings involving certain elements.

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

Sec. 54.1047. ORDER OF REFERRAL. Requires a judge, to refer one or more cases to a magistrate, to issue an order of referral specifying the magistrate's duties. Sets forth authorized elements of an order of referral.

Sec. 54.1048. POWERS. Sets forth the specific authority of a magistrate to whom a case is referred, except as limited by an order of referral. 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 case, but authorizes the magistrate to make findings, conclusions, and recommendations on those issues.

Sec. 54.1049. NOTICE OF HEARING. Requires each party to be given notice of the time and place of a hearing as provided by law, before a magistrate holds the hearing.

Sec. 54.1050. WITNESSES. Provides that a witness who appears before a magistrate and is sworn is subject to the penalties for perjury as provided by law. 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. 54.1051. RECORD OF EVIDENCE. Provides that a court reporter is not required during a hearing held by a magistrate. Authorizes a party, the magistrate, or the referring court to provide for a reporter during the hearing. Authorizes the record of a hearing before a

magistrate to be preserved by any means approved by the referring court, including by stenographic or electronic recording. Authorizes the referring court or magistrate to impose on a party the expense of preserving the record as a court cost.

Sec. 54.1052. REPORT AND PAPERS TRANSMITTED TO JUDGE. Requires a magistrate, at the conclusion of the proceedings, to send to the referring court certain materials.

Sec. 54.1053. HEARING BEFORE JUDGE. (a) Entitles any party, principal, or minor, or the parent, guardian, or custodian of a minor, after receiving notice of the magistrate's findings, to a hearing before the judge of the referring court.

(b) Authorizes notice of the right to a hearing before the judge to be given at the hearing before the magistrate or otherwise as the referring court directs.

(c) Requires a party, except as provided by other law requiring a party to file a request for a hearing sooner, to file a request for hearing with the referring court not later than the fifth day after the date the magistrate signs the report under Section 54.1052. Requires the appeal to the referring court to specify the findings and conclusions of the magistrate to which the party objects. Provides that the appeal is limited to the findings and conclusions specified in the appeal.

Sec. 54.1054. EFFECT OF MAGISTRATE'S REPORT PENDING APPEAL. Provides that, pending appeal of the magistrate's report to the referring court, the decisions and recommendations of the magistrate's report have the force and effect of, and are enforceable as, an order of the referring court, except as provided by other law for a particular action by the magistrate.

Sec. 54.1055. JUDICIAL ACTION. Authorizes the referring court to modify, correct, reject, reverse, or recommit for further proceedings any action taken by the magistrate. Provides that if the referring court does not take any action, the actions of the magistrate become the decree of the referring court on adoption by that court.

Sec. 54.1056. COSTS OF MAGISTRATE. (a) Requires the court to determine if the nonprevailing party is able to defray the costs of the magistrate. Requires the court, if it determines that the nonprevailing party is able to pay those costs, to impose the magistrate's fees as costs against the nonprevailing party.

(b) Requires the Commissioners Court of Brazos County to set the amount of the magistrate's fees that may be imposed as costs. Provides that unless a higher fee is authorized by law for a particular action taken by the magistrate, the magistrate's fees in a case may not exceed \$50.

(c) Requires the clerk of the referring court to collect the magistrate's fees and deposit the fees in the county treasury.

SECTION 2. Effective date: upon passage or September 1, 2001.