BILL ANALYSIS

Senate Research Center 80R14730 KLA-F

H.B. 4107
By: Herrero et al. (Hinojosa)
Jurisprudence
5/12/2007
Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

With increases in population and caseloads, better efficiency in the administration of criminal law is a concern for most localities. Currently, there is no statutory system for the appointment and activities of criminal law magistrates in Nueces County.

H.B. 4107 amends the Government Code to make provisions applicable to Nueces County for criminal law magistrates. Magistrates under these provisions would be selected jointly by the judges of the district courts for district court service, the county courts for county court service, or both on a half-time basis for each set of courts on the agreement of the judges. Termination for a set of courts is by majority vote of the judges of such courts. Eligibility is limited to licensed lawyers residing in Nueces County with 10 years of active criminal law experience and preference is to be given to former and retired judges. Immunity is provided, and staff are to be supplied by the clerk of the court served. The powers supplied to magistrates are broad, but typical of magistrate duties in other jurisdictions. Primary jurisdiction is retained by the referring court, and a magistrate may not dismiss a case. Recordings or transcription of proceedings is required. The bill requires a sworn waiver of right to speedy trial prior to consideration for pretrial diversion.

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 Article 2.09, Code of Criminal Procedure, to include Nueces County among the county and district courts whose officers are magistrates within the meaning of this code.

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

SUBCHAPTER FF. CRIMINAL LAW MAGISTRATES IN NUECES COUNTY

Sec. 54.1781. APPLICATION. Provides that this subchapter applies to the district courts and the county courts at law in Nueces County.

Sec. 54.1782. APPOINTMENT; COMPENSATION. (a) Requires the Commissioners Court of Nueces County to set the number of magistrates needed to perform the duties authorized by this subchapter.

(b) Requires a magistrate to be paid a salary determined by the Commissioners Court of Nueces County.

(c) Authorizes the judges of the district courts who wish to use the services of a magistrate to jointly appoint the magistrates that will assist their courts. Authorizes the judges of the county courts at law who wish to use the services of a magistrate to jointly appoint the magistrates that will assist their courts. Authorizes a judge who uses the services of a magistrate to determine the extent to which those services are used in the judge's court.

(d) Authorizes a magistrate, on agreement between the judges of the district courts and the judges of the county courts at law who wish to use the services of a magistrate, to serve in both those district courts and those county courts at law. Requires a magistrate serving in both the district courts and the county courts at law to spend half the magistrate's time in the district courts and half in the county courts at law.

(e) Requires each magistrate, if the number of magistrates is less than the number of the judges who wish to use the services of a magistrate, to serve equally in the courts of those judges.

(f) Provides that a magistrate serves a one-year term, unless the magistrate is terminated under Section 54.1789, Government Code.

(g) Authorizes a magistrate to be employed on a full-time or part-time basis. Requires a court served by the magistrate to determine the magistrate's work schedule.

Sec. 54.1783. ELIGIBILITY FOR APPOINTMENT. Requires the judges of the district courts or the judges of the county courts at law, in determining whom to appoint as a magistrate under this subchapter, as applicable, to give priority to a retired or former judge, as those terms are defined by Section 74.041 (defining "former judge" and "retired judge"), Government Code. Requires the appointing judges, if no retired or former judge desires to be appointed, to consider for appointment persons who are licensed to practice law in this state, reside in Nueces County, have at least 10 years of active experience in criminal law practice, and exhibit judicial temperaments.

Sec. 54.1784. JUDICIAL IMMUNITY. Provides that a magistrate has the same judicial immunity as a district judge or judge of a county court at law, as applicable.

Sec. 54.1785. STAFF FOR MAGISTRATE. Requires the clerk of a court a magistrate serves to provide a clerk for the magistrate. Requires a sheriff's deputy to attend a proceeding conducted by a magistrate and to act as a bailiff.

Sec. 54.1786. PROCEEDINGS THAT MAY BE REFERRED. Authorizes a judge who appoints a magistrate under Section 54.1782, Government Code, to refer to the magistrate any criminal case for proceedings involving certain matters.

Sec. 54.1787. POWERS. Authorizes a magistrate to whom a case is referred, except as limited by an order of referral, to take certain actions to perform duties required by the order of referral.

Sec. 54.1788. DISMISSAL. Prohibits a magistrate appointed under this chapter from dismissing a case.

Sec. 54.1789. TERMINATION OF SERVICES. Authorizes the magistrate's services with respect to a particular type of court to be terminated only on a majority vote of the judges of that type of court who appointed the magistrate under Section 54.1782, Government Code, or their successors, regardless of whether a magistrate serves in both the district courts and the county courts at law or whether the magistrate serves in only one of those types of courts.

Sec. 54.1790. ABSENCE OF MAGISTRATE. Authorizes the local administrative judge of the type of court with respect to which the magistrate served, if a magistrate appointed under this subchapter is absent or unable to serve, to appoint a temporary magistrate to serve for the absent magistrate. Provides that a temporary magistrate serving for another magistrate under this section has the powers and is required to perform the duties of the magistrate for whom the temporary magistrate is serving.

Sec. 54.1791. RECORD OF PROCEEDINGS. Requires a criminal proceeding in a magistrate court to be recorded by a good quality electronic audio or videotape recording

device, unless the defendant requests that a court reporter be present. Requires the record to be retained by the clerk of the court as required by law.

Sec. 54.1792. PAPERS TRANSMITTED TO JUDGE. Requires a magistrate, at the conclusion of the proceedings, to transmit to the referring court as soon as possible any papers relating to the case, including the magistrate's findings, conclusions, orders, recommendations, or other actions taken.

Sec. 54.1793. JUDICIAL ACTION. Authorizes the judge of the court in which the case is pending to modify, correct, reject, reverse, or recommit for further information any action taken by the magistrate. Provides that the action becomes the order, judgment, or decree of the court, if the supervising judge or judges do not modify, correct, reject, reverse, or recommit an action of the magistrate within the time required by law.

Sec. 54.1794. PRETRIAL DIVERSION. Requires a defendant, as a condition for a defendant to enter any pretrial diversion program or the functional equivalent that is authorized to be operated in Nueces County, to file in the court in which the charges are pending a sworn waiver of the defendant's right to a speedy trial under the United States Constitution and other law and a motion requesting the court to approve the waiver without a hearing. Provides that the defendant is eligible for consideration for acceptance into a pretrial diversion or equivalent program, if the court approves the waiver.

SECTION 3. Effective date: September 1, 2007.