

# MAGISTRATE DUTIES

## Legislative Update August 2007

Presented By: Honorable Robin A. Ramsay  
Presiding Municipal Judge, City of Denton

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## Specific County Legislation

- ▶ SB 1404 – Criminal Law Hearing Officers in Harris County
  - Amends Sec. 54.856 and 54.858, Gov. Code
  - “all other duties of a magistrate as specified CCP”
  - Removes jurisdiction over Justice Court cases
- ▶ HB 4107 – Criminal Magistrates in Nueces County
  - Amends Sec. 54.1782, 3, 5, 6, 8, Gov. Code
  - Allows for appointment of criminal law magistrates
  - Selected by District & County Ct. Judges

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## HB 3593 Completion of Counseling

- Amends Family Code 85.024(a)
- Applies after “a person has been found to have engaged in family violence”
- Prior law required that offender file an affidavit of completion of counseling within 30 days of the expiration of the **protective order**
- Amendment requires offender to file an affidavit not later than 30 days of expiration of a **protective order** or the 1<sup>st</sup> anniversary of the protective order, whichever occurs first

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**SB 584 – Magistrate P.O. and Sexual and Aggravated Offenses**

- › Amends CCP 17.292 related to Magistrates Emergency Orders for Protection
- › Expands applicability to include offenses under Penal Code 22.011 and 22.021
- › Specifically covers the offenses of Sexual Assault and Aggravated Sexual Assault
- › May be requested by parent or legal guardian
- › M.O.E.P. may be issued as to these offenses whether or not they involve family violence

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**HB 1988  
Extension of Protective Orders**

- HB 1988 amends Art. 7A, T.C.C.P. (Protective Orders – NOT Magistrate Emergency P.O.)
- Extends duration of protective order in sexual assault, aggravated sexual assault or indecency w/ a child
- P.O. in such cases may be valid “for the duration of the lives of the victim”
- Allows parents or guardians of persons younger than 17 to file request for P.O. – prior law allowed only victim or prosecutor to file request

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**HB 518 – Detention and Examination of Mentally Ill**

- › Amends Sec. 573.021, Health & Safety Code
- › Authorizes detention of persons accepted for preliminary mental health evaluations for up to 48 Hours after detention without Order for Protective custody
- › Prior limitation – 24 hours
- › Requires physician to examine patient within 12 hours – shortened from previous 24 hour
- › CME must be performed not earlier than the 3<sup>rd</sup> day (rather than 5<sup>th</sup>) prior to filing of motion

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**SB 867 – Criminal Defendants w/  
Mental Retardation/ Mental Illness**

- ▶ Amends Chapter 46B T.C.C.P. (Incompetency to stand trial)
- ▶ Continues evolution of Ch. 46B aimed at expediting competency cases and reducing procedural burdens on probate courts
- ▶ Allows magistrate to order examination OR (new) use the results of a past evaluation if the defendant was found to have mental illness after an evaluation in the last year or
- ▶ If found to be mentally retarded by local mental health authority or expert in past
- ▶ Will not affect most magistrates (typically probate court)

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**SB 778  
Technology and the Mentally Ill**

- SB 778 creates cost-effective option for re-commitment hearings for patients placed involuntarily in state mental health facility
- Amends H & S Sec. 573.012 to allow physician applicant to present an application for emergency detention via two-way, simultaneous, compressed, interactive, full-motion video and sound communication between the judge or magistrate and physician

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**Technology and the Mentally Ill  
(Continued)**

- Presentation of application must be recorded and preserved until patient is released or discharged
- Patient must consent and, if indigent, copy of record must be provided without cost
- New Sec. 574.203 allows *entire re-commitment* hearing to be conducted electronically if all requirements for two-way communication have been met

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**HB 3131**

**Search Warrants by Non-record Courts**

- Amends Art. 18.01(i) T.C.C.P.
- Expands list of magistrates who may issue search warrants for “mere evidence” under Subdivision (10) of Art. 18.01
- Allows any magistrate to issue search warrants for “mere evidence” in a county that does NOT have an attorney judge of a county court, statutory county court or municipal court of record

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**SB 909 –**

**Magistrate’s Notice of Arrest**

- › Amends Art. 15.19, T.C.C.P.
- › Removes the word “accused” and substitutes the phrase “arrested person”
- › Removes gender related words and substitutes “arrested person”
- › Requires that the magistrate “provide notice to” (instead of notify) sheriff of county where offense alleged
- › Sheriff must have the “arrested person” brought before the proper magistrate or court before the 11<sup>th</sup> day after arrest - if not, discharged from custody

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**HJR 6 –Denying Bail –**

**Violation of Bond Condition – Family Violence**

- › Proposes Constitutional Amendment
- › Must be submitted to voters on November, 2007 general election
- › Proposes authorization of denial of bail to a person who violates an magistrate’s emergency protective order after arrest for an offense involving family violence

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**Violation of Bond Condition - Family Violence  
(continued)**

- Applies only to pre-trial conditions of bond
- Requires revocation or forfeiture of bond for a prior condition of bond
- Magistrate must find that defendant violated condition or emergency protective order by a preponderance of evidence
- Deletes prior language requiring denial of bail only after a hearing to set or reinstate bail before a District Judge
- Will not take effect unless voters approve in November, 2007

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**HB 3692  
Denying Bail - Violation of Bond Condition**

- Amends sec. 25.07 Tx. Penal Code
- Effective date: January 1, 2008
- Statutory embodiment of proposed Constitutional Amendment (HJR 6)
- Previously, person may only be denied bond in limited circumstances involving felonies
- Provides for the denial of bond when a person commits an offense involving family violence under 25.07- whether felony or misdemeanor

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**Denying Bail - Violation of Bond Condition  
(HB 3692 continued)**

- Requires defendant be in custody after bond is revoked or forfeited
- Magistrate must find defendant committed an offense involving family violence by a preponderance of evidence
- Defendant must be brought before a magistrate (Art. 15.17) not later than 48 Hrs.
- Magistrate must conduct hearing and may consider additional information
- Last minute amendment, provides for community service by minors - not relevant to denial of bond

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**HB 2391**

**Citations for Class A & B Misdemeanors**

- ▶ Amends Article 14.06 T.C.C.P.
- ▶ Modifies Subsection (a) and creates (c) and (d)
- ▶ Depending on process established by each county, may have little effect on daily magistration process
- ▶ Authorizes peace officers to issue citations for limited list of “non-class C misdemeanors”

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**Citations for Class A & B Misdemeanors (Continued)**

- ▶ **Applies only to the following offenses:**
  - Poss. Of Marijuana (under 4 oz.)
  - Criminal Mischief (under \$500)
  - Graffiti (under \$500)
  - Theft (under \$500)
  - Theft By Check (over \$20 but under \$500)
  - Theft of Service (over \$20 but under \$500)
  - Poss. of Contraband in Corr. Facility
  - Driving While License Invalid

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**Citations for Class A & B Misdemeanors (Continued)**

- ▶ Authorizes peace officers to issue citations
- ▶ Defendant released in lieu of further detention – at officer’s discretion
- ▶ Defendant must be a resident of the county in which arrested
- ▶ Citation must direct defendant to appear before a magistrate at later date and must state the date, time and place for appearance

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**Citations for Class A & B Misdemeanors (Continued)**

- ▶ Amends Art. 15.17 T.C.C.P. by adding Subsection (g)
- ▶ Magistrate who processes a defendant issued a citation for class A or B misdemeanor must perform magistrate duties in the same manner as if the person had been arrested and brought before a magistrate by an officer subsequent to arrest

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**Citations for Class A & B Misdemeanors (Continued)**

- ▶ If defendant appears at magistration as directed by Class B or A "citation", the magistrate may, unless good cause shown, release the defendant on a Personal Bond
- ▶ If defendant does not appear as directed by citation, the magistrate shall issue a warrant of arrest for the defendant

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