

CHAPTER 317

S.B. No. 599

AN ACT

relating to the creation of the El Paso Criminal Law Magistrate Court.

*Be it enacted by the Legislature of the State of Texas:*

SECTION 1. SHORT TITLE. This Act may be cited as the El Paso Criminal Law Magistrates Act.

SECTION 2. CREATION. (a) The El Paso Criminal Law Magistrate Court is created on the date determined as provided by Section 34 of this Act.

(b) The El Paso Criminal Law Magistrate Court has the jurisdiction provided by this Act over offenses allegedly committed in El Paso County except for that portion of the county in the corporate limits of Vinton, Texas.

SECTION 3. JURISDICTION. (a) Except as provided by Subsection (b) of this section, the criminal law magistrate court has the criminal jurisdiction provided by the constitution and laws of this state for county courts.

(b) The criminal law magistrate court does not have jurisdiction to:

(1) hear a trial of a misdemeanor offense, other than a Class C misdemeanor, on the merits if a jury trial is demanded; or

(2) hear a trial of a misdemeanor, other than a Class C misdemeanor, on the merits if a defendant pleads not guilty.

(c) The criminal law magistrate court has the jurisdiction provided by the constitution and laws of this state for magistrates. A judge of the criminal law magistrate court is a magistrate as that term is defined by Section 2.09, Code of Criminal Procedure.

(d) Except as provided by Subsection (e) of this section, the criminal law magistrate court has the criminal jurisdiction provided by the constitution and laws of the state for a district court.

(e) The criminal law magistrate court does not have jurisdiction to:

(1) hear a trial of a felony offense on the merits if a jury trial is demanded;

(2) hear a trial of a felony offense on the merits if a defendant pleads not guilty;

(3) sentence in a felony case unless the judge of the court in whose court the case is pending assigned the case to the criminal law magistrate court for a guilty plea and sentence; or

(4) hear any part of a capital murder case after indictment.

(f) A criminal law magistrate court may not issue writs of habeas corpus in felony cases, but may hear and grant relief on a writ of habeas corpus that is issued by a district court and that is assigned by the district court to the criminal law magistrate court.

(g) A felony or misdemeanor indictment may not be filed in or transferred to the criminal law magistrate court.

(h) A felony or misdemeanor information may not be filed in or transferred to the criminal law magistrate court.

(i) A judge of the criminal law magistrate court shall exercise jurisdiction granted by this Act over felony and misdemeanor indictments and informations only as judge presiding for the court in which the indictment or information is pending and under the limitations set out in the assignment order by the assigning court or as provided by local administrative rules.

**SECTION 4. TERM OF COURT.** The criminal law magistrate court has two terms of court beginning on the first Mondays in January and July.

**SECTION 5. POWERS AND DUTIES.** The criminal law magistrate court or a judge of the criminal law magistrate court may issue writs of injunction and all other writs necessary for the enforcement of the jurisdiction of the court and may issue misdemeanor writs of habeas corpus in cases in which the offense charged is within the jurisdiction of the court or of any other court of inferior jurisdiction in the county. The court and the judge may punish for contempt as provided by law for district courts. A judge of the criminal law magistrate court has all other powers, duties, immunities, and privileges provided by law for county court judges when acting in a misdemeanor case and for district court judges when acting in a felony case.

**SECTION 6. COUNCIL OF JUDGES.** (a) The El Paso Council of Judges is composed of the judges of the district courts of El Paso County and the judges of the county courts at law of El Paso County.

(b) The council of judges shall ensure that the criminal law magistrate court gives preference to magistrate duties, as those duties apply to the county jail inmate population, until the commissioners court provides funds for more than one judge to sit on the criminal law magistrate court.

**SECTION 7. ADMINISTRATIVE RULES.** (a) The El Paso Council of Judges by majority vote shall include in the local rules of administration adopted as provided by Chapter 5, Court Administration Act (Article 200a-1, Vernon's Texas Civil Statutes), rules for the administration of the criminal law magistrate court.

(b) The rules may provide for:

(1) assignment and hearing of all criminal cases subject to the jurisdictional limitations of the criminal law magistrate court;

(2) designation of a particular judge of the criminal law magistrate court to be responsible for certain matters;

(3) fair and equitable division of caseloads of criminal cases of the judges of the council of judges and the criminal law magistrate court;

(4) limitations on the assignment of cases to the criminal law magistrate court;

(5) limitations on the powers of a judge of the criminal law magistrate court in regard to the exercise of jurisdiction when presiding for an assigning court;

(6) setting hours, days, and places for holding court by a judge of the criminal law magistrate court; and

(7) any other matter necessary to carry out this Act or to improve the administration and management of the court system and its auxiliary services.

(c) The rules must provide that:

(1) a criminal law magistrate judge may not, on a regular basis, hold court or perform magistrate duties after 7 p.m. or before 7 a.m.; and

(2) a criminal law magistrate judge may only release a defendant under Article 17.031, Code of Criminal Procedure, under guidelines established by the council of judges.

**SECTION 8. TRANSFER AND ASSIGNMENT OF CASES.** (a) Except as provided by Subsection (b) of this section or local administrative rules, the local administrative judge or a judge of the criminal law magistrate court may transfer between courts any unindicted felony case, Class A misdemeanor case, or Class B misdemeanor case if an information has not been filed and if the case is pending in the court of any magistrate in the criminal law magistrate court's jurisdiction.

(b) A case may not be transferred from or to the magistrate docket of a judge on the El Paso Council of Judges without the consent of the judge to which it is transferred.

(c) Except as provided by Subsection (d) of this section or local administrative rules, the local administrative judge may assign a judge on the council of judges, a judge of the criminal law magistrate court, or any other magistrate to act as presiding judge in any unindicted felony case, Class A misdemeanor case, or Class B misdemeanor case if an information has not been filed and if the case is pending in the court of any magistrate in the criminal law magistrate court's jurisdiction.

(d) A case may not be assigned to a judge on the council of judges without the assigned judge's consent.

(e) This section applies only to the district courts, county courts at law, justice courts, and municipal courts in the county.

(f) The local administrative judge may delegate or the local administrative rules may provide for the delegation of the power to transfer or assign cases to any other judge on the council of judges.

SECTION 9. ORDER OF ASSIGNMENT. (a) Cases may be assigned by local administrative rules, by a blanket written order, or on a case-by-case basis. Each district court and county court at law may use any of the methods to assign cases to the criminal law magistrate court.

(b) The local administrative rules, a blanket order of assignment, or a specific order of assignment may limit the powers of a criminal law magistrate court or a judge of that court.

(c) Unless limited as provided by Subsection (b) of this section, the criminal law magistrate court and a judge of that court may perform all acts and take all measures necessary and proper to exercise the jurisdiction granted in this Act in relation to a case assigned under this Act.

(d) A case assigned under this Act to the criminal law magistrate court from a district court or a county court at law remains on the docket of the assigning court and in the assigning court's jurisdiction.

SECTION 10. EFFECT OF TRANSFER. When a case is transferred from one court to another as provided by this Act, all processes, writs, bonds, recognizances, or other obligations issued from the transferring court are returnable to the court to which the case is transferred as if originally issued by that court. The obligees in all bonds and recognizances taken in a case that is transferred and all witnesses summoned to appear in a court from which a case is transferred are required to appear before the court to which the case is transferred as if the processes or obligations were originally issued by the court to which the transfer is made.

SECTION 11. FORFEITURES. Bail bonds and personal bonds may be forfeited by the criminal law magistrate court in the manner provided by Chapter 22, Code of Criminal Procedure, and those forfeitures shall be filed with the district clerk, except in cases in which the county clerk is the clerk under this Act.

SECTION 12. COSTS. (a) When the district clerk is the clerk under this Act, the district clerk shall charge the same court costs for cases filed, transferred to, or assigned to the criminal law magistrate court that are charged in the district courts.

(b) When the county clerk is the clerk under this Act, the county clerk shall charge the same court costs for cases filed in, transferred to, or assigned to the criminal law magistrate court that are charged in the county courts.

SECTION 13. OBJECTION TO JUDGE. (a) If after indictment, the defendant or the state files a timely objection to the assignment of a first-degree felony to the criminal law magistrate court, the judge is disqualified to hear the case.

(b) If after indictment the defendant or the state files a timely objection to a particular judge on the criminal law magistrate court hearing a first-degree felony assigned to that court, that judge is disqualified to hear the case.

(c) An objection under this section must be filed before the first hearing or trial, including pretrial hearings, in which the assigned judge is to preside.

SECTION 14. JUDGES ON EL PASO COUNCIL OF JUDGES. Unless the local rules of administration provide otherwise, the judges on the El Paso Council of Judges and the judges on the criminal law magistrate court may sit and act for any magistrate in El Paso County on any unindicted felony or Class A or B misdemeanor case if an information has not been filed.

SECTION 15. PRETRIAL DIVERSION. (a) As a condition for a defendant to enter any pretrial diversion program or the functional equivalent that may be operated in El Paso County by the West Texas Regional Adult Probation Department or a county or district attorney of El Paso County, a defendant must file in the court in which the charges are pending a sworn waiver of speedy trial motion requesting the court to approve without a hearing defendant's waiver of his speedy trial rights under the constitution and other law. If the court approves the waiver, the defendant is eligible for consideration for acceptance into a pretrial diversion program or equivalent program.

(b) At the time the motion to waive speedy trial rights required by Subsection (a) of this section is filed, the court clerk shall collect a \$100 filing fee unless the court for good cause waives the fee or any part of the fee under guidelines that may be set by the local administrative rules. The filing fee is nonrefundable.

(c) The fees collected by the court clerk under Subsection (b) of this section shall be deposited in the general fund of the county treasury as provided by Chapter 467, Acts of the 62nd Legislature, Regular Session, 1971 (Article 1709a, Vernon's Texas Civil Statutes).

SECTION 16. JURISDICTION OF JUDGES ON THE EL PASO COUNCIL OF JUDGES. (a) In addition to jurisdiction conferred by other law, each district court and county court at law in El Paso County has the same jurisdiction given to the criminal law magistrate court by this Act.

(b) A misdemeanor information may not be filed in a district court under the grant of jurisdiction in Subsection (a) of this section.

(c) A felony indictment or information may not be filed in a county court at law under the grant of jurisdiction in Subsection (a) of this section.

(d) A judge of a county court at law in El Paso County shall exercise jurisdiction granted by Subsection (a) of this section over felony indictments and felony information only as a judge presiding for the court in which the felony is pending and only if the El Paso Council of Judges has so provided in the local administrative rules by a unanimous vote. The exercise of this jurisdiction outside of El Paso County is as provided by the Court Administration Act (Article 200a-1, Vernon's Texas Civil Statutes) and other law.

(e) A judge of a district court in El Paso County shall exercise jurisdiction granted by Subsection (a) of this section over misdemeanor information only as a judge presiding for the court in which the misdemeanor is pending and only if the council of judges has so provided in the local administrative rules by a unanimous vote. The exercise of this jurisdiction outside of El Paso County is as provided by the Court Administration Act (Article 200a-1, Vernon's Texas Civil Statutes) and other law.

(f) This Act does not grant jurisdiction over misdemeanors involving official misconduct to any court and all those cases remain in the original jurisdiction of the district courts as provided by law.

SECTION 17. JUDGE. (a) The criminal law magistrate court is presided over by one or more judges appointed by a two-thirds vote of all the district court and county court at law judges. A criminal law magistrate court judge serves for a one-year term beginning on the date of appointment.

(b) To be eligible for appointment as a judge of the criminal law magistrate court, a person must meet all the requirements and qualifications to serve as a district court judge.

(c) If there is more than one criminal law magistrate court judge, the council of judges may appoint one of the judges to be the presiding criminal law magistrate court judge.

(d) The order appointing a judge of the criminal law magistrate court must be signed by two-thirds of the judges on the El Paso Council of Judges and shall be entered in the

minutes of each district court and county court at law. The order must state the judge's name, state bar identification number, and the date the appointment takes effect.

(e) The council of judges may withdraw a judge's appointment to the criminal law magistrate court by a majority vote of all the judges on the council of judges. The order must be signed by the local administrative judge and shall be entered in the minutes of each district court and county court at law. The order must state the judge's name, state bar identification number, and the date the order of withdrawal takes effect.

(f) Any judge on the council of judges may withdraw that judge's consent for a judge or judges of the criminal law magistrate court to act for that judge under this Act. The order withdrawing consent to act must state the name of the judge who may not act, the judge's state bar identification number, and the date the withdrawal of consent takes effect.

(g) A judge of the criminal law magistrate court is entitled to the salary determined by the commissioners court. The salary may not be less than the salary authorized to be paid to a family law master appointed for El Paso County.

(h) Except as provided for in Subsection (i) of this section, the council of judges may only appoint the number of judges for which the commissioners court by order provides compensation in the county budget.

(i) The council of judges may appoint any number of judges who agree to serve on the criminal law magistrate court as part-time or as full-time judges without compensation.

SECTION 18. OATH OF OFFICE. The judges of the criminal law magistrate court must take the constitutional oath of office prescribed for appointed officers.

SECTION 19. JUDICIAL IMMUNITY. The judges of the criminal law magistrate court and the judges of the county courts at law have the same judicial immunity as a district judge.

SECTION 20. EXCHANGE OF BENCHES. (a) The judges of the criminal law magistrate court may exchange benches and may sit and act for each other in any proceeding pending in the criminal law magistrate court.

(b) Except as provided by Subsection (c) of this section, the judges of the criminal law magistrate court may exchange benches and may sit and act for each other in any proceeding assigned to them under this Act if a felony or misdemeanor indictment has been filed or a felony or misdemeanor information has been filed.

(c) Any court that assigns an indicted case or a case in which an information has been filed under this Act to the criminal law magistrate court may provide in the assignment order or the local administrative rules may provide that only the judge who is named in the assignment order may act on the case and that another judge of the criminal law magistrate court may not exchange benches or sit for the judge named in the assignment order or local administrative rules.

SECTION 21. SPECIAL JUDGE. (a) If a full-time compensated judge of the criminal law magistrate court is absent or is from any cause disabled or disqualified from presiding, a special judge may be appointed in the manner provided by this Act for the appointment of a judge of the criminal law magistrate court.

(b) A special judge shall take the oath of office that is required by law for the regular judge and has all the power and jurisdiction of the court and of the regular judge for whom he is sitting. A special judge may sign orders, judgments, decrees, or other process of any kind as "Judge Presiding" when acting for the regular judge.

(c) A special judge is entitled to receive for the services actually performed the same amount of compensation that the regular judge is entitled to receive for the services. The compensation shall be paid out of county funds. None of the amount paid to a special judge for sitting for the regular judge may be deducted or paid out of the salary of the regular judge.

SECTION 22. PROSECUTOR. (a) The county attorney represents the state in misdemeanor cases in the criminal law magistrate court.

(b) The district attorney of the 34th Judicial District represents the state in felony cases in the criminal law magistrate court.

**SECTION 23. CLERK.** (a) The district clerk serves as clerk of the criminal law magistrate court, except that after a misdemeanor information is filed in the county court at law and assigned to the criminal law magistrate court, the county clerk serves as clerk for that misdemeanor case.

(b) The district clerk shall establish a docket and keep the minutes for the cases filed in or transferred to the criminal law magistrate court. The district clerk shall perform any other duties that local administrative rules require in connection with the implementation of this Act. The local administrative judge shall ensure that the duties required under this subsection are performed.

(c) The clerk of the case shall include as part of the record on appeal a copy of the order and local administrative rule under which a criminal law magistrate court acted.

**SECTION 24. SHERIFF.** (a) The county sheriff, either in person or by deputy, shall attend the criminal law magistrate court as required by a judge of that court.

(b) Unless the local administrative rules provide otherwise, the county sheriff, either in person or by deputy, shall attend court proceedings heard by El Paso family law masters as required by a family law master.

**SECTION 25. COURT REPORTERS.** Each judge of the criminal law magistrate court and each El Paso family law master shall appoint an official shorthand reporter to serve that judge or that master. Those official shorthand reporters and the official court reporters appointed by the judges of the county courts at law must be well skilled in their profession. Such a reporter is a sworn officer of the court who holds office at the pleasure of the court.

**SECTION 26. FAMILY LAW MASTER.** (a) An El Paso family law master may be appointed as a judge of the criminal law magistrate court and continue as a family law master.

(b) A family law master may not be appointed as a judge of the criminal law magistrate court unless the family law master agrees to the appointment.

(c) A family law master appointed to serve as a judge of the criminal law magistrate court is not entitled to receive additional compensation for serving as a judge of that court unless the commissioners court provides additional compensation.

**SECTION 27. JUDGE OF CRIMINAL LAW MAGISTRATE COURT.** (a) A judge of the criminal law magistrate court may be appointed as a family law master and continue as a judge of the criminal law magistrate court.

(b) A judge of the criminal law magistrate court may not be appointed as a family law master unless the judge agrees to the appointment.

(c) A judge of the criminal law magistrate court appointed to serve as a family law master is not entitled to receive additional compensation for serving as a family law master unless the commissioners court provides additional compensation.

**SECTION 28. MAGISTRATES MAY BE APPOINTED.** (a) Any magistrate in El Paso County may be appointed as a judge of the criminal law magistrate court or as a family law master, or both, and continue as a judge or justice of another court.

(b) A magistrate may not be appointed under Subsection (a) of this section unless the magistrate agrees to the appointment.

(c) A magistrate appointed under Subsection (a) of this section is not entitled to receive additional compensation unless the commissioners court provides additional compensation.

**SECTION 29. LOCATION OF COURT.** The criminal law magistrate court may be held at the location provided by the local administrative rules or that is ordered by the local administrative judge.

**SECTION 30. COURT SEAL.** The seal of the criminal law magistrate court shall be the same as that provided by law for county courts, except that the seal shall contain the words "El Paso Criminal Law Magistrate Court." The seal shall be judicially noticed.

**SECTION 31. INACTIVE COURT.** (a) If in the opinion of a majority of the judges of the El Paso Council of Judges the criminal law magistrate court should not continue in

active operation after it is created, then by an order or orders signed by the local administrative judge all pending cases on the active docket of the criminal law magistrate court shall be transferred to the court or courts of other magistrates that have potential jurisdiction over the cases transferred.

(b) The local administrative judge shall select the courts to which the cases are transferred under Subsection (a) of this section.

**SECTION 32. JURISDICTION NOT DIMINISHED.** This Act does not diminish the jurisdiction granted by the constitution and laws of this state to any court named in this Act.

**SECTION 33. TRANSFER UNDER CODE OF CRIMINAL PROCEDURE.** This Act does not prevent a district court from transferring misdemeanor indictments to an inferior court as provided by Chapter 21, Code of Criminal Procedure, notwithstanding the grant of misdemeanor jurisdiction to the district courts by this Act.

**SECTION 34. CREATION OF COURT.** The criminal law magistrate court is created on September 1, 1992, or on an earlier date determined by the El Paso County Commissioners Court by an order entered on its minutes.

**SECTION 35. EMERGENCY.** The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

Passed the Senate on May 14, 1987, by the following vote: Yeas 30, Nays 0. Passed the House on May 22, 1987, by the following vote: Yeas 148, Nays 0, one present not voting.

Approved June 11, 1987.

Effective June 11, 1987.