

Sample Magistrate Statutes

GOVERNMENT CODE

TITLE 2. JUDICIAL BRANCH

SUBTITLE D. JUDICIAL PERSONNEL AND OFFICIALS

CHAPTER 54. MASTERS; MAGISTRATES; REFEREES; ASSOCIATE JUDGES

SUBCHAPTER D. CRIMINAL LAW MAGISTRATES IN DALLAS COUNTY

Sec. 54.301. APPOINTMENT. (a) Each judge of a district court of Dallas County that gives preference to criminal cases, each judge of a criminal district court of Dallas County, and each judge of a county criminal court of Dallas County, with the consent and approval of the Commissioners Court of Dallas County, may appoint a magistrate to perform the duties authorized by this subchapter.

(b) Judges may authorize one or more magistrates to share service with more than one court.

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

Acts 1985, 69th Leg., ch. 480, Sec. 1, eff. Sept. 1, 1985.
Amended by Acts 1997, 75th Leg., ch. 215, Sec. 1, eff. May 23, 1997.

Sec. 54.302. QUALIFICATIONS. To be eligible for appointment as a magistrate, a person must:

- (1) be a resident of this state; and
- (2) have been licensed to practice law in this state for at least four years.

Acts 1985, 69th Leg., ch. 480, Sec. 1, eff. Sept. 1, 1985.

Sec. 54.303. COMPENSATION. (a) A magistrate is entitled to the salary determined by the Commissioners Court of Dallas County.

(b) The salary may not be less than the salary authorized to be paid to a master for family law cases appointed under Subchapter A.

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

Acts 1985, 69th Leg., ch. 480, Sec. 1, eff. Sept. 1, 1985.

Sec. 54.304. JUDICIAL IMMUNITY. A magistrate has the same judicial immunity as a district judge.

Acts 1985, 69th Leg., ch. 480, Sec. 1, eff. Sept. 1, 1985.

Sec. 54.305. TERMINATION OF SERVICES. (a) A magistrate who serves a single court serves at the will of the judge.

(b) The services of a magistrate who serves more than one court may be terminated by a majority vote of all the judges whom the magistrate serves.

Acts 1985, 69th Leg., ch. 480, Sec. 1, eff. Sept. 1, 1985.

Sec. 54.306. PROCEEDING THAT MAY BE REFERRED. (a) A judge may refer to a magistrate any matter arising out of a criminal case involving:

(1) a negotiated plea of guilty or nolo contendere before the court;

(2) a bond forfeiture;

(3) a pretrial motion;

(4) a postconviction writ of habeas corpus;

(5) an examining trial;

(6) an occupational driver's license;

(7) an appeal of an administrative driver's license revocation hearing; and

(8) any other matter the judge considers necessary and proper.

(b) The magistrate may not preside over a trial on the merits, whether or not the trial is before a jury.

Acts 1985, 69th Leg., ch. 480, Sec. 1, eff. Sept. 1, 1985.
Amended by Acts 1997, 75th Leg., ch. 215, Sec. 2, eff. May 23, 1997; Acts 1999, 76th Leg., ch. 811, Sec. 1, eff. Sept. 1, 1999.

Sec. 54.307. ORDER OF REFERRAL. (a) To refer one or more cases to a magistrate, a judge must issue an order of referral specifying the magistrate's duties.

(b) An order of referral may:

(1) limit the powers of the magistrate and direct the magistrate to report only on specific issues, do particular acts, or receive and report on evidence only;

(2) set the time and place for the hearing;

(3) prescribe a closing date for the hearing;

(4) provide a date for filing the magistrate's findings;

(5) designate proceedings for more than one case over which the magistrate shall preside;

(6) direct the magistrate to call the court's docket; and

(7) set forth general powers and limitations of authority of the magistrate applicable to any case referred.

Acts 1985, 69th Leg., ch. 480, Sec. 1, eff. Sept. 1, 1985.

Sec. 54.308. POWERS. (a) Except as limited by an order of referral, a magistrate to whom a case is referred may:

(1) conduct hearings;

(2) hear evidence;

(3) compel production of relevant evidence;

(4) rule on admissibility of evidence;

- (5) issue summons for the appearance of witnesses;
- (6) examine witnesses;
- (7) swear witnesses for hearings;
- (8) make findings of fact on evidence;
- (9) formulate conclusions of law;
- (10) rule on a pretrial motion;
- (11) recommend the rulings, orders, or judgment to be made in a case;
- (12) regulate proceedings in a hearing; and
- (13) do any act and take any measure necessary and proper for the efficient performance of the duties required by the order of referral.

(b) A magistrate may not enter a ruling on any issue of law or fact if that ruling could result in dismissal or require dismissal of a pending criminal prosecution, but the magistrate may make findings, conclusions, and recommendations on those issues.

(c) Except as limited by an order of referral, a magistrate who is appointed by a district court judge and to whom a case is referred may accept a plea of guilty or nolo contendere in a misdemeanor case for a county criminal court. The magistrate shall forward any fee or fine collected for the misdemeanor offense to the county clerk.

Acts 1985, 69th Leg., ch. 480, Sec. 1, eff. Sept. 1, 1985.
Amended by Acts 1987, 70th Leg., ch. 522, Sec. 1, eff. June 17, 1987; Acts 1997, 75th Leg., ch. 215, Sec. 3, eff. May 23, 1997.

Sec. 54.309. COURT REPORTER. At the request of a party in a felony case, the court shall provide a court reporter to record the proceedings before the magistrate.

Acts 1985, 69th Leg., ch. 480, Sec. 1, eff. Sept. 1, 1985.
Amended by Acts 1997, 75th Leg., ch. 215, Sec. 4, eff. May 23, 1997.

Sec. 54.310. WITNESS. (a) A witness who appears before a magistrate and is sworn is subject to the penalties for perjury provided by law.

(b) A referring court may issue attachment against and may fine or imprison a witness whose failure to appear after being summoned or whose refusal to answer questions has been certified to the court.

Acts 1985, 69th Leg., ch. 480, Sec. 1, eff. Sept. 1, 1985.

Sec. 54.311. PAPERS TRANSMITTED TO JUDGE. At the conclusion of the proceedings, a magistrate shall transmit to the referring court any papers relating to the case, including the magistrate's findings, conclusions, orders, recommendations, or other action taken.

Acts 1985, 69th Leg., ch. 480, Sec. 1, eff. Sept. 1, 1985.

Sec. 54.312. JUDICIAL ACTION. (a) A referring court may modify, correct, reject, reverse, or recommit for further information any action taken by the magistrate.

(b) If the court does not modify, correct, reject, reverse, or recommit an action of the magistrate, the action becomes the decree of the court.

(c) At the conclusion of each term during which the services of a magistrate are used, the referring court shall enter a decree on the minutes adopting the actions of the magistrate of which the court approves.

Acts 1985, 69th Leg., ch. 480, Sec. 1, eff. Sept. 1, 1985.

Sec. 54.313. COSTS OF MAGISTRATE. The court shall determine if the nonprevailing party is able to defray the costs of the magistrate. If the court determines that the nonprevailing party is able to pay those costs, the court shall

tax the magistrate's fees as costs against the nonprevailing party.

Acts 1985, 69th Leg., ch. 480, Sec. 1, eff. Sept. 1, 1985.

SUBCHAPTER H. CRIMINAL LAW MAGISTRATES IN TARRANT COUNTY

Sec. 54.651. APPOINTMENT. (a) The judges of the district courts of Tarrant County that give preference to criminal cases, the judges of the criminal district courts of Tarrant County, and the judges of the county criminal courts of Tarrant County, with the consent and approval of the Commissioners Court of Tarrant County, shall jointly appoint the number of magistrates set by the commissioners court to perform the duties authorized by this subchapter.

(b) Each magistrate's appointment must be made with the approval of at least two-thirds of all the judges described in Subsection (a).

(c) If the number of magistrates is less than the number of judges described in Subsection (a), each magistrate shall serve equally in the courts of those judges.

Added by Acts 1987, 70th Leg., ch. 81, Sec. 1, eff. Aug. 31, 1987. Amended by Acts 1997, 75th Leg., ch. 1147, Sec. 1, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 910, Sec. 1, eff. Sept. 1, 2003.

Sec. 54.652. QUALIFICATIONS. To be eligible for appointment as a magistrate, a person must:

- (1) be a resident of this state; and
- (2) have been licensed to practice law in this state for at least four years.

Added by Acts 1987, 70th Leg., ch. 81, Sec. 1, eff. Aug. 31, 1987.

Sec. 54.653. COMPENSATION. (a) A full-time magistrate is entitled to the salary determined by the Commissioners Court of Tarrant County.

(b) The salary of a full-time magistrate may not exceed 90 percent of the sum of:

(1) the salary paid to a district judge by the state under Section 659.012; and

(2) the maximum amount of county contributions and supplements allowed by law to be paid to a district judge under Section 659.012.

(c) The salary of a part-time magistrate is equal to the per-hour salary of a full-time magistrate. The per-hour salary is determined by dividing the annual salary by a 2,080 work-hour year. The judges of the courts trying criminal cases in Tarrant County shall approve the number of hours for which a part-time magistrate is to be paid.

(d) A magistrate's salary is paid from the county fund available for payment of officers' salaries.

Added by Acts 1987, 70th Leg., ch. 81, Sec. 1, eff. Aug. 31, 1987.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 1045 (H.B. 1904), Sec. 1, eff. September 1, 2017.

Sec. 54.654. JUDICIAL IMMUNITY. A magistrate has the same judicial immunity as a district judge.

Added by Acts 1987, 70th Leg., ch. 81, Sec. 1, eff. Aug. 31, 1987.

Sec. 54.655. TERMINATION OF SERVICES. (a) A magistrate who serves a single court serves at the will of the judge.

(b) The services of a magistrate who serves more than one court may be terminated by a majority vote of all the judges whom the magistrate serves.

Added by Acts 1987, 70th Leg., ch. 81, Sec. 1, eff. Aug. 31, 1987.

Sec. 54.656. PROCEEDING THAT MAY BE REFERRED. (a) A judge may refer to a magistrate any criminal case or matter relating to a criminal case for proceedings involving:

- (1) a negotiated plea of guilty or no contest and sentencing before the court;
- (2) a bond forfeiture, remittitur, and related proceedings;
- (3) a pretrial motion;
- (4) a writ of habeas corpus;
- (5) an examining trial;
- (6) an occupational driver's license;
- (7) a petition for an order of expunction under Chapter 55, Code of Criminal Procedure;
- (8) an asset forfeiture hearing as provided by Chapter 59, Code of Criminal Procedure;
- (9) a petition for an order of nondisclosure of criminal history record information or an order of nondisclosure of criminal history record information that does not require a petition provided by Subchapter E-1, Chapter 411;
- (10) a motion to modify or revoke community supervision or to proceed with an adjudication of guilt;
- (11) setting conditions, modifying, revoking, and surrendering of bonds, including surety bonds;
- (12) specialty court proceedings;
- (13) a waiver of extradition; and
- (14) any other matter the judge considers necessary and proper.

(b) A judge may refer to a magistrate a civil case arising out of Chapter 59, Code of Criminal Procedure, for any purpose authorized by that chapter, including issuing orders, accepting agreed judgments, enforcing judgments, and presiding over a case on the merits if a party has not requested a jury trial.

(c) A magistrate may accept a plea of guilty from a defendant charged with misdemeanor, felony, or both misdemeanor and felony offenses.

(d) A magistrate may select a jury. A magistrate may not preside over a criminal trial on the merits, whether or not the trial is before a jury.

(e) A magistrate may not hear a jury trial on the merits of a bond forfeiture.

Added by Acts 1987, 70th Leg., ch. 81, Sec. 1, eff. Aug. 31, 1987. Amended by Acts 1997, 75th Leg., ch. 1147, Sec. 2, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 910, Sec. 2, eff. Sept. 1, 2003.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 66 (S.B. 483), Sec. 1, eff. September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 1279 (S.B. 1902), Sec. 17, eff. September 1, 2015.

Acts 2017, 85th Leg., R.S., Ch. 1045 (H.B. 1904), Sec. 2, eff. September 1, 2017.

Sec. 54.657. ORDER OF REFERRAL. (a) To refer one or more cases to a magistrate, a judge must issue an order of referral specifying the magistrate's duties.

(b) An order of referral may:

(1) limit the powers of the magistrate and direct the magistrate to report only on specific issues, do particular acts, or receive and report on evidence only;

(2) set the time and place for the hearing;

(3) prescribe a closing date for the hearing;

(4) provide a date for filing the magistrate's findings;

(5) designate proceedings for more than one case over which the magistrate shall preside;

(6) direct the magistrate to call the court's docket;
and

(7) set forth general powers and limitations of authority of the magistrate applicable to any case referred.

Added by Acts 1987, 70th Leg., ch. 81, Sec. 1, eff. Aug. 31, 1987.

Sec. 54.658. POWERS. (a) Except as limited by an order of referral, a magistrate to whom a case is referred may:

- (1) conduct hearings;
- (2) hear evidence;
- (3) compel production of relevant evidence;
- (4) rule on admissibility of evidence;
- (5) issue summons for the appearance of witnesses;
- (6) examine witnesses;
- (7) swear witnesses for hearings;
- (8) make findings of fact on evidence;
- (9) formulate conclusions of law;
- (10) rule on a pretrial motion;
- (11) recommend the rulings, orders, or judgment to be made in a case;
- (12) regulate proceedings in a hearing;
- (13) accept a plea of guilty from a defendant charged with misdemeanor, felony, or both misdemeanor and felony offenses;
- (14) select a jury;
- (15) accept a negotiated plea on a probation revocation;
- (16) conduct a contested probation revocation hearing;
- (17) sign a dismissal in a misdemeanor case;
- (18) in any case referred under Section [54.656\(a\)\(1\)](#), accept a negotiated plea of guilty or no contest and:
 - (A) enter a finding of guilt and impose or suspend the sentence; or
 - (B) defer adjudication of guilt; and

(19) do any act and take any measure necessary and proper for the efficient performance of the duties required by the order of referral.

(b) A magistrate may sign a motion to dismiss submitted by an attorney representing the state on cases referred to the magistrate, or on dockets called by the magistrate, and may consider unadjudicated cases at sentencing under Section 12.45, Penal Code.

(c) A magistrate has all of the powers of a magistrate under the laws of this state and may administer an oath for any purpose.

(d) A magistrate does not have authority under Article 18.01(c), Code of Criminal Procedure, to issue a subsequent search warrant under Article 18.02(10), Code of Criminal Procedure.

Added by Acts 1987, 70th Leg., ch. 81, Sec. 1, eff. Aug. 31, 1987. Amended by Acts 2003, 78th Leg., ch. 910, Sec. 3, eff. Sept. 1, 2003.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 66 (S.B. 483), Sec. 2, eff. September 1, 2011.

Acts 2017, 85th Leg., R.S., Ch. 1045 (H.B. 1904), Sec. 3, eff. September 1, 2017.

Sec. 54.659. COURT REPORTER. At the request of a party in a felony case, the court shall provide a court reporter to record the proceedings before the magistrate.

Added by Acts 1987, 70th Leg., ch. 81, Sec. 1, eff. Aug. 31, 1987. Amended by Acts 1997, 75th Leg., ch. 1147, Sec. 3, eff. Sept. 1, 1997.

Sec. 54.660. WITNESS. (a) A witness who appears before a magistrate and is sworn is subject to the penalties for perjury provided by law.

(b) A referring court may issue attachment against and may fine or imprison a witness whose failure to appear after being summoned or whose refusal to answer questions has been certified to the court.

Added by Acts 1987, 70th Leg., ch. 81, Sec. 1, eff. Aug. 31, 1987.

Sec. 54.661. PAPERS TRANSMITTED TO JUDGE. At the conclusion of the proceedings, a magistrate shall transmit to the referring court any papers relating to the case, including the magistrate's findings, conclusions, orders, recommendations, or other action taken.

Added by Acts 1987, 70th Leg., ch. 81, Sec. 1, eff. Aug. 31, 1987.

Sec. 54.662. JUDICIAL ACTION. (a) A referring court may modify, correct, reject, reverse, or recommit for further information any action taken by the magistrate.

(b) If the court does not modify, correct, reject, reverse, or recommit an action of the magistrate, the action becomes the decree of the court.

(c) At the conclusion of each term during which the services of a magistrate are used, the referring court shall enter a decree on the minutes adopting the actions of the magistrate of which the court approves.

Added by Acts 1987, 70th Leg., ch. 81, Sec. 1, eff. Aug. 31, 1987.

Sec. 54.663. COSTS OF MAGISTRATE. The court shall determine if the nonprevailing party is able to defray the costs of the magistrate. If the court determines that the nonprevailing party is able to pay those costs, the court shall

tax the magistrate's fees as costs against the nonprevailing party.

Added by Acts 1987, 70th Leg., ch. 81, Sec. 1, eff. Aug. 31, 1987.