

2020 Regular Session

SENATE BILL NO. 74

BY SENATOR MIZELL

COURTS. Adds a second commissioner to the Twenty-Second Judicial District Court and authorizes commissioners to preside over domestic violence cases and civil matters. (8/1/20)

1 AN ACT

2 To amend and reenact R.S. 13:721 and 722, relative to the Twenty-Second Judicial District

3 Court; to provide for an additional commissioner for the Twenty-Second Judicial

4 District Court; to authorize commissioners to preside over cases involving domestic

5 violence; to authorize commissioners to preside over civil cases; to provide for the

6 residency requirements of the commissioners; to provide for the salary of

7 commissioners; to provide for the duties and powers of the commissioners; to

8 provide for temporary orders and recommendations for final judgments; to provide

9 for procedure and delays to request a hearing before a district court judge to traverse

10 the recommendations of the commissioner; to reaffirm the jurisdiction and authority

11 of the district judges to accept, reject, or modify the findings or recommendations of

12 the commissioners; to provide for appeals; and to provide for related matters.

13 Be it enacted by the Legislature of Louisiana:

14 Section 1. R.S. 13:721 and 722 are hereby amended and reenacted to read as
15 follows:

16 §721. ~~Commissioner~~ **Commissioners** for the Twenty-Second Judicial District Court

17 A. There is ~~are~~ hereby created ~~one office~~ **two offices** of commissioner for the

1 Twenty-Second Judicial District Court.

2 B. The ~~commissioner~~ commissioners shall be selected by a majority of the
3 judges of the Twenty-Second Judicial District and may be removed from office by
4 a majority of those judges. There shall be no term of such office. ~~☆~~ Each
5 commissioner shall serve at the pleasure of the court. Additionally, the ~~commissioner~~
6 commissioners may be subject to removal from office for any reason for which a
7 district judge may be removed.

8 C. The ~~commissioner~~ commissioners shall have jurisdiction over criminal
9 and civil matters. The jurisdiction over criminal and civil matters shall include
10 matters of domestic violence.

11 D. The provisions of this Section shall not affect or limit the jurisdiction of
12 a district judge in the Twenty-Second Judicial District Court as provided by law.

13 E.(1) Subject to the other provisions of this Subsection, the commissioner
14 shall have all of the powers as are enumerated below. The powers of the
15 commissioner shall not be inconsistent with the constitution and laws of this state,
16 the constitution and laws of the United States, or the rules of the Twenty-Second
17 Judicial District Court. The ~~commissioner~~ commissioners shall perform such duties
18 as are assigned by the Twenty-Second Judicial District Court, in accordance with the
19 rules which shall be prescribed by the elected judges of the court.

20 (2) The powers of the ~~commissioner~~ commissioners when hearing criminal
21 matters may include but shall not be limited to the power to:

22 (a) Administer oaths and affirmations.

23 (b) Take acknowledgments, affidavits, and depositions.

24 (c) Act on misdemeanor and felony charges through arraignment; however,
25 the commissioner shall not accept guilty pleas, ~~of guilty on or sign orders disposing~~
26 ~~of felony charges.~~

27 (d) ~~Hear preliminary motions prior to filing the bill of information or~~
28 ~~indictment and make recommendations to the district judge.~~

29 (e) ~~Act on misdemeanor charges including accepting pleas in misdemeanor~~

1 ~~cases preliminary to trial on the merits and conduct evidentiary hearings of~~
2 ~~misdemeanor cases. A trial on the merits in a misdemeanor case shall be tried by the~~
3 ~~commissioner only upon the written consent of the defendant and the expressed~~
4 ~~waiver of the defendant's right to have his case heard by a district court judge.~~

5 ~~(f)~~**(d)** Fix bail.

6 ~~(g)~~**(e)** Review probable cause affidavits within forty-eight hours of
7 warrantless arrests.

8 ~~(h)~~**(f)** Conduct seventy-two hour hearings.

9 ~~(i)~~**(g)** Sign waivers of extradition only upon the written consent of the
10 defendant and the expressed waiver of the defendant's right to have his extradition
11 heard by a district court.

12 ~~(j)~~**(h)** Supervise defendants sentenced under the provisions of the ~~drug court~~
13 **specialty courts** in accordance with the policies set down by the judges of the
14 Twenty-Second Judicial District Court.

15 ~~(k)~~**(i)** Supervise all conditions of bail bonds.

16 ~~(l)~~**(j)** Supervise special conditions of protective orders, domestic violence,
17 and any other probation conditions.

18 **(3) The powers of the commissioners when hearing civil matters may**
19 **include but shall not be limited to the power to:**

20 **(a) Administer oaths and affirmations.**

21 **(b) Take acknowledgments, affidavits, and depositions.**

22 **(c) Review and act on petitions for protective orders and matters of**
23 **domestic violence, including the issuance of temporary orders of protection and**
24 **temporary restraining orders, until such time as hearings may be conducted on**
25 **the matters.**

26 **(d) Conduct hearings regarding protective orders and make**
27 **recommendations to the appropriate district judge for the issuance of a**
28 **preliminary or permanent injunction.**

29 **(e) Accept and review emergency cases and grant temporary ex parte**

1 orders pursuant to Code of Civil Procedure Article 3945, until such time as a
2 hearing on a rule to show cause can be conducted.

3 ~~F.(1) When a misdemeanor case, with the written consent of the defendant~~
4 ~~and the expressed waiver of the defendant's right to have his case heard by a district~~
5 ~~court judge, is referred to the commissioner by rule of court or assigned to the~~
6 ~~commissioner by a judge of the Twenty-Second Judicial District Court, the~~
7 ~~commissioner shall receive all evidence and prepare a written report of his findings~~
8 ~~which shall contain the following elements:~~

9 (a) ~~A statement of the pleadings.~~

10 (b) ~~A statement of the facts as found by the commissioner.~~

11 (c) ~~An opinion based on the pleadings and facts.~~

12 (d) ~~A judgment as he determines should be rendered with the~~
13 ~~recommendation to the judge that it be made the judgment of the court.~~

14 (2) ~~In such a case, the commissioner shall file a report containing proposed~~
15 ~~findings and recommendations with the court, and a copy shall be promptly provided~~
16 ~~to all parties or their counsel of record either at the hearing or by mail.~~

17 (3) ~~Any party, within ten days after filing the report, may traverse such~~
18 ~~findings or recommendations in writing in such manner as shall be specified by the~~
19 ~~rules of the district court.~~

20 (4) ~~If exceptions to the report are timely filed within ten days, the judge may~~
21 ~~set the exceptions for hearing within thirty days, may hear argument on the~~
22 ~~exceptions and decide the exceptions on the record and evidence previously made~~
23 ~~before the commissioner.~~

24 (5) ~~The judge may accept, reject, or modify in whole or in part the findings~~
25 ~~or recommendations made by the commissioner and also may receive further~~
26 ~~evidence or recommit the matter to the commissioner with instructions or may hear~~
27 ~~the case de novo and enter judgment.~~

28 F. The commissioners shall have the same authority as to that which is
29 vested in hearing officers including but is not limited to presiding over cases of

1 domestic violence, child custody, and child support matters, as provided in R.S.
2 46:236.5.

3 G. If a litigant disagrees with a judgment or ruling of a commissioner,
4 the litigant may object and request a hearing before a district judge according
5 to the procedure established by the Twenty-Second Judicial District Court
6 Appendices to the Louisiana District Court Rules.

7 (1) A timely filed objection shall be heard by the district judge to whom
8 the matter was originally allotted.

9 (2) The judge may decide the objection based on the record of the
10 proceedings before the commissioner, or may receive further evidence and rule
11 based on that evidence, or may recommit the matter to the commissioner with
12 instructions.

13 (3) If no objection is made within the time and manner established by
14 court rules, the order shall become a final judgment of the court and shall be
15 signed by the district judge assigned to the case. The final judgment may be
16 appealed to the court of appeals.

17 §722. Commissioners: qualifications; salary and benefits; restrictions on
18 employment; office space; supplies; equipment; employees

19 A. The qualifications for the office of commissioner for the Twenty-Second
20 Judicial District Court shall be the same as the qualifications for office for district
21 court judges, however there shall be no requirement of prior residency within
22 the district boundaries of the Twenty-Second Judicial District Court as a
23 prerequisite to the office of commissioner.

24 B. The salary of the commissioner shall be set by a majority of the elected
25 judges of the Twenty-Second Judicial District Court and shall not exceed ~~seventy-~~
26 ~~two thousand five hundred dollars~~ eighty-five percent of the salary of a district
27 judge per annum. ~~A commissioner may be a member of the Parochial Employees'~~
28 ~~Retirement System. A commissioner may be reimbursed for his expenses as provided~~
29 ~~for by court rule.~~

1 C. A commissioner shall be a full-time employee of the Twenty-Second
2 Judicial District Court. A commissioner shall not engage in any outside business,
3 occupation, or employment that is inconsistent with the expeditious, proper, and
4 impartial performance of ~~his~~ **the commissioner's** duties as judicial officer, nor shall
5 ~~he~~ **the commissioner** engage in the practice of law. Any question regarding the
6 conduct of any outside business, occupation, or employment by the commissioner
7 shall be resolved by a majority of the elected judges of the Twenty-Second Judicial
8 District Court. The provisions of this Subsection shall not abrogate or supersede any
9 provisions of the Rules ~~for Lawyer Disciplinary Enforcement~~ **of Professional**
10 **Conduct applicable to attorneys** or the Louisiana Code of Judicial Conduct
11 applicable to judges, ~~and attorneys.~~

12 D. Office space for the ~~commissioner~~ **commissioners** may be provided by
13 the Twenty-Second Judicial District Court, out of funds available to the court.

14 E. Any employee of the ~~office~~ **offices** of commissioner shall be hired only
15 upon the prior approval of employment by a majority of the elected judges of the
16 court pursuant to adopted rules or the specific order of the court, ~~and may be a~~
17 ~~member of the Parochial Employees' Retirement System.~~

18 F. The salaries, related benefits, and expenses of the ~~commissioner~~
19 **commissioners**, and the salaries and related benefits of the employees of the
20 ~~commissioner~~ **commissioners**, the costs of the equipment and supplies of the
21 ~~commissioner~~ **commissioners** and ~~his~~ **the** employees, and other costs of
22 implementing this Section and R.S. 13:721 shall be paid from funds available to the
23 Twenty-Second Judicial District Court.

24 G. The sources of funding for the ~~commissioner~~ **commissioners** and ~~his~~ **the**
25 **commissioners'** offices and employees shall include but shall not be limited to the
26 following sources:

27 (1) Subject to the other provisions of this Section, there is hereby imposed an
28 additional fee on all persons convicted in the Twenty-Second Judicial District Court
29 of felony, misdemeanor, and traffic offenses. The amount of the additional fees shall

1 be set by the judges of the Twenty-Second Judicial District Court sitting en banc.
2 The amount of the additional fee in felony cases shall not exceed one hundred
3 dollars. The amount of the additional fee in misdemeanor and traffic cases shall not
4 exceed seven dollars and fifty cents.

5 (2) The additional fees created in this Section shall be collected by the
6 sheriffs in the same manner as all other criminal court costs. All additional fees
7 collected under this Section shall be remitted by the sheriffs to the ~~police juries~~
8 **governing authority** of the parishes of St. Tammany and Washington and deposited
9 into special accounts. These funds are to be used by the parishes, only when
10 authorized by court order from the chief judge of the Twenty-Second Judicial
11 District Court, to defray the costs and expenses incurred pursuant to the provisions
12 of this Section and other related judicial expenditures.

13 (3) If any part of the provisions of this Section become dependent upon
14 monies from the general fund of the respective parishes, the provisions of this
15 Section and of R.S. 13:721 shall terminate if ~~the a~~ parish ~~police juries~~ **governing**
16 **authority fail fails** to appropriate sufficient monies to provide for the continuation
17 of the ~~office~~ **offices** of commissioner for the Twenty-Second Judicial District Court.

18 H. The ~~commissioner~~ **commissioners** shall use the title of commissioner in
19 the performance of ~~his~~ **their** duties under the provisions of this Section and R.S.
20 13:721.

The original instrument and the following digest, which constitutes no part
of the legislative instrument, were prepared by Carla S. Roberts.

DIGEST

SB 74 Original

2020 Regular Session

Mizell

Present law provides for the office of commissioner for the 22nd JDC (parishes of St. Tammany and Washington) and the office employs one commissioner.

Proposed law retains present law but provides for the employment of one additional commissioner, bringing the total to two commissioners serving the 22nd JDC.

Present law grants to the commissioner jurisdiction over certain aspects of criminal cases.

Proposed law retains present law but further grants commissioners jurisdiction over certain aspects of civil cases as well. Proposed law specifies that the jurisdiction over criminal and civil matters shall include matters of domestic violence.

Present law specifies that the commissioner shall have certain powers related to criminal cases as follows:

- (1) To administer oaths and affirmations.
- (2) To take acknowledgments, affidavits, and depositions.
- (3) To act on felony charges through arraignment; however, the commissioner shall not accept guilty pleas or sign orders disposing of felony charges.
- (4) To fix bail.
- (5) To review probable cause affidavits within 48 hours of warrantless arrests.
- (6) To conduct 72-hour hearings.
- (7) To sign waivers of extradition only upon the written consent of the defendant and the expressed waiver of the defendant's right to have his extradition heard by a district court.
- (8) To supervise defendants sentenced under the provisions of the drug court in accordance with the policies set down by the judges of the Twenty-Second Judicial District Court.
- (9) To supervise all conditions of bail bonds.
- (10) To supervise special conditions of protective orders, domestic violence, and any other probation conditions.

Proposed law retains present law as it relates to pretrial matters once criminal charges have been filed against the defendant in a felony case.

Proposed law retains present law but adds misdemeanors to the felony cases for which the commissioners may act on pretrial criminal matters.

Present law provides that the commissioner may hear preliminary motions prior to filing of criminal felony charges and make recommendations to the district judges.

Proposed law repeals present law. Proposed law provides that the commissioners may only perform duties related to a criminal case after the defendant has been charged with a felony or misdemeanor.

Present law provides that the commissioner is not authorized to accept guilty pleas or sign orders disposing of felony cases.

Proposed law retains present law but adds misdemeanors to the criminal cases for which the commissioners may not accept guilty pleas or sign orders disposing of the criminal cases.

Present law provides that when a misdemeanor case has the written consent of the defendant and the expressed waiver of the defendant's right to have his case heard by a district court judge and the case is referred to the commissioner by rule of court or assigned to him by a judge, the commissioner shall receive all evidence and prepare a written report of his findings. Present law further requires the commissioner to file his proposed findings and recommendations with the court and a copy to be mailed to all parties or their counsel of record; grants any party 10 days to traverse the findings or recommendations in writing; authorizes the judge to set the matter for hearing on exceptions made on the record to the findings and recommendations of the commissioner; and grants to the judge the authority to accept, reject, or modify in whole or in part the findings or recommendations of the

commissioner and to receive further evidence or to recommit the matter to the commissioner with further instructions.

Proposed law repeals present law as it relates to the ability of the commissioner to preside over misdemeanor criminal trials. Proposed law requires the district court judges to preside over all criminal trials, both misdemeanor and felony.

Proposed law, as it relates to civil cases, provides that commissioners have the following duties:

- (1) Administer oaths and affirmations.
- (2) Take acknowledgments, affidavits, and depositions.
- (3) Review and act on petitions for protective orders and matters of domestic violence, including the issuance of temporary orders of protection and temporary restraining orders, until such time as hearings may be conducted on the matters.
- (4) Conduct hearings regarding protective orders and make recommendations to the appropriate district judge for the issuance of a preliminary or permanent injunction.
- (5) Review emergency cases related to orders of temporary child custody and grant ex parte orders of child custody in certain circumstances until a district court judge can conduct an evidentiary hearing on the matter (i.e., a rule to show cause).

Present law provides that Louisiana courts who have jurisdiction over the establishment of paternity or the establishment and enforcement of support and other domestic and family matters may appoint one or more hearing officers to hear paternity, support, and other domestic and family related matters.

Proposed law retains present law and provides that the two commissioners serving the 22nd JDC shall also have the same powers and duties which are currently granted to hearing officers under present law.

Proposed law provides that if a litigant disagrees with a judgment or ruling of a commissioner, the litigant may object and request a hearing before an elected district judge.

Proposed law provides that, if a litigant makes a timely objection to a commissioner's ruling, the case will be heard by the district judge to whom the matter was originally allotted. The district judge may do either of the following:

- (1) The judge may decide the objection based on the record of the proceedings before the commissioner, may receive further evidence and rule based on that evidence, or may recommit the matter to the commissioner with instructions.
- (2) If no objection is made within the time and manner established by court rules, the order shall become a final judgment of the court and shall be signed by the district judge assigned to the case. The final judgment may be appealed to the court of appeals.

Present law requires the qualifications for the office of commissioner to be the same as the qualifications for the office of a district court judge.

Proposed law retains present law but provides that there shall be no requirement of prior residency within the district boundaries of the 22nd JDC as a prerequisite to the office of commissioner.

Present law provides that the salary of the commissioner shall be set by a majority of the

elected judges of the district but shall not exceed \$72,500 per year. Present law further authorizes the commissioner and any of his employees to be members of the Parochial Employees' Retirement System.

Proposed law changes present law to provide that the salary of the commissioner shall not exceed 85% of the salary of a district judge per year and removes authorization of the commissioner to be a member of the Parochial Employees' Retirement System.

Proposed law makes technical changes consistent with present law.

Effective August 1, 2020.

(Amends R.S. 13:721 and 722)