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**S. 903**

**STATUS INFORMATION**

General Bill

Sponsors: Senators Davis and Young

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Introduced in the Senate on January 14, 2020

Currently residing in the Senate Committee on **Judiciary**

Summary: Magistrate Reform Act

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

12/11/2019 Senate Prefiled

12/11/2019 Senate Referred to Committee on **Judiciary**

12/16/2019 Scrivener's error corrected

1/14/2020 Senate Introduced and read first time ([Senate Journal‑page 33](file:///h:\sj\20200114.docx))

1/14/2020 Senate Referred to Committee on **Judiciary** ([Senate Journal‑page 33](file:///h:\sj\20200114.docx))

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**VERSIONS OF THIS BILL**

[12/11/2019](file:///p:\pprever\2019-20\903_20191211.docx)

[12/16/2019](file:///p:\pprever\2019-20\903_20191216.docx)

**A** **BILL**

TO ENACT THE “MAGISTRATE REFORM ACT OF 2020”; TO AMEND SECTION 22-1-10 OF THE 1976 CODE, RELATING TO THE APPOINTMENT, TERM AND TERRITORIAL JURISDICTION, TRAINING, AND CERTIFICATION OR RECERTIFICATION REQUIREMENTS OF MAGISTRATES, TO PROVIDE THAT MAGISTRATES APPOINTED BY THE GOVERNOR MUST BE CONFIRMED BY A WEIGHTED MAJORITY OF SENATORS AND A WEIGHTED MAJORITY OF MEMBERS OF THE HOUSE OF REPRESENTATIVES THAT COMPRISE THE LEGISLATIVE DELEGATION IN THE COUNTY FOR WHICH THE MAGISTRATE WAS APPOINTED, TO PROVIDE THAT AN IMMEDIATE FAMILY MEMBER OF A MEMBER OF THE GENERAL ASSEMBLY OR AN IMMEDIATE FAMILY MEMBER OF A FORMER MEMBER OF THE GENERAL ASSEMBLY WHO CEASED TO BE A MEMBER OF THE GENERAL ASSEMBLY WITHIN TWO YEARS OF THE PERSON’S APPOINTMENT TO THE OFFICE OF MAGISTRATE IS NOT ELIGIBLE FOR APPOINTMENT AS A MAGISTRATE, TO PROVIDE THAT A MEMBER OF THE GENERAL ASSEMBLY MAY NOT BE APPOINTED TO THE OFFICE OF MAGISTRATE WHILE HE IS SERVING IN THE GENERAL ASSEMBLY OR FOR A PERIOD OF TWO YEARS AFTER HE CEASES TO BE A MEMBER OF THE GENERAL ASSEMBLY, AND TO PROVIDE THAT A MAGISTRATE MAY NOT SERVE IN A HOLDOVER CAPACITY FOR MORE THAN NINETY DAYS AFTER THE EXPIRATION OF HIS TERM OF OFFICE; AND TO AMEND SECTION 22-3-1000(A) OF THE 1976 CODE, RELATING TO THE TIME FOR MOTIONS FOR A NEW TRIAL OR AN APPEAL, TO PROVIDE THAT A NEW TRIAL FOR A CRIMINAL DEFENDANT SENTENCED TO A TERM OF IMPRISONMENT BY A NON-LAWYER MAGISTRATE SHALL BE CONDUCTED BY A MAGISTRATE WHO IS LICENSED TO PRACTICE LAW IN THIS STATE, AND TO PROVIDE THAT APPEALS BY A CRIMINAL DEFENDANT SENTENCED TO A TERM OF IMPRISONMENT BY A NON-LAWYER MAGISTRATE SHALL BE HEARD *DE NOVO*.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. This act must be known and may be cited as the “Magistrate Reform Act of 2020”.

SECTION 2. Section 22-1-10 of the 1976 Code is amended to read:

“Section 22-1-10. (A)(1) The Governor~~, by and with the advice and consent of the Senate,~~ may appoint magistrates in each county of the State for a term of four years, with the advice and consent of the legislative delegation of the county in which the magistrate shall serve. Magistrates shall serve ~~and~~ until their successors are appointed and qualified, or their positions are terminated as provided in subsection (B), Section 22‑1‑30, or Section 22‑2‑40, provided that no magistrate may serve in a holdover capacity for longer than ninety days.

(2) An appointee receives the advice and consent of a legislative delegation if the appointee receives a majority of the weighted vote of the Senators in the legislative delegation and a majority of the weighted vote of the members of the House of Representatives in the legislative delegation. If the legislative delegation provides advice and consent to an appointee or if the legislative delegation rejects an appointee, then the legislative delegation shall report to the Clerk of the House of Representatives, the Clerk of the Senate, and the Governor.

~~Magistrates serving the counties of Abbeville, Allendale, Bamberg, Beaufort, Calhoun, Cherokee, Chesterfield, Clarendon, Colleton, Dillon, Edgefield, Florence, Greenville, Hampton, Jasper, Lancaster, Lee, Marion, McCormick, Oconee, Pickens, Saluda, Sumter, and Williamsburg shall serve terms of four years commencing May 1, 1990. Magistrates serving the counties of Aiken, Anderson, Barnwell, Berkeley, Charleston, Chester, Darlington, Dorchester, Fairfield, Georgetown, Greenwood, Horry, Kershaw, Laurens, Lexington, Marlboro, Newberry, Orangeburg, Richland, Spartanburg, Union, and York shall serve terms of four years commencing May 1, 1991.~~

(B)(1) At least ninety days before the date of the commencement of the terms provided in the preceding paragraph and every four years thereafter, each county governing body must inform, in writing, the ~~Senators~~ members of the legislative delegation representing that county of the number of full‑time and part‑time magistrate positions available in the county, the number of work hours required by each position, the compensation for each position, and the area of the county to which each position is assigned. If the county governing body fails to inform, in writing, the ~~Senators~~ members of the legislative delegation representing that county of the information as required in this section, then the compensation, hours, and location of the full‑time and part‑time magistrate positions available in the county remain as designated for the previous four years.

(2) Each magistrate's number of work hours, compensation, and work location must remain the same throughout the term of office, except for a change ~~(1)~~ specifically allowed by statute or ~~(2)~~ authorized by the county governing body at least four years after the magistrate's most recent appointment and after a material change in conditions has occurred which warrants the change. Nothing provided in this section prohibits the raising of compensation or hours and compensation during a term of office. No magistrate may be paid for work not performed except for bona fide illness or as otherwise provided by law.

~~The number of magistrates to be appointed for each county and their territorial jurisdiction are as prescribed by law before March 2, 1897, for trial justices in the respective counties of the State, except as otherwise provided in this section.~~

~~(B)~~(C)(1)(a) No person is eligible to hold the office of magistrate if he is an immediate family member of a member of the General Assembly or an immediate family member of a former member of the General Assembly who ceased to be a member of the General Assembly within two years of the person’s appointment to the office of magistrate. For the purposes of this subsection, immediate family member has the same meaning as in Section 8-13-100(18) ~~who is not at the time of his appointment a citizen of the United States and of this State, and who has not been a resident of this State for at least five years, has not attained the age of twenty‑one years upon his appointment, and has not received a high school diploma or its equivalent educational training as recognized by the State Department of Education~~.

(b) A member of the General Assembly may not be appointed to the office of magistrate while he is serving in the General Assembly or for a period of two years after he ceases to be a member of the General Assembly.

(2) ~~Notwithstanding the educational qualifications required in item (1):~~

~~(a)~~ ~~On and after July 1, 2001, no person is eligible for an initial appointment to hold the office of magistrate who (i) is not at the time of his appointment a citizen of the United States and of this State, (ii) has not been a resident of this State for at least five years, (iii) has not attained the age of twenty‑one years upon his appointment, and (iv) has not received a two‑year associate degree.~~

~~(b)~~ ~~On and after July 1, 2005, no person is eligible for an initial appointment to hold the office of magistrate who (i) is not at the time of his appointment a citizen of the United States and of this State, (ii) has not been a resident of this State for at least five years, (iii) has not attained the age of twenty‑one years upon his appointment, and (iv) has not received a four‑year baccalaureate degree~~ To hold the office of magistrate, a person, at the time of his appointment, must be a citizen of the United States, a resident of this State for at least five years, at least twenty‑one years of age, and a recipient of a four‑year baccalaureate degree.

~~(C)~~(D)(1) ~~Notwithstanding any other provision of law relating to the terms and qualifications of magistrates:~~ Within one year of initially taking office or within one year of reappointment,

~~(1)~~ ~~All magistrates~~ a magistrate shall complete a training program ~~or~~ and pass a certification ~~or recertification examinations~~ examination.~~, or both, pursuant to standards established by the~~ TheSupreme Court of South Carolina shall provide for the curriculum in the training program and develop the certification examination. The training program and the certification examination must be offered at least three times each year.

~~(a)~~ ~~Magistrates appointed for the first time on or after the effective date of this act shall complete the training program and pass the certification examination within one year after taking office, or before April 30, 1995, whichever is later.~~

~~(b)~~ ~~Magistrates serving the counties of Abbeville, Allendale, Bamberg, Beaufort, Calhoun, Cherokee, Chesterfield, Clarendon, Colleton, Dillon, Edgefield, Florence, Greenville, Hampton, Jasper, Lancaster, Lee, Marion, McCormick, Oconee, Pickens, Saluda, Sumter, and Williamsburg, as of the effective date of this act, shall pass a certification examination before April 30, 1995.~~

~~(c)~~ ~~Magistrates serving the counties of Aiken, Anderson, Barnwell, Berkeley, Charleston, Chester, Darlington, Dorchester, Fairfield, Georgetown, Greenwood, Horry, Kershaw, Laurens, Lexington, Marlboro, Newberry, Orangeburg, Richland, Spartanburg, Union, and York, as of the effective date of this section, shall pass a certification examination before April 30, 1996.~~

~~(d)~~ ~~Every magistrate shall pass a recertification examination within eight years after passing the initial certification examination, and at least once every eight years thereafter.~~

(2) If ~~any~~ a magistrate does not comply with ~~these~~ the training or examination requirements contained in this subsection, then the Chief Justice of the Supreme Court shall declare that his office is ~~declared~~ vacant on the date the time expires, or when he is notified, as provided in subsection (D), whichever is earlier.

~~(D)~~(E) Upon written notification ~~of~~ from the Chief Justice of the Supreme Court, or ~~its~~ his designee, to the affected magistrate and the Governor of the failure of the magistrate to complete the training program or pass the certification examination required pursuant to subsection (C), the magistrate's office is declared vacant, the magistrate does not hold over, and the Governor shall appoint a successor in the manner provided by law; however, the Governor shall not reappoint the current magistrate who failed to complete the training program or pass the certification examination required pursuant to subsection (C) to a new term or to fill the vacancy in the existing term.”

SECTION 2. Section 22-3-1000(A) of the 1976 Code is amended to read:

“Section 22-3-1000. (A)(1) Except as provided in subsection (B), a motion for a new trial may not be heard unless made within ten days from the rendering of the judgment. The right of appeal from the judgment exists for thirty days after the rendering of the judgment. A magistrate's order of restitution may be appealed within thirty days. The order of restitution may be appealed separately from an appeal relating to the conviction.

(2)(a) A criminal defendant sentenced to a term of imprisonment by a magistrate who is not an attorney licensed to practice law in this State shall be granted a new trial upon proper motion. The new trial shall be heard by a magistrate who is licensed to practice law in this State. If there is no magistrate in the county who is licensed to practice law in this State, then the motion for new trial shall be deemed an appeal of the conviction and heard in the Court of General Sessions as provided in subitem (b).

(b) Upon appeal, the Court of General Sessions shall review *de novo* the conviction of a criminal defendant sentenced to a term of imprisonment by a magistrate who is not an attorney licensed to practice law in this State.”

SECTION 3. This act takes effect upon approval by the Governor.

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