

BILL ANALYSIS

Senate Research Center

H.B. 530
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Criminal Justice
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Drug courts have demonstrated a low recidivism rate and a lower cost to the state than incarceration. The 77th Legislature, Regular Session, 2001, passed legislation requiring counties with a population of over 550,000 to create such courts within those counties and authorizing them to be created in all other counties.

H.B. 530 requires these courts to be created in counties with a population of over 200,000 and creates a \$50 court fee, payable by the defendant, to fund the courts.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 469.001, Health and Safety Code, as follows:

Sec. 469.001. New heading: DRUG COURT PROGRAM DEFINED; PROCEDURES FOR CERTAIN DEFENDANTS. (a) Creates this section from existing text.

(b) Authorizes the court, if a defendant successfully completes a drug court program, regardless of whether the defendant was convicted of the offense for which the defendant entered the program or whether the court deferred further proceedings without entering an adjudication of guilt, after notice to the state and a hearing on whether the person is otherwise entitled to the petition and whether issuance of the order is in the best interest of justice, to enter an order of nondisclosure under Section 411.081 (Application of Subchapter (Subchapter F: Criminal History Record Information)), Government Code, as if the defendant had received a discharge and dismissal under Section 5(c) (a discharge and dismissal on the expiration of a community supervision period imposed according to certain law), Article 42.12, Code of Criminal Procedure, with respect to all records and files related to the defendant's arrest for the offense for which the defendant entered the program if the defendant has not been previously convicted of a felony offense and is not convicted for any other felony offense before the second anniversary of the defendant's successful completion of the program.

(c) Provides that an order of nondisclosure issued under Subsection (b) does not affect the consequences of a conviction with respect to any driver's license suspension or denial. Requires the Department of Public Safety to establish procedures to ensure compliance with this subsection.

SECTION 2. Amends Section 469.002, Health and Safety Code, to authorize the commissioners court of a county or governing body of a municipality to establish drug courts for juveniles detained for, taken into custody for, or adjudicated as having engaged in certain drug-related or alcohol-related delinquent conduct, reentry drug courts for persons with a demonstrated history of using alcohol or a controlled substance who may benefit from a program designed to facilitate the person's transition and reintegration into the community on release from a state or local correctional facility, family dependency drug treatment courts for family members involved in a suit affecting the parent-child relationship in which a parent's use of alcohol or a controlled

substance is a primary consideration in the outcome of the suit or programs for other persons not previously described by this subsection who may benefit from a program that has the essential characteristics described by Section 469.001. Deletes existing text providing an exception (Section 469.006 (Program in Certain Counties Mandatory)). Makes conforming changes.

SECTION 3. Amends Section 469.003, Health and Safety Code, as follows:

Sec. 469.003. OVERSIGHT. (a) and (b) Makes conforming changes.

(c) Requires a drug court program established under this chapter to notify the criminal justice division of the governor's office before or on implementation of the program and provide information regarding the performance of the program to the division on request.

SECTION 4. Amends Section 469.004, Health and Safety Code, as follows:

Sec. 469.004. FEES. (a) Authorizes a drug court program established under this chapter, rather than under Section 469.002, to collect from a participant in the program a reasonable program fee not to exceed \$1,000 and an alcohol or controlled substance testing, counseling, and treatment fee. Deletes existing text authorizing the program fee to be paid on a periodic basis or on a deferred payment schedule at the discretion of the judge, magistrate, or program director administering the program. Makes conforming changes.

(b) Authorizes fees collected under this section to be paid on a periodic basis or on a deferred payment schedule at the discretion of the judge, magistrate, or program director administering the program. Requires the fees to be based on the participant's ability to pay and used only for purposes specific to the program. Makes conforming changes.

SECTION 5. Amends Section 469.006, Health and Safety Code, as follows:

Sec. 469.006. PROGRAM IN CERTAIN COUNTIES MANDATORY. (a) Requires the commissioners court of a county with a population of more than 200,000, rather than 550,000, to establish a drug court program under Subdivision (1) of Section 469.002.

(b) Redesignated from Subsection (c). Requires a county required under this section to establish a drug court program to apply for federal and state funds available to pay the costs of the program. Deletes existing Subsection (b), requiring a drug court program required under this section to have at least 100 participants during the first four months in which the program is operating in order for the program to be established. Makes conforming changes.

(c) Provides that a county is required to establish a drug court program under this section only if the county receives federal or state funding, including funding under Article 102.0178, Code of Criminal Procedure, specifically for that purpose, notwithstanding Subsection (a).

(d) Provides that a county that does not maintain a drug court program is ineligible to receive from the state any grants for substance abuse treatment programs administered by the criminal justice division of the governor's office.

SECTION 6. Amends Section 469.007, Health and Safety Code, to make a conforming change.

SECTION 7. Amends Chapter 469, Health and Safety Code, by adding Sections 469.005, 469.008, and 469.009, as follows:

Sec. 469.005. DRUG COURT PROGRAMS EXCLUSIVELY FOR CERTAIN INTOXICATION OFFENSES. (a) Authorizes the commissioners court of a county to establish under this chapter a drug court program exclusively for persons arrested for,

charged with, or convicted of an offense involving the operation of a motor vehicle while intoxicated.

(b) Requires a county that establishes a drug court program under this chapter (Drug Court Programs) but does not establish a separate program under this section to employ procedures designed to ensure that a person arrested for, charged with, or convicted of a second or subsequent offense involving the operation of a motor vehicle while intoxicated participates in the county's existing drug court program.

Sec. 469.008. **SUSPENSION OR DISMISSAL OF COMMUNITY SERVICE REQUIREMENT.** (a) Authorizes the judge or magistrate administering the program to suspend any requirement that a participant in the program work a specified number of hours at a community service project or projects as a condition of community supervision in order to encourage participation in a drug court program established under this chapter, notwithstanding Sections 13 (DWI Community Supervision) and 16 (Community Service), Article 42.12, Code of Criminal Procedure.

(b) Authorizes a judge or magistrate to excuse the participant from any condition of community supervision previously suspended under Subsection (a) on successful completion of a drug court program.

Sec. 469.009. **OCCUPATIONAL DRIVER'S LICENSE.** Authorizes the judge or magistrate administering a drug court program under this chapter, if a participant's driver's license has been suspended as a result of an alcohol-related or drug-related enforcement contact, as defined by Section 524.001 (Definitions), Transportation Code, or as a result of a conviction under Section 49.04 (Driving While Intoxicated), 49.07 (Intoxication Assault), or 49.08 (Intoxication Manslaughter), Penal Code, to order an occupational license be issued to the participant, notwithstanding Section 521.242 (Petition), Transportation Code. Provides that an order issued under this section is subject to Sections 521.248 (Order Requirements), 521.249 (Notice to Department; Issuance of Occupational License), 521.250 (Court Order in Operations Possession), 521.251 (Effective Date of Occupational License), and 521.252 (License Revocation), Transportation Code, except that any reference to a petition under Section 521.242 of that code does not apply.

SECTION 8. Amends Subchapter A, Chapter 102, Code of Criminal Procedure, by adding Article 102.0178, as follows:

Art. 102.0178. **COSTS ATTENDANT TO CERTAIN INTOXICATION AND DRUG CONVICTIONS.** (a) Requires a person to pay \$50 as a court cost, in addition to other costs on conviction imposed by this chapter, on conviction of an offense under Chapter 49 (Intoxication and Alcoholic Beverage Violations), Penal Code, or Chapter 481 (Texas Controlled Substances Act), Health and Safety Code.

(b) Provides that, for purposes of this article, a person is considered to have been convicted if a sentence is imposed, the defendant receives community supervision or deferred adjudication, or the court defers final disposition of the case.

(c) Provides that court costs under this article are collected in the same manner as other fines or costs. Requires an officer collecting the costs to keep separate records of the funds collected as costs under this article and to deposit the funds in the county or municipal treasury, as appropriate.

(d) Requires the custodian of a county or municipal treasury to keep records of the amount of funds on deposit collected under this article and except as provided by Subsection (e), send to the comptroller of public accounts (comptroller) before the last day of the first month following each calendar quarter the funds collected under this article during the preceding quarter.

(e) Entitles a county or municipality to retain certain percentages of funds collected under this article as set forth in this subsection.

(f) Requires the custodian of the treasury, if no funds due as costs under this article are deposited in a county or municipal treasury in a calendar quarter, to file the report required for the quarter in the regular manner and to state that no funds were collected.

(g) Requires the comptroller to deposit the funds received under this article to the credit of the drug court account in the general revenue fund to help fund drug court programs established under Chapter 469 (Drug Court Programs), Health and Safety Code. Requires the legislature to appropriate money from the account solely to the criminal justice division of the governor's office for distribution to drug court programs that apply for the money.

(h) Provides that funds collected under this article are subject to audit by the comptroller.

SECTION 9. Amends Chapter 54, Government Code, by adding Subchapter GG, as follows:

SUBCHAPTER GG. MAGISTRATES FOR DRUG COURT PROGRAMS

Sec. 54.1801. DEFINITION. Defines "drug court."

Sec. 54.1802. APPLICATION OF SUBCHAPTER. Provides that this subchapter applies to each district court in this state and that if a provision of this subchapter conflicts with a specific provision for a particular district court, the specific provision controls.

Sec. 54.1803. APPOINTMENT. (a) Authorizes the judges of the district courts of a county hearing criminal cases, with the consent and approval of the commissioners court of the county, to appoint the number of magistrates set by the commissioners court to perform the duties associated with the administration of drug courts as authorized by this subchapter.

(b) Requires each magistrate's appointment to be made with the approval of the majority of the judges described in Subsection (a).

(c) Provides that a magistrate appointed under this section serves at the will of a majority of the appointing judges.

Sec. 54.1804. QUALIFICATIONS. Requires a magistrate to be a resident of this state and of the county in which the magistrate is appointed to serve under this subchapter and have been licensed to practice law in this state for at least four years.

Sec. 54.1805. COMPENSATION. Entitles a magistrate to the salary determined by the county commissioners court.

Sec. 54.1806. JUDICIAL IMMUNITY. Provides that a magistrate has the same judicial immunity as a district judge.

Sec. 54.1807. PROCEEDINGS THAT MAY BE REFERRED. (a) Authorizes a district judge to refer to a magistrate a criminal case for drug court proceedings.

(b) Prohibits a magistrate from presiding over a contested trial on the merits, regardless of whether the trial is before a jury.

Sec. 54.1808. ORDER OF REFERRAL. (a) Requires a district judge, in order to refer one or more cases to a drug court magistrate, to issue an order of referral specifying the magistrate's duties.

(b) Authorizes an order of referral to contain certain provisions set forth in this subsection.

Sec. 54.1809. POWERS. (a) Authorizes a magistrate to whom a drug court case is referred, except as limited by an order of referral, to take certain action set forth in this subsection.

(b) Prohibits a magistrate from entering 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 authorizes the magistrate to make findings, conclusions, and recommendations on those issues.

SECTION 10. Amends Subchapter B, Chapter 102, Government Code, by adding Section 102.0215, as follows:

Sec. 102.0215. ADDITIONAL COURT COSTS ON CONVICTION: CODE OF CRIMINAL PROCEDURE. Sets a cost attendant to convictions under Chapter 49, Penal Code, and under Chapter 481, Health and Safety Code, of \$50 to help fund drug court programs established under Chapter 469, Health and Safety Code (Article 102.0178, Code of Criminal Procedure), that a person convicted of an offense is required to pay under the Code of Criminal Procedure, in addition to all other costs.

SECTION 11. (a) Provides that the change in law made by this Act in amending Chapter 469, Health and Safety Code, applies to a defendant who enters a drug court program under that chapter regardless of whether the defendant committed the offense for which the defendant enters the program before, on, or after the Act's effective date.

(b) Requires the commissioners court of a county required under Section 469.006(b), Health and Safety Code, as amended by this Act, to establish a drug court program to establish the program not later than the later of September 1, 2008, or the first anniversary of the initial date on which the federal census indicates that the county's population exceeds 200,000.

(c) Makes application of Article 102.0178, Code of Criminal Procedure, and Section 102.0215, Government Code, as added by this Act, prospective.

SECTION 12. Effective date: upon passage or September 1, 2007.