

## **BILL ANALYSIS**

C.S.H.B. 530  
By: Madden  
Corrections  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

The 77th Texas Legislature passed House Bill 1287, authorizing counties to create drug courts and requiring them in counties with populations over 550,000. Nationally, drug court programs continue to draw attention for their low recidivism rates and low cost compared to incarceration. C.S.H.B. 530 creates a \$50 court fee to fund drug courts in Texas, mandates drug courts in counties with populations over 200,000 and authorizes other types of specialized courts.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

### **ANALYSIS**

C.S.H.B. 530 amends the Code of Criminal Procedure by adding Article 102.0178, which establishes an additional \$50 court cost on a conviction of an offense under Chapter 49, Penal Code, or Chapter 481, Health and Safety Code, to help fund drug courts. The bill also amends the Government Code to reflect this additional fee.

Conviction, for the purpose of Article 102.0178, Code of Criminal Procedure, means that a sentence is imposed, the defendant receives community supervision or deferred adjudication or the court defers final disposition of the case. The bill provides that these court costs are collected in the same manner as other fines or costs and that the officer collecting the costs shall keep separate records of the funds collected as costs under Article 102.0178 and shall deposit the funds in the county or municipal treasury, as appropriate. The funds collected under Article 102.0178 are subject to audit by the comptroller.

This bill provides that the custodian of a county or municipal treasury shall keep records of the amount of funds collected under Article 102.0178 and except for the funds that the county or municipality is entitled to, send the funds to the comptroller on a quarterly basis. If the custodian of the county or municipal treasury complies with these requirements, the county or municipality may retain 10 percent of the funds collected under Article 102.0178 during the calendar quarter as a service fee. If the county or municipality has established a drug court program or establishes a drug court program before the expiration of the calendar quarter, that county or municipality may retain an additional 50 percent of the funds collected under Article 102.0178 during the calendar quarter to be used exclusively for the development and maintenance of drug court programs operated within the county or municipality.

C.S.H.B. 530 also provides that if no funds due as costs under Article 102.0178 are deposited in a county or municipal treasury in a calendar quarter, the custodian of the treasury shall file the report required for the quarter in the regular manner and must state that no funds were collected.

C.S.H.B. 530 provides that the comptroller shall deposit the funds received under Article 102.0178 to the credit of the drug court account in the general revenue fund to help fund drug court programs established under Chapter 469, Health and Safety Code. The legislature shall 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.

The change in law made by this Act in adding Article 102.0178, Code of Criminal Procedure, and Section 102.0215, Government Code, applies only to an offense committed on or after the effective date of this Act.

C.S.H.B 530 provides procedures for certain defendants involved in drug courts, regardless of whether the defendant was convicted of the offense for which he or she entered the program or whether the court deferred further proceedings without entering an adjudication of guilt. This bill provides that if a defendant has not been previously convicted of a felony offense and is not convicted for any other felony offense before the second anniversary of successful completion of the drug court program, after notice to the state and a hearing, the court shall enter an order of nondisclosure under Section 411.081, Government Code. This order of nondisclosure is as if the defendant had received a discharge and dismissal under Section 5(c), 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. C.S.H.B 530 also provides that this order of nondisclosure does not affect the consequences of a conviction with respect to any driver's license suspension or denial and requires the Department of Public Safety to establish procedures to ensure compliance. These changes apply to a defendant who enters a drug court program, regardless of whether the defendant enters the program before, on, or after the effective date of this Act.

This bill also provides authority to establish a drug court program to a governing body of a municipality, rather than only the commissioners court of a county. Additionally, the types of drug court programs authorized to be established by these entities are expanded to include juvenile drug courts, reentry drug courts, family dependency drug treatment courts, and other drug court programs that have the essential characteristics described by Section 469.001, Health and Safety Code. C.S.H.B 530 also requires drug court programs established under Section 469.002, Health and Safety Code, to notify the Criminal Justice Division of the Governor's Office (CJD) prior to or upon implementation of the program and to provide CJD with performance data on request.

C.S.H.B 530 makes changes to the types of fees a drug court may collect from a participant in the program. The bill replaces a urinalysis testing and counseling fee in an amount necessary to cover the costs of testing and counseling with an alcohol or controlled substance testing, counseling, and treatment fee in an amount necessary to cover the costs of the testing, counseling and treatment. The bill also provides that all fees collected under Section 469.004, Health and Safety Code, may 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. Additionally, all the fees collected under Section 469.004 must be based on the participant's ability to pay and used only for purposes specific to the program.

C.S.H.B 530 reduces the population threshold for counties that are statutorily required to establish drug courts from 550,000 to 200,000. The commissioners court of a county with a population of more than 200,000 shall establish a drug court 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 a county's population exceeds 200,000. Additionally, language is deleted to eliminate the requirement that a drug court program required under Section 469.006, Health and Safety Code, must have at least 100 participants during the first four months of operation.

This bill amends the Health and Safety Code to provide that the counties required to establish a drug court program under Section 469.006, Health and Safety Code, shall apply for federal and state funds available to pay the costs of the program, rather than only federal funds, as is required currently. The Health and Safety Code is also amended to remove language that allows the CJD to provide financial assistance to counties pursuing federal funding for drug courts.

This bill provides that, notwithstanding Subsection (a) of Section 469.006, Health and Safety Code, a county is only required to establish a drug court program under Section 469.006, Health and Safety Code, if it receives federal or state funding, including funding under Article 102.0178, Code of Criminal Procedure, specifically for that purpose. C.S.H.B 530 also provides that a county mandated to establish a drug court program under Section 469.006, Health and Safety Code, must not only establish (as in current law) but also maintain the program in order to receive certain funds and grants from the state. The bill specifies the type of CJD grant that a

C.S.H.B. 530 80(R)

county that does not establish and maintain a drug court program, as required by Section 469.006, is ineligible to receive from the state.

The bill adds Subchapter GG (Magistrates for Drug Court Programs) to Chapter 54, Government Code. Subchapter GG applies to each district court in this state. If a provision of this subchapter conflicts with a specific provision for a particular district court, the specific provision controls.

The bill adds language allowing 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 magistrates set by the commissioners court to perform the duties associated with the administration of drug courts. Each magistrate's appointment must be made with the approval of the majority of the judges of the district courts of a county hearing criminal cases. These magistrates serve at the will of a majority of the appointing judges.

The bill requires that a drug court magistrate be a resident of this state and of the county in which he or she is appointed to serve and have been licensed to practice law in this state for at least four years. Additionally, this bill provides that a drug court magistrate is entitled to the salary determined by the county commissioners court and has the same judicial immunity as a district judge.

C.S.H.B. 530 allows a district judge to refer to a magistrate a criminal case for drug court proceedings. The bill prohibits a magistrate from presiding over a contested trial on the merits, regardless of whether the trial is before a jury.

The bill 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. An order of referral may: limit the powers of the magistrate and direct the magistrate to report on specific issues and perform particular acts; set the time and place for the hearing; provide a date for filing the magistrate's findings; designate proceedings for more than one case over which the magistrate shall preside; and set forth general powers and limitations of authority of the magistrate applicable to any case referred.

C.S.H.B. 530 provides that except as limited by an order of referral, a magistrate to whom a drug court case is referred may: conduct hearings; hear evidence; compel production of relevant evidence; rule on admissibility of evidence; issue summons for the appearance of witnesses; examine witnesses; swear witnesses for hearings; and perform any act and take any measure necessary and proper for the efficient performance of the duties assigned by the district judge.

C.S.H.B. 530 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. The magistrate is permitted, however, to make findings, conclusions and recommendations on those issues.

### **EFFECTIVE DATE**

Upon passage, or, if the Act does not receive the necessary vote, the Act takes effect September 1, 2007.

### **COMPARISON OF ORIGINAL TO SUBSTITUTE**

H.B. 530 provides that a county or municipality may retain 40 percent of the funds collected under Article 102.0178, Code of Criminal Procedure, to be used exclusively for the development and maintenance of drug court programs operated within the county or municipality. C.S.H.B. 530 changes this amount to 50 percent and adds that a county without a drug court may begin keeping this amount during the quarter in which it establishes a drug court program.

The original bill states that a county or municipality may retain an additional 10 percent of the funds collected as a collection fee. The substitute clarifies that this amount is a service fee to be retained by any county whose treasury keeps records and files on time.

C.S.H.B. 530 80(R)

C.S.H.B. 530 deletes language in the original bill that required courts to assess and make a reasonable effort to collect the cost due under Article 102.0178, Code of Criminal Procedure, whether or not any other court cost is assessed or collected.

The substitute also deletes language in the original bill that would allow drug courts to defer state jail felony proceedings, and if the defendant successfully completed the drug court program, to dismiss the indictment or information charging the defendant with the commission of the offense.

The original bill allows the defendant to request an order of nondisclosure with respect to all records and files related to their arrest for the offense leading to drug court entry, as long as he or she has not been previously convicted of a felony offense and is not arrested or convicted for any other felony offense for two years after successful completion of the drug court program. Under the substitute, a defendant shall receive nondisclosure as long as he has not been previously convicted of a felony and is not *convicted* for any other felony for two years. Also, in the original bill, a defendant had to request nondisclosure, whereas in the substitute, the court must give notice to the state and hold a hearing, after which it shall enter an order of nondisclosure. The substitute also adds language that provides that an order of nondisclosure under Subsection (b), Section 469.001, Health and Safety Code, does not affect the consequences of a conviction with respect to any driver's license suspension or denial and requires the Department of Public Safety to establish procedures to ensure compliance with this subsection.

In the original bill, counties for which drug courts are mandatory are required to establish a drug court program only if the county receives federal or state funding for that purpose. The substitute specifies that state funding includes funds under Article 102.0178, Code of Criminal Procedure.

In the original bill, a drug court program established under Section 469.002, Health and Safety Code, *may* 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 upon request. C.S.H.B. 530 changes "may" to "shall."

C.S.H.B. 530 adds a subchapter not in the original bill allowing judges of the district courts of a county hearing criminal cases to appoint magistrates to perform the duties associated with the administration of drug courts. The substitute specifies processes and requirements related to the magistrates' specific duties and also describes the magistrates' qualifications, compensation, protections, and powers.