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H.B. No. 530

A BILL TO BE ENTITLED

AN ACT

relating to the operation and funding of drug court programs.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 469.001, Health and Safety Code, is amended to read as follows:

Sec. 469.001. DRUG COURT PROGRAM DEFINED; PROCEDURES FOR CERTAIN DEFENDANTS. (a) In this chapter, "drug court program" means a program that has the following essential characteristics:

(1) the integration of alcohol and other drug treatment services in the processing of cases in the judicial system;

(2) the use of a nonadversarial approach involving prosecutors and defense attorneys to promote public safety and to protect the due process rights of program participants;

(3) early identification and prompt placement of eligible participants in the program;

(4) access to a continuum of alcohol, drug, and other related treatment and rehabilitative services;

(5) monitoring of abstinence through weekly alcohol and other drug testing;

(6) a coordinated strategy to govern program responses to participants' compliance;

(7) ongoing judicial interaction with program participants;

1 (8) monitoring and evaluation of program goals and
2 effectiveness;

3 (9) continuing interdisciplinary education to promote
4 effective program planning, implementation, and operations; and

5 (10) development of partnerships with public agencies
6 and community organizations.

7 (b) If a defendant successfully completes a drug court
8 program, regardless of whether the defendant was convicted of the
9 offense for which the defendant entered the program or whether the
10 court deferred further proceedings without entering an
11 adjudication of guilt, after notice to the state and a hearing on
12 whether the person is otherwise entitled to the petition and
13 whether issuance of the order is in the best interest of justice,
14 the court may enter an order of nondisclosure under Section
15 411.081, Government Code, as if the defendant had received a
16 discharge and dismissal under Section 5(c), Article 42.12, Code of
17 Criminal Procedure, with respect to all records and files related
18 to the defendant's arrest for the offense for which the defendant
19 entered the program if the defendant:

20 (1) has not been previously convicted of a felony
21 offense; and

22 (2) is not convicted for any other felony offense
23 before the second anniversary of the defendant's successful
24 completion of the program.

25 (c) An order of nondisclosure issued under Subsection (b)
26 does not affect the consequences of a conviction with respect to any
27 driver's license suspension or denial. The Department of Public

1 Safety shall establish procedures to ensure compliance with this
2 subsection.

3 SECTION 2. Section 469.002, Health and Safety Code, is
4 amended to read as follows:

5 Sec. 469.002. AUTHORITY TO ESTABLISH PROGRAM. The [~~Except~~
6 ~~as provided by Section 469.006, the~~] commissioners court of a
7 county or governing body of a municipality may establish the
8 following types of [a] drug court programs:

9 (1) drug courts for [~~program for~~] persons arrested
10 for, charged with, or convicted of:

11 (A) [~~(1)~~] an offense in which an element of the
12 offense is the use or possession of alcohol or the use, possession,
13 or sale of a controlled substance, a controlled substance analogue,
14 or marihuana; or

15 (B) [~~(2)~~] an offense in which the use of alcohol
16 or a controlled substance is suspected to have significantly
17 contributed to the commission of the offense and the offense did not
18 involve:

19 (i) [~~(A)~~] carrying, possessing, or using a
20 firearm or other dangerous weapon;

21 (ii) [~~(B)~~] the use of force against the
22 person of another; or

23 (iii) [~~(C)~~] the death of or serious bodily
24 injury to another;

25 (2) drug courts for juveniles detained for, taken into
26 custody for, or adjudicated as having engaged in:

27 (A) delinquent conduct, including habitual

1 felony conduct, or conduct indicating a need for supervision in
2 which an element of the conduct is the use or possession of alcohol
3 or the use, possession, or sale of a controlled substance, a
4 controlled substance analogue, or marihuana; or

5 (B) delinquent conduct, including habitual
6 felony conduct, or conduct indicating a need for supervision in
7 which the use of alcohol or a controlled substance is suspected to
8 have significantly contributed to the commission of the conduct and
9 the conduct did not involve:

10 (i) carrying, possessing, or using a
11 firearm or other dangerous weapon;

12 (ii) the use of force against the person of
13 another; or

14 (iii) the death of or serious bodily injury
15 to another;

16 (3) reentry drug courts for persons with a
17 demonstrated history of using alcohol or a controlled substance who
18 may benefit from a program designed to facilitate the person's
19 transition and reintegration into the community on release from a
20 state or local correctional facility;

21 (4) family dependency drug treatment courts for family
22 members involved in a suit affecting the parent-child relationship
23 in which a parent's use of alcohol or a controlled substance is a
24 primary consideration in the outcome of the suit; or

25 (5) programs for other persons not precisely described
26 by Subdivisions (1)-(4) who may benefit from a program that has the
27 essential characteristics described by Section 469.001.

1 SECTION 3. Section 469.003, Health and Safety Code, is
2 amended to read as follows:

3 Sec. 469.003. OVERSIGHT. (a) The lieutenant governor and
4 the speaker of the house of representatives may assign to
5 appropriate legislative committees duties relating to the
6 oversight of drug court programs established under this chapter
7 [~~Section 469.002~~].

8 (b) A legislative committee or the governor may request the
9 state auditor to perform a management, operations, or financial or
10 accounting audit of a drug court program established under this
11 chapter [~~Section 469.002~~].

12 (c) A drug court program established under this chapter
13 shall:

14 (1) notify the criminal justice division of the
15 governor's office before or on implementation of the program; and

16 (2) provide information regarding the performance of
17 the program to the division on request.

18 SECTION 4. Section 469.004, Health and Safety Code, is
19 amended to read as follows:

20 Sec. 469.004. FEES. (a) A drug court program established
21 under this chapter [~~Section 469.002~~] may collect from a participant
22 in the program:

23 (1) a reasonable program fee not to exceed \$1,000[~~7~~
24 ~~which may be paid on a periodic basis or on a deferred payment~~
25 ~~schedule at the discretion of the judge, magistrate, or program~~
26 ~~director administering the program]; and~~

27 (2) an alcohol or controlled substance [~~a urinalysis~~]

1 testing, ~~and~~ counseling, and treatment fee[+]

2 [~~(A)~~ based on the participant's ability to pay,
3 ~~and~~

4 [~~(B)~~] in an amount necessary to cover the costs
5 of the testing, ~~and~~ counseling, and treatment.

6 (b) Fees collected under this section may be paid on a
7 periodic basis or on a deferred payment schedule at the discretion
8 of the judge, magistrate, or program director administering the
9 program. The fees must be:

10 (1) [~~A drug court program may require a participant to~~
11 ~~pay all treatment costs incurred while participating in the~~
12 ~~program,~~] based on the participant's ability to pay; and

13 (2) used only for purposes specific to the program.

14 SECTION 5. Section 469.006, Health and Safety Code, is
15 amended to read as follows:

16 Sec. 469.006. PROGRAM IN CERTAIN COUNTIES MANDATORY. (a)
17 The commissioners court of a county with a population of more than
18 200,000 [~~550,000~~] shall establish a drug court program under
19 Subdivision (1) of Section 469.002.

20 (b) [~~A drug court program required under this section to be~~
21 ~~established must have at least 100 participants during the first~~
22 ~~four months in which the program is operating.~~

23 [~~(c)~~] A county required under this section to establish a
24 drug court program shall apply for [~~to the~~] federal and state
25 [~~government for any~~] funds available to pay the costs of the
26 program. The criminal justice division of the governor's office
27 may assist a county in applying for federal funds as required by

1 this subsection[, ~~including providing financial assistance to the~~
2 ~~county~~].

3 (c) Notwithstanding Subsection (a), a county is required to
4 establish a drug court program under this section only if the county
5 receives federal or state funding, including funding under Article
6 102.0178, Code of Criminal Procedure, specifically for that
7 purpose.

8 (d) A county that does not establish a drug court program as
9 required by this section and maintain the program is ineligible to
10 receive from the state:

11 (1) funds for a community supervision and corrections
12 department; and

13 (2) grants for substance abuse treatment programs
14 administered by the criminal justice division of the governor's
15 office.

16 SECTION 6. Section 469.007, Health and Safety Code, is
17 amended to read as follows:

18 Sec. 469.007. USE OF OTHER DRUG AND ALCOHOL AWARENESS
19 PROGRAMS. In addition to using a drug court program established
20 under this chapter [~~Section 469.002~~], the commissioners court of a
21 county or a court may use other drug awareness or drug and alcohol
22 driving awareness programs to treat persons convicted of drug or
23 alcohol related offenses.

24 SECTION 7. Chapter 469, Health and Safety Code, is amended
25 by adding Sections 469.005, 469.008, and 469.009 to read as
26 follows:

27 Sec. 469.005. DRUG COURT PROGRAMS EXCLUSIVELY FOR CERTAIN

1 INTOXICATION OFFENSES. (a) The commissioners court of a county may
2 establish under this chapter a drug court program exclusively for
3 persons arrested for, charged with, or convicted of an offense
4 involving the operation of a motor vehicle while intoxicated.

5 (b) A county that establishes a drug court program under
6 this chapter but does not establish a separate program under this
7 section must employ procedures designed to ensure that a person
8 arrested for, charged with, or convicted of a second or subsequent
9 offense involving the operation of a motor vehicle while
10 intoxicated participates in the county's existing drug court
11 program.

12 Sec. 469.008. SUSPENSION OR DISMISSAL OF COMMUNITY SERVICE
13 REQUIREMENT. (a) Notwithstanding Sections 13 and 16, Article
14 42.12, Code of Criminal Procedure, to encourage participation in a
15 drug court program established under this chapter, the judge or
16 magistrate administering the program may suspend any requirement
17 that, as a condition of community supervision, a participant in the
18 program work a specified number of hours at a community service
19 project or projects.

20 (b) On successful completion of a drug court program, a
21 judge or magistrate may excuse the participant from any condition
22 of community supervision previously suspended under Subsection
23 (a).

24 Sec. 469.009. OCCUPATIONAL DRIVER'S LICENSE.
25 Notwithstanding Section 521.242, Transportation Code, if a
26 participant's driver's license has been suspended as a result of an
27 alcohol-related or drug-related enforcement contact, as defined by

1 Section 524.001, Transportation Code, or as a result of a
2 conviction under Section 49.04, 49.07, or 49.08, Penal Code, the
3 judge or magistrate administering a drug court program under this
4 chapter may order that an occupational license be issued to the
5 participant. An order issued under this section is subject to
6 Sections 521.248-521.252, Transportation Code, except that any
7 reference to a petition under Section 521.242 of that code does not
8 apply.

9 SECTION 8. Subchapter A, Chapter 102, Code of Criminal
10 Procedure, is amended by adding Article 102.0178 to read as
11 follows:

12 Art. 102.0178. COSTS ATTENDANT TO CERTAIN INTOXICATION AND
13 DRUG CONVICTIONS. (a) In addition to other costs on conviction
14 imposed by this chapter, a person shall pay \$50 as a court cost on
15 conviction of an offense under:

16 (1) Chapter 49, Penal Code; or

17 (2) Chapter 481, Health and Safety Code.

18 (b) For purposes of this article, a person is considered to
19 have been convicted if:

20 (1) a sentence is imposed;

21 (2) the defendant receives community supervision or
22 deferred adjudication; or

23 (3) the court defers final disposition of the case.

24 (c) Court costs under this article are collected in the same
25 manner as other fines or costs. An officer collecting the costs
26 shall keep separate records of the funds collected as costs under
27 this article and shall deposit the funds in the county or municipal

1 treasury, as appropriate.

2 (d) The custodian of a county or municipal treasury shall:

3 (1) keep records of the amount of funds on deposit
4 collected under this article; and

5 (2) except as provided by Subsection (e), send to the
6 comptroller before the last day of the first month following each
7 calendar quarter the funds collected under this article during the
8 preceding quarter.

9 (e) A county or municipality is entitled to:

10 (1) if the custodian of the county or municipal
11 treasury complies with Subsection (d), retain 10 percent of the
12 funds collected under this article by an officer of the county or
13 municipality during the calendar quarter as a service fee; and

14 (2) retain in addition to the 10 percent authorized by
15 Subdivision (1) another 50 percent of the funds collected under
16 this article by an officer of the county or municipality during the
17 calendar quarter to be used exclusively for:

18 (A) the development and maintenance of drug court
19 programs operated within the county or municipality, if the county
20 or municipality has established a drug court program or establishes
21 a drug court program before the expiration of the calendar quarter;
22 or

23 (B) the development and operation of any programs
24 within the county or municipality that are designed to prevent or
25 provide education concerning alcohol and drug abuse, if the county
26 or municipality has not established a drug court program and does
27 not establish a drug court program before the expiration of the

1 calendar quarter.

2 (f) If no funds due as costs under this article are
3 deposited in a county or municipal treasury in a calendar quarter,
4 the custodian of the treasury shall file the report required for the
5 quarter in the regular manner and must state that no funds were
6 collected.

7 (g) The comptroller shall deposit the funds received under
8 this article to the credit of the drug court account in the general
9 revenue fund to help fund drug court programs established under
10 Chapter 469, Health and Safety Code. The legislature shall
11 appropriate money from the account solely to the criminal justice
12 division of the governor's office for distribution to drug court
13 programs that apply for the money.

14 (h) Funds collected under this article are subject to audit
15 by the comptroller.

16 SECTION 9. Chapter 54, Government Code, is amended by
17 adding Subchapter GG to read as follows:

18 SUBCHAPTER GG. MAGISTRATES FOR DRUG COURT PROGRAMS

19 Sec. 54.1801. DEFINITION. In this chapter, "drug court"
20 has the meaning assigned by Section 469.001, Health and Safety
21 Code.

22 Sec. 54.1802. APPLICATION OF SUBCHAPTER. This subchapter
23 applies to each district court in this state. If a provision of
24 this subchapter conflicts with a specific provision for a
25 particular district court, the specific provision controls.

26 Sec. 54.1803. APPOINTMENT. (a) The judges of the district
27 courts of a county hearing criminal cases, with the consent and

1 approval of the commissioners court of the county, may appoint the
2 number of magistrates set by the commissioners court to perform the
3 duties associated with the administration of drug courts as
4 authorized by this subchapter.

5 (b) Each magistrate's appointment must be made with the
6 approval of the majority of the judges described in Subsection (a).

7 (c) A magistrate appointed under this section serves at the
8 will of a majority of the appointing judges.

9 Sec. 54.1804. QUALIFICATIONS. A magistrate must:

10 (1) be a resident of this state and of the county in
11 which the magistrate is appointed to serve under this subchapter;
12 and

13 (2) have been licensed to practice law in this state
14 for at least four years.

15 Sec. 54.1805. COMPENSATION. A magistrate is entitled to
16 the salary determined by the county commissioners court.

17 Sec. 54.1806. JUDICIAL IMMUNITY. A magistrate has the same
18 judicial immunity as a district judge.

19 Sec. 54.1807. PROCEEDINGS THAT MAY BE REFERRED. (a) A
20 district judge may refer to a magistrate a criminal case for drug
21 court proceedings.

22 (b) A magistrate may not preside over a contested trial on
23 the merits, regardless of whether the trial is before a jury.

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

27 (b) An order of referral may:

1 (1) limit the powers of the magistrate and direct the
2 magistrate to report on specific issues and perform particular
3 acts;

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

5 (3) provide a date for filing the magistrate's
6 findings;

7 (4) designate proceedings for more than one case over
8 which the magistrate shall preside; and

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

11 Sec. 54.1809. POWERS. (a) Except as limited by an order of
12 referral, a magistrate to whom a drug court case is referred may:

13 (1) conduct hearings;

14 (2) hear evidence;

15 (3) compel production of relevant evidence;

16 (4) rule on admissibility of evidence;

17 (5) issue summons for the appearance of witnesses;

18 (6) examine witnesses;

19 (7) swear witnesses for hearings; and

20 (8) perform any act and take any measure necessary and
21 proper for the efficient performance of the duties assigned by the
22 district judge.

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

27 SECTION 10. Subchapter B, Chapter 102, Government Code, is

1 amended by adding Section 102.0215 to read as follows:

2 Sec. 102.0215. ADDITIONAL COURT COSTS ON CONVICTION: CODE
3 OF CRIMINAL PROCEDURE. A person convicted of an offense shall pay
4 under the Code of Criminal Procedure, in addition to all other
5 costs, costs attendant to convictions under Chapter 49, Penal Code,
6 and under Chapter 481, Health and Safety Code, to help fund drug
7 court programs established under Chapter 469, Health and Safety
8 Code (Art. 102.0178, Code of Criminal Procedure) . . . \$50.

9 SECTION 11. (a) Except as otherwise provided by this
10 section, the change in law made by this Act in amending Chapter 469,
11 Health and Safety Code, applies to a defendant who enters a drug
12 court program under Chapter 469, Health and Safety Code, regardless
13 of whether the defendant committed the offense for which the
14 defendant enters the program before, on, or after the effective
15 date of this Act.

16 (b) The commissioners court of a county required under
17 Section 469.006(b), Health and Safety Code, as amended by this Act,
18 to establish a drug court program shall establish the program not
19 later than the later of:

20 (1) September 1, 2008; or

21 (2) the first anniversary of the initial date on which
22 the federal census indicates that the county's population exceeds
23 200,000.

24 (c) The change in law made by this Act in adding Article
25 102.0178, Code of Criminal Procedure, and Section 102.0215,
26 Government Code, applies only to an offense committed on or after
27 the effective date of this Act. An offense committed before the

1 effective date of this Act is governed by the law in effect when the
2 offense was committed, and the former law is continued in effect for
3 that purpose. For purposes of this subsection, an offense was
4 committed before the effective date of this Act if any element of
5 the offense was committed before that date.

6 SECTION 12. This Act takes effect immediately if it
7 receives a vote of two-thirds of all the members elected to each
8 house, as provided by Section 39, Article III, Texas Constitution.
9 If this Act does not receive the vote necessary for immediate
10 effect, this Act takes effect September 1, 2007.