

By: Madden, Rodriguez, Pena, Hodge, Woolley

H.B. No. 530

Substitute the following for H.B. No. 530:

By: Madden

C.S.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 shall 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 by adding Subsection (c) to read as follows:

3 (c) A drug court program established under Section 469.002
4 shall:

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

7 (2) provide information regarding the performance of
8 the program to the division on request.

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

11 Sec. 469.004. FEES. (a) A drug court program established
12 under Section 469.002 may collect from a participant in the
13 program:

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

18 (2) an alcohol or controlled substance [a urinalysis]
19 testing, [and] counseling, and treatment fee[+]

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

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

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

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

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

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

7 Sec. 469.006. PROGRAM IN CERTAIN COUNTIES MANDATORY. (a)
8 The commissioners court of a county with a population of more than
9 200,000 ~~[550,000]~~ shall establish a drug court program under
10 Subdivision (1) of Section 469.002.

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

14 ~~[(c)]~~ A county required under this section to establish a
15 drug court program shall apply for ~~[to the]~~ federal and state
16 ~~[government for any]~~ funds available to pay the costs of the
17 program. The criminal justice division of the governor's office
18 may assist a county in applying for federal funds as required by
19 this subsection~~[, including providing financial assistance to the~~
20 ~~county]~~.

21 (c) Notwithstanding Subsection (a), a county is required to
22 establish a drug court program under this section only if the county
23 receives federal or state funding, including funding under Article
24 102.0178, Code of Criminal Procedure, specifically for that
25 purpose.

26 (d) A county that does not establish a drug court program as
27 required by this section and maintain the program is ineligible to

1 receive from the state:

2 (1) funds for a community supervision and corrections
3 department; and

4 (2) grants for substance abuse treatment programs
5 administered by the criminal justice division of the governor's
6 office.

7 SECTION 6. Subchapter A, Chapter 102, Code of Criminal
8 Procedure, is amended by adding Article 102.0178 to read as
9 follows:

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

14 (1) Chapter 49, Penal Code; or

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

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

18 (1) a sentence is imposed;

19 (2) the defendant receives community supervision or
20 deferred adjudication; or

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

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

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

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

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

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

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

12 (2) if the county or municipality has established a
13 drug court program or establishes a drug court program before the
14 expiration of the calendar quarter, retain in addition to the 10
15 percent authorized by Subdivision (1) another 50 percent of the
16 funds collected under this article by an officer of the county or
17 municipality during the calendar quarter to be used exclusively for
18 the development and maintenance of drug court programs operated
19 within the county or municipality.

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

25 (g) The comptroller shall deposit the funds received under
26 this article to the credit of the drug court account in the general
27 revenue fund to help fund drug court programs established under

1 Chapter 469, Health and Safety Code. The legislature shall
2 appropriate money from the account solely to the criminal justice
3 division of the governor's office for distribution to drug court
4 programs that apply for the money.

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

7 SECTION 7. Chapter 54, Government Code, is amended by
8 adding Subchapter GG to read as follows:

9 SUBCHAPTER GG. MAGISTRATES FOR DRUG COURT PROGRAMS

10 Sec. 54.1801. DEFINITION. In this chapter, "drug court"
11 has the meaning assigned by Section 469.001, Health and Safety
12 Code.

13 Sec. 54.1802. APPLICATION OF SUBCHAPTER. This subchapter
14 applies to each district court in this state. If a provision of
15 this subchapter conflicts with a specific provision for a
16 particular district court, the specific provision controls.

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

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

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

27 Sec. 54.1804. QUALIFICATIONS. A magistrate must:

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

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

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

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

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

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

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

18 (b) An order of referral may:

19 (1) limit the powers of the magistrate and direct the
20 magistrate to report on specific issues and perform particular
21 acts;

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

23 (3) provide a date for filing the magistrate's
24 findings;

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

27 (5) set forth general powers and limitations of

1 authority of the magistrate applicable to any case referred.

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

4 (1) conduct hearings;

5 (2) hear evidence;

6 (3) compel production of relevant evidence;

7 (4) rule on admissibility of evidence;

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

9 (6) examine witnesses;

10 (7) swear witnesses for hearings; and

11 (8) perform any act and take any measure necessary and
12 proper for the efficient performance of the duties assigned by the
13 district judge.

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

18 SECTION 8. Subchapter B, Chapter 102, Government Code, is
19 amended by adding Section 102.0215 to read as follows:

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

27 SECTION 9. (a) The change in law made by this Act in

1 amending Section 469.001, Health and Safety Code, applies to a
2 defendant who enters a drug court program under Chapter 469, Health
3 and Safety Code, regardless of whether the defendant committed the
4 offense for which the defendant enters the program before, on, or
5 after the effective date of this Act.

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

10 (1) September 1, 2008; or

11 (2) the first anniversary of the initial date on which
12 the federal census indicates that the county's population exceeds
13 200,000.

14 (c) The change in law made by this Act in adding Article
15 102.0178, Code of Criminal Procedure, and Section 102.0215,
16 Government Code, applies only to an offense committed on or after
17 the effective date of this Act. An offense committed before the
18 effective date of this Act is governed by the law in effect when the
19 offense was committed, and the former law is continued in effect for
20 that purpose. For purposes of this subsection, an offense was
21 committed before the effective date of this Act if any element of
22 the offense was committed before that date.

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