

1-1 By: Madden (Senate Sponsor - Seliger) H.B. No. 530
1-2 (In the Senate - Received from the House April 26, 2007;
1-3 May 1, 2007, read first time and referred to Committee on Criminal
1-4 Justice; May 14, 2007, reported adversely, with favorable
1-5 Committee Substitute by the following vote: Yeas 7, Nays 0;
1-6 May 14, 2007, sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR H.B. No. 530 By: Seliger

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to the operation and funding of drug court programs.

1-11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-12 SECTION 1. Section 469.001, Health and Safety Code, is
1-13 amended to read as follows:

1-14 Sec. 469.001. DRUG COURT PROGRAM DEFINED; PROCEDURES FOR
1-15 CERTAIN DEFENDANTS. (a) In this chapter, "drug court program"
1-16 means a program that has the following essential characteristics:

1-17 (1) the integration of alcohol and other drug
1-18 treatment services in the processing of cases in the judicial
1-19 system;

1-20 (2) the use of a nonadversarial approach involving
1-21 prosecutors and defense attorneys to promote public safety and to
1-22 protect the due process rights of program participants;

1-23 (3) early identification and prompt placement of
1-24 eligible participants in the program;

1-25 (4) access to a continuum of alcohol, drug, and other
1-26 related treatment and rehabilitative services;

1-27 (5) monitoring of abstinence through weekly alcohol
1-28 and other drug testing;

1-29 (6) a coordinated strategy to govern program responses
1-30 to participants' compliance;

1-31 (7) ongoing judicial interaction with program
1-32 participants;

1-33 (8) monitoring and evaluation of program goals and
1-34 effectiveness;

1-35 (9) continuing interdisciplinary education to promote
1-36 effective program planning, implementation, and operations; and

1-37 (10) development of partnerships with public agencies
1-38 and community organizations.

1-39 (b) If a defendant successfully completes a drug court
1-40 program, regardless of whether the defendant was convicted of the
1-41 offense for which the defendant entered the program or whether the
1-42 court deferred further proceedings without entering an
1-43 adjudication of guilt, after notice to the state and a hearing on
1-44 whether the defendant is otherwise entitled to the petition and
1-45 whether issuance of the order is in the best interest of justice,
1-46 the court shall enter an order of nondisclosure under Section
1-47 411.081, Government Code, as if the defendant had received a
1-48 discharge and dismissal under Section 5(c), Article 42.12, Code of
1-49 Criminal Procedure, with respect to all records and files related
1-50 to the defendant's arrest for the offense for which the defendant
1-51 entered the program if the defendant:

1-52 (1) has not been previously convicted of a felony
1-53 offense; and

1-54 (2) is not convicted for any other felony offense
1-55 before the second anniversary of the defendant's successful
1-56 completion of the program.

1-57 (c) Notwithstanding Subsection (b), a defendant is not
1-58 entitled to petition the court for an order of nondisclosure
1-59 following successful completion of a drug court program if the
1-60 defendant's entry into the program arose as the result of a
1-61 conviction for an offense involving the operation of a motor
1-62 vehicle while intoxicated.

1-63 SECTION 2. Section 469.002, Health and Safety Code, is

2-1 amended to read as follows:

2-2 Sec. 469.002. AUTHORITY TO ESTABLISH PROGRAM. The [Except
 2-3 as provided by Section 469.006, the] commissioners court of a
 2-4 county or governing body of a municipality may establish the
 2-5 following types of [a] drug court programs:

2-6 (1) drug courts for [program for] persons arrested
 2-7 for, charged with, or convicted of:

2-8 (A) [(-1)] an offense in which an element of the
 2-9 offense is the use or possession of alcohol or the use, possession,
 2-10 or sale of a controlled substance, a controlled substance analogue,
 2-11 or marihuana; or

2-12 (B) [(-2)] an offense in which the use of alcohol
 2-13 or a controlled substance is suspected to have significantly
 2-14 contributed to the commission of the offense and the offense did not
 2-15 involve:

2-16 (i) [(-A)] carrying, possessing, or using a
 2-17 firearm or other dangerous weapon;

2-18 (ii) [(-B)] the use of force against the
 2-19 person of another; or

2-20 (iii) [(-C)] the death of or serious bodily
 2-21 injury to another;

2-22 (2) drug courts for juveniles detained for, taken into
 2-23 custody for, or adjudicated as having engaged in:

2-24 (A) delinquent conduct, including habitual
 2-25 felony conduct, or conduct indicating a need for supervision in
 2-26 which an element of the conduct is the use or possession of alcohol
 2-27 or the use, possession, or sale of a controlled substance, a
 2-28 controlled substance analogue, or marihuana; or

2-29 (B) delinquent conduct, including habitual
 2-30 felony conduct, or conduct indicating a need for supervision in
 2-31 which the use of alcohol or a controlled substance is suspected to
 2-32 have significantly contributed to the commission of the conduct and
 2-33 the conduct did not involve:

2-34 (i) carrying, possessing, or using a
 2-35 firearm or other dangerous weapon;

2-36 (ii) the use of force against the person of
 2-37 another; or

2-38 (iii) the death of or serious bodily injury
 2-39 to another;

2-40 (3) reentry drug courts for persons with a
 2-41 demonstrated history of using alcohol or a controlled substance who
 2-42 may benefit from a program designed to facilitate the person's
 2-43 transition and reintegration into the community on release from a
 2-44 state or local correctional facility;

2-45 (4) family dependency drug treatment courts for family
 2-46 members involved in a suit affecting the parent-child relationship
 2-47 in which a parent's use of alcohol or a controlled substance is a
 2-48 primary consideration in the outcome of the suit; or

2-49 (5) programs for other persons not precisely described
 2-50 by Subdivisions (1)-(4) who may benefit from a program that has the
 2-51 essential characteristics described by Section 469.001.

2-52 SECTION 3. Section 469.003, Health and Safety Code, is
 2-53 amended to read as follows:

2-54 Sec. 469.003. OVERSIGHT. (a) The lieutenant governor and
 2-55 the speaker of the house of representatives may assign to
 2-56 appropriate legislative committees duties relating to the
 2-57 oversight of drug court programs established under this chapter
 2-58 [Section 469.002].

2-59 (b) A legislative committee or the governor may request the
 2-60 state auditor to perform a management, operations, or financial or
 2-61 accounting audit of a drug court program established under this
 2-62 chapter [Section 469.002].

2-63 (c) A drug court program established under this chapter
 2-64 shall:

2-65 (1) notify the criminal justice division of the
 2-66 governor's office before or on implementation of the program; and

2-67 (2) provide information regarding the performance of
 2-68 the program to the division on request.

2-69 SECTION 4. Section 469.004, Health and Safety Code, is

3-1 amended to read as follows:

3-2 Sec. 469.004. FEES. (a) A drug court program established
 3-3 under this chapter [~~Section 469.002~~] may collect from a participant
 3-4 in the program:

3-5 (1) a reasonable program fee not to exceed \$1,000[~~7~~
 3-6 ~~which may be paid on a periodic basis or on a deferred payment~~
 3-7 ~~schedule at the discretion of the judge, magistrate, or program~~
 3-8 ~~director administering the program]; and~~

3-9 (2) an alcohol or controlled substance [a urinalysis]
 3-10 testing, [and] counseling, and treatment fee[+]

3-11 [~~(A) based on the participant's ability to pay,~~
 3-12 ~~and~~

3-13 [~~(B)~~] in an amount necessary to cover the costs
 3-14 of the testing, [and] counseling, and treatment.

3-15 (b) Fees collected under this section may be paid on a
 3-16 periodic basis or on a deferred payment schedule at the discretion
 3-17 of the judge, magistrate, or program director administering the
 3-18 program. The fees must be:

3-19 (1) [~~A drug court program may require a participant to~~
 3-20 ~~pay all treatment costs incurred while participating in the~~
 3-21 ~~program,] based on the participant's ability to pay; and~~

3-22 (2) used only for purposes specific to the program.

3-23 SECTION 5. Section 469.006, Health and Safety Code, is
 3-24 amended to read as follows:

3-25 Sec. 469.006. PROGRAM IN CERTAIN COUNTIES MANDATORY. (a)
 3-26 The commissioners court of a county with a population of more than
 3-27 200,000 [550,000] shall establish a drug court program under
 3-28 Subdivision (1) of Section 469.002.

3-29 (b) [~~A drug court program required under this section to be~~
 3-30 ~~established must have at least 100 participants during the first~~
 3-31 ~~four months in which the program is operating.~~

3-32 [~~(c)~~] A county required under this section to establish a
 3-33 drug court program shall apply for [~~to the~~] federal and state
 3-34 [~~government for any~~] funds available to pay the costs of the
 3-35 program. The criminal justice division of the governor's office
 3-36 may assist a county in applying for federal funds as required by
 3-37 this subsection[~~, including providing financial assistance to the~~
 3-38 ~~county].~~

3-39 (c) Notwithstanding Subsection (a), a county is required to
 3-40 establish a drug court program under this section only if the county
 3-41 receives federal or state funding, including funding under Article
 3-42 102.0178, Code of Criminal Procedure, specifically for that
 3-43 purpose.

3-44 (d) A county that does not establish a drug court program as
 3-45 required by this section and maintain the program is ineligible to
 3-46 receive from the state:

3-47 (1) funds for a community supervision and corrections
 3-48 department; and

3-49 (2) grants for substance abuse treatment programs
 3-50 administered by the criminal justice division of the governor's
 3-51 office.

3-52 SECTION 6. Section 469.007, Health and Safety Code, is
 3-53 amended to read as follows:

3-54 Sec. 469.007. USE OF OTHER DRUG AND ALCOHOL AWARENESS
 3-55 PROGRAMS. In addition to using a drug court program established
 3-56 under this chapter [~~Section 469.002~~], the commissioners court of a
 3-57 county or a court may use other drug awareness or drug and alcohol
 3-58 driving awareness programs to treat persons convicted of drug or
 3-59 alcohol related offenses.

3-60 SECTION 7. Chapter 469, Health and Safety Code, is amended
 3-61 by adding Sections 469.0025, 469.005, 469.008, and 469.009 to read
 3-62 as follows:

3-63 Sec. 469.0025. ESTABLISHMENT OF REGIONAL PROGRAM. (a) The
 3-64 commissioners courts of three or more counties, or the governing
 3-65 bodies of three or more municipalities, may elect to establish a
 3-66 regional drug court program under this chapter for the
 3-67 participating counties or municipalities.

3-68 (b) For purposes of this chapter, each county or
 3-69 municipality that elects to establish a regional drug court program

4-1 under this section is considered to have established the program
 4-2 and is entitled to retain fees under Article 102.0178, Code of
 4-3 Criminal Procedure, in the same manner as if the county or
 4-4 municipality had established a drug court program without
 4-5 participating in a regional program.

4-6 Sec. 469.005. DRUG COURT PROGRAMS EXCLUSIVELY FOR CERTAIN
 4-7 INTOXICATION OFFENSES. (a) The commissioners court of a county may
 4-8 establish under this chapter a drug court program exclusively for
 4-9 persons arrested for, charged with, or convicted of an offense
 4-10 involving the operation of a motor vehicle while intoxicated.

4-11 (b) A county that establishes a drug court program under
 4-12 this chapter but does not establish a separate program under this
 4-13 section must employ procedures designed to ensure that a person
 4-14 arrested for, charged with, or convicted of a second or subsequent
 4-15 offense involving the operation of a motor vehicle while
 4-16 intoxicated participates in the county's existing drug court
 4-17 program.

4-18 Sec. 469.008. SUSPENSION OR DISMISSAL OF COMMUNITY SERVICE
 4-19 REQUIREMENT. (a) Notwithstanding Sections 13 and 16, Article
 4-20 42.12, Code of Criminal Procedure, to encourage participation in a
 4-21 drug court program established under this chapter, the judge or
 4-22 magistrate administering the program may suspend any requirement
 4-23 that, as a condition of community supervision, a participant in the
 4-24 program work a specified number of hours at a community service
 4-25 project or projects.

4-26 (b) On a participant's successful completion of a drug court
 4-27 program, a judge or magistrate may excuse the participant from any
 4-28 condition of community supervision previously suspended under
 4-29 Subsection (a).

4-30 Sec. 469.009. OCCUPATIONAL DRIVER'S LICENSE.
 4-31 Notwithstanding Section 521.242, Transportation Code, if a
 4-32 participant's driver's license has been suspended as a result of an
 4-33 alcohol-related or drug-related enforcement contact, as defined by
 4-34 Section 524.001, Transportation Code, or as a result of a
 4-35 conviction under Section 49.04, 49.07, or 49.08, Penal Code, the
 4-36 judge or magistrate administering a drug court program under this
 4-37 chapter may order that an occupational license be issued to the
 4-38 participant. An order issued under this section is subject to
 4-39 Sections 521.248-521.252, Transportation Code, except that any
 4-40 reference to a petition under Section 521.242 of that code does not
 4-41 apply.

4-42 SECTION 8. Subchapter A, Chapter 102, Code of Criminal
 4-43 Procedure, is amended by adding Article 102.0178 to read as
 4-44 follows:

4-45 Art. 102.0178. COSTS ATTENDANT TO CERTAIN INTOXICATION AND
 4-46 DRUG CONVICTIONS. (a) In addition to other costs on conviction
 4-47 imposed by this chapter, a person shall pay \$50 as a court cost on
 4-48 conviction of an offense punishable as a Class B misdemeanor or any
 4-49 higher category of offense under:

4-50 (1) Chapter 49, Penal Code; or

4-51 (2) Chapter 481, Health and Safety Code.

4-52 (b) For purposes of this article, a person is considered to
 4-53 have been convicted if:

4-54 (1) a sentence is imposed; or

4-55 (2) the defendant receives community supervision or
 4-56 deferred adjudication.

4-57 (c) Court costs under this article are collected in the same
 4-58 manner as other fines or costs. An officer collecting the costs
 4-59 shall keep separate records of the funds collected as costs under
 4-60 this article and shall deposit the funds in the county or municipal
 4-61 treasury, as appropriate.

4-62 (d) The custodian of a county or municipal treasury shall:

4-63 (1) keep records of the amount of funds on deposit
 4-64 collected under this article; and

4-65 (2) except as provided by Subsection (e), send to the
 4-66 comptroller before the last day of the first month following each
 4-67 calendar quarter the funds collected under this article during the
 4-68 preceding quarter.

4-69 (e) A county or municipality is entitled to:

5-1 (1) if the custodian of the county or municipal
 5-2 treasury complies with Subsection (d), retain 10 percent of the
 5-3 funds collected under this article by an officer of the county or
 5-4 municipality during the calendar quarter as a service fee; and

5-5 (2) if the county or municipality has established a
 5-6 drug court program or establishes a drug court program before the
 5-7 expiration of the calendar quarter, retain in addition to the 10
 5-8 percent authorized by Subdivision (1) another 50 percent of the
 5-9 funds collected under this article by an officer of the county or
 5-10 municipality during the calendar quarter to be used exclusively for
 5-11 the development and maintenance of drug court programs operated
 5-12 within the county or municipality.

5-13 (f) If no funds due as costs under this article are
 5-14 deposited in a county or municipal treasury in a calendar quarter,
 5-15 the custodian of the treasury shall file the report required for the
 5-16 quarter in the regular manner and must state that no funds were
 5-17 collected.

5-18 (g) The comptroller shall deposit the funds received under
 5-19 this article to the credit of the drug court account in the general
 5-20 revenue fund to help fund drug court programs established under
 5-21 Chapter 469, Health and Safety Code. The legislature shall
 5-22 appropriate money from the account solely to the criminal justice
 5-23 division of the governor's office for distribution to drug court
 5-24 programs that apply for the money.

5-25 (h) Funds collected under this article are subject to audit
 5-26 by the comptroller.

5-27 SECTION 9. Chapter 54, Government Code, is amended by
 5-28 adding Subchapter GG to read as follows:

5-29 SUBCHAPTER GG. MAGISTRATES FOR DRUG COURT PROGRAMS

5-30 Sec. 54.1801. DEFINITION. In this subchapter, "drug court"
 5-31 has the meaning assigned by Section 469.001, Health and Safety
 5-32 Code.

5-33 Sec. 54.1802. APPLICABILITY OF SUBCHAPTER. This subchapter
 5-34 applies to each district court and statutory county court with
 5-35 criminal jurisdiction in this state. If a provision of this
 5-36 subchapter conflicts with a specific provision for a particular
 5-37 district court or statutory county court, the specific provision
 5-38 controls.

5-39 Sec. 54.1803. APPOINTMENT. (a) The judges of the district
 5-40 courts of a county hearing criminal cases and the judges of the
 5-41 statutory county courts with criminal jurisdiction in a county,
 5-42 with the consent and approval of the commissioners court of the
 5-43 county, may appoint the number of magistrates set by the
 5-44 commissioners court to perform the duties associated with the
 5-45 administration of drug courts as authorized by this subchapter.

5-46 (b) Each magistrate's appointment must be made with the
 5-47 approval of the majority of the district court or statutory county
 5-48 court judges described in Subsection (a), as applicable.

5-49 (c) A magistrate appointed under this section serves at the
 5-50 will of a majority of the appointing judges.

5-51 Sec. 54.1804. QUALIFICATIONS. A magistrate must:

5-52 (1) be a resident of this state and of the county in
 5-53 which the magistrate is appointed to serve under this subchapter;
 5-54 and

5-55 (2) have been licensed to practice law in this state
 5-56 for at least four years.

5-57 Sec. 54.1805. COMPENSATION. A magistrate is entitled to
 5-58 the salary determined by the county commissioners court.

5-59 Sec. 54.1806. JUDICIAL IMMUNITY. A magistrate has the same
 5-60 judicial immunity as a judge of a district court or statutory county
 5-61 court appointing the magistrate.

5-62 Sec. 54.1807. PROCEEDINGS THAT MAY BE REFERRED. (a) A
 5-63 district judge or judge of a statutory county court with criminal
 5-64 jurisdiction may refer to a magistrate a criminal case for drug
 5-65 court proceedings.

5-66 (b) A magistrate may not preside over a contested trial on
 5-67 the merits, regardless of whether the trial is before a jury.

5-68 Sec. 54.1808. ORDER OF REFERRAL. (a) To refer one or more
 5-69 cases to a drug court magistrate, a district judge or judge of a

6-1 statutory county court with criminal jurisdiction must issue an
6-2 order of referral specifying the magistrate's duties.

6-3 (b) An order of referral may:

6-4 (1) limit the powers of the magistrate and direct the
6-5 magistrate to report on specific issues and perform particular
6-6 acts;

6-7 (2) set the time and place for the hearing;

6-8 (3) provide a date for filing the magistrate's
6-9 findings;

6-10 (4) designate proceedings for more than one case over
6-11 which the magistrate shall preside; and

6-12 (5) set forth general powers and limitations of
6-13 authority of the magistrate applicable to any case referred.

6-14 Sec. 54.1809. POWERS. (a) Except as limited by an order of
6-15 referral, a magistrate to whom a drug court case is referred may:

6-16 (1) conduct hearings;

6-17 (2) hear evidence;

6-18 (3) compel production of relevant evidence;

6-19 (4) rule on admissibility of evidence;

6-20 (5) issue summons for the appearance of witnesses;

6-21 (6) examine witnesses;

6-22 (7) swear witnesses for hearings; and

6-23 (8) perform any act and take any measure necessary and
6-24 proper for the efficient performance of the duties assigned by the
6-25 district or statutory county court judge.

6-26 (b) A magistrate may not enter a ruling on any issue of law
6-27 or fact if that ruling could result in dismissal or require
6-28 dismissal of a pending criminal prosecution, but the magistrate may
6-29 make findings, conclusions, and recommendations on those issues.

6-30 SECTION 10. Subchapter B, Chapter 102, Government Code, is
6-31 amended by adding Section 102.0215 to read as follows:

6-32 Sec. 102.0215. ADDITIONAL COURT COSTS ON CONVICTION: CODE
6-33 OF CRIMINAL PROCEDURE. A person convicted of an offense shall pay
6-34 under the Code of Criminal Procedure, in addition to all other
6-35 costs, costs attendant to convictions under Chapter 49, Penal Code,
6-36 and under Chapter 481, Health and Safety Code, to help fund drug
6-37 court programs established under Chapter 469, Health and Safety
6-38 Code (Art. 102.0178, Code of Criminal Procedure) . . . \$50.

6-39 SECTION 11. (a) Except as otherwise provided by this
6-40 section, the change in law made by this Act in amending Chapter 469,
6-41 Health and Safety Code, applies to a defendant who enters a drug
6-42 court program under Chapter 469, Health and Safety Code, regardless
6-43 of whether the defendant committed the offense for which the
6-44 defendant enters the program before, on, or after the effective
6-45 date of this Act.

6-46 (b) The commissioners court of a county required under
6-47 Section 469.006(a), Health and Safety Code, as amended by this Act,
6-48 to establish a drug court program shall establish the program not
6-49 later than the later of:

6-50 (1) September 1, 2008; or

6-51 (2) the first anniversary of the initial date on which
6-52 the federal census indicates that the county's population exceeds
6-53 200,000.

6-54 (c) The change in law made by this Act in adding Article
6-55 102.0178, Code of Criminal Procedure, and Section 102.0215,
6-56 Government Code, applies only to an offense committed on or after
6-57 the effective date of this Act. An offense committed before the
6-58 effective date of this Act is governed by the law in effect when the
6-59 offense was committed, and the former law is continued in effect for
6-60 that purpose. For purposes of this subsection, an offense was
6-61 committed before the effective date of this Act if any element of
6-62 the offense was committed before that date.

6-63 SECTION 12. This Act takes effect immediately if it
6-64 receives a vote of two-thirds of all the members elected to each
6-65 house, as provided by Section 39, Article III, Texas Constitution.
6-66 If this Act does not receive the vote necessary for immediate
6-67 effect, this Act takes effect September 1, 2007.

6-68 * * * * *