

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 80TH LEGISLATIVE REGULAR SESSION

May 7, 2007

TO: Honorable John Whitmire, Chair, Senate Committee on Criminal Justice

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: HB530 by Madden (Relating to the operation and funding of drug court programs.), As Engrossed

Estimated Two-year Net Impact to General Revenue Related Funds for HB530, As Engrossed: an impact of \$0 through the biennium ending August 31, 2009.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2008	\$0
2009	\$0
2010	\$0
2011	\$0
2012	\$0

All Funds, Five-Year Impact:

Fiscal Year	Probable Revenue Gain/(Loss) from <i>New General Revenue Dedicated-Drug Court</i>	Probable (Cost) from <i>New General Revenue Dedicated-Drug Court</i>
2008	\$929,000	(\$929,000)
2009	\$2,258,000	(\$2,258,000)
2010	\$2,288,000	(\$2,288,000)
2011	\$2,317,000	(\$2,317,000)
2012	\$2,347,000	(\$2,347,000)

Fiscal Analysis

This bill would amend Chapter 469 of the Health and Safety Code to expand the definition of drug courts to allow other types of problem-solving courts to be established. These new problem-solving courts would include, but would not be limited to, DWI courts, juvenile drug courts, reentry drug courts, and family dependency drug courts. Currently, only counties have the authority to establish drug courts. The bill would also authorize municipalities to establish said programs.

The bill would establish the conditions and procedures for defendants' entry into drug court programs and the final disposition of cases. The bill would lower the population threshold for requiring the establishment of drug court programs in certain counties, provided those counties received federal or state funding for the programs. Currently, drug court programs are only mandatory in counties with a population over 550,000. This bill would reduce that threshold to more than 200,000 people as

provided in section 5.

Section 1 of the bill states that courts may enter an order of nondisclosure under Government Code 411.081 with respect to all records and files related to defendant's arrest for the offense for which the defendant entered the drug court program if the defendant: 1) has not been previously convicted of a felony; 2) does not get convicted for another felony offense in the two years after the completion of the drug court program.

This amendment would allow anyone who has completed a drug court program to have the court give notice to the state and hold a hearing, and then enter an order of nondisclosure for all records relating to the offense that made them eligible for the drug court program. Under 469.002, drug court programs may include drug courts for persons arrested for, charged with, or convicted of an offense in which an element of the offense is the use or possession of a controlled substance, or marihuana.

Therefore, a person convicted of possession of a controlled substance or marihuana can be placed in the drug court program and upon completion of the program (if they have no prior felony or get convicted of a felony within 2 years), the person is eligible for the order of nondisclosure under 469.001(b). Non-disclosure would not apply to the issuance of a driver's license.

Section 3 of the bill would implement recommendations 1, 2 and 3 in the "Rehabilitate DWI Offenders and Conserve Prison Capacity by Creating More DWI Courts," report from the Legislative Budget Board's publication, *Texas State Government Effectiveness and Efficiency: Selected Issues and Recommendations*.

Provisions in this section would amend Chapter 469 of the Health and Safety Code to statutorily recognize DWI courts and apply the existing requirements for drug courts to DWI courts. Some exceptions to the requirements would apply. Counties would have the option of accepting DWI offenders in their existing drug court programs or create a separate DWI court. All operating drug courts in counties without a separate DWI court would be required to serve DWI offenders in the drug court program.

As a way to encourage participation in the DWI court program, this bill would also amend Chapter 469 of the Health and Safety Code to give judges or magistrates administering the program the option to suspend any requirements as a condition of community supervision as it relates to community service hours. The bill provides that upon successful completion of the DWI court program, a judge or magistrate may excuse a participant from any conditions of community supervision as they relate to community service hours.

The bill would amend Chapter 469 of the Health and Safety Code to permit a presiding judge or magistrate of a drug court to order an occupational license as a condition of the program. An occupational license allows a participant to drive to and from designated points like work, court, and treatment meetings. Currently, under Section 521.242 of the Transportation Code, a defendant must file a separate civil petition for an occupational driver's license. Adding this provision to the Health and Safety Code would serve as an incentive to the participant who needs immediate access to a vehicle to comply with regular court appearances and drug testing, and decrease the cost and time involved in obtaining the license.

Section 3 also requires drug court programs to notify the Criminal Justice Division (CJD) of the Governor's Office prior to or upon completion of implementation and to provide CJD with performance data on request.

Section 4 of the bill would authorize drug courts to impose, based on a defendant's ability to pay, additional local fees to support the programs. Judges, magistrates, or program administrators would have the discretion to allow defendants to pay the fees on a periodic basis or on a deferred payment schedule.

Section 6 of the bill would amend Chapter 102, Subchapter A of the Code of Criminal Procedure to impose a new court cost of \$50 on the conviction of certain intoxication and drug offenses to be used to fund drug courts. The State would receive 40 percent of the \$50 fee, to be used to help fund drug court programs established under Chapter 469 of the Health and Safety Code. Counties and

municipalities would be allowed to retain 10 percent as a service fee, and an additional 50 percent of the revenue, if the county or municipality keeps record of the total amount collected and remits collections due to the state from this fee, on a quarterly basis, to the Comptroller. Counties would be allowed to use these funds to develop and maintain drug courts or develop and operate any programs designed to prevent or provide education concerning alcohol and drug abuse within a county that does not establish a drug court program. The Comptroller would be required to deposit and credit the funds to the newly created General Revenue-Dedicated Account—Drug Courts. The bill would direct the Legislature to appropriate revenue in the account to the Criminal Justice Division of the Governor's Office for distribution to applicable drug court programs. The bill would authorize the auditing of the court cost collections by the Comptroller.

Section 7 of the bill outlines the powers of a magistrate as they pertain to drug court programs.

Finally, Section 8 of the bill would make a conforming amendment to Subchapter B, Chapter 102 of the Government Code to revise the informational listing of court costs.

This bill would take effect immediately upon enactment, assuming that it received the requisite two-thirds majority votes in both houses of the Legislature. Otherwise, it would take effect September 1, 2007. The new court cost would not apply to offenses, in part or whole, committed before the effective date.

This bill would create a dedicated account in the General Revenue Fund, or create a dedicated revenue source. Therefore, the fund, account, or revenue dedication included in the bill would be subject to the funds consolidation review by the current Legislature.

Methodology

Currently, there are nine counties that fit the requirement of a population greater than 550,000. If the population threshold were reduced to over 200,000 people, 12 additional counties would be required to operate drug courts under this bill according to 2005 US Census Bureau population estimates. This would bring the total number of counties in Texas statutorily required to have drug courts up to 21.

The annual gain to the State would be \$929,000 in General Revenue-Dedicated Funds in fiscal year 2008 and \$2,258,000 in fiscal year 2009. The gain to the state was based on data from the Annual Statistical Report for the Texas Judiciary-Fiscal 2006 data on the number of convictions and deferred adjudications in three categories (Drug Sale or Manufacture, Drug Possession, and Felony D.W.I.). The total number of convictions is multiplied by the \$50 fee, multiplied by 40% (counties retain 60%), and multiplied by a collection rate of 60% for court costs as estimated by the Comptroller. In the first year, only 5 months will be collected because counties remit to the state each calendar quarter. This is reflected in the fiscal year 2008 revenue gain.

This newly generated revenue would be in addition to the current biennial \$1.5 million drug court funding available through the Criminal Justice Division of the Governor's Office. The additional revenues generated by the bill would allow the 21 courts to be funded at a higher level per court than is currently provided for the mandated courts.

This bill could potentially result in a cost savings to the State if more offenders are diverted from prison or state jail as a result of participating in drug court or other problem-solving court programs.

Local Government Impact

Local governments will see an increase in revenue due to the new \$50 court cost. This revenue may be used to develop and maintain the drug court programs or other problem-solving courts as defined in Chapter 469 of the Health and Safety Code, or may be used to develop and operate develop and operate any programs designed to prevent or provide education concerning alcohol and drug abuse within a county that has not/does not establish a drug court program. Counties will see a revenue gain estimated to be \$1,393,000 in fiscal year 2008 and \$3,387,000 in fiscal year 2009.

Source Agencies: 212 Office of Court Administration, Texas Judicial Council, 301 Office of the Governor, 304 Comptroller of Public Accounts, 601 Department of Transportation, 696 Department of Criminal Justice

LBB Staff: JOB, YD, ES, JI