

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 80TH LEGISLATIVE REGULAR SESSION
Revision 1

March 10, 2007

TO: Honorable Jerry Madden, Chair, House Committee on Corrections

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 Introduced**

Estimated Two-year Net Impact to General Revenue Related Funds for HB530, As Introduced: 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</i>	Probable (Cost) from <i>New General Revenue Dedicated</i>
2008	\$1,161,000	\$1,161,000
2009	\$2,823,000	\$2,823,000
2010	\$2,859,000	\$2,859,000
2011	\$2,897,000	\$2,897,000
2012	\$2,934,000	\$2,934,000

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, 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 shall 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 arrested 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 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(c).

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 50 percent of the \$50 fee, to be used to help fund drug court programs established under Chapter 469 of the Health and Safety Code. The annual gain to the State would be \$1,161,000 in General Revenue-Dedicated Funds in fiscal year 2008 and \$2,823,000 in fiscal year 2009. Counties and municipalities would be allowed to retain 40 percent of the revenue to fund the development and maintenance of drug courts, and an additional 10 percent as a collection fee, if the county or municipality keeps record of the total amount collected and remits 50 percent of total collections from this fee, on a quarterly basis, to the Comptroller. 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.

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.

Finally, section 7 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.

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 Censuses Bureau population estimates. This would bring the total number of counties in Texas statutorily required to have drug courts up to 21.

The nondisclosure provision for certain offender populations, including those served in drug courts, would place the state out of compliance and would jeopardize highway funds under federal law, 23 USC 159. The loss of federal highway funds to the state amount to approximately \$142.2 million in fiscal year 2008 and \$144.5 million in fiscal year 2009.

The loss in federal funds is based on a penalty of 10 percent of certain funds apportioned to the state. The Texas Department of Transportation estimates that Texas' fiscal year 2008 federal apportionment at \$1,421,854,688 and \$1,444,779,989 for fiscal year 2009. If the provisions of the bill relating to nondisclosure were implemented, it is estimated that Texas could lose approximately \$142 million in federal highway funds per year.

The annual revenue 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 50% (counties retain 50%), and multiplied by a collection rate of 60% for court costs as estimated by the Comptroller. In the first year, only 10 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.

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. However, the fiscal impact may vary by county depending on whether or not the county elects to use these funds for the development or maintenance of drug courts. Assuming all counties elect to operate a drug court and retain the 50 percent of the fee that they are entitled to for the purposes outlined in the bill, they will see an equal amount of revenue gain as the state from this new \$50 court cost. The annual local fiscal impact is estimated to be \$1,161,000 in fiscal year 2008 and \$2,823,000 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

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