

## **BILL ANALYSIS**

H.B. 3595  
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Corrections  
Committee Report (Unamended)

### **BACKGROUND AND PURPOSE**

The 77th Legislature, Regular Session, 2001, required a county with a population of 550,000 or more to establish a drug court program. The 80th Legislature, Regular Session, 2007, expanded the mandate for drug courts to apply the requirement to a county with a population of 200,000 or more. Empirical evidence has demonstrated that drug courts are successful in rehabilitating lives and preventing incarceration. They also have been successful in helping program participants become productive citizens while protecting public safety. Under current law, a judge in a county of less than 200,000 may voluntarily hold drug courts but typically does so without any financial assistance from the state. Drug courts generally meet on a weekly basis, which places great demands on their presiding judges.

H.B. 3595 authorizes the presiding judge of an administrative judicial region, with the approval of the judges of the local courts, to appoint an associate judge to operate a drug court program in a county with a population of not more than 200,000, if state funds are available for the program.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

### **ANALYSIS**

H.B. 3595 amends the Health and Safety Code to require the presiding judge of each administrative judicial region, after conferring with the judges of courts in the region with a county population of not more than 200,000, to determine which courts desire the appointment of a full-time or part-time associate judge to operate any drug court program established under state law. The bill authorizes the presiding judge to limit the appointment to a specified period and to terminate an appointment at any time. The bill authorizes an associate judge appointed to operate a drug program to be appointed to serve more than one court and authorizes two or more judges of administrative judicial regions to jointly appoint one or more associate judges to serve the regions. The bill requires the presiding judge, if the judge determines that a court or courts desire the appointment of an associate judge, and if state funding is available for the program, to appoint an associate judge. The bill requires all appropriate cases, if an associate judge is appointed, to be referred to the associate judge by a general order for each county issued by the judge of each court for which the associate judge is appointed or, in the absence of that order, by a general order issued by the presiding judge who appointed the associate judge.

H.B. 3595 requires a person, to be eligible for appointment as an associate judge for a drug court program, to be a U.S. citizen, to have resided in Texas for the two years preceding the date of appointment, and:

- to be qualified on the basis of the person's eligibility for assignment because the person is named on the list of retired and former judges maintained by the presiding judge of the administrative region or on the basis of the person's being licensed to practice law in Texas and having been a practicing lawyer in Texas or a judge of a court in Texas who is

not otherwise eligible for assignment, for the four years preceding the date of appointment;

- to not have been defeated for reelection to a judicial office;
- to not have been removed from office by impeachment, by the supreme court, by the governor on address to the legislature, by a tribunal reviewing a recommendation of the State Commission on Judicial Conduct, or by the legislature's abolition of the judge's court; and
- to not have resigned from office after having received notice that formal proceedings by the State Commission on Judicial Conduct regarding allegation or appearance of misconduct or disability of the judge had been instituted and before final disposition of the proceedings.

H.B. 3595 requires the presiding judges of the administrative judicial regions, subject to the approval of the commissioners court of the proposed host county, to determine by majority vote the host county of an associate judge appointed for a drug court program. The bill requires the host county to provide an adequate courtroom and quarters, including furniture, necessary utilities, and telephone equipment and service, for the associate judge and other personnel assisting the associate judge and establishes that an associate judge is not required to reside in the host county.

H.B. 3595 authorizes an associate judge to refer a case back to the referring court on the motion of a party or the associate judge. The bill sets forth the general powers of an associate judge to whom a case is referred, prohibits an associate judge from entering a ruling on any issue of law or fact if that ruling could result in dismissal or require dismissal of a pending criminal prosecution, and authorizes the judge to make findings, conclusions, and recommendations on those issues. The bill prohibits an associate judge from presiding over a trial on the merits, whether or not the trial is before a jury.

H.B. 3595 sets forth the procedures for providing a court reporter during and for preserving the record of a hearing held by an associate judge.

H.B. 3595 authorizes a referring court to modify, correct, reject, reverse, or recommit for further information any action taken by the associate judge and establishes that if the court does not modify, correct, reject, reverse, or recommit an action to the associate judge within 30 days of the action, the action becomes the decree of the court.

H.B. 3595 grants an associate judge the same judicial immunity as a district judge and entitles an associate judge to a salary as determined by a majority vote of the presiding judges of the administrative judicial regions. The bill prohibits the salary from exceeding 90 percent of the salary paid to a district judge as set by the state General Appropriations Act and requires the salary to be paid from funds available from the state for purposes of the associate judge appointment. The bill authorizes the presiding judge of an administrative judicial region or the presiding judges of the administrative judicial regions, by majority vote, to appoint personnel as needed to implement and administer the bill's provisions and requires the salaries of the personnel to be paid from funds available from the state for purposes of the appointment of the associate judge to a drug court program.

H.B. 3595 requires the office of court administration to assist the presiding judges in monitoring the associate judges' compliance with any applicable job performance standards, uniform practices adopted by the presiding judges, and federal and state laws and policies; in addressing the training needs and resource requirements of the associate judges; in conducting annual performance evaluations for the associate judges and other appointed personnel based on written personnel performance standards adopted by the presiding judges; and in receiving, investigating, and resolving complaints about particular associate judges or the associate judge program based on a uniform process adopted by the presiding judges.

H.B. 3595 authorizes the office of court administration to contract for available state, county, and federal funds from any source and to employ personnel needed to implement and administer the bill's provisions. The bill establishes that an associate judge and other appointed personnel are state employees for all purposes, including accrual of leave time, insurance benefits, retirement benefits, and travel regulations. The bill authorizes the presiding judges of the administrative judicial regions, state agencies, and counties to contract for available federal funds from any source to reimburse costs and salaries associated with associate judges and appointed personnel and also to use available state and county funds and public or private grants. The bill requires the presiding judges and the office of court administration in cooperation with other agencies to take action necessary to maximize the amount of federal money available to fund the use of associate judges for drug court programs.

H.B. 3595 establishes that its provisions do not limit the authority of a presiding judge to assign a judge eligible for assignment under the Court Administration Act to operate a drug court program. The bill authorizes the presiding judge of the administrative judicial region in which an associate judge serves or a vacancy occurs, if the associate judge appointed is temporarily unable to perform the associate judge's official duties because of absence resulting from family circumstances, illness, injury, disability, or military service, or if there is a vacancy in the position of associate judge, to appoint a visiting associate judge to perform the associate judge's duties during the period the associate judge is unable to perform or until another associate judge is appointed to fill the vacancy. The bill establishes that a person is not eligible for such a visiting appointment unless the person has served as an associate judge, a district judge, or a statutory county court judge for at least two years before the date of appointment and that a visiting associate judge is subject to each state law provision relating to a drug court program that applies to an associate judge serving under a regular appointment to the program. The bill entitles a visiting associate judge to compensation to be determined by a majority vote of the presiding judges of the administrative judicial regions, through use of funds available for an associate judge appointment. The bill establishes that a visiting associate judge is not considered to be a state employee for any purpose and that provisions prohibiting a state agency from entering into an employment contract with former or retired agency employees do not apply to the appointment of a visiting associate judge. The bill prohibits an appointed associate judge from engaging in the private practice of law.

#### **EFFECTIVE DATE**

On passage, or, if the act does not receive the necessary vote, the act takes effect September 1, 2009.