

By: Lozano

H.B. No. 768

A BILL TO BE ENTITLED

AN ACT

relating to the provision of drug court programs in this state.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Sections 469.001 and 469.002, Section 469.003, as amended by this Act, and Sections 469.004 through 469.009, Health and Safety Code, are designated as Subchapter A, Chapter 469, Health and Safety Code, and a heading is added to that subchapter to read as follows:

SUBCHAPTER A. DRUG COURT PROGRAMS

SECTION 2. Chapter 469, Health and Safety Code, is amended by adding Subchapter B to read as follows:

SUBCHAPTER B. ASSOCIATE JUDGE FOR DRUG COURT PROGRAMS

Sec. 469.031. AUTHORITY OF PRESIDING JUDGE. (a) 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, shall determine which courts desire the appointment of a full-time or part-time associate judge to operate any drug court program described by Section 469.002.

(b) The presiding judge may limit the appointment to a specified period and may terminate an appointment at any time.

(c) An associate judge appointed under this subchapter may be appointed to serve more than one court. Two or more judges of administrative judicial regions may jointly appoint one or more associate judges to serve the regions.

1       (d) If the presiding judge determines that a court or courts  
2 desire the appointment of an associate judge, and if state funding  
3 is available for the program, the presiding judge shall appoint an  
4 associate judge. If an associate judge is appointed for a court or  
5 courts, all appropriate cases shall be referred to the associate  
6 judge by a general order for each county issued by the judge of each  
7 court for which the associate judge is appointed or, in the absence  
8 of that order, by a general order issued by the presiding judge who  
9 appointed the associate judge.

10       Sec. 469.032. QUALIFICATIONS. (a) To be eligible for  
11 appointment under this subchapter, a person must be a citizen of the  
12 United States, have resided in this state for the two years  
13 preceding the date of appointment, and:

14               (1) be qualified on the basis of the person's:

15                       (A) eligibility for assignment under Section  
16 74.054, Government Code, because the person is named on the list of  
17 retired and former judges maintained by the presiding judge of the  
18 administrative region under Section 74.055, Government Code; or

19                       (B) being licensed to practice law in this state  
20 and having been a practicing lawyer in this state or a judge of a  
21 court in this state who is not otherwise eligible under Subdivision  
22 (1), for the four years preceding the date of appointment;

23               (2) not have been defeated for reelection to a  
24 judicial office;

25               (3) not have been removed from office by impeachment,  
26 by the supreme court, by the governor on address to the legislature,  
27 by a tribunal reviewing a recommendation of the State Commission on

1 Judicial Conduct, or by the legislature's abolition of the judge's  
2 court; and

3 (4) not have resigned from office after having  
4 received notice that formal proceedings by the State Commission on  
5 Judicial Conduct had been instituted as provided by Section 33.022  
6 and before final disposition of the proceedings.

7 Sec. 469.033. DESIGNATION OF HOST COUNTY. (a) Subject to  
8 the approval of the commissioners court of the proposed host  
9 county, the presiding judges of the administrative judicial regions  
10 by majority vote shall determine the host county of an associate  
11 judge appointed under this subchapter.

12 (b) The host county shall provide an adequate courtroom and  
13 quarters, including furniture, necessary utilities, and telephone  
14 equipment and service, for the associate judge and other personnel  
15 assisting the associate judge.

16 (c) An associate judge is not required to reside in the host  
17 county.

18 Sec. 469.034. GENERAL POWERS OF ASSOCIATE JUDGE. (a) On  
19 the motion of a party or the associate judge, an associate judge may  
20 refer a case back to the referring court.

21 (b) Except as limited by an order of referral, an associate  
22 judge to whom a case is referred may:

23 (1) conduct hearings;

24 (2) hear evidence;

25 (3) compel production of relevant evidence;

26 (4) rule on the admissibility of evidence;

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

- 1           (6) examine a witness;  
2           (7) swear a witness for a hearing;  
3           (8) make findings of fact on evidence;  
4           (9) formulate conclusions of law;  
5           (10) rule on pretrial motions;  
6           (11) recommend the rulings, orders, or judgment to be  
7 made in a case;  
8           (12) regulate proceedings in a hearing;  
9           (13) order the attachment of a witness or party who  
10 fails to obey a subpoena;  
11           (14) accept a plea of guilty from a defendant charged  
12 with misdemeanor, felony, or both misdemeanor and felony offenses;  
13           (15) select a jury; and  
14           (16) take action as necessary and proper for the  
15 efficient performance of the duties required by the order of  
16 referral.

17           (c) An associate judge may not enter a ruling on any issue of  
18 law or fact if that ruling could result in dismissal or require  
19 dismissal of a pending criminal prosecution, but the associate  
20 judge may make findings, conclusions, and recommendations on those  
21 issues.

22           (d) An associate judge may not preside over a trial on the  
23 merits, whether or not the trial is before a jury.

24           Sec. 469.035. COURT REPORTER; RECORD. (a) A court reporter  
25 may be provided during a hearing held by an associate judge  
26 appointed under this subchapter. At the request of a party, the  
27 court shall provide a court reporter to record the proceedings

1 before the associate judge.

2 (b) A party, the associate judge, or the referring court may  
3 provide for a reporter during the hearing if one is not otherwise  
4 provided.

5 (c) Except as provided by Subsection (a), in the absence of  
6 a court reporter or on agreement of the parties, the record may be  
7 preserved by any means approved by the associate judge.

8 (d) The referring court or associate judge may assess the  
9 expense of preserving the record under Subsection (c) as costs.

10 Sec. 469.036. JUDICIAL ACTION. (a) A referring court may  
11 modify, correct, reject, reverse, or recommit for further  
12 information any action taken by the associate judge.

13 (b) If the court does not modify, correct, reject, reverse,  
14 or recommit an action to the associate judge, within 30 days of the  
15 action of the associate judge, the action becomes the decree of the  
16 court.

17 Sec. 469.037. JUDICIAL IMMUNITY. An associate judge has  
18 the same judicial immunity as a district judge.

19 Sec. 469.038. COMPENSATION OF ASSOCIATE JUDGE. (a) An  
20 associate judge appointed under this subchapter is entitled to a  
21 salary as determined by a majority vote of the presiding judges of  
22 the administrative judicial regions. The salary may not exceed 90  
23 percent of the salary paid to a district judge as set by the state  
24 General Appropriations Act.

25 (b) The associate judge's salary shall be paid from funds  
26 available from the state as provided by this subchapter.

27 Sec. 469.039. PERSONNEL. (a) The presiding judge of an

1 administrative judicial region or the presiding judges of the  
2 administrative judicial regions, by majority vote, may appoint  
3 personnel as needed to implement and administer the provisions of  
4 this subchapter.

5 (b) The salaries of the personnel shall be paid from funds  
6 available from the state as provided by this subchapter.

7 Sec. 469.040. SUPERVISION OF ASSOCIATE JUDGES. The office  
8 of court administration shall assist the presiding judges in:

9 (1) monitoring the associate judges' compliance with  
10 any applicable job performance standards, uniform practices  
11 adopted by the presiding judges, and federal and state laws and  
12 policies;

13 (2) addressing the training needs and resource  
14 requirements of the associate judges;

15 (3) conducting annual performance evaluations for the  
16 associate judges and other personnel appointed under this  
17 subchapter based on written personnel performance standards  
18 adopted by the presiding judges; and

19 (4) receiving, investigating, and resolving  
20 complaints about particular associate judges or the associate judge  
21 program under this subchapter based on a uniform process adopted by  
22 the presiding judges.

23 Sec. 469.041. STATE AND FEDERAL FUNDS; PERSONNEL. (a) The  
24 office of court administration may contract for available state,  
25 county and federal funds from any source and may employ personnel  
26 needed to implement and administer this subchapter. An associate  
27 judge and other personnel appointed under this subsection are state

1 employees for all purposes, including accrual of leave time,  
2 insurance benefits, retirement benefits, and travel regulations.

3 (b) The presiding judges of the administrative judicial  
4 regions, state agencies, and counties may contract for available  
5 federal funds from any source to reimburse costs and salaries  
6 associated with associate judges and personnel appointed under this  
7 section and may also use available state and county funds and public  
8 or private grants.

9 (c) The presiding judges and the office of court  
10 administration in cooperation with other agencies shall take action  
11 necessary to maximize the amount of federal money available to fund  
12 the use of associate judges under this subchapter.

13 Sec. 469.042. ASSIGNMENT OF JUDGES AND APPOINTMENT OF  
14 VISITING ASSOCIATE JUDGES. (a) This chapter does not limit the  
15 authority of a presiding judge to assign a judge eligible for  
16 assignment under Chapter 74, Government Code, to operate a drug  
17 court program under this subchapter.

18 (b) If an associate judge appointed under this subchapter is  
19 temporarily unable to perform the associate judge's official duties  
20 because of absence resulting from family circumstances, illness,  
21 injury, disability, or military service, or if there is a vacancy in  
22 the position of associate judge, the presiding judge of the  
23 administrative judicial region in which the associate judge serves  
24 or the vacancy occurs may appoint a visiting associate judge to  
25 perform the duties of the associate judge during the period the  
26 associate judge is unable to perform the associate judge's duties  
27 or until another associate judge is appointed to fill the vacancy.

1       (c) A person is not eligible for appointment under this  
2 section unless the person has served as an associate judge, a  
3 district judge, or a statutory county court judge for at least two  
4 years before the date of appointment.

5       (d) A visiting associate judge appointed under this section  
6 is subject to each provision of this chapter that applies to an  
7 associate judge serving under a regular appointment under this  
8 subchapter. A visiting associate judge appointed under this  
9 section is entitled to compensation, to be determined by a majority  
10 vote of the presiding judges of the administrative judicial  
11 regions, through use of funds under this subchapter. A visiting  
12 associate judge is not considered to be a state employee for any  
13 purpose.

14       (e) Section 2252.901, Government Code, does not apply to the  
15 appointment of a visiting associate judge under this section.

16       Sec. 469.043. LIMITATION ON LAW PRACTICE BY ASSOCIATE  
17 JUDGE. An associate judge appointed under this subchapter may not  
18 engage in the private practice of law.

19       SECTION 3. This Act takes effect immediately if it receives  
20 a vote of two-thirds of all the members elected to each house, as  
21 provided by Section 39, Article III, Texas Constitution. If this  
22 Act does not receive the vote necessary for immediate effect, this  
23 Act takes effect September 1, 2011.