

BILL ANALYSIS

Senate Research Center

S.B. 462
By: Huffman
Criminal Justice
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Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The use of specialty courts in Texas began in 1990 with the establishment of the first drug court. Since then, the drug court model has often been replicated in order to divert nonviolent offenders suffering from mental health and/or substance abuse issues from the criminal justice system intensive treatment programs.

Although government funding was directed to drug courts in 2001, no performance measures were ever established to determine the success and cost-effectiveness of the use of specialty courts in Texas. Additionally, the laws governing the various types of specialty courts are not codified in a common place in statute for ease of reference for judges and specialty court team professionals.

S.B. 462 consolidates Texas statutes by creating a new Subtitle K within the Government Code where all relevant specialty court provisions can be easily located; improves oversight of specialty court programs by requiring them to register with the criminal justice division of the Office of the Governor and follow programmatic best practices in order to be eligible to receive state and federal grant funds; and changes the composition of the Governor's Specialty Courts Advisory Council to nine members and requires the council to recommend programmatic best practices to the criminal justice division.

S.B. 462 amends current law relating to specialty court programs in this state.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

ARTICLE 1. SPECIALTY COURT PROGRAMS

SECTION 1.01. Amends Title 2, Government Code, by adding Subtitle K, as follows:

SUBTITLE K. SPECIALTY COURTS

CHAPTER 121. GENERAL PROVISIONS

Sec. 121.001. DEFINITION. Defines "specialty court" in this subtitle.

Sec. 121.002. OVERSIGHT. (a) Authorizes the lieutenant governor and the speaker of the house of representatives to assign to appropriate legislative committees duties relating to the oversight of specialty court programs.

(b) Authorizes the governor or a legislative committee to which duties are assigned under Subsection (a) to request the state auditor to perform a management, operations, or financial or accounting audit of the program for the purpose of determining the eligibility of a specialty court program to receive state or federal grant funds administered by a state agency.

(c) Prohibits a specialty court program, notwithstanding any other law, from operating until the judge, magistrate, or coordinator:

(1) provides to the criminal justice division of the governor's office (criminal justice division) written notice of the program, any resolution or other official declaration under which the program was established, and a copy of the applicable community justice plan that incorporates duties related to supervision that will be required under the program; and

(2) receives from the criminal justice division written verification of the program's compliance with Subdivision (1).

(d) Requires that a specialty court program comply with all programmatic best practices recommended by the Specialty Courts Advisory Council (council) under Section 772.0061(b)(2) and approved by the Texas Judicial Council, and report to the criminal justice division any information required by the division regarding the performance of the program.

(e) Provides that a specialty court program that fails to comply with Subsections (c) and (d) is not eligible to receive any state or federal grant funds administered by any state agency.

SECTION 1.02. Transfers Subchapter J, Chapter 264, Family Code, to Subtitle K, Title 2, Government Code, as added by this Act, redesignates it as Chapter 122, Government Code, and amends it as follows:

CHAPTER 122. FAMILY DRUG COURT PROGRAM

Redesignates existing Subchapter J, Chapter 264, Family Code, as Chapter 122, Government Code.

Sec. 122.001. FAMILY DRUG COURT PROGRAM DEFINED. Redesignates existing Section 264.801, Family Code, as Section 122.001, Government Code. Redefines "family drug court program" in this chapter, rather than this subchapter. Changes a reference to the department to the Department of Family and Protective Services.

Sec. 122.002. AUTHORITY TO ESTABLISH PROGRAM. Redesignates existing Section 264.802, Family Code, as Section 122.002, Government Code. Makes conforming changes.

Deletes existing Section 264.803 (Oversight), Family Code.

Sec. 122.003. PARTICIPANT PAYMENT FOR TREATMENT AND SERVICES. Redesignates existing Section 264.804, Family Code, as Section 122.003, Government Code. Makes no further change to this section.

Sec. 122.004. FUNDING. Redesignates existing Section 264.805, Family Code, as Section 122.004, Government Code. Makes no further change to this section.

SECTION 1.03. Amends Section 76.011(a), Government Code, to authorize a community supervision and corrections department established under this chapter (Community Supervision and Corrections Departments) to operate programs for certain purposes, including the supervision of a person subject to, or the verification of compliance with, a court order issued under Chapter 123 of this code or former law, rather than Chapter 469, Health and Safety Code, issuing an occupational driver's license.

SECTION 1.04. Transfers Chapter 469, Health and Safety Code, to Subtitle K, Title 2, Government Code, as added by this Act, redesignates it as Chapter 123, Government Code, and amends it as follows:

CHAPTER 123. DRUG COURT PROGRAMS

Redesignates existing Chapter 469, Health and Safety Code, as Chapter 123, Government Code.

Sec. 123.001. DRUG COURT PROGRAM DEFINED; PROCEDURES FOR CERTAIN DEFENDANTS. Redesignates existing Section 469.001, Health and Safety Code, as Section 123.001, Government Code. (a) Makes no change to this subsection.

(b) Requires the court, if a defendant successfully completes a drug court program, regardless of whether the defendant was convicted of the offense for which the defendant entered the program or whether the court deferred further proceedings without entering an adjudication of guilt, after notice to the state and a hearing on whether the defendant is otherwise entitled to the petition and whether issuance of the order is in the best interest of justice, to enter an order of nondisclosure under Section 411.081 (Application of Subchapter), as if the defendant had received a discharge and dismissal under Section 5(c) (relating to requiring a judge to dismiss proceedings and discharge a defendant), Article 42.12, Code of Criminal Procedure, with respect to all records and files related to the defendant's arrest for the offense for which the defendant entered the program if the defendant:

(1) has not been previously convicted of an offense listed in Section 3g (relating to prohibiting a judge from denying community supervision to a defendant based solely on the defendant's inability to speak, read, write, hear, or understand English), Article 42.12, Code of Criminal Procedure, or a sexually violent offense, as defined by Article 62.001 (Definitions), Code of Criminal Procedure, rather than has not previously been convicted of a felony offense; and

(2) is not convicted for any felony offense between the date on which the defendant successfully completed the program and the second anniversary of that date, rather than is not convicted for any other felony offense before the second anniversary of the defendant's successful completion of the program.

(c) Makes no change to this subsection.

Sec. 123.002. AUTHORITY TO ESTABLISH PROGRAM. Redesignates existing Section 469.002, Health and Safety Code, as Section 123.002, Government Code. Makes a conforming change.

Sec. 123.003. ESTABLISHMENT OF REGIONAL PROGRAM. Redesignates existing Section 469.0025, Health and Safety Code, as Section 123.003, Government Code. Makes no further change to this section.

Deletes existing Section 469.003 (Oversight), Health and Safety Code.

Sec. 123.004. FEES. Redesignates existing Section 469.004, Health and Safety Code, as Section 123.004, Government Code. (a) Makes no change to this subsection.

(b) Authorizes the fees collected under this section to be paid on a periodic basis or on a deferred payment schedule at the discretion of the judge, magistrate, or coordinator, rather than at the discretion of the judge, magistrate, or program director administering the program.

Sec. 123.005. DRUG COURT PROGRAMS EXCLUSIVELY FOR CERTAIN INTOXICATION OFFENSES. Redesignates existing Section 469.005, Health and Safety Code, as Section 123.005, Government Code. Makes no further change to this section.

Sec. 123.006. PROGRAM IN CERTAIN COUNTIES MANDATORY. Redesignates existing Section 469.006, Health and Safety Code, as Section 123.006, Government Code. (a) Requires the commissioners court of a county with a population of more than 200,000 to establish a drug court program under Section 123.002(1) (relating to authorizing the commissioners court of a county or governing body of a municipality to establish certain types of drug programs) and direct the judge, magistrate, or coordinator to comply with Section 121.002(c)(1). Makes conforming and nonsubstantive changes.

(b) Makes no change to this subsection.

(c) Requires that a county, notwithstanding Subsection (a), establish a drug court program under this section only if the county receives federal or state funding, including funding under Article 102.0178, Code of Criminal Procedure, specifically for that purpose, and the judge, magistrate, or coordinator receives the verification described by Section 121.002(c)(2).

(d) Makes no change to this subsection.

Sec. 123.007. USE OF OTHER DRUG AND ALCOHOL AWARENESS PROGRAMS. Redesignates existing Section 469.007, Health and Safety Code, as Section 123.007, Government Code. Makes no further change to this section.

Sec. 123.008. SUSPENSION OR DISMISSAL OF COMMUNITY SERVICE REQUIREMENT. Redesignates existing Section 469.008, Health and Safety Code, as Section 123.008, Government Code. Makes no further change to this section.

Sec. 123.009. OCCUPATIONAL DRIVER'S LICENSE. Redesignates existing Section 469.009, Health and Safety Code, as Section 123.009, Government Code. Makes no further change to this section.

SECTION 1.05. Transfers Chapter 617, Health and Safety Code, to Subtitle K, Title 2, Government Code, as added by this Act, redesignates it as Chapter 124, Government Code, and amends it as follows:

CHAPTER 124. VETERANS COURT PROGRAM

Redesignates existing Chapter 617, Health and Safety Code, as Chapter 124, Government Code.

Sec. 124.001. VETERANS COURT PROGRAM DEFINED; PROCEDURES FOR CERTAIN DEFENDANTS. Redesignates existing Section 617.001, Health and Safety Code, as Section 124.001, Government Code. (a) Makes no change to this subsection.

(b) Makes a conforming change.

Sec. 124.002. AUTHORITY TO ESTABLISH PROGRAM; ELIGIBILITY. Redesignates existing Section 617.002, Health and Safety Code, as Section 124.002, Government Code. Makes no further change to this section.

Sec. 124.003. DUTIES OF VETERANS COURT. Redesignates existing Section 617.003, Health and Safety Code, as Section 124.003, Government Code. Makes no further change to this section.

Sec. 124.004. ESTABLISHMENT OF REGIONAL PROGRAM. Redesignates existing Section 617.004, Health and Safety Code, as Section 124.004, Government Code. (a) Creates this subsection from existing text. Makes no further change to this subsection.

(b) Provides that for purposes of this chapter, each county that elects to establish a regional veterans court program under this section is considered to have established the program and is entitled to retain fees under Article 102.0178, Code of Criminal Procedure, in the same manner as if the county had established a veterans court program without participating in a regional program.

Deletes existing Section 617.005 (Oversight), Health and Safety Code.

Sec. 124.005. FEES. Redesignates existing Section 617.006, Health and Safety Code, as Section 124.005, Government Code. (a) Makes no change to this subsection.

(b) Authorizes fees collected under this section to be paid on a periodic basis or on a deferred payment schedule at the discretion of the judge, magistrate, or coordinator, rather than the judge, magistrate, or program director administering the program.

SECTION 1.06. Transfers Chapter 616, Health and Safety Code, to Subtitle K, Title 2, Government Code, as added by this Act, redesignates it as Chapter 125, Government Code, and amends it as follows:

CHAPTER 125. MENTAL HEALTH COURT PROGRAMS

Redesignates existing Chapter 616, Health and Safety Code, as Chapter 125, Government Code.

Sec. 125.001. MENTAL HEALTH COURT PROGRAM DEFINED. Redesignates existing Section 616.001, Health and Safety Code, as Section 125.001, Government Code. Makes no further change to this section.

Sec. 125.002. AUTHORITY TO ESTABLISH PROGRAM. Redesignates existing Section 616.002, Health and Safety Code, as Section 125.002, Government Code. Makes no further change to this section.

Sec. 125.003. PROGRAM. Redesignates existing Section 616.003, Health and Safety Code, as Section 125.003, Government Code. (a) Provides that a mental health court program established under Section 125.002 may handle all issues arising under Articles 16.22 (Early Identification of Defendant Suspected of Having Mental Illness or Mental Retardation) and 17.032 (Release on Personal Bond of Certain Mentally Ill Defendants) and Chapter 46B (Incompetency to Stand Trial), Code of Criminal Procedure, and take certain actions.

(b) Makes a conforming change.

Deletes existing Section 616.004 (Oversight), Health and Safety Code.

Sec. 125.004. PARTICIPANT PAYMENT FOR TREATMENT AND SERVICES. Redesignates existing Section 616.005, Health and Safety Code, as Section 125.004, Government Code. Makes no further change to this section.

SECTION 1.07. Amends Section 509.007(b), Government Code, to require that a community justice plan required under this section include certain information, including a description of the programs and services the community supervision and corrections department (department) provides or intends to provide, including a separate description of any services the department intends to provide in relation to a specialty court program and any programs or other services the department intends to provide to enhance public safety, reduce recidivism, strengthen the investigation and prosecution of criminal offenses, improve programs and services available to victims of crime, and increase the amount of restitution collected from persons supervised by the department.

SECTION 1.08. Amends Section 772.0061(a)(2), Government Code, to redefine "specialty court."

SECTION 1.09. Amends Section 772.0061, Government Code, by amending Subsections (b), (c), (d), and (e) and adding Subsection (j), as follows:

(b) Requires the governor to establish the council within the criminal justice division established under Section 772.006 (Governor's Criminal Justice Division) to:

(1) evaluate applications for grant funding for specialty courts in this state and to make funding recommendations to the criminal justice division; and

(2) make recommendations to the criminal justice division regarding best practices for specialty courts established under Chapter 122, 123, 124, or 125 or former law.

(c) Provides that the council is composed of nine members, rather than seven members, appointed by the governor as follows:

(1) one member with experience as the judge of a specialty court described by Subsection (a)(2)(A) (defining "specialty court" as a family drug court program established under Chapter 122 or former law);

(2) one member with experience as the judge of a specialty court described by Subsection (a)(2)(B) (defining "specialty court" as a family drug court program established under Chapter 123 or former law);

(3) one member with experience as the judge of a specialty court described by Subsection (a)(2)(C) (defining "specialty court" as a veterans court program established under Chapter 124 or former law);

(4) one member with experience as the judge of a specialty court described by Subsection (a)(2)(D) (defining "specialty court" as a mental health court program established under Chapter 125 or former law); and

(5) five members who represent the public.

Deletes existing text stipulating that the governor appoint three members with experience as judges of a specialty court and four members who represent the public.

(d) Requires the members appointed under Subsection (c)(5), rather than Subsection (c)(2), to meet certain qualifications.

(e) Provides that members are appointed for staggered six-year terms, with the terms of three members expiring February 1 of each odd-numbered year. Deletes existing text providing that the staggered six-year terms of either two or three members, as applicable, expire February 1 of each odd-numbered year.

(j) Prohibits a member of the council from receiving compensation for service on the council. Authorizes the member to receive reimbursement from the criminal justice division for actual and necessary expenses incurred in performing council functions as provided by Section 2110.004 (Reimbursement of Members' Expenses; Appropriations Process).

ARTICLE 2. CONFORMING AMENDMENTS

SECTION 2.01. Amends Section 18(b), Article 42.12, Code of Criminal Procedure, to prohibit a term in a community corrections facility from being more than 24 months if a judge requires as a condition of community supervision or participation in a drug court program established under Chapter 123, Government Code, or former law, rather than Chapter 469, Health and Safety Code, that the defendant serve a term.

SECTION 2.02. Amends Article 59.062(f), Code of Criminal Procedure, to require a civil penalty collected under this article to be deposited to the credit of the drug court account in the general revenue fund to help fund drug court programs established under Chapter 122, 123, 124, or 125, Government Code, or former law, rather than under Chapter 469, Health and Safety Code.

SECTION 2.03. Amends Section 102.0178 (g), Code of Criminal Procedure, to require the comptroller of public accounts of the State of Texas to deposit the funds received under this article to the credit of the drug court account in the general revenue fund to help fund drug court programs established under Chapter 122, 123, 124, or 125, Government Code, or former law, rather than under Chapter 469, Health and Safety Code.

SECTION 2.04. Amends Section 58.003(c-1), Family Code, to authorize a juvenile court, notwithstanding Subsections (a) (relating to requiring the court to order the sealing of the records in the case under certain conditions) and (c) (relating to authorizing a court to order the sealing of records concerning a person adjudicated as having engaged in delinquent conduct that violated a penal law of the grade of felony under certain conditions) and subject to Subsection (b) (relating to prohibiting a court from ordering the sealing of the records of certain persons), to order the sealing of records concerning a child adjudicated as having engaged in delinquent conduct or conduct indicating a need for supervision that violated a penal law of the grade of misdemeanor or felony if the child unsuccessfully completed a drug court program under Chapter 123, Government Code, or former law, rather than Chapter 469, Health and Safety Code.

SECTION 2.05. Amends Section 54.1801, Government Code, to redefine "drug court" and define "drug court program," in this subchapter (Magistrates for Drug Court Programs).

SECTION 2.06. Amends Subchapter C, Chapter 71, Government Code, by adding Section 71.037, as follows:

Sec. 71.037. SPECIALTY COURT BEST PRACTICES. Requires the Texas Judicial Council to review and as appropriate approve recommendations made by the council under Section 772.0061(b)(2).

SECTION 2.07. Amends Section 76.017(d), Government Code, to authorize a magistrate to order a person to participate in a treatment in a drug court program established under Chapter 123 or former law, rather than Chapter 469, Health and Safety Code, as a condition of bond or condition of pretrial release.

SECTION 2.08. Amends Section 102.021, Government Code, to require a person convicted of an offense to pay, in addition to other costs, under the Code of Criminal Procedure, the fee of \$60 which is the cost attendant to convictions under Chapter 49, Penal Code, and under Chapter 481, Health and Safety Code, to help fund drug court programs established under Chapter 122, 123, 124, or 125, Government Code, or former law, rather than Chapter 469, Health and Safety Code.

SECTION 2.09. (a) Amends Subchapter B, Chapter 103, Government Code, by adding Section 103.0271, as follows:

Sec. 103.0271. ADDITIONAL MISCELLANEOUS FEES AND COSTS: GOVERNMENT CODE. Requires that fees and costs be paid or collected under the Government Code as follows:

(1) a program fee for a drug court program (Section 123.004, Government Code)...not to exceed \$1,000;

(2) an alcohol or controlled substance testing, counseling, and treatment fee (Section 123.004, Government Code)...the amount necessary to cover the costs of testing, counseling, and treatment;

(3) a reasonable program fee for a veterans court program (Section 124.005, Government Code)...not to exceed \$1,000; and

(4) a testing, counseling, and treatment fee for testing, counseling, or treatment performed or provided under a veterans court program (Section

124.005, Government Code)...the amount necessary to cover the costs of testing, counseling, or treatment.

(b) Amends Subchapter B, Chapter 103, Government Code, by adding Section 103.0292, as follows:

Sec. 103.0292. ADDITIONAL MISCELLANEOUS FEES AND COSTS: HEALTH AND SAFETY CODE. Requires that a nonrefundable program fee for a first offender prostitution prevention program established under Section 169.002 (Authority to Establish Program; Eligibility), Health and Safety Code, be collected under Section 169.005 (Fees), Health and Safety Code, in a reasonable amount not to exceed \$1,000, which includes a counseling and services fee in an amount necessary to cover the costs of counseling and services provided by the program, a victim services fee in an amount equal to 10 percent of the total fee, and a law enforcement training fee in an amount equal to five percent of the total fee.

(c) Repealers: Sections 103.029 (Miscellaneous Fees and Costs: Health and Safety Code) and 103.0291 (Additional Miscellaneous Fees and Costs: Health and Safety Code), Government Code.

SECTION 2.10. Amends Section 493.009(a), Government Code, to make a conforming change.

SECTION 2.11. Amends Section 509.001(1), Government Code, to redefine "community corrections facility."

ARTICLE 3. TRANSITION

SECTION 3.01. (a) Provides that the change in law made by this Act applies to a specialty court as defined by Section 121.001, Government Code, as added by this Act, regardless of whether that court was created under Subtitle K, Title 2, Government Code, as added by this Act, or former law, except as provided by Subsection (b) of this section.

(b) Makes application of Section 123.001(b), Government Code, as redesignated and amended by this Act, prospective.

(c) Requires the governor, promptly after this Act takes effect, to appoint two additional members to the council under Section 772.0061, Government Code, as amended by this Act, as follows:

(1) one member who has experience as a judge of a specialty court, to serve a term expiring February 1, 2017; and

(2) one member who represents the public, to serve a term expiring February 1, 2019.

(d) Provides that the change in law made by this Act in the qualifications applying to a member of the council does not affect the entitlement of a member serving on the council immediately before September 1, 2013, to continue to serve and function as a member of the council for the remainder of the member's term. Provides that the change in law in the qualifications applies only to a member appointed on or after September 1, 2013. Requires the governor to make additional appointments to the council as necessary to comply with Section 772.0061, Government Code, as amended by this Act, as the terms of the members serving immediately before September 1, 2013, expire or become vacant.

(e) Provides that to the extent of any conflict, this Act prevails over another Act of the 83rd Legislature, Regular Session, 2013, relating to nonsubstantive additions to and corrections in enacted codes.

ARTICLE 4. EFFECTIVE DATE

SECTION 4.01. Effective date: September 1, 2013.