

By: Dutton

H.B. No. 543

A BILL TO BE ENTITLED

AN ACT

relating to the creation of a specialty court for certain first-time DWI offenders; imposing fees for participation and alcohol monitoring.

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

SECTION 1. Subtitle B, Title 6, Health and Safety Code, is amended by adding Chapter 470 to read as follows:

CHAPTER 470. DIVERT PROGRAM

Sec. 470.001. DIVERT PROGRAM DEFINED; PROCEDURES FOR CERTAIN DEFENDANTS. (a) In this chapter, "Direct Intervention using Voluntary Education, Restitution, and Treatment Program" or "DIVERT program" means a program that has the following essential characteristics:

(1) the integration of alcohol and other drug treatment services in the processing of certain first-time driving while intoxicated cases in the judicial system;

(2) the use of a nonadversarial approach involving prosecutors and defense attorneys to promote public safety, raise community awareness of the consequences of driving while intoxicated, and protect the due process rights of program participants;

(3) early identification and prompt placement of eligible participants in the program;

(4) access to a continuum of evidence-based alcohol,

- 1 drug, and other related treatment and rehabilitative services;
2 (5) monitoring of abstinence through weekly alcohol
3 and other drug testing;
4 (6) a coordinated strategy to govern program responses
5 to participants' compliance;
6 (7) minimization of court appearances during the
7 period of participation in the program;
8 (8) application of uniform criteria to the entry,
9 supervision, and treatment of each program participant;
10 (9) monitoring and evaluation of program goals and
11 effectiveness;
12 (10) continuing interdisciplinary education to
13 promote effective program planning, implementation, and
14 operations; and
15 (11) development of partnerships with public agencies
16 and community organizations.

17 (b) If a defendant successfully completes a DIVERT program,
18 after notice to the state and a hearing on whether the defendant is
19 otherwise entitled to the petition and whether issuance of the
20 order is in the best interest of justice, notwithstanding Section
21 5(d), Article 42.12, Code of Criminal Procedure, the court shall
22 enter an order of nondisclosure under Section 411.081, Government
23 Code, as if the defendant had received a discharge and dismissal
24 under Section 5(c), Article 42.12, Code of Criminal Procedure, with
25 respect to all records and files related to the defendant's arrest
26 for the offense for which the defendant entered the program if the
27 defendant:

1 (1) has not been previously convicted of any felony
2 offense; and

3 (2) is not before the second anniversary of the
4 defendant's successful completion of the program convicted of:

5 (A) an offense under Chapter 49, Penal Code,
6 other than an offense under Section 49.02 or 49.031 of that code;

7 (B) an offense under Chapter 481; or

8 (C) any offense punishable as a felony.

9 Sec. 470.002. EVALUATION AND CONDITIONS. (a) Treatment,
10 education, and supervision provided under the DIVERT program must
11 be based on a series of evaluations designed to assess the treatment
12 and education needs of each program participant with respect to the
13 participant's alcohol or drug dependency and motivation.

14 (b) Except as otherwise provided by this section, program
15 administrators shall impose on each program participant conditions
16 for successful completion of the program based on the needs
17 assessment conducted under Subsection (a).

18 (c) Program administrators shall require any participant
19 younger than 25 years of age to attend a video course of not less
20 than four hours designed to empower young drivers to adopt safer
21 driving habits and reduce injury and death among young drivers,
22 such as the video course titled "Alive at 25" developed by the
23 National Safety Council.

24 (d) The court shall require a program participant as a
25 condition of participation in the program to, for a period of one
26 year:

27 (1) if the participant owns or regularly drives a

1 motor vehicle:

2 (A) have installed on the motor vehicle owned by
3 the participant or on the vehicle most regularly driven by the
4 participant a device that uses a deep-lung breath analysis
5 mechanism to make impractical the operation of a motor vehicle if
6 ethyl alcohol is detected in the breath of the operator; and

7 (B) not operate any motor vehicle unless the
8 vehicle is equipped with that device; or

9 (2) if the participant does not own or regularly drive
10 a motor vehicle:

11 (A) obtain a deep-lung breath analysis mechanism
12 that detects ethyl alcohol on the participant's breath; and

13 (B) use the mechanism at intervals prescribed by
14 the court.

15 (e) The court may designate an appropriate agency to verify
16 the installation of the device described by Subsection (d)(1) or
17 the acquisition of the mechanism described by Subsection (d)(2) and
18 to monitor the device or mechanism. If the magistrate designates an
19 agency under this subsection, in each month during which the agency
20 verifies the installation of the device or the acquisition of the
21 mechanism or provides a monitoring service for the device or
22 mechanism, the participant shall pay a fee to the designated agency
23 in the amount set by the court. The participant shall pay the
24 initial fee at the time the agency verifies the installation of the
25 device or the acquisition of the mechanism. In each subsequent
26 month during which the participant is required to pay a fee, the
27 participant shall pay the fee on the first occasion in that month

1 that the agency provides a monitoring service. The court shall set
2 the fee in an amount not to exceed \$10 as determined by the county
3 auditor, or by the commissioners court of the county if the county
4 does not have a county auditor, to be sufficient to cover the cost
5 incurred by the designated agency in conducting the verification or
6 providing the monitoring service, as applicable in that county.

7 Sec. 470.003. AUTHORITY TO ESTABLISH PROGRAM. The
8 commissioners court of a county or governing body of a municipality
9 may establish a DIVERT program for persons:

10 (1) who are arrested for, charged with, or convicted
11 of an offense under Section 49.04, Penal Code, or who are juveniles
12 detained for, taken into custody for, or adjudicated as having
13 engaged in conduct constituting an offense under Section 49.04,
14 Penal Code;

15 (2) who have not been previously convicted of or
16 adjudicated as having engaged in conduct constituting an offense
17 under Chapter 49, Penal Code, other than an offense under Section
18 49.02 or 49.031, Penal Code; and

19 (3) for whom participation in the program is in the
20 best interests of the community, as determined by the court and the
21 attorney representing the state.

22 Sec. 470.004. ESTABLISHMENT OF REGIONAL PROGRAM. The
23 commissioners courts of two or more counties, or the governing
24 bodies of two or more municipalities, may elect to establish a
25 regional DIVERT program under this chapter for the participating
26 counties or municipalities.

27 Sec. 470.005. OVERSIGHT. (a) The lieutenant governor and

1 the speaker of the house of representatives may assign to
2 appropriate legislative committees duties relating to the
3 oversight of DIVERT programs established under this chapter.

4 (b) A legislative committee or the governor may request the
5 state auditor to perform a management, operations, or financial or
6 accounting audit of a DIVERT program established under this
7 chapter.

8 (c) The director or administrator of a DIVERT program
9 established under this chapter shall:

10 (1) notify the criminal justice division of the
11 governor's office before or on implementation of the program; and

12 (2) provide information regarding the performance of
13 the program to the division on request.

14 Sec. 470.006. FEES. (a) A DIVERT program established under
15 this chapter may collect from a participant in the program:

16 (1) a reasonable program fee not to exceed \$1,000; and

17 (2) an alcohol or controlled substance testing,
18 counseling, and treatment fee in an amount necessary to cover the
19 costs of the testing, counseling, and treatment.

20 (b) Fees collected under this section may be paid on a
21 periodic basis or on a deferred payment schedule at the discretion
22 of the judge, magistrate, or program director administering the
23 program. The fees must be:

24 (1) based on the participant's ability to pay; and

25 (2) used only for purposes specific to the program.

26 Sec. 470.007. PROGRAM IN CERTAIN COUNTIES MANDATORY. (a)
27 The commissioners court of a county with a population of more than

1 200,000 shall establish a DIVERT program under Section 470.003.

2 (b) A county required under this section to establish a
3 DIVERT program shall apply for federal and state funds available to
4 pay the costs of the program. The criminal justice division of the
5 governor's office may assist a county in applying for federal funds
6 as required by this subsection.

7 (c) Notwithstanding Subsection (a), a county is required to
8 establish a DIVERT program under this section only if the county
9 receives federal or state funding specifically for that purpose.

10 (d) A county that does not establish a DIVERT program as
11 required by this section and maintain the program is ineligible to
12 receive from the state:

13 (1) funds for a community supervision and corrections
14 department; and

15 (2) grants for substance abuse treatment programs
16 administered by the criminal justice division of the governor's
17 office.

18 Sec. 470.008. USE OF OTHER DRUG AND ALCOHOL AWARENESS
19 PROGRAMS. (a) In addition to using a DIVERT program established
20 under this chapter, the commissioners court of a county or a court
21 may use other drug-awareness programs or drug-related and
22 alcohol-related driving awareness programs to treat persons
23 convicted of drug-related or alcohol-related offenses.

24 (b) If the county or municipality in which a person resides
25 has established both a DIVERT program under this chapter and a drug
26 court program under Section 123.005, Government Code, and if the
27 person is eligible to be a participant in both programs, the court

1 may order the person to participate in either program as the court
2 determines appropriate.

3 Sec. 470.009. SUSPENSION OR DISMISSAL OF COMMUNITY SERVICE
4 REQUIREMENT. (a) Notwithstanding Sections 13 and 16, Article
5 42.12, Code of Criminal Procedure, to encourage participation in a
6 DIVERT program established under this chapter, the judge or
7 magistrate administering the program may suspend any requirement
8 that, as a condition of community supervision, a participant in the
9 program work a specified number of hours at a community service
10 project or projects.

11 (b) On a participant's successful completion of a DIVERT
12 program, a judge or magistrate may excuse the participant from any
13 condition of community supervision previously suspended under
14 Subsection (a).

15 Sec. 470.010. OCCUPATIONAL DRIVER'S LICENSE.
16 Notwithstanding Section 521.242, Transportation Code, if a
17 participant's driver's license has been suspended as a result of an
18 alcohol-related or drug-related enforcement contact, as defined by
19 Section 524.001, Transportation Code, or as a result of a
20 conviction under Section 49.04, Penal Code, or an adjudication of
21 conduct constituting an offense under that section, the judge or
22 magistrate administering a DIVERT program under this chapter may
23 order that an occupational license be issued to the participant. An
24 order issued under this section is subject to Sections
25 521.248-521.252, Transportation Code, except that any reference to
26 a petition under Section 521.242 of that code does not apply.

27 SECTION 2. Subchapter B, Chapter 103, Government Code, is

1 amended by adding Sections 103.0294 and 103.0295 to read as
2 follows:

3 Sec. 103.0294. ADDITIONAL MISCELLANEOUS FEES AND COSTS:
4 HEALTH AND SAFETY CODE. A program fee for a DIVERT program
5 established under Section 470.003, Health and Safety Code, shall be
6 collected under Section 470.006, Health and Safety Code, in a
7 reasonable amount not to exceed \$1,000.

8 Sec. 103.0295. ADDITIONAL MISCELLANEOUS FEES AND COSTS:
9 HEALTH AND SAFETY CODE. A participant in a DIVERT program
10 administered under Chapter 470, Health and Safety Code, who is
11 ordered by the court to have an ignition interlock device installed
12 on the participant's vehicle or to obtain and use a breath analysis
13 mechanism shall pay a fee in an amount set by a court not to exceed
14 \$10 in each month that the designated agency verifies the
15 installation of a device or the acquisition of a mechanism or
16 provides a monitoring service.

17 SECTION 3. (a) Except as provided by Subsection (b) of
18 this section, the commissioners court of a county shall establish a
19 DIVERT program as required by Section 470.007, Health and Safety
20 Code, as added by this Act, not later than September 1, 2016.

21 (b) A county is required under Section 470.007, Health and
22 Safety Code, as added by this Act, to establish a DIVERT program
23 only if the county receives federal funding specifically for that
24 purpose or the legislature appropriates money specifically for that
25 purpose. If the county does not receive federal funding
26 specifically for that purpose and the legislature does not
27 appropriate money specifically for that purpose, a county may, but

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1 is not required to, establish a DIVERT program under Section
2 470.003, Health and Safety Code, as added by this Act, using other
3 money available for that purpose.

4 SECTION 4. This Act takes effect September 1, 2015.