

SUBJECT: Expansion, operation, and funding of drug courts

COMMITTEE: Corrections — committee substitute recommended

VOTE: 6 ayes — Madden, Hochberg, McReynolds, Dunnam, Haggerty, Jones

0 nays

1 absent — Oliveira

WITNESSES: For — Doots DuFour, Diocese of Austin Texas Catholic Correctional Ministries; Marc Levin, Texas Public Policy Foundation; Holly McFarland, Tarrant County Challenge; Herbert Steptoe, Winners Circle Peer Support Network Peer-to-Peer Recovery Support Services; Ana Yanez-Correa; David Grassbaugh; Maria Teresa Herr; (*Registered, but did not testify*: Craig Pardue, Dallas County; Nicole Porter, American Civil Liberties Union of Texas; Andrew Rivas, Texas Catholic Conference; Chris Shields, Texas Association of Addiction Professionals (TAAP) and Association of Substance Abuse Programs (ASAP); M. Madison Sloan, Texas Appleseed; Sarah Zottarelli, Bexar County Commissioners Court; David Grassbaugh)

Against — None

On — Mike Eisenberg, Bonita White, Texas Department of Criminal Justice-Community Justice Assistance Division; Kristin Etter, Texas Criminal Defense Lawyers Association; Bennett Sandlin, Texas Municipal League; Joel Bennett; Caprice Coper; Bill King; Mike Lynch; Brock Thomas; (*Registered, but did not testify*: Becky Blewett, Texas Department of Transportation; Ken Nicolas, Office of the Governor/CJD)

BACKGROUND: Health and Safety Code, sec. 469.002 authorizes counties to establish drug courts for persons arrested for or convicted of alcohol or drug offenses or other nonviolent offenses in which alcohol or drugs contributed to the offense. Sec. 469.006 requires counties with populations of more than 550,000 to establish drug court programs. If one of these counties does not establish a drug court program, it is ineligible to receive state funds for a probation department and grants administered by the criminal justice division of the Governor's Office.

Offenders can be charged a program fee up to \$1,000 and fees for urinalysis testing and counseling, and can be required to pay treatment costs, based on an ability to pay. At the discretion of the judge, fees can be paid on a payment schedule.

Government Code, sec. 411.081 allows people placed on deferred adjudication probation to ask courts for an order of nondisclosure under certain circumstances. These orders prohibit criminal justice agencies from disclosing to the public criminal history record information related to the offense and allow disclosure only to other criminal justice agencies for criminal justice or regulatory licensing purposes.

DIGEST:

CSHB 530 would expand the counties required to establish drug courts, establish a fee on criminal convictions to fund those courts, and expand the type of courts that could be established.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2007.

Expansion of drug courts. CSHB 530 would require more counties to establish drug courts, but the requirement would take effect only in counties that received federal or state funding for them. The requirement to establish drug courts would be applied to counties with populations of 200,000, instead of the current 550,000. The current requirement that courts have at least 100 participants in their first four months of operation would be eliminated. Upon request, courts would have to provide information on their performance to the division.

Counties that did not establish and maintain a drug court as required would be ineligible for state funding for their probation department and for grants for substance abuse treatment programs from the criminal justice division of the Governor's Office. Counties would be required to establish drug courts by September 1, 2008, or within one year of the federal census putting their population over 200,000.

Types of drug courts. CSHB 530 would expand the types of drug courts. Courts could be established for juveniles involved in drug and alcohol offenses. Re-entry drug courts could be established for those who might benefit from a program to help their transition and reintegration into the community upon release from a correctional facility. Family dependency

drug treatment courts could be established for family members involved in child custody suits in which a parent's use of alcohol or drugs would be a primary consideration in the outcome of the suit. Drug court programs also could be established for people not described by CSHB 530 as long as the program met other statutory requirements.

Funding drug courts. CSHB 530 would authorize a \$50 fee to fund the state's drug courts, which would be charged to defendants convicted of certain alcohol and drug offenses. The fee would be levied on defendants who were convicted or put on probation or deferred adjudication, or if the court deferred final disposition of the case.

Counties and cities would keep 10 percent of the fee. Counties and cities that established drug courts could keep an additional 50 percent of the fee for the development and maintenance of drug court programs. The rest would go to the state and would have to be appropriated by the Legislature to the governor's criminal justice division for distribution to drug courts. Drug courts also could continue to charge their participants additional fees related to testing, counseling, and treatment.

The new fee would apply only to offenses committed on or after the bill's effective date.

Drug court magistrates. CSHB 530 would authorize district court judges, with commissioners court approval, to appoint magistrates to handle the administration of drug courts. Magistrates would have to have had a license to practice law for at least four years and meet residency requirements.

District judges could refer to the magistrate cases for drug court proceedings. Drug court magistrates could not preside over contested trials. To refer a case to a drug court magistrate, district judges would have to issue an order of referral that specified the magistrate's duties. The referral could establish the magistrate's general powers and limitations in a case and require the magistrate to report on specific issues and perform certain acts. Unless prohibited by a referral order, magistrates' authority would include conducting hearings, hearing evidence, issuing summons, and examining witnesses. Magistrates would be prohibited from ruling on any issue of law or fact if the ruling could result in dismissal or require dismissal of a pending criminal proceeding.

Appointments would have to be made with the approval of the majority of district judges. Magistrates' salaries would be determined by the commissioners court, and they would have the same judicial immunity as a district judge.

Orders of non-disclosure. Judges would have to enter orders of nondisclosure for certain defendants who successfully completed a drug court program. This requirement would apply to defendants with no prior felony convictions and who were not convicted of a felony within two years of completion of the drug court program. It would apply both to defendants who had been convicted of an offense and those placed on deferred adjudication probation. The order would have no effect on the suspension or denial of a driver's license to the defendant.

These provisions would apply to people who entered drug court programs, regardless of whether their offense was committed before, on, or after the bill's effective date.

**SUPPORTERS
SAY:**

Expansion of drug courts. Texas should expand the state's drug courts because they have proven successful in giving non-violent drug and alcohol offenders both the necessary supervision to ensure public safety and the necessary treatment to reduce recidivism. Expansion of the courts would allow more probationers to take advantage of the opportunities they afford, allow offenders to be more appropriately handled by the criminal justice system, and be a wise use of state and local resources.

Routing drug offenders into drug courts could save the state money and help preserve correctional beds for violent, serious offenders. Drug courts are less expensive than incarcerating offenders, and they also help reduce demand for beds in the future because they result in fewer offenders committing new offenses. State correctional facilities are operating at capacity now, and the Legislature needs to do all it can to ensure that only offenders who truly need to be incarcerated are sent to TDCJ.

Drug courts involve supervision of offenders through intensive interaction with judges, routine drug testing, immediate sanctions for undesirable behavior, and incentives for good behavior, and this approach has proven successful. In one study of Texas drug courts, 12 percent of offenders participating in the courts were incarcerated in prison within three years of entering a drug court compared with about 27 percent of a comparison group, according to a 2003 report by the now-defunct Criminal Justice

Policy Council. Only about 3.4 percent of offenders completing a drug court program were in prison three years after entering the program, according to the report. A 2005 study from the U.S. General Accountability Office found that the drug courts it assessed led to reductions in recidivism and a positive cost/benefit ratio for participants, criminal justice systems, and society.

Types of drug courts. By expanding the types of courts that could be established, CSHB 530 would give counties more flexibility to implement programs to meet the needs of local offenders. Juveniles, families, and others could benefit from drug courts, and CSHB 530 would facilitate this.

Uniformity and quality control would be ensured by requiring that all courts adhere to the list in Health and Safety Code sec. 469.001 of essential drug court characteristics. For example, all courts would have to include monitoring and ongoing judicial interaction. In addition, other checks and balances are in place to monitor the programs through the TDCJ's probation division and the requirement that courts submit performance information upon request. Evaluations by counties and judges provide another check on the courts. Enacting more specific requirements for the courts would take away the flexibility necessary to structure the courts to meet local needs and resources.

Funding drug courts. CSHB 530 would establish a predictable, stable funding source for the state's drug courts. Judges throughout the state have been asking for a predictable source of funding so that they could better plan and operate their drug courts. It is more appropriate to fund drug courts through charges on offenders convicted of alcohol and drug crimes than through another source of general funding.

CSHB 530 would not be an unfunded mandate because the bill would make the requirement to operate a court take effect only if the county received state or federal funding for the courts. Currently, nine counties are required to have a drug court, and moving the threshold requiring drug courts to counties of more than 200,000 would take in 12 additional counties, six of which already have drug courts, and bring the state total to 21 counties with courts.

According to the fiscal note, the bill would generate revenue in addition to the current state biennial appropriation of about \$1.5 million, which would

allow the state to fund the 21 drug courts at a higher level per court than currently occurs.

Drug court magistrates. By authorizing magistrates to administer drug courts, CSHB 530 would give counties more flexibility. Some areas already use a system like the one described by CSHB 530 to run their drug courts, and CSHB 530 would ensure uniformity when magistrates were used so that they performed the same duties with the same, appropriate limits in all areas. The state uses magistrates and associate judges in other, similar situations in which expertise and intense supervision are desirable, such as in child support cases. Magistrates would be under the direct supervision of the district judges, who could be held accountable for their actions.

Orders of non-disclosure. CSHB 530 would take a reasonable approach to the records of offenders who successfully completed drug court programs. The bill would allow for orders of non-disclosure so that offenders records would not be publicly available but would be available for law enforcement and licensing needs. This would help motivate defendants successfully to complete the program and would strike a fair balance between the desires of defendants to have a clean record and the needs of the criminal justice system in some situations to know about people's backgrounds.

OPPONENTS
SAY:

Establishment of drug courts. The state should not mandate that any counties establish drug courts. It would be better to authorize or encourage the courts but not to institute something that could become an unfunded mandate in the future. The success of the current drug courts could be due, at least in part, to the strong desire of areas to have the courts. Expanding the requirement to create and support the courts could lead to a dilution of their success if areas that did not want to create them were forced to do so.

Types of drug courts. CSHB 530 would expand significantly the types of drug courts without any quality control on the many types of courts that would be established. Authorization and funding for such a wide variety of drug courts should come with additional standardized statutory programmatic requirements and not just the broad characteristics outlined in current law.

Funding drug courts. CSHB 530 would contribute to the relentless tide of increased court costs and fees imposed on criminal offenders that make it difficult for offenders to recover from committing an offense.

Drug court magistrates. Texas should not authorize the expansion of the use of non-elected judges such as the drug-court magistrates that CSHB 530 would allow. The state's judicial system was designed around the accountability of elected judges. Magistrates' role is more appropriately limited to the front end of the judicial system than to such a hands-on supervisory role as drug courts. The success of drug courts is due, at least in part, to the strong, authoritative involvement of judges. Allowing appointed magistrates to handle more drug courts could dilute this important ingredient in their success.

OTHER
OPPONENTS
SAY:

Drug court magistrates. Some of the authority of magistrates that would be established by CSHB 530 would be inappropriate for judges working drug courts and beyond the typical scope of drug court magistrates. For example, CSHB 530 would authorize drug court magistrates to hear evidence and rule on the admissibility of evidence, something not traditionally done in the non-adversarial atmosphere of drug courts. Having this authority in statute could be confusing and taken as authority to initiate these types of actions.

NOTES:

The committee substitute added the provisions dealing with drug court magistrates and made other changes to the original bill, including revising the fee-sharing arrangement with counties, requiring, rather than permitting, drug courts to provide information to the Governor's Office, eliminating provisions that would have allowed the dismissal of some indictments dealing with drug offenses, and eliminating a stipulation that someone not be arrested for an offense for an order of nondisclosure to take effect.