

- SUBJECT:** Providing for oversight of specialty court programs
- COMMITTEE:** Judiciary and Civil Jurisprudence — committee substitute recommended
- VOTE:** 7 ayes — Lewis, Farrar, Farney, Gooden, Hunter, K. King, S. Thompson
0 nays
2 absent — Hernandez Luna, Raymond
- SENATE VOTE:** On final passage, March 27 — 30-0
- WITNESSES:** For — Dib Waldrip, Texas Criminal Justice Advisory Council;
(*Registered, but did not testify:* Lee Johnson, Texas Council of
Community Centers; Travis Leete, Texas Criminal Justice Coalition;
Jason Sabo, Children at Risk)

Against — None

On — David Slayton, Office of Court Administration; (*Registered, but did
not testify:* Christopher Burnett, Office of the Governor)
- BACKGROUND:** Specialty courts are established within existing courts and provide programs for certain defendants, such as veterans or those with drug addictions or mental health issues. These courts integrate mental health and addiction treatment with alternative penalties to address underlying problems that cause criminal behavior in an attempt to reduce recidivism.

Under Government Code, sec. 509.007, a community supervision and corrections department must submit a community justice plan to the Texas Department of Criminal Justice’s community justice assistance division to receive state aid. This plan must include information about the goals, practices, and programs of the department and must be submitted once in every biennium.

A defendant who has successfully completed a drug court program is eligible under certain circumstances for an order of nondisclosure for records relating to the offense for which the person entered the program.

The court must enter an order of nondisclosure if the defendant:

- has not been previously convicted of a felony; and
- has not been convicted of any other felony offense before the second anniversary of his or her successful completion of the drug court program.

Code of Criminal Procedure, art. 42.12, sec. 3g enumerates certain serious and violent crimes and prevents persons convicted of these crimes from receiving judge-ordered community supervision. These offenses are often referred to as “3(g) offenses.”

Government Code, sec. 772.0061 creates and governs the Specialty Court Advisory Council. The council evaluates applications for grant funding for specialty courts and makes funding recommendations to the criminal justice division of the governor’s office. The council has seven members, including three members with experience as judges of specialty courts and four members of the public.

DIGEST:

SB 462 would restructure specialty court programs. It would bring the existing specialty court programs under one statute, provide uniform oversight, make amendments to the existing programs, and change the composition and duties of the Specialty Court Advisory Council.

Structure. CSSB 462 would create a new subtitle under Title 2 of the Government Code, Subtitle K, relating to specialty courts. The following court programs would be moved from their current positions in other codes to the newly created Subtitle K:

- family drug court program under Family Code, ch. 264;
- drug court program under Health and Safety Code, ch. 469;
- veterans court program under Health and Safety Code, ch. 617; and
- mental health court program under Health and Safety Code, ch. 616.

The current oversight requirements in each of these programs would be repealed. Necessary conforming amendments would be made throughout each affected code.

Oversight. CSSB 462 would define specialty courts as courts established under Subtitle K or former law and would provide for oversight of these

courts. It would allow the lieutenant governor and speaker of the House to assign appropriate legislative committee duties relating to oversight of specialty courts. The state auditor would perform audits at the request of these legislative committees to determine eligibility of specialty courts for federal grant funds.

Specialty court programs could not operate until the judge, magistrate, or coordinator had provided to the governor's criminal justice division:

- written notice of the program;
- any resolution or official declaration under which the program was established; and
- a copy of the community justice plan that incorporated duties related to supervision required under the program.

The court program would then need to receive written verification of compliance with these requirements to resume operation.

A specialty court program would be required to comply with all approved programmatic best practices recommended by the Specialty Courts Advisory Council and to report to the governor's criminal justice division any information required regarding the performance of the program.

Any court out of compliance with the oversight requirements under the bill would not be eligible to receive state or federal grant funds administered by any state agency.

Services provided by a community supervision and corrections department to a specialty court program would need to be included in that department's community justice plan.

Conforming amendments would be made to ensure compliance with oversight requirements.

Drug court program. The bill would amend the drug court program to require a court to issue an order of nondisclosure for a defendant who had not previously been convicted of a 3g offense or a sexually violent offense and who had not been convicted of any felony for two years after successful completion of the program.

Veterans court program. The bill would allow commissioners courts

participating in a regional veterans court program to retain certain fees as if they had established their own veterans court programs.

Specialty Courts Advisory Council. The Specialty Courts Advisory Council would be required to make best practices recommendations to the courts under Subtitle K. The membership of the council would increase from seven to nine and would include:

- one member with experience as a family drug court judge;
- one member with experience as drug court judge;
- one member with experience as a veterans court judge;
- one member with experience as a mental health court judge; and
- five members of the public.

Members of the council would not receive compensation for their service on the council but would receive reimbursement for actual and necessary expenses incurred in performing council functions.

The governor would be required to promptly appoint two additional members to the Specialty Court Advisory Council, one judge with specialty court experience and one member of the public.

Fees and costs. The bill would require fees to be collected by the specialty courts affected as follows:

- for drug court programs, a fee not to exceed \$1,000;
- for the veterans court program, a reasonable fee not to exceed \$1,000; and
- for alcohol or substance testing, counseling, and treatment, under a veterans court program or drug court program, the amount necessary to cover those costs.

The bill would also require courts to collect a program fee for first offender prostitution prevention programs. This fee would be a reasonable amount not to exceed \$1,000, including:

- counseling and services fee in an amount necessary to cover the costs of counseling and services;
- 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 5 percent of

the total fee.

Effective date and application. The changes to nondisclosure of offenses under the drug court program would apply only to offenses committed on or after the effective date.

The bill would prevail in any conflict with another act of the 83rd Legislature.

The bill would take effect September 1, 2013.

**SUPPORTERS
SAY:**

CSSB 462 would provide uniform statutory structure and necessary oversight to the disjointed specialty court program. Specialty courts have been successful where implemented and have reduced recidivism and lowered costs to the state. However, because there are no uniform oversight provisions and no requirement for registration, it is unknown how many specialty courts are operating in the state or how many are working as expected. CSSB 462 would provide consistency across programs, a better understanding of how criminal indicators were affected by specialty courts, and improved access to relevant statutes. The costs incurred by this oversight would be necessary to ensure effective justice and would reduce costs to the state in the long run.

The bill would solve problems caused by the current local control scheme by requiring specialty court programs to comply with adopted statewide best practices. Currently, programs identifying themselves as specialty courts may not comply with best practices and may be operating in an ineffective manner. Some specialty courts are pet projects of local judges and are vulnerable when there is judicial turnover. Incorporating the specialty court plans into community justice plans would ensure that the programs were institutionalized in local jurisdictions and maintained effective operations. By changing the membership of the Specialty Court Advisory Council, the bill would improve input from members of the community and specialty court stakeholders, which would mitigate potential problems caused by the shift in the local control scheme.

The bill would expand the ability of drug court programs to order nondisclosure of records to individuals convicted of certain felony offenses, providing an additional incentive for participants to enroll in rigorous treatment programs and complete the program. This would help

with problems encountered by offenders during reintegration and reentry, such as barriers to employment and housing.

OPPONENTS
SAY:

CSSB 462 would be implemented at a great cost to taxpayers, with consequences that would be difficult to predict or quantify. The bill would cost Texans about \$2.5 million every year and has a \$4.8 million fiscal note for the 2014-2015 biennium. The Legislative Budget Board was unable to approximate the amount that would be offset by the new fee created in the bill. Vague promises of revenues would not be a justifiable reason to approve the costs incurred by the bill. Because there is currently no oversight or reporting from specialty courts, it is not known whether they operate correctly or what effect they have on communities and the state budget. The state should not be putting its resources into instituting a costly, complicated maintenance scheme with no guarantees of a positive outcome.

CSSB 462 would impose statewide standards on programs intended to meet local needs. Specialty courts are programs instituted by judges and courts to meet the specific needs of a jurisdiction. These programs have had broad latitude to determine what solutions work best for each court and each community. By imposing statewide standards and requiring specialty courts to follow best practices, the bill would negate the important local control enjoyed by these programs.

The bill would expand the availability of orders of nondisclosure for certain persons charged with felonies. By increasing the number of people who qualified for non-disclosure, the bill would inhibit access by the public to important criminal court records. Employers and other interested parties should be able to access information about arrests and criminal charges, and by expanding the province of orders of nondisclosure the bill unfairly would restrict this access and weaken transparency.

NOTES:

The committee substitute differs from the Senate version of the bill by adding an oversight requirement relating to community justice plans.