

## **BILL ANALYSIS**

Senate Research Center

H.B. 3595  
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Criminal Justice  
5/21/2009  
Engrossed

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

H.B. 3595 relates to the provision of drug 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**

SECTION 1. Designates Sections 469.001 through 469.009, Health and Safety Code, as Subchapter A, Chapter 469, Health and Safety Code, and adds a heading to that subchapter to read as follows:

#### SUBCHAPTER A. DRUG COURT PROGRAMS

SECTION 2. Amends Chapter 469, Health and Safety Code, by adding Subchapter B, as follows:

#### SUBCHAPTER B. ASSOCIATE JUDGE FOR DRUG COURT PROGRAMS

Sec. 469.031. **AUTHORITY OF PRESIDING JUDGE.** (a) Requires 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, to 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 (Authority to Establish Program).

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

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

(d) Requires the presiding judge to appoint an associate judge, if the presiding judge determines that a court or courts desire the appointment of an associate judge, and if state funding is available for the program. Requires that all appropriate cases, if an associate judge is appointed for a court or courts, be referred to the associate judge by a general order for each county issued by the judge of each court for which the associate judge is appointed or, in the absence of that order, by a general order issued by the presiding judge who appointed the associate judge.

Sec. 469.032. **QUALIFICATIONS.** (a) Requires a person, to be eligible for appointment under this subchapter, to be a citizen of the United States, have resided in this state for the two years preceding the date of appointment, and meet certain qualifications.

Sec. 469.033. **DESIGNATION OF HOST COUNTY.** (a) Requires the presiding judges of the administrative judicial regions by majority vote, subject to the approval of the

commissioners court of the proposed host county, to determine the host county of an associate judge appointed under this subchapter.

(b) Requires the host county to provide an adequate courtroom and quarters, including furniture, necessary utilities, and telephone equipment and service, for the associate judge and other personnel assisting the associate judge.

(c) Provides that an associate judge is not required to reside in the host county.

Sec. 469.034. GENERAL POWERS OF ASSOCIATE JUDGE. (a) Authorizes an associate judge, on the motion of a party or the associate judge, to refer a case back to the referring court.

(b) Authorizes an associate judge to whom a case is referred, except as limited by an order of referral, to conduct hearings, hear evidence, compel production of relevant evidence, rule on the admissibility of evidence, issue summons for the appearance of witnesses, examine a witness, swear a witness for a hearing, make findings of fact on evidence, formulate conclusions of law, rule on pretrial motions, recommend the rulings, orders, or judgment to be made in a case, regulate proceedings in a hearing, order the attachment of a witness or party who fails to obey a subpoena, accept a plea of guilty from a defendant charged with misdemeanor, felony, or both misdemeanor and felony offenses, select a jury, and take action as necessary and proper for the efficient performance of the duties required by the order of referral.

(c) Prohibits an associate judge from entering a ruling on any issue of law or fact if that ruling could result in dismissal or require dismissal of a pending criminal prosecution, but authorizes the associate judge to make findings, conclusions, and recommendations on those issues.

(d) Prohibits an associate judge from presiding over a trial on the merits, whether or not the trial is before a jury.

Sec. 469.035. COURT REPORTER; RECORD. (a) Authorizes a court reporter to be provided during a hearing held by an associate judge appointed under this subchapter. Requires the court, at the request of a party, to provide a court reporter to record the proceedings before the associate judge.

(b) Authorizes a party, the associate judge, or the referring court to provide for a reporter during the hearing if one is not otherwise provided.

(c) Authorizes the record, except as provided by Subsection (a), in the absence of a court reporter or on agreement of the parties, to be preserved by any means approved by the associate judge.

(d) Authorizes the referring court or associate judge to assess the expense of preserving the record under Subsection (c) as costs.

Sec. 469.036. JUDICIAL ACTION. (a) Authorizes a referring court to modify, correct, reject, reverse, or recommit for further information any action taken by the associate judge.

(b) Provides that if the court does not modify, correct, reject, reverse, or recommit an action to the associate judge, within 30 days of the action of the associate judge, the action becomes the decree of the court.

Sec. 469.037. JUDICIAL IMMUNITY. Provides that an associate judge has the same judicial immunity as a district judge.

Sec. 469.038. COMPENSATION OF ASSOCIATE JUDGE. (a) Entitles an associate judge appointed under this subchapter to a salary as determined by a majority vote of the

presiding judges of the administrative judicial regions. Prohibits the salary from exceeding 90 percent of the salary paid to a district judge as set by the state General Appropriations Act.

(b) Requires that the associate judge's salary be paid from funds available from the state as provided by this subchapter.

Sec. 469.039. PERSONNEL. (a) Authorizes the presiding judge of an administrative judicial region or the presiding judges of the administrative judicial regions, by majority vote, to appoint personnel as needed to implement and administer the provisions of this subchapter.

(b) Requires that the salaries of the personnel be paid from funds available from the state as provided by this subchapter.

Sec. 469.040. SUPERVISION OF ASSOCIATE JUDGES. Requires the office of court administration to assist the presiding judges in monitoring the associate judges' compliance with any applicable job performance standards, uniform practices adopted by the presiding judges, and federal and state laws and policies; addressing the training needs and resource requirements of the associate judges; conducting annual performance evaluations for the associate judges and other personnel appointed under this subchapter based on written personnel performance standards adopted by the presiding judges; and receiving, investigating, and resolving complaints about particular associate judges or the associate judge program under this subchapter based on a uniform process adopted by the presiding judges.

Sec. 469.041. STATE AND FEDERAL FUNDS; PERSONNEL. (a) Authorizes the office of court administration to contract for available state, county, and federal funds from any source and to employ personnel needed to implement and administer this subchapter. Provides that an associate judge and other personnel appointed under this subsection are state employees for all purposes, including accrual of leave time, insurance benefits, retirement benefits, and travel regulations.

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

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

Sec. 469.042. ASSIGNMENT OF JUDGES AND APPOINTMENT OF VISITING ASSOCIATE JUDGES. (a) Provides that this chapter does not limit the authority of a presiding judge to assign a judge eligible for assignment under Chapter 74 (Court Administration Act), Government Code, to operate a drug court program under this subchapter.

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

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

(d) Provides that a visiting associate judge appointed under this section is subject to each provision of this chapter that applies to an associate judge serving under a regular appointment under this subchapter. Entitles a visiting associate judge appointed under this section to compensation, to be determined by a majority vote of the presiding judges of the administrative judicial regions, through use of funds under this subchapter. Provides that a visiting associate judge is not considered to be a state employee for any purpose.

(e) Provides that Section 2252.901 (Contracts with Former or Retired Agency Employees), Government Code, does not apply to the appointment of a visiting associate judge under this section.

Sec. 469.043. LIMITATION ON LAW PRACTICE BY ASSOCIATE JUDGE. Prohibits an associate judge appointed under this subchapter from engaging in the private practice of law.

SECTION 3. Effective date: upon passage or September 1, 2009.