

SUBJECT: Establishing drug courts

COMMITTEE: Judicial Affairs — committee substitute recommended

VOTE: 6 ayes — Thompson, Hartnett, Capelo, Deshotel, Solis, Uresti

1 nay — Talton

2 absent — Garcia, Hinojosa

WITNESSES: For — Sylvia Yarborough, David Bluestein, Montgomery County District Attorney's Office; John Creuzot, State District Judge, Dallas County; Claire Dawson-Brown, Travis County District Attorney's Office; Patricia Greenspan, Travis County Drug Court; Barry Keenan, New Directions in Corrections, C-Cubed Institute; Karen Heikkala, Drug Policy Forum of Texas; Jeff Frazier, American Civil Liberties Union, Texas; Charles C. Holt, Common Cause Texas; Dan Smith, on behalf of Travis County Judge Samuel T. Biscoe; *Registered, but did not testify*: Mark Mendez, Tarrant County Commissioners Court; Wally Ellinger; Ola Ann Moseley; Suzanne Rittenberry, Texas Citizens United for Rehabilitation of Errants; Sandra Jackson; Larry Jackson; Rider Scott, Greater Dallas Crime Commission; Bob Kamm, Travis County Commissioners Court; Sally Velasquez, Webb County; Janice Flint; Jean Leath; Elizabeth Joblin; Drew S. Johnson

Against — Chuck Noll, Harris County District Attorney's Office

On — Manuel Muñoz, Comptroller's Office

BACKGROUND: Drug courts use the justice system to provide intensive supervision, rehabilitation, and substance-abuse treatment for nonviolent drug- and alcohol-addicted offenders. Typically, offenders who enter the program must complete three phases of treatment. In each phase, the offender must remain drug- or alcohol-free for a number of consecutive months, participate in all required treatment and educational programs, and remain actively employed. Failure to comply brings an immediate sanction ranging from community service hours to inpatient drug treatment or jail time.

Participants in drug court programs have contact with the treatment provider several times a week, have frequent, random urine analyses, and go before the drug court judge at least biweekly to report on their progress. The minimum time for completion of the program is 12 months, but many participants take 14 to 18 months to finish. Participants who finish the program successfully have their criminal records cleared of the drug charge.

Drug courts first were introduced in 1989 in Miami, Florida. In 1994, the U.S. Congress enacted the Violent Crime Control and Law Enforcement Act, which created the Drug Courts Program Office within the U.S. Department of Justice (DOJ) to administer grants and provide training and technical assistance to local drug court programs. DOJ estimates that more than 500 drug courts have been implemented nationwide.

While current Texas statutes do not grant explicit authority for a drug court system, Government Code, art. 76.011 permits local community supervision and corrections (probation) departments to operate programs that include testing for controlled substances for the supervision and rehabilitation of persons in pre-trial intervention programs. Five Texas counties — Dallas, Jefferson, Montgomery, Tarrant, and Travis — have established drug court programs, and a sixth, Webb County, is in the process of implementing one. The courts operate either under county court administration or as part of the local probation department.

DIGEST: CSHB 1287 would amend Health and Safety Code, 6B, by adding ch. 469, establishing drug court programs. A drug court program would be defined as sharing the 10 components of the U.S. Department of Justice's drug courts, including:

- ! integration of alcohol and other drug treatment services in processing cases in the judicial system;
- ! use of a non-adversarial approach involving prosecutors and defense attorneys to promote public safety and protect the due process rights of program participants;
- ! early identification and prompt placement of eligible participants into the program;
- ! access to a continuum of alcohol, drug, and other related treatment and rehabilitative services;

- ! monitoring of abstinence through weekly alcohol and other drug testing;
- ! use of a coordinated strategy to govern program responses to participants' compliance;
- ! ongoing judicial interaction with program participants;
- ! monitoring and evaluation of program goals and effectiveness;
- ! continuing interdisciplinary education to promote effective program planning, implementation, and operations; and
- ! development of partnerships with public agencies and community organizations.

County commissioners courts could establish a drug court program for people who were arrested for, charged with, or convicted of: 1) illegally using or possessing alcohol or using, possessing, or selling illegal drugs; or 2) committing an offense in which the use of alcohol or a controlled substance was suspected to have contributed significantly to commission of the offense and that did not involve the use of force against another, or the serious bodily injury or death of another, or the possession or use of a firearm or other dangerous weapon.

County commissioners courts in counties with a population exceeding 383,000 residents, according to the 1990 census (Bexar, Dallas, El Paso, Harris, Hidalgo, Tarrant, and Travis), would have to establish a drug court program by September 1, 2002, and have at least 100 participants in the program within the first four months of operation. Failure to implement a drug court program would result in the loss of state funding supplements for district and county attorneys and any state grants administered by the Criminal Justice Division (CJD) of the Office of the Governor during the third and fourth quarters of fiscal 2003.

The bill would grant oversight authority to CJD in the Office of the Governor, which could establish rules for the operations, management, and financial practices of drug court programs. The lieutenant governor and speaker of the house also could assign oversight functions to appropriate legislative committees. A legislative committee or the governor could request that the state auditor perform a management, operations, financial, or accounting audit of any drug court program established under the bill.

A drug court could collect the following fees from participants:

- ! a reasonable program fee, not to exceed \$1,000;
- ! a urinalysis testing and counseling fee, in an amount necessary to cover the costs of the testing and counseling and based on the participant's ability to pay;
- ! cost of all treatments incurred, based on the participant's ability to pay;
- ! a one-time \$10 community supervision fee, to be deposited in the county general revenue fund for support of county drug court programs.

The Criminal Justice Policy Council would have to conduct a study of Texas drug court programs and issue a report by January 15, 2003, to various elected state officials. The report would examine the effectiveness of current drug court programs and make recommendations about potential improvements and expansion. This section would expire on June 1, 2003.

CSHB 1287 would take effect on September 1, 2001.

SUPPORTERS
SAY:

By formally establishing a drug court program and requiring its implementation in the largest urban counties, CSHB 1287 would help reduce recidivism by offenders with drug and alcohol problems. Studies show that offenders who complete drug court programs are less likely to commit new crimes than those who are given private treatment, ordinary probation, or jail time. A March 2000 study of the Travis County drug court, for example, showed that only 15 percent of drug court graduates were rearrested on *any charge* within 18 months after being released from court supervision, while 38 percent of regular probationers were arrested for a subsequent *felony*. About 65 percent of drug court enrollees in Travis County successfully complete the program. A study of the Jefferson County drug court showed that after five years of operation, recidivism for graduates was one-third that of non-graduates.

CSHB 1287 would save state and local taxpayer dollars. It is less expensive to put drug offenders through drug court treatment programs than to incarcerate them. The Comptroller's Office reports that in fiscal 1998, it cost about \$3,500 per year per offender for the treatment component of a drug court versus more than \$11,000 per year for state jail incarceration. A study of the Travis County drug court program estimates that between 1993 and

2000, the program saved the state about \$5.3 million in state jail and prison costs, while the program cost only about \$1.8 million during that time period. By keeping offenders out of jail and requiring that they hold a job, drug courts save the state from having to support an offender's family. In addition, because of their lower recidivism rate, people who go through the drug court program save the state money by not committing new crimes.

CSHB 1287 would allow nonviolent drug offenders to clear their records and defeat their addictions through the drug court system. Even if they overcome an addiction, people with a felony drug conviction on their records have a difficult time getting a job, finding an apartment, or furthering their education. Without jobs, these offenders don't contribute to the economy and often must rely on taxpayer assistance. Drug courts assist these offenders by helping them through their addictions, requiring them to be employed and to complete educational goals, and clearing their criminal records of the drug offense upon successful completion of the program.

CSHB 1287 would grant clear authority for drug courts in Texas and establish uniform standards. Having a statutory outline of the program also would make it easier for counties to establish the courts. Texas is behind other large states, including California, Florida, and Louisiana, in setting up drug courts, at least in part because counties find it difficult to set them up under the ambiguity of current law.

CSHB 1287 would provide adequate funding to counties by allowing them to raise the cap on permissible fees for drug courts. Five of the six Texas drug courts are pre-trial diversion programs, which are limited to collecting a maximum fee of \$500 per participant. Additional funds from fees would allow drug courts to expand their services and treat more people. The new fees would be on a sliding scale, so that participants would not be forced to pay more than they could afford. Counties would have other funding sources as well. Federal grants through DOJ are available to start drug court programs. In addition, the Senate-passed version of SB 1, the general appropriations bill, includes a rider that would appropriate \$2 million to the Office of the Governor to provide grants to drug courts.

CSHB 1287 would provide an incentive for large counties to set up drug court programs. By taking away certain state funds from large counties that

refused to create a drug court system, the bill would ensure these counties' future participation. In addition, requiring that counties have 100 participants within the first four months of operation would act as a deterrent to counties that might set up a drug court just to keep state funding without actually helping offenders.

CSHB 1287 would provide a much-needed alternative to incarceration in Harris County and other large counties that don't already have a drug court program. The Comptroller's Office estimates that almost 38 percent of the state jail offender population comes from Harris County alone.

Counties could receive funding for the drug court program from the CJD in the Governor's Office. Counties understand that when state funding is involved in a program, there needs to be state oversight to see that the money is spent properly. Many county officials believe that the Governor's Office would be the best place to locate state oversight authority of the drug court system because officials there have experience granting money to criminal justice diversion programs and recognize that local communities are best able to determine how those programs should be run.

OPPONENTS
SAY:

CSHB 1287 would be an unfunded mandate for the seven counties with populations above 383,000, especially Bexar, El Paso, Harris, and Hidalgo, which do not currently have drug court programs. Federal grants are available for start up costs for drug courts, but these usually are phased out within three or four years. Afterward, counties must pick up the slack.

The Legislative Budget Board estimates that a drug court program would cost counties \$300,000 or more per year, and many counties could not afford to pay that amount. Because of the penalty involved for not running a drug court system, counties might be forced to take money from other important programs to pay for the drug court. Although the Senate included a rider in its version of SB 1 to appropriate \$2 million annually over the 2002-03 biennium to the Governor's Office for drug court grants, there is no guarantee that this rider will be in the final appropriations bill or that counties would be awarded those grants.

It would be very difficult for counties with just over 383,000 residents to obtain 100 participants within the first four months of their drug courts'

operation. Even if a smaller county made a good-faith effort to comply with this inflexible mandate, it still could fall short of the necessary number of participants and be penalized with the loss of state funds, including any drug court grant from the Governor's Office.

CSHB 1287 would take oversight control from local communities and give it to the state. It makes better sense to keep drug courts, which would be part of local legal systems, under local control. These courts may not local needs. If a community does not support the idea of a drug court, that court will not be very effective.

It would be unfair to take state funding for district and county attorneys and CJD grants from the Governor's Office away from counties with populations over 383,000 residents that did not comply with this bill. Often, county attorneys handle civil cases and play no role in the criminal justice system, and therefore would have no involvement in a drug court system. If a county commissioners court did not get along with an elected county attorney, it effectively could cut off that attorney's pay by not setting up a drug court. In addition, grants from CJD go to a variety of county programs, and taking them away would penalize people involved in other programs who may have nothing to do with setting up drug courts.

NOTES:

The committee substitute differs from the filed version of HB 1287 in several ways. It added the requirement that counties with a 1990 census population greater than 383,000 residents to set up drug courts by September 1, 2002, and have at least 100 participants in the courts within four months of opening, and would penalize counties that failed to comply by rescinding certain state funding.

The original bill would have permitted offenders to participate in the drug court program for a nonviolent offense in which the use of alcohol or a controlled substance was suspected to have significantly contributed to commission of the offense, but only if the person had not been previously arrested, charged with, or convicted of a criminal offense. The committee substitute deleted the previous arrest, charge, or conviction limitation and included a detailed definition of what constitutes a nonviolent offense.

HB 1287 as filed would have required drug courts to be certified by the Office of Justice Programs of the DOJ within 18 months of establishment. The committee substitute would not require this certification, but would require that drug court programs include the 10 key components of the DOJ definition of drug court. HB 1287 as filed also would have set up a different fee system than the one included in the committee substitute.

The substitute also added grant oversight authority for the Office of the Governor and appropriate legislative committees appointed by the lieutenant governor and House speaker and would allow committees to order a state audit of drug court programs. It also would commission a Criminal Justice Policy Council study of the effectiveness of the programs.

In the fiscal note, the LBB found no significant fiscal impact to the state. It determined that a county establishing and operating a drug court program could expect to incur costs beginning around \$300,000 annually. The costs would be offset at least partially by grants and by fees from participants and other offenders on probation for drug- or alcohol-related offenses.

The Senate-passed version of SB 1 by Ellis, the general appropriations bill for fiscal 2002-03, includes a rider for \$2 million in drug court grants to be distributed by the Criminal Justice Division of the Office of the Governor (Art I, Strategy A.1.4., Rider 11). The rider is not contingent on enactment of CSHB 1287.