

GREEN SHEET REDIGEST

HB 264

2018 Regular Session

Smith

COURTS: Provides relative to community-based sentencing alternatives for offenses committed by primary caretakers.

DIGEST

Proposed law creates the Community-based Alternatives for Primary Caretakers Act which authorizes a pilot program in Orleans Parish Criminal District Court for a division of the court to be designated as the division to which offenses committed by primary caretakers may be assigned.

Proposed law provides that on and after Jan. 1, 2020, any judicial district court by rule may designate one or more divisions to which offenses committed by primary caretakers of dependent children may be assigned, and may establish a program to be administered by a presiding judge or judges thereof or by an employee designated by the court.

Proposed law provides definitions for "dependent child" and "primary caretaker" and does all of the following:

- (1) Provides eligibility requirements for participants in the program which include the following: (a) the defendant is a primary caretaker of a dependent child; (b) the defendant is charged with an offense that is not a crime of violence committed against a person who is under the age of eighteen years, a sex offense committed against a person who is under the age of eighteen years, or any offense committed against the defendant's biological or adopted child; (c) the interest of justice, the child's best interest, and the best interest of the community are all served by the defendant's participation in the program as opposed to the defendant's incarceration or other sanctions; and (d) the district attorney, the defendant, and the court to which the defendant's case is assigned consent to the defendant's participation in the program.
- (2) Provides that the court shall make the final determination as to whether the defendant is eligible for participation in the program, and provides certain factors for the court to consider in making this determination including but not limited to information regarding prior criminal charges; education, work experience, and training; and family history. In addition, requires the court to consider all of the following: (a) the nature of the crime charged and the circumstances surrounding the crime; (b) any special characteristics or circumstances of the defendant; (c) the defendant's criminal history and whether the defendant previously participated in the primary caretaker program; (d) whether there is a probability that the defendant will cooperate with and benefit from the program; (e) whether the program has the necessary resources that are appropriate to meet the needs of the defendant; (f) the community impact; (g) recommendations, if any, of the prosecutor, the involved law enforcement agency, or the victim of the offense; and (h) any other circumstances reasonably related to the defendant's case.
- (3) Requires an eligibility screening and assessment to determine if the defendant is a primary caretaker of a dependent child and provides that if the defendant is determined to be eligible to participate in the program, the court is required to provide the defendant with certain information about the program including the following:
 - (a) If the defendant is accepted into and elects to participate in the program, his sentence will either be deferred or suspended and he will be placed on supervised probation under the usual conditions or probation or under certain special conditions of probation ordered by the court that are related to the completion of the primary caretaker program.

- (b) The court may impose any conditions reasonably related to the defendant's successful completion of the primary caretaker program and the best interests of the defendant's child.
 - (c) If the defendant completes the program, and successfully completes all other requirements of the court, the conviction may be set aside and the prosecution dismissed. If the defendant does not successfully complete the program, the court may revoke the probation and impose the sentence, or the court may revoke the probation and order the defendant to serve the sentence previously imposed and suspended.
- (4) Provides that the defendant has a right to be represented by counsel at all stages of criminal prosecution and in any court hearing related to his participation in the program. Further provides that no statement made to any probation officer or primary caretaker program worker subsequent to the granting of probation shall be admissible in any civil or criminal action or proceeding, except a probation revocation proceeding.
 - (5) Provides that if the court determines that the defendant is not qualified for enrollment in the primary caretaker program, the court shall state for the record the reasons for such determination.
 - (6) Provides that the court may require the person to meet certain conditions that the court deems appropriate, including but not limited to any of the following: drug and alcohol treatment; domestic violence education and prevention; physical and sexual abuse counseling; anger management; vocational and educational services; job training and placement; affordable and safe housing assistance; financial literacy; parenting classes; family and individual counseling; and family case management services.
 - (7) Provides that the terms of the program agreement shall be decided by the court and requires certain information to be included in the agreement which must be signed by the defendant.
 - (8) Provides that a defendant may not be excluded from participation in the program because of a defendant's inability to pay all of the related costs associated with participation in the program.
 - (9) Provides that if the defendant violates any of the conditions of probation or the program agreement or performs unsatisfactorily in the program, or if it appears that the defendant is not benefitting from the program, the program supervisor or probation officer may move the court for a hearing to determine if the defendant has violated a condition of the program, whether the defendant should remain in the program, or whether participation in the program or probation should be revoked and the defendant removed from the program and sentenced or ordered to serve any sentence previously imposed.
 - (10) If at the hearing the moving party demonstrates sufficient proof that the defendant has violated probation or the agreement, the defendant may be reprimanded, sanctioned for the violation, removed from the program, or the agreement may be changed to meet the defendant's specific needs.
 - (11) Provides that upon successful completion of the program and its terms and conditions, the court may vacate the judgment of conviction and dismiss the criminal proceedings against the defendant or may discharge the defendant from probation in accordance with present law (C.Cr.P. Art. 893 or 894).

(Adds R.S. 13:5381 - 5386)

Summary of Amendments Adopted by House

The Committee Amendments Proposed by House Committee on Judiciary to the original bill:

1. Require the consent of the district attorney for the defendant to be considered for the primary caretaker program.

Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Judiciary B to the reengrossed bill

1. Creates a pilot program for the primary caretaker division of court in the Orleans Parish Criminal District Court.
2. Authorizes any judicial district court to designate a primary caretaker division on or after Jan. 1, 2020.