

By: Thompson of Harris

H.B. No. 361

A BILL TO BE ENTITLED

AN ACT

relating to the placement on community supervision, including deferred adjudication community supervision, of a defendant who is the primary caretaker of a child.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subchapter C, Chapter 42A, Code of Criminal Procedure, is amended by adding Article 42A.1025 to read as follows:

Art. 42A.1025. DEFERRED ADJUDICATION COMMUNITY SUPERVISION FOR DEFENDANT WHO IS PRIMARY CARETAKER OF CHILD. (a) In this article, "primary caretaker of a child" means a person, including a person who has temporarily relinquished custody of the child as a result of pretrial detention, who has assumed or will soon assume responsibility for a dependent child younger than 18 years of age by providing for the child's needs, including housing, health care, financial support, education, family support, or safety.

(b) This article applies only to a defendant who is:

(1) charged with an offense for which the defendant is eligible for deferred adjudication community supervision under this subchapter; and

(2) the primary caretaker of a child.

(c) On written motion of a defendant described by Subsection (b), the court shall, after receiving a plea of guilty or nolo contendere, hearing the evidence, and finding that the evidence

1 substantiates the defendant's guilt, consider the defendant's  
2 status as the primary caretaker of a child. The motion must include  
3 evidence of the defendant's primary caretaker status.

4 (d) As soon as practicable after receipt of a motion under  
5 Subsection (c), the court shall make written findings regarding the  
6 defendant's primary caretaker status.

7 (e) On a determination by the court that the defendant is  
8 the primary caretaker of a child, the court may defer further  
9 proceedings without entering an adjudication of guilt and place the  
10 defendant on deferred adjudication community supervision in  
11 accordance with this subchapter.

12 (f) This subsection applies only to a defendant described by  
13 Subsection (b) who does not make a motion under Subsection (c). If  
14 in the court's opinion the best interest of society, the defendant,  
15 and the defendant's child or children will be served, the court may,  
16 after receiving a plea of guilty or nolo contendere, hearing the  
17 evidence, and finding that the evidence substantiates the  
18 defendant's guilt, defer further proceedings without entering an  
19 adjudication of guilt and place the defendant on deferred  
20 adjudication community supervision in accordance with this  
21 subchapter.

22 (g) A court placing a defendant on deferred adjudication  
23 community supervision under this article may impose conditions of  
24 deferred adjudication community supervision that emphasize  
25 parent-child unity and the defendant's rehabilitation in a  
26 community setting and that provide support to the parent-child  
27 relationship, such as conditions relating to:

- 1           (1) alcohol or substance abuse counseling or  
2 treatment;
- 3           (2) domestic violence education and prevention;
- 4           (3) physical or sexual abuse counseling;
- 5           (4) anger management;
- 6           (5) vocational, technical, or career education or  
7 training, including financial literacy;
- 8           (6) affordable and safe housing assistance;
- 9           (7) parenting skills;
- 10          (8) family or individual counseling; or
- 11          (9) family case management services.

12          (h) Notwithstanding Article 42A.104, a court that places a  
13 defendant on deferred adjudication community supervision under  
14 this article may not require as a condition of deferred  
15 adjudication community supervision that the defendant submit to a  
16 term of confinement, except that the court may order the defendant  
17 to submit to a term of confinement if the court proceeds with an  
18 adjudication of guilt for the offense for which the defendant was  
19 placed on deferred adjudication community supervision under this  
20 article.

21          SECTION 2. Article 42A.108(a), Code of Criminal Procedure,  
22 is amended to read as follows:

23          (a) On violation of a condition of deferred adjudication  
24 community supervision imposed under Article 42A.1025 or 42A.104,  
25 the defendant may be arrested and detained as provided in Article  
26 42A.751.

27          SECTION 3. Subchapter K, Chapter 42A, Code of Criminal

1 Procedure, is amended by adding Article 42A.518 to read as follows:

2 Art. 42A.518. COMMUNITY SUPERVISION FOR DEFENDANT WHO IS  
3 PRIMARY CARETAKER OF CHILD. (a) In this article, "primary  
4 caretaker of a child" has the meaning assigned by Article 42A.1025.

5 (b) This article applies only to a defendant who is:

6 (1) convicted of an offense for which the defendant is  
7 eligible for community supervision under this chapter; and

8 (2) the primary caretaker of a child.

9 (c) On written motion of a defendant described by Subsection  
10 (b), the court shall, before imposing a sentence requiring  
11 confinement, consider the defendant's status as the primary  
12 caretaker of a child. The motion must include evidence of the  
13 defendant's primary caretaker status.

14 (d) As soon as practicable after receipt of a motion under  
15 Subsection (c), the court shall make written findings regarding the  
16 defendant's primary caretaker status. The court may not impose a  
17 sentence of confinement, including confinement as a condition of  
18 community supervision, without first making the written findings  
19 required by this subsection.

20 (e) On a determination by the court that the defendant is  
21 the primary caretaker of a child, the court may suspend the  
22 imposition of the sentence and place the defendant on community  
23 supervision in accordance with this chapter.

24 (f) This subsection applies only to a defendant described by  
25 Subsection (b) who does not make a motion under Subsection (c). If  
26 in the court's opinion the best interest of justice, the public, the  
27 defendant, and the defendant's child or children will be served,

1 the court may suspend the imposition of the sentence and place the  
2 defendant on community supervision in accordance with this chapter.

3 (g) A court placing a defendant on community supervision  
4 under this article may impose conditions of community supervision  
5 that emphasize parent-child unity and the defendant's  
6 rehabilitation in a community setting and that provide support to  
7 the parent-child relationship, such as conditions relating to:

8 (1) alcohol or substance abuse counseling or  
9 treatment;

10 (2) domestic violence education and prevention;

11 (3) physical or sexual abuse counseling;

12 (4) anger management;

13 (5) vocational, technical, or career education or  
14 training, including financial literacy;

15 (6) affordable and safe housing assistance;

16 (7) parenting skills;

17 (8) family or individual counseling; or

18 (9) family case management services.

19 (h) Notwithstanding any other provision of this chapter, a  
20 court that places a defendant on community supervision under this  
21 article may not require as a condition of community supervision  
22 that the defendant submit to a term of confinement, except that the  
23 court may order the defendant to submit to a term of confinement  
24 following a determination that the defendant violated a condition  
25 of community supervision or if the defendant's community  
26 supervision is revoked under Article [42A.755](#).

27 SECTION 4. (a) Article 42A.1025, Code of Criminal

1 Procedure, as added by this Act, applies to a defendant who enters a  
2 plea of guilty or nolo contendere for an offense on or after the  
3 effective date of this Act, regardless of when the offense was  
4 committed.

5 (b) Article 42A.518, Code of Criminal Procedure, as added by  
6 this Act, applies to a defendant sentenced for an offense on or  
7 after the effective date of this Act, regardless of when the offense  
8 was committed.

9 SECTION 5. This Act takes effect September 1, 2023.