

## **BILL ANALYSIS**

H.B. 361  
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Corrections  
Committee Report (Unamended)

### **BACKGROUND AND PURPOSE**

According to a Texas Criminal Justice Coalition 2018 report, 81 percent of incarcerated women are mothers, many of whom are the primary caretakers of their children. Healthy relationships between parents and children are essential to promoting positive development of health in children. According to a Marshall Project report, incarcerated women lose their children to the foster care system at a rate five times higher than incarcerated men. Separation from parents can be detrimental to a child, leading to social challenges, behavioral issues, or poor mental and physical health. H.B. 361 seeks to address childhood outcomes that can be negatively affected by a parent's incarceration by allowing judges to divert parents from prison to a more community-based supervision and recommend additional rehabilitative services. Prior to sentencing a convicted parent to community supervision, judges would be required to take into consideration primary caretaker status, rehabilitative opportunities available in the community, the likelihood of successful completion of community supervision, and the needs of the person's family members and any public safety concerns, as applicable. This will hold parents accountable for their actions while simultaneously allowing them to be present to support their families.

### **CRIMINAL JUSTICE IMPACT**

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

### **ANALYSIS**

H.B. 361 amends the Code of Criminal Procedure to require a court on an applicable defendant's written motion that includes evidence of the defendant's status as a primary caretaker of a child, and either after receiving a plea of guilty or nolo contendere, hearing the evidence, and finding that the evidence substantiates guilt or before imposing a sentence requiring confinement, to consider the defendant's primary caretaker status. The bill applies only to a defendant who is the primary caretaker of a child and is either:

- charged with an offense for which the defendant is eligible for deferred adjudication community supervision; or
- convicted of an offense for which the defendant is eligible for community supervision.

The bill requires the court, as soon as practicable after receipt of such a motion, to make written findings regarding the defendant's primary caretaker status. With respect to a defendant who is convicted of an offense and eligible for community supervision, the bill prohibits the court from imposing a sentence of confinement without first making the written finding. The bill authorizes the court either to defer further proceedings without entering an adjudication of guilt and place a

defendant on deferred adjudication community supervision or to suspend the imposition of a sentence and place a defendant on community supervision, as applicable, under the following circumstances:

- on a determination by the court that the defendant is the primary caretaker of a child; or
- for an applicable defendant who does not file a motion, if it is the court's opinion that the defendant, the defendant's child or children, and best interest of society or justice, as applicable, will be served.

H.B. 361 authorizes a court placing a defendant on supervision to impose certain conditions that emphasize parent-child unity and the defendant's rehabilitation in a community setting and that provide support to the parent-child relationship. The bill prohibits a court from requiring as a condition of supervision that the defendant submit to a term of confinement but authorizes a court either proceeding with an adjudication of guilt or on a determination that the defendant violated a condition of supervision or that the defendant's community supervision is revoked to order the defendant to submit to a term of confinement. The bill authorizes the arrest and detention of a defendant on violation of a condition of deferred adjudication community supervision imposed under the bill's provisions.

H.B. 361 defines "primary caretaker of a child" as 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.

H.B. 361 applies to a defendant who enters a plea of guilty or nolo contendere or is sentenced for an offense on or after the bill's effective date, regardless of when the offense was committed.

**EFFECTIVE DATE**

September 1, 2023.