

- SUBJECT:** Requiring courts to consider primary caretaker status in sentencing
- COMMITTEE:** Corrections — favorable, without amendment
- VOTE:** 7 ayes — White, Allen, Bailes, Bowers, Dean, Sherman, Stephenson
- 0 nays
- 1 absent — Neave
- WITNESSES:** For — Lauren Johnson, ACLU of Texas; Kaitlin Owens, American Conservative Union; Lindsey Linder, Texas Criminal Justice Coalition; Kaycie Alexander, Texas Public Policy Foundation; Jason Vaughn, Texas Young Republicans; Michelle Ramirez, Youth Rise Texas; Koretta Brown; Elizabeth Gillette; Mia Greer; Margarita Luna; and Kirsten Ricketts; (*Registered, but did not testify*: Terra Tucker, Alliance for Safety and Justice; Hal Wuertz, Austin Justice Coalition; Traci Berry, Goodwill Central Texas; Julia Egler, National Alliance on Mental Illness Texas; Will Francis, National Association of Social Workers-Texas Chapter; Mary Mergler, Texas Appleseed; Lori Henning, Texas Association of Goodwills; Kathryn Freeman, Texas Baptist Christian Life Commission; Michael Barba, Texas Catholic Conference of Bishops; Lauren Oertel, Texas Inmate Families Association; Alexis Tatum, Travis County Commissioners Court)
- Against — None
- On — Karen Keith; (*Registered, but did not testify*: Manny Rodriguez, Texas Department of Criminal Justice)
- BACKGROUND:** Code of Criminal Procedure art. 42A.101 defines deferred adjudication as a form of probation under which a judge, after receiving a plea of guilty or no contest, postpones the determination of guilt while the defendant serves probation. It can result in the defendant being discharged and dismissed upon successful completion of that probation.

DIGEST: HB 1389 would require courts to consider a criminal defendant's status as a primary caretaker of a child before entering an adjudication of guilt or imposing a sentence on a defendant who was eligible for probation.

The bill would define a "primary caretaker of a child" as a person who assumed, or soon would assume, responsibility for a dependent child younger than 18 by providing for the child's needs, including housing, health care, financial support, education, family support, or safety. Those who temporarily relinquished custody of a child because of pretrial detention also would be considered primary caretakers.

Community supervision. After receiving a written motion including evidence of caretaker status from a defendant who entered a plea of guilty or no contest, a court would be required to make written findings regarding the defendant's primary caretaker status. The court then could place the defendant on deferred adjudication or community supervision, as applicable.

In the absence of a written motion from a defendant, a court could place a defendant who was a primary caretaker on deferred adjudication or community supervision if the court decided that was in the best interest of society, the defendant, and the defendant's children.

Conditions of supervision. Courts could impose conditions of supervision that emphasized rehabilitation and parent-child unity and provided support to parent-child relationships, including conditions related to:

- alcohol or substance abuse counseling or treatment;
- domestic violence education and prevention;
- physical or sexual abuse counseling;
- anger management;
- vocational, technical, or career education or training, including financial literacy;
- affordable and safe housing assistance;
- parenting skills;

- family or individual counseling; or
- family case management services.

A court that placed a defendant on deferred adjudication or community supervision could not require as a condition of probation that the defendant be confined, with some exceptions:

- a court proceeded with an adjudication of guilt for someone placed on deferred adjudication;
- a court determined that the defendant violated a condition of probation; or
- the defendant's probation was revoked.

The bill would take effect September 1, 2019, and would apply to defendants who were sentenced for an offense on or after that date.

**SUPPORTERS
SAY:**

HB 1389 would ensure that courts considered a defendant's status as a primary caretaker of a child so that a fair and appropriate punishment could be imposed on such defendants. While caretakers should be held responsible for their actions, courts should first consider probation as an alternative to incarceration that would allow caretakers to remain with their children and rehabilitate in the community.

Studies show that the separation of a child and a parent can result in serious mental, physical, and emotional health issues for the child. In addition, confining children's caretakers can lead to children being placed in foster care or other vulnerable situations. By eliminating confinement as a condition of probation for primary caretakers, the bill would ensure that caretakers were not separated from their children if a judge elected to place them on probation. This would keep more families together and benefit the caretakers, children, and community.

Judges would retain discretion within the parameters set by the bill to craft sanctions to fit specific individuals and cases. Judges who deemed probation an inappropriate punishment for a particular caretaker still could levy incarceration as a punishment. Additionally, caretakers who violated

their probation could be subject to confinement.

HB 1389 also would save taxpayer money by keeping caretakers out of jails and prison and allowing them to keep their jobs and pay taxes. Placing defendants on probation is much less expensive than incarcerating them and better enables defendants to rehabilitate in their communities.

**OPPONENTS
SAY:**

HB 1389 would reduce judges' discretion to confine a primary caretaker as a condition of probation, giving caretakers an unfair benefit over non-caretakers. For example, those placed on probation for certain intoxication offenses must be confined for a period of time as a condition of probation. That requirement would not apply to caretakers under this bill. Judges should continue to have the full range of options when crafting sanctions.

**OTHER
OPPONENTS
SAY:**

HB 1389 also should explicitly apply to pregnant women, who deserve the same protection under the bill as other caretakers.