

2018 Regular Session

HOUSE BILL NO. 264

BY REPRESENTATIVE SMITH

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

1 AN ACT

2 To enact Chapter 33-D of Title 13 of the Louisiana Revised Statutes of 1950, to be

3 comprised of R.S. 13:5381 through 5386, relative to divisions of court; to authorize

4 the establishment of divisions of court to which offenses committed by primary

5 caretakers of dependent children are assigned; to provide for definitions; to provide

6 for eligibility and screening of potential participants in the program; to provide for

7 certain factors for the court to consider in determining a defendant's eligibility; to

8 provide relative to the conditions of the defendant's participation in the program; to

9 provide for a program agreement and the terms of such agreement; to provide

10 relative to the rights of the defendant with respect to representation by counsel and

11 admissibility of statements made by the defendant; to provide relative to removal of

12 the defendant from the program or revocation of probation for violations of his

13 probation or participation in the program; to provide for the vacation of judgment

14 and conviction upon the defendant's successful completion of the program; to

15 provide for definitions; to provide for certain duties of the court and the defendant;

16 and to provide for related matters.

17 Be it enacted by the Legislature of Louisiana:

18 Section 1. Chapter 33-D of Title 13 of the Louisiana Revised Statutes of 1950,

19 comprised of R.S. 13:5381 through 5386, is hereby enacted to read as follows:

1        CHAPTER 33-D. DIVISION OF COURT FOR PRIMARY CARETAKERS

2        §5381. Short title

3                This Chapter shall be known and may be cited as the "Community-based  
4        Alternatives for Primary Caretakers Act".

5        §5382. Definitions

6                For purposes of this Chapter:

7                (1) "Dependent child" means a person who is under the age of eighteen years  
8        or any person who, because of a physical or mental disability, is permanently  
9        incapable of taking care of himself.

10               (2) "Division of court for primary caretakers" is the division or divisions of  
11        the court to which cases of primary caretakers of dependent children may be  
12        assigned pursuant to the provisions of this Chapter.

13               (3) "Primary caretaker program" or "program" means a structured judicial  
14        intervention process which provides community-based alternatives to incarceration  
15        for eligible defendants who are primary caretakers of dependent children, and that  
16        includes local social programs and intensive judicial monitoring in support of such  
17        defendants.

18               (4)(a) "Primary caretaker of a dependent child" is a biological or adoptive  
19        parent who has consistently assumed responsibility for the housing, health, and  
20        safety of a child.

21               (b) A parent who, in the best interest of the child, has arranged for the  
22        temporary care of the child in the home of a relative or other responsible adult shall  
23        not for that reason be excluded from the definition of "primary caretaker of a  
24        dependent child".

25        §5383. Authorization

26               A. Each district court by rule may designate one or more divisions to be a  
27        division of court for primary caretakers to which offenses committed by primary  
28        caretakers of dependent children may be assigned, and may establish a program to

1 be administered by a presiding judge or judges thereof or by an employee designated  
2 by the court.

3 B. Each judicial district that establishes a division of court for primary  
4 caretakers and a primary caretaker program shall adopt written policies and  
5 guidelines for the implementation of a program in accordance with this Chapter. The  
6 policies and guidelines shall include provisions concerning the pre-enrollment  
7 examination of the defendant to determine if he is qualified for admission into the  
8 program.

9 C. Each division of court for primary caretakers shall develop a method of  
10 evaluation so that its effectiveness can be measured. These evaluations shall be  
11 compiled annually and transmitted to the judicial administrator for the Louisiana  
12 Supreme Court and shall include information on recidivism reduction on the  
13 participants in the program.

14 §5384. Eligibility requirements and determination of eligibility

15 A. A defendant may be considered for a primary caretaker program if all of  
16 the following criteria are met:

17 (1) The defendant is a primary caretaker of a dependent child.

18 (2) The defendant is charged with an offense that is not a crime of violence  
19 as defined by R.S. 14:2 committed against a person who is under the age of eighteen  
20 years, a sex offense as defined by R.S. 15:541 committed against a person who is  
21 under the age of eighteen years, or any offense committed against the defendant's  
22 biological or adopted child.

23 (3) The interest of justice, the child's best interest, and the best interest of the  
24 community are all served by the defendant's participation in the program as opposed  
25 to the defendant's incarceration or other sanctions.

26 (4) The district attorney, the defendant, and the court to which the  
27 defendant's case is assigned consent to the defendant's participation in the program.

28 B. A defendant may be excluded from a primary caretaker program if the  
29 defendant fails to demonstrate a willingness to participate in the program.

1           C.(1) The court shall make the final determination as to whether the  
2           defendant is eligible for participation in the program. In making this determination,  
3           the court may request that the defendant provide the following information to the  
4           court:

- 5           (a) Information regarding prior criminal charges.
- 6           (b) Education, work experience, and training.
- 7           (c) Family history, including residence in the community.
- 8           (d) Any other information reasonably related to the defendant's successful  
9           participation in the program.

10           (2) The court shall also consider the following factors in making its  
11           determination:

- 12           (a) The nature of the crime charged and the circumstances surrounding the  
13           crime.
- 14           (b) Any special characteristics or circumstances of the defendant.
- 15           (c) The defendant's criminal history and whether the defendant previously  
16           participated in the primary caretaker program.
- 17           (d) Whether there is a probability that the defendant will cooperate with and  
18           benefit from the program.
- 19           (e) Whether the program has the necessary resources that are appropriate to  
20           meet the needs of the defendant.
- 21           (f) The community impact.
- 22           (g) Recommendations, if any, of the prosecutor, the involved law  
23           enforcement agency, or the victim of the offense.
- 24           (h) Any other circumstances reasonably related to the defendant's case.

25           §5385. Screening and assessment; procedures; program agreement; and conditions

26           A.(1) Any court with a primary caretaker program established within its  
27           judicial district pursuant to the provisions of this Chapter shall ask each defendant  
28           that appears before it whether the defendant is a primary caretaker of a dependent  
29           child. If the defendant states that he is a primary caretaker of a dependent child, the

1 court shall require an eligibility screening and an assessment of the defendant to  
2 determine if the defendant is a primary caretaker of a dependent child.

3 (2) If the defendant is determined to be a primary caretaker of a dependent  
4 child and is eligible, under the provisions of R.S. 13:5384, to participate in the  
5 primary caretaker program, the court shall advise the defendant that he is eligible for  
6 admission in the primary caretaker program. In advising the defendant of his  
7 eligibility, the court shall advise the defendant of the following:

8 (a)(i) If the defendant is accepted into and elects to participate in the  
9 program, the defendant may enter a guilty plea and waive the right to a trial, with the  
10 stipulation that sentencing be deferred or that sentence be imposed, but suspended,  
11 and the defendant be placed on supervised probation under the conditions of  
12 probation provided by law or under certain special conditions of probation ordered  
13 by the court that are related to the completion of the primary caretaker program.

14 (ii) If after trial the defendant is found guilty of the offense and is accepted  
15 into and elects to participate in the program, the court shall either defer or suspend  
16 the defendant's sentence and place the defendant on supervised probation under the  
17 conditions of probation provided by law or under certain special conditions of  
18 probation ordered by the court that are related to the completion of the primary  
19 caretaker program.

20 (b) The court may impose any conditions reasonably related to the  
21 defendant's successful completion of the primary caretaker program and the best  
22 interests of the defendant's child.

23 (c) If the defendant completes the program, and successfully completes all  
24 other requirements of the court, the conviction may be set aside and the prosecution  
25 dismissed in accordance with the provisions of Code of Criminal Procedure Article  
26 893 or 894. If the defendant was sentenced to probation after being found guilty or  
27 at the time of the entry of the plea of guilty, the successful completion of the  
28 program and the other requirements of probation will result in his discharge from  
29 supervision. If the defendant does not successfully complete the program, the court

1 may revoke the probation and impose the sentence, or the court may revoke the  
2 probation and order the defendant to serve the sentence previously imposed and  
3 suspended.

4 B.(1) The defendant has a right to be represented by counsel at all stages of  
5 the criminal prosecution and in any court hearing related to his participation in the  
6 program. The defendant shall be represented by counsel during the negotiations to  
7 determine eligibility to participate in the program and shall be represented by  
8 counsel at the time of the execution of the program agreement, and at any hearing to  
9 revoke the defendant's probation and discharge him from the program, unless the  
10 court finds and the record shows that the defendant has knowingly and intelligently  
11 waived his right to counsel.

12 (2) No statement, or any information procured therefrom, with respect to the  
13 specific offenses with which the defendant is charged, which is made to any  
14 probation officer or primary caretaker program worker subsequent to the granting of  
15 probation, shall be admissible in any civil or criminal action or proceeding, except  
16 a probation revocation proceeding.

17 C.(1) If the court determines that the defendant is a primary caretaker of a  
18 dependent child and should be admitted into the primary caretaker program pursuant  
19 to the provisions of this Chapter, the court shall, notwithstanding any limitation or  
20 prohibition on deferral or suspension of sentence under Code of Criminal Procedure  
21 Article 893 or 894, either defer the imposition of sentence and place the defendant  
22 on probation under the terms and conditions of the primary caretaker program, or  
23 impose sentence and suspend the execution thereof, placing the defendant on  
24 probation under the terms and conditions of the primary caretaker program.

25 (2) If the court determines that the defendant is not qualified for enrollment  
26 in the primary caretaker program, the court shall state for the record the reasons for  
27 such determination.

28 D. The court may require the person to meet certain conditions that the court  
29 deems appropriate, including but not limited to any of the following:

- 1                   (1) Drug and alcohol treatment.
- 2                   (2) Domestic violence education and prevention.
- 3                   (3) Physical and sexual abuse counseling.
- 4                   (4) Anger management.
- 5                   (5) Vocational and educational services.
- 6                   (6) Job training and placement.
- 7                   (7) Affordable and safe housing assistance.
- 8                   (8) Financial literacy.
- 9                   (9) Parenting classes.
- 10                  (10) Family and individual counseling.
- 11                  (11) Family case management services.

12                  E.(1) The terms of the program agreement shall be decided by the court. The  
13                  defendant must agree to enter the primary caretaker program and sign a program  
14                  agreement stating the terms and conditions of his program.

15                  (2) Any program agreement entered into pursuant to the provisions of this  
16                  Chapter shall include the following:

17                  (a) The terms of the agreement, which shall provide that if the defendant  
18                  fulfills the obligations of the agreement, as determined by the court, the criminal  
19                  charges may be dismissed and the prosecution set aside in accordance with the  
20                  provisions of Code of Criminal Procedure Article 893 or 894, or, if the defendant has  
21                  been sentenced following the plea of guilty, the successful completion of the  
22                  program shall result in the discharge of the defendant from continued supervision.

23                  (b) The defendant's full name.

24                  (c) The defendant's full name at the time the complaint was filed, if different  
25                  from the defendant's current name.

26                  (d) The defendant's sex and date of birth.

27                  (e) The crime before the court.

28                  (f) The date the complaint was filed.

29                  (g) The court in which the agreement was filed.

1           (h) A stipulation of the facts upon which the charge was based, as agreed to  
2           by the defendant and the district attorney.

3           (i) A provision that the defendant may be required to pay a supervision fee.

4           (j) A provision, in cases where applicable, that the defendant will be required  
5           to pay restitution to the victim.

6           (k) A copy of the plea agreement or a court record of the guilty verdict.

7           (3)(a) The program agreement shall also provide that a defendant shall not  
8           be excluded from participation in the program because of a defendant's inability to  
9           pay all of the related costs associated with participation in the program.

10           (b) If the defendant does not have the financial resources to pay all the  
11           related costs of the probation program, the court may do any of the following:

12           (i) Arrange for the probationer to be assigned to a treatment program funded  
13           by the state or federal government.

14           (ii) May order the defendant, with the recommendation of the program, to  
15           perform supervised work for the benefit of the community in lieu of paying all or a  
16           part of the costs relating to his supervision and participation in the program. The  
17           work must be performed for and under the supervising authority of a parish,  
18           municipality, or other political subdivision or agency of the state of Louisiana or a  
19           charitable organization that renders service to the community or its residents.

20           (iii) Waive any or all fees.

21           §5386. Violation; sanctions; dismissal; discharge of criminal charges

22           A.(1) If the defendant violates any of the conditions of probation or the  
23           agreement provided in R.S. 13:5385(E) or performs unsatisfactorily in the program,  
24           or if it appears that the defendant is not benefitting from the program, the program  
25           supervisor or probation officer may move the court for a hearing to determine if the  
26           defendant has violated a condition of the program, whether the defendant should  
27           remain in the program, or whether participation in the program or probation should  
28           be revoked and the defendant removed from the program and sentenced or ordered  
29           to serve any sentence previously imposed. If at the hearing the moving party



1 demonstrates sufficient proof that the defendant has violated probation or the  
 2 agreement, the defendant may be reprimanded, sanctioned for the violation, removed  
 3 from the program, or the agreement may be changed to meet the defendant's specific  
 4 needs.

5 (2) If the court finds that the defendant has violated a condition of probation  
 6 or a provision of the agreement and that the defendant should be removed from the  
 7 program, the court may revoke the probation and sentence the individual or, if the  
 8 individual has been sentenced and the sentence suspended, order the individual to  
 9 begin serving the sentence.

10 (3) The burden of proof at such hearings shall be the burden of proof  
 11 required to revoke probation as provided by law.

12 B.(1) Upon successful completion of the program and its terms and  
 13 conditions, the court may vacate the judgment of conviction and dismiss the criminal  
 14 proceedings against the defendant or may discharge the defendant from probation in  
 15 accordance with the provisions of Code of Criminal Procedure Article 893 or 894.

16 (2) Discharge or dismissal under this Chapter, as provided in Code of  
 17 Criminal Procedure Articles 893 and 894, shall have the same effect as an acquittal.

---

#### DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 264 Reengrossed

2018 Regular Session

Smith

**Abstract:** Creates the Community-based Alternatives for Primary Caretakers Act which authorizes district courts to establish a division of court to which offenses committed by primary caretakers of dependent children may be assigned.

Proposed law creates the Community-based Alternatives for Primary Caretakers Act which provides that each 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. In this regard, 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.