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SB-394 Criminal procedure: diversion for primary caregivers of minor children. (2019-2020)

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Senate Bill No. 394

CHAPTER 593

An act to add Chapter 2.9E (commencing with Section 1001.83) to Title 6 of Part 2 of the Penal Code, relating to criminal procedure.

[Approved by Governor October 08, 2019. Filed with Secretary of State October 08, 2019.]

LEGISLATIVE COUNSEL'S DIGEST

SB 394, Skinner. Criminal procedure: diversion for primary caregivers of minor children.

Existing law allows individuals charged with a specified crime to qualify for a pretrial diversion program based upon various circumstances and qualifications, including mental health disorders, military service, or drug addiction. Existing law generally requires, if the defendant performs satisfactorily in one of these diversion programs, that the court dismiss the defendant's criminal charges and seal the record of arrest, as specified.

This bill would authorize the presiding judge of the superior court, in consultation with the presiding juvenile court judge and criminal court judges and together with the prosecuting entity and the public defender, to create a pretrial diversion program for defendants who are primary caregivers of a child under 18 years of age, as specified, who are charged with a misdemeanor or a nonserious, nonviolent felony, and who are not being placed into diversion for a crime alleged to have been committed against a person for whom the defendant is the primary caregiver. The bill would set the period of diversion at not less than 6 months, but not more than 24 months. The bill would require the defendant to participate in classes relating to subjects that may include parenting, anger management, and financial literacy, and to receive services relating to housing, employment, and drug, alcohol, and mental health treatment, among others.

Vote: majority Appropriation: no Fiscal Committee: no Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Chapter 2.9E (commencing with Section 1001.83) is added to Title 6 of Part 2 of the Penal Code, to read:

CHAPTER 2.9E. Primary Caregiver Diversion

1001.83. (a) The presiding judge of the superior court, or a judge designated by the presiding judge, in consultation with the presiding juvenile court judge and criminal court judges, and together with the prosecuting entity and the public defender or the contracted criminal defense office that provides the services of a public defender, may agree in writing to establish and conduct a pretrial diversion program for primary caregivers, pursuant to the provisions of this chapter, wherein criminal proceedings are suspended without a plea of guilty for a period of not less than 6 months and not more than 24 months. If the defendant is also participating in juvenile court proceedings, the juvenile and criminal courts shall not duplicate efforts.

(b) The program described in this section may include, but not be limited to, all of the following components:

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

(c) The defendant may be referred to supportive services and classes in already existing diversion programs and county outpatient services. Before approving a proposed treatment program, the court shall consider the request of the defense, the request of the prosecution, the needs of the defendant and the dependent child or children, and the interests of the community. The programming may be procured using public or private funds. A referral may be made to a county agency, existing collaborative court, or assisted outpatient treatment or services, if the entity agrees to provide the required programming.

(d) On an accusatory pleading alleging the commission of a misdemeanor or felony offense, the court may, after considering the positions of the defense and prosecution, grant pretrial diversion to a defendant pursuant to this section if the defendant meets all of the following requirements:

- (1) The defendant is a custodial parent or legal guardian of a minor child under 18 years of age, presently resides in the same household as that child, presently provides care or financial support for that minor child either alone or with the assistance of other household members, and the defendant's absence in the child's life would be detrimental to the child.
- (2) The defendant has been advised of and waived the right to a speedy trial and a speedy preliminary hearing.
- (3) The defendant has been informed of and agrees to comply with the requirements of the program.
- (4) The court is satisfied that the defendant will not pose an unreasonable risk of danger to public safety, as defined in Section 1170.18, or to the minor child in their custody, if allowed to remain in the community. The court may consider the positions of the prosecuting entity and defense counsel, the defendant's violence and criminal history, the recency of the defendant's criminal history, the defendant's history of behavior towards minors, the risk of the dependent minor's exposure to or involvement in criminal activity, the current charged offense, child welfare history involving the defendant, and any other factors that the court deems appropriate.
- (5) The defendant is not being placed into a diversion program, pursuant to this section, for any serious felony as described in Section 1192.7 or 1192.8 or violent felony as described in subdivision (c) of Section 667.5.
- (6) The defendant is not being placed into a diversion program pursuant to this section for a crime alleged to have been committed against a person for whom the defendant is the primary caregiver.

(e) The provider of the pretrial diversion services in which the defendant has been placed shall provide regular reports to the court, the defense, and the prosecutor on the defendant's progress in the programming.

(f) (1) If it appears to the prosecuting attorney, the court, pretrial services, or the probation department that the defendant is performing unsatisfactorily in the assigned program, or if the defendant is, subsequent to entering the program, convicted of a felony or any offense that reflects a propensity for violence, the prosecuting attorney or the probation department may make a motion to reinstate criminal proceedings. The court may also reinstate criminal proceedings on its own motion.

- (2) After notice to the defendant, the court shall hold a hearing to determine whether to reinstate criminal proceedings.

(3) If the court finds that the defendant is not performing satisfactorily in the assigned program, or the court finds that the defendant has been convicted of a crime as indicated in paragraph (1), the court may end the diversion program and order the resumption of criminal proceedings.

(g) If the defendant has performed satisfactorily in diversion, at the end of the period of diversion, the court shall dismiss the defendant's criminal charges that were the subject of the criminal proceedings at the time of the initial diversion. A court may conclude that the defendant has performed satisfactorily if the defendant has substantially complied with the requirements of diversion, and has avoided significant new violations of law. If the court dismisses the charges, the clerk of the court shall file a record with the Department of Justice indicating the disposition of the case diverted pursuant to this section. Upon successful completion of diversion, if the court dismisses the charges, the arrest upon which the diversion was based shall be deemed never to have occurred, and the court shall order access to the record of the arrest restricted in accordance with Section 1001.9, except as specified in subdivision (i). The defendant who successfully completes diversion may indicate in response to any question concerning the defendant's prior criminal record that they were not arrested or diverted for the offense, except as specified in subdivision (i).

(h) A record pertaining to an arrest resulting in successful completion of diversion, or any record generated as a result of the defendant's application for or participation in diversion, shall not, without the defendant's consent, be used in any way that could result in the denial of any employment, benefit, license, or certificate.

(i) The defendant shall be advised that, regardless of the defendant's completion of diversion, both of the following apply:

(1) The arrest upon which the diversion was based may be disclosed by the Department of Justice to any peace officer application request and that, notwithstanding subdivision (h), this section does not relieve the defendant of the obligation to disclose the arrest in response to any direct question contained in any questionnaire or application for a position as a peace officer, as defined in Section 830.

(2) An order to seal records pertaining to an arrest made pursuant to this section has no effect on a criminal justice agency's ability to access and use those sealed records and information regarding sealed arrests, as described in Section 851.92.