

1 AN ACT relating to crimes and punishments.

2 WHEREAS, it is the intent of this Commonwealth to promote, strengthen, and
3 encourage family life for the protection and care of children and to maintain the family
4 unit with an emphasis on the parent-child relationship; and

5 WHEREAS, the Commonwealth recognizes that parental incarceration is classified
6 as an adverse childhood experience. Multiple peer-reviewed studies demonstrate that
7 adverse childhood experiences contribute to poor mental and physical health outcomes
8 for children and increase the likelihood that a child will become involved with the
9 criminal justice system; and

10 WHEREAS, to prevent unnecessary harm to children caused by the separation from
11 a parent during incarceration, alternative sentences should be considered before a parent
12 is sentenced to a term of imprisonment; and

13 WHEREAS, this Act shall be interpreted to promote the family unit with an
14 emphasis on maintaining the parent-child relationship by providing mental health
15 treatment, substance use disorder treatment, parenting classes, educational or vocational
16 training, or other services, as appropriate, while ensuring public safety, reducing
17 recidivism, and making any victim whole through restitution;

18 NOW, THEREFORE,

19 ***Be it enacted by the General Assembly of the Commonwealth of Kentucky:***

20 ➔SECTION 1. A NEW SECTION OF KRS CHAPTER 533 IS CREATED TO
21 READ AS FOLLOWS:

22 ***As used in Sections 1 to 3 of this Act:***

23 ***(1) "Dependent child" means a person under:***

24 ***(a) Eighteen (18) years of age; or***

25 ***(b) Twenty-one (21) years of age, if the person is an individual with an***
26 ***intellectual disability;***

27 ***(2) "Family impact statement" means an oral or written statement to the court prior***

1 to sentencing, which may contain but is not limited to testimony, video, or other
2 documentation from family and community members about the impact the
3 defendant's incarceration would have on the dependent child;

4 (3) "Individual with an intellectual disability" has the same meaning as in KRS
5 510.010; and

6 (4) (a) "Primary caretaker of a dependent child" means:

7 1. A parent or legal guardian who has consistently assumed
8 responsibility for the housing, health, education, and safety of a child
9 prior to the parent or legal guardian's incarceration; or

10 2. A woman who has given birth to a child or remains pregnant while
11 awaiting her sentencing hearing and who expresses a willingness to
12 assume responsibility for the housing, health, education, and safety of
13 that child.

14 (b) A parent or legal guardian who, in the best interests of the child, has
15 arranged for the temporary care of the child in the home of a relative or
16 other responsible adult shall not for that reason be excluded from the
17 definition of "primary caretaker of a dependent child."

18 ➔SECTION 2. A NEW SECTION OF KRS CHAPTER 533 IS CREATED TO
19 READ AS FOLLOWS:

20 (1) Upon conviction, the court shall consider the defendant's status as a primary
21 caretaker of a dependent child before imposing a sentence unless:

22 (a) The defendant is classified as a violent offender under KRS 439.3401;

23 (b) The victim is a child; or

24 (c) A statute prohibits probation, shock probation, or conditional discharge.

25 (2) The court shall make written findings concerning a defendant's status as a
26 primary caretaker of a dependent child. Upon a finding that a defendant is a
27 primary caretaker of a dependent child, the court shall consider an alternative

- 1 sentence.
- 2 (3) When determining whether to impose an alternative sentence under subsection
- 3 (2) of this section, the court shall consider:
- 4 (a) The criminal history of the defendant;
- 5 (b) The seriousness of the offense;
- 6 (c) Whether the offense was against persons or property, with greater weight
- 7 given to offenses against persons;
- 8 (d) The likelihood the defendant will reoffend and whether the likelihood might
- 9 be reduced by in-patient or out-patient treatment for substance use disorder;
- 10 (e) The age of the dependent child, with strong consideration given to avoid
- 11 disruption to the caregiving of an infant, pre-school, or school-age
- 12 dependent child;
- 13 (f) Whether the defendant is breastfeeding the dependent child;
- 14 (g) The role of the defendant in the day-to-day educational and medical needs
- 15 of the dependent child;
- 16 (h) Any special medical, educational, or psychological needs of the dependent
- 17 child;
- 18 (i) The role of the defendant in the financial support of the dependent child;
- 19 (j) The relationship of the defendant and the dependent child; and
- 20 (k) The best interests of the dependent child and the community.
- 21 (4) The defendant shall have the right to present an alternative sentencing plan and
- 22 a family impact statement to the court.
- 23 (5) If the court determines that a defendant is a primary caretaker of a dependent
- 24 child and imposes an alternative sentence, the court may, in addition to other
- 25 reasonable conditions, require the defendant to participate in programs or
- 26 services with a focus on parent-child unity or supporting the parent-child
- 27 relationship, including but not limited to:

- 1 (a) Substance use disorder treatment and prevention services;
2 (b) Domestic violence education and prevention services;
3 (c) Child abuse treatment and prevention services;
4 (d) Parenting classes;
5 (e) Anger management;
6 (f) Vocational and educational training;
7 (g) Targeted case management services that assist with access to transportation
8 and affordable and safe housing;
9 (h) Literacy and financial literacy training;
10 (i) Individual and family counseling and therapy; and
11 (j) Restorative practices designed to make the participant accountable to the
12 victim, when there is an identified victim and when it is safe to do so.
13 (6) Notwithstanding any law to the contrary, a court that imposes an alternative
14 sentence under this section shall not require the defendant to commit to a term of
15 confinement unless the defendant fails to adhere to or complete the conditions of
16 the alternative sentence. If the defendant violates the terms or conditions of the
17 alternative sentence, the court may modify or revoke the alternative sentence and
18 commit the defendant to an institution.
19 ➔SECTION 3. A NEW SECTION OF KRS CHAPTER 533 IS CREATED TO
20 READ AS FOLLOWS:
21 The Administrative Office of the Courts shall provide a report on or before July 1,
22 2026, and July 1 of each year thereafter to the Kentucky State Corrections Commission
23 and to the Legislative Research Commission for referral to the Interim Joint
24 Committee on Judiciary and the Interim Joint Committee on Families and Children,
25 detailing:
26 (1) The number and percentage of defendants that are found by a court to be a
27 primary caretaker of a dependent child;

- 1 (2) The age, sex, race, and ethnicity of defendants found by a court to be a primary
2 caretaker of a dependent child;
- 3 (3) The age, sex, race, and ethnicity of the dependent children of defendants found
4 by a court to be a primary caretaker of a dependent child;
- 5 (4) The number and percentage of defendants found by a court to be a primary
6 caretaker of a dependent child that are given an alternative sentence;
- 7 (5) The number and percentage of defendants found not to be a primary caretaker of
8 a dependent child that are given an alternative sentence; and
- 9 (6) The number and percentage of defendants found by a court to be a primary
10 caretaker of a dependent child, who were given an alternative sentence that was
11 subsequently revoked, and the reasons for the revocation.
- 12 ➔ Section 4. This Act may be cited as the Primary Caretaker Consideration Act.