

1 AN ACT concerning criminal law.

2 **Be it enacted by the People of the State of Illinois,**  
3 **represented in the General Assembly:**

4 Section 1. This Act may be referred to as the Children's  
5 Best Interest Act.

6 Section 3. Purpose. The purpose of this Act is to:

7 (1) prevent unnecessary harm to children caused by  
8 separation from parents during pre-trial detention or  
9 incarceration; and

10 (2) ensure the fair and compassionate treatment of children  
11 whose parents are involved in the criminal justice system by  
12 affording certain basic considerations to these children when  
13 decisions are made that affect them. Sentences that are based  
14 on evidence-based practices serve families and communities, as  
15 well as defendants. Parental incarceration is classified as an  
16 Adverse Childhood Experience. Multiple peer-reviewed studies  
17 connect Adverse Childhood Experiences, a set of specific  
18 traumatic events that occur during childhood, to poor mental  
19 and physical health outcomes such as chronic diseases, certain  
20 cancers, sexually transmitted infections, depression, and  
21 other mental health conditions. Allowing incarcerated mothers  
22 and babies to co-habitate during the baby's first year of life  
23 leads to babies having more secure attachments when compared to

1 those who have not co-habitated for a full year which improves  
2 long-term outcomes for both mothers and babies.  
3 Community-based residential parenting programs and day  
4 programs where parents can serve their sentences with their  
5 infants and children in a non-prison setting that offers  
6 housing and social services serve to enhance parent-child  
7 bonding and foster healthy child development. Family-based  
8 drug treatment programs that offer parenting skills training  
9 and home-based case management services are successful in  
10 reducing parental drug abuse and improving parenting skills.  
11 Parenting classes for fathers and mothers improve parent-child  
12 relationships and attachment, children's self-concept and  
13 behaviors, and feelings of competence among parents. Among  
14 parents who participate in residential drug treatment, those  
15 who have their children with them are far more likely to  
16 complete the program when compared to those who are separated  
17 from their children. Children of parents who participate in  
18 family-based drug treatment are less likely to develop  
19 substance abuse disorders.

20 Section 5. The Unified Code of Corrections is amended by  
21 changing Section 5-5-3.1 as follows:

22 (730 ILCS 5/5-5-3.1) (from Ch. 38, par. 1005-5-3.1)

23 Sec. 5-5-3.1. Factors in mitigation.

24 (a) The following grounds shall be accorded weight in favor

1 of withholding or minimizing a sentence of imprisonment:

2 (1) The defendant's criminal conduct neither caused  
3 nor threatened serious physical harm to another.

4 (2) The defendant did not contemplate that his criminal  
5 conduct would cause or threaten serious physical harm to  
6 another.

7 (3) The defendant acted under a strong provocation.

8 (4) There were substantial grounds tending to excuse or  
9 justify the defendant's criminal conduct, though failing  
10 to establish a defense.

11 (5) The defendant's criminal conduct was induced or  
12 facilitated by someone other than the defendant.

13 (6) The defendant has compensated or will compensate  
14 the victim of his criminal conduct for the damage or injury  
15 that he sustained.

16 (7) The defendant has no history of prior delinquency  
17 or criminal activity or has led a law-abiding life for a  
18 substantial period of time before the commission of the  
19 present crime.

20 (8) The defendant's criminal conduct was the result of  
21 circumstances unlikely to recur.

22 (9) The character and attitudes of the defendant  
23 indicate that he is unlikely to commit another crime.

24 (10) The defendant is particularly likely to comply  
25 with the terms of a period of probation.

26 (11) (Blank). ~~The imprisonment of the defendant would~~

1 ~~entail excessive hardship to his dependents.~~

2 (12) The imprisonment of the defendant would endanger  
3 his or her medical condition.

4 (13) The defendant was a person with an intellectual  
5 disability as defined in Section 5-1-13 of this Code.

6 (14) The defendant sought or obtained emergency  
7 medical assistance for an overdose and was convicted of a  
8 Class 3 felony or higher possession, manufacture, or  
9 delivery of a controlled, counterfeit, or look-alike  
10 substance or a controlled substance analog under the  
11 Illinois Controlled Substances Act or a Class 2 felony or  
12 higher possession, manufacture or delivery of  
13 methamphetamine under the Methamphetamine Control and  
14 Community Protection Act.

15 (15) At the time of the offense, the defendant is or  
16 had been the victim of domestic violence and the effects of  
17 the domestic violence tended to excuse or justify the  
18 defendant's criminal conduct. As used in this paragraph  
19 (15), "domestic violence" means abuse as defined in Section  
20 103 of the Illinois Domestic Violence Act of 1986.

21 (16) At the time of the offense, the defendant was  
22 suffering from a serious mental illness which, though  
23 insufficient to establish the defense of insanity,  
24 substantially affected his or her ability to understand the  
25 nature of his or her acts or to conform his or her conduct  
26 to the requirements of the law.

1 (17) At the time of the offense, the defendant was  
2 suffering from post-partum depression or post-partum  
3 psychosis which was either undiagnosed or untreated, or  
4 both, and this temporary mental illness tended to excuse or  
5 justify the defendant's criminal conduct and the defendant  
6 has been diagnosed as suffering from post-partum  
7 depression or post-partum psychosis, or both, by a  
8 qualified medical person and the diagnoses or testimony, or  
9 both, was not used at trial. In this paragraph (17):

10 "Post-partum depression" means a mood disorder  
11 which strikes many women during and after pregnancy  
12 which usually occurs during pregnancy and up to 12  
13 months after delivery. This depression can include  
14 anxiety disorders.

15 "Post-partum psychosis" means an extreme form of  
16 post-partum depression which can occur during  
17 pregnancy and up to 12 months after delivery. This can  
18 include losing touch with reality, distorted thinking,  
19 delusions, auditory and visual hallucinations,  
20 paranoia, hyperactivity and rapid speech, or mania.

21 (18) The defendant is the parent of a child or infant  
22 whose well-being will be negatively affected by the  
23 parent's absence. Circumstances to be considered in  
24 assessing this factor in mitigation include:

25 (A) that the parent is breastfeeding the child;

26 (B) the age of the child, with strong consideration

1 given to avoid disruption of the caregiving of an  
2 infant, pre-school or school-age child by a parent;

3 (C) the role of the parent in the day-to-day  
4 educational and medical needs of the child;

5 (D) the relationship of the parent and the child;

6 (E) any special medical, educational, or  
7 psychological needs of the child;

8 (F) the role of the parent in the financial support  
9 of the child.

10 Under this Section, the defendant shall have the right to  
11 present a Family Impact Statement at sentencing, which the  
12 court shall consider prior to imposing any sentence and may  
13 include testimony from family and community members, written  
14 statements, video, and documentation. Unless the court finds  
15 that the parent poses a significant risk to the community that  
16 outweighs the risk of harm from the parent's removal from the  
17 family, the court shall impose a sentence in accordance with  
18 subsection (b) that allows the parent to continue to care for  
19 the child or children.

20 (19) The defendant serves as the caregiver for a  
21 relative who is ill, disabled, or elderly.

22 (b) If the court, having due regard for the character of  
23 the offender, the nature and circumstances of the offense and  
24 the public interest finds that a sentence of imprisonment is  
25 the most appropriate disposition of the offender, or where  
26 other provisions of this Code mandate the imprisonment of the

1 offender, the grounds listed in paragraph (a) of this  
2 subsection shall be considered as factors in mitigation of the  
3 term imposed.

4 (Source: P.A. 99-143, eff. 7-27-15; 99-384, eff. 1-1-16;  
5 99-642, eff. 7-28-16; 99-877, eff. 8-22-16; 100-574, eff.  
6 6-1-18.)