

AN ACT concerning criminal law.

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

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

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

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

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

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

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

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

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

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

of withholding or minimizing a sentence of imprisonment:

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

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

(3) The defendant acted under a strong provocation.

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

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

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

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

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

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

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

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

~~entail excessive hardship to his dependents.~~

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

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

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

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

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

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

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

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

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

(A) that the parent is breastfeeding the child;

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

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

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

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

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

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

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

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

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

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

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