



101ST GENERAL ASSEMBLY

State of Illinois

2019 and 2020

HB2444

by Rep. Kelly M. Cassidy

SYNOPSIS AS INTRODUCED:

725 ILCS 5/110-5.3 new
730 ILCS 5/5-5-3.1

from Ch. 38, par. 1005-5-3.1

Amends the Code of Criminal Procedure of 1963. Provides that at the initial bail hearing or any subsequent hearing, the defendant shall be released on recognizance if the judge finds that the defendant's pre-trial detention will harm any infant or child in the defendant's custody at the time of arrest, unless the harm is outweighed by a clear and serious risk of harm to a victim or the community. Provides circumstances that the court shall consider in favor of release. Amends the Unified Code of Corrections. Provides that the defendant is the parent of a child or infant whose well-being will be affected by the parent's absence shall be accorded weight in favor of withholding or minimizing a sentence of imprisonment. Provides circumstances to be considered in assessing this factor in mitigation. Makes other changes.

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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 Code of Criminal Procedure of 1963 is
21 amended by adding Section 110-5.3 as follows:

22 (725 ILCS 5/110-5.3 new)

23 Sec. 110-5.3. Bail; impact of parental detention on
24 children.

1 (a) It is the policy of this State that a family unit
2 should not be unnecessarily disrupted by pre-trial detention
3 absent a finding by the court that continued pre-trial custody
4 is necessary to protect the public or the victim of the offense
5 on which the charge is based.

6 (b) At the initial bail hearing or any subsequent hearing,
7 the defendant shall be released on recognizance if the judge
8 finds that the defendant's pre-trial detention will harm any
9 infant or child in the defendant's custody at the time of
10 arrest, unless the harm is outweighed by a clear and serious
11 risk of harm to a victim or the community. The court shall
12 consider the following factors as reasons for release
13 pre-trial, based on information provided by the defendant and
14 any witnesses available:

15 (1) The defendant is the parent of a child or infant
16 whose well-being will be affected by the parent's absence.
17 Circumstances to be considered in favor of release of the
18 defendant include:

19 (A) that the defendant is a parent whose child is
20 still breastfeeding;

21 (B) the age of the child, with strong consideration
22 given to avoid disruption of the caregiving of an
23 infant, pre-school or school-age child by a parent;

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

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

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

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

5 Under this Section, the defendant shall have the right to
6 present a Family Impact Statement, which the court shall
7 consider when determining whether to release the defendant and
8 may include testimony from family and community members,
9 written statements, video, and documentation. Unless the court
10 finds that the parent poses a significant risk to the community
11 that outweighs the risk of harm from the parent's removal from
12 the family, the court shall release the defendant pre-trial to
13 allow the parent to continue to care for the child or children.

14 (2) The defendant serves or served as the caregiver for
15 a relative who is ill, disabled, or elderly.

16 Section 10. The Unified Code of Corrections is amended by
17 changing Section 5-5-3.1 as follows:

18 (730 ILCS 5/5-5-3.1) (from Ch. 38, par. 1005-5-3.1)

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

20 (a) The following grounds shall be accorded weight in favor
21 of withholding or minimizing a sentence of imprisonment:

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

24 (2) The defendant did not contemplate that his criminal

1 conduct would cause or threaten serious physical harm to
2 another.

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

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

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

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

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

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

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

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

22 (11) The imprisonment of the defendant would entail
23 excessive hardship to his dependents.

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

26 (13) The defendant was a person with an intellectual

1 disability as defined in Section 5-1-13 of this Code.

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

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

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

23 (17) At the time of the offense, the defendant was
24 suffering from post-partum depression or post-partum
25 psychosis which was either undiagnosed or untreated, or
26 both, and this temporary mental illness tended to excuse or

1 justify the defendant's criminal conduct and the defendant
2 has been diagnosed as suffering from post-partum
3 depression or post-partum psychosis, or both, by a
4 qualified medical person and the diagnoses or testimony, or
5 both, was not used at trial. In this paragraph (17):

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

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

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

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

22 (B) the age of the child, with strong consideration
23 given to avoid disruption of the caregiving of an
24 infant, pre-school or school-age child by a parent;

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

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

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

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

6 Under this Section, the defendant shall have the right to
7 present a Family Impact Statement at sentencing, which the
8 court shall consider prior to imposing any sentence and may
9 include testimony from family and community members, written
10 statements, video, and documentation. Unless the court finds
11 that the parent poses a significant risk to the community that
12 outweighs the risk of harm from the parent's removal from the
13 family, the court shall impose a sentence that allows the
14 parent to continue to care for the child or children.

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

17 (b) If the court, having due regard for the character of
18 the offender, the nature and circumstances of the offense and
19 the public interest finds that a sentence of imprisonment is
20 the most appropriate disposition of the offender, or where
21 other provisions of this Code mandate the imprisonment of the
22 offender, the grounds listed in paragraph (a) of this
23 subsection shall be considered as factors in mitigation of the
24 term imposed.

25 (Source: P.A. 99-143, eff. 7-27-15; 99-384, eff. 1-1-16;
26 99-642, eff. 7-28-16; 99-877, eff. 8-22-16; 100-574, eff.

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