



Rep. Kelly M. Cassidy

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LRB101 10397 SLF 57650 a

1 AMENDMENT TO HOUSE BILL 2444

2 AMENDMENT NO. _____. Amend House Bill 2444 by replacing
3 everything after the enacting clause with the following:

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

1 connect Adverse Childhood Experiences, a set of specific
2 traumatic events that occur during childhood, to poor mental
3 and physical health outcomes such as chronic diseases, certain
4 cancers, sexually transmitted infections, depression, and
5 other mental health conditions. Allowing incarcerated mothers
6 and babies to co-habitate during the baby's first year of life
7 leads to babies having more secure attachments when compared to
8 those who have not co-habitated for a full year which improves
9 long-term outcomes for both mothers and babies.
10 Community-based residential parenting programs and day
11 programs where parents can serve their sentences with their
12 infants and children in a non-prison setting that offers
13 housing and social services serve to enhance parent-child
14 bonding and foster healthy child development. Family-based
15 drug treatment programs that offer parenting skills training
16 and home-based case management services are successful in
17 reducing parental drug abuse and improving parenting skills.
18 Parenting classes for fathers and mothers improve parent-child
19 relationships and attachment, children's self-concept and
20 behaviors, and feelings of competence among parents. Among
21 parents who participate in residential drug treatment, those
22 who have their children with them are far more likely to
23 complete the program when compared to those who are separated
24 from their children. Children of parents who participate in
25 family-based drug treatment are less likely to develop
26 substance abuse disorders.

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

3 (730 ILCS 5/5-5-3.1) (from Ch. 38, par. 1005-5-3.1)

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

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

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

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

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

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

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

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

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

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

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

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

7 (11) (Blank) ~~The imprisonment of the defendant would~~
8 ~~entail excessive hardship to his dependents.~~

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

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

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

22 (15) At the time of the offense, the defendant is or
23 had been the victim of domestic violence and the effects of
24 the domestic violence tended to excuse or justify the
25 defendant's criminal conduct. As used in this paragraph
26 (15), "domestic violence" means abuse as defined in Section

1 103 of the Illinois Domestic Violence Act of 1986.

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

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

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

22 "Post-partum psychosis" means an extreme form of
23 post-partum depression which can occur during
24 pregnancy and up to 12 months after delivery. This can
25 include losing touch with reality, distorted thinking,
26 delusions, auditory and visual hallucinations,

1 paranoia, hyperactivity and rapid speech, or mania.

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

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

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

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

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

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

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

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

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

3 (b) If the court, having due regard for the character of
4 the offender, the nature and circumstances of the offense and
5 the public interest finds that a sentence of imprisonment is
6 the most appropriate disposition of the offender, or where
7 other provisions of this Code mandate the imprisonment of the
8 offender, the grounds listed in paragraph (a) of this
9 subsection shall be considered as factors in mitigation of the
10 term imposed.

11 (Source: P.A. 99-143, eff. 7-27-15; 99-384, eff. 1-1-16;
12 99-642, eff. 7-28-16; 99-877, eff. 8-22-16; 100-574, eff.
13 6-1-18.)".