AN ACT relating to crimes and punishments.

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

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

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

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

NOW, THEREFORE,

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

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

As used in Sections 1 and 2 of this Act:

(1) (a) "Caretaker of a dependent child" means:

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

2. A woman who has given birth to a child or remains pregnant while

awaiting her sentencing hearing.

(b) A parent or legal guardian who has arranged for the temporary care of the child in the home of a relative or other responsible adult shall not for that reason be excluded from the definition of "caretaker of a dependent child";

(2) "Dependent child" means a person:

(a) Under eighteen (18) years of age; or

(b) Between eighteen (18) and twenty-five (25) years of age for whom a guardian, limited guardian, conservator, or limited conservator has been appointed under KRS 387.600; and

(3) "Family impact statement" means a written statement to the court prior to sentencing, which may contain written documentation from family and community members about the impact the defendant's incarceration would have on the dependent child.

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

(1) Upon a motion by the defendant, the court shall consider the defendant's status as a caretaker of a dependent child before imposing a sentence following a conviction for a felony offense unless:

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

(b) The defendant has been convicted of an offense that:

1. Involved the use, attempted use, or threat of physical force upon; or

2. Wantonly endangered;

a person and the relationship between the defendant and the person meets the definition of a family member or member of an unmarried couple as defined in KRS 403.720, or is or has been in a dating relationship as defined KRS 456.010;

(c) The victim is a child; or

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

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

(b) The determination of the court concerning a defendant's status as a caretaker of a dependent child under paragraph (a) of this subsection shall apply only to the pending matter and in any subsequent proceeding shall not be:

1. Admissible as evidence; or

2. Determinative of caretaker status.

(3) When determining whether to impose an alternative sentence under subsection (2) of this section, the court shall consider:

(a) The criminal history of the defendant;

(b) The seriousness of the offense;

(c) Whether the offense was against persons or property, with greater weight given to offenses against persons;

(d) Whether the defendant has an administrative finding of child abuse or neglect as defined in KRS 160.380;

(e) Whether the defendant is a registered sex offender under KRS 17.510;

(f) The likelihood the defendant will reoffend and whether the likelihood might be reduced by inpatient or outpatient treatment for substance use disorder;

(g) The age of the dependent child, with strong consideration given to avoid disruption to the caregiving of an infant, pre-school, or school-age dependent child;

(h) Whether the defendant is breastfeeding the dependent child;

(i) The role of the defendant in the day-to-day educational and medical needs

of the dependent child;

(j) Any special medical, educational, or psychological needs of the dependent child;

(k) The role of the defendant in the financial support of the dependent child; and

(l) The relationship of the defendant and the dependent child;

(4) The defendant shall have the right to present an alternative sentencing plan and a family impact statement to the court.

(5) If the court determines that a defendant is a caretaker of a dependent child and imposes an alternative sentence, the court may, in addition to other reasonable conditions, require the defendant to participate in programs or services with a focus on parent-child unity or supporting the parent-child relationship, including but not limited to:

(a) Substance use disorder treatment and prevention services;

(b) Domestic violence education and prevention services;

(c) Child abuse treatment and prevention services;

(d) Parenting classes;

(e) Anger management;

(f) Vocational and educational training;

(g) Targeted case management services that assist with access to transportation and affordable and safe housing;

(h) Literacy and financial literacy training;

(i) Individual counseling and therapy:

(j) Family counseling when there is no known history of family or intimate partner violence;

(k) Referral to local domestic violence resources for voluntary participation; and

(l) Restorative practices designed to make the participant accountable to the victim, when there is an identified victim and when it is safe to do so.

(6) Notwithstanding any law to the contrary, a court that imposes an alternative sentence under this section shall not require the defendant to commit to a term of confinement unless the defendant fails to adhere to or complete the conditions of the alternative sentence. If the defendant violates the terms or conditions of the alternative sentence, the court may modify or revoke the alternative sentence and commit the defendant to an institution.

➔Section 3. KRS 610.340 is amended to read as follows:

(1) (a) Unless a specific provision of KRS Chapters 600 to 645 specifies otherwise, all juvenile court records of any nature generated pursuant to KRS Chapters 600 to 645 by any agency or instrumentality, public or private, shall be deemed to be confidential and shall not be disclosed except to the child, parent, victims, or other persons authorized to attend a juvenile court hearing pursuant to KRS 610.070 unless ordered by the court for good cause.

(b) Juvenile court records which contain information pertaining to arrests, petitions, adjudications, and dispositions of a child may be disclosed to victims or other persons authorized to attend a juvenile court hearing pursuant to KRS 610.070.

(c) Release of the child's treatment, medical, mental, or psychological records is prohibited unless presented as evidence in Circuit Court. Any records resulting from the child's prior abuse and neglect under Title IV-E or Title IV-B of the Federal Social Security Act shall not be disclosed to victims or other persons authorized to attend a juvenile court hearing pursuant to KRS 610.070.

(d) Victim access under this subsection to juvenile court records shall include access to records of adjudications that occurred prior to July 15, 1998.

(2) The provisions of this section shall not apply to public officers or employees engaged in the investigation of and in the prosecution of cases under KRS Chapters 600 to 645 or other portions of the Kentucky Revised Statutes. Any record obtained pursuant to this subsection shall be used for official use only, shall not be disclosed publicly, and shall be exempt from disclosure under the Open Records Act, KRS 61.870 to 61.884.

(3) The provisions of this section shall not apply to any peace officer, as defined in KRS 446.010, who is engaged in the investigation or prosecution of cases under KRS Chapters 600 to 645 or other portions of the Kentucky Revised Statutes. Any record obtained pursuant to this subsection shall be used for official use only, shall not be disclosed publicly, and shall be exempt from disclosure under the Open Records Act, KRS 61.870 to 61.884.

(4) The provisions of this section shall not apply to employees of the Department of Juvenile Justice or cabinet or its designees responsible for any services under KRS Chapters 600 to 645 or to attorneys for parties involved in actions relating to KRS Chapters 600 to 645 or other prosecutions authorized by the Kentucky Revised Statutes.

(5) The provisions of this section shall not apply to records disclosed pursuant to KRS 610.320 or to public or private elementary and secondary school administrative, transportation, and counseling personnel, to any teacher or school employee with whom the student may come in contact, or to persons entitled to have juvenile records under KRS 610.345, if the possession and use of the records is in compliance with the provisions of KRS 610.345 and this section.

(6) The provisions of this section shall not apply to employees of local law enforcement agencies, the Department of Kentucky State Police, or the Federal Bureau of Investigation engaged in conducting background checks for the sole purpose of identifying and providing potentially disqualifying juvenile public

offense records to the National Instant Criminal Background Check System pursuant to Div. A, Title II, Sec. 12001(a) of the Bipartisan Safer Communities Act, Pub. L. No. 117-159. Notwithstanding KRS 635.040, an adjudication for a public offense is a conviction of a crime for purposes of 18 U.S.C. sec. 922(d)(1), (3), or (9). Any public offense record obtained pursuant to this subsection shall be used for official use only, not be disclosed publicly, and be exempt from disclosure under the Open Records Act, KRS 61.870 to 61.884.

(7) (a) The provisions of this section shall not apply to records or proceedings in any case in which a child has made an admission to or been adjudicated for a violent felony offense as defined in KRS 532.200 until the expiration of a three (3) year period from the date of admission or adjudication.

(b) If the child has not received any additional public offense convictions during the three (3) year period from the date of admission or adjudication, all records in the case shall be automatically sealed and shall not be disclosed consistent with the provisions of this section.

(c) As used in this subsection, "admission" means a formal admission in a case, on the record, upon the waiving of an adjudication hearing.

(8) ***The provisions of this section shall not apply to courts determining whether to impose an alternative sentence under Section 2 of this Act. Any record obtained pursuant to this subsection shall be used for official use only, shall not be disclosed publicly, and shall be exempt from disclosure under the Open Records Act, KRS 61.870 to 61.884.***

(9) No person, including school personnel, shall disclose any confidential record or any information contained therein except as permitted by this section or other specific section of KRS Chapters 600 to 645, or except as permitted by specific order of the court.

(10) ~~[(9)]~~ No person, including school personnel, authorized to obtain records pursuant

to KRS Chapters 600 to 645 shall obtain or attempt to obtain confidential records to which he or she is not entitled or for purposes for which he or she is not permitted to obtain them pursuant to KRS Chapters 600 to 645.

(11) ~~[(10)]~~ No person, including school personnel, not authorized to obtain records pursuant to KRS Chapters 600 to 645 shall obtain or attempt to obtain records which are made confidential pursuant to KRS Chapters 600 to 645 except upon proper motion to a court of competent jurisdiction.

(12) ~~[(11)]~~ No person shall destroy or attempt to destroy any record required to be kept pursuant to KRS Chapters 600 to 645 unless the destruction is permitted pursuant to KRS Chapters 600 to 645 and is authorized by the court upon proper motion and good cause for the destruction being shown.

(13) ~~[(12)]~~ As used in this section the term "KRS Chapters 600 to 645" includes any administrative regulations which are lawfully promulgated pursuant to KRS Chapters 600 to 645.

(14) ~~[(13)]~~ Nothing in this section shall be construed to prohibit a crime victim from speaking publicly after the adjudication about his or her case on matters within his or her knowledge or on matters disclosed to the victim during any aspect of a juvenile court proceeding.

➔Section 4. This Act may be cited as the Family Preservation and Accountability Act.