

1 AN ACT relating to alternative sentences.

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

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

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

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

18 NOW, THEREFORE,

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

20 ➔Section 1. KRS 533.010 is amended to read as follows:

21 (1) Any person who has been convicted of a crime and who has not been sentenced to  
22 death may be sentenced to probation, probation with an alternative sentencing plan,  
23 or conditional discharge as provided in this chapter.

24 (2) Before imposition of a sentence of imprisonment, the court shall consider  
25 probation, probation with an alternative sentencing plan, or conditional discharge.

26 Unless the defendant is a violent felon as defined in KRS 439.3401 or a statute  
27 prohibits probation, shock probation, or conditional discharge, after due

1 consideration of the defendant's risk and needs assessment, nature and  
2 circumstances of the crime, and the history, character, and condition of the  
3 defendant, including whether the defendant is a caretaker, probation or  
4 conditional discharge shall be granted, unless the court is of the opinion that  
5 imprisonment is necessary for protection of the public because:

- 6 (a) There is substantial risk that during a period of probation or conditional  
7 discharge the defendant will commit another crime;
- 8 (b) The defendant is in need of correctional treatment that can be provided most  
9 effectively by ~~his~~ commitment to a correctional institution; or
- 10 (c) A disposition under this chapter will unduly depreciate the seriousness of the  
11 defendant's crime.

12 (3) In the event the court determines that probation is not appropriate after due  
13 consideration of the defendant's risk and needs assessment, nature and  
14 circumstances of the crime, and the history, character, and condition of the  
15 defendant, including whether the defendant is a caretaker, probation with an  
16 alternative sentencing plan shall be granted unless the court is of the opinion that  
17 imprisonment is necessary for the protection of the public because:

- 18 (a) There is a likelihood that during a period of probation with an alternative  
19 sentencing plan or conditional discharge the defendant will commit a Class D  
20 or Class C felony or a substantial risk that the defendant will commit a Class  
21 B or Class A felony;
- 22 (b) The defendant is in need of correctional treatment that can be provided most  
23 effectively by commitment to a correctional institution; or
- 24 (c) A disposition under this chapter will unduly depreciate the seriousness of the  
25 defendant's crime.

26 (4) The court shall not determine that there is a likelihood that the defendant will  
27 commit a Class C or Class D felony based upon the defendant's risk and needs

1 assessment and the fact that:

2 (a) The defendant has never been convicted of, pled guilty to, or entered an  
3 Alford plea to a felony offense;

4 (b) If convicted of, having pled guilty to, or ***having*** entered an Alford plea to a  
5 felony offense, the defendant successfully completed probation more than ten  
6 (10) years immediately prior to the date of the commission of the felony for  
7 which the defendant is now being sentenced and has had no intervening  
8 convictions, pleas of guilty, or Alford pleas to any criminal offense during  
9 that period; or

10 (c) The defendant has been released from incarceration for the commission of a  
11 felony offense more than ten (10) years immediately prior to the date of the  
12 commission of the felony for which the defendant is now being sentenced and  
13 has had no intervening convictions, pleas of guilty, or Alford pleas to any  
14 criminal offense during that period.

15 (5) In making a determination under subsection (4) of this section, the court may  
16 determine that the greater weight of the evidence indicates that there is a likelihood  
17 that the defendant will commit a Class C or Class D felony.

18 (6) ***In determining whether a defendant is a caretaker as described in subsections (2)***  
19 ***and (3) of this section, the court shall consider evidence presented to the court***  
20 ***that the defendant:***

21 ***(a) Has consistently assumed responsibility for the housing, health, education,***  
22 ***safety, or support of a dependent child, family member, or any other person***  
23 ***identified by the court as being reliant on the defendant for support; or***

24 ***(b) Is a woman who has given birth to a child while awaiting her sentencing***  
25 ***hearing, or who remains pregnant while awaiting her sentencing hearing.***

26 ***(7)*** Upon initial sentencing of a defendant or upon modification or revocation of  
27 probation, when the court deems it in the best interest of the public and the

1 defendant, the court may order probation with the defendant to serve one (1) of the  
2 following alternative sentences:

- 3 (a) To a halfway house for no more than twelve (12) months;
- 4 (b) To home incarceration with or without work release for no more than twelve  
5 (12) months;
- 6 (c) To jail for a period not to exceed twelve (12) months with or without work  
7 release, community service and other programs as required by the court;
- 8 (d) To a residential treatment program for the abuse of alcohol or controlled  
9 substances;
- 10 (e) To a reentry center for no more than twelve (12) months; or
- 11 (f) To any other specified counseling program, rehabilitation or treatment  
12 program, or facility, including but not limited to one (1) of more of the

13 following:

14 1. Substance use disorder treatment and prevention services;

15 2. Domestic violence education and prevention services;

16 3. Child abuse treatment and prevention services;

17 4. Parenting classes;

18 5. Anger management;

19 6. Vocational and educational training;

20 7. Targeted case management services that assist with access to  
21 transportation and affordable and safe housing;

22 8. Literacy and financial literacy training;

23 9. Individual counseling and therapy;

24 10. Family counseling when there is no known history of family or  
25 intimate partner violence;

26 11. Referral to local domestic violence resources for voluntary  
27 participation; and

1                    **12. Restorative practices designed to make the participant accountable to**  
2                    **the victim, when there is an identified victim and when it is safe to do**  
3                    **so.**

4     ~~(8)~~~~(7)~~     If during the term of the alternative sentence the defendant fails to adhere to  
5                    and complete the conditions of the alternative sentence, the court may modify the  
6                    terms of the alternative sentence or may modify or revoke probation and alternative  
7                    sentence and commit the defendant to an institution.

8     ~~(9)~~~~(8)~~     In addition to those conditions that the court may impose, the conditions of  
9                    alternative sentence shall include the following and, if the court determines that the  
10                    defendant cannot comply with them, then they shall not be made available:

11                    (a) A defendant sentenced to a halfway house shall:

- 12                    1. Be working or pursuing his or her education or be enrolled in a full-time
- 13                    treatment program;
- 14                    2. Pay restitution during the term of probation; and
- 15                    3. Have no contact with the victim of the defendant's crime;

16                    (b) A defendant sentenced to home incarceration shall:

- 17                    1. Be employed by another person or self-employed at the time of
- 18                    sentencing to home incarceration and continue the employment
- 19                    throughout the period of home incarceration, unless the court determines
- 20                    that there is a compelling reason to allow home incarceration while the
- 21                    defendant is unemployed;
- 22                    2. Pay restitution during the term of home incarceration;
- 23                    3. Enter a treatment program, if appropriate;
- 24                    4. Pay all or some portion of the cost of home incarceration as determined
- 25                    by the court;
- 26                    5. Comply with other conditions as specified; and
- 27                    6. Have no contact with the victim of the defendant's crime;

- 1 (c) A defendant sentenced to jail with community service shall:
- 2 1. Pay restitution during all or some part of the defendant's term of
- 3 probation; and
- 4 2. Have no contact with the victim of the defendant's crime;
- 5 (d) A defendant sentenced to a residential treatment program for drug and alcohol
- 6 abuse shall:
- 7 1. Undergo mandatory drug screening during term of probation;
- 8 2. Be subject to active, supervised probation for a term of five (5) years;
- 9 3. Undergo aftercare as required by the treatment program;
- 10 4. Pay restitution during the term of probation; and
- 11 5. Have no contact with the victim of the defendant's crime; or
- 12 (e) A defendant sentenced to a reentry center shall:
- 13 1. Be employed in the community or working in a vocational program at
- 14 the reentry center;
- 15 2. Be enrolled in a treatment program;
- 16 3. Pay restitution, fees, and fines during the term of probation; and
- 17 4. Comply with other conditions as specified.

18 ~~(10)~~<sup>(9)</sup> When the court deems it in the best interest of the defendant and the public,

19 the court may order the defendant~~[person]~~ to work at community service related

20 projects under the terms and conditions specified in KRS 533.070. Work at

21 community service related projects shall be considered as a form of conditional

22 discharge.

23 ~~(11)~~<sup>(10)</sup> Probation with alternative sentence shall not be available as set out in KRS

24 532.045 and 533.060, except as provided in KRS 533.030(6).

25 ~~(12)~~<sup>(11)</sup> The court may utilize a community corrections program authorized or funded

26 under KRS Chapter 196 to provide services to any person released under this

27 section.

1 ~~(13)~~[(12)] When the court deems it in the best interest of the defendant and the public,  
2 the court may order the defendant to placement for probation monitoring by a  
3 private agency. The private agency shall report to the court on the defendant's  
4 compliance with his or her terms of probation or conditional discharge. The  
5 defendant shall be responsible for any reasonable charges which the private agency  
6 charges.

7 ~~(14)~~[(13)] The jailer in each county incarcerating Class C or D felons may deny work  
8 release privileges to any defendant for violating standards of discipline or other jail  
9 regulations. The jailer shall report the action taken and the details of the violation  
10 on which the action was based to the court of jurisdiction within five (5) days of the  
11 violation.

12 ~~(15)~~[(14)] The Department of Corrections shall, by administrative regulation, develop  
13 written criteria for work release privileges granted under this section.

14 ~~(16)~~[(15)] Reimbursement of incarceration costs shall be paid directly to the jailer in the  
15 amount specified by written order of the court. Incarceration costs owed to the  
16 Department of Corrections shall be paid through the circuit clerk.

17 ~~(17)~~[(16)] The court shall enter into the record written findings of fact and conclusions  
18 of law when considering implementation of any sentence under this section.

19 ➔Section 2. This Act may be cited as the Family Preservation and Accountability  
20 Act.