

# Parenting Sentencing Alternative: 5 Key Components for Future Legislation

*The following is a brief summary of the five key components we believe are essential for an effective and expansive Parenting Sentencing Alternative.*

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## 1. A Broad Definition of Caregiver

**To reflect the reality of family composition in the United States, a broad definition of caregiver is essential.** When eligibility for an alternative program is narrowly restricted to a single “primary care-giver,”<sup>i</sup> this becomes a bar to the inclusion of many people upon whom a child depends for the essential love, nurturing and support that every child needs and deserves. For example, an individual should be eligible for the parenting sentencing alternative if the person is:

- (i) A parent with physical custody of a minor child;
  - (ii) An expectant or pregnant parent;
  - (iii) A legal guardian of a minor child; or
  - (iv) A biological parent, adoptive parent, custodian, or stepparent with a proven, established, ongoing, and substantial relationship with a minor child that existed at the time of the offense.
- (iv) a person who serves as the caregiver for a relative who is ill, disabled, or elderly.<sup>ii</sup>

## 2. Provides Judicial Discretion

**Courts should be required to a family impact statement in order to assess family needs.** Family Impact Statements are an essential element for providing judges with accurate, objective assessments of defendants’ family responsibilities, assisting them in weighing the impact of either imprisonment or community supervision on the children involved. Detailed information about the role and responsibility of the individual as parent bears regarding their family and dependent children should be included within every presentence investigation

report.<sup>iii</sup>

Further, the bill should give the court full discretion. For example, once a sentencing court determines that the individual is eligible for a sentencing alternative and that the sentencing alternative is appropriate and should be imposed, the bill should have mandatory language, such as a “court shall” have the authority to waive the imposition of a sentence within the standard sentence range and impose a sentence consisting of twelve months of community custody.<sup>iv</sup>

### 3. Targets the “prison bound”

Eligibility for the alternative includes individuals whose presumptive sentence is greater than one year in a state corrections facility and the duration of the alternative is a twelve-month term.<sup>v</sup>

### 4. Provides Community Supervision and Program Services

Community Supervision should promote protective factors for strengthening families that includes parental resilience, social connections, concrete support in times of need, knowledge of parenting and child development, and the social and emotional competence of children. Need should be ascertained through the use of a family impact statement. The program should include, but not be limited to, all of the following components: (1) Parenting classes; (2) Family and individual counseling; (3) Mental health screening, education, and treatment.; (4) Family case management services; (5) Drug and alcohol treatment; (6) Domestic violence education and prevention; (7) Physical and sexual abuse counseling; (8) Anger management; (9) Vocational and educational services; (10) Job training and placement; (11) Affordable and safe housing assistance; (12) Financial literacy courses.<sup>vi</sup>

### 5. Requires Data Tracking

The department implementing the alternative should submit a report concerning the Family Sentencing Alternative Program, that must include program outcomes and data related to the efficacy of the program, and which may include recommendations for legislation no later than January 1 of each year. Specific types of data that should be tracked include demographics, return to prison rates, foster care avoidance, etc. that should be collected in order to measure whether the program is meeting the needs of the community.<sup>vii</sup>

<sup>i</sup> Until very recently our public policies have defined “family” by the nuclear model of centuries past. But things are changing to meet new realities. In his Executive Order 13706 authorizing paid sick leave for employees of federal contractors, former President Obama defined a family member for whom a worker could take such leave to provide needed care as those bearing a relationship through either “Blood or affinity.” That language stated: *Section 2 (c) Paid sick leave earned under this order may be used by an employee for an absence resulting from: (i) physical or mental illness, injury, or medical condition; (ii) obtaining diagnosis, care, or preventive care from a health care provider; (iii) caring for a child, a parent, a spouse, a domestic partner, or any other individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship [emphasis added] who has any of the conditions or needs for diagnosis, care, or preventive care described in paragraphs (i) or (ii) of this subsection or is otherwise in need of care.* 29 CFR § 13.5 - Paid sick leave for Federal contractors and subcontractors.

<sup>ii</sup> This language is based on recently passed Washington State Law: Engrossed Second Substitute Senate Bill 5291, Chapter 137, Laws of 2020, 66<sup>th</sup> Legislature, signed by the governor on March 25, 2020 (Effective June 11, 2020). See <http://lawfilesexternal.wa.gov/biennium/2019-20/Pdf/Bills/Session%20Laws/Senate/5291-S2.SL.pdf?q=20200413102521> <sup>iii</sup> ILL 730 ILCS Sec. 5-5-3.1 Factors in mitigation. (from Ch. 38, par. 1005-5-3.1), available at: <http://www.ilga.gov/legislation/ilcs/fulltext.asp?DocName=073000050K5-5-3.1>

<sup>iv</sup> This language is from existing Washington Law: RCW 9.94A.655(4).

<sup>v</sup> This language is from existing Oregon Law: ORS 421.170(2)(a).

<sup>vi</sup> This language is from existing California Law: Cal. Penal Code § 1001.83 (b).

<sup>vii</sup> This suggested component is a more detailed version of current Oregon Law: ORS 421.170(6).