

SENATE No. 770

The Commonwealth of Massachusetts

PRESENTED BY:

William N. Brownsberger

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act providing community-based sentencing alternatives for primary caretakers of dependent children who have been convicted of non-violent crimes.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	
<i>William N. Brownsberger</i>	<i>Second Suffolk and Middlesex</i>	
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>	<i>1/27/2017</i>
<i>Solomon Goldstein-Rose</i>	<i>3rd Hampshire</i>	<i>2/1/2017</i>
<i>Sonia Chang-Diaz</i>	<i>Second Suffolk</i>	<i>2/2/2017</i>
<i>Patricia D. Jehlen</i>	<i>Second Middlesex</i>	<i>2/2/2017</i>
<i>Mary S. Keefe</i>	<i>15th Worcester</i>	<i>2/2/2017</i>
<i>Denise Provost</i>	<i>27th Middlesex</i>	<i>2/2/2017</i>
<i>Adam G. Hinds</i>	<i>Berkshire, Hampshire, Franklin and Hampden</i>	<i>2/2/2017</i>
<i>Kenneth J. Donnelly</i>	<i>Fourth Middlesex</i>	<i>2/2/2017</i>
<i>Paul R. Heroux</i>	<i>2nd Bristol</i>	<i>2/2/2017</i>
<i>Michael D. Brady</i>	<i>Second Plymouth and Bristol</i>	<i>2/3/2017</i>
<i>Joan B. Lovely</i>	<i>Second Essex</i>	<i>2/3/2017</i>
<i>Jay R. Kaufman</i>	<i>15th Middlesex</i>	<i>2/3/2017</i>
<i>Alice Hanlon Peisch</i>	<i>14th Norfolk</i>	<i>2/3/2017</i>

SENATE No. 770

By Mr. Brownsberger, a petition (accompanied by bill, Senate, No. 770) of William N. Brownsberger, James B. Eldridge, Solomon Goldstein-Rose, Sonia Chang-Diaz and other members of the General Court for legislation to provide community-based sentencing alternatives for primary caretakers of dependent children who have been convicted of non-violent crimes. The Judiciary.

The Commonwealth of Massachusetts

**In the One Hundred and Ninetieth General Court
(2017-2018)**

An Act providing community-based sentencing alternatives for primary caretakers of dependent children who have been convicted of non-violent crimes.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 Chapter 279 of the General Laws is hereby amended by inserting after section 6A, as
2 appearing in the 2014 Official Edition, the following new section:-

3 Section 6B.

4 (a) As used in this section the following terms shall, unless the context clearly requires
5 otherwise, have the following meanings:-

6 "Dependent child", a person who is less than 18 years of age.

7 "Non-violent offense", any conviction for a crime punishable by imprisonment, except a
8 crime punishable by imprisonment that: (i) has as an element the use, attempted use or threatened
9 use of physical force or a deadly weapon against the person of another; (ii) is burglary, extortion,

10 arson or kidnapping; (iii) involves the use of explosives; or (iv) otherwise involves conduct that
11 presents a serious risk of physical injury to another.

12 “Primary caretaker of a dependent child”, a person who has assumed responsibility for a
13 dependent child’s housing, health, financial support, education, family ties, or safety; or a
14 woman who has given birth to a child after or while awaiting her sentencing hearing and who
15 expresses a willingness to assume responsibility for the housing, health, and safety of that child.
16 A parent who, in the best interest of the child, has arranged for the temporary care of the child in
17 the home of a relative or other responsible adult shall not for that reason be excluded from the
18 definition of "primary caretaker of a dependent child".

19 (b) Notwithstanding any general or special law to the contrary, a defendant, upon
20 conviction, shall have the right to have the court impose a sentence only after consideration of
21 the defendant’s primary caretaker status. A defendant shall request such consideration, by
22 motion supported by affidavit, within 10 days of the entry of judgment. Upon receipt of such a
23 motion supported by affidavit, the court shall make written findings concerning the defendant’s
24 primary caregiver status and the availability of appropriate individually assessed non-
25 incarcerative sentence alternatives. The court shall not impose a sentence of incarceration
26 without first making such written findings. Upon a determination that the defendant is a primary
27 caretaker and the identification of an available, appropriate non-custodial sentence, the court may
28 impose such a non-custodial sentence with conditions, set forth in writing, which emphasize
29 community rehabilitation and parent-child unity and support, including but not limited to:

30 (i) Drug and alcohol treatment;

31 (ii) Domestic violence education and prevention;

- 32 (iii) Physical and sexual abuse counseling;
- 33 (iv) Anger management;
- 34 (v) Vocational and educational services;
- 35 (vi) Job training and placement;
- 36 (vii) Affordable and safe housing assistance;
- 37 (viii) Financial literacy;
- 38 (ix) Parenting classes;
- 39 (x) Family and individual counseling; and
- 40 (xi) Family case management services.

41 (c) (1) The court may require any person serving an individually-assessed sentence
42 pursuant this section to appear in court any time during his or her sentence to evaluate the
43 person's progress in treatment or rehabilitation, or to determine if the person has violated any
44 condition of the sentence.

45 (2) Upon an appearance in court made pursuant to paragraph (1), the court may: (i)
46 modify the conditions of a sentence imposed pursuant to this section; (ii) decrease the duration of
47 a sentence imposed pursuant to this section based on the person's successful advancement; or
48 (iii) sanction the person for each detected violation of any condition of the sentence imposed
49 pursuant to this section, including but not limited to, requiring the person to serve a term of
50 imprisonment within the range of the offense for which the person was originally convicted,

- 51 notwithstanding the determination made pursuant to subsection (b) that the person is a primary
52 caretaker of a dependent child.