SENATE DOCKET, NO. 1960 FILED ON: 1/20/2023

SENATE . . . . . No. 1049

The Commonwealth of Massachusetts

PRESENTED BY:

Liz Miranda

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 relative to diversion for primary caretakers.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	
Liz Miranda	*Second Suffolk*	
Jason M. Lewis	*Fifth Middlesex*	*2/21/2023*
Patricia D. Jehlen	*Second Middlesex*	*3/2/2023*
Lindsay N. Sabadosa	*1st Hampshire*	*3/6/2023*
Mike Connolly	*26th Middlesex*	*3/15/2023*

SENATE DOCKET, NO. 1960 FILED ON: 1/20/2023

SENATE . . . . . No. 1049

By Ms. Miranda, a petition (accompanied by bill, Senate, No. 1049) of Liz Miranda, Jason M. Lewis, Patricia D. Jehlen and Lindsay N. Sabadosa for legislation relative to diversion for primary caretakers. The Judiciary.

The Commonwealth of Massachusetts

In the One Hundred and Ninety-Third General Court
(2023-2024)

An Act relative to diversion for primary caretakers.

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

SECTION 1. Section 6B of Chapter 279 of the general laws, as so appearing, is hereby amended by striking subsection a and inserting in place thereof

(a) As used in this section the following words shall, unless the context clearly requires otherwise, have the following meanings:—

"Dependent child," a person under 18 years of age

"Primary caretaker of a dependent child," (1) a parent with whom a child has a primary residence, and/or (2) a parent who presently provides care or financial support for that minor child either alone or with the assistance of the child's household members, where the caretaker's absence in the child's life would be detrimental to the child

"Primary caretaker of an aging or sick immediate family member," a person who shares a residence and provides care or financial support to an immediate family who is elderly or who has a debilitating illness or condition

SECTION 2. Section 6B of Chapter 279 of the general laws, as so appearing, is hereby amended by renumbering subsection b to become subsection c;

SECTION 3. Section 6B of Chapter 279 of the general laws, as so appearing, is hereby amended by inserting the following subsection as the new subsection b after subsection a and before the renumbered subsection c:

(b) A defendant who is pregnant, the primary caretaker of a dependent child, or the primary caretaker of an aging or sick immediate family member may file a motion with the court for pretrial diversion, wherein criminal proceedings are suspended without a plea of guilty for a period of not less than 3 months and not more than 24 months. The motion shall include the defendant's plan for the diversion period, which may include programs, services, restorative justice activities, employment, and/or community service. Upon receipt of such a motion, the court shall make written findings 1) concerning the defendant's status as a primary caretaker and 2) whether the conditions of diversion are feasible and will contribute to the well-being of the defendant and their community. If such a motion has been filed, the court shall not proceed with pre-trial hearings without first making such written findings.

i) As parental separation due to incarceration is an adverse childhood experience and the continued presence of the primary caretaker is in the best interest of the child, a primary caretaker's diversion plan will be presumed to be feasible and beneficial to the child and

community unless the Commonwealth can show a public safety concern by clear and convincing evidence;

ii) No consent by the defendant to the stay of proceedings or any act done or statement made in fulfillment of the terms and conditions of such stay of proceedings shall be admissible as an admission, implied or otherwise, against the defendant, should the stay of proceedings be terminated and criminal proceedings resumed on the original charge or charges;

iii) If the defendant has performed satisfactorily in diversion, at the end of the period of diversion, the court shall enter a dismissal of the underlying case. A court may conclude that the defendant has performed satisfactorily if the defendant has substantially complied with the conditions of diversion and not willfully violated any other conditions set by the court;

iv) if the defendant does not perform satisfactorily in diversion, the court may extend the period of diversion and modify the conditions; or the court may reinstate criminal proceedings.

SECTION 4. Section 6B of Chapter 279 of the general laws, as so appearing, is hereby amended by inserting in the renumbered subsection c after the words “the defendant’s status” the following words:- "as a pregnant person or” each time it appears in the subsection

SECTION 5. Section 6B of Chapter 279 of the general laws, as so appearing, is hereby amended by inserting in the renumbered subsection c after the words “primary caretaker of a dependent child” the following words:- “or the primary caretaker of an aging or sick immediate family member” each time it appears in the subsection.