

Finding Alternatives to Mass Incarceration:
Lives Improved by Ending Separation (FAMILIES) Act
Introduced by Senator Ron Wyden and Congresswoman Pramila Jayapal
Section-by-Section Summary

Sec. 1. Short title. Section 1 sets forth the short title of the bill as the “Finding Alternatives to Mass Incarceration: Lives Improved by Ending Separation Act of 2020” or the “FAMILIES Act”.

Sec. 2. Purpose. Section 2 explains that the purpose of this act is to divert parents of minor children, expectant parents, and other caregivers from incarceration if those individuals, and society, would be better served by the individual entering into a comprehensive community supervision program that provides resources, services, to the individual and their families.

Sec. 3. Families Diversion Program. Section 3 amends the U.S. Code, Subchapter A, Section 3551 by adding the FAMILIES Program as an authorized sentence.

Section 3 also prohibits mandatory restitution. Any imposition of a sentence by the court to pay a fine, forfeit property, provide notice to a victim, or pay restitution must take into consideration the ability of the individual to afford the fine, forfeiture, cost of giving notice, or restitution; the impact of the fine or sanction on the individual’s ability to succeed in the FAMILIES Program; and the individual’s ability to succeed is not hindered by financial obstacles.

Section 3 establishes that a court shall determine if a defendant, who is an eligible individual and is not otherwise subject to any minimum term of imprisonment as required by law, and society, would be best served by diverting this individual into the FAMILIES Program, instead of a term of imprisonment or probation.

An eligible individual is defined as an individual who is –

1. A parent of a minor child, defined as an individual under the age of 18;
2. Pregnant;
3. A caregiver for a minor child or another minor relative;
4. A caregiver for an individual with disabilities;
5. A caregiver for an elderly family member; or
6. The spouse or dating partner of an individual who is a parent of a minor child or pregnant.

In making this decision, Section 3 establishes the following factors that the court shall consider -

1. Whether the defendant has significant parental responsibilities, including significant expected parental responsibilities in the case of an individual who is pregnant or the spouse or partner of a pregnant individual;
2. Whether the defendant has significant caregiving responsibilities for an adult dependent;
3. Whether the individual poses no apparent risk of harm to any identifiable child or adult dependent with whom they have significant parental responsibilities;

4. A family impact statement, if available;
5. The nature of the offense as it relates to the future rehabilitation of the defendant;
6. The defendant's ties to the community;
7. A victim impact statement; and
8. Any prior criminal history of the defendant.

Section 3 establishes that the court is not required to find that each factor described above weighs in favor of the defendant's participation in the FAMILIES Program in order to determine that the defendant, and society would be best served by diverting them into the program.

Section 3 further directs the court to state in open court, at the time of sentencing, the reasons for imposing a sentence including the determination as to whether the defendant, and society, would be best served by diverting the defendant to the FAMILIES Program, including findings of fact that support that determination.

Section 3 directs the court to impose a sentence that includes participation in the FAMILIES Program instead of a term of probation or imprisonment if the eligible individual is found guilty of an offense and the court makes an affirmative determination that the defendant, and society, would benefit from the program.

The court is directed to consider the FAMILIES Program in light of the personal history of the defendant and whether a record of arrest, criminal proceedings, or conviction of the offense and associated collateral consequences would harm the defendant and their ability to perform caregiving duties.

Section 3 directs the court, in collaboration with the Office of Probation and Pretrial Services of the Administrative Office of the United States Courts and the Secretary of Health and Human Services, to identify the programs and services that the defendant shall be required to complete in order to successfully complete the FAMILIES Program.

In identifying these programs and services, the court may not impose any user fees or other costs unless it weighs the importance of the fee or other costs against the ability of the defendant to afford it; the impact of the fee or other costs on the defendant's ability to succeed in the FAMILIES Program; and the court takes all necessary steps to ensure that the success of the defendant in the program is not hindered by financial obstacles.

Section 3 directs the Secretary of Health and Human Services, in collaboration with the Attorney General and the United States Sentencing Commission, to develop a training for district court judges on how to implement the FAMILIES Program. This includes training on-

1. Trauma-informed decision making which is defined as decision making that is informed by an organizational structure and treatment framework that involves understanding, recognizing, and responding to the effects of all types of trauma; and in accordance with recognized principles of a trauma-informed approach and trauma-specific interventions to address the consequences of trauma and facilitate healing;
2. Child development, family dynamics, and the effects of parental separation;

3. Domestic violence;
4. Child abuse and neglect;
5. Substance abuse and addiction;
6. Mental health;
7. Cultural competence; and
8. Examining bias.

Section 3 establishes the FAMILIES Program by instructing the Office of Probation and Pretrial Services of the Administrative Office of the United States Courts, in cooperation with the Director of the Administrative Office of the United States Courts, the Attorney General, the Secretary of Health and Human Services, and the Chief of the Defender Services Office the Administrative Office of the United States Courts to establish and operate the FAMILIES Program. The Families Program shall include the following-

1. Education programs including general educational development (GED) programs and postsecondary education programs, including community college;
2. Employment counseling and job-seeking activities;
3. Subsidized jobs programs;
4. In-home parenting and skill-based programs;
5. Substance abuse and mental health treatment programs including medication-assisted treatment programs that make available not less than 2 drugs that have been approved by the Federal Food, Drug, and Cosmetic Act or the Public Health Service Act for the treatment of an opioid use disorder; and
6. Two-generation model programs that address needs of both the parent and the child.

Section 3 directs the Office of Probation and Pretrial Services of the Administrative Office of the United States Courts, the Director of the Administrative Office of the Office of the United States Courts, the Attorney General, and the Secretary of Health and Human Services to collaborate with State and local governmental agencies and nonprofit organizations to offer comprehensive community supervision programs and services to participants of the FAMILIES Program in close proximity to the participant's place of residence.

The sentencing court shall also, to the extent possible, connect the eligible individual to services and programs that will meet the basic needs of the individual and their family, as appropriate, including-

1. Health care services, including assistance with enrollment in health insurance;
2. Housing assistance;
3. Services to help the individual enroll in the following programs:
 - a. The Special Supplemental Nutrition Program for Women, Infants, and Children (WIC);
 - b. The Supplemental Nutrition Assistance Program (SNAP);
 - c. The Temporary Assistance for Needy Families (TANF) Program;
 - d. Disability insurance benefits, or other benefits payable on the basis of a disability; and
 - e. Supplemental security income benefits;

4. Evidence-based substance use disorder treatment, including medication-assisted treatment and harm reduction services; and
5. Any other service or program that the court determines necessary to meet the basic needs of the individual and their family, including family therapy or counseling services.

Section 3 also clarifies that during the period of a national or state public health emergency, including the COVID-19 pandemic, the FAMILIES Program may be conducted, to the extent practicable, by electronic means. Such electronic means includes telephone, teleconference, and videoconference. If some elements of the FAMILIES Program are not available by electronic means during a period of a national or state public health emergency, the participant shall not be penalized for their inability to participate in the unavailable element and they may be offered the opportunity to participate in other elements of the FAMILIES Program that can be conducted solely by electronic means.

Section 3 then describes a process for the circumstance in which the defendant violates a condition of participation in the FAMILIES Program prior to the completion of the program. In this instance the court may conduct a hearing to consider relevant sentencing factors and whether the program requirements need to be modified in order for the defendant to be successful. As a result of this hearing the court may either continue the defendant's participation in the FAMILIES Program with or without extending the term or changing the conditions, or revoke the sentence and resentence the defendant. In this hearing, the defendant may be represented by counsel, and if the defendant is financially unable to obtain representation by counsel for this hearing, the court shall appoint counsel. Such counsel shall be appointed and compensated as previously established by law.

If the defendant participating in the FAMILIES Program is recovering from a substance use disorder and suffers a relapse, the court shall notify the service providers working with the defendant and may not revoke the sentence or otherwise penalize the defendant solely because of the relapse.

Section 3 also establishes pre-judgement sentence and expungement procedures. As such, if an eligible individual is found guilty of an offense and the court makes an affirmative determination of appropriateness for the program, the court may, with the consent of the individual, sentence them to participate in the FAMILIES Program for a specific term determined by the court, without entering a judgement of conviction. The court also may dismiss the proceedings against the individual and dismiss the proceedings against the individual, any time before the expiration of that specific term determined by the court. At the expiration of the term of sentence, if the individual has not violated the conditions of the FAMILIES Program, the court shall dismiss the proceedings against the individual and discharge them from the Program, without entering a judgement of conviction.

For individuals in the FAMILIES Program who were less than 21 years of age at the time of the offense, the court shall enter an expungement order upon dismissing the proceedings against them and discharging them from the Program. This expungement order directs all reference to the arrest, criminal proceedings, and results of those proceedings to be expunged from all official records of the individual. The intended effect of this expungement is to restore the individual to

the same status this individual occupied before the arrest or institution of criminal proceedings for which they participated in the FAMILIES Program. This individual will subsequently be protected from perjury laws, meaning they shall not be considered guilty of perjury, false swearing, or making a false statement by failing to acknowledge the arrest, criminal proceedings, or results of the proceedings during an inquiry for any purpose.

Section 3 also includes protections against collateral consequences by stating that a disposition or conviction subject to an expungement shall not be considered for the purpose of a disqualification or a disability imposed by law upon conviction of a crime, or other purpose.

Section 3 also includes a number of technical and conforming amendments to ensure that it aligns with current United States Code.

Section 3 then authorizes the Attorney General, acting through the Bureau of Justice Assistance, to make grants to States to replicate, on a larger scale, successful State parenting sentencing alternatives programs that have the potential to keep parents out of prison. It then appropriates \$20,000,000 to the Attorney General for fiscal year 2020 to carry out such grants.

Section 3 then directs the Office of Planning, Research and Evaluation of the Department of Health and Human Services, in collaboration with the National Institute of Justice to study and publish a report on the effects of incarceration on children of incarcerated parents no later than 2 years after the date of enactment. It also appropriates \$1,000,000 to the Office of Planning, Research, and Evaluation of the Department of Health and Human Services to carry out this study in 2021, and to remain available until it is spent.

It also directs the Comptroller General of the United States to direct the Government Accountability Office to conduct a study to examine the implementation of the FAMILIES Program, focusing on demographic data and profiles of program participants in order to determine who is receiving the benefits of the program, program services are equitably available to all eligible individuals, and how program services can be better directed to eligible individuals who would otherwise be sentenced to a term of probation or imprisonment. This study shall also examine access to the FAMILIES Program for Black, Latinx or Hispanic, Native American, Asian American, and Pacific Islander communities.

Finally, Section 3 appropriates \$100,000,000 for fiscal year 2021 to the Administrative Office of the United States Courts to carry out the FAMILIES Program. It also appropriates \$5,000,000 to the Secretary of Health and Human Services to develop the aforementioned training for judges.