

THE CLASS OF 1964 POLICY RESEARCH SHOP PARENTAL INCARCERATION IN VERMONT



PRESENTED TO WOMEN'S LEGISLATIVE CAUCUS **Vermont House of Representatives**

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EXECUTIVE SUMMARY

This report provides background, context, and insights into the current impacts of parental incarceration of children in Vermont. In addition, it analyzes the expedient factors in H.399, a bill that proposes "to require the sentencing court to consider the criminal defendant's status as the primary caretaker of a dependent child prior to imposing sentence."¹ A review of existing literature on the impact of parental incarceration on children provides insight into how Vermont parental incarceration affects childhood development and opportunity. The report also includes a mixed-methods approach consisting of comparative case study reviews of state sentencing policies and interviews with current key stakeholders and judicial actors. Additionally, the report examines the potential impacts of this bill on various state systems within Vermont. Finally, through these approaches, the report aims to inform policy decisions on sentencing guidelines related to defendants with primary caregiver status for children dependents in Vermont.

1 INTRODUCTION

Over the course of a year, an estimated 6,000 children in Vermont, or one child out of every 17, live with the consequences of having an incarcerated parent.² There is a consensus on the adverse effects of parental incarceration on childhood development. Children of incarcerated parents disproportionately deal with trauma stemming from parent-child separation, social isolation, and shame caused by the stigma associated with having an incarcerated parent, and experience stress resulting from family disruption and financial hardship.³ Furthermore, these children are more likely to develop learning disabilities, have behavioral problems, and even drop out of school.⁴ Parental incarceration takes a toll on the mental and physical well-being of dependents, leading to increased chances of children suffering from “migraines, asthma, high cholesterol, depression, anxiety, post-traumatic stress disorder, and homelessness.”⁵ Additionally, studies show that parental incarceration disproportionately affects children based on race and socioeconomic status, which exacerbates the opportunity gap for these children.

Three states (California, Illinois, and Massachusetts) have recently taken measures to address parental incarceration by examining the effects on children, the nature of the offense, and alternative programs instead of sentencing the defendants to time in prison. The Vermont legislature is currently focusing on whether to require that courts consider the caregiving status of defendants before sentencing them. Examining this query requires analyzing the feasibility of implementation in terms of time, money, and the infrastructure of existing state systems, available alternatives to parental incarceration, how other states have implemented similar policies, and the degrees of success of these policies.

2 PURPOSE STATEMENT

This report seeks to answer five primary questions in assessing the potential impacts of Vermont state courts considering the caregiving status of defendants: (1) How does parental incarceration affect children? (2) What impact does parental incarceration have on state systems? (3) Are there alternative solutions to parental incarceration that already exist in Vermont? (4) Which relevant factors provide insight for courts to consider when determining a defendant's eligibility to receive alternative sentencing due to his/her caregiver status? (5) Of the states that already have sentencing policies regarding parental incarceration, what procedures have they implemented? This report draws from the accounts of various judicial actors and stakeholders within the Vermont sentencing process, including judges, representatives, and state defenders. From the accounts of a wide variety of different stakeholders, this report seeks to understand the current state of sentencing in Vermont and provides insights into how sentencing affects differing interests.

These questions and the approach will guide our research to gain an overall understanding of the current costs and benefits of parental incarceration and the feasibility of introducing new sentencing procedures that allow for alternative solutions.

3 METHODOLOGY

Understanding the impacts of parental incarceration in Vermont requires comparing other sentencing guidelines from other similar states. Several states have either implemented or currently considering implementation measures concerning the primary caregiver status for defendants. Information from the National Center for State Courts and National Conference of State Legislatures (NCSL) also informs these overviews of state sentencing guidelines.

Our report uses a comparative case study approach in assessing four states to explore the following areas of parental incarceration in the United States:

1. What current guidelines exist for each state?
 - a. What factors does each state consider in determining sentences for various crimes?
 - b. For example, is primary caregiver status considered?
2. Which states include a provision for considering primary caregiver status?
 - a. What types of provisions do these states include?
 - b. Which states allow the court to receive family impact statements beforehand?
 - c. How have family impact statements affected sentencing?

This report analyzes four states with this methodology. Examination of the sentencing systems of Illinois, Massachusetts, Tennessee, and New Hampshire provides a representative sample of different sentencing systems across the United States. For this report, Illinois, Massachusetts, and Tennessee have passed legislation similar to H.399, providing valuable insights into potential impacts for Vermont. However, with the recent passage and ongoing implementation of each respective law, there remains a lack of data concerning these long-term effects of these reforms. Despite the very recent passage of these laws, the processes and rationale behind each legislative effort provide pertinent information for Vermont policymakers. Additionally, New Hampshire, given its similarity to the Vermont sentencing system, similar demographics, and proximity, provides a useful comparison case as well.

3.1. STATE-BY-STATE COMPARISONS

The current sentencing guidelines that exist across the nation have been described as so variegated that it is "impossible to generalize about prevailing normative ideas." The inconsistency across state sentencing guidelines means that there are no standardized considerations for sentencing defendants. Depending on the state, the defendant's status may not receive consideration at sentencing.

Despite the current lack of standardized practice, the NCSL has categorized state sentencing into two general categories—determinate and indeterminate sentencing. Broadly speaking, determinate sentencing has fixed term lengths of punishments for specific crimes, whereas indeterminate sentencing relies on court discretion and parole boards to determine specific punishment and prison time.

The NCSL further divides sentencing systems between states with and without structured sentencing. These additional guidelines assist in sentencing fairness and consistency among judge discretion across jurisdictions. Thirty-three states utilize indeterminate sentencing as their primary sentencing system.

3.2 OVERVIEW OF STATE SENTENCING GUIDELINES

As there is no standard for considering primary caregiver status in courts across states, many states fail to address the issue and those that do take varying approaches. Illinois, Massachusetts, Tennessee, and California all consider primary caregiver status through different protocols or have bills under consideration that include such a provision. These states, in particular, would prove beneficial in a comparative analysis with Vermont. Each state has specific sentence guidelines that provide a representative contrast with Vermont or a similar sentencing structure to include an impact statement provision. Figure 1 below shows a map of the current sentencing structures across the United States, with broad generalizations according to a survey conducted by the NCSL.⁶



Figure 1: Map of Sentencing Systems in the United States

Research has shown that implementing a structured sentencing system with flexibility as to how judges enforce such procedures results in greater consistency for sentence lengths and allows for greater consideration of the defendant’s status and potential sentence impacts.⁷ As a result of data collected by legislatures on the state of incarceration, many courts require an impact statement on sentencing before the sentencing takes place. Sentence decisions are informed by risks and need assessments, with factors such as parole eligibility, automatic release, and sentence credits affecting the possibility of release.

3.3 ILLINOIS SENTENCING GUIDELINES

In this analysis, Illinois is the only state with a current statute regarding a required impact statement on the defendant prior to sentencing.⁸ Illinois based its policies on similar policies passed in Colorado and Kentucky, which decreased prisoner recidivism by encouraging tentative sentencing upon consideration of various defendant conditions.⁹ Despite this, Illinois has a determinate sentencing system in contrast to that of Vermont and has no structured sentencing guidelines.

In the Illinois Children's Best Interest Act, the defendant receives the right to present a Family Impact Statement at sentencing. The statement may include testimony from family and community members, written statements, video statements, and other documentation. The court will consider the statement before imposing any sentence. Unless the court finds that the parent is a significant risk to the community—outweighing the risk of harm from the parent's removal from the family—the court will give a sentence that allows the parent to continue to care for his or her children.¹⁰

3.4 MASSACHUSETTS SENTENCING GUIDELINES

The Commonwealth of Massachusetts has a system of indeterminate sentencing, not unlike Vermont. The focus on alternative sentencing as an option for more defendants has informed recent policy changes to its statutes on sentencing. The sentencing commission does not include language stating that the guidelines provided in the statutes are mandatory, allowing for judges to undertake a more comprehensive assessment of each defendant and allowing for defendant statements to inform the sentencing process.¹¹

Massachusetts Bill S.770 does not include the phrase, "Family Impact Statement," but it considers similar factors. The defendant would have the right to have the court impose a sentence only after considering his or her primary caretaker status. A defendant requests this consideration by motion supported by affidavit within ten days of the entry of judgment. The court will then draft written findings regarding the primary caregiver status of the defendant and any appropriate non-incarceration sentence alternatives. The court will not impose a sentence of incarceration without the written findings. Suppose the court finds an appropriate non-custodial sentence and the defendant is determined to be a primary caretaker through the proper procedure. In that case, the court may impose the non-custodial sentence. Special conditions will be set forth that emphasize community rehabilitation and parent-child unity and support.¹²

3.5 TENNESSEE SENTENCING GUIDELINES

The sentencing commission in Tennessee provides for an indeterminate system of sentencing that also has specific guidelines granting judicial discretion regarding the background of a defendant. Using the largely voluntary system of sentencing, judges have categorized defendants into five different classes based on past criminal history and offenses.¹³

Tennessee Senate Bill No. 985 states that before sentencing a person convicted of an offense, the sentencing court shall determine if the crime was nonviolent and if the convicted person is a primary caretaker of a dependent child. If the court determines both of these factors to be accurate, they may impose an individually assessed sentence without imprisonment. Instead, the sentence would focus on community rehabilitation, parent-child unity, and support. The primary caregiver must meet certain conditions such as drug treatment, domestic violence prevention, and family counseling. Despite

providing for the alternative sentencing through the annotations adding an impact statement to the Tennessee code, there is no standard procedure in place for the defendant to request the consideration of their primary caregiver status and give their impact statement.¹⁴

3.6 NEW HAMPSHIRE SENTENCING GUIDELINES

New Hampshire employs an indeterminate sentencing system. Judges are given minimal guidance when sentencing. For example, New Hampshire has established certain thresholds that create a tiered system of sentencing, with the severity of punishment positively correlated with the severity of the crime. The indeterminate sentencing process is not influenced significantly by impact statements. Currently, New Hampshire does not require corrections impact statements.

3.7 FIS AND POTENTIAL VERMONT SENTENCING CONSEQUENCES

The H.399 bill proposes requiring Vermont courts to allow defendants to provide a Family Impact Statement.¹⁵ This statement would standardize the way courts consider caregiver status before sentencing defendants. Studies and professional consensus on the effects of parental incarceration on children and the foster care system demonstrate that it may be helpful for a family impact statement to include the impact on the physical and mental well-being of dependent children; the effects of parental incarceration on households' financial situations; and the existing literature on parental incarceration. These aspects would address the impact of parental incarceration in a formalized and structured manner. The current sentencing guidelines that exist across the nation have been described as so variegated that it is “impossible to generalize about prevailing normative ideas.”¹⁶ The inconsistency across state sentencing guidelines means that there are no standardized considerations for sentencing defendants. Therefore, depending on the state, the potential caregiver status of the defendant may not receive consideration at sentencing.¹⁷

3.8 STAKEHOLDER INTERVIEWS

Although there is not an abundance of evidence lending itself to the experience of stakeholders undergoing the incarceration of a primary caregiver, anecdotal evidence and narrative insights from stakeholders may address gaps in the current literature. In particular, interviews with various judicial actors within the institution of the courts informed how the current sentencing system affected the dependents of those incarcerated may inform the design of guidelines for family impact statements mandated by bill H.399. In addition, stakeholders were asked questions about their roles in the sentencing process, their experiences in the criminal justice system, and their insights into the specific language of H.399. These six interviews contributed to a holistic analysis of the impacts of the incarceration of caregivers. Interview questions are provided in Appendix 7.1.

4 CRIMINAL SENTENCING IN VERMONT

Vermont is among those states with indeterminate sentencing that do not include sentencing guidelines. As such, Vermont does not have a formalized process to evaluate an offender's caregiving responsibilities and effects of incarceration on children.¹⁸ The House Bill, H.399, would introduce a sentencing guideline that may be added to the current guidelines but requires more clarity about what statements could include and where information about dependents may be included before sentencing.¹⁹ Regardless of what system a state uses for sentencing, the goals of sentencing are

primarily dependent on the purposes of the punishment, namely retribution, rehabilitation, deterrence, and incapacitation.²⁰

4.1 OVERVIEW OF CRIMINAL SENTENCING IN VERMONT

In the vast majority of criminal cases brought before a judge in Vermont, an agreement between defense attorneys and state prosecutors may result in a sentence before the case ever comes before a judge. These sentences are known as uncontested sentences, and according to Former Vermont Chief Superior Judge Grearson, are a key part of the sentencing process in Vermont.²¹ The few cases that do not result in a pre-sentence agreement are brought before the court in a trial. While the court has the prerogative to intervene in pre-sentence agreements, they often abstain due to the degree that both attorneys have greater familiarity with the cases.

In 2019, under the executive order of Governor Phil Scott, Vermont embarked on Justice Reinvestment II, a working group designed to understand the current challenges and potential policy options for criminal justice reform and improving outcomes for all stakeholders within the criminal justice system.²² The working group assembled representatives from across all branches of government, advocacy groups, and formerly incarcerated people. Among the initiative's final recommendations were police proposals to increase the amount of data and reporting within the criminal justice system, appropriating funds for expanding risk and harm reduction, and increasing resources for diversionary programs and alternative court systems to ensure prioritization of rehabilitation, equity, and improved behavioral health outcomes.²³ Despite setbacks, including the onset of the COVID-19 pandemic and the continued need to address the needs of the overcrowded prison system in Vermont, the proposals set forth by the working group have received considerable attention within policymaking spaces. With support from Act 148, passed in July 2020, the group continues to meet to revise and update its policy proposal and engage in its third round of policy development.²⁴ Updates to procedure, practice, and policy within the criminal justice system will continue to receive further scrutiny from this working group and other stakeholders as more policies are proposed and considered.

4.2 EFFECTS OF PARENTAL INCARCERATION ON CHILD WELL-BEING

Children of incarcerated parents are an extremely vulnerable group. They are much more likely to suffer from behavioral issues, physical and mental health problems, and opportunity gaps compared to their peers. In addition, incarceration disproportionately affects people from lower socioeconomic backgrounds and racial minorities, which means parental incarceration compounds existing opportunity disparities for these children.²⁵ Black, poor, and rural children are most severely affected by parental incarceration.²⁶

Incarcerating parents also negatively impacts household income and family stability. Research from the Fragile Families and Child Well-being Study shows that when fathers are incarcerated, it not only leads to a decrease in household income, but "also a drop in social support, various forms of public assistance, and the mother's capacity to cope (measured by increases in depression and stress)."²⁷ Furthermore, the data shows that the negative impacts of parental incarceration on household financial security and the parents' relationship can increase parents' neglectful and physically aggressive behaviors towards their children.²⁸ Interestingly, the researchers in this study were unable to find the same measurable effects of parental incarceration when studying abusive parents who were incarcerated. The aforementioned negative effects of parental incarceration were closely tied to when

nonviolent caregivers were incarcerated.²⁹ In other words, while it may be the case that incarcerating abusive parents protects children, when nonviolent offenders are incarcerated, the well-being of their children actually worsens.

4.3 IMPACTS ON FOSTER CARE SYSTEM AND JUDICIAL SYSTEM

This bill has potential implications for the financial and institutional aspects of various state systems. It is important to evaluate any benefits or costs associated with implementing an additional court procedure when sentencing defendants who are caregivers.

4.3.1 EFFECT ON FOSTER CARE SYSTEM

Parental incarceration directly affects the foster care system as it results in more children entering the system. Children of incarcerated parents deal with disrupted living situations, separation from siblings, and multiple care placements. During the incarceration period of a parent, children can often be placed with family or community caregivers who are unwilling or unable to provide sufficient care.³⁰ This may be the result of caregivers lacking the resources and social support to meet the needs of the children or because of tension between the caregiver and the incarcerated parent due to the parent's involvement with the criminal legal system. In any case, children of incarcerated parents have a greater risk factor for child abuse and neglect, which creates a pathway for entering the foster care system.

Although the number of children placed in foster care as the result of parental incarceration is not exactly known from existing data collection systems, there are studies that indicate a noteworthy overlap between parental incarceration and the foster care system.³¹ According to the Adoption and Foster Care Analysis and Reporting System (AFCARS), parental incarceration was a reason for entry for seven percent of children who entered the foster care system in 2019.³² However, this statistic might underestimate the overlap between parental incarceration and entry into the foster care system because not all the reasons for entry are always listed. One study approximated that 40 percent of children in foster care have experienced parental incarceration.³³

Parental incarceration contributes to further straining an already overburdened foster care system. When parents are incarcerated, their children may not have a support system to care for them, resulting in their entry into the foster care system. Offering alternatives to jail/prison time for parents allows them to continue their caregiving responsibilities, reducing the number of children entering foster care and alleviating the stress placed on the system. This results in reduced state spending on foster care and also avoids children of convicted parents undergoing further adversity resulting from their experiences in the foster care system.

4.3.2 FAMILY IMPACT STATEMENT STANDARDS

Family Impact Statements are typically presented to the court by attorneys on behalf of the defendant. The exact procedure for when the information included in the impact statement may be introduced is largely dependent on the individual case. States such as Illinois and Tennessee require that a defendant who seeks consideration of his or her primary caregiver status must be charged with a nonviolent offense as well as a non-sexual offense. Typically, this leads to defendants raising the FIS for the court to consider diversionary programs to support rehabilitation and prevent significant disruptions to

family life.³⁴ Due to the differences across state sentencing systems, there is no standardized procedure for when a FIS may be released in trial.

Family Impact Statements include information about a defendant's dependents, including any children, stepchildren, or other forms of dependents. They also include information about the defendant's current employment, their prospects for gaining employment if unemployed, and the current supporters that may provide assistance within their kin structures. Critically for defendants, the FIS also provides the court with insights into the ability to provide for dependents, the current capacities to maintain healthy relationships, and whether the dependents are at risk for any Adverse Childhood Experiences (ACEs).³⁵ Thus, when required in court procedure, a FIS may reveal negative details about the defendant as well as any other information that the court previously would not have considered.

4.3.3 FAMILY IMPACT STATEMENT VS. PARENTAL RESPONSIBILITY ASSESSMENT

A Parental Responsibility Assessment (PRA) and a Family Impact Statement are identical documents except in name. Within contemporary literature and current legislation, Parental Responsibility Assessment has become the preferred term when referring to a statement introduced to elucidate the court on the status of a defendant and his or her dependents. This difference is critical for how courts approach these types of statements. As Tricia Long with *Resilience Beyond Incarceration* explains, a PRA implies that the main stakeholder considered with the assessment is the child. A PRA ensures that the defendant's status as a parent or guardian is brought to the forefront of sentencing considerations. In addition, a PRA is typically accompanied by an interview.³⁶

The goal of the Parental Responsibility Assessment (PRA) interview is to provide information to the court and engage the defendant in a conversation about his or her role as a parent/caregiver. The PRA could potentially result in a reduced period of incarceration or alternative sentence, with the goal of understanding how the defendant can best provide parental support. The conversation may facilitate referrals to other programs or connect the family to community resources and other potential support systems.

In the interview, the defendant is asked about how many children he or she has, the ages of the children, and where the children currently reside. Defendants are asked about primary caregiver status and their relationship with their children. They are also asked about financial concerns, potential violence, and any other risk. Lastly, the PRA investigates other relatives in the child's life and aims to determine who may or may not be fit to provide care. Examples of the type of interview questions asked to a defendant are located in the Appendix 7.2.

4.3.4 EFFECT ON JUDICIAL SYSTEM

It is necessary to evaluate whether current court system in Vermont has the infrastructure to implement a new sentencing guideline and how feasible it would be to do so. In this case, the bill outlines a way for the courts to assess the caregiving status of a defendant—through Family Impact Statements. The Vermont legal system already uses Victim Impact Statements; therefore, it would be highly feasible to introduce FIS into the sentencing process. State agencies would likely not incur additional costs or procedures to implement this practice of allowing defendants to offer FIS to the court prior to sentencing.

5 POTENTIAL IMPACTS H. 399 ON VERMONT

H.399 has potential implications for the financial and institutional aspects of various state systems. It is important to evaluate any benefits or costs associated with implementing an additional court procedure when sentencing defendants who are caregivers.

The purpose of Parental Responsibility Assessments is to ensure that, when a parent is about to be incarcerated, the child is considered. Currently, there is no agency responsible for accounting for the children of incarcerated parents. If H.399 is passed into law, the State of Vermont will be responsible for knowing how many children of incarcerated parents there are at any given time. This will ensure that the consideration of parental responsibility is not a “last-minute thought.”³⁷ Parole officers conduct pre-sentencing investigations; this is an opportunity for state officials to assess parental responsibility. This accounting could also be undertaken through government contracts with organizations already engaged in this work. Given that the criminal justice system lacks infrastructure to support defendants through the process of submitting an assessment, advocacy groups like Resilience Beyond Incarceration often provide guides such as the one included in Appendix 7.3

The state will also be impacted by where the incarcerated parents are located during their sentence. If the PRA results in the convicted person being located near their children, the state may be responsible for facilitating visitation.

5.1 EFFECTS ON DEFENDANTS

PRAs focus on the impacted children in any given case. The children of incarcerated parents are at a significant disadvantage, and thus the PRA objective is to mitigate trauma for the child wherever possible. “PRAs come from a neutral place and are not meant to make things easier on the parent,” Tricia Long explains.³⁸ Some potential outcomes of a PRA are the parent is housed in a facility closer to the child so that they can maintain a connection and relations. The submission of PRAs could also result in alternative sentencing outcomes.

In parental sentencing, there is the risk of gender bias. Men are considered less important than women in parenting roles. Federal Sentencing guidelines make no distinction for offenders with regard to gender. As such, judges generally have broader discretion regarding the sentencing of caretakers, which has led to, “women on the whole receiving much shorter sentences than men when facing the same punishments.”³⁹

For men, the PRA could be taken less seriously, as their role as parents and caretakers has historically been diminished by judges.

5.2 EFFECTS ON ATTORNEYS

If passed, H.399 would change standardized institutional practices within the court system. Judge Brian Grearson notes that the majority of sentences in criminal cases in Vermont are decided by agreement between the state and defense in uncontested sentences.⁴⁰ As it currently stands, Vermont court procedure allows for defense attorneys to raise specific information about a defendant's status prior to sentencing. H.399, if passed in its current form, would create an issue within the procedure for cases in which a sentence is agreed upon prior to appearing before a judge.

If the prosecution and defense have a disposition toward a certain outcome, and the defense has the chance to alter the outcome through additional information on behalf of the defendant, the state would not be able to condone previous agreements when a case reaches the bench. In implementing legislation affecting court procedure, attorneys representing either side may set parameters prior to deliberations on what to consider to a sentence. Regardless of the approaches representatives from either side in a case may take, H.399 would ensure that sentencing practice would be further standardized across Vermont's 14 counties. The large amount of discretion afforded to attorneys in the status quo makes for, as Vermont Representative Martin LaLonde reports, "Some people [say that] we have 14 different criminal justice systems in the state because the state's attorneys have a lot of discretion."

Ultimately, as Judge Grearson elucidates, a FIS is not "inherently positive or negative."⁴¹ It offers the opportunity for defendants to have more information presented on their behalf, which may introduce positive influences in favor of the defense or negative traits in favor of the state. The weight placed on the information provided to a judge may play a larger role in the sentence.

5.3 ADDITIONAL POLICY CONSIDERATIONS

Some additional policy considerations include the language of the proposed bill and the fact that ultimate sentencing is up to the discretion of the judge. One important factor in assessing this bill is the language, use of definitions, and its parameters. While the bill applies to defendants who are caregivers, it does not include a concrete definition of "caregivers." However, as Ashley Messier, the Executive Director of Women's Justice & Freedom Initiative who helped write this bill, has explained, "caregivers are not just cisgender biological mothers and fathers; that is why the language is so inclusive." On the one hand, the lack of clear provisions regarding who qualifies in the category of a "caregiver" makes the language of the bill and its applications vague. On the other hand, it allows for courts to decide who qualifies on a case-by-case basis. If the bill were to specify that a "caregiver" is a biological or legal guardian, an unmarried partner of a parent might not meet these qualifications, but their role in the child's life and involvement in the household are still integral contributions of a caregiver. Such specific language may exclude members of the community who fulfill those responsibilities outside of traditional relationships.

Another policy consideration is the fact that ultimate sentencing is up to the discretion of the judge. Some opponents of the bill may argue that, because sentencing is ultimately up to each judge, for the sake of procedure and efficiency, it might be best to allow judges to consider whatever information they find pertinent rather than reviewing a family impact statement. However, a family impact statement may provide a more standardized method of reviewing relevant information for judges. In the end, judges determine the sentence, but an important policy consideration is the utility of having a more formalized process for presenting this information related to the defendant's caregiving status.

6 CONCLUSION

Through a comparative case study comparing Vermont sentencing guidelines with those of four other states, interviews with childcare professional and judicial officials, the research provides an overview of the impacts of parental incarceration on Vermont children while providing policy options to inform new guidelines on Vermont's current sentencing system. The H.399 bill is one such policy that seeks

to reform the current sentencing system in Vermont and has substantial potential impacts within state foster care and the judiciary. The mixed-methods approach to analyzing H.399 provides an overview of the direct implications of parental incarceration of children while informing how potential policy might shape Family Impact Statements (FIS) before sentencing. Moving forward, possible areas of consideration for the legislature include investigations into how implementing such legislation would alter other areas of Vermont statutes on sentencing.

7 APPENDIX

7.1 A: Sample Judicial Actor Interview Questions

1. Could you describe to us some of your work related to parental incarceration and childhood interventions?
2. Are there specific child impacts you considered when designing this bill?
3. Are there scenarios where this bill could adversely affect the children involved?
4. How would you recommend establishing guardrails to protect children against potential negative outcomes?
5. What can you tell us about the effectiveness of similar bills to H.399?
6. Have you considered the negative impacts such a bill might have on children with abusive parents or parents that have a chronic history of drug abuse?
7. What have other states prioritized when implementing similar legislation in the past?
8. How have other similar bills been designed?
9. How should FIS be constructed?
10. Is there evidence to support that legislation similar to H.399 on the whole benefits both children and their parents?
11. How exactly would judges include these statements in their sentencing considerations?
12. Does the bill aim to prevent harm through less austere sentences or through decreasing the amount of incarcerated parents?
13. What impact do you hope this legislation will have on Vermont's current system of indeterminate sentencing?

7.2 B: SAMPLE PARENTAL RESPONSIBILITY ASSESSMENT (PRA) QUESTIONNAIRE

Taken from the State of Tennessee's Primary Caregiver Motion and Affidavit

DETAILS OF CLIENT AND CHILD/REN

1. Child/ren's name(s), age(s)
2. Relationship to you
3. How long have you known the child/ren?
4. Your information: age, education, previous and current work, place of residence.
5. Does child/ren live with you? How long has child/ren lived with you?
6. If child/ren has not lived with you their entire life, why? Who did they live with and why is it better when child/ren lives with you?
7. Communication/status/relationship with child/ren's (other) parent(s)? Other family or caregivers?

CHILD(REN)'S MEDICAL CARE

1. How are you involved in your child's medical care?
2. Does child/ren have medical conditions, mental health conditions/diagnoses/allergies/dietary restrictions?
3. If so, what medication does child/ren take and how often (Including daily, or emergency such as inhaler or epi pen)? Do you help remind and/or administer child/ren's medication? Pick up prescription? Do you take child/ren to and from doctor's appointments? How often and since when?

TRANSPORTATION AND ACTIVITIES

1. What does your daily routine look like with your child/ren?
2. What are your key responsibilities in your child/ren's life?
3. What do you most enjoy doing with them?
4. Do you drive or otherwise accompany child/ren (via public transportation, walking) to and from places?
5. Where? How often?
6. How does child/ren get to and from school every day?
7. School child/ren attends? After school programs they attend or want to attend?
8. How many times during the day/ week do you eat with and/ or provide food for child/ren?
9. How else do you help care for the child/ren? (i.e.: bathing, help with homework, getting ready for school or other outings, getting to and from sports or other programs, extracurricular activities?)

IMPACT ON CHILD/REN

1. What do you do for child/ren that no one else can?

2. What important milestones are coming up in child/ren's life that you don't want to miss?
3. What's one of your child/ren's recent accomplishments that made you proud as a caregiver?
4. What are you currently teaching your child/ren or practicing with your child/ren?
5. Describe a time you helped child/ren overcome a challenge?
6. What, if any, financial support do you provide for child/ren?
7. Do you and child/ren have special plans that you keep on a weekly/ monthly/yearly basis?
8. How do you spend time together?
9. Do you have photographs of both of you together? Letters or cards from child/ren to you?
10. What is the longest period of time you've spent away from child/ren?
11. When you are away, how does child/ren cope/ get by? Who do they stay with?
12. How do you expect child/ren will be impacted if you are incarcerated?
13. Who may be able to care for child/ren?

PARENT GOALS/PLANS

1. What's important to you and your family's life that would be interrupted if you were incarcerated?
2. What plans and goals do you have for yourself and your family? What are some next steps that you have in mind? (I.e: a desire to pursue training, education, to stay employed, receive a promotion, continue coaching soccer, or maintain ownership of a property, etc.)
3. If you have had previous convictions, including probation sentences: since then, how has your life and conditions changed? Has your housing changed? What jobs have you held, services or programs have you sought out or received? Any other accomplishments, things that you're proud of since then?
4. Are there any programs or services that you're seeking or would like to seek for yourself or your family? (I.e: Completing treatment or continuing AA, NA, recovery coaching, or therapy, or trainings, or seeking out after-school or weekend programs including sports, mentoring, or other programs for your child/ren, etc.)

7.3 C: DEFENDANT GUIDELINES FOR PARENTAL RESPONSIBILITY ASSESSMENT (PRA)

Provided by Tricia Long, Director of Resilience Beyond Incarceration



Questions to ask during a *Parental Responsibility Assessment (PRA)* interview:

The goal of the *Parental Responsibility Assessment (PRA)* interview is not only to provide information to the court that could potentially result in a reduced period of incarceration or alternative sentence. It is also the opportunity to engage the participant in considering their role as a parent in their child's life and how to best support them. Ideally, the conversation offers an opportunity for rich discussion and may also facilitate referrals, connecting a child/family to community resources and potential support.

Regarding the defendant's relationship with and caregiving responsibilities for minor children:

1. How many children do you have and what are their ages?
2. Do your children reside with you, and where? If not, with whom do they live, and where?
3. Are you the primary caregiver for any of your children? If you are not the primary caregiver, what are your responsibilities in relation to your children?
4. What is your relationship with your children like? (Specific examples are helpful here.)
5. Do you financially support your children? Is there an active child support case?
6. Did the current offense involve violence? Family violence?
7. Were any children placed at risk because of the circumstances of this offense?
8. Is DCF currently or were they previously involved with your family?

Optional question: Are there other family members who are dependent on you for financial or other support (for example an elderly parent, developmentally challenged adult child, or children of your partner who live with you)?

Regarding the impact of incarceration on the children:

9. How will a period of incarceration impact your children?
10. How will it influence your family's ability to provide economic support and stability for your children, including housing, medical and mental health treatment, child care, and educational needs?
11. How will you maintain a relationship if separated? What are the potential barriers to communication and in-person or remote visitation?

Regarding relatives who may (or may not) be available to care for the children:

12. Are there suitable relatives who are willing and available to care for the children in your absence?
13. What is the potential caregiver's relationship with your children, and with you?
14. Where does the potential caregiver live?
15. Is the potential caregiver physically and financially able to provide for the children's needs?
16. Would the children have to move to a new community, school, or childcare?



Parental Responsibility Assessment (sample A)

State V. Tom S.

October 24, 2019

To assist the court in considering the needs of minor children during sentencing of their parent, Lamoille Restorative Center offers Parental Responsibility Assessments (PRA's) for defendants who are the primary caregivers of minor children.

A *Parental Responsibility Assessment (PRA)* acknowledges the parent's accountability for their crime and the harm it has caused others, and also acknowledges the parent's responsibility to care and provide for their children. Research shows that children of incarcerated parents are three times more likely to experience things like: serious mental health problems, school failure, substance abuse, delinquency, and eventual incarceration themselves.

The *PRA* is offered for consideration, not to minimize guilt, but rather to help the court safeguard minor children from suffering additionally and unnecessarily as a result of their parent's actions. Decisions informed by a *PRA* can benefit children, families, and communities, and create potential cost-savings to taxpayers.

Defendant's relationship with and caregiving responsibilities for minor children:

Tom S. is the father of two children, _____ age 10 and her brother _____ age 8. Tom is the primary caregiver for both children. They live full time with him and they reside at _____.

Tom is solely responsible for their physical care, emotional, and financial support. He consistently attends to his children's needs: He advocates for them in school to assure their educational and social success; he attends to their medical, mental health, and emotional needs.

When their mother left the household, Tom became the primary parental figure for his children. He supported them in adjusting to the changes and worked to establish consistency for them. He took on all care-giving responsibilities such as cooking, getting them up and on the bus each morning, greeting them with a snack after school, attending school meetings, and assuring their general health and wellbeing.

Although this family is currently open with DCF, there has been significant progress and the DCF worker reports they will be closing the case if this positive course continues. The children's progress has been noticed across venues. The school has seen a marked difference in both children's academic progress and confidence, as well as noticing a more positive attitude. Tom has been consistent in getting kids to counseling. Both children have established strong relationships with mental health counselors and they are starting to engage in community activities.



Tom's offense did not involve violence. Although an intoxicated driver puts many people at risk, the circumstances of this offense did not compromise his children's immediate safety. They were not in the car, nor were any other children.

Impact of incarceration on children:

The children's current well-being is in large measure due to Tom's consistent presence, supporting them and building a network around them. Even a short period of incarceration will disrupt the progress this family has made toward establishing more stability in their everyday life. Given the children's already disrupted attachment with their mother, a subsequent disrupted attachment to their father will likely have significant adverse and potentially life-long impacts.

Progress toward important family goals will also be interrupted and set back. Tom's goals include: school success for the children; getting physical, dental and mental health needs met for both kids and himself; and maintaining employment, financial security, and housing stability. Tom owns a mobile home and is up to date with lot rent, but he would not be able to maintain this if incarcerated.

Relatives who may (or may not) be available to care for the children:

The children's mother is living with her current boyfriend. To date, visits and contact with her have been inconsistent and unreliable which has resulted in disrupted attachment and adversity. She does not participate in any of the school meetings for the children, and does not provide for them physically or financially.

There is an uncle (mom's brother) who lives in Wolcott. Because of difficult circumstances in his own life right now, he would not be a reliable or suitable caregiver. He may be able to watch the kids occasionally or help with transportation, but he does not have the resources to support them beyond that.

The children's paternal grandmother lives in Hardwick. She sustained a traumatic brain injury several years ago, which has left her unable to care for her grandchildren.

Tom has several siblings, but none of them are closely connected to the children or available to care for them. There are no other relatives to care for the children.

Signature, title and date



Parental Responsibility Assessment (sample B)

State V. Lea Y.

November 7, 2019

To assist the court in considering the needs of minor children during sentencing of their parent, Lamoille Restorative Center offers Parental Responsibility Assessments (PRA's) for defendants who are the primary caregivers of minor children.

A *Parental Responsibility Assessment (PRA)* acknowledges the parent's accountability for their crime and the harm it has caused others, and also acknowledges the parent's responsibility to care and provide for their children. Research shows that children of incarcerated parents are three times more likely to experience: serious mental health problems, school failure, substance abuse, delinquency and eventual incarceration themselves.

The *PRA* is offered for consideration not to minimize guilt, but rather to help the court safeguard minor children from suffering additionally and unnecessarily as a result of their parent's actions. Decisions informed by a *PRA* can benefit children, families and communities, and create potential cost-savings to taxpayers.

Defendant's relationship with and caregiving responsibilities for minor children:

Lea is a 21 year old single mother who lives at _____, with her 3 year old son (ZY). There is no DCF involvement with this family. Lea's offense did not involve violence and her son was not placed at risk due to the circumstances of the offense.

Lea rents a bedroom in a larger house, and there are four others who also rent rooms in the house. Lea shares the rented room with ZY. They have lived there for three years, and have slept in the same room ever since he was born. One of the other tenants in the residence is Lea's mother, (SY). All tenants share the kitchen and living room. Lea's rent payment is \$100/week. If Lea leaves for a period of incarceration, her room will be rented to a new tenant.

During the interview, Lea spoke of how devastated she would be if she is not able to raise her son. When Z was born, Lea's partner at the time was listed on ZY's birth certificate as his father, however it was later determined that he is not Z's biological father, and there is no contact between them. Lea talked about how important it is to have parents in your life. She shared that her own father was absent when she was growing up and how that impacted her.

ZY attends _____ preschool, and a private home daycare in Hyde Park. The childcare provider (name) said that there is a very strong bond between Lea and her son. She said that ZY arrives on time, in clean clothes, and is very well cared for. She mentioned that he is always excited to see Lea at the end of the day, that he adores both his mom and grandma, and regularly talks about Mommy, Gram, and the things they all do together at home.



Impact of incarceration on children:

If Lea is incarcerated, her mother SY will take temporary guardianship of ZY. Lea is concerned about SY's ability to care for Z alone, both physically and financially. SY is a part time office worker, and deals with ongoing health issues. She has had several surgeries, and continues to struggle with back pain.

SY said that her relationship with Lea hasn't always been smooth and it has become much better in recent years. She said that Lea does whatever she can for ZY, and is worried about how ZY will be impacted if Lea goes to prison. SY doesn't think prison will help Lea with her problems and she believes that Lea has made some positive changes over the last year. She talked about how Lea struggled through middle and high school and how she eventually achieved her high school diploma through the Adult Basic Ed program.

Lea works full time as a housekeeping manager and brings home about \$450/week. A conversation with her supervisor at _____ in Stowe confirmed that she has worked there since June 2017, earns \$14/hour, and that "she is a hard worker, dependable, and very diligent." Whether she could be re-employed there following a period of incarceration is questionable because of hiring regulations.

Preschool is free as it's provided by the public school. For daycare expenses, Lea has a subsidy through Lamaille Family Center that pays for 60% of the cost, leaving her with a bill of \$100 per week. If Lea is incarcerated, and guardianship for ZY is transferred to SY, the subsidy will be based on SY's income. The subsidy may be reduced if SY's income is greater than Lea's.

Lea's other expenses include transportation, groceries, phone, and supplies for ZY.

Relatives who may (or may not) be available to care for children:

Lea's mother, SY will accept temporary guardianship, however she has both physical and financial challenges that may impact her ability to provide care.

Lea has one sibling, a sister, who lives in Johnson. She is willing to help with ZY on occasion but could not take on the responsibility to care for him.

There are no other relatives who are able to care for ZY in his mother's absence.

Signature, title and date

8 REFERENCES

- ¹ Coffey, Sara. “H.399.” VT LEG #353715, H. 399, 2021, <https://legislature.vermont.gov/bill/status/2022/H.399>.
- ² Long, Tricia. “Resilience beyond Incarceration.” *Lamoille Restorative Center*, 14 Sep. 2021, <https://lrcvt.org/resilience-beyond-incarceration/>
- ³ Haskins, Anna. “How Does Paternal Incarceration Affect Children’s Cognitive and Noncognitive Development?” *Institute for Research on Poverty*, 2015, <https://www.irp.wisc.edu/publications/focus/pdfs/foc322d.pdf>.
- ⁴ Morsy, Leila, and Richard Rothstein. “Mass Incarceration and Children's Outcomes: Criminal Justice Policy Is Education Policy.” *Economic Policy Institute*, 15 Dec. 2016, <https://www.epi.org/publication/mass-incarceration-and-childrens-outcomes/>.
- ⁵ “Mass Incarceration and Children’s Outcomes: Criminal Justice Policy Is Education Policy.” *Economic Policy Institute*, <https://www.epi.org/publication/mass-incarceration-and-childrens-outcomes/>.
- ⁶ Lawrence
- ⁷ Kauder
- ⁸ Lawrence
- ⁹ Lawrence
- ¹⁰ Illinois State Legislature. Amendment to House Bill 2444. *Wisconsin State Legislature*, 14 Mar. 2019, <https://www.ilga.gov/legislation/101/HB/PDF/10100HB2444ham001.pdf>
- ¹¹ Kauder
- ¹² Massachusetts State Legislature. Bill S.770. Massachusetts State Legislature, 2017, <https://malegislature.gov/Bills/190/S770>
- ¹³ Kauder
- ¹⁴ Tennessee State Legislature. Bill S.985. Tennessee State Legislature, 13 May 2019, <https://www.capitol.tn.gov/Bills/111/Bill/SB0985.pdf>
- ¹⁵ Coffey
- ¹⁶ Tonry, Michael. *Sentencing in America, 1975-2025*. SSRN Scholarly Paper, ID 2321174, Social Science Research Network, 11 June 2013. papers.ssrn.com, <https://papers.ssrn.com/abstract=2321174>.
- ¹⁷ Tonry
- ¹⁸ Vermont Sentencing Statutes. <https://legislature.vermont.gov/statutes/fullchapter/13/221>.
- ¹⁹ Coffey
- ²⁰ “Sentencing and Corrections in the 21st Century: Setting the Stage for the Future.” *National Institute of Justice*, <https://nij.ojp.gov/library/publications/sentencing-and-corrections-21st-century-setting-stage-future>.
- ²¹ (Interview: Chief Superior Judge Brian Grearson)
- ²² Vermont Justice Reinvestment II Working Group | Vermont Judiciary. <https://www.vermontjudiciary.org/about-vermont-judiciary/vermont-justice-reinvestment-ii-working-group>, 2019
- ²³ Vermont Justice Reinvestment II Working Group
- ²⁴ Vermont Justice Reinvestment II Working Group
- ²⁵ Scommegna, Paola. “Parents' Imprisonment Linked to Children's Health, Behavioral Problems.” *Population Reference Bureau*, 3 Dec. 2014, <https://www.prb.org/resources/parents-imprisonment-linked-to-childrens-health-behavioral-problems/>.
- ²⁶ Levin, Dan. “As More Mothers Fill Prisons, Children Suffer 'a Primal Wound'.” *The New York Times*, The New York Times, 28 Dec. 2019, <https://www.nytimes.com/2019/12/28/us/prison-mothers-children.html>.
- ²⁷ Haskins, Anna. “How Does Paternal Incarceration Affect Children’s Cognitive and Noncognitive Development?” *Institute for Research on Poverty*, 2015, <https://www.irp.wisc.edu/publications/focus/pdfs/foc322d.pdf>.
- ²⁸ Scommegna, Paola. “Parents' Imprisonment Linked to Children's Health, Behavioral Problems.” *Population Reference Bureau*, 3 Dec. 2014, <https://www.prb.org/resources/parents-imprisonment-linked-to-childrens-health-behavioral-problems/>.
- ²⁹ “Mass Incarceration and Children’s Outcomes: Criminal Justice Policy Is Education Policy.” *Economic Policy Institute*, <https://www.epi.org/publication/mass-incarceration-and-childrens-outcomes/>.

³⁰ Seymour, Cynthia. "Children with Parents in Prison Child Welfare Policy, Program, and Practice Issues." *Child Welfare* 77.5 (1998): 469–493.

³¹ "Child Welfare Services to Children and Families of Prisoners." *Child Welfare Services to Children and Families of Prisoners* | *Youth.gov*, <https://youth.gov/youth-topics/children-of-incarcerated-parents/child-welfare-services-children-and-families-prisoners>.

³² Child Welfare Information Gateway. *Parental Incarceration - Child Welfare*. https://www.childwelfare.gov/pubPDFs/parental_incarceration.pdf.

³³ "Mass Incarceration and Children's Outcomes: Criminal Justice Policy Is Education Policy." *Economic Policy Institute*, <https://www.epi.org/publication/mass-incarceration-and-childrens-outcomes/>.

³⁴ Keeping Kids and Parents Together: A Healthier Approach to Sentencing in Ma, Tn, La. (n.d.). Human Impact Partners. Retrieved February 2, 2022, from <https://humanimpact.org/hiprojects/primary-caretakers/>

³⁵ Keeping Kids and Parents Together: A Healthier Approach to Sentencing in Ma, Tn, La

³⁶ Interview (Tricia Long)

³⁷ Interview (Tricia Long)

³⁸ Interview (Tricia Long)

³⁹ Keeping Kids and Parents Together: A Healthier Approach to Sentencing in Ma, Tn, La

⁴⁰ Interview (Chief Superior Judge Brian Grearson)

⁴¹ Interview (Chief Superior Judge Brian Grearson)