

**OFFICE OF THE DEFENDER GENERAL**

6 Baldwin Street, 4th Floor  
Montpelier, VT 05633-3301

Matthew F. Valerio  
Defender General

(802) 828-3168 (voice)  
(802) 828-3163 (fax)

April 19, 2022

Re: H.399 - An act relating to incarceration terms for criminal defendants who are primary caretakers of dependent children

To the Senate Judiciary Committee:

I am writing to support H.399, a bill that requires courts to consider the effect of incarcerative sentences not only on the defendant, but on the defendant's family and particularly on the children in their care. This is not bill that will fundamentally alter the way that courts impose sentences. In fact, many, if not most, courts already consider the effect of a sentence on the defendant's family. This bill will ensure that the practice is consistent in courtrooms across the state.

Sentencing a defendant who has dependent family is a challenge. While the normal process of weighing the needs of the defendant against the needs of society is hard enough, adding a family into the mix makes it especially sensitive. Where a short incarcerative sentence may be appropriate in a particular case, does that same sentence make sense if it means that the defendant will necessarily lose their job and that the defendant's whole family will lose their housing? Sometimes there may be no other choice, but other times there may be creative sentencing solutions that can serve the sentencing purposes without causing unnecessary harm and suffering for the defendant's family. This bill just directs courts to consider family impact when imposing a sentence.

Vermont's list of sentencing factors, in 13 V.S.A. § 7030(a), requires courts to consider the characteristics of the crime, the characteristics of the defendant, the defendant's need for treatment, and public safety when determining what sentence to impose. That list is not exclusive, and courts are free to weigh other considerations in their sentencing analysis. One factor that comes up frequently is the impact of a particular sentence on the defendant's family. While, under current law, most courts consider that impact in most cases, there is no regularity to the practice, and no recourse if the court decides *not* to consider family impact. This

bill would require courts to consider family impact in every relevant case and would provide grounds for an appeal if a court failed to do so. It would ensure that consideration of family impact is available fairly and uniformly in every courtroom in front of every judge.

The Office of the Defender General urges the Committee to pass H.399.

Thank you,

A handwritten signature in black ink, appearing to read "M Pahl", written over the printed name.

Marshall Pahl

Deputy Defender General

Chief Juvenile Defender