

## Testimony of the Human Trafficking Prevention Project

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**BILL NO:** House Bill 337  
**TITLE:** Criminal Procedure – Sentencing – Primary Caretaker  
**COMMITTEE:** Judiciary  
**HEARING DATE:** February 8, 2022  
**POSITION:** **SUPPORT WITH AMENDMENTS**

House Bill 337 will allow people convicted of non-violent offenses to file a motion post-conviction requesting that their primary caretaker status to a dependent child or vulnerable adult be considered during sentencing. The Human Trafficking Prevention Project at the University of Baltimore School of Law supports this bill, with amendments, because it supports the health and advancement of women involved in the criminal legal system, many of whom are survivors of human trafficking.

The majority of women in jails and prisons in the U.S. each year are considered the primary caretakers for their children.<sup>1</sup> Having an incarcerated parent is classified as an Adverse Childhood Experience (ACE) by the Centers for Disease Control, and has been linked with a host of physical and mental health consequences, including but not limited to asthma, depression, increased aggression, substance abuse disorder, and PTSD.<sup>2</sup> Beyond health consequences, the children of incarcerated parents have also been shown to have higher rates of poverty, poor school performance and/or dropping out, becoming incarcerated themselves, and homelessness.<sup>3</sup> SB 21 would attempt to ameliorate this harm by requiring that the court take a defendant's role in parenting a child or caring for a vulnerable adult into sentencing. Upon conviction for a non-violent offense,<sup>4</sup> a defendant would be permitted to file a motion declaring their role as primary caretaker in the life of a child or vulnerable adult. A judge could then consider whether or not a suitable community-based alternative to incarceration exists, such as job training, substance abuse treatment, or home confinement.

HB 337 will also have a strong positive impact on the lives of survivors of human trafficking, who are frequently charged with non-violent criminal offenses stemming from acts they were forced to commit by their traffickers, or from the instability that so often precedes or follows a trafficking experience. Data recently obtained from a national survey of both sex and labor trafficking survivors highlights the regularity with which survivors of trafficking are criminalized, with 91% of survivors reporting having been arrested at some point in their lives.<sup>5</sup> Of those 91%, over 40% reported being arrested over nine times or more, while 60% stated that they were arrested for a variety of crimes *other* than prostitution.<sup>6</sup> Allowing for alternatives to incarceration will support these survivors' resiliency while at the same time allowing them to remain with their children, an outcome which benefits both children *and* parents.<sup>7</sup>

Finally, while the Human Trafficking Prevention Project strongly supports the intent of this bill, we have concerns that, as drafted, the definition of "primary caretaker" located in section (A)(3)(1) of the bill draft is ripe for misuse. Accordingly, the HTPP would recommend additional language that would further define the defendant's caretaker role, either through some display or formality or duration. With amendments such as these, the Human Trafficking Prevention Project at the University of Baltimore School of Law supports House Bill 337 and respectfully urges a favorable report.

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<sup>1</sup> Wanda Bertram & Wendy Sawyer, *Prisons and Jails will Separate Millions of Mothers from their Children in 2021* (2021), <https://www.prisonpolicy.org/blog/2021/05/05/mothers-day-2021/> (citing that of the 2,019,900 women jailed in the U.S. each year, 80% are mothers).

<sup>2</sup> See generally Annie Gjelsvik et. al., *Adverse Childhood Events: Incarceration of Household Members and Health-Related Quality of Life in Adulthood* (2014), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4897769/pdf/nihms-790324.pdf>.

<sup>3</sup> See generally Leila Morsy & Richard Rothstein, *Mass Incarceration and Children's Outcomes* (2016), <https://files.epi.org/pdf/118615.pdf>.

<sup>4</sup> In 2021 approximately half of women incarcerated in DPSCS correctional facilities were convicted of a nonviolent offense.

<sup>5</sup> National Survivor Network, *National Survivor Network Members Survey: Impact of Criminal Arrest and Detention on Survivors of Human Trafficking* (2016), <https://nationalsurvivornetwork.org/wp-content/uploads/2017/12/VacateSurveyFinal.pdf>.

<sup>6</sup> *Id.*

<sup>7</sup> See generally Werner, D., Young, N.K., Dennis, K., & Amatetti, S., *Family-Centered Treatment for Women with Substance Use Disorders – History, Key Elements and Challenges*. Department of Health and Human Services, Substance Abuse and Mental Health Services Administration (2007); Gary Hunter, *Prison Nursery Programs Promote Bonding, Reduce Recidivism* (2010) (citing numerous studies reporting lower recidivism rates for women who were able to complete an alternative sentencing program instead of being separated from their children).