



S.195 Context: Data as of 12/10/23

Repeat Offenses: Of those persons with pending cases, **3,485 defendants had two or more criminal dockets and represented 12,688 pending criminal dockets** (of the total pending 21,619 dockets). Meaning, nearly 60% (58.68%) of pending criminal dockets involve persons with two or more dockets—alleged to have committed repeated criminal conduct (a docket may, typically, include multiple individual counts).

Total Persons with a pending case: As of 12/10/23 there were **12,416 persons with at least one pending criminal docket (total pending criminal dockets = 21,619)**.

Failure to Appear Arrest Warrants (FTA Aws): **5,023** (between 1/1/23-12/29/23).

VCRs: Total filed counts for Violations of Conditions of Release (VCRs) (as of 1/9/24): **4,605**.

Misdemeanors: **14,772** (note VT is one of the only states where the misdemeanor cut-off is the 2-year penalty, most states have the 1-year cut-off).

Felonies: **6,748** (83 pending murder/attempted murder cases as of 12/10/23 and more than 90 as of 3/1/24).

Retail theft: **1,596** pending “retail” dockets. Note, as with any filed information, a docket may have multiple counts, meaning that there may be many more counts of retail theft (e.g., you could have a 5-count information with 5 counts of retail theft in a single docket/case). Likely most retail theft cases are charged as a misdemeanor.

Draft for discussion purposes

Repeat Offenses

As of 12/10/23 there were **3,485 people with 12,688 pending dockets**. As of 12/10/23 there was 21,619 pending criminal cases. As such, 58.68% of all pending criminal cases were alleged *repeat offenders* (two or more pending criminal dockets).

- 8 people with 25 or more open dockets, representing 297 pending dockets.
- 20 people with 20 or more open dockets, representing 558 pending dockets.
- 59 people with 15 or more open dockets, representing 1,198 pending dockets.
- 157 people with 10 or more open dockets, representing 2,287 pending dockets.
- 689 people with 5 or more open dockets, representing 5,587 pending dockets.**

(Data Source, Vermont Judiciary 12/10/23)

Row Labels	Addison Unit	Bennington Unit	Caledonia Unit	Chittenden Unit	Essex Unit	Franklin Unit	Grand Isle Unit	Lamoille Unit	Orange Unit	Orleans Unit	Rutland Unit	Washington Unit	Windham Unit	Windsor Unit	Grand Total
Count of Defendants	136	341	339	740	71	399	40	201	147	372	454	376	374	278	
															Grand To
															Count
															12,688
															3,485

Data in chart above represents defendants *with two or more* pending dockets. Note a docket may include multiple counts.

As noted above, the 3,485 people with 12,688 pending dockets are those defendants with *two or more* pending dockets. Meaning of the 21,619 pending criminal dockets – 12,688 relate to 3,485 persons. As such, nearly 60% of pending cases are persons alleged to have committed repeated criminal conduct.

“Criminal Case” data DOES NOT include Appeals, Family Division matters (CHINS, Juvenile Delinquency, Youthful Offender, ERPOs), or Civil Division matters assigned to SAS (e.g., PCRs). (Data Source, Vermont Judiciary 12/10/23)



S.195 Context Continued: Top 20 Persons with Pending Dockets as of 12/10/23

4/3/24 draft for discussion purposes

This chart is snapshot, as of 12/10/23, of the top 20 persons with multiple pending dockets (pending dockets are in the column on the right and represent a total of 558 dockets amongst 20 persons).

- A defendant in Windham had 74 pending dockets.
- A defendant in Bennington had 47 pending dockets.
- A defendant in Chittenden had 41 pending dockets.
- A defendant had 13 pending dockets in Washington, 9 in Chittenden, and 7 in Caledonia.
- A defendant had 27 pending dockets in Rutland and one pending docket in Addison.
- In Rutland there were three defendants with over 20 pending dockets.
- In Windham there were five defendants with 20 or more pending dockets.

B	C	D	E	F	G	H	I	J	K	L	M	N	O	P
Addison Unit	Bennington Unit	Caledonia Unit	Chittenden Unit	Essex Unit	Franklin Unit	Grand Isle Unit	Lamoille Unit	Orange Unit	Orleans Unit	Rutland Unit	Washington Unit	Windham Unit	Windsor Unit	Grand Total
												74		74
	47													47
			41											41
		7	9								13			29
1										27				28
4	1									22				27
				25								26		26
														25
													24	24
												24		24
										23				23
			22											22
		7							15					22
										22				22
21														21
			21											21
								1			20			21
	21													21
												20		20
		20												20

➤ **As of 12/10/23 there were 12,416 persons with at least one pending criminal docket (total pending criminal dockets as of 12/10/23 = 21,619).**



S.195 Context: Data Update (as of 3/1/24)

Column Labels	Felony	Misdemeanor	Fish and Game	Grand Total
	8	66		74
	9	40		49
	1	30		31
	10	21		31
	2	25		27
	4	21		25
	1	23		24
	2	21		23
	3	20		23
	12	10		22
	1	21		22
	6	16		22
	4	17		21
	2	19		21
	5	16		21
	1	20		21
	7	14		21
	5	16		21
	1	19		20
	4	16		20
	1	19		20
	10	10		20

- **This chart provides a snapshot of those persons, as of 3/1/2024, with 20 or more pending criminal dockets** (22 persons attached to 579 pending dockets).
- Note: as of 3/1/2024, **3,437 persons had two or more pending criminal dockets.**
- The 3,437 persons, with two or more pending criminal dockets, were attached to 12,650 pending criminal dockets, from a total of 21,116 pending 3/1/24 criminal dockets. In sum, 59.9% of all pending 3/1/24 criminal dockets were attached to persons with two or more pending criminal dockets, which is consistent with the 12/10/23 numbers.
- **As such, nearly 60% of all pending criminal cases, as of 3/1/24, relate to persons accused of repeated criminal conduct.**
- **Note: as of 3/1/2024, 11,978 persons had at least one pending criminal docket and a total of 21,116 pending criminal dockets.**



S.195's BAIL-ANALYSIS-RELATED AMENDMENTS, AS PASSED BY THE SENATE

Draft for
discussion
purposes

- VCRs & Noncompliance with Court Orders” should be viewed as essential factors in the analysis of “Risk of Flight from Prosecution.”
- **S.195 AMENDS 13 V. 7576(9)** definition of “Flight from Prosecution” to emphasize the aim that **noncompliance with court orders and failures to appear at court** should always be considered in the analysis of “**RISK**” of Flight from Prosecution” and should be considered as essential factors in the court’s 13 V. 7554 analysis when deciding whether to impose bail or impose elevated conditions of release.

AS PASSED BY SENATE
2024

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(9) “Flight from prosecution” means any action or behavior undertaken by a person charged with a criminal offense to avoid court proceedings, including noncompliance with court orders and a person’s failure to appear at court hearings.

- **S.195 AMENDS 13 V. 7551(b)(2)** and provides that the \$200 cap shall not apply to an offense allegedly committed by a defendant who has been released pending trial for another offense.

8 (2) In the event the court finds that imposing bail is necessary to
9 mitigate the risk of flight from prosecution for a person charged with a
10 violation of a misdemeanor offense that is eligible for expungement pursuant
11 to subdivision 7601(4)(A) of this title, the court may impose bail in a
12 maximum amount of \$200.00. The \$200.00 limit shall not apply to an offense
13 allegedly committed by a defendant who has been released on personal
14 recognizance or conditions of release pending trial for another offense.



VCRs Under Existing Law versus S.195's Newly Contemplated

Summary Proceeding, 7554e

Title 13 : Crimes and Criminal Procedure, Chapter 229 : Bail and Recognizances

(Cite as: 13 V.S.A. § 7559)

§ 7559. Release; designation; sanctions (the State may pursue criminal contempt, filed as a misdemeanor [“a VCR”] under 13 V. 7559)

(e) The State's Attorney may commence a prosecution for criminal contempt under Rule 42 of the Vermont Rules of Criminal Procedure against a person who violates a condition of release imposed under section 7554 of this title. The maximum penalty that may be imposed under this subsection shall be a fine of \$1,000.00 or imprisonment for six months, or both. Upon commencement of a prosecution for criminal contempt, the court shall review, in accordance with section 7554 of this title, and may continue or modify conditions of release or terminate release of the person.

Caselaw Example: *State v. Hanson*, No. 24-AP-050, 2024 WL 752396, at *1 (Vt. Feb. 22, 2024)

Defendant charged in August 2023 with reckless endangerment, in violation of 13 V.S.A. § 1025, and with simple assault, in violation of 13 V.S.A. § 1023(a)(1), relating to an altercation with his neighbor. According to the State's probable cause affidavit, defendant confronted neighbor, accusing her of taking his dog, and proceeded to punch her in the head, pull her hair, rip her shirt, and fire one round from his shotgun.

In an August 7 order, the court imposed several conditions of release, including requirements that defendant not have contact with neighbor and that he not have or use any firearms. Defendant was released pursuant to the conditions. Neighbor subsequently obtained a protective order against defendant.

On November 13, 2023, police responded to a call from neighbor, who accused defendant of shouting threats at her across their shared property line. According to neighbor, defendant told her that she was “dead already” and that he would burn her house down. Defendant was arrested and charged with two counts of violating his conditions of release, 13 V.S.A. § 7559(e), and one count of violation of an abuse prevention order, 13 V.S.A. § 1030. The court imposed additional conditions of release, including \$200 cash bail, curfew, and supervision by a court-approved responsible adult.

NOTE: As noted by the Chief Superior Court Judge, prior to crossover, in Senate testimony, S.195 as passed by the Senate creates a new summary VCR proceeding (7554e) that replicates what can already be accomplished and considered through a 13 V.S.A. § 7559 filing and review.

Sec. 4. 13 V.S.A. § 7554e is added to read:

§ 7554e. VIOLATIONS OF CONDITIONS OF RELEASE

(a) Procedure.



S.195's Amendments to 13. V. 7575

7 Sec. 7. 13 V.S.A. § 7575 is amended to read:

8 § 7575. REVOCATION OF THE RIGHT TO BAIL

- Upon a more detailed review of S.195, following the crossover process, and to the degree that the proposed amendments to 13 V. 7575 are designed to codify existing caselaw and/or allow for greater utilization of 13 V. 7575, SAS believes that the contemplated changes to 13 V. 7575 should be removed from S.195.
- The SAS Exec. Committee and SAS EDO, including its appellate counsel, have noted that the amended language presents questions and concerns that warrant a pause to allow for a more substantive review (if there is a desire to provide for easier utilization of 13 V. 7575).



COMMUNITY EXPECTATIONS V. REALITY: REPEAT OFFENSES / BAIL / VCRs

- ❑ There is often confusion among community members concerning how and what bail is really for. It is not unusual to have a defendant with 10+ charges with multiple VCRs and “failures to appear” in court. SAS has seen an increase in cycles of noncompliance when defendants repeatedly violate conditions, FTA, commit new crimes, are arrested on a warrant, and are then released again on conditions.
- ❑ It is important to remember that while the prosecutor may request bail, it is the Court that imposes bail. Further, Courts may impose bail, or conditions, even without a request from the State. Cash bail remains a needed judicial tool to mitigate risk of flight from prosecution in those circumstances where conditions of release are unable to mitigate risk of flight.
- ❑ **“HOLD WITHOUT BAIL.”** Defs can only be held without bail for certain crimes of violence (13 V. 7553a) & life offenses (13 V. 7553) – very limited circumstances.
- ❑ **“IMPOSITION OF BAIL.”** Cash bail is a mechanism utilized by Judges, in Vermont, only to “mitigate the risk of flight from prosecution.” 13 V. 7554 / 13 V. 7576.
- ❑ **13 V. 7554(a)(1). COURTS CONSIDER . . .** the following factors when imposing bail and mitigating risk of flight from prosecution: {13 V. 7554(a) + Caselaw}: “in addition to any other factors...” the seriousness, number of offenses, the nature and circumstances of the offense charged etc. amongst others. *State v. Pratt* (2017). Often prior failures to appear (FTAs) are heavily relied upon in the bail analysis.
- ❑ **THE CURRENT DEFINITION OF 13 V. 7576(9)** does not expressly include contemplation of VCRs, noncompliance with court orders or failures to appear, but “flight from prosecution” is intended to include “any action or behavior undertaken by a person charged with a criminal offense to avoid court proceedings.” (S.195 makes clear that VCRs, noncompliance with court orders, and failures to appear should be considered in the 7554 analysis).

EVENTS/PROCEEDINGS WHERE CASH BAIL MAY BE IMPOSED IN VERMONT

- *Arrest without warrant – VRCrP 3(k) & 5(b), 13 VSA § 7551(b), 13 VSA § 7559(b);*
- *Issuance of an arrest warrant upon application by a prosecutor – VRCrP 4, 13 VSA § 7551(b);*
- *At initial appearance (and arraignment) – VRCrP 46(a), 13 VSA § 7551(b), 13 VSA § 7554;*
- *Upon failure to appear and issuance of a warrant - 13 VSA § 7551(b), 13 VSA § 7560a(a)(1);*
- *After conviction and before sentencing – VRCrP 46(c), 13 VSA § 7574;*
- *Probation violations – 28 VSA § 301(4)&(5);*
- *Fugitives – 13 VSA § 4955-57; and,*
- *Detention on a material witness warrant – 13 VSA § 6605.*



DOC DETAINEE/BAIL SNAPSHOT DATA

Current Detainees with Bail Amounts - 01/03/2024

Facility Where Held	<1000	1Ks	10Ks	100Ks	HWOB	ADULT	Drug Court Sanction - Serve	N/A / Release to Responsible	Other	UNKNOWN	Grand Total
CRCF	2	10	11	2	16	3	0	0	0	1	45
MVRCF	2	5	8	1	41	0	1	0	0	5	63
NECC	2	9	9	0	21	0	0	0	0	2	43
NSCF	4	13	13	3	47	3	0	0	0	4	87
NWSCF	1	8	2	3	36	4	0	1	1	2	58
SSCF	6	18	12	3	60	0	0	0	0	4	103
Grand Total	17	63	55	12	221	10	1	1	1	18	399

The chart above reflects DOC "Current Detainees" as of 1/3/2024 at 8:48am. 17 people were detained on less than \$1,000 bail. These may entail misdemeanor or felony offenses. 221 were held on HWOB ("held without bail," which is limited to serious felony offenses, and only maintained after an evidentiary hearing.).



DOC has noted that this is only a snapshot of who at an exact point in time was detained in Vermont correctional facilities with a corresponding bail amount (or held without bail/with stipulations). This means the individuals incarcerated with a bail amount in this table have not yet paid their bail as of 8:48am on 1/3/2024 (but very well might etc.). Other prior snapshot data is provided below from September 2023 and February 2023.



The data available does not delineate between **when** bail was imposed during the course of a case – whether imposed at arraignment or subsequently, and does not capture circumstances where bail was posted and then a higher bail amount was set based on non-appearance or where bail was set and then posted and the person was released outside the time period captured by the snapshot.



*Draft for
discussion
purposes*

Current Detainees with Bail Amounts - 09/25/2023

Facility Where Held	<1000	1Ks	10Ks	100Ks	HWOB	ADULT	Cash or Bond	Other	Other / Release to Responsible	UNKNOWN	Grand Total
CRCF	3	9	13	2	11	1	1	0	0	3	43
MVRCF	3	5	11	1	46	0	0	0	0	6	72
NECC	8	10	11	1	27	1	0	0	0	3	61
NSCF	3	15	14	3	50	10	0	0	0	3	98
NWSCF	4	16	6	1	41	5	0	1	1	4	79
SSCF	4	18	10	4	54	2	0	0	0	9	101
Grand Total	25	73	65	12	229	19	1	1	1	28	454

Current Offenders with Bail Amounts - 02/14/2023

Facility Where Held	0	<1000	1Ks	10Ks	100Ks	HWOB	Grand Total
CRCF	3	3	7	12	6	13	44
MVRCF	2	2	8	11	1	39	63
NECC	11	3	6	8	1	24	53
NSCF	9	5	14	18	5	63	114
NWSCF	6	1	15	11	2	34	69
SSCF	5	5	13	19		60	102
Grand Total	36	19	63	79	15	233	445

- The table above, from February 2023: 176 of 445 individuals from this data set were held for lack of bail. 233 are noted as held without bail (which is limited to serious felony offenses, and only maintained after an evidentiary hearing). The other 36 individuals held with 0 bail are attributable to lack of a responsible adult or other circumstances not involving setting of cash bail by a court. In summary, there was a total of 3 women and 16 men on bail in amounts less than \$1,000 as of February 14, 2023. These may entail misdemeanor or felony offenses.
- *(Data Source: DOC snapshot from 2/14/23 was presented to SJC in February 2023 during the course of S.27 testimony from SAS).*

Background Information

What type of offenses are resulting in imposition of cash bail?

Recent data from the Department of Corrections indicates that 34 of 428, or 8% of those detained are detained based on a misdemeanor offense. Of this group, three-quarters of the individuals are detained based upon commission of crimes against a person (e.g. domestic assault, simple assault, etc.):

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VT Department of Corrections: Population Report 12/31/2022 *

1244 VT in-state population
110 VT out-of-state population
1354 Total VT incarcerated population

Crime Type	Detained	Hold	Sentenced	Total
01:Fel./Serious	284		535	819
02:Fel./Person	26	1	82	109
03:Fel./Property	43		119	162
04:Fel./Drug	21	1	30	52
05:Fel./MotorV	8		27	35
06:Fel./Other	12		16	28
07:Misd./Person	23		33	56
08:Misd./Property	2		1	3
09:Misd./Drug	1		1	2
10:Misd./MotorV	3	1	7	11
11:Misd./Other	5			5
Uncategorized		72		72
Total	428	75	851	1354

Crime Type Examples:

01:Fel./Serious: Aggravated Assault, Aggravated Sexual Assault, Murder

02:Fel./Person: Assault and Robbery, Lewd and Lascivious

03:Fel./Property: Burglary Occupied, Grand Larceny, Arson

04:Fel./Drug: Dealing, Trafficking, Possession and Sale

05:Fel./MotorV: DUI3 or more

06:Fel./Other: Obstruction of Justice, Fugitive

07:Misd./Person: Domestic Assault, Simple Assault

08:Misd./Property: Unlawful Trespass, Retail Theft

09:Misd./Drug: Possession of drugs

10:Misd./MotorV: Careless and Negligent Operation

11:Misd./Other: Violations Conditions of Release

Note: All Uncategorized Crime Types have a Hold Status

*Note: Daily Counts are accurate as of 10pm on the date listed

The data available does not delineate between when bail was imposed during the course of a case –whether imposed at arraignment or subsequently – and does not capture circumstances where bail was posted and then a higher bail amount was set based on non-appearance.²

In any event, the data demonstrates that the majority of individuals detained are not just felony cases, but they are serious crimes of violence (more than 300 of the 428 detained individuals).

Draft for
discussion
purposes



Department of
State's Attorneys
and Sheriffs

- The December 31, 2022, DOC snapshot indicates that 34 individuals were held on misdemeanors, which constituted 0.3% of the total number – signifying a very small percentage of total cases, even if the total number for the year is greater versus that moment in time.
- The number of those detained almost certainly changes daily – as multiple individuals are apprehended on warrants each day and may be held overnight or count toward the population and be released the next day. Others will post bail after a period of time or resolve their cases.



- ✓ [S.287: Legal Mechanisms Related to the Pretrial Revolving Door Issue](#) (SOURCE, DPS: Tucker Jones).

Legal mechanisms related to pretrial “revolving door” issue

- 1. Imposing bail.** Review [Act No. 164 from 2018](#). Repeal this Act ([H. 775](#)). Alternatively, consider revisions ([S. 287](#)).
 - a. \$200 cap: eliminate, or revise (by striking limit for defendant who has been released pending trial for another offense).
 - b. Add to judicial factors relating to protection of public in § 7554 ([S. 287, p. 7](#)).
 - c. Revise definition of flight from prosecution to expressly include noncompliance with court orders and failures to appear at court hearings. ([S. 287, p. 17](#)).
- 2. Flash cites.** Give legislative direction to the timing of arraignments for violations of conditions of release, especially when the violation constitutes a new crime. See, e.g., 13 V.S.A. § 1048(b) (“A person cited for domestic assault shall be arraigned on the next business day after the citation is issued except for good cause shown.”).
- 3. VCR enforcement scheme.** (See [S. 287, p. 10](#).)
- 4. Pretrial risk assessments and needs screenings.** Make orders under [13 V.S.A. § 7554c](#) enforceable. These orders are currently unenforceable by statute. See 13 V.S.A. § 7554c(d)(4).
- 5. Civil contempt.** Codify civil contempt for pretrial orders to perform certain acts, including orders under § 7554c. Bill language has been drafted and is based on civil contempt for failure to pay child support in [15 V.S.A. § 603](#). Civil contempt overview: [Russell v. Armitage](#), 166 Vt. 392, 407 (1997) (Morse, J., concurring).
- 6. Revoking bail.** Give legislative attention to [13 V.S.A. § 7575](#), informed by the constitutional standard for revoking bail (see [State v. Sauve](#), 159 Vt. 566, 575 (1993)). Review change to § 7575 in [Act 164 in 2018, p. 10](#), and proposed repeal in [H.775, p. 8](#). Consider a statutory definition for “impedes prosecution” consistent with *Sauve*. Also, for purposes of policy discussion, compare [13 V.S.A. § 7575](#) with [18 U.S.C. § 3148](#).



Roles of the Criminal Justice System

- Retribution, rehabilitation, incapacitation, and deterrence
- Deterrence: Probability and Severity of Consequences
- Many studies find that the probability of consequences deters more than the severity of punishment.
- Probability of Consequences
 - Chances of Being Caught
 - Certainty and Expediency of Consequences
- [Rubb, T., Meta Analysis of Crime and Deterrence: A Comprehensive Review of Literature \(2008\)](#)



NOTE: SAS WORKLOAD (as of 12/10/23)

- **SAS attorneys handle 99%** of criminal-justice cases and the vast majority of family-juvenile justice cases in Vermont.

- **SAS Attorney Caseload Average.** As of 12/10/23 for most SAS case types (*excluding Appeals, ERPOs, and investigation related work*), there were 26,039 pending cases and as of 12/10/23, the statewide SAS attorney average was:
 - ❖ **361.652 cases per SAS attorney.**

- **SAS Victim Advocate Caseload Average.** As of 12/10/23 the estimated average caseload for an SAS victim advocates was:
 - ❖ **665 cases per SAS Victim Advocate.**