

Retail Theft Data (12/10/23)

1,596 pending “retail” dockets. See below for all the pending dockets that include “retail” in the literal charge. 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

	Addison	Bennington	Caledonia	Chittenden	Essex	Franklin	Grand Isle	Lamoille	Orange	Orleans	Rutland	Washington	Windham	Windsor	Grand Total
Grand Total Retail Theft Dockets	35	69	41	608	4	117	1	59	12	98	270	144	94	44	1,596
Docket total as % of Statewide total	2.19%	4.32%	2.57%	38.10%	0.25%	7.33%	0.06%	3.70%	0.75%	6.14%	16.92%	9.02%	5.89%	2.76%	100%
2020 Census population	37,363	37,347	30,233	168,323	5,920	49,946	7,293	25,945	29,277	27,393	60,572	59,807	45,905	57,753	643,077
Population as % of State population	5.81%	5.81%	4.70%	26.17%	0.92%	7.77%	1.13%	4.03%	4.55%	4.26%	9.42%	9.30%	7.14%	8.98%	100%
Difference between % of RT dockets and % of population	-3.62%	-1.48%	-2.13%	11.92%	-0.67%	-0.44%	-1.07%	-0.34%	-3.80%	1.88%	7.50%	-0.28%	-1.25%	-6.22%	0%



Draft for discussion purposes

➤ 21,619 pending “criminal” cases are related to 13,216 persons.

- **Repeat Offenses:** Of those persons with pending cases, **3,485 defendants had two or more 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 people with two or more dockets—alleged to have committed repeated criminal conduct (a docket may, typically, include multiple individual counts).
- **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*).
- **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.*
- **Failure to Appear Arrest Warrants** (FTA Aws): **5,023** (1/1/23-12/29/23).
- **VCRs:** Total counts for Violations of Conditions of Release (VCRs) (as of 1/9/24): **4605**

“Criminal” only data DOES NOT include Appeals, Family Division matters (CHINS, Juvenile Delinquency, Youthful Offender, ERPOs), or Civil Division matters assigned to SAS (e.g., PCR).

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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	12,688
															Count
															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.



REPEAT OFFENSES / BAIL / VCRs: TIMELINESS OF RESPONSE PROMOTES ACCOUNTABILITY

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
												26		26
			25											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

- The chart below is snapshot 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).
- The data below represents those persons with the top 20 highest pending dockets as of 12/10/23.
 - A defendant in Windham has 74 pending dockets.
 - A defendant in Bennington has 47 pending dockets.
 - A defendant in Chittenden has 41 pending dockets.
 - A defendant has 13 pending dockets in Washington, 9 in Chittenden, and 7 in Caledonia.
 - A defendant has 27 pending dockets in Rutland and one pending docket in Addison.
 - In Rutland there are three defendants with over 20 pending dockets.
 - In Windham there are five defendants with 20 or more pending dockets.

- **To discourage repeat offenses and VCRs = decrease the amount of time between offense-date and accountability-date (between arrest and consequence).**
- **It is better for the Defendant, Victim, and Community to reduce time period between arrest-date and date of potential consequences.** For lower-level crime: **date of arrest is too far removed from final disposition...**
- **On the rise: “lower-level” community crime** (e.g., *VCRs, Simple Assault, Driving-related conduct, Dis.Conduct, VAPOs, Interference w/Access to Emergency Services, Petit Larceny, Retail Theft, Unlawful Mischief, Unlawful Trespass, etc. In Vermont. Even amongst “lower-level” offenses, we are seeing an increase in violent-conduct and gun-related incidents*).
- **Not unusual for defendants with 10-15 pending dockets.** Increase in cycles of noncompliance w/repeated VCRs.





REPEAT OFFENSES / BAIL / VCRs: TIMELINESS OF RESPONSE PROMOTES ACCOUNTABILITY

*Draft for
discussion
purposes*

➤ **Conditions (CORs) imposed by a Court should matter** - CORs are conditions imposed by a Judge that allow for a defendant to be released prior to trial in the community - in lieu of imposition of cash bail, conditions of release are supposed to reasonably mitigate risk of flight AND reasonably protect the public. NOTE: bail *may not* be used to ensure protection of the public.

✓ ***If conditions “of release” are violated or there are multiple pending cases for a single person, what is the appropriate response?***

- ✓ **Closing the gap in time between date of offense and date of consequences** may assist in decreasing prevalence of repeat-offense, misdemeanor, first-time offenders, while increasing VCR accountability, particularly, for lower-level community criminal conduct.
- ✓ **Immediacy is an essential ingredient** as well as **certainty of a date where consequences could occur**.
- ✓ **Bail**. What is missing in the 7576 / 7554 analysis? Express mention of noncompliance with court orders? What can be done to ensure efficient and expedient prosecution to close gap between offense date and consequences?
- ✓ **VCRs**. The State may pursue criminal contempt for VCRs and file criminal charges for VCRs but what other tools could be pursued to expedite VCR-related cases and increase accountability for lack of compliance with VCR-related cases?
 - ✓ Enhanced expedited pathway for Civil Contempt for elevated-conditions VCRs?
 - ✓ Many reference 13 V. 7575 “revocation” for VCRs etc. but 7575 is seldom requested given the high bar set by caselaw related to VCRs, amongst other reasons. If this statute is to have meaning, what can be done to improve its ability to be used in practice?
 - ✓ Or should there be a new VCR enforcement scheme?



BAIL And VCR Overlap: Timeliness Of Response Promotes Accountability.

- **VCRs / Noncompliance with Court Orders” should be viewed as essential factors in the “Risk of Flight from Prosecution” Bail Analysis.** In practice there is a reliance on FTAs (*failures to appear*) for misdemeanors in the bail analysis. Even with many FTAs, we are seeing those alleged to have committed repeat offenses released without imposition of bail or consideration of new VCR arrests or repeat offense arrests.
 - ✓ **BAIL.**
 - ✓ **AMEND 13 V. 7554(a)(1)** to ensure that **VCRs, Noncompliance with Court Orders, FTAs, and Supervision Status** should be accounted for as essential factors in the 13 V. 7554 analysis of **Risk of Flight from Prosecution**.
 - ✓ **AMEND the 13 V. 7576(9)** definition of “*Flight from Prosecution*” to emphasize the policy aim and community expectation that **Noncompliance with Court Orders and Failures to Appear at Court** should be considered evidence of “**RISK**” of *Flight from Prosecution*” and should be considered as essential factors in the court’s analysis when deciding whether to impose bail or impose elevated conditions of release. “Flight from prosecution” means any action or behavior undertaken by a person charged with a criminal offense to avoid court proceedings...
 - ✓ **AMEND 13 V. 7551(b)** so that the \$200 cap shall not apply to an offense committed by a defendant who has been released pending trial for another offense.
 - ✓ **VCRs and Repeat Offenses.**
 - ✓ **Stricter timelines for those with VCRs and expanded court time for those held on misdemeanor bail, or on elevated conditions of release (#4, curfew, etc.)** (*complexities abound: MH, Substance Use, Housing, Generational Poverty, DV/SV violence, etc.*).
 - ✓ The State may pursue criminal contempt for VCRs and may file criminal charges for VCRS - but what other tools could be pursued to expedite VCR-related cases and increase accountability for lack of compliance with COR and repeat-offense cases?
 - ✓ Civil Contempt. Should there be enhanced expedited pathway for Civil Contempt relating to elevated-conditions VCRs? Should there be a stronger civil contempt statute for alleged VCRS?
 - ✓ Generally, should there be a stronger VCR enforcement scheme (*unrelated to contempt or 7575*)?
 - ✓ **S.287: Legal Mechanisms Related to the Pretrial Revolving Door Issue** (Tucker Jones).

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

Department of Public Safety
Tucker Jones
January 24 2024 Senate Judiciary

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](#).



*Draft for discussion
purposes*

- **Should Vermont provide for expedited VCR enforcement scheme whereby VCR-related cases take priority?** Should there be expanded court time and trial dates available for VCR and repeat offenses as well as those held on bail? For someone cited with repeated VCRs, should the date of arraignment be next day (rather than six weeks out) and should the trial date for all pending cases be moved up?
- **VCR consequences.** Should those convicted of a VCR or certain repeat offenses no longer be eligible for midpoint review or other consequences?
- **If one of the goals of criminal justice system is public safety,** we have seen in practice that the longer the timeframe from offense to consequences, for lower-level crimes (*VCRs, dc, pl, um, etc.*), that there is an increase in chances/opportunities to re-offend. Lack of timeliness sends a message that criminal conduct is not going to be met with a response, particularly, if while awaiting trial, multiple VCRs and/or FTAs occur with no detention or imposition of bail to mitigate “risk” of flight from prosecution.



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

Draft for discussion purposes

- **“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 tool utilized by Judges, in Vermont, only to secure appearances / AND per our bail statute, “mitigate the **risk of flight from prosecution.**” 13 V. 7554(a)(1).
 - **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.”

A note on FTAs (Failures to Appear)

➤ From 1/1/23 to 12/29/23 – there were **5023 FTA ARREST WARRANTS (AW).**

- ✓ Note: Sometimes Judges may not issue a FTA warrant even when someone fails to appear (e.g., a Judge may wish reschedule the person for another arraignment date or provides defense attorney further time to locate client). Or a Judge will intend to issue a FTA AW but then the defendant eventually appears prior to COB and the warrant never issues (sometimes a person who FTAs may become aware of the potential for an AW and in response appear in court after hearing time. Or def appears after learning that they had missed the appearance by other means and as such FTA AW is never issued).



[Source. Rep. LaLonde, Pres. 12.19.23](#)

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 \(2008\)](#)





- **SAS is responding to multiple points of community crisis:** a housing emergency leaving many people unhoused; community level crimes against property, businesses, cars, and persons; drug-related crime; increasing crime amongst younger offenders; domestic violence; child abuse; sexual assault; an overdose/opioid epidemic; increasing gun violence; and repeat offenders who fail to abide by court orders. Both low-level and serious crime are on the rise, and it is taking too long for cases to reach final disposition.
- **SAS attorneys handle 99%** of criminal-justice and the vast majority of family-juvenile justice cases in Vermont.
- **Criminal-Only SAS Attorney Caseload Average.** As of 12/10/23 there were 21,539 pending SAS-related “**criminal-only**” cases. 21,539 divided by [14 State’s Attorneys plus 58 DSAs] results in an average criminal-only caseload of: **299.15**.
- **Family-Criminal-Civil SAS Attorney Caseload Average.** As of 12/10/23 for **all SAS case types** (excluding Appeals, ERPOs, and investigation related work), there were 26,039 pending cases. There is a distinction between SAS criminal-only cases and SAS cases for all case types. As of 12/10/23 for all pending SAS case types, the statewide SAS attorney average was: **361.652**.
- **SAS Victim Advocate Caseload Average.** The current estimated average caseload for **SAS victim advocates: 665**.

21,539 is the total of pending criminal division cases likely assigned to SAS attorneys, which excludes the criminal cases known to be assigned to known to be assigned to AGO attorneys.

Pending “criminal” data does not include cases in the Family Division (CHINS, ERPOS, Juvenile Delinquency, Youthful Offender) or the Civil Division (e.g., PCRs) assigned to SAS ATTYS. Pending criminal data also does not include appeals or investigation related workload.

- SAS is currently **prosecuting over 80 murder/attempted murder cases** in Vermont courts. Murder and attempted murder cases have been filed and are pending in every county except Essex and Grand Isle. The complexity and seriousness of pending crimes in Vermont courts as well as the ongoing investigations relating to unsolved cases and cases yet to be charged are stretching SAS resources thin.
- As of 12/10/23, **there were 211 pending cases** under the following offense types: **all forms of murder and attempted murder, manslaughter, death resulting, and aggravated assaults**.
- **Increase in SAS staffing is needed.** It was noted at the Joint Hearing of 1/10/2024 that: 10-14 Deputy State's Attorneys, 6 Victim Advocates, and 8 Administrative staff would assist the Department in reducing SAS staff workloads and reduce attorney and victim advocate caseloads. 10-14 Deputy State's Attorneys would assist the Department in reducing the criminal-only caseloads (as of current data) of SAS attorneys (to achieve 250-275 criminal cases per attorney). Increasing SAS staffing (attorneys, victim advocates, and administrative staff) will lead to more prudent outcomes and heightened pursuit of justice. More time to allocate to each case per/staff will result in a more thorough approach and review of each case.

Takeaways concerning all SAS case types, *excluding ERPOS and APPEALS*, as of 12/10/23: (Criminal) 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: 6748; Fish and Game: 99; Murders: 83 (includes attempts); (Civil) PCRs: 76; (Family) Juvenile Delinquencies: 1,273; YO: 517; CHINS D (truancy): 172; CHINS C (without or beyond control of the p/g/c): 147; CHINS B (neglect): 1,484; and, CHINS A: 85 (abandoned or abused by p/g/c). 83 was as of 12/10/23. It is believed that