

1 S.7

2 Introduced by Senator Sears

3 Referred to Committee on Judiciary

4 Date: January 14, 2015

5 Subject: Crimes and criminal procedure; lewdness and prostitution; bail and
6 recognizances

7 Statement of purpose of bill as introduced: This bill proposes to categorize
8 conduct constituting the offense of lewd and lascivious conduct with a child as
9 a violent offense for the purpose of determining bail.

10 An act relating to bail determinations concerning a defendant charged with
11 lewd and lascivious conduct with a child

12 It is hereby enacted by the General Assembly of the State of Vermont:

13 ~~Sec. 1. 13 V.S.A. § 2602(f) is added to read:~~

14 ~~(f) Conduct constituting the offense of lewd and lascivious conduct with a~~
15 ~~child under this section shall be considered a violent act for the purpose of~~
16 ~~determining bail under chapter 229 of this title.~~

17 Sec. 2. EFFECTIVE DATE

18 ~~This act shall take effect on passage.~~

Sec. 1. 13 V.S.A. § 2602(f) is added to read:

(f) Conduct constituting the offense of lewd and lascivious conduct with a child under this section shall be considered a violent act for the purpose of determining bail under chapter 229 of this title.

Sec. 2. 13 V.S.A. § 7554 is amended to read:

§ 7554. RELEASE PRIOR TO TRIAL

(a) Any person charged with an offense, other than a person held without bail under section 7553 or 7553a of this title, shall at his or her appearance before a judicial officer be ordered released pending trial in accordance with this section.

(1) ~~The person defendant~~ shall be ordered released on personal recognizance or upon the execution of an unsecured appearance bond in an amount specified by the judicial officer unless the judicial officer determines that such a release will not reasonably ~~assure~~ ensure the appearance of the person as required. In determining whether the ~~person defendant~~ presents a risk of nonappearance, the judicial officer shall consider, in addition to any other factors, the seriousness of the offense charged and the number of offenses with which the person is charged. If the officer determines that such a release will not reasonably ~~assure~~ ensure the appearance of the ~~person defendant~~ as required, the officer shall, either in lieu of or in addition to the above methods of release, impose the least restrictive of the following conditions or the least restrictive combination of the following conditions ~~which that~~ will reasonably ~~assure~~ ensure the appearance of the ~~person defendant~~ as required:

(A) ~~place the person~~ Place the defendant in the custody of a designated person or organization agreeing to supervise him or her if the defendant is charged with an offense that is not a nonviolent misdemeanor or nonviolent felony as defined in 28 V.S.A. § 301.

(B) ~~place~~ Place restrictions on the travel, association, or place of abode of the ~~person defendant~~ during the period of release.

(C) ~~require the person~~ Require the defendant to participate in an alcohol or drug treatment program. The judicial officer shall take into consideration the defendant's ability to comply with an order of treatment and the availability of treatment resources.

(D) ~~require~~ Require the execution of a secured appearance bond in a specified amount and the deposit with the clerk of the Court, in cash or other security as directed, of a sum not to exceed 10 percent of the amount of the bond, such deposit to be returned upon the appearance of the ~~person defendant~~ as required.

(E) ~~require~~ Require the execution of a surety bond with sufficient solvent sureties, or the deposit of cash in lieu thereof;

(F) ~~impose~~ Impose any other condition found reasonably necessary to ~~assure~~ ensure appearance as required, including a condition requiring that the ~~person~~ defendant return to custody after specified hours.

(2) If the judicial officer determines that conditions of release imposed to ~~assure~~ ensure appearance will not reasonably protect the public, the judicial officer may ~~in addition~~ impose in addition the least restrictive of the following conditions or the least restrictive combination of the following conditions ~~which that~~ that will reasonably ~~assure~~ ensure protection of the public:

(A) ~~place the person~~ Place the defendant in the custody of a designated person or organization agreeing to supervise him or her; if the defendant is charged with an offense that is not a nonviolent misdemeanor or nonviolent felony as defined in 28 V.S.A. § 301.

(B) ~~place~~ Place restrictions on the travel, association, or place of abode of the ~~person~~ defendant during the period of release;

(C) ~~require the person~~ Require the defendant to participate in an alcohol or drug treatment program. The judicial officer shall take into consideration the defendant's ability to comply with an order of treatment and the availability of treatment resources;

(D) ~~impose~~ Impose any other condition found reasonably necessary to protect the public, except that a physically restrictive condition may only be imposed in extraordinary circumstances;

(E) ~~if the person~~ If the defendant is a State, county, or municipal officer charged with violating section 2537 of this title, the Court may suspend the officer's duties in whole or in part, if the Court finds that it is necessary to protect the public.

* * *

Sec. 3. 28 V.S.A. § 808(f) is amended to read:

(f) While appropriate community housing is an important consideration in release of offenders, the Department ~~of Corrections~~ shall not use lack of housing as the sole factor in denying furlough to offenders who have served at least their minimum sentence for a nonviolent misdemeanor or nonviolent felony provided that public safety and the best interests of the offender will be served by reentering the community on furlough. The Department shall adopt rules to implement this subsection.

Sec. 4. COMMUNITY HOUSING PLAN

On or before October 15, 2015, the Department of Corrections shall report to the Joint Legislative Corrections Oversight Committee regarding a plan for reducing the growing number of nonviolent offenders being held past their minimum sentence because of the lack of community housing and regarding its proposal for rulemaking. The report shall include data for offenders who are held past their minimum sentence for lack of housing, the offenders' risk levels, and whether they were released and reincarcerated due to violating conditions.

Sec. 5. EFFECTIVE DATES

(a) Secs. 1 and 2 shall take effect on July 1, 2015.

(b) This section and Secs. 3 and 4 shall take effect on passage.