

Journal of the Senate

TUESDAY, FEBRUARY 23, 2016

The Senate was called to order by the President.

Devotional Exercises

A moment of silence was observed in lieu of devotions.

Pledge of Allegiance

The President then led the members of the Senate in the pledge of allegiance.

Consideration Postponed

Senate bill entitled:

S. 154.

An act relating to enhanced penalties for assaulting an employee of the Family Services Division of the Department for Children and Families and to criminal threatening.

Was taken up.

Thereupon, Senator Sears moved that consideration of the bill be postponed until Thursday, February 25, 2016, which was agreed to.

Third Reading Ordered

S. 256.

Senator Lyons, for the Committee on Health & Welfare, to which was referred Senate bill entitled:

An act relating to extending the moratorium on home health agency certificates of need.

Reported that the bill ought to pass.

Thereupon, the bill was read the second time by title only pursuant to Rule 43, and third reading of the bill was ordered.

Bill Amended; Third Reading Ordered

S. 212.

Senator White, for the Committee on Judiciary, to which was referred Senate bill entitled:

An act relating to court-approved absences from home detention and home confinement furlough.

Reported recommending that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 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 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 ensure the appearance of the person as required. In determining whether the 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 ensure the appearance of the defendant as required, the officer shall, either in lieu of or in addition to the ~~above~~ methods of release in this section, impose the least restrictive of the following conditions or the least restrictive combination of the following conditions that will reasonably ensure the appearance of the defendant as required:

(A) 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 restrictions on the travel, association, or place of abode of the defendant during the period of release.

(C) 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 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 defendant as required.

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

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

(G) Place the defendant in a program of community-based electronic monitoring in accordance with section 7554e of this title.

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

(A) 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 restrictions on the travel, association, or place of abode of the defendant during the period of release.

(C) 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 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 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.

(F) Place the defendant in a program of community-based electronic monitoring in accordance with section 7554e of this title.

* * *

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

§ 7554b. HOME DETENTION PROGRAM

(a) ~~Definition~~ Definitions. As used in this section:

(1) “~~home~~ Home detention” means a program of ~~confinement~~ pretrial detention and supervision that restricts a defendant to a preapproved residence continuously, except for authorized absences, and is enforced by appropriate means of surveillance and electronic monitoring by the Department of Corrections or local sheriff’s office providing electronic monitoring. ~~The Court may authorize scheduled absences such as work, school, or treatment. Any changes in the schedule shall be solely at the discretion of the Department of Corrections.~~ A defendant who is on home detention shall remain in the custody of the Commissioner of Corrections with conditions set by the ~~Court~~ court.

(2) “Listed crime” shall have the same meaning as provided in section 5301 of this title.

(b) Procedure. The status of a defendant who is detained pretrial for more than seven days in a correctional facility for lack of bail may be reviewed by the Court to determine whether the defendant is appropriate for home detention. The request for review may be made by either the Department of Corrections or the defendant. After a hearing, the Court may order that the defendant be released to the Home Detention Program, providing that the Court finds placing the defendant on home detention will reasonably assure his or her appearance in Court when required and the proposed residence is appropriate for home detention. In making such a determination, the Court shall consider:

(1) the nature of the offense with which the defendant is charged;

(2) the defendant’s prior convictions, history of violence, medical and mental health needs, history of supervision, and risk of flight; and

(3) any risk or undue burden to other persons who reside at the proposed residence or risk to third parties or to public safety that may result from such placement.

(c)(1) Conditions for defendants charged with an offense that is not a listed crime. The court may authorize scheduled absences such as for work, school, or treatment. Any changes in the schedule shall be solely at the discretion of the Department of Corrections or the sheriff’s office providing the electronic monitoring.

(2) Conditions for defendants charged with a listed crime. The court may approve authorized absences from the home only if such absences are clearly identified on the record with respect to the day of the week, time of day, the purpose of the absence, the permissible duration of the absence, the places that may be visited during the absence, and the frequency with which the absence may recur. The absences may commence no earlier than 24 hours

following the issuance of the order. The day the order is issued, the court shall provide an electronic copy of the order to the prosecutor's office. The Department of Corrections or the sheriff's office providing the electronic monitoring may reschedule court-authorized absences only after providing 72 hours' advance notice of the changes to the prosecutor's office. Only medical emergencies are exempted from the notification requirements of this subdivision.

(d) Failure to comply. The Department of Corrections may revoke a defendant's home detention status for an unauthorized absence or failure to comply with any other condition of the Program and shall return the defendant to a correctional facility.

Sec. 3. 13 V.S.A. § 7554e is added to read:

§ 7554e. COMMUNITY-BASED ELECTRONIC MONITORING PROGRAM

(a) Definitions. As used in this section:

(1) "Community-based electronic monitoring" means an integrated community detention program that provides 24-hours-a-day, seven-days-a-week electronic monitoring that restricts the defendant to a preapproved community continuously with supervision and immediate response by the sheriff's office that is providing the electronic monitoring. A court may impose community-based electronic monitoring as a condition of release prior to trial in accordance with subdivisions 7554(a)(1)(G) or 7554(a)(2)(F) of this title.

(2) "Listed crime" shall have the same meaning as provided in section 5301 of this title.

(b) Procedure. The court may order that a defendant charged with an offense that is not a listed crime be released prior to trial in accordance with section 7554 of this title to a program of community-based electronic monitoring, provided that the court finds that placing the defendant on community-based electronic monitoring will reasonably assure his or her appearance in court when required and that the proposed community is an appropriate placement for the defendant. In making such a determination, the court shall consider:

(1) the nature of the offense with which the defendant is charged;

(2) the defendant's prior convictions, history of violence, medical and mental health needs, history of supervision, and risk of flight; and

(3) any risk or undue burden to other persons who reside in the proposed community or risk to third parties or to public safety that may result from such placement.

(c) Failure to comply. A judicial officer imposing a program of community-based electronic monitoring on a defendant as a condition of his or her release shall, in accordance with subsection 7554(c) of this title, issue an appropriate order and inform the defendant of any penalties applicable to violations of the imposed conditions, and advise the defendant that a warrant for his or her arrest may be issued immediately upon any such violation.

Sec. 4. REPEAL

13 V.S.A. § 7554d (Windham County Electronic Monitoring Program) is repealed.

Sec. 5. 28 V.S.A. § 808b is amended to read:

§ 808b. HOME CONFINEMENT FURLOUGH

(a) An offender may be sentenced to serve a term of imprisonment, but placed by a court on home confinement furlough that restricts the defendant to a preapproved place of residence continuously, except for authorized absences. Home confinement furlough shall be enforced by appropriate means of supervision, including electronic monitoring and other conditions such as limitations on alcohol, visitors, and access to firearms imposed by the ~~Court~~ court or the Department, or both.

(b) The Department, in its own discretion, may place on home confinement furlough an offender who has not yet served the minimum term of the sentence for an eligible misdemeanor as defined in section 808d of this title if the Department has made a determination based upon a risk assessment that the offender poses a low risk to public safety or victim safety and that employing an alternative to incarceration to hold the offender accountable is likely to reduce the risk of recidivism.

~~(c) A home confinement furlough shall not exceed a total of 180 days and shall require the defendant:~~

~~(1) to remain at a preapproved residence at all times except for scheduled and preapproved absences for work, school, treatment, attorney appointments, court appearances, and other obligations as the Court may order; or~~

~~(2) to remain at a preapproved residence 24 hours a day on lock-down status except for medical appointments and court appearances.~~

(d) In determining whether a home confinement furlough sentence is appropriate and whether a place of residence is suitable for such a sentence, all of the following shall be considered:

(1) The nature of the offense with which the defendant was charged and the nature of the offense of which the defendant was convicted.

(2) The defendant's criminal history record, history of violence, medical and mental health needs, history of supervision, and risk of flight.

(3) Any risk or undue burden to other persons who reside at the proposed residence or risk to third parties or to public safety that may result from such placement.

(d)(1) A home confinement furlough shall not exceed a total of 180 days and shall require the defendant:

(A) to remain at a preapproved residence at all times except for preapproved absences for work, school, treatment, attorney appointments, court appearances, and other obligations as the court may order; or

(B) to remain at a preapproved residence 24 hours a day on lock-down status except for medical appointments and court appearances.

(2) In cases involving offenders convicted of a listed crime, the defendant shall remain at a preapproved residence at all times except for preapproved absences for work, school, treatment, attorney appointments, court appearances, and other obligations as the court or Department may authorize. The day the absences are approved, the court or the Department shall provide a record to the prosecutor's office documenting the date, time, location, and purpose of the authorized absences. The authorized absences may commence no earlier than 24 hours following notification to the prosecutor's office. The Department may reschedule authorized absences only after providing 72 hours' advance notice to the prosecutor's office. Only medical emergencies are exempted from the notification requirements of this subdivision.

(e) [Repealed.]

Sec. 6. WINDHAM COUNTY SHERIFF'S OFFICE ELECTRONIC MONITORING PROGRAM AGREEMENTS; STATEWIDE COMMUNITY-BASED ELECTRONIC MONITORING

(a) The Windham County Sheriff's Office (WCSO), tasked with piloting an electronic monitoring program from July 1, 2014 through June 30, 2016 in accordance with 2014 Act No. 179, Sec. E.339.1, is authorized to enter into agreements with any Vermont sheriff's office that wishes to participate in offering community-based electronic monitoring in accordance with 13 V.S.A.

§§ 7554b and 7554e. As a part of the agreements, the WCSO shall provide and the sheriff's offices shall abide by the policies and procedures the WCSO establishes for providing electronic monitoring under 13 V.S.A. §§ 7554b and 7554e.

(b) The electronic monitoring program for pretrial detention as set forth in 13 V.S.A. §§ 7554b and 7554e shall be utilized as a tool for monitoring and supervising detainees who would otherwise be housed in a correctional facility. The goals of expanding the program statewide are to save valuable bed space for detainees who should be lodged in a correctional facility, reduce out-of-state prison placements, reduce recidivism, improve public safety and victim notification, reduce transportation costs, increase detainee access to services, and reduce case resolution time.

Sec. 7. EFFECTIVE DATES

This act shall take effect on July 1, 2016, except for this section and Sec. 6, which shall take effect on passage.

And that when so amended the bill ought to pass.

Thereupon, the bill was read the second time by title only pursuant to Rule 43, the recommendation of amendment was agreed to, and third reading of the bill was ordered.

Rules Suspended; Bill Committed

S. 116.

Appearing on the Calendar for notice, on motion of Senator Flory, the rules were suspended and Senate bill entitled:

An act relating to rights of offenders in the custody of the Department of Corrections.

Was taken up for immediate consideration.

Thereupon, pending the reading of the report of the Committee on Institutions, Senator Flory moved that Senate Rule 49 be suspended in order to commit the bill to the Committee on Judiciary with the report of the Committee on Institutions *intact*,

Which was agreed to.

Message from the House No. 25

A message was received from the House of Representatives by Mr. Jeremy Weiss, its Second Assistant Clerk, as follows:

Mr. President:

I am directed to inform the Senate that:

The House has passed House bills of the following titles:

H. 297. An act relating to the sale of ivory or rhinoceros horn.

H. 530. An act relating to categorization of State contracts for service.

H. 622. An act relating to obligations for reporting child abuse and neglect and cooperating in investigations of child abuse and neglect.

In the passage of which the concurrence of the Senate is requested.

The House has considered Senate proposal of amendment to House bill of the following title:

H. 611. An act relating to fiscal year 2016 budget adjustments.

And has severally concurred therein with a further proposal of amendment thereto, in the adoption of which the concurrence of the Senate is requested.

Adjournment

On motion of Senator Campbell, the Senate adjourned until one o'clock in the afternoon on Wednesday, February 24, 2016.