

1 TO THE HONORABLE SENATE:

2 The Committee on Judiciary to which was referred Senate Bill No. 212
3 entitled “An act relating to court-approved absences from home detention and
4 home confinement furlough” respectfully reports that it has considered the
5 same and recommends that the bill be amended by striking out all after the
6 enacting clause and inserting in lieu thereof the following:

7 **Sec. 1. 13 V.S.A. § 7554 is amended to read:**

8 § 7554. RELEASE PRIOR TO TRIAL

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

13 (1) The defendant shall be ordered released on personal recognizance or
14 upon the execution of an unsecured appearance bond in an amount specified by
15 the judicial officer unless the judicial officer determines that such a release will
16 not reasonably ensure the appearance of the person as required. In determining
17 whether the defendant presents a risk of nonappearance, the judicial officer
18 shall consider, in addition to any other factors, the seriousness of the offense
19 charged and the number of offenses with which the person is charged. If the
20 officer determines that such a release will not reasonably ensure the
21 appearance of the defendant as required, the officer shall, either in lieu of or in

1 addition to the above methods of release, impose the least restrictive of the
2 following conditions or the least restrictive combination of the following
3 conditions that will reasonably ensure the appearance of the defendant as
4 required:

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

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

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

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

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

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

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

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

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

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

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

1 (D) Impose any other condition found reasonably necessary to protect
2 the public, except that a physically restrictive condition may only be imposed
3 in extraordinary circumstances.

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

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

10 * * *

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

12 § 7554b. HOME DETENTION PROGRAM

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

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

1 custody of the Commissioner of Corrections with conditions set by the ~~Court~~
2 court.

3 (2) “Listed crime” shall have the same meaning as provided in section
4 5301 of this title.

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

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

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

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

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

6 (2) Conditions for defendants charged with a listed crime. The court
7 may approve authorized absences from the home only if such absences are
8 clearly identified on the record with respect to the day of the week, time of
9 day, the purpose of the absence, the permissible duration of the absence, the
10 places that may be visited during the absence, and the frequency with which
11 the absence may recur. The absences may commence no earlier than 24 hours
12 following the issuance of the order. The day the order is issued, the court shall
13 provide an electronic copy of the order to the State's Attorney's or Attorney
14 General's Victim Advocate. The Department of Corrections or the sheriff's
15 office providing the electronic monitoring may reschedule court-authorized
16 absences only after providing 72 hours' advance notice of the changes to the
17 State's Attorney's or Attorney General's Victim Advocate. Only medical
18 emergencies are exempted from the notification requirements of this
19 subdivision.

20 (d) Failure to comply. The Department of Corrections may revoke a
21 defendant's home detention status for an unauthorized absence or failure to

1 comply with any other condition of the Program and shall return the defendant
2 to a correctional facility.

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

4 § 7554e. COMMUNITY-BASED ELECTRONIC MONITORING
5 PROGRAM

6 (a) Definitions. As used in this section:

7 (1) “Community-based electronic monitoring” means an
8 integrated community detention program that provides 24-hours-a-day,
9 seven-days-a-week electronic monitoring that restricts the defendant to a
10 preapproved community continuously with supervision and immediate
11 response by the sheriff’s office that is providing the electronic monitoring. A
12 court may impose community-based electronic monitoring as a condition of
13 release prior to trial in accordance with subdivisions 7554(a)(1)(G) or
14 7554(a)(2)(F) of this title.

15 (2) “Listed crime” shall have the same meaning as provided in section
16 5301 of this title.

17 (b) Procedure. The court may order that a defendant charged with an
18 offense that is not a listed crime be released prior to trial in accordance with
19 section 7554 of this title to a program of community-based electronic
20 monitoring, provided that the court finds that placing the defendant on
21 community-based electronic monitoring will reasonably assure his or her

1 appearance in court when required and that the proposed community is an
2 appropriate placement for the defendant. In making such a determination, the
3 court shall consider:

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

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

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

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

16 **Sec. 4. REPEAL**

17 13 V.S.A. § 7554d (Windham County Electronic Monitoring Program) is
18 repealed.

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

20 § 808b. HOME CONFINEMENT FURLOUGH

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

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

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

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

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

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

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

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

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

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

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

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

1 (2) In cases involving offenders convicted of a listed crime, the court
2 may approve authorized absences from the residence only if such absences are
3 clearly identified on the record with respect to the day of the week, time of
4 day, the purpose of the absence, the permissible duration of the absence, the
5 places that may be visited during the absence, and the frequency with which
6 the absence may recur. The absences may commence no earlier than 24 hours
7 following the issuance of the order. The day the order is issued, the court shall
8 provide an electronic copy of the order to the State’s Attorney’s or Attorney
9 General’s Victim Advocate. The Department of Corrections may reschedule
10 court-authorized absences only after providing 72 hours’ advance notice to the
11 State’s Attorney’s or Attorney General’s Victim Advocate of the changes.
12 Only medical emergencies are exempted from the notification requirements of
13 this subdivision.

14 (e) [Repealed.]

15 **Sec. 6. WINDHAM COUNTY SHERIFF’S OFFICE ELECTRONIC**
16 **MONITORING PROGRAM; STATEWIDE COMMUNITY-BASED**
17 **ELECTRONIC MONITORING**

18 The Windham County Sheriff’s Office (WCSO), tasked with piloting an
19 electronic monitoring program from July 1, 2014 through June 30, 2016 in
20 accordance with 2014 Act No. 179, Sec. E.339.1, shall enter into agreements
21 with sheriff’s offices statewide to offer community-based electronic

1 monitoring in accordance with 13 V.S.A. §§ 7554b and 7554e. As a part of the
2 agreements, the WCSO shall provide and the sheriff's offices shall abide by
3 the policies and procedures the WCSO establishes for its electronic monitoring
4 pilot project.

5 Sec. 7. EFFECTIVE DATES

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

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10 (Committee vote: _____)

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Senator _____
FOR THE COMMITTEE