

1 H.728

2 Introduced by Representatives Grad of Moretown, Hooper of Montpelier,

3 Colburn of Burlington, Conquest of Newbury, LaLonde of

4 South Burlington, Morris of Bennington, Rachelson of

5 Burlington, and Willhoit of St. Johnsbury

6 Referred to Committee on

7 Date:

8 Subject: Crimes and criminal procedure; bail and recognizances

9 Statement of purpose of bill as introduced: This bill proposes to: 1) restrict
10 the imposition of an appearance bond at the initial court appearance of a
11 person charged with a violation of conditions of release; 2) impose a cap on
12 cash bail for certain misdemeanor offenses; 3) require the court to make a
13 finding establishing the defendant's financial means prior to imposing bail; 4)
14 create a presumption that courts will release defendants accused of certain
15 misdemeanor offenses who are detained for lack of bail to a home detention
16 program pretrial; 5) limit the offenses for which a court may impose pretrial
17 conditions on a defendant's place of abode; and 6) provide that repeatedly
18 violating conditions of release does not, by itself, entitle the court to revoke
19 bail entirely.

20 An act relating to bail reform

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

2 ~~Sec. 1. 13 V.S.A. § 7551 is amended to read:~~

3 § 7551. IMPOSITION OF APPEARANCE BONDS; GENERALLY

4 (a) Appearance bonds; generally. A bond given by a person charged with a
5 criminal offense or by a witness in a criminal prosecution under section 6605
6 of this title, conditioned for the appearance of the person or witness before the
7 court in cases where the offense is punishable by fine or imprisonment, and in
8 appealed cases, shall be taken to the Criminal Division of the Superior Court
9 where the prosecution is pending, and shall remain binding upon parties until
10 discharged by the court or until sentencing. The person or witness shall appear
11 at all required court proceedings.

12 (b) Limitation on imposition of appearance bonds.

13 (1) No bond may be imposed at the initial appearance of a person
14 charged with:

15 (A) a misdemeanor if the person was cited for the offense in
16 accordance with Rule 3 of the Vermont Rules of Criminal Procedure; or

17 (B) a violation of conditions of release imposed pursuant to section
18 7554 of this title.

19 (2) For a defendant charged with a misdemeanor offense that is eligible
20 for expungement pursuant to subdivision 7601(4)(A) of this title, the court
21 may impose a secured appearance bond, surety bond, or cash deposit in lieu

1 ~~thereof in a maximum amount of \$200.00.~~

2 (3) This subsection shall not be construed to restrict the court's ability to
3 impose conditions on such persons to reasonably ensure his or her appearance
4 at future proceedings or to reasonably protect the public in accordance with
5 section 7554 of this title.

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

7 § 7554. RELEASE PRIOR TO TRIAL

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

12 (1) The defendant shall be ordered released on personal recognizance or
13 upon the execution of an unsecured appearance bond in an amount specified
14 by the judicial officer unless the judicial officer determines that such a release
15 will not reasonably ensure the appearance of the person mitigate the risk of
16 flight from prosecution as required. In determining whether the defendant
17 presents a risk of ~~nonappearance~~ flight from prosecution, 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~~ mitigate the risk of flight of the defendant as required, the officer

1 ~~shall, either in lieu of or in addition to the methods of release in this section,~~
2 impose the least restrictive of the following conditions or the least restrictive
3 combination of the following conditions that will reasonably ensure the
4 appearance, mitigate the risk of flight of the defendant as 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, or association, or place of abode
10 of 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~~ Upon a finding establishing the defendant's financial
16 means, require the execution of a secured appearance bond in a specified
17 amount and the deposit with the clerk of the Court, in cash or other security as
18 directed, of a sum not to exceed 10 percent of the amount of the bond, such
19 deposit to be returned upon the appearance of the defendant as required.

20 (E) ~~Require~~ Upon a finding establishing the defendant's financial
21 means, require the execution of a surety bond with sufficient solvent sureties,

1 ~~or the deposit of cash in lieu thereof.~~

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

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

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

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

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

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

1 ~~(D) Impose any other condition found reasonably necessary to~~
2 protect the public, except that a physically restrictive condition may only be
3 imposed 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~~ Suspend the
6 officer's duties in whole or in part; if the defendant is a State, county, or
7 municipal officer charged with violating section 2537 of this title and the court
8 finds that it is necessary to protect the public.

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

11 (G) Place restrictions on the defendant's place of abode during the
12 period of release if the defendant is charged with a domestic assault offense
13 under section 1042, 1043, or 1044 of this title or an offense involving violation
14 of a protection order in violation of section 1030 of this title.

15 (3) A judicial officer may order that a defendant not harass or contact or
16 cause to be harassed or contacted a victim or potential witness. This order
17 shall take effect immediately, regardless of whether the defendant is
18 incarcerated or released.

19 (b) Judicial considerations in imposing conditions of release. In
20 determining which conditions of release to impose under:

21 ~~(1) In subdivision (a)(1) of this section, the judicial officer, on the basis~~

1 ~~of available information, shall take into account the nature and circumstances~~
2 ~~of the offense charged; the weight of the evidence against the accused; the~~
3 ~~accused's employment; financial resources, including his or her ability to post~~
4 ~~bail; character and mental condition; length of residence in the community;~~
5 ~~and record of appearance at court proceedings or of flight to avoid prosecution~~
6 ~~or failure to appear at court proceedings.~~

7 (2) ~~subsection~~ In subdivision (a)(2) of this section, the judicial officer
8 ~~shall~~, on the basis of available information, shall take into account the nature
9 and circumstances of the offense charged, the weight of the evidence against
10 the accused, the accused's family ties, employment, ~~financial resources,~~
11 character and mental condition, the length of residence in the community,
12 record of convictions, and record of appearance at court proceedings or of
13 flight to avoid prosecution or failure to appear at court proceedings. Recent
14 history of actual violence or threats of violence may be considered by the
15 judicial officer as bearing on the character and mental condition of the
16 accused.

17 (c) Order. A judicial officer authorizing the release of a person under this
18 section shall issue an appropriate order containing a statement of the
19 conditions imposed, if any, shall inform such person of the penalties applicable
20 to violations of the conditions of release, and shall advise him or her that a
21 ~~warrant for his or her arrest will be issued immediately upon any such~~

1 violation

2 (d) Review of conditions.

3 (1) A person for whom conditions of release are imposed and who is
4 detained as a result of his or her inability to meet the conditions of release or
5 who is ordered released on a condition that he or she return to custody after
6 specified hours shall, within 48 hours of following application, be entitled to
7 have the conditions reviewed by a judge in the court having original
8 jurisdiction over the offense charged. A person applying for review shall be
9 given the opportunity for a hearing. Unless the conditions of release are
10 amended as requested, the judge shall set forth in writing or orally on the
11 record a reasonable basis for continuing the conditions imposed. In the event
12 that a judge in the court having original jurisdiction over the offense charged is
13 not available, any Superior judge may review such conditions.

14 (2) A person for whom conditions of release are imposed shall, within
15 five working days of following application, be entitled to have the conditions
16 reviewed by a judge in the court having original jurisdiction over the offense
17 charged. A person applying for review shall be given the opportunity for a
18 hearing. Unless the conditions of release are amended as requested, the judge
19 shall set forth in writing or orally on the record a reasonable basis for
20 continuing the conditions imposed. In the event that a judge in the court
21 having original jurisdiction over the offense charged is not available, any

1 Superior judge may review such conditions.

2 (e) Amendment of order. A judicial officer ordering the release of a person
3 on any condition specified in this section may at any time amend the order to
4 impose additional or different conditions of release, provided that the
5 provisions of subsection (d) of this section shall apply.

6 (f) Definition. The term “judicial officer” as used in this section and
7 section 7556 of this title shall mean a clerk of a Superior Court or a Superior
8 Court judge.

9 (g) Admissibility of evidence. Information stated in, or offered in
10 connection with, any order entered pursuant to this section need not conform
11 to the rules pertaining to the admissibility of evidence in a court of law.

12 (h) Forfeiture. Nothing contained in this section shall be construed to
13 prevent the disposition of any case or class of cases by forfeiture of collateral
14 security where if such disposition is authorized by the court.

15 (i) Forms. The Court Administrator shall establish forms for appearance
16 bonds, secured appearance bonds, surety bonds, and for use in the posting of
17 bail. Each form shall include the following information:

18 (1) The bond or bail may be forfeited in the event that the defendant or
19 witness fails to appear at any required court proceeding.

20 (2) The surety or person posting bond or bail has the right to be released
21 from the obligations under the bond or bail agreement upon written application

1 to the judicial officer and detention of the defendant or witness.

2 (3) The bond will continue through sentencing in the event that bail is
3 continued after final adjudication.

4 (j) Juveniles. Any juvenile between 14 and 16 years of age who is charged
5 with a listed crime as defined in subdivision 5301(7) of this title shall appear
6 before a judicial officer and be ordered released pending trial in accordance
7 with this section within 24 hours of following the juvenile's arrest.

8 Sec. 3. 13 V.S.A. § 7554b is amended to read:

9 § 7554b. HOME DETENTION PROGRAM

10 (a) Definition. As used in this section, "home detention" means a program
11 of confinement and supervision that restricts a defendant to a preapproved
12 residence continuously, except for authorized absences, and is enforced by
13 appropriate means of surveillance and electronic monitoring by the
14 Department of Corrections. The court may authorize scheduled absences such
15 as work, school, or treatment. Any changes in the schedule shall be solely at
16 the discretion of the Department of Corrections. A defendant who is on home
17 detention shall remain in the custody of the Commissioner of Corrections with
18 conditions set by the court.

19 (b) Procedure. At the request of the court, the Department of Corrections,
20 or the defendant, the status of a defendant who is detained pretrial in a

21 ~~correctional facility for lack of bail may be reviewed by the court to determine~~

1 ~~whether the defendant is appropriate for home detention. At arraignment or~~
2 after a hearing, the court may order that the defendant be released to the Home
3 Detention Program, providing that the court finds placing the defendant on
4 home detention will reasonably ~~assure~~ ensure his or her appearance in court
5 when required and the proposed residence is appropriate for home detention.

6 (1) In making such a determination, the court shall consider:

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

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

10 ~~(3)~~(C) 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 (2) Unless the court finds it is contrary to the interests of justice, the
14 court shall order a defendant detained pretrial for lack of bail to be released to
15 the Home Detention Program if the defendant is charged with committing a
16 misdemeanor that is not:

17 (A) a listed crime as defined in subdivision 5301(7) of this title;

18 (B) an offense involving sexual exploitation of children in violation
19 of chapter 64 of this title; or

20 (C) an offense involving violation of a protection order in violation
21 of section 1050 of this title.

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

5 (d) Credit for time served. A defendant shall receive credit for a sentence
6 of imprisonment for time served in the Home Detention Program.

7 Sec. 4. 13 V.S.A. § 7575 is amended to read:

8 § 7575. REVOCATION OF THE RIGHT TO BAIL

9 The right to bail may be revoked entirely if the judicial officer finds that the
10 accused has:

11 (1) intimidated or harassed a victim, potential witness, juror, or judicial
12 officer in violation of a condition of release; or

13 (2) ~~repeatedly violated conditions of release;~~ or [Repealed.]

14 (3) violated a condition or conditions of release which constitute a threat
15 to the integrity of the judicial system; or

16 (4) without just cause, failed to appear at a specified time and place
17 ordered by a judicial officer; or

18 (5) in violation of a condition of release, been charged with a felony or
19 a crime against a person or an offense ~~like~~ similar to the underlying charge, for
20 which, after hearing, probable cause is found.

21 ~~Sec. 5. EFFECTIVE DATE~~

1 ~~This act shall take effect on July 1, 2018.~~

Sec. 1. 13 V.S.A. § 7551 is amended to read:

§ 7551. IMPOSITION OF BAIL, SECURED APPEARANCE BONDS, AND APPEARANCE BONDS; GENERALLY

(a) Bonds; generally. A bond given by a person charged with a criminal offense or by a witness in a criminal prosecution under section 6605 of this title, conditioned for the appearance of the person or witness before the court in cases where the offense is punishable by fine or imprisonment, and in appealed cases, shall be taken to the Criminal Division of the Superior Court where the prosecution is pending, and shall remain binding upon parties until discharged by the court or until sentencing. The person or witness shall appear at all required court proceedings.

(b) Limitation on imposition of bail, secured appearance bonds, and appearance bonds. No bail, secured appearance bond, or appearance bond may be imposed:

(1) No bond may be imposed at the initial appearance of a person charged with a misdemeanor if the person was cited for the offense in accordance with Rule 3 of the Vermont Rules of Criminal Procedure; or

(2) upon the temporary release of a person pursuant to Rule 5(b) of the Vermont Rules of Criminal Procedure, or at the initial appearance of a person charged with a violation of a misdemeanor offense that is eligible for

expungement pursuant to subdivision 7601(4)(A) of this title.

(3) This subsection shall not be construed to restrict the court's ability to impose conditions on such persons to reasonably ensure his or her appearance at future proceedings mitigate the risk of flight from prosecution or to reasonably protect the public in accordance with section 7554 of this title.

Sec. 2. Rule 3(k) of the Vermont Rules of Criminal Procedure is amended to read:

(k) Temporary Release. A law enforcement officer arresting a person shall consult with the prosecuting attorney, and the prosecuting attorney shall contact a judicial officer for determination of temporary release pursuant to Rule 5(b) of these rules without unnecessary delay. The law enforcement officer or prosecuting attorney shall provide the judicial officer with the information and affidavit or sworn statement required by Rule 4(a) of these rules.

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

§ 7554. RELEASE PRIOR TO TRIAL

(a) Release; conditions of release. 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~~ mitigate the risk of flight from prosecution as required. In determining whether the defendant presents a risk of ~~nonappearance~~ flight from prosecution, 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 defendant presents a risk of flight from prosecution, the officer shall, either in lieu of or in addition to the 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~~ mitigate the risk of flight 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, or 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~~ Upon consideration of the defendant's financial means, ~~require~~ the execution of a secured appearance bond in a specified amount and the deposit with the clerk of the ~~Court~~ 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~~ Upon consideration of the defendant's financial means, ~~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 mitigate the risk of flight 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 7554d of this title.

(2) If the judicial officer determines that conditions of release imposed to ~~ensure appearance~~ mitigate the risk of flight 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, or 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~~ Suspend the officer's duties in whole or in part, if the defendant is a State, county, or municipal officer charged with violating section 2537 of this title and 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 7554d of this title.*

(G) *Place restrictions on the defendant's place of abode during the*

period of release if the defendant is charged with a listed crime as defined in subdivision 5301(7) of this title or an offense involving sexual exploitation of children in violation of chapter 64 of this title.

(3) A judicial officer may order that a defendant not harass or contact or cause to be harassed or contacted a victim or potential witness. This order shall take effect immediately, regardless of whether the defendant is incarcerated or released.

(b) Judicial considerations in imposing conditions of release. In determining which conditions of release to impose ~~under:~~

(1) In subdivision (a)(1) of this section, the judicial officer, on the basis of available information, shall take into account the nature and circumstances of the offense charged; the weight of the evidence against the accused; the accused's employment; financial resources, including his or her ability to post bail; character and mental condition; length of residence in the community; and record of appearance at court proceedings or of flight to avoid prosecution or failure to appear at court proceedings.

(2) subsection In subdivision (a)(2) of this section, the judicial officer shall, on the basis of available information, shall take into account the nature and circumstances of the offense charged, the weight of the evidence against the accused, the accused's family ties, employment, financial resources, character and mental condition, the length of residence in the community,

record of convictions, and record of appearance at court proceedings or of flight to avoid prosecution or failure to appear at court proceedings. Recent history of actual violence or threats of violence may be considered by the judicial officer as bearing on the character and mental condition of the accused.

(c) Order. A judicial officer authorizing the release of a person under this section shall issue an appropriate order containing a statement of the conditions imposed, if any; shall inform such person of the penalties applicable to violations of the conditions of release; and shall advise him or her that a warrant for his or her arrest will be issued immediately upon any such violation.

(d) Review of conditions.

(1) A person for whom conditions of release are imposed and who is detained as a result of his or her inability to meet the conditions of release or who is ordered released on a condition that he or she return to custody after specified hours shall, within 48 hours of following application, be entitled to have the conditions reviewed by a judge in the court having original jurisdiction over the offense charged. A person applying for review shall be given the opportunity for a hearing. Unless the conditions of release are amended as requested, the judge shall set forth in writing or orally on the record a reasonable basis for continuing the conditions imposed. In the event

that a judge in the court having original jurisdiction over the offense charged is not available, any Superior judge may review such conditions.

(2) A person for whom conditions of release are imposed shall, within five working days of following application, be entitled to have the conditions reviewed by a judge in the court having original jurisdiction over the offense charged. A person applying for review shall be given the opportunity for a hearing. Unless the conditions of release are amended as requested, the judge shall set forth in writing or orally on the record a reasonable basis for continuing the conditions imposed. In the event that a judge in the court having original jurisdiction over the offense charged is not available, any Superior judge may review such conditions.

(e) Amendment of order. A judicial officer ordering the release of a person on any condition specified in this section may at any time amend the order to impose additional or different conditions of release; provided that the provisions of subsection (d) of this section shall apply.

(f) Definition. The term "judicial officer" as used in this section and section 7556 of this title shall mean a clerk of a Superior Court or a Superior Court judge.

(g) Admissibility of evidence. Information stated in, or offered in connection with, any order entered pursuant to this section need not conform to the rules pertaining to the admissibility of evidence in a court of law.

(h) Forfeiture. *Nothing contained in this section shall be construed to prevent the disposition of any case or class of cases by forfeiture of collateral security where if such disposition is authorized by the court.*

(i) Forms. *The Court Administrator shall establish forms for appearance bonds, secured appearance bonds, surety bonds, and for use in the posting of bail. Each form shall include the following information:*

(1) *The bond or bail may be forfeited in the event that the defendant or witness fails to appear at any required court proceeding.*

(2) *The surety or person posting bond or bail has the right to be released from the obligations under the bond or bail agreement upon written application to the judicial officer and detention of the defendant or witness.*

(3) *The bond will continue through sentencing in the event that bail is continued after final adjudication.*

(j) Juveniles. *Any juvenile between 14 and 16 years of age who is charged with a listed crime as defined in subdivision 5301(7) of this title shall appear before a judicial officer and be ordered released pending trial in accordance with this section within 24 hours ~~of~~ following the juvenile's arrest.*

Sec. 4. 13 V.S.A. § 7575 is amended to read:

§ 7575. REVOCATION OF THE RIGHT TO BAIL

The right to bail may be revoked entirely if the judicial officer finds that the accused has:

(1) intimidated or harassed a victim, potential witness, juror, or judicial officer in violation of a condition of release; or

(2) ~~repeatedly violated conditions of release; or~~ [Repealed.]

(3) violated a condition or conditions of release ~~which~~ that constitute a threat to the integrity of the judicial system; or

(4) without just cause, failed to appear at a specified time and place ordered by a judicial officer; or

(5) in violation of a condition of release, been charged with a felony or a crime against a person or an offense ~~like~~ similar to the underlying charge, for which, after hearing, probable cause is found.

Sec. 5. EFFECTIVE DATE

This act shall take effect on July 1, 2018.