

No. 125. An act relating to court-approved absences from home detention and home confinement furlough.

(S.212)

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

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 7554d 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 7554d of this title.

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

§ 7554d. ~~WINDHAM COUNTY ELECTRONIC MONITORING PILOT~~
PROGRAM

(a)(1) The Windham County Sheriff's Office (WCSO) shall establish and manage a two-year electronic monitoring pilot program in Windham County for the purpose of supervising persons ordered to be under electronic monitoring as a condition of release or in addition to or in lieu of the imposition of bail pursuant to section 7554 of this title, ~~to home detention pursuant to section 7554b of this title, and home confinement furlough pursuant to 28 V.S.A. § 808b.~~ The program shall be a part of an integrated community incarceration program and shall provide 24-hours-a-day, seven-days-a-week electronic monitoring with supervision and immediate response.

(2) For purposes of this program;

~~(A)~~ if electronic monitoring is ordered by the Court pursuant to section 7554 of this title, the Court shall use the following criteria ~~in section 7554b~~ for determining whether ~~home detention~~ electronic monitoring is appropriate;

~~(B) the seven day waiting period under 7554b of this title shall not apply; and~~

~~(C) for persons who are under the custody of the Department of Corrections pursuant to section 7554b of this title and 28 V.S.A. § 808b, the WCSO shall notify the Department of any violations.;~~

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

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

(C) 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 the placement.

(3) The WCSO shall establish written policies and procedures for the electronic monitoring program, shall provide progress reports on the development of the policies and procedures to the Justice Oversight Committee, and shall submit the final policies and procedures to the Committee for approval on or before June 30, 2016.

(b) The goal of the pilot program is to assist policymakers in determining whether electronically monitored home detention and home confinement can be utilized for pretrial detention and as a post-adjudication option to reduce recidivism, to improve public safety, and to save valuable bed space for detainees and inmates who ~~should~~, without an electronic monitoring program, would otherwise be lodged in a correctional facility. Additional benefits may

include reducing transportation costs, increasing detainee access to services, reducing case resolution time, and determining if the program can be replicated statewide.

(c) The WCSO shall work with the Crime Research Group (CRG) for design and evaluation assistance. The program shall be evaluated by CRG to determine if the stated goals have been attained, the cost and savings of the program, identifying what goals or objective were not met and if not, what could be changed to meet the goals and objectives to ensure program success. The Joint Fiscal Office shall contract with the CRG to provide design and evaluation services.

(d)(1) The WCSO is authorized to enter into written agreements with the sheriffs of other counties permitting those counties to participate in the pilot program subject to the policies and procedures established by the WCSO under this section. At least one of the agreements shall be between the WCSO and a county with a significant population.

(2) The purpose of expanding the electronic monitoring program to other counties under this subsection is to increase the number of participants to a level sufficient to permit evaluation of whether the program is meeting the bed savings and other goals identified in subsection (b) of this section.

(e) The Department of Corrections shall enter into a memorandum of understanding with the Department of State's Attorneys and Sheriffs for

oversight and funding of the electronic monitoring program established by this section. The memorandum shall establish processes for:

(1) transmitting funding for the electronic monitoring program from the Department of Corrections to the Department of State's Attorneys and Sheriffs for purposes of allocation to the sheriff's departments participating in the program; and

(2) maintaining oversight of the electronic monitoring program to ensure that it complies with the requirements of this section and the policies and procedures established by the WCSO pursuant to subdivision (a)(3) of this section.

~~(d)~~(f) The pilot program shall be in effect from July 1, 2014 through ~~June 30, 2016~~ June 30, 2018.

Sec. 3. 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. In the case of a medical emergency, the notice required by this subdivision shall be provided as soon as practicable after the emergency.

(e) [Repealed.]

Sec. 4. APPLICABILITY

A defendant participating in an electronic monitoring program established under 13 V.S.A. § 7554d prior to July 1, 2016 shall not have his or her participation in the program withdrawn or affected as a result of this act.

Sec. 5. REPORT

On or before December 15, 2016, the Windham County Sheriff's Office shall report to the House Committee on Corrections and Institutions, the Senate Committee on Institutions, and the House and Senate Committees on Judiciary on the electronic monitoring program established under 13 V.S.A. § 7554d. The report shall include the number of program participants, the offense with which each participant is charged, the number of participants who violate conditions of the program, the costs of the program, and the manner in which the program creates budgetary savings, including whether and how the program makes correctional facility bed space available that would otherwise be occupied by detainees and inmates in the program.

Sec. 6. JOINT LEGISLATIVE JUSTICE OVERSIGHT COMMITTEE; 2016

LEGISLATIVE INTERIM; GENDER-BASED DISPARITIES IN
DETENTION AND SENTENCING

During the 2016 legislative interim, the Joint Legislative Justice Oversight Committee shall evaluate any disparities in sentencing and detainment by gender, including the average duration of detention for men and women, and

the percentage of sentences or detainments imposed for listed crimes and nonlisted crimes for men and women. The Committee also shall investigate whether the primary drivers for detention, such as lack of housing, substance abuse, and risk assessment results, differ for men and women.

Sec. 7. EFFECTIVE DATES

(a) This section and Sec. 2 shall take effect on passage.

(b) Secs. 1 and 3-6 shall take effect on July 1, 2016.

Date Governor signed bill: May 23, 2016