



TO: House Committee on the Judiciary
FROM: Jay Diaz, Staff Attorney, ACLU-VT
DATE: January 31, 2017
SUBJECT: ACLU-VT suggested language on bail reform

Below is the ACLU's suggested amendments to 13 V.S.A. 7554. Additional amendments are needed to other portions of Vermont's bail statute, but these amendments below cover the issues of 1) right to bail, 2) deeming bail and other conditions of release to be meant to address only the risk of flight, 3) accounting for financial inability to pay, 4) addressing potentially unconstitutional conditions of release, and 5) addressing the reference to "mental condition." For questions or comments, please do not hesitate to contact me via email, work phone, or cell at 201-694-4105.

ACLU-VT Bail Statute Amendment Recommendations

13 V.S.A. 7554 is amended to read:

- (a) Any person charged with an offense, other than a person held without bail under section 7553 or 7553a of this title, **has a constitutional right to bail and** 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 **address the defendant's risk of flight from the jurisdiction**. In determining whether the defendant presents a risk of ~~nonappearance~~ **flight**, the judicial officer shall consider, in addition to any other factors, except those factors which are impermissible under 9 V.S.A. 4502(a), 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~~ **address the defendant's risk of flight from the jurisdiction** of the ~~defendant~~ as required, 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~~ **address the defendant's risk of flight from the jurisdiction** 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) **Upon written findings on the record determining that alcohol or drug use may present an obstacle to the defendant making future court appearances,** 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~~ **reasonably address the defendant's 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.

(F) (placeholder section for something regarding the judge's ordering pre-trial monitors to communicate court dates, etc. to bailed defendants.)

(2) If the judicial officer determines that conditions of release imposed to ensure appearance **reasonably address the defendant's 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, association, or place of abode of the defendant during the period of release.

(C) **Upon written findings on the record determining that alcohol or drug use may present an obstacle to the defendant making future court appearances,** 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.

(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) In determining which conditions of release to impose under subsection (a) of this section, the judicial officer shall, on the basis of available information, 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, and ability to pay as set forth below. 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) In all cases where an unsecured or secured appearance bond is determined as a condition of release, to determine the amount of such bond, the judicial officer shall:

(1) fix the bail to reasonably address the defendant's risk of flight

(2) consider ability to pay and not set the bond amount so as to cause an indigent defendant to be detained solely because they cannot afford to pay for their release.

(d)) In all cases where an unsecured or secured appearance bond is determined as a condition of release, a defendant who has a financial inability to post a money bond may file a motion with the court at any time requesting relief from the condition to post bond.