

Judge Karen Carroll: Understanding bail and the conditions of release in Vermont

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By Karen Carroll

My friends and family routinely ask me, after learning about a particularly serious crime, why the defendant was not automatically held in jail until the trial. It is quite common to see on the news that a person charged in another state with a similar crime is locked up pending further hearing. Why do things seem to be so different in Vermont?

In every jurisdiction, a person charged with a crime is presumed innocent of that crime until proven guilty by the government beyond a reasonable doubt. The presumption of innocence applies to every person, even if the evidence of guilt is strong and despite the fact the charge may be extremely serious. It is not uncommon for a defendant to be found not guilty by a jury or for the state to dismiss a charge altogether. Because of the presumption of innocence, great consideration must be undertaken before requiring a person charged with a crime to post bail before being released or before holding a person in jail without the opportunity to post bail at all.

In most cases, the standard in Vermont courts is that a defendant is released on his or her own recognizance or on conditions of release. These conditions of release are meant to do two things: ensure that the defendant will appear in court for future court proceedings and to protect the public from identified, dangerous behaviors. For instance, if the judge determines that the defendant is not from Vermont or has failed to appear in court in the past, the court might order the defendant to report daily to a local police department and sign in, showing that he or she is still in the area and has not fled. Or, the judge may order that the defendant reside in the county where the offense occurred and not leave the county without the court's permission.

Conditions of release may also be ordered so that a defendant's risky behavior will be controlled so that the community is protected. When a defendant is charged with repeatedly driving under the influence of alcohol, it is common for a judge to order the defendant to not possess or consume any alcohol. If a person is charged with assaulting someone, the court will likely order that he or she have no contact with the alleged victim. Other common conditions of release used to protect the public include a curfew, an order prohibiting the possession of firearms, and a condition to not have or use any regulated drugs.

Only if the court determines that conditions of release alone will not ensure the defendant's future appearance in court, may the judge then consider other options. If the court is concerned that, even with the imposition of conditions of release, a defendant is at risk of fleeing or not appearing in court, the judge may require the defendant to post monetary bail prior to being released. This helps to motivate the defendant to appear in court because, if he or she does not, the bail may be forfeited to the state. In some jurisdictions, a judge may require a defendant to post bail due to the seriousness of the offense alone. This is where Vermont differs in its bail laws. The imposition of bail is permissible in this state only when conditions of release will not adequately address risk of flight or nonappearance. Bail cannot be ordered in Vermont courts solely because the defendant is charged

with a serious offense or because a defendant poses a risk of danger to the community. We are unlike many states in this regard.

As noted, the judge must also use conditions of release to manage a defendant's behavior to protect the community. However, there are three general exceptions to this rule. First, when a defendant faces the potential of life in prison after being charged with a very serious offense including murder, kidnapping and some sexual offenses against children, the presumption of release is switched. The court, if it finds the evidence of guilt is great, presumes the defendant should be held in jail pending trial and may, but is not required to, forego the imposition of conditions of release and hold the defendant without bail. Second, If a person is charged with a violation of probation, and the violation is due to new criminal activity or if the underlying conviction was for any one of a number of enumerated offenses, the judge may order this person held without bail. Finally, when a defendant is charged with a felony offense which involves an act of violence against another person, the court may hold him or her without bail if it makes several findings including that the evidence of guilt is great, that there continues to be a threat of violence against another person, and that conditions of release alone will not address this threat of violence. This is often seen in felony domestic violence cases.

Judges in Vermont must apply this state's bail laws which are quite different than those in other states. In most cases, this requires the court to release a defendant on conditions of release unless the court is concerned about the defendant fleeing or not appearing in court. The court cannot order that a defendant be held on bail solely because he or she is charged with a serious offense and poses a danger of harm to the community. A defendant may be held without bail in certain limited circumstances.

Judge Karen Carroll is the presiding judge in the Windham County Courthouse in Brattleboro. She has been a judge on the Vermont Superior Court since December 2000.