



VERMONT NETWORK

**Testimony on H.728
House Committee on Judiciary
January 31, 2018**

**Auburn Watersong
Policy Director**

Thank you for the opportunity to speak to you on H.728

The Network acknowledges that there is a bias woven into a bail structure which enables financial inequity in the system. In Vermont, our current bail structure may well inequitably jail folks who live in poverty. And for low-level, non-violent offenses, we understand and agree that this is worth review and revision. An offender who lives in poverty may also be supporting a family that lives in poverty. It is important to remember that when offenders are jailed, those who are in relationships with them are also affected.

Balancing Rights

If, under the Vermont Constitution, bail may only be required to ensure that the offender is not a flight risk, we need to figure out a way to balance the rights of offenders with the rights and safety of victims and the public. Both are equally important. The question is: How do we do that? I have a few suggestions:

1. *Risk Assessments*

Evidence-based risk assessment is valuable in attempting to identify the most dangerous offenders and manage the risks posed to victims. In response, risk assessment tools in the domestic violence field have been developed to assess both an offender's risk of re-offending, and a victim's risk of lethal assault. Prior to release, evidence-based risk assessment, which are specifically geared towards DV/SA offenders should be done to help better inform the court as to whether, and which, conditions of release should be ordered.

The Network remains concerned that Vermont does not have the systems in place to adequately assess the risk of those charged with domestic violence, sexual violence or stalking. One common risk assessment tool currently used– the ORAS – is primarily a treatment tool and more general in its questions. It is not domestic violence specific – and will not meet the safety needs of victims in our communities.



2. *Conditions of Release Pursuant to 13 V.S.A. §7554*

If conditions of release are appropriate in a case in which an offender poses a safety risk to a victim or to the public, those conditions should include adequate supervision and a structure of accountability, so that the offender understands the seriousness of following those conditions.

3. *Violation of Conditions of Release*

Without consequences attached to failure to adhere to conditions of release, conditions of release are empty orders. While, at first glance, it might seem that an offender's bail should not be revoked for a violation of conditions of release, such a violation can be seen as a blatant disregard for the rule of law and for the orders of the court. As such, it is also an indication that the offender may, in fact, be a flight risk, because he or she has demonstrated an inability or disregard to follow the court's order. That is evidence that bail could, and should be revoked.

Furthermore, if an offender violates conditions of release related to victim safety (i.e. no contact with a victim, or an order to stay away), those violations alone should merit the potential revocation of bail, not just because repeated violations of a court order are evidence that the offender may be a flight risk due to a lack of following court orders, but because of the potential danger indicated. Repeated violations indicate potentially escalating danger and therefore more than one such violation should be grounds for great concern.

Unfortunately, this is something that victims and survivors of domestic violence know all too well. Just 6 months ago, Molly McLain was stabbed and shot and killed by her husband Jason in Maidstone, Vermont. The Essex County State's Attorney had charged Jason with two misdemeanors: domestic assaults and interfering with emergency services. Jason had no criminal record and had deep ties to the community. On July 10, Jason pleaded not guilty. The Judge released him on conditions that he stay 300 feet away from Molly and the children. Molly also secured a relief from abuse order against Jason as the criminal case was pending. On July 26th, Jason violated the court-ordered conditions of release and killed Molly and then himself.

And you may remember Stella Gravel, Rhonda Gray's mother who testified here in House Judiciary last session, and then testified last night in favor of H.422. At the time of her (Rhonda Gray's) death, her husband, Troy, had conditions of release to prevent contact with her, but he continued to come to her home uninvited. Rhonda was too



afraid of the possible repercussions to her and her children to report the violations. He was in violation when he killed her.

Suggested Amendments:

Add 13 V.S.A. § 7554(h) - P.5 to read:

If the offender violates any conditions of release that the court orders pursuant to this section, the judicial officer shall reconsider whether the defendant presents a risk of flight from prosecution. The judicial officer shall take into consideration the seriousness violation and the risk to the victim and to the public.

And/Or ***Amend 13 V.S.A. § 7575(2) - P.12 to read:***

(2) ~~repeatedly~~ violated conditions of release which presented a risk to the safety of victims or the public; or

If the initial hearing, the court can consider the seriousness of the offense charged and the number of offenses. The court should be able to reconsider the issue of risk of flight from prosecution at the time that conditions of release are violated.

13 V.S.A. § 7554(a)(2)(G) - P.6

(G) Place restrictions on the defendant's place of abode during the period of release if the defendant is charged with a ~~domestic assault offense under section 1042, 1043, or 1044 of this title~~ *a listed crime as defined in subdivision 5301(7) of this title; an offense involving sexual exploitation of children in violation of chapter 64 of this title; or an offense involving violation of a protection order in violation of section 1030 of this title.*

13 V.S.A. § 7554(b)(1) - P.7

(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

The Network is concerned that if the judicial officer takes into account the "weight of the evidence" this may result in a victim being required to testify against the accused.



13 V.S.A. § 7554b(a) - P.10

The Network is concerned about the home detention program relying on the electronic monitoring system as an option for supervision in Vermont for the following reasons:

- Technology does not always allow for its efficacy – no cell reception;
- Requires financial resources and staffing capacity for 24/7 supervision;
- Requires excellent coordinated community response

13 V.S.A. § 7554b(b)(2) - P.11

The use of the phrase “contrary to the interests of justice” is a very high standard to meet. We are concerned that such a high standard will jeopardize the safety of victims and the public.

Thank you.