

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 person
11 charged with a violation of conditions of release; 2) impose a cap on cash bail
12 for certain misdemeanor offenses; 3) require the court to make a finding
13 establishing the defendant's financial means prior to imposing bail; 4) create a
14 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 may

1 impose a secured appearance bond, surety bond, or cash deposit in lieu thereof
2 in a maximum amount of \$200.00.

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

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

8 § 7554. RELEASE PRIOR TO TRIAL

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

13 (1) The defendant shall be ordered released on personal recognizance or
14 upon the execution of an unsecured appearance bond in an amount specified by
15 the judicial officer unless the judicial officer determines that such a release will
16 not reasonably ~~ensure the appearance of the person~~ mitigate the risk of flight
17 from prosecution as required. In determining whether the defendant presents a
18 risk of ~~nonappearance~~ flight from prosecution, the judicial officer shall
19 consider, in addition to any other factors, the seriousness of the offense
20 charged and the number of offenses with which the person is charged. If the
21 officer determines that such a release will not reasonably ~~ensure the~~

1 ~~appearance~~ mitigate the risk of flight of the defendant as required, the officer
2 shall, either in lieu of or in addition to the methods of release in this section,
3 impose the least restrictive of the following conditions or the least restrictive
4 combination of the following conditions that will reasonably ~~ensure the~~
5 ~~appearance~~ mitigate the risk of flight of the defendant as required:

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

10 (B) Place restrictions on the travel; or association; ~~or place of abode~~
11 of the defendant during the period of release.

12 (C) Require the defendant to participate in an alcohol or drug
13 treatment program. The judicial officer shall take into consideration the
14 defendant's ability to comply with an order of treatment and the availability of
15 treatment resources.

16 (D) ~~Require~~ Upon a finding establishing the defendant's financial
17 means, require the execution of a secured appearance bond in a specified
18 amount and the deposit with the clerk of the Court, in cash or other security as
19 directed, of a sum not to exceed 10 percent of the amount of the bond, such
20 deposit to be returned upon the appearance of the defendant as required.

1 (E) ~~Require~~ Upon a finding establishing the defendant's financial
2 means, require the execution of a surety bond with sufficient solvent sureties,
3 or the deposit of cash in lieu thereof.

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

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

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

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

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

20 (C) Require the defendant to participate in an alcohol or drug
21 treatment program. The judicial officer shall take into consideration the

1 defendant's ability to comply with an order of treatment and the availability of
2 treatment resources.

3 (D) Impose any other condition found reasonably necessary to
4 protect the public, except that a physically restrictive condition may only be
5 imposed in extraordinary circumstances.

6 (E) ~~If the defendant is a State, county, or municipal officer charged~~
7 ~~with violating section 2537 of this title, the court may suspend~~ Suspend the
8 officer's duties in whole or in part; if the defendant is a State, county, or
9 municipal officer charged with violating section 2537 of this title and the court
10 finds that it is necessary to protect the public.

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

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

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

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

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

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

19 (c) Order. A judicial officer authorizing the release of a person under this
20 section shall issue an appropriate order containing a statement of the conditions
21 imposed, if any, shall inform such person of the penalties applicable to

1 violations of the conditions of release, and shall advise him or her that a
2 warrant for his or her arrest will be issued immediately upon any such
3 violation.

4 (d) Review of conditions.

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

16 (2) A person for whom conditions of release are imposed shall, within
17 five working days ~~of~~ following application, be entitled to have the conditions
18 reviewed by a judge in the court having original jurisdiction over the offense
19 charged. A person applying for review shall be given the opportunity for a
20 hearing. Unless the conditions of release are amended as requested, the judge
21 shall set forth in writing or orally on the record a reasonable basis for

1 continuing the conditions imposed. In the event that a judge in the court
2 having original jurisdiction over the offense charged is not available, any
3 Superior judge may review such conditions.

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

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

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

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

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

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

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

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

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

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

11 § 7554b. HOME DETENTION PROGRAM

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

1 (b) Procedure. At the request of the court, the Department of Corrections,
2 or the defendant, the status of a defendant who is detained pretrial in a
3 correctional facility for lack of bail may be reviewed by the court to determine
4 whether the defendant is appropriate for home detention. At arraignment or
5 after a hearing, the court may order that the defendant be released to the Home
6 Detention Program, providing that the court finds placing the defendant on
7 home detention will reasonably ~~assure~~ ensure his or her appearance in court
8 when required and the proposed residence is appropriate for home detention.

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

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

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

13 ~~(3)(C)~~ any risk or undue burden to other persons who reside at the
14 proposed residence or risk to third parties or to public safety that may result
15 from such placement.

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

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

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

3 (C) an offense involving violation of a protection order in violation
4 of section 1030 of this title.

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

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

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

12 § 7575. REVOCATION OF THE RIGHT TO BAIL

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

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

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

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

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

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

4 Sec. 5. EFFECTIVE DATE

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