



Testimony on H. 728
An Act Relating to Bail Reform
House Committee on Judiciary

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Thank you for the opportunity to comment on this bill. I received a copy of it on Monday and have shared it with the state's attorney victim advocates for their comment as well.

If victims and survivors share any common belief or expectation in what the criminal justice system should accomplish, it would be to ensure that the person who harmed them doesn't commit another crime or harm them again. For this reason, the Center supports evidence-based criminal justice reform proven to reduce recidivism, increase accountability, and improve victim and community safety. Included with my testimony is a copy of the Center's "Principles to Guide Criminal Justice Reform Informed by Victims and Survivors" which is adapted from the work of a national group convened by the MacArthur Foundation.

Although this committee is focused on policy, the connection to appropriations should remain an ongoing part of this conversation. Fundamental to any effort to enact meaningful criminal justice reform is a commitment to addressing the basic resource needs of victims and defendants alike. When the system releases defendants into the community who lack housing, financial resources, treatment, transportation, or childcare, the system sets them up to fail.

The other challenge that comes with speaking about the specific proposals set out in this bill is the fact that despite the very best efforts of the Department of Corrections and the Judiciary, those of us who work in the criminal justice field

currently lack accurate, reliable data on our pre-trial detainee population. You'll find that many of us testifying today instead speak in anecdotes or cite national figures, rather than providing hard numbers specific to Vermont.

Over the past six months, I have represented the Center on a panel with other state-based stakeholders convened by the Department of Public Safety and Crime Research Group and funded by the NGA's Criminal Justice Reform Project to consider what tangible steps Vermont can take improve its pre-trial system with evidence-based criminal justice reforms. The first step is to address the state's data challenges. Getting a better handle on data needs to be a top criminal justice reform priority if the goal is to make evidence-based changes, rather than conduct experiments. The Center is particularly invested in this, because when we conduct experiments, crime victims and the general public become the guinea pigs.

In the meantime, here is what we know by the numbers and facts:

- Year after year, Vermont's incarcerated population continues to decline, and Vermont now has one of the lowest rates of incarceration in the country. The vast majority of Vermont's incarcerated population is comprised of those either accused or convicted of committing crimes of violence.
- Despite overall declining numbers in the criminal docket, the number of domestic violence felonies filed in Vermont courts continue to rise each year. Domestic violence misdemeanors generally remain steady.
- Year after year, domestic violence underlies most homicides in Vermont.
- Our state constitution presumes that "all persons shall be bailable by sufficient sureties" unless one of two narrow exceptions apply for either a life offense or a felony crime of violence. Unlike many states, our constitution is extremely deferential to those accused of a crime who are not yet convicted.

Meanwhile, when I talk to prosecutors, victim advocates, and most importantly—victims and survivors—about their concerns with the criminal justice system, I continually hear about defendants released into the community who continue to re-offend or violate conditions of release without recourse. Many are concerned

about violent offenders who they perceive to be high risk who are not detained pre-trial. I worked with a group of small store owners in Washington County last year who were robbed by the same Defendant—some of them twice—before he was caught and released on conditions, only then to be robbed a second and third time, at which point he was released again. Needless to say, they were quite disillusioned by this experience and asking questions like, “what do we have to do to be left alone?”

The mother of a homicide victim in a drug-related crime submitted a statement to be read aloud at some of the Center’s Listening Forums this fall. She wrote, “these men were given another chance after they violated their conditions many times. Waiting for them to commit a new crime meant waiting for them to kill my daughter.”

When it comes to conditions of release, they matter. Under the Vermont Constitution, in felony crime of violence cases, the defendant cannot be held without bail unless: “no condition or combination of conditions of release will reasonably prevent the physical violence.” As a result, many defendants accused of violent crimes are released under the expectation that conditions of release will help keep the victim and the public safe—it’s enshrined in our constitution that conditions of release can do this. Depending on the specific facts, conditions that prohibit contact with the victim, trespassing on the victim’s property, possessing a weapon, drinking alcohol, or living in a house with minors are extremely meaningful to victims and should matter to the system as a whole. Violations of conditions of release are red flags that the Defendant is not making change, and in some cases, that the victim or the public could be in danger.

With these comments as a backdrop, the Center’s specific recommendations with respect to this bill are as follows:

- Page 1, Line 17: Courts should retain discretion to issue bail in cases where the Defendant has violated conditions of release.

- Page 6, Line 13: At the very least, the court should retain discretion to issue conditions related to housing in all listed crime cases and cases involving sexual exploitation of children.
- Page 11: The Center is concerned about how the home detention program is currently implemented and would not recommend further expansion. Victim release/escape notification is not formally required by DOC directive, although an informal system requires contact with victims via the state's attorney victim advocates. It is unclear whether victims are engaged in DOC's referral determinations.
- Page 12, Line 17: Revoking the right to bail is the only sanction available for the court to hold defendants accountable for multiple violations of conditions of release. If the court lacks this authority, conditions of release are meaningless.