

1 TO THE HOUSE OF REPRESENTATIVES:

2 The Committee on Judiciary to which was referred House Bill No. 728 entitled
3 “An act relating to bail reform” respectfully reports that it has considered the
4 same and recommends that the bill be amended by striking out all after the
5 enacting clause and inserting in lieu thereof the following:

6 Sec. 1. 13 V.S.A. § 7551 is amended to read:

7 § 7551. IMPOSITION OF BAIL, SECURED APPEARANCE BONDS, AND
8 APPEARANCE BONDS;~~GENERALLY~~

9 (a) Bonds; generally. A bond given by a person charged with a criminal
10 offense or by a witness in a criminal prosecution under section 6605 of this
11 title, conditioned for the appearance of the person or witness before the court
12 in cases where the offense is punishable by fine or imprisonment, and in
13 appealed cases, shall be taken to the Criminal Division of the Superior Court
14 where the prosecution is pending, and shall remain binding upon parties until
15 discharged by the court or until sentencing. The person or witness shall appear
16 at all required court proceedings.

17 (b) Limitation on imposition of bail, secured appearance bonds, and
18 appearance bonds. No bail, secured appearance bond, or appearance bond may
19 be imposed:

1 (1) ~~No bond may be imposed~~ at the initial appearance of a person
2 charged with a misdemeanor if the person was cited for the offense in
3 accordance with Rule 3 of the Vermont Rules of Criminal Procedure; or

4 (2) upon the temporary release of a person pursuant to Rule 5(b) of the
5 Vermont Rules of Criminal Procedure, or at the initial appearance of a person
6 charged with a violation of a misdemeanor offense that is eligible for
7 expungement pursuant to subdivision 7601(4)(A) of this title.

8 (3) This subsection shall not be construed to restrict the court's ability to
9 impose conditions on such persons to reasonably ~~ensure his or her appearance~~
10 ~~at future proceedings~~ mitigate the risk of flight from prosecution or to
11 reasonably protect the public in accordance with section 7554 of this title.

12 Sec. 2. Rule 3(k) of the Vermont Rules of Criminal Procedure is amended to
13 read:

14 (k) Temporary Release. A law enforcement officer arresting a person shall
15 consult with the prosecuting attorney, and the prosecuting attorney shall
16 contact a judicial officer for determination of temporary release pursuant to
17 Rule 5(b) of these rules without unnecessary delay. The law enforcement
18 officer or prosecuting attorney shall provide the judicial officer with the
19 information and affidavit or sworn statement required by Rule 4(a) of these
20 rules.

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

2 § 7554. RELEASE PRIOR TO TRIAL

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

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

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

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

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

11 (D) ~~Require~~ Upon consideration of the defendant's financial means,
12 require the execution of a secured appearance bond in a specified amount and
13 the deposit with the clerk of the Court, in cash or other security as directed, of
14 a sum not to exceed 10 percent of the amount of the bond, such deposit to be
15 returned upon the appearance of the defendant as required.

16 (E) ~~Require~~ Upon consideration of the defendant's financial means,
17 require the execution of a surety bond with sufficient solvent sureties, or the
18 deposit of cash in lieu thereof.

19 (F) Impose any other condition found reasonably necessary to ~~ensure~~
20 ~~appearance~~ mitigate the risk of flight as required, including a condition
21 requiring that the defendant return to custody after specified hours.

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

3 (2) If the judicial officer determines that conditions of release imposed
4 to ~~ensure appearance~~ mitigate the risk of flight will not reasonably protect the
5 public, the judicial officer may impose in addition the least restrictive of the
6 following conditions or the least restrictive combination of the following
7 conditions that will reasonably ensure protection of the public:

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

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

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

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

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

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

8 (G) Place restrictions on the defendant's place of abode during the
9 period of release if the defendant is charged with a listed crime as defined in
10 subdivision 5301(7) of this title or an offense involving sexual exploitation of
11 children in violation of chapter 64 of this title.

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

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

18 (1) In subdivision (a)(1) of this section, the judicial officer, on the basis
19 of available information, shall take into account the nature and circumstances
20 of the offense charged; the weight of the evidence against the accused; the
21 accused's employment; financial resources, including his or her ability to post

1 bail; character and mental condition; length of residence in the community; and
2 record of appearance at court proceedings or of flight to avoid prosecution or
3 failure to appear at court proceedings.

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

13 (c) Order. A judicial officer authorizing the release of a person under this
14 section shall issue an appropriate order containing a statement of the conditions
15 imposed, if any, shall inform such person of the penalties applicable to
16 violations of the conditions of release, and shall advise him or her that a
17 warrant for his or her arrest will be issued immediately upon any such
18 violation.

19 (d) Review of conditions.

20 (1) A person for whom conditions of release are imposed and who is
21 detained as a result of his or her inability to meet the conditions of release or

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

10 (2) A person for whom conditions of release are imposed shall, within
11 five working days ~~of~~ following application, be entitled to have the conditions
12 reviewed by a judge in the court having original jurisdiction over the offense
13 charged. A person applying for review shall be given the opportunity for a
14 hearing. Unless the conditions of release are amended as requested, the judge
15 shall set forth in writing or orally on the record a reasonable basis for
16 continuing the conditions imposed. In the event that a judge in the court
17 having original jurisdiction over the offense charged is not available, any
18 Superior judge may review such conditions.

19 (e) Amendment of order. A judicial officer ordering the release of a person
20 on any condition specified in this section may at any time amend the order to

1 impose additional or different conditions of release, provided that the
2 provisions of subsection (d) of this section shall apply.

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

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

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

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

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

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

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

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

5 Sec. 4. 13 V.S.A. § 7554b is amended to read:

6 § 7554b. HOME DETENTION PROGRAM

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

16 (b) Procedure.

17 (1) At the request of the court, the Department of Corrections, or the
18 defendant, the status of a defendant who is detained pretrial in a correctional
19 facility for lack of bail may be reviewed by the court to determine whether the
20 defendant is appropriate for home detention. At arraignment or after a hearing,
21 the court may order that the defendant be ~~released to~~ placed on the Home

1 Detention Program, providing that the court finds placing the defendant on
2 home detention will reasonably ~~assure his or her appearance in court when~~
3 ~~required~~ mitigate the risk of flight and the proposed residence is appropriate
4 for home detention. In making such a determination, the court shall consider:

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

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

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

11 (2) Unless it is contrary to public safety, the court shall order a
12 defendant detained pretrial for lack of bail to be placed on the Home Detention
13 Program if the defendant is charged with committing a misdemeanor that is
14 not:

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

16 (B) an offense involving sexual exploitation of children in violation
17 of chapter 64 of this title.

18 (3) Upon approving a defendant for the Home Detention Program, the
19 court may waive the preapproved residence requirement and place on the
20 Home Detention Program a person charged with an offense other than a listed

1 crime as defined in subdivision 5301(7) of this title or an offense involving
2 sexual exploitation of children in violation of chapter 64 of this title.

3 (4) A defendant held without bail pursuant to section 7553 or 7553a of
4 this title shall not be eligible for placement on the Home Detention Program.

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. 5. 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~~ that constitute a
19 threat 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.

1 Sec. 5. EFFECTIVE DATE

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

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5 (Committee vote: _____)

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7

Representative _____

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FOR THE COMMITTEE