

1 TO THE HONORABLE SENATE:

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

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

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

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

18 (b) Limitation on imposition of bail, secured appearance bonds, and  
19 appearance bonds.

1           ~~(1) No bond may be imposed~~ Except as provided in subdivision (2) of  
2           this subsection, no bail, secured appearance bond, or appearance bond may be  
3           imposed:

4           (A) at the initial appearance of a person charged with a misdemeanor  
5           if the person was cited for the offense in accordance with Rule 3 of the  
6           Vermont Rules of Criminal Procedure; or

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

11           (2) In the event the court finds that imposing bail is necessary to  
12           mitigate the risk of flight from prosecution for a person charged with a  
13           violation of a misdemeanor offense that is eligible for expungement pursuant  
14           to subdivision 7601(4)(A) of this title, the court may impose bail in a  
15           maximum amount of \$200.00.

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

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

3 (k) Temporary Release. A law enforcement officer arresting a person or  
4 the prosecuting attorney shall contact a judicial officer for determination of  
5 temporary release pursuant to Rule 5(b) of these rules without unnecessary  
6 delay. The law enforcement officer or prosecuting attorney shall provide the  
7 judicial officer with the information and affidavit or sworn statement required  
8 by Rule 4(a) of these rules.

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

10 § 7554. RELEASE PRIOR TO TRIAL

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

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

1 charged and the number of offenses with which the person is charged. If the  
2 officer determines that ~~such a release will not reasonably ensure the~~  
3 ~~appearance of the defendant as required~~ the defendant presents a risk of flight  
4 from prosecution, the officer shall, either in lieu of or in addition to the  
5 methods of release in this section, impose the least restrictive of the following  
6 conditions or the least restrictive combination of the following conditions that  
7 will reasonably ~~ensure the appearance~~ mitigate the risk of flight of the  
8 defendant as required:

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

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

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

19 (D) ~~Require~~ Upon consideration of the defendant's financial means,  
20 require the execution of a secured appearance bond in a specified amount and  
21 the deposit with the clerk of the ~~Court~~ court, in cash or other security as

1 directed, of a sum not to exceed 10 percent of the amount of the bond, such  
2 deposit to be returned upon the appearance of the defendant as required.

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

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

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

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

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

20 (B) Place restrictions on the travel, association, or place of abode of  
21 the defendant during the period of release.

1           (C) Require the defendant to participate in an alcohol or drug  
2 treatment program. The judicial officer shall take into consideration the  
3 defendant’s ability to comply with an order of treatment and the availability of  
4 treatment resources.

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

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

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

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

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

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

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

17          (c) Order. A judicial officer authorizing the release of a person under this  
18          section shall issue an appropriate order containing a statement of the conditions  
19          imposed, if any; shall inform such person of the penalties applicable to  
20          violations of the conditions of release; and shall advise him or her that a

1 warrant for his or her arrest will be issued immediately upon any such  
2 violation.

3 (d) Review of conditions.

4 (1) A person for whom conditions of release are imposed and who is  
5 detained as a result of his or her inability to meet the conditions of release or  
6 who is ordered released on a condition that he or she return to custody after  
7 specified hours, or the State, following a material change in circumstances,  
8 shall, within 48 hours ~~of~~ following application, be entitled to have the  
9 conditions reviewed by a judge in the court having original jurisdiction over  
10 the offense charged. A ~~person~~ party applying for review shall be given the  
11 opportunity for a hearing. Unless the conditions of release are amended as  
12 requested, the judge shall set forth in writing or orally on the record a  
13 reasonable basis for continuing the conditions imposed. In the event that a  
14 judge in the court having original jurisdiction over the offense charged is not  
15 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. 4. 13 V.S.A. § 7575 is amended to read:

11       § 7575. REVOCATION OF THE RIGHT TO BAIL

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

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

16           (2) repeatedly violated conditions of release in a manner that impedes  
17 the prosecution of the accused; or

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.

4 Sec. 5. 13 V.S.A. § 7576 is amended to read:

5 § 7576. DEFINITIONS

6 As used in this chapter:

7 \* \* \*

8 (9) “Flight from prosecution” means any action or behavior by a person  
9 charged with a criminal offense undertaken to avoid court proceedings.

10 Sec. 6. INCARCERATION RATES OF PEOPLE OF COLOR; STUDY  
11 COMMITTEE; REPORT

12 (a) Study Committee. The Commissioner of the Department of  
13 Corrections, the Commissioner of the Department of Public Safety, the  
14 Attorney General, the Executive Director of the Department of State’s  
15 Attorneys and Sheriffs, and the Director of the Vermont State Police shall meet  
16 during the 2018 legislative interim to examine data regarding people of color  
17 who are incarcerated in Vermont. To the extent possible, the Committee shall  
18 also review data regarding people of color incarcerated in Maine and New  
19 Hampshire.

20 (b) On or before October 15, 2018, the committee shall report to the Joint  
21 Legislative Justice Oversight Committee on:

1           (1) data regarding all non-white offenders in the custody of the  
2           Department of Corrections, including:

3                   (A) demographic information about the offender, including race and  
4           ethnicity and all known places of residence;

5                   (B) the crime or crimes for which the offender is serving a sentence  
6           or being detained; and

7                   (C) the length of the sentence being served by the offender, or the  
8           length of his or her detainment;

9           (2) sentence length comparison data between white and non-white  
10          offenders who committed the same offense; and

11           (3) comparison data among Vermont, Maine and New Hampshire  
12          regarding sentence lengths and incarceration rates of people of color.

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

14          § 7554b. HOME DETENTION PROGRAM

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

1 detention shall remain in the custody of the Commissioner of Corrections with  
2 conditions set by the court.

3 (b) Procedure. At the request of the court, the Department of Corrections,  
4 or the defendant, the status of a defendant who is detained pretrial in a  
5 correctional facility for ~~lack of~~ inability to pay bail after bail has been set by  
6 the court may be reviewed by the court to determine whether the defendant is  
7 appropriate for home detention. The review shall be scheduled upon the  
8 court's receipt of a report from the Department determining that the proposed  
9 residence is suitable for electronic monitoring. A defendant [charged with an  
10 offense for which he or she may be held without bail] OR [held without bail]  
11 pursuant to section 7553 or 7553a of this title shall not be eligible for release to  
12 the Home Detention Program on or after June 1, 2018. At arraignment or after  
13 a hearing, the court may order that the defendant be released to the Home  
14 Detention Program, providing that the court finds placing the defendant on  
15 home detention will reasonably assure his or her appearance in court when  
16 required and the proposed residence is appropriate for home detention. In  
17 making such a determination, the court shall consider:

- 18 (1) the nature of the offense with which the defendant is charged;  
19 (2) the defendant's prior convictions, history of violence, medical and  
20 mental health needs, history of supervision, and risk of flight; and

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

4 \* \* \*

5 **Sec. 8. JOINT LEGISLATIVE JUSTICE OVERSIGHT COMMITTEE;**  
6 **HOME DETENTION PROGRAM REVIEW**

7 During the 2018 legislative interim, the Joint Legislative Justice Oversight  
8 Committee shall evaluate the Home Detention Program established under 13  
9 V.S.A. § 7554b and recommend whether to continue the Program in its current  
10 form, continue the Program with modifications, or repeal the Program. Any  
11 resulting legislative recommendations shall be introduced as a bill in the 2019  
12 legislative session.

13 Sec. 9. EFFECTIVE DATE

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

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18 (Committee vote: \_\_\_\_\_)

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Senator \_\_\_\_\_

FOR THE COMMITTEE