

State's Attorney Proposal

H.728

An act relating to bail reform

It is hereby enacted by the General Assembly of the State of Vermont:

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

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

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

(b) Limitation on imposition of appearance bonds.

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

(2) For a defendant charged with a misdemeanor offense that is eligible for expungement pursuant to subdivision 7601(4)(A) of this title, the court may impose a secured appearance bond, surety bond, or cash deposit in lieu thereof in a maximum amount of \$1,000.00.

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

(c) Flight from prosecution; definition. For the purposes of this chapter, the term "flight from prosecution" shall mean any action or behavior to avoid court processes.

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

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

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

§ 7554. RELEASE PRIOR TO TRIAL

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

(1) The defendant shall be ordered released on personal recognizance or upon the execution of an unsecured appearance bond in an amount specified by the judicial officer unless the judicial officer determines that such a release will ~~not reasonably ensure the appearance of the person~~ mitigate the risk of flight from prosecution as required. In determining whether the defendant presents a risk of ~~nonappearance~~ flight from prosecution, the judicial officer shall consider, in addition to any other factors, the seriousness of the offense charged and the number of offenses with which the person is charged, as well as any prior instance in which the person charged avoided court processes. If the officer determines that ~~such a release will not reasonably ensure the appearance of the defendant as required~~ the defendant presents a risk of flight from prosecution, the officer shall, either in lieu of or in addition to the methods of release in this section, impose the least restrictive of the following conditions or the least restrictive combination of the following conditions that will reasonably ~~ensure the appearance~~ mitigate the risk of flight of the defendant as required:

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

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

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

(d) Review of conditions.

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