

1 TO THE HONORABLE SENATE:

2 The Committee on Judiciary to which was referred House Bill No. 503  
3 entitled “An act relating to bail” respectfully reports that it has considered the  
4 same and recommends that the Senate propose to the House that the bill be  
5 amended by striking out all after the enacting clause and inserting in lieu  
6 thereof the following:

7 \* \* \*Release Prior to Trial \* \* \*

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

9 § 7551. APPEARANCE BONDS; GENERALLY

10 (a) A bond given by a person charged with a criminal offense or by a  
11 witness in a criminal prosecution under section 6605 of this title, conditioned  
12 for the appearance of the person or witness before the court in cases where the  
13 offense is punishable by fine or imprisonment, and in appealed cases, shall be  
14 taken to the ~~district or superior court~~ 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) No bond may be imposed at the initial appearance of a person charged  
19 with a misdemeanor if the person was cited for the offense in accordance with  
20 Rule 3 of the Vermont Rules of Criminal Procedure. This subsection shall not  
21 be construed to restrict the court’s ability to impose conditions on an individual

1 reasonably to ensure his or her appearance at future proceedings or reasonably  
2 to protect the public in accordance with section 7554 of this title.

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

4 § 7554. RELEASE PRIOR TO TRIAL

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

9 \* \* \*

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

14 (4) A judicial officer may order that a defendant not possess firearms or  
15 other weapons. This order shall take effect immediately, regardless of whether  
16 the defendant is incarcerated or released.

17 Sec. 3. 28 V.S.A. § 301 is amended to read:

18 § 301. SUMMONS OR ARREST OF PROBATIONER

19 \* \* \*

20 (2) Arrest or citation of person on probation. Any correctional officer  
21 may arrest a probationer without a warrant if, in the judgment of the

1 correctional officer, the probationer has violated a condition or conditions of  
2 his or her probation other than a condition that the probationer pay restitution;  
3 or may deputize any other law enforcement officer to arrest a probationer  
4 without a warrant by giving him or her a written statement setting forth that the  
5 probationer has, in the judgment of the correctional officer, violated a  
6 condition or conditions of his or her probation other than a condition that the  
7 probationer pay restitution. The written statement delivered with the person by  
8 the arresting officer to the supervising officer of the correctional facility to  
9 which the person is brought for detention shall be sufficient warrant for  
10 detaining him or her. In lieu of arrest, a correctional officer may issue a  
11 probationer a citation to appear for arraignment. In deciding whether to arrest  
12 or issue a citation, an officer shall consider whether issuance of a citation will  
13 reasonably ensure the probationer's appearance at future proceedings and  
14 reasonably protect the public.

15 \* \* \*

16 (4) Detention pending hearing for probationer. Pending arraignment for  
17 any charge of violation, the probationer shall ~~continue to~~ be detained at a  
18 correctional facility unless issued a citation by a correctional officer.

19 Thereafter, the court may release the probationer pursuant to 13 V.S.A. § 7554.

20 There shall be no right to bail or release, unless the person is on probation for a

1 nonviolent misdemeanor or nonviolent felony ~~and the probation violation did~~  
2 ~~not constitute a new crime.~~ As used in this subdivision:

3 (A) “Nonviolent felony” means a felony offense which is not a listed  
4 crime as defined in 13 V.S.A. § 5301(7) or an offense involving sexual  
5 exploitation of children in violation of 13 V.S.A. chapter 64.

6 (B) “Nonviolent misdemeanor” means a misdemeanor offense which is  
7 not a listed crime as defined in 13 V.S.A. § 5301(7) or an offense involving  
8 sexual exploitation of children in violation of 13 V.S.A. chapter 64 or  
9 13 V.S.A. § 1030.

10 \* \* \* Regulated Drugs \* \* \*

11 Sec. 4. 18 V.S.A. § 4233a is added to read:

12 § 4233a. FENTANYL

13 (a) Selling or dispensing.

14 (1) A person knowingly and unlawfully dispensing fentanyl shall be  
15 imprisoned not more than three years or fined not more than \$75,000.00, or  
16 both. A person knowingly and unlawfully selling fentanyl shall be imprisoned  
17 not more than five years or fined not more than \$100,000.00, or both.

18 (2) A person knowingly and unlawfully selling or dispensing fentanyl in  
19 an amount consisting of four milligrams or more of one or more preparations,  
20 compounds, mixtures, or substances containing fentanyl shall be imprisoned  
21 not more than 10 years or fined not more than \$250,000.00, or both.

1           (3) A person knowingly and unlawfully selling or dispensing fentanyl in  
2           an amount consisting of 20 milligrams or more of one or more preparations,  
3           compounds, mixtures, or substances containing fentanyl shall be imprisoned  
4           not more than 20 years or fined not more than \$1,000,000.00, or both.

5           (4) In lieu of a charge under this subsection, but in addition to any other  
6           penalties provided by law, a person knowingly and unlawfully selling or  
7           dispensing any regulated drug containing a detectable amount of fentanyl shall  
8           be imprisoned not more than five years or fined not more than \$250,000.00,  
9           or both.

10          (b) Trafficking. A person knowingly and unlawfully possessing fentanyl in  
11          an amount consisting of 70 milligrams or more of one or more preparations,  
12          compounds, mixtures, or substances containing fentanyl with the intent to sell  
13          or dispense the fentanyl shall be imprisoned not more than 30 years or fined  
14          not more than \$1,000,000.00, or both. There shall be a permissive inference  
15          that a person who possesses fentanyl in an amount of 70 milligrams or more of  
16          one or more preparations, compounds, mixtures, or substances containing  
17          fentanyl intends to sell or dispense the fentanyl. The amount of possessed  
18          fentanyl under this subsection to sustain a charge of conspiracy under  
19          13 V.S.A. § 1404 shall be not less than 70 milligrams in the aggregate.

20          (c) Transportation into the State. In addition to any other penalties  
21          provided by law, a person knowingly and unlawfully transporting more than

1 20 milligrams of fentanyl into Vermont with the intent to sell or dispense the  
2 fentanyl shall be imprisoned not more than 10 years or fined not more than  
3 \$100,000.00, or both.

4 Sec. 5. 18 V.S.A. § 4234 is amended to read:

5 § 4234. DEPRESSANT, STIMULANT, AND NARCOTIC DRUGS

6 \* \* \*

7 (b) Selling or dispensing.

8 (1) A person knowingly and unlawfully dispensing a depressant,  
9 stimulant, or narcotic drug, other than fentanyl, heroin, or cocaine, shall be  
10 imprisoned not more than three years or fined not more than \$75,000.00, or  
11 both. A person knowingly and unlawfully selling a depressant, stimulant, or  
12 narcotic drug, other than fentanyl, cocaine, or heroin, shall be imprisoned not  
13 more than five years or fined not more than \$25,000.00, or both.

14 (2) A person knowingly and unlawfully selling or dispensing a  
15 depressant, stimulant, or narcotic drug, other than fentanyl, heroin, or cocaine,  
16 consisting of 100 times a benchmark unlawful dosage or its equivalent as  
17 determined by the ~~board of health~~ Board of Health by rule shall be imprisoned  
18 not more than 10 years or fined not more than \$100,000.00, or both.

19 (3) A person knowingly and unlawfully selling or dispensing a  
20 depressant, stimulant, or narcotic drug, other than fentanyl, heroin, or cocaine,  
21 consisting of 1,000 times a benchmark unlawful dosage or its equivalent as

1 determined by the ~~board of health~~ Board of Health by rule shall be imprisoned  
2 not more than 20 years or fined not more than \$500,000.00, or both.

3 Sec. 6. 13 V.S.A. § 1404 is amended to read:

4 § 1404. CONSPIRACY

5 (a) A person is guilty of conspiracy if, with the purpose that an offense  
6 listed in subsection (c) of this section be committed, that person agrees with  
7 one or more persons to commit or cause the commission of that offense, and at  
8 least two of the co-conspirators are persons who are neither law enforcement  
9 officials acting in official capacity nor persons acting in cooperation with a law  
10 enforcement official.

11 (b) No person shall be convicted of conspiracy unless a substantial overt  
12 act in furtherance of the conspiracy is alleged and proved to have been done by  
13 the defendant or by a co-conspirator, other than a law enforcement official  
14 acting in an official capacity or a person acting in cooperation with a law  
15 enforcement official, and subsequent to the defendant's entrance into the  
16 conspiracy. Speech alone may not constitute an overt act.

17 (c) This section applies only to a conspiracy to commit or cause the  
18 commission of one or more of the following offenses:

- 19 (1) murder in the first or second degree;  
20 (2) arson under sections 501-504 and 506 of this title;

1 (3) sexual exploitation of children under sections 2822, 2823, and 2824  
2 of this title;

3 (4) receiving stolen property under sections 2561-2564 of this title; or

4 (5) an offense involving the sale, delivery, manufacture, or cultivation of  
5 a regulated drug or an offense under:

6 (A) 18 V.S.A. § 4230(c), relating to trafficking in marijuana;

7 (B) 18 V.S.A. § 4231(c), relating to trafficking in cocaine;

8 (C) 18 V.S.A. § 4233(c), relating to trafficking in heroin;

9 (D) 18 V.S.A. § 4234(b)(3), relating to unlawful selling or dispensing  
10 of a depressant, stimulant, or narcotic drug, other than heroin or cocaine; ~~or~~

11 (E) 18 V.S.A. § 4234a(c), relating to trafficking in  
12 methamphetamine; or

13 (F) 18 V.S.A. § 4233a(c), relating to trafficking in fentanyl.

14 Sec. 7. 18 V.S.A. § 4234b is amended to read:

15 § 4234b. EPHEDRINE AND PSEUDOEPHEDRINE

16 \* \* \*

17 (c) Electronic registry system.

18 (1)(A) Retail establishments shall use an electronic registry system to  
19 record the sale of products made pursuant to subsection (b) of this section. The  
20 electronic registry system shall have the capacity to block a sale of  
21 nonprescription drug products containing ephedrine base, pseudoephedrine

1 base, or phenylpropanolamine base that would result in a purchaser exceeding  
2 the lawful daily or monthly amount. The system shall contain an override  
3 function that may be used by an agent of a retail establishment who is  
4 dispensing the drug product and who has a reasonable fear of imminent bodily  
5 harm to his or her person or to another person if the transaction is not  
6 completed. The system shall create a record of each use of the override  
7 mechanism.

8 (B) The electronic registry system shall be available free of charge to  
9 the State of Vermont, retail establishments, and local law enforcement  
10 agencies.

11 (C) The electronic registry system shall operate in real time to enable  
12 communication among in-state users and users of similar systems in  
13 neighboring states.

14 (D) The State shall use the National Precursor Log Exchange  
15 (NPLEx) online portal or its equivalent to host Vermont's electronic registry  
16 system.

17 (2)(A) Prior to completing a sale under subsection (b) of this section, a  
18 retail establishment shall require the person purchasing the drug product to  
19 present a current, valid government-issued identification document. The retail  
20 establishment shall record in the electronic registry system:

21 (i) the name and address of the purchaser;

1                   (ii) the name of the drug product and quantity of ephedrine,  
2                   pseudoephedrine, and phenylpropanolamine base sold in grams;

3                   (iii) the date and time of purchase;

4                   (iv) the form of identification presented, the issuing government  
5                   entity, and the corresponding identification number; and

6                   (v) the name of the person selling or furnishing the drug product.

7                   (B)(i) If the retail establishment experiences an electronic or  
8                   mechanical failure of the electronic registry system and is unable to comply  
9                   with the electronic recording requirement, the retail establishment shall  
10                  maintain a written log or an alternative electronic record-keeping mechanism  
11                  until the retail establishment is able to comply fully with this subsection (c).

12                  (ii) If the region of the State where the retail establishment is  
13                  located does not have broadband Internet access, the retail establishment shall  
14                  maintain a written log or an alternative electronic record-keeping mechanism  
15                  until broadband Internet access becomes accessible in that region. At that  
16                  time, the retail establishment shall come into compliance with this  
17                  subsection (c).

18                  (C) A retail establishment shall maintain all records of drug product  
19                  purchases made pursuant to this subsection (c) for a minimum of two years.

1           (3) A retail establishment shall display a sign at the register provided by  
2           NPLEx or its equivalent to notify purchasers of drug products containing  
3           ephedrine, pseudoephedrine, or phenylpropanolamine base that:

4                   (A) the purchase of the drug product or products shall result in the  
5                   purchaser’s identity being listed on a national database; and

6                   (B) the purchaser has the right to request the transaction number for  
7                   any purchase that was denied pursuant to this subsection (c).

8           (4) Except as provided in subdivision (5) of this subsection (c), a person  
9           or retail establishment that violates this subsection shall:

10                   (A) for a first violation be assessed a civil penalty of not more than  
11                   \$100.00; and

12                   (B) for a second or subsequent violation be assessed a civil penalty of  
13                   not more than \$500.00.

14           (d) This section shall not apply to a manufacturer ~~which~~ that has obtained  
15           an exemption from the Attorney General of the United States under Section  
16           711(d) of the federal Combat Methamphetamine Epidemic Act of 2005.

17           (e) As used in this section:

18                   (1) “Distributor” means a person, other than a manufacturer or  
19                   wholesaler, who sells, delivers, transfers, or in any manner furnishes a drug  
20                   product to any person who is not the ultimate user or consumer of the product.

21                   (2) “Knowingly” means having actual knowledge of the relevant facts.



1 of decision or unconscious or dead, it is deemed that the person's consent is  
2 given and a sample of blood shall be taken. A blood test sought pursuant to  
3 this subdivision (2) shall be obtained pursuant to subsection (f) of this section.

4 (3) Evidentiary test. The evidentiary test shall be required of a person  
5 when a law enforcement officer has reasonable grounds to believe that the  
6 person was operating, attempting to operate, or in actual physical control of a  
7 vehicle in violation of section 1201 of this title.

8 (4) Fatal collision or incident resulting in serious bodily injury. The  
9 evidentiary test shall also be required if the person is the surviving operator of  
10 a motor vehicle involved in a fatal incident or collision or an incident or  
11 collision resulting in serious bodily injury and the law enforcement officer has  
12 reasonable grounds to believe that the person has any amount of alcohol or  
13 other drug in his or her system.

14 (b) ~~If the person refuses to submit to an evidentiary test it shall not be~~  
15 ~~given, except as provided in subsection (f) of this section, but the~~ A refusal to  
16 take a breath test may be introduced as evidence in a criminal proceeding.

17 \* \* \*

18 (f) If a blood test is sought from a person pursuant to subdivision (a)(2) of  
19 this section, or if a person who has been involved in an accident or collision  
20 resulting in serious bodily injury or death to another refuses an evidentiary test,  
21 a law enforcement officer may apply for a search warrant pursuant to Rule 41

1 of the Vermont Rules of Criminal Procedure to obtain a sample of blood for an  
2 evidentiary test. If a blood sample is obtained by search warrant, the fact of  
3 the refusal may still be introduced in evidence, in addition to the results of the  
4 evidentiary test. Once a law enforcement official begins the application  
5 process for a search warrant, the law enforcement official is not obligated to  
6 discontinue the process even if the person later agrees to provide an  
7 evidentiary breath sample. The limitation created by Rule 41(g) of the  
8 Vermont Rules of Criminal Procedure regarding blood specimens shall not  
9 apply to search warrants authorized by this section.

10 \* \* \*

11 \* \* \* Electronic Monitoring \* \* \*

12 Sec. 9. ELECTRONIC MONITORING

13 (a) The Commissioner of Corrections shall establish an active electronic  
14 monitoring program with real-time enforcement. The Electronic Monitoring  
15 Program shall be administered by the Department of State's Attorneys and  
16 Sheriffs and enforced by the Department of Corrections.

17 (b) The Electronic Monitoring Program described in subsection (a) of this  
18 section may be used to monitor, in lieu of incarcerating in a facility, the  
19 following populations:

20 (1) offenders in the custody of the Commissioner who are eligible for  
21 the Home Detention Program described in 13 V.S.A. § 7554b; and

1           (2) offenders in the custody of the Commissioner, including the  
2 following target populations:

3           (A) offenders who are eligible for home confinement furlough, as  
4 described in 28 V.S.A. § 808b;

5           (B) offenders who are past their minimum sentence and are deemed  
6 appropriate for the Program by the Commissioner of Corrections; or

7           (C) offenders who are eligible for reintegration furlough, as described  
8 in 28 V.S.A. § 808c.

9           (c) An offender shall only be eligible for the Electronic Monitoring  
10 Program described in subsection (a) of this section if electronic monitoring  
11 equipment is fully functional in the geographic area where the offender will be  
12 located.

13       Sec. 10. EFFECTIVE DATES

14           This section and Secs. 7 (ephedrine and pseudoephedrine), 8 (impaired  
15 driving), and 9 (electronic monitoring) shall take effect on passage. The  
16 remaining sections shall take effect on July 1, 2017.

17           and that after passage the title of the bill be amended to read: “An act relating  
18 to criminal justice”

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3 (Committee vote: \_\_\_\_\_)

4

\_\_\_\_\_

5

Senator \_\_\_\_\_

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FOR THE COMMITTEE