

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.

20 (1) ~~No bond may be imposed~~ No bail, secured appearance bond, or
21 appearance bond may be imposed:

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

4 (B) upon a person charged with a violation of a misdemeanor offense
5 that is eligible for expungement pursuant to subdivision 7601(4)(A) of this
6 title:

7 (i) upon the temporary release of the person pursuant to Rule 5(b)
8 of the Vermont Rules of Criminal Procedure; or

9 (ii) at the initial appearance of the person charged.

10 (2) In the event the Court finds it is against the interest of justice to
11 release a defendant charged with a violation of a misdemeanor offense that is
12 eligible for expungement pursuant to subdivision 7601(4)(A) of this title
13 without imposing bail pursuant to subdivision (1) of this subsection, the Court
14 may impose bail in a maximum amount of \$200.00.

15 (3) This subsection shall not be construed to restrict the court's ability to
16 impose conditions on such persons to reasonably ~~ensure his or her appearance~~
17 ~~at future proceedings~~ mitigate the risk of flight from prosecution or to
18 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 shall
4 consult with the prosecuting attorney, and the prosecuting attorney shall
5 contact a judicial officer for determination of temporary release pursuant to
6 Rule 5(b) of these rules without unnecessary delay. The law enforcement
7 officer or prosecuting attorney shall provide the judicial officer with the
8 information and affidavit or sworn statement required by Rule 4(a) of these
9 rules.

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

11 § 7554. RELEASE PRIOR TO TRIAL

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

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

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

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

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

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

20 (D) ~~Require~~ Upon consideration of the defendant's financial means,
21 require the execution of a secured appearance bond in a specified amount and

1 the deposit with the clerk of the ~~Court~~ court, in cash or other security as
2 directed, of a sum not to exceed 10 percent of the amount of the bond, such
3 deposit to be returned upon the appearance of the defendant as required.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

14 (2) ~~subsection~~ In subdivision (a)(2) of this section, the judicial officer
15 ~~shall~~, on the basis of available information, shall take into account the nature
16 and circumstances of the offense charged, the weight of the evidence against
17 the accused, the accused's family ties, employment, ~~financial resources,~~
18 character and mental condition, the length of residence in the community,
19 record of convictions, and record of appearance at court proceedings or of
20 flight to avoid prosecution or failure to appear at court proceedings. Recent

1 history of actual violence or threats of violence may be considered by the
2 judicial officer as bearing on the character and mental condition of the accused.

3 (c) Order. A judicial officer authorizing the release of a person under this
4 section shall issue an appropriate order containing a statement of the conditions
5 imposed, if any; shall inform such person of the penalties applicable to
6 violations of the conditions of release; and shall advise him or her that a
7 warrant for his or her arrest will be issued immediately upon any such
8 violation.

9 (d) Review of conditions.

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

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

10 (e) Amendment of order. A judicial officer ordering the release of a person
11 on any condition specified in this section may at any time amend the order to
12 impose additional or different conditions of release, provided that the
13 provisions of subsection (d) of this section shall apply.

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

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

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

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

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

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

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

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

18 Sec. 4. 13 V.S.A. § 7575 is amended to read:

19 § 7575. REVOCATION OF THE RIGHT TO BAIL

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

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

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

5 (3) violated a condition or conditions of release ~~which~~ that constitute a
6 threat to the integrity of the judicial system; or

7 (4) without just cause, failed to appear at a specified time and place
8 ordered by a judicial officer; or

9 (5) in violation of a condition of release, been charged with a felony or a
10 crime against a person or an offense ~~like~~ similar to the underlying charge, for
11 which, after hearing, probable cause is found.

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

13 § 7576. DEFINITIONS

14 As used in this chapter:

15 * * *

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

1 **Sec. 6. INCARCERATION RATES OF PEOPLE OF COLOR; STUDY**
2 **COMMITTEE; REPORT**

3 (a) Study Committee. The Commissioner of the Department of
4 Corrections, the Commissioner of the Department of Public Safety, the
5 Attorney General, and the Director of the Vermont State Police shall meet
6 during the 2018 legislative interim to examine data regarding people of color
7 who are incarcerated in Vermont. To the extent possible, the Committee shall
8 also review data regarding people of color incarcerated in Maine and New
9 Hampshire.

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

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

14 (A) demographic information about the offender, including race and
15 ethnicity;

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

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

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

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

3 Sec. 7. EFFECTIVE DATE

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

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8 (Committee vote: _____)

9

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Senator _____

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FOR THE COMMITTEE