

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 shall
4 consult with the prosecuting attorney, and the prosecuting attorney or law
5 enforcement officer shall contact a judicial officer for determination of
6 temporary release pursuant to Rule 5(b) of these rules without unnecessary
7 delay. The law enforcement officer or prosecuting attorney shall provide the
8 judicial officer with the information and affidavit or sworn statement required
9 by Rule 4(a) of these 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, association, or place of abode of
2 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 (3) A judicial officer may order that a defendant not harass or contact or
18 cause to be harassed or contacted a victim or potential witness. This order
19 shall take effect immediately, regardless of whether the defendant is
20 incarcerated or released.

1 (b) Judicial considerations in imposing conditions of release. In
2 determining which conditions of release to impose ~~under~~;

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

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

19 (c) Order. A judicial officer authorizing the release of a person under this
20 section shall issue an appropriate order containing a statement of the conditions
21 imposed, if any; shall inform such person of the penalties applicable to

1 violations of the conditions of release; and shall advise him or her that a
2 warrant for his or her arrest will be issued immediately upon any such
3 violation.

4 (d) Review of conditions.

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

17 (2) A person for whom conditions of release are imposed shall, within
18 five working days of following application, be entitled to have the conditions
19 reviewed by a judge in the court having original jurisdiction over the offense
20 charged. A person applying for review shall be given the opportunity for a
21 hearing. Unless the conditions of release are amended as requested, the judge

1 shall set forth in writing or orally on the record a reasonable basis for
2 continuing the conditions imposed. In the event that a judge in the court
3 having original jurisdiction over the offense charged is not available, any
4 Superior judge may review such conditions.

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

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

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

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

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

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

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

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

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

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

13 § 7575. REVOCATION OF THE RIGHT TO BAIL

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

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

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

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

