

1 H.666

2 Introduced by Representatives Scheuermann of Stowe, Noyes of Wolcott, Patt  
3 of Worcester, and Yacovone of Morristown

4 Referred to Committee on

5 Date:

6 Subject: Crimes and criminal procedure; bail; pretrial risk assessments; needs  
7 screenings

8 Statement of purpose of bill as introduced: This bill proposes to designate  
9 operating under the influence of alcohol or another substance, resulting in  
10 serious bodily injury or death to any person other than the operator, as an act of  
11 violence against another person for purposes of bail and to require a person  
12 charged with such an offense to participate in a risk assessment, and, if  
13 appropriate, a needs screening.

14 An act relating to pretrial release of a person charged with impaired driving  
15 with serious bodily injury or death resulting

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

17 Sec. 1. 13 V.S.A. § 7553a is amended to read:

18 § 7553a. ACTS OF VIOLENCE; DENIAL OF RELEASE ON BAIL

19 (a) A person charged with an offense that is a felony, an element of which  
20 involves an act of violence against another person, may be held without bail

1 when the evidence of guilt is great and the court finds, based upon clear and  
2 convincing evidence, that the person's release poses a substantial threat of  
3 physical violence to any person and that no condition or combination of  
4 conditions of release will reasonably prevent the physical violence.

5 (b) For purposes of this section, a felony, an element of which involves an  
6 act of violence against another person, shall include a violation of 23 V.S.A.  
7 § 1201(a) related to operating under the influence of alcohol or other  
8 substance, resulting in serious bodily injury or death to any person other than  
9 the operator.

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

11 § 7554c. PRETRIAL RISK ASSESSMENTS; NEEDS SCREENINGS

12 (a)(1) The objective of a pretrial risk assessment is to provide information  
13 to the court for the purpose of determining whether a person presents a risk of  
14 nonappearance or a risk of re-offense so the court can make an appropriate  
15 order concerning bail and conditions of pretrial release. The assessment shall  
16 not assess victim safety or risk of lethality in domestic assaults.

17 (2) The objective of a pretrial needs screening is to obtain a preliminary  
18 indication of whether a person has a substantial substance abuse or mental  
19 health issue that would warrant a subsequent court order for a more detailed  
20 clinical assessment.

1           (3) Participation in a risk assessment or needs screening pursuant to this  
2 section does not create any entitlement for the assessed or screened person.

3           (b)(1) Except as provided in subdivision (2) of this subsection, a person  
4 who is arrested, lodged, and unable to post bail within 24 hours of lodging  
5 shall be offered a risk assessment and, if deemed appropriate by the pretrial  
6 services coordinator, a needs screening prior to arraignment.

7           (2)(A) A person charged with an offense for which registration as a sex  
8 offender is required pursuant to chapter 167, subchapter 3 of this title or an  
9 offense punishable by a term of life imprisonment shall not be eligible under  
10 this section.

11           (B) A person charged with a violation of 23 V.S.A. § 1201(a) related  
12 to operating under the influence of alcohol or other substance, resulting in  
13 serious bodily injury or death to any person other than the operator, shall  
14 participate in a risk assessment, and, if appropriate, a needs screening.

15           (3) ~~Participation~~ Except as provided in subdivision (a)(2)(B) of this  
16 section, participation in a risk assessment or needs screening shall be voluntary  
17 and a person's refusal to participate shall not result in any criminal legal  
18 liability to the person.

19           (4) In the event an assessment or screening cannot be obtained prior to  
20 arraignment, the risk assessment and needs screening shall be conducted as  
21 soon as practicable.

1           (5) A person who qualifies pursuant to subdivision (1) of this subsection  
2           and who has an additional pending charge or a violation of probation shall not  
3           be excluded from being offered a risk assessment or needs screening unless the  
4           other charge is a listed crime.

5           (6) Any person charged with a criminal offense or who is the subject of  
6           a youthful offender petition pursuant to 33 V.S.A. § 5280, except those persons  
7           identified in subdivision (2) of this subsection, may choose to engage with a  
8           pretrial services coordinator.

9           (c) The results of the risk assessment and needs screening shall be provided  
10          to the person and his or her attorney, the prosecutor, and the court. Pretrial  
11          services coordinators may share information only within the limitations of  
12          subsection (e) of this section.

13          (d)(1) At arraignment, the court may order a person to do the following:

14                (A) meet with a pretrial services coordinator on a schedule set by the  
15          court;

16                (B) participate in a needs screening with a pretrial services  
17          coordinator; and

18                (C) participate in a clinical assessment by a substance abuse or  
19          mental health treatment provider and follow the recommendations of the  
20          provider.

1           (2) The court may order the person to engage in pretrial services.

2           Pretrial services may include the pretrial services coordinator:

3                   (A) supporting the person in meeting conditions of release imposed  
4           by the court, including the condition to appear for judicial proceedings; and

5                   (B) connecting the person with community-based treatment  
6           programs, rehabilitative services, recovery supports, and restorative justice  
7           programs.

8           (3) If possible, the court shall set the date and time for the clinical  
9           assessment at arraignment. In the alternative, the pretrial services coordinator  
10          shall coordinate the date, time, and location of the clinical assessment and  
11          advise the court, the person and his or her attorney, and the prosecutor.

12          (4) An order authorized in subdivision (1) or (2) of this subsection shall  
13          be in addition to any conditions of release permitted by law and shall not limit  
14          the court in any way. Failure to comply with a court order authorized by  
15          subdivision (1) or (2) of this subsection shall not constitute a violation of  
16          section 7559 of this title.

17          (5) This section shall not be construed to limit a court's authority to  
18          impose conditions pursuant to section 7554 of this title.

19          (e)(1) Information obtained from the person during the risk assessment or  
20          needs screening shall be exempt from public inspection and copying under the  
21          Public Records Act and, except as provided in subdivision (2) of this

1 subsection, only may be used for determining bail, conditions of release, and  
2 appropriate programming for the person in the pending case. The information  
3 a pretrial services coordinator may report is limited to whether a risk  
4 assessment indicates risk of nonappearance, whether further substance use  
5 assessment or treatment is indicated, whether mental health assessment or  
6 treatment is indicated, whether a person participated in a clinical assessment,  
7 and whether further engagement with pretrial services is recommended, unless  
8 the person provides written permission to release additional information.

9 Information related to the present offense directly or indirectly derived from  
10 the risk assessment, needs screening, or other conversation with the pretrial  
11 services coordinator shall not be used against the person in the person's  
12 criminal or juvenile case for any purpose, including impeachment or cross-  
13 examination. However, the fact of participation or nonparticipation in the risk  
14 assessment or needs screening may be used in subsequent proceedings. The  
15 immunity provisions of this subsection apply only to the use and derivative use  
16 of information gained as a proximate result of the risk assessment, needs  
17 screening, or other conversation with the pretrial services coordinator.

18 (2) The person shall retain all of his or her due process rights throughout  
19 the risk assessment and needs screening process and may release his or her  
20 records at his or her discretion.

1           (3) All records of information obtained during a risk assessment or  
2 needs screening shall be stored in a manner making them accessible only to the  
3 Director of Pretrial Services and pretrial service coordinators for a period of  
4 three years, after which the records shall be maintained as required by sections  
5 117 and 218 of this title and any other State law. The Director of Pretrial  
6 Services shall be responsible for the destruction of records when ordered by  
7 the court.

8           (f) The Attorney General's Office shall:

9           (1) contract for or otherwise provide the pretrial services described in  
10 this section, including performance of risk assessments, needs screenings, and  
11 pretrial monitoring services, and

12           (2) develop pretrial services outcomes following the designated State of  
13 Vermont performance accountability framework and, in consultation with the  
14 Department of State's Attorneys and Sheriffs, the Office of the Defender  
15 General, the Center for Crime Victim Services, and the Judiciary, report  
16 annually on or before December 1 to the General Assembly on services  
17 provided and outcome indicators.

18           Sec. 3. EFFECTIVE DATE

19           This act shall take effect on July 1, 2020.