

1 TO THE HOUSE OF REPRESENTATIVES:

2 The Committee on Corrections and Institutions to which was referred
3 House Bill No. 195 entitled “An act relating to how a defendant’s criminal
4 record is considered in imposing conditions of release” respectfully reports that
5 it has considered the same and recommends that the bill be amended by
6 striking out all after the enacting clause and inserting in lieu thereof the
7 following:

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

9 § 7551. IMPOSITION OF BAIL, SECURED APPEARANCE BONDS, AND
10 APPEARANCE BONDS

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

19 (b) Limitation on imposition of bail, secured appearance bonds, and
20 appearance bonds.

1 (1) Except as provided in subdivision (2) of this subsection, no bail,
2 secured appearance bond, or appearance bond may be imposed:

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

6 (B) at the initial appearance or upon the temporary release pursuant
7 to Rule 5(b) of the Vermont Rules of Criminal Procedure of a person charged
8 with a violation of a misdemeanor offense that is eligible for expungement
9 pursuant to subdivision 7601(4)(A) of this title.

10 (2) In the event the court finds that imposing bail is necessary to
11 mitigate the risk of flight from prosecution for a person charged with a
12 violation of a misdemeanor offense that is eligible for expungement pursuant
13 to subdivision 7601(4)(A) of this title, the court may impose bail in a
14 maximum amount of \$200.00. The \$200.00 limit shall not apply to an offense
15 allegedly committed by a defendant who has been released on personal
16 recognizance or conditions of release pending trial for another offense.

17 (3) This subsection shall not be construed to restrict the court's ability to
18 impose conditions on such persons to reasonably mitigate the risk of flight
19 from prosecution or to reasonably protect the public in accordance with section
20 7554 of this title.

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

2 § 7554. RELEASE PRIOR TO TRIAL

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

7 (1) The defendant shall be ordered released on personal recognizance or
8 upon the execution of an unsecured appearance bond in an amount specified by
9 the judicial officer unless the judicial officer determines that such a release will
10 not reasonably mitigate the risk of flight from prosecution as required. In
11 determining whether the defendant presents a risk of flight from prosecution,
12 the judicial officer shall consider, in addition to any other factors, the
13 seriousness of the offense charged and the number of offenses with which the
14 person is charged. If the judicial officer determines that the defendant presents
15 a risk of flight from prosecution, the officer shall, either in lieu of or in
16 addition to the methods of release in this section, impose the least restrictive of
17 the following conditions or the least restrictive combination of the following
18 conditions that will reasonably mitigate the risk of flight of the defendant as
19 required:

20 (A) Place the defendant in the custody of a designated person or
21 organization agreeing to supervise ~~him or her~~ the defendant if the defendant is

1 charged with an offense that is not a nonviolent misdemeanor or nonviolent
2 felony as defined in 28 V.S.A. § 301.

3 (B) Place restrictions on the travel or association of the defendant
4 during the period of release.

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

9 (D) Upon consideration of the defendant’s financial means, require
10 the execution of a secured appearance bond in a specified amount and the
11 deposit with the clerk of the court, in cash or other security as directed, of a
12 sum not to exceed 10 percent of the amount of the bond, such deposit to be
13 returned upon the appearance of the defendant as required.

14 (E) Upon consideration of the defendant’s financial means, require
15 the execution of a surety bond with sufficient solvent sureties, or the deposit of
16 cash in lieu thereof.

17 (F) Impose any other condition found reasonably necessary to
18 mitigate the risk of flight as required, including a condition requiring that the
19 defendant return to custody after specified hours.

20 (G) [Repealed.]

1 (H) Place the defendant in the electronic monitoring program
2 pursuant to section 7554f of this title.

3 (I) Place the defendant in the home detention program pursuant to
4 section 7554b of this title.

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

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

14 (B) Place restrictions on the travel, association, or place of abode of
15 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.

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

4 (E) Suspend the officer’s duties in whole or in part if the defendant is
5 a State, county, or municipal officer charged with violating section 2537 of this
6 title and the court finds that it is necessary to protect the public.

7 (F) [Repealed.]

8 (G) Place the defendant in the electronic monitoring program
9 pursuant to section 7554f of this title.

10 (H) Place the defendant in the home detention program pursuant to
11 section 7554b of this title.

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

16 (b) Judicial considerations in imposing conditions of release. In
17 determining which conditions of release to impose:

18 (1) In subdivision (a)(1) of this section, the judicial officer, on the basis
19 of available information, shall take into account the nature and circumstances
20 of the offense charged; the weight of the evidence against the accused; the
21 accused’s employment; financial resources, including the accused’s ability to

1 post bail; the accused’s character and mental condition; the accused’s length of
2 residence in the community; and the accused’s record of appearance at court
3 proceedings or of flight to avoid prosecution or failure to appear at court
4 proceedings.

5 (2) In subdivision (a)(2) of this section, the judicial officer, on the basis
6 of available information, shall take into account the nature and circumstances
7 of the offense charged; the weight of the evidence against the accused; the
8 number of offenses with which the accused is charged; whether the accused is
9 subject to release on personal recognizance or subject to conditions of release
10 related to protecting the public in another case pending before federal or state
11 court; whether the accused is subject to conditions related to protecting the
12 public for probation, parole, furlough, or another form of community
13 supervision; whether the accused is currently compliant with any court orders;
14 and the accused’s family ties, employment, character and mental condition,
15 length of residence in the community, record of convictions, and record of
16 appearance at court proceedings or of flight to avoid prosecution or failure to
17 appear at court proceedings. Recent history of actual violence or threats of
18 violence may be considered by the judicial officer as bearing on the character
19 and mental condition of the accused.

20 (c) Order. A judicial officer authorizing the release of a person under this
21 section shall issue an appropriate order containing a statement of the conditions

1 imposed, if any; shall inform such person of the penalties applicable to
2 violations of the conditions of release; and shall advise ~~him or her~~ the person
3 that a warrant for ~~his or her~~ the person's arrest ~~will~~ may be issued immediately
4 upon any such violation.

5 (d) Review of conditions.

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

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

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

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

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

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

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

19 (i) Forms. The Court Administrator shall establish forms for appearance
20 bonds, secured appearance bonds, surety bonds, and for use in the posting of
21 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 following the juvenile’s arrest.

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

13 § 7554b. HOME DETENTION PROGRAM

14 (a) Definition. As used in this section, “home detention” means a program
15 of confinement and supervision that restricts a defendant to a preapproved
16 residence continuously, except for authorized absences, and is enforced by
17 appropriate means of surveillance and electronic monitoring by the Department
18 of Corrections, including the use of passive electronic monitoring. The court
19 may authorize scheduled absences such as for work, school, or treatment. Any
20 changes in the schedule shall be solely at the discretion of the Department of

1 Corrections. A defendant who is on home detention shall remain in the
2 custody of the Commissioner of Corrections with conditions set by the court.

3 **(b) Procedure Defendants with the inability to pay bail.**

4 **(1) Procedure.** At the request of the court, the Department of
5 Corrections, or the defendant, the status of a defendant who is detained pretrial
6 in a correctional facility for inability to pay bail after bail has been set by the
7 court may be reviewed by the court to determine whether the defendant is
8 appropriate for home detention. The review shall be scheduled upon the court's
9 receipt of a report from the Department determining that the proposed
10 residence is suitable for the use of electronic monitoring. A defendant held
11 without bail pursuant to section 7553 or 7553a of this title shall not be eligible
12 for release to the Home Detention Program on or after June 1, 2018. At
13 arraignment or after a hearing, the court may order that the defendant be
14 released to the Home Detention Program, provided that the court finds placing
15 the defendant on home detention will reasonably ~~assure his or her appearance~~
16 ~~in court when required~~ mitigate the defendant's risk of flight and the proposed
17 residence is appropriate for home detention. In making such a determination,
18 the court shall consider:

19 ~~(1)(A)~~ **(1)(A)** the nature of the offense with which the defendant is charged;

20 ~~(2)(B)~~ **(2)(B)** the defendant's prior convictions, history of violence, medical

21 and mental health needs, history of supervision, and risk of flight; and

1 ~~(3)(C)~~ any risk or undue burden to other persons who reside at the
2 proposed residence or risk to third parties or to public safety that may result
3 from such placement.

4 ~~(e)(2)~~ Failure to comply. The Department of Corrections may revoke a
5 defendant’s home detention status for an unauthorized absence or failure to
6 comply with any other condition of the Program and shall return the defendant
7 to a correctional facility.

8 (c) Defendants who violate conditions of release.

9 (1) Procedure. At the request of the court, the prosecutor, or the
10 defendant, the status of a defendant who is has allegedly violated conditions of
11 release may be reviewed by the court to determine whether the defendant is
12 appropriate for home detention. The review shall be scheduled upon the court’s
13 receipt of a report from the Department determining that the proposed
14 residence is suitable for the use of electronic monitoring. A defendant held
15 without bail pursuant to section 7553 or 7553a of this title shall not be eligible
16 for release to the Home Detention Program on or after June 1, 2024. At
17 arraignment or after a hearing, the court may order that the defendant be
18 released to the Home Detention Program, provided that the court finds placing
19 the defendant on home detention will reasonably mitigate the defendant’s risk
20 of flight and the proposed residence is appropriate for home detention. In

1 making such a determination, the court shall consider the factors listed in
2 subdivisions (b)(1)(A)–(C) of this section.

3 (2) Failure to comply. The Department of Corrections may report a
4 defendant’s unauthorized absence or failure to comply with any other
5 condition of the Program to the prosecutor and the defendant, provided that a
6 defendant’s failure to comply with any condition of the Program for a reason
7 other than fault on the part of the defendant shall not be reportable. To address
8 a reported violation, the prosecutor may request:

9 (A) a review of conditions pursuant to section 7554 of this title;

10 (B) a prosecution for contempt pursuant to section 7559 of this title;

11 or

12 (C) a bail revocation hearing pursuant to section 7575 of this title.

13 (d) Credit for time served. A defendant shall receive credit for a sentence
14 of imprisonment for time served in the Home Detention Program.

15 (e) Program support. The Department may support the monitoring
16 operations of the Program through grants of financial assistance to, or contracts
17 for services with, any public or nonprofit entity that meets the Department’s
18 requirements.

19 (f) Manual. The Department of Corrections shall establish a written
20 policies and procedures manual for the Home Detention Program to be used by

1 the Department, any contractors or grantees that the Department engages with
2 to assist **with the monitoring operations** of the program, and the courts.

3 Sec. 4. 13 V.S.A. § 7554f is added to read:

4 § 7554f. ELECTRONIC MONITORING PROGRAM

5 (a) Intent. It is the intent of the General Assembly that the electronic
6 monitoring program assist in ensuring a defendant’s compliance with
7 conditions of release, mitigating a defendant’s risk of flight, or reasonably
8 protecting the public.

9 (b) Program and administration.

10 (1) The Department of Corrections shall expand and manage an
11 electronic monitoring program for the purpose of supervising persons ordered
12 to be under electronic monitoring as a condition of release, in addition to or in
13 lieu of the imposition of bail pursuant to section 7554 of this title, or placed on
14 home detention pursuant to section 7554b of this title.

15 (2) The Department may support the Program’s monitoring operations
16 through grants of financial assistance to, or contracts for services with, any
17 public or nonprofit entity that meets the Department’s requirements.

18 (c) Procedure. At the request of the court, the prosecutor, or the defendant,
19 the court may determine whether a defendant is appropriate for electronic
20 monitoring. After a hearing, the court may order that the defendant be placed
21 under electronic monitoring, provided that the court finds that placing the

1 defendant under electronic monitoring will assist in ensuring a defendant's
2 compliance with conditions of release, mitigating a defendant's risk of flight,
3 or reasonably protecting the public. In making such a determination, the court
4 shall consider:

5 (1) the nature of the offense with which the defendant is charged;

6 (2) the defendant's prior convictions, history of violence, medical and
7 mental health needs, history of supervision, risk of flight, and history of
8 compliance with court orders; and

9 (3) any risk or undue burden to other persons who reside at the proposed
10 residence, risk to third parties, or risk to public safety that may result from the
11 placement.

12 (d) Manual. The Department of Corrections shall establish a written
13 policies and procedures manual for the electronic monitoring program to be
14 used by the Department, any contractors or grantees that the Department
15 engages with to assist in operating the program, and the courts.

16 (e) Failure to comply. The Department of Corrections may report a
17 violation of the defendant's electronic monitoring conditions to the prosecutor
18 and the defendant, provided that a defendant's failure to comply with any
19 condition of the Program for a reason other than fault on the part of the
20 defendant shall not be reportable. To address a reported violation, the
21 prosecutor may initiate:

- 1 (1) a review of conditions pursuant to section 7554 of this title;
- 2 (2) a prosecution for contempt pursuant to section 7559 of this title; or
- 3 (3) a bail revocation hearing pursuant to section 7575 of this title.

4 Sec. 5. 13 V.S.A. § 7554g is added to read:

5 § 7554g. PRE-TRIAL SUPERVISION PROGRAM

6 (a) Purpose. The purpose of the Pre-Trial Supervision Program is to assist
7 eligible people through the use of evidence-based strategies to improve pre-
8 trial compliance with conditions of release, to coordinate and support the
9 provision of pre-trial services when appropriate, to ensure attendance at court
10 appearances, and to decrease the potential to recidivate while awaiting trial.

11 (b) Definition. As used in this section, “Absconding” has the same
12 meaning as defined in 28 V.S.A. § 722(1)(B)–(C).

13 (c) Pre-trial supervision.

14 (1) The Pre-Trial Supervision Program shall supervise defendants who
15 violate conditions of release pursuant to section 7559 of this title, have not
16 fewer than five pending dockets, pose a risk of nonappearance at court
17 proceedings, pose a risk of flight from prosecution, or pose a risk to public
18 safety.

19 (2) The Department of Corrections shall be responsible for supervising
20 defendants who are placed in the Pre-Trial Supervision Program. The
21 Department shall assign a pre-trial supervisor to monitor defendants in a

1 designated region of Vermont and help coordinate any pre-trial services
2 needed by the defendant. The Department shall determine the appropriate
3 level of supervision based on evidence-based screenings of those defendants
4 eligible to be placed in the Program. The Department’s supervision methods
5 may include use of:

6 (A) the Department’s telephone monitoring system;

7 (B) telephonic meetings with a pre-trial supervisor;

8 (C) in-person meetings with a pre-trial supervisor; or

9 (D) any other means of contact deemed appropriate.

10 (3) If the court determines that the defendant is appropriate for the Pre-
11 Trial Supervision Program, the court shall issue an order placing the defendant
12 in the Program and setting the defendant’s conditions of supervision.

13 (d) Procedure.

14 (1) At the request of the court, the prosecutor, or the defendant, the
15 defendant may be reviewed by the court to determine whether the defendant is
16 appropriate for pre-trial supervision. The review shall be scheduled upon the
17 court’s receipt of a report from the Department of Corrections determining that
18 the defendant is eligible for pre-trial supervision. A defendant held without
19 bail pursuant to section 7553 or 7553a shall not be eligible for pre-trial
20 supervision.

21 (2) A defendant is eligible for pre-trial supervision if the person:

1 (A) has violated conditions of release pursuant to section 7559 of this
2 title;

3 (B) has not fewer than five pending court dockets;

4 (C) poses a risk of nonappearance at court proceedings;

5 (D) poses a risk of flight from prosecution; or

6 (E) poses a risk to public safety.

7 (3) After a hearing, the court may order that the defendant be released to
8 the Pre-Trial Supervision Program, provided that the court finds placing the
9 defendant under pre-trial supervision will reasonably ensure the person’s
10 appearance in court when required, mitigate the person’s risk of flight, or
11 reasonable ensure protection of the public. In making such a determination,
12 the court shall consider any of the following:

13 (A) the nature of the violation of conditions of release pursuant to
14 section 7559 of this title;

15 (B) the nature and circumstances of the underlying offense with
16 which the defendant is charged;

17 (C) the defendant’s prior convictions, history of violence, medical
18 and mental health needs, history of supervision, and risk of flight; or

19 (D) any other factors that the court deems appropriate.

20 (e) Compliance and review.

1 (1) Pre-trial supervisors shall notify the prosecutor and use reasonable
2 efforts to notify the defendant of any violations of Program supervision
3 requirements committed by the defendant.

4 (A) Upon submission of the pre-trial supervisor’s sworn affidavit by
5 the prosecutor, the court may issue a warrant for the arrest of a defendant who
6 fails to report to the pre-trial supervisor, commits multiple violations of
7 supervision requirements, or is suspected of absconding.

8 (B) The defendant may appear before the court not later than the next
9 business day following the arrest to modify the defendant’s conditions.

10 (2) At the request of the court, the prosecutor, or the defendant, a
11 defendant’s compliance with pre-trial supervision conditions may be reviewed
12 by the court. The court may issue an appropriate order in accordance with the
13 following:

14 (A) A defendant who complies with all conditions of the Pre-Trial
15 Supervision Program for not less than 90 days may receive a reduction in
16 supervision level or may be removed from the Program altogether.

17 (B) A defendant who violates a condition of the Pre-Trial
18 Supervision Program may receive an increase in supervision level or other
19 sanction permitted by law.

1 (2) Referral to a community reparative board pursuant to 28 V.S.A.
2 chapter 12 in the case of an offender who has pled guilty to a nonviolent
3 felony, a nonviolent misdemeanor, or a misdemeanor that does not involve the
4 subject areas prohibited for referral to a community justice center under
5 24 V.S.A. § 1967. Referral to a community reparative board pursuant to this
6 subdivision does not require the court to place the offender on probation. The
7 offender shall return to court for further sentencing if the reparative board does
8 not accept the case or if the offender fails to complete the reparative board
9 program to the satisfaction of the board in a time deemed reasonable by the
10 board.

11 (3) Probation pursuant to 28 V.S.A. § 205.

12 (4) Supervised community sentence pursuant to 28 V.S.A. § 352.

13 (5) Sentence of imprisonment.

14 (b) When ordering a sentence of probation, the court may require
15 participation in the Restorative Justice Program established by 28 V.S.A.
16 chapter 12 as a condition of the sentence.

17 Sec. 8. 18 V.S.A. § 4253 is amended to read:

18 § 4253. USE OF A FIREARM WHILE SELLING OR DISPENSING A
19 DRUG

20 (a) A person who uses a firearm during and in relation to selling or
21 dispensing a regulated drug in violation of subdivision 4230(b)(3), 4231(b)(3),

1 4232(b)(3), 4233(b)(3), 4234(b)(3), 4234a(b)(3), 4235(c)(3), or 4235a(b)(3) of
2 this title shall be imprisoned not more than three years or fined not more than
3 \$5,000.00, or both, in addition to the penalty for the underlying crime.

4 (b) A person who uses a firearm during and in relation to trafficking a
5 regulated drug in violation of subsection 4230(c), 4231(c), 4233(c), or
6 4234a(c) of this title shall be imprisoned not more than five years or fined not
7 more than \$10,000.00, or both, in addition to the penalty for the underlying
8 crime.

9 (c) For purposes of this section, “use of a firearm” ~~shall include~~ includes:

10 (1) using a firearm while selling or trafficking a regulated drug; and

11 (2) the exchange of firearms for drugs, and this section shall apply to the
12 person who trades a firearm for a drug and the person who trades a drug for a
13 firearm.

14 (d) Conduct constituting the offense of using a firearm while selling or
15 trafficking a regulated drug shall be considered a violent act for the purposes of
16 determining bail.

17 Sec. 9. EFFECTIVE DATE

18 This act shall take effect on passage.

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4 (Committee vote: _____)

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Representative _____

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FOR THE COMMITTEE