

1 TO THE HOUSE OF REPRESENTATIVES:

2 The Committee on Judiciary to which was referred Senate Bill No. 195  
3 entitled “An act relating to how a defendant’s criminal record is considered in  
4 imposing conditions of release” respectfully reports that it has considered the  
5 same and recommends that the House propose to the Senate that the bill be  
6 amended by striking out all after the enacting clause and inserting in lieu  
7 thereof the 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; whether, at the time of the current offense or arrest, the  
15 defendant was released on conditions or personal recognizance, on probation,  
16 furlough, parole, or other release pending trial, sentencing, appeal, or  
17 completion of a sentence for an offense under federal or state law; and whether  
18 the defendant is compliant with court orders or failures to appear at court  
19 hearings in connection with a criminal prosecution. If the judicial officer  
20 determines that the defendant presents a risk of flight from prosecution, the  
21 officer shall, either in lieu of or in addition to the methods of release in this

1 section, impose the least restrictive of the following conditions or the least  
2 restrictive combination of the following conditions that will reasonably  
3 mitigate the risk of flight of the defendant as required:

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

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

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

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

19 (E) Upon consideration of the defendant's financial means, require  
20 the execution of a surety bond with sufficient solvent sureties, or the deposit of  
21 cash in lieu thereof.

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

4 (G) [Repealed.]

5 (H) Place the defendant in the pre-trial supervision program pursuant  
6 to section 7555 of this title.

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

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

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

18 (B) Place restrictions on the travel, association, or place of abode of  
19 the defendant during the period of release.

20 (C) Require the defendant to participate in an alcohol or drug  
21 treatment program. The judicial officer shall take into consideration the

1 defendant's ability to comply with an order of treatment and the availability of  
2 treatment resources.

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

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

9 (F) [Repealed.]

10 (G) Place the defendant in the pre-trial supervision program pursuant  
11 to section 7555 of this title.

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

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

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

20 (1) In subdivision (a)(1) of this section, the judicial officer, on the basis  
21 of available information, shall take into account the nature and circumstances

1 of the offense charged; the weight of the evidence against the accused; the  
2 accused's employment; financial resources, including the accused's ability to  
3 post bail; the accused's character and mental condition; the accused's length of  
4 residence in the community; and the accused's record of appearance at court  
5 proceedings or of flight to avoid prosecution or failure to appear at court  
6 proceedings.

7 (2) In subdivision (a)(2) 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; and the  
10 accused's family ties, employment, character and mental condition, length of  
11 residence in the community, record of convictions, and record of appearance at  
12 court proceedings or of flight to avoid prosecution or failure to appear at court  
13 proceedings. Recent history of actual violence or threats of violence may be  
14 considered by the judicial officer as bearing on the character and mental  
15 condition of the accused.

16 (c) Order. A judicial officer authorizing the release of a person under this  
17 section shall issue an appropriate order containing a statement of the conditions  
18 imposed, if any; shall inform such person of the penalties applicable to  
19 violations of the conditions of release; and shall advise ~~him or her~~ the person  
20 that a warrant for ~~his or her~~ the person's arrest ~~will~~ may be issued immediately  
21 upon any such violation.

1 (d) Review of conditions.

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

14 (2) A person for whom conditions of release are imposed shall, within  
15 five working days following application, be entitled to have the conditions  
16 reviewed by a judge in the court having original jurisdiction over the offense  
17 charged. A person applying for review shall be given the opportunity for a  
18 hearing. Unless the conditions of release are amended as requested, the judge  
19 shall set forth in writing or orally on the record a reasonable basis for  
20 continuing the conditions imposed. In the event that a judge in the court



1 having original jurisdiction over the offense charged is not available, any  
2 Superior judge may review such conditions.

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

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

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

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

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

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

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

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

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

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

11       § 7554b. HOME DETENTION PROGRAM

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

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

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

18 (2) the defendant's prior convictions, history of violence, medical and  
19 mental health needs, history of supervision, and risk of flight; and

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

4           (c) Failure to comply. The Department of Corrections may ~~revoke~~ report 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~~ to the prosecutor and the defendant, provided that a  
8 defendant's failure to comply with any condition of the Program for a reason  
9 other than fault on the part of the defendant shall not be reportable. To address  
10 a reported violation, the prosecutor may initiate:

11                 (1) a review of conditions pursuant to section 7554 of this title;

12                 (2) a violation of conditions proceeding pursuant to section 7554e of this  
13 title;

14                 (3) a prosecution for contempt pursuant to section 7559 of this title; or

15                 (4) a bail revocation hearing pursuant to section 7575 of this title.

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

18           (e) Program support. The Department may support the operation of the  
19 Program through grants of financial assistance to, or contracts for services  
20 with, any public or nonprofit entity that meets the Department's requirements.

21           Sec. 5. 13 V.S.A. **§ 7555** is added to read:

1 § 7555. PRE-TRIAL SUPERVISION PROGRAM

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

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

9 (c) Pre-trial supervision.

10 (1) The Pre-Trial Supervision Program shall, if ordered by the court,  
11 supervise defendants who violate conditions of release pursuant to section  
12 7559 of this title, have not fewer than five pending dockets, pose a risk of  
13 nonappearance at court proceedings, pose a risk of flight from prosecution, or  
14 pose a risk to public safety.

15 (2) The Department shall assign a pre-trial supervisor to monitor  
16 defendants in a designated region of Vermont and help coordinate any pre-trial  
17 services needed by the defendant. The Department shall determine the  
18 appropriate level of supervision using on evidence-based screenings of those  
19 defendants eligible to be placed in the Program. The Department’s supervision  
20 levels may include use of:

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

- 1           (B) telephonic meetings with a pre-trial supervisor;
- 2           (C) in-person meetings with a pre-trial supervisor;
- 3           (D) **electronic monitoring**; or
- 4           (E) any other means of **supervision** deemed appropriate.

5           (3) **If appropriate, the court shall issue an order placing the defendant in**  
6 **the Program that sets the defendant’s level of supervision based on**  
7 **recommendations submitted by the Department of Corrections.**

8           (d) Procedure.

9           (1) **At arraignment or at a subsequent hearing, the prosecutor or the**  
10 **defendant may request, or on the court’s own initiative,** that the defendant be  
11 reviewed by the court to determine whether the defendant is appropriate for  
12 pre-trial supervision. The review shall be scheduled upon the court’s receipt of  
13 a report from the Department of Corrections **determining that the defendant is**  
14 **eligible for pre-trial supervision** containing recommendations pertaining to the  
15 **Defendant’s supervision level.** A defendant held without bail pursuant to  
16 section 7553 or 7553a shall not be eligible for pre-trial supervision.

17           (2) After a hearing, the court may order that the defendant be released to  
18 the Pre-Trial Supervision Program, provided that the court finds placing the  
19 defendant under pre-trial supervision will reasonably ensure the person’s  
20 appearance in court when required, mitigate the person’s risk of flight, or

1 reasonably ensure protection of the public. In making such a determination,  
2 the court shall consider the following:

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

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

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

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

12 (E) any other factors that the court deems appropriate.

13 (e) Compliance and review.

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

17 (A) Upon submission of the pre-trial supervisor’s sworn affidavit by  
18 the prosecutor, the court may issue a warrant for the arrest of a defendant who  
19 fails to report to the pre-trial supervisor, commits multiple violations of  
20 supervision requirements, or has absconded.

1           (B) A hearing shall be held to determine whether to modify the  
2           defendant’s conditions.

3           (2) At the request the prosecutor or the defendant, or on the court’s own  
4           initiative, a defendant’s compliance with pre-trial supervision conditions may  
5           be reviewed by the court. The court may issue an appropriate order in  
6           accordance with the following:

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

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

13           (f) Manual. The Department of Corrections shall establish a written  
14           policies and procedures manual for Pre-Trial Supervision Program to be used  
15           by the Department, any contractors or grantees that the Department engages  
16           with to assist in operating the Program, and the courts.

17           (g) Contingent on funding. The Pre-Trial Supervision Program established  
18           in this section shall operate only to the extent funds are appropriated for its  
19           operation.

20           Sec. 6. 13 V.S.A. § 7559 is amended to read:



1 § 7559. RELEASE; DESIGNATION; SANCTIONS VIOLATIONS OF  
2 CONDITIONS OF RELEASE; FAILURE TO APPEAR;  
3 WARRANTLESS ARREST

4 (a) The officer in charge of a facility under the control of the department of  
5 corrections, county jail or a local lockup shall discharge any person held by  
6 him or her upon receipt of an order for release issued by a judicial officer  
7 pursuant to section 7554 of this title, accompanied by the full amount of any  
8 bond or cash bail fixed by the judicial officer. The officer in charge, or a  
9 person designated by the Court Administrator, shall issue a receipt for such  
10 bond or cash bail, and shall account for and turn over such bond or cash bail to  
11 the court having jurisdiction. The State's Attorney may commence a  
12 prosecution for criminal contempt under Rule 42 of the Vermont Rules of  
13 Criminal Procedure against a person who violates a condition of release  
14 imposed under section 7554 of this title. The maximum penalty that may be  
15 imposed under this section shall be a fine of \$1,000.00 or imprisonment for six  
16 months, or both.

17 (b) The Court Administrator shall designate persons to set bail for any  
18 person under arrest prior to arraignment when the offense charged provides for  
19 a penalty of less than two years imprisonment or a fine of less than \$1,000.00  
20 or both. Such persons designated by the Court Administrator shall be  
21 considered judicial officers for the purposes of sections 7554 and 7556 of this

1 ~~title~~ Upon commencement of a prosecution for criminal contempt, including  
2 when considering an afterhours request to set temporary conditions or impose  
3 bail for criminal contempt, or upon the initial appearance of the person to  
4 answer such offense, in accordance with any of sections 7553, 7553a, 7554, or  
5 7575 of this title, a judicial officer may continue or modify existing conditions  
6 of release or terminate release of the person.

7 (c) Any person who is designated by the Court Administrator under  
8 subsection (b) of this section, may refuse the designation by so notifying the  
9 Court Administrator in writing within seven days of the designation. A person  
10 who has been released pursuant to section 7554 of this title with or without bail  
11 on condition that the person appear at a specified time and place in connection  
12 with a prosecution for an offense and who without just cause fails to appear  
13 shall be imprisoned not more than two years or fined not more than \$5,000.00,  
14 or both.

15 (d) A person who has been released pursuant to section 7554 of this title  
16 with or without bail on condition that he or she appear at a specified time and  
17 place in connection with a prosecution for an offense and who without just  
18 cause fails to appear shall be imprisoned not more than two years or fined not  
19 more than \$5,000.00, or both. Notwithstanding Rule 3 of the Vermont Rules  
20 of Criminal Procedure, a law enforcement officer may arrest a person without a  
21 warrant when the officer has probable cause to believe the person without just

1 ~~cause has failed to appear at a specified time and place in connection with a~~  
2 ~~prosecution for an offense or has violated a condition of release relating to a~~  
3 ~~restriction on travel or a condition of release that the person not directly~~  
4 ~~contact, harass, or cause to be harassed a victim or potential witness.~~

5 ~~(e) The State's Attorney may commence a prosecution for criminal~~  
6 ~~contempt under Rule 42 of the Vermont Rules of Criminal Procedure against a~~  
7 ~~person who violates a condition of release imposed under section 7554 of this~~  
8 ~~title. The maximum penalty that may be imposed under this subsection shall~~  
9 ~~be a fine of \$1,000.00 or imprisonment for six months, or both. Upon~~  
10 ~~commencement of a prosecution for criminal contempt, the court shall review,~~  
11 ~~in accordance with section 7554 of this title, and may continue or modify~~  
12 ~~conditions of release or terminate release of the person. [Repealed.]~~

13 ~~(f) Notwithstanding Rule 3 of the Vermont Rules of Criminal Procedure, a~~  
14 ~~law enforcement officer may arrest a person without a warrant when the officer~~  
15 ~~has probable cause to believe the person without just cause has failed to appear~~  
16 ~~at a specified time and place in connection with a prosecution for an offense or~~  
17 ~~has violated a condition of release relating to a restriction on travel or a~~  
18 ~~condition of release that he or she not directly contact, harass, or cause to be~~  
19 ~~harassed a victim or potential witness. [Repealed.]~~

20 ~~Sec. 7. 13 V.S.A. § 7559a is added to read:~~

21 ~~§ 7559a. RELEASE; DESIGNATION~~

1        (a) The officer in charge of a facility under the control of the department of  
2        corrections shall discharge any person held by the officer upon receipt of an  
3        order for release issued by a judicial officer pursuant to section 7554 of this  
4        title, accompanied by the full amount of any bond or cash bail fixed by the  
5        judicial officer. The officer in charge, or a person designated by the Court  
6        Administrator, shall issue a receipt for such bond or cash bail, and shall  
7        account for and turn over such bond or cash bail to the court having  
8        jurisdiction.

9        (b) The Court Administrator shall designate persons to set bail for any  
10       person under arrest prior to arraignment when the offense charged provides for  
11       a penalty of less than two years imprisonment or a fine of less than \$1,000.00,  
12       or both. Such persons designated by the Court Administrator shall be  
13       considered judicial officers for the purposes of sections 7554 and 7556 of this  
14       title.

15       (c) Any person who is designated by the Court Administrator under  
16       subsection (b) of this section, may refuse the designation by so notifying the  
17       Court Administrator in writing within seven days of the designation.

18       Sec. 8. 13 V.S.A. § 7030 is amended to read:

19       § 7030. SENTENCING ALTERNATIVES

20       (a) In determining which of the following should be ordered, the court shall  
21       consider the nature and circumstances of the crime; the history and character of

1 the defendant; the defendant’s family circumstances and relationships; the  
2 impact of any sentence upon the defendant’s minor children; the need for  
3 treatment; any violations of conditions of release by the defendant that are  
4 established by reliable evidence; and the risk to self, others, and the  
5 community at large presented by the defendant:

6 (1) A deferred sentence pursuant to section 7041 of this title.

7 (2) Referral to a community reparative board pursuant to 28 V.S.A.  
8 chapter 12 in the case of an offender who has pled guilty to a nonviolent  
9 felony, a nonviolent misdemeanor, or a misdemeanor that does not involve the  
10 subject areas prohibited for referral to a community justice center under  
11 24 V.S.A. § 1967. Referral to a community reparative board pursuant to this  
12 subdivision does not require the court to place the offender on probation. The  
13 offender shall return to court for further sentencing if the reparative board does  
14 not accept the case or if the offender fails to complete the reparative board  
15 program to the satisfaction of the board in a time deemed reasonable by the  
16 board.

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

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

19 (5) Sentence of imprisonment.

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

4 Sec. 9. 18 V.S.A. § 4253 is amended to read:

5 § 4253. USE OF A FIREARM WHILE SELLING OR DISPENSING A  
6 DRUG

7 (a) A person who uses a firearm during and in relation to selling or  
8 dispensing a regulated drug in violation of subdivision 4230(b)(3), 4231(b)(3),  
9 4232(b)(3), 4233(b)(3), 4234(b)(3), 4234a(b)(3), 4235(c)(3), or 4235a(b)(3) of  
10 this title shall be imprisoned not more than three years or fined not more than  
11 \$5,000.00, or both, in addition to the penalty for the underlying crime.

12 (b) A person who uses a firearm during and in relation to trafficking a  
13 regulated drug in violation of subsection 4230(c), 4231(c), 4233(c), or  
14 4234a(c) of this title shall be imprisoned not more than five years or fined not  
15 more than \$10,000.00, or both, in addition to the penalty for the underlying  
16 crime.

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

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

19 (2) the exchange of firearms for drugs, and this section shall apply to the  
20 person who trades a firearm for a drug and the person who trades a drug for a  
21 firearm.

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

4           Sec. 10. EFFECTIVE DATE

5           This act shall take effect on passage.

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12           (Committee vote: \_\_\_\_\_)

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Representative \_\_\_\_\_

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FOR THE COMMITTEE