

1 TO THE HONORABLE SENATE:

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 bill be amended by striking out all after the
6 enacting clause and inserting in 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

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) Except as provided in subdivision (2) of this subsection, no bail,
21 secured appearance bond, or 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) at the initial appearance or upon the temporary release pursuant
5 to Rule 5(b) of the Vermont Rules of Criminal Procedure of a person charged
6 with a violation of a misdemeanor offense that is eligible for expungement
7 pursuant to subdivision 7601(4)(A) of this title.

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

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

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

20 § 7554. RELEASE PRIOR TO TRIAL

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

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

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

1 (B) Place restrictions on the travel or association of the defendant
2 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) Upon consideration of the defendant's financial means, require
8 the execution of a secured appearance bond in a specified amount and the
9 deposit with the clerk of the court, in cash or other security as directed, of a
10 sum not to exceed 10 percent of the amount of the bond, such deposit to be
11 returned upon the appearance of the defendant as required.

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

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

18 (G) [Repealed.]

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

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

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

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

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

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

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

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

4 (F) [Repealed.]

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

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

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

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

15 (1) In subdivision (a)(1) of this section, the judicial officer, on the basis
16 of available information, shall take into account the nature and circumstances
17 of the offense charged; the weight of the evidence against the accused; the
18 accused’s employment; financial resources, including the accused’s ability to
19 post bail; the accused’s character and mental condition; the accused’s length of
20 residence in the community; and the accused’s record of appearance at court

1 proceedings or of flight to avoid prosecution or failure to appear at court
2 proceedings.

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

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

1 that a warrant for ~~his or her~~ the person's arrest ~~will~~ may be issued immediately
2 upon any such violation.

3 (d) Review of conditions.

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

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

1 continuing the conditions imposed. In the event that a judge in the court
2 having original jurisdiction over the offense charged is not available, any
3 Superior judge may review such conditions.

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

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

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

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

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

20 (1) The bond or bail may be forfeited in the event that the defendant or
21 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 court for a review of conditions pursuant to~~
8 ~~section 7554 of this title, a violation of conditions proceeding pursuant to~~
9 ~~section 7554e of this title, a prosecution for contempt pursuant to section 7559~~
10 ~~of this title, or a bail revocation hearing pursuant to section 7575 of this title.~~

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

13 (e) Program support. The Department may support the operation of the
14 Program through grants of financial assistance to, or contracts for services
15 with, any entity, public or private, that meets the Department's requirements.

16 Sec. 4. 13 V.S.A. § 7554e is added to read:

17 § 7554e. VIOLATIONS OF CONDITIONS OF RELEASE

18 (a) Procedure.

19 (1) The court may determine that a condition of release was violated
20 only upon notice to the defendant and a hearing.

1 (2) Whenever a defendant is alleged to have violated a condition of
2 release ordered by a court pursuant to section 7554 of this title, the defendant
3 may be arrested or cited in accordance with Rules 3 or 18 of the Vermont
4 Rules of Criminal Procedure to appear before the court in which the conditions
5 of release were ordered.

6 (3) A judicial officer may issue a warrant for the arrest of a defendant
7 charged with violating a condition of release and the defendant shall appear
8 before the judicial officer.

9 (4) The defendant alleged to have violated a condition of release shall
10 appear before the judicial officer not later than the next business day following
11 the arrest or citation. At this appearance, the judicial officer may review and
12 modify the defendant's conditions of release pursuant to section 7554 of this
13 title. The prosecutor may also request that the judicial officer schedule a
14 summary hearing in accordance with subsection (b) of this section or elect to
15 commence a prosecution pursuant to section 7559 of this title.

16 (b) Hearing.

17 (1) Upon request, the judicial officer may schedule a summary hearing
18 to determine if the defendant violated a condition of release.

19 (2) The State shall have the burden of proving a violation of conditions
20 of release by a preponderance of the evidence.

1 (3) Information stated in, or offered in connection with, any order
2 entered pursuant to this section need not conform to the rules pertaining to the
3 admissibility of evidence in a court of law unless the judicial officer
4 determines that live testimony is necessary.

5 (4) The judicial officer shall issue an appropriate order addressing the
6 alleged violation pursuant to subsection (c) of this section.

7 (c) Disposition of violations.

8 (1) In determining that a condition of release was violated, the judicial
9 officer shall consider any of the following:

10 (A) whether the defendant violated a condition of release that does
11 not otherwise constitute an offense under federal or State law;

12 (B) whether the defendant violated a condition of release that also
13 constitutes an offense under federal or State law;

14 (C) the nature of the underlying offense with which the defendant is
15 charged;

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

18 (E) any risk that the defendant poses to the public.

19 (2) Upon a finding that the person violated a condition of release, the
20 judicial officer shall impose the least restrictive condition or combination of
21 conditions to reasonably ensure the defendant’s court appearances, to mitigate

1 the defendant’s risk of flight from prosecution, or to reasonably protect the
2 public. **Such conditions include:**

3 (A) imposing any condition or combination of conditions pursuant to
4 section 7554 of this title; or

5 (B) placing the defendant under the supervision of the pre-trial
6 supervision program pursuant to section 7554g of this title.

7 (3) Notwithstanding section 7559 of this title, if the defendant violated a
8 condition of release that also constitutes an offense under federal or State law,
9 a prosecutor may pursue bail revocation pursuant to section 7575 of this title.

10 (d) Exclusive remedy; prosecution for contempt. A **proceeding** pursuant to
11 this section or a **prosecution** pursuant to section 7559 of this title shall be a
12 prosecutor’s exclusive remedy to modify conditions of release as a result of an
13 alleged violation. Nothing in this section shall be construed to modify or limit
14 a judicial officer’s ability to exercise the officer’s own authority to address
15 contempt or to modify or limit a prosecutor’s ability to commence a
16 prosecution for contempt for any reason other than a violation of a condition of
17 release.

18 Sec. 5. 13 V.S.A. § 7554f is added to read:

19 § 7554f. ELECTRONIC MONITORING PROGRAM

20 (a) Intent. It is the intent of the General Assembly that the electronic
21 monitoring program assist in ensuring a defendant’s compliance with

1 conditions of release, mitigating a defendant’s risk of flight, or reasonably
2 protecting the public.

3 (b) Program and administration.

4 (1) The Department of Corrections shall establish and manage an
5 electronic monitoring program for the purpose of supervising persons ordered
6 to be under electronic monitoring as a condition of release, in addition to or in
7 lieu of the imposition of bail pursuant to section 7554 of this title, or placed on
8 home detention pursuant to 7554b of this title.

9 (2) The program shall be a part of an integrated pre-trial supervision
10 program and shall provide 24-hours-a-day, seven-days-a-week electronic
11 monitoring with supervision and immediate response.

12 (3) The Department may support the operation of the Program through
13 grants of financial assistance to, or contracts for services with, any entity,
14 public or private, that meets the Department’s requirements.

15 (c) Procedure. At the request of the court, the prosecutor, or the defendant,
16 the court may determine whether a defendant is appropriate for electronic
17 monitoring. After a hearing, the court may order that the defendant be placed
18 under electronic monitoring, provided that the court finds that placing the
19 defendant under electronic monitoring will assist in ensuring a defendant’s
20 compliance with conditions of release, mitigating a defendant’s risk of flight,

1 or reasonably protecting the public. In making such a determination, the court
2 shall consider:

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

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

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

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

14 Sec. 6. 13 V.S.A. § 7554g is added to read:

15 § 7554g. PRE-TRIAL SUPERVISION PROGRAM

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

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

3 (c) Pre-trial supervision.

4 (1) The Pre-Trial Supervision Program shall supervise persons who
5 violate conditions of release pursuant to sections 7554e or 7559 of this title or
6 who pose a risk of nonappearance at court proceedings, pose a risk of flight
7 from prosecution, or pose a risk to public safety.

8 (2) The Department of Corrections shall be responsible for supervising
9 defendants who are placed in the Pre-Trial Supervision Program. The
10 Department shall assign a pre-trial supervisor to monitor supervisees in a
11 designated region of Vermont and help coordinate any pre-trial services
12 needed by the supervisee. The Department shall determine the appropriate
13 level of supervision based on evidence-based screenings of those persons
14 eligible to be placed in the program. The Department’s supervision methods
15 may include use of:

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

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

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

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

20 (3) If the court determines that the defendant is appropriate for the Pre-
21 Trial Supervision Program, the court shall issue an order placing the defendant

1 in the Program and setting the defendant's conditions of supervision. Pre-trial
2 supervisors shall notify the court that placed a defendant in the Program of any
3 violations of supervision requirements committed by the defendant. Based
4 upon a sworn affidavit of the defendant's supervisor, the court may issue a
5 warrant for the arrest of a defendant who fails to report to the pre-trial
6 supervisor, commits multiple violations of supervision requirements, or is
7 suspected of absconding, and the defendant shall appear before the court not
8 later than the next business day following the arrest to modify the defendant's
9 conditions.

10 (d) Procedure.

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

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

19 (A) has violated conditions of release pursuant to section 7554e or
20 7559 of this title;

21 (B) poses a risk of nonappearance at court proceedings;

1 (C) poses a risk of flight from prosecution; or

2 (D) poses a risk to public safety.

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

9 (A) the nature of the violation of conditions of release pursuant to
10 section 7554e or 7559 of this title;

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

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

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

16 (e) Compliance and review. At the request of the court, the prosecutor, the
17 defendant, or the pre-trial supervisor, a defendant’s compliance with pre-trial
18 supervision conditions may be reviewed. The court may issue an appropriate
19 order in accordance with the following:

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

4 (2) A defendant who violates a condition of the Pre-Trial Supervision
5 Program may receive an increase in supervision level or other sanction
6 permitted by law.

7 Sec. 7. 13 V.S.A. § 7575 is amended to read:

8 § 7575. REVOCATION OF THE RIGHT TO BAIL

9 (a) Revocation. The right to bail may be revoked entirely if the judicial
10 officer finds the accused has:

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

13 (2) repeatedly violated conditions of release in a manner that ~~impedes~~
14 disrupts the prosecution of the accused; ~~or~~

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

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

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

1 (9) “Flight from prosecution” means any action or behavior undertaken
2 by a person charged with a criminal offense to avoid court proceedings,
3 including noncompliance with court orders and a person’s failure to appear at
4 court hearings.

5 Sec. 9. 13 V.S.A. § 7030 is amended to read:

6 § 7030. SENTENCING ALTERNATIVES

7 (a) In determining which of the following should be ordered, the court shall
8 consider the nature and circumstances of the crime; the history and character of
9 the defendant; the defendant’s family circumstances and relationships; the
10 impact of any sentence upon the defendant’s minor children; the need for
11 treatment; any violations of conditions of release by the defendant that are
12 established by reliable evidence; and the risk to self, others, and the
13 community at large presented by the defendant:

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

15 (2) Referral to a community reparative board pursuant to 28 V.S.A.
16 chapter 12 in the case of an offender who has pled guilty to a nonviolent
17 felony, a nonviolent misdemeanor, or a misdemeanor that does not involve the
18 subject areas prohibited for referral to a community justice center under
19 24 V.S.A. § 1967. Referral to a community reparative board pursuant to this
20 subdivision does not require the court to place the offender on probation. The
21 offender shall return to court for further sentencing if the reparative board does

1 not accept the case or if the offender fails to complete the reparative board
2 program to the satisfaction of the board in a time deemed reasonable by the
3 board.

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

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

6 (5) Sentence of imprisonment.

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

10 Sec. 10. 18 V.S.A. § 4253 is amended to read:

11 § 4253. USE OF A FIREARM WHILE SELLING OR DISPENSING A
12 DRUG

13 (a) A person who uses a firearm during and in relation to selling or
14 dispensing a regulated drug in violation of subdivision 4230(b)(3), 4231(b)(3),
15 4232(b)(3), 4233(b)(3), 4234(b)(3), 4234a(b)(3), 4235(c)(3), or 4235a(b)(3) of
16 this title shall be imprisoned not more than three years or fined not more than
17 \$5,000.00, or both, in addition to the penalty for the underlying crime.

18 (b) A person who uses a firearm during and in relation to trafficking a
19 regulated drug in violation of subsection 4230(c), 4231(c), 4233(c), or
20 4234a(c) of this title shall be imprisoned not more than five years or fined not

1 more than \$10,000.00, or both, in addition to the penalty for the underlying
2 crime.

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

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

5 (2) the exchange of firearms for drugs, and this section shall apply to the
6 person who trades a firearm for a drug and the person who trades a drug for a
7 firearm.

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

11 Sec. 11. DEPARTMENT OF CORRECTIONS; POSITIONS;

12 APPROPRIATION

13 (a) On July 1, 2024, six new permanent classified Pre-Trial Supervisor
14 positions are created in the Department of Corrections. In addition to any
15 other duties deemed appropriate by the Department, the Pre-Trial Supervisors
16 shall monitor and supervise persons placed in the Pre-Trial Supervision
17 Program pursuant to 13 V.S.A. § 7554g.

18 (b) The six Pre-Trial Supervisors established in subsection (a) of this
19 section shall be subject to a General Fund appropriation in FY 2025.

20 (c) On July 1, 2024, one new permanent classified administrative assistant
21 position is created in the Department of Corrections. In addition to any duties

1 deemed appropriate by the Department, the administrative assistant shall
2 provide administrative support to the Pre-Trial Supervision Program pursuant
3 to 13 V.S.A. § 7554g.

4 (d) The one administrative assistant established in subsection (c) of this
5 section shall be subject to a General Fund appropriation in FY 2025.

6 Sec. 12. EFFECTIVE DATE

7 This act shall take effect on passage.

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13 (Committee vote: _____)

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Senator _____

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FOR THE COMMITTEE