

H.409

Introduced by Representative LaLonde of South Burlington

Referred to Committee on

Date:

Subject: Crimes; bail and recognizances; bail revocation

Statement of purpose of bill as introduced: This bill proposes to develop the procedure to follow to revoke a defendant's bail or conditions of release.

Specifically, the bill proposes to align the procedure and terminology of the bail revocation statute in accordance with *State v. Sauve*, 159 Vt. 566 (1993) and its progeny.

~~An act relating to the procedures for bail revocation~~

An act relating to appeals of orders denying bail revocation

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

~~§ 1. INTENT~~

~~It is the intent of the General Assembly that its bail revocation statute is consistent with *State v. Sauve*, 159 Vt. 566 (1993); *State v. Gates*, 2016 VT 36; and their progeny so that repeated failures to appear in court, repeated violations of conditions of release, and other violations of court orders constitute a compelling State interest that falls within the statutory definition of "disrupts the prosecution."~~

1 ~~Sec. 2-13 V.S.A. § 7575 is amended to read:~~

2 § 7575. REVOCATION OF THE RIGHT TO BAIL

3 (a) Revocation bases. The right to bail may be revoked entirely if the
4 judicial officer finds that the ~~accused~~ defendant has:

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

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

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

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

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

16 (b) Procedure.

17 (1) At any time during which a defendant is released prior to trial
18 pursuant to section 7554 of this title, a prosecutor may move, or the court on
19 its own motion, to revoke bail based on the conduct identified in subsection (a)
20 of this section.

1 ~~(2)(A) The State shall have the burden of proving by a preponderance of~~
2 the evidence that the accused engaged in the conduct identified in subsection
3 (a) of this section.

4 (B) Any evidence presented may be shown through affidavits or
5 sworn statements, provided the defendant has the opportunity to present direct
6 evidence at a hearing.

7 (3) Notwithstanding Rule 3 of the Vermont Rules of Criminal
8 Procedure, after issuance of an order revoking bail pursuant to subsection (c)
9 of this section, a law enforcement officer may arrest the person subject to the
10 order without a warrant.

11 (4) The prosecutor or the defendant may move, or the court upon its
12 own motion, to review a bail revocation order issued pursuant to subsection (c)
13 of this section. Any review shall be scheduled at the discretion of the court.

14 (5) After issuance of a bail revocation order pursuant to subsection (c)
15 of this section or disposition of a request to review the order pursuant to
16 subdivision (b)(4) of this section, the prosecutor may move to forfeit any bail
17 or bond in accordance with section 7560a of this title.

18 (c) Orders.

19 (1) After notice to the defendant and a hearing, the court may issue an
20 order revoking bail only upon a finding that a legitimate and compelling State
21 interest exists to revoke bail.

1 ~~(2) In any order revoking bail, the court shall make a specific finding~~
2 ~~that the State met its burden pursuant to subdivision (b)(2) of this section.~~

3 (d) Speedy trial.

4 (1) Once the court issues an order revoking bail, the court shall set the
5 defendant's case for trial not more than 60 days from the date of revocation.

6 (2) If the trial is not commenced within 60 days following revocation
7 and the delay is not attributable to the defense, the court shall immediately
8 schedule a bail hearing in accordance with section 7554 of this title.

9 Sec. 3. 13 V.S.A. § 7576 is amended to read:

10 § 7576. DEFINITIONS

11 As used in this chapter:

12 * * *

13 (4) "Disrupt the prosecution" means, in addition to any other meaning
14 recognized by law, committing a criminal offense or violating a condition of
15 release by a defendant who has been released pending trial for another offense
16 and demonstrates that there is no condition or combination of conditions of
17 release that will reasonably mitigate the defendant's risk of flight from
18 prosecution, reasonably mitigate the defendant's risk to public safety, or
19 reasonably ensure the defendant's compliance with court orders and
20 appearances.

1 ~~(5) “Needs screening” means a preliminary systematic procedure to~~
2 evaluate the likelihood that an individual has a substance abuse or a mental
3 health condition.

4 ~~(5)(6) “Risk assessment” means a pretrial assessment that is designed to~~
5 be predictive of a person’s failure to appear in court and risk of violating
6 pretrial conditions of release with a new alleged offense.

7 ~~(6)(7) “Secured appearance bond” means a written agreement which~~
8 that allows a person charged with a criminal offense to be released if:

9 (A) the person pledges to pay the court a specified amount in the
10 event that the person fails to appear at a court proceeding; and

11 (B) a portion of the bond is paid to the court prior to release.

12 ~~(7)(8) “Surety” means:~~

13 (A) a person who agrees to be responsible for guaranteeing the
14 appearance in court of a person charged with a criminal offense; or

15 (B) a person who agrees to be responsible for guaranteeing that
16 another person complies with the conditions of a peace bond under section
17 7573 of this title.

18 ~~(8)(9) “Surety bond” means a written agreement, in a form established~~
19 by the Court Administrator, under which a surety guarantees the appearance in
20 court of a person charged with a criminal offense, and pledges to pay the court
21 ~~a specified amount if the person fails to appear.~~

1 ~~(9)(10). "Flight from prosecution" means any action or behavior~~
2 undertaken by a person charged with a criminal offense to avoid court
3 proceedings.

4 Sec. 4. EFFECTIVE DATE

5 ~~This act shall take effect on July 1, 2025.~~

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

*§ 7551. IMPOSITION OF BAIL, SECURED APPEARANCE BONDS, AND
APPEARANCE BONDS*

** * **

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

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

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

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

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

** * **

Sec. 2. 13 V.S.A. § 7556 is amended to read:

§ 7556. APPEAL FROM CONDITIONS OF RELEASE OR BAIL

REVOCATION DENIAL

(a) A person who is detained, or whose release on a condition requiring ~~him or her~~ the person to return to custody after specified hours is continued, after review of ~~his or her~~ the person's application pursuant to subsection 7554(d) or (e) of this title by a judicial officer, other than a judge of the court having original jurisdiction over the offense with which ~~he or she~~ the person is charged or a Justice of the Supreme Court, may move the court having original jurisdiction over the offense with which ~~he or she~~ the person is charged to amend the order. The motion shall be determined promptly.

(b) When a person is detained after a court denies a motion under subsection (a) of this section or when conditions of release have been imposed

or amended by the judge of the court having original jurisdiction over the offense charged, an appeal may be taken to a single Justice of the Supreme Court who may hear the matter or at ~~his or her~~ the Justice's discretion refer it to the entire Supreme Court for hearing. No further appeal may lie from the ruling of a single Justice in matters to which this subsection applies. Any order so appealed shall be affirmed if it is supported by the proceedings below. If the order is not supported, the Supreme Court or single Justice hearing the matter may remand the case for a further hearing or may, with or without additional evidence, order the person released. The appeal shall be determined forthwith.

(c)(1) When a person is released, with or without bail or other conditions of release, an appeal may be taken by the State to a single Justice of the Supreme Court who may hear the matter or at ~~his or her~~ the Justice's discretion refer it to the entire Supreme Court for hearing. No further appeal may lie from the ruling of a single Justice in matters to which this subsection applies. Any order so appealed shall be affirmed if it is supported by the proceedings below. If the order is not supported, the Supreme Court or single Justice hearing the matter may remand the case for a further hearing or may, with or without additional evidence, modify or vacate the order. The appeal shall be determined ~~forthwith~~ promptly.

(2) When a request to revoke bail pursuant to section 7575 of this title is denied, the State may appeal the court's order in accordance with the procedure outlined in subdivision (1) of this subsection.

(d) A person held without bail under section 7553a of this title prior to trial shall be entitled to an independent, second evidentiary hearing on the merits of the denial of bail, which shall be a hearing de novo by a single Justice of the Supreme Court forthwith. Pursuant to 4 V.S.A. § 22 the Chief Justice may appoint and assign a retired justice or judge with ~~his or her~~ the retired justice's or judge's consent or a Superior judge or ~~Distriet~~ judge to a special assignment on the Supreme Court to conduct that de novo hearing. Such hearing de novo shall be an entirely new evidentiary hearing without regard to the record compiled before the trial court; except, the parties may stipulate to the admission of portions of the trial court record.

(e) A person held without bail prior to trial shall be entitled to review of that determination by a panel of three Supreme Court Justices within seven business days after bail is denied.

Sec. 3. EFFECTIVE DATE

This act shall take effect on passage.