

1 H.866

2 Introduced by Representative Galfetti of Barre Town

3 Referred to Committee on

4 Date:

5 Subject: Crimes and criminal procedures; bail and recognizances

6 Statement of purpose of bill as introduced: This bill proposes to eliminate
7 limitations on the imposition of bail; raise the maximum amount of bail a court
8 may impose on a defendant who is charged with a misdemeanor that is eligible
9 for sealing; require that the court hold without bail or impose mandatory
10 minimum bail amounts for certain defendants who failed to appear at a court
11 proceeding multiple times, were charged with or convicted of multiple
12 misdemeanors or felonies, or are charged while on release for other pending
13 charges; require the court to provide a written justification based on specific
14 factors if the court does not hold the defendant without bail; authorize the law
15 enforcement officer who arrested or cited the defendant for the offense to
16 recommend detention without bail or an amount of bail and require the court to
17 comply with the law enforcement officer's recommendation in certain
18 circumstances; require that the court hold an expedited hearing within 72 hours
19 at which the defendant may present evidence regarding the bail determination;
20 automatically forfeit all bail posted for a defendant's previous charges if the
21 defendant is released and arrested for a new offense while on release; eliminate

1 the requirement that a court impose the least restrictive conditions when
2 imposing conditions of release; eliminate the court's consideration of the
3 defendant's financial means in imposing bail as a condition of release; and
4 require that a judicial officer impose specified mandatory conditions of release
5 on certain defendants who have failed to appear at a court proceeding multiple
6 times, have been charged with or convicted of multiple misdemeanors or
7 felonies, or are charged while on release for other pending charges.

8 An act relating to bail and conditions of pretrial release

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

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

11 § 7551. IMPOSITION OF BAIL, SECURED APPEARANCE BONDS, AND
12 APPEARANCE BONDS

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

1 (b) Limitation on imposition Imposition of bail, secured appearance bonds,
2 and appearance bonds.

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

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

1 (D) to address concerns identified in the release recommendation of
2 the law enforcement officer who arrested or cited the defendant for the offense.
3 The \$200.00 limit shall not apply to an offense allegedly committed by a
4 defendant who has been released on personal recognizance or conditions of
5 release pending trial for another offense.

6 (3)(2) This subsection shall not be construed to restrict the court's
7 ability to impose conditions on such persons to reasonably mitigate the risk of
8 flight from prosecution or to reasonably protect the public in accordance with
9 section 7554 of this title defendants for the purposes set forth in subdivisions
10 (1)(A)–(D) of this subsection.

11 (c) Mandatory detention and enhanced bail for repeat offenders.

12 (1) Notwithstanding subsections (a) and (b) of this section and except as
13 provided in subdivision (2) of this subsection, the following defendants shall
14 be held without bail:

15 (A) a defendant who has failed to appear at a court proceeding two or
16 more times in the previous five years;

17 (B) a defendant who was previously convicted of three or more
18 offenses in the previous five years;

19 (C) a defendant who has four or more pending charges, including the
20 offense charged;

1 (D) a defendant who was arrested for the offense charged while
2 released on bail in another pending case;

3 (E) a defendant who was previously convicted of five or more
4 misdemeanor offenses in the previous three years;

5 (F) a defendant who was previously convicted of two or more felony
6 offenses in the previous five years;

7 (G) a defendant charged with a crime involving domestic violence
8 who was previously convicted of or charged with one or more crimes
9 involving domestic violence in the previous seven years;

10 (H) a defendant who was previously convicted of three or more
11 alcohol-related or drug-related offenses in the previous five years;

12 (I) a defendant charged with a felony offense while on release after
13 being charged with a felony offense;

14 (J) a defendant charged with a violent offense while on release after
15 being charged with any other offense;

16 (K) a defendant charged with a drug trafficking or drug distribution
17 offense while on release after being charged with any other offense; and

18 (L) a defendant in subdivisions (A)–(K) of this subdivision (1) who is
19 released on bail, on personal recognizance, or subject to conditions of release
20 and who is charged with any new offense.

1 (2) For persons identified in subdivisions (1)(A)–(L) of this subsection,
2 the judicial officer may set bail in the following amounts for the purposes set
3 forth in subdivisions (b)(1)(A)–(D) of this section:

4 (A) for a defendant who failed to appear at a court proceeding two or
5 more times in the previous five years, an amount not less than:

6 (i) \$1,000.00 if the defendant previously failed to appear at a court
7 proceeding two times in the previous five years;

8 (ii) \$2,000.00 if the defendant previously failed to appear at a
9 court proceeding three times in the previous five years; and

10 (iii) \$3,000.00 if the defendant previously failed to appear at a
11 court proceeding four or more times in the previous five years;

12 (B) for a defendant who was previously convicted of three or more
13 offenses in the previous five years, an amount not less than:

14 (i) \$2,500.00 if the defendant was previously convicted of three
15 offenses in the previous five years;

16 (ii) \$5,000.00 if the defendant was previously convicted of four
17 offenses in the previous five years; and

18 (iii) \$7,500.00 if the defendant was previously convicted of five or
19 more offenses in the previous five years;

20 (C) for a defendant who has four or more pending charges, including
21 the charged offense, an amount not less than:

2 seven or more misdemeanor offenses in the previous three years;

(J) for a defendant charged with a violent offense while on release after being charged with any other offense, an amount not less than:

(i) \$20,000.00 if the defendant was not previously charged with a violent offense while on release after being charged with another offense;

(ii) \$40,000.00 if the defendant was previously convicted of one violent offense; and

(iii) \$50,000.00 if the defendant was previously convicted of two or more violent offenses;

(K) for a defendant charged with a drug trafficking or drug distribution offense while on release after being charged with any other offense, an amount not less than:

(i) \$25,000.00 if the defendant was not previously charged with a drug trafficking or drug distribution offense while on release after being charged with another offense;

(ii) \$50,000.00 if the defendant was previously convicted of one drug trafficking or drug distribution offense; and

(iii) \$100,000.00 if the defendant was previously convicted of two or more drug trafficking or drug distribution offenses; and

(L) for a defendant identified in subdivisions (1)(A)–(K) of this subsection (c) who is charged with any new criminal offense while on bail, personal recognizance, or subject to conditions of release, an amount not less

1 than twice the amount specified in subdivisions (A)–(K) of this subdivision
2 (c)(2).

3 (d) Judicial determination that detention without bail is not warranted;
4 factors, written justification.

5 (1) In determining whether to impose mandatory detention without bail
6 or enhanced bail amounts, the judicial officer shall consider the following:
7 (A) the number and frequency of prior offenses of which the
8 defendant was previously convicted and with which the defendant is charged,
9 including all of the following:

10 (i) the number of the defendant's prior convictions;
11 (ii) the number of the defendant's pending charges;
12 (iii) the number of times the defendant failed to appear at a court
13 proceeding;
14 (iv) the number of offenses the defendant committed per year; and
15 (v) any pattern of escalating or de-escalating criminal behavior by
16 the defendant;

17 (B) the nature and circumstances of the offenses of which the
18 defendant was previously convicted and with which the defendant is charged,
19 including all of the following:

(i) the recommendation of the law enforcement officer who arrested or cited the defendant for the offense that the defendant be detained without bail or that a certain bail amount should be imposed;

(ii) the risk assessment of the law enforcement officer who arrested or cited the defendant for the offense, including whether the defendant cooperated with law enforcement, was under the influence of alcohol or another substance at the time of the offense, or poses a risk to the public;

(iii) any flight risk indicators observed by the law enforcement officer who arrested or cited the defendant for the offense;

(iv) any threats made by the defendant during the arrest;

(v) the defendant's history of which the law enforcement officer who arrested or cited the defendant for the offense has knowledge; and

(vi) the risk factors identified in the affidavit of the law enforcement officer who arrested or cited the defendant for the offense; and

(D) the defendant's circumstances, the protection of the public, and the protection of a victim or witness, including all of the following:

(i) whether the defendant complied with prior conditions of release;

(ii) the defendant's ties to the community, including the defendant's employment status and family;

6 (2) If the judicial officer sets an enhanced bail amount instead of
7 holding the defendant without bail, the judicial officer shall make written
8 findings on the record explaining:

9 (A) the factors the judicial officer considered;

14 (D) if the judicial officer's determination is not consistent with the
15 release recommendation of the law enforcement officer who arrested or cited
16 the defendant for the offense, why the judicial officer's determination is not
17 consistent with the release recommendation of the law enforcement officer.

18 (e) Advisory bail by law enforcement officer who arrested or cited the
19 defendant for the offense binding on judicial officer in certain circumstances.

20 The law enforcement officer who arrested or cited the defendant for the
21 offense may provide a release recommendation to the judicial officer based on

1 the law enforcement officer's observations of the defendant's behavior, flight
2 risk indicators, and history.

3 (1) Notwithstanding subdivision (c)(2) of this section, if the law
4 enforcement officer who arrested or cited the defendant for the offense
5 recommends that the defendant be held without bail, the judicial officer shall
6 hold the defendant without bail.

7 (2) Notwithstanding subsection (c) of this section, if the law
8 enforcement officer who arrested or cited the defendant for the offense
9 recommends that bail should be imposed, the judicial officer shall impose bail
10 in the amount recommended by the law enforcement officer, provided the law
11 enforcement officer submits an affidavit that details the defendant's risk
12 factors and the judicial officer finds the law enforcement officer's
13 recommendation supported by the evidence. The law enforcement officer who
14 arrested or cited the defendant for the offense shall not recommend and the
15 judicial officer shall not impose bail in an amount greater than \$25,000.00 for a
16 misdemeanor offense or greater than \$100,000.00 for a felony offense.

17 (f) Expedited hearing for defendant to present evidence. At the initial bail
18 hearing, a defendant held without bail under subsection (c) of this section may
19 request an expedited hearing at which the defendant may present evidence
20 regarding the factors listed in subsection (d) of this section. If the defendant
21 requests a hearing, a hearing shall be held within 72 hours after the initial bail

1 determination, excluding weekends and holidays. At the hearing, a judicial
2 officer shall hear the defendant's evidence and review whether the defendant
3 should be held without bail as provided in subsection (c).

4 (g) Automatic forfeiture of bail upon arrest for new offense. A defendant
5 who has been released pursuant to subdivision (c)(2) of this section who is
6 charged with a new offense while on release shall automatically forfeit all bail
7 posted for the defendant's previous charges. The defendant shall be subject to
8 the provisions of subdivisions (c)(2)(A)–(L) of this section for the new offense
9 and all pending charges.

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

11 § 7554. RELEASE PRIOR TO TRIAL

12 (a) Release; conditions of release. Any person charged with an offense,
13 other than a person held without bail under section 7553 or 7553a of this title,
14 shall may at the person's appearance before a judicial officer be ordered
15 released pending trial in accordance with this section.

16 (1) The defendant shall may only be ordered released on personal
17 recognizance or upon the execution of ~~an unsecured~~ a secured appearance bond
18 in an amount specified by the judicial officer ~~unless if~~ the judicial officer
19 determines that such a release will ~~not~~ reasonably ~~mitigate the risk of flight~~
20 ~~from prosecution as required~~ achieve the purposes set forth in subdivisions
21 7551(b)(1)(A)–(D) of this title. In determining whether the defendant presents

1 a ~~risk of flight from prosecution~~ making this determination, the judicial officer
2 shall consider, in addition to any other factors, the seriousness of the offense
3 charged; the number of offenses with which the person is charged; whether, at
4 the time of the current offense or arrest, the defendant was released on
5 conditions or personal recognizance, on probation, furlough, parole, or other
6 release pending trial, sentencing, appeal, or completion of a sentence for an
7 offense under federal or state law; ~~and~~ whether, in connection with a criminal
8 prosecution, the defendant is compliant with court orders or has failed to
9 appear at a court hearing; the protection of the public; the protection of a
10 victim or witness; and the concerns identified in the release recommendation of
11 the law enforcement officer who arrested or cited the defendant for the offense.
12 If the judicial officer determines that the defendant presents a risk of flight
13 from prosecution, a risk to the public, a risk to a victim or witness, or a concern
14 identified in the release recommendation of the law enforcement officer who
15 arrested or cited the defendant for the offense, the officer shall, ~~either in lieu of~~
16 ~~or in addition to the methods of release in this section~~, impose ~~the least~~
17 ~~restrictive of~~ the following conditions or ~~the least restrictive~~ a combination of
18 the following conditions that will reasonably ~~mitigate the risk of flight of the~~
19 ~~defendant as required~~ achieve the purposes set forth in subdivisions
20 7551(b)(1)(A)–(D) of this title:

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

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

19 (F) Impose any other condition found reasonably necessary to
20 ~~mitigate the risk of flight~~ achieve the purposes set forth in subdivisions

1 7551(b)(1)(A)–(D) of this title as required, including a condition requiring that
2 the defendant return to custody after specified hours.

3 (G) [Repealed.]

4 (H) Place the defendant in the ~~pretrial supervision program~~ Pretrial
5 Supervision Program pursuant to section 7555 of this title, provided that the
6 defendant meets the criteria identified in subdivisions ~~7555(d)(2)–(3)~~
7 7555(d)(2) and (3) of this title.

8 (I) Place the defendant in the ~~home detention program~~ Home
9 Detention Program pursuant to section 7554b of this title.

10 (2) If the judicial officer determines that conditions of release imposed
11 to mitigate the risk of flight will not reasonably protect the public or address
12 concerns identified in the release recommendation of the law enforcement
13 officer who arrested or cited the defendant for the offense, the judicial officer
14 may impose, in addition, ~~the least restrictive~~ of the following conditions or ~~the~~
15 least restrictive a combination of the following conditions that will reasonably
16 ensure protection of the public and address concerns identified in the release
17 recommendation of the law enforcement officer who arrested or cited the
18 defendant for the offense:

19 (A) Place the defendant in the custody of a designated person or
20 organization agreeing to supervise the defendant if the defendant is charged

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

3 (B) Place restrictions on the travel, association, or place of abode of
4 the defendant 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) Impose any other condition found reasonably necessary to
10 protect the public,~~except that a physically restrictive condition may only be~~
11 ~~imposed in extraordinary circumstances and address concerns identified in the~~
12 ~~release recommendation of the law enforcement officer who arrested or cited~~
13 ~~the defendant for the offense.~~

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

17 (F) [Repealed.]

18 (G) Place the defendant in the ~~pretrial supervision program~~ Pretrial
19 Supervision Program pursuant to section 7555 of this title, provided that the
20 defendant meets the criteria identified in subdivisions ~~7555(d)(2)-(3)~~
21 7555(d)(2) and (3) of this title.

1 (H) Place the defendant in the ~~home detention program~~ Home
2 Detention Program pursuant to section 7554b of this title.

1 electronic monitoring, or place the defendant in the Home Detention Program

2 pursuant to section 7554b of this title;

3 (ii) place the defendant in the Pretrial Supervision Program

4 pursuant to section 7555 of this title, provided that the defendant meets the

5 criteria identified in subdivisions 7555(d)(2) and (3) of this title, and require

6 the defendant to report on a weekly basis to the Department of Corrections;

7 and

8 (iii) require the defendant to participate in an alcohol or drug
9 treatment program.

10 (C) If the defendant has four or more pending criminal charges,
11 including the charged offense, the judicial officer shall:

12 (i) place the defendant under surveillance and electronic
13 monitoring by the Department of Corrections, including the use of passive
14 electronic monitoring;

15 (ii) place the defendant in the Pretrial Supervision Program
16 pursuant to section 7555 of this title, provided that the defendant meets the
17 criteria identified in subdivisions 7555(d)(2) and (3) of this title;

18 (iii) require the defendant to participate in an alcohol or drug
19 treatment program; and

20 (iv) place restrictions on the travel of the defendant during the
21 period of release to the county of the defendant's residence.

1 (D) If the defendant violated release conditions in the previous three
2 years, the judicial officer shall:

3 (i) place the defendant in the Home Detention Program pursuant
4 to section 7554b of this title;

5 (ii) place the defendant in the Pretrial Supervision Program
6 pursuant to section 7555 of this title, provided that the defendant meets the
7 criteria identified in subdivisions 7555(d)(2) and (3) of this title;

8 (iii) require the defendant to participate in an alcohol or drug
9 treatment program; and

10 (iv) require the defendant to abstain from consuming alcohol,
11 which the Department of Corrections may enforce through random testing.

12 (E) If the defendant is charged with an offense involving domestic
13 violence and was charged with or convicted of an offense involving domestic
14 violence in the previous seven years, the judicial officer shall:

15 (i) require that the defendant not contact the victim or victims;

16 (ii) place the defendant under surveillance and electronic
17 monitoring by the Department of Corrections, including the use of passive
18 electronic monitoring, with designated exclusion zones;

19 (iii) require the defendant to participate in a domestic violence
20 treatment program; and

1 (iv) require the defendant to participate in an alcohol or drug
2 treatment program.

3 (F) If the defendant was previously convicted of five or more
4 misdemeanor offenses in the previous three years, the judicial officer shall:

5 (i) place the defendant in the Pretrial Supervision Program
6 pursuant to section 7555 of this title, provided that the defendant meets the
7 criteria identified in subdivisions 7555(d)(2) and (3) of this title;
8 (ii) require the defendant to participate in an alcohol or drug
9 treatment program;

10 (iii) require the defendant to report in person each week to the
11 Department of Corrections; and

12 (iv) require the defendant comply with a curfew between 10:00
13 p.m. and 6:00 a.m.

14 (G) If the defendant was charged with a felony while on release after
15 being charged with a felony offense, the judicial officer shall:

16 (i) place the defendant under surveillance and electronic
17 monitoring by the Department of Corrections, including the use of passive
18 electronic monitoring;

19 (ii) require the defendant to participate in an alcohol or drug
20 treatment program; and

1 (iii) place restrictions on the association of the defendant with any
2 co-defendants during the period of release.

3 (H) If the defendant was previously convicted of three or more
4 alcohol-related or drug-related offenses in the previous five years, the judicial
5 officer shall:

6 (i) require the defendant to participate in an alcohol or drug
7 treatment program;

8 (ii) require the defendant to submit to random drug and alcohol
9 testing at least two times each week;

10 (iii) place the defendant under surveillance and electronic
11 monitoring by the Department of Corrections, including the use of passive
12 electronic monitoring, or place the defendant in the Home Detention Program
13 pursuant to section 7554b of this title; and

14 (iv) require the defendant to abstain from consuming alcohol or
15 visiting establishments that primarily serve alcohol.

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

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

(2) In subdivision (a)(2) of this section, the judicial officer, on the basis of available information, shall take into account the nature and circumstances of the offense charged; the weight of the evidence against the ~~accused~~ defendant; the ~~accused's~~ defendant's family ties, employment, character and mental condition, length of residence in the community, record of convictions, and record of appearance at court proceedings or of flight to avoid prosecution or failure to appear at court proceedings; whether, at the time of the current offense or arrest, the defendant was released on conditions or personal recognizance, on probation, furlough, parole, or other release pending trial, sentencing, appeal, or completion of a sentence for an offense under federal or state law; and whether, in connection with a criminal prosecution, the defendant is compliant with court orders or has failed to appear at a court

1 hearing; and the protection of the public. Recent history of actual violence or
2 threats of violence may be considered by the judicial officer as bearing on the
3 character and mental condition of the accused defendant.

4 (3) In subdivision (a)(2) of this section, the judicial officer, on the basis
5 of available information, shall take into account whether the defendant is a
6 repeat or chronic offender and the protection of the public and public
7 resources. The judicial officer may impose enhanced conditions based on
8 whether the defendant was previously convicted of three or more misdemeanor
9 offenses in the previous two years, whether the defendant was previously
10 convicted of five or more misdemeanor offenses in the previous five years,
11 whether the defendant was previously convicted of two or more felony
12 offenses in the previous five years, whether the defendant has four or more
13 pending charges, whether the defendant previously failed to appear at a court
14 proceeding two or more times in the previous five years, and whether the
15 defendant has a pattern of committing similar offenses, defined as being
16 convicted of three or more offenses of the same type in the previous three
17 years.

18 * * *

19 Sec. 3. EFFECTIVE DATE

20 This act shall take effect on July 1, 2026.