

STATE OF VERMONT
VERMONT SUPREME COURT
_____ TERM, 2025

Order Promulgating Amendments to Rule 3(k) of the Vermont Rules of Criminal Procedure

Pursuant to the Vermont Constitution, Chapter II, § 37, and 12 V.S.A. § 1, it is hereby ordered:

1. That Rule 3(k) of the Vermont Rules of Criminal Procedure be amended as follows (new matter underlined; deleted matter struck through):

RULE 3. ARREST WITHOUT A WARRANT; CITATION TO APPEAR

(k) **Temporary Release.** A law enforcement officer arresting a person shall contact a judicial officer for determination of temporary release pursuant to Rule 5(b) of these rules without unnecessary delay. The law enforcement officer shall provide the judicial officer with an affidavit or sworn statement as required by Rule 4(a) of these rules, and information upon which the determination as to temporary release may be made. ~~The affidavit or sworn statement must indicate the crimes to be charged by the arresting officer.~~ The procedures and standards established by the Presiding Judge of each unit pursuant to Rule 5(b) must require that the affidavit or sworn statement include the charge or charges that the prosecuting attorney intends to file and may require that the affidavit also include any conditions of release, including bail or an order to hold without bail, that the prosecuting attorney is requesting.

Reporter's Notes—2026 Amendment

In 2019, the Legislature amended Rule 3(k) to delete express reference to the option of the prosecuting attorney contacting a judicial officer or providing the affidavit required for determination of bail and/or conditions of release. The amendments also replaced the language “charges the prosecuting attorney intends to file” with “crimes to be charged by the arresting officer.” See 2019, No. 40, § 7.

The present amendments are made to provide clarity and flexibility as to judicial requests for sufficient information in affidavits submitted in support of after-hours requests for bail or conditions of release, to enable prompt, reasoned, and accurate bail/conditions determinations, and to recognize that it is the prosecuting attorney, not an arresting officer, who is vested with authority to determine what charges are to be brought.

To this end, the rule is amended in two respects:

First, the amendment deletes the existing sentence which requires that “[t]he affidavit or sworn statement must indicate the crimes to be charged by the arresting officer,” as it is the prosecuting attorney who is solely authorized to charge criminal offenses.

Second, the amendment provides that “[t]he procedures and standards established by the Presiding Judge of each unit pursuant to V.R.Cr.P. 5(b) must require that the affidavit or sworn statement include the charge or charges that the prosecuting attorney intends to file, and may require that the affidavit also include any conditions of release, including bail or an order to hold without bail, that the prosecuting attorney is requesting.”

The latter amendment provides clarity as to a judge’s authority—subject to established procedures and standards set by the Presiding Judge of each unit—to require the arresting officer to include in the affidavit a statement of a prosecuting attorney’s intended charges and recommended bail or conditions of release for the individual. The amendment does not require the presence of a prosecuting attorney, or their personal affidavit, unless the Presiding Judge of a unit requires that procedure and standard. The amendment does clarify that when an after-hours bail request is made, a unit’s established procedures and standards must require a prosecuting attorney’s involvement in informing the arresting officer of charges to be brought and may require the prosecuting attorney’s recommendations as to bail or conditions of release to be ordered. Both are functions within the prosecuting attorney’s authority and responsibility.

The amendment provides clarity for the minimum level of required prosecuting attorney involvement in recommendations of charges and bail/conditions. The amendment provides flexibility to allow the Presiding Judge in a particular unit to establish enhanced standards and procedures for cases and charges more frequently experienced in after-hours bail calls, as well as the most serious of offenses, for which a unit’s procedures and standards may require greater prosecuting attorney participation in the after-hours process. The Presiding Judge retains discretion to enhance the requirements as necessary for their unit.

2. That this rule is prescribed and promulgated effective _____, 2026. The Reporter's Notes are advisory.

3. That the Chief Justice is authorized to report this rule to the General Assembly in accordance with the provisions of 12 V.S.A. § 1, as amended.

Dated in Chambers at Montpelier, Vermont, this _____ day of _____, 2025.

Paul L. Reiber, Chief Justice

Harold E. Eaton, Jr., Associate Justice

William D. Cohen, Associate Justice

Nancy J. Waples, Associate Justice