

STATE OF VERMONT  
VERMONT SUPREME COURT  
\_\_\_\_\_ TERM, 20265

**Order Promulgating Amendments to Rule 32.1 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 32.1 of the Vermont Rules of Criminal Procedure be amended as follows (new matter underlined; deleted matter struck through):

**RULE 32.1. REVOCATION AND MODIFICATION OF PROBATION**

**(a) Revocation of Probation.**

(1) Initiation of Proceedings

(A) Warrant or Summons.

(i) Except as provided in (a)(1)(B), probation revocation proceedings must be initiated by a summons or warrant based on a written report, signed under penalty of perjury, showing probable cause to believe a probationer violated probation.

(ii) The court must issue a summons unless the court believes a warrant is necessary to secure the probationer's appearance or prevent harm to the probationer or another, or to reasonably protect the public. If the probationer fails to appear on the summons, the court may issue a warrant.

(iii) Any summons must be served by the probation officer or a law enforcement officer.

(B) Emergency Arrest. A probation officer or a law enforcement officer may arrest a probationer when there is probable cause to believe the probationer has violated a condition of probation.

(C) Citation.

- (i) The probationer must be released on a citation to appear unless:
- a. The arresting officer has reasonable grounds to believe that the probationer will not appear on citation;
  - b. The arresting officer has reasonable grounds to believe that detention is necessary to reasonably protect the public; or
  - c. The probationer is on probation for an offense for which there is no statutory or constitutional right to bail.

(ii) Unless the probationer is released on citation, the probation officer must promptly file a written report, signed under penalty of perjury, showing probable cause to believe the probationer violated probation. If the probationer is released on citation the probation officer must file such a report before the date on which the probationer is cited to appear.

(2) Initial Appearance and Release from Custody

(A) A probationer who is arrested and not released on a citation must be brought before a judicial officer without unnecessary delay.

(B) V.R.Cr.P. 5 and 11 apply to probation violation proceedings unless otherwise provided by rule or statute. A probationer's plea in such a proceeding may be an admission, a denial, or nolo contendere. If a probationer refuses to enter a plea, the court will enter a denial.

(C) Release from custody.

(i) A probationer held in custody pursuant to a request to revoke probation may be released by a judicial officer pending hearing or appeal. In determining conditions of release, the judicial officer will consider the factors set forth in 13 V.S.A. § 7554(b). Any denial of or change in the terms of release will be reviewable in the manner provided in 13 V.S.A. §§ 7554 and 7556 for pretrial release. A hearing on any motion to modify must be held within five working days of the filing of the motion.

(ii) A probationer who is serving a sentence for a sex offense that requires registration pursuant to chapter 167, subchapter 3 of Title 13 who violates a risk-related condition of probation may be held in custody until the revocation hearing.

(H) (D) Preliminary Probable Cause Hearing. Whenever a probationer is held in custody following the initial appearance before a judicial officer on the ground that ~~he or she~~ the probationer has violated a condition of probation, the probationer ~~shall~~ must be afforded a

prompt hearing before a judicial officer in order to determine whether there is probable cause to hold the probationer for a revocation hearing. The probationer ~~shall~~ must be given:

- (A)(i) notice of the preliminary hearing and its purpose and notice of the alleged violation of probation;
- (B)(ii) an opportunity to appear at the hearing and present evidence in ~~his or her~~ the probationer's own behalf;
- (C)(iii) upon request, the opportunity to question opposing witnesses unless, for good cause, the judicial officer decides that justice does not require the appearance of the witness; and
- (D)(iv) notice of the right to be represented by counsel and the right to assigned counsel if ~~he or she~~ the probationer is unable to obtain counsel.

The proceeding will be recorded. The proceeding shall be taken down by a court reporter or recording equipment. If probable cause is found to exist, the probationers shall be held for a revocation hearing. If probable cause is not found to exist, the proceeding will be dismissed, otherwise a revocation hearing may be held.

~~(2) (3) Revocation Hearing. The revocation hearing, unless waived by the probationer, shall be held within a reasonable time in the court in which probation is imposed. The probationer shall be given:~~

(A) The revocation hearing, unless waived by the probationer, will be held within a reasonable time in the court in which probation is imposed. The probationer must be given:

- (A)(i) written notice of the alleged violation of probation;
- (B)(ii) disclosure of the evidence against ~~him or her~~ the probationer;
- (C)(iii) an opportunity to appear and to present evidence;
- (D)(iv) the opportunity to question opposing witnesses; and
- (E)(v) ~~written~~ notice of the right to be represented by counsel and the right to assigned counsel if ~~he or she~~ the probationer is unable to obtain counsel.

(B) At any revocation hearing the State must establish the alleged violation by a preponderance of the evidence.

(C) The court may revoke probation if the probationer violates a condition of probation or is convicted of another crime. When probation is revoked, the court may order confinement if, based on the original offense and intervening conduct, the court

finds that:

(i) confinement is necessary to protect the community from further criminal activity by the probationer;

(ii) the probationer is in need of correctional treatment which can most effectively be provided if the probationer is confined; or

(iii) it would unduly depreciate the seriousness of the violation if probation were not revoked.

(D) If the court finds a violation, it may impose any of the alternatives in 28 V.S.A. § 304. A plea agreement does not limit the court's discretion.

(E) An order revoking probation or imposing an alternative sanction is appealable in the same manner as would be applicable to the probationer's original conviction.

(3) Release From Custody.

~~(A) A probationer held in custody pursuant to a request to revoke probation may be released by a judicial officer pending hearing or appeal. In determining conditions of release, the judicial officer shall consider the factors set forth in 13 V.S.A. § 7554(b). Any denial of or change in the terms of release shall be reviewable in the manner provided in 13 V.S.A. §§ 7554 and 7556 for pretrial release.~~

~~(B) A probationer who is serving a sentence for a sex offense that requires registration pursuant to chapter 167, subchapter 3 of Title 13 who violates a risk-related condition of probation may be held in custody until the revocation hearing.~~

~~(b) **Modification of Probation.** A hearing and assistance of counsel are required before the terms or conditions of probation can be modified, unless the relief granted to the probationer upon his or her request or the court's own motion is favorable to the probationer.~~

~~(1) In General. Before modifying the conditions of probation, the court must hold a hearing, at which the probationer has the right to counsel and an opportunity to make a statement and present any information in mitigation.~~

~~(2) Exceptions. A hearing is not required if all of the following conditions are met:~~

~~(A) the probationer validly waives the hearing pursuant to a proper written waiver form that includes, at a minimum, notice to the probationer of:~~

(i) the right to contest the modification of probation;

(ii) the right to a hearing on the modification of probation;

(iii) the right to representation of counsel for the hearing on the modification of probation;

(iv) the opportunity to make a statement and present any information in mitigation during the modification hearing;

(v) the penalties the probationer will face following the modification of probation;

(vi) the potential for modifications of probation to serve as the basis for future sanctions or revocations of probation; and

(B) the relief sought is favorable to the probationer and does not extend the term of probation; and

(C) an attorney for the State has received notice of the relief sought, has had a reasonable opportunity to object, and has not done so.

#### **REPORTER'S NOTES—2027 Amendment**

This rule updates the procedures for revocation or modification of probation with greater specificity to provide clarity and a consistent process for probationers. The rule is updated in the following respects.

Rule 32.1(a)(1) adds a provision addressing initiation of violation of probation proceedings. This paragraph establishes a process for initiation based on application to the court. It is modeled after Minnesota's rule of criminal procedure. See Minn. R. Crim. Pro. 27.04.

Rule 32.1(a)(1)(A) addresses initiation of proceedings by warrant or summons, while Rule 32.1(a)(1)(B) governs arrests of probationers without a warrant, expressly following 28 V.S.A. § 301.

Rule 32.1(a)(1)(C) sets standards for release on citation after arrest. See 28 V.S.A. § 301(2). The probationer must be released on a citation to appear unless any of the conditions listed in Rule 32.1(a)(1)(C)(i)(a), (b), or (c) are present. However, even if any or all of Rule 32.1(a)(1)(C)(i)(a), (b), or (c) are present, discretion remains to release probationer.

Rule 32.1(a)(2) adopts procedural rules for initial appearances and release from custody for probationers alleged to have committed a violation of probation. Rule 32.1(a)(2)(A) and (B) clarify the process by expressly incorporating existing Rules regarding initial appearance and pleas in criminal cases. See V.R.Cr.P. 10, 11. Specifically, Rule 32.1(a)(2)(B) now adopts the use of nolo contendere pleas in violations of probation with the same constraints for their use as detailed in Rule 11. See V.R.Cr.P. 11. Rule 32.1(a)(2)(C) incorporates provisions of 28 V.S.A. § 301(4) & (5) and V.R.Cr.P. 32.1(3) to clarify the process for considering release from custody of the probationer following initiation of revocation of probation proceedings. This paragraph updates and relocates the provisions of prior Rule 32.1(3)(A). See 28 V.S.A. § 301(4) & (5) and V.R.Cr.P. 32.1(3). This paragraph also adds a provision that requires a hearing on any motion to modify the conditions of release within five working days of the filing of the motion. See *State v. Campbell*, 2014 VT 113, 197 Vt. 647, 109 A.3d 438. Rule 32.1(a)(2)(C)(ii) relocates the contents of former V.R.Cr.P. 32.1(a)(3)(B). The language used in this section remains consistent from the previous version as enacted by the Legislature. See 2009, No. 1, § 48.

Rule 32.1(a)(2)(D), regarding preliminary probable cause hearings, adopts the process of the previous version of this rule with minimal updates to the language. This update relocates the process from 32.1(a)(1). The previous Reporter's Notes address the necessity of this process.

Rule 32.1(a)(3)(A) relocates the process for the revocation hearing from prior Rule 32.1(a)(2). See 28 V.S.A. § 302. Rule 32.1(a)(3) further expands upon the revocation hearing process by adding 32.1(a)(3)(B), (C), (D), and (E), which include existing statutory rules of process for the revocation hearing. Rule 32.1(a)(3)(B) follows 28 V.S.A. § 302(a)(4), requiring the State to

establish the violation by a preponderance of the evidence. See 28 V.S.A. § 302(a)(4). Rule 32.1(a)(3)(C) follows the process of 28 V.S.A. § 303 for revocation of probation and confinement of the probationer. Rule 32.1(a)(3)(D) directs the court to 28 V.S.A. § 304 to consider enumerated alternatives when imposing a sentence for a violation of probation. Rule 32.1(a)(3)(E) follows 28 V.S.A. § 302(b), regarding process for appealing the violation or revocation of probation.

Rule 32.1(b) addresses modification of probation. Rule 32.1(b)(1) requires a hearing as the default process to modify probation. This paragraph further clarifies the minimum rights afforded the probationer for the hearing. Rule 32.1(b)(2) creates a narrow exception where the court need not hold a hearing to modify probation. These exceptions are designed to be used to promote efficiency only when beneficial to the probationer. These exceptions are modeled after Federal Rule of Criminal Procedure 32.1(c)(2) and include similar updates to that Rule.

Importantly, all conditions of Rule 32.1(b)(2)(A), (B), and (C) must be met to modify probation without a hearing. These requirements are: (A) a valid knowing and voluntary waiver of the probationer's rights to a hearing and during the hearing. This waiver must be clearly communicated on a written form in keeping with the minimum requirements of Rule 32.1(b)(2)(A)(i)-(v). These requirements are intended to ensure the probationer is aware of any risks associated with modifying their probation without a hearing and the court is confident the probationer has been so advised before granting the modification without a hearing; (B) the relief sought is favorable to the probationer and does not extend the term of probation; and (C) an attorney for the State has received notice of the relief sought, has had a reasonable opportunity to object, and has not done so. These requirements will protect the interests of all parties involved with the modification of probation under the exceptional situations that merit doing so without a formal hearing.

2. That this rule is prescribed and promulgated effective \_\_\_\_\_, 2027. 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 \_\_\_\_\_, 2026.

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Paul L. Reiber, Chief Justice

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Harold E. Eaton, Jr., Associate Justice

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Nancy J. Waples, Associate Justice

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Christina E. Nolan, Associate Justice

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Michael P. Drescher, Associate Justice