

**VERMONT SUPREME COURT
ADVISORY COMMITTEE ON RULES OF CRIMINAL PROCEDURE**

**MINUTES OF MEETING
August 1, 2025 Meeting**

The Criminal Rules Committee's August 1, 2025 meeting commenced at approximately 9:33 a.m. via video conference. Present were Committee Chair Judge John Treadwell, Judge Mary Morrissey, Judge Heather Gray, Jessica Burke, Meghan Place, Mimi Brill, Jordana Levine, Ian Sullivan, Andrew Schmidt, Domenica Padula, and Rebecca Turner. Committee Reporter, Shannon Heery, was also present. Unable to be present today were members Frank Twarog, Mary Mossey, and Supreme Court Liaison, Justice Karen Carroll.

Meeting Opening; General Announcements (Chair John Treadwell)

Committee Chair Judge Treadwell opened the meeting by welcoming new Committee member, Attorney Christopher A. Davis. Judge Treadwell then turned to discussing Justice Karen Carroll's retirement and transition off of the Committee. Judge Treadwell and other members expressed that Justice Carroll would be dearly missed and that they were grateful for all of her work with the Criminal Rules Committee.

1. Approval of May 2, 2025 Meeting Minutes

On motion, the minutes from the Committee's May 2, 2025 meeting were approved.

2. Rules Report:

There were no updates to rules at this time.

OLD BUSINESS:

3. 2023-10: Promulgated V.R.C.P. 43.1: Further Committee Review and Provision of Comments/Suggested Further Amendments to Comport with Criminal Division Practice and Imperatives

Judge Treadwell and Reporter Heery updated the Committee that the letter and AO 38 report was submitted to the Court on June 13, 2025. Reporter Heery informed the Committee of the communication received in response to the submission. The Committee concluded it was appropriate to table this agenda item at this time.

4. 2021-02: V.R.Cr.P. 53 and V.R.C.P. 79.2 (Recording Court Proceedings) And V.R.Cr.P. 53.1 (Use of Video Recording Equipment Where the Official Record is Made by Video Recording); Issues Associated with Defense Request to Video Record Jury Trial.

After a brief discussion, the Committee agreed to remove this topic from the agenda unless and until additional updates require revisiting the discussion.

5. 2023-04: V.R.Cr.P. 41.1(m)&(n): Non-Testimonial Identification Orders; “Minors”; “Offense”; Application in Delinquency and YO Cases; Revision for Currency of Terms and Consistency with Current Practices and Statutory Expansion of Jurisdiction.

The joint subcommittee of Criminal Rules and Family Rules held a virtual meeting on May 23, 2025. The result of the subcommittee meeting was the Family Rules Committee members planned to discuss the draft of V.R.Cr.P. 41(m)&(n) at their July Committee meeting and update Criminal Rules on their discussion. At this time, this Committee awaits the result of that discussion before taking further action. Reporter Heery will continue to update the Committee as necessary about the progress in conjunction with the Family Rules Committee’s consideration of the issue.

6. 2024-02: V.R.Cr.P. 3(k); Court May Add Required Contents for Affidavits/Sworn Statements Submitted per V.R.Cr.P. 5(b) for After-Hours Bail Calls, to Determine Hold without Bail/Bail/Conditions of Release.

Following a brief review of this Committee’s previous discussions of the proposed drafts,¹ the Committee voted to determine the version of proposed language supported by the most Committee members.

Version One included the following language:

“The procedures and standards established by the Presiding Judge of each unit pursuant to Rule 5(b) may 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.”

Version Two included the following language:

“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.”

Version Three included the following language:

“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 must 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.”

¹ See, Minutes of Committee Meetings, 11/1/24; 2/7/25; and 5/2/25.

All versions had at least one member of the committee who offered support. Version One had one member of the Committee in support, and nine members against. Version Two had the unanimous support of all members of the Committee. Version Three had five members in support and five against. Version Two was therefore approved by this Committee to transmit to the Court as a proposed rule. Reporter Heery will prepare the draft of the proposed rule along with a transmittal letter for the Court.

7. 2024: Joint Subcommittee with Committee on Rules for Public Access to Court Records to address access status of inquests, subpoenas duces tecum, and nontestimonial orders.

Judge Morrissey provided brief updates to the Committee. Because the Public Access Committee has formulated their proposed rules, the Committee concluded that this was no longer an issue for Criminal Rules' consideration.

NEW BUSINESS:

8. 2024-07: V.R.Cr.P. 32.1; Committee Review and Provision of Comments/Suggested Further Amendments to draft of V.R.Cr.P. 32.1 proposed revisions designed to update procedures and process for probation revocation and modifications

Judge Treadwell introduced discussion of proposed amendments to V.R.Cr.P. 32.1 by referencing the history of the current rule, which has only been amended one time since its adoption in 1984. The proposed revisions stemmed from concerns that the current rule does not reflect common practices surrounding probation revocations and modifications. Prior to the meeting, committee members were provided with a first draft of proposed amendments to facilitate discussion. These amendments were designed to reflect current practices, not to alter the operation of revocations or modifications of probation.

The committee first considered the proposed amendments line by line. A question was addressed about Section A(1)(b)(ii). Based on committee discussion, there was support to amend the current draft from “necessary to mitigate a risk of harm to the probationer, any person or the community; or” to “necessary to reasonably protect the public; or.” The proposed amendment will be updated to reflect that change.

The committee continued by considering the next section and noting the changes within that section. Specifically, Section A(2)(B) incorporated *nolo contendere* pleas as an optional disposition for violations of probation. Members shared their experiences with how these pleas can be beneficial, especially where probationers are charged with a new offense in a different jurisdiction that may violate their probation if convicted. Some members discussed current strategies to handle this scenario. Other members indicated that without the *nolo contendere* plea option, violations of probations in their jurisdiction were not easily resolved. As committee members continued to discuss the possibility of a *nolo contendere* plea for a violation of probation, members expressed support for another mechanism to avoid issues that may arise from violations of probation. There were additional questions from committee members about the practice in other jurisdictions, as well as what, if any, impact this plea would have on the restoration of probation. The committee discussed potential pitfalls to the proposed language. After discussion, there were no additional amendments or proposed revisions to the draft.

The committee then considered A(2)(C)(i) and (ii). A member proposed changing the language, “may be released by a judicial officer pending hearing” to “may be released by a judicial officer pending hearing **or appeal.**” Committee members agreed to add the phrase “or appeal” to this section. Turning to the following sections, the committee discussed the minor modifications to the rule.

The committee then turned to proposed amendments of Section (b)(2), addressing modifications of probation, and discussed this section at length. The stated purpose of the amendments in Section (b)(2) was clarify exceptions to hearing requirements. Members expressed concern regarding the draft amendment language, noting that it may create an unlevel playing field if the probationer is asked to waive the hearing without a proper process for obtaining a knowing, intelligent, and voluntary waiver. Suggestions were made by members to add language that makes clear that the probationer would still have the opportunity to consider all options before waiving their modification hearing. Committee members expressed clear support for explicit language requiring a waiver which expressly states the rights being waived by the probationer.

Following the Committee’s robust discussion on the proposed amendments to V.R.Cr.P. 32.1, Chair Treadwell and Reporter Heery planned to amend the language in accordance with what was discussed by the members. A new draft will be circulated before the next Committee meeting.

9. Recent Court Decisions of Note.

There were no cases of note to discuss.

10. Current Committee Meetings Annual Calendar/Discussion and Adoption of Revisions.

The committee discussed upcoming meetings.

11. Any Other Business.

There was no other no other business before the Committee at this time.

12. Next Committee Meeting Date Scheduled for November 7, 2025.

Having no further business, Chair Treadwell reminded the members of the next scheduled committee meeting date: November 7, 2025. On motion, the committee meeting adjourned.

Respectfully submitted,

Shannon Heery
Committee Reporter

[SH: 11/5/25]