

## CRIMINAL RULES ADVISORY COMMITTEE

April 12th, 2024 Meeting  
9:30 a.m.  
Vermont Supreme Court (via Zoom)

### AGENDA

Meeting Opening; Chair John Treadwell; General Announcements; Committee Member Transitions; Committee Reporter Transition and Introduction of New Committee Reporter.

#### AGENDA ITEMS:

1. Approve minutes of January 19, 2024 Committee meeting.

2. **REPORTS:**

--Legislative Committee on Judicial Rules, Meeting on November 13, 2023.  
(V.R.Cr.P. 26(c)&(d); 47(b)&(c), 45(d))(Treadwell)

-- Status of Various Rules Amendments:

Promulgated

- **No recent promulgations, since amendments of V.R.Cr.P. 47(b)&(c); V.R.Cr.P. 45(d) (Provision for reply memoranda; V.R.A.P. 28(e) and 30 (To require Printed Case); and Administrative Order No. 11 (Proposed Rules; Public Notice and Opportunity to Comment), all effective 1/1/24.**

Proposed—

- **2023-04—Amendment of V.R.Cr.P. 41.1(b) and (c)** to make the rule consistent with V.R.Cr.P. 41(d)(4), enabling applications for nontestimonial identification orders to be made by reliable electronic means, as well as in person, with supporting affidavits sworn to either in person, or by telephone if the application is by reliable electronic means. (Published for comment on December 12; comments due February 12, 2024).

#### OLD BUSINESS:

3. **Promulgated V.R.Cr.P. 43.1: Further Committee Review and Provision of Comments/Suggested Further Amendments to Comport with Criminal Division Practice and Imperatives** (As directed in Court's July 10<sup>th</sup> promulgation order amending A.O. 38, ¶ 3). (*Posted for update on future Agenda in approximately six months' time from September 29<sup>th</sup> meeting. i.e., March/April, 2024, to consider experience in civil/family divisions under amended rule.*)
4. **2021-04: (Speedy Trial Standards) V.R.Cr.P. 48(b)(1); A.O. 5/A.D. 24; Review Joint Subcommittee; Overview and Discussion of Joint Subcommittee February 26<sup>th</sup> Report and Recommendations** (Judge Arms) (*Subcommittee members: Arms; Lanthier; Padula; Sullivan; for Crim.Oversight: Sally Adams; Josh O'Hara; John Pacht*)

5. **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.** (*Discussion/Approval of Redrafted Proposal of Amendment, for Publication and Comment*) (Morris) (*Subcommittee: Treadwell, Turner, Sullivan, Lanthier, Arms*).
6. **2023-04—Amendment of V.R.Cr.P. 41.1(b) and (c)** to make the rule consistent with V.R.Cr.P. 41(d)(4), enabling applications for nontestimonial identification orders to be made by reliable electronic means, as well as in person, with supporting affidavits sworn to either in person, or by telephone if the application is by reliable electronic means. (Published for comment on December 12; comments due February 12, 2024) (*No comments received in response to publication; Discussion/Approval for Promulgation Recommendation*).
7. **2023-04: V.R.Cr.P. 41.1(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.** (*Consideration of a draft of further amendments for publication and comment, with input received from Marshall Pahl as to YO implications; Other jurisdiction approaches to the issue*).<sup>1</sup>
8. **2023-06: V.R.Cr.P. 5(c) and P.A.C.R. 6(b)(5)** (*Issue under consideration by the Advisory Committee on Rules for Public Access to Court Proceedings*).

Under V.R.Cr.P. 5(c), criminal information and affidavit is filed by the judge after completing arraignment. Cf. P.A.C.R. 6(b)(5), says it is a public record once probable cause is found. Related are the statutes that make information and affidavits confidential if the person is referred to Diversion after probable cause is found. 3 V.S.A. §§ 163(c)(5); 164(e)(5).

9. **2024-01: Vermont Digital Evidence Portal (VREP); Expanded to all Criminal Division Units eff. 2/12/24; Any Implications for Criminal Rules?** See, <https://www.vermontjudiciary.org/about-vermont-judiciary/vermont-digital-evidence-project>.
10. **Recent Court Decisions of Note:** *State v. Armstrong*, 2024 VT 5 (2/16/24) (Speedy Trial; delay associated with competency evaluation, as well as period in which defendant continues incompetency prior to restoration and trial);
11. **Current Committee Meetings Annual Calendar/Discussion and Adoption of Revisions.**
12. **Any Other Business.**
13. **Next Committee Meeting Date.**
14. **Adjourn.**

4/3/24

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<sup>1</sup> See, *Beyond the Davis Dictum: Reforming Nontestimonial Identification Evidence and Rules and Statutes*, 79 U.Colo.L.Rev. 189 (Winter 2008) and Columbia Justice Lab, Emerging Adult Justice Project, *Update on the Implementation of Vermont’s “Raise the Age” Law*, Report, January 2024.