

December 6, 2025

Dear members of the Joint Legislative Rules Committee,

Please find below the perspectives of Deputy State's Attorneys from around Vermont on the proposed changes to Rule of Criminal Procedure 3(k). While the on call responsibilities vary from county to county, there is broad consensus that the proposed amendment would significantly increase the burdens on DSAs, and on law enforcement officers processing after-hours arrests, without improving public safety or due procedural protections.

Respectfully,

Eliza Novick-Smith
Chair, VSEA State's Attorneys Office Unit

DSA George Antes, Windham County:

The proposed amendment seems poorly crafted, because it will delay the judicial decision on COR's and bail for defendants arrested after hours. Our practice here is for the police officers to consult with the on-call DSA as soon as the officer has the situation pretty well in hand. We then have a conversation with the officer in which we learn the nature of the conduct which the officer is asking us if we will charge, the persons involved, and facts that enable us to determine which conditions of release and bail to have the officer ask the judge for, as well as whether the defendant should be flash cited. The officer then speaks with the judge, and the judge makes those decisions on temporary COR's and bail. It is only then that the officer writes their affidavit and sends it to our office, where it is reviewed in the morning by a DSA (often the on-call, but sometimes the DSA who has the most familiarity with that defendant or the subject matter), final charging decisions are made based on all the facts, and the affidavit is filed in Odyssey. It's at this point that the DSA also makes the decision about what conditions of release and bail to request at the Rule 5 hearing, which is partly informed by Victim Advocate input. As I read it, the proposed Rule 3 would essentially eliminate the initial telephonic consultation between officer and on-call DSA. Instead, the on-call DSA would have to be deeply involved in the officer's drafting of the affidavit, in virtually every after-hours case. This would turn the 1-2 typical calls we have a night from a 10-30 minute interaction into one taking potentially hours. The consequences include increased interruption of our sleep; delay before the officer can call the judge for judicial decisions on COR and bail; injecting Rule 5 considerations into the temporary conditions stage.

DSA Dana Nevins, Windham County:

This will create a significant burden on us. It will require the police to call us on simple cases that do not need our immediate review. It will mean that we are woken up more in the middle of the night to review simple cases that the police have well in hand. Getting woken up multiple times in the night makes working the next day harder and contributes to the stress of this job. It will also result in Defendants being held longer than necessary. For example, Defendant A is picked up for DC. He has local ties and is cooperative. The police want him flash cited but not

held. Instead of the police calling the judge, asking for a flash cite, and releasing him, they now have to draft their affidavit before calling us and the judge. This will result in people being held longer than necessary before the police can reach out to a judge. It is an extra step that provides no additional protections to the Defendant and will work to harm them in many instances.

DSA Thomas Paul, Caledonia County:

As a practical matter it would require at least two calls back to LEO: the first to review the draft affidavit for the charges, and the second to review the affidavit with the “prosecutor’s requested charges and conditions of release or bail” which would have to be typed in by LE after talking with me. So instead of the first call to wake up and the second call to call back after looking at the affidavit there would be a third call to look at the affidavit with my “wish list” of charges, COR, and bail. This would add a considerable time to the overall case. And note, that the judge is called only for bail or HWOB.

I always discuss in detail with LE the conditions of release/bail I am requesting, and I know that LE is relaying it correctly, e.g., “please tell Judge Kainen that Tom Paul wants \$5,000 cash bail” and then I offer my off the record insight on what Judge Kainen will impose. I also let the officer know what factors to cite in support of any bail request. If it’s a HWOB I make sure the officer knows if I’m looking at Sec 7553 or 7553a and how to explain the criteria to the judge. BUT it would take an officer quite a bit of time to effectively draft a HWOB motion in the affidavit get it back to me and then tweak it some more. And such a motion would have to be filed anyway at the time of the arraignment the next morning. And sometimes, we do a HWOB the next day when we haven’t requested it overnight. I could go on with the permutations.

Bottom line: I’ve been doing this for seven years and never has there been a problem with an officer relaying my bail requests clearly with the judge and the judge clearly considering what to do. So, it would take at least twice as long to process a call.

DSA Simon Mayo, Caledonia County

Requiring a “statement”, CORs and bail for any individual arrested after hours would significantly increase the burden/hours.

DSA Sally Adams, Chittenden County

My concerns generally falling to two categories: lack of adequate compensation for the work this change will create and recruitment and retention impacts.

First, DSAs only get paid \$50 a night to be on call. That is woefully inadequate to compensate someone to get woken up 5-10x to review an affidavit, make a charging decision based on the available information, and give a recommendation to a judge on something that is entirely within the judge’s discretion and control (and they get paid handsomely for it) and then get up and go to work the next day with the expectation that they are able to function like a normal human being. Essentially we are going to have a bunch of DSAs at the office who are sleep deprived like they have a colicky infant at home. With the complex and complicated decisions that we are making on a day to day basis, I don’t see how this is a good idea unless the DSAs start getting compensated like judges. Mistakes will be made, people will be calling out sick, our judgement will be impaired. The compensation is insulting and unless legislature is willing to pay someone their normal hourly

rate for the overnights they are on call this should be a non-starter. Additionally, the legislature should be willing to fund additional DSA positions so that whoever is on call can be excused from work during the day for the nights they are on call and we aren't short-staffed as a result of that person being unavailable during the day.

Second, and probably my biggest concern, is the impact that this change will have on retention. Already we struggle to compete with other SOV attorney jobs where people get paid the same or more to do exponentially less work with less stress. To add this additional layer to the job duties of a DSA means that we will have even more difficulty finding people who even want to go into this work (why not get a job at the AGO or other state agency, telework multiple days a week, and not be on call for the same or more money?) and I'm gravely concerned about retaining the people who are currently in the job who hate the on call aspect of the job but tolerate it because it poses only a minor inconvenience in their life that is outweighed by the other positive aspects of this job. As we lose staff and deal with vacancies, our existing staff must pick up the slack as the work doesn't stop or slow down just because we don't have a body to do the job. This leads to even more to burnout and low morale.

DSA Andrew Gilbertson, Chittenden County

This amendment will mean a substantial change in the workload and sleep of on-call deputies in Chittenden County. It is entirely likely that the on-call deputy will never get a full night of sleep, since there are Rule 3 arrests almost every night, and there are some nights where the deputy might not be able to sleep at all. This would make it harder to be present for my family when not responding to a call, and extremely difficult to be effective at work the following day. Being Deputy State's Attorney is already a stressful and challenging job. Making our on-call shifts that much more difficult will inevitably lead to more turnover, which will lead to more delays and reduced ability to address the backlog.

DSA Kelton Olney, Chittenden County

The amendment will substantially increase the amount of time spent by on-call deputy state's attorneys responding to law enforcement calls after hours. Being on call is already a difficult proposition. After working hard on complicated issues all day, being on call requires that, at any moment, the on-call attorney be prepared to handle calls from law enforcement that range from: untimely/suspicious deaths to emergency search warrant issues. Even during those on-call periods where there are fewer than average calls, being on-call means, for me, that I am never able to fully relax, decompress from my day and enjoy activities with my family. While the on-call deputy does receive on-call pay, it is already inadequate to compensate for the significant disruption in life. This amendment will absolutely increase the amount of work necessary for the on-call deputy making the already inadequate compensation significantly less adequate. Doing good work in our profession requires diligence, attention to detail and thoughtful analysis of our cases. I believe that, if this amendment is approved, deputies' ability to diligently and thoughtfully work on our cases will be significantly compromised during those weeks we are on call. As mentioned, it is hard enough being on call with the current rate of calls. Increasing that amount by being contacted every time a

police officer seeks conditions or bail will be very difficult in the short term and likely untenable in the long term.

DSA Taaba Rehmani, Windsor County

I personally think this is a poorly thought-out resolution. When an officer is responding to an acute emergency, the officer is wearing many hats. Firstly the officer needs to care about public safety, then the officer typically considers investigation and charges. Victims (particularly in traumatic incidents such as aggravated domestic cases) are also in a heightened state. There are times where our office learns more about the situation through communication with the victim the next morning, or communication with other jurisdictions, or through any number of factors that change between the night wherein the officer is focused on safety and the next morning. To mandate disclosure of conditions in sensitive, dangerous, and fluid cases like flash cites can cause significant problems. Finally, regarding our office, we have DSAs who receive calls that will end up being prosecuted by other members of our office. To mandate that the State is required to disclose the conditions to be requested would lock my colleagues into my decisions – and place work product into a public court filing.

DSA Travis Weaver, Windsor County

I serve as a deputy prosecutor in Windsor County, which can have a relatively high volume of calls. In my experience, the practical burden of this responsibility has increased steadily over time to the point where, on busy nights, it can feel like an entirely second shift of work.

I am concerned the proposed language could even further increase the amount of work required during each on-call contact. In practical terms, the changes contemplate a level of charging review that closely resembles what is typically performed during regular business hours. This involves substantial time at a computer, careful affidavit review, and legal analysis. This work would of course need to be done over the course of a night, sandwiched between two other complete days of work.

While I fully support the goal of careful and accurate charging decisions, I have serious concerns about whether this expectation is realistically sustainable in higher-volume counties. Prosecutors who are on call are frequently asked to make important legal decisions on limited sleep, sometimes across multiple consecutive nights. For senior attorneys handling serious and complex cases during the day, prolonged sleep deprivation directly undermines performance, judgment, and health. This is not a matter of inconvenience or insufficient pay, it is a question of long-term physical sustainability.

It is also important to emphasize that most offices are small, and frequently short-staffed. As a result, it is possible for a deputy prosecutor to be on call roughly 25% of the time over the course of a year. In high-volume counties, this workload already places a substantial and continuing strain on those attorneys. The proposed amendment risks converting what was intended to be intermittent on-call duty into something functionally indistinguishable from night shifts, at least on those nights with a heavy volume of calls.

I would further stress that after-hours decisions are often by their nature necessarily made based on initial and incomplete information. Even with careful review, additional facts frequently emerge by the next morning that affect charging or conditions. The need to reconsider a preliminary decision is not a failure of attention; it is the unavoidable reality of having to make quick decisions

on limited information, in the middle of the night, while frequently erring on the side of ensuring the people involved are safe until morning.

I recognize that some of these concerns are not universal across the State. Some counties have significantly lower call volumes than others. And some —typically younger—prosecutors can bear the burden of the extra hours better than others.

Speaking personally, I would share that my #1 concern with remaining a prosecutor for the rest of my career is the physical strain that the workload carries, and that the on-call burden is a major part of this. At the risk of over-sharing, I will admit that my own personal health is far from ideal and that I have had two doctors recommend to me that I refrain from taking any on-call shifts, at all. That is not, however, remotely realistic given our staffing levels and our county's on-call volume.

I am writing this letter for two reasons. First is to simply ask this Committee to reject the proposed changes to Rule 3(k). Second, I also hope to draw at least some attention to my concerns about the sustainability of being a career prosecutor in the State of Vermont. In my view, too often those concerns get lost in the discussions and negotiations about compensation. I am hoping that it is clear based on what I have written that the concerns I raise here are separate and distinct and require different solutions.