

STATE OF VERMONT
VERMONT SUPREME COURT
_____ TERM, 2017

Order Promulgating Amendments to Rule 5 of the Vermont Rules of Criminal Procedure

Pursuant to the Vermont Constitution, Chapter 11, Section 37, and 12 V.S.A. § 1, it is hereby ordered:

1. That Rule 5(e) of the Vermont Rules of Criminal Procedure be amended to read as follows (deleted matter struck through; new matter underlined):

RULE 5. APPEARANCE BEFORE A JUDICIAL OFFICER

(e) **Advisement of Pretrial Risk Assessment and Needs Screening; Use of Results Thereof.** The judicial officer must inform ~~the~~ an eligible defendant that:

~~(1) The court may order that the defendant participate in a pretrial risk assessment or needs screening and any recommended treatment as a condition of release; and~~

~~(2) If the defendant participates in a pretrial risk assessment or needs screening, the results will be provided to the prosecuting attorney, who upon filing a criminal charge, shall provide them to the defendant, his or her attorney, and the court; and~~

(1) If the defendant participates in a pretrial risk assessment or needs screening, the results will be provided, in accordance with 13 V.S.A. § 7554c(e), to the defendant and his or her attorney, the prosecutor, and the court; and

(2) At arraignment, the court may order the defendant to:

(A) Meet with a pretrial services coordinator on a schedule set by the court;

(B) Participate in a needs screening with a pretrial services coordinator; and

(C) Participate in a clinical assessment by a substance abuse or mental health treatment provider and follow the recommendations of the provider; and

(3) The court may order the defendant to engage in pretrial services; and

~~(3)(4)~~ (4) In accordance with 13 V.S.A. § 7554c(e), information provided by the defendant during the risk assessment or needs screening only may be used for determining bail, conditions of release, and appropriate programming for the defendant in the pending case; and

~~(4)~~(5) Information provided by the defendant during the risk assessment or needs screening will be otherwise exempt from public inspection and copying as a public record; and

~~(5)~~(6) The defendant will have use and derivative use immunity for information related to the present offense or offenses gained as a proximate result of the risk assessment or needs screening.

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Reporters Notes—2017 Amendment

Rule 5(e) was originally added in response to the passage of Act No. 195 of 2013 (Adj. Sess.), which established a system of pretrial risk assessments and needs screenings, codified in pertinent part at 13 V.S.A. § 7554c. The statute was again amended in enactment of Act No. 140 of 2015 (Adj. Sess.) to alter former language for court-ordered participation in pretrial risk assessment and needs screenings, and to prescribe that the results of pretrial assessments or screenings are to be provided directly to the defendant and his or her attorney, the prosecutor, and the court. Formerly, the statute and the rule provided that the prosecutor would receive the results, and thereafter provide them to the defendant, his or her attorney, and the court in the event that criminal charges were filed. The statute was amended yet again in Act No. ____ of 2017 (S. 134) to specify that the advisements are provided to “eligible” defendants (defined by amended subsection 13 V.S.A. § 7554c(b)(2) as defendants charged with any offense other than one for which a conviction requires registration as a sex offender, or subjects the defendant to potential life imprisonment). The referenced statutory revisions also delete reference to the term pretrial “monitor,” substituting pretrial “services coordinator,” consistent with amendments vesting the pretrial services program, formerly under auspices of the Department of Corrections, in the Office of the Attorney General.

The 2017 enactment clarifies that while the court may order a defendant to meet with a pretrial services coordinator and participate in a needs screening, to participate in a clinical assessment by a substance abuse or mental health treatment provider and follow the recommendations of the provider, and to otherwise participate in pretrial services, such orders are deemed to be in addition to conditions of release authorized by law, and do not serve to limit the discretion of the court to impose conditions of release authorized under 13 V.S.A. § 7554. However, a defendant’s failure to comply with such orders shall not constitute a violation of 13 V.S.A. § 7559 (criminal offense of violation of conditions of release).

The 2017 enactment amends subsection 7554c(e)(1) to provide further specificity as to the limitations upon the information secured in the course of a risk assessment or needs screening that may be divulged by a pretrial services coordinator. Finally, the amended statute, at § 7554c(e)(1) generally recasts the use and derivative use immunity grant as extending to “Information related to the present offense directly or indirectly derived from the risk assessment, needs screening, or other conversation with the pretrial services coordinator.” The statute retains the existing provision that “The immunity provisions of this subsection apply only to the use and derivative use of information gained as a proximate result of the risk assessment, [or] needs screening” and adds “other conversation with the pretrial services coordinator.”

The provisions of V.R.Cr.P. 5(e) are thus amended as indicated to comport with the referenced revisions of 13 V.S.A. § 7554c.

2. That these Rules, as amended, are prescribed and promulgated to become effective _____, 2017. The Reporters Notes are advisory.
3. That the Chief Justice is authorized to report these amendments 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 _____, 2017.

Paul L. Reiber, Chief Justice

Marilyn S. Skoglund, Associate Justice

Beth Robinson, Associate Justice

Harold E. Eaton, Jr., Associate Justice

Karen R. Carroll, Associate Justice