

1 H.730

2 Introduced by Representative Michelsen of Hardwick

3 Referred to Committee on

4 Date:

5 Subject: Court procedure; special procedures for DUI civil license suspensions

6 Statement of purpose of bill as introduced: This bill proposes to make the fee
7 charged to obtain a copy of the videotape in a DUI civil suspension proceeding
8 consistent in the applicable rules.

9 An act relating to the fee for obtaining a copy of the videotape in a DUI
10 civil suspension proceeding

11 It is hereby enacted by the General Assembly of the State of Vermont:

12 Sec. 1. Rule 80.5(e) of the Vermont Rules of Civil Procedure is amend to
13 read:

14 (e) Preliminary Hearing; Waiver; Discovery Limited. In every case under
15 this rule, except as set forth below, a preliminary hearing shall be held within
16 21 days of the alleged offense.

17 At the preliminary hearing, the State and the defendant shall each make
18 available for inspection all nonprivileged information and written statements in
19 their possession and control concerning the evidentiary test or tests, relation
20 back, or other matters to be contested at the hearing on the merits, including

1 without limitation the police report, expert witnesses' reports, processing
2 forms, affidavit, breath test results, police notes, and the names and addresses
3 of witnesses, except that evidence the defendant does not intend to use at the
4 hearing need not be disclosed by the defendant. A copy of a videotape made
5 of the alleged offense and subsequent processing shall be available for
6 purchase by the defendant directly from the law enforcement agency
7 responsible for initiating the action upon written request and advance payment
8 of a ~~\$15.00~~ \$50.00 fee, except that no fee shall be charged to a defendant
9 whom the court has determined to be indigent. The fees collected for
10 videotapes sold under this rule shall be allocated in the manner prescribed by
11 Rule 16 of the Vermont Rules of Criminal Procedure. Discoverable evidence
12 not known at the time of the preliminary hearing shall be disclosed to the party
13 immediately when it becomes known. Failure to provide discovery in
14 accordance with this paragraph may be subject to appropriate sanctions in the
15 discretion of the court, which may include preclusion of any witness or
16 evidence not timely disclosed.

17 A defendant to whom notice of suspension has been delivered or mailed
18 shall appear by counsel or pro se at the preliminary hearing unless, prior to the
19 hearing, the district court in the exercise of its discretion grants a request for
20 waiver of the preliminary hearing. The request for waiver may be granted only
21 if supported by affidavit establishing hardship and setting forth a telephone

1 number at which the person may be contacted during business hours to be
2 informed of the court's ruling.

3 At the preliminary hearing, the court shall ensure that the required
4 disclosure has occurred, provide the defendant with an explanation of the
5 procedures to be followed at the hearing on the merits, determine whether the
6 defendant continues to seek a hearing on the merits, and, if so, schedule the
7 hearing to be held within 21 days of the date of the preliminary hearing and not
8 more than 42 days after the date of the alleged offense without the consent of
9 the defendant or for good cause shown.

10 In extraordinary circumstances, the court may authorize use of discovery
11 pursuant to these rules in addition to that set forth in this subdivision, but
12 subject to the time constraints of this rule.

13 Sec. 2. EFFECTIVE DATE

14 This act shall take effect on passage.