



Arrest or Citation Under Rule 3 of the Vermont Rules of Criminal Procedure

- **Point of Practice:** Rule 3 of the Vermont Rules of Criminal Procedure prescribes how criminal conduct is responded to in practice.
- **Rule 3 (a) “Arrest Without a Warrant for a Felony Offense.”**
 - Law Enforcement Officer (“LEO”) may arrest without a warrant (or may issue a citation) when probable cause to believe a felony has been committed. No LEO presence requirement.
- **Rule 3 (b) “Arrest Without a Warrant for a Misdemeanor Offense Committed in the Presence of an Officer.”**
 - LEO may arrest without a warrant (or may issue a citation) when probable cause to believe a misdemeanor has been committed in LEO presence.
- **Applicable to S. 36, Rule 3 (c) “Nonwitnessed Misdemeanor Offenses.”**
 - For misdemeanors committed outside the presence of LEO, LEO will generally issue a citation to appear before a judicial officer in lieu of arrest OR LEO may arrest without a warrant if LEO has probable cause as to a series of exceptions premised upon factors and circumstances detailed by V.R.Cr.P. 3(c). For example – a non-witnessed domestic assault may result in an arrest pursuant to Rule 3(c)(8).



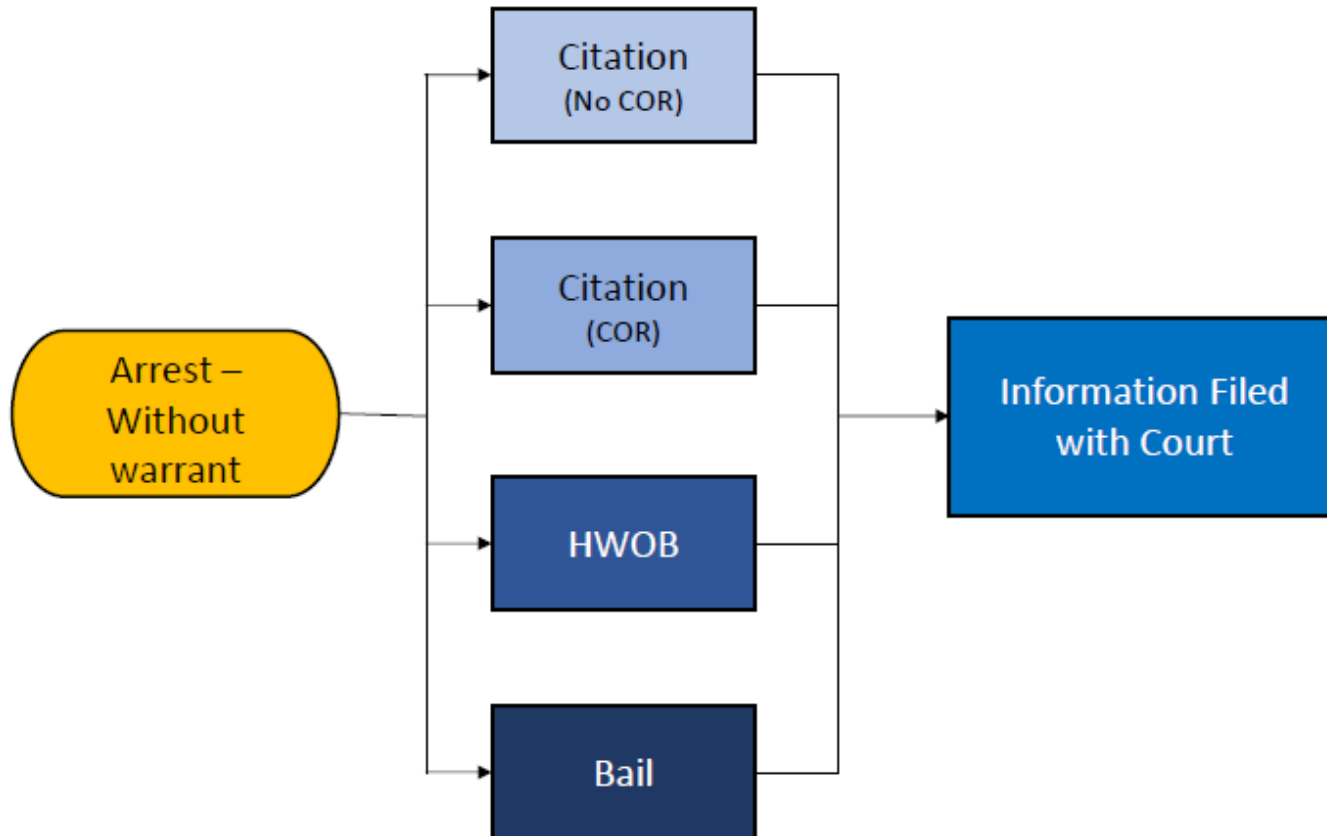
- **Point of Practice:** The list detailed under **Rule 3(c)** provides context and policy guidance to LEOs, Prosecutors, and Judges. Rule 3(c) provides the guidebook to law enforcement and prosecution for use in fast-moving situations that occur at all hours of the day. As noted by the Senator from Windham County, Sen. Hashim, law enforcement aim to memorize Rule 3.
- **RULE 3(c) Nonwitnessed Misdemeanor Offenses.** If an officer has probable cause to believe a person has committed or is committing a misdemeanor outside the presence of the LEO, LEO **may arrest the person without a warrant if the officer has probable cause to believe:**
- (1) The person has failed to provide satisfactory proof of identity.
 - (2) Arrest is necessary to obtain nontestimonial evidence upon the person or within the reach of the person, including an evidentiary test for purposes of determining blood alcohol content.
 - (3) Arrest is necessary to prevent the continuation of the criminal conduct for which the person was detained, to prevent harm to the person detained or harm to another person.
 - (4) The person has no ties to the community reasonably sufficient to assure his or her appearance, or there is a likelihood that he or she will refuse to respond to a citation.
 - (5) The person has previously failed to appear in response to a citation, summons, warrant, or other court order issued in connection with the same or another offence.
 - (6) The person has violated an order issued by a court in this state pursuant to 12 V.S.A. chapter 178, 15 V.S.A. chapter 21, or 33 V.S.A. chapter 69 or subsection 5115(e).
 - (7) The person has violated a foreign abuse prevention order issued by a court in any other state, federally-recognized Indian tribe, territory or possession of the United States, the Commonwealth or Puerto Rico or the District of Columbia.
 - **(8) The person who has committed a misdemeanor which involves an assault against a family member.**
 - (9) The person has committed a misdemeanor offense prohibited by [13 V.S.A. §§ 1376-1379](#) against a vulnerable adult as defined in [13 V.S.A. § 1375\(8\)](#).
 - (10) The person has violated [23 V.S.A. § 1201](#) (operating a vehicle under the influence), and has a prior conviction under [section 1201](#).
 - (11) The person has violated a hate-motivated crime injunction issued pursuant to chapter 33 of Title 13.
 - (12) The person has violated a condition of release that relates to: (A) a restriction on travel, including curfew; (B) the operation of a motor vehicle; or (C) direct or indirect contact or harassment of a victim or potential witness.
 - (13) The person has violated [13 V.S.A. § 1062](#) (stalking).
 - (14) The person has violated [13 V.S.A. § 1023](#) (simple assault).
 - (15) The person has violated [13 V.S.A. § 1025](#) (recklessly endangering another person).
 - (16) The person has violated [13 V.S.A. § 1304\(a\)](#) (cruelty to a child).
 - (17) The person is a sex offender who has failed to comply with the provisions of subchapter 3 of chapter 167 of Title 13 (sex offender registration and notification).



RULE 3(f) Continuation of Custody for Misdemeanor Offenses. A person who has been arrested without a warrant for a misdemeanor offense shall be released on citation if:

- (1) none of the exceptions in subsection (c) of this rule apply; or
- (2) the arrest was made pursuant to an exception in subsection (c) of this rule, and the conditions or reason for which the exception applied no longer exist and no other exception applies.

Arrest without warrant



***Source:** Chief Superior Court Judge Thomas Zonay (Presentation to House Institutions, January 2023).*