

**SUPREME COURT OF PENNSYLVANIA
CRIMINAL PROCEDURAL RULES COMMITTEE
NOTICE OF PROPOSED RULEMAKING**

Proposed Amendments of Pa.Rs.Crim.P. 490 and 790

The Criminal Procedural Rules Committee is planning to propose to the Supreme Court of Pennsylvania the amendment of Rules 490 (Procedure for Obtaining Expungement in Summary Cases; Expungement Order) and 790 (Procedure For Obtaining Expungement In Court Cases; Expungement Order) for the reasons set forth in the accompanying supplemental explanatory report. Pursuant to Pa.R.J.A. No. 103(a)(1), the proposal is being published in the *Pennsylvania Bulletin* for comments, suggestions, or objections prior to submission to the Supreme Court.

Any reports, notes, or comments in the proposal have been inserted by the Committee for the convenience of those using the rules. They neither will constitute a part of the rules nor will be officially adopted by the Supreme Court.

Additions to the text of the proposal are bolded and underlined; deletions to the text are bolded and bracketed.

The Committee invites all interested persons to submit comments, suggestions, or objections in writing to:

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Supreme Court of Pennsylvania
Criminal Procedural Rules Committee
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All communications in reference to the proposal should be received by **no later than Friday, November 13, 2015**. E-mail is the preferred method for submitting comments, suggestions, or objections; any e-mailed submission need not be reproduced and resubmitted via mail. The Committee will acknowledge receipt of all submissions.

September 21, 2015

BY THE CRIMINAL PROCEDURAL RULES COMMITTEE:

*Paul M. Yatron
Chair*

RULE 490. PROCEDURE FOR OBTAINING EXPUNGEMENT IN SUMMARY CASES;
EXPUNGEMENT ORDER.

(A) PETITION FOR EXPUNGEMENT

(1) Except as provided in Rule 320, an individual who satisfies the requirements of 18 Pa.C.S. § 9122 for expungement of a summary case may request expungement by filing a petition with the clerk of the courts of the judicial district in which the charges were disposed.

(2) The petition shall set forth:

- (a) the petitioner's name and any aliases that the petitioner has used, address, date of birth, and social security number;
- (b) the name and address of the issuing authority who accepted the guilty plea or heard the case;
- (c) the name and mailing address of the affiant as shown on the complaint or citation, if available;
- (d) the magisterial district court number;
- (e) the docket number;
- (f) the date on the citation or complaint, or the date of arrest, and, if available, the criminal justice agency that made the arrest;
- (g) the specific charges, as they appear on the charging document, to be expunged;
- (h) the disposition and, if the sentence includes a fine, costs, or restitution, whether the amount due has been paid;
- (i) the reason(s) for expungement; and
- (j) a verification by the petitioner that facts set forth in the petition are true and correct to the best of the petitioner's personal knowledge or information and belief. The verification may be by a sworn affidavit or by an unsworn written statement that the facts are verified subject to the penalties for unsworn falsification to authorities under the Crimes Code § 4904, 18 Pa.C.S. § 4904.

Additional information shall not be required by local rule or practice.

(3) **Unless the attorney for the Commonwealth agrees in writing to waive this requirement, [A] a** current copy of the petitioner's Pennsylvania State Police criminal record shall be attached to the petition. The copy shall be obtained from the Pennsylvania State Police within 60 days before filing the petition.

(4) A copy of the petition shall be served on the attorney for the Commonwealth concurrently with filing.

(B) OBJECTIONS; HEARING

(1) Within 30 days after service of the petition, the attorney for the Commonwealth shall file a consent or objection to the petition or take no action. The attorney for the Commonwealth's consent or objection shall be filed with the clerk of courts, and copies shall be served on the petitioner's attorney, or the petitioner if unrepresented.

(2) Upon receipt of the attorney for the Commonwealth's response, or no later than 14 days after the expiration of the 30-day period in paragraph (B)(1), the judge shall grant or deny the petition or shall schedule a hearing.

(3) At the hearing, if any, the parties shall be afforded an opportunity to be heard. Following the hearing, the judge promptly shall enter an order granting or denying the petition.

(4) If the judge grants the petition for expungement, the judge shall enter an order directing expungement.

(a) The order shall contain the information required in paragraph (C).

(b) **Except when the attorney for the Commonwealth has filed a consent to the petition pursuant to paragraph (B)(1), [T]**the order shall be stayed for 30 days pending an appeal. If a timely notice of appeal is filed, the expungement order is stayed pending the disposition of the appeal and further order of court.

(5) If the judge denies the petition for expungement, the judge shall enter an order denying the petition and stating the reasons for the denial.

(C) ORDER

(1) Every order for expungement shall include:

(a) the petitioner's name and any aliases that the petitioner has used, address, date of birth, and social security number;

- (b) the name and address of the issuing authority who accepted the guilty plea or heard the case;
- (c) the name and mailing address of the affiant as shown on the complaint or citation, if available;
- (d) the magisterial district court number;
- (e) the docket number;
- (f) the date on the citation or complaint, or the date of arrest, and, if available, the criminal justice agency that made the arrest;
- (g) the specific charges, as they appear on the charging document, to be expunged;
- (h) the disposition and, if the sentence includes a fine, costs, or restitution, whether the amount due has been paid;
- (i) the reason(s) for expungement; and
- (j) the criminal justice agencies upon which certified copies of the order shall be served.

Additional information shall not be required by local rule or practice.

(2) The clerk of courts shall serve a certified copy of the Order to each criminal justice agency identified in the court's Order.

COMMENT: This rule, adopted in 2010, provides the procedures for requesting and ordering expungement in summary cases. Any case in which a summary offense is filed with a misdemeanor, felony, or murder of the first, second, or third degree is a court case (see Rule 103). The petition for expungement of the summary offense in such a case would proceed under Rule 790.

See *also* Rule 320 for the procedures for expungement following the successful completion of an ARD program in a summary case and Rule 790 for court case expungement procedures.

This rule sets forth the only information that is to be included in every expungement petition and order.

Paragraph (A)(3) requires the petitioner to attach a copy of his or her criminal record to the petition. **The attorney for the Commonwealth may waive the requirement that the criminal record be attached to the petition. The rule anticipates that, in such a case, the petitioner and the attorney for the Commonwealth will reach an agreement prior to the submission of the petition to the court that the petitioners' criminal history has been confirmed by means other than the Pennsylvania State Police criminal record. The copy of the written waiver signed by the attorney for the Commonwealth must be attached to the petition in lieu of the Pennsylvania State Police criminal record.**

[A form petition is to be designed and published by the Administrative Office of Pennsylvania Courts in consultation with the Committee as provided in Rule 104.]

A form petition and form order of expungement has been created by the Administrative Office of Pennsylvania Courts, in consultation with the Committee, and is available at the following website: <http://www.pacourts.us/forms/for-the-public>.

"Petition," as used in this rule, is a "motion" for purposes of Rules 575, 576, and 577.

The "reason for expungement" in paragraph (A)(2)(i) and (C)(1)(i) means, for example, acquittal, arrest or prosecution free for five years following the conviction for that summary offense, or age.

For the procedures for filing and service of petitions, see Rule 576.

For the procedures for filing and service of orders, see Rule 114.

For purposes of this rule, "criminal justice agency" includes police departments, county detectives, and other law enforcement agencies. See *also* 18 Pa.C.S. § 9102.

Concerning standing, see *In Re Administrative Order No. 1-MD-2003*, [594 Pa. 346,] 936 A.2d 1 (Pa. 2007); *Commonwealth v. J.H.*, [563 Pa. 248,] 759 A.2d 1269 (Pa. 2000).

NOTE: Adopted September 22, 2010 effective in 90 days [.]
; amended _____, 2015, effective _____, 2015.

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COMMITTEE EXPLANATORY REPORTS:

Final Report explaining the September 22, 2010 promulgation of new Rule 490 providing the procedures for expungements in summary cases published with the Court's Order at 40 Pa.B. (_____, 2010).

Report explaining the proposed amendment regarding the stay on expungement when the Commonwealth has consented and petition and order forms published for comment at 45 Pa.B. 3978 (July 25, 2015); Supplemental Report explaining the proposed amendment regarding the agreement to waive the requirement of a PSP criminal record published for comment at 45 Pa.B. (_____, 2015).

RULE 790. PROCEDURE FOR OBTAINING EXPUNGEMENT IN COURT CASES;
EXPUNGEMENT ORDER.

(A) PETITION FOR EXPUNGEMENT

(1) Except as provided in Rule 320 and 35 P.S. § 780-119, an individual who satisfies the requirements for expungement may request expungement by filing a petition with the clerk of the courts of the judicial district in which the charges were disposed.

(2) The petition shall set forth:

(a) the petitioner's name and any aliases that the petitioner has used, address, date of birth, and social security number;

(b) the name and address of the judge of the court of common pleas who accepted the guilty plea or heard the case;

(c) the name and mailing address of the affiant as shown on the complaint, if available;

(d) the Philadelphia Municipal Court docket number or the court of common pleas docket number, whichever applies;

(e) the offense tracking number (OTN);

(f) the date on the complaint, or the date of arrest, and, if available, the criminal justice agency that made the arrest;

(g) the specific charges, as they appear on the charging document, to be expunged;

(h) the disposition and, if the sentence includes a fine, costs, or restitution, whether the amount due has been paid;

(i) the reason(s) for expungement; and

(j) a verification by the petitioner that facts set forth in the petition are true and correct to the best of the petitioner's personal knowledge or information and belief. The verification may be by a sworn affidavit or by an unsworn written statement that the facts are verified subject to the penalties for unsworn falsification to authorities under the Crimes Code § 4904, 18 Pa.C.S. § 4904.

Additional information shall not be required by local rule or practice.

(3) **Unless the attorney for the Commonwealth agrees in writing to waive this requirement, [A] a** current copy of the petitioner's Pennsylvania State Police criminal record shall be attached to the petition. The copy shall be obtained from the Pennsylvania State Police within 60 days before filing the petition.

(4) A copy of the petition shall be served on the attorney for the Commonwealth concurrently with filing.

(B) OBJECTIONS; HEARING

(1) Within 60 days after service of the petition, the attorney for the Commonwealth shall file a consent or objection to the petition or take no action. The attorney for the Commonwealth's consent or objection shall be filed with the clerk of courts, and copies shall be served on the petitioner's attorney, or the petitioner if unrepresented.

(2) Upon receipt of the attorney for the Commonwealth's response, or no later than 14 days after the expiration of the 60-day period in paragraph (B)(1), the judge shall grant or deny the petition or shall schedule a hearing.

(3) At the hearing, if any, the parties shall be afforded an opportunity to be heard. Following the hearing, the judge promptly shall enter an order granting or denying the petition.

(4) If the judge grants the petition for expungement, the judge shall enter an order directing expungement.

(a) The order shall contain the information required in paragraph (C).

(b) **Except when the attorney for the Commonwealth has filed a consent to the petition pursuant to paragraph (B)(1), [T]t**he order shall be stayed for 30 days pending an appeal. If a timely notice of appeal is filed, the expungement order is stayed pending the disposition of the appeal and further order of court.

(5) If the judge denies the petition for expungement, the judge shall enter an order denying the petition and stating the reasons for the denial.

(C) ORDER

(1) Every order for expungement shall include:

(a) the petitioner's name and any aliases that the petitioner has used, address, date of birth, and social security number;

- (b) the name and address of the judge of the court of common pleas who accepted the guilty plea or heard the case;
- (c) the name and mailing address of the affiant as shown on the complaint, if available;
- (d) the Philadelphia Municipal Court docket number or the court of common pleas docket number, whichever applies;
- (e) the offense tracking number (OTN);
- (f) the date on the complaint, or the date of arrest, and, if available, the criminal justice agency that made the arrest;
- (g) the specific charges, as they appear on the charging document, to be expunged;
- (h) the disposition and, if the sentence includes a fine, costs, or restitution, whether the amount due has been paid;
- (i) the reason(s) for expungement; and
- (j) the criminal justice agencies upon which certified copies of the order shall be served.

Additional information shall not be required by local rule or practice.

- (2) The clerk of courts shall serve a certified copy of the Order to each criminal justice agency identified in the court's Order.

COMMENT: This rule, adopted in 2010, provides the procedures for requesting and ordering expungement in court cases. Any case in which a summary offense is filed with a misdemeanor, felony, or murder of the first, second, or third degree is a court case (see Rule 103). The petition for expungement of the summary offense in such a case would proceed under this rule.

See *also* Rule 320 for the procedures for expungement following the successful completion of an ARD program in a court case, Rule 490 for summary case expungement procedures, and 35 P.S. § 780-119 for expungement

procedures under the Controlled Substance, Drug, Device, and Cosmetic Act.

This rule sets forth the only information that must be included in every expungement petition and order.

Paragraph (A)(3) requires the petitioner to attach a copy of his or her criminal record to the petition. **The attorney for the Commonwealth may waive the requirement that the criminal record be attached to the petition. The rule anticipates that, in such a case, the petitioner and the attorney for the Commonwealth will reach an agreement prior to the submission of the petition to the court that the petitioners' criminal history has been confirmed by means other than the Pennsylvania State Police criminal record. The copy of the written waiver signed by the attorney for the Commonwealth must be attached to the petition in lieu of the Pennsylvania State Police criminal record.**

An order for expungement under the Controlled Substance, Drug, Device, and Cosmetic Act, 35 P.S. § 780-119, also must include the information in paragraph (C).

[A form petition is to be designed and published by the Administrative Office of Pennsylvania Courts in consultation with the Committee as provided in Rule 104.]

A form petition and form order of expungement has been created by the Administrative Office of Pennsylvania Courts, in consultation with the Committee, and is available at the following website: <http://www.pacourts.us/forms/for-the-public>.

"Petition" as used in this rule is a "motion" for purposes of Rules 575, 576, and 577.

The "reason for expungement" in paragraph (A)(2)(i) and (C)(1)(i) means, for example, acquittal or age.

For the procedures for filing and service of petitions, see Rule 576.

For the procedures for filing and service of orders, see Rule 114.

When a summons instead of an arrest warrant is issued pursuant to Rule 519, the date of the summons constitutes the "date of arrest" for purposes of paragraph (A)(2)(f).

For purposes of this rule, "criminal justice agency" includes police departments, county detectives, and other law enforcement agencies. See also 18 Pa.C.S. § 9102.

Concerning standing, see *In Re Administrative Order No. 1-MD-2003*, [594 Pa. 346,] 936 A.2d 1 (Pa. 2007); *Commonwealth v. J.H.*, [563 Pa. 248,] 759 A.2d 1269 (Pa. 2000).

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SUPPLEMENTAL REPORT

Proposed amendment of Pa.Rs.Crim.P. 490 and 790

CONTENTS OF EXPUNGEMENT PETITIONS AND ORDERS

Recently, the Committee had considered suggested amendments to the procedures contained in Rules 490 (Procedure for Obtaining Expungement in Summary Cases; Expungement Order) and 790 (Procedure For Obtaining Expungement In Court Cases; Expungement Order). Proposed rule changes were published that would have (1) removed the requirement for including the petitioner's Social Security number in the petition and order, (2) eliminate the 30-day stay on the expungement order during which time the Commonwealth may appeal cases in which the Commonwealth has consented to the expungement, and (3) add a cross-reference to the *Comments* of both rules to the webpage where the AOPC forms for expungement petitions and orders are found. See 45 Pa.B. 3978 (July 25, 2015), and

<http://www.pacourts.us/assets/uploads/Resources/Documents/Publication%20Report%20Rule%20490%20790%20Expungements%2000000003%20-%20004601.pdf?cb=ddd57>

Based on responses to this publication, the Committee has decided to make changes to the proposal. The Committee received a number of complaints that the length of time that it takes for a petitioner to receive the required Pennsylvania State Police (PSP) criminal record reports is excessive. It was suggested that this requirement be eliminated or modified so that the PSP criminal history could be replaced with an alternative such as the AOPC web docket sheets. The Committee concluded that the PSP report represents the best available criminal history record information and therefore the requirement would be retained in this proposal.

However, the Committee has determined that there are jurisdictions, such as Philadelphia, in which very large numbers of expungement petitions are being filed and, as a result, protocols have been developed between petitioners and district attorney's offices to speed the process of expungement in a large majority of cases. These include means of alternative confirmation of a petitioner's criminal history. The Committee concluded that such agreements are beneficial and therefore, the current

proposal would provide that the requirement for the attachment of the PSP report may be waived by the attorney for the Commonwealth. Since the approval of the court is required for any expungement petition, a written copy of the waiver must be attached to the petition in lieu of the PSP report. The *Comment* would be revised to provide further detail regarding this option.

As noted in the prior publication, the proposal to remove the requirement to include the petitioner's Social Security number in the petition and order originated from a meeting between Committee members and certain representatives of the PSP who had suggested this change. Upon publication, however, the Committee received an official statement from the PSP indicating that the Social Security number is still necessary for proper identification of the petitioners' cases and removal of the requirement would be detrimental to the processing of expungement orders. Therefore, this proposal has been removed.

The other two provisions of the original proposal, elimination of the stay on the order when the Commonwealth consents to expungement and addition of cross-references to the AOPC forms, proved uncontroversial and so have been retained in the current version of the proposal.