

**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 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:

*Jeffrey M. Wasileski, Counsel
Supreme Court of Pennsylvania
Criminal Procedural Rules Committee
601 Commonwealth Avenue, Suite 6200
Harrisburg, PA 17106-2635
fax: (717) 231-9521
e-mail: criminalrules@pacourts.us*

All communications in reference to the proposal should be received by **no later than Friday, September 4, 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.

July 15, 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, **and** 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) 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, **and** 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.

[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 (2007); *Commonwealth v. J.H.*, 563 Pa. 248, 759 A.2d 1269 (2000).

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

* * * * *

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. (, 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, **and** 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) 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]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, **and** 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.

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 (2007); *Commonwealth v. J.H.*, 563 Pa. 248, 759 A.2d 1269 (2000).

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

* * * * *

COMMITTEE EXPLANATORY REPORTS:

Final Report explaining the September 22, 2010 promulgation of new Rule 790 providing the procedures for expungements in court 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. (_____, 2015).

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). Some of these suggestions related to complaints that it was taking lengthy amounts of time for the Pennsylvania State Police (PSP) to expunge records and to provide criminal history reports required for the expungement petition. As a result, Committee members met with representatives of the PSP to discuss these problems and possible rule changes that might help alleviate the problems. From these discussions, it appeared that most of the problems were of an administrative nature not amenable to correction by rule amendment. However, the PSP representatives suggested two possible changes that might assist their processing of expungement requests.

One of the things that was claimed to contribute to delay was that each county used a different type of expungement order. The PSP suggested that requiring a standard expungement order would help with this problem. The Committee considered this suggestion and noted that the AOPC has developed form petitions and orders for expungements under Rules 490 and 790 that are publically available on the UJS website. Additionally, the Committee noted that this problem has not been reported from other agencies that process large numbers of expungement orders including the AOPC.

The Committee ultimately rejected the idea of requiring one particular form. There was a concern that a petition could be rejected solely on the basis of not being the approved form while still containing the other information necessary for an expungement. The *Comments* to Rule 490 and 790 already mention the AOPC forms. The Committee concluded that adding a cross-reference to the webpage where the AOPC forms for expungement petitions and orders are found would be helpful to encourage use of the standard forms.

The PSP representatives also suggested removing the requirement of including the defendant's social security number in the expungement order due to identity theft concerns. Prior to the adoption of the current expungement rules, the Committee had considered removing this requirement and had, in 2008, recommended to the Court that the requirement for the defendant's social security number be removed. However, the Committee withdrew that recommendation as a result of communications from the State Police stating that the social security number was needed to ensure the defendant whose record was to be expunged was properly identified. This was particularly so for summary case expungements, because there were fewer defendant- and case-identifiers in such cases. Since that time, it appears that better processes for identifying particular defendants have been put in place and the social security number now is not needed. Therefore, this requirement would be removed from both expungement rules. Since the social security number would no longer be required for the order, similar amendments would remove the requirement to include the social security number in the expungement petition.

Another suggestion received by the Committee was to eliminate, in those cases in which the Commonwealth has filed a consent to the expungement, the 30-day stay on the expungement order provided in Rules 490(B)(4)(b) and 790(B)(4)(b) during which time the Commonwealth may appeal. The consent provisions in Rule 490(B)(1) and 790(B)(1) recognize that the Commonwealth may join in the desire to expedite an expungement. Some of the members believed that it is logical that the stay provision be curtailed where the Commonwealth has consented. On the other hand, some members were concerned about the rare case where the Commonwealth discovers reasons for appeal after having given consent and the stay period is the last chance for the Commonwealth to correct such a mistake before a record is eliminated. The Committee ultimately concluded that the Commonwealth has a responsibility to thoroughly investigate the defendant's circumstances before consenting to expungement in the first place and agreed to add a provision precluding the stay in cases in which the Commonwealth has consented to the expungement.