

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

Proposed Amendment of Pa.R.Crim.P. 564

The Criminal Procedural Rules Committee is planning to propose to the Supreme Court of Pennsylvania the amendment of Rules 564 (Amendment of Information) 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, January 29, 2016**. 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.

December 10, 2015

BY THE CRIMINAL PROCEDURAL RULES COMMITTEE:

*Paul M. Yatron
Chair*

RULE 564. AMENDMENT OF INFORMATION.

The court may allow an information to be amended, **[when there is a defect in form, the description of the offense(s), the description of any person or any property, or the date charged, provided the information as amended does not charge an additional or different offense] provided that the information as amended does not charge offenses arising from a different set of events and that the amended charges are not so materially different from the original charge that the defendant would be unfairly prejudiced.** Upon amendment, the court may grant postponement of trial or other relief as is necessary to the interests of justice.

COMMENT: The rule was amended in 2015 to more accurately reflect the interpretation of this rule that has developed since it first was adopted in 1974. See Commonwealth v. Brown, 727 A.2d 541 (Pa. 1999). See also Commonwealth v. Beck, 78 A.3d. 656 (Pa. Super 2013); Commonwealth v. Page, 965 A.2d 1212 (Pa. Super. 2009); Commonwealth v. Sinclair, 897 A.2d 1218 (Pa. Super. 2006).

NOTE: Rule 229 adopted February 15, 1974, effective immediately; renumbered Rule 564 and amended March 1, 2000, effective April 1, 2001 [.] ; **amended _____, 2016, effective _____, 2016.**

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COMMITTEE EXPLANATORY REPORTS:

Final Report explaining the March 1, 2000 reorganization and renumbering of the rules published with the Court's Order at 30 Pa.B. 1478 (March 18, 2000).

Report explaining the proposed amendment regarding the standard for amendment published for comment at 46 Pa.B. (_____, 2016).

REPORT

Proposed amendment of Pa.R.Crim.P. 564

ADDITION OF OFFENSES TO THE CRIMINAL INFORMATION

Recently, the Committee had been presented with a suggestion that Rule 564 (Amendment of Information) be amended. Rule 564 provides that the court may allow an information to be amended so long as the amended information “does not charge an additional or different offense.” It was suggested that case law has interpreted the rule more broadly than a plain reading of the language would indicate. The Committee has concluded this to be the case and is proposing that the rule be changed to reflect this broader interpretation.

Rule 564 was adopted as Rule 229 in 1974. Except for renumbering as part of the general reorganization of the Rules of Criminal Procedure in 2000, the language of the rule has remained virtually unchanged since its initial adoption.

There has been a considerable body of case law interpreting whether amendments that add new offenses were permissible under the rule. As defined in these cases, the purpose of Rule 564 (or then-Rule 229) is to ensure that a defendant is fully apprised of the charges, and to avoid prejudice to the defendant by prohibiting the last minute addition of alleged criminal acts of which the defendant is uninformed. See, e.g. *Commonwealth v. Lawton*, 414 A.2d 658 (Pa. Super. 1979). Courts apply the rule allowing amendment of a defective information with an eye toward its underlying purposes and with a commitment to do justice rather than be bound by a literal or narrow reading of the procedural rules. *Commonwealth v. Roser*, 914 A.2d 447 (Pa. Super. 2006), *appeal denied* 927 A.2d 624 (Pa. 2007). In effecting this purpose, the courts employ the test of whether the crimes specified in the original information involved the same basic elements and evolved out of the same factual situation as the crimes specified in the amended information. If so, the defendant is deemed to have been placed on notice regarding the alleged criminal conduct. However, if the amended provision alleges a different set of events, or the elements or defense to the amended crime are materially different from the elements or defense to the crime originally charged, so that the defendant would be prejudiced by the change, then amendment is

not permissible. *Commonwealth v. Page*, 965 A.2d 1212 (Pa. Super. 2009). See also, *Commonwealth v. Beck*, 78 A.3d 656 (Pa. Super 2013). Factors that the trial court must consider in determining whether a defendant was prejudiced by an amendment include: (1) whether the amendment changes the factual scenario supporting the charges; (2) whether the amendment adds new facts previously unknown to the defendant; (3) whether the entire factual scenario was developed during a preliminary hearing; (4) whether the description of the charges changed with the amendment; (5) whether a change in defense strategy was necessitated by the amendment; and (6) whether the timing of the Commonwealth's request for amendment allowed for ample notice and preparation. *Commonwealth v. Sinclair*, 897 A.2d 1218 (Pa. Super. 2006), citing *Commonwealth v. Grekis*, 601 A.2d 1284 (Pa. Super. 1992).

The most recent Pennsylvania Supreme Court case dealing with Rule 564 is *Commonwealth v. Brown*, 727 A.2d 541 (Pa. 1999), which held that, since the purpose of the information is to apprise the defendant of the charges against him so that he may have a fair opportunity to prepare a defense, an amendment should be precluded only when the variance between the original and the new charges prejudices an appellant by, for example, rendering defenses which might have been raised against the original charges ineffective with respect to the substituted charges. In this case, an amendment of the information changing the charge from one of sexual assault using force to one of sexual assault on an unconscious person was not proper because it prejudiced the defendant due to the differences in potential defenses available.

Based on the foregoing analysis, the Committee has concluded that the language of the rule does not accurately reflect the correct standards, as developed by the courts, for allowance of amendment of the information. Therefore, the language of the rule would be amended to reflect that a court may allow the information to be amended provided that the amended information does not “charge offenses arising from a different set of events and that the amended charges are not so materially different from the original charge such that the defendant would be unfairly prejudiced.”