

**SUPREME COURT OF PENNSYLVANIA
CRIMINAL PROCEDURAL RULES COMMITTEE**

NOTICE OF PROPOSED RULEMAKING

Proposed Amendment of Pa.R.Crim.P. 632.

The Criminal Procedural Rules Committee is considering proposing to the Supreme Court the amendment of Pa.R.Crim.P. 632 for the reasons set forth in the accompanying publication report. Pursuant to Pa.R.J.A. 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 report accompanying this proposal was prepared by the Committee to indicate the rationale for the proposed rulemaking. It will neither constitute a part of the rules nor be 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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All communications in reference to the proposal should be received by **Monday, May 1, 2023**. 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.

By the Criminal Procedural Rules Committee,

Stefanie Salavantis
Chair

Rule 632. Juror Information Questionnaire.

[(A)](a) Prior to *voir dire*:

- (1) Each prospective juror shall complete and verify the standard, confidential juror information questionnaire required by **[paragraph (H)] subdivision (i)** of this rule, and any supplemental questionnaire provided by the court.
- (2) The president judge shall designate the method for distributing and maintaining the juror information questionnaires.
- (3) The trial judge and the attorneys shall receive copies of the completed questionnaires for use during *voir dire*, and the attorneys shall be given a reasonable opportunity to examine the questionnaires.

[(B)](b) The information provided by the jurors on the questionnaires shall be confidential and limited to use for the purpose **[of jury selection only] or pursuant to subdivision (h)**. Except for disclosures made during *voir dire*, or unless the trial judge otherwise orders pursuant to **[paragraph (F) this] subdivision (f), non-aggregated, personally identifiable** information shall only be made available to the trial judge, the defendant**[(s)]** and the attorney**[(s)]** for the defendant**[(s)]**, and the attorney for the Commonwealth.

[(C)](c) The original and any copies of the juror information questionnaires shall not constitute a public record.

[(D)](d) Juror information questionnaires shall be used in conjunction with the examination of the prospective jurors conducted by the judge or counsel pursuant to Rule 631(E), **or for the purposes of subdivision (h)**.

[(E)](e) If the court adjourns before *voir dire* is completed, the trial judge may order that the attorneys be permitted to retain their copies of the questionnaires during the adjournment. When copies of the questionnaires are permitted to be taken from the courtroom, the copies:

- (1) shall continue to be subject to the confidentiality requirements of this rule, and to the disclosure requirements of **[paragraph (B)] subdivision (b)**; and
- (2) shall not be duplicated, distributed, or published.

The trial judge may make such other order to protect the copies as is appropriate.

[(F)](f)The original questionnaires of all impaneled jurors shall be retained in a sealed file and shall be destroyed upon completion of the jurors' service, unless otherwise ordered by the trial judge **or retained for the purposes of subdivision (h)**. Upon completion of *voir dire*, all copies of the questionnaires shall be returned to the trial judge and destroyed, unless otherwise ordered by the trial judge at the request of the defendant**[(s)]**, the attorney**[(s)]** for the defendant**[(s)]**, or the attorney for the Commonwealth, **or unless retained for the purposes of subdivision (h)**.

[(G)](g)**Subject to subdivision (h)**, **[The] the** original and any copies of questionnaires of all prospective jurors not impaneled or not selected for any trial shall be destroyed upon completion of the jurors' service.

(h) **Nothing in this rule shall prevent judicial districts from individually electing to retain the information provided by prospective or impaneled jurors on their questionnaires for the purpose of assessing their district's juror demographics as it relates to the constitutional guarantee that juries be drawn from a representative cross-section of the community, provided that such information may only be retained or published by the districts in the aggregate and in a manner that does not contain or reveal any personally identifiable information of the prospective or impaneled jurors.**

[(H)](i)The form of the juror information questionnaire shall be as follows:

(The remainder of this page has been intentionally left blank.)

**JUROR INFORMATION QUESTIONNAIRE
CONFIDENTIAL; NOT PUBLIC RECORD**

NAME: LAST		FIRST		MIDDLE INITIAL	
CITY/TOWNSHIP			COMMUNITIES IN WHICH YOU RESIDED OVER THE PAST 10 YEARS:		
MARITAL STATUS: MARRIED <input type="checkbox"/>		SINGLE <input type="checkbox"/>	SEPARATED <input type="checkbox"/>	DIVORCED <input type="checkbox"/>	WIDOWED <input type="checkbox"/>
OCCUPATION			OCCUPATION(S) PAST 10 YEARS		
OCCUPATION OF SPOUSE/OTHER			PAST 10 YEARS OCCUPATION OF SPOUSE/OTHER		
NUMBER OF CHILDREN			[RACE: <input type="checkbox"/> WHITE <input type="checkbox"/> BLACK <input type="checkbox"/> HISPANIC <input type="checkbox"/> OTHER]		
<u>RACE (Circle all that apply)</u>			<u>American Indian or Alaska Native: A person having origins in any of the original peoples of North and South America (including Central America) and who maintains tribal affiliation or community attachment.</u> <u>Asian: A person having origins in any of the original peoples of the Far East, Southeast Asia, or the Indian subcontinent including, for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand, and Vietnam.</u> <u>Black or African American: A person having origins in any of the Black racial groups of Africa.</u> <u>Native Hawaiian or Other Pacific Islander: A person having origins in any of the original peoples of Hawaii, Guam, Samoa, or other Pacific Islands.</u> <u>White: A person having origins in any of the original peoples of Europe, the Middle East, or North Africa.</u>		
<u>ETHNICITY (Circle One)</u>			<u>Hispanic or Latino: A person of Cuban, Mexican, Puerto Rican, South or Central American, or other Spanish culture or origin, regardless of race.</u> <u>Not Hispanic or Latino.</u>		
<u>GENDER (Circle One)</u>			<u>Male</u> <u>Female</u> <u>Other _____</u>		
LEVEL OF EDUCATION YOURS		SPOUSE/OTHER		CHILDREN	

- | | YES | NO |
|--|--|--|
| 1. Have you ever served as a juror before?
If so, were you ever on a hung jury? | <input type="checkbox"/>
<input type="checkbox"/> | <input type="checkbox"/>
<input type="checkbox"/> |
| 2. Do you have any religious, moral, or ethical beliefs that would prevent you from sitting in judgment in a criminal case and rendering a fair verdict? | <input type="checkbox"/> | <input type="checkbox"/> |
| 3. Do you have any physical or psychological disability that might interfere with or prevent you from serving as a juror? | <input type="checkbox"/> | <input type="checkbox"/> |
| 4. Have you or anyone close to you ever been the victim of a crime? | <input type="checkbox"/> | <input type="checkbox"/> |
| 5. Have you or anyone close to you ever been charged with or arrested for a crime, other than a traffic violation? | <input type="checkbox"/> | <input type="checkbox"/> |
| 6. Have you or anyone close to you ever been an eyewitness to a crime, whether or not it ever came to court? | <input type="checkbox"/> | <input type="checkbox"/> |
| 7. Have you or anyone close to you ever worked in law enforcement or the justice system? This includes | | |

- police, prosecutors, attorneys, detectives, security or prison guards, and court related agencies.
8. Would you be more likely to believe the testimony of a police officer or any other law enforcement officer because of his or her job?
9. Would you be less likely to believe the testimony of a police officer or other law enforcement officer because of his or her job?
10. Would you have any problem following the court's instruction that the defendant in a criminal case is presumed to be innocent unless and until proven guilty beyond a reasonable doubt?
11. Would you have any problem following the court's instruction that the defendant in a criminal case does not have to take the stand or present evidence, and it cannot be held against the defendant if he or she elects to remain silent or present no evidence?
12. Would you have any problem following the court's instruction in a criminal case that just because someone is arrested, it does not mean that the person is guilty of anything?
13. In general, would you have any problem following and applying the judge's instruction on the law?
14. Would you have any problem during jury deliberations in a criminal case discussing the case fully but still making up your own mind?
15. Are you presently taking any medication that might interfere with or prevent you from serving as a juror?
16. Is there any other reason you could not be a fair juror in a criminal case?

I hereby certify that the answers on this form are true and correct. I understand that false answers provided herein subject me to penalties under 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

SIGNATURE _____ DATE _____

(The remainder of this page has been intentionally left blank.)

Comment: This rule requires that, prior to *voir dire* in any criminal case, the prospective jurors, including prospective alternate jurors, must complete the standard, confidential juror information questionnaire required in **[paragraph (H)] subdivision (i)**, and that the trial judge and attorneys must automatically be given copies of the completed questionnaires in time to examine them before *voir dire* begins. Compare Rule 625, which provides that attorneys must request copies of juror qualification forms for the jurors summoned in their case.

Under **[paragraph (A)(2)] subdivision (a)(2)**, it is intended that the president judge of each judicial district may designate procedures for submitting the questionnaire to the jurors and maintaining them upon completion. For example, some districts may choose to mail them along with their jury qualification form, while others may desire to have the questionnaire completed by the panel of prospective jurors when they report for jury service. This rule, however, mandates that the questionnaires be completed by each prospective juror to a criminal case.

Each judicial district must provide the jurors with instructions for completing the form[,] and inform them of the procedures for maintaining confidentiality of the questionnaires. It is expected that each judicial district will inform the jurors that the questionnaires will only be used for jury selection **or for the limited purposes provided in subdivision (h)**.

Pursuant to **[paragraph (C)] subdivision (c)**, the juror information questionnaire is not a public record and therefore may not be combined in one form with the qualification questionnaire required by Rule 625. However, nothing in this rule would prohibit the distribution of both questionnaires in the same mailing.

Under **[paragraph (B)] subdivision (b)**, the **disaggregated** information provided by the jurors **that contains their individualized, personally identifiable information** is confidential and may be used only for the purpose of jury selection. Except for disclosures made during *voir dire*, **[the] such** information in the completed questionnaires may not be disclosed to anyone except the trial judge, the attorneys and any persons assisting the attorneys in jury selection, such as a member of the trial team or a consultant hired to assist in jury selection, the defendant, and any court personnel designated by the judge. Even once disclosed to such persons, however, the information in the questionnaires remains confidential. **Nothing in this rule is intended to prohibit or discourage the collection and retention of aggregated juror demographic data pursuant to subdivision (h)**.

Although the defendant may participate in *voir dire* and have access to information from the questionnaire, nothing in this rule is intended to allow a defendant to have a copy of the questionnaire.

[Paragraph (D)] Subdivision (d) makes it clear that juror information questionnaires are to be used in conjunction with the oral examination of the prospective jurors[,] and are not to be used as a substitute for the oral examination. Juror information questionnaires facilitate and expedite the *voir dire* examination by providing the trial judge and attorneys with basic background information about the jurors, thereby eliminating the need for many commonly asked questions. Although nothing in this rule is intended to preclude oral questioning during *voir dire*, the scope of *voir dire* is within the discretion of the trial judge. See, e.g., *Commonwealth v. McGrew*, 100 A.2d 467 (Pa. 1953) and Rule 631(E).

[Paragraph (E)] Subdivision (e) provides, upon order of the trial judge, that only attorneys in the case, subject to strict limitations imposed by the court, may retain their copies of the juror information questionnaires during adjournment.

[Paragraph (F)] Subdivision (f) provides the procedures for the collection and disposition of the original completed questionnaires and copies for impaneled jurors. Once *voir dire* is concluded, all copies of the completed questionnaires are returned to the official designated by the president judge pursuant to **[paragraph (A)(2),] subdivision (a)(2)** and destroyed promptly **or retained for the limited purposes of subdivision (h)**. The original completed questionnaires of the impaneled jury must be retained in a sealed file in the manner prescribed pursuant to **[paragraph (A)(2),] subdivision (a)(2)** and destroyed upon the conclusion of the juror's service, unless the trial judge orders otherwise **or unless retained for the limited purposes of subdivision (h)**. Because the information in the questionnaires is confidential, the trial judge should only order retention of the original questionnaires under unusual circumstances. Such a circumstance would arise, for example, if the questionnaires were placed at issue for post-verdict review. In that event, the judge would order the preservation of the questionnaires in order to make them part of the appellate record. **Nothing in this rule is intended to prevent the trial or president judge, court administrator, or other relevant official from retaining the original questionnaires for the limited purposes of subdivision (h)**.

Under **[paragraph (G)] subdivision (g)**, the original and any copies of the questionnaires of those jurors not impaneled and not selected for any jury must be destroyed **[without exception]** upon completion of their service **unless retained for the limited purposes of subdivision (h)**.

There may be situations in which the attorneys and judge would want to prepare an individualized questionnaire for a particular case. In this situation, a supplemental questionnaire, **as permitted by subdivision (a)(1)**, would be used together with the standard juror information questionnaire, and the disclosure and retention provisions in **[paragraphs (B) and (F)] subdivisions (b) and (f)** would apply. **[See paragraph (A)(1).]**

[NOTE: Former Rule 1107 rescinded September 28, 1975. Present Rule 1107 adopted September 15, 1993, effective January 1, 1994; suspended December 17, 1993 until further Order of the Court; the September 15, 1993 Order is superseded by the September 18, 1998 Order, and present Rule 1107 adopted September 18, 1998, effective July 1, 1999; renumbered Rule 632 and amended March 1, 2000, effective April 1, 2001; amended May 2, 2005, effective August 1, 2005; amended July 7, 2015, effective October 1, 2015.

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COMMITTEE EXPLANATORY REPORTS:

Final Report explaining the September 18, 1998 adoption of new Rule 1107 concerning juror information questionnaires published with the Court's Order at 29 Pa.B. 4887 (October 3, 1999).

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).

Final Report explaining the May 2, 2005 amendments to the mandatory juror information questionnaire form published at 35 Pa.B. 2870 (May 14, 2005).

Final Report explaining the July 7, 2015 amendments correcting cross-references to Rules 625 and 631 published with the Court's Order at 45 Pa.B. 3985 (July 25, 2015).]

**SUPREME COURT OF PENNSYLVANIA
CRIMINAL PROCEDURAL RULES COMMITTEE**

PUBLICATION REPORT

Proposed Amendment of Pa.R.Crim.P. 632.

The Criminal Procedural Rules Committee is considering proposing to the Supreme Court the amendment of Pa.R.Crim.P. 632. The proposed amendment would revise the juror information questionnaire by increasing the number of categories of race and ethnicity from which a juror may choose and by including a query for gender. The rule would also be amended to explicitly permit judicial districts to retain information provided by prospective and impaneled jurors so long as such information is only retained in the aggregate.

Currently, Pa.R.Crim.P. 632(H) sets forth the juror information questionnaire. Among sections seeking biographical information, e.g., name, city, and marital status, there is a section soliciting prospective jurors to identify their race. The form presents the juror with four choices: “white,” “black,” “Hispanic,” and “other.” Each choice is accompanied by a corresponding checkbox. The “other” checkbox, however, does not have an accompanying space for the juror to disclose a specific race. The questionnaire does not solicit prospective or impaneled jurors to identify their ethnicity or their gender. This current version of the juror information questionnaire containing a “race box” was first adopted in 1998. See 28 Pa.B. 4883 (October 3, 1998). The purpose of the questionnaire was to “reduce otherwise lengthy *voir dire* practices [] and ensure that basic information about the jurors is known to the parties.” As governed by Pa.R.Crim.P. 632, the information contained in the questionnaires is made available only to the trial judge, the defendant, the defendant’s attorney, and the attorney for the Commonwealth and only for the purpose of jury selection. Pa.R.Crim.P. 632(B). The questionnaires are to be returned to the judge at the completion of a juror’s service and destroyed.

The Committee’s review was prompted by an observation that the questionnaire’s options for race and ethnicity were too limited. Additionally, the Pennsylvania Interbranch Commission for Gender, Racial and Ethnic Fairness requested that the rule be amended to permit judicial districts to retain aggregated, non-identifiable juror demographic information for the purpose of assessing that juries are drawn from a representative cross-section of the community.

With respect to increasing the number of categories of race and ethnicity from which a juror may choose, the proposed amendment was informed, in part, by the importance of gathering such information for *Batson* challenges. In *Batson v. Kentucky*, 476 U.S. 79 (1986), the Supreme Court of the United States held that “the Equal Protection Clause forbids the prosecutor to challenge potential jurors solely on account

of their race or on the assumption that black jurors as a group will be unable impartially to consider the State's case against a black defendant." *Batson*, 476 U.S. at 89. See *Commonwealth v. Reid*, 99 A.3d 470, 484 (Pa. 2014). The Equal Protection Clause of the 14th Amendment to the United States Constitution forbids the exercise of peremptory challenges to potential jurors on the basis of gender or ethnicity as well. See *J.E.B. v. Alabama ex rel. T.B.*, 511 U.S. 127, 129 (1994) ("We hold that gender, like race, is an unconstitutional proxy for juror competence and impartiality."); *Commonwealth v. Uderra*, 862 A.2d 74, 84 (Pa. 2004) (ethnicity). Beyond *Batson*, litigants have the right to be informed concerning the make-up of the jury and to be tried by a jury of their peers.

In crafting new categories, the Committee reviewed the 2020 U.S. Census questionnaire as well as the practices of other jurisdictions and courts. The Committee acknowledged that there are a variety of categories and subcategories in use based on the purpose of the data collection. Ultimately, the Committee concluded that the questionnaire should include sufficient categories of race and ethnicity for use in a *Batson* challenge and include gender to provide potentially relevant *Batson* information.

To permit the retention of data from the questionnaires, the Committee proposes subdivision (h), which would permit retention of juror data, provided the data is retained in the aggregate and in a manner that does not contain or reveal any personally identifiable information of the prospective or impaneled jurors. Please note, subdivision (h) is intended to permit the retention of this information; it is not intended to require retention. Whether that data is retained is an administrative, rather than procedural, matter.

The Committee invites all comments, concerns, and suggestions.