

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

NOTICE OF PROPOSED RULEMAKING

Proposed Adoption of Pa.R.Crim.P. 124.

The Criminal Procedural Rules Committee is considering proposing to the Supreme Court the adoption of Pa.R.Crim.P. 124 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

—The following text is entirely new—

Rule 124. Waiver of Fees and Costs.

A defendant may seek or obtain a waiver of any fees or costs pursuant to Pa.R.J.A. 1990 except for fees, costs, or other financial assessments imposed as a result of conviction.

Comment: Pennsylvania Rule of Judicial Administration 1990 (Application to Waive Fees and Costs) sets forth the procedure for seeking or obtaining a waiver of the payment of filing fees. The eligibility criteria at Pa.R.J.A. 1990(b) should inform the defendant whether to proceed by application or *praecipe*.

For an expungement, an application for a waiver or a *praecipe* of counsel should be filed at the same docket containing the records the defendant seeks to expunge.

**SUPREME COURT OF PENNSYLVANIA
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Publication Report

Proposed Pa.R.Crim.P. 124

The Committee previously published proposed amendments to Pa.R.Crim.P. 460, 490, 490.1, 790, and 790.1. Those proposed amendments would have extended the application of proposed Pa.R.J.A. 1990 to permit the waiver of fees and costs for a notice of appeal from a magisterial district court and for expungement and limited access proceedings. See 52 Pa.B. 2561 (April 30, 2022). Comments indicated there are myriad filing fees imposed in criminal proceedings throughout Pennsylvania, including fees to file a motion, a PCRA petition, a *habeas* petition, for *certiorari*, and to obtain copies of criminal records. Instead of the previously proposed amendments, the adoption of a general rule that would permit the application of Pa.R.J.A. 1990 to obtain a waiver of fees and costs — with exceptions for costs, fees, and other financial assessments imposed as a result of a conviction — was suggested.

In response to this suggestion, the Committee is considering an alternative proposal for the adoption of Pa.R.Crim.P. 124 (Waiver of Fees and Costs). The Committee believes the proffered language, “imposed as a result of conviction,” would exclude fines, fees, costs, and restitution imposed at sentencing or as a consequence of being convicted. However, the Committee questioned how the rule would apply to financial obligations as a condition of an accelerated rehabilitative disposition (ARD) program or imposed by a problem-solving court, e.g., veterans treatment court, or other program.

In *Commonwealth v. Melnyk*, 548 A.2d 266 (Pa. Super. 1988), the Superior Court opined that the conditions of admittance into ARD must take into consideration a defendant’s ability to meet any financial obligations resulting from those conditions. A defendant’s indigency cannot be used to deny entry into an ARD program, and alternative conditions must be considered where the defendant is unable to meet those financial conditions despite “sufficient *bona fide* efforts to do so.” *Id.* at 272; see also Pa.R.Crim.P. 316, cmt. at ¶ 2. Therefore, it appears Pa.R.Crim.P. 124, as herein proposed, would apply Pa.R.J.A. 1990 to the fees and costs of ARD programs. Please note that restitution is neither a fee nor a cost so it would not be subject to Pa.R.Crim.P. 124.

The Committee specifically invites comment on this aspect of the proposal. If admission into an ARD program and the conditions of the program were to be specifically excluded from Pa.R.Crim.P. 124, then suggestions for a uniform alternative to Pa.R.J.A. 1990, consonant with *Melnyk*, are welcome.

Regarding specialty courts, see 42 Pa.C.S. § 916, such courts have been described as deferred proceedings after a plea of guilty. See *Commonwealth v. McCabe*, 265 A.3d 1279 1287-88 (Pa. 2021). “A plea of guilty (when accepted and entered by the Court) is the equivalent of a conviction and a verdict of guilty by a jury.” *Com. ex rel. Hough v. Maroney*, 229 A.2d 913, 914–15 (Pa. 1967). Insofar as admission into a specialty court is conditioned on a plea, the post-plea financial obligations imposed by the specialty court are “a result of conviction.” Accordingly, those financial obligations would not be subject to Pa.R.J.A. 1990 *vis-à-vis* Pa.R.Crim.P. 124.

The Act of November 3, 2022, P.L. 163 substantially amended 42 Pa.C.S. § 9730 (payment of court costs, restitution, and fines). The Committee contemplates separate rulemaking to implement that Act.

All comments, concerns, and suggestions concerning this proposal are welcome.