

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

**Proposed New Pa.R.Crim.P. 490.1**

The Criminal Procedural Rules Committee is planning to propose to the Supreme Court of Pennsylvania the adoption of new Rule 490.1(Procedures for Obtaining Expungement of Truancy 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:

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Criminal Procedural Rules Committee  
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All communications in reference to the proposal should be received by **no later than Friday, May 5, 2017**. 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.

*March 22, 2017*

*BY THE CRIMINAL PROCEDURAL RULES COMMITTEE:*

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*Charles A. Ehrlich  
Chair*

## **RULE**

(This is an entirely new rule.)

### **RULE 490.1. PROCEDURE FOR OBTAINING EXPUNGEMENT OF TRUANCY CASES; EXPUNGEMENT ORDER.**

#### **(A) PETITION FOR EXPUNGEMENT**

(1) An individual who satisfies the requirements of 24 P.S. §13-1333.3(h) for expungement of a summary truancy case may request expungement by filing a petition with the issuing authority by whom 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 or costs, whether the amount due has been paid;

(i) that the petitioner has satisfied the requirements of 24 P.S. §13-1333.3(h) 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 copy of the petitioner's high school diploma, a Commonwealth secondary school diploma or another department of education-approved equivalent, or documentation that the petitioner is subject to an exception to compulsory attendance under 24 P.S. §13-1330 shall be attached to the petition.

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

#### (B) OBJECTIONS; HEARING

(1) Within 30 days after service of the petition, the affiant or 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 issuing authority, and copies shall be served on the petitioner's attorney, or the petitioner if unrepresented.

(2) Upon receipt of the affiant or 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 issuing authority 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 issuing authority promptly shall enter an order granting or denying the petition.

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

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

(b) Except when the affiant or the attorney for the Commonwealth has filed a consent to the petition pursuant to paragraph (B)(1), 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 issuing authority denies the petition for expungement, the issuing authority 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 or costs, whether the amount due has been paid;
- (i) a statement that the petitioner has satisfied the requirements of 24 P.S. §13-1333.3(h) 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 issuing authority shall serve a certified copy of the Order to each criminal justice agency identified in the Order.

COMMENT: This rule, adopted in 2017, provides the procedures for requesting and ordering expungement in summary truancy cases as provided in 24 P.S. §13-1333.3(h). If the issuing authority finds the petitioner has satisfied the statutory conditions, the issuing authority shall grant the petition.

See Rule 490 for the procedures for expungement of summary cases other than truancy. 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.

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.

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*, 936 A.2d 1 (Pa. 2007); *Commonwealth v. J.H.*, 759 A.2d 1269 (Pa. 2000).

NOTE: Adopted \_\_\_\_\_, 2017, effective \_\_\_\_\_, 2017.

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**COMMITTEE EXPLANATORY REPORTS:**

**Report explaining proposed new Rule 490.1 regarding procedures for expungement in truancy cases published for comment at 47 Pa.B. (\_\_\_\_\_, 2017).**

## REPORT

### *Proposed New Pa.R.Crim.P. 490.1*

#### EXPUNGEMENT OF SUMMARY TRUANCY CASES

The Committee recently considered a suggestion to make changes to the summary expungement rule, Rule 490, to accommodate the provisions of Act 138 of 2016. Act 138 of 2016 (hereafter “the Act”) amends truancy protocols in Pennsylvania. The Act, in 24 P.S. §13-1333.3, provides that a child convicted of the summary offense of truancy may request a court to expunge his/her record if certain conditions are met. These conditions are that the child has earned a high school diploma, a Commonwealth secondary school diploma or another Department of Education-approved equivalent, or is subject to an exception to compulsory attendance under 24 P.S. §13-1330 and has satisfied any sentence including payment of fines and costs. It should be noted that this expungement procedure applies only to a summary conviction of a truant child not a summary conviction of a parent or guardian.

The intent of the Act is to provide a relatively easy method of expungement of a summary truancy conviction when a defendant has accomplished the requirements of the Act, primarily completion of high school or the equivalent. The Committee agreed that the Criminal Rules should be amended to incorporate the procedures that address this particular form of expungement. In addition, the Committee noted that some of the general summary expungement procedures in Rule 490 would be unnecessary for “streamlined” truancy expungement. The Committee concluded that, rather than incorporating the new procedures into the current rule, it would be clearer to place the procedures for truancy expungement in a separate rule that would be numbered Rule 490.1, immediately following the general summary expungement procedures in Rule 490.

The organization of new Rule 490.1 would mirror Rule 490. This would include provisions regarding the petition for expungement, provisions for review and objection by the Commonwealth, and provisions for the expungement order, if granted. Under the general summary expungement procedures of Rule 490, when a defendant is eligible for expungement, he or she must file a petition with the clerk of courts and the

determination on expungement is made by a common pleas judge. Under the Act, the expungement petition may be filed and adjudicated by a “court,” which is defined as “a magisterial district court, the Philadelphia Municipal Court or a Court of Common Pleas.” The Committee concluded that, given the intended expedited nature of truancy expungement, the petitioner should be allowed to file in any of the courts provided in the Act. This is provided in paragraph (A)(1) of the proposed new rule that provides that the petition may be filed with “the issuing authority by whom the charges were disposed.”

Paragraph (A)(2) would provide the contents of the petition. The contents are taken from requirements of Rule 490. Most of the information in the Rule 490 petition is required to ensure that the proper case is identified and disposed. The same concern would be present in truancy cases and so the information required in the petition under Rule 490.1 is the same as in Rule 490. The one exception in contents is the requirement for a Pennsylvania State Police criminal history to be attached. Since the Act conditions expungement of truancy offenses only on completion of high school or equivalent and satisfaction of the conditions of the original case, criminal history did not appear to be as relevant here as in other summary cases. The Committee concluded that this requirement should not be carried over into proposed Rule 490.1.

The proposed new rule would also provide for notice to the Commonwealth with the opportunity to respond. The Committee discussed, given the intended expedited nature of truancy expungement, whether this should be included at all. The Committee concluded that the truancy conviction still remains a summary conviction and it would be inappropriate to deny the Commonwealth the opportunity to review and object prior to expungement of this criminal record. Therefore, paragraph (B) would provide notice and response procedures identical to those in Rule 490.

Paragraph (C) would contain the provisions related to the order granting the expungement. The contents of the order also are identical to those of Rule 490 for other summary expungement orders. As with the contents of the petition, the same concept, *i.e.* correct identification of the case, are at work here.

The Committee also concluded that the Act did not intend that the adjudicating court have unlimited discretion in denying the petition. Rather, the Committee concluded that if the petitioner provides confirmation of having completed the

educational and other requirements stated in the act, the court must grant the petition. Therefore, the *Comment* would state that, “If the judge finds the petitioner has satisfied the statutory conditions, the judge shall grant the petition.”