

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

Proposed Amendment of Pa.R.Crim.P. 490

The Criminal Procedural Rules Committee is planning to propose to the Supreme Court of Pennsylvania the amendment of Rule 490 (Procedure for Obtaining Expungement in Summary 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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Supreme Court of Pennsylvania
Criminal Procedural Rules Committee
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All communications in reference to the proposal should be received by **no later than Friday, May 18, 2018**. 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 23, 2018

BY THE CRIMINAL PROCEDURAL RULES COMMITTEE:

*Brian W. Perry
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 or 18 Pa.C.S. §9123(a) 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, 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) Unless the attorney for the Commonwealth agrees to waive this requirement, a current copy of the petitioner's Pennsylvania State Police criminal history report shall be attached to the petition. The copy shall be obtained from the Pennsylvania State Police within 60 days before filing the petition. Absent a waiver by the attorney for the Commonwealth, the judge shall not rule upon the petition until the Pennsylvania State Police criminal history report is filed.

(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), 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, 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.

This rule was amended in 2018 to clarify that the procedures under this rule are to be used for summary convictions when the defendant is under 18 years of age. This also would include any summary conviction that has also been certified to juvenile court pursuant to Pa.R.J.C.P. 200(3) and 42 Pa.C.S. § 6304.1. In such cases, two expungement petitions would need to be

filed: one would be filed pursuant to Pa.R.J.C.P. 170 to expunge the record of the juvenile proceeding and the second would be filed pursuant to Pa.R.Crim.P. 490 to expunge the underlying summary conviction.

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 history report to the petition. The attorney for the Commonwealth may waive the requirement that the criminal history report be attached to the petition. The Commonwealth's agreement to the waiver may be made orally or in writing, or averred in the petition.

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

NOTE: Adopted September 22, 2010 effective in 90 days; amended November 1, 2016, effective November 14, 2016 [.] ; amended _____, 2018, effective _____, 2018.

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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. 5737 (October 9, 2010).

Final Report explaining the November 1, 2016 amendment regarding the stay of expungement when the Commonwealth has consented and petition and order forms published for comment at 46 Pa.B. 7439 (November 26, 2016).

Report explaining the proposed amendment regarding expungement of summary offenses when the defendant is under 18 years of age published for comment at 48 Pa.B. _____ (_____, 2018).

REPORT

Proposed Amendment of Pa.R.Crim.P. 490

SUMMARY EXPUNGEMENT FOR DEFENDANTS UNDER THE AGE OF 18

Recently, the Committee in conjunction with the Juvenile Court Procedural Rules Committee, explored rule changes to address two issues regarding the expungement of summary offenses when the defendant is under 18 years old: (1) expungement under 18 Pa.C.S. §9123(a); and (2) the expungement of summary convictions and juvenile court records that result from a failure to comply with the sentence on the underlying summary convictions.

There are two statutes that permit the expungement of summary convictions. The first statute, 18 Pa.C.S. § 9122(b)(3)(i), generally applies without reference to the age of the defendant and requires the defendant to be free from arrest or prosecution for five years. This statute also contains a provision for the expungement of underage drinking convictions when the defendant is 20 years or older, provided the violation occurred when the defendant was at least 18 years old.

The second statute, 18 Pa.C.S. § 9123(a), applies to “juvenile records” and permits the expungement of a conviction for a summary offense if the defendant is 18 years or older and six months have elapsed after satisfying the sentence. The statute also contains a provision for the expungement of underage drinking convictions when the defendant is 18 years or older, provided the violation occurred when the defendant was under 18 years old.

Currently, Rule 490 (Procedure for Obtaining Expungement in Summary Cases; Expungement Order) cites to Section 9122 and not Section 9123(a). Summary offenses are specifically excluded from the Juvenile Act and Pa.R.J.C.P. 170 (Motion to Expunge or Destroy Records) does not recognize Section 9123(a) as it pertains to summary convictions when the defendant is under 18 years of age.

The Committees have developed an amendment of Rule 490 to include reference to 18 Pa.C.S. § 9123(a) so that these expungements proceed in accordance with the Criminal Rules. The Committees did not see merit in establishing two different procedures to expunge the same conviction in the MDJ court based on the age of the

defendant. A cross-reference to Rule 490 would be added to the *Comment* to Pa.R.J.C.P. 170.

The other issue that the Committees examined was what procedures should be used to expunge both the summary conviction and the juvenile record when the conviction is certified pursuant to Pa.R.J.C.P. 200(3) and 42 Pa.C.S. § 6304.1. Pa.R.J.C.P. 200(3) and 42 Pa.C.S. § 6304.1 provide that a delinquency proceeding may be commenced when a juvenile has failed to comply with the sentence arising from a summary conviction. The question was whether a petition pursuant to Rule 490 needed to be filed to expunge the summary conviction and another petition pursuant to Pa.R.J.C.P. 170 needed to be filed to expunge the certification and any subsequent juvenile court record.

The Committees recognize that requiring an expungement petition in the criminal court for the summary offense and another expungement petition in the juvenile court may be burdensome. However, it was observed that eligibility for expungement of the MDJ record and the juvenile record so differed that one court should not expunge both records.

For example, a curfew violation may result in a summary conviction and fine. If the minor fails to comply with the sentence (*i.e.*, pay the fine), then the matter may be certified to the juvenile court. A majority of these types of certifications result in an informal adjustment, consent decree, or entry into a diversion program rather than a petition being filed. Consequently, the minor would be entitled to expungement of the juvenile record pursuant to 18 Pa.C.S. § 9123(a)(2) six months after completing the program. However, the underlying summary offense could not be expunged until the defendant was at least 18 years of age. See 18 Pa.C.S. §§ 9123(2.1), (2.2). The minor could be eligible for expungement of the juvenile record before being eligible for expungement of the summary conviction. Accordingly, the Committees reluctantly agreed to a two-petition procedure.

The *Comment* to Pa.R.Crim.P. 490 therefore would be revised to inform readers of the dual tracks for the expungement of certified failure to comply cases and the underlying summary offense.