

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

Proposed Amendment of Pa.R.Crim.P. 544

The Criminal Procedural Rules Committee is planning to propose to the Supreme Court of Pennsylvania the amendment of Rule 544 (Reinstating Charges Following Withdrawal or Dismissal) 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, 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 544. REINSTITUTING CHARGES FOLLOWING WITHDRAWAL OR
DISMISSAL.

(A) When charges are dismissed or withdrawn at, or prior to, a preliminary hearing, or when a grand jury declines to indict and the complaint is dismissed, the attorney for the Commonwealth may reinstitute the charges by approving, in writing, the re-filing of a complaint with the issuing authority who dismissed or permitted the withdrawal of the charges **or any issuing authority designated by the president judge or his or her designee to receive the reinstatement of charges.**

(B) Following the re-filing of a complaint pursuant to paragraph (A), if the attorney for the Commonwealth determines that the preliminary hearing should be conducted by a different issuing authority, the attorney shall file a Rule 132 motion with the clerk of courts requesting that the president judge, or a judge designated by the president judge, assign a different issuing authority to conduct the preliminary hearing. The motion shall set forth the reasons for requesting a different issuing authority.

COMMENT: This rule provides the procedures for reinstating criminal charges following their withdrawal or dismissal at, or prior to, the preliminary hearing as provided in Rule 543, or after the complaint is dismissed when a grand jury declines to indict.

The authority of the attorney for the Commonwealth to reinstitute charges that have been dismissed at the preliminary hearing is well established by case law. See, e.g., *McNair's Petition*, [324 Pa. 48,] 187 A. 498 (Pa. 1936); *Commonwealth v. Thorpe*, [549 Pa. 343,] 701 A.2d 488 (Pa. 1997). This authority, however, is not unlimited. First, the charges must be reinstated prior to the expiration of the applicable statute(s) of limitations. See *Commonwealth v. Thorpe*, [549 Pa. 343,] 701 A.2d 488 (Pa. 1997). In addition, the courts have held that the reinstatement may be barred in a case in which the Commonwealth has repeatedly rearrested the defendant in order to harass him or her, or if the rearrest results in prejudice. See *Commonwealth v. Thorpe*, [549 Pa. 343,] 701 A.2d 488 (Pa. 1997); *Commonwealth v. Shoop*, [420 Pa. Super. 606,] 617 A.2d 351 (Pa. Super. 1992).

The decision to reinstitute charges must be made by the attorney for the Commonwealth. Therefore, in cases in which no attorney for the Commonwealth was present at the

preliminary hearing, the police officer may not re-file the complaint without the written authorization of the attorney for the Commonwealth. See Rule 507 (Approval of Police Complaints and Arrest Warrant Affidavits by Attorney for the Commonwealth -- Local Option) for procedures for prior approval of complaints.

Pursuant to paragraph (A), in the usual case, charges will be reinstated by filing a complaint with the issuing authority who dismissed or permitted the withdrawal of the charges. However, there may be cases in which the attorney for the Commonwealth determines that a different issuing authority should conduct the preliminary hearing, such as when an error of law is made by the issuing authority in finding that the Commonwealth did not sustain its burden to establish a *prima facie* case. Paragraph (B) requires that, in these cases, the attorney for the Commonwealth must file a petition with the court of common pleas requesting that the president judge, or a judge designated by the president judge, assign a different issuing authority to conduct the preliminary hearing. For the procedure for requesting assignment of a different issuing authority, see Rule 132.

Paragraph (A) was amended in 2016 to address the reinstatement of charges in those judicial districts that have consolidated the issuing authority functions into a centralized body. These include the Pittsburgh Municipal Court, the Philadelphia Municipal Court, and those judicial districts that have established “central courts” in which the judicial district’s magisterial district judges undertake the issuing authority function at a central location on a rotating basis. In these situations, it is not necessary for charges to be reinstated with the individual issuing authority and the charges may be reinstated with the centralized issuing authority designated by the president judge.

See Chapter 5 Part E for the procedures governing indicting grand juries. If the attorney for the Commonwealth is reinstating the charges after a complaint is dismissed when a grand jury has declined to indict, the complaint should be re-filed with the issuing authority with whom the original complaint was filed.

See Chapter 5 Part F(1) for the procedures governing motions.

NOTE: Original Rule 123, adopted June 30, 1964, effective January 1, 1965; suspended January 31, 1970, effective May 1, 1970. New Rule 123 adopted January 31, 1970, effective May 1, 1970; renumbered Rule 143 September 18, 1973, effective January 1, 1974; amended January 28, 1983, effective July 1, 1983; amended August 9, 1994, effective January 1, 1995; amended September 13, 1995, effective January 1, 1996. The January 1, 1996 effective date extended to April 1, 1996; the April 1, 1996 effective date extended to July 1, 1996; renumbered Rule 142 October 8, 1999, effective January 1, 2000. New Rule 143 adopted October 8, 1999, effective January 1, 2000; renumbered Rule 544 and amended March 1, 2000, effective April 1, 2001; amended June 21, 2012, effective in 180 days [.] ; amended _____, 2016, effective _____, 2016.

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COMMITTEE EXPLANATORY REPORTS:

Final Report explaining new Rule 143 published with the Court's Order at 29 Pa.B. 5509 (October 23, 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 June 21, 2012 amendments to paragraph (A) concerning indicting grand juries published with the Court's Order at 42 Pa.B. (_____, 2012).

Report explaining the proposed amendments concerning the definition of the issuing authority who dismissed charges published for comment at 46 Pa.B. (_____, 2016).

REPORT

Proposed amendment of Pa.R.Crim.P. 544

MAGISTRATE FOR THE REFILING OF CHARGES

The Committee was recently presented with a question regarding the Rule 544(A) requirement for the Commonwealth to refile previously dismissed criminal charges with “the issuing authority who dismissed or permitted the withdrawal of the charges.” In most jurisdictions, it is simply a matter of approaching the magisterial district judge (MDJ) having jurisdiction who is most frequently the MDJ who dismissed the complaint or permitted its withdrawal. However, in jurisdictions that have centralized minor courts such as the Pittsburgh and Philadelphia¹ Municipal Courts, there is a question whether the issuing authority who initially handled the matter must be approached about the re-filing or if any of the issuing authorities who staff these centralized courts may be approached about the re-filing.

Rule 544 was adopted in 1999 to standardize the reinstatement of charges. As noted in the *Comment* to the rule and in the *Final Report* that the Committee issued when the rule was adopted, see 29 Pa.B. 5505 (Oct. 23, 1999), the authority for reinstating charges is within the discretion of the attorney for the Commonwealth. There are however two limitations on this authority. First, the applicable statute of limitations must not have run. Second, reinstatement may be barred when the Commonwealth has repeatedly rearrested the defendant in order to harass him or her, or if the rearrest results in prejudice. See *Commonwealth v. Thorpe*, 701 A.2d 488 (Pa. 1997); *Commonwealth v. Shoop*, 617 A.2d 351 (Pa. Super. 1992).

The requirement to have the charges filed before the issuing authority who

¹ The Philadelphia Municipal Court, which has a somewhat similar combined body of magistrates albeit Municipal Court judges, does not have a separate rule relating to the re-filing of dismissed charges. Under Rule 1000(B), the Municipal Court is bound by the statewide rules when no specific MC rule is provided so that the provisions of Rule 544 would govern. Preliminary hearings are only provided in felony cases in the Municipal Court.

dismissed them is premised on the idea that the original issuing authority would be in a better position to determine that the refiling is not being done from an improper motive or has resulted in prejudice to the defendant. This is also a means of reducing “judge-shopping” by preventing the repeated refiling until the prosecution finds a more amenable magistrate. It should be noted that, in situations where the original dismissal was improper, the Commonwealth’s remedy is to seek a reassignment to a different magistrate pursuant to Rule 544(B).

The question presented to the Committee was whether refiling should be treated differently when the preliminary hearing function is handled by a combined body of the judicial district’s issuing authorities. Such courts will usually have a single filing office and may assign cases in a less direct manner than would be the case in a typical MDJ office, resulting in more difficulty in ensuring that the refiled charges are presented to the original dismissing issuing authority. The Committee observed that, in the Philadelphia Municipal Court, a case is refiled by presenting a motion to refile to the Municipal Court Judge designated to handle motions and does not return to the original judge who dismissed it. It was also noted that many more jurisdictions are setting up centralized minor courts in which the MDJs within the judicial district preside over preliminary hearings on a rotating basis.

The Committee concluded that, in these circumstances, allowance should be made for the refiling to be reviewed by any magistrate within the centralized court or, as in the case of the Philadelphia Municipal Court, with the specific magistrate designated by the President Judge to review refilings.

Therefore, paragraph (A) would be amended to allow reinstatement of charges with the issuing authority “designated by the president judge to receive the reinstatement of charges.” This terminology would be intentionally broad since the manner in which these centralized courts are organized and function can vary considerably. Rather than generally permitting the reinstatement to be done before any issuing authority, the Committee believed it would be good practice to have this duty specifically designated. It is contemplated that, in the central court situation, this designation could simply be one of the duties enumerated for the sitting magistrate.