



## The Pennsylvania Interbranch Commission for Gender, Racial and Ethnic Fairness

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June 21, 2022

Daniel A. Durst, Chief Counsel  
Supreme Court of Pennsylvania  
Rules Committees  
Pennsylvania Judicial Center  
PO Box 62635  
Harrisburg, PA 17106-2635

Re: Amendment of Pa.R.Crim.P. 632 to Explicitly Permit Judicial Districts to Collect Aggregated Juror Demographic Data and to Expand Demographic Classifications on the Juror Information Questionnaire

Dear Mr. Durst:

I am writing you in response to our June 7, 2022 meeting regarding proposed updates to Pa.R.Crim.P. 632 – specifically, amending the text of the Rule to explicitly permit judicial districts to collect aggregated, non-identifiable juror demographic information and to broaden and define the racial and ethnic categories on the juror information questionnaire.

As you know, the Pennsylvania Interbranch Commission for Gender, Racial and Ethnic Fairness (the “Commission”) was established in 2005 to implement the recommendations of the Final Report of the Pennsylvania Supreme Court Committee on Racial and Gender Bias in the Justice System. That Report found that Pennsylvania’s juries were seldom comprised of a representative cross-section of the community and thus recommended that the AOPC and court administrators work together to collect juror demographic data as a baseline from which to increase jury diversity across the Commonwealth.<sup>1</sup>

Pursuant to that recommendation, in October 2021, the Commission distributed a survey to each of Pennsylvania’s judicial districts designed to determine the extent to which the districts collect racial, ethnic, or other juror-based demographic data. The survey found that most of the districts do not collect such data and that even those districts that *do* collect it only do so during the initial stages of the jury selection process. When prompted to cite a reason for their decision not to collect

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<sup>1</sup> A copy of the Final Report is available at <https://pa-interbranchcommission.com/wp-content/uploads/2022/01/FinalReport.pdf>

demographic data, several court administrators stated that they did not have enough guidance on proper data collection methods, either statutorily or from the AOPC.

This letter is intended to propose specific amendments to Pa.R.Crim.P. 632 to provide such guidance. Our two proposals below center on language notifying the districts that they may individually choose to collect juror demographic data in a personally non-identifiable and aggregated manner. The first proposal entails inserting an exception into the text of Pa.R.Crim.P. 632 itself, which presently requires that all juror questionnaires be destroyed upon completion of *voir dire* or jurors' service. The proposal also includes suggested text to bring the Rule's Comment section into harmony with this exception. The second, alternative option would simply insert new language into the Comment section below the Rule's text. Both options also propose updating the Rule's questionnaire form to include an expanded list of racial and ethnic categories for prospective jurors to select, along with corresponding definitions for those categories.

**Proposal 1: Insert an exception to Rule 632's requirement that juror data be destroyed upon completion of *voir dire* or jurors' service; update Rule's comment section for consistency.**

### **Rule Text**

- **Amend Pa.R.Crim.P. 632, Paragraph (B) to read:** "The information provided by the jurors on the questionnaires shall be confidential and limited to use for the purpose of jury selection or pursuant to paragraph (H). Except for disclosures made during *voir dire*, or unless the trial judge otherwise orders pursuant to paragraph (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."
- **Amend Pa.R.Crim.P. 632, Paragraph (D) to read:** "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 paragraph (H)."
- **Amend Pa.R.Crim.P. 632, Paragraph (F) to read:** "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 paragraph (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 paragraph (H)."
- **Amend Pa.R.Crim.P. 632, Paragraph (G) to read:** "Subject to paragraph (H), 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."



- **Insert a new Pa.R.Crim.P. 632, Paragraph (H) to read:** “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.”
- **Revise existing Pa.R.Crim.P. 632, Paragraph (H) to be Pa.R.Crim.P. 632, Paragraph (I).**
- **Amend the existing Juror Information Questionnaire table in new Pa.R.Crim.P. 632, Paragraph (I) as follows:**

NAME: LAST		FIRST		MIDDLE INITIAL
CITY/TOWNSHIP		COMMUNITIES IN WHICH YOU RESIDED OVER THE PAST 10 YEARS:		
MARITAL STATUS: MARRIED	SINGLE	SEPARATED	DIVORCED	WIDOWED
OCCUPATION		OCCUPATION(S) PAST 10 YEARS		
OCCUPATION OF SPOUSE/ OTHER		PAST 10 YEARS OCCUPATION OF SPOUSE/OTHER		
NUMBER OF CHILDREN				
RACE (Circle all that apply)		<p><b>American Indian or Alaska Native:</b> 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.</p> <p><b>Asian:</b> 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.</p> <p><b>Black or African American:</b> A person having origins in any of the Black racial groups of Africa.</p> <p><b>Native Hawaiian or Other Pacific Islander:</b> A person having origins in any of the original peoples of Hawaii, Guam, Samoa, or other Pacific Islands.</p> <p><b>White:</b> A person having origins in any of the original peoples of Europe, the Middle East, or North Africa.</p>		

<b>ETHNICITY (Circle one)</b>	<b>Hispanic or Latino:</b> A person of Cuban, Mexican, Puerto Rican, South or Central American, or other Spanish culture or origin, regardless of race. The term “Spanish origin” can be used in addition to “Hispanic or Latino.” <b>Not Hispanic or Latino.</b>	
<b>HOW WOULD YOU LIKE TO BE ADDRESSED? (Circle one)</b>	“Mr. [Suffix]” “Mrs. [Suffix]” “Ms. [Suffix]” “Juror [Suffix]” Prefix/Title Not Provided Above: _____	
<b>LEVEL OF EDUCATION YOURS</b>	<b>SPOUSE/OTHER</b>	<b>CHILDREN</b>

### Comment Text

- Amend the Comment to Pa.R.Crim.P. 632 as follows:

1. In the third paragraph of the Comment, amend the second sentence to read: “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 paragraph (H).”
2. In the fifth paragraph of the Comment:
  - a. Amend the first two sentences to read: “Under paragraph (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*, such information in the completed questionnaires . . . .”
  - b. Insert a new sentence at the end of the paragraph to read: “Nothing in this paragraph is intended to prohibit or discourage the collection and retention of aggregated juror demographic data pursuant to paragraph (H).”
3. In the third-to-last paragraph of the Comment:
  - a. Amend the second sentence to read: “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), and destroyed promptly or retained for the limited purposes of paragraph (H).”
  - b. Amend the third sentence to read: “The original completed questionnaires of the impaneled jury must be retained in a sealed file in the manner prescribed pursuant to paragraph (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 paragraph (H).”



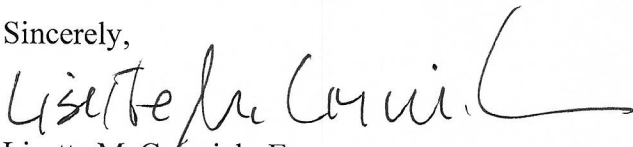
- c. **Insert a new sentence at the end of the paragraph to read:** “Nothing in this paragraph is intended to prevent the trial or president judge, court administrator, or other relevant official from retaining the original questionnaires for the limited purposes of paragraph (H).”
4. **Amend the second-to-last paragraph of the Comment to read:** “Under paragraph (G), the original and any copies of the questionnaires of those jurors not impaneled and not selected for any jury must be destroyed upon completion of their service, unless retained for the limited purposes of paragraph (H).”

**Proposal 2: Preserve the text of Rule 632, but amend the Comment Section to clarify that districts may (but are not required to) collect aggregated demographic data.**

- **Insert a new paragraph at the end of the Comment section to read:** “Nothing in this Comment or the text of the rule prohibits the judicial districts from individually electing to retain the information provided by prospective or impaneled jurors on their questionnaires for the purpose of assessing those districts’ 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.”
- **[Additionally, amend the Juror Information Questionnaire table in existing Pa.R.Crim.P. 632, Paragraph (H) to update the racial and ethnic categories and corresponding definitions, as provided on page 3, *supra*.]**

Thank you for the opportunity to present the changes proposed above to Pennsylvania Rule of Criminal Procedure 632. If you have any questions or concerns regarding our proposals, please do not hesitate to contact me by phone, at (412) 687-1311 or (412) 298-9148, or by email, at [lisette.mccormick@pacourts.us](mailto:lisette.mccormick@pacourts.us). We look forward to continuing to work with you to improve diversity on Pennsylvania’s juries.

Sincerely,



Lisette McCormick, Esq.  
Executive Director

cc: Jury Diversity Committee Members  
Interbranch Commission Members