

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

ADOPTION REPORT

Amendment of Pa.R.Crim.P. 201, 205, 206, 208, 209, 211, 540, and 1003

On May 2, 2024, the Supreme Court amended Pennsylvania Rules of Criminal Procedure 201, 205, 206, 208, 209, 211, 540, and 1003.¹ The Criminal Procedural Rules Committee has prepared this Adoption Report describing the rulemaking process. An Adoption Report should not be confused with Comments to the rules. See Pa.R.J.A. 103, cmt. The statements contained herein are those of the Committee, not the Court.

Background

Prompted by the Court's opinion in the companion cases of *Commonwealth v. Romero* and *Commonwealth v. Castro*, 183 A.3d 364 (Pa. 2018) (hereinafter "*Romero and Castro*"), the Committee began examining the manner in which an arrest warrant is used to gain access to a residence or other premises in an attempt to apprehend the subject of the warrant. The Committee concluded that the extent to which the police may search a residence pursuant to an arrest warrant and the manner in which such a search is adjudicated is primarily a substantive issue and, as demonstrated in *Romero and Castro*, this substantive law is still being developed.

However, in considering these issues, the Committee became concerned that Rule 201 (Purpose of Warrant) could cause confusion as "persons" are not identified in the rule as proper subjects of a search warrant. As a result, law enforcement, reading Rule 201 as not governing the issuance of a search warrant for a person, might conclude that an arrest warrant is sufficient regardless of where the subject of the warrant is to be located, even when intending to search a premises that is not the residence of the subject of the arrest warrant. Under such circumstances, the search would be conducted without a judge having first determined that there was probable cause for the search. Additionally, because the rule provides for the issuance of a warrant that permits law enforcement "to search" and "to seize," the Committee was concerned that the term "seize" would suggest that a search warrant could replace the need for an arrest warrant. To address these concerns, the following amendments have been adopted.

¹ Stylistic amendments have also been made to conform to the Supreme Court of Pennsylvania Style and Rulemaking Guide for Procedural and Evidentiary Rules.

Amendments

Rule 201 has been amended to add a subdivision (d). This subdivision states that the search for and seizure of a person can be authorized by a search warrant if that person is also the subject of either a bench or arrest warrant. The Comment to Rule 201 has been revised to state specifically that a search warrant alone is insufficient; a bench or arrest warrant must also be issued.

The proposed amendment of Rule 201 was published for comment in March of 2019. See 49 Pa.B. 1357 (March 23, 2019). Two responses to the publication were received. One response questioned the description of the holding in the *Romero* and *Castro* cases contained in the Publication Report. As this did not implicate the proposed rule change itself, the Committee made no change to the proposal.

The other comment suggested that other rules might need to be amended in light of the proposed provision that would permit a person to be the subject of a search warrant. The Committee concurred that the terminology of several rules should be broadened to incorporate this concept. The Committee identified Rules 205 (Contents of Search Warrant), 206 (Contents of Application for Search Warrant), and 208 (Copy of Warrant; Receipt for Seized Property) as warranting amendment. Those rules have been amended to specifically incorporate a person as a proper subject of a search warrant. Additionally, corollary amendments have been made to Rules 209, 211, 540, and 1003.

Additionally, the proposed subdivision published for comment would have also provided for the issuance of a search warrant to search for “a person for whom there is probable cause to believe is a victim of a crime and for whom there is no other means of access.” However, concerns were raised post-publication that this proposed subdivision might permit the issuance of a search warrant to gain access to a victim of any crime, even a lesser one, or result in the issuance of a warrant to gain access to a victim who is merely declining to participate in a prosecution or investigation rather than being prevented from such participation. The Committee concluded that other, less intrusive methods, such as subpoenas, were more appropriate for gaining access to these individuals. Consequently, this subdivision and related commentary were not adopted.

Lastly, commentary has been removed from Rules 201 and 206. The following commentary has been removed from Rule 201: “The Third Circuit's opinion cited with approval *Commonwealth v. Patrone*, 27 D&C 2d 343 (Philadelphia Co. 1962); *Commonwealth v. Rehmyer*, 29 D&C 2d 635 (York Co. 1962); and *Simmons v. Oklahoma*, 286 P.2d 296, 298 (Okla. Cr. 1955).” This sentence has been removed as superfluous. The cases cited in that sentence are discussed in *United States ex. Rel. Campbell v. Rundle*, 327 F.2d 153 (3rd Cir. 1964), which is cited earlier in the second paragraph of the Comment. The following commentary has been removed from Rule 206: “While this rule continues to require written affidavits, the form of affidavit was

deleted in 1984 because it is no longer necessary to control the specific form of written affidavit by rule.” This paragraph has been removed as unnecessary historical commentary.

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The following commentary has been removed from Rule 201:

Comment, ¶ 2: “The Third Circuit's opinion cited with approval *Commonwealth v. Patrone*, 27 D&C 2d 343 (Philadelphia Co. 1962); *Commonwealth v. Rehmeyer*, 29 D&C 2d 635 (York Co. 1962); and *Simmons v. Oklahoma*, 286 P.2d 296, 298 (Okla. Cr. 1955).”

Official Note: Rule 2002 adopted March 28, 1973, effective 60 days hence; renumbered Rule 201 and amended March 1, 2000, effective April 1, 2001.

Committee Explanatory Reports:

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).

The following commentary has been removed from Rule 205:

Official Note: Rule 2005 adopted October 17, 1973, effective 60 days hence; amended November 9, 1984, effective January 2, 1985; amended September 3, 1993, effective January 1, 1994; renumbered Rule 205 and amended March 1, 2000, effective April 1, 2001; amended October 19, 2005, effective February 1, 2006; *Comment* revised October 22, 2013, effective January 1, 2014; amended July 31, 2017, effective October 1, 2017.

Committee Explanatory Reports:

Report explaining the September 3, 1993 amendments published at 21 Pa.B. 3681 (August 17, 1991).

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 October 19, 2005 amendments to paragraph (4) and the *Comment* published with the Court’s Order at 35 Pa.B. 6087 (November 5, 2005).

Final Report explaining the October 22, 2013 revisions to the Comment regarding the return of the search warrant published at 43 Pa.B. 6649 (November 9, 2013).

Final Report explaining the July 31, 2017 amendment regarding search warrants for electronically stored information published with the Court's Order at 47 Pa.B. 4680 (August 12, 2017).

The following commentary has been removed from Rule 206:

Comment, ¶ 2: "While this rule continues to require written affidavits, the form of affidavit was deleted in 1984 because it is no longer necessary to control the specific form of written affidavit by rule."

Official Note: Previous Rule 2006 adopted October 17, 1973, effective 60 days hence; rescinded November 9, 1984, effective January 2, 1985. Present Rule 2006 adopted November 9, 1984, effective January 2, 1985; amended September 3, 1993, effective January 1, 1994; renumbered Rule 206 and amended March 1, 2000, effective April 1, 2001; amended October 19, 2005, effective February 1, 2006; amended June 1, 2018, effective July 1, 2018.

Committee Explanatory Reports:

Report explaining the September 3, 1993 amendments published at 21 Pa.B. 3681 (August 17, 1991).

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 October 19, 2005 amendments to paragraph (6) and the Comment published with the Court's Order at 35 Pa.B. 6087 (November 5, 2005).

Amendment regarding the Court's public access policy published with the Court's Order at 48 Pa.B. 3575 (June 16, 2018).

The following commentary has been removed from Rule 208:

Official Note: Rule 2008 adopted October 17, 1973, effective 60 days hence; amended September 3, 1993, effective January 1, 1994; renumbered Rule 208 and amended March 1, 2000, effective April 1, 2001.

Committee Explanatory Reports:

Report explaining the September 3, 1993 amendments published at 21 Pa.B. 3681 (August 17, 1991).

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).

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These amendments are effective October 1, 2024.