

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

NOTICE OF PROPOSED RULEMAKING

Proposed Amendment of Pa.R.J.C.P. 515, 610, & 632

The Juvenile Court Procedural Rules Committee is considering proposing to the Supreme Court of Pennsylvania the amendment of Pennsylvania Rules of Juvenile Court Procedure 515, 610, and 632 concerning the imposition of financial obligations on juveniles at the time of disposition 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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All communications in reference to the proposal should be received by **September 15, 2020**. 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.

By the Juvenile Court Procedural Rules Committee,

Judge Joy Reynolds McCoy, Chair

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

REPORT

Proposed Amendment of Pa.R.J.C.P. 515, 610, & 632

The Juvenile Court Procedural Rules Committee herein proposes amendment of Pennsylvania Rules of Juvenile Court Procedure 515, 610, and 632 concerning the imposition of financial obligations on juveniles at the time of disposition.

The Committee previously published proposed amendments to Rules 515 and 610 concerning the imposition of financial obligations on juveniles at the time of disposition. See 49 Pa.B. 2474 (May 14, 2019). Although the proposal suggested a change to the rule text in Rule 515 to a more encompassing phrase of “financial obligations,” most of the proposal involved revisions to the commentary. The purpose of these revisions was to explain the operation of the rules and Juvenile Act to permit subsequent modifications to outstanding financial obligations.

The Committee received 14 comments. After reviewing the comments, the Committee recognized, consistent with the prior publication report, the limits on which procedural rulemaking can address the issues of policy raised in the comments. The Committee did not disagree with the sentiment and seeming frustration expressed by some commenters regarding juveniles’ ability to satisfy financial obligations. Nor did the Committee disagree with the burden that such obligations place on a juvenile beyond the jurisdiction of the juvenile court. Further, the Committee acknowledged that perspectives on the imposition of financial obligations differed among stakeholders, especially when financial obligations are imposed as restitution. Moreover, while some commenters believe that some costs are “mandatory” regardless of circumstance and others contend that imposition of any cost must be consistent with the Juvenile Act, the Committee believed this difference of opinion is best resolved through adjudicatory proceedings or legislative action than by procedural rulemaking.

The Committee discussed at length the implication of modifying restitution after the initial imposition. Concerns were expressed that victims have notice and the opportunity to be heard prior to the court ordering a modification of restitution. Rule 610(B) currently requires notice to the victim when there is going to be a change in disposition. However, the notice is not specific to restitution so the victim does not know if the change concerns restitution.

What follows is a description of additional revisions contained in the current proposal:

- Rule 515(B)(3) is revised to make a payment schedule mandatory and based on the juvenile's ability to pay. Likely, the juvenile is going to lack the present funds to immediately pay financial obligations unless the amount is relatively low. In that instance, the judge can order the immediate and full payment without burdening the court with creating a schedule. However, in response to comments, there would also be an inquiry into the juvenile's ability to pay. The inquiry involves the *collection* of the financial obligation, not the *calculation* of that amount because the calculation requires consideration of the juvenile's earning potential, per the Juvenile Act. Through scheduling, the judge will be informed just how long payments may extend including beyond the juvenile's 21st birthday.
- In the Comment to Rule 515, users are reminded that the financial obligation must be consistent with the goals of balanced and restorative justice ("BARJ"). This statement is also intended to encompass the goals in the "plan of rehabilitation."
- In the Comment to Rule 515, factors are included to determine a juvenile's earning capacity. Several of these factors are from *Commonwealth v. B.D.G.*, 959 A.2d 362, 367–68 (Pa.Super. 2008) (*en banc*) (quoting *In Interest of Dublinski*, 695 A.2d 827, 830 (Pa. Super. 1997)). Additional factors include the availability of suitable employment, and the priority of other uses of earnings, including essential goods and services, dependents, and the pursuit of higher education.
- In the Comment to Rule 515, a reference to case law and the rehabilitative purpose of restitution was added. The word "primary" was chosen to describe "purpose" to indicate that a secondary purpose may be the compensation of the victim for loss caused by the juvenile. A citation to *Commonwealth v. Petrick*, 217 A.3d 1217 (Pa. 2019) was added in support of this premise.
- In the Comment to Rule 515, a statement is added indicating that the use of third party funds to satisfy financial obligations do not further a juvenile's rehabilitation. This statement is intended to guard against parents paying a juvenile's financial obligation and circumventing the accountability function of financial obligations. This statement was prompted by commenters' citation of *In re C.W.*, 7 A.3d 891 (Pa. Cmwith. 2010) for the proposition that parental income is not relevant for the calculation of a juvenile's earning capacity. Additionally, the statement is intended to address commenters' concerns that juveniles from indigent families may be subject to longer terms of supervision relative to juveniles from families with the means to satisfy financial obligations. See also 42 Pa.C.S § 6352(a)(5) ("[T]he court shall retain jurisdiction until there has been full compliance with the order.").

The Committee is aware of 23 Pa.C.S. §§ 5503(a) & 5505, whereby parents of a juvenile can be held liable, subject to caps, for injury caused by the juvenile. The Committee specially invites comment on the interplay between consideration of a

juvenile's earning capacity and parental liability for restitution in determining financial obligations.

- In the Comment to Rule 515, further explanation is added indicating that a disposition should be reviewed when the disposition no longer meets the goals of BARJ.
- In the Comment to Rule 515, the last paragraph concerning the use and location of form orders is removed given the statewide use of PACMS for generating orders.
- Rule 610(B) is revised to add a second sentence requiring notice to the victim prior to any reduction of outstanding restitution in a dispositional review hearing. The specific notice provision is intended to address the use of more generalized language in a modification motion that fails to inform the other parties that the filing party may seek a decrease in restitution owed at the hearing. Corresponding commentary was added to the Comment.
- In the Comment to Rule 610, the proposed sentence in the 3rd paragraph is revised to replace "diminution" with "adjustment."
- The text of Rule 632 is revised to clarify that only a single compelling reason is sufficient for early termination of court supervision. The current version, with pluralized "reasons," suggests there must be more than one compelling reason.
- The Comment to Rule 632 is revised to include the definition for "compelling reason" discussed by the Court in *In the Interest of D.C.D.*, 1717 A.3d 727 (Pa. 2017). This commentary is intended to aid readers in applying the rule.

The Committee invites all comments, concerns, and suggestions regarding this rulemaking proposal.

Rule 515. DISPOSITIONAL ORDER

A. **Generally.** When the court enters a disposition after an adjudication of delinquency pursuant to Rule 409(A)(2), the court shall issue a written order, which provides balanced attention to the protection of the community, accountability for the offenses committed, and development of the juvenile's competencies to enable the juvenile to become a responsible and productive member of the community. The order shall include:

- 1) the court's findings pursuant to Rule 512(D);
- 2) a designation whether the case is eligible pursuant to 42 Pa.C.S. § 6307 (b)(1.1)(i) for limited public information;
- 3) a directive that the juvenile shall submit to fingerprinting and photographing by, or arranged by, the law enforcement agency that submitted the written allegation in all cases in which the juvenile has not previously been fingerprinted or photographed;
- 4) the date of the order; and
- 5) the signature and printed name of the judge entering the order.

B. **[Restitution. If restitution is ordered in a case,] Financial Obligations. If the court orders the payment of fines, costs, fees, or restitution, the amounts shall be reasonable and as part of a plan of rehabilitation considering the nature of the acts committed and the earning capacity of the juvenile. [t]** The dispositional order shall include:

- 1) **[a] the specific amounts of fines, costs, fees, or restitution to be paid by the juvenile;**
- 2) to whom the **[restitution] financial obligations** shall be paid; and
- 3) a payment schedule[, **if so determined by the court] based upon the juvenile's ability to pay.**

C. **Guardian [p]Participation.** The dispositional order shall include any conditions, limitations, restrictions, and obligations imposed upon the guardian.

D. **Disposition [r]Reporting.** The court shall forward the case disposition to the Juvenile Court Judges' Commission, as required by the Commission.

Comment

Pursuant to paragraph (A)(2), the court is to determine if the case is eligible for limited public information under the requirements of 42 Pa.C.S. § 6307(b)(1.1)(i). See 42 Pa.C.S. § 6307(b)(2). When the case is designated, the clerk of courts is to mark the file clearly. For information that is available to the public in those eligible cases, see Rule 160.

See 23 Pa.C.S. § 5503 and 42 Pa.C.S. §§ 6308, 6309 & 6310.

Pursuant to paragraph (B), financial obligations may be imposed as a plan of rehabilitation consistent with the goals of balanced and restorative justice: 1) the protection of the community; 2) the imposition of accountability for offenses committed; and 3) the development of competencies to enable the juvenile to become a responsible and productive member of the community. See 42 Pa.C.S. § 6352(a).

In determining the amount of the financial obligation pursuant to paragraph (B), the judge may include a contribution to a restitution fund. See 42 Pa.C.S. § 6352(a)(5). A juvenile's earning capacity can be determined by examining factors including, but not limited to, the juvenile's physical and intellectual capabilities, maturity, education, work history, availability of suitable employment, and the priority of other uses of earnings, including essential goods and services, dependents, and the pursuit of higher education. The primary purpose of a financial obligation should be the juvenile's rehabilitation, not the juvenile's punishment or the victim's recompense. See generally *Commonwealth v. Petrick*, 217 A.3d 1217 (Pa. 2019). The satisfaction of a financial obligation using third party funds does not further a juvenile's rehabilitation.

Assuming the court finds the juvenile has a sufficient earning capacity to impose a reasonable financial obligation, the court should determine the juvenile's ability to pay the financial obligation pursuant to paragraph (B)(3). In determining a payment schedule, the court should include the frequency, amount, and duration of payments. A juvenile with a present ability to satisfy a financial obligation should be placed on an immediate and full payment schedule.

When a disposition is no longer consistent with the goals of balanced and restorative justice, a juvenile's plan of rehabilitation may be changed through a dispositional review hearing and modification of dispositional order, including an adjustment of financial obligations. See Rule 610(A)-(B).

The court shall retain jurisdiction over the juvenile until the financial obligation has been satisfied, the juvenile attains 21 years of age, or supervision has otherwise been terminated. See 42 Pa.C.S § 6352(a)(5); see also Rule 632 (Early Termination of Court Supervision by Motion).

[Dispositional orders should comport in substantial form and content to the Juvenile Court Judges' Commission model orders to receive funding under the federal Adoption and Safe Families Act (ASFA) of 1997 (P. L. 105-89). The model forms are also in compliance with Title IV-B and Title IV-E of the Social Security Act. For model orders, see <http://www.jcjc.state.pa.us> or <http://www.dpw.state.pa.us> or request a copy on diskette directly from the Juvenile Court Judges' Commission, Room 401, Finance Building, Harrisburg, PA 17120.]

Official Note: Rule 515 adopted April 1, 2005, effective October 1, 2005. Amended August 20, 2007, effective December 1, 2007. Amended July 28, 2009, effective immediately. Amended December 24, 2009, effective immediately. Amended April 29, 2011, effective July 1, 2011. Amended February 13, 2019, effective June 28, 2019. **Amended _____, 2020, effective _____, 2020.**

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 515 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005). Final Report explaining the amendments to Rule 515 published with the Court's Order at 37 Pa.B. 4866 (September 8, 2007). Final Report explaining the amendment to Rule 515 published with the Court's Order at 39 Pa.B. 4743 (August 8, 2009). Final Report explaining the amendments to Rule 515 published with the Court's Order at 40 Pa.B. 222 (January 9, 2010). Final Report explaining the amendments to Rule 515 published with the Courts Order at 41 Pa.B. 2413 (May 14, 2011). Final Report explaining the amendments to Rule 515 published with the Court's Order at 49 Pa.B. **916 (March 2, 2019). Final Report explaining the amendments to Rule 515 published with the Court's Order at _____ Pa.B. (_____, 2020).**

RULE 610. DISPOSITIONAL AND COMMITMENT REVIEW

- A. **Dispositional [r]Review [h]Hearing.** The court shall review its disposition and conduct dispositional review hearings for the purpose of ensuring that the juvenile is receiving necessary treatment and services and that the terms and conditions of the disposition are being met.
- 1) In all cases, the court shall conduct dispositional review hearings at least every six months.
 - 2) In all cases, the juvenile shall appear in person at least once a year.
 - 3) The court may schedule a review hearing at any time.
- B. **[Change in] Modification of Dispositional Order.** Whenever there is a **[request] motion** for a **[change in] modification of** the dispositional order, other than a motion to revoke probation as provided in Rule 612, notice and an opportunity to be heard shall be given to the parties and the victim. **Any outstanding restitution amounts may not be reduced by modification of the dispositional order without specific notice to the victim prior to the hearing that a modification may be ordered.**
- 1) The juvenile may be detained pending a court hearing.
 - 2) A detention hearing shall be held within **[seventy-two] 72** hours of the juvenile's detention, if detained.
 - 3) The juvenile shall be given a statement of reasons for the discharge from a placement facility or **[request] motion** for **[change in] modification of** the dispositional order.
 - 4) A review hearing shall be held within **[twenty] 20** days of the discharge from the placement facility or **[request] motion** for **[change in] modification of** the dispositional order.
- C. **Advanced [c]Communication [t]Technology.** A court may utilize advanced communication technology pursuant to Rule 129 for a juvenile or a witness unless good cause is shown otherwise.
- D. **Post-Dispositional Rights.** A colloquy and inquiry of post-dispositional rights shall be conducted when a juvenile is aggrieved by a **[change in] modification of** the dispositional order.

Comment

At any hearing, if it is determined that the juvenile is in need of an educational decision maker, the court is to appoint an educational decision maker pursuant to Rule 147.

Under paragraph (A), the court is to conduct dispositional review hearings as frequently as necessary to ensure that the juvenile is receiving necessary treatment and services and that the terms and conditions of the disposition are being met. See Rule 800.

When conducting a dispositional review hearing, the court is to ensure that the disposition continues to provide balanced attention to the protection of the community, the imposition of accountability for offenses committed, and the development of competencies to enable the juvenile to become a responsible and productive member of the community. **A change in the plan of rehabilitation may result in the adjustment of financial obligations imposed pursuant to Rule 515.**

Nothing in this rule prohibits the juvenile from requesting an earlier review hearing. The juvenile may file a motion requesting a hearing when there is a need for change in treatment or services.

Additionally, nothing in this rule is intended to prohibit the emergency transfer of a juvenile from a placement facility to a detention facility pending reconsideration of the dispositional order, and this rule is not intended to preclude a motion for modification of a dispositional order after the juvenile has been detained.

Under paragraph (B), the attorney for the Commonwealth or its designee is to notify the victim of the date, time, place, and purpose of the review hearing. Prior to ordering the **[change in] modification of** the dispositional order, the court is to give the victim an opportunity to submit an oral and/or written victim-impact statement if the victim so chooses. See Victim[']s Bill of Rights, 18 P.S. §§ 11.201 *et seq.* **Whenever a motion seeks a reduction of outstanding restitution, the victim should be given specific notice of the relief sought prior to the hearing. A court may not order a downward adjustment of outstanding restitution without first ensuring that notice was given to the victim of the possibility that such an adjustment was specifically being considered at the dispositional review hearing.**

Any persons may be subpoenaed to appear for the hearing. See Rule 123 and 42 Pa.C.S. § 6333. However, nothing in these rules requires the attendance of the victim unless subpoenaed. If the victim is not present, the victim is to be notified of the final outcome of the proceeding.

Some placement facilities are hours away from the dispositional court. Paragraph (C) allows a hearing to be conducted via teleconferencing, two-way simultaneous audio-visual communication, or similar method. The juvenile is to be afforded all the same rights and privileges as if the hearing was held with all present in the courtroom.

If a juvenile is detained or placed, the juvenile is to be placed in a detention facility or placement facility, which does not include a county jail or state prison. See Rule 120 and its Comment for definitions of “detention facility” and “placement facility.”

For the colloquy and inquiry of post-dispositional rights, see Rule 512(C). If a change in disposition results in an out-of-home placement, then the court should also explain to the juvenile the availability of review of the out-of-home placement pursuant to Pa.R.A.P. 1770.

Official Note: Rule 610 adopted April 1, 2005, effective October 1, 2005. Amended December 30, 2005, effective immediately. Amended April 21, 2011, effective July 1, 2011. Amended April 29, 2011, effective July 1, 2011. Amended May 26, 2011, effective July 1, 2011. Amended June 28, 2013, effective immediately. Amended May 11, 2017, effective October 1, 2017. **Amended _____, 2020, effective _____, 2020.**

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 610 published with the Court’s Order at 35 Pa.B. 2214 (April 16, 2005). Final Report explaining the revisions of Rule 610 published with the Court’s Order at 36 Pa.B. 186 (January 14, 2006). Final Report explaining the amendments to Rule 610 published with the Court’s Order at 41 Pa.B. 2319 (May 7, 2011). Final Report explaining the amendments to Rule 610 published with the Court’s Order at 41 Pa.B. 2413 (May 14, 2011). Final Report explaining the amendments to Rule 610 published with the Court’s Order at 41 Pa.B. 3180 (June 25, 2011). Final Report explaining the amendments to Rule 610 published with the Court’s Order at 43 Pa.B. 3938 (July 13, 2013). Final Report explaining the amendments to Rule 610 published with the Court’s Order at 47 Pa.B. 2969 (May 27, 2017). **Final Report explaining the amendments to Rule 610 published with the Court’s Order at Pa.B. (_____, 2020).**

Rule 632. Early Termination of Court Supervision by Motion

A. **Motion.** Any party may move for early termination of court supervision. The motion shall state with specificity why early termination is sought and why the requirements of Rule 631(A) have not been met.

B. **Notice.**

- 1) In addition to the service requirements of Rule 345, any party moving for early termination shall serve the motion on the juvenile probation officer.
- 2) The victim shall be provided notice of the motion for early termination of court supervision.

C. **Objection.**

- 1) A party or the juvenile probation officer may object to the motion under paragraph (A) and request a hearing.
- 2) Such objection shall be made within **[thirty] 30** days of the date of the motion; otherwise, objections are deemed waived.

D. **Court's [d]Determination.** The court shall:

- 1) rule on the motion and any objections without a hearing; or
- 2) schedule a hearing.

E. **Hearing.** If objections have been made pursuant to paragraph (C) **[and/]**or the court has determined a hearing is necessary, the court shall hold a hearing and give each party, the victim, and the juvenile probation officer an opportunity to be heard before the court enters its final order.

F. **Termination.** When the requirements of paragraphs (A) through (E) have been met and the court is satisfied that there **[are] is a** compelling reason**[s]** to discharge the juvenile prior to the completion of the requirements of Rule 631(A), the court may order an early discharge of the juvenile from its supervision.

Comment

If a party has moved for early termination of court supervision of a juvenile pursuant to paragraph (A) or the court has scheduled a hearing pursuant to paragraph

(E), the attorney for the Commonwealth or its designee is to notify the victim of the motion for early termination and/or the date, time, place, and purpose of the hearing.

The victim may be present at the hearing and is to be afforded the opportunity to submit an oral and/or written victim-impact statement. See Rule 132 and the Victim's Bill of Rights, 18 P.S. §§ 11.201 *et seq.*

For the submission of victim-impact statements by victims of personal injury crimes prior to the release or transfer of a juvenile from a placement facility, see Victim's Bill of Rights, 18 P.S. § 11.201(8.1)(iii).

Any persons may be subpoenaed to appear for the hearing. See Rule 123 and 42 Pa.C.S. § 6333. However, nothing in these rules requires the attendance of the victim unless subpoenaed. If the victim is not present, the victim is to be notified of the final outcome of the proceeding.

For procedures on motions, see Rule 344. For filing and service requirements, see Rule 345.

If all parties are in agreement with the termination, the court may terminate court supervision without a hearing.

For procedures on the dispositional order, see Rule 515. See *also*, 42 Pa.C.S. § 6352. For collection of outstanding restitution regardless of court supervision status, see 42 Pa.C.S. § 9728.

“Compelling reason,” as set forth in paragraph (F), should reflect consideration of the statutory goals of balanced and restorative justice: 1) the protection of the community; 2) the imposition of accountability for offenses committed; and 3) the development of competencies to enable the juvenile to become a responsible and productive member of the community. See *In the Interest of D.C.D.*, 171 A.3d 727 (Pa. 2017); 42 Pa.C.S. § 6352(a). The court has broad discretion in weighing each goal as appropriate to the individual juvenile. See *id.* at 742.

Official Note: Rule 632 adopted February 26, 2008, effective April 1, 2008. Amended May 26, 2011, effective July 1, 2011. **Amended _____, 2020, effective _____, 2020.**

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 632 published with the Court's Order at 38 Pa.B. 1146 (March 8, 2008). Final Report explaining the amendments to Rule 632 published with the Court's Order at 41 Pa.B. 3180 (June 25, 2011). **Final Report explaining the amendments to Rule 632 published with the Court's Order at _____ Pa.B. (_____, 2020).**