

## **JUVENILE COURT PROCEDURAL RULES COMMITTEE ADOPTION REPORT**

### **Amendment of Pa.R.J.C.P. 515, 610, 612, and 632**

On October 22, 2021, the Supreme Court amended Pennsylvania Rules of Juvenile Court Procedure 515, 610, 612, and 632 to assist in applying the principles of the Juvenile Act when imposing financial obligations at the time of disposition in a delinquency proceeding. The Juvenile Court 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, Comment. The statements contained herein are those of the Committee, not the Court.

The Committee received a request for rulemaking to: 1) clarify that the juvenile court retains discretion to waive court-imposed financial obligations, including restitution; 2) require the juvenile court to consider a juvenile's ability to pay before imposing financial obligations, together with a presumption of indigence; and 3) prohibit the juvenile court from imposing juvenile adjudication, disposition, or terms of probation for a failure to pay that is not willful. Additionally, the requestor sought amendment of Pa.R.J.C.P. 631 to permit the termination of supervision when there are outstanding financial obligations and the juvenile is unable to pay them.

To gain perspective, the Committee considered the frequency with which financial obligations are imposed and satisfied within Pennsylvania's juvenile justice system. Based upon Juvenile Court Judges Commission's Statewide Outcome Measures, in 2019 there were 9,128 juvenile cases closed. Of those cases, 76.8% of the cases did not have a restitution obligation. Of those cases with a restitution obligation, 88.6% made full restitution. Thus, there were 228 cases closed in Pennsylvania in 2019 where less than full restitution was paid. Of those cases, 53.6% (165 cases) resulted in a judgement being entered for outstanding restitution while 25.9% (59 cases) closed with unpaid restitution that did not result in a judgement.

Regarding fines, fees, and costs, only 29.6% of cases closed in 2019 had no such financial obligation imposed. Of the cases with fines, fees, or costs ordered, only 10.4% (671 cases) were not paid in full at the time of closing. Of the closed cases with unpaid fines, fees, or costs, 64% were closed without a judgment being entered.

These statistics informed the Committee that a vast majority of juvenile cases with ordered financial obligations were satisfied at the time of closing. In the cases that were closed with an outstanding financial obligation, a portion of those cases did not result in a judgment being entered against the juvenile. These statistics appeared to demonstrate a practice in some juvenile courts of effectively discharging unpaid financial obligations

at the time that supervision is terminated. For consistency of practice, the Committee believed there would be merit in pursuing rulemaking on this topic.

Next, the Committee considered whether all financial obligations are discretionary. For example, the Crime Victims Act requires a juvenile to pay costs of at least \$25 when there is a consent decree or an adjudication of delinquency. See 18 P.S. § 11.1101(a)(3). The Crime Victims Act states: “This cost shall be imposed notwithstanding any statutory provision to the contrary.” *Id.* § 110.1101(c). The Committee believed the subordination of such statutory mandates to the principles of the Juvenile Act, 42 Pa.C.S. § 6352(a)(5), is a substantive matter, not procedural. Anecdotally, the practice in Pennsylvania of not imposing mandatory fees was varied.

The Committee initially proposed an amendment of Pa.R.J.C.P. 515(B) to incorporate the statutory criteria for imposing financial obligations on juveniles. See 49 Pa.B. 2474 (May 18, 2019). Additionally, “restitution” would be replaced with “financial obligations” to include fines, costs, and fees with restitution amounts. The Comment to Pa.R.J.C.P. 515 would be revised to contain statutory content and citations. Further, the Committee proposed adding a reference to the Comment to Pa.R.J.C.P. 515 indicating that diminution of financial obligations may be sought through a dispositional review hearing. The Comment to Pa.R.J.C.P. 610 would be revised to contain a corollary statement.

The Committee received 14 comments. After reviewing the comments, the Committee recognized the limits to 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 that such obligations place a burden on juveniles that potentially extends beyond the supervision 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, several commenters believed that some costs are “mandatory” regardless of circumstance and other commenters contended that imposition of any cost must be consistent with the Juvenile Act. The Committee believed this difference of opinion is best resolved through either an adjudicatory proceeding or legislative action rather than by procedural rulemaking.

However, it bears noting that the initial order of disposition is not static; it is subject to subsequent review and modification by the juvenile court to ensure “that the juvenile is receiving necessary treatment and services and that the terms and conditions of the disposition are being met.” Pa.R.J.C.P. 610(A). As the imposition of financial obligations is part of disposition, see generally 42 Pa.C.S. § 6352 (Disposition of Delinquent Child), it, too, is subject to subsequent review and modification pursuant to Pa.R.J.C.P. 610.

The implication of modifying restitution after the initial imposition was discussed at length. The issue of restitution pivoted on the relationship between the Juvenile Act and the Crime Victims Act. As indicated by the comments, there is an ardent belief that restitution, once imposed, should never be modified. However, unlike criminal court, few matters are “final” while a juvenile remains under the supervision of the juvenile court, including the disposition. To illustrate, a juvenile court, subject to the requirements of 42 Pa.C.S. § 6353(a), can extend a juvenile’s commitment after the initial disposition.

Procedurally, there was concern 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.

Believing the more prudent course was to propose a procedural avenue to seek relief and for cases to be determined on individual merit with all stakeholders given notice, including victims, see Pa.R.J.C.P. 600(B)(1) & Comment (attorney for the Commonwealth is to notify victim of dispositional review hearing); Pa.R.J.C.P. 631(E) & Comment (same for motion for early termination), the Committee published revised proposed amendments to Pa.R.J.C.P. 515 and 610 for comment. See 50 Pa.B. 3838 (August 1, 2020). The proposed rules were intended to clarify what is already permitted by the Pennsylvania Rules of Juvenile Court Procedure. Per Pa.R.J.C.P. 515, the court may impose financial obligations, including restitution, at the time of disposition. Per Pa.R.J.C.P. 610, the court may review and modify, without limitation, the dispositional order. The anticipation that a modification of the dispositional order may impact a victim is already contemplated in Pa.R.J.C.P. 610(B) with notice to the victim, together with an opportunity to be heard. The proposed rules recognize that a party may seek an adjustment of the dispositional order, but they do not dictate an outcome. That decision is reserved for the juvenile court judge based upon the individual facts of the case.

The Committee received 10 comments in response to the revised proposal. Only one commenter favored the proposal. While the other commenters believed the proposal did not go far enough, there was no consensus on direction. Some commenters believed that juveniles should be liable for repayment of all mandatory financial obligations imposed and victims should be entitled to full restitution from the juvenile. Other commenters believed that juveniles should be presumed indigent and any financial obligation must reflect this presumption. Further, juveniles should not be liable for unpaid obligations.

The statistics reviewed, *supra*, did not suggest to the Committee that the vast majority of financial obligations being imposed were excessive to the point that juveniles were unable to satisfy those obligations with widespread frequency. Indeed, many of the

arguments raised by the commenters, such as the calculation of earnings capacity, are best directed to the juvenile court judge based upon individual case circumstances and should not be preordained by the rules.

In its second publication, the Committee proposed adding, *inter alia*, the third and fourth sentences of the second proposed paragraph of the Comment to Pa.R.J.C.P. 515, which drew sharp criticism. Those sentences stated:

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.

Regarding the "third sentence," several commenters indicated that victim restitution is part of a juvenile's rehabilitation because it imposes accountability. The intent of the sentence was to reinforce the Juvenile Act's requirement that financial obligations, including restitution, be part of a juvenile's plan of rehabilitation. See 42 Pa.C.S. § 6351(a)(5). Imposing restitution without consideration of a juvenile's rehabilitation plan would not be consistent with the Juvenile Act. The citation to *Petrick* was qualified with an appropriate introductory signal.

Yet, after reviewing the comments, the Committee decided the better path was to remove, rather than refine, the Comment language to address the concerns. Further, the citation to *Petrick* was removed lest readers view it as an invitation to apply collection procedures from criminal courts to juvenile proceedings.

Regarding the "fourth sentence," the Committee believed that the use of third-party funds to pay off or pay down financial obligations does not hold a juvenile accountable. Upon reflection, the sentence might be in tension with 23 Pa.C.S. §§ 5503(a), 5505, which hold parents of a juvenile liable, subject to caps, for injuries caused by the juvenile. The Committee specifically solicited comments on the interplay between these statutes and the Juvenile Act. Noting there is little recent case law on these statutes, a commenter expressed concern about the parents' rights and the procedure for imposing this liability.

It was not believed that 23 Pa.C.S. §§ 5503(a), 5505 were widely applied in all counties in all circumstances. Anecdotally, the parents of juveniles often lack the funds to satisfy a juvenile's financial obligations. Nonetheless, given that the "fourth sentence" could be read to prohibit application of those statutes, the Committee favored removing that sentence. Additionally, the Committee did not wish for the sentence to be interpreted to preclude victim restitution from third party sources.

Several comments sought a rule-based preclusion for the extension of supervision for unpaid financial obligations. That concept seemingly ran contrary to the principles of juvenile justice. If accountability is part of a juvenile's rehabilitation, and accountability may be maintained through the imposition of financial obligations, then a juvenile cannot be rehabilitated until all outstanding financial obligations have been paid. Therefore, unpaid financial obligations may properly be a basis for extending supervision. See also 42 Pa.C.S. § 6352(a)(5). However, an extension of supervision is not fated in all cases; there is a procedure to seek modification of a juvenile's plan of rehabilitation, which may include the diminution of financial obligations.

There appeared to be a misapprehension that financial obligations imposed upon indigent juveniles were improper in all instances. The Juvenile Act permits a term of probation to include a fine or restitution. See 42 Pa.C.S. § 6352(a)(6). The Juvenile Act further permits the court to order the juvenile to perform "community service" to "work off" the financial obligation. See *id.* The duration of this service may be extended, consistent with 42 Pa.C.S. § 6353(a). See *id.* In a sense, the imposed financial obligation is tantamount to an order of community service. The alternative to payment is a means to satisfy imposed financial obligations on indigent juveniles.

The concept of a "presumption of indigence" when imposing a reasonable amount of financial obligations was not incorporated. First, it is a presumption with potential to overwhelm and displace the other factors used in determining a reasonable amount. Second, it reflects the juvenile's state of "wealth" at the time of disposition and fails to reflect the juvenile's capacity for "wealth" over a period of time. Third, the juvenile's earning capacity, as expounded upon in the revised Comment to Pa.R.J.C.P. 515, should render a truer assessment of a juvenile's current and potential "wealth." Fourth, practically all juveniles are indigent by adult standards, so a presumption applicable to juveniles did not appear to be particularly enlightening. Fifth, a juvenile has the opportunity at a review or modification hearing to demonstrate that any inadequacy of earnings is not the result of insufficient effort or willful conduct. Sixth, the presumption of indigence, cited by commenters as precedential, serves a purpose for assigning counsel, see Pa.R.J.C.P. 151, which is unrelated from the purpose of these proposed rules.

The use of "financial obligations" in Pa.R.J.C.P. 515(B) to include fines, costs, fees, and restitution was not intended to diminish the importance of restitution. The phrase is simply representative of the total amount imposed upon a juvenile. With respect to the commenters, the importance of restitution is reflected, to a degree, in the priority and proportionality of each payment by the juvenile that flows directly to the victim rather than to the county or state treasury.

The Committee did not accept the suggestion that the rules instruct the manner in which the value of restitution is to be calculated. The focus at disposition is not on the valuation of restitution, *per se*, but on the "reasonable amount" of restitution "deemed

appropriate as part of the plan of rehabilitation considering the nature of the acts committed and the earning capacity of the child, including a contribution to a restitution fund.” 42 Pa.C.S. § 6352(a)(5). Moreover, the Committee was concerned that the value of restitution would become a proxy for a reasonable amount of restitution, which fails to consider the aforementioned statutory factors. Finally, the Committee was not aware of complaints of restitution being incorrectly or incompletely valued in present practice.

Relatedly, the Committee was asked to limit the evaluation of a juvenile’s earning capacity to 21 years of age. The argument for this limitation is found in 42 Pa.C.S. § 6352(a)(5), which states: “the earning capacity of the child.” The Juvenile Act defines a “child” as, *inter alia*, “an individual who is under the age of 21 years who committed an act of delinquency before reaching the age of 18 years.” 42 Pa.C.S. § 6302. Therefore, as argued, the court may only consider earning capacity through 21 years of age.

The Committee rejected this request, not because it lacked merit, but because it implicated a significant policy issue involving statutory construction. Statutes provide for the reduction of unpaid financial obligations to judgments against juveniles. See 42 Pa.C.S. § 6352(a)(5); 42 Pa.C.S. § 9728(a)(1). These statutes appear to contemplate that imposed financial obligations may not be paid off by a juvenile’s 21<sup>st</sup> birthday. To limit earning capacity to 21 years of age implied that any outstanding financial obligation afterward was indicative of an unreasonable amount being imposed at the time of disposition. Moreover, limiting earning capacity to 21 years of age would essentially abrogate the part of § 6352(a)(5) providing that “any restitution order which remains unpaid at the time the child attains 21 years of age shall continue to be collectible under [42 Pa.C.S. §] 9728 (relating to collection of restitution, reparation, fees, costs, fines and penalties).”

Notwithstanding, if there is no temporal limit on a juvenile’s earning capacity, then potentially the court could consider a lifetime of earnings when imposing financial obligations, especially restitution. See, e.g., *Commonwealth v. B.D.G.*, 959 A.2d 362 (Pa. Super. 2008). The Committee was not inclined to recommend rulemaking to reconcile the argument to limit earning capacity with the effect of such a limitation. That issue appeared to be more appropriately resolved through the appellate process and an established factual record.

Several comments sought to limit subsequent modifications of the dispositional order to only downward adjustment of financial obligations, as opposed to any form of adjustment, including an upward adjustment. The Committee did not favor limiting the type of adjustment because restitution may be uncertain at the time of disposition given the expedited adjudicatory process of juvenile justice. See also *In re J.G.*, 45 A.3d 1118 (Pa. Super. 2012) (holding that juvenile court had jurisdiction to issue an order for restitution 114 days after the order of disposition). However, the neutrality of “adjustment”

was not intended to invite the imposition of increased fines, fees, and costs after disposition. The Comment to Rule 610 was revised to express this intention.

Further non-substantive revisions were made post-publication to include citations of authority, incorporation of language from the Juvenile Act, instructions on financial obligations, revised commentary, and the correlative addition of commentary to Rule 632.

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In sum, financial obligations in juvenile proceedings are a policy-laden matter and subject to differing perspectives. The Committee believes those issues are best addressed by juvenile court judges on an individual basis using the procedures herein adopted and with the advocacy of counsel.

These amendments become effective April 1, 2022.