

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

NOTICE OF PROPOSED RULEMAKING

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

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 and 610 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:

**Daniel A. Durst, Chief Counsel
Juvenile Court Procedural Rules Committee
Supreme Court of Pennsylvania
Pennsylvania Judicial Center
PO Box 62635
Harrisburg, PA 17106-2635
FAX: 717-231-9541
juvenilerules@pacourts.us**

All communications in reference to the proposal should be received by **August 16, 2019**. 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 Jennifer R. Sletvold, Chair

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

REPORT

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

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

Procedurally, if a juvenile is adjudicated delinquent, then the court enters an order providing “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.” Pa.R.J.C.P. 515(A). Concerning the imposition of financial obligations, the Juvenile Act requires that the amounts of financial obligations be reasonable and as part of a plan of rehabilitation considering the nature of the acts committed and the earning capacity of the juvenile. 42 Pa.C.S. § 6352(a)(5). The Juvenile Act further provides that the court retains jurisdiction over the juvenile until the age of 21 years or until there has been satisfaction of outstanding financial obligations. *Id.* After the age of 21 years, any outstanding restitution is reduced to a judgment against the juvenile. *Id.*; see also 42 Pa.C.S. § 9728(a).

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 indigency; 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 Rule 631 to permit the termination of supervision when there are outstanding financial obligations and the juvenile is unable to pay them.

Preliminarily, 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 believes it is a substantive matter, and not procedural, whether a financial obligation that may be inconsistent with balanced and restorative juvenile justice, and not in accordance with 42 Pa.C.S. § 6352(a)(5), may nonetheless be imposed as part of the initial disposition. Anecdotally, the practice in Pennsylvania appears varied as to this matter.

Notwithstanding, 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 Rule 610.

Accordingly, the Committee proposes an amendment of Rule 515(B) to incorporate the statutory criteria for imposing financial obligations on juveniles. Additionally, “restitution” would be replaced with “financial obligations” to include fines, costs, and fees with restitution amounts. The Comment to Rule 515 would be revised to contain statutory content and citations. Further, the Committee proposes adding a reference to the Comment to Rule 515 indicating that diminution of financial obligations may be sought through a dispositional review hearing. The Comment to Rule 610 would be revised to contain a corollary statement.

Readers should observe that the proposed language in the commentary describes a downward modification of outstanding financial obligations. The Committee did not anticipate there would be an upward modification of financial obligations. Readers are invited to comment specifically on this point in addition to the proposal as a whole.

Concerning the “ability to pay” suggestion, the Committee did not believe there was substantive difference between “earning capacity” and “ability to pay.” The Committee debated, without resolution, whether a court could accurately estimate a juvenile’s future earnings at the time of disposition. Regarding a presumption of indigency, the Committee did not believe a presumption was necessary at the time of disposition because the juvenile could seek subsequent review of outstanding financial obligations and prove inadequacy of actual earnings from the time of initial disposition. Additionally, the dispositional review hearing provides the juvenile an opportunity to demonstrate that an inadequacy of earnings is not the result of insufficient effort or willful conduct.

Further, the Committee did not believe an amendment of Rule 631 is necessary to permit the termination of supervision when there are outstanding financial obligations and the juvenile is unable to pay them. A juvenile who is unable to satisfy financial obligations imposed at disposition should seek review and modification of the dispositional order in accordance with Rules 600-610.

The Committee recognizes there may be reasons unrelated to the dispositional order that might warrant early termination. Rule 632(A) permits any party to file a

motion for early termination and explain why, *inter alia*, financial obligations have not been paid in full. See Pa.R.J.C.P. 632(A); Pa.R.J.C.P. 631(A)(2). If the court finds there are “compelling reasons” to terminate supervision prior to the satisfaction of outstanding financial obligations, then the court may do so. See Pa.R.J.C.P. 632(F); *see also In Interest of D.C.D.*, 171 A.3d 727, 741 (Pa. 2017) (juvenile court must consider the factors of balanced and restorative justice when determining whether compelling reasons exist for the early termination of supervision).

The Committee is mindful of reports of juveniles remaining under supervision due solely to unpaid obligations. However, the Committee refrains from proposing how juvenile courts should exercise discretion. Rather, the Committee believes the more prudent course is 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 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 **s** 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.

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.

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). 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 *id.*; see also Rule 632 (Early Termination of Court Supervision by Motion). A subsequent change in the plan of rehabilitation may warrant diminution of financial obligations through a dispositional review hearing and modification of dispositional order. See Rule 610(A)-(B).

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 _____, 2019, effective _____, 2019.**

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. (, 2019).

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 Dispositional Order.** Whenever there is a request for a change in 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.

- 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 for change in the dispositional order.
- 4) A review hearing shall be held within **[twenty] 20** days of the discharge from the placement facility or request for change in 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 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 warrant diminution 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 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.*

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 _____, 2019, effective _____, 2019.**

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. (_____, 2019).**