

**Proposed Amendments to Pa.R.Crim.P. 708 and
Revision of the Comment to Pa.R.Crim.P. 701**

INTRODUCTION

The Criminal Procedural Rules Committee is planning to recommend that the Supreme Court of Pennsylvania amend Rule of Criminal Procedure 708 and approve the revision of the Comment to Rule of Criminal Procedure 701 to make clear that a defendant at the time of sentencing in probation, intermediate punishment, or parole violation cases also may plead guilty to other offenses the defendant has committed within the jurisdiction of the sentencing court. The Committee also is proposing the revision of the Comments to Rules 701 and 708 to alert the bench and bar to the requirements of the Crime Victims Act in the context of guilty pleas to multiple offenses. This proposal has not been submitted for review by the Supreme Court of Pennsylvania.

The following explanatory Report highlights the Committee's considerations in formulating this proposal. Please note that the Committee's Report should not be confused with the official Committee Comments to the rules. Also note that the Supreme Court does not adopt the Committee's Comments or the contents of the explanatory Reports.

The text of the proposed rule changes precedes the Report. Additions are shown in bold and are underlined; deletions are in bold and brackets.

We request that interested persons submit suggestions, comments, or objections concerning this proposal in writing to the Committee through counsel,

*Anne T. Panfil, Counsel
Supreme Court of Pennsylvania
Criminal Procedural Rules Committee
Pennsylvania Judicial Center
601 Commonwealth Ave., Suite 6200
P.O. Box 62635
Harrisburg, PA 17106-2635
fax: (717) 231-9521
e-mail: criminalrules@pacourts.us*

no later than Friday, April 1, 2011.

February 14, 2010

BY THE CRIMINAL PROCEDURAL RULES COMMITTEE:

Risa Vetri Ferman, Chair

*Anne T. Panfil
Counsel*

*Jeffrey M. Wasileski
Counsel*

RULE 701. PLEAS OF GUILTY TO MULTIPLE OFFENSES.

(A) Before the imposition of sentence, the defendant may plead guilty to other offenses that the defendant committed within the jurisdiction of the sentencing court.

(B) When such pleas are accepted, the court shall sentence the defendant for all the offenses.

COMMENT: The objective of this rule is to enable consolidation of all outstanding charges within the jurisdiction of the sentencing court for sentencing at one time.

This rule applies when a defendant is to be sentenced following a finding that the defendant violated his or her probation, intermediate punishment, or parole. See Rule 708(D) for the sentencing procedures in probation, intermediate punishment, or parole violation cases.

When a defendant is permitted to plead guilty to multiple offenses as provided in paragraph (A), if any of the other offenses involves a victim, the sentencing proceeding must be delayed to afford the Commonwealth adequate time to contact the victim(s), and to give the victim(s) an opportunity to offer prior comment on the sentencing or to submit a written and oral victim impact statement. See the Crime Victims Act, 18 P.S. 11.201(5).

NOTE: Rule 1402 adopted July 23, 1973, effective 90 days hence; renumbered Rule 701 and amended March 1, 2000, effective April 1, 2001 [.] ; **Comment revised**, **2011, effective**, **2011.**

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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. 1477 (March 18, 2000).

Report explaining the proposed revision of the Comment concerning probation violation cases and the Crime Victims Act published at 41 Pa.B. (, 2011).

RULE 708. VIOLATION OF PROBATION, INTERMEDIATE PUNISHMENT, OR PAROLE: HEARING AND DISPOSITION.

(A) A written request for revocation shall be filed with the clerk of courts.

(B) Whenever a defendant has been sentenced to probation or intermediate punishment, or placed on parole, the judge shall not revoke such probation, intermediate punishment, or parole as allowed by law unless there has been:

(1) a hearing held as speedily as possible at which the defendant is present and represented by counsel; and

(2) a finding of record that the defendant violated a condition of probation, intermediate punishment, or parole.

(C) Before the imposition of sentence,

(1) the defendant may plead guilty to other offenses that the defendant committed within the jurisdiction of the sentencing court.

(2) When such pleas are accepted, the court shall sentence the defendant for all the offenses.

[(C)] (D) Sentencing Procedures

(1) At the time of sentencing, the judge shall afford the defendant the opportunity to make a statement in his or her behalf and shall afford counsel for both parties the opportunity to present information and argument relative to sentencing.

(2) The judge shall state on the record the reasons for the sentence imposed.

(3) The judge shall advise the defendant on the record:

(a) of the right to file a motion to modify sentence and to appeal, of the time within which the defendant must exercise those rights, and of the right to assistance of counsel in the preparation of the motion and appeal; and

(b) of the rights, if the defendant is indigent, to proceed *in forma pauperis* and to proceed with assigned counsel as provided in Rule 122.

(4) The judge shall require that a record of the sentencing proceeding be made and preserved so that it can be transcribed as needed. The record shall include:

- (a) the record of any stipulation made at a pre-sentence conference; and
- (b) a verbatim account of the entire sentencing proceeding.

[(D)] (E) Motion to Modify Sentence

A motion to modify a sentence imposed after a revocation shall be filed within 10 days of the date of imposition.

COMMENT: This rule addresses *Gagnon* II revocation hearings only, and not the procedures for determining probable cause (*Gagnon* I). See *Gagnon v. Scarpelli*, 411 U.S. 778 (1973).

Paragraph (A) requires that the *Gagnon* II proceeding be initiated by a written request for revocation filed with the clerk of courts.

The judge may not revoke probation or parole on arrest alone, but only upon a finding of a violation thereof after a hearing, as provided in this rule. However, the judge need not wait for disposition of new criminal charges to hold such hearing. See *Commonwealth v. Kates*, **452 Pa. 102**, 305 A.2d 701 ([Pa.] 1973).

This rule does not govern parole cases under the jurisdiction of the Pennsylvania Board of Probation and Parole, but applies only to the defendants who can be paroled by a judge. See 61 P.S. § 314. See also *Georgevich v. Court of Common Pleas of Allegheny County*, **510 Pa. 285**, 507 A.2d 812 ([Pa.] 1986).

This rule was amended in 1996 to include sentences of intermediate punishment. See 42 Pa.C.S. §§ 9763 and 9773. Rules 704, 720, and 721 do not apply to revocation cases.

The objective of the procedures enumerated in paragraph (C) is to enable consolidation of all outstanding charges within the jurisdiction of the

sentencing court for sentencing at one time. See Rule 701.

When a defendant is permitted to plead guilty to multiple offenses as provided in paragraph (C), if any of the other offenses involves a victim, the sentencing proceeding must be delayed to afford the Commonwealth adequate time to contact the victim(s), and to give the victim(s) an opportunity to offer prior comment on the sentencing or to submit a written and oral victim impact statement. See the Crime Victims Act, 18 P.S. 11.201(5).

Issues properly preserved at the sentencing proceeding need not, but may, be raised again in a motion to modify sentence in order to preserve them for appeal. In deciding whether to move to modify sentence, counsel must carefully consider whether the record created at the sentencing proceeding is adequate for appellate review of the issues, or the issues may be waived. See *Commonwealth v. Jarvis*, **444 Pa. Super. 295**, 663 A.2d 790, 791-2, n. 1 ([Pa. Super.] 1995). As a general rule, the motion to modify sentence under paragraph **[(D)] (E)** gives the sentencing judge the earliest opportunity to modify the sentence. This procedure does not affect the court's inherent powers to correct an illegal sentence or obvious and patent mistakes in its orders at any time before appeal or upon remand by the appellate court. See, e.g., *Commonwealth v. Jones*, **520 Pa. 385**, 554 A.2d 50 ([Pa.] 1989) (sentencing court can, *sua sponte*, correct an illegal sentence even after the defendant has begun serving the original sentence) and *Commonwealth v. Cole*, **437 Pa. 288**, 263 A.2d 339 ([Pa.] 1970) (inherent power of the court to correct obvious and patent mistakes).

Once a sentence has been modified or reimposed pursuant to a motion to modify sentence under paragraph **[(D)] (E)**, a party wishing to challenge the decision on the motion does not have to file an additional motion to modify sentence in order to preserve an issue for appeal, as long as the issue was properly preserved at the time sentence was modified or re-imposed.

NOTE: Rule 1409 adopted July 23, 1973, effective 90 days hence; amended May 22, 1978, effective as to cases in which sentence is imposed on or after July 1, 1978; *Comment* revised November 1, 1991, effective January 1, 1992; amended September 26, 1996, effective January 1, 1997; *Comment* revised August 22, 1997, effective January 1, 1998; renumbered Rule 708 and amended March 1, 2000, effective April 1, 2001 [.] amended _____, 2011, effective _____, 2011.

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COMMITTEE EXPLANATORY REPORTS:

Report explaining the January 1, 1992 amendments published at 21 Pa.B. 2246 (May 11, 1990); Supplemental Report published with the Court's Order at 21 Pa.B. 5329 (November 16, 1991).

Final Report explaining the September 26, 1996 amendments published with the Court's Order at 26 Pa.B. 4900 (October 12, 1996).

Final Report explaining the August 22, 1997 Comment revision [which] that cross-references Rule [1411] 721 published with the Court's Order at 27 Pa.B. 4553 (September 6, 1997).

Final Report explaining the March 1, 2000 reorganization and renumbering of the rules published with the Court's Order at 30 Pa.B. 1477 (March 18, 2000).

Report explaining the proposed amendments to paragraph (C) concerning multiple guilty pleas and the Comment concerning the Crime Victims Act published at 41 Pa.B. (_____, 2011).

REPORT

Proposed Amendments to Pa.R.Crim.P. 708 and Revision of the Comment to Pa.R.Crim.P. 701

PLEAS OF GUILTY TO MULTIPLE OFFENSES; CRIME VICTIMS ACT

The Committee undertook a review of Rules 701 (Pleas of Guilty to Multiple Offenses) and 708 (Violation of Probation, Intermediate Punishment, or Parole: Hearing and Disposition) after receiving inquiries asking whether a defendant who is being sentenced for a probation, intermediate punishment, or parole violation would be able to plead guilty to other offenses pursuant to Rule 701.

Rule 701 permits a defendant, before the imposition of sentence, to plead guilty to other offenses the defendant has committed that are within the jurisdiction of the sentencing court. The Rule 701 *Comment* explains the objective of this rule is “to enable consolidation of all outstanding charges within the jurisdiction of the sentencing court for sentencing at one time.”

When Rule 701 was adopted in 1973,¹ the Committee observed that the rule reflects sound sentencing policy, noting that this is consistent with the positions of the American Bar Association, the Pennsylvania Bar Association, and the Task Force on Corrections of the National Advisory Commission on Criminal Justice Standards and Goals.

The benefits of this policy are stated in the *ABA Standards for Criminal Justice*, Chapter 14--Pleas of Guilty, Standard 14.1.2 (1999) Commentary

Allowing for consolidated guilty pleas enables a defendant to be sentenced simultaneously on all charges that he or she is facing in that government's courts. This reduces the governmental resources that must be devoted to the cases, while also allowing the defendant to take full advantage of any concurrent sentencing options that may be available. By pleading to all offenses simultaneously, the defendant can complete his or her sentence without facing these additional charges, and can avoid the risk of having a detainer filed against the defendant on these other charges while serving his or her sentence.

¹ Rule 701, originally numbered Rule 1402, was renumbered Rule 701 in 2000 as part of comprehensive renumbering and reorganization of the Rules..

Rule 708(C) (Violation of Probation, Intermediate Punishment, or Parole: Hearing and Disposition) provides sentencing procedures comparable to paragraph (C) of Rule 704 (Procedure at Time of Sentencing). The Committee reasoned that the provisions of Rule 701 should apply to sentencing proceedings following trials and probation, intermediate punishment, or parole violations since the sentencing proceeding in a probation violation case is comparable to a sentencing proceeding following a trial. They also believe the same reasons articulated in support of permitting pleas to multiple offenses after trial apply equally well to sentencing in probation, intermediate punishment, and parole violation cases. Furthermore, the members noted that this practice already is occurring in a number of judicial districts. However, because there appears to be confusion among some members of the bench and bar, the members agreed it makes sense to add some clarifying language to the Rule 701 *Comment* and to Rule 708. Accordingly, the Rule 701 *Comment* would be revised by the addition of a new paragraph that states that Rule 701 applies in sentencing proceedings under Rule 708. Rule 708 would be amended by adding a new paragraph (C) that incorporates the procedures in Rule 701 for a defendant to plead guilty to other offenses the defendant has committed within the jurisdiction of the sentencing court.

During the Committee's consideration of Rules 701 and 708, some members observed that neither rule specifically recognizes the provisions of the Crime Victims Act, 18 P.S. § 11.201(5), which requires, *inter alia*, that victims be given an opportunity to offer comment about the defendant's sentence prior to the sentencing. Without some accommodation for delay in sentencing in Rules 701 and 708, the case could run afoul of the Crime Victims Act. The Committee concluded adding a reference to the Crime Victims Act in the *Comments* to both Rules 701 and 708 would ensure that the bench and bar is aware of their responsibilities under the Crime Victims Act. The proposed new *Comment* provisions would make it clear that the sentencing proceeding must be delayed when there is a victim for any of the other offenses to which the defendant is pleading guilty. The *Comment* explains the delay is necessary to afford the

Commonwealth adequate time to contact the victim and give the victim an opportunity to offer input as required by the Crime Victims Act, and includes a citation to the Act.