

THE COURTS

Title 237—JUVENILE RULES

PART I. RULES

[237 PA. CODE CHS. 5 AND 6]

Order Amending Rules 515, 610, 612 and 632 of the Pennsylvania Rules of Juvenile Court Procedure; No. 885 Supreme Court Rules Doc.

Order

Per Curiam

And Now, this 22nd day of October, 2021, upon the recommendation of the Juvenile Court Procedural Rules Committee, the proposal having been published for public comment at 50 Pa.B. 3838 (August 1, 2020) and 49 Pa.B. 2474 (May 18, 2019):

It is Ordered pursuant to Article V, Section 10 of the Constitution of Pennsylvania that Pennsylvania Rules of Juvenile Court Procedure 515, 610, 612, and 632 are amended in the following form.

This Order shall be processed in accordance with Pa.R.J.A. 103(b), and shall be effective on April 1, 2022.

Annex A

TITLE 237. JUVENILE RULES

PART I. RULES

Subpart A. DELINQUENCY MATTERS

CHAPTER 5. DISPOSITIONAL HEARING

PART B. DISPOSITIONAL HEARING AND AIDS

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 in accordance with 42 Pa.C.S. § 6352, which [provides] provide the court has determined to be consistent with the protection of the public interest and best suited to the child's treatment, supervision, rehabilitation and welfare, which disposition shall, as appropriate to the individual circumstances of the child's case, 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, the] Financial Obligations. If the court orders the payment of fines, costs, fees, or restitution, pursu-

ant to 42 Pa.C.S. § 6352(a)(5) and (6), the amounts shall be reasonable and as deemed appropriate as part of a plan of rehabilitation considering the nature of the acts committed and the earning capacity of the juvenile. The dispositional order shall include:

- 1) [a specific amount of] the specific amounts of fines, costs, fees, or restitution to be paid by the juvenile;
- 2) to whom each of 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 according to the dispositional order.

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

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

Comment

See 42 Pa.C.S. § 6352 regarding disposition of a delinquent child.

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 and 6310.

[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.]

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)-(6). 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 court may also order non-financial obligations consistent with the principles of balanced and restorative justice.

Assuming the court finds the juvenile has a sufficient earning capacity to impose a reasonable financial obligation, the court should determine the juvenile's present ability to pay the financial obligation in accordance with the payment schedule 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 may 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 juvenile attains 21 years of age, or supervision has been terminated upon completion of the terms of the dispositional order and satisfaction of financial obligations, or otherwise. See 42 Pa.C.S. § 6352(a)(5); see also Rules 630 (Loss of Court Jurisdiction), 631 (Termination of Court Supervision) and 632 (Early Termination of Court Supervision by Motion).

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 October 22, 2021, effective April 1, 2022.**

Committee Explanatory Reports:

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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 51 Pa.B. 6905 (November 6, 2021).

CHAPTER 6. POST-DISPOSITIONAL PROCEDURES

PART B. MODIFICATIONS AND REVIEWS

Rule 610. Dispositional and Commitment Review.

A. *Dispositional [review hearing] Review 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 for change in] motion for 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 for change in] motion for modification of** the dispositional order.

C. *Advanced [communication technology] Communication 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. An "adjustment" is not intended to invite the imposition of increased fines, fees, or costs after disposition.**

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**] **Victims** 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**] **1612.**

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 October 22, 2021, effective April 1, 2022.**

Committee Explanatory Reports:

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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 51 Pa.B. 6905 (November 6, 2021).

Rule 612. Modification or Revocation of Probation.

A. *Filing.* A motion to modify or revoke probation shall be filed in accordance with Rule 345.

B. *Time of Hearing on the Motion.*

1) If the juvenile is detained, the hearing on the motion shall be held within ten days of the detention hearing.

2) If the juvenile is not detained, the hearing on the motion shall be held promptly.

C. *Modification.* If the court modifies the dispositional order, the court shall state the grounds for the modification and shall issue a new dispositional order in accordance with Rule 515.

D. *Advanced Communication Technology.* A court may utilize advanced communication technology pursuant to Rule 129 for a juvenile or a witness unless good cause is shown otherwise.

E. *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

A juvenile should be afforded due process before probation can be revoked. *Cf. Gagnon v. Scarpelli*, 411 U.S. 778 (1973); *Morrissey v. Brewer*, 408 U.S. 471 (1972). A juvenile’s probation cannot be revoked simply on the grounds of hearsay evidence. *In re Davis*, 586 A.2d 914 (Pa. 1991).

If a juvenile is over the age of eighteen, under the age of twenty-one, and is alleged to have violated the terms of probation, the juvenile, if detained, is to be placed in a detention facility. See Rule 120 and its Comment for definitions of “detention facility,” which does not include a county jail or state prison, and “juvenile,” which includes a person who has attained ten years of age and is not yet twenty-one years of age who is alleged to have committed a delinquent act before reaching eighteen years of age or who is alleged to have violated the terms of juvenile probation prior to termination of juvenile court supervision.

For detention procedures, see Rules 240 through 243.

For dispositional orders, see Rule 515.

Whenever a motion seeking to modify probation also 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 hearing. See Pa.R.J.C.P. 610(B).

For the use of advanced communication technology, see Rule 129.

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**] **1612.**

Official Note: Rule 612 adopted April 1, 2005, effective October 1, 2005. Amended March 5, 2013, effective immediately. Amended June 28, 2013, effective immediately. Amended May 11, 2017, effective October 1, 2017. **Amended October 22, 2021, effective April 1, 2022.**

Committee Explanatory Reports:

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Final Report explaining the amendments to Rule 612 published with the Court’s Order at 47 Pa.B. 2969 (May 27, 2017).

Final Report explaining the amendments to Rule 612 published with the Court’s Order at 51 Pa.B. 6905 (November 6, 2021).

**PART D. CESSATION OF COURT JURISDICTION
OR SUPERVISION**

**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 [**determination**] 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**] **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 [**reasons**] **reason** 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**] **Victims** 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**] **Victims** 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 protection of the public interest in a manner best suited to the juvenile’s treatment, supervision, rehabilitation and welfare within the framework of balanced and restorative justice, which attends to: 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 October 22, 2021, effective April 1, 2022.**

Committee Explanatory Reports:

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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 51 Pa.B. 6905 (November 6, 2021).

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 21st 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.

* * *

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.

[Pa.B. Doc. No. 21-1833. Filed for public inspection November 5, 2021, 9:00 a.m.]

Title 255—LOCAL COURT RULES

MERCER COUNTY

Amendments to Local Rules of Civil Procedure L1915.3 Through L1915.27; No. 2021-2707

And Now, this 25th day October, 2021, the Court hereby *Approves, Adopts* and *Promulgates* the following Amendments to the Mercer County Local Rules L1915.3 through L1915.27 Regarding Primary Physical Custody and Partial Physical Custody of Minor Children.

It Is Further *Ordered* and *Directed* that the Court Administrator of Mercer County shall file one (1) certified copy of the Amendments with the Administrative Office of Pennsylvania Courts and furnish two (2) certified copies to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.

It Is Further *Ordered* and *Directed* that these Amendments shall be kept continuously available for public inspection and copying in the Office of the Clerk of Courts of Mercer County and the Office of the Prothonotary of Mercer County. This Order shall be published in the *Mercer County Law Journal*.

By the Court

DANIEL P. WALLACE,
Judge

AMENDMENTS TO THE MERCER COUNTY LOCAL RULES REGARDING PRIMARY PHYSICAL CUSTODY AND PARTIAL PHYSICAL CUSTODY OF MINOR CHILDREN

A. The title of this subchapter shall be amended as follows:

ACTIONS FOR PRIMARY PHYSICAL CUSTODY AND PARTIAL PHYSICAL CUSTODY OF MINOR CHILDREN

B. LOCAL RULES L1915.3 through L1915.27 shall be deleted and replaced with the following:

Rule L1915.1. Office of the Custody Conciliator.

(a) The Mercer County Office of the Hearing Master is hereby renamed the Mercer County Office of the Custody Conciliator.

Rule L1915.3. Commencement of Action. Complaint. Order.

(a) Except for a custody action asserted in a divorce complaint, a plaintiff shall commence a custody action by filing a verified complaint substantially in the form provided by Pa.R.C.P. No. 1915.15(a).

(b) A motion for the appointment of a Conciliator shall be filed with any pleading that includes a claim for primary physical custody or partial physical custody. The motion and accompanying order shall comply with Pa.R.C.P. No. 1920.74. However, the party shall substitute the title “Conciliator” for “Master” where appropriate in the motion.

(c) No fee shall be assessed for a Conciliator conference.

(d) The order accompanying the motion for appointment of a Conciliator in all primary physical custody or partial physical custody actions shall comply with Pa.R.C.P. No. 1915.3(b) and Pa.R.C.P. No. 1915.15(c). The party filing the motion shall obtain from the Office of the Custody Conciliator the date, time, and place of the Conciliator conference.

(e) If a party is represented, the Office of the Custody Conciliator shall serve the order scheduling the Conciliator conference on the party's counsel by first class mail. If a party is unrepresented, the Office of the Custody Conciliator shall serve the order upon the party by first class mail at the party's last known address.

(f) The Office of the Custody Conciliator shall also file a copy of the order accompanying the motion for appointment of Conciliator with the Prothonotary.

(g) All Conciliator conferences regarding partial custody or supervised physical custody shall comply with Pa.R.C.P. No. 1915.4-2(a).

Rule L1915.4-1. Conciliator Hearings for Partial Custody Actions.

(a) Pursuant to Pa.R.C.P. No. 1915.4-1(a), with respect to partial custody actions only, the Court adopts the alternate hearing procedure provided for under Pa.R.C.P. No. 1915.4-2.

(b) Pursuant to Pa.R.C.P. No. 1915.4-1(b), with respect to partial custody actions only, a party may, after the parties' initial contact with the court as set forth in Pa.R.C.P. No. 1915.4(a), promptly file a motion with the Prothonotary for a hearing in front of a judge, rather than a hearing in front of the Conciliator.

(c) A motion for a hearing in front of a judge, in an action involving partial custody only, will not be granted unless:

1. There are complex questions of law, fact or both; or,
2. The parties certify to the court that there are serious allegations affecting the child's welfare.

(d) The Conciliator shall determine whether a partial custody action qualifies for a hearing in front of a judge pursuant (c)(1) or (c)(2) above. In the event a party objects to the Conciliator's determination, the appointing judge shall have final discretion.

(e) All hearings involving partial custody actions that occur before the Conciliator shall comply with the procedure set forth in Pa.R.C.P. No. 1915.4-2(b).

(f) A fee in an amount to be determined by court order shall be assessed against each party for a Conciliator hearing in an action involving partial physical custody. The fee shall be waived for any party determined to be indigent.

Rule L1915.4-2. Conciliator Hearings by Default. Partial Custody Only.

(a) If the parties to a partial custody action do not reach an agreement at the Conciliator conference, and neither party had moved for a hearing in front of a judge prior to the Conciliator conference, the parties will be deemed to have consented to a hearing before the Conciliator.

(b) A Conciliator hearing regarding a partial custody action shall comply with the procedure set forth in Pa.R.C.P. No. 1915.4-2(b).

Rule L1915.4-3. Conciliator Conference.

(a) A conference before a Conciliator shall be held in all actions for primary physical custody and partial physical custody unless a party in an action for partial physical custody has filed a motion pursuant to Pa.R.C.P. No. 1915.4-1(b) for a hearing in front of a judge prior to the Conciliator's conference.

(b) In the event the parties reach an agreement at the Conciliator conference, the Conciliator shall dictate a proposed order that encompasses the parties' agreement in their presence or immediately thereafter. The Conciliator shall then submit the order to the appointing judge for consideration.

(c) In the event the parties do not reach an agreement at the Conciliator conference, the Conciliator shall immediately dictate a proposed interim custody order in the presence of the parties. The proposed interim order shall be forwarded to the appointing judge for review and approval.

(d) In the event the parties do not reach an agreement at the Conciliator conference, the Court Administrator shall schedule a Pre-Trial Conference in front of the appointing judge.

(e) Once the Court Administrator schedules a Pre-Trial Conference, the Conciliator shall prepare a report for the appointing judge. The report shall indicate the positions of the parties and shall contain the Conciliator's recommendation as reflected in the proposed interim order.

(f) A copy of the Conciliator's report and the interim order shall be served on counsel if a party is represented, or on a party directly if pro se, and on the guardian ad litem if one has been appointed. The parties shall not be permitted to file exceptions to the interim order or the Conciliator's report.

[Pa.B. Doc. No. 21-1834. Filed for public inspection November 5, 2021, 9:00 a.m.]

Title 255—LOCAL COURT RULES

MONROE COUNTY

Local Rule of Criminal Procedure 576.1 Rescinded, Amended and Adopted; 101 AD 2021; 5 CV 2021

Order

And Now, this 26th day of October, 2021, it is Ordered that Monroe County Rules of Criminal Procedure (Monroe Co.R.Crim.P. 576.1) is rescinded, amended and adopted effective thirty (30) days after publication in the *Pennsylvania Bulletin*.

It Is Further Ordered that the District Court Administrator shall:

1. File one (1) electronic copy of this Rule with the Administrative Office of Pennsylvania Courts via email to adminrules@pacourts.us.

2. File two (2) paper copies of this Order and Rule with the Legislative Reference Bureau and one (1) electronic copy in Microsoft Word format only via email to bulletin@palrb.us for publication in the *Pennsylvania Bulletin*.

3. Arrange to have this Rule published on the Monroe County Bar Association website at www.monroebar.org.

4. Arrange to have this Rule, as well as all local rules, published on the 43rd Judicial District website at www.monroepacourts.us.

5. Keep this Rule, as well as all local rules of this Court, continuously available for public inspection and copying in the respective Monroe County filing office.

a. Upon request and payment of reasonable cost of reproduction and mailing, the respective filing office shall furnish to any person a copy of any local rule.

By the Court

MARGHERITA PATTI-WORTHINGTON,
President Judge

Rule 576.1. Electronic Filing and Service of Legal Papers.

(A) *General Scope and Purpose of this Rule.*

The electronic filing of legal papers in the Court of Common Pleas, 43rd Judicial District, is authorized in accordance with Pa.R.Crim.P. 576.1 and this rule. The applicable general rules of court and court policies that implement the rules shall continue to apply to all filings regardless of the method of filing.

(B) The Administrative Office of Pennsylvania Courts agreed upon the implementation plan for the use of PACFile in the 43rd Judicial District as of June 28, 2016.

(C) Pursuant to Pa.R.Crim.P. 576.1(B)(2) and this local rule, use of the current electronic filing system, or any subsequent electronic filing system authorized by the Court, is mandatory as of January 1, 2022 and legal papers permitted and excluded from electronic filing are as defined in Pa.R.Crim.P. 576.1(C).

(D) The Clerk of Courts shall maintain an electronic file only, except for filings expressly excluded in Pa.R.Crim.P. 576.1(C) defining “legal paper.” For such filings, the Clerk of Courts shall maintain a paper file numbered in accordance with the electronic file for the same case.

(E) *PACFile.*

(1) The exclusive system for electronic filing is the PACFile System, developed and administered by the Administrative Office of the Pennsylvania Courts and located on Pennsylvania’s Unified Judicial System Web Portal at: <https://ujportal.pacourts.us/>

(2) Pursuant to Pa.R.Crim.P. 576.1(D)(2), establishment of a PACFile account constitutes consent to participate in electronic filing, including acceptance of service electronically of any document filed on the PACFile system in any judicial district that permits electronic filing.

(3) Any party who is unable to electronically file or accept service of legal papers which were filed electronically, or who is otherwise unable to access the PACFile system, shall be permitted to file legal papers in a physical paper format and shall be served legal papers in a physical paper format by the Clerk of Courts and other parties, whether electronically filed or otherwise, as required by Pa.R.Crim.P. 576.

(F) *Legal Papers Filed in a Paper Format.*

Any legal paper submitted for filing to the Clerk of Courts in a paper (or “hard-copy”) format, whether required or permitted under this rule, shall be accepted by the Clerk of Courts in that format and shall be retained by the Clerk of Courts as may be required by applicable rules of Court and record retention policies. The Clerk of Courts shall convert such hard-copy legal paper to pdf, add it to the electronic system, and return the paper copy to the filer, except those legal papers excluded from electronic filing pursuant to Pa.R.Crim.P. 576.1(C). Once converted to pdf, the pdf version of the legal paper shall be deemed and treated as the original legal paper and may be used by the parties and the Court for all purposes, including but not limited to, court hearings and trials in the Court of Common Pleas, 43rd Judicial District.

(G) *Filing Fees.*

Applicable filing fees shall be paid through procedures established by the Clerk of Courts and at the same time and in the same amount as required by statute, Court rule or order, or published fee schedule.

(H) *Record on Appeal.*

Electronically filed legal papers, and copies of legal papers filed in a paper format as provided in subsection (F), shall become the record on appeal.

(I) *Confidential information.*

Counsel and unrepresented parties must adhere to the PUBLIC ACCESS POLICY OF THE UNIFIED JUDICIAL SYSTEM OF PENNSYLVANIA and refrain from including confidential information in legal papers filed with the Clerk of Courts or the Court whether filed electronically or in a paper format. Counsel and unrepresented parties must include confidential information relevant to the case on the approved AOPC Confidential Information Form. The Confidential Information Form shall be served on and made available to the parties to the case, the Court and appropriate Court staff, as provided in the Public Access Policy.

(J) *Miscellaneous provisions.*

The Clerk of Courts shall provide sufficient computer terminals at such locations as may be determined from time to time to allow parties and the public to file and access legal papers as provided by this rule and as authorized by applicable Public Access Policies.

[Pa.B. Doc. No. 21-1835. Filed for public inspection November 5, 2021, 9:00 a.m.]