

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

NOTICE OF PROPOSED RULEMAKING

**Proposed Amendment of Pa.R.Crim.P. 550 (Pleas of Guilty Before Magisterial
District Judge in Court Cases) and 590 (Pleas and Plea Agreements)**

The Criminal Procedural Rules Committee is considering proposing to the Supreme Court of Pennsylvania the amendment of Pa.R.Crim.P. 550 and 590 for the reasons set forth in the accompanying publication report. Pursuant to Pa.R.J.A. 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 report accompanying this proposal was prepared by the Committee to indicate the rationale for the proposed rulemaking. It will neither constitute a part of the rules nor be adopted by the Supreme Court.

Additions to the text of the proposal are bolded and underlined; deletions to the text are bolded and bracketed.

The Committee invites all interested persons to submit comments, suggestions, or objections in writing to:

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All communications in reference to the proposal should be received by **June 7, 2022**. 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 Criminal Procedural Rules Committee,

Aaron J. Marcus
Chair

Rule 550. Pleas of Guilty Before Magisterial District Judge in Court Cases.

- (A) In a court case in which a magisterial district judge is specifically empowered by statute to exercise jurisdiction, a defendant may plead guilty before a magisterial district judge at any time up to the completion of the preliminary hearing or the waiver thereof.
- (B) The magisterial district judge may refuse to accept a plea of guilty, and **[the magisterial district judge]** shall not accept such plea, unless **[there has been a determination] the magisterial district judge determines**, after inquiry of the defendant **conducted in accordance with subdivision (E)**, that the plea is **[voluntarily and understandingly] knowingly, intelligently, and voluntarily** tendered.
- (C) The plea shall be in writing:
- (1) signed by the defendant, with a representation by the defendant that the plea is entered knowingly, **[voluntarily, and intelligently] intelligently, and voluntarily**; and
 - (2) signed by the magisterial district judge, with a certification that the plea was accepted after **[a full] inquiry of the defendant pursuant to subdivision (E)**, and that the plea was made knowingly, voluntarily, and intelligently.
- (D) Before accepting a plea, the magisterial district judge shall be satisfied of:**
- (1) the court's jurisdiction to accept the plea; and**
 - (2) the defendant's eligibility under the law to plead guilty before a magisterial district judge.**
- (E) The magisterial district judge shall question the defendant to confirm, at a minimum, the following:**
- (1) the defendant's identity;**
 - (2) the defendant's capacity to comprehend and communicate in the proceedings;**
 - (3) the defendant's satisfaction with the representation provided by his or her attorney, if any;**

- (4) there is a factual basis for the plea; and**
- (5) the defendant understands:**
- (a) the nature and elements of the offenses to which he or she is pleading guilty, the permissible range of sentences, including fines, for those offenses, the maximum aggregate sentence, and any applicable mandatory sentence;**
 - (b) his or her right to counsel;**
 - (c) he or she has certain rights, including, but not limited to: the right to a trial in the court of common pleas; the right to file and litigate pretrial motions; the right to testify; the right to cross-examine witnesses; and the right to call his or her own witnesses;**
 - (d) he or she has the right to a trial by a jury, consisting of 12 jurors of his or her peers, if charged with an offense punishable by a maximum term of incarceration exceeding six months;**
 - (e) he or she has the right to a unanimous verdict;**
 - (f) the magisterial district judge is not bound by the terms of any plea agreement tendered unless the magisterial district judge accepts such agreement;**
 - (g) a conviction may have consequences of deportation, exclusion from admission to the United States, or denial of naturalization pursuant to federal law if he or she is not a citizen of the United States;**
 - (h) he or she is presumed innocent and can only be convicted if proven guilty beyond a reasonable doubt;**
 - (i) the plea precludes consideration for ARD or other diversionary programs; and**
 - (i) he or she may, as provided in subdivision (F), change the plea to not guilty within 30 days after sentence by**

notifying the magisterial district judge who accepted the plea of this decision in writing.

([D]E)A defendant who enters a plea of guilty under this rule may, within 30 days after sentence, change the plea to not guilty by so notifying the magisterial district judge in writing. In such event, the magisterial district judge shall vacate the plea and judgment of sentence, and the case shall proceed in accordance with Rule 547, as though the defendant had been held for court.

([E]G)Thirty days after the acceptance of the guilty plea and the imposition of sentence, the magisterial district judge shall certify the judgment, and shall forward the case to the clerk of courts of the judicial district for further proceedings.

Comment: In certain cases, what would ordinarily be a court case within the jurisdiction of the court of common pleas has been placed within the jurisdiction of magisterial district judges. See **[Judicial Code,]** 42 Pa.C.S. § 1515(a)(5), (5.1), (6), (6.1), and (7). This rule provides the procedures to implement this expanded jurisdiction of magisterial district judges.

In those cases in which either the defendant declines to enter a plea of guilty before the magisterial district judge or the magisterial district judge refuses to accept a plea of guilty, the case is to proceed in the same manner as any other court case.

This rule applies whenever a magisterial district judge has jurisdiction to accept a plea of guilty in a court case.

Under **[paragraph] subdivision (A)**, it is intended that a defendant may plead guilty at the completion of the preliminary hearing or at any time prior thereto.

Prior to accepting a plea of guilty under this rule, it is suggested that the magisterial district judge consult with the attorney for the Commonwealth concerning the case, concerning the defendant's possible eligibility for ARD or other types of diversion, and concerning possible related offenses that might be charged in the same complaint. See *Commonwealth v. Campana*, 304 A.2d 432 (Pa. 1973), vacated and remanded, 414 U.S. 808 (1973), on remand, 314 A.2d 854 (Pa. 1974).

[Before accepting a plea:

- (a) The magisterial district judge should be satisfied of jurisdiction to accept the plea, and should determine whether any other related offenses exist that might affect jurisdiction.**

- (b) The magisterial district judge should be satisfied that the defendant is eligible under the law to plead guilty before a magisterial district judge, and, when relevant, should check the defendant's prior record and inquire into the amount of damages.**
- (c) The magisterial district judge should advise the defendant of the right to counsel. For purposes of appointment of counsel, these cases should be treated as court cases, and the Rule 122 (Appointment of Counsel) procedures should be followed.**
- (d) The magisterial district judge should advise the defendant that, if the defendant wants to change the plea to not guilty, the defendant, within 30 days after imposition of sentence, must notify the magisterial district judge who accepted the plea of this decision in writing.**
- (e) The magisterial district judge should make a searching inquiry into the voluntariness of the defendant's plea. A colloquy similar to that suggested in Rule 590 should be conducted to determine the voluntariness of the plea. At a minimum, the magisterial district judge should ask questions to elicit the following information:**
 - (1) that the defendant understands the nature of the charges pursuant to which the plea is entered;**
 - (2) that there is a factual basis for the plea;**
 - (3) that the defendant understands that he or she is waiving the right to trial by jury;**
 - (4) that the defendant understands that he or she is presumed innocent until found guilty;**
 - (5) that the defendant is aware of the permissible range of sentences and/or fines for the offenses charged;**
 - (6) that the defendant is aware that the magisterial district judge is not bound by the terms of any plea agreement tendered unless the magisterial district judge accepts such agreement; and**

(7) that the defendant understands that the plea precludes consideration for ARD or other diversionary programs.

See Rule 590 and the Comment thereto for further elaboration of the required colloquy.]

For purposes of appointment of counsel, cases proceeding under this rule are court cases, and Rule 122 (Appointment of Counsel) applies.

[See also *Commonwealth v. Minor*, 356 A.2d 346 (Pa. 1976), overruled on other grounds in *Commonwealth v. Minarik*, 427 A.2d 623, 627 (Pa. 1981); *Commonwealth v. Ingram*, 316 A.2d 77 (Pa. 1974); *Commonwealth v. Martin*, 282 A.2d 241 (Pa. 1971).]

As provided in subdivision (D)(1), before accepting a plea, the magisterial district judge must be satisfied of jurisdiction to accept the plea. This includes determining whether any other related offenses exist that might affect jurisdiction.

Similarly, pursuant to subdivision (D)(2), the magisterial district judge must be satisfied of the defendant's eligibility under the law to plead guilty before a magisterial district judge. When relevant, the magisterial district judge must review the defendant's prior record and inquire into the amount of damages.

[While the rule continues to require a written plea incorporating the contents specified in paragraph (C), the form of plea was deleted in 1985 because it is no longer necessary to control the specific form of written plea by rule.]

[Paragraph] Subdivision (C) does not preclude verbatim transcription of the colloquy and plea.

While subdivision (E)(5)(g) requires a defendant to be informed of the consequences of a conviction that a defendant who is not a citizen of the United States may suffer, the court is not to inquire into the defendant's immigration status.

The time limit for withdrawal of the plea contained in [paragraph] subdivision [(D)] (F) [was increased from 10 days to 30 days in 2014 to place] places a defendant who enters a plea to a misdemeanor before a magisterial district judge closer to the position of a defendant who pleads guilty to the same offense in common pleas court or a defendant who pleads guilty to a summary offense before a magisterial district judge. A 30-day time period for withdrawal of the plea is consistent with the 30-day period for summary appeal and the 30-day common pleas guilty plea appeal period.

Withdrawal of the guilty plea is the only relief available before a magisterial district judge for a defendant who has entered a plea pursuant to this rule. Any further challenge to the entry of the plea must be sought in the court of common pleas.

For the procedures concerning sentences that include restitution in court cases, see Rule 705.1.

At the time of sentencing, or at any time within the 30-day period before transmitting the case to the clerk of courts pursuant to **[paragraph] subdivision (E)G**, the magisterial district judge may accept payment of, or may establish a payment schedule for, installment payments of restitution, fines, and costs.

If a plea is not entered pursuant to this rule, the papers must be transmitted to the clerk of courts of the judicial district in accordance with Rule 547. After the time set forth in **[paragraph] subdivision (A)** for acceptance of the plea of guilty has expired, the magisterial district judge no longer has jurisdiction to accept a plea.

Regardless of whether a plea stands or is timely changed to not guilty by the defendant, the magisterial district judge must transmit the transcript and all supporting documents to the appropriate court, in accordance with Rule 547.

Once the case is forwarded as provided in this rule and in Rule 547, the court of common pleas has exclusive jurisdiction over the case and any plea incident thereto. The case would thereafter proceed in the same manner as any other court case, which would include, for example, the collection of restitution, fines, and costs; the establishment of time payments; and the supervision of probation in those cases in which the magisterial district judge has accepted a guilty plea and imposed sentence.

[NOTE: Rule 149 adopted June 30, 1977, effective September 1, 1977; Comment revised January 28, 1983, effective July 1, 1983; amended November 9, 1984, effective January 2, 1985; amended August 22, 1997, effective January 1, 1998; renumbered Rule 550 and amended March 1, 2000, effective April 1, 2001; amended December 9, 2005, effective February 1, 2006; amended January 6, 2014, effective March 1, 2014; Comment revised March 9, 2016, effective July 1, 2016.

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COMMITTEE EXPLANATORY REPORTS:

Final Report explaining the August 22, 1997 amendments, that clarify the procedures following a district justice's acceptance of a guilty plea and imposition of sentence in a court case published with the Court's order at 27 **Pa.B.** 4548 (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.** 1478 (March 18, 2000).

Final Report explaining the December 9, 2005 changes to the rule clarifying the magisterial district judges' exercise of jurisdiction published with the Court's Order at 35 **Pa.B.** 6896 (December 24, 2005).

Final Report explaining the January 6, 2014 changes to the rule increasing the time for withdrawal of the guilty plea from 10 to 30 days published with the Court's Order at 44 **Pa.B.** 478 (January 25, 2014).

Final Report explaining the March 9, 2016 Comment revision concerning the Rule 705.1 restitution procedures published with the Court's Order at 46 **Pa.B.** 1540 (March 26, 2016).]

Rule 590. Pleas and Plea Agreements.

(A) Generally.

- (1) Pleas shall be taken in open court.
- (2) A defendant may plead not guilty, guilty, or, with the consent of the judge, *nolo contendere*. If the defendant refuses to plead, the judge shall enter a plea of not guilty on the defendant's behalf.

(3) Guilty Pleas and Pleas of *Nolo Contendere*.

(a) The judge may refuse to accept a plea of guilty or *nolo contendere*, and shall not accept **[it] such plea**, unless the judge determines, after inquiry of the defendant **conducted in accordance with subdivisions (A)(3)(b) - (d)**, that the plea is **[voluntarily and understandingly] knowingly, intelligently, and voluntarily** tendered. Such inquiry shall appear on the record.

(b) **The judge, or, if permitted by the judge, either the attorney for the Commonwealth or the attorney for the defendant in the presence of the judge, shall question the defendant to confirm, at a minimum, the following:**

(i) the defendant's identity;

(ii) the defendant's capacity to comprehend and communicate in the proceedings;

(iii) the defendant's satisfaction with the representation provided by his or her attorney, if any;

(iv) there is a factual basis for the plea; and

(v) the defendant understands:

(l) the nature and elements of the offenses to which he or she is pleading guilty or *nolo contendere*, the permissible range of sentences, including fines, for those

offenses, the maximum aggregate sentence, and any applicable mandatory sentence;

(II) the Commonwealth's right to have a jury decide the degree of guilt if the defendant is pleading guilty to murder generally; and

(III) a conviction may have consequences of deportation, exclusion from admission to the United States, or denial of naturalization pursuant to federal law if he or she is not a citizen of the United States.

(c) The judge, or, if permitted by the judge, either the attorney for the Commonwealth or the attorney for the defendant, shall question the defendant, either orally or in writing, to confirm, at a minimum, the following:

(i) the defendant's counsel has explained to the defendant the nature and the elements of the offenses to which he or she is pleading guilty or *nolo contendere* and that the defendant understands these offenses; and

(ii) the defendant understands:

(I) he or she has certain rights, including, but not limited to: the right to a trial; the right to file and litigate pretrial motions; the right to counsel; the right to testify; the right to cross-examine witnesses; and the right to call his or her own witnesses;

(II) he or she has the right to a trial by a jury, consisting of 12 jurors of his or her peers, if charged with an offense punishable by a maximum term of incarceration exceeding six months;

(III) he or she has the right to a unanimous verdict;

(IV) he or she is presumed innocent and can only be convicted if proven guilty beyond a reasonable doubt; and

(V) the grounds to appeal after a guilty plea are limited to the legality of the sentence, the voluntariness of the plea, and the jurisdiction of the court.

(d) Counsel for the defendant shall certify, either orally or in writing, that he or she has had the opportunity to discuss the case with the defendant and that the defendant has been advised of his or her rights.

(B) Plea Agreements.

(1) At any time prior to the verdict, when counsel for both sides have arrived at a plea agreement, they shall state on the record in open court, in the presence of the defendant, the terms of the agreement, unless the judge orders, for good cause shown and with the consent of the defendant, counsel for the defendant, and the attorney for the Commonwealth, that specific conditions in the agreement be placed on the record *in camera* and the record sealed.

(2) The judge shall conduct a separate inquiry of the defendant on the record to determine whether the defendant understands and voluntarily accepts the terms of the plea agreement on which the guilty plea or plea of *nolo contendere* is based, **and that the defendant understands that the judge is not bound by the terms of the tendered plea agreement unless the judge accepts the plea agreement.**

(3) Any local rule that is inconsistent with the provisions of this rule is prohibited, including any local rule mandating deadline dates for the acceptance of a plea entered pursuant to a plea agreement.

(C) Murder Cases. In cases in which the imposition of a sentence of death is not authorized, when a defendant enters a plea of guilty or *nolo contendere* to a charge of murder generally, the degree of guilt shall be determined by a jury unless the attorney for the Commonwealth elects to have the judge, before whom the plea was entered, alone determine the degree of guilt.

Comment: The purpose of [paragraph] subdivision (A)(2) is to codify the requirement that the judge, on the record, ascertain from the defendant that the guilty plea or plea of *nolo contendere* is [**voluntarily and understandingly**] knowingly, intelligently, and voluntarily tendered. On the mandatory nature of this practice, see *Commonwealth v. Ingram*, 316 A.2d 77 (Pa. 1974); *Commonwealth v. Campbell*, 304 A.2d 121 (Pa. 1973); *Commonwealth v. Jackson*, 299 A.2d 209 (Pa. 1973).

[It is difficult to formulate a comprehensive list of questions a judge must ask of a defendant in determining whether the judge should accept the plea of guilty or a plea of nolo contendere. Court decisions may add areas to be encompassed in determining whether the defendant understands the full impact and consequences of the plea, but is nevertheless willing to enter that plea. At a minimum the judge should ask questions to elicit the following information:

- (1) Does the defendant understand the nature of the charges to which he or she is pleading guilty or nolo contendere?**
- (2) Is there a factual basis for the plea?**
- (3) Does the defendant understand that he or she has the right to trial by jury?**
- (4) Does the defendant understand that he or she is presumed innocent until found guilty?**
- (5) Is the defendant aware of the permissible range of sentences and/or fines for the offenses charged?**
- (6) Is the defendant aware that the judge is not bound by the terms of any plea agreement tendered unless the judge accepts such agreement?**
- (7) Does the defendant understand that the Commonwealth has a right to have a jury decide the degree of guilt if the defendant pleads guilty to murder generally?]**

The Court in *Commonwealth v. Willis*, 369 A.2d 1189 (Pa. 1977), and *Commonwealth v. Dilbeck*, 353 A.2d 824 (Pa. 1976), mandated that, during a guilty plea colloquy, judges must elicit the information set forth in paragraphs (1) through (6) above. In 2008, the Court added paragraph (7) to the list of areas of inquiry.

Many, though not all, of the areas to be covered by such questions are set forth in a footnote to the Court's opinion in *Commonwealth v. Martin*, 282 A.2d 241, 244-245 (Pa. 1971), in which the colloquy conducted by the trial judge with

approval. See also *Commonwealth v. Minor*, 356 A.2d 346 (Pa. 1976), and *Commonwealth v. Ingram*, 316 A.2d 77 (Pa. 1974). As to the requirement that the judge ascertain that there is a factual basis for the plea, see *Commonwealth v. Maddox*, 300 A.2d 503 (Pa. 1973) and *Commonwealth v. Jackson*, 299 A.2d 209 (Pa. 1973).]

While subdivision (A)(3)(b)(v)(III) requires a defendant to be informed of the consequences of a conviction that a defendant who is not a citizen of the United States may suffer, the court is not to inquire into the defendant's immigration status.

In addition to ensuring that the defendant understands the terms of a plea agreement pursuant to subdivision (B)(1), the court must also be satisfied that the defendant's decision to enter the plea has not been induced by promises made beyond those contained in the plea agreement nor tainted by coercion.

A judge either shall accept or reject the plea agreement in whole. See *Commonwealth v. Parsons*, 969 A.2d 1259 (Pa. Super. 2009) ("If the court is dissatisfied with any of the terms of the plea bargain, it should not accept the plea; instead, it should give the parties the option of proceeding to trial before a jury.").

It is advisable that the judge conduct the examination of the defendant. However, **[paragraph] subdivisions (A)(3)(b) and (c) [does not prevent] authorize the judge to permit** defense counsel or the attorney for the Commonwealth **[from conducting] to conduct** part or all of the examination of the defendant[, as permitted by the judge. In addition, nothing in the rule would preclude the use of a written colloquy that is read, completed, signed by the defendant, and made part of the record of the plea proceedings. This written colloquy would have to be supplemented by some on-the-record oral examination. Its use would not, of course, change any other requirements of law, including these rules, regarding the prerequisites of a valid guilty plea or plea of nolo contendere].

The "terms" of the plea agreement, referred to in **[paragraph] subdivision (B)(1)**, frequently involve the attorney for the Commonwealth—in exchange for the defendant's plea of guilty or nolo contendere, and perhaps for the defendant's promise to cooperate with law enforcement officials—promising concessions such as a reduction of a charge to a less serious offense, the dropping of one or more additional charges, a recommendation of a lenient sentence, or a combination of these. In any event, **[paragraph] subdivision (B)** is intended to insure that all terms of the agreement are openly acknowledged for the judge's assessment. See, e.g., *Commonwealth v. Wilkins*, 277 A.2d 341 (Pa. 1971).

[The 1995 amendment deleting former paragraph (B)(1) eliminates the absolute prohibition against any judicial involvement in plea discussions in order to align the rule with the realities of current practice. For example, the rule now permits a judge to inquire of defense counsel and the attorney for the Commonwealth whether there has been any discussion of a plea agreement, or to give counsel, when requested, a reasonable period of time to conduct such a discussion.] Nothing in this rule[, however,] is intended to permit a judge to suggest to a defendant, defense counsel, or the attorney for the Commonwealth, that a plea agreement should be negotiated or accepted.

[Paragraph (B)(1) was amended and paragraph (B)(3) was added in 2018 to clarify that the intent of this rule is that a plea made pursuant to an agreement may be entered any time prior to verdict. Any local rule that places a time limit for the entry of such pleas prior to verdict is in conflict with this rule and therefore invalid.]

Under **[paragraph] subdivision** (B)(1), upon request and with the consent of the parties, a judge may, as permitted by law, order that the specific conditions of a plea agreement be placed on the record in camera and that portion of the record sealed. Such a procedure does not in any way eliminate the obligation of the attorney for the Commonwealth to comply in a timely manner with Rule 573 and the constitutional mandates of *Brady v. Maryland*, 373 U.S. 83 (1963), and its progeny. Similarly, the attorney for the Commonwealth is responsible for notifying the cooperating defendant that the specific conditions to which the defendant agreed will be disclosed to third parties within a specified time period, and should afford the cooperating defendant an opportunity to object to the unsealing of the record or to any other form of disclosure.

[When a guilty plea, or plea of nolo contendere, includes a plea agreement, the 1995 amendment to paragraph (B)(2) requires that the judge conduct a separate inquiry on the record to determine that the defendant understands and accepts the terms of the plea agreement. See *Commonwealth v. Porreca*, 595 A.2d 23 (Pa. 1991).

Former paragraph (B)(3) was deleted in 1995 for two reasons. The first sentence merely reiterated an earlier provision in the rule. See paragraph (A)(3). The second sentence concerning the withdrawal of a guilty plea was deleted to eliminate the confusion being generated when that provision was read in conjunction with Rule 591. As provided in Rule 591, it is a matter of judicial discretion and case law whether to permit or direct a guilty plea or plea of nolo contendere to be withdrawn. See also *Commonwealth v. Porreca*, 595 A.2d 23 (Pa. 1991) (the terms of a plea agreement may determine a defendant's right to withdraw a guilty plea).]

For the procedures governing the withdrawal of a plea of guilty or nolo contendere, see Rule 591.

For the procedures concerning sentences that include restitution in court cases, see Rule 705.1.

[Paragraph (C) reflects a change in Pennsylvania practice, that formerly required the judge to convene a panel of three judges to determine the degree of guilt in murder cases in which the imposition of a sentence of death was not statutorily authorized. The 2008 amendment to paragraph (C) and the Comment recognizes the Commonwealth’s right to have a jury determine the degree of guilt following a plea of guilty to murder generally. See Article I, § 6 of the Pennsylvania Constitution that provides that “the Commonwealth shall have the same right to trial by jury as does the accused.” See also *Commonwealth v. White*, 910 A.2d 648 (Pa. 2006).]

For the procedures for accepting a guilty plea in a court case before a magisterial district judge, see Rule 550.

[Note: Rule 319 (a) adopted June 30, 1964, effective January 1, 1965; amended November 18, 1968, effective February 3, 1969; paragraph (b) adopted and title of rule amended October 3, 1972, effective 30 days hence; specific areas of inquiry in Comment deleted in 1972 amendment, reinstated in revised form March 28, 1973, effective immediately; amended June 29, 1977 and November 22, 1977, effective as to cases in which the indictment or information is filed on or after January 1, 1978; paragraph (c) added and Comment revised May 22, 1978, effective July 1, 1978; Comment revised November 9, 1984, effective January 2, 1985; amended December 22, 1995, effective July 1, 1996; amended July 15, 1999, effective January 1, 2000; renumbered Rule 590 and Comment revised March 1, 2000, effective April 1, 2001; amended September 18, 2008, effective November 1, 2008; Comment revised March 9, 2016, effective July 1, 2016; amended January 18, 2018, effective April 1, 2018.

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COMMITTEE EXPLANATORY REPORTS:

Final Report explaining the December 22, 1995 amendments published with the Court’s Order at 26 Pa.B. 8 (January 6, 1996).

Final Report explaining the July 15, 1999 changes concerning references to nolo contendere pleas and cross-referencing Rule 320 published with the Court's Order at 29 Pa.B. 4057 (July 31, 1999).

Final Report explaining the March 1, 2000 reorganization and renumbering of the rules published with the Court's Order at 30 Pa.B. 1478 (March 18, 2000).

Final Report explaining the September 18, 2008 amendments to paragraph (C) concerning juries determining degree of guilt published with the Court's Order at 38 Pa.B. 5431 (October 4, 2008).

Final Report explaining the March 9, 2016 Comment revision concerning the Rule 705.1 restitution procedures published with the Court's Order at 46 Pa.B. 1540 (March 26, 2016).

Final Report explaining the January 18, 2018 amendments concerning plea agreement deadlines published with the Court's Order at 48 Pa.B. 730 (February 3, 2018).]

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

PUBLICATION REPORT

Proposed Amendment of Pa.R.Crim.P. 550 and 590

The Criminal Procedural Rules Committee is considering proposing to the Supreme Court the amendment of Pa.R.Crim.P. 550 and 590. Primarily, the proposed amendments would relocate from the Comments to the rule text the information required to be elicited from a defendant to ensure that his or her plea is being entered into knowingly, intelligently, and voluntarily. The proposed amendments would also require a defendant to be advised of the possible consequences of a plea if the defendant is not a citizen of the United States. See *Padilla v. Kentucky*, 559 U.S. 356 (2010).

The Comments to Rules 550 and 590 currently include a list of six areas a judge must, at a minimum, inquire into to ensure that the defendant's plea is being entered knowingly, intelligently, and voluntarily. Those six areas are: (1) the defendant's understanding of the nature of the offenses pursuant to which the plea is entered; (2) the factual basis for the plea; (3) the defendant's understanding that he or she is waiving the right to a trial; (4) the defendant's understanding that he or she is presumed innocent until found guilty; (5) whether the defendant is aware of the permissible range of sentences and/or fines for the offenses charged; and (6) whether the defendant is aware that the judge is not bound by the terms of any plea agreement tendered unless the judge accepts such agreement. See *Commonwealth v. Willis*, 369 A.2d 1189 (Pa. 1977), and *Commonwealth v. Dilbeck*, 353 A.2d 824 (Pa. 1976). With the amendment proposed here, those areas of inquiry would be relocated to subdivision (E) of Rule 550 and subdivisions (A)(3)(b) and (c) of Rule 590. The Committee's proposal is intended to redress the inaptness of mandatory inquiries being enumerated in commentary. Both rules would augment the above six areas with additional required inquiries.

Beginning with the proposed amendment of Rule 550, subdivision (D) of that rule would require the magisterial district judge to be satisfied of the court's jurisdiction to accept the plea and of the defendant's eligibility to plead before a magisterial district judge. Subdivision (E) of Rule 550 would require the following information to be confirmed by the judge: the defendant's identity; the defendant's capacity to comprehend and communicate in the proceedings; the defendant's satisfaction with the representation of counsel, if any; and that there is a factual basis for the plea. Subdivision (E) would also require the magisterial district judge to confirm that the defendant understands all of the following: the nature of the charges and the permissible range of sentences; his or her right to counsel; his or her right to trial in the court of common pleas; his or her right to file and litigate pretrial motions, to testify at trial, to cross-examine witnesses, and to call his or her own witnesses; that he or she is presumed innocent and can only be convicted if

proven guilty beyond a reasonable doubt; and that the judge is not bound by the terms of any plea agreement unless the judge accepts the agreement. Additionally, Rule 550 would require inquiry into the defendant's understanding that the plea precludes consideration for ARD and that he or she has 30 days after imposition of sentence to change his or her plea to not guilty by notifying the magisterial district judge in writing.

The Comment to Rule 550 would be amended to advise that a magisterial district judge's verification of the court's jurisdiction to accept a plea — as would be required by new subdivision (D)(1) — “includes determining whether any other related offenses exist that might affect jurisdiction.” The Comment would also advise that determining whether a defendant is eligible to plead before the magisterial district judge — a determination required by new subdivision (D)(2) — may necessitate a “review [of] the defendant's prior record and inquir[y] into the amount of damages.” Regarding the appointment of counsel, the Comment would direct the reader to Rule 122 (Appointment of Counsel) as cases disposed of pursuant to Rule 550 are court cases. See *Pa.R.Crim.P.* 103 (Definitions) (defining a court case as a case where one or more offenses is a misdemeanor, felony, or murder).

Like Rule 550, Rule 590 currently has mandatory areas of inquiry enumerated in its Comment. With this proposal, those areas of mandatory inquiry would be relocated to the rule text. New subdivision (A)(3)(b) of Rule 590 would require all of the following to be confirmed orally on the record: the identity of the defendant; the defendant's capacity to comprehend and communicate in the proceedings; the defendant's satisfaction with any representation by counsel, if any; and that there is a factual basis for the plea. Subdivision (A)(3)(b) would also require oral confirmation on the record that the defendant understands: the nature of the charges to which he or she is pleading guilty or *nolo contendere*; the permissible range of sentences; and, if the defendant is pleading guilty to murder generally, that the Commonwealth has the right to have a jury decide the degree of guilt.

While all of the areas of inquiry enumerated in subdivision (A)(3)(b) must be confirmed orally on the record, new subdivision (A)(3)(c) of Rule 590 would permit oral or written confirmation of the defendant's understanding of the following: that he or she is presumed innocent and can only be convicted if proven guilty beyond a reasonable doubt and that he or she has the right to have a trial, to file and litigate pretrial motions, to be represented by counsel, to testify at trial, to cross-examine witnesses, and to call his or her own witnesses. Subdivision (A)(3)(c) would also require oral or written confirmation that the defendant's counsel has explained the nature and the elements of the charges to which the defendant is pleading guilty or *nolo contendere* and that any appeal after a guilty plea is limited to the legality of the sentence, the voluntariness of the plea, and the jurisdiction of the court. New subdivision (A)(3)(d) would require defense counsel to certify on the record that he or she “has had the opportunity to discuss the case with the defendant and that the defendant has been advised of his or her rights.” This certification

can be memorialized either orally or in writing. Subdivision (B)(2) would be amended to require the judge to ensure that the defendant understands that the judge is not bound by the terms of any plea agreement unless the judge accepts the agreement.

Additionally, Rule 590(A)(3)(b) and (c) would authorize the judge to permit either the attorney for the Commonwealth or the attorney for the defendant to conduct the required questioning of the defendant. With respect to subdivision (A)(3)(b), any questioning of the defendant by either attorney would be required to be conducted in the presence of the judge.

The Comment to Rule 590 would be amended to advise a court that it must be satisfied “that the defendant’s decision to enter the plea has not been induced by promises made beyond those contained in the plea agreement nor tainted by coercion.” The Comment would also cite *Commonwealth v. Parsons*, 969 A.2d 1259 (Pa. Super. 2009) to clarify that a judge shall either accept or reject a plea agreement in whole.

Several amendments would be made to both rules. First, both rules would require the court, or, if permitted by the judge, the attorney for the Commonwealth or the attorney for the defendant in the case of Rule 590, to ensure that the defendant understands that a conviction may have consequences of deportation, exclusion from admission to the United States, or denial of naturalization pursuant to federal law if the defendant is not a citizen of the United States. Proposed Rules 550(E)(5)(g) and 590(A)(3)(b)(v)(III); see *Padilla v. Kentucky*, 559 U.S. 356 (2010). While each rule would require a defendant to be informed of these possible consequences, the Comments to these rules would be amended to warn that “the court is not to inquire into the defendant’s immigration status.” The Committee elected to include this caution because such inquiry could be perceived as arising out of a discriminatory motive, calling into question the impartiality of the court. Moreover, the improper use of a defendant’s immigration status for a discriminatory purpose would likely be violative of Title VI of the Civil Rights Act of 1964. Second, both rules would require inquiry into the defendant’s understanding that he or she has the right to a unanimous verdict, *Commonwealth v. Jackson*, 324 A.2d 350 (Pa. 1974); *Ramos v. Louisiana*, 140 S.Ct. 1390 (2020), and, if charged with any offense punishable by a maximum period of incarceration exceeding six months, the right to a trial by a jury, *Commonwealth v. Mayberry*, 327 A.2d 86 (Pa. 1974). To increase uniformity, subdivision (B) of Rule 550 and subdivision (A)(3)(a) of Rule 590, which provide preliminary instructions and requirements with respect to the accepting of a plea, would be revised to reflect their analogous function within their respective rules.

Finally, historical commentary and commentary that merely restates or paraphrases the rule text would be deleted from the Comments to both rules, and citations to case law that serve as authority for the areas of mandatory inquiry currently enumerated in the Comments would be deleted in conjunction with the relocation of those mandatory inquiries to the rule text.

The Committee invites all comments, concerns, and suggestions.