

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

NOTICE OF PROPOSED RULEMAKING

Proposed Amendment of Pa.R.Crim.P. 702

The Criminal Procedural Rules Committee is considering proposing to the Supreme Court of Pennsylvania the amendment of Pa.R.Crim.P. 702 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 **February 17, 2026**. 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,

David R. Crowley, Esq., Chair

Rule 702. Aids in Imposing Sentence.

[(A)](a)[PRE-SENTENCE INVESTIGATION REPORT] Pre-Sentence Investigation Report.

- (1) The sentencing judge may, in the judge's discretion, order a pre-sentence investigation report in any case.
- (2) The sentencing judge shall place on the record the reasons for dispensing with the pre-sentence investigation report if the judge fails to order a pre-sentence report in any of the following instances:
 - [(a)](i)** when incarceration for one year or more is a possible disposition under the applicable sentencing statutes;
 - [(b)](ii)** when the defendant is less than 21 years old at the time of conviction or entry of a plea of guilty; or
 - [(c)](iii)** when a defendant is a first offender in that he or she has not heretofore been sentenced as an adult.
- (3) The pre-sentence investigation report shall include information regarding the circumstances of the offense and the character of the defendant sufficient to assist the judge in determining sentence.
- (4) The pre-sentence investigation report shall also include a victim impact statement as provided by law.

[(B)](b)[PSYCHIATRIC OR PSYCHOLOGICAL EXAMINATION] Psychiatric or Psychological Examination. After a finding of guilt and before the imposition of sentence, after notice to counsel for both parties, the sentencing judge may, as provided by law, order the defendant to undergo a psychiatric or psychological examination. For this purpose the defendant may be remanded to any available clinic, hospital, institution, or state correctional diagnostic and classification center for a period not exceeding 60 days.

(c) Veterans.

- (1) **As used in this subdivision, the term "veteran" shall mean a person who served in the active military, naval, air, or space service, and who was discharged or released therefrom under conditions other than dishonorable.**

- (2) Upon conviction of a felony, the judge shall determine if the defendant is a veteran by questioning the defendant or the defendant's counsel.
- (3) If a veteran is convicted of a felony, in addition to any sentencing aids described in subdivisions (a) and (b), the court may also order a neuropsychological examination by a licensed neuropsychologist to determine if the defendant suffers from a traumatic brain injury, unless:
- (i) the defendant will not be incarcerated pursuant to a plea agreement;
 - (ii) the defendant provides the court with a copy of existing and reasonably current mental health or medical records that would otherwise satisfy the purpose of the examination; or
 - (iii) the defendant objects to undergoing the examination.

Comment: For purposes of [paragraph (A)(2)(c)] subdivision (a)(2)(iii), whether the defendant has a prior juvenile adjudication is immaterial. [Paragraph (A)(3)] Subdivision (a)(3) indicates in general terms what the contents of the pre-sentence investigation report must include. With respect to the particularized contents of such reports, see *Commonwealth v. Martin*, 351 A.2d 650 (Pa. 1976). Concerning other information that would be helpful for the sentencing judge to have in the pre-sentence investigation report, see 18 Pa.C.S. § 1106(c)(2)(iv) (the judge, when determining the amount of restitution, must consider “any other preexisting orders imposed on the defendant, including, but not limited to, orders imposed under this title or any other title”).

The sentencing judge may also order a validated risk-needs assessment or a validated risk-needs-responsivity assessment. See 204 Pa. Code 303a.5(b)(3)(iii). These assessments may be completed with a pre-sentence investigation report or without a pre-sentence investigation report.

For the victim's right to have information included in the pre-sentence report concerning the impact of the crime on the victim, as provided in [paragraph (A)(4)] subdivision (a)(4), see [71 P. S. § 180-9.3] 18 P.S. § 11.201(5).

A psychiatric or psychological examination may be ordered on an outpatient or inpatient basis as provided by law. See 50 P.S. § 7405. Because the 1976 Mental Health Procedures Act excludes issues related to **[mental retardation] intellectual disability**, 50 P.S. § 7502, see also the Mental Health and **[Mental Retardation] Intellectual Disability** Act of 1966, 50 P.S. §§ 4101 *et seq.*

When an incarcerated defendant has undergone any period of voluntary or involuntary confinement for the purpose of examination pursuant to this rule, credit for the period of confinement should be given toward the sentence ultimately imposed. See, e.g., 50 P.S. §§ 7401(b) and 7407(f).

Additional pre-sentence procedures may be required by statute. For example, see 42 Pa.C.S. § **[§ 9791—9799.5] 9799.24** (concerning persons convicted of sexually violent offenses) for pre-sentence assessment and hearing procedures. **[See also 42 Pa.C.S. § 9714(c) for hearing to determine high risk dangerous offender status.]**

Under the provisions of Rule 703 (Disclosure of Pre-Sentence Reports), full disclosure of reports to defense counsel and the Commonwealth is required. See **[Rule] Pa.R.Crim.P. 703(A)(2)**. Reports may also be disclosed under Rule 703 to other designated persons or agencies, unless the sentencing judge otherwise orders. See **[Rule] Pa.R.Crim.P. 703(C), (D), and (E)**.

[Official Note: Rule 1403 adopted July 23, 1973, effective 90 days hence; amended June 28, 1976, effective January 1, 1977; amended November 1, 1991, effective January 1, 1992; amended March 22, 1993, effective January 1, 1994; Comment revised April 18, 1997, effective immediately; renumbered Rule 702 and amended March 1, 2000, effective April 1, 2001; Comment revised March 27, 2003, effective July 1, 2003.]

Committee Explanatory Reports:

Report explaining the January 1, 1992 amendments published at 20 Pa.B. 1697 (March 24, 1990); Supplemental Report published with the Court's Order at 21 Pa.B. 5329 (November 16, 1991).

Final Report explaining the March 22, 1993 amendments published with the Court's Order at 23 Pa.B. 1699 (April 10, 1993).

Report explaining the April 18, 1997 Comment revision published with the Court's Order at 27 Pa.B. 2122 (May 3, 1997).]

SUPREME COURT OF PENNSYLVANIA
CRIMINAL PROCEDURAL RULES COMMITTEE
PUBLICATION REPORT

Proposed Amendment of Pa.R.Crim.P. 702

The Criminal Procedural Rules Committee is considering proposing to the Supreme Court the amendment of Pa.R.Crim.P. 702 (Aids in Imposing Sentence) to establish procedures for additional sentencing aids related to defendants who are military veterans (“veteran-defendants”). The proposal also includes new commentary regarding the use of certain pre-sentence risk assessment instruments. The Committee is considering these amendments upon receipt of separate rulemaking requests.

Currently, Pa.R.Crim.P. 702 establishes procedures related to certain sentencing aids, including pre-sentence investigation reports, psychological examinations, and psychiatric examinations. In particular, subdivision (A) governs pre-sentence investigation reports. Subdivision (B) governs pre-sentence psychological or psychiatric examinations of a defendant. Pursuant to the rule, the use of these sentencing aids is discretionary with the judge.

In addition to the sentencing aids already covered, the Committee concluded that Pa.R.Crim.P. 702 should establish a mechanism to clearly and reliably allow judges to learn about a defendant’s veteran status prior to sentencing. The Committee also concluded that judges should have a way to determine if a veteran-defendant has suffered a traumatic brain injury (TBI). Data suggests that a significant number of military veterans suffer from TBI. Data also suggests that a TBI can negatively affect cognition, mood, and behavior. This may have contributed to the conduct which led to the veteran-defendant’s conviction. As a result, the veteran-defendant’s TBI may often be material to the sentencing determination.

The existing rule does not provide a clear and reliable path for the sentencing judge to identify a defendant who is a veteran with TBI. While a defendant’s veteran status would typically be disclosed in a pre-sentence investigation report, such reports are not ordered in all cases. In the absence of a pre-sentence report, judges must rely on the defendant to volunteer the information during the sentencing hearing. However, the defendant may fail to volunteer the information. Likewise, the defendant might fail to disclose that he or she suffers from TBI. A veteran-defendant with TBI might also be unable to volunteer that information because he or she has never been formally diagnosed. Furthermore, even if the defendant discloses a TBI diagnosis, the nature and extent of the TBI may still be unknown without the benefit of a formal examination.

Proposed subdivision (c), titled “Veterans,” is intended to address these concerns. Proposed Pa.R.Crim.P. 702(c)(1) provides a definition of “veteran.” This definition is taken from 38 U.S.C. § 101(2). Next, proposed subdivision (c)(2) requires the judge to question any defendant convicted of felony about whether he or she is a veteran. This will ensure that the judge learns about the defendant’s veteran status even when no pre-sentence investigation report is ordered. Furthermore, learning that a defendant is a veteran may inform the judge’s decision about whether to order a pre-sentence investigation report or other examinations.

Proposed subdivision (c)(3) establishes the sentencing court’s ability to order a neuropsychological examination of a veteran-defendant who has been convicted of a felony. The examination would be for the express purpose of determining if the veteran-defendant suffers from TBI. However, the examination would not be mandatory. The judge would have discretion to order it based on the totality of the circumstances.

Proposed subdivisions (c)(3)(i)-(c)(3)(iii) would place limitations on the judge’s ability to order a neuropsychological examination in three circumstances. First, pursuant to subdivision (c)(3)(i), the judge may not order the evaluation if the defendant will not be incarcerated pursuant to a plea agreement. Second, pursuant to subdivision (c)(3)(ii), the judge may not order the evaluation if the defendant provides the court with current records which establish whether he or she has a TBI. Finally, pursuant to subdivision (c)(3)(iii), the judge could not order the evaluation if the defendant objects.

Although proposed subdivision (c)(3) gives the judge discretion to order a neuropsychological examination, the Committee also considered a proposal that would make the neuropsychological examination mandatory. However, the Committee had concerns that a mandatory examination in all felony cases involving veteran-defendants would likely be overly broad. Some veteran-defendants could easily confirm to the court that they had no experiences that could have caused TBI. In addition, when a veteran-defendant is being sentenced to a state correctional institution pursuant to a negotiated plea agreement, the usefulness of the examination as a sentencing aid becomes less apparent. This is particularly true since the Department of Corrections can provide services for veterans through its Veterans Service Units and Veteran Service Office. For these reasons, mandatory examinations did not seem warranted.

The Committee notes that some counties in Pennsylvania have veterans treatment courts. As of 2024, only 27 counties had such programs. In addition, a defendant’s participation in such programs often requires the district attorney’s consent. The defendant’s criminal history and the nature of the charged offenses may render a veteran-defendant ineligible to participate in a county’s veterans treatment court. This proposal is designed to ensure that the judge has crucial information prior to sentencing any veteran-defendant, not only those who are eligible for treatment courts.

In addition, the Committee also considered a proposal that would have specifically required or authorized the judge to order a pre-sentence assessment of veteran-defendants for post-traumatic stress disorder (PTSD). The Committee determined that a separate provision related to PTSD appeared unnecessary because subdivision (b) already provides for a discretionary psychological or psychiatric examination. These tools can be used to obtain a PTSD diagnosis, along with other mental health diagnoses.

Next, in response to another rulemaking request, the Committee proposes to amend the Comment to Pa.R.Crim.P. 702 to acknowledge the judge's authority to utilize validated risk-needs assessments (RNA) and validated risk-needs-responsivity (RNR) assessments. These terms are defined by the Pennsylvania Sentencing Guidelines. See 204 Pa. Code §§ 305.1(b)(13)(iii)-(b)(13)(iv). The possible use and consideration of an RNA or RNR assessment is currently contemplated by the sentencing guidelines, though it is not mandatory. See 204 Pa. Code § 303a.5(b). The proposed comment is intended to raise awareness of these tools and encourage their use when available and appropriate.

The Committee also proposes additional amendments to the Comment with updated statutory citations and stylistic revisions. These amendments are not intended to be substantive.

The Committee invites all comments, concerns, and suggestions.