

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

**NOTICE OF PROPOSED RULEMAKING**

**Proposed Amendment of Pa.R.J.C.P. 161, 170, and 172**

The Juvenile Court Procedural Rules Committee is considering proposing to the Supreme Court of Pennsylvania the amendment of Pennsylvania Rules of Juvenile Court Procedure 161, 170, and 172 governing expungement procedures 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.

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 **May 31, 2024**. E-mail is the preferred method for submitting comments, suggestions, or objections; any e-mailed submission need not be reproduced and resubmitted via mail. The Committee will acknowledge receipt of all submissions.

By the Juvenile Court Procedural Rules Committee,

Judge Andrea Marceca Strong, Chair

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

**PUBLICATION REPORT**

**Proposed Amendment of Pa.R.J.C.P. 161, 170, and 172**

The Juvenile Court Procedural Rules Committee (“Committee”) is considering proposing the amendment of Pennsylvania Rules of Juvenile Court Procedure 161, 170, and 172 to facilitate the complete expungement of delinquency court records.

The Committee previously published a proposal to revise the required contents of an expungement order to direct that all records be expunged or destroyed and to provide the juvenile court with the discretion to establish a compliance deadline. See 49 Pa.B. 7293 (December 14, 2019). That proposal was intended to address concerns of undue delay in compliance with expungement orders and incomplete expungements.

During the course of rulemaking, the Pennsylvania Juvenile Justice Task Force was formed. Released in June of 2021, the Task Force’s Report and Recommendation included proposals changing the expungement eligibility criteria and making the juvenile probation office responsible for initiating the expungement process. Responsive legislation was introduced as Senate Bill 170, Regular Session 2023-2024, to amend the Juvenile Act. Consequently, the Committee paused further rulemaking.

The Committee was informed that the concerns giving rise to the original proposal continue to exist. Accordingly, the Committee opted to reopen rulemaking to address those concerns while remaining mindful of the pending legislation.

First, “incomplete expungements” occur when the motion and order fail to identify all the recordkeepers to be served and all the records to be expunged or destroyed. This is a particular concern in counties where the burden of initiating the expungement process is placed on the juvenile because often the juvenile does not know “who received what” as it is typically the juvenile probation office (JPO) disseminating records, including those in the manner of “service inquiries” to prospective providers of services.

Second, there should be a “feedback loop” requiring the recordkeepers to act on the expungement order by a date certain. Anecdotally, the information in the expungement order may not match the recordkeeper’s required identifiers, e.g., Offense Tracking Number, so there is no expungement. However, the feedback that an expungement cannot occur based upon the information in the order is not communicated to the juvenile or the court.

The Committee proposes amending Pa.R.J.C.P. 161 to add subdivision (e) to permit an eligible juvenile to submit a written request to the JPO to disclose information to the juvenile that is necessary to expunge the juvenile's records. The JPO has 30 days to respond to that request. The requirements for the content of an expungement motion set forth in Pa.R.J.C.P. 170(b) would be amended to include identification of the records to be expunged and the recordkeepers to be served with the expungement order.

The Committee also proposes amending Pa.R.J.C.P. 172 to require recordkeepers to respond in writing within 30 days of service of the expungement order about the action taken in response to the order. This amendment is intended to provide the necessary feedback to ensure compliance with expungement orders and to detect whether additional information is needed to effectuate the expungement.

The Committee invites all comments, concerns, and suggestions regarding this rulemaking proposal.

**Rule 161. Inspecting, Copying, and Disseminating Juvenile Probation Files.**

**[A.](a) Inspecting and Copying.** Except as provided in **[paragraph (C)] subdivision (c)**, juvenile probation files shall be open to inspection **[and/or] and** copying only by:

- (1) the juvenile or the juvenile's attorney of record in the instant proceeding;
- (2) the attorney for the Commonwealth;
- (3) the State Sexual Offenders Assessment Board;
- (4) the Juvenile Court Judges' Commission; or
- (5) any other person, agency, or department by order of court.

**[B.](b) Juvenile Probation Information.**

- (1) Information maintained by juvenile probation offices other than juvenile probation files shall be subject to inspection **[and/or] and** copying only pursuant to court order.
- (2) Each juvenile probation office shall create a document, which describes the information that is maintained by the juvenile probation office concerning each juvenile. This document shall be open to inspection and copying pursuant to **[paragraph (A)] subdivision (a)**.

**[C.](c) Contents of Order.** The order shall:

- (1) specify who shall be permitted to inspect the file, information, or any portion thereof;
- (2) specify who shall be permitted to copy the file or information;
- (3) state that the file or information received shall not be disseminated to any person, agency, or department not listed in the court order; and
- (4) state that dissemination of any file or information received is a violation of the court order.

**[D.](d) Disseminating.**

- (1) The juvenile probation office has discretion to disseminate portions of its files or information to the juvenile, service providers, placement facilities, and courts and courts' professional staff of other jurisdictions when facilitating placement, the delivery of services,

treatment, or transfer of the case to, or supervision by another jurisdiction consistent with applicable Federal or state law.

- (2) Unauthorized dissemination of any file or information to a person, agency, or department not permitted to inspect or copy the file pursuant to this rule may result in a finding of contempt of court.

**(e) Expungement Information. Upon written request by an eligible juvenile for the purpose of expungement, and without the necessity of a court order, the juvenile probation office shall provide the juvenile the following within 30 days of the request:**

- (1) a list of recipients to whom the juvenile probation office has disseminated the juvenile's record;**
- (2) the identification of the records disseminated; and**
- (3) any other information reasonably necessary to expunge the juvenile's record.**

**Comment:** Documents contained in the juvenile probation files are not a part of the official court record unless the juvenile probation office officially files the documents in the official court record. Those documents placed in the official court record are governed by Rule 160 and 42 Pa.C.S. § 6307.

Juvenile probation files containing a juvenile's disclosures for the purpose of treatment should be reviewed for potentially privileged communications prior to dissemination. See, e.g., *Commonwealth v. Carter*, 821 A.2d 601 (Pa. Super. 2003).

The notes of a juvenile probation officer, which describe the officer's impressions or personal observations, but which are not included in a report to the court or other report, are not considered a component of a juvenile probation file that is open to inspection **[or and]** copying under **[paragraph (A)] subdivision (a)**. "Juvenile probation files," as used in **[paragraph (A)] subdivision (a)** and defined in Rule 120, is intended to include files existing in whole or in part in either paper or digital form.

Nothing in this rule is intended to preclude the juvenile probation office from sharing information with the juvenile.

**[Official Note: Rule 161 adopted May 21, 2012, effective August 1, 2012. Amended August 23, 2012, effective immediately. Amended March 15, 2019, effective July 1, 2019.]**

***Committee Explanatory Reports:***

**Final Report explaining the provisions of Rule 161 published with the Court's Order at 42 Pa.B. 3203 (June 9, 2012). Final Report explaining the amendments to Rule 161 published with the Court's Order at 42 Pa.B. 5734 (September 8, 2012). Final Report explaining the amendments to Rule 161 published with the Court's Order at 49 Pa.B. 1512 (March 30, 2019).]**

**Rule 170. Motion to Expunge or Destroy Records.**

**[A.](a) Motion.** Upon motion, or *sua sponte*, expungement proceedings may be commenced:

- (1) if a written allegation is not approved for prosecution;
- (2) if the petition is dismissed by the court;
- (3) in consent decree and informal adjustment cases:
  - [(a)](i)** when six months have elapsed since the final discharge of the juvenile from supervision; and
  - [(b)](ii)** if no proceeding seeking adjudication or conviction is pending;
- (4) **[when] if** a juvenile has been discharged from court supervision pursuant to Rule 631:
  - [(a)](i)** five years have elapsed;
  - [(b)](ii)** the juvenile has not been convicted or adjudicated delinquent for a felony or misdemeanor;
  - [(c)](iii)** no court proceeding is pending seeking such conviction or adjudication; and
  - [(d)](iv)** the delinquent act is not an act precluded from expungement pursuant to 18 Pa.C.S. § 9123(a.1); or
- (5) **[when] if** the attorney for the Commonwealth consents to the expungement.

**[B.](b) Contents of Motion.** A motion, which shall include a proposed court order, shall contain the following information:

- (1) the name of the juvenile;
- (2) the date of birth of the juvenile, if known;
- (3) the juvenile's case docket number, if any;
- (4) the allegations or offenses to which the order pertains;
- (5) the law enforcement agency that initiated the allegations;
- (6) the reference number of the police report or written allegation to be expunged or destroyed, including the juvenile offense tracking number (JOTN), if available;
- (7) the date of arrest;
- (8) the disposition of the written allegation or petition;

- (9) the reasons and statutory authority for expunging or destroying the documents, fingerprints, or photographs; **[and]**
- (10) **the identification of records to be expunged or destroyed; and**
- (11) the **[agencies] recordkeepers** upon which certified copies of the court order shall be served.

**[C.](c) Service of Motion.** In addition to the service required by Rule 345, the movant shall serve the motion on the chief juvenile probation officer.

**[D.](d) Answer.**

- (1) The attorney for the Commonwealth, and any other person upon whom the motion was served, may file an answer to the motion.
- (2) If objections to the motion are not made within **[thirty] 30** days of the filing of the motion, they shall be deemed waived.

**[E.](e) Court's Response to the Motion.** The court shall conduct a hearing or grant or deny the motion after giving consideration to the following factors:

- (1) the type of offense;
- (2) the individual's age, history of employment, history of academic or vocational training, delinquent or criminal activity, and drug or alcohol issues;
- (3) adverse consequences that the individual may suffer if the records are not expunged; and
- (4) whether retention of the record is required for purposes of public safety.

**[F.](f) Inter-County Transfer Cases.**

- (1) A motion to expunge or destroy records shall be filed in the county in which the adjudication of delinquency was entered.
- (2) A motion regarding the records of a juvenile whose disposition did not involve an adjudication of delinquency shall be filed in the county in which the disposition occurred.
- (3) The court entering an order to expunge or destroy records shall direct the order to any other court possessing records pertaining to the case.

**Comment:** **[Paragraph (A) provides that a motion to expunge or destroy records, files, fingerprints, or photographs, or the court, *sua sponte*, may commence expungement proceedings.] The juvenile or the juvenile probation office may initiate an expungement proceeding in accordance with this rule.**

Under **[paragraphs (A)(1) & (2)] subdivisions (a)(1)-(a)(2)**, the written allegation or petition may be dismissed for several reasons, including, but not limited to, when: 1) a juvenile completes an informal adjustment or diversionary program; 2) the attorney for the Commonwealth declines to prosecute; 3) probable cause is not found at the detention hearing pursuant to Rule 242(C)(1); 4) there is no finding on the offenses pursuant to Rule 408(B); or 5) there is no finding of a need for treatment, supervision, and rehabilitation pursuant to Rule 409(A)(1). Expungement proceedings may be commenced upon these dismissals of the written allegation or the petition.

For expungement of summary offenses heard by a magisterial district court or criminal court, see Pa.R.Crim.P. 490 and 490.1 (truancy). For eligibility for expungement, see 18 Pa.C.S. § 9123(a); 24 P.S. § 13-1333.3(h) (truancy).

**For the information required by subdivision (b), see Pa.R.J.C.P. 161(e) (requesting expungement information from the juvenile probation office).**

Under **[paragraph (B)(6)] subdivision (b)(6)**, any number assigned to police papers helpful in tracking the police report or written allegation that would assist the law enforcement agency in expunging or destroying the document is to be listed. A reference number could be a juvenile offense tracking number, district control number, crime control number, incident number, Philadelphia identification number, or another number assigned by the law enforcement agency to track the document.

Pursuant to **[paragraph (B)(9)] subdivision (b)(9)**, the reasons for expunging the records or destroying fingerprints and photographs are to be included in the motion, specifically citing which provision of **[paragraph (A)] subdivision (a)** applies.

“Expunge” or “expungement” is defined by Rule 120, which means to erase legally, or the process of legal erasure of an item making it permanently not available to the public but where some information may be retained only for limited purposes by agencies or departments. See **[Rule 173. See also Comment to Rule 120] Pa.R.J.C.P. 173; Pa.R.J.C.P. 120, cmt.**

Rule 173 provides for the retention of certain information that is crucial for: 1) determining compliance with the order to expunge; 2) determining eligibility in a court program, determining the grading or penalty of an offense, or for other purposes as provided by law; 3) maintaining statistical and research information; 4) maintaining intelligence and investigative information; and 5) financial audits.

Pursuant to **[paragraph (D)] subdivision (d)**, the attorney for the Commonwealth is given an opportunity to respond to the motion. The attorney for the Commonwealth should specify its position on whether items should be expunged or destroyed. Expunged

items remain available to law enforcement agencies and the attorney for the Commonwealth in limited circumstances, whereas destroyed items are permanently erased. The attorney for the Commonwealth should consent to expunging records unless the attorney for the Commonwealth demonstrates good cause for the retention of records. See *In re A.B.*, 987 A.2d 769 (Pa. Super. 2009).

The reasons for maintaining information pursuant to Rule 173 do not qualify as good cause against expunging records under this rule. Maintenance of specific information is different from the maintenance of the official court record or other official records of the juvenile probation office or a law enforcement agency. Pursuant to Rule 173, a separate document, file, or database is to be created. See **[Rule 173 and its Comment] Pa.R.J.C.P. 173**.

If the attorney for the Commonwealth objects to expunging or destroying the records, the court should conduct a hearing on the motion.

Pursuant to **[paragraph (E)(3)] subdivision (e)(3)**, the court is to consider adverse consequences that an individual may suffer if the records are not expunged. Adverse consequences are discussed in The Pennsylvania Collateral Consequences Checklist instituted by Pennsylvania Juvenile Indigent Defense Action Network in conjunction with the initiative the Models for Change System Reform in Juvenile Justice. This checklist may be accessed on the Supreme Court's website at <https://www.pacourts.us/courts/supreme-court/committees/rules-committees/juvenile-court-procedural-rules-committee/juvenile-court-committee-rules-and-forms>.

The attorney for the Commonwealth in the county in which a motion is filed in an inter-county transfer case pursuant to **[paragraph (F)] subdivision (f)** should provide notice of the motion to, and communicate with, the attorney for the Commonwealth and the juvenile probation office in the county to which, or from which, the case was transferred.

Notwithstanding this rule, **[see] see** 18 Pa.C.S. § 9123(a.1) for cases that are ineligible for expungement proceedings. **[See also] See also** 42 Pa.C.S. § 6341 for destruction of fingerprints and photographs.

**[Official Note: Rule 170 adopted April 1, 2005, effective October 1, 2005. Amended July 28, 2014, effective September 29, 2014. Amended February 12, 2015, effective immediately. Amended March 1, 2019, effective July 1, 2019.**

***Committee Explanatory Reports:***

**Final Report explaining the provisions of Rule 170 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005). Final Report explaining the amendments to**

**Rule 170 published with the Court's Order at 44 Pa.B. 5447 (August 16, 2014). Final Report explaining the amendments to Rule 170 published with the Court's Order at 49 Pa.B. 1142 (March 16, 2019).]**

**Rule 172. Order to Expunge or Destroy.**

**[A.](a) Contents.** Any order to expunge or destroy the official court record, juvenile probation files, docket entries, law enforcement records, or fingerprints and photographs shall include the following information:

- (1) all items contained in Rule **[170(B)] 170(b)**;
- (2) a directive specifically identifying which items shall be expunged or destroyed, including all law enforcement records, juvenile probation files, official court records, other juvenile records, fingerprints, photographs, and any other information pertaining to the arrest;
- (3) a directive that the keeper of the juvenile records shall expunge or destroy such items;
- (4) a directive that each **[agency, department, or office] recordkeeper [ , upon request,]** shall notify the court or its designee, **within 30 days of service of the order and** in writing, of the action taken in response to the order to expunge or destroy;
- (5) a directive to a school building principal or his or her designee to destroy information received from the court pursuant to Rule 163 **and to comply with the notice requirement of subdivision (a)(4)**;
- (6) the printed name and signature of the judge issuing the order; and
- (7) the date of the court order.

**[B.](b) Service.** In addition to the service required by Rule 167, the clerk of courts, court administrator, or other court designee shall serve certified copies of the order on the chief juvenile probation officer, the Pennsylvania State Police, the Juvenile Court Judges' Commission, and any other person or agency as directed by the court.

**Comment:** Pursuant to **[paragraph (A)(2)] subdivision (a)(2)**, the court is to list specifically which items are to be expunged and which items are to be destroyed. Specific information retained pursuant to Rule 173 should be expunged but not destroyed. In most instances, the court should order that the fingerprints and photographs be destroyed and that the remaining records and documents be expunged.

Pursuant to **[paragraph (A)(4)] subdivision (a)(4)**, an agency, department, **school**, or office **[may be requested] is required** to produce evidence of compliance

with the court order to expunge or to explain why compliance cannot be made. The court's designee to receive written notice under this subdivision can be the juvenile probation office. Non-compliance may result in a finding of contempt of court.

Pursuant to **[paragraph (A)(5)] subdivision (a)(5)**, the school is to destroy all information received from the court. Because the school is required to store this information separately under Rule 163(F), destruction should not be difficult. See **[Rule 163 and its Comment] Pa.R.J.C.P. 163**. **[The court may also require the school to provide written notice of the action taken.]**

**[Official Note: Rule 172 adopted April 1, 2005, effective October 1, 2005. Amended December 24, 2009, effective immediately. Amended July 28, 2014, effective September 29, 2014. Amended March 1, 2019, effective July 1, 2019.]**

***Committee Explanatory Reports:***

Final Report explaining the amendments to Rule 172 published with the Court's Order at 40 Pa.B. 222 (January 9, 2010). Final Report explaining the amendments to Rule 172 published with the Court's Order at 44 Pa.B. 5447 (August 16, 2014). Final Report explaining the amendments to Rule 172 published with the Court's Order at 49 Pa.B. \_\_ ( \_\_ \_\_, 2019).]