

INTRODUCTION

The Supreme Court of Pennsylvania has adopted the amendments to Rules 120, 163, 167, 170, 172, 370, 408, 409, and 1120, and adopted Rule 173. The amendments are effective September 29, 2014.

EXPLANATORY REPORT JULY 2014

The amendments described herein primarily concern the procedures for expunging and destroying documents, fingerprints, and photographs.

Rules 120 and 1120 - Definitions

The term “county agency” is defined in the dependency rules. Because of its use this term in the delinquency rules, this definition has been added to Rule 120.

Proposed Rule 120 provides specific definitions of “destroy” and “expunge.” Although many standard dictionaries and thesauruses use these terms to define each other or as synonyms, it is important to note that they have different legal meanings.

“Destroy,” as used in these Rules, is the permanent erasure of a document or item. There shall be nothing left to trace or indicate that the item ever existed.

The term, “expunge,” as distinguished from destroy means making a document or item not available to the public under any circumstances. There are several circumstances where the information may be necessarily retained for limited use by “juvenile justice agencies” and/or for statistical purposes. However, expunging a document allows the juvenile to have a “clean record” when trying to secure a job, enrolling in college, or enlisting in the military.

“Intelligence information” and “investigative information” have also been defined to limit the information that may be kept by “juvenile justice agencies.”

“Juvenile justice agency” is defined as any court and agencies authorized to perform the administration of justice, including the attorney for the Commonwealth. This is especially important in retention of specific information to determine subsequent eligibility in a court program.

“Juvenile record” is defined to discern it from the “official court record.” The “official court record” is the juvenile court file maintained by the clerk of courts; whereas, the “juvenile record” is collected and maintained by “juvenile justice agencies.”

“Service provider” was added to Rules 167(B) and 173(F). It is defined as any

entity that provides services to juveniles pursuant to a proceeding under the Juvenile Act.

Rule 163 - Release of Information to School

When the court enters an order to expunge records, it should concurrently enter an order to destroy all information provided to the school. Because the school is not a “juvenile justice agency”, it should not retain any information provided by the court.

Paragraph (B) of this rule requires that the school maintain a separate file of information provided from the court. This information is not to be placed in the juvenile’s official school record. Therefore, when the court enters a destruction order, the school can destroy the separate file without affecting the official school record.

Paragraph (D) requires the building principal to acknowledge receipt of his or her requirements pursuant to this rule.

If the juvenile transfers to another school, the building principal must transfer the notice and keep a log of all the individuals to whom this information was subsequently provided. See paragraph (E).

Rule 167 - Filings and Service of Court Orders and Notices

Rule 167 is amended to include a party, juvenile probation officer, and any other person, service provider, or agency listed in the court order among those individuals or entities who must receive copies of court orders and notices.

The juvenile should always receive a copy of court orders and notices regardless of whether the juvenile is represented by counsel. The juvenile probation officer and any other person, service provider, or agency listed in the court order should also be provided with a copy.

Rule 170 - Motion to Expunge or Destroy Records

Upon motion, the court may order that juvenile records, fingerprints, or photograph be expunged or destroyed.

The court should specify whether an item is being destroyed or expunged. The presentation of a motion allows the Commonwealth the opportunity to object and provide compelling reasons why the items at issue should be “expunged,” rather than “destroyed.”

Intelligence and investigative information kept separately by law enforcement agencies is not subject to this rule.

Rule 172 - Order to Expunge or Destroy

Rule 172 has been amended to require that the court's order identify with specificity which items shall be expunged or destroyed. See discussion *infra*.

Rule 173 - Retention of Specific Information in Juvenile Records

This new rule provides for the retention of specific information by the court and juvenile justice agencies.

The information kept by the court must be limited to the information provided in paragraph (B). However, juvenile justice agencies have more latitude in keeping information for the purpose of determining subsequent eligibility in a court program, preparing a pre-sentence report, or for maintaining intelligence and investigative information.

Information retained by juvenile justice agencies is neither open to inspection by the public, nor governed by Rule 160 or § 6308 of the Juvenile Act.

Rule 370 - Consent Decree

This amendment clarifies that the agreement is between the Commonwealth and the juvenile. Additionally, the *Comment* clarifies that a consent decree may be entered at any time prior to the entry of the adjudication of delinquency.

Rule 408 - Ruling on Offenses

It was brought to the Committee's attention that paragraph (B) was confusing because of its use of the term "all." The modification clarifies the intent of the rule and provides new language to read that if the court finds that the juvenile committed none of the alleged delinquent acts, the court shall dismiss the petition and release the juvenile.

If the court finds, for example, that the juvenile committed one of the twelve alleged delinquent acts, the petition cannot be dismissed.

Rule 409 - Adjudication of Delinquency

Paragraph (A)(1)(b) and its *Comment* was modified to ensure the court orders that records, fingerprints, or photographs be destroyed or expunged.