

**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 **April 30, 2025**. 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 governing expungement procedures.

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.

Thereafter, the Committee reopened rulemaking to address further concerns about incomplete expungements. The Committee proposed amending Pa.R.J.C.P. 161 to add subdivision (e) to permit an eligible juvenile to submit a written request to the juvenile probation office to disclose information to the juvenile that is necessary to expunge the juvenile’s records. The juvenile probation office would have 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 proposed 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 was 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 proposal was published for comment. See 54 Pa.B. 2061 (April 20, 2024). Three comments were received, and all supported the proposal with one suggesting further refinements.

Thereafter, the Committee revised the Comment to Pa.R.J.C.P. 161 and Pa.R.J.C.P. 170(f) to include courtesy supervision. Next, the Committee revised Pa.R.J.C.P. 172(a)(4) to include the juvenile as a recipient of the notice with a corollary revision to Pa.R.J.C.P. 170 to add subdivision (b)(12) to include information in the motion on where to send the notice to the juvenile. Finally, the Committee revised the Comment to Pa.R.J.C.P. 170 to add a reference to 44 Pa.C.S. § 2321 for the expungement of a DNA sample, record, or profile.

Following publication, the Act of October 16, 2024, P.L. 1006, No. 108 amended the eligibility requirements for obtaining an expungement of juvenile records. Generally, the category of offenses subject to expungement was broadened and the length of time to become eligible was decreased. Additionally, the Chief Juvenile Probation Officer or designee (hereinafter referred to as “JPO”) is responsible for notifying the court that a juvenile’s records are eligible for expungement and requesting the court to initiate expungement proceedings.

Specifically, the Act amended the Juvenile Act to expand JPO responsibilities to include:

The Chief Juvenile Probation Officer or designee shall promptly *notify* the court that the records of a juvenile delinquency case are eligible for expungement and shall *request* the court to initiate expungement proceedings in accordance with 18 Pa.C.S. § 9123 (relating to juvenile records) and the Pennsylvania Rules of Juvenile Court Procedure, upon *determining* that any of the following applies:

42 Pa.C.S. § 6304(a.2) (emphasis added). Accordingly, there are three actions that must be performed by the JPO. First, the JPO must determine a juvenile’s eligibility for expungement under 18 Pa.C.S. § 9123. Second, assuming a juvenile is eligible, the JPO must notify the court. Third, the JPO must also “request” the court to initiate expungement proceedings. It is through the “request” that the Act places the greatest procedural burden on the JPO.

To implement the Act, the Committee reopened rulemaking once more. The juvenile-initiated motion procedure would be preserved, including the previously proposed procedures in Pa.R.J.C.P. 161(d)(2). This would provide a juvenile with procedures if a JPO does not make a timely eligibility determination, if the juvenile is able to secure the prosecutor’s consent, or if the juvenile wishes to seek expungement again at a later date if a JPO’s request was denied. Further, it was uncertain whether the Act was only prospective in nature.

Pa.R.J.C.P. 170(a) would be amended to include a JPO’s request as a method of commencing an expungement. Thereafter, the “request” would flow along the same procedures as a motion, containing the same information as a motion for the recordkeepers to ensure a complete expungement.

Service of a request may be more complicated than a motion. Pursuant to Pa.R.J.C.P. 170(d), a request would be filed by the JPO and served on the parties presumably via PACFile. The reference to Pa.R.J.C.P. 345 in subdivision (d) would permit the juvenile to be served if unrepresented.

However, the Committee recognized that the eligibility for some expungements may be several years after a juvenile's supervision has been terminated and, if the juvenile's attorney has not withdrawn his or her appearance, then the attorney is going to be served with the request. In those circumstances, the juvenile's former attorney may not know where the juvenile currently lives.

Subdivision (h) would be added to Pa.R.J.C.P. 170 to permit the court to decide a request in the juvenile's absence if the juvenile's whereabouts are "not reasonably known." Hence, an expungement by request could still proceed even if service on the juvenile could not be accomplished. Regarding "not reasonably known," the intent of that phrase was to require some effort to determine a juvenile's whereabouts without prescribing those efforts.

Pa.R.J.C.P. 170(i), which would include both an expungement by request and an expungement by motion, would allow a juvenile to seek another expungement so there would be no prejudice if a request or motion was denied. While the basis for expungement is primarily factual, *e.g.*, type of offense, years since offense, reoffend status, which will not change over time, subdivision (i) is intended to permit a subsequent petition if expungement was denied "upon cause shown." See 18 Pa.C.S. § 9123(a.1)(2). Also, the prosecutor might later consent to an expungement.

The eligibility requirements in Pa.R.J.C.P. 170(A) would be removed and the Comment revised to include a reference to 18 Pa.C.S. § 9123(a)-(a.1) for eligibility. No further amendment of Pa.R.J.C.P. 172 has been proposed to implement the Act. Previously proposed amendments have been retained.

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] counsel** 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) **The juvenile probation office shall maintain:**
 - (i) **a list of recipients to whom the juvenile probation office has disseminated a juvenile's record; and**
 - (ii) **the identification of the records disseminated.**
- (3) 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) **Information for Expungement or Destruction of Juvenile's Records. Upon written request by an eligible juvenile for the purpose of expunging or destroying the juvenile's records, 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] Pa.R.J.C.P.** 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] Pa.R.J.C.P.** 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.

For an intercounty transfer case or courtesy supervision, see Pa.R.J.C.P. 302, a written request pursuant to subdivision (e) should be made to the juvenile probation office in both the county of origin and the county that received the juvenile's case or provided courtesy supervision.

[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 Juvenile Records.

[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) when six months have elapsed since the final discharge of the juvenile from supervision; and**
 - (b) if no proceeding seeking adjudication or conviction is pending;****
- (4) when a juvenile has been discharged from court supervision pursuant to Rule 631:
 - (a) five years have elapsed;**
 - (b) the juvenile has not been convicted or adjudicated delinquent for a felony or misdemeanor;**
 - (c) no court proceeding is pending seeking such conviction or adjudication; and**
 - (d) the delinquent act is not an act precluded from expungement pursuant to 18 Pa.C.S. § 9123(a.1); or****
- (5) when the attorney for the Commonwealth consents to the expungement.]**

(a) Commencement. Expungement proceeding may be commenced by a party's motion, the chief juvenile probation officer's request, or the court *sua sponte*.

[B.](b) Contents of Motion or Request. A motion or request, 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 juvenile records to be expunged or destroyed;**
- (11)** the **[agencies]** **recordkeepers** upon which certified copies of the court order shall be served**[.]; and**
- (12)** **where the notice to the juvenile pursuant to Pa.R.J.C.P. 172(a)(4) shall be sent.**

[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) Filing and Service of Request. The chief juvenile probation officer shall file the request and serve it on the parties pursuant to Pa.R.J.C.P. 345.

[D.](e) Answer.

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

[E.](f) Court's Response to the Motion or Request. The court shall **[conduct a hearing or]** grant or deny the motion **or request, following a hearing if necessary,** 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.](g) [Inter-County] Intercounty Transfer Cases and Courtesy Supervision.

- (1) A motion **or notice** to expunge or destroy records shall be filed in the county in which the adjudication of delinquency was entered.
- (2) A motion **or notice** 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 **for a case involving an intercounty transfer or courtesy supervision** shall direct the order to any other court possessing records pertaining to the case.

(h) Juvenile's Absence. The court may proceed in a juvenile's absence if the expungement proceedings have been commenced by request and the juvenile's whereabouts are not reasonably known.

(i) Without Prejudice. The court's denial, in whole or in part, of an expungement shall be without prejudice to the juvenile.

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.]

[Under paragraphs (A)(1) & (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 the eligibility of an expungement of juvenile records, see 18 Pa.C.S. § 9123(a)-(a.1). For the definition of "juvenile records," see Pa.R.J.C.P. 120. See also 42 Pa.C.S. § 6309(e) (defining "juvenile history record information"); 42 Pa.C.S. § 6308(c)(3) (destruction of fingerprint and photographic records).

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).

The “chief juvenile probation officer” in subdivisions (a) and (d) include the chief juvenile probation officer’s designee. See also 42 Pa.C.S. § 6304(a.2) (setting forth responsibility for providing notice and making request).

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 **or order**, specifically citing which provision of **[paragraph (A)] 18 Pa.C.S. § 9123(a)** applies.

For the information required by subdivisions (b)(10)-(b)(11), see Pa.R.J.C.P. 161(e) (requesting information from the juvenile probation office).

“Expunge” or “expungement” is defined by **[Rule] Pa.R.J.C.P. 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] Pa.R.J.C.P. 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 **or order**. **A response to a request, insofar as practicable, should adhere to the requirements for answers pursuant to Pa.R.J.C.P. 344(D).** 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] Pa.R.J.C.P. 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] where** a motion is filed in an **[inter-county] intercounty** transfer case **or a courtesy supervision** 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 **or courtesy supervision provided**.

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.

For the expungement of a DNA sample, record, or profile, see 44 Pa.C.S. § 2321.

[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)] Pa.R.J.C.P. 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, **and the juvenile, 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] the principal's** designee to destroy information received from the court pursuant to **[Rule] Pa.R.J.C.P. 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] Pa.R.J.C.P. 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] Pa.R.J.C.P. 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's 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] Pa.R.J.C.P. 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. 1142 (March 16, 2019).]