

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

**NOTICE OF PROPOSED RULEMAKING**

**Proposed Amendment of Pa.R.J.C.P. 172**

The Juvenile Court Procedural Rules Committee is considering proposing to the Supreme Court of Pennsylvania the amendment of Pennsylvania Rule of Juvenile Court Procedure 172 to revise the required contents of an order to expunge or destroy juvenile records for the reasons set forth in the accompanying explanatory report. Pursuant to Pa.R.J.A. No. 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 reports, notes, or comments in the proposal have been inserted by the Committee for the convenience of those using the rules. They neither will constitute a part of the rules nor will be officially 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:

**Daniel A. Durst, Chief Counsel  
Juvenile Court Procedural Rules Committee  
Supreme Court of Pennsylvania  
Pennsylvania Judicial Center  
PO Box 62635  
Harrisburg, PA 17106-2635  
FAX: 717-231-9541  
[juvenilerules@pacourts.us](mailto:juvenilerules@pacourts.us)**

All communications in reference to the proposal should be received by **February 3, 2020**. 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 Jennifer R. Sletvold, Chair

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

**REPORT**

**Proposed Amendment of Pa.R.J.C.P. 172**

The Juvenile Court Procedural Rules Committee proposes the amendment of Pennsylvania Rule of Juvenile Court Procedure 172 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.

Concern was expressed to the Committee that some record keepers unduly delay compliance with expungement orders. Further, the petitioner does not have firsthand knowledge of all the records that may have been created as a result an adjudication, which precludes the petitioner from knowing whether the records specifically identified by the court in its expungement order represent the universe of records that should be expunged or destroyed. This latter circumstance may increase the risk of an “incomplete expungement.”

Undeniably, the existence of a delinquency record may have collateral consequences for a juvenile. See, e.g., Pa.R.J.C.P. 407(C) (admission colloquy discussing consequences of adjudication of delinquency). The expungement of a delinquency record may be a time sensitive matter, such as during the application process for entry into the job market, college, or the military.

The Committee considered whether Rule 172(A)(3) should contain a rule-based deadline for compliance, e.g., 30 days, which ostensibly would address part of the concern. However, establishing a deadline might actually operate to “relax” existing local practices that achieve compliance in a shorter timeframe.

Further, imposing a deadline may require unattainably expeditious action for the record keeper. From the petitioner’s perspective of the expungement process, the only practical endpoint is expungement. Yet, the process’s timeline is actually a two-part sequence: 1) the time for the clerk to transmit the order to the record keepers, and 2) the time for the record keepers to expunge the records. Having one unitary deadline applicable to two independent sub-processes potentially operates to hold neither accountable.

Additionally, it was unknown whether delayed compliance is county-specific or widespread. Anecdotal experience varies, but accounts from other sources suggest that delays might be localized. The Committee specifically invites readers’ comments on this aspect of the expungement process.

For these reasons, the Committee proposes amending Rule 172(A)(3) to provide juvenile court judges with the discretion for setting a compliance deadline. This approach grants flexibility and accommodates local practices and resources. In counties where compliance delays are commonplace or time is of the essence, the petitioner can seek, via the expungement motion, a compliance deadline. Alternatively, the court may *sua sponte* establish a compliance deadline in its order, although authority to do so is arguably inherent absent a procedural rule.

The Committee also proposes to amend Rule 172(A)(2) to remove the requirement that records be specifically identified, and replace it with “all records,” unless those records are excluded by “relevant authority.” Examples of “all records” are included in the Comment rather than in the rule text. Additionally, the Comment contains examples of “relevant authority” that may operate to exclude those records from expungement or destruction.

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

## Rule 172. ORDER TO EXPUNGE OR DESTROY

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);
- 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] that all records be expunged or destroyed unless otherwise excluded by relevant authority;**
- 3) a directive that the keeper of the juvenile records shall expunge or destroy such items, together with a deadline for compliance, as may be established by the court;
- 4) a directive that each agency, department, or office, upon request, shall notify the court or its designee, 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;
- 6) the printed name and signature of the judge issuing the order; and
- 7) the date of the court order.

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), **[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.]** “all

**records” include law enforcement records, juvenile probation files, official court records, other juvenile records, fingerprints, photographs, and any other information pertaining to the arrest. Exclusions may include those provided by rule or statute. See, e.g., Pa.R.J.C.P. 173; 18 Pa.C.S. § 9122(c).**

Pursuant to paragraph (A)(4), an agency, department, or office may be requested to produce evidence of compliance with the court order to expunge. Non-compliance may result in a finding of contempt of court.

Pursuant to paragraph (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. 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. **Amended \_\_\_\_\_, 2020, effective \_\_\_\_\_, 2020.**

*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). **Final Report explaining the amendments to Rule 172 published with the Court’s Order at 49 Pa.B. ( \_\_\_\_\_, 2019).**