

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

NOTICE OF PROPOSED RULEMAKING

Proposed Amendment of Pa.R.J.C.P. 409

The Juvenile Court Procedural Rules Committee proposes the amendment of Rule 409 to change the outcome from “termination of jurisdiction” to “dismissal of petition” when the court finds the juvenile is “not in need” 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:

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All communications in reference to the proposal should be received by **January 8, 2018**. 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,

Kelly L. McNaney, Esq., Chair

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

REPORT

Proposed Amendment of Pa.R.J.C.P. 409

The Juvenile Court Procedural Rules Committee proposes the amendment of Rule 409 to change the outcome from “termination of jurisdiction” to “dismissal of petition” when the court finds the juvenile is “not in need.”

In a delinquency proceeding, if a court’s ruling on the offenses is that the juvenile did not commit the alleged offenses, the Juvenile Act requires the petition be dismissed. See 42 Pa.C.S. § 6341(a). Rule 408 tracks this legislatively mandated outcome. See Pa.R.J.C.P. 408(B)(1). If the court rules that the juvenile committed the alleged offenses, but the juvenile is not in need, the Juvenile Act requires the proceeding be dismissed. See 42 Pa.C.S. § 6341(b). In contrast, Rule 409 states that court shall enter an order terminating jurisdiction. See Pa.R.J.C.P. 409(A)(1)(a).

As mentioned, the Juvenile Act has two outcomes: 1) dismissal of the petition; and 2) dismissal of the proceeding. The Juvenile Act requires the delinquency petition to include both the alleged offenses and a statement that the juvenile is in need. See 42 Pa.C.S. § 6334(a)(1). Therefore, a failure to substantiate either requirement would result in dismissal of the petition, which then operates to dismiss the proceeding.

Within the Rules, there are two outcomes: 1) dismissal of the petition; and 2) termination of jurisdiction. Procedurally, there is no difference between a dismissal of a petition pursuant to Rule 408 and termination of jurisdiction pursuant to Rule 409 because the outcomes are the same: there is no adjudication of delinquency after consideration of the merits. See also *In Interest of Morrow*, 583 A.2d 816, 818 (Pa. Super. 1990) (jeopardy attached once testimony commenced at the adjudicatory hearing). Moreover, for purposes of expungement, the termination of jurisdiction is considered the same as a dismissed petition. See Pa.R.J.C.P. 170(A)(2) and Comment.

The Committee discussed concerns that “jurisdiction,” as used in Rule 409, might be conflated with the use of that term in other parts of the Rules. See, e.g., Pa.R.J.C.P. 630. Accordingly, to resolve any ambiguity, the Committee proposes to amend Rule 409(A)(1)(a) to state that the petition shall be dismissed when the juvenile is found not to be in need.

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

RULE 409. ADJUDICATION OF DELINQUENCY

A. **Adjudicating the [j]Juvenile [d]Delinquent.** Once the court has ruled on the offenses as provided in Rule 408, the court shall conduct a hearing to determine if the juvenile is in need of treatment, supervision, or rehabilitation.

1) **Not in [n]Need.** If the court determines that the juvenile is not in need of treatment, supervision, or rehabilitation, the court shall enter an order providing that:

a) **[jurisdiction shall be terminated] the petition shall be dismissed** and the juvenile shall be released, if detained, unless there are other reasons for the juvenile's detention; and

b) any records, fingerprints, and photographs taken shall be expunged or destroyed.

2) **In [n]Need.**

a) If the court determines that the juvenile is in need of treatment, supervision, or rehabilitation, the court shall enter an order adjudicating the juvenile delinquent and proceed in determining a proper disposition under Rule 512.

b) The court also shall order the law enforcement agency that submitted the written allegation:

i) to take, or cause to be taken, the fingerprints and photographs of the juvenile if not previously taken pursuant to this case, and

ii) to ensure that these records, including the case reference number, are forwarded to the central repository maintained by the Pennsylvania State Police.

B. **Timing.**

1) If the juvenile is in detention, the court shall make its finding within twenty days of the ruling on the offenses pursuant to Rule 408.

2) If the juvenile is not in detention, the court shall make its finding within sixty days of the ruling on the offenses pursuant to Rule 408.

C. **Extending Time by Agreement.** The time restrictions under paragraphs (B)(1) and (B)(2) may be extended if there is an agreement by both parties.

Comment

Under paragraph (A), absent evidence to the contrary, evidence of the commission of acts that constitute a felony is sufficient to sustain a finding that the juvenile is in need of treatment, supervision, or rehabilitation. See 42 Pa.C.S. § 6341(b).

If the court determines that the juvenile is not in need of treatment, supervision, or rehabilitation and the court enters an order **[terminating jurisdiction] dismissing the petition**, the victim, if not present, shall be notified of the final outcome of the proceeding. See Victim's Bill of Rights, 18 P.S. § 11.201 *et seq.*

This rule addresses adjudicating the juvenile delinquent or **[releasing the juvenile from the court's jurisdiction] dismissing the petition**. This determination is different from finding the juvenile committed a delinquent act under Rule 408.

Pursuant to 42 Pa.C.S. § 6308(c)(3), all fingerprints and photographic records are to be destroyed upon order of the court if the juvenile is not adjudicated delinquent.

Pursuant to paragraph (A)(1)(b), the court is to specify which items are to be expunged and which items are to be destroyed. See Rule 172(A)(2) and its Comment.

Pursuant to paragraph (A)(2)(b)(ii), a case reference number is to be included to help track this case. See Comment to Rule 170 for further description of a case reference number.

A report on the disposition is to be sent to the Juvenile Court Judges' Commission. See 42 Pa.C.S. § 6309(d).

For dispositional hearing procedures, see Chapter Five.

Official Note: Rule 409 adopted April 1, 2005, effective October 1, 2005. Amended December 24, 2009, effective immediately. Amended May 26, 2011, effective July 1, 2011. Amended July 28, 2014, effective September 29, 2014. **Amended _____, 2018, effective _____, 2018.**

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 409 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005). Final Report explaining the amendments to Rule 409 published with the Court's Order at 40 Pa.B. 222 (January 9, 2010). Final

Report explaining the amendments to Rule 409 published with the Court's Order at 41 Pa.B. 3180 (June 25, 2011). Final Report explaining the amendments to Rule 409 published with Court's Order at 44 Pa.B. 5447 (August 16, 2014). **Final Report explaining the amendments to Rule 409 published with Court's Order at Pa.B. ____ (____, 2018).**