

INTRODUCTION

The Juvenile Court Procedural Rules Committee is planning to recommend to the Supreme Court of Pennsylvania that the modification of Rules 120, 163, 167, 170, 172, 173, 408, and 800 be adopted and prescribed. These proposed modifications set forth the procedures for expunging and destroying documents, fingerprints, and photographs.

The following *Explanatory Report* highlights the intent of these Rules. Please note that the Committee's *Reports* should not be confused with the official Committee *Comments* to the Rules. Also note that the Supreme Court does not adopt the Committee's *Comments* or the contents of the *Explanatory Reports*.

The Committee requests that interested persons submit suggestions, comments, or objections concerning this proposal to the Committee through counsel, Christine Riscili at juvenilerules@pacourts.us. Email is the preferred method for receiving comments in an effort to conserve paper and expedite the distribution of comments to the Committee. Emailed comments need not be reproduced and sent via hard copy. The Committee will acknowledge receipt of your comment.

For those who do not have access to email, comments may be faxed to the Committee at 717-231-9541 or written comments may be mailed to:

Christine Riscili, Esq., Counsel
Supreme Court of Pennsylvania
Juvenile Court Procedural Rules Committee
Pennsylvania Judicial Center
601 Commonwealth Ave, Suite 6200
P.O. Box 62635
Harrisburg, PA 17106-2635.

All comments shall be received no later than Monday, Sept. 27, 2010.

08/17/2010

BY THE JUVENILE COURT PROCEDURAL RULES
COMMITTEE:

Cynthia K. Stoltz, Esq., Chair

Christine Riscili, Esq.
Counsel

EXPLANATORY REPORT

Background

The Committee has received several inquiries as to the application of the Criminal History Record Information Act (CHRIA) in juvenile cases. 18 Pa.C.S. § 9101 *et seq.*

According to 18 Pa.C.S. § 9105, nothing in CHRIA shall apply to juveniles except as provided in § 9123. Section 9123 governs juvenile records and provides the Court with criteria for expunging records. See 18 Pa.C.S. §§ 9105 and 9123.

CHRIA was adopted in 1980. Subsequently in 1986, the legislature enacted § 6309(a) of the Juvenile Act, making other sections of CHRIA applicable to alleged delinquents. The Juvenile Act expanded CHRIA's applicability regarding: 1) fingerprints and photographs; and 2) information collected, maintained, disseminated, or received by juvenile justice agencies.

Except for §§ 9105 (relating to other criminal justice agencies), 9112(a)&(b) (relating to mandatory fingerprinting), 9113 (relating to disposition reporting by criminal justice agencies) and 9121(b)(relating to general regulations), the remaining provisions of 18 Pa.C.S. Ch. 91 (relating to criminal history record information) shall apply to all alleged delinquents and adjudicated delinquents whose fingerprints and photographs are taken pursuant to § 6308(c)(relating to law enforcement records) and to any juvenile justice agency which collects, maintains, disseminates or receives juvenile history record information. 42 Pa.C.S. § 6309(a)

Section 9104 of CHRIA sets forth its scope and it does not apply to court documents, records, or indices prepared or maintained by or filed in any court. 18 Pa.C.S. § 9104(a)(2).

Because there are no criteria for expunging court cases, these proposed rule additions address the expunging of the official court record.

In addition, these proposed rule modifications address the destruction of fingerprints and photographs of juveniles. Section 6341(a) of the Juvenile Act provides for the immediate destruction of fingerprints and photographs if it is determined that the juvenile did not commit the alleged delinquent acts. "Destruction" was not defined and did not take into account any compelling reasons for keeping the documents. With the new definitions of "destroy" and "expunge," the Commonwealth may argue that the fingerprints and photographs be expunged but not destroyed.

Rule 120 - Definitions

This proposed Rule provides specific definitions of "expunge" and "destroy." 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 agencies” is defined as the 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.”

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 (D) 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.

Rule 167 - Filings and Service of Court Orders and Notices

This proposal modifies Rule 167 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.” See *also* Rule 800 for suspension of § 6341(a) of the Juvenile Act.

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

Rule 172 - Order to Expunge or Destroy

The proposed language adds that the court’s order must identify with specificity which items shall be expunged or destroyed. See discussion *infra*.

Rule 173 - Retention of Specific Information in Juvenile Records

This new proposed 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 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 proposed 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, then the petition cannot be dismissed.

Rule 800 - Suspension of Acts of Assembly

Application of CHRIA to juvenile matters, specifically fingerprints, photographs, and other law enforcement records has been much debated and created confusion among the bench and bar.

This Rule suspends CHRIA, 18 Pa.C.S. § 9101 *et seq.*, as it applies to juvenile cases.

Rules 170, 172, and 173 govern expunging and destroying records, fingerprints, or photographs.

This Rule also suspends § 6341(a) of the Juvenile Act only to the extent that it conflicts with Rules 120 and 171, which require a motion for the destruction of fingerprints and photographs.

RULE 120. DEFINITIONS

* * *

DESTROY OR DESTRUCTION is to permanently erase or the process of permanent erasure of an item leaving no trace or indication that it ever existed.

* * *

EXPUNGE or EXPUNGEMENT is to legally erase or the process of legal erasure of juvenile record information making it permanently not available to the public, but where some information may be kept only by a juvenile justice agency for limited purposes: 1) to determine eligibility in a court program; or 2) for retention of statistical records when all identifiers to trace the identity of an individual have been removed.

INTELLIGENCE INFORMATION is information concerning the habits, practices, characteristics, possessions, associations, or financial status of any juvenile compiled in an effort to anticipate, prevent, monitor, investigate, or prosecute delinquent activity.

INVESTIGATIVE INFORMATION is the information assembled as result of the performance of any inquiry, formal or informal, into delinquent activity or an allegation of a delinquent act and may include *modus operandi* information.

* * *

JUVENILE JUSTICE AGENCY is any court, including the minor judiciary, or any other governmental agency specifically authorized to perform the administration of juvenile justice as its function. Juvenile justice agencies include, but are not limited to, organized State and municipal police departments, probation agencies, district or prosecuting attorneys, or any such persons, agencies, or departments as determined by the court to be juvenile justice agencies.

JUVENILE RECORD is the information collected and retained by juvenile justice agencies concerning juveniles, and arising from the initiation of delinquency proceedings, consisting of identifiable descriptions, dates and notations of arrest, written allegations, petitions, other formal charging documents, official court records, and any dispositions arising from those records. The juvenile record does not include intelligence information or investigative information that is maintained separately by law enforcement agencies.

* * *

COMMENT

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“Destroy” and “expunge” do not have the same meaning. “Destroy” is to permanently erase; whereas, “expunge” is to legally erase. Outside of law enforcement and prosecuting attorneys, no one has access to expunged items. Documents in which personal identifiers have been removed may be

dispensed to agencies authorized by the court to compile statistics. For limited purposes, specific information should be kept.

The term “disposition” includes all final determinations made by the court. A disposition includes a response to an adjudication of delinquency, such as sending the juvenile to a placement facility or placing the juvenile on probation. It also includes other types of final determinations made by the court. Other final determinations include a finding that the juvenile did not commit a delinquent act pursuant to Rule 408(B), a finding that the juvenile is not in need of treatment, rehabilitation, or supervision pursuant to Rule 409(A)(1), dismissing the case “with prejudice” prior to an adjudicatory hearing, or any other final action by the court that closes or terminates the case.

The term “intelligence information” may include information on prescribing, dispensing, selling, obtaining, or using a controlled substance as defined in the act of April 14, 1972 (P.L. 233, No. 64) known as the “Controlled Substance, Drug, Device and Cosmetic Act.”

“Juvenile records” as used in these Rules do not include investigative and intelligence information kept separately by law enforcement agencies. Those documents kept separately by law enforcement agencies are not subject to Rules 170 and 172.

The term “juvenile justice agency” is a very broad term that includes all those agencies that enforce the administration of justice.

The “official court record” is to contain all court orders, court notices, docket entries, filed documents, evidence admitted into the record, and other court designated documents in each juvenile case. The court may also designate any document to be a part of the record. It does not include items contained in juvenile probation’s reports and files unless they are made a part of the official record by being filed with the clerk of courts.

* * *

Official Note: Rule 120 adopted April 1, 2005, effective October 1, 2005. Amended December 30, 2005, effective immediately. Amended March 23, 2007, effective August 1, 2007. Amended February 26, 2008, effective June 1, 2008. Amended July 28, 2009, effective immediately. Amended December 24, 2009, effective immediately.

Committee Explanatory Reports:

Final Report explaining the amendments to Rule 120 published with the Court’s Order at 36 Pa.B. 186 (January 14, 2006). Final Report explaining the amendments to Rule 120 published with the Court’s Order at 37 Pa.B. 1483 (April 7, 2007). Final Report explaining the amendments to Rule 120 published with the Court’s Order at 38 Pa.B. 1142 (March 8, 2008). Final Report explaining the amendment to Rule 120 published with the Court’s Order at 39 Pa.B. 4743 (August 8, 2009). Final Report explaining the amendments to Rule 120 published with the Court’s Order at 40 Pa.B. 222 (January 9, 2010).

RULE 163. RELEASE OF INFORMATION TO SCHOOL

A. **Generally.** Upon finding a juvenile to be a delinquent, the court shall, through the juvenile probation office, provide the following information to the building principal or his or her designee of any public, private, or parochial school in which the juvenile is enrolled:

- 1) name and address of the juvenile;
- 2) the delinquent act or acts that the juvenile was found to have committed;
- 3) a brief description of the delinquent act or acts; and
- 4) the disposition of the case.

B. **Additional information.**

- 1) If the juvenile is adjudicated delinquent of a felony offense, the court, through the juvenile probation office, shall provide to the building principal or his or her designee relevant information regarding the juvenile contained in the juvenile probation or treatment reports pertaining to the adjudication, prior delinquent history, and the supervision plan of the juvenile.
- 2) The court or the juvenile probation office shall have the authority to share any additional information regarding the juvenile under its jurisdiction with the building principal or his or her designee as deemed necessary to protect public safety or to enable appropriate treatment, supervision, or rehabilitation of the juvenile.

C. **Transfers to other schools.** Any information provided to and maintained by the building principal or his or her designee under this rule shall be transferred to the building principal or his or her designee of any public, private, or parochial school to which the juvenile transfers enrollment.

D. **Maintained separately.** Any information provided to the building principal or his or her designee under this rule shall be maintained separately from the juvenile's official school record.

COMMENT

The delinquency information in the school record is to be used only by school officials and is not to be released to the general public or third parties unless ordered by the court.

For further dissemination and usage in school, see 42 Pa.C.S. § 6341(b.1).

Pursuant to paragraph (D), information provided by the court is to be kept and maintained separately from the juvenile's official school record. If the court has ordered a record to be expunged, the court should concurrently order the destruction of the information provided to the school by the court; including information subsequently provided to another school. The terms "expunged" and "destruction" should not be confused in this Comment. Because the school is not law enforcement or a prosecutor, there is no reason for the school to maintain its information. Therefore, the school is to destroy all information received by the court.

Official note: Rule 163 adopted April 1, 2005, effective October 1, 2005.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 163 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005).

RULE 167. FILINGS AND SERVICE OF COURT ORDERS AND NOTICES

A. Filings.

- 1) All orders and court notices shall be transmitted promptly to the clerk of courts for filing. Upon receipt by the clerk of courts, the order or court notice shall be time stamped promptly with the date of receipt.
- 2) All orders and court notices shall be filed in the juvenile court file.

B. Service.

- 1) A copy of any order or court notice shall be served promptly on each party, **their attorneys, the juvenile probation officer, and any other person, service provider, or agency listed in the court order.** [s attorney, and the juvenile, if unrepresented.]
- 2) The clerk of courts shall serve the order or court notice, unless the president judge has promulgated a local rule designating service to be by the [court or] court administrator **or other court designee.**
- 3) **Methods of service.** Service shall be:
 - a) in writing by:
 - i) personal delivery to the party's attorney[, **and if unrepresented,] or** the juvenile;
 - ii) mailing a copy to the party's attorney or leaving a copy for the attorney at the attorney's office;
 - iii) in those judicial districts that maintain in the courthouse assigned boxes for counsel to receive service, leaving a copy for the attorney in the attorney's box;
 - iv) sending a copy to [**an unrepresented**] **the** juvenile by first class mail addressed to the juvenile's place of residence, detention, or placement;
 - v) sending a copy by facsimile transmission or other electronic means if the party's attorney[, **and if unrepresented,] or** the juvenile has filed written request for this method of service or has included a facsimile number or an electronic address on a prior legal paper filed in the case; or
 - vi) delivery to the party's attorney[, **and if unrepresented,] or** the juvenile by carrier service; or

b) orally in open court on the record.

C. **Unified Practice.** Any local rule that is inconsistent with the provisions of this rule is prohibited, including any local rule requiring a person to file or serve orders or court notices.

COMMENT

Court notices, as used in this rule, are communications that ordinarily are issued by a judge or the court administrator concerning, for example, calendaring or scheduling, including proceedings requiring the juvenile's presence.

A facsimile number or electronic address set forth on the letterhead is not sufficient to authorize service by facsimile transmission or other electronic means under paragraph (B)(3)(a)(v). The authorization for service by facsimile transmission or other electronic means under this rule is valid only for the duration of the case. A separate authorization is to be filed in each case by the juvenile, if unrepresented, or by the attorney who wants to receive documents by this method of service.

Nothing in this rule is intended to preclude the use of automated or other electronic means for the transmission of the orders or court notices between the judge, court administrator, and clerk of courts, or for time stamping.

Official Note: Rule 167 adopted April 1, 2005, effective October 1, 2005.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 167 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005)

PART C(3)
EXPUNGING OR DESTROYING RECORDS, FINGERPRINTS, OR
PHOTOGRAPHS

170. **Motion to** Expunge[ing] or Destroy[ing **Juvenile Court**] Records-

172. Order to Expunge or Destroy

173. Retention of specific information

RULE 170. MOTION TO EXPUNGE[ING] OR DESTROY[ING JUVENILE
COURT]-RECORDS

A. **Motion.** Upon motion, the court may order that j[J]uvenile records, **fingerprints,**
or photographs [may] be expunged **or destroyed**[upon motion].

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

- 1) [T]he 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 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;
- 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 agencies upon which certified copies of the court order shall be served.

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. **Answer.** The attorney for the Commonwealth, and any other person upon whom the motion was served, may file an answer to the motion.

E. **Hearing.** Unless the attorney for the Commonwealth consents to expunging the records **or destroying the fingerprints and photographs**, the court shall:

- 1) schedule and conduct a hearing;
- 2) absent good cause, order the destruction of the juvenile's fingerprints and photographs, if the court has found that the juvenile:
 - 1) committed none of the delinquent acts, or
 - 2) is not in need of treatment, supervision, and rehabilitation; and
- 3) if the motion is granted, specify whether items shall be expunged or destroyed[, and thereafter grant or deny the motion].

F. Inter-county transferred cases.

- 1) A motion should be filed in the county which received the transfer of the case pursuant to Rule 302.
- 2) The receiving county should include any transferring court(s) in the order to expunge juvenile records.

COMMENT

[See 18 Pa.C.S. § 9123 for records that may be expunged and 42 Pa.C.S. § 6341(a) for destruction of fingerprints and photographs.]

Under paragraph (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 an 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), the reasons for expunging the records or destroying fingerprints and photographs are to be included in the motion.

“Expunge” is defined by Rule 120 which means to legally erase or the process of legal erasure of an item making it permanently not available to the public, but where some information may be kept only by a juvenile justice agency or to determine subsequent eligibility in a court program; or is when all identifiers to trace the identity of an individual have been removed for retention of statistical records.

The retention of certain information is crucial for many statistical purposes, such as those statistics produced by the Juvenile Court Judges' Commission, the Office of Children and Families in the Court, the Administrative Office of Pennsylvania Courts, and other legitimate research bodies. All identifiers used to trace the identity of an individual are to be removed from items kept for these statistical purposes.

See Rule 800 for suspension of the Criminal History Records Information Act (CHRIA) and 42 Pa.C.S. § 6309(a), which makes CHRIA applicable in juvenile cases. All procedures expunging juvenile cases are governed by this Rule. See also Rule 120 for the definition of “expunge” and Rule 172 for entry of the court order.

In addition, Rule 800 suspends § 6341(a) of the Juvenile Act, which provides for the automatic destruction of fingerprints or photographs if the court finds that the juvenile committed none of the alleged delinquent acts.

Pursuant to paragraph (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 are available to law enforcement and the attorney for the Commonwealth in limited circumstances. Whereas, destroyed items are permanently erased.

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

Official Note: Rule 170 adopted April 1, 2005, effective October 1, 2005.

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)

RULE 172. ORDER TO EXPUNGE OR DESTROY

A. **Contents.** Any order to expunge or destroy the juvenile court file, docket entries, law enforcement records, or fingerprints and photographs shall include the following information:

- 1) ~~[A]~~all items contained in Rule 170(B);
- 2) **a directive specifically identifying which items shall be expunged or destroyed, including all official and unofficial law enforcement, probation, and juvenile court 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 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) the printed name and signature of the judge issuing the order; and
- ~~[3]~~6) 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 and any other person or agency as directed by the court.

RULE 173. RETENTION OF SPECIFIC INFORMATION IN JUVENILE RECORDS

A. Maintenance of specific information. All information retained according to this Rule shall be confidential. This information is not eligible for inspection pursuant to Rule 160.

B. By court. The court may maintain the following information:

- 1) a list of juvenile names;**
- 2) identifying information, such as date of birth;**
- 3) the case docket number;**
- 4) a copy of the order to expunge; and**
- 5) any compliance letters sent pursuant to Rule 172(A)(3);**

C. By Juvenile Justice Agencies.

- 1) Juvenile Justice Agencies may maintain the following information solely for purpose of determining subsequent eligibility for a court program or in the preparation of a pre-sentence report in criminal court:**
 - a) a list of the names of juveniles who have been adjudicated delinquent;**
 - b) identifying information, such as date of birth;**
 - c) a list of the delinquent acts petitioned; and**
 - d) a list of the delinquent acts founded.**
- 2) Juvenile Justice Agencies may maintain necessary records as intelligence and investigative information.**

COMMENT

Pursuant to Rule 167(B)(2), the clerk of courts is to serve orders from the court unless the President Judge has promulgated a local rule designating service to be by the court administrator or other court designee. See Rule 121 for procedures on local rules.

The directive is to include expungement from all registries, including but not limited to the Central Repository maintained by the Pennsylvania State Police, JNET, CLEAN, PCIC, and NCIC. Each agency, department, or office is to notify the court that it has complied with the expungement order. See also 42 Pa.C.S. § 6309.

Pursuant to paragraph (A)(3), the agency, department, or office is to notify the court of the action taken. This notification may be accomplished by filing a signed affidavit when requested.

Paragraph (C) sets forth the information that can be maintained by the court, prosecuting attorney, and the Central Repository.

Official Note: Rule 172 adopted April 1, 2005, effective October 1, 2005.

RULE 408. RULING ON OFFENSES

- A. Entered finding.** Within seven days of hearing the evidence on the petition or accepting an admission under Rule 407, the court shall enter a finding by specifying which, if any, offenses, including grading and counts, alleged in the petition were committed by the juvenile.
- B. Did not commit acts.**
- 1) If the court finds the juvenile **[did not] committed none [all]** of the alleged delinquent acts, the court shall dismiss the petition and release the juvenile, if detained, unless there are other grounds for the juvenile's detention.
 - 2) The court shall move to expunge the records related to the dismissed petition pursuant to 18 Pa.C.S. § 9123(a)(1) and Rule 172.
 - 3) Absent cause shown, the court shall expunge the records and order the destruction of any fingerprints or photographs.
- C. Committed act. After an adjudicatory hearing, i[I]f the court finds that the juvenile committed any delinquent act, the court shall proceed as provided in Rule 409.**

COMMENT

Under paragraph (A), for any offense the court finds that the juvenile committed, the court is to specify the grading and count(s). *See* 42 Pa.C.S. § 6341(b). It is noted that some offenses have no specific grading, i.e., ungraded felony or misdemeanor of the Controlled Substance, Drug, Device and Cosmetic Act, 35 P.S. § 780-101 *et seq.*, or the ungraded delinquent act of failure to comply with a sentence for a summary offense, 42 Pa.C.S. § 6302 (definition of "delinquent act").

Pursuant to paragraph (B), if the court finds that the juvenile **[did not] committed none [all]** of the alleged delinquent acts, the court, upon its own motion, is to expunge the records pursuant to 18 Pa.C.S. § 9123(a)(1) **and Rule 172 and is to order the destruction of the fingerprints and photographs pursuant to 42 Pa.C.S. § 6341(a). If the court does find that the juvenile committed at least one of the offenses petitioned, there is no expungement or destruction of records, fingerprints, or photographs.** Absent cause shown, the court is to expunge the records pursuant to Rule 172. In its order, the court is to specify the case reference number or other identifying number so the order only applies to the specified case. *See Comment* to Rule 170 for further definition of a reference number.

Paragraph (C) requires that there is to be an adjudicatory hearing before proceeding pursuant to Rule 409. This rule is not meant to preclude the use of a consent decree. If a consent decree is ordered, the court does not proceed under Rule 409.

Official Note: Rule 408 adopted April 1, 2005, effective October 1, 2005. Amended December 24, 2009, effective immediately.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 408 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005). Final Report explaining the amendments to Rule 408 published with the Court's Order at 40 Pa.B. 222 (January 9, 2010).

CHAPTER 8 SUSPENSIONS

RULE 800. SUSPENSIONS OF ACTS OF ASSEMBLY

This rule provides for the suspension of the following Acts of Assembly that apply to delinquency proceedings only:

- 1) The Act of November 21, 1990, P.L. 588, No. 138, § 1, 42 Pa.C.S. § 8934, which authorizes the sealing of search warrant affidavits, and which is implemented by Pa.R.Crim.P. Rule 211, through Pa.R.J.C.P. Rule 105, is suspended only insofar as the Act is inconsistent with Pa.R.Crim.P. Rules 205, 206, and 211.
 - 2) **The Act of July 16, 1979, P.L. 116, No. 47, § 2, 18 Pa.C.S. § 9101 et seq., which provides for the expungement of juvenile records, is suspended only insofar as it applies to juvenile cases. All procedural requirements for expunging juvenile records are governed by Rules 120, 170, and 172.**
 - 3) **The Act of July 9, 1976, P.L. 586, No. 142, § 2, 42 Pa.C.S. § 6341(a), which provides that fingerprints and photographs are to be immediately destroyed where it is determined that the acts ascribed to the juvenile were not committed by him, is suspended only insofar as the Act is inconsistent with Rule 120 and 171, which require a motion for the destruction of fingerprints and photographs.**
- [2]4) The Act of July 9, 1976, P.L. 586, No. 142, § 2, 42 Pa.C.S. § 6335(c), which provides for the issuance of arrest warrants if the juvenile may abscond or may not attend or be brought to a hearing, is suspended only insofar as the Act is inconsistent with Rules 124, 140, and 364, which require a summoned person to fail to appear and the court to find that sufficient notice was given.
- [3]5) The Act of July 9, 1976, P.L. 586, No. 142, § 2, 42 Pa.C.S. § 6336(c), which provides that if a proceeding is not recorded, full minutes shall be kept by the court, is suspended only insofar as the Act is inconsistent with Rule 127(A), which requires all proceedings to be recorded, except for detention hearings.
- [4]6) The Public Defender Act, Act of December 2, 1968, P.L. 1144, No. 358, § 1 et seq. as amended through Act of December 10, 1974, P.L. 830, No. 277, § 1, 16 P.S. 9960.1 et seq., which requires the Public Defender to represent all juveniles who for lack of sufficient funds are unable to employ counsel is suspended only insofar as the Act is inconsistent with Rules 150 and 151, which requires separate counsel if there is a conflict of interest.
- [5]7) The Act of July 9, 1976, P.L. 586, No. 142, § 2, 42 Pa.C.S. § 6337, which provides that counsel must be provided unless the guardian is present and waives counsel for the juvenile, is suspended only insofar as the Act is

inconsistent with Rule 152, which does not allow a guardian to waive the juvenile's right to counsel.

- [6]8) The Act of July 9, 1976, P.L. 586, No. 142, § 2, 42 Pa.C.S. § 6305(b), which provides that the court may direct hearings in any case or class or cases be conducted by the master, is suspended only insofar as the Act is inconsistent with Rule 187, which allows masters to hear only specific classes of cases.
- [7]9) The Act of July 9, 1976, P.L. 586, No. 142, § 2, 42 Pa.C.S. § 6321, which provides for commencement of a proceeding by the filing of a petition, is suspended only insofar as the Act is inconsistent with Rule 200, which provides the submission of a written allegation shall commence a proceeding.
- [8]10) The Act of July 9, 1976, P.L. 586, No. 142, § 2, 42 Pa.C.S. § 6303(b), which provides that a district judge or judge of the minor judiciary may not detain a juvenile, is suspended only insofar as the Act is inconsistent with Rule 210, which allows Magisterial District Judges to issue an arrest warrant, which may lead to detention in limited circumstances.
- [9]11) The Act of July 9, 1976, P.L. 586, No. 142, § 2, 42 Pa.C.S. § 6334, which provides that any person may bring a petition, is suspended only insofar as the Act is inconsistent with Rules 231, 233, and 330, which provide for a person other than a law enforcement officer to submit a private written allegation to the juvenile probation office or an attorney for the Commonwealth, if elected for approval; and that only a juvenile probation officer or attorney for the Commonwealth may file a petition.
- [10]12) The Act of July 9, 1976, P.L. 586, No. 142, § 2, 42 Pa.C.S. § 6304(a)(2), which provides that probation officers may receive and examine complaints for the purposes of commencing proceedings, is suspended only insofar as the Act is inconsistent with Rules 231 and 330, which provide that the District Attorney may file a certification that requires an attorney for the Commonwealth to initially receive and approve written allegations and petitions.
- [12]14) The Act of July 9, 1976, P.L. 586, No. 142, § 2, 42 Pa.C.S. § 6331, which provides for the filing of a petition with the court within twenty-four hours or the next business day of the admission of the juvenile to detention or shelter care, is suspended only insofar as the Act is inconsistent with the filing of a petition within twenty-four hours or the next business day from the detention hearing if the juvenile is detained under Rule 242.
- [13]15) The Act of July 9, 1976, P.L. 586, No. 142, § 2, 42 Pa.C.S. § 6323(a)(2), which provides that a delinquent child may be referred for an informal adjustment by a juvenile probation officer, is suspended only insofar as the Act is inconsistent with Rule 312, which provides that only an *alleged*

delinquent child may be referred for an informal adjustment because the filing of informal adjustment shall occur prior to the filing of a petition.

[14]16) Section 5720 of the Wiretapping and Electronic Surveillance Control Act, Act of October 4, 1978, P.L. 831, No. 164, 18 Pa.C.S. § 5720, is suspended as inconsistent with Rule 340 only insofar as the section may delay disclosure to a juvenile seeking discovery under Rule 340(B)(6); and Section 5721(b) of the Act, 18 Pa.C.S. § 5721(b), is suspended only insofar as the time frame for making a motion to suppress is concerned, as inconsistent with Rules 347 and 350.

[15]17) The Act of July 9, 1976, P.L. 586, No. 142, § 2, 42 Pa.C.S. § 6340(c), which provides consent decree shall remain in force for six months unless the child is discharged sooner by probation services with the approval of the court, is suspended only insofar as the Act is inconsistent with the requirement of Rule 373 that a motion for early discharge is to be made to the court.

[16]18) The Act of July 9, 1976, P.L. 586, No. 142, § 2, 42 Pa.C.S. § 6335, which provides for a hearing within ten days of the juvenile's detention unless the exceptions of (a)(1)&(2) or (f) are met, is suspended only insofar as the Act is inconsistent with Rule 391, which provides for an additional ten days of detention if a notice of intent for transfer to criminal proceedings has been filed.

[17]19) The Act of July 9, 1976, P.L. 586, No. 142, § 2, 42 Pa.C.S. § 6353(a), which requires dispositional review hearings to be held at least every nine months, is suspended only insofar as it is inconsistent with the requirement of Rule 610, which requires dispositional review hearings to be held at least every six months when a juvenile is removed from the home.

COMMENT

The authority for suspension of Acts of Assembly is granted to the Supreme Court by Article V § 10(c) of the Pennsylvania Constitution. *See also* Rule 102.

Official Note: Rule 800 adopted April 1, 2005, effective October 1, 2005. Amended December 30, 2005, effective immediately. Amended March 23, 2007, effective August 1, 2007. Amended February 26, 2008, effective June 1, 2008. Amended March 19, 2009, effective June 1, 2009. Amended February 12, 2010, effective immediately.

Committee Explanatory Reports:

Final Report explaining the amendments to Rule 800 published with the Court's Order at 36 Pa.B. 186 (January 14, 2006). Final Report explaining the amendments to Rule 800 published with the Court's Order at 37 Pa.B. 1483 (April 7, 2007). Final Report explaining the amendments to Rule 800 published with the Court's Order at 38 Pa.B. 1142 (March 8, 2008). Final Report explaining the amendments to Rule 800 published with the Court's Order at 39 Pa.B. 1614 (April 4, 2009). Final Report explaining the amendments to Rule 800 published with the Court's Order at 40 Pa.B. 1073 (February 27, 2010).