

CHAPTER 6 - RECORDS RETENTION, DESTRUCTION AND EXPUNGEMENTS

I. AUTHORITIES

To assist the District Court Clerks in records management, it is suggested that a careful review be made of the following statutory provisions and policy statement to ensure that all court records are retained and destroyed in accordance with the required procedures:

§ 16.1-69.53. Definitions; construction of references to period of years.

As used in this article, the following terms shall have the following meanings:

- **“Court records”** shall include case records, financial records and administrative records as defined in this section.
- **“Case records”** shall mean all documents, dockets and indices.
- **“Documents”** shall mean all motions for judgment, bills of complaint, answers, bills of particulars, other pleadings, interrogatories, motions in writing, warrants, summonses, petitions, proof of service, witness summonses and subpoenas, documents received in evidence, transcripts, orders, judgments, writs, and any other similar case-related records and papers in the possession of the district courts and filed with the pleadings in the case.
- **“Financial records”** shall mean all papers and records related to the receipt and disbursement of money by the district court.
- **“Administrative records”** shall mean all other court papers and records not otherwise defined.

Whenever a reference to a period of years for the retention of documents is made in this section, it shall be construed to commence on January 2 of the first year following (i) the final adjudication of a civil case or (ii) the final disposition in all other cases, unless otherwise specified herein. In foster care cases, the final disposition date is the date of transfer of custody to a local board of public welfare or social services or a child welfare agency.

§16.1-69.54. General provisions. --Each district court shall retain and store its court records as provided in this article. The Committee on District Courts, after consultation with the Executive Secretary of the Supreme Court of Virginia, shall determine the methods of processing, retention, reproduction and disposal of records and information in district courts, including records required to be retained in district courts by statute.

Whenever a court record has been reproduced for the purpose of record retention under this article, such original may be disposed of upon completion of the Commonwealth’s audit of the court records unless approval is given by the Auditor of Public Accounts for earlier disposition. In the event of such reproduction, the reproduction of the court record shall be

retained in accordance with the retention periods specified in this section. The reproduction shall have the same force and effect as the original court record and shall be given the same faith and credit to which the original itself would have been entitled in any judicial or administrative proceeding.

§ 16.1-69.57. Destruction of court records. --The clerk of each district court shall destroy the court records upon expiration of the appropriate retention period as set forth in §§ 16.1-69.55 and 16.1-69.56 and consistent with the requirements of confidentiality for juvenile records. The Supreme Court shall determine the methods to be used in destroying court records. Likewise, magistrates shall destroy records retained in the office of the magistrate upon the expiration of the appropriate retention period as set forth in § 16.1-69.56.

To assist the courts in their record-keeping functions these requirements are grouped by type of document and separated into the following classifications:

- Administrative Records
- Financial Records
- Case Records
- Civil Records
- Criminal and Traffic Records
- Expungement/Destruction

II. RETENTION PROVISIONS

A. Administrative Records

1. Retention Period--three (3) years. Includes:

- Correspondence

Substitute judges

General

- Job Applications
- Invoices, Purchase Orders and Statements

2. Destruction Provisions--destroy in fourth year

Example: 1994 Leave reports--retain through 1997, destroy in 1998

B. Financial Records

1. Manual Financial Records

The following **manual** financial records may be destroyed after they are three years old, provided the Auditor of Public Accounts has submitted an Audit Report for the time frame to be destroyed and there were no shortages or misappropriation of funds still under review.

- Bank statements, NSF notices, validated bank deposit slips and monthly bank reconciliation (FMS BR013)
- Set-off debt collection program documents (§ 58.1-520)
- Collection (Department of Taxation/collection agency program documents (§ 19.2-349)
- Escheatment documents (§ 55-210.12)
- Weekly and monthly transmittal of collection reports (FMS BU011)
- Manual receipt books
- Manual records associated with “contingency planning for the Judicial System of Virginia” manual

2. Automated Financial Records

Destruction of **automated** financial records is to be in accordance with the guidelines established in the “Courts Automated Information System - Financial Management User’s Guide.”

It is the responsibility of the court to ensure financial reports are printed and maintained in accordance with the established retention schedule below. Important! The term ‘after audit’ means keep the report until the audit report is received from the Auditor of Public Accounts and all audit points have been satisfied. The term ‘monthly closing’ includes reconciling the bank statement and resolving all accounting problems.

<u>REPORT TYPE</u>	<u>RETENTION AND DISPOSITION</u>
Receipts:	
- PCR Receipt Copies	Retain until monthly closing then destroy.
- PCR Reports	Retain until monthly closing then destroy.
- Manual Receipt Copies, DC-32/33	Retain until 6 months after APA audit then destroy.
- Voided Receipt Copies	Retain until 6 months after APA audit then destroy.

- Corrected Receipt Copies	Retain until 6 months after APA audit then destroy.
- Credit Card Receipts	Retain until 6 months after APA audit then destroy.
- Credit Card Report Copy	Retain until 6 months after APA audit then destroy.
Daily FMS Reports:	
- Daily Receipt Register (BR02)	Retain until 6 months after APA audit then destroy.
- All Reports from Last Workday	Retain until 6 months after APA audit then destroy.
- All Other Daily Reports	Retain until monthly closing then destroy.
- DC-225 Report (BU53)	Retain until 6 months after APA audit then destroy.
All Monthly FMS Reports:	
Retain until 6 months after APA audit then destroy.	
All Yearly FMS Reports:	
Retain until 6 months after APA audit then destroy.	
All On-demand FMS Reports:	
Retain until monthly closing then destroy.	
Supporting Documentation:	
- Bank statements, cancelled checks	Retain 3 years after APA audit then destroy
- Bank Deposit Slips	Retain 3 years after APA audit then destroy
- Treasury Form 270	Retain 3 years after APA audit then destroy.
- List of Allowances (DC-40, DC-41)	Retain 3 years after APA audit then destroy.
Cover Sheet:	
Clerk of the Court and bookkeeper must sign and date the cover sheet each day to certify all daily FMS report content and transactions are authorized and reviewed. The court must attach all required documentation to the cover sheet.	Retain until 6 months after APA audit then destroy.

3. Case Records

a. **Civil Cases**, including mental commitment and other proceedings under Title 37.2.

- Decided on or after January 1, 1985

General Rule

- Retain documents, indices and manual dockets for ten (10) years from final disposition.
- Destroy documents, indices and dockets in eleventh year.
- Examples:

1985 Documents--retain through 1995, destroy in 1996.

1986 Indices--retain through 1996, destroy in 1997.

- Exceptions (documents only)
 - All documents in civil proceedings in district court which are dismissed, including dismissal under Va. Code § 8.01-335, or in which no service of process is had within 24 months of the last return date--retain until the completion of the Commonwealth's audit of the court records, then destroy.
- Extension of statute of limitations
 - transfer of documents to Circuit Court
 - note transfer and transfer date to Circuit Court in CMS. Treat the record as provided in the General Rule, above.
 - Mental commitments--if the subject of the petition or his attorney requests that the documents be kept confidential, the documents are to be placed in an envelope that is marked with the case number and the word "CONFIDENTIAL" on both sides, then closed and filed in numerical order with other case papers--destroy in eleventh year.
- Decided prior to January 1, 1985
 - Courts that retained documents--retain documents, indices, and dockets for twenty (20) years from final disposition, destroy in twenty-first year.

- Courts that transferred documents to the Circuit Court--retain indices and dockets for 20 years, destroy in twenty-first year.

b. Criminal and Traffic Cases

General Rule

- Retain documents, indices, and manual dockets for 10 years from final disposition. (Also applies to indices and dockets of cases decided prior to 1984 where documents were transferred to Circuit Court.) In misdemeanor cases under Va. Code §§ 16.1-253.2 or 18.2-57.2, all documents shall be retained for 20 years.
- Destroy manual documents, indices and documents in eleventh year.
- Example:

1986 documents--retain until 1996, destroy in 1997.
1980 documents--retain until 1990, destroy in 1991.
- Exception--Procedures for expungement of criminal records in accordance with Va. Code § 19.2-392.2 *et seq.* when defendant was not found guilty. See EXPUNGEMENT PROCEDURES, *below*.

C. 19.2-392.2 Expungement Of Police And Court Records -Adults

An action to delete all police and court reports, including electronic records, pertaining to a **criminal case** when any of the following has occurred: acquittal, nolle prosequi, dismissal, absolute pardon, an individual's name is used WITHOUT consent and authorization or case is dismissed because the person arrested is not the person named on the summons, warrant, or indictment.

Expungement is not available for those persons whose criminal case resulted in deferred dismissal following a finding of evidence sufficient to convict the defendant. Dismissals pursuant to Va. Code § 19.2-151 are eligible for expungement.

Note: When a record is expunged the record is not destroyed but removed from public access and sealed.

1. Petition filed in Circuit Court even if the case was disposed of in District Court.

Order of expungement entered by Circuit Court, forwarded to Division of State Police who ultimately notifies District Court of expungement requirement. Do not proceed with expungement procedures until notified by State Police to do so.

	<u>PROCEDURE</u>	<u>COMMENTS</u>
Step 1	Clerk receives a letter from State Police requesting notification of compliance with expungement procedures.	See Va. Code § 9.1-134.
Step 2	Clerk deletes original case from CMS.	See CMS Users Manuals.
Step 3	Docket Sheet information must be redacted.	Docket sheets for cases contained in the automated systems should not be retained and are required to be destroyed; however if docket sheets or any other hearing disposition report are retained, the entries of the case identifying the individual, charge and disposition must be eliminated with heavy black ink.
Step 4	Clerk places original case documents in an envelope which is physically sealed and writes on the outside of the envelope the case number, and date enclosed materials are to be destroyed based on the retention schedule specified in § 16.1-69.55 and the following clause.	Stamp or print the following on the envelope: “Expunged pursuant to §19.2-392.2(A) by order of the Circuit Court on (date) Signature of Clerk/Deputy Clerk. This record to be unsealed only on court order”.
Step 5	Clerk places sealed envelope in secure storage area that is not accessible to public.	Clerk places number on the envelope for reference index. (see special note)
Step 6	Clerk sends written notification of compliance within 120 days of receipt of State Police request for expungement to Virginia State Police.	Manager, Central Criminal Records Exchange Virginia State Police P. O. Box 27472 Richmond, Virginia 23261-7472.

2. Petition filed in applicable District Court

(ID used without consent or authorization by another person charged or arrested using such name or identification) pursuant to Va. Code § 19.2-392.2(B).

	<u>PROCEDURE</u>	<u>COMMENTS</u>
Step 1	Clerk receives Petition or Motion For	Petition or motion should be

	Expungement Form, DC-363.	accompanied by copy of warrant or summons, if available, and contain:
	Note: Petitioner provides a copy of petition to a law enforcement agency to obtain fingerprint card to be submitted to CCRE. CCRE will then forward, under seal, petitioner's criminal history, copy of source documents, and set of fingerprints to the court. Va. Code § 19.2-392.2(E).	Case number, date of arrest, name of arresting agency, specific charge to be expunged, date of final disposition, petitioner's name and date of birth, and full name of person, if known, who used petitioner's name when charge was made.
Step 2	Only the General District Court Clerk collects civil fees and sheriff's fees.	Petitioner may list multiple charges to be expunged on one petition, and pay only one filing fee.
Step 3	Clerk assigns new civil case number and indexes in CMS.	Juvenile case type OT Adult case type ST
Step 4	Clerk sets date for hearing on petition for no less and 60 days. Hearing type AJ	Clerk should provide petitioner with two copies of petition listing case number and court date.
	Note: Commonwealth Attorney has 21 days from service in which to object to expungement.	
Step 5	Clerk issues DC-512, Notice of Hearing, to the sheriff for service on Commonwealth Attorney along with a copy of the petition.	Based on local policy, complainant may be notified by court upon filing of petition or Commonwealth Attorney may subpoena complainant. Commonwealth Attorney may file answer or objection within 21 days of service or may simply endorse petitioner's order of expungement.
Step 6	After receipt of criminal history record information from CCRE (see #1 above), the Court shall conduct a hearing on the petition.	At conclusion of the hearing, the Court shall return fingerprint card to the petitioner.
Step 7	Depending on the court disposition, update CMS with final disposition code.	Cont field F (final) Disposition O (other)
	Court disposition may be appealed within 10 days.	
Step 8	If expungement ordered, issue DC-365,	Following the termination of appeal

<p>Expungement Order. Clerk is required to send a certified copy of the order to Virginia State Police. Va. Code § 19.2-392.2 (I).</p>	<p>period send Expungement Order, DC-365 MASTER) to:</p>
<p>The clerk should not expunge any documents or records until State Police instructs the clerk to do so in writing.</p>	<p>Manager, Central Criminal Records Exchange Virginia State Police P. O. Box 27472 Richmond, Virginia 23261-7472.</p>
<p>Step 9 Clerk receives a letter from State Police requesting notification of compliance with expungement procedures.</p>	<p>Va. Code § 9.1-134.</p>
<p>Step 10 Clerk deletes original case from CMS.</p>	<p>See CMS Users Manual.</p>
<p>Step 11 If docket sheet has been retained, information must be redacted.</p>	<p>Docket sheets for cases contained in the automated systems should not be retained and are required to be destroyed; however if docket sheets or any other hearing disposition report are retained, the entries of the case identifying the individual, charge and disposition must be eliminated with heavy black ink.</p>
<p>Step 12 Financial and other records.</p>	<p>Zero out fines and costs in the individual account which were assessed on the original case to be expunged if an order of expungement is issued.</p>
<p>Step 13 Clerk places:</p> <ul style="list-style-type: none"> ▪ Original case documents ▪ Copy of petition for expungement ▪ Order of expungement ▪ Copy of letter of compliance to State Police in an envelope 	<p>Stamp or print the following on the envelope: Case number Date original case to be destroyed. <u>“Expunged pursuant to §19.2-392.2(B) by order of the Circuit Court on (date) Signature of Clerk/Deputy Clerk. This record to be unsealed only on court order”.</u> Maintain sealed envelopes in secure storage area, which is not accessible to public.</p>
<p>All documents are physically sealed.</p>	<p>Destroy following expiration of retention period for the original case specified in § 16.1-69.55 or 16.1-306. Adult traffic or</p>
<p>Give the envelope a number for index reference. (see special note)</p>	

reference. (see special note)

criminal 10 years from disposition.

- Step 14** Clerk sends written notification of compliance within 120 days of receipt of State Police request for expungement to Virginia State Police.
- Manager, Central Criminal Records Exchange
Virginia State Police
P. O. Box 27472
Richmond, Virginia 23261-7472.

3. Wrong Person Arrested on Warrant or Summons/Charge Dismissed due to wrong arrest pursuant to §19.2-392.2 (H)

PROCEDURE

COMMENTS

- Step 1** Written request filed with the clerk requesting expungement for a charge dismissed because the person arrested or charges was not the person named in the charging document.
- DC-363, PETITION OR MOTION FOR EXPUNGEMENT, may be used or person filing motion may write letter of request.
- No fees are charged for the filing of the motion.
- Step 2** The clerk indexes as a subsequent action of the original base case.
- JA Case type "OT".
JJ Case type "ST"
- Step 3** Hearing type AJ
Depending on the court disposition, update CMS with final disposition code.
- Cont field F (final)
Disposition field O (other)
- Step 4** If expungement ordered, issue DC-365, EXPUNGEMENT ORDER. Clerk is required to send a certified copy of the order to Virginia State Police. Va. Code § 19.2-392.2 (I).
- Following the termination of appeal period send DC-365, EXPUNGEMENT ORDER to:
- Manager, Central Criminal Records Exchange
Virginia State Police
P. O. Box 27472
Richmond, Virginia 23261-7472.
- The clerk should not expunge any documents or records until State Police instructs the clerk to do so in writing.
- Step 5** Clerk receives a letter from State Police requesting notification of compliance with expungement procedures.
- Va. Code § 9.1-134.
- Step 6** Clerk deletes both cases from CMS.
- See CMS Users Manual.
- Step 7** If docket sheet has been retained, information must be redacted.
- Docket sheets for cases contained in the automated systems should not be retained and are required to be

destroyed; however if docket sheets or any other hearing disposition report are retained, the entries of the case identifying the individual, charge and disposition must be eliminated with heavy black ink.

Step 8 Financial and other records.

Zero out fines and costs in the individual account, which were assessed on the original case to be expunged if an order of expungement, is issued.

SPECIAL NOTE: The clerk should maintain a separate reference index to identify all cases expunged and sealed. A list with the envelope #, defendant name and expungement date.

This reference index can be placed with the sealed envelopes or kept in a separate area for reference if needed.

a. Forms

- DC-363 Petition of Expungement
- DC-512 Notice of Hearing
- DC-365 Order of Expungement

b. Code References

19.2-392.2 et. Seq. Expungement of police and court records.