

Chapter 11 - Records Retention, Destruction and Expungements

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 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

Retention Provisions

Administrative Records

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

- Correspondence
- Substitute judges
- General
- Job Applications
- Invoices, Purchase Orders and Statements

Destruction Provisions--destroy in fourth year

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

Financial Records

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 (FAS BR013)
- Escheatment documents ([Va. Code § 55-210.12](#))
- Weekly and monthly transmittal of collection reports (FAS BU011)
- Manual receipt books
- Manual records associated with “contingency planning for the Judicial System of Virginia” manual

Automated financial records

Destruction of **automated** financial records is to be in accordance with the guidelines established in the District Financial Accounting System 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.

REPORT TYPE	RETENTION AND DISPOSITION
Receipts:	
PCR Receipt Copies	Retain until monthly closing then destroy.
PCR Reports	Retain until monthly closing then destroy.

REPORT TYPE	RETENTION AND DISPOSITION
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 FAS Reports:	
Daily Receipt Register (BR02). Cover sheet must be signed by the clerk of the court and bookkeeper to verify all reports have been reviewed.	Retain until 6 months after APA audit then destroy.
Report (BU53)	Retain 10 years after printing then destroy.
CD-R, flash drives, zip-drive discs, or shared network drive	Retain 2 copies until 10 years after APA audit then destroy.
All Monthly FAS Reports	Retain until 6 months after APA audit then destroy.
All Yearly FAS Reports	Retain until 6 months after APA audit then destroy.
All On-demand FAS 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/ePay Receipt	Retain 3 years after APA audit then destroy.
DC-14	Retain 3 years after APA audit then destroy.
List of Allowances (DC-40, DC-40A, DC-52, and DC-41)	Retain 3 years after APA audit then destroy.
Unclaimed Property – Criminal Injury Compensation Fund (WC-1 & WC-2) forms	Retain 5 years after the report is filed when monies are remitted then destroy.

REPORT TYPE	RETENTION AND DISPOSITION
	Retain 10 years after report is filed when zero monies are remitted then destroy.
Unclaimed Property – The Virginia Department of Treasury (AP1 & AP2) forms	Retain 3 years after APA audit then destroy.

Note: LabCorp reimbursements for paternity tests are submitted using a DC-40. These are included in the 3-year retention schedule.

Full JDIS (Juvenile District Imaging System) Courts

At the direction of the chief judge of a district court, the clerk of that court may cause any or all papers or documents pertaining to civil and criminal cases that have been ended to be destroyed if such records, papers, or documents will no longer have administrative, fiscal, historical, or legal value to warrant continued retention, provided such records, papers, or documents have been microfilmed or converted to an electronic format. Such documents shall be placed in conveniently accessible files and provisions made for examining and using the same. The provisions of this subsection shall not apply to the documents for misdemeanor cases under §§ 16.1-253.2, 18.2-57.2, 18.2-60.4, 18.2-67.4, 18.2-67.4:1, 18.2-67.4:2, 18.2-346, 18.2-347, 18.2-348, 18.2-349, 18.2-370, 18.2-370.01, 18.2-374, 18.2-386.1, 18.2-387, and 18.2-387.1, which shall be retained as provided in subsection A. A copy of the order entered by the Chief Judge should be provided to the Department of Judicial Services.

Unexecuted Warrants (Magistrate Issued)

An attorney for the Commonwealth may move the court in which the warrant or summons would be returnable for the dismissal and/or destruction of any unexecuted warrant or summons issued by a magistrate. Dismissal would be without prejudice.

STEP	DESCRIPTION
1	Clerk receives unexecuted warrant or summons issued by the magistrate from the Commonwealth’s Attorney’s office. Do not index warrant or summons in JCMS. Va. Code § 19.2-76.1 Note: If the Commonwealth’s Attorney’s office submits a court order, the order should be treated as an administrative record and retained for three years. The order should not be disclosed.
2	Court dismisses the warrant or summons and signs and dates the document.
3	If the court orders the warrant to be dismissed, but not destroyed:

<p>3 <i>cont'd</i></p>	<p>Clerk places the original case papers in an envelope which is physically sealed and records defendant’s name and the date of judgment on the outside of the envelope, and a notation, “Warrant(s) dismissed-pursuant to § 19.2-76.1. Not to be destroyed” on the outside of the envelope. If the envelope contains multiple warrants for the same individual, you may wish to document the number of warrants contained herein.</p> <p>If the court orders the warrant to be dismissed and destroyed:</p> <p>The clerk shreds the warrant or summons. No further action is required.</p> <p>Provide a copy of the court order to the chief magistrate, in order that the appropriate steps regarding the OTN can be taken within the magistrate system.</p>
<p>4</p>	<p>If the court does not order the destruction of the unserved warrant, the envelope is placed in a secure storage area not accessible to the public. Any case papers sealed pursuant to this code section should not be disclosed except by court order.</p>

Unserved Warrants/Capias

STEP	DESCRIPTION
<p>1</p>	<p>The chief law-enforcement officer of the police department or sheriff’s office, whichever is responsible for service, shall submit quarterly reports to the attorney for the Commonwealth listing those existing felony arrest warrants in his possession that have not been executed within seven years of the date of issuance, those misdemeanor warrants, summonses, capiases and other criminal processes in his possession that have not been executed within three years from the date of issuance. The reports along with the unexecuted warrants shall be submitted to the Commonwealth’s Attorney who shall petition the circuit court for destruction of such unexecuted warrants. Va. Code § 19.2-76.1</p>
<p>2</p>	<p>When the report is received the court dismisses the unexecuted warrant or summons and signs and dates the document.</p> <p>After the warrant or capias has been destroyed, pursuant to the circuit court order, delete the case from JCMS.</p> <p>Underlying warrant: Place the underlying charge(s) back on the docket for the Commonwealth’s Attorney to review and make a recommendation as to disposition.</p>

3	<p>If the court orders the warrant to be dismissed, but not destroyed:</p> <p>Clerk places original case papers in an envelope which is physically sealed and records the defendant’s name and the date of judgment on the outside of the envelope, and a notation, “Warrant(s) dismissed-pursuant to § 19.2-76.1. Not to be destroyed” on the outside of the envelope. If the envelope contains multiple warrants for the same individual, you may wish to document the number of warrants contained herein.</p> <p>If the court orders the warrant to be dismissed and destroyed:</p> <p>The clerk shreds the warrant or summons. No further action is required.</p> <p>Provide a copy of the court order to the chief magistrate, in order that the appropriate steps regarding the OTN can be taken within the magistrate system.</p>
4	<p>If the court does not order the destruction of the unserved warrant, the envelope is placed in a secure storage area not accessible to the public. Any case papers sealed pursuant to this code section should not be disclosed except by court order.</p>

§ 19.2-392.2 Early Expungement of Police and Court Records - Adults

An action to delete all police and court reports, including electronic records, pertaining to a criminal or traffic 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.

Dismissals pursuant to [Va. Code § 19.2-151](#) are eligible for expungement.

Upon agreement of all parties, a charge that is deferred and dismissed pursuant to [Va. Code §19.2-298.02](#), including an original charge that was reduced or a charge that is dismissed after a plea or stipulation of the facts that would justify a finding of guilt, may be eligible for expungement.

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

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.

STEP	DESCRIPTION
1	Clerk receives a letter from State Police requesting notification of compliance with expungement procedures. See Va. Code § 9.1-134.
2	Clerk deletes original case from JCMS. See JCMS USER'S GUIDE
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, indices 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.
4	Clerk places original case documents, including expungement letter from Virginia State Police and Circuit Court order, 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 Va. Code § 16.1-69.55. Stamp or print the following on the envelope: <u>"Expunged pursuant to Va. Code § 19.2-392.2 (A) by order of the Circuit Court on (date) by (Signature of Clerk/Deputy Clerk). This record to be unsealed only on court order".</u>
5	Clerk places sealed envelope in secure storage area that is not accessible to public and places number on the envelope for reference index. (See special note)
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

Special Note: The clerk should maintain a separate reference index to identify all cases expunged and sealed. A list with the envelope #, defendant name, expungement date and destruction date. This reference index should be kept in a separate area for reference if needed.

Petition filed in applicable District Court

ID used without consent or authorization by another person charged or arrested using such name or identification.

STEP	DESCRIPTION
1	<p>Clerk receives district court form DC-363, Petition or Motion for Expungement. The petition/motion shall include one complete set of fingerprints obtained from a law enforcement agency.</p> <p>No person shall be required to pay any fees for the filing of the petition. Va. Code § 19.2-392.2(B). Petitioner may list multiple charges to be expunged on one petition.</p> <p>Petition or motion should be accompanied by certified or attested copy of warrant or summons, if available, and contain:</p> <ul style="list-style-type: none"> • 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. Va. Code § 19.2-392.2 (E) <p>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.</p>
2	<p>Clerk assigns new case number and indexes in JCMS.</p> <p style="padding-left: 40px;">Juvenile case type: ST</p> <p style="padding-left: 40px;">Adult case type: OT</p>
3	<p>Clerk sets date for hearing on petition for no less than sixty days and provides the petitioner with two copies of the petition listing the case number(s) and the court date.</p> <p>Hearing type AJ.</p> <p>NOTE: Commonwealth’s Attorney has twenty-one days from service in which to object or answer to the petition or may give written notice to the court that he does not object to the petition for expungement.</p>

STEP	DESCRIPTION
4	<p>Clerk issues district court form DC-512, NOTICE OF HEARING, to the sheriff for service on the Commonwealth’s Attorney along with a copy of the petition.</p> <p>The Commonwealth’s Attorney may subpoena complainant. The Commonwealth’s Attorney may file answer or objection within twenty-one days of service or simply endorse petitioner’s order of expungement. If the Commonwealth does not object to the petition for expungement, the court may enter an order for expungement without conducting a hearing.</p>
5	<p>At conclusion of the hearing, the Court shall return fingerprint card to the petitioner.</p> <p>If no hearing was conducted, upon the entry of an order of expungement the court shall cause the fingerprint card to be destroyed unless, within 30 days of the date of the entry of the order, the petitioner requests the return of the fingerprint card in person from the clerk of the court or provides the clerk of the court a self-addressed, stamped envelope for the return of the fingerprint card.</p>
6	<p>Depending on the court disposition, update JCMS with final disposition code.</p> <p style="padding-left: 40px;">Result Field: F (final)</p> <p style="padding-left: 40px;">Disposition: O (other)</p> <p>Court disposition may be appealed within ten days.</p>
7	<p>If expungement ordered, issue district court form DC-365, EXPUNGEMENT ORDER. Following the termination of the appeal period the clerk is required to send a certified copy of the order along with a certified copy of the district court form DC-363, PETITION OR MOTION FOR EXPUNGEMENT TO Virginia State Police. Va. Code § 19.2-392.2 (l)</p> <p style="padding-left: 40px;">Manager, Central Criminal Records Exchange Virginia State Police P. O. Box 27472 Richmond, Virginia 23261-7472</p> <p>The clerk should not expunge any documents or records until State Police instructs the clerk to do so in writing.</p>
8	<p>Clerk receives a letter from State Police requesting notification of compliance with expungement procedures. Va. Code § 9.1-134</p>
9	<p>Clerk performs ‘Case Early Expungement’ action on the original charge and performs ‘Delete’ action on the petition/motion for expungement case(s) from JCMS. See JCMS USER’S GUIDE</p>

STEP	DESCRIPTION
10	<p>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, indices 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>
11	<p>Financial and other records. Zero out fines and costs in the individual account that were assessed on the original case to be expunged if an order of expungement is issued. If the original charge transmitted to DMV, an amended abstract noting "ID fraud-case reopened and dismissed" must be prepared and forwarded to DMV to remove the charge from the record. Seal or redact any printed financial report where the expunged case(s) appear.</p>
12	<p>Clerk places in envelope:</p> <ul style="list-style-type: none"> • Original case documents • DC-363, PETITION OR MOTION FOR EXPUNGEMENT • DC-365, EXPUNGEMENT ORDER • Copy of letter of compliance to State Police <p>All documents are physically sealed. On the outside of the envelope print the case number and the date the enclosed documents are to be destroyed based on the retention schedule in Va. Code § 16.1-69.55.</p> <p>Stamp or print the following on the envelope: "Expunged pursuant to Va. Code § 19.2-392.2 (B) by order of the General District Court on (date) by (Signature of Clerk/Deputy Clerk). This record to be unsealed only on court order".</p> <p>Maintain sealed envelopes in secure storage area, which is not accessible to public. Destroy following expiration of retention period for the original case specified in. Va. Code §§ 16.1-69.55 or 16.1-306.</p> <p>An order of expungement can be voided for up to three years from the date of entry. Therefore, the expunged record must be kept until the three-year period expires even if the statutory expungement date occurs first. Va. Code § 19.2-392.2.</p> <p>Give the envelope a number for index reference. (See special note)</p>

STEP	DESCRIPTION
13	<p>Clerk sends written notification of compliance within 60 days of receipt of State Police request for expungement to Virginia State Police, pursuant to Virginia Administrative Code 6VAC20-120-80E.</p> <p style="padding-left: 40px;"> Manager, Central Criminal Records Exchange Virginia State Police P. O. Box 27472 Richmond, Virginia 23261-7472 </p>

Special Note: The clerk should maintain a separate reference index to identify all cases expunged and sealed. A list with the envelope #, defendant name, expungement date, and destruction date. This reference index should be kept in a separate area for reference if needed.

Wrong Person Arrested on Warrant or Summons/Charge Dismissed due to wrong arrest pursuant to [Va. Code § 19.2-392.2 \(H\)](#)

STEP	DESCRIPTION
1	<p>Written request filed with the clerk requesting expungement for a charge dismissed because the person arrested or charged was not the person named in the charging document.</p> <p>District court form DC-363, Petition or Motion for Expungement, may be used or the person filing the motion may write letter of request. The petition/motion shall include one complete set of fingerprints obtained from a law enforcement agency.</p> <p>No person shall be required to pay any fees for the filing of the petition. Va. Code § 19.2-392.2(H) Va. Code § 19.2-392.2(E) . Petitioner may list multiple charges to be expunged on one petition.</p> <p>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.</p>
2	<p>The clerk indexes as a subsequent action of the original base case and sets a date for the hearing.</p> <p style="padding-left: 40px;"> Adult case type: OT Juvenile case type: ST </p> <p>The clerk should provide a copy of the petition listing the case number(s) to the petitioner and the Commonwealth’s Attorney.</p>

STEP	DESCRIPTION
3	<p>Hearing type: AJ Cont field: F (final) Disposition field: O (other)</p> <p>Depending on the court disposition, update JCMS with final disposition code.</p>
4	<p>If expungement ordered, issue district court form DC-365, EXPUNGEMENT ORDER. Following the termination of the appeal period the clerk is required to send a certified copy of the order along with a certified copy of the district court form DC-363, PETITION OR MOTION FOR EXPUNGEMENT to Virginia State Police. Va. Code § 19.2-392.2 (I)</p> <p>Manager, Central Criminal Records Exchange Virginia State Police P. O. Box 27472 Richmond, Virginia 23261-7472</p> <p>The clerk should not expunge any documents or records until State Police instructs the clerk to do so in writing</p>
5	<p>Clerk receives a letter from State Police requesting notification of compliance with expungement procedures. Va. Code § 9.1-134.</p>
6	<p>Clerk deletes both cases from JCMS. See JCMS USER'S GUIDE</p>
7	<p>If docket sheet has been retained, information must be redacted.</p> <p>Docket sheets for cases contained the automated systems should not be retained and are required to be destroyed; however if docket sheets, indices 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>
8	<p>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.</p> <p>If the original charge transmitted to DMV, an amended abstract must be prepared and forwarded to DMV to remove the charge from the record. Seal or redact any printed financial report where the expunged case(s) appear.</p>

STEP	DESCRIPTION
9	<p>Clerk places in envelope:</p> <ul style="list-style-type: none"> • Original case documents • DC-363, PETITION OR MOTION FOR EXPUNGEMENT • DC-365, EXPUNGEMENT ORDER • Copy of letter of compliance to State Police <p>All documents are physically sealed. On the outside of the envelope print the case number and the date the enclosed documents are to be destroyed based on the retention schedule in Va. Code § 16.1-69.55.</p> <p>Stamp or print the following on the envelope: “Expunged pursuant to Va. Code § 19.2-392.2 (H) by order of the General District Court on (<i>date</i>) by (<i>Signature of Clerk/Deputy Clerk</i>). This record to be unsealed only on court order”.</p> <p>Maintain sealed envelopes in secure storage area, which is not accessible to public. Destroy following expiration of retention period for the original case specified in Va. Code §§ 16.1-69.55 or 16.1-306. An order of expungement can be voided for up to three years from the date of entry. Therefore, the expunged record must be kept until the three-year period expires even if the statutory expungement date occurs first. Va. Code § 19.2-392.2.</p> <p>Give the envelope a number for index reference. (See special note)</p>

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 should be kept in a separate area for reference if needed.

Expungement of Original Charge only. (Partial Expungement); Dressner v. Commonwealth, 285 Va. (2013)

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

STEP	DESCRIPTION
1	Clerk receives a letter from the State Police requesting notification of compliance with expungement procedures. Va. Code § 9.1-134 .

STEP	DESCRIPTION
2	Clerk removes the original charge in JCMS and updates the original charge with the amended charge, so the original charge is no longer reflected.
3	Copy the original charging documents. Redact the original charging information from the original documentation, including code section violated and verbiage. Ensure the original charge is redacted from all case documents. File the redacted original documentation case papers back in original location.
4	Clerk places the copy of the original case documents (the un-redacted copy), including the expungement letter from State Police and Circuit Court order, in an envelope which is physically sealed and write on the outside of the envelope the case number and the date the enclosed materials are to be destroyed based on the retention schedule specified in Va. Code § 16.1-69.55 Stamp or print the following on the envelope: “Expunged pursuant to Va. Code § 19.2-392.2 (H) by order of the General District Court on (date) by (Signature of Clerk/Deputy Clerk). This record to be unsealed only on court order”.
5	Maintain sealed envelopes in secure storage area, which is not accessible to public. Give the envelope a number for index reference. (See special note)
6	Clerk sends written notification of compliance within 120 days of receipt of request for expungement to State Police. Manager, Central Criminal Records Exchange Virginia State Police P. O. Box 27472 Richmond, Virginia 23261-7472

Special Note: The clerk should maintain a separate reference index to identify all cases expunged and sealed. A list with the envelope #, defendant name, expungement date and date. This reference index should be kept in a separate area for reference if needed.

Virginia State Police Motion to Void Expungement

Any order entered where the court or parties failed to strictly comply with the procedures set forth or the court enters an order of expungement contrary to law, shall be voidable upon motion and notice made within three years of the entry of such order.

STEP	DESCRIPTION
1	<p>The clerk will receive a letter from the Virginia State Police directing that the expungement has been voided.</p> <p>The clerk should not unseal any documents or records until the State Police instructs the clerk to do so in writing.</p>
2	<p>Pull the correct expungement from the secure area. Enter the information back into JCMS. It will be necessary to change the file date.</p>
3	<p>File case papers back in their original location.</p>
4	<p>Clerk sends written notification of compliance within 120 days of receipt of request for reinstatement of expungement to State Police.</p> <p style="text-align: center;"> Manager, Central Criminal Records Exchange Virginia State Police P. O. Box 27472 Richmond, Virginia 23261-7472 </p>

Early Destruction of Juvenile Records

A juvenile can petition the court for early destruction of the records when the juvenile was found innocent of a traffic or delinquency proceeding was dismissed. [Va. Code § 16.1-306](#).

STEP	DESCRIPTION
1	<p>A juvenile files a motion for destruction of the records in connection with the charge.</p>
2	<p>The clerk enters the motion in JCMS. The case is entered as a subsequent action of the original charge.</p>
3	<p>The clerk issues district court form DC-512, NOTICE OF HEARING TO THE COMMONWEALTH’S ATTORNEY.</p>
4	<p>Unless good cause is shown why records should not be destroyed, the court grants the motion, and enters an order for destruction of the record.</p> <p>The clerk forwards a copy of the order to all pertinent agencies and persons having records concerning this case. See sample order below.</p>
5	<p>The clerk deletes the case from JCMS and destroys the case papers. If a manual index card exists and lists other charges, a new index card should be created, omitting the entries regarding the charge the court ordered destroyed. The original index card should then be destroyed.</p>

Sample Order for Destruction:

Order for Destruction of Record	
Commonwealth of Virginia	
IN RE: John Doe	Date of Birth: ____/____/____
1105 Main Street	Case Number: Offense:
Anytown, Virginia	
Pursuant to Va. Code § 16.1-306 (C) and upon motion of the said John Doe requesting the destruction of all records pertaining to his case, and the Commonwealth Attorney having been notified;	
And the court having heard such motion;	
It is hereby ordered that all such records be destroyed and a copy of this order be sent to any office or agency that is the repository of any such record and such office or agency shall comply with this order.	
Given under my hand this _____ day of _____, _____	

JUDGE	

Forms

- DC-363 [PETITION OR MOTION FOR EXPUNGEMENT](#)
- DC-365 EXPUNGEMENT ORDER
- DC-512 NOTICE OF HEARING

References

[Va. Code § 19.2-392.2](#) *et seq.*

Annual Expungement of Juvenile Cases

Expungement of court records is the permanent removal and/or destruction of JCMS records from the files of the Juvenile and Domestic Relations District Court. Records of the court can be expunged based upon statutory guidelines under [Va. Code § 19.2-392.2](#) or by request for early expungement under [Va. Code §§ 16.1-306](#) and [16.1-69.55](#)

Juvenile Expungements

[Virginia Code § 16.1-306](#) provides:

The Clerk of the JDR Court shall, on January 2nd of each year or a date designated by the court, complete the expungement of all eligible juvenile records.

The Clerk shall review the procedures and [Va. Code § 16.1-306](#) prior to performing annual expungement. Procedural questions may also be addressed with the Department of Judicial Services of the Supreme Court of Virginia.

General Information:

- Juvenile cases are expunged/destroyed based on specific criteria. (See chart on the following page).
- All records not meeting the criteria are retained in the court's regular permanent filing system by case file number.
- If a juvenile's case meets the criteria, the Court is not required to notify any person or agency. The exception is a defendant's motion for early expungement of records under [Va. Code § 16.1-306 \(C\)](#).
- All court records should be destroyed by a method which renders the court records illegible, such as shredding or burning.
- If civil in nature, the juvenile base case and any subsequent action(s) purge together. If a criminal or traffic case, the juvenile base case and any subsequent action(s) purge own their own merit.
- The juvenile index cards (if the court has them) and the Juvenile Expungement Report must be used to determine if a case meets the criteria. Index cards must contain the following information to determine expungement or retention of a case.
 - Juvenile's name
 - Juvenile's date of birth
 - Juvenile's case number(s)
 - All court hearing dates for each charge

For a case to be considered for destruction the juvenile must have attained age nineteen and five years must have elapsed since last court hearing date.

Clerk's Procedures for Expungement

The following procedures are recommended when clerk is expunging records:

STEP	DESCRIPTION
1	The clerk submits for the first Edit List. JJ13, through JCMS to identify cases eligible for expungement. <i>See JCMS USER’S GUIDE</i>
2	<p>The clerk uses the edit list to pull and review all cases displayed on the listing for the juvenile’s age and last hearing date to determine eligibility for destruction.</p> <p>Cases in which a juvenile was found guilty of an offense for which the clerk is required to furnish a record to DMV must be retained until the juvenile reaches twenty-nine years old. Va. Code § 46.2-383, Va. Code § 16.1-306.</p> <p>OR</p> <p>Cases in which a juvenile was found guilty of a delinquent act that would be a felony if committed by an adult, shall be retained, unless the record was expunged by destruction on or before July 1, 1996. Va. Code § 16.1-306 (A).</p> <p><i>See Chart below for Expungement criteria.</i></p>

Juvenile Records Retention Schedule

CASE TYPE	DESTRUCTION CRITERIA
Custody/Visitation/Chins/Abuse & Neglect/Foster Care/Paternity/Judicial Bypass	Age 19 + 5 years from last hearing.
Juvenile Misdemeanor Non-DMV Reportable	Age 19 + 5 years from last hearing.
Traffic Infraction Not Guilty or Dismissed	Age 19 + 5 years from last hearing
Traffic Infraction Guilty Finding, Misdemeanor Delinquent Finding or Ancillary Offense - DMV Reportable	Age 29
Felony – Non conviction. (includes cases that are transferred or certified to the circuit court)	Age 19 + 5 years from last hearing.
Felony or Ancillary Offense –Delinquent Finding.	Retain Indefinitely.
TDO/ECO/MC	Age 19 + 5 years from last hearing.

STEP	DESCRIPTION
1	The clerk makes any necessary updates in JCMS before submitting for the second edit list from JCMS. For example, an incorrect date of birth on JCMS. The update may cause the case to become ineligible for expungement.

STEP	DESCRIPTION
2	The clerk submits for the second edit list through JCMS and reviews it to determine if eligible cases have been removed. See JCMS USER’S GUIDE for submission guidelines.
3	The clerk submits for report JJ14, Cases Removed From JCMS. See JCMS USER’S GUIDE for submission guidelines.
4	The clerk destroys all eligible case papers, documents and attachments. All court records should be destroyed by a method which renders the court records illegible, such as shredding or burning
5	Once all case papers, documents and attachments are expunged from the master file, the empty folder should be destroyed. NOTE: Do not reuse the file numbers.
6	The clerk retains the “Cases Removed from JCMS” report for three years, the same as other administrative reports. The report (s) may be filed with other month end reports.

Annual Purging of Adult Cases

[Virginia Code § 16.1-69.55](#) provides:

The Clerk shall on January 2nd of each year or a date designated by the court, complete the purging of all eligible adult records. The Clerk shall review the procedures and [Va. Code § 16.1-69.55](#) prior to performing the annual purge. Procedural questions should be directed to the Department of Judicial Services. Annual purging of adult records should be accomplished according to the following chart.

Adult Records Retention Schedule

CASE TYPE	DESTRUCTION CRITERIA	COMMENT
Support – Regardless of disposition.	10 yrs. from date order terminated by operation of law or was dismissed AND last child’s DOB at least 29 yrs.	Original charge (base case) and all subsequent actions for support purge together.
Spousal Support	Cases which involve spousal support in the year which equals the Respondent’s date of birth + 75 years.	Original charge (base case) and any subsequent actions for support purge together.

CASE TYPE	DESTRUCTION CRITERIA	COMMENT
Criminal Cases regardless of disposition including cases certified to the Grand Jury. (includes 18.2-370.1)	10 years from final disposition date.	
Sexually Violent Charges	50 years.	
Assault and Battery Against a Family or Household Member Charges	20 years.	
Adult Protective Order including Foreign Protective Orders	10 years from last hearing.	Original charge (base case) and any subsequent actions purge together.
Protective Order-Violation	20 years from the sentencing date or when the sentence term ends, whichever comes later.	
TDO/ECO	10 years from last hearing.	

Note: It should be noted that in support cases, the last child’s date of birth should be updated correctly to put the case on the correct purge report.

Procedures

STEP	DESCRIPTION
1	The clerk submits for the first Edit list, JA13, through JCMS to identify cases eligible for expungement. See JCMS USER’S GUIDE for submission guidelines.
2	The clerk uses the edit list to pull and review all cases displayed on the listing to determine eligibility for destruction. Adult support base cases and any subsequent actions purge together.
3	The clerk makes any necessary updates in JCMS before submitting for the second edit list from JCMS. The update may cause the case to become ineligible for expungement
4	The clerk submits for the second edit list through JCMS and reviews it to determine if ineligible cases have been removed. See JCMS USER’S GUIDE for submission guidelines.
5	The clerk submits for the Cases Removed from JCMS report, JA14. See JCMS USER’S GUIDE for submission guidelines.

STEP	DESCRIPTION
6	<p>The clerk destroys all eligible case papers, documents and attachments.</p> <p>All court records should be destroyed by a method, which renders the court records illegible, such as shredding or burning.</p> <p>Once all case papers, documents and attachments are expunged from the case folder, the empty folder should be destroyed. NOTE: Do not reuse the file.</p>
7	<p>The clerk retains the Cases Removed from JCMS Report for three years. The report may be filed with other month end reports.</p>

Time Constraints

Expunging and purging of court records should occur on January 2nd of each year or on a date designated by Court. The OES recommendation is annually, to be completed by the end of the first quarter each year.

Forms

- DC-363 [PETITION OR MOTION FOR EXPUNGEMENT](#)
- DC-365 EXPUNGEMENT ORDER
- DC-512 NOTICE OF HEARING
- DC-630 [MOTION TO AMEND OR REVIEW ORDER](#)
- JJ13 JUVENILE CASE EXPUNGE LISTINGS
- JJ14 JUVENILE - CASES REMOVED FROM JCMS
- JA13 ADULT CASE PURGE LISTINGS
- JA14 ADULT - CASES REMOVED FROM JCMS
- ORDER FOR EXPUNGEMENT FROM CIRCUIT COURT

References

- [Va. Code § 16.1-30](#) Expungement of Court Records
- [Va. Code § 16.1-69.53](#) Definitions; construction of references to period of years
- [Va. Code § 16.1-69.54](#) General Provisions
- [Va. Code § 16.1-69.55](#) Retention of case records; limitations on enforcement of Judgments; extensions
- [Va. Code § 16.1-69.56](#) Destruction of Records
- [Va. Code § 19.2-392.2](#) Expungement of Police & Court Records
- [Va. Code § 46.2-382](#) Retention of Records
- [Va. Code § 46.2-383](#) DMV Reportable Cases