

NEW YORK STATE COURTS OF LOCAL CRIMINAL JURISDICTION  
CRIMINAL RECORDS PURGE PROJECT  
FREQUENTLY ASKED QUESTIONS

Rev. 5/10/06

**Who has custody of court records?**

Custody of court records is defined in the Uniform Justice Court Act §2019 (a) and §107 (See: UCA §2019 (a) and §107).

**Are court records FOILable?**

Court records are not FOILable. Access to court records is covered by statute.

**What allows me to dispose of the records?**

If you are concerned with the legality of destroying records, please note that case files that are destroyed “in the normal course of business,” using the Records Retention Schedules and Records Disposition Request Forms, are in conformance with legal requirements.

**How do I determine the disposition charge?**

In addition to options outlined in the Guidelines for Purging Criminal Case Files and Filing Strategies for Criminal Case Files, the Criminal History Disposition Sheet/Cover Sheet can be used to determine the disposition charge. Also, for MOTOR VEHICLE/TRAFFIC CASES, some uniform traffic tickets have a check-off box which can be used to determine if the case is a misdemeanor or violation.

**What records have a permanent retention?**

All records prior to 1920 are to be retained permanently; all misdemeanors and felony arraignments prior to 1951 are to be retained permanently.

**What should I do if I cannot determine if the case file is purgable?**

Do not spend a lot of time on any one case. When “in doubt” on whether to purge a case file, make a notation of the docket number so you can investigate it further after you have completed purging your records. If you are still unsure please contact the Office of Records Management at (212) 428-2875.

**When is a dog bite considered a violation or misdemeanor?**

The Dangerous Dog Law state: a first time dog bite is a VIOLATION and a second bite when the dog “was found to be dangerous” is a MISDEMEANOR.

**What are archival samples?**

Archival samples are (1) misdemeanors and (2) felony arraignments for years ending in " 0" . Archival samples are to be retained permanently.

### **What is the retention for RAP SHEETS?**

For courts outside of New York City, RAP Sheets must be destroyed immediately after disposition of after being updated. For courts in New York City, RAP SHEETS are considered part of the case file and are to be retained for the same length of time as the case file.

### **Do Town and Village Courts require additional approval from other parties?**

Town and Village Courts are required to obtain approval from the State Comptroller's Office before disposal of their records. Procedure requires that you first submit a "Records Retention and Disposition Form" to the Division of Court Operations Office of Records Management.

### **Is it necessary to keep a list of all destroyed records?**

It is not necessary to keep a list of each individual record that is destroyed. If you are already doing this you may continue to do so, but there is no obligation to document this information. However, if misdemeanors are to be microfilmed, it is recommended that you include a list of docket numbers for records that are destroyed in front of the roll.

### **Some of the charges on the accusatory instrument have been dismissed because they were covered by another charge, how long should I keep the records?**

If some of the charges in an accusatory instrument are dismissed because they are covered by another charge, keep the records on all the counts for as long as you are keeping the conviction charge.

### **How can I prepare a "Certificate of Disposition" for cases that were destroyed?**

A substitute for a "Certificate of Disposition" can be issued to the public for cases that were destroyed. If you know the case had been heard in your court, the document could state that the records were destroyed in the normal course of business, pursuant to 22 NYCRR 104 (which includes the Records Retention Schedules). If you are not sure whether the case was heard in your court, you can prepare a document that indicates that you know if the case was heard in your court since all \_\_\_\_\_ (fill in record type), including the Record of Court Activity (if applicable), for \_\_\_\_\_ (fill in the year) were disposed of in the normal course of business pursuant to the Rules of the Chief Administrator of the Courts.

### **Some present day offenses are considered to be violations while in the past they were misdemeanors, what is the proper retention?**

When you are reviewing older records, the disposition charge(s) should reflect the category of charges at the time the acts were committed, even if they have been changed by statute. For example, if a charge was a MISDEMEANOR in the 1960's but now the same charge is considered a VIOLATION, the case is to be kept for the retention designated for MISDEMEANORS.

### **How long should records of proceedings be retained?**

Records of proceedings, whether taken by court stenographers of the town or village justices, are part of the case record and should be retained for as long as designated in the Retention Schedule (2 years for MOTOR VEHICLE/TRAFFIC AND PARKING CASES and all CIVIL CASES, and 10 years for all other CRIMINAL CASES). COURT REPORTER NOTES for cases which have been terminated in favor of the accused should be retained for the same length of time as the case file. This would lower the retention of some MISDEMEANOR related NOTES from ten years to six years.

### **Do sealed records require special attention?**

Sealed records include dismissals, acquittals, and Youthful Offender cases. The disposition date for Adjudged in Contemplation of Dismissal (ACD) cases starts at the time of the actual dismissal (See CPL §160.50 and §170.55.)

Criminal cases that were disposed prior to the automatic sealing provisions of CPL §160.50 are not considered confidential. These cases can be sealed only by motion of the defendant. (See §160.50 )

You may have to unseal records to determine if they were sealed because (1) the case was adjudicated in favor of the defendant (dismissed or acquitted only) or (2) The defendant received Youthful Offender treatment. Often, Youthful Offender status is noted on the outside of the case jacket, so unsealing is not necessary. Youthful Offender status does not fall under the “terminated in favor of the defendant category” even though it is sealed; it must be retained for the same length of time as an ordinary conviction. Permission must be obtained to open sealed records. Discuss procedures for opening sealed records with your Town Justice, OCA District Office or Town and Village Resource Center.

### **In regards to Environmental Conservation Law, how do I determine the type of offense?**

For Environmental Conservation Law offenses there is no “cheat sheet” that lists the type of offense for each case. However, the ticket for some of these cases may include a check-off box which can be used to determine whether it is a misdemeanor, violation, etc. Please remember, however, that it is the disposition charge, not the arrest charge, that determines retention. In all other instances, the court will have to identify these cases on an individual basis. It is recommended that you put them aside and research them all together at a later date. You can look in McKinney’s or call the Town and Village Resource Center for the type of offense.

The Records Retention and Disposition Schedule for Criminal Records of the Criminal Court of the City of New York, City Courts, District Courts & Town and Village Courts indicates that Disposed Violations are to be retained for six years from the date of disposition, EXCEPT for cases which contain a Family Offense Order of Protection which are to be retained for twenty-five years. If the case is terminated in favor of the defendant and contains a Family Offense Order of Protection should it be retained for six years or twenty-five years?

If an "Order of Protection" is issued for a Violation and the case is eventually terminated in favor of the defendant, the case is to be retained for six years after disposition, not the twenty-five years indicated in the Records Retention Schedule.

#### **Why does the RECORD OF COURT ACTIVITY REQUIRE SPECIAL ATTENTION?**

The record of court activity requires special attention because:

Retention of the RECORD OF COURT ACTIVITY is different from retention of the related CASE FILES. For example, disposed MISDEMEANOR CASE papers can be destroyed after 25 years from date of disposition but the related entry in the RECORD OF COURT ACTIVITY is permanent.

You do not have to keep an entire DOCKET BOOK because you have interfiled misdemeanors and infractions. (For retention, see Records Retention Schedule, "RECORD OF COURT ACTIVITY" Item No. 80420). You may remove and save the cases which are permanent and those that are undisposed and destroy the rest of the book after the designated retention period has elapsed.

If a court did not create a RECORD OF COURT ACTIVITY for a period of time or the Record of Court Activity is not complete, then the CASE FILE cannot be destroyed until (a) a RECORD OF COURT ACTIVITY is created OR (b) the retention for the RECORD OF COURT ACTIVITY has expired.