



Office of the Commonwealth's Attorneys

Records Retention Schedule

Prepared by the State Records Branch
Archives and Records Management Division
Approved by the State Libraries, Archives, and Records Commission



Kentucky Department for Libraries and Archives

This records retention schedule governs retention and disposal of records created, used and maintained by the Office of the Commonwealth's Attorneys. **Government records in Kentucky can only be disposed of with the approval of the State Archives and Records Commission (the Commission).** If records do not appear on a Commission-approved records retention schedule, agencies should not destroy those records. This agency-specific schedule was drafted by Office of the Commonwealth's Attorneys personnel and Archives and Records Management Division staff, and reviewed and approved by the Commission. This schedule provides the legal authority for the Office of the Commonwealth's Attorneys to destroy the records listed, after the appropriate retention periods have passed.

Office of the Commonwealth's Attorneys personnel should use this agency-specific schedule in combination with the *General Schedule for State Agencies (General Schedule)*, also approved by the Commission. The *General Schedule* applies to records that are created, used and maintained by staff at all or most state agencies. Agency-specific retention schedules are used only by specific agencies and apply to records that are created only by a particular state agency, or to records that a state agency is required to retain longer than the approved time period on the *General Schedule*. The *General Schedule* and agency-specific retention schedule should cover all records for the Office of the Commonwealth's Attorneys.

This retention schedule applies to state agency records and information regardless of how it is created or stored. For example, information created and sent using e-mail is as much a public record as materials created or maintained in paper. Kentucky law defines public records, in part, as "documentary materials, *regardless of physical form or characteristics*, which are prepared, owned, used, in the possession of or retained by a public agency" (KRS 171.410[1]). This means that records management standards and principles apply to all forms of recorded information, from creation to final disposition, regardless of the medium. Records retention scheduling is important in developing, using, and managing computer systems and other electronic devices. Records management practices encourage cost-effective use of electronic media through accurate retention scheduling and legal destruction of records.

All state government employees are responsible for maintaining records according to the retention schedule, whether those records are stored electronically or in paper. Information must be accessible to the appropriate parties until all legal, fiscal, and administrative retention periods are met, regardless of the records storage medium.

This retention schedule covers the content of records created by the Office of the Commonwealth's Attorneys, including records created or stored using computers and computer systems. The *General Schedule for Electronic and Related Records* applies to records related to computers or a computer system. Examples of these include system documentation and use records, backup files, or website format and control records.

Audits and Legal Action

Agency records may be subject to fiscal, compliance or procedural audit. If an agency should maintain records longer than the approved retention period, as may be the case with some federal audits, then all affected records should be retained until the audit has been completed and the retention period met. In no case should records that are subject to audit be destroyed until the audit has been completed and retention periods met, or the records have been officially exempt from any audit requirements.

Records may also be involved in legal or investigative actions, such as lawsuits, administrative hearings or open records matters. These records must be retained at least until all legal or

investigative matters have concluded, regardless of retention period. This includes all appeals of lawsuits.

Vital Records

Vital records are essential to the continued functioning of an agency during and after an emergency. Vital records are also essential to the protection of the rights and interests of an agency and of the individuals for whose rights and interests it has a responsibility. Vital records are identified in the retention schedule with a (V).

Confidential Records

While all records created, used and maintained by government agency personnel are public records, not all of those records are open to public inspection. Whether a record is open to public inspection is determined by the state's Open Records laws and other relevant state or federal statutes and regulations. Restriction of public inspection of confidential records may apply to the whole record or only to certain information contained in the record.

Kentucky's public records are considered open for public inspection unless there is some specific law or regulation that exempts them. Agency personnel who believe certain records are confidential should submit a citation from Kentucky Revised Statutes, Administrative Regulations, Code of Federal Regulations, or similar authority. **State agency heads have the responsibility to know all the appropriate confidentiality laws, statutes and regulations that apply to the records maintained by their agency and to see that those laws are enforced.** Even though a record series may or may not be marked confidential on a retention schedule, contradictory laws or regulations that are passed after the schedule has been approved must be honored.

Copies of Records

Agency personnel often make copies of records for internal use or reference purposes. Agencies should designate one copy as the official copy and make sure it is retained according to the records retention schedule. Agencies can destroy all other copies when no longer useful.

Updating the Retention Schedule

Per 725 KAR 1:010, the head of each state government agency is required to designate a member of his or her staff to serve as a records officer. The agency records officer represents that agency in its records-related work with the Archives and Records Management Division. The agency records officer is responsible for assisting the Archives and Records Management Division in drafting a records retention schedule, and in finding any schedule updates to bring before the Commission. The retention schedule should be reviewed on a regular basis to suggest appropriate changes to the Commission.

Unified Prosecutorial System Commonwealth's Attorneys

The Unified Prosecutorial System, pursuant to KRS 15.700, was established January 1, 1978 to encourage cooperation among law enforcement officers and provide for the general supervision of criminal justice by the Attorney General as chief law enforcement officer and chief prosecutor of the Commonwealth. Its role is to maintain uniform and efficient enforcement of the criminal laws and administration of criminal justice throughout the Commonwealth.

The Unified Prosecutorial System is administered by the Prosecutors Advisory Council, which the Attorney General chairs. The Unified Prosecutorial System, comprised of the 57 Commonwealth's Attorneys and 120 County Attorneys, prosecutes criminal cases in Kentucky's circuit and district courts.

RECORDS RETENTION SCHEDULE

Signature Page

Department of Law
Agency
Commonwealth's Attorney Model
Unit

September 1989
Schedule Date
June 14, 2018
Change Date
June 14, 2018
Date Approved By Commission

APPROVALS

The undersigned approve of the following Records Retention Schedule or Change:

[Signature]
Agency Head

5/14/18
Date of Approval

[Signature]
Agency Records Officer

5/14/18
Date of Approval

[Signature]
State Archivist and Records Administrator
Director, Archives and Records Management Division

6/14/18
Date of Approval

[Signature]
Chairman, State Archives and Records Commission

6/14/18
Date of Approval

The undersigned Archives and Records Management Division staff have examined the record items and recommend the disposition as shown:

[Signature]
Records Analyst/Regional Administrator

6.6.18
Date of Approval

[Signature]
Appraisal Archivist

6/18/18
Date of Approval

[Signature]
State/Local Records Branch Manager

6.14.18
Date of Approval

The determination as set forth meets with my approval.

[Signature]
Auditor of Public Accounts

6/14/18
Date of Approval

STATE ARCHIVES AND RECORDS COMMISSION
Public Records Division
Kentucky Department for Libraries and Archives

STATE AGENCY RECORDS
RETENTION SCHEDULE

Law, Department of
 Unified Prosecutorial System
 Commonwealth's Attorney Model

Record Group
Number

Series	Records Title and Description	Function and Use
03437	Commonwealth's Attorney Case File (V)	This series documents the legal activity and criminal prosecution that is carried out by the Office. A file may be created as a result of an arrest or complaint, an individual asks that a charge be filed, a charge waived or held from District Court and, in some cases, when an indictment has been handed down by the grand jury. Information is received automatically by the Office from the District Court Clerk or law enforcement agency, or from the Office of the Attorney General. The prosecutor determines possible charges and schedules a grand jury hearing or decides no charges shall be presented to a grand jury. Once the case is closed, the defendant has ten days from entry of the judgment to file an appeal.
	Access Restrictions	Agencies should consult legal counsel regarding open records matters.
	Contents	Series may contain: Tracking forms, witness lists, subpoenas, correspondence, police reports, police witness forms, police officer testimony, prior criminal record, Federal Bureau of Investigation rap sheet, uniform citation, indictment, motions and orders, attorney's notes, photographs, witness statements, evaluation reports, final judgment, mediation intake sheet, criminal complaint, warrant of arrest, offender index.
	Retention and Disposition	Retain in Agency until five (5) years after case closure and all appeals have been exhausted, then transfer to the State Records Center for ten (10) years. Then destroy. Total retention is fifteen (15) years after case closure and all appeals have been exhausted.
03438	Commonwealth's Attorney Appeal Case File	This series documents information pertaining to cases appealed from District to Circuit Court, usually for misdemeanor district cases, i.e., where fines may be less than \$1000 and/or less than a twelve-month jail sentence. An appeal is initiated through the Circuit Court by the defendant.
	Access Restrictions	Agencies should consult legal counsel regarding open records matters.
	Contents	Series may contain: Notice of appeal, statement of appeal, counter statement, motions and orders.
	Retention and Disposition	Retain in Agency until five (5) years after case closure, then transfer to the State Records Center for five (5) years. Then destroy. Total retention is ten (10) years after case closure.
03439	Diversion Case File (V)	This series documents information regarding defendants who have been accepted into the Diversion Program. The program allows the defendant to serve his sentence out of jail, rather than being incarcerated. The Commonwealth's Attorney has the option of recommending that the defendant be accepted into the program. Diversion candidates are usually first time offenders, or is a case where restitution can be made. The judge issues an Order as to whether an individual will participate in the program. If the defendant does not fulfill program requirements, the case is referred back to the court for trial.
	Access Restrictions	Agencies should consult legal counsel regarding open records matters.
	Contents	Series may contain: Restitution payment plan/information letters, requirements for participation, grounds for termination, conditions for volunteer agency participation, release of information, application form, miranda rights, juvenile record waiver, initial intake form, witness/police opinion sheet, defendant's statement, diversion information sheet, monthly visit logs, correspondence, motions, psychosocial history, volunteer time sheets/referral form, motion to defer prosecution, case progress worksheet, criminal history.
	Retention and Disposition	Retain in Agency for five (5) years, then transfer to the State Records Center for five (5) years. Then destroy. Total retention is ten (10) years.

STATE ARCHIVES AND RECORDS COMMISSION
Public Records Division
Kentucky Department for Libraries and Archives

STATE AGENCY RECORDS
RETENTION SCHEDULE

Law, Department of
 Unified Prosecutorial System
 Commonwealth's Attorney Model

Record Group
Number

Series	Records Title and Description	Function and Use
03441	Commonwealth's Attorney Defendant Indictment Index	CLOSED SERIES. This series documents felony indictments and is used to perform record checks and to track persistent felony offenders, and to check the status of cases. It provides a source of summarized information after a case has been closed, is stored off-site, or has been destroyed. It can also be used for statistical research.
	Access Restrictions	Agencies should consult legal counsel regarding open records matters.
	Contents	Series contains: Defendant's name; alias names; defendant's address; sex; race; date of birth; photograph identification number; list of indictment numbers and charges; prosecutor assigned to the case; final disposition of case
	Retention and Disposition	Retain permanently in Agency.
03442	Grand Jury Proceedings (V)	This series documents the testimony of witnesses who appear before the grand jury. Grand jury hearings are to be recorded, as required in RCr 5.16.
	Access Restrictions	Agencies should consult legal counsel regarding open records matters.
	Contents	Series contains: name of witness, testimony.
	Retention and Disposition	Retain in Agency five (5) years post indictment, then destroy.
04331	Commonwealth's Attorney Permanent Case File (V)	This series documents the legal activities and criminal prosecution of cases considered to be special, historically significant, and/or high profile in the Commonwealth's Attorney Office. The cases have been separated from series 03437 to be retained permanently because of their legal and historical value. Similar to the Special Prosecutions Permanent Case File (04313) in the Attorney General's Office, this series involves cases of corruption of elected public officials (not necessarily state or local employees); cases attracting such publicity that precedents are set, laws are changed, written, or rewritten; and capital punishment cases, regardless of whether an execution takes place or not. Cases handled by the Commonwealth's Attorneys are assigned through the prosecutor's circuit court jurisdiction. The Special Prosecutions Division in the Attorney General's Office intervenes only when a Commonwealth's Attorney disqualifies himself and another must be appointed.
	Access Restrictions	Agencies should consult legal counsel regarding open records matters.
	Contents	Series may contain: Investigative information, legal pleadings and motions, correspondence, Grand Jury transcript, evidence, photographs, disqualification/appointment letter (from Special Prosecutions Division, Attorney General's Office)
	Retention and Disposition	Retain in Agency five (5) years after case closure; transfer to State Archives Center for permanent retention.

Electronic System With Included Records Series

General Government

Unified Prosecutorial System

System Description: Justware Prosecutor is a database case management system used to track and store information related to criminal cases being prosecuted by the Commonwealth's Attorney's Offices.

System Contents: This database may contain case information including charges, court proceedings, contact information for case involved persons and agencies, calendar information, and generated documents. Information is accessed through categorized modules including Case Information, Name Information, Agency Information, Event information, File views (fillable forms), and Report views.

General Schedule Items:

System Title: Justware Prosecutor

Alternate Title: Justware

Series #: Series Title:

Disposition Instructions:

03437	Commonwealth's Attorney Case File	Retain in Agency until five (5) years after case closure and all appeals have been exhausted, then transfer to the State Records Center for ten (10) years. Then destroy. Total retention is fifteen (15) years after case closure and all appeals have been exhausted.
03438	Commonwealth's Attorney Appeal Case File	Retain in Agency until five (5) years after case closure, then transfer to the State Records Center for five (5) years. Then destroy. Total retention is ten (10) years after case closure.
03439	Diversion Case File	Retain in Agency for five (5) years, then transfer to the State Records Center for five (5) years. Then destroy. Total retention is ten (10) years.
03440	Economic Crime Investigative File	Retain in Agency and destroy five (5) years after close of investigation or retain in agency until one (1) year after close of investigation, then transfer to the State Records Center for four (4) years; destroy. NOTE: If prosecution results, the case will be retained under series 03437, Commonwealth's Attorney Case File

System Title: Justware Prosecutor

Alternate Title: Justware

Series #: ***Series Title:***

Disposition Instructions:

03441 Commonwealth's Attorney Defendant Indictment Index

Retain permanently in Agency.

04331 Commonwealth's Attorney Permanent Case File

Retain in Agency five (5) years after case closure; transfer to State Archives Center for permanent retention.