

# Office of the State Public Defender Administrative Policies

Subject: <b>Client File Retention</b>	Policy No.: <b>107</b>
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## 1.0 POLICY

- 1.1 All Office of the State Public Defender (OPD) client files are the property of the State of Montana and disposition of files must follow the rules established by the Montana Secretary of State.
- 1.2 Every client is entitled to one copy of their case file. Clients will be notified of this right and the scheduled date of file destruction in the case closing letter. Requested files will be delivered in electronic format unless the client requests a paper copy. There will be no charge to the client for providing the case file in either format.
- 1.3 OPD has established the following procedures for disposition of client files. This policy applies to all client files, whether maintained by OPD offices or by contract attorneys.
- 1.4 This retention schedule applies to investigative and social work files that are maintained separately from the case file.

Social work or mental health consultation files related to evaluations are considered client medical files. They are to be maintained separately from the case file and retained under State of Montana general schedule GS3, item 36.

## 2.0 PROCEDURE, OPD OFFICES

- 2.1 All client files will be retained by calendar year for the appropriate retention period by case type and disposition as described below.
- 2.2 Destruction will occur in January or February for all client files that fulfilled the retention period as of December of the prior year. The Central Office will notify all offices when the destruction request for that year has been approved by the Secretary of State.
- 2.3 Paper files will be shredded. Electronic files will be deleted.
- 2.4 Incoming FTE attorneys may not bring or store their private practice files in OPD offices, unless the case becomes an OPD case when they are hired.
- 2.5 Any hard copy files that are forwarded to the appellate office will be returned to the originating office when the appellate office has copied/scanned them for the appeal. Those files are subject to the retention period based on the original case.

- 2.6 Remote FTE attorneys are required to forward any closed paper case files to the appropriate office at least quarterly to be processed by support staff.
- 2.7 Public Defender Division FTE assigned a conflict case from another region will retain the file in their home office.

### **3.0 PROCEDURE, CONTRACTOR OFFICES**

All contractor files, whether conflict or non-conflict, are the responsibility of the contractor.

- 3.1 OPD should not accept or retain any contractor files in their offices.
- 3.2 Contractors agree to abide by OPD's retention schedule when they sign the Memorandum of Understanding (MOU).
- 3.3 A report from the case management system will be auto-generated and emailed to contractors each January listing the files the contractor holds that may be eligible for destruction at the end of the previous calendar year. It is then up to the contractor to destroy or retain as appropriate.

### **4.0 CRIMINAL CASES**

#### **4.1 FELONY CASE FILES**

##### **4.1.1 DEFERRED**

###### **4.1.1.1 DEFERRED IMPOSITION OF SENTENCE**

Destroy two years following the end of the deferral period, or a maximum of eight years after judgment.

###### **4.1.1.2 DEFERRED PROSECUTION**

Destroy three years following dismissal.

##### **4.1.2 LOW LEVEL FELONY CONVICTION**

Low level felony cases (excluding homicide, sex crimes, robbery, aggravated kidnapping, aggravated promotion of prostitution and trafficking of persons) are to be destroyed 10 years following judgment regardless of length of sentence.

##### **4.1.3 MAJOR FELONY CONVICTION**

Major felony cases including homicide, sex crimes, robbery, aggravated kidnapping, aggravated promotion of prostitution and trafficking of persons are to be destroyed 20 years following judgment, regardless of length of sentence.

##### **4.1.4 Individual offices will retain the file for a period exceeding the retention schedule, within their discretion and with documented management approval, when:**

**4.1.4.1** The file is that of a client whom the office believes will be a client again; or

**4.1.4.2** The file contains briefs or pleadings that may be of use in new cases but have not yet been entered into a brief bank; or

**4.1.4.3** The file is that of a client whom the office believes may benefit from keeping the file for a longer period of time due to the nature of the offense or the disposition of the case.

- 4.2 MISDEMEANOR CASE FILES  
Destroy three years following judgment unless there is a pending Order to Show Cause, Petition to Revoke or warrant relating to the case.
- 4.3 TREATMENT COURT CASE FILES  
Destroy three years following completion or dismissal.
- 4.4 JUVENILE CASE FILES  
Destroy one year after youth court jurisdiction ends.
- 4.5 EXTRADITION CASE FILES  
Destroy three years following the date of decision.
- 5.0 **POST-JUDGMENT**
  - 5.1 APPELLATE CASES  
Destroy ten years after the Supreme Court opinion is issued.
  - 5.2 POSTCONVICTION RELIEF  
Destroy three years following the date of decision, after notification to the client that the file will be destroyed.
  - 5.3 SENTENCE REVIEW  
Destroy three years following the date of decision.
  - 5.4 PETITIONS FOR RELIEF OF DUTY TO REGISTER AS A VIOLENT OR SEX OFFENDER  
Destroy three years following the date of decision.
- 6.0 **CIVIL CASES**
  - 6.1 DEPENDENT/NEGLECT CASE FILES  
Destroy when:
    - 6.1.1 The case has been closed for five years (even if dismissed); or
    - 6.1.2 The concerned children have reached the age of 18 before the case has been closed for five years; or
    - 6.1.3 The children have been adopted.
  - 6.2 INVOLUNTARY COMMITMENT OR GUARDIANSHIP CASE FILES  
Destroy five years after the date of disposition, even if dismissed.
  - 6.3 PRIVATE ADOPTION CASE FILES  
Destroy five years after the case is closed.
- 7.0 **OTHER**
  - 7.1 ELIGIBILITY DETERMINATION FILES  
Destroy three years following the final determination.
  - 7.2 APPOINTMENTS  
Incorporate into case file.
  - 7.3 JAIL INTAKE FORMS  
Incorporate into case file or destroy as a transitory record.

**7.4** SUBSTITUTION OF COUNSEL  
Destroy three years following the substitution.

**7.5** DISMISSED CASE FILES  
Destroy one year following dismissal.

**7.6** ACQUITTED CASE FILES  
Destroy one year after judgment.

**8.0 DECEASED CLIENTS**  
Destroy one year following client death.

**9.0 CLOSING**  
Questions about this policy should be directed to:

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