



Disposing of Certain Records

Dear Reader:

The following document was created from the MTAS website ([mtas.tennessee.edu](http://www.mtas.tennessee.edu)). This website is maintained daily by MTAS staff and seeks to represent the most current information regarding issues relative to Tennessee municipal government.

We hope this information will be useful to you; reference to it will assist you with many of the questions that will arise in your tenure with municipal government. However, the *Tennessee Code Annotated* and other relevant laws or regulations should always be consulted before any action is taken based upon the contents of this document.

Please feel free to contact us if you have questions or comments regarding this information or any other MTAS website material.

Sincerely,

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Disposing of Certain Records

Reference Number: MTAS-476

The law provides for some special considerations for certain records before they are eligible for destruction.

Audits

Reference Number: MTAS-477

Records that are important for audits need to be maintained through the time of the audit plus about three years afterward in case any problems arise. Formerly, the retention period for these records was three years after the audit was complete. Since it was often difficult for a local official to know when an audit became final, the retention period was changed to five years from the date of creation of the record. This gives the official a definite time period to work from and also allows continuous destruction of financial records rather than lumping all records from a fiscal year together with a single retention date.

Exhibits and Evidence in Court Cases

Reference Number: MTAS-478

The law includes a number of special considerations for materials that have become evidence and exhibits in judicial proceedings. Although some of these materials technically are not “records,” this information is related to records management for court clerks. Exhibits are treated differently depending on whether they are documents, some other kind of physical evidence or firearms.

Documents

Unless local rules of court provide otherwise, the clerk can destroy certain records under the direction and order of the judge once a case has been finally disposed of for a period of 10 years. “Finally disposed of” means a final order adjudicating a case has been entered, and the time for filing appeals, if any, has lapsed for all parties. The court clerk has to retain the pleadings, original process and original opinion, original rules, appearance and execution dockets, minute books, and plat or plan books as permanent records. But all other records, dockets, books, ledgers, and documents can be destroyed pursuant to a court order. ^[1] In civil cases, a judge may order the clerk to destroy discovery materials, briefs, cost bonds, subpoenas, and other temporary records three years after the final disposition of the case. ^[2] In addition to these procedures, clerks must comply with T.C.A. § 18-1-204. This statute requires them to notify Library and Archives of the records they intend to destroy and gives them 90 days to examine and remove any significant historical records if they so choose.

For physical evidence other than documents and firearms

There is a more complicated set of procedures for physical evidence, but the good news is that it can be destroyed sooner. If evidence is used in a case, once the case comes to judgment or conclusion and once all appeals have been settled, the clerk is to give 30 days notice to the attorneys of record in the case that they can pick up anything that belongs to them or their clients. After 30 days, the clerk can dispose of the evidence by following the procedures in T.C.A. §§ 18-1-206(a)(2)–(7). This statute requires the clerk to make an inventory of the evidence to be destroyed with references to the case involved and the term of court in which the evidence was used. The clerk then publishes the inventory for three consecutive weeks in a newspaper of general circulation. Parties who want to object to the disposition of the property or make a claim for it have 30 days to file a petition with the court. Once that time passes, the clerk gives the inventory (and any petitions that have been filed) to the court for the judge to approve or reject each item on the list and decide if it should be:

- Returned to the owner or the owner’s attorney;
- Be preserved by an organization for historical purposes;

- Sold; or
- Destroyed.

The clerk then gives the court order and the items to be disposed of to the sheriff. Depending on the disposition ordered for the item, the sheriff then delivers the items to their owners or to historical organizations, or advertises and sells the items, or destroys them and files an affidavit with the court concerning destruction of the items.

For firearms

If a court clerk has exhibits in his or her possession that are firearms, they should be disposed of in accordance with the procedures spelled out in T.C.A. §§ 39-17-1317–1318.

Original Process

Records and documents of proceedings in a court of record can be destroyed only after a judge has issued an order authorizing their destruction. ^[3] Regardless of who approves it, however, the law explicitly prohibits the destruction of any original process in a civil action or criminal proceeding.

^[1] T.C.A. § 18-1-202.

^[2] T.C.A. § 18-1-202(b).

^[3] T.C.A. § 18-1-202.

City Hospital and Other Health Records

Reference Number: MTAS-479

Special rules apply to medical records. They generally are governed by T.C.A. §§ 68-11-301 et seq. The definition of “hospital” used in these provisions is broad enough to include city hospitals and health departments. ^[1] Certain hospital records are not public records. ^[2] Generally, the law requires that a hospital or health department is required to retain and preserve records that relate directly to the care and treatment of a patient for 10 years following the discharge of the patient or the patient’s death during the period of treatment within the hospital. ^[3]

Mental health records are treated differently. Hospitals and health departments are given the option of retaining records for a longer period if they wish. ^[4]

^[1] T.C.A. § 66-11-302.

^[2] T.C.A. § 68-11-304.

^[3] T.C.A. § 68-11-305.

^[4] T.C.A. § 68-11-307.

DISCLAIMER: The letters and publications written by the MTAS consultants were written based upon the law at the time and/or a specific sets of facts. The laws referenced in the letters and publications may have changed and/or the technical advice provided may not be applicable to your city or circumstances. Always consult with your city attorney or an MTAS consultant before taking any action based on information contained in this website.

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