

Report of the
Advisory Committee to
Develop Policies for
Retention, Destruction,
and Access to Electronic
Court Records



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Report of the Advisory Committee to Develop Policies for Retention, Destruction, and Access to Electronic Court Records

“The objective is not simply to adopt new technology for its own sake, but to solve business process problems, provide prompt, reliable information to decision makers, and improve service to the public.”

Chief Justice Rebecca White Berch
*Justice 2020: A Vision for the Future
of the Arizona Judicial Branch
2010 - 2015*

INTRODUCTION

The Arizona Judicial Branch is transitioning from paper-based case records to electronic case records by digitizing existing paper case documents and by accepting e-filed, “born-digital” case documents. The Judicial Branch is also developing a technology system that will allow attorneys, parties, and the public remote access to court documents and data. These efforts help achieve the critical goal of the Judicial Branch strategic agenda: to strengthen the administration of justice by using technology to enhance public access to court services and to improve the efficient management of court information and resources. The Advisory Committee to Develop Policies for Retention, Destruction, and Access to Electronic Court Records (Electronic Records Committee or committee) was established to provide recommendations on policy decisions that are necessary to help reach these important objectives.

The committee’s recommendations are limited primarily to retention and destruction of electronic case records, not paper case records, for several reasons. First, paper case records are accepted, processed, and stored quite differently than electronic records, and the principles involved in handling paper records are distinct from those involved for electronic records. Second, the policy direction for handling paper case records has long been established, and the general principles are sound. Third, the local courts’ transition from paper case records to electronic case records is in varied stages of evolution, largely impacted by the local resources and storage capacity of the individual courts. Fourth, reliance on paper case records in the courts is quickly vanishing with the courts’ digitization of existing paper records; the implementation of statewide e-filing; and the demand for convenient access to electronic records by attorneys, judges, court partners, the public, and the courts themselves. The committee also considered public availability of certain electronic records, the long-term cost of storing electronic records, and best practices in government records management.

While it focused on electronic records, the committee is recommending two changes to the retention schedule for paper records: (1) extending the retention period for DUI, OUI, and domestic violence offense case records from seven to eight years after final adjudication and

satisfaction of sanctions, and (2) establishing a definite retention period of 25 years following the year filed for juvenile delinquency case records.

It is important to note that the work of the Electronic Records Committee was limited by administrative order to developing recommended policy direction for court *case* records. Therefore, the committee did not address policies for court *administrative* records. Case records are the records of a particular court case, whereas administrative records are the records of the court itself and the various functions of the court, including human resources, finance, and building maintenance.

CHARGE OF THE COMMITTEE

The Electronic Records Committee was charged with examining and making recommendations on the following questions:

1. Should policies regarding the length of time case documents and data are made available to the public online be consistent across court levels and from court to court within the same level?
2. Given that it is easier to systematically destroy electronic records, are the current records retention time periods adequate?
3. When the minimum retention period has been met under the existing retention schedules, is destruction of electronic case documents and data mandatory or permissive?
4. Once the retention deadline is reached, should originals or copies of documents or data be retained for purposes of government research and analysis, and, if so, should those records continue to be publicly available or released only pursuant to court order?

The committee is to submit a final report of its recommendations to the Arizona Judicial Council not later than the Council's December 2013 meeting.

SUMMARY OF RECOMMENDATIONS

The Electronic Records Committee members first engaged in informal discussion about electronic records issues plaguing their own courts and concerns of the public. However, the committee moved quickly to address more systemic, statewide Judicial Branch policy and technology considerations. Through these discussions and review of best practices, the committee developed a strong consensus on the following recommendations for electronic records retention, destruction, and access:

1. The length of time electronic case documents and data are made available online or at a court facility should be consistent within each court level across the state.
2. Although the structure of the current Arizona court records retention and destruction schedules is generally sound, when considering electronic records, the committee concludes that the retention period for some limited jurisdiction court case records is too short, and a clarification is required in the retention period for juvenile delinquency records in general jurisdiction courts. Therefore, the committee is respectfully submitting recommended modifications to the existing records retention schedules as set forth in Appendix B.

For limited jurisdiction courts, the committee also recommends the establishment of separate schedules for retention of paper case records, records displayed on public access websites maintained by both the Supreme Court and local courts, and electronic case records maintained in case and document management systems. The recommended retention schedules for limited jurisdiction courts are presented in Appendix C.

Additionally, for limited jurisdiction courts, the committee recommends that local ordinance violations no longer be displayed on the Supreme Court's Public Access website. The design of the Supreme Court's Public Access website is unable to identify, track, and support the display of the wide variety of local ordinances that are continuously created and revised throughout the state. As a result, currently, the Supreme Court displays only the general term "local charge," on its Public Access website, for any local ordinance violation. This sometimes causes harm to the individual identified as responsible for the local ordinance violation, when others misinterpret the local charge to be of a serious nature, or even criminal, when it is not.

3. Destruction of electronic case documents and data should be mandatory and automatic, at a point in time specified in Arizona court policy, as follows:
 - a. For general jurisdiction and appellate courts, destruction of records should be mandatory and automatic according to the time periods in the records retention and destruction schedules (ACJA § 3-402 and Administrative Orders 99-79 and 2001-45), with the proposed modifications herein, while taking into account any requirement to transfer these records to the Arizona State Library, Archives and Public Records (ASLAPR). (*See also* Rule 29, Rules of the Supreme Court of Arizona.)
 - b. For limited jurisdiction courts and the Administrative Office of the Courts (AOC), case records should be removed from public access websites maintained by both the Supreme Court and local courts, pursuant to the retention periods set forth in the current limited jurisdiction court records retention schedule (ACJA § 4-302), with the proposed modifications herein. Electronic records should be deleted automatically from case and document

management systems at the end of the newly established retention period for electronic records as set forth in Appendix C.

4. Given the extended time periods recommended for electronic records retention for designated case types, the committee concludes that no special provisions are required for longer maintenance of data for research purposes.
5. A process should be developed for court personnel or the public to request that court records in a specific case be permanently retained pursuant to court order, in each level of court, similar to the current historical records provisions for general jurisdiction courts in ACJA § 3-402(F). Criteria upon which this decision is to be made should also be developed.
6. In light of the automation support required for the proposed electronic records management modifications, the committee recommends the following approach:
 - a. A 24-month period should be provided to implement the new policies.
 - b. These electronic records policies should be applied to any case that reaches the retention period subsequent to adoption of these recommendations.
 - c. A process should be established by which individual courts may apply to the Commission on Technology or its designee for additional time to implement the new requirements, based upon technology resource constraints and funding.
 - d. The custodian(s) of records for each court shall institute a plan within 18 months, and provide a copy to the AOC, of how and by when the custodian will destroy electronic records for all cases that have already reached the retention period prior to adoption of these recommendations. Courts that use an AOC-supported CMS can seek the assistance of the AOC in instituting the plan.
 - e. Upon adoption of these recommendations, the AOC shall begin removing electronic case records from the Supreme Court's existing Public Access website and the planned e-Access website, regardless of when a case is destroyed by the local court.

The reasoning supporting these recommendations is provided in detail beginning on page 8.

THE COMMITTEE'S WORK PROCESS

The Electronic Records Committee membership includes judges from trial and appellate courts, court clerks from appellate and superior courts, practicing attorneys, court administrators from superior and limited jurisdiction courts, law enforcement, prosecutors, an ASLAPR

representative, and the public. Once established, the committee moved quickly to complete its assignment, holding seven full-day meetings and two workgroup meetings over an eight-month period.

The committee heard from a local expert who uses court records to carry out employment screenings, data compilation, and criminal case research and ASLAPR representatives who are knowledgeable about the elements of the cost of digital preservation and the records retention schedules of other Arizona government entities. AOC representatives provided information about the history and technology of retaining Arizona court case records; Arizona court records policy; research and statistical requests received from judicial officers, national court organizations, the Arizona legislature, academic research organizations, the public, government agencies, the media, and others; concerns raised about the length of time data is displayed on the Supreme Court's Public Access to court information website; the cost of electronic records storage, and federal court records retention policies.

The committee chair and staff also reported on discussions they had with a consultant and vice president at the National Center for State Courts (NCSC), a member of the Administrative Office of the United States Courts, a member of the National Archives and Records Administration (NARA), a federal court clerk, and others familiar with case records retention policies of courts around the country.

The committee reviewed research material on topics such as privacy concerns with court records, government budget cuts impacting the digitization of records, and the mandatory versus permissive nature of government records retention and destruction schedules. In addition, the committee considered court case record retention and access policies for the federal courts and for the states of Washington, Colorado, Utah, Maryland, California, Georgia, Idaho, Illinois, Oklahoma, Pennsylvania, South Carolina, Vermont, and Wisconsin. Finally, committee staff reviewed and reported on records retention articles and surveys by policy development organizations, including NCSC and NARA.

COMPLETING THE WORK

This report presents recommendations for amendments to the Arizona courts' case records retention and destruction policies. With the approval of the Arizona Judicial Council and the Arizona Supreme Court, these policies will be carried out, including revisions to the existing court records retention schedules. Should an existing court rule or code section need to be revised to effectuate the recommendations of this report or an entirely new court rule or code section be proposed, that court rule or code section will be brought before the Arizona Judicial Council for consideration.

ELECTRONIC CASE RECORDS: PAST, PRESENT, AND FUTURE

History and Overview of Records Retention and Destruction Law and Policy of the Arizona Judicial Branch

In 1991, Rule 29, Rules of the Supreme Court of Arizona, was adopted. This rule requires the Supreme Court to adopt records retention schedules for Arizona courts, providing:

(A) The Supreme Court shall adopt . . . retention and disposition schedules identifying the length of time court records must be kept prior to destruction and purge lists identifying documents to be removed from case files before storage or replication.

Rule 29 addresses both case and administrative court records at all levels of court: appellate, superior, justice of the peace, and municipal. The rule further directs that court records *shall* be maintained and *may* be destroyed in accordance with approved retention and disposition schedules, suggesting that the original intent of the rule was for destruction of court records to be permissive, not mandatory, with the local court.

As a direct result of Rule 29, four records retention and destruction schedules were developed. The limited jurisdiction court and general jurisdiction court schedules were adopted in 1991, the Court of Appeals schedule in 1999, and the Supreme Court schedule in 2001. Each of these schedules initially appeared as an administrative order of the Arizona Supreme Court; however, the limited jurisdiction and the general jurisdiction court schedules were subsequently adopted in the Arizona Code of Judicial Administration (ACJA) at §§ 4-302 and 3-402, respectively.

At the time these records retention and destruction schedules were developed, Arizona courts operated largely in a paper-based world. The schedules reflect the natural focus of the courts on paper case records. Now, nearly 25 years after the first records retention and destruction schedules were developed, Arizona courts are rapidly moving toward a largely electronic world. Today, case records are either e-filed as a “born-digital” document or scanned by the clerk after paper submission.

This evolution toward electronic case processing provides benefits to attorneys, the public, and the court. It offers instant access to case records, allows multiple users to access the same case record at the same time in different locations, results in almost no misplaced case documents or files, and requires less physical storage space. However, the change has also given rise to the need to re-examine the existing records retention and destruction schedules from the perspective of the growing volume of electronic case records and the diminishing volume of paper case records.

In addition to Rule 29 and the records retention and destruction schedules, Rule 123, Rules of the Supreme Court of Arizona, governs *access* to the judicial records of the state. Rule 123 is the judicial branch counterpart to the executive branch public records statutes. In 1997, the Supreme Court chose to exercise its constitutionally derived administrative authority over all state court

records by adopting Rule 123. This rule governs access to case documents and case data, as well as court administrative records, in both paper and electronic format.

One of the more well-known provisions of Rule 123 establishes that public access may be restricted for reasons of privacy, confidentiality, or because it is in the state's best interests (Rule 123(c)(1)). Additionally, Rule 123 delineates the authority of a clerk of court to remove case management system (CMS) data and case documents from online display once the records retention schedule period has been met (Rule 123(g)(5)). Finally, Rule 123 provides that for cases scheduled to be retained more than 25 years, courts or clerks of court may remove CMS data and case records from online display after 25 years, provided the data and records are then retained through an electronically preserved method until the retention schedule period has been met. In place of the records, the court or clerk of court is to display a notice online that directs the viewer to contact the court or clerk for access to the case record.

Future Records Projects Impacted by Electronic Records Retention and Destruction Law and Policy of the Arizona Judicial Branch

Several technology projects are in various stages of development by the Arizona Judicial Branch, requiring electronic records management policy direction. These new projects, which include e-Filing, e-Access, and e-Bench, will help the Judicial Branch strengthen the administration of justice by using technology to enhance public access to court services and improve the efficient management of court resources. E-Filing will permit electronic filing of case documents by attorneys and parties in all courts and all case types across the state. E-Access will provide remote electronic access to certain case documents and case information for attorneys, parties, other government entities, and the public. E-Bench will provide access to case documents and data by judges throughout the Arizona Judicial Branch. Each of these projects is impacted by electronic records retention and destruction policy, making the timely recommendations of this committee of vital importance.

Unintended Consequences of Current Records Retention and Destruction Law and Policy of the Arizona Judicial Branch

The present records retention and destruction policies of the Judicial Branch were developed in a paper records environment. Now, courts, court partners, and the public are rapidly turning away from paper toward electronic case records. Attempting to apply the current paper-based records retention policies to electronic case records has resulted in some unintended consequences, including:

- ❖ Harm can be caused to individuals whose case data remains on the Supreme Court and local court public access websites beyond the minimum period prescribed in the current records retention schedules. Data on this website is often used by companies conducting employment background searches, tenant screenings, and other investigations, and the data is sometimes misinterpreted, with detrimental consequences to these individuals.
- ❖ Users of the Supreme Court's Public Access website often do not recognize that data on the site is received from most, but not all, courts in Arizona.

- ❖ Sometimes case data appears on the Supreme Court’s Public Access website but the originating court has properly destroyed the underlying case file. In this situation, alleged errors or discrepancies between the data and the case file cannot be resolved.
- ❖ The Supreme Court’s Public Access website does not track, compare, describe, or maintain the many offenses established by local jurisdictions. Consequently, all of these charges are identified generically on the Public Access website as “local charge.” This situation has caused confusion among some users of the site regarding the type and severity of the local charge.
- ❖ When all factors are properly considered, the true cost of retaining electronic case records is significant. The media on which data are stored will eventually become obsolete or fail; data can be lost when digital records migrate to new technology; the growing volume of electronic records being generated is far greater than was ever generated on paper, and with the added ease of producing new electronic elements, such as sound and graphics, the size and number of electronic records is growing exponentially; verification of the chain of custody for electronic records is difficult and costly; hardware purchased for constant, ongoing government use must be of a high quality and have a lower failure rate than hardware purchased for the home, at a greater cost; and access speed, security, and recovery time for electronic data must all be of a high standard, again at a significant cost.
- ❖ Courts across the state but within the same court level do not retain case records for the same period of time, in part because of differing resources allocated to destruction of records among the courts. At times, differences in the period of time case records are retained generate complaints from the public.

COMMITTEE RECOMMENDATIONS AND COMMENTS

1. The length of time electronic case documents and data are made available online or at a court facility should be consistent within each court level across the state.

The committee recognizes that consistency of retention periods is expected by those who use court records across the state, including the public, attorneys, justice partners, the media, researchers, and others. The committee, therefore, proposes that consistency be achieved through the recommendations in this report.

Further, the committee recommends that bulk data requestors and subscribers receive only the same data that appears on the Supreme Court’s Public Access website with the proposed retention period modifications herein. Bulk data requestors and subscribers should receive the same data the general public receives on the Supreme Court and local court websites. This recommendation

can be achieved by modifying the provisions of the contracts and data dissemination agreements entered into with these individuals and entities.

- 2. Although the structure of the current Arizona court records retention and destruction schedules is generally sound, when considering electronic records, the committee concludes that the retention period for some limited jurisdiction court case records is too short, and a clarification is required in the retention period for juvenile delinquency records in general jurisdiction courts. Therefore, the committee is respectfully submitting recommended modifications to the existing records retention schedules as set forth in Appendix B.**

Currently, the retention period for DUI, OUI, and domestic violence offense cases in limited jurisdiction courts is seven years after final adjudication and completion of sentence. This retention period was designed around the seven-year look-back period in statute that may result in an increased charge for a repeat offense. The committee recommends lengthening this retention period to eight years to provide a buffer period and enable a prosecutor to obtain a warrant and order records from another court.

The general jurisdiction court records retention schedule currently establishes a retention period for juvenile delinquency case records that provides “After satisfaction of A.R.S. § 8-349 *or following the juvenile’s 30th birthday.*” The retention period begins following the year filed. The committee concludes that this retention period criteria is too vague, and, furthermore, the committee recognizes that courts do not store juvenile case files by date of birth. A definite retention period is preferred. Therefore, the committee recommends a definitive retention period for juvenile delinquency case records of “After satisfaction of A.R.S. § 8-349 *or 25 years.* Retention period begins following the year filed.”

The committee is aware that certain state statutes, such as A.R.S. §§ 8-348, 13-907, and 13-912.01, currently provide no time limitation within which a person must apply to set aside a previous conviction or for restoration of civil rights. In light of these statutes, case records should arguably be retained for a lifespan or even indefinitely. However, upon balancing practical considerations with the rights of the individuals who are the subject of these records, the committee determined that it is impractical for courts to retain case records for a lifespan or indefinitely. Statutory revisions would help by establishing a time limit within which such applications must be filed. However, without statutory revisions, the committee believes that, after balancing all factors, courts should continue to eliminate case records according to the existing retention periods, with the modifications proposed herein.

For limited jurisdiction courts, the committee also recommends the establishment of separate schedules for retention of paper case records, records displayed on public access websites maintained by both the Supreme Court and local courts, and electronic case records maintained in case and document

management systems. The recommended retention schedules for limited jurisdiction courts are presented in Appendix C.

Limited jurisdictions courts have jurisdiction over a high volume of relatively low-level offenses, such as civil traffic, misdemeanors and criminal traffic, petty offenses, parking, local ordinances, and others. Information contained in these cases is used by employers, background search companies, the public, the media, and others in a variety of ways and is sometimes harmful to individuals identified in the case, particularly when an error in the information or a misinterpretation occurs. Therefore, the committee determined that a three-tiered level of access, as set forth in Appendix C, should exist for limited jurisdiction court case records.

Generally, the committee determined that the current records retention schedule found in ACJA § 4-302 is sound and recommended extending only the existing retention period for DUI, OUI, and domestic violence offense cases from seven to eight years. However, the committee additionally concluded that information about these cases should be removed from the Supreme Court's Public Access website and from local court websites at the same time as the retention period for paper case documents to avoid unduly burdening the people who are the subject of these case records.

Finally, the committee concluded that a local court should retain case information in its case and document management systems for longer periods of time, in part to assist the court in ruling upon an application for set aside or for restoration of civil rights. Therefore, electronic case information will be retained at the court facility for a longer period of time than the information appears on a court website. The committee acknowledges a difference between publishing information to a court website, thereby permitting the ease of remote electronic access to the information anywhere that a computer and Internet connection exist, and requiring a personal visit when information is available only at a court facility. The proposed retention periods are set out in Appendix C.

Additionally, for limited jurisdiction courts, the committee recommends that local ordinance violations no longer be displayed on the Supreme Court's Public Access website. The design of the Supreme Court's Public Access website is unable to identify, track, and support the display of the wide variety of local ordinances that are continuously created and revised throughout the state. As a result, currently, the Supreme Court displays only the general term "local charge," on its Public Access website, for any local ordinance violation. This sometimes causes harm to the individual identified as responsible for the local ordinance violation, when others misinterpret the local charge to be of a serious nature, or even criminal, when it is not.

Currently, the Supreme Court displays only the term "local charge" on its Public Access website for a local ordinance violation, with no additional information. This general term was created by the Supreme Court for all local ordinance

violations, because the Supreme Court does not have sufficient resources to identify every local charge in every jurisdiction, by ordinance number and name of violation. Furthermore, local ordinances change regularly, requiring constant system revision and maintenance. Therefore, since sufficient resources are not available for the Supreme Court to identify and maintain all local ordinances throughout the state, the committee recommends that local ordinance violations not be displayed on the Supreme Court's Public Access website.

3. Destruction of electronic case documents and data should be mandatory and automatic, at a point in time specified in Arizona court policy, as follows:

- a. For general jurisdiction and appellate courts, destruction of records should be mandatory and automatic according to the time periods in the records retention and destruction schedules (ACJA § 3-402 and Administrative Orders 99-79 and 2001-45), with the proposed modifications herein, while taking into account any requirement to transfer these records to the Arizona State Library, Archives and Public Records (ASLAPR). (See also Rule 29, Rules of the Supreme Court of Arizona.)**

For any electronic document management system (EDMS) and CMS it maintains, the AOC must program the automatic deletion of electronic case documents and data in a local court's EDMS and CMS when the minimum electronic retention period has been met. A local court must do the same for any non-AOC-maintained EDMS or CMS under its control.

Currently, ASLAPR is unable to accept electronic records from courts and other public agencies, because it does not have the capacity to accept electronic records in multiple formats, maintain these records, and provide the records in a usable format for public research. Therefore, current practice dictates that Arizona courts cannot transfer electronic records to ASLAPR; instead, courts must retain these records in house. However, ASLAPR is pursuing funding to enable it to accept electronic records from courts and other state agencies; once this is achieved, general jurisdiction courts will be able to transfer electronic case records to ASLAPR, pursuant to the records retention schedule.

Compliance with the case file purge lists found in ACJA § 3-402 may no longer be practical or necessary when working with electronic records. The purge lists were originally established to enable clerks of court to remove certain paper documents from a file, thereby reducing the volume of the paper file for long-term storage. Now that courts operate primarily with electronic case records, compliance with the purge lists may be more cumbersome than simply retaining the entire electronic case file intact.

- b. For limited jurisdiction courts and the AOC, case records should be removed from public access websites maintained by both the Supreme Court and local courts, pursuant to the retention periods set forth in the current limited**

jurisdiction court records retention schedule (ACJA § 4-302), with the proposed modifications herein. Electronic records should be deleted automatically from case and document management systems at the end of the newly established retention period for electronic records as set forth in Appendix C.

For any EDMS and CMS it maintains, the AOC must program the automatic deletion of electronic case documents and data in a local court's EDMS and CMS when the minimum electronic retention period has been met. A local court must do the same for any non-AOC-maintained EDMS or CMS under its control.

The committee noted that the proposed revisions to the records retention schedule for electronic records are not impacted by ACJA § 1-401: Minimum Accounting Standards (MAS). Although MAS requires each court to undergo an external review of its accounting records, procedures, automated financial management system records, and internal controls at least triennially, the code section does not require the external auditor to begin the triennial review at the point the last review was completed. The code section requires only that the court undergo a review every three years. Therefore, when conducting the review, the external auditor generally reviews court case financial records over a specific period of time, often in the current fiscal year. The language found in ACJA § 1-401 may need to be clarified to express this position more clearly.

- 4. Given the extended time periods recommended for electronic records retention for designated case types, the committee concludes that no special provisions are required for longer maintenance of data for research purposes.**

The AOC regularly receives requests for research and statistics from Arizona courts (such as for the purpose of calculating judicial productivity credits), the Arizona legislature, Arizona probation departments, national court organizations, academic researchers, the media, the public, and others. The AOC must retain sufficient data and be able to collate, aggregate, organize, and extract this data to respond to inquiries. The retention periods for limited jurisdiction case and document management systems proposed in Appendix C provide data for a sufficient period of time to enable the AOC to continue to respond to these requests. By extending the retention period for limited jurisdiction court electronic case records stored in case and document management systems, as proposed in Appendix C herein, the data research needs of the AOC and individual courts will be accommodated.

- 5. A process should be developed for court personnel or the public to request that court records in a specific case be permanently retained pursuant to court order, in each level of court, similar to the current historical records provisions for general jurisdiction courts in ACJA § 3-402(F). Criteria upon which this decision is to be made should also be developed.**

ACJA § 3-402(F), which is limited to general jurisdiction court case records, establishes a procedure by which a case can be designated as historically significant or as a landmark case. The code section further identifies the clerk's responsibilities for processing and archiving such a case at ASLAPR.

Although the code section sets forth the factors a court must consider in deciding whether a case is a landmark case, it does not set forth factors for determining whether a case is historically significant. The committee believes that specific criteria should be developed for applicants and courts to rely upon in requesting and reaching a decision on whether a particular case file should be retained beyond its scheduled retention period, either as a historically significant case or as a landmark case. Furthermore, the committee believes the criteria and procedures should be extended to all levels of court throughout the state, not just the general jurisdiction court.

The committee believes the AOC should work with ASLAPR in establishing these provisions in the records retention schedules for all state courts in Arizona.

6. In light of the automation support required for the proposed electronic records management modifications, the committee recommends the following approach:

- a. A 24-month period should be provided to implement the new policies.**
- b. These electronic records policies should be applied to any case that reaches the retention period subsequent to adoption of these recommendations.**
- c. A process should be established by which individual courts may apply to the Commission on Technology or its designee for additional time to implement the new requirements, based upon technology resource constraints and funding.**
- d. The custodian(s) of records for each court shall institute a plan within 18 months, and provide a copy to the AOC, of how and by when the custodian will destroy electronic records for all cases that have already reached the retention period prior to adoption of these recommendations. Courts that use an AOC-supported CMS can seek the assistance of the AOC in instituting the plan.**

The committee believes that these cases can and should be deleted in due course and that courts should be given time to institute a plan as to how and when deletion will occur.

- e. Upon adoption of these recommendations, the AOC shall begin removing electronic case records from the Supreme Court's existing Public Access**

website and the planned e-Access website, regardless of when a case is destroyed by the local court.

ADDITIONAL COMMITTEE COMMENTS

- Courts are not only a repository of records for their own use, but, as a matter of policy, the Judicial Branch needs to retain records, for a reasonable period of time, for use by others, including the public, other government agencies, and private businesses.
- Imaged case documents and e-filed (born digital) case documents should be treated the same for retention purposes.
- The electronic version of a case document maintained by the local court as an original, whether filed on paper or electronically, is the original document.
- Depending on whether electronic documents and data are located on a local EDMS, in a local CMS, at the AOC, or published to the Internet, the custodian of the documents and data may be the local court, the judge, the elected clerk, or the AOC.
- Before deleting records from a local court, the AOC must first advise the local court of its intent to delete.
- When the local court is to delete electronic records, it must do so following the records retention schedules and may do so without first confirming its intent to delete with the AOC.
- Any EDMS and CMS constructed or procured by any court from this date forward should delete case data and documents from the local court's EDMS and CMS automatically after first giving notice to the local court.
- Any deletion of electronic documents and data by a local court must be accomplished in a manner that successfully triggers a corresponding deletion within the statewide data warehouse, central case index, or the central document repository, as applicable.
- Further study and examination are required to address the requirements for sex offender registration. A.R.S. §§ 13-3821 and 13-907 either *require* a defendant to register as a sex offender upon conviction of a third or additional offense or *permit* a judge to order a defendant to register as a sex offender upon conviction of certain offenses. A time limit for conviction of a subsequent offense is not identified. Arguably, a sex offender case should be retained for a lifespan, or even indefinitely, since proof of a prior conviction is established by a certified copy of the court order of conviction. Sex offender registration requirements must be reconciled with the court case records retention schedules. This could be done by establishing a definition of "completion of sentence" in the records retention schedules, the creation of a flag in the CMS to identify these cases, or by another method.

- The Supreme Court may wish to consider changing from a permanent retention period for some of its case documents to a fixed number of years.

CONCLUSION

During this time when courts are transitioning from paper-based to electronic case records, it is important to establish guiding principles for the retention and destruction of electronic case records. The principles developed by this committee will help in the development of the e-Filing, e-Access, e-Bench, and other electronic case records projects – projects that will help the Judicial Branch strengthen the administration of justice by using technology to enhance public access to court services and improve the efficient management of court resources.

By obtaining input from all aspects of court management, as well as users of court records, the committee sought to balance the competing interests of access to case records with the privacy rights of the individuals who are the subject of those records. Furthermore, the committee considered the practical and legal requirements and responsibilities of the courts, the users of case records, and the individuals identified in the records in developing these recommendations.

This report presents recommendations for amendments to the Arizona courts' case records retention and destruction policies. With the approval of the Arizona Judicial Council and the Arizona Supreme Court, these policies will be carried out, including revisions to the existing court records retention schedules. Should an existing court rule or code section need to be revised to effectuate the recommendations of this report or an entirely new court rule or code section be proposed, that court rule or code section will be brought before the Arizona Judicial Council for consideration.

APPENDIX A

IN THE SUPREME COURT OF THE STATE OF ARIZONA

In the Matter of:)	
)	
ESTABLISHING THE ADVISORY)	Administrative Order
COMMITTEE TO DEVELOP POLICIES)	<u>No. 2013 - 33</u>
FOR RETENTION, DESTRUCTION,)	
AND ACCESS TO ELECTRONIC)	
COURT RECORDS)	
<hr/>)	

The Arizona Judicial Branch is currently digitizing court records by implementing electronic document management systems and a statewide e-filing system, and developing an online system that will allow individuals to remotely access, view, and print court documents and data. These new systems help achieve the important goal of this Court’s strategic agenda to strengthen the administration of justice by improving efficiency of case processing and by using technology to enhance public access to court services.

Rule 123, Rules of the Supreme Court, as well as the records retention and destruction schedules in the Arizona Code of Judicial Administration (ACJA), similar Administrative Orders, and various statutes govern the retention and management of case documents and data throughout the judicial branch of Arizona.

Historically court records have been paper based. Additional direction and clarification is needed to manage digital records.

In accordance with ACJA § 1-104, the Chief Justice establishes advisory committees to the Arizona Judicial Council to assist the Council in carrying out its responsibilities. Therefore, pursuant to Article VI, Section 3 of the Arizona Constitution and ACJA § 1-104,

IT IS ORDERED that the Advisory Committee to Develop Policies for Retention, Destruction, and Access to Electronic Court Records is established to examine and make recommendations on the following questions:

1. When the minimum retention period has been met under the existing retention schedules, is destruction of electronic case documents and data mandatory or permissive?
2. Given that it is easier to systematically destroy electronic records, are the current records retention time periods adequate?
3. Should policies regarding the length of time case documents and data are made available

to the public online be consistent across court levels and from court to court within the same level?

4. Once the destruction period is reached, should originals or copies of documents or data be retained for purposes of government research and analysis and, if so, should those records continue to be publicly available or released only pursuant to court order?

The Committee shall report its recommendation to the Arizona Judicial Council not later than at the Council's meeting in December 2013. Additionally, since this Court is aware that court records are used by many different groups, including law enforcement, government entities, members of the public, background search firms, credit reporting services, attorneys and their staff, and researchers, the Committee shall attempt to seek widespread public input in formulating recommendations.

IT IS FURTHER ORDERED that the individuals listed in Appendix A are appointed as members of the Committee beginning upon entry of this Order and ending on December 31, 2013. The Chief Justice may appoint additional members as necessary.

IT IS FURTHER ORDERED that the Committee meetings shall be scheduled at the discretion of the Chair. Pursuant to ACJA § 1-202, all meetings shall comply with the public meeting policy of the Arizona Judicial Branch. The Administrative Office of the Courts (AOC) shall provide staff for the Committee.

Dated this 20th day of March, 2013.

REBECCA WHITE BERCH
Chief Justice

APPENDIX B

RECOMMENDED MODIFICATIONS TO EXISTING RECORDS RETENTION SCHEDULES

LIMITED JURISDICTION COURT

RECORD TYPE	PRESENT RETENTION PERIOD	PROPOSED RETENTION PERIOD	COMMENTS/REASON
A. Civil case records			
- Civil other than traffic	1 yr. after final adjudication and satisfaction of judgment	No change recommended	
- Civil other than traffic – small claims	5 yrs. after final judgment	No change recommended	
- Parking violations-statute only	6 months after satisfaction of sanctions	No change recommended	
- Civil traffic	1 yr. after final adjudication and satisfaction of sanctions	5 yrs. after final adjudication and satisfaction of sanctions.	Civil traffic case documents may be used to review the 36-month look-back period when multiple violations of the motor vehicle financial responsibility requirement have occurred (A.R.S. § 28-4135(E)(3) and other purposes. Additionally, civil traffic case records are used by local courts when a claim of false identity arises. Civil traffic case data is also used by local courts and the AOC to analyze trends, prepare budgets, compute judicial productivity credits, respond to legislative inquiries, and for other reasons.
- Local ordinances	6 months after satisfaction of sanctions – 1 yr. after final adjudication and satisfaction of	1 yr. after final adjudication and satisfaction of sanctions	A local charge must be identified as a separate case type to emphasize that the Supreme Court is not to publish any information on its Public Access website on

LIMITED JURISDICTION COURT

RECORD TYPE	PRESENT RETENTION PERIOD	PROPOSED RETENTION PERIOD	COMMENTS/REASON
	judgment		a local charge. Since the Supreme Court is unable to provide <i>specific</i> information on an ordinance violation, the Supreme Court should not publish <i>any</i> information on an ordinance violation.
B. Criminal case records (applies to both adult and juvenile cases)			
- Misdemeanors and criminal traffic	5 yrs. after final adjudication and completion of sentence.	No change recommended	
- DUI, OUI, and domestic violence offenses	7 yrs. after final adjudication and completion of sentence	8 yrs. after final adjudication and satisfaction of sanctions	A buffer period is needed, beyond the seven-year statutory look-back period, to obtain a warrant and order records from another court.

GENERAL JURISDICTION COURT

RECORD TYPE	PRESENT RETENTION PERIOD	PROPOSED RETENTION PERIOD	REASON
- Civil – General Includes: - Administrative review - Contract - Declaratory judgment - Department of Economic Security (DES) instant judgment - Eminent domain - Foreign judgment - Habeas corpus - Malpractice - Name change - Non-general stream	50 yrs. for cases filed after 1959; Permanent for cases filed prior to 1960	No change recommended	

GENERAL JURISDICTION COURT

RECORD TYPE	PRESENT RETENTION PERIOD	PROPOSED RETENTION PERIOD	REASON
<ul style="list-style-type: none"> adjudication water rights - Quiet title - Restoration of civil rights - Special action appeal - Tax appeal - Tort general (all non-motor vehicle) - Transcript of judgment - Other unspecified non-domestic relations civil case categories 			
- Family court cases – with children	75 yrs. for cases filed after 1959; Permanent for cases filed prior to 1960	No change recommended	
- Family court cases – without children	50 yrs. for cases filed after 1959; Permanent for cases filed prior to 1960	No change recommended	
- Probate Includes: <ul style="list-style-type: none"> - Conservatorship - Combination Conservatorship/Guardianship - Guardianship (adult and juvenile) - Adult adoptions - Non-case specific filings 	100 yrs. for cases filed after 1959; Permanent for cases filed prior to 1960	No change recommended	
- Criminal - General	50 yrs. (for cases filed after 1959); Permanent (for cases filed prior to 1960)	No change recommended	
- Juvenile dependency	100 yrs. (for	No change	

GENERAL JURISDICTION COURT

RECORD TYPE	PRESENT RETENTION PERIOD	PROPOSED RETENTION PERIOD	REASON
(includes Indian Child Welfare Act Cases. Also includes sealed dependency materials)	cases filed after 1959); Permanent (for cases filed prior to 1960)	recommended	
- Juvenile delinquencies (includes citations, juvenile orders of protection, injunctions against harassment, incorrigibility and sealed delinquency materials)	After satisfaction of A.R.S. § 8-349 or following juvenile's 30 th birthday, A.R.S. § 13-912. Microfilm and dispose in accordance with court order. The juvenile court may authorize the microfilming or destruction of these cases or orders of protection/injunctions against harassment issued pursuant to A.R.S. § 13-3602.	After satisfaction of A.R.S. § 8-349 or 25 yrs. Retention period begins following the year filed.	Since courts do not store these records according to the age of the juvenile, a time-certain for destruction is needed. The youngest age a juvenile can be charged with delinquency is eight years old; therefore following the statutory requirement for retention found in A.R.S. § 13-912 (of the juvenile's 30 th birthday), a retention period of 25 years, being more than the 22 years at which the youngest juvenile charged will reach the age of 30, is adequate and provides a buffer of three years.

COURT OF APPEALS

RECORD TYPE	PRESENT RETENTION PERIOD	PROPOSED RETENTION PERIOD	REASON
-			

SUPREME COURT

RECORD TYPE	PRESENT RETENTION PERIOD	PROPOSED RETENTION PERIOD	REASON
- Record on appeal from lower court agency for: <i>Denied Petition for Review: Civil and Criminal</i>, except those involving Post-Conviction Relief in death penalty cases.	Permanent	5 yrs. after date of final adjudication	This time period is in line with other state supreme courts.

APPENDIX C

NEW LIMITED JURISDICTION COURT ELECTRONIC RECORDS RETENTION SCHEDULE FOR PUBLIC ACCESS WEBSITES AND CASE AND DOCUMENT MANAGEMENT SYSTEMS

LIMITED JURISDICTION COURT			
RECORD TYPE	CURRENT/ PROPOSED RECORDS RETENTION SCHEDULE	SUPREME COURT AND LOCAL COURT PUBLIC ACCESS WEBSITES	CASE AND DOCUMENT MANAGEMENT SYSTEMS
A. Civil case records			
- Civil other than traffic	1 yr. after final adjudication and satisfaction of judgment	1 yr. after final adjudication and satisfaction of judgment	5 yrs. after final adjudication and satisfaction of judgment
- Civil other than traffic – small claims	5 yrs. after final judgment	5 yrs. after final judgment	5 yrs. after final judgment
- Parking violations – statute only	6 mos. after satisfaction of sanctions	6 mos. after satisfaction of sanctions	1 yr. after satisfaction of sanctions
- Civil traffic	1 yr. after final adjudication and satisfaction of sanctions	1 yr. after final adjudication and satisfaction of sanctions	5 yrs. after final adjudication and satisfaction of sanctions
- Local ordinances	1 yr. after final adjudication and satisfaction of sanctions	Not available on the Supreme Court’s Public Access website. May be available on a local court website.	5 yrs. after final adjudication and satisfaction of sanctions
B. Criminal case records (applies to both adult and juvenile cases)			
- Misdemeanors and criminal traffic	5 yrs. after final adjudication and completion of sentence	5 yrs. after final adjudication and completion of sentence	10 yrs. after final adjudication and completion of sentence
- DUI, OUI, and domestic violence offenses	8 yrs. after final adjudication and satisfaction of sanctions	8 yrs. after final adjudication and satisfaction of	10 yrs. after final adjudication and satisfaction of

LIMITED JURISDICTION COURT

RECORD TYPE	CURRENT/ PROPOSED RECORDS RETENTION SCHEDULE	SUPREME COURT AND LOCAL COURT PUBLIC ACCESS WEBSITES	CASE AND DOCUMENT MANAGEMENT SYSTEMS
		sanctions	sanctions
- Petty offenses	1 yr. after final adjudication and completion of sentence	1 yr. after final adjudication and completion of sentence	1 yr. after final adjudication and completion of sentence