

**REPORT OF THE  
JOINT SUBCOMMITTEE STUDYING**

# **A Retention Schedule for Court Records**

**TO THE GOVERNOR AND  
THE GENERAL ASSEMBLY OF VIRGINIA**



## **HOUSE DOCUMENT NO. 3**

**COMMONWEALTH OF VIRGINIA  
RICHMOND  
1991**

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Report of the  
Joint Subcommittee Studying  
A Retention Schedule for Court Records  
To  
The Governor and the  
General Assembly of Virginia  
Richmond, Virginia  
1990

TO: The Honorable L. Douglas Wilder, Governor  
and  
The General Assembly of Virginia

## Introduction

Pursuant to House Joint Resolution No. 69 (see Appendix A), the 1986 Session of the General Assembly authorized a study to review alternatives and recommend proposals concerning a retention and disposition policy for circuit court records in the Commonwealth.

C. Hardaway Marks, a delegate from Hopewell and sponsor of the study resolution, was selected to chair the joint study subcommittee. Other members of the General Assembly chosen from the House of Delegates to serve on this subcommittee were W. Tayloe Murphy, Jr., and Robert W. Ackerman and from the Senate were Virgil H. Goode, Jr., and Thomas J. Michie, Jr. Additionally, two circuit court judges, Robert C. Goad and Robert W. Stewart; two clerks of circuit courts, Charlton E. Gnadl and David A. Bell; and two citizen members, Lawrence A. Belcher and R. Breckinridge Daughtrey, were appointed to serve on the subcommittee.

In order to receive sufficient input and response to interim proposals, the study was carried over through 1989. A final legislative proposal was submitted to the 1990 Session of the General Assembly for approval following ratification of legislation submitted to the 1989 Session.

## Background

In recent years, the clerks of Virginia's circuit courts have been inundated with a relentlessly growing sea of court records. Many clerks' offices suffer from a critical shortage of storage space. Often, case files must be transferred to makeshift, temporary, or inaccessible storage areas. Consequently, quality of service to the public is beginning to suffer as retrieval time for files increases. Jammed storage areas often unavoidably pose serious fire risks. Most clerks have neither the funds nor personnel to deal with the many problems created by this mountain of case files which prior to July 1, 1989, were required under state law to be permanently retained.

The annual number of law, equity, and criminal cases commenced in Virginia circuit courts increased 177 percent between 1960 and 1983. New cases statewide grew from 54,048 in 1960 to 149,583 in 1983. Case volume is not expected to decline significantly in the future.

By the year 2000, it has been estimated that approximately \$3,500,000 will be needed to construct new storage areas. This estimate reflects only minimal equipment, construction, and maintenance costs. On the other hand, microfilming offers no easy solution to the storage problem. Approximately \$200,000 annually would be required to microfilm new case files, and this sum would leave all existing files in their current state.

Overcrowding of storage areas in the Fairfax County Courthouse is illustrative of the problem statewide. More than 260,500 case files are housed in the Fairfax Judicial Center. Of these, files in excess of 145,000 are stacked in temporary, shelved-in areas which have been earmarked for courtroom and administrative office expansion within the next five years. There is no other storage space currently available, and construction costs for new facilities would exceed \$100 per square foot. Almost \$3 million would be required to backfilm all case files. Additionally, Fairfax County does not have sufficient staff to continually reorganize and upgrade (including boxing, marking, and moving) existing files.

Although the volume of case files is greater in Fairfax County than in most other circuit courts in the Commonwealth, many of the smaller courthouses are just as or even more crowded. For example, testimony was received from the City of Williamsburg Circuit Court Clerk that massive storage problems have left her entire office "in a shambles."

## Considerations

In an effort to understand the magnitude of this problem and examine alternative solutions, the subcommittee held public hearings and work sessions during 1987, 1988, and 1989. Circuit court clerks, judges, and other interested parties were invited and encouraged to share their concerns and suggest solutions.

Generally, the subcommittee explored three alternatives or combinations thereof:

1. Constructing statewide storage facilities;
2. Microfilming all concluded circuit court law, equity, and criminal case files;
3. Purging or destroying existing case files after approved retention periods.

Each alternative contained drawbacks and posed serious funding problems.

## Findings and Recommendations

The subcommittee recommended to the 1989 Session of the General Assembly that the study be continued for an additional year for the purpose of holding hearings and taking surveys to receive input from circuit court judges, clerks, and others with regard to a proposed comprehensive records retention program. This program was embodied within legislation enacted by the 1989 Session (see Appendix B) and was structured as follows:

- A. All case files ended prior to January 1, 1913, are to be permanently maintained in hardcopy form, either in the locality involved or in the State Library in accordance with §§ 42.1-83 and 42.1-86 of the Code.

Reason: These records, which constitute only a small percentage of the total volume of case files, represent a mother lode for genealogists and historians who must rely almost exclusively on court records for many types of historical data. For records prior to 1913, when vital statistics began being kept, collateral sources of information are very scarce or nonexistent.

B. Case files after 1912.

1. General retention rule:

- a. After a 30-year retention period (all retention periods begin on the court order date), all case files may be purged of nonessential material which will be enumerated in a disposal list to be prepared during 1989.
- b. Clerks will be encouraged to keep the entire file for any case which is deemed to have historical or sensational significance.
- c. No records regulating or pertaining to land title are to be destroyed.
- d. The files retained after purging may be kept either in hardcopy or on microfilm, at the local clerk's option.

2. Exceptions where the entire file may be destroyed after a 10-year retention period:

- a. Cases that fall under the two- or five-year rule (see § 8.01-335(A) and (B)) which permits courts to dismiss inactive cases.
- b. Nonsuits.
- c. Misdemeanor appeals (unless a felony is involved).
- d. Uncontested divorce case files.
- e. Other (to be designated).

During 1989, the subcommittee specifically sought guidance as to which items should be included on the 30-year disposal list or added to the recommended exceptions subject to the 10-year disposal rule. A survey was conducted among all circuit court clerks to determine the pervasiveness of the overcrowding problem and to solicit responses to the enacted legislation.

Based on further reflection by subcommittee members, results of the clerks' survey, and input from other interested parties, the subcommittee reversed itself as to selective purging provisions under the 30-year

retention proposal. This change of heart was based upon a consensus (with one dissenting opinion) that clerks would have neither the time nor money to go through each case file and selectively purge designated items.

Consequently, in lieu of the 30-year retention period, legislation was proposed (see Appendix C) which would authorize the destruction of case files in their entirety at the discretion of each circuit court clerk based upon the type of case file involved. Civil and chancery case files could be destroyed after 20 years, criminal misdemeanor files after 10 years, and criminal felony files (i) after 20 years or (ii) when the sentence term ends, whichever comes later.

This proposal left intact the permanent maintenance requirements for files involving cases ended prior to January 1, 1913, (see subsection A of § 17-47.4) and the 10-year retention period for designated files under subsection B of § 17-47.4. Also, the entire file of any case deemed by the local clerk of court to have historical, genealogical, or sensational significance must be permanently retained as shall the file of any case in which the title to real estate is established, conveyed, or condemned by an order or decree of the court or by a property settlement agreement.

\* \* \*

In summation, the subcommittee felt that neither construction of regional or local depositories nor wholesale microfilming solves the overcrowding problem. Additionally, each of these options would be prohibitively expensive.

The proposed records retention program with its multitiered retention periods permits each locality to begin destroying older case files at its own pace. While the subcommittee was reluctant to recommend the destruction of entire case files, it was believed that sufficient safeguards have been provided to ensure that vital records are preserved. These safeguards include lengthy waiting periods and permanent retention requirements for designated records. Even after passage of the mandatory waiting periods, case file destruction is merely permissive, with each local circuit court clerk being authorized to make any final determinations.

Subcommittee members felt that overcrowding of storage areas should be dealt with immediately and that to propose "stop gap" measures would ultimately prove more expensive. The proposed records retention program serves to balance cost against historic significance and the necessity to permanently maintain vital records.

Respectfully submitted,

C. Hardaway Marks, Chairman

Robert W. Ackerman

Lawrence A. Belcher

David A. Bell

R. Breckinridge Daughtrey

Charlton E. Gnad

Robert C. Goad

Virgil H. Goode, Jr., (Dissenting statement attached)

Thomas J. Michie, Jr.

W. Tayloe Murphy, Jr.

Robert W. Stewart



Dissenting statement of Senator Virgil H. Goode, Jr.:

I recognize the need for additional space for Virginia's circuit court clerks, but I prefer the listing of specific items for disposal on a disposal list approved by the General Assembly instead of the bill proposed by the subcommittee.

\* \* \*

**GENERAL ASSEMBLY OF VIRGINIA -- 1986 SESSION**

Appendix A

**HOUSE JOINT RESOLUTION NO. 69**

*Requesting a joint subcommittee to study the need to establish a retention schedule for court records.*

Agreed to by the House of Delegates, February 10, 1986

Agreed to by the Senate, March 6, 1986

**WHEREAS**, a critical shortage of space exists in many courthouses across the Commonwealth; and

**WHEREAS**, the number of criminal and civil cases commenced in the circuit courts of Virginia continues to increase; and

**WHEREAS**, court orders emanating from all circuit court proceedings are, and will continue to be, recorded in perpetuity; and

**WHEREAS**, no statutory provisions currently exist to permit the disposal of case files; now, therefore, be it

**RESOLVED** by the House of Delegates, the Senate concurring, That a joint subcommittee be established to study the need for a retention schedule for criminal and civil case files.

The joint subcommittee shall be appointed as follows: three members of the House Committee for Courts of Justice, to be appointed by the Speaker of the House of Delegates; two members of the Senate Committee for Courts of Justice, to be appointed by the Senate Committee on Privileges and Elections; two circuit court judges and one citizen from the Commonwealth at large to be appointed by the Speaker of the House; and two clerks of circuit courts and one citizen from the Commonwealth at large to be appointed by the Senate Committee on Privileges and Elections. The Chief Justice of the Supreme Court of Virginia shall recommend the appointments of circuit court judges to the appointing authority; the President of the Virginia Court Clerks' Association shall recommend the appointment of clerks of circuit courts to the appointing authority; and the State Library Board shall recommend the appointment of citizens at large to the appointing authorities.

The joint subcommittee shall complete its work prior to November 15, 1986.

The costs of this study, including direct and indirect costs, are estimated to be \$14,800.

1 D 7/27/88 Brinson C 7/27/88 jds

2 SENATE BILL NO. .... HOUSE BILL NO. ....

3 A BILL to amend and reenact § 17-47.4 of the Code of Virginia,  
4 relating to disposal of papers in ended cases.

5

6 Be it enacted by the General Assembly of Virginia:

7 1. That § 17-47.4 of the Code of Virginia is amended and reenacted as  
8 follows:

9 § 17-47.4. Disposition of papers in ended cases.-- A. The  
10 Except as otherwise provided by this section, the clerk of a circuit  
11 court may cause any or all ended records, papers, or documents  
12 pertaining to law, chancery, and criminal cases which have been ended  
13 for a period of three years or longer to be destroyed if such records,  
14 papers, or documents no longer have administrative, fiscal,  
15 historical, or legal value to warrant continued retention, provided  
16 such records, papers, or documents have been microfilmed. Such  
17 microfilm and microphotographic process and equipment shall meet State  
18 state archival microfilm standards pursuant to § 42.1-82 and such  
19 microfilm shall be placed in conveniently accessible files and  
20 provisions made for examining and using same. The clerk shall further  
21 provide security negative microfilm copies of such ended cases for  
22 storage in the Archives and Records Division of the Virginia State  
23 Library.

24 B. All case files for cases ended prior to January 1, 1913,  
25 shall be permanently maintained in hardcopy form, either in the

1 locality served by the circuit court where such files originated or in  
2 the Archives and Records Division of the Virginia State Library and  
3 Archives in accordance with the provisions of §§ 42.1-83 and 42.1-86  
4 of the Code.

5 C. The following records for cases ending on or after January 1,  
6 1913, may be destroyed in their entirety at the discretion of the  
7 clerk of each circuit court after having been retained for ten years:

- 8 1. Conditional sales contracts;
- 9 2. Concealed weapons permit applications;
- 10 3. Minister appointments;
- 11 4. Petitions for appointment of trustee;
- 12 5. Name changes;
- 13 6. Nolle prosequi cases;
- 14 7. Law and chancery matters that are voluntarily dismissed;
- 15 8. Misdemeanor cases, including those which were commenced on a  
16 felony charge but concluded as a misdemeanor;
- 17 9. Suits to enforce a lien;
- 18 10. Garnishments;
- 19 11. Executions except for those covered in § 8.01-44;
- 20 12. Miscellaneous oaths and qualifications.

21 D. All other records or cases ending on or after January 1,  
22 1913, shall be retained thirty years after the court order date and  
23 shall, after this thirty-year period, be subject to the following  
24 guidelines:

25 1. After July 1, 1990, all nonessential material may be purged  
26 in accordance with a disposal list approved by the General Assembly.

27 2. The entire file of any case deemed by the local clerk of  
28 court to have historical or sensational significance shall be

1 retained.

2 3. All records regulating or pertaining to the title of land  
3 shall be retained.

4 4. Any files retained after purging may be kept either in  
5 hardcopy form or on microfilm at the option of the local clerk of  
6 court. Microfilming shall be in accordance with State standards, with  
7 original files being destroyed after they are microfilmed.

8

#

1 D 12/8/89 Brinson C 12/12/89 jds

2 SENATE BILL NO. .... HOUSE BILL NO. ....

3 A BILL to amend and reenact § 17-47.4 of the Code of Virginia,  
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11 maintained in hardcopy form, either in the locality served by the  
12 circuit court where such files originated or in the Archives and  
13 Records Division of the Virginia State Library and Archives in  
14 accordance with the provisions of §§ 42.1-83 and 42.1-86 of the Code.

15 B. The following records for cases ending on or after January 1,  
16 1913, may be destroyed in their entirety at the discretion of the  
17 clerk of each circuit court after having been retained for ten years:

- 18 1. Conditional sales contracts;
- 19 2. Concealed weapons permit applications;
- 20 3. Minister appointments;
- 21 4. Petitions for appointment of trustee;
- 22 5. Name changes;
- 23 6. Nolle prosequi cases;
- 24 7. Law and chancery matters that are voluntarily dismissed,
- 25 including nonsuits, cases that are dismissed as settled and agreed,

1 and cases that are discontinued or dismissed under § 8.01-335;

2 8. Misdemeanor and traffic cases, including those which were  
3 commenced on a felony charge but concluded as a misdemeanor;

4 9. Suits to enforce a lien;

5 10. Garnishments;

6 11. Executions except for those covered in § 8.01-44; and

7 12. Miscellaneous oaths and qualifications, but only if the order  
8 or oath or qualification is spread in the appropriate order book.

9 C. All other records or cases ending on or after January 1, 1913,  
10 ~~shall be retained thirty years after the court order date and shall,~~  
11 ~~after this thirty-year period, be may be destroyed in their entirety~~  
12 ~~at the discretion of the clerk of each circuit court~~ subject to the  
13 following guidelines:

14 ~~1. After July 1, 1990, all nonessential material may be purged in~~  
15 ~~accordance with a disposal list approved by the General Assembly.~~

16 ~~2. Any files retained after purging may be kept either in~~  
17 ~~hardcopy form or on microfilm at the option of the local clerk of~~  
18 ~~court. Microfilming shall be in accordance with state archival~~  
19 ~~microfilm standards pursuant to § 42.1-82, with original files being~~  
20 ~~destroyed after they are microfilmed.~~

21 1. All civil and chancery case files to which subsection D does  
22 not pertain may be destroyed after twenty years from the court order  
23 date.

24 2. All criminal case files involving a misdemeanor may be  
25 destroyed after ten years from the court order date.

26 3. All criminal case files involving a felony may be destroyed  
27 (i) after twenty years from the court order date or (ii) when the  
28 sentence term ends, whichever comes later.

1 D. Under the provisions of subsections B and C, the entire file  
2 of any case deemed by the local clerk of court to have historical  
3 value, as defined in § 42.1-77, or genealogical or sensational  
4 significance shall be retained permanently as shall all cases in which  
5 the title to real estate is established, conveyed or condemned by an  
6 order or decree of the court or by a property settlement agreement .  
7 The final order for all cases in which the title to real estate is so  
8 affected shall include an appropriate notification thereof to the  
9 clerk.

10 E. Except as provided in subsection A, the clerk of a circuit  
11 court may cause any or all ended records, papers, or documents  
12 pertaining to law, chancery, and criminal cases which have been ended  
13 for a period of three years or longer to be destroyed if such records,  
14 papers, or documents no longer have administrative, fiscal,  
15 historical, or legal value to warrant continued retention, provided  
16 such records, papers, or documents have been microfilmed. Such  
17 microfilm and microphotographic process and equipment shall meet state  
18 archival microfilm standards pursuant to § 42.1-82 and such microfilm  
19 shall be placed in conveniently accessible files and provisions made  
20 for examining and using same. The clerk shall further provide  
21 security negative microfilm copies of such ended cases for storage in  
22 the Archives and Records Division of the Virginia State Library and  
23 Archives.

24

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