

TITLE 1 GENERAL GOVERNMENT ADMINISTRATION
CHAPTER 18 EXECUTIVE RECORDS RETENTION AND DISPOSITION SCHEDULES (ERRDS)
PART 355 ERRDS, PUBLIC DEFENDER DEPARTMENT

1.18.355.1 ISSUING AGENCY: State Commission of Public Records - State Records Center and Archives
[1.18.355.1 NMAC - Rp, 1.18.355.1 NMAC, 01/01/2009]

1.18.355.2 SCOPE: public defender department
[1.18.355.2 NMAC - Rp, 1.18.355.2 NMAC, 01/01/2009]

1.18.355.3 STATUTORY AUTHORITY: Section 14-3-6 NMSA 1978. The administrator shall establish a records management program for the application of efficient and economical management methods for the creation, utilization, maintenance, retention, preservation and disposal of public records.
[1.18.355.3 NMAC - Rp, 1.18.355.3 NMAC, 01/01/2009]

1.18.355.4 DURATION: permanent
[1.18.355.4 NMAC - Rp, 1.18.355.4 NMAC, 01/01/2009]

1.18.355.5 EFFECTIVE DATE: January 1, 2009 unless a later date is cited at the end of a section.
[1.18.355.5 NMAC - Rp, 1.18.355.5 NMAC, 01/01/2009]

1.18.355.6 OBJECTIVE: To establish a records disposal schedules for the orderly management and retirement of records necessary for carrying out the Public Records Act per Section 14-3-6 NMSA 1978.
[1.18.355.6 NMAC - Rp, 1.18.355.6 NMAC, 01/01/2009]

1.18.355.7 DEFINITIONS:

- A. “Administrator”** means the state records administrator (Section 14-3-2 NMSA 1978).
- B. “Agency”** means any state agency, department, bureau, board, commission, institution or other organization of the state government, the territorial government and the Spanish and Mexican governments in New Mexico (Section 14-3-2 NMSA 1978).
- C. “Archives”** means the state archives of the commission of public records.
- D. “Disposition”** means final action that puts into effect the results of an appraisal decision for a series of records (i.e., transfer to archives or destruction).
- E. “Habeas Corpus”** means a writ which directs the law enforcement officials who have custody of a prisoner to appear in court with the prisoner to help the judge determine whether the prisoner is lawfully in prison or jail. The writ is obtained by petition to a judge in the county or district where the prisoner is incarcerated, and the judge sets a hearing on whether there is a legal basis for holding the prisoner.
- F. “Misdemeanor”** means a class of criminal offenses less serious than felonies and sanctioned by less severe penalties.
- G. “Non-record”** means extra copies of documents kept solely for convenience of reference, stocks of publications, records not usually included within the scope of the official records of an agency or government entity, and library material intended only for reference or exhibition. The following specific types of materials are non-records: materials neither made nor received in pursuance of statutory requirements nor in connection with the functional responsibility of the officer or agency; extra copies of correspondence; preliminary drafts or other material summarized in final or other form and which have no value once action has been taken; blank forms, transmittal letters or forms that do not add information; sample letters; and reading file or informational files.
- H. “Public record”** means all books, papers, maps, photographs or other documentary materials, regardless of physical form or characteristics, made or received by any agency in pursuance of law or in connection with the transaction of public business and preserved, or appropriate for preservation, by the agency or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations or other activities of the government, or because of the informational and historical value of data contained therein (Section 14-3-2 NMSA 1978).
- I. “Records custodian”** means the statutory head of the agency using or maintaining the records or the custodian's designee.
- J. “Records management”** means the systematic control of all records from creation or receipt through processing, distribution, maintenance and retrieval, to their ultimate disposition.

K. “Records retention and disposition schedule” means rules adopted by the commission pursuant to Section 14-3-6 NMSA 1978 describing records of an agency, establishing a timetable for their life cycle and providing authorization for their disposition.

L. “Retention” means the period of time during which records must be maintained by an organization because they are needed for operational, legal, fiscal, historical or other purposes.

M. “Routine cases” means cases that have not been designated as special cases by the district defender or chief appellate defender.

N. “Special cases” means cases that have been designated as warranting special retention treatment by the district defender or chief appellate defender (i.e., might include cases involving unusually complex or difficult litigation clients with psychological or mental health issues, or any other unusual case that the district defender chief appellate defender judges to require greater than routine retention for ethical considerations or other reasons.)

[1.18.355.7 NMAC - Rp, 1.18.355.7 NMAC, 01/01/2009]

1.18.355.8 ABBREVIATIONS AND ACRONYMS:

A. “NMAC” stands for New Mexico administrative code.

B. “NMSA” stands for New Mexico statutes annotated.

[1.18.355.8 NMAC - N, 01/01/2009]

1.18.355.9 INSTRUCTIONS:

A. For records of a general administrative nature, refer to the GRRDS, General Administrative Records Retention and Disposition Schedule, 1.15.2 NMAC.

B. For records of a financial nature, refer to the GRRDS, General Financial Records Retention and Disposition Schedule, 1.15.4 NMAC.

C. For records of a personnel nature, refer to the GRRDS, General Personnel Records Retention and Disposition Schedule, 1.15.6 NMAC.

D. For records of a medical nature, refer to the GRRDS, General Medical Records Retention and Disposition Schedule, 1.15.8 NMAC.

E. Retention periods shall be extended until six months after all current or pending litigation; current claims, audit exceptions or court orders involving a record have been resolved or concluded.

F. The descriptions of files are intended to be evocative, not complete. For example, there will always be some documents that are filed in a file that are not listed in the description, and similarly, not every file will contain an example of each document listed in the description.

G. Confidentiality is denoted for files likely to contain confidential materials, but files without a confidentiality note nonetheless may contain confidential or privileged materials, and failure to include an express confidentiality note in the description of a file does not waive the confidential or privileged nature of those materials. Some or all materials in a file may be confidential. Refer questions concerning the confidentiality of a file or portions of a file to legal counsel for the agency.

H. Access to confidential documents and confidential files shall be only by authorization of agency, attorney general or by court order, unless otherwise provided by statute. Release of confidential documents to law enforcement and other government agencies, shall only be upon specific statutory authorization or court order.

I. All records, papers or documents may be photographed, microfilmed, micro-photographed or reproduced on film. Such photographs, microfilm, photographic film or microphotographs shall be deemed to be an original record for all purposes, including introduction in evidence in all courts or administrative agencies (Sections 14-1-5, 14-1-6 NMSA 1978).

J. Many paper records are being eliminated when the information has been placed on magnetic tapes, disks, or other data processing media (i.e., machine readable records). In these cases, the information on the data processing medium should be retained for the length of time specified in records retention and disposition schedules for paper records and should be subject to the same confidentiality and access restrictions as paper records. When the destruction of a record is required, all versions of said record shall be electronically over-written on machine readable media on which it is stored (or media destroyed). See also 1.13.70 NMAC: Performance Guidelines for the Legal Acceptance of Public Records Produced by Information Technology Systems.

[1.18.355.9 NMAC - Rp, 1.18.355.8 NMAC, 01/01/2009]

1.18.355.10 - 1.18.355.100 [RESERVED]

1.18.355.101 ADULT CRIMINAL CASE FILES:

- A. Program:** public defender
- B. Maintenance system:** chronological by year and month, then numerical by case number
- C. Description:** records concerning the defense of adult clients prosecuted on criminal charges. File may contain criminal case report, judgment and sentence, motions, police report, application for public defender court clinic services, client interviews, attorney notes, etc.
- D. Retention:**
 - (1) **Routine felony and enhanceable misdemeanor cases:** eight years after case is closed
 - (2) **Special felony cases:** 15 years after case is closed
 - (3) **Non-enhanceable misdemeanor cases:** three years after case is closed
- E. Confidentiality:** Portions of this file may be confidential or exempted from disclosure under the Inspection of Public Records Act, Section 14-2-1, or pursuant to other law."
[1.18.355.101 NMAC - Rp, 1.18.355.101 NMAC, 01/01/2009]

1.18.355.102 APPELLATE CASE FILES:

- A. Program:** public defender
- B. Maintenance system:** chronological by year and month, then numerical by case number
- C. Description:** cases appealed by defendants charged with a crime. Files may include attorney work product, correspondence, and other privileged material, etc.
- D. Retention:**
 - (1) **Routine felony cases:** 15 years after case is closed
 - (2) **Special felony cases:**
 - (a) **Death penalty cases:** permanent, transfer to archives five years after exhaustion of appeals
 - (b) **All other cases:** 25 years after case is closed transfer to archives for review
 - (3) **Misdemeanor cases:** eight years after case is closed
 - (4) **Juvenile cases:** eight years after case is closed
 - (5) **All other cases:** eight years after case is closed
- E. Confidentiality:** Portions of this file may be confidential or exempted from disclosure under the Inspection of Public Records Act, Section 14-2-1, or pursuant to other law."
[1.18.355.102 NMAC - Rp, 1.18.355.102 NMAC, 01/01/2009]

1.18.355.103 JUVENILE CASE FILES:

- A. Program:** public defender
- B. Maintenance system:** chronological by year and month, then numerical by case number
- C. Description:** records concerning the defense of juvenile client prosecuted on criminal charges. Files may contain time waiver, district court consent, and children's court predisposition report, notice of hearing, petitions, motions, psychiatric evaluation, and attorney notes, etc.
- D. Retention:** three years after final judgment or at age 19 whichever is longer
- E. Confidentiality:** Portions of this file may be confidential or exempted from disclosure under the Inspection of Public Records Act, Section 14-2-1, or pursuant to other law."
[1.18.355.103 NMAC - Rp, 1.18.355.103 NMAC, 01/01/2009]

1.18.355.104 CAPITAL CRIMES CASE FILES:

- A. Program:** public defender
- B. Maintenance system:** chronological by year and month, then numerical by case number
- C. Description:** records concerning the defense of clients prosecuted for first degree capital murder. Files may include discovery, interview transcripts, grand jury transcripts, attorney note, petitions, medical records, school records, employment records, etc.
- D. Retention:** permanent, transfer to archives five years after exhaustion of appeals
- E. Confidentiality:** Portions of this file may be confidential or exempted from disclosure under the Inspection of Public Records Act, Section 14-2-1, or pursuant to other law."
[1.18.355.104 NMAC - N, 01/01/2009]

1.18.355.105 HABEAS CORPUS CASE FILES:

- A. Program:** public defender
- B. Maintenance system:** chronological by year and month, then numerical by case number

C. Description: records concerning the petitioning of an inmate's contested conviction or conditions of confinement. Files may include inmate petition, order of appointment, entry of appearance, good time sheet, case log, final order, etc.

D. Retention:

- (1) **Routine cases:** 10 years after case is closed
- (2) **Special cases:** 15 years after case is closed

E. Confidentiality: Portions of this file may contain confidential information pursuant, but not limited to Section 14-2-1 NMSA 1978 (i.e., attorney-client privileged information).

[1.18.355.105 NMAC - N, 01/01/2009]

1.18.355.106 CASE DEFENDANT MANAGEMENT SYSTEM:

A. Program: public defender

B. Maintenance system: numerical by primary key

C. Description: system maintains and tracks client information and case status of defendants. Data may include social security number, address, date of birth, attorney assigned to case, case status, case events, co-defendants, conflicts, etc

D. Retention:

(1) **Adult criminal case files:**

- (a) **Routine felony and enhanceable misdemeanor cases:** eight years after case is closed
- (b) **Special felony cases:** 15 years after case is closed
- (c) **Non-enhanceable misdemeanor cases:** three years after case is closed

(2) **Appellate case files:**

- (a) **Routine felony cases:** 15 years after case is closed
- (b) **Special felony cases:** 25 years after case is closed
- (c) **Misdemeanor cases:** eight years after case is closed
- (d) **Juvenile cases:** eight years after case is closed
- (e) **All other cases:** eight years after case is closed

(3) **Capital crime cases files:** permanent

(4) **Habeas corpus cases files:**

- (a) **Routine cases:** 10 years after case is closed
- (b) **Special cases:** 15 years after case is closed

(5) **Juvenile cases files:** three years after final judgment or at age 19 whichever is longer

E. Confidentiality: Portions of this record may be confidential pursuant but not limited to 5 USC, Section 552a (i.e., social security number), Section 29-10-4 NMSA 1978 (i.e., arrest records) and Section 14-2-1 NMSA 1978 (i.e., "law enforcement records that reveal confidential sources, methods, information or individuals accused but not charged with a crime").

F. Input: All records used as input for the case defendant management system are filed in *adult criminal case files*, 1.18.355.101 NMAC; *appellate case files*, 1.18.355.102 NMAC; *capital crimes case files*, 1.18.355.104 NMAC; *habeas corpus case files*, 1.18.355.105 NMAC and *juvenile case files*, 1.18.355.106 NMAC.

G. Output: Because the case defendant management system is a data-based system, regularly scheduled and ad hoc reports may be generated upon request or demand. When produced, these reports are forwarded to the requesting entity.

[1.18.355.106 NMAC - N, 01/01/2009]

History of 1.18.355 NMAC:

Pre-NMAC History: Material in this part was derived from that previously filed with the State Records Center under:

SRC Rule 83-2, Records Retention and Disposition Schedule for Public Defender, filed 08-30-83.

SRC Rule 89-20, Records Retention and Disposition Schedule for Public Defender, filed 12-18-89.

History of Repealed Material:

1.18.355 NMAC ERRDS, Public Defender, filed 8/29/2001, repealed 1/1/2009.