



Home	Bill Information	California Law	Publications	Other Resources	My Subscriptions	My Favorites
------	------------------	----------------	--------------	-----------------	------------------	--------------

AB-1443 Court records. (2017-2018)

SHARE THIS:  

Date Published: 08/07/2017 09:00 PM

Assembly Bill No. 1443

CHAPTER 172

An act to amend Sections 68150, 68152, and 68153 of the Government Code, relating to court records.

[Approved by Governor August 07, 2017. Filed with Secretary of State August 07, 2017.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1443, Levine. Court records.

(1) Existing law allows trial court records to be created, maintained, and preserved in any form of communication or representation, including paper, optical, electronic, magnetic, micrographic, or photographic media or other technology, if the form of representation or communication satisfies specified rules adopted by the Judicial Council, once those rules have been adopted. Existing law allows the court to continue to create, maintain, and preserve records according to minimum standards or guidelines adopted by the American National Standards Institute or the Association for Information and Image Management until those rules are adopted by the Judicial Council.

This bill would delete a trial court's authority to create, maintain, and preserve records according to standards and guidelines adopted by the American National Standards Institute or the Association for Information and Image Management.

(2) Existing law specifies the time periods after which court documents may be destroyed. Existing law allows restraining orders to be granted in cases of civil harassment, domestic violence, elder and dependent adult abuse, private postsecondary school violence, and workplace violence. In these cases, existing law requires the records to be retained for the same period of time as the duration of the restraining order and any renewals thereof. Existing law additionally allows for the filing of gun violence restraining orders.

This bill would add gun violence to the above list of cases for which records are required to be preserved for the same period of time as the duration of the restraining order and any renewals thereof. The bill would also make technical, nonsubstantive changes by updating obsolete cross-references.

(3) Existing law requires that a list of the court records destroyed within the jurisdiction of a superior court be provided to the Judicial Council in accordance with the California Rules of Court.

This bill would delete that requirement.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 68150 of the Government Code is amended to read:

68150. (a) Trial court records may be created, maintained, and preserved in any form or forms of communication or representation, including paper, optical, electronic, magnetic, micrographic, or photographic media or other technology pursuant to the rules adopted by the Judicial Council pursuant to subdivision (c).

(b) (1) This section does not apply to court reporters' transcripts or to specifications for electronic recordings made as the official record of oral proceedings. These records shall be governed by the California Rules of Court.

(2) This section does not apply to original wills and codicils delivered to the clerk of the court under Section 8200 of the Probate Code. Original wills and codicils shall be retained as provided in Section 26810.

(c) The Judicial Council shall adopt rules to establish the standards or guidelines for the creation, maintenance, reproduction, or preservation of court records, including records that must be preserved permanently. The standards or guidelines shall reflect industry standards for each medium used, if those standards exist. The standards or guidelines shall ensure that court records are created and maintained in a manner that ensures accuracy and preserves the integrity of the records throughout their maintenance. They shall also ensure that the records are stored and preserved in a manner that will protect them against loss and ensure preservation for the required period of time. Standards and guidelines for the electronic creation, maintenance, and preservation of court records shall ensure that the public can access and reproduce records with at least the same amount of convenience as paper records previously provided.

(d) Additions, deletions, or changes shall not be made to the content of court records, except as authorized by statute or the California Rules of Court.

(e) Court records shall be indexed for convenient access.

(f) A copy of a court record created, maintained, preserved, or reproduced according to subdivisions (a) and (c) shall be deemed an original court record and may be certified as a true and correct copy of the original record. The clerk of the court may certify a copy of the record by electronic or other technological means, if the means adopted by the court reasonably ensures that the certified copy is a true and correct copy of the original record, or of a specified part of the original record.

(g) Any notice, order, judgment, decree, decision, ruling, opinion, memorandum, warrant, certificate of service, writ, subpoena, or other legal process or similar document issued by a trial court or by a judicial officer of a trial court may be signed, subscribed, or verified using a computer or other technology in accordance with procedures, standards, and guidelines established by the Judicial Council pursuant to this section. Notwithstanding any other law, all notices, orders, judgments, decrees, decisions, rulings, opinions, memoranda, warrants, certificates of service, writs, subpoenas, or other legal process or similar documents that are signed, subscribed, or verified by computer or other technological means pursuant to this subdivision shall have the same validity, and the same legal force and effect, as paper documents signed, subscribed, or verified by a trial court or a judicial officer of the court.

(h) A court record created, maintained, preserved, or reproduced in accordance with subdivisions (a) and (c) shall be stored in a manner and in a place that reasonably ensures its preservation against loss, theft, defacement, or destruction for the prescribed retention period under Section 68152.

(i) A court record that was created, maintained, preserved, or reproduced in accordance with subdivisions (a) and (c) may be disposed of in accordance with the procedure under Section 68153, unless it is either of the following:

(1) A comprehensive historical and sample superior court record preserved for research under the California Rules of Court.

(2) A court record that is required to be preserved permanently.

(j) Instructions for access to data stored on a medium other than paper shall be documented.

(k) Each court shall conduct a periodic review of the media in which the court records are stored to ensure that the storage medium is not obsolete and that current technology is capable of accessing and reproducing the records. The court shall reproduce records before the expiration of their estimated lifespan for the medium in which they are stored according to the standards or guidelines established by the Judicial Council.

(l) Unless access is otherwise restricted by law, court records created, maintained, preserved, or reproduced under subdivisions (a) and (c) shall be made reasonably accessible to all members of the public for viewing and duplication as the paper records would have been accessible. Unless access is otherwise restricted by law, court records maintained in electronic form shall be viewable at the court, regardless of whether they are also accessible remotely. Reasonable provision shall be made for duplicating the records at cost. Cost shall consist of all costs associated with duplicating the records as determined by the court.

SEC. 2. Section 68152 of the Government Code is amended to read:

68152. The trial court clerk may destroy court records under Section 68153 after notice of destruction, and if there is no request and order for transfer of the records, except the comprehensive historical and sample superior court records preserved for research under the California Rules of Court, when the following times have expired after the date of final disposition of the case in the categories listed:

(a) Civil actions and proceedings, as follows:

(1) Except as otherwise specified: retain 10 years.

(2) Civil unlimited cases, limited cases, and small claims cases, including after trial de novo, if any, except as otherwise specified: retain for 10 years.

(3) Civil judgments for unlimited civil cases: retain permanently.

(4) Civil judgments for limited and small claims cases: retain for 10 years, unless judgment is renewed. If judgment is renewed, retain judgment for length of renewal pursuant to Article 2 (commencing with Section 683.110) of Chapter 3 of Division 1 of Title 9 of Part 2 of the Code of Civil Procedure.

(5) If a party in a civil case appears by a guardian ad litem: retain for 10 years after termination of the court's jurisdiction.

(6) Civil harassment, domestic violence, elder and dependent adult abuse, private postsecondary school violence, gun violence, and workplace violence cases: retain for the same period of time as the duration of the restraining or other orders and any renewals thereof, then retain the restraining or other orders permanently as a judgment; 60 days after expiration of the temporary restraining or other temporary orders; retain judgments establishing paternity under Section 6323 of the Family Code permanently.

(7) Family law, except as otherwise specified: retain for 30 years.

(8) Adoption: retain permanently.

(9) Parentage: retain permanently.

(10) Change of name, gender, or name and gender: retain permanently.

(11) Probate:

(A) Decedent estates: retain permanently all orders, judgments, and decrees of the court, all inventories and appraisals, and all wills and codicils of the decedent filed in the case, including those not admitted to probate. All other records: retain for five years after final disposition of the estate proceeding.

(B) Wills and codicils transferred or delivered to the court pursuant to Section 732, 734, or 8203 of the Probate Code: retain permanently. For wills and codicils delivered to the clerk of the court under Section 8200 of the Probate Code, retain the original documents as provided in Section 26810.

(C) Substitutes for decedent estate administration:

(i) Affidavit procedures for real property of small value under Chapter 3 (commencing with Section 13100) of Part 1 of Division 8 of the Probate Code: retain permanently.

(ii) Proceedings for determining succession to property under Chapter 4 (commencing with Section 13150) of Part 1 of Division 8 of the Probate Code: retain permanently all inventories and appraisals and court orders. Other records: retain for five years after final disposition of the proceeding.

(iii) Proceedings for determination of property passing or belonging to surviving spouse under Chapter 5 (commencing with Section 13650) of Part 2 of Division 8 of the Probate Code: retain permanently all inventories and appraisals and court orders. Other records: retain for five years after final disposition of the proceeding.

(D) Conservatorships: retain permanently all court orders. Documents of trusts established under substituted judgment pursuant to Section 2580 of the Probate Code: retain as provided in clause (iii) of subparagraph (G). Other records: retain for five years after the later of either (i) the final disposition of the conservatorship proceeding, or (ii) the date of the conservatee's death, if that date is disclosed in the court's file.

(E) Guardianships: retain permanently orders terminating the guardianship, if any, and court orders settling final account and ordering distribution of the estate. Other records: retain for five years after the later of (i) the final disposition of the guardianship proceeding, or (ii) the earlier of the date of the ward's death, if that date is disclosed in the court's file, or the date the ward reaches 23 years of age.

(F) Compromise of minor's or disabled person's claim or action, and disposition of judgment for minors and disabled persons under Section 372 of the Code of Civil Procedure and Chapter 4 (commencing with Section 3600) of Part 8 of Division 4 of the Probate Code:

(i) Retain permanently judgments in favor of minors or disabled persons, orders approving compromises of claims and actions and disposition of the proceeds of judgments, orders directing payment of expenses, costs, and fees, orders directing deposits into blocked accounts and receipts and acknowledgments of those orders, and orders for the withdrawal of funds from blocked accounts.

(ii) Retain other records for the same retention period as for records in the underlying case. If there is no underlying case, retain for five years after the later of either (I) the date the order for payment or delivery of the final balance of the money or property is entered, or (II) the earlier of the date of the minor's death, if that date is disclosed in the court's file, or the date the minor reaches 23 years of age.

(G) Trusts:

(i) Proceedings under Part 5 (commencing with Section 17000) of Division 9 of the Probate Code: retain permanently.

(ii) Trusts created by substituted judgment under Section 2580 of the Probate Code: retain permanently all trust instruments and court orders. Other records: retain as long as the underlying conservatorship file is retained.

(iii) Special needs trusts: retain permanently all trust instruments and court orders. Other records: retain until the later of either (I) the retention date of "other records" in the beneficiary's conservatorship or guardianship file under subparagraph (D) or (E), if any, or (II) five years after the date of the beneficiary's death, if that date is disclosed in the court's file.

(H) All other proceedings under the Probate Code: retain as provided for civil cases.

(12) Mental health:

(A) Lanterman Developmental Disabilities Services Act: retain for 10 years.

(B) Lanterman-Petris-Short Act: retain for 20 years.

(C) Riese (capacity) hearings under Sections 5333 and 5334 of the Welfare and Institutions Code: retain for the later of either (i) 20 years after the date of the capacity determination order, or (ii) the court records retention date of the underlying involuntary treatment or commitment proceeding, if any.

(D) Petitions under Chapter 3 (commencing with Section 8100) of Division 8 of the Welfare and Institutions Code for the return of firearms to petitioners who relinquished them to law enforcement while detained in a mental health facility: retain for 10 years.

(13) Eminent domain: retain permanently.

(14) Real property other than unlawful detainer: retain permanently if the action affects title or an interest in real property.

(15) Unlawful detainer: retain for one year if judgment is only for possession of the premises; retain for 10 years if judgment is for money, or money and possession.

(b) Notwithstanding subdivision (a), any civil or small claims case in the trial court:

(1) Involuntarily dismissed by the court for delay in prosecution or failure to comply with state or local rules: retain for one year.

(2) Voluntarily dismissed by a party without entry of judgment: retain for one year.

(c) Criminal actions and proceedings, as follows:

(1) Capital felony in which the defendant is sentenced to death, and any felony resulting in a sentence of life or life without the possibility of parole: retain permanently, including records of the cases of any codefendants and any related cases, regardless of the disposition. For the purpose of this paragraph, "capital felony" means murder with special circumstances when the prosecution seeks the death penalty. Records of the cases of codefendants and related cases required to be retained under this paragraph shall be limited to those cases that are factually linked or related to the charged offense, that are identified in the courtroom, and that are placed on the record. If a capital felony is disposed of by a sentence less than death, or imprisonment for life or life without the possibility of parole, the judgment shall be retained permanently, and the record shall be retained for 50 years or for 10 years after the official written notification of the death of the defendant. If a capital felony is disposed of by an acquittal, the record shall be retained for 10 years.

(2) Felony, except as otherwise specified, and in any felony or misdemeanor case resulting in a requirement that the defendant register as a sex offender under Section 290 of the Penal Code: retain judgment permanently. For all other documents: retain for 50 years or the maximum term of the sentence, whichever is longer. However, any record other than the judgment may be destroyed 10 years after the death of the defendant. Felony case files that do not include final sentencing or other final disposition because the case was bound over from a former municipal court to the superior court and not already consolidated with the superior court felony case file: retain for 10 years from the disposition of the superior court case.

(3) Felony reduced to a misdemeanor: retain in accordance with the retention period for the relevant misdemeanor.

(4) Felony, if the charge is dismissed, except as provided in paragraph (6): retain for three years.

(5) Misdemeanor, if the charge is dismissed, except as provided in paragraph (6): retain for one year.

(6) Dismissal under Section 1203.4 or 1203.4a of the Penal Code: retain for the same retention period as for records of the underlying case. If the records in the underlying case have been destroyed, retain for five years after dismissal.

(7) Misdemeanor, except as otherwise specified: retain for five years. For misdemeanors alleging a violation of Section 23103, 23152, or 23153 of the Vehicle Code: retain for 10 years.

(8) Misdemeanor alleging a marijuana violation under subdivision (b) or (c) of Section 11357 of the Health and Safety Code, or subdivision (b) of Section 11360 of the Health and Safety Code: records shall be destroyed, or redacted in accordance with subdivision (c) of Section 11361.5 of the Health and Safety Code, two years from the date of conviction, or from the date of arrest if no conviction, if the case is no longer subject to review on appeal, all applicable fines and fees have been paid, and the defendant has complied with all terms and conditions of the sentence or grant of probation. As provided in subdivision (a) of Section 11361.5 of the Health and Safety Code and paragraph (5) of subdivision (d) of this section, records of an infraction alleging a marijuana violation under subdivision (d) of Section 11357 of the Health and Safety Code shall be retained until the offender attains 18 years of age, at which time the records shall be destroyed as provided in subdivision (c) of Section 11361.5 of the Health and Safety Code.

(9) Misdemeanor reduced to an infraction: retain in accordance with the retention period for the relevant infraction.

(10) Infraction, except as otherwise specified: retain for one year. Vehicle Code infraction: retain for three years. Infraction alleging a marijuana violation under subdivision (a) of Section 11357 of the Health and Safety Code: if records are retained past the one-year minimum retention period, the records shall be destroyed or redacted in accordance with subdivision (c) of Section 11361.5 of the Health and Safety Code two years from the date of conviction, or from the date of arrest if no conviction, if the case is no longer subject to review on appeal, all applicable fines and fees have been paid, and the defendant has complied with all terms and conditions of the sentence or grant of probation.

(11) Criminal protective order: retain until the order expires or is terminated.

(12) Arrest warrant: retain for the same retention period as for records in the underlying case. If there is no underlying case, retain for one year from the date of issue.

(13) Search warrant:

(A) If there is no underlying case, retain for five years from the date of issue.

(B) If there is any underlying case, retain for 10 years from the date of issue or, if the retention period for records in the underlying case is less than 10 years or if the underlying case is a capital felony described in paragraph (1) of subdivision (c), retain for the same retention period as for records in the underlying case.

(14) Probable cause declarations: retain for the same retention period as for records in the underlying case. If there is no underlying case, retain for one year from the date of declaration.

(15) Proceedings for revocation of postrelease community supervision or postrelease parole supervision: retain for five years after the period of supervision expires or is terminated.

(d) Habeas corpus:

(1) Habeas corpus in criminal and family law matters: retain for the same retention period as for records in the underlying case, whether granted or denied.

(2) Habeas corpus in mental health matters: retain all records for the same retention period as for records in the underlying case, whether granted or denied. If there is no underlying case, retain records for 20 years.

(e) Juveniles:

(1) Dependent pursuant to Section 300 of the Welfare and Institutions Code: upon reaching 28 years of age, or on written request, shall be released to the juvenile five years after jurisdiction over the person has terminated under subdivision (a) of Section 826 of the Welfare and Institutions Code. Sealed records shall be destroyed upon court order five years after the records have been sealed pursuant to subdivision (c) of Section 389 of the Welfare and Institutions Code.

(2) Ward pursuant to Section 601 of the Welfare and Institutions Code: upon reaching 21 years of age, or on written request, shall be released to the juvenile five years after jurisdiction over the person has terminated under subdivision (a) of Section 826 of the Welfare and Institutions Code. Sealed records shall be destroyed upon court order five years after the records have been sealed under subdivision (d) of Section 781 of the Welfare and Institutions Code.

(3) Ward pursuant to Section 602 of the Welfare and Institutions Code: upon reaching 38 years of age under subdivision (a) of Section 826 of the Welfare and Institutions Code. Sealed records shall be destroyed upon court order when the subject of the record reaches 38 years of age under subdivision (d) of Section 781 of the Welfare and Institutions Code.

(4) Traffic and some nontraffic misdemeanors and infractions pursuant to Section 601 of the Welfare and Institutions Code: upon reaching 21 years of age, or five years after jurisdiction over the person has terminated under subdivision (c) of Section 826 of the Welfare and Institutions Code. Records may be microfilmed or photocopied.

(5) Marijuana infraction under subdivision (d) of Section 11357 of the Health and Safety Code in accordance with procedures specified in subdivision (a) of Section 11361.5 of the Health and Safety Code: upon reaching 18 years of age, the records shall be destroyed.

(f) Court records of the appellate division of the superior court: retain for five years.

(g) Other records:

(1) Bench warrant: retain for the same retention period as for records in the underlying case. For a bench warrant issued for a misdemeanor, retain records for the same retention period as for records in the underlying misdemeanor following issuance. If there is no return on the warrant, the court may dismiss on its own motion and immediately destroy the records.

(2) Body attachment: retain for same retention period as for records in the underlying case.

(3) Bond: retain for three years after exoneration and release.

(4) Court reporter notes:

(A) Criminal and juvenile proceedings: retain notes for 10 years, except as otherwise specified. Notes reporting proceedings in capital felony cases (murder with special circumstances when the prosecution seeks the death penalty and the sentence is death), including notes reporting the preliminary hearing, shall be retained permanently, unless the Supreme Court on request of the court clerk authorizes the destruction.

(B) Civil and all other proceedings: retain notes for five years.

(5) Electronic recordings made as the official record of the oral proceedings under the California Rules of Court may be destroyed or deleted as follows:

(A) Any time after final disposition of the case in infraction and misdemeanor proceedings.

(B) After 10 years in all other criminal proceedings.

(C) After five years in all other proceedings.

(6) Electronic recordings not made as the official record of the oral proceedings under the California Rules of Court may be destroyed at any time at the discretion of the court.

(7) Fee waiver applications: retain for the same retention period as for records in the underlying case.

(8) Judgments within the jurisdiction of the superior court other than in a limited civil case, misdemeanor case, or infraction case: retain permanently.

(9) Judgments in misdemeanor cases, infraction cases, and limited civil cases: retain for the same retention period as for records in the underlying case.

(10) Juror proceedings, including sanctions: retain for one year.

(11) Minutes: retain for the same retention period as for records in the underlying case.

(12) Orders not associated with an underlying case, such as orders for the destruction of court records for telephone taps, orders to destroy drugs, and other miscellaneous court orders: retain for one year.

(13) Naturalization index: retain permanently.

(14) Index for cases alleging traffic violations: retain for the same retention period as for records in the underlying case.

(15) Index, except as otherwise specified: retain permanently.

(16) Register of actions or docket: retain for the same retention period as for records in the underlying case, but in no event less than 10 years for civil and small claims cases.

(h) Retention of the court records under this section shall be extended by order of the court on its own motion, or on application of a party or an interested member of the public for good cause shown and on those terms as are just. A fee shall not be charged for making the application.

(i) The record retention periods provided in this section, as amended effective January 1, 2014, apply to all court records in existence prior to that date as well as to records created on or after that date.

SEC. 3. Section 68153 of the Government Code is amended to read:

68153. (a) Upon order of the presiding judge of the court, court records open to public inspection and not ordered transferred under the procedures in the California Rules of Court, confidential records, and sealed records that are ready for destruction under Section 68152 may be destroyed. Destruction shall be by shredding, burial, burning, erasure, obliteration, recycling, or other method approved by the court, except confidential and sealed records, which shall not be buried or recycled unless the text of the records is first obliterated.

(b) Notation of the date of destruction shall be made on the index of cases or on a separate destruction index.