

AMENDED IN ASSEMBLY MAY 6, 2015

AMENDED IN ASSEMBLY APRIL 22, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 897

Introduced by Assembly Member Gonzalez

February 26, 2015

An act to amend Section ~~5270.50~~ of the Welfare and Institutions Code, relating to mental health; ~~68152~~ of the Government Code, relating to court records.

LEGISLATIVE COUNSEL'S DIGEST

AB 897, as amended, Gonzalez. ~~Mental health: involuntary confinement.~~ *Retention of court records: driving offenses.*

Existing law authorizes the court clerk to destroy court records, as defined, after notice of destruction, if there is no request and order for transfer of the records, upon the expiration of specified time periods after final disposition of the case. Existing law generally requires the clerk to retain court records relating to misdemeanors, including misdemeanors alleging reckless driving, for 5 years, or, for specified offenses, including misdemeanor offenses relating to street racing, for 10 years.

This bill would instead require the court clerk to retain court records pertaining to street racing offenses for 5 years, and would require the court clerk to retain records pertaining to reckless driving offenses for 10 years.

~~Existing law, the Lanterman-Petris-Short Act, provides for the involuntary detention and treatment of any person with a mental disorder who, as a result of the mental disorder, is a danger to others or to himself~~

or herself, or is gravely disabled. Existing law establishes various requirements with respect to determinations to be made by a psychiatrist directly responsible for the person’s treatment as to the initial detention for evaluation and treatment, for various subsequent periods of confinement for treatment, and for the release of persons subject to the act. Existing law provides that if certain conditions are satisfied, the professional person in charge of the facility providing intensive treatment, his or her designee, and the professional person directly responsible for the person’s treatment shall not be held civilly or criminally liable for any action by a person released before or at the end of a specified 30-day treatment period.

This bill would extend those immunity provisions to the attorney or advocate representing the person, the court-appointed commissioner or referee, the certification review hearing officer, and the peace officer responsible for the detainment of the person, for any action by a person released at or before the end of the 30-day treatment period.

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.
 State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 68152 of the Government Code is
 2 amended to read:
 3 68152. The trial court clerk may destroy court records under
 4 Section 68153 after notice of destruction, and if there is no request
 5 and order for transfer of the records, except the comprehensive
 6 historical and sample superior court records preserved for research
 7 under the California Rules of Court, when the following times
 8 have expired after the date of final disposition of the case in the
 9 categories listed:
 10 (a) Civil actions and proceedings, as follows:
 11 (1) Except as otherwise specified: retain 10 years.
 12 (2) Civil unlimited cases, limited cases, and small claims cases,
 13 including after trial de novo, if any, except as otherwise specified:
 14 retain for 10 years.
 15 (3) Civil judgments for unlimited civil cases: retain permanently.
 16 (4) Civil judgments for limited and small claims cases: retain
 17 for 10 years, unless judgment is renewed. If judgment is renewed,
 18 retain judgment for length of renewal pursuant to Article 2

1 (commencing with Section 683.110) of Chapter 3 of Division 1
2 of Title 9 of Part 2 of the Code of Civil Procedure.

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

5 (6) Civil harassment, domestic violence, elder and dependent
6 adult abuse, private postsecondary school violence, and workplace
7 violence cases: retain for the same period of time as the duration
8 of the restraining or other orders and any renewals thereof, then
9 retain the restraining or other orders permanently as a judgment;
10 60 days after expiration of the temporary restraining or other
11 temporary orders; retain judgments establishing paternity under
12 Section 6323 of the Family Code permanently.

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

15 (8) Adoption: retain permanently.

16 (9) Parentage: retain permanently.

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

19 (11) Probate:

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

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

30 (C) Substitutes for decedent estate administration:

31 (i) Affidavit procedures for real property of small value under
32 Chapter 3 (commencing with Section 13100) of Part 1 of Division
33 8 of the Probate Code: retain permanently.

34 (ii) Proceedings for determining succession to property under
35 Chapter 4 (commencing with Section 13150) of Part 1 of Division
36 8 of the Probate Code: retain permanently all inventories and
37 appraisals and court orders. Other records: retain for five years
38 after final disposition of the proceeding.

39 (iii) Proceedings for determination of property passing or
40 belonging to surviving spouse under Chapter 5 (commencing with

1 Section 13650) of Part 2 of Division 8 of the Probate Code: retain
2 permanently all inventories and appraisals and court orders. Other
3 records: retain for five years after final disposition of the
4 proceeding.

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

12 (E) Guardianships: retain permanently orders terminating the
13 guardianship, if any, and court orders settling final account and
14 ordering distribution of the estate. Other records: retain for five
15 years after the later of (i) the final disposition of the guardianship
16 proceeding, or (ii) the earlier of the date of the ward's death, if
17 that date is disclosed in the court's file, or the date the ward reaches
18 23 years of age.

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

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

30 (ii) Retain other records for the same retention period as for
31 records in the underlying case. If there is no underlying case, retain
32 for five years after the later of either (I) the date the order for
33 payment or delivery of the final balance of the money or property
34 is entered, or (II) the earlier of the date of the minor's death, if that
35 date is disclosed in the court's file, or the date the minor reaches
36 23 years of age.

37 (G) Trusts:

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

- 1 (ii) Trusts created by substituted judgment under Section 2580
2 of the Probate Code: retain permanently all trust instruments and
3 court orders. Other records: retain as long as the underlying
4 conservatorship file is retained.
- 5 (iii) Special needs trusts: retain permanently all trust instruments
6 and court orders. Other records: retain until the later of either (I)
7 the retention date of “other records” in the beneficiary’s
8 conservatorship or guardianship file under subparagraph (D) or
9 (E), if any, or (II) five years after the date of the beneficiary’s
10 death, if that date is disclosed in the court’s file.
- 11 (H) All other proceedings under the Probate Code: retain as
12 provided for civil cases.
- 13 (12) Mental health:
- 14 (A) Lanterman Developmental Disabilities Services Act: retain
15 for 10 years.
- 16 (B) Lanterman-Petris-Short Act: retain for 20 years.
- 17 (C) Riese (capacity) hearings under Sections 5333 and 5334 of
18 the Welfare and Institutions Code: retain for the later of either (i)
19 20 years after the date of the capacity determination order, or (ii)
20 the court records retention date of the underlying involuntary
21 treatment or commitment proceeding, if any.
- 22 (D) Petitions under Chapter 3 (commencing with Section 8100)
23 of Division 8 of the Welfare and Institutions Code for the return
24 of firearms to petitioners who relinquished them to law
25 enforcement while detained in a mental health facility: retain for
26 10 years.
- 27 (13) Eminent domain: retain permanently.
- 28 (14) Real property other than unlawful detainer: retain
29 permanently if the action affects title or an interest in real property.
- 30 (15) Unlawful detainer: retain for one year if judgment is only
31 for possession of the premises; retain for 10 years if judgment is
32 for money, or money and possession.
- 33 (b) Notwithstanding subdivision (a), any civil or small claims
34 case in the trial court:
- 35 (1) Involuntarily dismissed by the court for delay in prosecution
36 or failure to comply with state or local rules: retain for one year.
- 37 (2) Voluntarily dismissed by a party without entry of judgment:
38 retain for one year.
- 39 (c) Criminal actions and proceedings, as follows:

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

18 (2) Felony, except as otherwise specified, and in any felony or
19 misdemeanor case resulting in a requirement that the defendant
20 register as a sex offender under Section 290 of the Penal Code:
21 retain judgment permanently. For all other documents: retain for
22 50 years or the maximum term of the sentence, whichever is longer.
23 However, any record other than the judgment may be destroyed
24 10 years after the death of the defendant. Felony case files that do
25 not include final sentencing or other final disposition because the
26 case was bound over from a former municipal court to the superior
27 court and not already consolidated with the superior court felony
28 case file: retain for 10 years from the disposition of the superior
29 court case.

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

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

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

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

1 (7) Misdemeanor, except as otherwise specified: retain for five
2 years. For misdemeanors alleging a violation of Section ~~23109;~~
3 ~~23109.5;~~ 23103, 23152, or 23153 of the Vehicle Code: retain for
4 10 years.

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

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

24 (10) Infraction, except as otherwise specified: retain for one
25 year. Vehicle Code infraction: retain for three years. Infraction
26 alleging a marijuana violation under subdivision (b) of Section
27 11357 of the Health and Safety Code: if records are retained past
28 the one-year minimum retention period, the records shall be
29 destroyed or redacted in accordance with subdivision (c) of Section
30 11361.5 of the Health and Safety Code two years from the date of
31 conviction, or from the date of arrest if no conviction, if the case
32 is no longer subject to review on appeal, all applicable fines and
33 fees have been paid, and the defendant has complied with all terms
34 and conditions of the sentence or grant of probation.

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

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

40 (13) Search warrant:

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

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

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

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

14 (d) Habeas corpus:

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

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

22 (e) Juveniles:

23 (1) Dependent pursuant to Section 300 of the Welfare and
24 Institutions Code: upon reaching 28 years of age, or on written
25 request, shall be released to the juvenile five years after jurisdiction
26 over the person has terminated under subdivision (a) of Section
27 826 of the Welfare and Institutions Code. Sealed records shall be
28 destroyed upon court order five years after the records have been
29 sealed pursuant to subdivision (c) of Section 389 of the Welfare
30 and Institutions Code.

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

39 (3) Ward pursuant to Section 602 of the Welfare and Institutions
40 Code: upon reaching 38 years of age under subdivision (a) of

1 Section 826 of the Welfare and Institutions Code. Sealed records
2 shall be destroyed upon court order when the subject of the record
3 reaches 38 years of age under subdivision (d) of Section 781 of
4 the Welfare and Institutions Code.

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

11 (5) Marijuana misdemeanor under subdivision (e) of Section
12 11357 of the Health and Safety Code in accordance with procedures
13 specified in subdivision (a) of Section 11361.5 of the Health and
14 Safety Code: upon reaching 18 years of age, the records shall be
15 destroyed.

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

18 (g) Other records:

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

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

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

28 (4) Court reporter notes:

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

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

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

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

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

4 (C) After five years in all other proceedings.

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

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

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

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

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

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

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

23 (13) Naturalization index: retain permanently.

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

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

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

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

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

39 ~~SECTION 1. Section 5270.50 of the Welfare and Institutions~~
40 ~~Code is amended to read:~~

1 ~~5270.50. (a) Notwithstanding Section 5113, if the provisions~~
2 ~~of Section 5270.35 have been met, the professional person in~~
3 ~~charge of the facility providing intensive treatment, his or her~~
4 ~~designee, and the professional person directly responsible for the~~
5 ~~person's treatment shall not be held civilly or criminally liable for~~
6 ~~any action by a person released before or at the end of the 30-day~~
7 ~~treatment period pursuant to this article.~~

8 ~~(b) The attorney or advocate representing the person, the~~
9 ~~court-appointed commissioner or referee, the certification review~~
10 ~~hearing officer conducting the certification review hearing, and~~
11 ~~the peace officer responsible for the detainment of the person shall~~
12 ~~not be held civilly or criminally liable for any action by a person~~
13 ~~released before or at the end of the 30-day treatment period~~
14 ~~pursuant to this article.~~