

ASSEMBLY BILL

No. 2232

Introduced by Assembly Member Obernolte

February 18, 2016

An act to amend Section 68152 of the Government Code, relating to court records.

LEGISLATIVE COUNSEL'S DIGEST

AB 2232, as introduced, Obernolte. Court records: misdemeanors.

Existing law authorizes the trial 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 provides that court records of a criminal proceeding relating to a misdemeanor violation may be destroyed after 5 years, but that court records of a criminal proceeding relating to a misdemeanor violation for speed contests, driving under the influence of drugs or alcohol, or driving under the influence and causing bodily injury, may be destroyed after 10 years.

This bill would decrease the time period that a court record of a misdemeanor violation for speed contests must be retained before it can be destroyed by the trial court clerk from 10 years to 5 years. The bill would increase the time period that a court record of a misdemeanor violation for reckless driving must be retained before it can be destroyed by the trial court clerk from 5 years to 10 years.

Vote: majority. Appropriation: no. Fiscal committee: 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
19 (commencing with Section 683.110) of Chapter 3 of Division 1
20 of Title 9 of Part 2 of the Code of Civil Procedure.
- 21 (5) If a party in a civil case appears by a guardian ad litem:
22 retain for 10 years after termination of the court's jurisdiction.
- 23 (6) Civil harassment, domestic violence, elder and dependent
24 adult abuse, private postsecondary school violence, and workplace
25 violence cases: retain for the same period of time as the duration
26 of the restraining or other orders and any renewals thereof, then
27 retain the restraining or other orders permanently as a judgment;
28 60 days after expiration of the temporary restraining or other
29 temporary orders; retain judgments establishing paternity under
30 Section 6323 of the Family Code permanently.
- 31 (7) Family law, except as otherwise specified: retain for 30
32 years.
- 33 (8) Adoption: retain permanently.
- 34 (9) Parentage: retain permanently.
- 35 (10) Change of name, gender, or name and gender: retain
36 permanently.
- 37 (11) Probate:

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

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

11 (C) Substitutes for decedent estate administration:

12 (i) Affidavit procedures for real property of small value under
13 Chapter 3 (commencing with Section 13100) of Part 1 of Division
14 8 of the Probate Code: retain permanently.

15 (ii) Proceedings for determining succession to property under
16 Chapter 4 (commencing with Section 13150) of Part 1 of Division
17 8 of the Probate Code: retain permanently all inventories and
18 appraisals and court orders. Other records: retain for five years
19 after final disposition of the proceeding.

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

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

33 (E) Guardianships: retain permanently orders terminating the
34 guardianship, if any, and court orders settling final account and
35 ordering distribution of the estate. Other records: retain for five
36 years after the later of (i) the final disposition of the guardianship
37 proceeding, or (ii) the earlier of the date of the ward's death, if
38 that date is disclosed in the court's file, or the date the ward reaches
39 23 years of age.

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

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

12 (ii) Retain other records for the same retention period as for
13 records in the underlying case. If there is no underlying case, retain
14 for five years after the later of either (I) the date the order for
15 payment or delivery of the final balance of the money or property
16 is entered, or (II) the earlier of the date of the minor’s death, if that
17 date is disclosed in the court’s file, or the date the minor reaches
18 23 years of age.

19 (G) Trusts:

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

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

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

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

34 (12) Mental health:

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

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

38 (C) Riese (capacity) hearings under Sections 5333 and 5334 of
39 the Welfare and Institutions Code: retain for the later of either (i)
40 20 years after the date of the capacity determination order, or (ii)

1 the court records retention date of the underlying involuntary
2 treatment or commitment proceeding, if any.

3 (D) Petitions under Chapter 3 (commencing with Section 8100)
4 of Division 8 of the Welfare and Institutions Code for the return
5 of firearms to petitioners who relinquished them to law
6 enforcement while detained in a mental health facility: retain for
7 10 years.

8 (13) Eminent domain: retain permanently.

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

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

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

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

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

20 (c) Criminal actions and proceedings, as follows:

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

38 (2) Felony, except as otherwise specified, and in any felony or
39 misdemeanor case resulting in a requirement that the defendant
40 register as a sex offender under Section 290 of the Penal Code:

1 retain judgment permanently. For all other documents: retain for
 2 50 years or the maximum term of the sentence, whichever is longer.
 3 However, any record other than the judgment may be destroyed
 4 10 years after the death of the defendant. Felony case files that do
 5 not include final sentencing or other final disposition because the
 6 case was bound over from a former municipal court to the superior
 7 court and not already consolidated with the superior court felony
 8 case file: retain for 10 years from the disposition of the superior
 9 court case.

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

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

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

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

20 (7) Misdemeanor, except as otherwise specified: retain for five
 21 years. For misdemeanors alleging a violation of Section ~~23109~~;
 22 ~~23109.5~~, 23103, 23152, or 23153 of the Vehicle Code: retain for
 23 10 years.

24 (8) Misdemeanor alleging a marijuana violation under
 25 subdivision (c), (d), or (e) of Section 11357 of the Health and
 26 Safety Code, or subdivision (b) of Section 11360 of the Health
 27 and Safety Code: records shall be destroyed, or redacted in
 28 accordance with subdivision (c) of Section 11361.5 of the Health
 29 and Safety Code, two years from the date of conviction, or from
 30 the date of arrest if no conviction, if the case is no longer subject
 31 to review on appeal, all applicable fines and fees have been paid,
 32 and the defendant has complied with all terms and conditions of
 33 the sentence or grant of probation. However, as provided in
 34 subdivision (a) of Section 11361.5 of the Health and Safety Code
 35 and paragraph (5) of subdivision (e) of this section, records of a
 36 misdemeanor alleging a marijuana violation under subdivision (e)
 37 of Section 11357 of the Health and Safety Code shall be retained
 38 until the offender attains 18 years of age, at which time the records
 39 shall be destroyed as provided in subdivision (c) of Section 11361.5
 40 of the Health and Safety Code.

- 1 (9) Misdemeanor reduced to an infraction: retain in accordance
2 with the retention period for the relevant infraction.
- 3 (10) Infraction, except as otherwise specified: retain for one
4 year. Vehicle Code infraction: retain for three years. Infraction
5 alleging a marijuana violation under subdivision (b) of Section
6 11357 of the Health and Safety Code: if records are retained past
7 the one-year minimum retention period, the records shall be
8 destroyed or redacted in accordance with subdivision (c) of Section
9 11361.5 of the Health and Safety Code two years from the date of
10 conviction, or from the date of arrest if no conviction, if the case
11 is no longer subject to review on appeal, all applicable fines and
12 fees have been paid, and the defendant has complied with all terms
13 and conditions of the sentence or grant of probation.
- 14 (11) Criminal protective order: retain until the order expires or
15 is terminated.
- 16 (12) Arrest warrant: retain for the same retention period as for
17 records in the underlying case. If there is no underlying case, retain
18 for one year from the date of issue.
- 19 (13) Search warrant:
- 20 (A) If there is no underlying case, retain for five years from the
21 date of issue.
- 22 (B) If there is any underlying case, retain for 10 years from the
23 date of issue or, if the retention period for records in the underlying
24 case is less than 10 years or if the underlying case is a capital felony
25 described in paragraph (1) of subdivision (c), retain for the same
26 retention period as for records in the underlying case.
- 27 (14) Probable cause declarations: retain for the same retention
28 period as for records in the underlying case. If there is no
29 underlying case, retain for one year from the date of declaration.
- 30 (15) Proceedings for revocation of postrelease community
31 supervision or postrelease parole supervision: retain for five years
32 after the period of supervision expires or is terminated.
- 33 (d) Habeas corpus:
- 34 (1) Habeas corpus in criminal and family law matters: retain
35 for the same retention period as for records in the underlying case,
36 whether granted or denied.
- 37 (2) Habeas corpus in mental health matters: retain all records
38 for the same retention period as for records in the underlying case,
39 whether granted or denied. If there is no underlying case, retain
40 records for 20 years.

1 (e) Juveniles:

2 (1) Dependent pursuant to Section 300 of the Welfare and
3 Institutions Code: upon reaching 28 years of age, or on written
4 request, shall be released to the juvenile five years after jurisdiction
5 over the person has terminated under subdivision (a) of Section
6 826 of the Welfare and Institutions Code. Sealed records shall be
7 destroyed upon court order five years after the records have been
8 sealed pursuant to subdivision (c) of Section 389 of the Welfare
9 and Institutions Code.

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

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

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

30 (5) Marijuana misdemeanor under subdivision (e) of Section
31 11357 of the Health and Safety Code in accordance with procedures
32 specified in subdivision (a) of Section 11361.5 of the Health and
33 Safety Code: upon reaching 18 years of age, the records shall be
34 destroyed.

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

37 (g) Other records:

38 (1) Bench warrant: retain for the same retention period as for
39 records in the underlying case. For a bench warrant issued for a
40 misdemeanor, retain records for the same retention period as for

1 records in the underlying misdemeanor following issuance. If there
2 is no return on the warrant, the court may dismiss on its own
3 motion and immediately destroy the records.

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

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

7 (4) Court reporter notes:

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

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

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

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

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

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

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

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

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

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

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

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

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

- 1 (13) Naturalization index: retain permanently.
- 2 (14) Index for cases alleging traffic violations: retain for the
- 3 same retention period as for records in the underlying case.
- 4 (15) Index, except as otherwise specified: retain permanently.
- 5 (16) Register of actions or docket: retain for the same retention
- 6 period as for records in the underlying case, but in no event less
- 7 than 10 years for civil and small claims cases.
- 8 (h) Retention of the court records under this section shall be
- 9 extended by order of the court on its own motion, or on application
- 10 of a party or an interested member of the public for good cause
- 11 shown and on those terms as are just. A fee shall not be charged
- 12 for making the application.
- 13 (i) The record retention periods provided in this section, as
- 14 amended effective January 1, 2014, apply to all court records in
- 15 existence prior to that date as well as to records created on or after
- 16 that date.