

Assembly Bill No. 2232

Passed the Assembly April 14, 2016

Chief Clerk of the Assembly

Passed the Senate June 30, 2016

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2016, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

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

LEGISLATIVE COUNSEL'S DIGEST

AB 2232, 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.

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

SECTION 1. 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, 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 (c), (d), or (e) 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. However, as provided in subdivision (a) of Section 11361.5 of the Health and Safety Code and paragraph (5) of subdivision (e) of this section, records of a misdemeanor alleging a marijuana violation under subdivision (e) 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 (b) 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 misdemeanor under subdivision (e) 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.

Approved _____, 2016

Governor