



Judicial Council of California · Administrative Office of the Courts

455 Golden Gate Avenue · San Francisco, California 94102-3688

www.courts.ca.gov

REPORT TO THE JUDICIAL COUNCIL

For business meeting on: February 26, 2013

Title	Agenda Item Type
Judicial Council–Sponsored Legislation: Modernization and Improvement of Statutes on Trial Court Records Retention and Management	Action Required
	Effective Date
	February 26, 2013
Rules, Forms, Standards, or Statutes Affected	Date of Report
Amend Gov. Code, §§ 68150, 68151, and 68152	February 15, 2013
Recommended by	Contact
Policy Coordination and Liaison Committee Hon. Marvin R. Baxter, Chair	Cory T. Jasperson, 916-323-3121, cory.jasperson@jud.ca.gov
Court Executives Advisory Committee ¹ Mr. David H. Yamasaki, Chair	Patrick O'Donnell, 415-865-7665, patrick.o'donnell@jud.ca.gov

Executive Summary

The Policy Coordination and Liaison Committee and Court Executives Advisory Committee recommend that the Judicial Council sponsor legislation to modernize and improve the statutes concerning the retention of trial court records. In particular, this proposal recommends that the records retention statutes be amended to authorize the destruction of some court records earlier than is permitted under existing law to enable the trial courts to reduce their storage costs. The proposed amendments would also establish statutory records retention periods for new types of records that are not dealt with under existing law—such as records resulting from the new

¹ In developing this legislative proposal, CEAC was greatly assisted by the committee's Court Records Management Working Group. The working group is chaired by Richard D. Feldstein, Court Executive Officer of the Superior Court of Napa County, and includes former chairs of CEAC, Alan Carlson and Kim Turner, who participated very actively on this project.

criminal realignment process. Finally, the proposed amendments would eliminate ambiguities in the law relating to records retention and would clarify how long certain records are to be retained.

Recommendation

The Policy Coordination and Liaison Committee (PCLC) and Court Executives Advisory Committee (CEAC) recommend the Judicial Council sponsor legislation to modernize and improve the statutes concerning the retention of trial court records and to realize financial savings by amending Government Code sections 68150, 68151, and 68152.

The text of the proposed legislation is attached at pages 16–26.

Previous Council Action

The Judicial Council has previously supported legislation to improve and clarify the law on the retention of court records. In 2009, the Judicial Council also sponsored legislation to modernize the statutes on the management of court records to authorize courts to create, maintain, and preserve records in a variety of forms—including paper; electronic, optical, magnetic, or photographic media; or other technology. This legislation was enacted as Assembly Bill 1926 (Stats. 2010, ch. 167); it is assisting the courts in modernizing their records and reducing long-term costs of record retention. However, additional legislation is desirable to reduce the costs of maintaining existing paper records and to clarify the law on the retention and destruction of records.

Rationale for Recommendation

In California, a vast amount of storage space is currently devoted to maintaining and preserving paper files of court records. A survey in 2007 indicated that court records were stored in 276 locations throughout the state (courthouses and off-site facilities), totaling 1,854,922 linear feet.² The total cost associated with records management during the fiscal year 2006–2007 was \$21,619,815, which includes storage costs of \$1,814,530 and staff costs of \$14,908,919.

The Judicial Council–sponsored legislation enacted in 2009 is assisting the courts in modernizing their records and reducing long-term costs of record retention. Nonetheless, large quantities of existing records still remain in paper forms and it would be prohibitively costly to convert all these records to electronic form. Some of these records do not need to be retained for as a long period as they are presently kept. Thus, other relief—such as the shortened records retention period recommended in this proposal—would be helpful in reducing the costs of maintaining existing records. The proposed legislation would enable courts that in the near future will still be preserving their records in paper to destroy some of those records sooner than is permissible

² Forty-nine out of 58 courts provided responses to the survey.

under current law and so realize additional savings. These measures are particularly important in these financially difficult and challenging times.

Government Code³ section 68152

Reorganization of section 68152. The main statute on trial court records retention is Government Code section 68152. That statute has been amended numerous times and is currently somewhat more difficult to understand than it needs to be. To improve the accessibility and comprehensibility of the statute, this proposal would reorganize the contents. All the items relating to civil cases would be collected under a single heading for “Civil actions and proceedings.” Under that heading, retention periods for similar types of cases would be grouped together. Also, throughout the statute, many subdivisions and subparts would be revised for clarity and consistency of style and format.

Clarification of retention periods. The preamble to section 68152 would be amended to clarify that the statute provides for the destruction of records when the times specified “have expired after the date of final disposition of the case in the categories listed” (the underlined language has been added). Other clarifications would be made to provisions regarding particular types of records.

Changes in retention periods. A principal feature of this proposal is to recommend that the records retention statutes provide that trial court records shall be retained as long as necessary but not longer. The individual retention requirements for different types of cases have been carefully considered and taken into account in developing the specific retention periods recommended. The highlights of the proposed changes in retention periods are explained below.

- ***Civil: Unlimited and limited***
The retention periods for civil records in unlimited and limited civil cases would remain unchanged, but a new paragraph would be added specifically stating the retention periods for such cases. (See amended § 68152(a)(2).) This paragraph would also include the retention periods for judgments in unlimited and limited civil cases, which are currently addressed separately at the end of the statute.
- ***Civil: Protective orders***
The retention periods for domestic violence and civil harassment protective orders would remain unchanged. The civil harassment records retention provision would be relocated and expanded to include records in cases involving protective orders to prevent elder and dependent adult abuse, private postsecondary school violence, and workplace violence. (See amended § 68152(a)(4).)

³ All future references are to the Government Code unless otherwise specified.

- *Civil: Family law*
The retention periods for family law records would remain unchanged. (See amended § 68152(a)(6).)
- *Adoption, parentage, and name and gender change*
The requirements that these records be kept permanently would not be changed; however, the reference to “paternity” records would be changed to “parentage” records. (See amended § 68152(a)(7)–(9).)
- *Civil: Probate*
The statutory provisions on the retention periods for various types of probate records (probate, conservatorships, and guardianships) would be revised to provide more precise times for specific categories of probate records. Also, important types of probate records not previously covered in section 68152 (trusts and minors’ compromises) would be expressly addressed for the first time.

The amended statute would provide that the following records relating to decedent estates shall be retained permanently: all orders, judgments, or 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 would be retained for five years after final disposition of the estate proceeding. (Amended § 68152(a)(10)(A).) The amended statute would also clarify that all wills and codicils transferred or delivered to the court under Probate Code section 732, 734, 8200, or 8203 shall be retained permanently. (Amended § 68152((a)(10)(B).)

The amendments would specify how long various documents in substitutes for decedent estate administration must be retained. (Amended § 68152((a)(10)(C).)

For conservatorship records, the statute currently provides that these records shall be retained for “10 years after the decree of termination”; also, under current section 68152(j)(9), judgments would be retained permanently. The amended statute would provide that in conservatorship proceedings all court orders shall be retained permanently. For other conservatorship records, documents of trusts established under substituted judgment under Probate Code section 2580 shall be retained as provided in subpart (I) of section 68152(a)(10) and other conservatorship records shall be retained for 5 years after final disposition of the conservatorship proceedings or the date of the conservatee’s death if that date is disclosed in the court’s file. (Amended § 68152((a)(10)(D).)

For guardianship records, the statute currently provides that the records shall be retained for “10 years after the age of 18”; also, under current section 68152(j)(9), judgments would be retained permanently. The amended statute would provide that in guardianships the records that shall be retained permanently are orders terminating the guardianship, if any, and court orders settling final accounts and ordering distribution of the estate. Other guardianship

records shall be retained for 5 years after the later of: (1) final disposition of the guardianship proceeding; or (2) 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 the age of 23. (Amended § 68152((a)(10)(E).)

New provisions would be added on minor's compromises. They would provide that the following records shall be retained 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 withdrawal of funds from blocked accounts. (Amended § 68152((a)(10)(F)(i).) Other records relating to minor's compromises shall be retained for the same period as the retention period for records in the underlying case. If there is no underlying case, these records shall be retained for 5 years after the later of: (1) the date that the order for payment or delivery of the final balance of the money or property is entered; or (2) 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 the age of 23. (Amended § 68152((a)(10)(F)(ii).)

Based on the comments, several new provisions have been added to section 68152 expressly addressing the retention periods for various types of trust documents. (Amended § 68152((a)(10)(G)–(J).) These new provisions should be helpful to the courts, the bar, and the public.

- *Civil: Mental health*

Currently, section 68152 provides that mental health records be retained for 30 years. The amended statute would create separate retention periods for records under the Lanterman Developmental Disabilities Services Act (10 years), under the Lanterman-Petris-Short Act (20 years), and for *Riese* (capacity) hearings (20 years after the later of the date of the capacity determination order or the retention date for court records related to any underlying involuntary treatment or commitment proceeding). (Amended § 68152((a)(11)(A)–(C).)

Also, a new provision would be added specifying that petitions under Welfare and Institutions Code section 8100 et seq. for return of firearms to petitioners who relinquished them to law enforcement while detained in a mental health facility shall be retained for 10 years. (Amended § 68152((a)(11)(D).)

- *Criminal actions*

Currently, section 68152 provides that records in capital felony cases where the prosecution seeks the death penalty shall be retained permanently. The statute further provides that, if the charge is disposed of by a sentence less than death, the case shall be reclassified. These provisions would be changed to specify permanent retention of the records in capital felony cases in which the defendant is sentenced to death, and in any felony resulting in a sentence of life or life without the possibility of parole, including the records of the cases of any co-defendants and any related cases, regardless of the disposition. (Amended § 68152(c)(1).)

“Capital felony” would be defined as meaning murder with special circumstances where the prosecution seeks the death penalty. Records of the cases of co-defendants and related cases to be retained under the provision would be limited to those cases that are factually linked or relate 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, life, or life without possibility of parole, the judgment would be retained permanently and the record would be retained for 50 years or for 10 years after official written notification of the death of the defendant. If a capital felony is disposed of by an acquittal, the record would be retained for 10 years. These changes are intended to ensure that all relevant records in capital cases are maintained for a sufficiently long period, while enabling courts to destroy records that are no longer needed.

For other felony cases, section 68152 currently states that, except as otherwise specified, records need to be retained for 75 years. This would be changed to provide that in felony cases—except as otherwise specified, and in any case (felony or misdemeanor) resulting in a requirement that the defendant register as a sex offender under Penal Code section 290—judgments would be retained permanently and all other documents for 50 years or the maximum term of the sentence, whichever is longer, with a provision that any record other than a judgment may be destroyed 10 years after the defendant’s death. (Amended § 68152(c)(2).)

The records retention statute would be amended to clarify that, for a felony reduced to a misdemeanor, the record shall be maintained in accord with the relevant misdemeanor. (Amended § 68152(c)(3).)

Several new provisions address records of dismissed criminal cases. For felonies where the charge is dismissed except under Penal Code section 1203.4 or 1203.4a, the record would be retained for three years. (Amended § 68152(c)(4).) For misdemeanors where the charge is dismissed except under Penal Code section 1203.4 or 1203.4a, the record would be retained for one year. (Amended § 68152(c)(5).) For dismissals under Penal Code section 1203.4 and 1203.4a, the records would be retained for same period as that specified for retention of the records in underlying case; and if those underlying records have been destroyed, the record of dismissal would be retained for five years after dismissal. (Amended § 68152(c)(6).)

The statutory retention periods for records involving misdemeanors would be reorganized and modified. Most of these records, with some exceptions, would need to be retained for five years. (Amended § 68152(c)(7).)

The provisions in the current law on the destruction of records involving certain misdemeanors alleging marijuana violations would be preserved. For misdemeanors alleging violations of subdivisions (c), (d), or (e) of section 11357 of the Health and Safety Code, some clarifying language would be added about redaction and the need for the defendant to

have paid all applicable fees and fines and to have completed community service and any and all other terms of conviction if there was one. (Amended § 68152(c)(8).) Also, a cross-reference would be added to the records retention provisions in subdivision (e)(5) of amended section 68152 concerning records for marijuana misdemeanors in cases involving juveniles under section 11357(e) of the Health and Safety Code.

A new provision would be added stating that records for misdemeanors reduced to an infraction would be retained in accord with the relevant infraction. (Amended § 68152(c)(9).)

Records of traffic infractions would continue to be retained for three years. The existing retention period for non-traffic infractions would be changed from three years to one year, unless otherwise specified. For infractions alleging a marijuana violation under Health and Safety Code section 11357(b) or (c), or Health and Safety Code section 11360(b), if the records are retained past the one-year minimum retention period, the records would need to be destroyed or redacted in accord with section 11361.5(c) of the Health and Safety Code two years from the date of conviction or from the date of arrest if no conviction, provided that the defendant has paid all applicable fees and fines and completed community service and any and all other terms of conviction if there was one. (Amended § 68152(c)(10).)

The current two-year retention period for parking infractions would be eliminated entirely because courts no longer have jurisdiction over original parking infractions.

A new provision would be added stating that a criminal protective order shall be retained until the order expires or is terminated. (Amended § 68152(c)(11).)

The provisions on the retention periods for arrest warrants, search warrants, and probable cause determinations would be moved from the end of the statute to the subdivision on criminal records. (Amended § 68152(c)(12)–(14).)

- *Habeas corpus proceedings*
For clarity, the current provision would be divided into two parts: one specifying the retention period for habeas corpus records in criminal and family law matters and the other for such records in mental health matters. (Amended § 68152(d)(1)–(2).)
- *Juvenile proceedings*
The retention periods for juvenile law records would remain unchanged. (Amended § 68152(e).)
- *Other trial court records*
The retention period for coroner's inquest reports would be eliminated from section 68152 because trial courts do not retain these records. Other records retention provisions that would be eliminated include those relating to 90-day evaluations under Penal Code section 1203.3.

The retention period for court orders not associated with any underlying case—such as orders for the destruction of court records for telephone taps, or to destroy drugs, and other miscellaneous court orders—would be changed from three years to one year. (Amended § 68152(g)(12).)

Retention periods for records in new or previously omitted case types. Assembly Bill 109, the criminal justice realignment legislation of 2011, changed the ways in which criminal cases are handled in many important respects, including the creation of new categories of court records. To reflect this change, several new provisions would be added to the Government Code to specify the retention periods for records for (1) proceedings for revocation of postrelease community supervision, and (2) proceedings for postrelease parole supervision. (New § 68152(c)(15)(A)–(B).) This proposal recommends that these records be retained for a period of five years after the period of supervision expires or is terminated.

New provisions would also be added concerning the retention periods for records in juror sanction proceedings. (See amended § 68152(g)(10).)

Retention periods for court reporter notes. The existing provision concerning the retention of court reporter notes would be subdivided into two subparts for clarity. One subpart would specify that court reporter notes in criminal and juvenile proceedings shall be retained for 10 years and the other that notes in civil and all other proceedings shall be retained for 5 years.⁴ The special provision regarding the retention of notes in capital felony cases would be preserved. (See amended § 68152(g)(4)(A)–(B).)

Retention periods for unofficial electronic recordings. The provision on the retention period for electronic recordings not made as the official record of oral proceedings would be changed from “any time either before or after final disposition of the case” to “may be destroyed or deleted at any time at the discretion of the court.” (Amended § 68152(g)(6).)

Retention periods for indexes and registers of actions. This proposal recommends retaining the existing retention period for indexes and registers of actions. Under the amended statute, these would be located in subdivision (g)(14) and(15) of section 68152. In the amended statute, the

⁴ The provisions in section 68152 on reporting notes in criminal cases need to be consistent with section 69955(e), which provides:

(e) Reporting notes produced under subdivision (b) may be destroyed upon the order of the court after 10 years from the taking of the notes in criminal proceedings and after five years from the taking of the notes in all other proceedings, unless the notes report proceedings in capital felony cases including the preliminary hearing. No reporting notes in a capital felony case proceeding shall be destroyed until such time as the Supreme Court on request by the court clerk authorizes the destruction.

provision for indexes generally and for indexes specifically for traffic offenses would be combined.

Scope of amendments. A provision would be included that would expressly state that the new records retention periods in amended section 68152 apply to all court records existing at the time that the legislation goes into effect. (§ 68152(i).) This provision is proposed to eliminate any ambiguity and to ensure that the legislation will achieve the full financial savings that are intended.

Historical records. This proposal makes no changes in the law relating to the preservation of historical records either as to the selection or retention of such records.

Government Code sections 68150 and 68151

Electronic certification of records. In addition to amending the statutes on records retention, this proposal recommends amending section 68150 to clarify an issue concerning certification of electronic court records. That code section currently provides that copies of electronic records may be certified as a correct copy of the original record. (See section 68150(f).) Thus, this statute may already provide all the authorization that courts need to electronically certify records. However, to avoid any future uncertainty, it would be beneficial to clarify in the statute that the clerk or deputy clerk does not need to print out a copy of an electronic court record and personally certify the record, but that the court clerk instead may use technology to generate certified electronic records.

Specifically, to eliminate any ambiguity, the committees recommend that a sentence be added to section 68150(f), so that subdivision (f) would read as follows:

(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 such a record by electronic or other technological means, provided that the means adopted by the court reasonably ensures that the certified copy is a true and correct copy of the original, or of a specified part thereof.

Cross-reference. The committees recommend amending section 68151 to change the cross-reference in subpart (3) to reflect that the reorganization of section 68152 under this proposal, which would result in the relettering of subdivision (j) as subdivision (g).

Comments, Alternatives Considered, and Policy Implications

The Court Executives Advisory Committee circulated this proposal for public comment between April 17 and June 20, 2012, as part of the regular spring 2012 comment cycle. Eighteen comments were received. The commentators included seven courts, two judges, a court commissioner, an attorney, a county counsel, the Domestic Violence Legal Roundtable, Legal

Advocates for Children and Youth, and the Executive Committees of the State Bar’s Family Law and Trusts & Estates Sections.

Most of the commentators were supportive of the proposed legislation; however, some objected to particular proposed retention periods or had other suggestion for modifications to the legislation. The comments and the Court Executives Advisory Committee’s responses are described below.⁵

Family and juvenile law: Comments and responses

The proposal as circulated included changes to the provisions on the retention of family and juvenile law records. For the most part, the proposed changes would have clarified existing law, though for juvenile cases the changes would have allowed some records to be destroyed sooner.

After reviewing the comments on these proposed changes and after extensive discussions with the Family and Juvenile Law Advisory Committee, the Court Executives Advisory Committee recommends not changing the current statutory provisions relating to records in family and juvenile cases at this time. Further study appears warranted as to the most appropriate retention periods for such records, the costs and benefits of records destruction, and the long-term implications of changing the retention periods for these types of record.

Domestic violence and other protective orders: Comments and responses

Like the family and juvenile records, issues have been raised about the proper retention periods for protective orders. Rather than recommending substantive changes, the Court Executives Advisory Committee proposes that the existing provisions for the retention of domestic violence protective orders be retained at this time. The current retention provisions for civil harassment orders would also be unchanged but would be extended to apply to orders involving elder and dependent adult abuse, private postsecondary school violence, and workplace violence.

Probate: Comments and responses

Three specific comments were received on the probate provisions in the records retention statute—raising issues about trusts, wills, guardianships, and minor’s compromises. (Comments 35, 36, and 37.) After the comment period, the Probate and Mental Health Advisory Committee assisted the Court Executives Advisory Committee in reviewing the comments, and that committee provided substantial input in developing the final proposals.

Trusts. The Executive Committee of the State Bar’s Trusts & Estates Section and a superior court both recommended adding separate provisions on trust records, although they differed on how long such records should be retained. (See comments 36 and 37.) The CEAC agreed that a

⁵ A chart summarizing the comments and the advisory committee’s responses is attached at pages 27–59. The first 18 items list all the commentators and identify their overall positions on the legislation. The subsequent comments are the more specific comments by those same commentators, organized by subject area (e.g., family law, criminal law, etc). The specific comments are given comment numbers for ease of reference.

separate set of provisions should be added on trust records. The Probate and Mental Health Advisory Committee assisted in drafting these new provisions, which have been incorporated into the proposal. (See amended § 68152((a)(10)(G)–(J).)

Wills. The current statute states: “Probate, including probated wills, except as otherwise specified: retain permanently.” (§ 68152(h)(3).) A court commented that the reference to wills in the proposed revisions were not clear; it questioned whether wills received for safekeeping and that are not probated are included and suggested that that the retention period for safekeeping wills might be 10 years. (See comment 36.) Based on recommendations from the Probate and Mental Health Advisory Committee, extensive revisions have been made to the provisions about probate records, including wills. Wills and codicils are now addressed in amended section 68152(a)(10)(B), which provides that wills delivered to the court would be retained permanently.

Guardianships. The Executive Committee of the State Bar’s Trusts & Estates Section recommended retaining guardianship records until the ward reaches 23 (five years after the ward reaches age 18) rather than 18 because guardianship records might be needed for some period of time after the guardianship terminates. The Probate and Mental Health Advisory Committee suggested that any orders terminating guardianships and court orders settling final accounts and ordering distribution of the estate should be retained permanently. Other guardianship records should be retained for five years after the later of (1) final disposition of the guardianship proceeding; or (2) 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 the age of 23. The Court Executives Advisory Committee supports the probate committee’s recommendations.

Minor’s compromises. A commentator suggested adding a reference to Code of Civil Procedure section 372, as well as one to Probate Code section 3600 et seq., to the new subpart on minor’s compromises. (Comment 35.) The committee agreed with this suggestion and has added the reference. It also supports adding other more-detailed provisions about minor’s compromises suggested by the probate committee. (See amended § 68152(a)(10)(F).)

Mental health: Comments and responses

The only formal comment on the proposed reduction of the time for retaining mental health records from 30 to 10 years was that it is a “good thing.” (Comment 38.) However, the Probate and Mental Health Advisory Committee reviewed the proposal and recommends a more differentiated set of retention periods.

Specifically, that committee recommends the 10-year retention period for records under the Lanterman Developmental Disabilities Services Act, as proposed. For records under the Lanterman-Petris-Short Act, it recommends that the records be retained for 20 years. For *Riese* (capacity) hearings under Welfare and Institutions Code sections 5333 and 5334, it recommends that the records be retained for the later of (1) 20 years after the date of the capacity determination order; or (2) the court records retention date of any underlying involuntary treatment or commitment proceeding. The CEAC agrees with the probate committee’s

recommendations. It also recommends adding a new provision that petitions under Welfare and Institutions Code section 8100 et seq. for return of firearms to petitioners who relinquished them to law enforcement while detained in a mental health facility be retained for 10 years. (Amended § 68152(a)(11).)

Criminal actions: Comments and responses

Several comments were received on the proposed changes to the statute on the retention of criminal records. (See comments 39–42.) After the comment period, the CEAC consulted further with the Criminal Law Advisory Committee. Based on the comments and discussions, some additional changes have been made to the criminal records provisions.

First, a commentator suggested that the question of what constitutes a “related case” in capital felony cases needed further clarification. (Comment 40.) CEAC agreed that clarification of what constitute records of codefendants and other related cases would be appropriate. In amended section 68152(c)(1), language has been added stating that the related cases are limited to those that are “identified in the courtroom” and “placed on the record.”

Second, a commentator suggested modifying the proposed new retention period for records concerning postrelease community supervision and parole revocation. (Comment 40.) The committee agreed and has changed the proposed amendments to provide that these records shall be retained for five years after the period of supervision expires or is terminated.

Third, a commentator suggested modifying the amendments to section (c)(8) and (11) on marijuana offenses to more closely reflect the language in *Younger v. Superior Court* (1978) 21 Cal.App.3d 102. (Comment 42.) This change has been made.

Fourth, two commentators suggested that a separate new provision is needed to address the retention period for criminal protective orders. (Comments 39 and 42.) A new subpart has been added on criminal protective orders which provides that these records shall be retained until the order expires or is terminated. (Amended § 68152(c)(11).)

Juvenile actions: Comments and responses

Several commentators stated that the proposed retention for juvenile records, which would be destroyed upon the individual reaching age 23 rather than 28 or released on written request five years after the jurisdiction over the person has terminated, was too short. (See comments 43, 45, and 46.) Some members of the Family and Juvenile Law Advisory Committee also expressed concerns about shortening the periods for the retention of juvenile records. Based on the comments, the Court Executives Advisory Committee has decided not to recommend any substantive changes to the statutory retention periods for records in juvenile proceedings at this time. A more thorough study of the appropriate retention periods for such records, the costs and benefits of records destruction, and the implementation issues is warranted.

Other records: Comments and responses

Bench warrants. A court suggested that the bench warrant provision in amended section 68152(g)(1) should include postrelease community supervision and parole warrants, which should be retained for the same periods as the underlying case category. (Comment 47.) The committee agreed that these warrants should be kept for the same period as those for the underlying case; however, a separate provision is not needed for postrelease community supervision warrants or parole warrants because the language in amended sections 68152(g)(1) and (c)(15) already provides the retention periods applicable for such records.

Expungements. The proposal that was circulated for public comment included a provision relating to the retention of expunged records. A commentator stated that this provision needed clarification and that the term “expungements,” in most courts, is used to refer to dismissals and sealings of criminal records. (Comment 49.) The Court Executives Advisory Committee agreed that the reference to expungements was unclear and that the term is often used to refer to dismissals of certain criminal actions.

To clarify the law, instead of adding a new provision on expungements, the proposal has been revised to add a new paragraph (c)(6) to the provisions on the retention of criminal records. This paragraph provides that records of dismissals under Penal Code sections 1203.4 and 1203.4a would be retained for the same period as for the retention of the records in the underlying case. If the records in the underlying case have been destroyed, the records of these dismissals would be retained for five years after the dismissal, as recommended by a court. (See comment 50.) The new provisions added to section 68152 do not consider the sealing of records because sealing is addressed in the sealing statutes and is distinct from the issues involved in retaining records of dismissals.

Naturalization indexes. Three commentators objected to the elimination of the requirement that naturalization indexes be retained permanently. (Comments 52, 53, and 54.) Although they recognized that naturalization indexes are no longer filed in state courts, they thought that the indexes have important historical value. They recommended that the indexes should be retained by the courts at least until some other means of ensuring that those records will be retained permanently has been established. The committee agreed.

Other subjects commented on

Exhibits. Commentators made some suggestions about exhibits, including incorporating the retention period for exhibits into Government Code section 68152. (See comments 55, 56, and 61.) The committee does not recommend the incorporation of exhibit statutes into section 68152. Exhibits raise many additional issues that are legitimately treated separately from records filed with the court. The CEAC Court Records Management Working Group is considering issues relating to exhibits and may later have recommendations concerning the law on exhibits. The group may also consider adding suggestions about the management of exhibits to future versions of the *Trial Court Records Manual*.

Cost savings. As discussed above, an important purpose of this legislative proposal is to enable courts that maintain many records in paper form to not have to retain those records longer than is really necessary. Changing the law on records retention to authorize quicker destruction should assist courts in reducing their paper records and so realize cost savings. However, a few courts commented that they will not be able to take advantage of this opportunity because they presently have insufficient staff to work on the records destruction process. (See comments 57, 58, and 59.) Although unfortunately this is probably the situation for other courts as well, for those courts that do have the ability to review their records, institute record destruction policies, and reduce their storage costs, the enactment of the proposed legislation should have beneficial results at this time. For other courts, they may be able to realize the benefits later.

Implementation. A court commented that it would not be prudent to expedite a proposal to destroy court records. (Comment 60.) CEAC is not recommending that this proposal be expedited; however, it supports obtaining authorization for earlier records destruction by January 1, 2014 through the regular legislative process so that individual courts that can begin to take advantage of the new shorter record retention periods as soon as the legislation is enacted.

Alternatives considered

The current records retention statute might be left unchanged. But if this were done, the trial courts would not be able to realize the savings and benefits from retaining records for the shorter periods that the proposed amendments to the statute would make possible. Also, the law on records retention would be unclear in many areas. Hence, the Policy Coordination and Liaison Committee and Court Executives Advisory Committee recommend that the Judicial Council sponsor the proposed legislation on records retention at this time.

Implementation Requirements, Costs, and Operational Impacts

For the courts, the key feature of this proposal is that it would not require them to make any changes in their court records retention practices, but if a court determines that it could realize savings and other benefits by retaining records for a shorter period as authorized by the proposed statutory changes, it could do so to the extent provided for under the legislation. By being able to dispose of voluminous unnecessary records, courts should be able to achieve savings if this legislation is enacted.

To realize the savings from reduced storage and other records-related costs, courts will need to take measures to review and destroy records. This will require staff time and resources. But under the amended statutes, courts will have the discretion to undertake such review and destruction. If they determine it is cost-effective, they may change their records retention practices. Only if a court determines that the review and destruction of records is a net benefit will it need to take measures to implement the new shorter records retention periods provided under the legislation.

Attachments

1. Text of proposed legislation, at pages 16–26
2. Comment chart and responses, at pages 27–59

Government Code sections 68150, 68151, and 68152 would be amended to read:

1 **Government Code section 68150**

2 (a)–(e) * * *

3
4 (f) A copy of a court record created, maintained, preserved, or reproduced according to
5 subdivisions (a) and (c) shall be deemed an original court record and may be certified as a true
6 and correct copy of the original record. The clerk of the court may certify a copy of such a record
7 by electronic or other technological means, provided that the means adopted by the court
8 reasonably ensures that the certified copy is a true and correct copy of the original or of a
9 specified part thereof.

10
11 (g)–(k) * * *

12
13 **Government Code section 68151**

14 The following definitions apply to this chapter:

15
16 (a) "Court record" shall consist of the following:

17 (1) All filed papers and documents in the case folder, but if no case folder is created by the
18 court, all filed papers and documents that would have been in the case folder if one had been
19 created.

20 (2) Administrative records filed in an action or proceeding, depositions, transcripts, including
21 preliminary hearing transcripts, and recordings of electronically recorded proceedings filed,
22 lodged, or maintained in connection with the case, unless disposed of earlier in the case pursuant
23 to law.

24 (3) Other records listed under subdivision ~~(j)~~(g) of Section 68152.

25
26 (b)–(d) * * * *

27
28 **Government Code section 68152**

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

34
35 ~~(a) Adoption: retain permanently.~~

36
37 ~~(b) Change of name: retain permanently.~~

38
39 ~~(c)(a) Other~~ Civil actions and proceedings, as follows:

40
41 (1) Except as otherwise specified: retain 10 years.

- 1 (2) Civil unlimited cases, limited cases, and small claims cases (including after trial de novo, if
2 any), except as otherwise specified: retain for 10 years. Civil judgments: retain permanently for
3 unlimited civil cases; retain for 10 years for limited and small claims cases unless judgment is
4 renewed; if judgment is renewed, retain judgment for length of renewal pursuant to Code of Civil
5 Procedure sections 683.110–683.220.
6
- 7 ~~(2)~~(3) Where a party in a civil case appears by a guardian ad litem: retain for 10 years after
8 termination of the court's jurisdiction.
9
- 10 (4) Civil harassment, elder and dependent adult abuse, private postsecondary school violence,
11 and workplace violence: same period as duration of the injunction and renewals, then retain the
12 injunction as a judgment: 60 days after expiration of the temporary restraining order.
13
- 14 ~~(3)~~(5) Domestic violence: same period as duration of the restraining or other orders and
15 renewals, then retain the restraining or other orders as a judgment; 60 days after expiration of the
16 temporary protective or temporary restraining order.
17
- 18 ~~(4) Eminent domain: retain permanently.~~
19
- 20 ~~(5)~~(6) Family law, except as otherwise specified: 30 years.
21
- 22 (7) Adoption: retain permanently.
23
- 24 (8) Parentage: retain permanently.
25
- 26 (9) Change of name, gender, or name and gender: retain permanently.
27
- 28 ~~(6) Harassment: same period as duration of the injunction and renewals, then retain the~~
29 ~~injunction as a judgment; 60 days after expiration of the temporary restraining order.~~
30
- 31 (10) Probate:
32
- 33 (A) Decedent estates: retain permanently all orders, judgments, or decrees of the court; all
34 Inventories and Appraisals; and all wills and codicils of decedent filed in the case, including
35 those not admitted to probate; other records: retain for five years after final disposition of the
36 estate proceeding.
37
- 38 (B) Wills and codicils transferred or delivered to the court pursuant to Probate Code section 732,
39 734, 8200, or 8203: retain permanently.
40
- 41 (C) Substitutes for decedent estate administration:
42

1 (i) Affidavit procedure for real property of small value under Probate Code section 13100 et seq.:
2 retain file permanently.

3
4 (ii) Proceeding for determining succession to property under Probate Code section 13150 et seq.:
5 retain permanently all Inventories and Appraisals and court orders; other records: retain for 5
6 years after final disposition of the proceeding.

7
8 (iii) Proceeding for determination of property passing or belonging to surviving spouse under
9 Probate Code section 13650 et seq.: retain permanently all Inventories and Appraisals and court
10 orders; other records: retain for 5 years after final disposition of the proceeding.

11
12 (D) Conservatorship: retain permanently all court orders; other records: retain documents of
13 trusts established under substituted judgment under Probate Code section 2580 as provided in
14 subpart (I) and retain other records for 5 years after the later of final disposition of the
15 conservatorship proceeding or the date of the conservatee's death if that date is disclosed in the
16 court's file.

17
18 (E) Guardianship: retain permanently orders terminating the guardianship, if any, and court
19 orders settling final account and ordering distribution of the estate; retain other records for 5
20 years after the later of (1) final disposition of the guardianship proceeding, or (2) the earlier of
21 the date of the ward's death (if that date is disclosed in the court's file) or the date the ward
22 reaches the age of 23.

23
24 (F) Compromises of minors' and disabled persons' claims and actions, and disposition of
25 judgments for minors and disabled persons under Code of Civil Procedure section 372 and
26 Probate Code section 3600 et seq.:

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

33
34 (ii) Retain other records for the same period as the retention period for records in the underlying
35 case. If there is no underlying case, retain for 5 years after the later of (1) the date of the order for
36 payment or delivery of the final balance of the money or property is entered; or (2) the earlier of
37 the date of the ward's death if that date is disclosed in the court's file or the date the ward
38 reaches the age of 23.

39
40 (G) Trusts: litigation under Probate Code sections 17000–17200: retain file permanently.

41
42 (H) Trusts: court-supervised testamentary trusts under Probate Code section 17300: retain file
43 permanently.

1
2 (I) Trusts: trusts created by substituted judgment under Probate Code section 2580: retain
3 permanently all trust instruments and court orders; other records: retain as long as the underlying
4 conservatorship file is retained.

5
6 (J) Trusts: special needs trusts: retain permanently all trust instruments and court orders; retain
7 other records until the later of (1) the retention date of “other records” in the beneficiary’s
8 guardianship or conservatorship file under (D) or (E), if any; or (2) 5 years after the date of the
9 beneficiary’s death (if that date is disclosed in the court’s file).

10
11 (K) All other proceedings under the Probate Code: retain as provided for civil cases.

12
13 ~~(7)(11) Mental health (Lanterman Developmental Disabilities Services Act and Lanterman-~~
14 ~~Petris Short Act): 30 years:~~

15
16 (A) Lanterman Developmental Disabilities Services Act: retain for 10 years.

17
18 (B) Lanterman-Petris-Short Act: retain for 20 years.

19
20 (C) Riese (capacity) hearings under Welfare and Institutions Code sections 5333 and 5334: retain
21 for the later of (1) 20 years after the date of the capacity determination order; or (2) the court
22 records retention date of the underlying involuntary treatment or commitment proceeding, if any.

23
24 (D) Petitions under Welfare and Institutions Code section 8100 et seq. for return of firearms to
25 petitioners who relinquished them to law enforcement while detained in a mental health facility:
26 retain for 10 years.

27
28 ~~(8) Paternity: retain permanently.~~

29
30 ~~(9) Petition, except as otherwise specified: 10 years.~~

31
32 (12) Eminent domain: retain permanently.

33
34 ~~(10)(13) Real property other than unlawful detainer: retain permanently if the action affects title~~
35 ~~or an interest in real property.~~

36
37 ~~(11) Small claims: 10 years.~~

38
39 ~~(12)(14) Unlawful detainer: retain for one year if judgment is only for possession of the~~
40 ~~premises; retain for 10 years if judgment is for money, or money and possession.~~

41
42 ~~(d)(b) Notwithstanding subdivision (e)(a), any civil or small claims case in the trial court:~~

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

3
4 (2) Voluntarily dismissed by a party without entry of judgment: retain for one year.

5
6 ~~Notation of the dismissal shall be made on the civil index of cases or on a separate dismissal~~
7 ~~index.~~

8
9 ~~(e)~~(c) Criminal actions and proceedings, as follows:

10
11 ~~(1) Capital felony (murder with special circumstances where the prosecution seeks the death~~
12 ~~penalty) in which the defendant is sentenced to death, and any felony resulting in a sentence of~~
13 ~~life or life without the possibility of parole: retain permanently, including the records of the cases~~
14 ~~of any co-defendants and any related cases, regardless of the disposition. "Capital felony" means~~
15 ~~murder with special circumstances where the prosecution seeks the death penalty. Records of~~
16 ~~the cases of co-defendants and related cases to be retained under this provision shall be limited to~~
17 ~~those cases that are factually linked or related to the charged offense, that are identified in the~~
18 ~~courtroom, and that are placed on the record. If the charge a capital felony is disposed of by~~
19 ~~acquittal or a sentence less than death, life, or life without possibility of parole, the judgment~~
20 ~~shall be retained permanently and the case record shall be reclassified retained for 50 years or for~~
21 ~~10 years after official written notification of the death of the defendant. If a capital felony is~~
22 ~~disposed of by an acquittal, the record shall be retained for 10 years.~~

23
24 (2) Felony, except as otherwise specified, and in any case (felony or misdemeanor) resulting in a
25 requirement that the defendant register as a sex offender under Penal Code section 290:
26 judgment: retain permanently. For all other documents: retain for 7550 years or the maximum
27 term of the sentence, whichever is longer; provided, however, that any record other than the
28 judgment may be destroyed 10 years after the death of the defendant. Felony case files that do
29 not include final sentencing or other final disposition because the case was bound over from a
30 former municipal court to the superior court and not already consolidated with the superior court
31 felony case file: retain for 10 years from the disposition of the superior court case.

32
33 ~~(3) Felony, except capital felony, with court records from the initial complaint through the~~
34 ~~preliminary hearing or plea and for which the case file does not include final sentencing or other~~
35 ~~final disposition of the case because the case was bound over to the superior court: five years.~~

36
37 ~~(4)~~(3) Misdemeanor, except as otherwise specified: five years. Felony reduced to a
38 misdemeanor: retain in accord with the relevant misdemeanor.

39
40 ~~(5)~~(4) Misdemeanor alleging a violation of the Vehicle Code, except as otherwise specified:
41 ~~three years. Felony, where charge is dismissed except as provided in paragraph (6): retain for~~
42 three years.

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

3
4 (6) Dismissal under Penal Code sections 1203.4 and 1203.4a: retain for same period as for
5 retention of the records in underlying case. If the records in the underlying case have been
6 destroyed, retain for five years after dismissal.

7
8 ~~(7) Misdemeanor alleging a violation of Section 23103, 23152, or 23153 of the Vehicle Code: 10~~
9 ~~years. Misdemeanor, except as otherwise specified: retain for 5 years. For misdemeanors~~
10 ~~alleging a violation of Vehicle Code Section 23152, 23153, 23109, 23109.5, or 23662, or Penal~~
11 ~~Code Section 12021(c): retain for 10 years.~~

12
13 ~~(7) Misdemeanor alleging a violation of Section 14601, 14601.1, 20002, 23104, 23105, 23109,~~
14 ~~or 23109.1 of the Vehicle Code: five years.~~

15
16 (8) Misdemeanor alleging a marijuana violation under subdivision (c), (d), or (e) of Section
17 11357 of the Health and Safety Code, ~~or subdivision (b) of Section 11360 of the Health and~~
18 ~~Safety Code in accordance with the procedure set forth in Section 11361.5 of the Health and~~
19 ~~Safety Code: records shall be destroyed or redacted in accord with Section 11361.5(c) of the~~
20 ~~Health and Safety Code two 2 years from the date of conviction or from the date of arrest if no~~
21 ~~conviction, provided that the case is no longer subject to review on appeal, all applicable fines~~
22 ~~and fees have been paid, and the defendant has complied with all terms and conditions of the~~
23 ~~sentence or grant of probation. However, as provided in Health and Safety Code section~~
24 ~~11361.5(a) and subdivision (e)(5) of this Section, records of a misdemeanor alleging a marijuana~~
25 ~~violation under Health and Safety Code section 11357(e) shall be retained until the offender~~
26 ~~attains the age of 18 years at which time the records shall be destroyed as provided in Health and~~
27 ~~Safety Code section 11361.5(c).~~

28
29 (9) Misdemeanor reduced to an infraction: retain in accord with the relevant infraction.

30
31 ~~(9) Misdemeanor, infraction, or civil action alleging a violation of the regulation and licensing~~
32 ~~of dogs under Sections 30951 to 30956, inclusive, of the Food and Agricultural Code or violation~~
33 ~~of any other local ordinance: three years.~~

34
35 ~~(10) Misdemeanor action resulting in a requirement that the defendant register as a sex offender~~
36 ~~pursuant to Section 290 of the Penal Code: 75 years. This paragraph shall apply to records~~
37 ~~relating to a person convicted on or after September 20, 2006.~~

38
39 ~~(11)~~(10) Infraction, except as otherwise specified: three years retain for one year. Vehicle Code
40 infraction: retain for three years. Infraction alleging a marijuana violation under subdivision (b),
41 or (c) of Section 11357 of the Health and Safety Code, or subdivision (b) of Section 11360 of the
42 Health and Safety Code: if records are retained past the one-year minimum retention period, the
43 records shall be destroyed or redacted in accord with Section 11361.5(c) of the Health and Safety

1 Code two years from the date of conviction or from the date of arrest if no conviction, provided
2 that the case is no longer subject to review on appeal, all applicable fines and fees have been paid
3 and the defendant has complied with all terms and conditions of the sentence or grant of
4 probation.

5
6 ~~(12) Parking infractions, including alleged violations under the stopping, standing, and parking~~
7 ~~provisions set forth in Chapter 9 (commencing with Section 22500) of Division 11 of the Vehicle~~
8 ~~Code: two years.~~

9
10 (11) Criminal protective order: retain until the order expires or is terminated.

11
12 (12) Arrest warrant: retain for same period as period for retention of the records in the underlying
13 case category. If there is no underlying case, retain for one year from date of issue.

14
15 (13) Search warrant: retain for same period as retention period for underlying case. If there is no
16 underlying case, retain for 5 years from date of issue.

17
18 (14) Probable cause declarations: retain for same period as retention period for underlying case.
19 If there is no underlying case, retain for one year from date of declaration.

20
21 (15) Revocation proceedings:

22
23 (A) Proceedings for revocation of postrelease community supervision: retain for 5 years after the
24 period of supervision expires or is terminated.

25
26 (B) Proceedings for revocation of postrelease parole supervision: retain for 5 years after the
27 period of supervision expires or is terminated.

28
29 ~~(f)~~(d) Habeas corpus:

30
31 (1) Habeas corpus in criminal and family law matters: retain for the same period as period for
32 retention of the records in the underlying case category, whether granted or denied.

33
34 (2) Habeas corpus in mental health matters: retain all records for same period as period for
35 retention of the records in the underlying case category, whether granted or denied, but if there is
36 no underlying case, retain records for 20 years.

37
38 ~~(g)~~(e) Juvenile:

39
40 (1) Dependent (Section 300 of the Welfare and Institutions Code): upon reaching age 28 or on
41 written request shall be released to the juvenile five years after jurisdiction over the person has
42 terminated under subdivision (a) of Section 826 of the Welfare and Institutions Code. Sealed

1 records shall be destroyed upon court order five years after the records have been sealed pursuant
2 to subdivision (c) of Section 389 of the Welfare and Institutions Code.

3
4 (2) Ward (Section 601 of the Welfare and Institutions Code): upon reaching age 21 or on written
5 request shall be released to the juvenile five years after jurisdiction over the person has
6 terminated under subdivision (a) of Section 826 of the Welfare and Institutions Code. Sealed
7 records shall be destroyed upon court order five years after the records have been sealed under
8 subdivision (d) of Section 781 of the Welfare and Institutions Code.

9
10 (3) Ward (Section 602 of the Welfare and Institutions Code): upon reaching age 38 under
11 subdivision (a) of Section 826 of the Welfare and Institutions Code. Sealed records shall be
12 destroyed upon court order when the subject of the record reaches the age of 38 under
13 subdivision (d) of Section 781 of the Welfare and Institutions Code.

14
15 (4) Traffic and some nontraffic misdemeanors and infractions (Section 601 of the Welfare and
16 Institutions Code): upon reaching age 21 or five years after jurisdiction over the person has
17 terminated under subdivision (c) of Section 826 of the Welfare and Institutions Code. May be
18 microfilmed or photocopied.

19
20 (5) Marijuana misdemeanor under subdivision (e) of Section 11357 of the Health and Safety
21 Code in accordance with procedures specified in subdivision (a) of Section 11361.5 of the Health
22 and Safety Code: upon reaching age 18, the records shall be destroyed.

23
24 ~~(h) Probate.~~

25
26 ~~(1) Conservatorship: 10 years after decree of termination.~~

27
28 ~~(2) Guardianship: 10 years after the age of 18.~~

29
30 ~~(3) Probate, including probated wills, except as otherwise specified: retain permanently.~~

31
32 ~~(i)(f)~~ Court records of the appellate division of the superior court: retain for five 5 years.

33
34 ~~(j)(g)~~ Other records:-

35
36 ~~(1) Applications in forma pauperis: any time after the disposition of the underlying case.~~

37
38 ~~(2) Arrest warrant: same period as period for retention of the records in the underlying case~~
39 ~~category.~~

40
41 ~~(3)~~(1) Bench warrant: retain for same period as period for retention of the records in the
42 underlying case category. For bench warrants issued for a misdemeanor, retain records for the

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

3
4 ~~(4)(2)~~ Body attachment: retain for same period as period for retention of the records in the
5 underlying case.

6
7 ~~(4)(3)~~ Bond: retain for three years after exoneration and release.

8
9 ~~(5) Coroner's inquest report: same period as period for retention of the records in the underlying~~
10 ~~case category; if no case, then permanent.~~

11
12 ~~(6) Court orders not associated with an underlying case, such as orders for destruction of court~~
13 ~~records for telephone taps, or to destroy drugs, and other miscellaneous court orders: three years.~~

14
15 ~~(7)(4)~~ Court reporter notes: 10 years after the notes have been taken in criminal and juvenile
16 proceedings and five years after the notes have been taken in all other proceedings, except notes
17 reporting proceedings in capital felony cases (murder with special circumstances where the
18 prosecution seeks the death penalty and the sentence is death), including notes reporting the
19 preliminary hearing, which shall be retained permanently, unless the Supreme Court on request
20 of the court clerk authorizes the destruction.

21
22 (A) Criminal and juvenile proceedings: retain notes for 10 years, except as otherwise specified.
23 Notes reporting proceedings in capital felony cases (murder with special circumstances where
24 the prosecution seeks the death penalty and the sentence is death), including notes reporting the
25 preliminary hearing, shall be retained permanently, unless the Supreme Court on request of the
26 court clerk authorizes the destruction.

27
28 (B) Civil and all other proceedings: retain notes for 5 years.

29
30 ~~(8)(5)~~ Electronic recordings made as the official record of the oral proceedings under the
31 California Rules of Court may be destroyed or deleted:

32
33 (A) Any time after final disposition of the case in infraction and misdemeanor proceedings,

34
35 (B) After 10 years in all other criminal proceedings, and

36
37 (C) After ~~five~~ 5 years in all other proceedings.

38
39 ~~(9)(6)~~ Electronic recordings not made as the official record of the oral proceedings under the
40 California Rules of Court: ~~any time either before or after final disposition of the case~~ may be
41 destroyed or deleted at any time at the discretion of the court.

42
43 ~~(10) Index, except as otherwise specified: retain permanently.~~

- 1
- 2 ~~(11) Index for cases alleging traffic violations: same period as period for retention of the records~~
- 3 ~~in the underlying case category.~~
- 4
- 5 ~~(12) Judgments within the jurisdiction of the superior court other than in a limited civil case,~~
- 6 ~~misdemeanor case, or infraction case: retain permanently.~~
- 7
- 8 ~~(13) Judgments in misdemeanor cases, infraction cases, and limited civil cases: same period as~~
- 9 ~~period for retention of the records in the underlying case category.~~
- 10
- 11 (7) Fee waiver applications: retain for same period as underlying case.
- 12
- 13 ~~(12)(8) Judgments within the jurisdiction of the superior court other than in a limited civil case,~~
- 14 ~~misdemeanor case, or infraction case: retain permanently.~~
- 15
- 16 ~~(13)(9) Judgments in misdemeanor cases, infraction cases, and limited civil cases: same period~~
- 17 ~~as period for retention of the records in the underlying case category.~~
- 18
- 19 (10) Juror proceedings, including sanctions: retain for one year.
- 20
- 21 ~~(14)(11) Minutes: retain for same period as period for retention of the records in the underlying~~
- 22 ~~case category.~~
- 23
- 24 (12) Orders not associated with an underlying case, such as orders for destruction of court
- 25 records for telephone taps, or to destroy drugs, and other miscellaneous court orders: retain for
- 26 one year.
- 27
- 28 ~~(15)(13) Naturalization index: retain permanently.~~
- 29
- 30 ~~(16) Ninety-day evaluation (under Section 1203.03 of the Penal Code): same period as period for~~
- 31 ~~retention of the records in the underlying case category, or period for completion or termination~~
- 32 ~~of probation, whichever is longer.~~
- 33
- 34 (14) Index, except as otherwise specified: retain permanently. Index for cases alleging traffic
- 35 violations: retain for same period as for retention of the records in the underlying case category.
- 36
- 37 ~~(17)(15) Register of actions or docket: retain for the same period as period for retention of the~~
- 38 ~~records in the underlying case category, but in no event less than 10 years for civil and small~~
- 39 ~~claims cases.~~
- 40
- 41 ~~(18) Search warrant: 10 years, except search warrants issued in connection with a capital felony~~
- 42 ~~case defined in paragraph (7), which shall be retained permanently.~~
- 43

1 ~~(k)~~(h) Retention of the court records under this section shall be extended as follows:(1) by order
2 of the court on its own motion, or on application of a party or an interested member of the public
3 for good cause shown and on those terms as are just. A fee shall not be charged for making the
4 application.

5
6 ~~(2) Upon application and order for renewal of the judgment to the extended time for enforcing~~
7 ~~the judgment.~~

8
9 (i) The record retention periods provided in this section as amended effective January 1, 2014
10 apply to all court records in existence prior to that date as well as to records created after that
11 date.

LEG12-02

Proposed Judicial Council-sponsored Legislation: Modernization and Improvement of Statutes on Trial Court Records Retention and Management

List of All Commentators, Overall Positions on the Proposal, and General Comments

	Commentator	Position	Comment on Behalf of Group?	Comment	Committee Response
1.	Hon. Jerilyn L. Borack Judge Superior Court of Sacramento County	NI	N	(See specific comments below.)	(See responses to specific comments below.)
2.	John Chemeleski Court Commissioner Superior Court of Los Angeles County	AM	N	(See specific comments below.)	(See responses to specific comments below.)
3.	Domestic Violence Legal Roundtable By Staci Martin Staff Attorney Bay Area Legal Aid San Francisco, CA	NI	Y	(See specific comments below.)	(See responses to specific comments below.)
4.	Hon. Mary Ann Grilli Judge Superior Court of Santa Clara County	NI	N	(See specific comments below.)	(See responses to specific comments below.)
5.	Thomas Lane Santa Monica, CA	N	N	(See specific comments below.)	(See responses to specific comments below.)
6.	Legal Advocates for Children and Youth (LACY) By Andrew Cain Supervising Attorney San Jose, CA	AM	Y	(See specific comments below.)	(See responses to specific comments below.)

LEG12-02

Proposed Judicial Council-sponsored Legislation: Modernization and Improvement of Statutes on Trial Court Records Retention and Management

7.	Mark Lomax Attorney at Law Pasadena, CA	AM	N	At the outset, let me say that I support reorganization of Government Code section 68152. I believe the proposed amendments will make the statute easier to understand and make its many provisions easier to navigate. (See specific comments below.)	The commentator's support for the reorganization is noted. (See responses to specific comments below.)
8.	Los Angeles County Counsel By James Owens Division Chief Children Services Division Monterey Park, CA	AM	Y	(See specific comments below.)	(See responses to specific comments below.)
9.	Superior Court of Contra Costa County By Kathleen Shambaugh Business Operations Administrator	NI	Y	(See specific comments below.)	(See responses to specific comments below.)
10.	Superior Court of Los Angeles (no specified individual)	AM	Y	(See specific comments below.)	(See responses to specific comments below.)
11.	Superior Court of Marin County By Kim Turner, Executive Officer	A	Y	We wholeheartedly support the proposed amendments but seek clarification on two issues. (See specific comments below.)	(See responses to specific comments below.)
12.	Superior Court of San Diego County By Mike Roddy Executive Officer	AM	Y	Generally the San Diego Superior Court agrees with reorganizing contents by case type in the Government Code, but the proposed amended statutes do not go into enough detail.	Some of the statutory retention provisions—including those relating to criminal and probate records—have been revised to be much more detailed based on the public comments and input from advisory committees.

LEG12-02

Proposed Judicial Council-sponsored Legislation: Modernization and Improvement of Statutes on Trial Court Records Retention and Management

				(See specific comments below.)	(See responses to specific comments below.)
13.	Superior Court of Solano County By Lezlee Sheldon Records Program Manager	A	Y	(See specific comments below.)	(See responses to specific comments below.)
14.	Superior Court of Ventura County By Mike Planet Executive Officer	A	Y	No specific comment.	No response required.
15.	Superior Court of Yolo County By Julie Ann Burton Court Operations Supervisor	A	Y	As to the items pertaining to case retention and appeals Yolo Superior Court didn't see anything of concern....This court agrees with the proposed changes to trial court records retention and management. The reorganization of Government Code section 68152 will make it more user-friendly. The proposal to authorize the destruction of various court records earlier than what is now permitted will be helpful for those courts who have available staff to work on the destruction process. (See specific comments below.)	The commentator's general support for the proposal is noted. (See responses to specific comments below.)
16.	The State Bar of California Executive Committee of the Trusts & Estates Section (TEXCOM) By Jeff G. Carchidi (TEXCOM) Newport Beach, CA Saul Bercovitch State Bar Legislative Counsel San Francisco, CA	NI	Y	(See specific comments below.)	(See responses to specific comments below.)

LEG12-02

Proposed Judicial Council-sponsored Legislation: Modernization and Improvement of Statutes on Trial Court Records Retention and Management

17.	The State Bar of California Executive Committee of the Family Law Section California (FLEXCOM) By Charlotte L. Keeley (FLEXCOM) Sacramento, CA Saul Bercovitch State Bar Legislative Counsel San Francisco, CA	NI	Y	(See specific comments below.)	(See responses to specific comments below.)
18.	Cath Trindle Redwood City, CA	AM	N	(See specific comments below.)	(See responses to specific comments below.)

LEG12-02

Proposed Judicial Council-sponsored Legislation: Modernization and Improvement of Statutes on Trial Court Records Retention and Management

Comments on the Proposed Legislation

	Commentator	Comment	Committee Response
<i>Family Law</i>			
19.	Hon. Jerilyn L. Borack Judge Superior Court of Sacramento County	Family law orders and judgments can refer to prior documents that are incorporated by reference. To the extent that those prior documents have been destroyed, the judgments/orders may not be comprehensible if a later motion to modify is filed after the retention period has expired.	Based on all the comments, the committee has decided not to recommend at this time any substantive changes to the statutory retention periods for records in family law, juvenile law, domestic violence protective order cases, or cases involving other types of civil protective orders. A more thorough study of the appropriate retention periods for such records, the costs and benefits of records destruction, and the implementation issues appears to be warranted.
20.	Domestic Violence Legal Roundtable By Staci Martin Staff Attorney Bay Area Legal Aid San Francisco, CA	Family law issues that may come up after the records are destroyed include: After-discovered assets (pertinent records include discovery motions); spousal support modifications (judgments rarely have the 4320 factors delineated and pleadings in support of permanent support would be necessary); and delayed sale of home proceedings. Documents regarding minor children: Issues - Adult dependent children; statutes of limitations for child abuse tort (for child sexual abuse, it's by age 26 or within 7 years of discovery of abuse (CCP 340.1)); and motions involving new families but same issues (i.e., knowingly false allegation of child abuse).	See response to comment 19.
21.	Hon. Mary Ann Grilli Judge Superior Court of Santa Clara County	1. In [proposed section 68152(a)(4)(A)], the proposal calls for keeping Judgments and QDRO's permanently, as well as any subsequent modifications. This could prove to be very confusing for staff. Not all orders are labeled as modifications of judgments. For example, an order after hearing on a support motion may technically be a modification of a judgment, but it could also be a modification of an order issued after the judgment. If spousal support is reserved in the judgment, as an example, and there is a subsequent order	See response to comment 19.

LEG12-02

Proposed Judicial Council-sponsored Legislation: Modernization and Improvement of Statutes on Trial Court Records Retention and Management

		<p>setting support, then a further modification would be modifying the order after hearing and not just the judgment.</p> <p>My concern in this is that staff would be in the position of having to spend quite a bit of time figuring out what papers to keep and what papers to destroy. With ever shrinking staff resources, there is a need for the retention statute to be very clear and to have as little an impact on staff as possible.</p> <p>The reference to a single judgment in section 4 is problematic. It is quite common to have a status only judgment followed by a judgment or several judgments on reserved issues. The language of the statute should clearly specify any and all judgments.</p> <p>2. In [proposed section 68152(a)(4)(A)], the proposal has the court retaining the files in cases without children for 5 years from the Judgment. Which judgment is this section referring to and what is to be done where there are several judgments in a case?</p> <p>3. In [proposed section 68152(a)(4)(B)], the proposal requires the court to retain the file until the youngest child attains age 23. This too can be problematic. For example, support can extend beyond the age of majority for disabled adult children. In addition, there can be ongoing spousal support orders in cases that extend well beyond the 23rd birthday of the youngest child. It is vital to have the underlying records in spousal support matters, given the requirement to review the 4320 factors in long term spousal support orders.</p>	
22.	<p>Superior Court of Contra Costa County By Kathleen Shambaugh Business Operations Administrator</p>	<p>Judgments and QDRO's will be retained indefinitely (good plan.) Other family law documents for cases with children would be retained for five years after the youngest child turns 23 years old.</p>	<p>See response to comment 19.</p>

LEG12-02

Proposed Judicial Council-sponsored Legislation: Modernization and Improvement of Statutes on Trial Court Records Retention and Management

		<p>I think that all orders (orders after hearing as opposed to judgments) that contain child, spousal or family support orders should also be retained indefinitely. Family Code Section 291 provides that these orders are enforceable until paid in full. We see many cases where the "children" are in their 40's and the obligor still owes back support. Given that these orders are enforceable until paid in full, I think they should be kept indefinitely.</p> <p>These support orders are microfilmed, as are judgments.</p>	
23.	Superior Court of Los Angeles County	<p>1. Proposed section 68152(a)(4)(A): Five years is not a sufficient retention period for cases that do not involve children. Modifications of spousal support can (and do) arise more than five years after the Judgment was granted. The Judgment and QDRO alone would not provide the judicial officer with sufficient background to rule on the modification, which would require a finding of change of circumstances. Specifying any post-Judgment retention period (e.g., ten years, fifteen years) would be arbitrary, although ten years would be more reasonable than five years.</p> <p>2. Proposed section 68152(a)(4)(B): Five years is not a sufficient retention period for cases that involve children. Litigation over arrears owed on child support orders can (and does) arise more than five years after the children turns 18. The Judgment would not provide the judicial officer with sufficient background to rule on the arrears, which would require a finding of change of circumstances. Specifying any port-Judgment retention period (e.g., ten years, fifteen years) would be arbitrary, although ten years would be more reasonable than five years.</p> <p>3. General comment: It should be noted that approximately a third of all Motions and Orders to Show Cause filed in Family Law in Los Angeles are filed post-judgment. In post-</p>	See response to comment 19.

LEG12-02

Proposed Judicial Council-sponsored Legislation: Modernization and Improvement of Statutes on Trial Court Records Retention and Management

		<p>judgment modification hearings, the judicial officer must consider any changes in circumstances. The premature destruction of records, pleadings and evidence would deprive judges of a complete and accurate evaluation of the circumstances under which the original judgment was entered.</p> <p>Further, while the electronic storage of records has many advantages, the speed of technological change can result in any platform adopted for storage becoming obsolete and making the permanent storage (or even the ten year storage) of electronic records unreliable.</p> <p>4. Retention requirements for Domestic Support cases filed by the Department of Child Support Services should be specified.</p> <p>5. Habeas Corpus cases involving child custody and Hague Convention International Child Abduction cases are not addressed under the current proposed amendments for either Family Law or Criminal Law.</p>	
24.	<p>Superior Court of San Diego County By Mike Roddy Executive Officer</p>	<p>Specifically, as to family law retention periods,... our court has the following comments:</p> <p>1. Proposed section 68152(a)(4)(A): Cases which do not involve minor children: Retention for five years after the date of entry of judgment does not seem sufficient when some parties seek a modification of judgment more than five years after judgment was entered. What is the recourse then for parties when their case is destroyed?</p> <p>2. Proposed section 68152(a)(4)(A): Cases which involve minor children: Because of the intricacies associated with child support cases and arrearages, it doesn't seem realistic to cap the retention for five years after the youngest child turns 23.</p>	See response to comment 19.

LEG12-02

Proposed Judicial Council-sponsored Legislation: Modernization and Improvement of Statutes on Trial Court Records Retention and Management

		<p>3. We also have concerns about approving time limits suggested for family cases in general due to the following concerns:</p> <ul style="list-style-type: none">• Retention of proof of service. Proofs of service are crucial in cases involving fraudulent service, defective substitute service, service by publication/lack of personal jurisdiction, set asides/dismissals and establishing the judgment as being void. Our court still sees these issues in cases from the early 1990's. Many of the children in these cases have been emancipated more than 5 years ago.• Cases without any judgment such as a Rosales issue where temporary orders never made it to a judgment yet are being enforced as a judgment when they should have been dismissed after five years. Documents in the case file are needed, sometimes decades later, to successfully attack arrearages.• Judgments made "without prejudice" which allow a party to go back years later to review the terms of the judgment. Documents in the case file are relevant to that determination.• Dissolution judgments entered over 5 years ago where there are no minor children (for example, a 30 year marriage); however, parties are still litigating division of community property. Court reserved jurisdiction over proceeds/value of community property residence and business. For whatever reason the issues are not resolved within a five year time frame. It would be crucial to retain documents in the court file that relate to the reserved issues.	
--	--	--	--

LEG12-02

Proposed Judicial Council-sponsored Legislation: Modernization and Improvement of Statutes on Trial Court Records Retention and Management

25.	<p>Superior Court of Solano County By Lezlee Sheldon Records Program Manager</p>	<p>Ex Parte Application for Restoration of Former Name After Entry of Judgment and Order form FL-395 should be retained permanently on family law cases - it's a name change order.</p>	<p>See response to comment 19.</p>
26.	<p>The State Bar of California Executive Committee of the Family Law Section California (FLEXCOM) By Charlotte L. Keeley (FLEXCOM) Sacramento, CA Saul Bercovitch State Bar Legislative Counsel San Francisco, CA</p>	<p>FLEXCOM recommends:</p> <ol style="list-style-type: none"> 1. Preservation of Judgments (including parentage and adoption judgments) and QDROs permanently. 2. Subject to the provisions of paragraph 5, in cases not involving children, if there is an order for spousal support, retention of all documents until the earlier of (a) 5 years after spousal support is terminated by operation of law (death or either party, remarriage of recipient) or entry of an order terminating spousal support jurisdiction; or (b) 50 years after the date of the most recent order establishing or modifying spousal support. <p>Because spousal support is typically subject to modification after entry of a judgment, documents filed prior to judgment remain relevant about the subject of some of the factors the court will consider relating to post-judgment determinations about the rate and duration of spousal support. For example, the parties' income and expense declarations filed from and after the date of separation are relevant to the issue of the marital standard of living, impacting the court's post-judgment determination of rate/duration of spousal support.</p> <ol style="list-style-type: none"> 3. Subject to the provisions of paragraph 5, in all cases involving children, retention of all documents until five years after child support and child custody jurisdiction ends. 4. Subject to the provisions of paragraph 5, in all cases where there is an assertion that there is a disabled child, retention of 	<p>See response to comment 19.</p>

LEG12-02

Proposed Judicial Council-sponsored Legislation: Modernization and Improvement of Statutes on Trial Court Records Retention and Management

		<p>all documents until the death of either party or the disabled child.</p> <p>Because the court may make an order for the support of a disabled adult child, all records should be retained until the disabled child or either party dies.</p> <p>5. Where child, spousal or family support has been awarded in any order or a judgment (including pendente lite and post-judgment orders), those orders shall be retained permanently <i>until</i> an Acknowledgment of Satisfaction of Judgment acknowledging that the obligations set forth in each respective order or judgment has been satisfied, at which point the orders may be destroyed. The Acknowledgment of Satisfaction of Judgment itself shall be retained permanently.</p> <p>6. For all other cases, retention of documents other than judgments and QDROs the period of five (5) years from date of entry of judgment.</p>	
Parentage			
27.	Hon. Mary Ann Grilli Judge Superior Court of Santa Clara County	[Proposed section 68152(a)(6)] requires that parentage cases be retained permanently. Parentage, however, can be established in several different case types— dissolutions, UPA cases, legal separations, domestic violence prevention act cases, and child support actions. Are all of these to be retained if there is a finding of parentage?	The parentage provision is directly based on the current law, which is retained. The questions concern how that law should be interpreted, which is not addressed in this proposal.
Domestic violence and other restraining orders			
28.	Hon. Jerilyn L. Borack Judge Superior Court of Sacramento County	Domestic violence restraining orders can be filed in other proceedings such as a dissolution or a parentage case. Similarly, orders relating to parentage or custody, visitation, support can be filed in a DVPA proceeding. The proposed language creates inconsistencies and ambiguities among these case types which seems anomalous and may result in missing documents. It may also be administratively costly to	See response to comment 19.

LEG12-02

Proposed Judicial Council-sponsored Legislation: Modernization and Improvement of Statutes on Trial Court Records Retention and Management

		<p>determine using this language which documents should be purged and which should remain.</p> <p>Domestic violence restraining orders increasingly record important information that may be useful to judges in subsequent or related proceedings. For example, the EPO form, if revised, will contain information about the presence of firearms and, arguably, should be retained.</p> <p>The case types in section 68152(a), subdivisions (4) through (8), are complex and often characterized by continuing litigation and cross-over litigation. For example, a criminal case could involve a party who is the subject of a domestic violence restraining order proceeding. The history evidenced in the file may be relevant in the criminal case filed after destruction of the records.</p> <p>It appears that the language in section 68152(a)(8) (D) and (E) attempts to carve out domestic violence proceedings that consist solely of restraining orders, but the language is unclear as to what happens to the documents.</p> <p>There may be a public interest in retaining records in these case types for research purposes. For example, records of restraining orders in domestic violence cases may be useful for analyzing public safety and other policy issues.</p>	
29.	<p>Domestic Violence Legal Roundtable By Staci Martin Staff Attorney Bay Area Legal Aid San Francisco, CA</p>	<p>1. EPOs - should be retained forever due to habeas cases. Any and all evidence helps.</p> <p>2. TROs - Many victims don't follow through with a permanent order and old TROs will support any current claim. If the pleadings were destroyed, a judge wouldn't see the previous four claims when the victim kept changing mind in following through.</p>	See response to comment 19.

LEG12-02

Proposed Judicial Council-sponsored Legislation: Modernization and Improvement of Statutes on Trial Court Records Retention and Management

		<p>3. ROAHs- same concern as EPOs.</p> <p>4. Other orders after hearing- Non-CLETS restraining orders would be useful in future hearings re protection.</p> <p>5. Other DV records - Similar need for habeas cases. Also, the underlying basis for why a RO was granted can be helpful in cases where the abuser later asks for an order against the victim. Also, immigration issues, like U visa application support.</p> <p>The concern is with the same perpetrator abusing elderly folks. Similar to DV concerns re destroying records.</p> <p>I guess these retention periods are because we're not moving along with electronic retention? The group certainly understands the very high costs associated with record retention, but the above issues reflect our concerns.</p>	
30.	Hon. Mary Ann Grilli Judge Superior Court of Santa Clara County	<p>In [proposed section 68152(a)(8)]which relates to domestic violence, there are some serious issues here. To only be required to keep the temporary restraining order for 60 days after its expiration could result in files containing only part of the documents in the case. For example, if a tro issues in a dissolution case, the proposed statute would have the order stricken 60 days after it expires. Read literally, if the TRO expires and is replaced by a 5 year order, the underlying TRO and related documents could no longer be in the file. This could be very problematic for the parties, the staff, and the judges. The information that leads up to a restraining order is often crucial to a custody determination. I would recommend that tro's and restraining orders, as well as their supporting documents, not be destroyed.</p> <p>In [proposed section 68152(a)(8)(C)], restraining orders would be subject to destruction 5 years after expiration. Here</p>	See response to comment 19.

LEG12-02

Proposed Judicial Council-sponsored Legislation: Modernization and Improvement of Statutes on Trial Court Records Retention and Management

		<p>again, the information about restraining orders and domestic violence is critical to custody determinations. In addition, domestic violence can also be considered in setting permanent spousal support. These vital records should not be subject to destruction, particularly while there are issues of support or custody in the case.</p> <p>The sections on domestic violence matters in [proposed section 68152(a)(8)] have varying standards for retention. This will cause an undue burden on staff. They will be having to comb through family law files looking for various types of orders and selectively disposing of different documents. Family law files can be very large, consisting of many volumes. Domestic violence may be referred to in all sorts of documents, from tro's, to supporting declarations, to responses, and orders after hearing. If there is to be the ability to destroy these records, it should be consistent in order to avoid confusion.</p> <p>In [proposed section 68152(a)(8) and (9)], there are references to Emergency Protective Orders. EPO's are not generally a part of the court file. They are sent to the court in addition to being part of CLETS during their term. These orders are very useful for statistical purposes and research. Courts often use them to assist in training of law enforcement and the bench regarding the issuance of these orders.</p> <p>Section [68152(a)(9)], raises some of the same issues as does section (8) and the two sections should be the same as it relates to the timing of any destruction. If there is to be destruction of these restraining order files, there should be a way to make it simple to administer. To do this, there should not be different timelines for TROs, orders after hearing, and supporting documents. I suggest that there be consideration of a single timeframe for destruction, not one that differs depending on the type of document. This would be far less</p>	
--	--	--	--

LEG12-02

Proposed Judicial Council-sponsored Legislation: Modernization and Improvement of Statutes on Trial Court Records Retention and Management

		<p>burdensome on staff.</p> <p>Please consider whether domestic violence or other restraining order documents should be destroyed at all. Such documents are very helpful in assessing custody cases, as well as issues relating to support.</p>	
31.	<p>Superior Court of Contra Costa County By Kathleen Shambaugh Business Operations Administrator</p>	<p>[Proposed section 68152 (a) (8)(C)] provides that restraining orders after hearing shall be kept for 5 years. Some restraining orders after hearing contain child custody orders and some contain child and/or spousal support orders. These ROAH's should be retained in the same manner as other family law orders, with support orders kept indefinitely.</p>	See response to comment 19.
32.	<p>Superior Court of Los Angeles County</p>	<p>1. Some protective orders are part of the criminal case file (i.e., DV). They should be kept in the case file and destroyed when the case file is destroyed.</p> <p>2. Longer retention of EPO's is not necessary. In fact, it is unclear why they need to be retained for 60 days after expiration of the order.</p>	See response to comment 19.
33.	<p>Superior Court of San Diego County By Mike Roddy Executive Officer</p>	<p>Emergency Protective Orders – Our court does not always receive these from the party, but when we do, we file them in the DV case that is opened (in the confidential folder), so the life expectancy is that of the TRO or the permanent restraining order. If the TRO is filed in a dissolution or parentage case, the underlying case type controls the retention period.</p>	See response to comment 19.
34.	<p>The State Bar of California Executive Committee of the Family Law Section California (FLEXCOM) By Charlotte L. Keeley (FLEXCOM)</p>	<p>Advisory Committee's recommendation: EPO will be retained 60 days after the order expires.</p> <p>1. No specific recommendation is made on the issue of how long to retain temporary restraining orders (including domestic violence, civil harassment, workplace violence and</p>	See response to comment 19.

LEG12-02

Proposed Judicial Council-sponsored Legislation: Modernization and Improvement of Statutes on Trial Court Records Retention and Management

	<p>Sacramento, CA Saul Bercovitch State Bar Legislative Counsel San Francisco, CA</p>	<p>private school violence).</p> <p>2. FLEXCOM recommends that an EPO not resulting in an order after hearing be retained 60 days after the order expires.</p> <p>3. For temporary restraining orders, because restraining orders may be extended after the expiration date, FLEXCOM recommends that any restraining order be retained for the period of five (5) years from the date the restraining order expires.</p>	
<i>Probate, Trusts, and Estates</i>			
35.	<p>Mark Lomax Attorney at Law Pasadena, CA</p>	<p>The proposed amendments to section 68152 would add a new retention period ...for minor’s compromises, but the subdivision references only Probate Code section 3600 et seq. While a petition to compromise a minor’s claim in which no civil case is pending is filed under Probate Code section 3600 et seq., a petition to compromise a minor’s claim filed in a pending civil case is governed by Code of Civil Procedure section 372, which should be referenced as well....</p>	<p>The committee agreed and has added a reference to Code of Civil Procedure section 372.</p>
36.	<p>Superior Court of Los Angeles County</p>	<p>1. Wills The reference to wills is not clear. Are wills received for safekeeping (that are not probated) included? It would be useful to have a limit on the retention period for safekeeping wills. Suggested time frame: 10 years.</p> <p>2. Minor’s Compromises The reference to “final order” is unclear. The final orders may be contained in the MC-355 and issued long before the minor turns 18 or the funds are expended. Consider replacing with “termination of the case.” A five-year retention period is preferable over a one-year retention period.</p>	<p>1. Wills Based on recommendations from the Probate and Mental Health Advisory Committee, extensive revisions have been made to the provisions regarding probate records, including wills. Wills and codicils are addressed in amended Government Code section 68152(a)(10)(B), which provides that wills delivered to the court shall be retained permanently.</p> <p>2. Minor’s Compromises Based on recommendations from the Probate and Mental Health Advisory Committee, extensive revisions have been made to the provisions regarding probate records, including minor’s compromises. Minor’s compromises are addressed in amended Government Code section</p>

LEG12-02

Proposed Judicial Council-sponsored Legislation: Modernization and Improvement of Statutes on Trial Court Records Retention and Management

		<p>3. Trusts There is no reference to Decedent’s Estates or Trusts. Consider defining a retention period tied to the final disbursement of the estate or the holdings in the trust.</p>	<p>68152(a)(10)(F). If there is no underlying case, the revised statute recommends that minor’s compromise records other than judgments and orders be retained for a five year period after the later of (1) the date of the order for payment or delivery of the final balance of the money or property is entered; or (2) 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 the age of 23.</p> <p>3. Trusts Based on recommendations from the Probate and Mental Health Advisory Committee, a detailed set of provisions relating to the retention of records of decedent estates and trust proceedings has been added to the records retention statute. (See amended Gov. Code, § 68152(a)(10)(A) and (G)–(K).)</p>
37.	<p>The State Bar of California Executive Committee of the Trusts & Estates Section (TEXCOM) By Jeff G. Carchidi (TEXCOM) Newport Beach, CA Saul Bercovitch State Bar Legislative Counsel San Francisco, CA</p>	<p>TEXCOM recommends the following changes to § 68152(a)(10):</p> <p>1. <u>Addition of § 68152(a)(10)(E) Pertaining to Trust Proceedings</u></p> <p>Over the past two decades, individuals have increasingly used various types of revocable and irrevocable inter vivos trusts for their personal estate planning. As a result, proceedings involving such trusts now constitute a significant portion of trial court business in many counties in California. It is TEXCOM’s opinion that this warrants specific mention of trust proceedings in Gov’t Code § 68152(a)(10).</p> <p>Absent a separate subdivision in § 68152(a)(10) addressing trust proceedings, trial court records for trust matters would be destroyed after 10 years under the “catch all” provision of Gov’t Code § 68152(a)(1) (“Except as</p>	<p>1. <u>Addition of § 68152(a)(10)(E) Pertaining to Trust Proceedings</u></p> <p>Based on recommendations from the Probate and Mental Health Advisory Committee, a detailed set of provisions relating to decedent estates and trusts has been added to the records retention statute. (See amended Gov. Code, § 68152(a)(10)(A) and (G)–(J).)</p>

LEG12-02

Proposed Judicial Council-sponsored Legislation: Modernization and Improvement of Statutes on Trial Court Records Retention and Management

	<p>otherwise specified: retain 10 years”). TEXCOM is of the opinion that a 10-year retention period is much too short. Many trusts are designed to be administered over a much longer period. Often times, trusts are drafted to be administered over the successive lifetimes of multiple beneficiaries. For example, upon the death of the settlor, it is not uncommon for the same trust instrument to provide for the administration, first, during the remaining lifetime of the settlor’s surviving spouse, second, upon the survivor’s death, for the lifetime of the settlor’s children and, third, upon a child’s death, for the child’s descendants. The administration of these types of trusts is likely to span over several decades notwithstanding any application of the rule against perpetuities.</p> <p>TEXCOM recommends that trial court records in trust proceedings be retained permanently, as is the case with probate records. As revocable inter vivos trusts have gained in popularity among Californians as the primary estate planning vehicle, a decedent’s property is at least as likely (perhaps more so) to be administered under the terms of a decedent’s trust rather than in probate proceedings. Therefore, TEXCOM believes that the records retention period for trust proceedings should be the same as for probate proceedings.</p> <p><u>2. Amendment to § 68152(a)(10)(C) Pertaining to Guardianships</u></p> <p>TEXCOM believes that the destruction of guardianship records once the ward reaches the age of 18 years might cause problems because it is foreseeable that such records might be needed for some period of time after the guardianship terminates. Therefore, TEXCOM recommended that the trial court records be retained until the ward reaches the age of 23 (five years after the ward reaches the age of 18).</p>	<p><u>2. Amendment to § 68152(a)(10)(C) Pertaining to Guardianships</u></p> <p>The committee agreed and has modified the records retention for guardianship records to provide for a longer period. (See amended Gov. Code section 68152(a)(10)(E).)</p>
--	--	---

LEG12-02

Proposed Judicial Council-sponsored Legislation: Modernization and Improvement of Statutes on Trial Court Records Retention and Management

<i>Mental Health</i>			
38.	Superior Court of Los Angeles County	<p>The proposed legislation reduces the time from 30 years to ten years for the retention of most mental health documents. A good thing.</p> <p>Probate conservatorships are retained for five years. There should be a separate item under mental health conservatorships under the LPS Act. In probate, it usually means the conservatee passed away or it may mean they regained the ability to take care of their own affairs. There is a difference, even though most other courts don't have a dedicated LPS conservatorship court.</p>	<p>The committee generally agreed with this comment; however, based on suggestions from the Probate and Mental Health Advisory Committee, the committee is ultimately recommending several different, shorter retention periods for different types of mental health records. (See amended Gov. Code, § 68152(11).)</p> <p>The proposal has been revised to include a separate provision for the retention of records under the Lanterman-Petris-Short Act. (See amended Gov. Code, § 68152(11)(B).)</p>
<i>Criminal Actions and Proceedings</i>			
39.	Hon. Mary Ann Grilli Judge Superior Court of Santa Clara County	<p>In the sections relating to criminal records, please consider whether misdemeanor [domestic violence prevention] files where there has been a conviction should be retained longer than 5 years. [Domestic violence] convictions can now lead to 10 year criminal protective orders. Consider whether the files should be retained until at least the expiration of the [criminal protective order].</p>	<p>The committee agreed that, if a criminal protective order has been issued, the order and other records should be retained for at least until the order expires or is terminated. (See amended Gov. Code, § 68152(c)(11).)</p>
40.	Superior Court of Los Angeles County	<p>1. For criminal cases, just to clarify - section 68152 (c) (1) – seems to say that for capital felony cases in which the defendant is sentenced to death, and any felony case resulting in a sentence of life or life without the possibility of parole – we are to retain these court cases permanently, including all records of co-defendants and any related cases, regardless of the disposition. [Note: These “related cases” would have to be identified in the courtroom and placed on the record. Office staff would not have sufficient information to conduct an investigation on each of these cases.]</p> <p>Later in the same paragraph, it states that if a capital felony case is disposed of by a sentence of less than death, life, or</p>	<p>1. The committee agreed that clarification of what constitute records of co-defendants and other related cases would be appropriate. Hence, in amended section 68152(c)(1), language has been added to the statute stating that such cases are limited to those that are “identified in the courtroom” and “placed on the record.”</p>

LEG12-02

Proposed Judicial Council-sponsored Legislation: Modernization and Improvement of Statutes on Trial Court Records Retention and Management

		<p>life without the possibility of parole, that it should be retained for 50 years or for 10 years after official written notification of the death of the defendant (the same as other felony cases).</p> <p>2. The retention period for [post-release community supervision] and parole records may not be adequate. The records should be kept until a fixed time after the period of supervision expires or is otherwise terminated. Keeping records five years from the date of filing without regard to a warrant being outstanding or an extended period of parole seems a bit rigid.</p> <p>3. Habeas Corpus cases involving child custody and Hague Convention International Child Abduction cases are not addressed under the current proposed amendments for either Family Law or Criminal Law.</p>	<p>2. The committee agreed that the retention period for post-release community supervision and parole records should be longer. It recommends modifying the period to be for 5 years after the period of supervision expires or is terminated. (See amended Gov. Code, § 68152(c)(13).)</p> <p>3. The habeas corpus provision in section 68152(d)((1) has been modified to also apply to family law cases.</p>
41.	<p>Superior Court of Marin County By Kim Turner, Executive Officer</p>	<p>In cases where defendant receives diversion and subsequently fails, resulting in reinstatement of criminal proceedings, does retention period commence on the original diversion date or on the date the case was resentenced?</p>	<p>Under Government Code section 68152, the record retention period in all cases is measured from <u>the date of final disposition of the case</u>; and records retention periods for dismissed criminal cases are covered in new subdivision (c)(4)–(6). In diversion cases, dismissal means the final disposition of the case; on the other hand, dismissed cases in which the diversion fails should be treated like the underlying case.</p>
42.	<p>Superior Court of San Diego County By Mike Roddy Executive Officer</p>	<p>1. On the proposed amendments to GC 68152(c)(6) (misdemeanor marijuana offenses) and (c)(8) (infraction marijuana offenses), consider making the exceptions more explicit and in line with <i>Younger v. Superior Court</i> (1978) 21 Cal.3d 102, which states at p. 113-114: “We conclude that section 11361.5, subdivision (b) (A.B.3050), neither requires nor authorizes destruction of records of a conviction that remains subject to review on appeal, or is the basis of a term of imprisonment that has not been fully served, or of a fine that has not been wholly paid, or of periods or conditions of</p>	<p>1. The committee agreed that the statutory provisions should be modified to more closely reflect the language in the <i>Younger</i> decision.</p>

LEG12-02

Proposed Judicial Council-sponsored Legislation: Modernization and Improvement of Statutes on Trial Court Records Retention and Management

		<p>parole or probation that have not been satisfactorily completed.” Here is a suggestion:</p> <p>(c)(6) Misdemeanor alleging a marijuana violation under subdivision (c), (d), or (e) of Section 11357 of the Health and Safety Code: records shall be destroyed or redacted in accord with Section 11361.5(c) of the Health and Safety Code 2 years from the date of conviction, or from the date of arrest if no conviction, provided that 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 Health and Safety Code section 11361.5(a) and subdivision (e)(5) of this Section, records of a misdemeanor alleging a marijuana violation under Health and Safety Code section 11357(e) shall be retained until the offender attains the age of 18 years at which time the records shall be destroyed as provided in Health and Safety Code section 11361.5(c), subject to the exceptions listed above.</p> <p>Also consider including similar amendments to HS § 11361.5 in the proposed legislation.</p> <p>2. In domestic violence cases, there are provisions for protective/restraining orders under the civil case heading, but what about in criminal cases, in particular the (up to) 10-year restraining orders authorized by PC 136.2(i) and 273.5(i)? This court has interpreted the current version of GC 68152 to mean that, if the duration of a protective order issued pursuant to PC §§ 136.2(i) or 273.5(i) will exceed the time otherwise set for permissible destruction of the underlying case file, all records in that case must kept for the duration of the protective order and, after that, the protective order is retained as a judgment. It would be helpful to have specific language for this (or for whatever duration is intended) in the criminal section.</p>	<p>2. The committee agreed that the retention period for criminal protective orders should be clarified. See response to comment 39. The committee recommends that, if a criminal protective order has been issued, the order and other records should be retained for at least until the order expires or is terminated. (See amended Gov. Code, § 68152(c)(11).)</p>
--	--	---	--

LEG12-02

Proposed Judicial Council-sponsored Legislation: Modernization and Improvement of Statutes on Trial Court Records Retention and Management

<i>Juvenile Actions and Proceedings</i>		
43.	<p>Legal Advocates for Children and Youth (LACY) By Andrew Cain Supervising Attorney San Jose, CA</p>	<p>Legal Advocates for Children and Youth (LACY) is submitting comment only on the portion of the proposal that seeks to amend Government Code section 68152(g)(1) related to juvenile dependency records. Current law allows for records to be destroyed when the subject of the petition turns 28. This proposal, if adopted by the Legislature, would allow a court to destroy juvenile dependency records once the subject of the petition turns 23. The section would continue to reference Welfare and Institutions Code 826, which provides further procedures for the destruction and release of records.</p> <p>LACY makes two recommendations related to the statutory scheme for release and destruction of dependency records. First, the age should be reduced to no lower than 25. Second, the waiting period for requesting release of records should be reduced from five to three years. Welfare and Institutions Code section 826 allows the subject of the petition to request release of the records five years after the court's jurisdiction has terminated. Whereas the law governing dependency allows a court to retain jurisdiction until a youth turns 21, the legislative proposal would divest some youth of the opportunity to request release of their records. A situation would be created where some youth wouldn't be able to request release of their records until after their 23rd birthday. By that time, if this proposal is adopted, a trial court could have destroyed the records.</p> <p>LACY suggests choosing an age no lower than 25 to allow for a reasonable period of time in which all youth can request the release of their records under Welfare and Institutions Code 826. If a youth's case stays open until age 21, that youth would have 12 months to request release before the trial court's right to destroy the records can be exercised. Choosing an age no lower than 25 strikes a balance between the</p> <p>Based on all the comments, the committee has decided not to recommend at this time any substantive changes to the statutory retention periods for records in family law, juvenile law, domestic violence protective orders cases, or other types of cases involving civil protective orders. A more thorough study of the appropriate retention periods for such records, the costs and benefits of records destruction, and the implementation issues is warranted.</p>

LEG12-02

Proposed Judicial Council-sponsored Legislation: Modernization and Improvement of Statutes on Trial Court Records Retention and Management

		<p>Council's desire to relax burdens on trial court storage costs and the youth's right to access court records.</p> <p>In addition, LACY suggests the Council propose an amendment to Welfare and Institutions Code 826. This amendment should mirror the timelines ultimately adopted in the proposal for Government Code section 68152(g)(1).</p>	
44.	<p>Mark Lomax Attorney at Law Pasadena, CA</p>	<p>Juvenile Nontraffic Misdemeanors. Regarding juvenile traffic and nontraffic misdemeanors and infractions, the phrase "some nontraffic misdemeanors" in existing subdivision (g)(4) (to be redesigned subdivision (e)(4) is not defined in section 68151 or 68152. Although I am not certain, I think the phrase refers to non-traffic-misdemeanor violations that can be heard and determined by a juvenile hearing officer, which are listed in Welfare and Institutions Code section 256. I suspect that others may be similarly bewildered by the phrase. To avoid uncertainty and confusion, I suggest that the phrase be defined in section 68151 or 68152.</p>	<p>See response to comment 43.</p>
45.	<p>Los Angeles County Counsel By James Owens Division Chief Children Services Division Monterey Park, CA</p>	<p>Government Code section 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:</p> <p>....</p> <p>(e) Juvenile actions and proceedings, as follows:</p> <p>(1) Dependent (Section 300 of the Welfare and Institutions Code): upon reaching age 23 or on written request shall be released to the juvenile five 5 years after jurisdiction over the person has terminated under subdivision (a) of Section 826 of the Welfare and Institutions Code. Sealed records shall be</p>	<p>See response to comment 43.</p>

LEG12-02

Proposed Judicial Council-sponsored Legislation: Modernization and Improvement of Statutes on Trial Court Records Retention and Management

		<p>destroyed upon court order five 5 years after the records have been sealed pursuant to subdivision (c) of Section 389 of the Welfare and Institutions Code.</p> <p>Comment: The proposed change allowing for the destruction of juvenile dependency records when the former dependent reaches the age of 23, rather than the age of 28 in the current law, does not provide a sufficient amount of time for the preservation of these important records. Especially in light of the recent changes in juvenile dependency law, providing for ongoing jurisdiction of nonminor dependents up to the age of 21, the proposed change would allow the destruction of records only two years after some of these cases have been terminated. In Los Angeles County, record requests by former dependents are made frequently for a variety of reasons, including record requests to verify the former dependency status for immigration applications as well as for financial aid or college applications. If the records are destroyed prematurely, many young adults may not be able to prove that they were prior juvenile dependents, resulting in an ability to qualify for various programs that benefit former foster youth. Retention of these important records for a longer period, such as the time period allowed under the present law, strikes a proper balance between the need to maintain records for a legitimate needs of former dependent and the need to conserve judicial budgets.</p>	
46.	<p>The State Bar of California Executive Committee of the Family Law Section California (FLEXCOM) By Charlotte L. Keeley (FLEXCOM) Sacramento, CA Saul Bercovitch</p>	<p>FLEXCOM’s comments and recommendations:</p> <p>Existing law requires the juvenile court to destroy records at age 28 or release them to the youth, upon request, after five years have elapsed since termination of jurisdiction. The Advisory Committee recommends retention of records until the youth attains age 23.</p>	<p>See response to comment 43.</p>

LEG12-02

Proposed Judicial Council-sponsored Legislation: Modernization and Improvement of Statutes on Trial Court Records Retention and Management

<p>State Bar Legislative Counsel San Francisco, CA</p>	<p>FLEXCOM recommends the retention of records until the youth attains age 25. FLEXCOM also recommends the waiting period before a youth, upon attaining 18 years of age, can request release of the court record be reduced from five to three years.</p> <p>Without a change in the waiting period, the proposal would allow a court to destroy juvenile records before some youth have the opportunity to submit a request for release. Existing law allows a dependent to remain under the jurisdiction of the juvenile court until age 21. In those instances where a youth remains under the court’s jurisdiction beyond their 18th birthday, the five year waiting period would not elapse until after the youth has turned 23. To strike the balance between the court’s desire to minimize the burden of storing records with the rights of a youth to seek release of the court file, FLEXCOM proposes an amendment that would allow every youth a minimum of 12 months to request the release of records before the file is destroyed. Setting the age for destruction of records at 25 and reducing the waiting period, once a youth attains 18, to three years should help strike this balance.</p> <p>If the statute is amended as currently proposed by the Advisory Committee, it is not known how many youth would lose the ability to request the release of their court file before destruction. For example, under Welfare and Institutions Code section 303, as recently enacted by AB 12, a court retains “general jurisdiction” over the youth, once a case is dismissed, for the purpose of allowing for re-entry into foster care. Thus, it is arguable that any youth who exits the system after his or her 18th birthday does not have jurisdiction “terminated,” as defined by Government Code section 68152, until age 21. If this interpretation were adopted, an even greater number of youth would lose the right to request release of records.</p>	
--	--	--

LEG12-02

Proposed Judicial Council-sponsored Legislation: Modernization and Improvement of Statutes on Trial Court Records Retention and Management

		FLEXCOM believes that, regardless of what age is ultimately settled upon in the proposed amendment of Government Code section 68152, amended language needs to be submitted for Welfare and Institutions Code section 826. The proposed amendment to Government Code section 68152 cannot be reconciled with Welfare and Institutions Code section 826, in its current form.	
Other Trial Court Records			
Bench Warrant			
47.	Superior Court of Los Angeles County	Under the bench warrant category, include language for PRCS and parole warrants. Recommend that we keep the same period as the underlying case category.	The committee agreed that these warrants should be kept for the same period as the underlying case. No separate provision is needed for PRCS warrants and parole warrants because the language in amended section 68152(g)(1) and (c)(13) already provides the retention periods applicable for these records.
Court Reporting Notes			
48.	Mark Lomax Attorney at Law Pasadena, CA	<p>The [Invitation to Comment] on the proposal states (in the last paragraph on p. 7) that no substantive change is being proposed concerning retention of court report notes. I believe this statement is incorrect. Based on my analysis, I have concluded that court reporter notes in juvenile proceedings are required to be retained for 10 years under current law. The proposed amendments to section 68152 would halve that period to five years.</p> <p>My conclusion is based on the following analysis: There is a conflict between section 68152, added by chapter 1030 of the Statutes of 1994, and section 69955, amended by chapter 390 of the Statutes of 1994, regarding the retention period for court reporter notes in juvenile proceedings. Subdivision (j)(7) of section 68152 requires notes in juvenile proceedings to be retained for 10 years, while subdivision (e) of section 69955 requires notes to be retained for five years in all</p>	The committee recommends that sections 68152 and 69955 both provide for the same retention periods: 10 years for criminal and juvenile proceedings (with certain exceptions) and 5 years for other types.

LEG12-02

Proposed Judicial Council-sponsored Legislation: Modernization and Improvement of Statutes on Trial Court Records Retention and Management

		<p>proceedings other than criminal, including juvenile. Since section 68152 was enacted by the chapter with the higher number, it prevails over section 69955. (§9605.) Therefore, the retention period for reporter notes in juvenile proceedings is currently 10 years.</p> <p>I have no opinion on whether the retention period for court reporter notes in juvenile proceedings should be 10 years or five years. I only point out that the proposed amendments to section 68152 would effect a substantive change in retention periods for court reporter notes.</p>	
Expungements			
49.	<p>Mark Lomax Attorney at Law Pasadena, CA</p>	<p>The proposed amendments to section 68152 would add a new retention period, located in subdivision (g)(7) for expungements. I think this new provision requires clarification.</p> <p>First the word “expungement” is not defined in the proposed amendments to section 68151 or 68152. In most courts, the word is commonly used to refer to dismissals and sealings under Penal Code sections 1203.4, 1203.4a, and 1203.45, even though those statutes do not use the word “expungement” or “expunge” to describe the relief granted under those sections. In some courts, the word is also used to refer to sealings under Penal Code sections 851.7, 851.8, 851.85, 851.86, and 851.90. To avoid uncertainty and confusion, I suggest that the word be defined in section 68151 or 68152 so that it specifically identifies the statutes to which it applies.</p> <p>Second, if the word “expungement” is to include a sealing of records under Penal Code section 851.7, or a sealing and destruction of records under Penal Code section 851.8, then new subdivision (g)(7) should be reworded. Penal Code sections 851.7 and 851.8 authorize filing a petition in court to</p>	<p>The committee agreed that the reference to “expungements” in the proposal is confusing and that the term usually refers to certain dismissals. To clarify the law, instead of adding a new provision on expungements, the proposal has been revised to add new paragraph(c)(6) on certain types of criminal dismissals. Specifically, this new provision provides that records of dismissals under Penal Code section 1203.4 and 1203.4a shall be retained for the same period as for the retention of the records in the underlying case; and if the records in the underlying case have been destroyed, the records of these dismissals would be retained for five years after the dismissal, as recommended in comment 50.</p> <p>The further proposed revisions to section 68152 do not address sealing of records, as opposed to dismissals, because sealing is addressed in the sealing statutes and is distinct from the retention issues.</p>

LEG12-02

Proposed Judicial Council-sponsored Legislation: Modernization and Improvement of Statutes on Trial Court Records Retention and Management

		seal and to seal and destroy, respectively, law enforcement records in a case where no accusatory pleading was filed in court, but subdivision (g)(7) does not contemplate such a scenario. Accordingly, I suggest that the second sentence of new subdivision (g)(7) be reworded as follows: “If <u>no accusatory pleading has been filed in the case</u> or if the records in the case have been destroyed, retain for one year after the application for expungement has been granted or denied.”	
50.	Superior Court of Los Angeles County County	Expungements – if the case file has been destroyed, one year may not be a sufficient retention period. We would recommend a five year retention period.	The committee agreed and has added a new paragraph(c)(6),which provides that records of dismissals under Penal Code section 1203.4 and 1203.4a shall be retained for the same period as for the retention of the records in the underlying case; and if the records in the underlying case have been destroyed, the records of dismissal would be retained for five years after these dismissals, as recommended in this comment.
51.	Superior Court of Marin County By Kim Turner, Executive Officer	In cases where the court grants a reduction of charge level from felony to misdemeanor (e.g., following an order of expungement) would the retention period be determined from the date of the reduction of charge level or from the date the case was originally sentenced? This is a common issue in expungement cases.	The provision on expungement has been revised as described in response to comments 49–50. The retention periods for records in cases with reduced charges are addressed in amended Government Code sections 68152(c)(3) and (10).
Naturalization Indexes			
52.	Thomas Lane Santa Monica, CA	I am writing to urge you to not repeal Government Code section 68152 which preserves naturalization records. These are often the only source for people trying to trace their family history.	The committee agreed that these indexes should be retained by the courts at least until some other means of ensuring that those records will be retained permanently has been established.
53.	Mark Lomax Attorney at Law	I am concerned by the proposal to eliminate the existing provision in subdivision (j)(15) of section 68152, which	The committee agreed that these indexes should be retained by the courts at least until some other means of

LEG12-02

Proposed Judicial Council-sponsored Legislation: Modernization and Improvement of Statutes on Trial Court Records Retention and Management

	Pasadena, CA	<p>requires naturalization indexes to be retained permanently. Naturalization petitions and declarations of intention are no longer filed in state courts, but many California superior courts still possess naturalization records dating from when naturalization proceedings were conducted in state courts.⁶ And while Citizenship and Immigration Services, Department of Homeland Security successor to the Immigration and Naturalization Service, has copies of records of naturalizations conducted in state courts since 1906, the agency does not have copies of records of naturalizations conducted in California superior courts before 1906. Because of the important historical and genealogical value of naturalization records, I believe superior court naturalization indexes should not be destroyed without ensuring that copies are available from other sources.</p> <p>Footnote: Despite changes in federal law that removed naturalization proceedings in state courts, section 69847 still requires superior court clerks to keep specified naturalization records. The Genealogical Society of Utah (an affiliate of the Church of Jesus Christ of Latter-day Saints) has microfilmed superior court naturalization records of many but, I think, not all California counties, and make those records available through family history center located throughout the country.</p>	ensuring that those records will be retained permanently has been established.
54.	Cath Trindle Redwood City, CA	<p>As a professional genealogist, I am concerned with the change in policy stating that Clerks will no longer be required to keep Naturalization Indexes permanently. Perhaps a change to "will no longer be required to keep Naturalization Indexes permanently if they have made those indexes and/or the records themselves available to the public in some permanent manner."</p>	The committee agreed that these indexes should be retained by the courts at least until some other means of ensuring that those records will be retained permanently has been established.

LEG12-02

Proposed Judicial Council-sponsored Legislation: Modernization and Improvement of Statutes on Trial Court Records Retention and Management

		The main concern is the records that date before the 1906 changes in US Naturalization law. As these records are over 100 years old, and being court records were not subject to privacy laws anyway, perhaps clerks could be encouraged to make them available to historical societies, genealogical societies, the family history library or other groups that would scan and make them permanently available for research, thereby making the need for clerks to keep indexes a moot point.	
<i>Other Comments</i>			
Court Records Definition in Government Code Section 68151			
55.	John Chemeleski Court Commissioner Superior Court of Los Angeles County	I suggest that the definition exclude exhibits. In family law, and perhaps other areas where there are many motion or other non-trial proceedings, a significant volume of existing files, perhaps more than half, is made up of exhibits attached to motions, orders to show cause, briefs and other various pleadings. Such exhibits are usually not necessary to maintain in the court file after the conclusion of the motion or other pre or post trial proceeding. Often such exhibits are merely duplications of previous filed pleadings or exhibits submitted to aid the court. Such exhibits should be returned to the parties to hold pending the finality of the proceedings, as we now handle trial exhibits. The statute and/or rules should either require or at least encourage such exhibits to be returned to the parties unless good cause exists for retention. Rules could also be drafted to have such exhibits presented separately (not attached to the pleading) making it easier for them to be returned. This would also make it easier to find the various pleadings and orders in some of the bulkier files which are now made up mainly of exhibits from previous proceedings.	The exclusion of exhibits is not necessary. These are treated separately under the law. (See comment 56 below.)
56.	Superior Court of Los Angeles County	Government Code Section 68151 defines the “Court record” as all filed papers and documents in the case folder, but if no	As the commentator notes, exhibits are treated differently under the than court records and have different retention

LEG12-02

Proposed Judicial Council-sponsored Legislation: Modernization and Improvement of Statutes on Trial Court Records Retention and Management

		<p>case folder is created by the Court, all filed papers and documents that would have been in a case folder if one had been created; administrative records filed in an action or proceeding, depositions, paper exhibits, transcripts, including preliminary hearing transcripts, and recordings of electronically recorded proceedings filed, lodged, or maintained in connection with the case unless disposed of earlier in the case pursuant to law; and other records listed under subdivision (j) of section 68152.</p> <p>Exhibit retention periods are defined beginning in Chapter 13, in section 1417 of the Penal Code. Exhibits are retained for different periods than the case file – just an FYI. We do not want to retain them permanently...</p>	<p>periods.</p>
Cost Savings			
57.	<p>Superior Court of Los Angeles County</p>	<p>Immediate savings would not be substantial, as significant manual work would be involved in much of the destruction, e.g., removing judgments and QDRO's from Family Law cases.</p> <p>Furthermore, existing cases have not been flagged with the defined destruction criteria, making designating cases for destruction cumbersome.</p>	<p>The extent of possible savings for each individual court will depend on that court's situation in terms of records maintenance and its retention practices. The proposed legislation will enable those courts that can destroy unneeded records—or at least some of those records--in a cost-efficient manner to do so. However, the fact that many records will not need to be retained for such long periods as in the past does not mean that an individual court must destroy those records if it is not efficient for that court to do so. Each court will make its own cost-benefit analysis of the situation and act accordingly.</p>
58.	<p>Superior Court of San Diego County By Mike Roddy Executive Officer</p>	<p>In the final analysis for all case types... a question exists as to whether our court can realize significant savings because we would have to take measures to review and destroy records. On occasion certain dismissed records in certain case types are destroyed, but that action is taken only when our court has sufficient resources to undertake such a review, which it currently does not possess.</p>	<p>See response to comment 57.</p>

LEG12-02

Proposed Judicial Council-sponsored Legislation: Modernization and Improvement of Statutes on Trial Court Records Retention and Management

59.	Superior Court of Yolo County By Julie Ann Burton Court Operations Supervisor	Although the proposed changes are to enable the trial courts to save on reduced storage costs, it will not benefit this court at this time. It would require a large number of staff & time to purge the various court records that will be authorized for an earlier destruction located at the storage facility and the court would require the storage facility be maintained for those records that we have to retain.	See response to comment 57.
Implementation			
60.	Superior Court of Los Angeles County	Expediting a proposal to destroy court records would not be prudent, given the consequences of setting inappropriate retention limit.	The committee is not recommending that the proposal be expedited. It has been circulated for comment and thoroughly considered; also, a number of Judicial Council advisory committees have provided extensive, detailed input on the proposal.
Other Statutes That Should Be Considered for Revision			
61.	Mark Lomax Attorney at Law Pasadena, CA	<p>I have identified several other statutes pertaining to trial court records retention that may warrant review for possible revision. That these provisions exist outside sections 68150-68153 is itself problematic, quite apart from the substance of the provisions. Their existence outside the main body of retention provisions risks the possibility that they may be over-looked and missed by court personnel, who, unaware of their existence, may erroneously rely on general, catchall retention provisions in section 68152.</p> <p>Here are the statutes I have identified:</p> <ul style="list-style-type: none"> • Code of Civil Procedure section 207, subdivision (c), regarding records pertaining to the selection, qualification, and assignment of prospective jurors. • Code of Civil Procedure sections 1952, 1952.2, and 1952.3, regarding exhibits in civil cases. See particularly the last paragraph of subdivision (b) of section 1952.3, which requires 	These suggestions are generally beyond the scope of the present proposal and may be addressed at a later time.

LEG12-02

Proposed Judicial Council-sponsored Legislation: Modernization and Improvement of Statutes on Trial Court Records Retention and Management

		<p>that a sealed file be retained for an additional two year after the date when destruction “would otherwise be authorized pursuant to this section.” As far as I can tell, section 1952.3 contains no provisions for destruction of case files, so I cannot see under what circumstances the two-year extension would apply.</p> <ul style="list-style-type: none">• Family Code section 1819, regarding family conciliation court records.• Government Code section 2610, regarding wills and other estate-planning documents deposited for safekeeping with superior court clerks.• Penal Code sections 1417–1417.9, regarding exhibits in criminal cases.	
--	--	--	--