



## JUDICIAL COUNCIL OF CALIFORNIA

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

[www.courts.ca.gov](http://www.courts.ca.gov)

---

# REPORT TO THE JUDICIAL COUNCIL

For business meeting on December 16, 2016

---

Title	Agenda Item Type
Judicial Council–Sponsored Legislation: Retention of Court Records in Gun Violence Cases	Action Required
Rules, Forms, Standards, or Statutes Affected Amend Gov. Code, §§ 68150 and 68152	Effective Date December 16, 2016
Recommended by Policy Coordination and Liaison Committee Hon. Kenneth K. So, Chair Court Executives Advisory Committee Mr. Jake Chatters, Chair	Date of Report October 28, 2016
	Contact Patrick O'Donnell, 415-865-7665 <a href="mailto:patrick.o'donnell@jud.ca.gov">patrick.o'donnell@jud.ca.gov</a> Josely Yangco-Fronza, 415-865-7626 <a href="mailto:josely.yangco-fronza@jud.ca.gov">josely.yangco-fronza@jud.ca.gov</a> Laura Speed, 916-323-3121 <a href="mailto:laura.speed@jud.ca.gov">laura.speed@jud.ca.gov</a>

---

### **Executive Summary**

The Policy Coordination and Liaison Committee and Court Executives Advisory Committee recommend that the Judicial Council sponsor legislation to amend Government Code section 68152(a)(6) to specify the retention period for court records in gun violence cases. This amendment is needed to eliminate the uncertainty regarding the retention period under current law. The amendment will enable courts to more effectively and efficiently implement their records retention and destruction policies with respect to records in gun violence cases. The committees also recommend a technical amendment to Government Code section 68150(a).

### **Recommendation**

The Policy Coordination and Liaison Committee and Court Executives Advisory Committee recommend that the Judicial Council sponsor legislation to:

1. Amend Government Code section 68152(a)(6) to specify the retention period for court records in gun violence cases; and
2. Amend Government Code section 68150(a) to remove references to the future adoption of rules of court, pursuant to subdivision (c).

The text of the amended Government Code sections is attached at page 4.

### **Previous Council Action**

In 2012, the Court Executives Advisory Committee led a collaborative effort with other advisory committees to modernize and improve the records retention statutes in the Government Code. The Judicial Council subsequently sponsored records retention legislation. This initiative resulted in the enactment of Assembly Bill 1352 (Stats. 2013, ch. 274), which amended the Government Code to reduce the record retention periods for certain court records, to establish retention periods for new types of records that were not dealt with under existing law, and to eliminate ambiguities in the law relating to records retention.

### **Rationale for Recommendation**

#### **Gun violence cases**

Since Assembly Bill 1352 was enacted in 2012, new legislation has been passed that provides for protective orders in proceedings to prevent gun violence. (See Assem. Bill 1014; Stats. 2014, ch. 872.) This proposal would amend Government Code section 68152, on court records retention, to specify the statutory period for retaining court records in gun violence cases. The proposed amendment would require the superior courts to retain the court records for gun violence cases for the same period that records must be retained for civil harassment, domestic violence, elder and dependent adult abuse, private postsecondary school violence, and workplace violence cases. Superior courts must retain records for these case types “for the same period of time as the duration of the restraining or other orders and any renewals thereof, then retain the restraining or other orders permanently as a judgment.” (Gov. Code, § 68152(a)(6).)

#### **Technical amendments**

This proposal would also amend Government Code section 68150(a) to remove references to the future adoption of rules of court, pursuant to subdivision (c). The Judicial Council adopted these rules in 2011. It would also remove the references to national standards that applied while the rule and implementing standards and guidelines were in development.<sup>1</sup>

### **Comments, Alternatives Considered, and Policy Implications**

This proposal was circulated for public comment in the spring of 2015 in conjunction with other legislative proposals. No comments were submitted concerning the proposals discussed in this report.<sup>2</sup>

---

<sup>1</sup> The standards and guidelines for electronic court records are stated in the *Trial Court Records Manual* (Judicial Council of Cal., rev. Jan. 1, 2016), pp. 35–45, [www.courts.ca.gov/documents/trial-court-records-manual.pdf](http://www.courts.ca.gov/documents/trial-court-records-manual.pdf). Rule 10.854 of the Cal. Rules of Court authorizes the preparation and maintenance of the manual.

<sup>2</sup> Members of the public commented on other proposals concerning the retention of original wills in probate proceedings. Those proposals have been withdrawn for further consideration and are not included in this proposal.

Because of the enactment of AB 1014, there is a need for new statutory provisions on the retention period for court records in gun violence cases. No alternatives to recommending such legislation were considered.

### **Implementation Requirements, Costs, and Operational Impacts**

By clarifying the retention period for court records relating to gun violence cases, the proposed amendments are expected to assist courts in maintaining and, when appropriate, destroying applicable court records.

### **Attachments**

1. Text of proposed Government Code sections 68150 and 68152, at page 4

Sections 68150 and 68152 of the Government Code would be amended, effective January 1, 2018, to read:

1    **§ 68150.**

2  
3    (a)    Trial court records may be created, maintained, and preserved in any form or forms of  
4           communication or representation, including paper, optical, electronic, magnetic,  
5           micrographic, or photographic media or other technology, if the form or forms of  
6           representation or communication satisfy the rules adopted by the Judicial Council  
7           pursuant to subdivision (c), ~~once those rules have been adopted. Until those rules are~~  
8           ~~adopted, the court may continue to create, maintain, and preserve records according to the~~  
9           ~~minimum standards or guidelines for the preservation and reproduction of the medium~~  
10          ~~adopted by the American National Standards Institute or the Association for Information~~  
11          ~~and Image Management.~~

12  
13   (b)-(l) \* \* \*

14  
15  
16    **§ 68152.**

17  
18    The trial court clerk may destroy court records under Section 68153 after notice of destruction,  
19    and if there is no request and order for transfer of the records, except the comprehensive  
20    historical and sample superior court records preserved for research under the California Rules of  
21    Court, when the following times have expired after the date of final disposition of the case in the  
22    categories listed:

23  
24    (a)    Civil actions and proceedings, as follows:

25  
26          (1)-(5) \* \* \*

27  
28          (6)    Civil harassment, domestic violence, elder and dependent adult abuse, private  
29                  postsecondary school violence, gun violence, and workplace violence cases: retain  
30                  for the same period of time as the duration of the restraining or other orders and  
31                  any renewals thereof, then retain the restraining or other orders permanently as a  
32                  judgment; 60 days after expiration of the temporary restraining or other temporary  
33                  orders; retain judgments establishing paternity under Section 6323 of the Family  
34                  Code permanently.

35  
36          (7)-(15) \* \* \*