



JUDICIAL COUNCIL OF CALIFORNIA

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TANI G. CANTIL-SAKAUYE
Chief Justice of California
Chair of the Judicial Council

MARTIN HOSHINO
Administrative Director

CORY T. JASPERSON
Director, Governmental Affairs

April 12, 2017

Hon. Shirley Weber
Member of the Assembly
State Capitol, Room 3123
Sacramento, California 95814

Subject: AB 1128 (Weber), as amended March 22, 2017 – Oppose

Dear Assembly Member Weber:

The Judicial Council regrettably opposes AB 1128, which extends the period of time that courts must retain certain records. In cases charging a violent felony, a specified sex offense, an aggravated assault on a child, or any charge that results in a life sentence, AB 1128 would prohibit the court from ordering the destruction of an exhibit before one year after the term of imprisonment ends. For exhibits that include biological material, AB 1128 would extend the period in which a party notified of the intention to destroy the records must respond from 180 days to one year. AB 1128 also excludes exhibits that include biological materials secured in connection with a criminal case charging a violent felony, a specified sex offense, an aggravated assault on a child, or any charge that results in a life sentence, from the type of exhibits for which a court may seek destruction and instead prohibits the court from ordering the destruction of those exhibits while any person charged is incarcerated.

Unfortunately, the Judicial Council is opposed to AB 1128 due to the significant new burdens placed on the courts by extending the required retention periods for certain records. Courts lack the resources to store and manage these records, especially in light of recently enacted unfunded

legislative mandates and new requirements place on courts by initiative measures passed in the November 2016 General Election. Further, many courts simply lack space capacity for the storage of records as contemplated by AB 1128. In those courts, AB 1128 could require the courts to obtain additional space to meet its mandate, however, the bill does not provide any funding to courts to do so.

With regard to record retention periods, AB 1128 would significantly extend the time period in which courts are required to retain exhibits in cases involving violent felonies, certain sex offenses, aggravated assault involving children, and charges that result in a life sentence, to one year after the term of imprisonment ends. In contrast, under existing law, courts may order destruction of a record as follows: (1) when no notice of appeal, 30 days after the last day for filing of notice; (2) when a notice of appeal is filed, 30 days after the date the clerk of the court receives the remittitur affirming the judgment; or (3) when an order for a rehearing, a new trial, or other proceeding is granted and the ordered proceedings have not commenced within one year, one year after the date of that order.

The Judicial Council also has concerns about the changes to the retention periods for biological materials and the significant burdens the changes proposed by AB 1128 would place on courts. Existing law requires biological material to be retained for the time period that any person remains incarcerated in connection with the case the biological material is used for, however, the court may destroy the evidence earlier if certain notifications are made to the parties and the court does not receive certain motions, requests or declarations. In contrast, AB 1128 would not allow destruction of exhibits under those circumstances for cases involving violent felonies, certain sex offenses, aggravated assault involving children, and charges that result in a life sentence. The council is also concerned about the ability of courts to properly store biological evidence for extended periods of times because certain biological evidence may need refrigeration or other temperature control measures in order to preserve it.

Moreover, the council is concerned that AB 1128 seeks to address a situation that exists only in San Diego County by imposing new burdens on courts throughout the state. The San Diego County Superior Court has been in discussions with various stakeholders, including the San Diego District Attorney, about the inability of the new courthouse to store exhibits as the court has done in the past. To address the storage issue, the San Diego County Superior Court is implementing new practices consistent with those followed in the Superior Courts of Orange, San Bernardino, Riverside, and Los Angeles Counties. AB 1128 would require those courts and likely others, which routinely destroy records in accordance with existing law, to change their practices and redirect resources to, among other things, managing, tracking, and allowing access to, records for extended periods of time.

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Finally, the council believes that AB 1128 would undermine the efficiencies gained by the passage of AB 1352 (Levine; Stats. 2013, ch. 274), which updated and revised court records retention provisions. AB 1352 allows courts to efficiently and effectively manage court records and ensure that courts are not burdened by excessive record storage costs in this time of severe budget reductions to court operations—which jeopardize access to justice for all Californians—while still preserving the public’s access to records when necessary. In addition, the council believes that over time AB 1352 will result in substantial savings to courts because historically courts have devoted a vast amount of storage space 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. 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.

For these reasons, the Judicial Council regretfully opposes AB 1128.

Sincerely,

Mailed on April 12, 2017

Sharon Reilly
Attorney

SR/yc-s

cc: Ms. Gail Stewart-Brockman, Legislative Director, San Diego District Attorney’s Office
Mr. Alexander Simmons, Associate Director, California Innocence Project
Mr. Daniel Seeman, Deputy Legislative Affairs Secretary, Office of the Governor
Mr. Martin Hoshino, Administrative Director, Judicial Council of California



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April 12, 2017

Hon. Reginald B. Jones-Sawyer, Sr., Chair
Assembly Public Safety Committee
State Capitol, Room 2117
Sacramento, California 95814

Subject: AB 1128 (Weber), as amended March 22, 2017 – Oppose
Hearing: Assembly Public Safety Committee – April 18, 2017

Dear Assembly Member Jones-Sawyer:

The Judicial Council regrettably opposes AB 1128, which extends the period of time that courts must retain certain records. In cases charging a violent felony, a specified sex offense, an aggravated assault on a child, or any charge that results in a life sentence, AB 1128 would prohibit the court from ordering the destruction of an exhibit before one year after the term of imprisonment ends. For exhibits that include biological material, AB 1128 would extend the period in which a party notified of the intention to destroy the records must respond from 180 days to one year. AB 1128 also excludes exhibits that include biological materials secured in connection with a criminal case charging a violent felony, a specified sex offense, an aggravated assault on a child, or any charge that results in a life sentence, from the type of exhibits for which a court may seek destruction and instead prohibits the court from ordering the destruction of those exhibits while any person charged is incarcerated.

Unfortunately, the Judicial Council is opposed to AB 1128 due to the significant new burdens placed on the courts by extending the required retention periods for certain records. Courts lack

the resources to store and manage these records, especially in light of recently enacted unfunded legislative mandates and new requirements place on courts by initiative measures passed in the November 2016 General Election. Further, many courts simply lack space capacity for the storage of records as contemplated by AB 1128. In those courts, AB 1128 could require the courts to obtain additional space to meet its mandate, however, the bill does not provide any funding to courts to do so.

With regard to record retention periods, AB 1128 would significantly extend the time period in which courts are required to retain exhibits in cases involving violent felonies, certain sex offenses, aggravated assault involving children, and charges that result in a life sentence, to one year after the term of imprisonment ends. In contrast, under existing law, courts may order destruction of a record as follows: (1) when no notice of appeal, 30 days after the last day for filing of notice; (2) when a notice of appeal is filed, 30 days after the date the clerk of the court receives the remittitur affirming the judgment; or (3) when an order for a rehearing, a new trial, or other proceeding is granted and the ordered proceedings have not commenced within one year, one year after the date of that order.

The Judicial Council also has concerns about the changes to the retention periods for biological materials and the significant burdens the changes proposed by AB 1128 would place on courts. Existing law requires biological material to be retained for the time period that any person remains incarcerated in connection with the case the biological material is used for, however, the court may destroy the evidence earlier if certain notifications are made to the parties and the court does not receive certain motions, requests or declarations. In contrast, AB 1128 would not allow destruction of exhibits under those circumstances for cases involving violent felonies, certain sex offenses, aggravated assault involving children, and charges that result in a life sentence. The council is also concerned about the ability of courts to properly store biological evidence for extended periods of times because certain biological evidence may need refrigeration or other temperature control measures in order to preserve it.

Moreover, the council is concerned that AB 1128 seeks to address a situation that exists only in San Diego County by imposing new burdens on courts throughout the state. The San Diego County Superior Court has been in discussions with various stakeholders, including the San Diego District Attorney, about the inability of the new courthouse to store exhibits as the court has done in the past. To address the storage issue, the San Diego County Superior Court is implementing new practices consistent with those followed in the Superior Courts of Orange, San Bernardino, Riverside, and Los Angeles Counties. AB 1128 would require those courts and likely others, which routinely destroy records in accordance with existing law, to change their practices and redirect resources to, among other things, managing, tracking, and allowing access to, records for extended periods of time.

Hon. Reginald B. Jones-Sawyer, Sr.

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For these reasons, the Judicial Council regretfully opposes AB 1128.

Should you have any questions or require additional information, please contact Sharon Reilly at 916-323-3121.

Sincerely,

Mailed on April 12, 2017

Cory T. Jaspersen
Director, Governmental Affairs

CTJ/SR/yc-s

cc: Members, Assembly Public Safety Committee
Hon. Shirley Weber, Member of the Assembly
Ms. Gail Stewart-Brockman, Legislative Director, San Diego District Attorney’s Office
Mr. Alexander Simmons, Associate Director, California Innocence Project
Ms. Cheryl Anderson, Counsel, Assembly Public Safety Committee
Mr. Gary Olson, Consultant, Assembly Republican Office of Policy
Mr. Daniel Seeman, Deputy Legislative Affairs Secretary, Office of the Governor
Mr. Martin Hoshino, Administrative Director, Judicial Council of California