

## Invitation to Comment

Title	Management of Trial Court Records: Proposed Legislation (amend Gov. Code, §§ 68150 and 68151)
Summary	<p>This proposal would modernize the statutes on the management of court records so that the courts will be able to operate in a more effective, cost-efficient manner using contemporary technology. Specifically, Government Code section 68150 would be amended to authorize courts to create, maintain, and preserve records in any form, including paper, optical, electronic, magnetic, micrographic, or photographic media or other technology, provided that the form satisfies standards or guidelines. The statute would require the Judicial Council to adopt rules to establish the guidelines or standards for the creation, maintenance, reproduction, and preservation of court records.</p> <p>The amended statutes would not apply to electronic recordings made as the official record of oral proceedings.</p>
Source	Court Executives Advisory Committee Michael D. Planet, Chair
Staff	<p>Patrick O'Donnell, Supervising Attorney, 415-865-7665, patrick.o'donnell@jud.ca.gov</p> <p>Mikayla Connell, Attorney, 415-865-8021, mikayla.connell@jud.ca.gov</p>
Discussion	<p><b>The Issue</b></p> <p>Court records have historically been maintained in paper form. In the California, a vast amount of storage space is currently devoted to paper files of court records. These files are expensive to create, maintain, and preserve. But with the increasing availability of electronic document management systems, the courts have an opportunity to realize significant long-term savings if they can convert from paper to electronic records. This is even more relevant in light of the likelihood that most documents filed with the court were prepared electronically, and then printed out to be filed with the court.</p> <p>The change from paper to electronic court records is practical and realistic. In the federal district courts, electronic records are</p>

already the official records of the courts. In California, the trial courts should also be able to shift toward electronic records as the official record. This change will become easier and more cost-efficient as parties are able to prepare and file documents electronically. Courts will be able to enter these electronically filed documents into their electronic document systems without the documents ever being in paper form or needing to be scanned into the systems.

Some statutory changes are required to facilitate the transition to electronic court records. The statutes on court records already have been modernized, in some respects, to reflect the digital age. For example, section 68150 of the Government Code provides that records reproduced under specific standards may be deemed the original court record. (See Gov. Code, § 68150(c).) However, additional changes are necessary to fully realize the possibilities afforded by electronic records management and ever changing technology and business practices.

### **This Proposal**

This proposal recommends that two sections of the Government Code relating to the management of trial court records be amended to enable courts to modernize the methods of creating, maintaining, and preserving records.

#### *Government Code section 68150*

The principal statute on the management of trial court records currently provides that trial court records may be preserved in any form of communication or representation including optical, electronic, magnetic, micrographic, or photographic media or other technology, provided the medium satisfies certain minimum standards or guidelines for the preservation and reproduction of the medium that have been adopted by the American National Standards Institute or the Association for Information and Image Management. (See Gov. Code, § 68150(a).) Several changes would be made to modernize this section and make it more effective.

First, a new subdivision would be added to make it clear that this entire section on trial court records does not apply to electronic recordings made as the official record of oral proceedings. (See proposed Gov. Code, § 68150 (b).) The official record of oral proceedings is governed by other law.

Second, in the first sentence of Government Code section 68150, the words “created” and “maintained” would be added before “preserved.” (See proposed Gov. Code, § 68150 (a).) This change will make it clear that courts can not only preserve, but also create and maintain records electronically.

Thus, under the amended statute, courts will be authorized to electronically generate documents such as court orders, file these documents in the courts’ electronic document management systems, and maintain these documents electronically as the official records of the court. Similarly, the changes will clarify that electronic documents prepared and filed by parties and entered into courts’ electronic document management systems can be the official records of the court. While courts may still preserve records in paper form, they will no longer be required to do so for most court records.

Third, the current references in subdivision (a) to standards or guidelines adopted by particular organizations would be eliminated. This language has been problematic in that the organizations have not always adopted specific standards for certain mediums or categories of documents. Instead of requiring records to comply with guidelines or standards adopted by specific organizations, a new subdivision (c) would require the Judicial Council to adopt rules to establish standards or guidelines for the creation, maintenance, reproduction, and preservation of court records. The amended statute would further provide that the standards or guidelines for court records shall reflect industry standards for each medium used, if such standards exist.

This approach is more practical and flexible than that contained the existing statute. It will enable the standards or guidelines to be regularly revised to reflect current industry standards, to be expeditiously updated to address changes in technology, and to cover situations where no specific national standards or guidelines have been promulgated.<sup>1</sup>

Several other proposed amendments to section 68150 should also

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<sup>1</sup> If the Judicial Council sponsors this legislative proposal, a companion proposal for rules to establish standards or guidelines for court records will be developed and circulated for comment in 2010. Both the legislation and the accompanying rules would become effective at the same time, i.e., January 1, 2011.

be mentioned. All applicable subdivisions have been modified to state that they apply to the creation and maintenance, as well as to the preservation, of court records. (See proposed Gov. Code, §§ 68150(f), (g), and (h).) References to standards and guidelines adopted by particular organizations have been eliminated. (See former subdivision (f) and amended subdivision (j).)

*Government Code section 68151*

Government Code section 68151 provides definitions of “court records” and other terms used in the chapter on the management of trial court records, which includes section 68150. To reflect the amendments to section 68150 described above, section 68151(d) would be amended to read: “‘Retain permanently’ means that the court records shall be maintained permanently according to standards or guidelines established under section 68150(c).”

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Attachment

Government Code sections 68150 and 68151 would be amended to read as follows:

1 **68150.** (a) Trial court records may be created, maintained, and preserved in any  
2 form of communication or representation, including paper, optical, electronic,  
3 magnetic, micrographic, or photographic media or other technology provided  
4 that the form satisfies the requirements of subdivision (c). ~~capable of accurately~~  
5 ~~producing or reproducing the original record according to minimum standards~~  
6 ~~or guidelines for the preservation and reproduction of the medium adopted by~~  
7 ~~the American National Standards Institute or the Association for Information~~  
8 ~~and Image Management.~~

9  
10 (b) ~~This section does not apply to Specifications for~~ electronic recordings made  
11 as the official record of ~~the~~ oral proceedings; such records shall be governed by  
12 the California Rules of Court rather than this section. Electronic recordings  
13 made as the official record of oral proceedings shall not require a backup copy  
14 unless otherwise specified in the California Rules of Court.

15  
16 (c) The Judicial Council shall adopt rules to establish the standards or  
17 guidelines for the creation, maintenance, reproduction, and preservation of  
18 court records, including records that must be preserved permanently. The  
19 standards or guidelines for court records shall reflect industry standards for each  
20 medium used, if such standards exist.

21  
22 ~~(b)(d)~~ (d) No additions, deletions, or changes shall be made to the content of the  
23 records, except as authorized by statute or the California Rules of Court.

24  
25 (e) The records shall be indexed for convenient access.

26  
27 ~~(e)~~ (f) A copy of the a record created, maintained, preserved, or reproduced  
28 according to subdivisions (a) and (b) (c) shall be deemed the an original court  
29 record and may be certified as a correct copy of the original record.

30  
31 ~~(d)~~ (g) A court record created, maintained, preserved, or reproduced in  
32 accordance with subdivisions (a) and (b) (c) shall be stored in a manner and in a  
33 place that reasonably assures its preservation against loss, theft, defacement, or  
34 destruction for the prescribed retention period under Section 68152. Electronic  
35 recordings made as the official record of the oral proceedings shall not require a  
36 backup copy unless otherwise specified in the California Rules of Court.

37 ~~(e)~~ (h) The A court record that was created, maintained, preserved, or  
38 reproduced in accordance with subdivisions (a) and (b) (c) may be disposed of

1 in accordance with the procedure under Section 68153, unless it is subject to  
2 subdivision (f).;

3  
4 (1) The comprehensive historical and sample superior court records preserved  
5 for research under the California Rules of Court; or

6  
7 (2) A court record that must be preserved permanently.

8  
9 ~~(f) The following court records may be preserved or reproduced under~~  
10 ~~subdivisions (a) and (b) but shall also be preserved on paper, microfilm, or in~~  
11 ~~another form of communication or representation approved by and in~~  
12 ~~accordance with standards that are defined as archival by the American~~  
13 ~~National Standards Institute for the duration of the record's retention period:~~

14 ~~—(1) The comprehensive historical and sample superior court records preserved~~  
15 ~~for research under the California Rules of Court.~~

16 ~~—(2) Court records that are preserved permanently.~~

17 ~~—Court records that must be preserved longer than 10 years but not~~  
18 ~~permanently may be reproduced on media other than paper or microfilm using~~  
19 ~~technology authorized under subdivisions (a) and (b). However the records~~  
20 ~~shall be reproduced before the expiration of their estimated lifespan for the~~  
21 ~~medium in which they are stored as specified in subdivision (g).~~

22  
23 ~~(g)(i)~~ Instructions for access to data stored on a medium other than paper shall  
24 be documented.

25  
26 ~~(j)~~ Each court shall conduct a periodic review of the media in which the court  
27 records are stored to assure that the storage medium is not obsolete and that  
28 current technology is capable of accessing and reproducing the records. The  
29 court shall reproduce records before the expiration of their estimated lifespan  
30 for the medium in which they are stored according to ~~minimum~~ standards and  
31 guidelines for the preservation and reproduction of the medium adopted by the  
32 American National Standards Institute or the Association for Information and  
33 Image Management established by the Judicial Council.

34  
35 ~~(h)(k)~~ Unless otherwise provided by law, court records preserved or reproduced  
36 under subdivisions (a) and ~~(h)(c)~~ shall be made reasonably accessible to all  
37 members of the public for viewing and duplication as would the paper records.  
38 Reasonable provision shall be made for duplicating the records at cost. Cost  
39 shall consist of all costs associated with duplicating the records as determined  
40 by the court.

1 **68151.** The following definitions apply to this chapter:

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

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

6 (2) Administrative records filed in an action or proceeding, depositions, paper  
7 exhibits, transcripts, including preliminary hearing transcripts, and tapes of  
8 electronically recorded proceedings filed, lodged, or maintained in connection  
9 with the case, unless disposed of earlier in the case pursuant to law.

10 (3) Other records listed under subdivision (j) of Section 68152.

11  
12 (b) "Notice of destruction and no transfer" means that the clerk has given  
13 notice of destruction of the superior court records open to public inspection, and  
14 that there is no request and order for transfer of the records as provided in the  
15 California Rules of Court.

16  
17 (c) "Final disposition of the case" means that an acquittal, dismissal, or order  
18 of judgment has been entered in the case or proceeding, the judgment has  
19 become final, and no postjudgment motions or appeals are pending in the case  
20 or for the reviewing court upon the mailing of notice of the issuance of the  
21 remittitur.

22 In a criminal prosecution, the order of judgment shall mean imposition of  
23 sentence, entry of an appealable order (including, but not limited to, an order  
24 granting probation, commitment of a defendant for insanity, or commitment of  
25 a defendant as a narcotics addict appealable under Section 1237 of the Penal  
26 Code), or forfeiture of bail without issuance of a bench warrant or calendaring  
27 of other proceedings.

28  
29 (d) "Retain permanently" means that the ~~original~~ court records shall ~~never~~ be  
30 ~~transferred or destroyed~~ maintained permanently according to the standards or  
31 guidelines established under section 68150(c).

## Item LEG09-02 Response Form

**Title:** Management of Trial Court Records: Proposed Legislation (amend Gov. Code, §§ 68150 and 68151)

- Agree** with proposed changes
- Agree** with proposed changes **if modified**
- Do not agree** with proposed changes

Comments: \_\_\_\_\_

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**Name:** \_\_\_\_\_ **Title:** \_\_\_\_\_

**Organization:** \_\_\_\_\_

- Commenting on behalf of an organization**

**Address:** \_\_\_\_\_

**City, State, Zip:** \_\_\_\_\_

### **To Submit Comments**

Comments may be submitted online, written on this form, or prepared in a letter format. If you are *not* commenting directly on this form, please include the information requested above and the proposal number for identification purposes. Please submit your comments online or email, mail, or fax comments. You are welcome to email your comments as an attachment.

**Internet:** <http://www.courtinfo.ca.gov/invitationstocomment/>

**Email:** [invitations@jud.ca.gov](mailto:invitations@jud.ca.gov)

**Mail:** Ms. Camilla Kieliger  
Judicial Council, 455 Golden Gate Avenue  
San Francisco, CA 94102

**Fax:** (415) 865-7664, Attn: Camilla Kieliger

<b>DEADLINE FOR COMMENT: 5:00 p.m., Friday, September 25, 2009</b>
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*Circulation for comment does not imply endorsement by the Judicial Council or the Policy Coordination and Liaison Committee. All comments will become part of the public record of the council's action.*