

Date of Hearing: May 17, 2017

ASSEMBLY COMMITTEE ON APPROPRIATIONS

Lorena Gonzalez Fletcher, Chair

AB 1128 (Weber) – As Amended April 17, 2017

Policy Committee: Public Safety

Vote: 7 - 0

Urgency: No

State Mandated Local Program: Yes

Reimbursable: No

**SUMMARY:**

This bill clarifies that exhibits are to be retained under the custody and control of the court, and, in more serious cases, extends the time periods that exhibits must be retained by the court or that an object or material that contains biological material must be retained by the appropriate governmental entity. Specifically, this bill:

- 1) Requires the court to retain custody and control of any exhibit introduced or filed in a criminal action or proceeding. It also prohibits the court from ordering the destruction of an exhibit before one year after the term of imprisonment ends in a case charging a specified violent felony, a specified sex offense, aggravated assault on a child, or any charge that results in a life sentence. Requires these exhibits to be destroyed or disposed of no sooner than 60 days after this time period expires.
- 2) Provides that at any time before the expiration of specified time periods, if the exhibit poses a security or safety problem, as determined by the court, it must be returned to the party offering it.
- 3) Provides that if the size of the exhibit presents a storage concern, and the court determines that the evidentiary value of an exhibit can be preserved by a digital or photographic record, or is severable so that only a portion need be retained to preserve its evidentiary value, the court must order the clerk to retain the evidentiary portion of the exhibit and order the return of the balance of the exhibit to the party that offered the exhibit, unless possession of the exhibit is prohibited by law.

**FISCAL EFFECT:**

The Judicial Council has indicated that some courts will not be able comply with the provisions of this bill unless significant capital improvements and infrastructure are funded (millions of dollars in GF or bond funds) to provide for the necessary storage envisioned in this bill.

**COMMENTS:**

- 1) **Background.** Current law requires that all exhibits which have been introduced or filed in any criminal action or proceeding are retained by the clerk of the court who must establish a procedure to account for the exhibits properly until final determination of the action or proceedings, and the exhibits must thereafter be distributed or disposed of, as provided.

Current law prohibits a court from ordering the destruction of an exhibit prior to the final determination of the action or proceeding. In cases where the death penalty is imposed, 30

days after the date of execution of sentence or one year after the defendant's death. In other cases, the destruction of evidence can occur much sooner, such 30 days after the last day for filing an appeal, or 30 days after the appeal, etc. Also, current law provides that 60 days after the final determination of a criminal action or proceeding, the clerk of the court must dispose of all exhibits introduced or filed in the case and remaining in the clerk's possession, as specified.

- 2) **Purpose.** The author points indicates the current statutes that governed the retention and destruction of evidence do not adequately serve justice as they favor the destruction of evidence after the first appeal, ignoring the fact that post-appellate scrutiny of convictions may require access to physical evidence to uncover wrongful convictions and to validate others.

AB 1128 also requires, in the most serious cases, the court to retain exhibits for a longer period of time and the appropriate government entity to retain any object or material that contains or includes biological material as long as the person remains incarcerated in connection with the case. The intent of this bill is to help ensure that exhibits and biological evidence remain available for post-conviction proceedings and testing. This, in turn, will help ensure that incarcerated defendants receive the benefit of advancements in forensic science. Advances in technology may allow for the testing of evidence that yields forensic results that could not have been obtained at the time of the conviction.

- 3) **Support.** The Northern California Innocence Project, a co-sponsor of this bill points out that nationwide, 349 men and women have been exonerated through DNA testing, but only because e physical evidence was retained in their case.
- 4) **Opposition.** The Judicial Council is concerned AB 1128 significantly extends 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. The Judicial Council indicates that many courts lack the capacity for the storage of records as contemplated by this bill.
- 5) **Related Legislation:** SB 238 (Hertzberg) allows, in addition to a photographic record, a digital record of the exhibit to be taken and preserved by the court. SB 238 is in the Assembly awaiting referral.
- 6) **Prior Legislation:** AB 1352 (Levine), Chapter 274, Statutes of 2013, revised requirements for the destruction of court records, permitting the earlier destruction of some court records, thereby reducing storage costs.

SB 1489 (Harman) 2012 Chapter 283, Statutes of 2012, authorized a court to order the destruction of exhibits in a death penalty case one year after the death of a defendant while awaiting execution.