

# JUDICIAL COUNCIL OF CALIFORNIA

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## INVITATION TO COMMENT

### LEG21-02

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**Title**

Proposal for Judicial Council–Sponsored Legislation: Vendor Storage of Exhibits and Evidence in Electronic Format

**Action Requested**

Review and submit comments by May 21, 2021

**Proposed Rules, Forms, Standards, or Statutes**

Enact Gov. Code, § 69846.1; amend Gov. Code, § 69846; Code Civ. Proc., § 1952; and Pen. Code, § 1417

**Proposed Effective Date**

January 1, 2023

**Proposed by**

Information Technology Advisory

Committee

Hon. Sheila F. Hanson, Chair

**Contact**

Andrea L. Jaramillo, 916-263-0991  
andrea.jaramillo@jud.ca.gov

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## Executive Summary and Origin

The Information Technology Advisory Committee recommends the Judicial Council sponsor legislation to authorize courts to use vendors for storage of exhibits and evidence in electronic format. The purpose of the proposal is to facilitate the use of electronic exhibits and electronic evidence in courts. The proposal originates with recommendations from the Information Technology Advisory Committee’s Digital Evidence Workstream.

## Background

In 2017, the Information Technology Advisory Committee (ITAC) established the Digital Evidence Workstream to investigate, assess, and report on statutes, rules, business practices, and technical standards related to digital evidence, also known as electronic evidence. During the first phase of the workstream’s activity, the workstream completed a survey of the courts about digital evidence. During the next phase, the workstream established a subgroup to work on identifying statutes and rules that need to change to allow courts to implement and receive electronic evidence, and to identify and create new statutes and rules where appropriate. In November 2020, the workstream presented its recommendations to ITAC. Recommendations included legislation authorizing vendor storage.

*This proposal has not been approved by the Judicial Council and is not intended to represent the views of the council, its Rules Committee, or its Legislation Committee.  
It is circulated for comment purposes only.*

## **The Proposal**

The proposal would authorize the clerk of the court to use a vendor for exhibits and evidence that exist in electronic format. As exhibits and evidence increasingly come to courts in an electronic format, the maintenance and storage of such material becomes a challenge both in terms of a court's storage capacity and its technical capabilities. The option to use a vendor for storage is intended to facilitate the use of electronic exhibits and electronic evidence in court proceedings while ensuring courts can maintain control over the exhibits and evidence.

The proposal would add section 69846.1 to the Government Code to authorize the clerk of the court to use a vendor for maintenance and storage of exhibits and evidence in electronic format. The new code section would:

- Authorize, but not require the clerk to use a vendor to store and maintain exhibits and evidence maintained in electronic format;
- Require vendors to adhere to any Judicial Council and local court security standards and policies;
- Limit access to exhibits and evidence to persons authorized by law or court order;
- Allow the vendor to destroy or dispose of exhibits and evidence only as directed by the court; and
- Allow the Judicial Council to adopt rules to facilitate implementation of the code section.

The proposal would also amend existing code sections to provide that a clerk may use a vendor for maintenance and storage subject to the requirements of Government Code section 69846.1. Specifically, the proposal would amend Government Code section 69846, Code of Civil Procedure section 1952, and Penal Code section 1417. In addition, the proposal would amend subdivision (c) and (d) of Code of Civil Procedure section 1952 to authorize the clerk to send by electronic means the notices of orders for disposal of certain specified materials.

## **Alternatives Considered**

The alternative to the proposal would be to maintain the status quo. However, because courts are increasingly becoming the recipients of exhibits and evidence in electronic format, the committee determined a change is now needed to facilitate the use of such evidence by allowing courts to use vendors for storage and maintenance.

## **Fiscal and Operational Impacts**

This section does not require the use of vendor storage. If a court were to choose vendor storage, that would most likely involve paying fees to the vendors. This could be a cost-effective option, however, over requiring in-house capacity and technical expertise to maintain a secure storage system.

### **Request for Specific Comments**

In addition to comments on the proposal as a whole, the advisory committee is interested in comments on the following:

- Does the proposal appropriately address the stated purpose?
- Is there any type of material that should be excluded from vendor storage? If so, what type of material and why should it be excluded?
- The proposal requires vendors to destroy or dispose of exhibits or evidence in electronic format only as directed by the court. Should the proposal also include a provision to require a vendor to confirm with the court that an exhibit or evidence was disposed of or destroyed?

The advisory committee also seeks comments from *courts* on the following cost and implementation matters:

- Would the proposal provide cost savings? If so, please quantify.
- What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems?
- How well would this proposal work in courts of different sizes?

### **Attachments and Links**

1. Gov. Code §§ 69846, 69846.1; Code Civ. Proc. § 1952; and Pen. Code § 1417, at pages 4–5

Section 69846 of the Government Code, section 1952 of the Code of Civil Procedure, and section 1417 of the Penal Code would be amended, and section 69846.1 of the Government Code would be enacted, effective January 1, 2023, to read:

1      **§ 69846**  
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3      The clerk of the superior court shall safely keep or dispose of according to law all papers  
4      and records filed or deposited in any action or proceeding before the court. The clerk may  
5      use a vendor to store exhibits lodged or introduced and evidence received by the court in  
6      electronic format subject to the requirements of Government Code section 69846.1.

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8      **§ 69846.1**  
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10     (a) The clerk may use a vendor to store and maintain exhibits lodged or introduced and  
11     evidence received by the court in electronic format. For purposes of this section,  
12     "exhibits lodged or introduced and evidence received by the court in electronic  
13     format" means exhibits and evidence that are transmitted electronically directly to  
14     the court or the court's electronic storage vendor.

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16     (b) The vendor shall comply with any judicial branch security standards and policies  
17     mandated by the Judicial Council and by any court with which the vendor  
18     contracts.

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20     (c) Exhibits and evidence in electronic format stored with a vendor shall be accessible  
21     only by persons authorized by law or court order.

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23     (d) If the court orders the clerk to destroy or otherwise dispose of an exhibit or  
24     evidence in electronic format and that exhibit or evidence is stored with a vendor,  
25     the clerk shall direct the vendor to destroy or dispose of the exhibit or evidence.

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27     (e) The vendor shall only destroy or dispose of exhibits or evidence in electronic  
28     format as directed by the court.

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30     (f) The Judicial Council may adopt rules to facilitate implementation of this section.

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32      **§ 1952**  
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34     (a) The clerk shall either retain in his or her custody, or in the custody of a vendor  
35     consistent with the requirements of Government Code section 69846.1, any exhibit,  
36     deposition, or administrative record introduced in the trial of a civil action or  
37     proceeding or filed in the action or proceeding until the final determination thereof  
38     or the dismissal of the action or proceeding, except that the court may order the  
39     exhibit, deposition, or administrative record returned to the respective party or

- 1        parties at any time upon oral stipulation in open court or by written stipulation by  
2        the parties or for good cause shown.  
3
- 4        (b) No exhibit or deposition shall be ordered destroyed or otherwise disposed of  
5        pursuant to this section where a party to the action or proceeding files a written  
6        notice with the court requesting the preservation of any exhibit, deposition, or  
7        administrative record for a stated time, but not to exceed one year.  
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- 9        (c) Upon the conclusion of the trial of a civil action or proceeding at which any exhibit  
10      or deposition has been introduced, the court shall order that the exhibit or  
11      deposition be destroyed or otherwise disposed of by the clerk. The operative  
12      destruction or disposition date shall be 60 days following final determination of the  
13      action or proceeding. Final determination includes final determination on appeal.  
14      Written notice of the order shall be sent by electronic means or first-class mail to  
15      the parties by the clerk.  
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- 17      (d) Upon the conclusion of any posttrial hearing at which any exhibit, deposition, or  
18      administrative record has been introduced, the court shall order that the exhibit or  
19      deposition be destroyed or otherwise disposed of by the clerk. The operative date of  
20      destruction or disposition shall be 60 days following the conclusion of the hearing,  
21      or if an appeal is taken, upon final determination of the appeal. Written notice of  
22      the order shall be sent by electronic means or first-class mail to the parties by the  
23      clerk.

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25      **§ 1417**

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27      All exhibits which have been introduced or filed in any criminal action or proceeding  
28      shall be retained by the clerk of the court or in the custody of a vendor consistent with the  
29      requirements of Government Code section 69846.1, who The clerk of the court shall  
30      establish a procedure to account for the exhibits properly, subject to Sections 1417.2 and  
31      1417.3 until final determination of the action or proceedings and the exhibits shall  
32      thereafter be distributed or disposed of as provided in this chapter.  
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