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## SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair

2017 - 2018 Regular

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**Bill No:** SB 238                      **Hearing Date:** March 21, 2017  
**Author:** Hertzberg  
**Version:** February 6, 2017  
**Urgency:** Yes                                      **Fiscal:** Yes  
**Consultant:** MK

**Subject:** *Evidence: Disposition of Exhibits: Photographic or Digital Record*

### HISTORY

**Source:** Los Angeles County District Attorney's Office

**Prior Legislation:** SB 177 (Kopp), Ch. 100, Stats. 1998

**Support:** California District Attorneys Association; California Public Defender's Association

**Opposition:** None known

### PURPOSE

*The purpose of this bill is to update the provision allowing a photographic record of exhibits to also allow a digital record of exhibits and to define "photographic record" and "duplicate" for these purposes.*

*Existing law* provides that all exhibits which have been introduced or filed in any criminal action or proceeding shall be retained by the clerk of the court who shall establish a procedure to account for all exhibits properly until final determination of the action or proceedings and the exhibits shall thereafter be distributed or disposed of. (Penal Code § 1417)

*Existing law* provides no orders shall be made for the destruction of an exhibit prior to the final determination of the action or proceeding. The date when a criminal action or proceeding becomes final is:

- When no notice of appeal is filed, 30 days after the last day for filing that notice.
- When a notice of appeal is filed, 30 days after the date the clerk of the court receives the remittitur affirming the judgment.
- When an order for a rehearing, a new trial or other proceeding is granted and the ordered proceedings have not been commenced within one year thereafter, one year after the date of that order.
- In cases where the death penalty is imposed 30 days after the date of execution of sentence or one year after the date of the defendant's death. (Penal Code § 1417.1)

*Existing law* provides that the court may, on application of the party entitled thereto or an agent designate in writing by the owner, order an exhibit delivered to that party at any time prior to the final determination of the action or proceeding, upon stipulation of the parties or upon notice and motion if both of the following requirements are met:

- No prejudice will be suffered by either party.
- A full and complete photographic record is made of the exhibits so released by the party to whom the exhibit is being returned. (Penal Code § 1417.2)

*Existing law* provides that at any time prior to the final determination of the action or proceeding, exhibits offered by the state or defendant shall be returned to the party offering them by order of the court when an exhibit poses a security, storage or safety problem, as recommended by the clerk of the court. If the exhibit is severable the court shall order the court to retain a portion to the district attorney and the clerk shall substitute a full and complete photographic record of any exhibit returned. (Penal Code § 1417.3 (a))

*Existing law* provides that exhibits toxic by their nature that pose a health hazard to humans shall be introduced to the court in the form of a photographic record and written chemical analysis certified by competent authority. (Penal Code § 1417.3 (b))

*Existing law* provides that after the final determination of a criminal action or proceeding, the clerk of the court shall dispose of all exhibits introduced or filed in the case and remaining in the clerk's possession as specified. (Penal Code § 1417.5)

*Existing law* provides for the destruction of illegal or dangerous property as specifies upon the final determination of the criminal action or proceed. (Penal Code § 1417.6)

*Existing law* provides that not less than 15 days before any proposed disposition of an exhibit pursuant to law, the court shall notify the district attorney, the attorney of record for each party, and each party who is not represented by counsel of the proposed disposition. Before the disposition, any party, at his or her own expense may cause to be prepared a photographic record of all or part of the exhibit by a person who is not a party or attorney of a party. The clerk of the court shall observe the taking of the petrographic record, and upon receipt of a declaration of hate person making the photographic record that the copy and negative of the photograph delivered to the clerk is a true, unaltered and unretouched print of the photographic record taking in the presence of the clerk., the clerk shall certify the photographic record as such without charge and retain it unaltered for a period of 60 days following the final determination of the criminal action of proceeding. A certified photographic record of exhibits shall not be deemed inadmissible. (Penal Code § 1417.7)

*This bill* provides that the copy of the exhibits can be in a digital format.

*This bill* provides that for purposes of Penal Code Section 1417.7 a “photographic record” of the exhibit means a photographic image of the exhibit or its equivalent stored in any form and a “duplicate” means a counterpart produced by a mechanical, photographic, chemical, electronic, or other equivalent process or technique that accurately reproduces the original.

## COMMENTS

### 1. Need for This Bill

According to the author:

Under existing law, the Superior Court is permitted to destroy exhibits they are storing and provides a process by which any party may obtain a certified photographic record of an exhibit admitted into evidence. A certified record of exhibits is admissible in any post-conviction proceeding or in a new trial. The clerk of the court is required to observe the taking of the photographic record before certifying that the copy and negative of the photograph is a true, unaltered and unretouched print of the photographic record.

Using film photography for every exhibit is time-consuming, and recent technology allows for a more efficient process by creating a digital scan of an exhibit which can be more accurate than a photograph of the same exhibit. Authorizing the use of digital photography updates existing practice to reflect current technology.

The proposal expands the definition of a certified record of exhibits to include a digital record and modernizes the existing process to reflect the technology available.

### 2. Updating Existing Provision on Exhibits

Existing law provides for exhibits from a criminal trial to be photographed and those photographs to be admissible as evidence in any proceedings related to the case. This provision has not been amended since 1998. As noted in the author's statement, this bill updates the provision allowing for a photographic record of exhibits to allow for a digital record of the exhibits. This amendment will also save the physical space it takes to store the photographs of exhibits.

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