
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Loni Hancock, Chair

2015 - 2016 Regular

Bill No: AB 2232 **Hearing Date:** May 10, 2016
Author: Obernolte
Version: February 18, 2016
Urgency: No **Fiscal:** Yes
Consultant: ML

Subject: *Court Records: Misdemeanors*

HISTORY

Source: Judicial Council of California
Prior Legislation: AB 1352 (Levine) – Ch. 274, Stats. 2013
Support: Unknown
Opposition: None known
Assembly Floor Vote: 76 - 0

PURPOSE

The purpose of this bill is to decrease the time period that a court retains a record for misdemeanor speed contest convictions from 10 years to 5 years, and to increase the time period that a court retains a record for misdemeanor reckless driving convictions from 5 to 10 years.

Existing law provides the manner in which the court may destroy records after specified retention periods for civil actions, small claims, criminal actions, juvenile proceedings, appellate matters of the superior court, and other matters. (Government Code § 68152.)

Existing law requires the court to retain the record for misdemeanors for 5 years, unless provided otherwise. This applies to a misdemeanor where a person drives a vehicle upon a highway in willful or wanton disregard for the safety of persons or property. (Government Code § 68152 (c)(7).)

Existing law requires the court to retain the record for 10 years for a misdemeanor involving a motor vehicle speed contest, or repeated prior offense within five years, and also for a misdemeanor involving a person under the influence of any alcoholic beverage or any drug to drive a vehicle. (Government Code § 68152.)

Existing law requires a defendant who has been convicted of a violation of Vehicle Code Section 23152 (DUI) or Section 23153 (DUI with bodily injury) within the past 10 years to participate in an alcohol program as a condition of probation. (Vehicle Code Section 23640.)

Existing law allows a conviction for Vehicle Code Section 23109 (speed contest) to be charged as an enhancement of a new criminal charge alleging a violation of that offense for five years after the original conviction. (Vehicle Code Section 23109.5 (a).)

This bill changes the time period that a court retains records for certain vehicular misdemeanors. Specifically, this bill:

- 1) Decreases the time period that a court retains a record for misdemeanor speed contest convictions from 10 years to 5 years.
- 2) Increases the time period that a court retains a record for misdemeanor reckless driving convictions from 5 to 10 years.

RECEIVERSHIP/OVERCROWDING CRISIS AGGRAVATION

For the past several years this Committee has scrutinized legislation referred to its jurisdiction for any potential impact on prison overcrowding. Mindful of the United States Supreme Court ruling and federal court orders relating to the state's ability to provide a constitutional level of health care to its inmate population and the related issue of prison overcrowding, this Committee has applied its "ROCA" policy as a content-neutral, provisional measure necessary to ensure that the Legislature does not erode progress in reducing prison overcrowding.

On February 10, 2014, the federal court ordered California to reduce its in-state adult institution population to 137.5% of design capacity by February 28, 2016, as follows:

- 143% of design bed capacity by June 30, 2014;
- 141.5% of design bed capacity by February 28, 2015; and,
- 137.5% of design bed capacity by February 28, 2016.

In December of 2015 the administration reported that as "of December 9, 2015, 112,510 inmates were housed in the State's 34 adult institutions, which amounts to 136.0% of design bed capacity, and 5,264 inmates were housed in out-of-state facilities. The current population is 1,212 inmates below the final court-ordered population benchmark of 137.5% of design bed capacity, and has been under that benchmark since February 2015." (Defendants' December 2015 Status Report in Response to February 10, 2014 Order, 2:90-cv-00520 KJM DAD PC, 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (fn. omitted).) One year ago, 115,826 inmates were housed in the State's 34 adult institutions, which amounted to 140.0% of design bed capacity, and 8,864 inmates were housed in out-of-state facilities. (Defendants' December 2014 Status Report in Response to February 10, 2014 Order, 2:90-cv-00520 KJM DAD PC, 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (fn. omitted).)

While significant gains have been made in reducing the prison population, the state must stabilize these advances and demonstrate to the federal court that California has in place the "durable solution" to prison overcrowding "consistently demanded" by the court. (Opinion Re: Order Granting in Part and Denying in Part Defendants' Request For Extension of December 31, 2013 Deadline, NO. 2:90-cv-0520 LKK DAD (PC), 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (2-10-14). The Committee's consideration of bills that may impact the prison population therefore will be informed by the following questions:

- Whether a proposal erodes a measure which has contributed to reducing the prison population;
- Whether a proposal addresses a major area of public safety or criminal activity for which there is no other reasonable, appropriate remedy;
- Whether a proposal addresses a crime which is directly dangerous to the physical safety of others for which there is no other reasonably appropriate sanction;
- Whether a proposal corrects a constitutional problem or legislative drafting error; and
- Whether a proposal proposes penalties which are proportionate, and cannot be achieved through any other reasonably appropriate remedy.

COMMENTS

1. Need for This Bill

According to the author:

In 2013, AB 1352 (Levine) was enacted to, among other things, update and streamline laws governing court record retention in the Government Code ((§68152(c)(7)) by changing the number of years various court records must be retained.

The intent of the bill was change and bring the timelines for retaining court records for particular violations in line with other similar violations. However, there was a drafting error in the bill. Instead of a five year schedule, like other Vehicle Code misdemeanors, speed contests (§23109 and §23109.5) were put on a ten year schedule. Similarly, reckless driving violations were given a five year schedule, unlike the 10 year schedule DUI violations are on.

AB 2232 would correct these drafting errors and add consistency to the records retention schedule for misdemeanor Vehicle Code violations. It would reduce the schedule for speeding contests from 10 to 5 years, in line with similar violations, and increase the schedule for reckless driving convictions from 5 to 10 years, as it is with DUIs.

2. Background; Effect of This Bill

Trial courts retain court records for different time periods based on types of cases involved and pursuant to statutes requiring records to be retained for specified periods. After the required time period has elapsed, the court is authorized to destroy the record. For most misdemeanor cases, courts are required to retain the records for five years; for other misdemeanors, the court is required to retain the records for one to ten years, depending on the nature of the crime.

In 2013, the Legislature enacted AB 1352, which revised and reorganized the retention period rules for various court records. However, according to the Judicial Council, the sponsor of this bill, AB 1352 had several drafting errors regarding the retention period for certain misdemeanors, specifically those involving violations of the Vehicle Code. Under the current framework, the drafting error came about when the Vehicle Code Sections for speed contests (§§ 23109-23109.5) were expressly specified - putting those records on the ten year schedule. Conversely, the Vehicle Code Section for reckless driving (§ 23103) was not expressly mentioned. Thus, the default schedule of five years applied.

This bill seeks to correct those errors with the following changes to retention rules: (1) Decreasing the retention period for misdemeanor speed contests conviction records from 10 to 5 years; and (2) Increasing the retention period for misdemeanor reckless driving conviction records from 5 to 10 years. This bill has no known opposition.

3. Argument in Support

According to the sponsor of this bill, the Judicial Council of California:

AB 2232 addresses drafting errors in the rules governing retention of court files regarding certain misdemeanor traffic offenses. This bill reduces the requirement for courts to retain files regarding violations of Vehicle Code sections 23109 (speed contests) and 23109.5 (sentencing for speed contests) from ten years to five years while increasing the requirement for courts to retain files regarding violations of Vehicle Code section 23103 (reckless driving) from five years to ten years.

In 2013, a Judicial Council working group assisted in drafting language for AB 1352 (stats 2013, ch. 274), which made significant improvements in the laws that govern retention of court records and clarified the statutes pertaining to the new ways that court records are produced and may be retained. During that drafting, an incorrect code section was inserted in the final version of the bill. After the bill was chaptered, the error was brought to the attention of the Judicial Council.

In response, the Judicial Council has sponsored this bill, which ensures that reckless driving convictions are retained on the same ten-year retention schedule as convictions for driving under the influence of alcohol, and clarifies those convictions for speed contests are retained on the same five-year retention schedule as all other misdemeanor Vehicle Code violations. Leaving the status as is will maintain an inconsistency in records retentions related to reckless driving convictions as compared to driving under the influence convictions, and will maintain in the law what was a drafting error.

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