

HOUSE BILL No. 5795

August 15, 2012, Introduced by Reps. Constan, Heise, Price, Darany, Kandrevas, Meadows and Oakes and referred to the Committee on Judiciary.

A bill to amend 1961 PA 236, entitled
"Revised judicature act of 1961,"
by amending sections 832, 859, 1427, 2137, and 8344 (MCL 600.832, 600.859, 600.1427, 600.2137, and 600.8344), sections 859 and 8344 as amended by 2005 PA 326 and section 2137 as amended by 2009 PA 239, and by adding sections 1426 and 1428; and to repeal acts and parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 832. ~~(1) The probate judge or chief probate judge~~ **CLERK**
2 **OF THE PROBATE COURT** shall have possession of the seal, records,
3 books, files, and papers belonging to the probate court in the
4 respective county or probate court district ~~. Each judge shall keep~~
5 ~~a true and correct record of each order, sentence, and decree of~~
6 ~~the court, and of all other official acts made or done by him, and~~

~~of all wills proved therein with the probate thereof, of all
letters of authority and of all other things proper to be recorded
in the court.~~ **AND, IN ACCORDANCE WITH SUPREME COURT RULES, SHALL**

MAINTAIN EVERY RECORD CREATED BY OR FILED WITH THE PROBATE COURT.

~~—— (2) The records, except as otherwise provided by law, may be
inspected without charge by all persons interested.~~

~~—— (3) The probate court shall maintain an alphabetical index to
the records of probate court proceedings in each county.~~

Sec. 859. (1) The following testimony before a probate judge
shall be recorded:

(a) Testimony in contested matters.

(b) Testimony in matters pertaining to the admission to a
hospital or other facility for mentally ill or developmentally
disabled persons.

(c) Testimony in matters pertaining to persons having a
contagious disease.

(d) Testimony in other matters if requested by an interested
party.

(e) Testimony and other proceedings required by supreme court
rule.

(2) In matters not governed by subsection (1), testimony
before a probate judge, probate register, or deputy probate
register may be given orally without a record being made of the
testimony.

(3) The court shall keep sufficient index of the testimony and
the court shall keep the index and the original notes ~~for at least
10 years~~ **AS PRESCRIBED BY SUPREME COURT RULES.** ~~The reporter or~~

~~recorder need not transcribe the testimony unless a transcript is ordered by the court or a party. Except in those cases in which the testimony is transcribed and filed with the record of the case, notes pertaining to a hearing for the admission of any person to a hospital or other place of detention as a mentally ill or developmentally disabled person or as a person with a contagious disease shall be destroyed only after the discharge of the person from the hospital or facility.~~

~~—— (4) Notes may not be destroyed until after 10 years after the date of the hearing or as provided in subsection (3), whichever is longer.~~

SEC. 1426. (1) EXCEPT AS PROVIDED IN SUBSECTION (2), A COURT MAY CHARGE A REASONABLE FEE, AS ESTABLISHED BY THE SUPREME COURT, FOR PROVIDING ENHANCED ACCESS.

(2) A COURT MAY PROVIDE ENHANCED ACCESS IN ACCORDANCE WITH A WRITTEN AGREEMENT WITHOUT CHARGING A FEE TO ANOTHER COURT OR TO A PUBLIC AGENCY. A WRITTEN AGREEMENT UNDER THIS SUBSECTION SHALL CONTAIN ALL OF THE FOLLOWING:

(A) A STATEMENT SPECIFYING THAT THE COURT OR PUBLIC AGENCY RECEIVING ACCESS TO OR OUTPUT FROM THE SYSTEM WITHOUT CHARGE IS PROHIBITED FROM SELLING OR PROVIDING ACCESS TO THE SYSTEM'S OUTPUT TO A THIRD PARTY, EXCEPT IN ACCORDANCE WITH THE WRITTEN AGREEMENT.

(B) A STATEMENT SPECIFYING THE PUBLIC PURPOSE FOR WHICH ACCESS TO OR OUTPUT FROM THE SYSTEM IS BEING PROVIDED.

(C) PROVISIONS REGARDING THE RETURN OF OUTPUT FROM THE SYSTEM.

(D) THE DURATION OF THE AGREEMENT AND THE METHOD BY WHICH THE AGREEMENT MAY BE RESCINDED OR TERMINATED BY EITHER PARTY BEFORE THE

1 STATED DATE OF TERMINATION.

2 (3) BEFORE PROVIDING ENHANCED ACCESS, A COURT SHALL ADOPT AN
3 ENHANCED ACCESS POLICY UNDER THE REQUIREMENTS PRESCRIBED BY THE
4 SUPREME COURT.

5 (4) THIS SECTION DOES NOT REQUIRE A COURT TO PROVIDE ENHANCED
6 ACCESS.

7 (5) AS USED IN THIS SECTION:

8 (A) "ENHANCED ACCESS" MEANS ACCESS TO A COURT THROUGH
9 ELECTRONIC MEANS FOR PLEADINGS, PRACTICE, AND PROCEDURE, INCLUDING,
10 BUT NOT LIMITED TO, ACCESS TO ITS CASE RECORDS AS PRESCRIBED BY
11 SUPREME COURT RULES.

12 (B) "OPERATING EXPENSE" INCLUDES, BUT IS NOT LIMITED TO, A
13 COURT'S DIRECT COST OF CREATING, MAINTAINING, PROCESSING, AND
14 UPGRADING ACCESS TO THE COURT THROUGH ELECTRONIC MEANS, INCLUDING
15 THE COST OF COMPUTER HARDWARE AND SOFTWARE, SYSTEM DEVELOPMENT,
16 EMPLOYEE TIME, AND THE ACTUAL COST OF PROVIDING THE ACCESS.

17 (C) "REASONABLE FEE" MEANS A CHARGE CALCULATED TO ENABLE A
18 COURT TO RECOVER OVER TIME THOSE OPERATING EXPENSES DIRECTLY
19 RELATED TO THE COURT'S PROVISION OF ENHANCED ACCESS.

20 Sec. 1427. All writs, process, proceedings and records in any
21 court within this state ~~,—~~shall be in the English language, ~~+~~
22 except that the proper and known names of process, and technical
23 words, may be expressed in the language heretofore and now commonly
24 used, ~~},—~~and shall be made out ~~on paper, in a fair, legible~~
25 ~~character, in words at length, and not abbreviated, but such~~
26 ~~abbreviations as are now commonly used in the English language may~~
27 ~~be used, and numbers may be expressed by Arabic figures, or Roman~~

1 ~~numerals, in the customary manner.~~ IN THE MANNER AND ON ANY MEDIUM
2 AUTHORIZED BY SUPREME COURT RULES. IF A SIGNATURE IS REQUIRED ON
3 ANY DOCUMENT FILED WITH OR CREATED BY A COURT, THAT REQUIREMENT IS
4 SATISFIED BY AN ELECTRONIC SIGNATURE AS PRESCRIBED BY SUPREME COURT
5 RULES.

6 SEC. 1428. (1) THE STATE COURT ADMINISTRATIVE OFFICE SHALL
7 ESTABLISH AND MAINTAIN RECORDS MANAGEMENT POLICIES AND PROCEDURES
8 FOR THE COURTS, INCLUDING A RECORDS RETENTION AND DISPOSAL
9 SCHEDULE, IN ACCORDANCE WITH SUPREME COURT RULES. THE RECORD
10 RETENTION AND DISPOSAL SCHEDULE SHALL BE DEVELOPED AND MAINTAINED
11 AS PRESCRIBED IN SECTION 5 OF 1913 PA 271, MCL 399.5.

12 (2) SUBJECT TO THE RECORDS REPRODUCTION ACT, 1992 PA 116, MCL
13 24.401 TO 24.406, A COURT MAY DISPOSE OF ANY RECORD AS PRESCRIBED
14 IN SUBSECTION (1).

15 (3) A RECORD, REGARDLESS OF ITS MEDIUM, SHALL NOT BE DISPOSED
16 OF UNTIL THE RECORD HAS BEEN IN THE CUSTODY OF THE COURT FOR THE
17 RETENTION PERIOD ESTABLISHED UNDER SUBSECTION (1).

18 (4) A COURT MAY ASSESS A REASONABLE FEE ASSOCIATED WITH THE
19 CREATION, REPRODUCTION, RETRIEVAL, AND RETENTION OF ITS RECORDS
20 ONLY AS PRESCRIBED BY THE SUPREME COURT.

21 (5) AS USED IN THIS SECTION, "RECORD" MEANS INFORMATION OF ANY
22 KIND THAT IS RECORDED IN ANY MANNER AND THAT HAS BEEN CREATED BY A
23 COURT OR FILED WITH A COURT IN ACCORDANCE WITH SUPREME COURT RULES.

24 ~~Sec. 2137. (1) If a public officer reproduces court records~~
25 ~~kept by him or her pursuant to the records reproduction act, 1992~~
26 ~~PA 116, MCL 24.401 to 24.406, the officer may offer the original~~
27 ~~records to the department or state agency responsible for~~

~~maintaining the state archives for placement in the state archives.
If the department or state agency responsible for maintaining the
state archives accepts the offer within 30 days, the court shall
transfer the records to that department or state agency. If the
department or state agency responsible for maintaining the state
archives does not accept the offer within 30 days, the court may
dispose of or destroy the records in the manner provided for state
agencies under sections 285 and 287 of the management and budget
act, 1984 PA 431, MCL 18.1285 and 18.1287, and section 5 of 1913 PA
271, MCL 399.5. The record of a court shall not be disposed of or
destroyed until the record has been in the custody of the court for
not less than 6 years.~~

~~—— (2) In a county or probate court district in which the county
board or boards of commissioners pass a resolution or resolutions
for reproducing records pursuant to the records reproduction act,
1992 PA 116, MCL 24.401 to 24.406, the judge of probate may have
the records of the probate court reproduced in accordance with the
resolution or resolutions. The judge of probate shall have a copy
or a duplicate kept in a building outside of the probate office and
shall keep a copy available in the probate office with any suitable
equipment necessary for displaying the record at not less than its
original size or for preparing copies for persons entitled to
copies. The judge of probate then may order a record destroyed. A
reproduction in a medium pursuant to **UNDER** the records reproduction
act, 1992 PA 116, MCL 24.401 to 24.406, or a reproduction
consisting of a printout or other output readable by sight from
such a medium is admissible as evidence before a court, commission,~~

1 or administrative body the same as the original ~~. The original file~~
2 ~~of an estate proceeding shall not be destroyed until 6 years after~~
3 ~~the date the discharge of the fiduciary is filed or 10 years after~~
4 ~~the last document is filed, whichever occurs first.~~

5 ~~—— (3) A court of record other than the district court may order~~
6 ~~the destruction of a court reporter or recorder note, tape, or~~
7 ~~recording 15 years after the date that the note, tape, or recording~~
8 ~~was made for a felony case and 10 years after the date that the~~
9 ~~note, tape, or recording was made for any other case. One year~~
10 ~~after a transcript of a note, tape, or recording is filed with the~~
11 ~~court, the court may order the destruction of the note, tape, or~~
12 ~~recording. If a transcript of a trial or other proceeding in a~~
13 ~~court of record other than the district court is ordered other than~~
14 ~~for filing in the case file, the court reporter or recorder also~~
15 ~~shall prepare and shall file a certified copy of the transcript in~~
16 ~~the case file at the expense of the person ordering the transcript~~
17 ~~unless a copy has been filed with the court or unless the chief~~
18 ~~judge of the court orders otherwise in an order filed in the case~~
19 ~~file. As used in this subsection, "felony case" does not include~~
20 ~~proceedings in a case that occur before arraignment on information~~
21 ~~or indictment or proceedings in a case in which the defendant is~~
22 ~~not convicted of a felony.~~

23 ~~—— (4) Except as provided in subsection (3), a judicial circuit~~
24 ~~of the circuit court may order the destruction of its files and~~
25 ~~records in a case in which action has not been taken during the 25~~
26 ~~years immediately preceding the order of destruction. All of the~~
27 ~~following procedures shall be followed before the issuance of an~~

~~order of destruction of circuit court files and records.~~

~~—— (a) The judgment or decree, if any, shall be reproduced pursuant to the records reproduction act, 1992 PA 116, MCL 24.401 to 24.406, or separated and retained, and the original or reproduction shall be made available for public inspection.~~

~~—— (b) The circuit court shall offer the files and records, subject to the order of destruction, to the Michigan historical commission established by section 1 of 1913 PA 271, MCL 399.1, or a historical commission created under section 2 of 1957 PA 213, MCL 399.172. If the historical commission accepts the offer within 30 days, the circuit court shall transfer the files and records to the historical commission. If the historical commission does not accept the offer within 30 days, the circuit court shall issue an order of destruction.~~

~~—— (5) A reproduction of a record in a medium pursuant to the records reproduction act, 1992 PA 116, MCL 24.401 to 24.406, or a reproduction consisting of a printout or other output readable by sight from such a medium, made as provided by law, **AND** has the same force and effect as the original would have had and shall be treated as an original for the purpose of admissibility in evidence. A duly certified or authenticated copy of the reproduction shall be admitted into evidence equally with the original reproduction.~~

~~—— (6) Except for records described in subsection (3), this **THIS** section only applies to records filed with the court and maintained by the court clerk or register.~~

Sec. 8344. ~~Except as provided in this section, not less than 6~~

~~years after the entry of a judgment in a civil action, including a summary proceeding, or in an ordinance violation case or a criminal case in the district court, the court may dispose of documents, records, recordings, and notes related to that action, except the register of actions pursuant to a schedule adopted by the state administrative board. The court may order the destruction of documents, records, recordings, and notes related to a civil infraction action not less than 3 years after the entry of a finding in the action. The court may order the destruction of notes, tapes, and recordings that have been transcribed and filed with the court 1 year after the date of the filing of the transcript. The register of actions shall be in a form adequate to reveal, in summary fashion, the general nature of the action and judgment. After the disposal of the documents, records, recordings, and notes, the register of actions or a certified reproduction of the register of actions pursuant to the records media act is the official record of the action and judgment. The validity and enforceability of a judgment are not affected by the destruction of the piece of paper upon which the judgment is entered, but the register of actions itself, or a certified reproduction of the register of actions pursuant to~~ **UNDER** ~~the records reproduction act, 1992 PA 116, MCL 24.401 to 24.406, is a complete replacement of the judgment and the records of the action. This section applies to judgments~~ **ALL OF THE FOLLOWING:**

(A) JUDGMENTS of municipal and common pleas courts abolished after January 1, 1969, if the judgment was entered or the action disposed of after January 1, 1969. ~~This section applies to actions~~

1 **(B) ACTIONS** entered in the small claims division of the
2 district court, except that a register of actions ~~need~~**IS** not
3 **REQUIRED TO** be preserved or maintained after destruction of the
4 file.

5 Enacting section 1. 1949 PA 66, MCL 780.221 to 780.225, is
6 repealed.