Removal or Destruction of Public Records

California Government Code §6200 states:

Every officer having the custody of any record, map, or book, or of any paper or proceeding of any court, filed or deposited in any public office, or placed in his or her hands for any purpose, is punishable by imprisonment in the state prison for two, three, or four years if, as to the whole or any part of the record, map, book, paper, or proceeding, the officer willfully does or permits any other person to do any of the following:

(a) Steal, remove, or secrete.
(b) Destroy, mutilate, or deface.
(c) Alter or falsify.

For non-officers guilty of the same acts Government Code §6201 sets the penalty at up to a year's term in prison or jail, or by a maximum $1,000 fine, or both. Section 6203 might apply to the act of an official denying in writing that a record existed, or maintaining it had been lost or destroyed—contrary to fact.

Every officer authorized by law to make or give any certificate or other writing is guilty of a misdemeanor if he makes and delivers as true any certificate or writing containing statements which he knows to be false.

In *Loder v. Municipal Court*, 17 Cal.3d 859 (1976) the California Supreme Court concluded that a police department could not erase or return to the petitioner the record of his arrest stemming from an altercation with a misbehaving police officer, although the city had opted not to press charges and that court had dismissed the case for lack of prosecution.

> On the contrary, such an act appears to be forbidden by Government Code §6200 . . . An arrest record is clearly a document which may properly be kept by a public officer in the discharge of his duties, and hence is within the scope of the statute. (See *People v. Pearson* (at) 31 . . .) And inasmuch as no showing of specific intent is required by the statute, an officer who knowingly removes or destroys such a document is punishable even though he acts without a criminal purpose.

Id. at 863.

Meaning of "Public" Records under Section 6200

> In *People v. Pearson,* 11 Cal.App.2d 9 (2d Dist. 1952) the court observed:
> The crime charged to Captain Pearson is not that he aided a guilty party to escape, or disclosed evidence he had against those mentioned in his reports or otherwise gave comfort to vice elements under investigation. He was convicted of having, while a deputy sheriff, in violation of section 6200,

supra, removed certain papers on file in the office of the sheriff of Los Angeles County, a public office. The question of his intent is not involved. The mere doing of an act forbidden by the statute is the sum total of the judgment against him.

The papers were not the property of the individual, Carl H. Pearson. Some had been prepared by him for the grand jury to show the work that had been done by the vice squad in running down criminal elements. Some were letters from the sheriff upon reported crimes; some were Pearson's replies to his superior; some were communications from citizens giving evidence of criminal activities; others were in Pearson's own writing he had used while testifying before the grand jury in the spring of 1950. . . .

The contention that the papers removed were not public records is a mere quibble. They were kept by the sheriff's office as evidence of what had been done, of what was to be done and proof of activities of those elements against whom the law-enforcing agencies should be on the alert. They were convenient to an expeditious discharge of the duties of the sheriff's office and they were necessary to the enlightenment of the sheriff as to past failures and achievements and to current endeavors. They were not open to public inspection. The sheriff's office would be handicapped in enforcing the laws if at every sunset vicious elements might read all the sheriff's reports of vice activities during the preceding day and all plans for defeating crime in the ensuing night. Such documents are confidential public records and because of public policy are entitled to the protection of the statute. . . A paper written by a public official in the performance of his duties or in recording the efforts of himself and those under his command or written plans of future work is a public record and is properly in the keeping of the office. . .

Id. at 16 (citations omitted).

In *People v. Sperl*, 54 Cal.App.3d 640 (2d Dist. 1976) the court again emphasized that the offense can occur with respect to records not required by law to be created or maintained. The defendant, the Los Angeles County Marshal, was convicted among other things of an offense under Section 6200 in connection with the unauthorized removal from archives of nearly 300 car radio logs documenting the use of official vehicles for certain trips.

The court of appeal stated:

Respondent's principal argument on count VII is that the maintenance of radio logs is not required by an ordinance or statute, therefore, because the marshal has control of all records of his office, he had the authority to do with the records as he saw fit. This argument is meritless. A public official has no right to treat official government records of an office, such as the marshal's department, as his own. . .

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As stated in *People v. Shaw*, 17 Cal. 2d 778, 811 [112 P.2d 241] and the authorities cited therein, "'In order that an entry or record of the official acts of a public officer shall be a public record, it is not necessary that such record be expressly required by law to be kept, but it is sufficient if it be

necessary or convenient to the discharge of his official duty. "Any record required by law to be kept by an officer, or which he keeps as necessary or convenient to the discharge of his official duty, is a public record."

Id. at 663 (citations omitted).