

Ability to Pay Implementation in Traffic Court Toolkit

Appendix

Back on the Road California

October 2017



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1 NAME: _____
2 ADDRESS: _____
3 CITY, STATE, ZIP: _____
4 TELEPHONE: _____

5 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
6 **IN AND FOR _____ COUNTY**
(Traffic Division)

7 PEOPLE OF THE STATE OF CALIFORNIA,
8 Plaintiff

Docket No.: _____
Citation No.: _____

9 Vs.

PETITION TO TRANSFER CASE FROM
REVENUE SERVICES TO COURT;
RECALL DMV HOLD; REDUCE FINES
OWED; INSTALL PAYMENT PLAN
COMPATIBLE WITH DEFENDANT'S
FINANCIAL ABILITY; VACATE CIVIL
ASSESSMENT FEE

10 _____,
11 Defendant

12 Date:
13 Time:
14 Dept.:

15 TO: The Commissioner of the Traffic Division of the Superior Court for _____ County:

16 PLEASE TAKE NOTICE that Defendant petitions to transfer their case from collections to
17 this court for adjudication of the "failure to pay" or "failure to appear." Defendant respectfully
18 requests that this court conduct an ability-to-pay determination at that adjudication and send a
19 notification to the DMV to remove the FTA/FTP hold or suspension.

20 PETITIONER AND DEFENDANT _____

21 In the above captioned case alleges:

22 1. That on Docket No. _____, Defendant was cited for violating V.C. Sec.

23 _____, and failure to appear.

24 2. That California Rule of Court 4.335 (adopted effective January 1, 2017) states that "A
25 defendant may request an ability-to-pay determination at adjudication, or while the judgment
26

remains unpaid, including when a case is delinquent or has been referred to a comprehensive collection program.”

3. That Subdivision (c)(1) of the Rule of Court 4.335’s Advisory Committee Comment (adopted effective January 1, 2017) states that, “In determining the defendant’s ability to pay, the court should take into account factors including: (1) receipt of public benefits under ... California Food Assistance Program ... General Assistance ... or Medi-Cal, and (2) a monthly income of 125 percent or less of the current poverty guidelines...”

3. That Defendant was notified by the county that her case had been referred to collections.

4. That a comprehensive collections agency has attempted to collect on this debt from Defendant.

5. That Defendant has the following financial circumstances (check one that applies):

(a) ☐ receives the following form(s) of public assistance: ☐ Medi-Cal, ☐ Food Stamps, ☐ SSI (Supplemental Security Income), ☐ SSP (State Supplementary Payment), ☐ GA (General Assistance), ☐ GR (General Relief), ☐ IHSS (In-Home Supportive Services), ☐ CalWORKS or Triban TANF (Tribal Temporary Assistance for Needy Families), ☐ CAPI (Cash Assistance Program for Aged, Blind and Disabled). See Benefits Letter attached.

(b) ☐ Receives a gross monthly income (before taxes) of 125 percent or less of the current federal poverty guidelines.

Family Size	Family Income	Family Size	Family Income	Family Size	Family Income	If more than 6 people at home, add \$435.50 for each extra person
1	\$1,256.25	3	\$2,127.09	5	\$2,997.92	
2	\$1,691.67	4	\$2,562.50	6	\$3,433.34	

(c) ☐ Does not have enough income to pay for their household’s basic needs and the Court fines in the case(s) listed above.

1
2 6. That Defendant cannot afford to pay the full fine amount that is associated with this ticket.

3 7. That Defendant's California Driver License has been suspended because of a Failure to
4 Appear or Failure to Pay because of this ticket.

5 8. That Defendant needs a driver's license in order to lawfully drive and perform daily
6 functions like go to school, training programs, and work.
7

8
9 **WHEREFORE**, Petitioner requests that this court issue an order to the collections agency directing
10 that her file be transferred to the Traffic Division and a hearing date be set to resolve the failure to
11 pay issue and conduct an ability to pay determination.

12 **PETITIONER PRAYS**, that this court releases the driver's license hold associated with this citation
13 per California Rule of Court 4.106, reduce the fine to an amount that is compatible with petitioner's
14 financial ability in conformance with the California Rule of Court 4.335, and allow the petitioner to
15 enter into a payment plan for the remaining outstanding fine.
16

17
18 DATED: _____

SIGNATURE

1
2
3
4
5 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
6 **IN AND FOR _____ COUNTY**
(Traffic Division)

7 PEOPLE OF THE STATE OF CALIFORNIA,
8 Plaintiff

Docket No.: _____

9 Vs.

ORDER REGARDING ABILITY-TO-PAY
PROCEEDING

10 _____,
11 Defendant

Date:
Time:
Dept.:

12
13 Defendant, having moved in this court for an order granting the Defendant (1.) Request to
14 Conduct an Ability-To-Pay Determination, (2.) Request to Reduce Fines, (3.) Request to Vacate
15 Civil Assessment Fee for FTA 1214.1 and FTP 1214.1, and (4.) Request to Recall DMV Hold on
16 Driver's License.

17 **IT IS HEREBY ORDERED:**

18 Pursuant to Rule 4.335 of the California Rules of Court, this Court will take the following
19 actions:

- 20 1. Court reduces all outstanding fines and fees to an amount of \$_____, to be paid in
21 full or in installments in a manner that is compatible with the Defendant's financial
22 circumstances, or to be converted to _____ hours of community service to be
23 completed within _____ days.
24 2. Court will assess no additional fines and fees after Defendant completes his/her
25 community service.
26

- 1 3. Court directs the California Department of Motor Vehicles to release the FTA/FTP hold
2 on Defendant license per Veh. Code § 13365.
3 4. Court vacates FTA and FTP, including any associated civil assessment fees imposed
4 pursuant to Penal Code § 1214.1.
5

6 **IT IS SO ORDERED.**

7 DATED: _____

Commissioner of the Superior Court for the
County of _____

1 NAME: _____
2 ADDRESS: _____
3 CITY, STATE, ZIP: _____
4 TELEPHONE: _____

5 SUPERIOR COURT OF CALIFORNIA
6 IN AND FOR THE COUNTY OF _____

7 PEOPLE OF THE STATE OF
8 CALIFORNIA,
9 Plaintiff,

10 -vs-

11 _____
12 Defendant,

) DOCKET NO: _____
)
)
) MOTION TO DISMISS NON-FELONY TRAFFIC
) CITATIONS AND/OR WARRANTS PURSUANT
) TO VEHICLE CODE § 41500
)
)
)
)
)

13 TO: THE HONORABLE COURT IN THE ABOVE ENTITLED ACTION:

14 PLEASE TAKE NOTICE that Defendant hereby moves the court for an ex-parte order to dismiss all non-
15 felony citations, warrants, and/or other holds resulting from Vehicle Code violations pursuant to the
16 Vehicle Code § 41500 and the authority of Penal Code § 1385. This motion is based on the grounds that
17 defendant was committed to custody of a state correctional facility at the time he was required to appear
18 on his charges.

19 NAME OF CORRECTIONAL FACILITY: _____

20 DATES OF INCARCERATION: ____/____/____ TO ____/____/____

21
22
23
24
25 DATED: _____

26 DEFENDANT
27
28

EX-PARTE APPLICATION TO DISMISS NON-FELONY TRAFFIC CITATIONS AND/OR WARRANTS

Note: This sample motion is intended to be used for individuals who received a Penal Code section 14601.1 charge for driving with a suspended license on or after June 27, 2017 and whose license suspension stems from a failure to pay in traffic court.

NAME: _____
ADDRESS: _____
CITY, STATE, ZIP: _____
TELEPHONE: _____

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR _____ COUNTY**

PEOPLE OF THE STATE OF
CALIFORNIA,

Plaintiff

Vs.

Docket No.: _____
Citation No.: _____

MOTION TO DISMISS BY OPERATION
OF NEW LAW, AB 103

Date: _____
Time: _____
Dept.: _____

_____,
Defendant

TO: The Commissioner of the Traffic Division of the Superior Court for _____
County:

PLEASE TAKE NOTICE that [Defendant] moves to dismiss this case in the interest of justice in light of newly enacted legislation Assembly Bill 103 (effective June 27, 2017), which eliminated driver's license suspensions for failure to pay. Accordingly, this charge, which arises from [Defendant]'s failure to pay, must be dismissed. The motion will be based on this notice of motion, the supporting memorandum served and filed herewith, on the records and file herein, and on such evidence as may be presented at the hearing of the motion.

MEMORANDUM OF POINTS AND AUTHORITIES

Effective June 27, 2017, AB 103 repealed the authority of the state to maintain driver's license suspensions for failure to pay a fine. [Defendant] was arrested on [Date]. As a result of AB 103, the previously-recorded license suspension had no legal effect on that date. Therefore,

Note: This sample motion is intended to be used for individuals who received a Penal Code section 14601.1 charge for driving with a suspended license on or after June 27, 2017 and whose license suspension stems from a failure to pay in traffic court.

Penal Code section 14601.1(a) no longer applies to [Defendant]'s conduct, and this charge must be dismissed.

ARGUMENT

1. AB 103 Ended All License Suspensions for Failure to Pay.

AB 103 amended the only statute that authorized the DMV to maintain a license suspension for failure to pay or failure to appear – Vehicle Code section 13365. AB 103, Stats. 2017, Ch. 17, Secs. 51-54. It also amended the statutes authorizing courts to give notice to DMV of willful failures to pay traffic fines (Vehicle Code sections 40509 and 40509.5) and directing how those suspensions are to be cured.

First, the words in Vehicle Code section 13365 are unambiguous. The amended statute reads: “The suspension shall continue until the suspended person’s driving record does not contain any notification of a violation of subdivision (a) of Section 40508.” Subdivision (a) of Vehicle Code section 40508 describes the misdemeanor offense of failure to appear. Before AB 103, section 13365 allowed suspensions to continue under 40508 (a) or (b), the subsection for failure to pay. It is clear that the statute was amended to remove the authority to continue failure to pay suspensions.

Second, the intent of AB 103 is clear. The Governor’s Budget Summary explained the public policy determination that license suspension is ineffective as a means of collecting revenue and imposes unreasonable burdens on persons who are unable to pay:

Repeal of Driver’s License Suspension

In the past, when the State Penalty Fund has faced shortfalls, the solution has often been to further increase fines and penalties. While this approach increases revenues generated by those who pay the amount owed, it places an undue burden on those who cannot afford to pay.

...

Note: This sample motion is intended to be used for individuals who received a Penal Code section 14601.1 charge for driving with a suspended license on or after June 27, 2017 and whose license suspension stems from a failure to pay in traffic court.

One of the collection methods that courts can use to collect outstanding debt is to suspend driver's licenses for failure to pay. Often, the primary consequence of a driver's license suspension is the inability to legally drive to work or take one's children to school. Therefore, the Budget eliminates the statutory provisions related to suspending driver's licenses for failure to pay fines and penalties.

The legislature adopted the Governor's proposal, and repealed all driver's license suspensions for failure to pay.

2. As a Result of AB 103, the Section 14601.1 Charge Must Be Dismissed.

Under well-established California Supreme Court precedent, there is a "universal common-law rule that when the legislature repeals a criminal statute or otherwise removes the State's condemnation from conduct deemed criminal, this action requires the dismissal of a pending criminal proceeding charging such conduct. The rule applies to any such proceeding which, at the time of the supervening legislation, has not yet reached final disposition in the highest court authorized to review it." *People v. Babylon*, 39 Cal. 3d 70, 728 (1985) quoting *Bell v. Maryland* (1964) 378 U.S. 226, 230.

[Defendant] was arrested after AB 103 passed. The license suspension on record did not have legal effect at that time. The charge must be dismissed.

CONCLUSION

For all the reasons described above, the court must dismiss the charge for driving with a suspended license.

Attorney for [Defendant]

1 NAME: _____
2 ADDRESS: _____
3 CITY, STATE, ZIP: _____
4 TELEPHONE: _____

5 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
6 **IN AND FOR _____ COUNTY**

7 **PEOPLE OF THE STATE OF CALIFORNIA,**
8 **Plaintiff**

Docket No.: _____
Citation No.: _____

9 Vs.

**PETITION TO SCHEDULE A HEARING
FOR ADJUDICATION WITHOUT
PAYMENT OF BAIL**

10 _____,
11 Defendant

12 TO: The Commissioner of the Traffic Division of the Superior Court for _____ County:

13 PLEASE TAKE NOTICE that Defendant petitions to schedule a hearing for the adjudication
14 of underlying charges without payment of bail, pursuant to California Rule of Court 4.016(d).

15 Defendant respectfully requests that this court hear defendant's underlying charges without requiring
16 that the defendant pay bail, a payment that is burdensome and difficult for the defendant to pay,
17 because the defendant's failure to appear was well supported by good cause.

18
19 **MEMORANDUM AND POINTS OF AUTHORITY**
20 **IN SUPPORT OF MOTION**

21 **I. STATEMENT OF FACTS & PROCEDURAL HISTORY**

22
23 Defendant was convicted on [DATE] for the following violations:[INSERT VIOLATIONS
24 AND CODE SECTIONS]. Because of health circumstances outside of Defendant's control, she did
25 not appear in court.

26 [DESCRIBE REASON FOR MISSING COURT]

1 Defendant is unable to afford the bail amount in order to schedule a court appearance to
2 adjudicate her underlying claims. Defendant therefore petitions to schedule a hearing for the
3 adjudication of underlying charges without payment of bail.
4

5 **II. ARGUMENT**

6

7 **A. Bail Should Be Waived for Defendant Because Good Cause is Demonstrated for** 8 **Non-Appearance and Defendant is Here Submitting A Petition As Required by** 9 **California Rule of Court 4.106(d)**

10

11 Veh. Code § 40903 provides that any person who fails to appear *as provided by law* may be
12 deemed to have elected to have a trial by written declaration. Veh. Code § 40508(a) requires the
13 element of willfulness before a judgment is made.

14 Defendant's failure to appear was not willful, and was for good cause. At the date of her
15 court hearing, Defendant was [INSERT REASON FOR MISSING COURT DATE]. Defendant was
16 thus unable to appear in court, the cause of which was out of her control. Defendant has shown good
17 cause negating willfulness.

18 California Rule of Court 4.106(d) states that "When a case has not been adjudicated and a
19 court refers it to a comprehensive collection program as provided in section 1463.007(b)(1) as
20 delinquent debt, the defendant may schedule a hearing for adjudication of the underlying charge(s)
21 without payment of the bail amount." California Rule of Court 4.106(d)(2) states that "The
22 defendant may request an appearance date to adjudicate the underlying charges by written petition or
23 alternative method provided by the court. Alternatively, the defendant may request or the court may
24 direct a court appearance." Defendant is hereby requesting a hearing to adjudicate her underlying
25
26

1 claims without paying bail, pursuant to California Rules of Court 4.106(d)(1) and 4.106(d)(2).

2 Furthermore, California Rule of Court 4.106(d)(3), states that, “A court may require a deposit
3 of bail before adjudication of the underlying charges if the court finds that the defendant is unlikely
4 to appear as ordered without a deposit of bail and the court expressly states the reasons for the
5 finding.” California Rule of Court 4.106(d)(3) is inapplicable here. As described above, Defendant
6 missed her court date due to [INSERT REASON FOR MISSING COURT DATE]. She has every
7 reason to come to court because [INSERT REASON FOR REQUESTING COURT DATE].
8 Because the court has basis to believe that the Defendant will appear at trial, bail must be waived.
9

10 It would be a hardship on Defendant to pay bail. [INSERT DETAILS ABOUT FINANCIAL
11 HARDSHIP.] Defendant would be unable to pay bail and thereby unable to have her claims heard
12 before court and have an opportunity to demonstrate good cause reason for her non-appearance, to
13 present evidence and to resolve her underlying claims absent action by this Court.

14 The requirement to deposit bail for a trial de novo in effect creates a two-tiered system for
15 people who demonstrate a good cause reason for non-appearance at trial. People who have money
16 get their day in court, but people who are indigent and do not have financial means are unable to
17 contest their ticket. It creates circumstances where low-income people are left with exorbitant debt,
18 when that same debt would be reduced at trial upon an evidentiary showing of mitigating
19 documentation for people who can afford to deposit bail. This defies all principles of due process,
20 fairness, and justice. Bail should be waived accordingly.
21

22 Defendant’s California Driver License has been suspended because of a Failure to Appear or
23 Failure to Pay because of this ticket. Defendant needs a driver’s license in order to lawfully drive
24 and perform daily functions like go to school, training programs, and work.
25
26

1 **III. CONCLUSION**

2 For all of the foregoing reasons, this Court should reopen Defendant’s case, vacate the
3 conviction and grant a trial de novo. In the alternative, the Court should set a date for a hearing in
4 order to determine whether Defendant has the ability to pay the fine.

5
6 **WHEREFORE**, Defendant requests that this court set a hearing in her case and waive bail.

7 **DEFENDANT PRAYS**, that this court allow the Defendant to appear in court to adjudicate her
8 underlying claims without paying bail.
9

10
11 DATED:

_____ DEFENDANT’S SIGNATURE
12
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14
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I can't afford to pay my ticket.



Ability to Pay

If you cannot afford to pay your ticket, you have a right to ask the traffic Clerk for an **"Ability to Pay"** determination.

When you ask for this, the court must look at your financial situation to determine whether they should reduce the amount you have to pay in fines. Below are the ability to pay determination steps.

1

I'm unable to pay.



Any time after you have been found guilty of a ticket, you can request the court to reduce your fine because you can't afford it.

2

TR-018



The clerk will refer you to the Form TR-018, that you will fill out, explaining why you can't afford the fine.

3



There are 3 options: (1) if you are getting public benefits, (2) if your income is below a level, or (3) if you have less than \$250 of disposable income.

4

Proof TR-018



You should fill in the form, and get proof to support your form, and submit it to the Clerk's office. You can also find this form online:
www.alameda.courts.ca.gov/pages.aspx/traffic

5

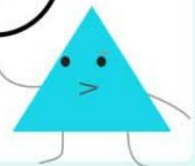
Proof TR-018



Then the court will evaluate it, and let you know if your ticket fine is reduced. It might take up to 30 days.

6

I want to contest.



If you are not satisfied with the court's decision, you can ask the clerk to contest the decision.



Wiley W. Manuel Courthouse
661 Washington Street
Oakland, California 94607
Hours: 8:00am-2:30pm

Fremont Hall of Justice
39439 Paseo Padre Parkway
Fremont, California 94538
Hours: 8:00am-2:30pm

East County Hall of Justice
5151 Gleason Drive
Dublin, California 94568
Hours: 8:00am-2:30pm

¿No tiene la capacidad para pagar?



Si no puede pagar su multa, usted tiene el derecho de preguntarle al secretario de tráfico por una determinación de “**capacidad para pagar**”.

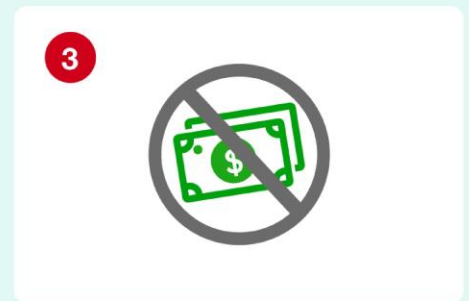
Cuando pide esto, la corte necesita analizar su situación financiera para determinar si deberán reducir la cantidad de su multa. A continuación, encontrará las etapas del proceso de determinación de capacidad para pagar.



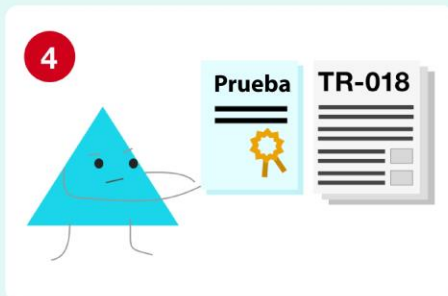
En cualquier momento después de que usted ha sido declarado culpable, usted puede solicitarle a la corte que reduzca la multa porque no puede pagarla.



El secretario le proporcionará el formulario TR-018, que usted llenará explicando porque usted no puede pagar la multa.



Existen 3 opciones: (1) Si usted recibe beneficios públicos, (2) si sus ingresos son más bajos que cierto nivel, o (3) si usted tiene menos de \$250 de fondos disponibles.



Debe llenar el formulario y obtener suficiente evidencia para apoyar su petición y luego entregará todo al secretario. Usted también puede obtener este formulario en la web:

www.alameda.courts.ca.gov/pages.aspx/traffic



La corte evaluará su aplicación y le informará si la cantidad total de la multa será reducida. Esto puede tomar hasta 30 días.



Si no le satisface la decisión de la corte, usted puede indicarle al secretario que desea disputar la decisión.

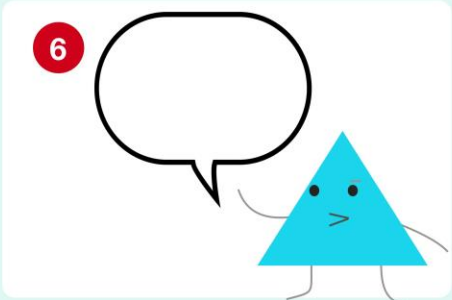
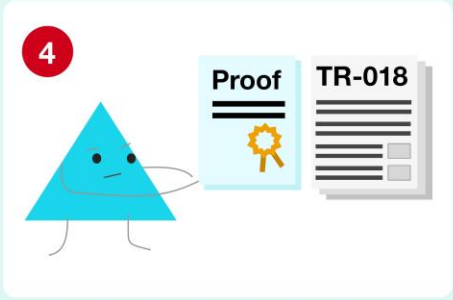
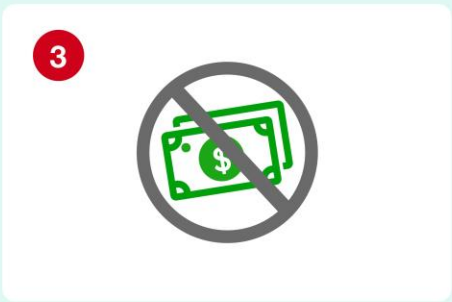
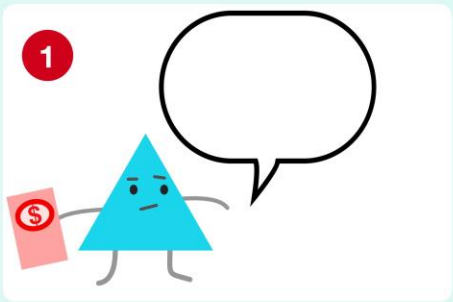
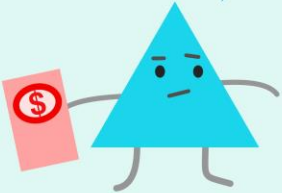


Entregue el formulario de capacidad para pagaren una de estas cortes:

Wiley W. Manuel Courthouse
661 Washington Street
Oakland, California 94607
Hours: 8:00am-2:30pm

Fremont Hall of Justice
39439 Paseo Padre Parkway
Fremont, California 94538
Hours: 8:00am-2:30pm

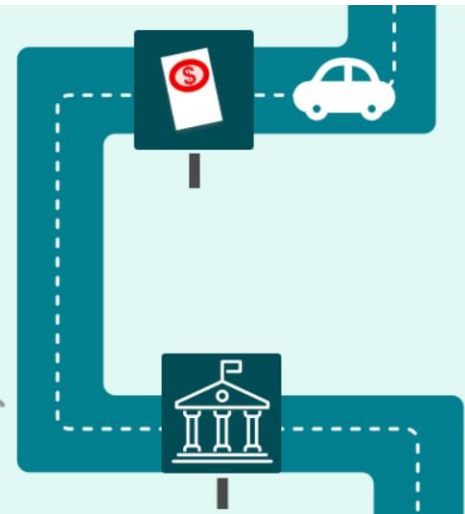
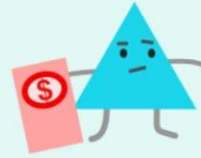
East County Hall of Justice
5151 Gleason Drive
Dublin, California 94568
Hours: 8:00am-2:30pm



Submit your Ability to Pay form at these courts

What happens at traffic court

After you get a ticket, you can come to court for the **arraignment**, where you hear the charges & make your plea.



What do you plead?

At the **arraignment**, the Judge will call you to the front and ask you what you plead.

I plead

Guilty

No contest

Not guilty

Fix-it

Guilty: You admit you did it and pay the fine.

No contest: You don't admit it, but you agree to pay the fine.

Not guilty: You want to fight the ticket.

Fix-it: You show proof that you fixed the problem.



Pay your fine to the Clerk, or set up a payment plan. You can also request traffic school which will make sure you don't get a point on your DMV record.



You will get a trial date, & will have to appear to make your case. If the officer doesn't appear, your case will be dismissed.



Pay \$25 dismissal fee to Clerk



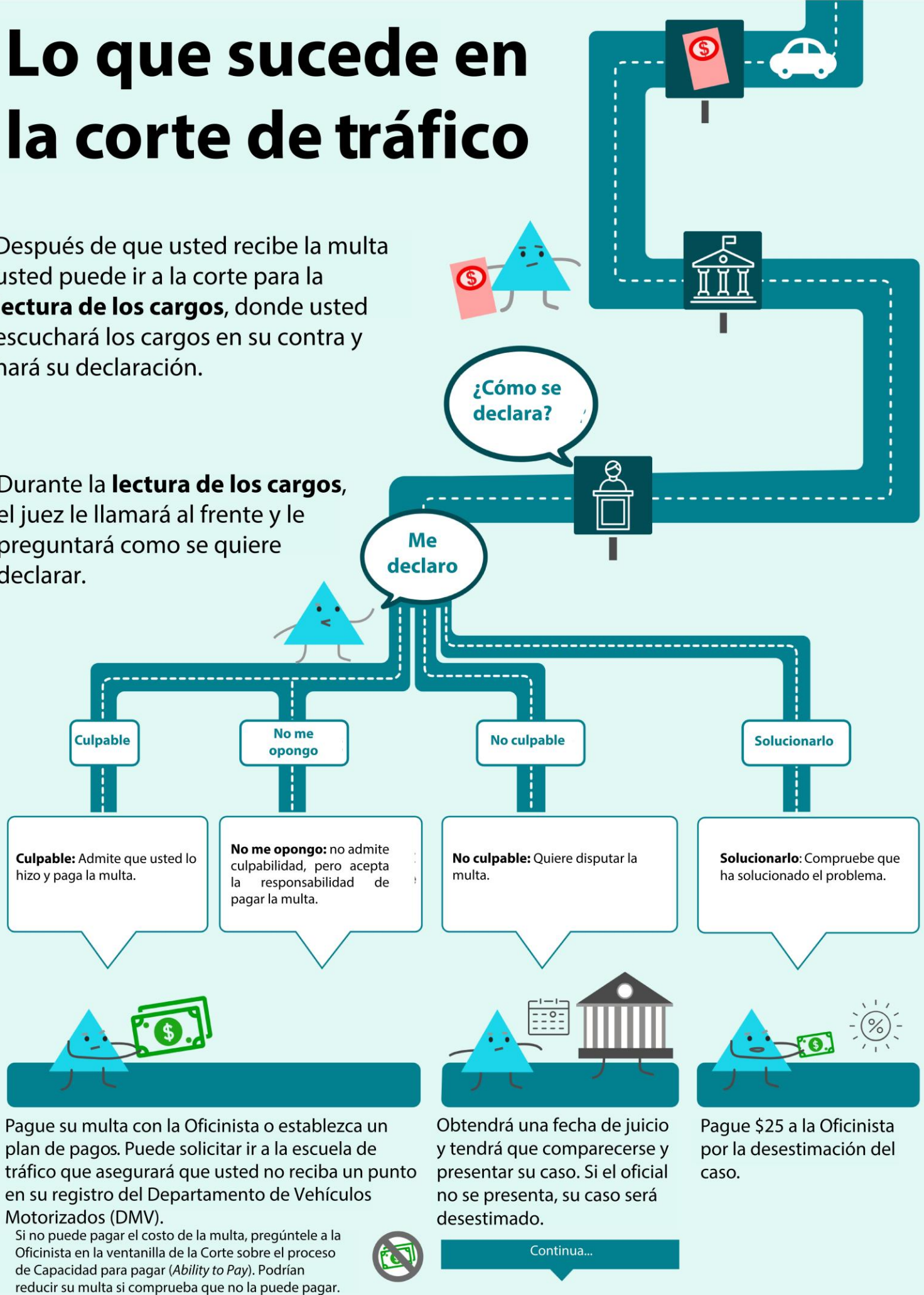
If you can't afford your ticket, ask the Clerk at the counter for an Ability to Pay process. They may reduce your fine if you show you can't afford it.

To be continued...

Lo que sucede en la corte de tráfico

Después de que usted recibe la multa usted puede ir a la corte para la **lectura de los cargos**, donde usted escuchará los cargos en su contra y hará su declaración.

Durante la **lectura de los cargos**, el juez le llamará al frente y le preguntará como se quiere declarar.



[ORGANIZATIONAL LOGO]

[DATE]

[ADDRESS]

Re: Ability to Pay, Civil Assessments, and Driver's License Suspensions

Dear _____:

[OPTIONAL PARAGRAPH]: [NAME OF ORGANIZATION] is a [civil rights/legal services/nonprofit] organization that assists low-income Californians with issues affecting their ability to live and work in [COUNTY NAME]. [INSERT SENTENCE ABOUT WORK OF ORGANIZATION AND ANY PERTINENT DETAILS]

As you are aware, Governor Brown, the California State Legislature, and the Judicial Council of California have moved in the past year to change the manner in which courts may collect debt related to infraction fines and fees. These changes are meant not only to advance equity for low-income traffic court defendants, but also to improve court efficiency and collection efficacy.

This letter summarizes these recent changes. Your Court may already be in the process of developing policies and procedures to comply with the newly enacted laws and court rules. Our office would like to set up a time to meet with you to discuss the recommendations and best practices outlined below, which we believe will implement these rules most effectively.

Please note that pending legislation, such as SB 185, may bring additional changes to these regulations. The below-summarized rules and state laws are current as of [DATE].

I. "Ability to Pay" Determinations

A. California Rule of Court 4.335

Adopted January 1, 2017, with a court implementation deadline of May 1, 2017, California Rule of Court 4.335(c)(1) requires that, upon request of a traffic defendant, a court must consider the defendant's ability to pay in assessing fines and fees. A defendant must be able to request this ability-to-pay determination by written petition unless the court directs a court appearance. Rule of Court 4.335(c)(3).

The Rule further requires that courts must provide defendants notice that they may request an ability-to-pay determination regarding fines and fees in any infraction offense for which a defendant has received a written notice to appear. Rule of Court 4.335(b). Courts must give instructions or other materials to

defendants advising how they may request such determinations. *Id.* In order to ensure that this information reaches the people who most need it, we encourage the Court to post user-friendly viewable flyers and posters in the traffic clerk's windows and traffic courtroom.

A defendant may request an ability-to-pay determination at "adjudication, or while the judgment remains unpaid, including when a case is delinquent or has been referred to a comprehensive collection program." Rule of Court 4.335(c)(2). This unequivocally means that any outstanding case remains eligible for an ability-to-pay determination, even after referral to a collection agency or the Franchise Tax Board, because the court retains jurisdiction to determine a defendant's ability to pay a fine or fee until the debt is satisfied.

Several courts have improved access to justice and streamlined traffic court processing by adopting updated, user-friendly forms and advisements. Some examples of good forms and advisements include:

- "Ability to Pay" standard application:
 - Model ability to pay forms allow defendants to list whether they receive any public benefits and explain relevant financial circumstances. These forms give defendants the ability to request a fine reduction, payment plan, and/or other alternatives.
 - Solano Superior Court's "[Financial Declaration/ Ability to Pay Form](#)," enclosed.
 - Alameda Superior Court's "[Request for an Ability to Pay Determination](#)."
 - Also in Solano County, GC Services (collection agency) will be revising its forms to include a notice on the right to ability to pay determination and contact information for the court.
- Information from the court:
 - Solano Superior Court provides "Know Your Rights" information for traffic defendants with limited financial means.
 - Alameda County's website contains clear information about eligibility requirements for ability-to-pay: (<http://www.alameda.courts.ca.gov/Pages.aspx/What-if-I-can-t-afford-to-pay->).

In evaluating an ability-to-pay petition, a court may suspend the fine in whole or in part, offer a payment plan or community service, and/or offer an alternative disposition. Rule of Court 4.335(c)(4). The advisory comment to Rule of Court 4.335(c)(4) states that the "amount and manner of paying the total fine must be reasonable and compatible with the defendant's financial ability." Even after a court has made an initial ability-to-pay determination, a defendant can request subsequent determinations based on changed circumstances. Rule of Court 4.335(c)(6).

Some courts have adopted a practice of reducing fines and fees owed for indigent defendants. Others have allowed for extended payment plans with no additional payment plan fees. Some features of a model ability-to-pay plan include:

- Immediate notification to DMV to remove the driver license hold upon adjudication of the ability-to-pay request
- 80% reductions on all fines and fees owed, including civil assessment fees, for people who are indigent (consistent with the Traffic Tickets/Infractions Amnesty Program);
- A discretionary reduction greater than 80% if it is warranted by the person's financial circumstances.

- Applicant presumed indigent if: (1) receipt of public assistance, (2) income is less than 125% of Federal Poverty Level, or (3) less than \$250 of monthly disposable income after covering basic household expenses;
- A \$0/month payment plan for indigent defendants until there is a change in financial circumstances;
- No fees to enter into payment plans;
- Fine reductions before imposing community service and/or a payment plan;
- No community service and payment plans that are beyond the person's financial capacity;
- No fees to sign up for community service, as in Tehama Superior Court, and a broad and flexible program in which socially positive activities such as enrolling in school or seeking job training or treatment services may satisfy required community service hours, like the Marin Community Court.

Model jurisdictions, such as Solano County, begin implementation of these policies and practices through the issuance of a memorandum to all court staff advising of new procedures.

B. California Rule of Court 4.106

Rule 4.106(e)(1) provides that, if a defendant fails to make a payment under an installment plan, a court must permit the defendant to appear by written petition to modify payment terms. A defendant also has the right to request a court appearance, and a court may direct an appearance, as well. *Id.* If the petition to modify payment terms is based on an inability to pay, Rule 4.335 procedures apply such that the court must reassess the defendant's ability to pay and modify the payment plan accordingly.

C. California Rule of Court 4.107

Rule 4.107 provides that the court must provide a mandatory courtesy notice on all tickets that are filed in court. An example of a revised courtesy notice that complies with the new rules can be found in Solano County. Solano has updated its reminder/courtesy notice and notice of civil assessment to include information about the right to an ability to pay determination (enclosed).

D. Vehicle Code § 40508 Charges

As a matter of due process, courts may not automatically enter of charges under VC § 40508 (misdemeanor charge for failure to appear or failure to pay). Neither may courts automatically report failure to appear or failure to pay to the DMV. Instead, any VC § 40508 charge must be ordered by a judicial officer, but only after the court gives a defendant notice and opportunity to be heard on the charge, as VC § 40508 requires a willfulness determination as to a failure to pay or appear.

II. Good Cause Categories to Vacate Civil Assessment Fees

Rule 4.106 addresses both when a court must vacate a civil assessment for good cause, and when a civil assessment should be reduced or waived based on a defendant's ability to pay. The Court must inform a defendant of her/his right to petition that a civil assessment be vacated for good cause and instruct a defendant as to the process for vacating or reducing the assessment. Penal Code section 1214.1(b).

Rule 4.106(c)(5) requires the court to vacate a civil assessment upon a showing of good cause for failure to appear or failure to pay. Judicial Council Advisory Committee Comment Subdivision (c)(3) states that good cause includes but is not limited to:

- Defendant's hospitalization, incapacitation, or incarceration;
- Military duty required of the defendant;
- Death or hospitalization of the defendant's dependent or immediate family member;
- Caregiver responsibility for a sick or disabled dependent or immediate family member; or
- Any extraordinary reason, beyond the defendant's control, that prevented the defendant from making an appearance or payment on or before the date listed on the notice to appear.

[TAILOR TO YOUR LOCAL COURT] This new rule expands the traditionally accepted categories of good cause, and this full list is not currently reflected on the Court's existing petition to vacate the civil assessment fee. One immediate way that this Court can comply with the new rules is to revise the Court's form to reflect updated categories for good cause. Note that this list is not exhaustive; courts have explicitly included additional good cause categories in their petitions, including defendant being housed in residential treatment, inability to pay by due-date, and court error. Some courts have also added an "other" space to allow defendants to write in their good cause for failing to appear or make a payment on time.

In the absence of good cause – which itself may include inability to pay – the Court may reconsider whether a civil assessment should be imposed and, if so, the amount of the assessment. The Court may consider such factors as the defendant's ability to pay and due diligence in appearing or paying after notice of the assessment is given. Rule 4.106(c)(6) and (7).

III. End of License Suspensions for Failure to Pay

Effective June 27, 2017, courts no longer have legal authority to notify DMV per Vehicle Code sections 40509 or 40509.5 of a defendant's failure to pay an infraction fine or fee. This authority was removed by state law (AB 103) passed on June 27, 2017.

IV. Impact on License Suspensions for Failure to Appear

If the court has notified the DMV of a failure to appear in order to place a hold on a defendant's license, please note that an ability-to-pay request constitutes an appearance. As such, the court must notify the DMV under VC § 40509.5(a) that the person has appeared in court (via a court form or otherwise) and resolved the case, thus removing authority to hold the individual's license.

* * *

[OPTIONAL] In response to this letter, we request that you confirm that the Court is longer notifying the DMV to suspend a person's driver's license due to failure to pay fines or fees ordered in traffic court. Per rule 10.500(c), please also provide copies of the following documents:

- (1) traffic court courtesy notice;
- (2) defendant petition for modification of fines/fees due to ability to pay; and

(3) defendant petition to vacate or modify civil assessment.

Because [NAME OF ORG] is a nonprofit organization, we request that you waive any fees that would normally be applicable to this request. See *North County Parents Organization v. Department of Education*, 23 Cal. App. 4th 144 (1994). If you are unable to do so, please notify us before incurring any costs. Where possible, please send your response in electronic format, as required by Rule 10.500(i), via electronic mail to [EMAIL ADDRESS]. Otherwise, please mail your response to:

[ADDRESS]

Thank you for your commitment to implementing these rules, and please contact me at [CONTACT INFO] should you have any questions or concerns.

Sincerely,

[NAME]

EXHIBIT 1



Superior Court of California, County of Solano

600 Union Avenue, P.O. Box 2463, Fairfield, CA 94533 Tel.: 707--207--7360

Courtesy Notice You received a ticket for the violation(s) listed below. Take care of this ticket by the **deadline**. If you do not, you may be **fin**ed and your license may be **suspended**. Keep this Notice. You will need it to take care of your ticket.

TO: «ODP_SOL_DEFENDANT_NAME»
«ODP_SOL_DEFENDANT_ADDRESS»
«ODP_SOL_DEFENDANT_CITY», «ODP_SOL_DEFENDANT_STATE_ZIP»

TICKET & FINE INFORMATION

DLN & State	«ODP_GENERAL_DFT_DRIVER_LICENSE»	VIN & State	«ODP_GENERAL_VEH_PLATE_NO» «ODP_GENERAL_VEH_STAT»	Birthdate	«ODP_GENERAL_DFT_DOB»
Ticket Number	«ODP_GENERAL_CASE_CITATION_NO»	Ticketing Agency	«ODP_GENERAL_ARREST_AGCY_ID	Ticket Date	«ODP_GENERAL_VIOLATION_D ATE»
Violation(s):					
« ODP_GENERAL_DEFENDANT_CHARGES» O D P - G E N E R					
If the violation(s) listed above is marked with an asterisk (*) that means you can fix the problem, go to any law enforcement office to have them sign your ticket as "Proof of Correction." Then send us the signed ticket and this Notice, along with payment of: Pay this amount if you are eligible and want to attend Traffic School. The amount includes the State/Court Administrative fee.					«ODP_GENERAL LOW BAIL AM
MUST GO TO COURT?		NO	If Yes, go to: Superior Court, 600 Union Ave. Fairfield, CA 94533--0246 (Tel.: 707--207--7360, 8 a.m. - 3 p.m.)		
Court Date & Time		«ODP_GENERAL_DUE_DATE» 9:00		Court Case #	«ODP_GENERAL_CASE_ID»
May Pay Ticket instead of Going to Court		YES			
Eligible for Traffic School? If yes, an admin fee was added to your fine.		«ODP_GENERAL_TV_S_ELIGIBLE»		Doing Traffic School keeps points off your DMV record.	
Total Fine Due:		«ODP_GENERAL_TOTAL_BAIL»			

See reverse side for information about your options. Then fill out below.

- ☐ PAY FINE IN FULL
- ☐ ENROLL IN TRAFFIC SCHOOL
- ☐ REQUEST COURT TO CONSIDER INABILITY TO PAY
- ☐ CONTEST TICKET IN COURT (PLEAD NOT GUILTY)

If you want to contest your ticket, you must fill out the grey box below

☐ I am not guilty of the violation(s) listed above and ask for a
Check one: ☐ Court Trial (no payment required)
☐ Trial by Mail (payment required)
☐ Trial by Mail with Traffic School Option (payment required)
I understand and agree that my trial will take place after the required 45-day period
Date: _____ Sign: _____ Tel # (day): _____

PAYMENT OPTIONS

Check / Money Order U.S. Mail Solano Superior Court
P.O. Box 2463
Fairfield, CA 94533

Credit Card 707-430-0342
(Not for traffic School or for Fix-it Tickets) www.solanocourtpayments.com
(plus a fee to pay by credit card)

Pay in person at any Solano Court Traffic Window



Este es un aviso sobre una multa que recibió. Puede ver una traducción de este aviso en [url].

Take Care of Your Ticket by the Deadline!

If you do not take care of your ticket by the Court Date shown on the reverse side of this notice, you may be **fin**ed and your license may be **suspended**. **Inability to Pay:** You may ask the court for a lower fine, a payment plan, or community service. Community service lets you work instead of paying all or some part of the fine. You must explain your financial situation to the court, or fill out a Declaration/Ability to Pay form. You can get the form at any Solano Traffic Court Clerk window or from the court's website: www.solano.courts.ca.gov/traffic/forms. Then return the form to the Traffic Court Clerk in person or by mail.

You may be able to:

- Pay the ticket,
- Go to Traffic School,
- Correct a fix-it ticket, or
- Contest the ticket in court or by mail.

Pay the ticket in full by the Court Date.

This will close your case. Violations will be reported to DMV. This option is **not** available for tickets that say **"Mandatory Appearance."**

You may:

- Send a **check** or **money order** for the **full amount**. Address and payment details on reverse side.
- Pay **in person** at any Solano Court listed on reverse side. We accept cash, check, and credit and debit cards.
- Pay **online** at www.solanocourtpayments.com.
- There is a service fee for credit card payments.

Fix-it Tickets

After you fix the problem you were ticketed for, take the ticket to any law enforcement office, 9-5. They will sign your ticket as "proof of correction." Mail or take a copy of the signed ticket, reverse side of this Notice, and the total fine due to the court. (*Address on reverse side.*)

NOTE: Officers cannot sign off on insurance violations. Proof of insurance for the ticket must be provided to the Court by mail or in person. For additional information on Fix-it Tickets, go to: www.solano.courts.ca.gov/traffic.

Go to traffic school and pay the ticket by the Court Date (if you qualify).

You qualify if:

- You have a valid driver's license and your ticket is for a *moving* violation,
- You were not driving a commercial vehicle or carrying hazardous material,
- You did not get a ticket in the last 18 months that you did traffic school for, and
- Your ticket was not for excessive speeding (more than 25 miles over the posted speed limit).

Pay by mail or in person.

- Pay for the ticket plus the traffic school fee in full, and an administrative fee
- Show proof of correction if you received a fix-it ticket
- Sign up for a DMV--approved traffic school. (See list at <http://www.dmv.ca.gov/oling2/welcome.do>.)
- Complete traffic school within **90 days**.
- Traffic school may allow you to have the conviction on your ticket held confidential by the DMV. If you are eligible for Traffic School and don't attend, your automobile insurance and driving record may be negatively affected.

Contest Your Ticket at Court

1. If you want to **contest your ticket in court**, check "Court Trial" in the grey box on the reverse side. The clerk will mail you a notice with a trial date. The ticketing officer will be there. You must go on that date for your trial.
2. If you don't want to ask for a court trial at this point, you may appear as a Walk-In on your Court Date to see a judicial officer for options on how to respond to your ticket. Check in at the Traffic Window in Vallejo from 8 – 9 a.m., Mon-Fri, or Fairfield from 9 – 10 a.m., Mon-Wed. (If you cannot appear on your Court Date, you can call or visit the Traffic Clerk to schedule another date before your scheduled date).

Arrive at court 30 minutes early! It takes time to go through security and to find your courtroom.

- Wear business-type clothes.

Contest Your Ticket by Mail

Trial by mail. You and the officer will each mail your sworn, written statement that explains your side.

To do this, you must:

- Fill out the grey box on the reverse side and return the forms we send you within 30 days
- Pay the ticket in full, plus any administrative fee (*if you prove your case, you will get your money back)
- Also pay for traffic school if you want the option to do traffic school. (*You will get a refund if you are found not guilty).

*Refunds will not include the service fee for payments made by credit card.

For additional information, visit the Court's website at www.solano.courts.ca.gov/traffic

EXHIBIT 2



Notice of Rights (Infractions)

Your Rights

You are here today because of an *infraction* ticket. An infraction is something that is against the law.

You have the following rights

- To have a **lawyer** represent you (at your expense).
- To an **interpreter** if you do not speak English well.
- To have the citation or complaint against you read in open court.
- To a **speedy court trial** within 45 days of arraignment (most likely you will be arraigned today). At that trial, you have the right to not testify against yourself, to subpoena witnesses to testify on your behalf, to confront and cross-examine witnesses by asking them questions.
- To have the court decide your case right away or to postpone sentencing for up to 5 days. Tell the court if you want to postpone sentencing.
- To **appeal** the court's decision.

When the court calls your name

Step to the front of the courtroom. You have the right to say if you are *Guilty*, *Not guilty* or *No contest*.

If you say...

- **Not guilty** – The court will schedule a trial. You and the officer that gave you the ticket must return to court on that date. You will each have a chance to present evidence and witnesses.
- **Guilty or No contest** – You accept the charge(s) on the ticket. There will not be a trial or witnesses. "No contest" is like saying "guilty," except that it cannot be used against you if there is a civil lawsuit related to your case.
- **Guilty with explanation** if you accept the charge(s) but want to give the court an explanation.

Can't afford to pay the fine?

If you are unable to pay all or part of your fine due to financial hardship, you may ask the court for a

- lower fine,
- payment plan
- community service (working instead of paying all or some part of the fine), or
- credit for time served (for example, if you have recently been in jail).

DO NOT SIGN UNLESS YOU FULLY UNDERSTAND THE ABOVE RIGHTS

Date: _____

Signed: _____

Telephone: _____

Address: _____

EXHIBIT 3



**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SOLANO
TRAFFIC DIVISION**

4807-TR

[] Hall of Justice
600 Union Avenue
P.O. Box 2463
Fairfield, CA 94533
(707) 207-7360

[] Solano Justice Center
321 Tuolumne Street
Vallejo, CA 94590
(707) 561-7860

DECLARATION / ABILITY TO PAY FORM

If you have more than one case, use one form for each case.

1. Your Information

Name: _____
Street or Mailing Address: _____
City: _____ State: _____ Zip: _____
Tel.: _____ Date of Birth: _____
E-mail (optional): _____

Case Number: _____

Clerk fills out this box

- ☐ FTA
☐ FTP
☐ A Traffic School Certificate was filed.

\$ _____
Amount ordered Due date
\$ _____
Amount paid Date paid
Balance due: \$ _____

2. What kind of help do you want from the court? (Check all that apply to your request)

- | | | |
|---|---|--|
| <input type="checkbox"/> 1. Lower the fine | <input type="checkbox"/> 4. Payment plan | <input type="checkbox"/> 8. Release DMV License Hold (Abstract) |
| <input type="checkbox"/> 2. Extend deadline to pay | <input type="checkbox"/> 5. Dismiss the fine/charge | <input type="checkbox"/> 9. Accept Proof of Correction |
| <input type="checkbox"/> 3. Credit for time served
in jail or residential
treatment program | <input type="checkbox"/> 6. Community Service | <input type="checkbox"/> 10. Dismiss late fee for Failure to Appear or Pay |
| | <input type="checkbox"/> 7. Ask for a Court Date | <input type="checkbox"/> 11. Other (specify): _____ |

3. Can you afford to pay?

- ☐ **Yes** (Skip Sections 4 and 5; Complete Sections 6, 7 and 8)
☐ **No** (If you check this box, you must also fill out Sections 4, 5, 6*, 7 and 8.)

4. Public Benefits – Check any benefits listed below that you are receiving now.

If you do *not* receive benefits, go to the next question.

- ☐ Medi-Cal ☐ CalFresh/WIC ☐ CalWORKs ☐ CAPI ☐ SSI/SSP ☐ Low-Income Veterans Pension
☐ Tribal TANF ☐ Refugee Cash Assistance ☐ General Assistance ☐ Extended Foster Care ☐ IHSS
☐ Other need-based help (specify): _____

Important! Attach a copy of **any document** that proves you are getting the benefits you checked.

5. Homeless or Temporary Housing

If you are homeless, live in a shelter, or in a transitional living facility, check below.

- ☐ Homeless (Where do you usually sleep?): _____
☐ Shelter or Transitional living facility (Which one?): _____

6. Household Income *(skip this section if you checked any public benefits in Item 4 or any box in Item 5)

Monthly income \$ _____

Number of people in household: _____

Important! Attach a copy of **any document(s)** that proves the amount of gross-monthly income (before tax deductions) for your household. In Item 7, provide any details or special circumstances you want the court to consider.

Case Number:

Please explain the reason for your request and include any details or special circumstances you want the court to consider. *(Attach more pages if you need more space.)*

This image shows a single sheet of white paper with horizontal blue or grey ruling lines. The lines are evenly spaced and run across the width of the page. There are approximately 20 lines visible. The paper has a slight shadow on the right side, suggesting it's resting on a surface.

I declare under penalty of perjury under the laws of the State of the California that the information I have provided on this form is true and correct.

Applicant signs here

Submitted by: _____
Clerk Name

EXHIBIT 4

DATE: _____, 2017

TO: Judicial Officers of the Solano County Superior Court

FROM: Robert C. Fracchia, Presiding Judge

RE: Ability to Pay Determinations in Traffic Infraction Cases

On January 1, 2017, the Judicial Council of California adopted three new rules of the California Rules of Court that clarify procedures regarding ability-to-pay determinations: Rules 4.106, 4.107, and 4.335. This memorandum is intended to summarize the content of those rules as relevant to ability-to-pay determinations and to provide guidance to judicial officers conducting ability-to-pay determinations requested by traffic and other infraction defendants pursuant to Vehicle Code § 42003(c).

Rule 4.106 applies to infraction cases for which the defendant has received a written notice to appear and has failed to appear or failed to pay. When a court imposes a civil assessment for failure to appear or pay, Rule 4.106 authorizes traffic defendants to petition the court to vacate or reduce the civil assessment without paying any bail, fines, penalties, fees or assessments. The court must vacate the assessment upon a showing of good cause for failure to appear or failure to pay. If the defendant does not establish good cause, the court may still exercise its discretion to reconsider whether a civil assessment should be imposed and, if so, the amount of the assessment, giving consideration to the defendant's financial circumstances and the defendant's due diligence in appearing or paying after notice of the assessment was given under Penal Code 1214.1(b)(1).

Circumstances that indicate good cause may include, but are not limited to, the defendant's hospitalization, incapacitation, or incarceration; military duty required of the defendant; death or hospitalization of the defendant's dependent or immediate family member; caregiver responsibility for a sick or disabled dependent or immediate family member of the defendant; or other good cause that prevented the defendant from making an appearance or payment on or before the date listed on the notice to appear.

Rule 4.106 also establishes procedures related to when a case has been referred to a collection program prior to adjudication. A defendant may schedule a hearing for adjudication of the underlying charge(s) without payment of the bail amount or the civil assessment. The only circumstances in which the court may require deposit of bail prior to adjudication is if the court finds that the defendant is unlikely to appear as ordered and the court expressly states the reason for the finding.

Rule 4.106 further establishes procedures related to when a defendant fails to pay a fine and make a payment under an installment plan. The court must allow a defendant to petition to modify the payment terms, and cannot require payment of bail, fines, penalties, fees or assessment to consider the petition. When a court agrees to modify or vacate a judgment for a violation of the Vehicle Code, the defendant may request that the court consider the defendant's ability to pay.

Rule 4.107 requires each court to send a reminder notice to infraction defendants that includes information regarding the defendant's right to request an ability-to-pay determination. The court has developed an updated courtesy notice that complies with Rule 4.107's requirements and will be implemented on or before ____.

Rule 4.335 applies to any infraction offense for which the defendant has received a written notice to appear, and establishes procedures for ability-to-pay determinations. Rule 4.335 provides that a defendant may request an ability-to-pay determination at adjudication or while the judgment remains unpaid, including when a case is delinquent or has been referred to a collection program.

Based on the ability-to-pay determination, the court may exercise its discretion to provide for payment on an installment plan, allow the defendant to complete reasonable community service in lieu of paying the total fine, suspend the fine in whole or in part, and/or offer an alternative disposition including, but not limited to, dismissal or consideration of credit for time served. Installment plans should take into account what the defendant can afford to pay each month based on their individual financial circumstances.

Congruent with the purpose of the new rules of promoting procedural fairness in infraction cases, ability-to-pay determinations requested by indigent infraction defendants should be adjudicated with the following principle in mind. In cases where the defendant requests an ability-to-pay determination and:

(1) receives public benefits under Supplemental Security Income (SSI), State Supplementary Payment (SSP), California Work Opportunity and Responsibility to Kids (CalWORKS), Federal Tribal Temporary Assistance for Needy Families (Tribal TANF), Supplemental Nutrition Assistance Program, California Food Assistant Program, County Relief, General Relief (GR), General Assistance (GA), Cash Assistance Program for Aged, Blind, and Disabled Legal Immigrants (CAPI), In Home Supportive Services (IHSS), or Medi-Cal;
or

(2) has a monthly income of 250 percent or less of the current poverty guidelines, updated periodically in the Federal Register by the U.S. Department of Health and Human Services under 42 U.S.C. § 9902(2);¹

¹ 250% of FPL Guidelines:

Family Size	Family Income before taxes	Family Size	Family Income before taxes	Family Size	Family Income before taxes
1	\$2,475	3	\$4,200	5	\$5,925
2	\$3,338	4	\$5,063	6	\$6,788

If more than 6 people at home, add \$867 for each extra person.

or

(3) is homeless, including but not limited to living in a shelter or transitional living facility;

the presiding judicial officer should consider alternatives to the payment of a fine, including community service in lieu of a fine, suspension or reduction of the fine in whole or in part, or dismissal.

If the defendant has the ability to pay some but not all of the fines or fees, the court should exercise discretion under Vehicle Code 42003 in determining the appropriate amount of fines and fees, and should consider, among other factors, the defendant's:

(1) Present financial position;

(2) Reasonably discernible future financial position. In no event shall the court consider a period of more than six months from the date of the hearing for purposes of determining reasonably discernible future financial position;

(3) Likelihood that the defendant will be able to obtain employment within the six-month period from the date of the hearing; and

(4) Any other factors that may bear upon the defendant's financial capability to pay.

Section 42003(c) entitles the defendant, among other protections, the right to present witnesses and other documentary evidence concerning his or her ability to pay and to a written statement of the findings of the court or the county officer.

Robert Fracchia
Presiding Judge



A Guide to Court Watching in Superior Court

Traffic Court Edition



A Guide to Court Watching in Traffic and Non-Traffic Violation Cases

I. INTRODUCTION TO COURT WATCHING AND MONITORING

What is court monitoring?

Court monitoring is the process of observing and gathering information on courts, whether it be on specific proceedings or judicial actions and practices. Court watching programs nationwide monitor a range of a court's aspects, from the audibility of proceedings to the behavior of court staff to gender or racial bias in the courts.

Who participates?

Court watchers go to court to examine proceedings and evaluate whether courts are serving the people fairly. They may consist of law students, university or college students, advocates, public interest groups, community groups, and other volunteers. Court watchers do not have a personal stake in the outcome of the cases they observe, unlike individuals who go to court as witnesses, victims, defendants, or jurors, though they too may provide insight based on their participation.

Why monitor?

Court watching and monitoring encourages an open and transparent court process and holds the system accountable for its practices in ensuring protection of and fairness for both victims and defendants. Observation provides a consistent and continuing public presence with an outsiders' viewpoint. Court watchers and other monitoring groups may provide feedback on individual cases or overall proceedings, which aids in policy and implementation efforts, and sheds light on gaps in the system.

II. WHY IS COURT WATCHING OF TRAFFIC COURT CASES IMPORTANT?

Background

Across the nation, low-income people who commit minor offenses are saddled with fines, fees and penalties that pile up, driving them deeper into poverty. Nonpayment of such fines and fees may lead to imposed civil assessments or even bench warrants, increasing the risk of losing their jobs or their homes.

In April 2016, member organizations of Back on the Road California (BOTCR) released *Stopped, Fined, Arrested – Racial Bias in Policing and Traffic Courts in California*.ⁱ The report unveiled a disturbing reality that frequently affects the lives of many Californians: there are striking racial and socioeconomic disparities in driver's license suspensions and arrests related to unpaid traffic fines and fees.

Stopped, Fined, Arrested built on BOTCR's April 2015 report, *Not Just a Ferguson Problem: How Traffic Courts Drive Inequality in California*, which detailed how revenue collection incentives have turned California traffic courts into a two-tiered system that functions in favor of people with money and resources and ultimately fails those without.ⁱⁱ The 2015 report also showed that steep increases in fines and penalties, together with policies that required full payment of all fines and fees before a citation could be challenged, have resulted in over 4.2 million suspended driver's licenses simply because people could not afford to pay or fight an infraction ticket.

In California, it remains a misdemeanor offense to drive with a suspended license. In fact, prior to July 2016, it was a misdemeanor to drive with a suspended license even if the sole reason for the suspension was an inability to pay a citation fine. Fortunately, Governor Brown earlier this summer signed a series of bills that now prevents courts from suspending an individual's driver's license simply because of unpaid traffic fees and fines.ⁱⁱⁱ However, judicial officers can still issue civil assessment fees and bench warrants for an individual's failure to appear or pay an infraction citation. Individuals who cannot afford to pay an infraction citation ultimately lose their employment or find themselves sinking deeper and deeper in debt, ultimately losing their livelihoods. The communities impacted by these policies are disproportionately communities of color.^{iv}

The Impact of Traffic Courts

Traffic courts, in particular, have jurisdiction over both traffic and non-traffic infractions^v, and so can process a variety of offenses, from traffic infractions such as having an expired license plate^{vi} to non-traffic offenses, such as not paying bus fare.^{vii} Costs for such citations have become steeper and more complex over time. Californians who have the ability to pay such fines are merely inconvenienced by these infraction citations. However, for many others who are unable to pay these costs or miss their court dates, traffic courts respond swiftly. Furthermore, there is no right to counsel in an infraction case, so even drivers who make it to court when they cannot afford to pay have little idea about their rights at any stage of the process, from arraignment to trial to sentencing.

There is a growing understanding that both implicit and explicit bias in the policies and practices of the police and courts contribute significantly to systemic racial inequities. California courts must protect access to justice and ensure that access does not depend on income, and the recent issuance of new court rules regarding ability-to-pay *should* ensure this. In 2015, the Judicial Council took steps towards protecting such access to justice and improving fairness in infraction cases by adopting rule 4.105. Under rule 4.105 the Council directed advisory committees to evaluate recommendations necessary to improve access, including those related to failure to appear or pay fines and fees.^{viii} In response to this, rule 4.335 was adopted and went into effect at the beginning of 2017, which standardized and

improved notice and court procedures with regards to ability-to-pay determinations.^{ix} It is the hope that implementation of such processes will enable courts to meaningfully assess an individual's ability to pay for infraction violations.

Court watching is a means of keeping courts accountable for such processes. Court watching provides a way for concerned groups to address problems of bias amongst courts by documenting when and if defendants are denied requests or not even notified of different methods of addressing payment, such as fine reductions, community service as a substitute for payment, or establishing a payment plan. It provides an opportunity to identify patterns and practices in each court in order to ensure that implementation of the new ability-to-pay rules is consistent throughout the entire state. Lastly, court watching is important because it provides an opportunity to address real change within the system.

III. TIPS FOR IMPLEMENTING A COURT WATCHING PLAN

1. Develop a court watching plan of action.

Determine a time frame for consistent court watching, such as at least once or twice a week for three months, six months, or even a year. On-going court observations is ideal, and inconsistent, sporadic observations may yield inaccurate or few results.

Determine which traffic courts will be monitored. Each county houses at least one traffic court. For example, in the greater Bay Area and northern California alone, there are sixteen counties. Some counties have three traffic courts, e.g. Alameda, Contra Costa, and Solano County, while others have only one, e.g. Marin, San Francisco, and San Mateo County. Many of these courts have multiple courtrooms in which citations are overseen. So keep in mind that at the outset, it may be too difficult to observe more than one or two courtrooms at a time. However, regardless of the county, each traffic court should still be held accountable for its practices and procedures.

Ensure that the selected courts are observed as many days and by as many volunteers as possible. With a higher frequency of observation, it is more likely that a variety of viewpoints and a more complete picture of the courts' day-to-day operations are obtained.

Contact the clerk of the courts to determine which courtrooms hear traffic and non-traffic citations and the days and times for when they are heard. Some courts may have specific proceedings for certain times regarding citations. For example, in San Francisco County, fine reduction hearings are heard at 9:00 a.m., arraignments at 10:30 a.m. and trials at 1:30 p.m., Monday through Thursday, while only trials are held Fridays.

In addition to determining when and in which courtroom citation hearings are held, ask the clerk which judge is presiding, and whether there is a specific judge, or judges, who preside over traffic court proceedings exclusively. Sometimes pro tem judges may be assigned on certain days, so keep in mind that your observations may be impacted due to pro tem judges' infrequent presence in traffic court (though they too should be held accountable for adjudicating fairly and properly).

2. Develop a proper survey.

Surveys determine what data are collected on court proceedings. As such, a good survey is critical to the success and usefulness of an observation. A sample survey is provided at page 7 of this guide.

Sometimes visiting and observing several proceedings prior to drafting a survey instrument may be useful. They will give you a better idea of what to look out for specifically and the pace of the proceeding itself. This is helpful to do when observing multiple traffic courts in different counties, since each court is likely to proceed slightly differently. Objective and subjective questions may include:

- the location (e.g. county and courtroom) the observation took place in;
- the date and time;
- demographic information for the defendant, witnesses, police officer, and judge, such as gender, race, and age;
- detailed case information, such as the type of violation and the date of the traffic or pedestrian stop; and
- judicial and court personnel **conduct and comments**.

Specific to traffic court observation and fine assessments and outcomes, other questions may include:

- what information was provided to the defendant about his rights in court;
- whether the judicial officer required full payment of fines/fees before allowing the case to proceed to trial;
- whether the judicial officer stated the total fines (including all penalty assessments and fees) that are associated with the sentence;
- whether a request was made for a fine reduction or ability to pay;
- whether hardship was alleged;
- whether a request was made for community service;
- whether a request for a payment or installment plan was made; and
- what the outcome or sentence was.

Note that court watching is not limited to the questions and intended data to be collected that are listed on the survey. A good court watcher may note other observations as well, outside the scope of the survey. Be alert to the multiple phases of a traffic court appearance. Oftentimes, a defendant is sent to the clerk's office or a cashier's office after their appearance before a judge. Observing the activity at all phases is essential to obtaining good information. This may require going to the clerk's office or the cashier's office and documenting stories of individuals after they leave the courtroom.

IV. WHAT TO DO WHEN OBSERVING IN COURT

A court watcher's job is to document what happens in each proceeding in their notes and on the survey form. Behavior, such as timeliness, ability to be heard, attentiveness to the defendant or witnesses, and inappropriate comments may be recorded. Noting the amount of the fines and any departures in sentencing is helpful as well.

Although traffic court is a little less formal than other courts, dignified conduct and dress are still important. A court watcher should avoid gesturing, loud comments, unpleasant facial expressions, angry words, confrontations, and other forms of disruptive behavior — a court watcher is there to observe, not interrupt proceedings.

In time, the attitude of the court may become apparent. However, the value of observations is rooted in the ability to stay neutral and unbiased, so refraining from coming to a conclusion without obtaining a sufficient amount of facts is important. The detailed information collected from these surveys will allow for patterns and long-term trends within the court to be identified.

V. COURT WATCHING CONCLUSIONS AND REPORTING BAD PRACTICES

Compile the data gathered from each observation, and use the quantitative and qualitative information to advocate in your local court accordingly.

Judges are held to high standards of ethics, both on and off the bench. If a judge is observed acting in an improper or biased manner, the information and observations gathered may be used to file a complaint with the Commission on Judicial Conduct. The Commission on Judicial Conduct has the power to discipline judges. However, prior to doing so, discuss with the appropriate leaders in the event there are alternative approaches that may be taken. Additionally, contact the local bar association for details on how to bring complaints against judges.

If you would like to report bad practices to the Back on the Road Coalition, visit <https://ebclc.org/backontheroad/problem/>.

ENDNOTES

ⁱ See Back on the Road California Coalition et al., *Stopped, Fined, Arrested – Racial Bias in Policing and Traffic Courts in California* (April 2016), http://ebclc.org/wp-content/uploads/2016/04/Stopped_Fined_Arrested_BOTRCA.pdf.

ⁱⁱ See Lawyers' Committee for Civil Rights of the Bay Area et al., *Not Just a Ferguson Problem: How Traffic Courts Drive Inequality in California* (April 2015), <http://www.lccr.com/wp-content/uploads/Not-Just-a-Ferguson-Problem-How-Traffic-Courts-Drive-Inequality-in-California-4.20.15.pdf>.

ⁱⁱⁱ S.B. 185, 2017 Leg., Reg. Sess. (Cal. 2017); see also L.A. TIMES, *California no longer will suspend driver's licenses for traffic fines* (June 29, 2017, 9:40 a.m.), <http://www.latimes.com/local/lanow/la-me-ln-driver-license-fees-20170629-story.html>.

^{iv} See LCCR, *supra* note 2.

^v See Judicial Council of Cal., *2016 Court Statistics Report – Statewide Caseload Trends* xi-xxi (2016), <http://www.courts.ca.gov/documents/2016-Court-Statistics-Report.pdf>. California is comprised of 58 counties, each with its own traffic court. Each county has between 1 and 46 branches of the superior court, depending on county population, which adds up to more than 500 different courthouses that serve a population of more than 39 million people in the state. Each county has one or more law enforcement agencies that are empowered to issue traffic citations. The California Highway Patrol is a state-wide agency that has jurisdiction to issue traffic citations anywhere in the state. Within the 58 counties, there are 482 municipalities. Each city has its own municipal code, its own police force, and its own authority to prosecute infractions.

^{vi} See Cal. Veh. Code § 5204(a).

^{vii} See Cal. Penal Code § 640(c)(1).

^{viii} Judicial Council of Cal., *Invitation to Comment – SP17-04 1-2* (2017), <http://www.courts.ca.gov/documents/SP17-04.pdf>.

^{ix} *Id.* at 2.

SAMPLE SURVEY

Court: _____ Date: _____

Did judge mention ability to pay, or say this was not possible? _____

Number of Individuals: _____

Gender	Race	Interpreter?	Charges, incl disc of past violations	Plea (NG, NC, G)	Request for fine reduction or ATP? (Y/N)	D said can't afford, hardship (Y/N)	Request for CS? (Y/N)	Request for payment plan? (Y/N)	Outcome (fine, CS, PP, lifted FTA/FTP, trial set, threat of suspension. If fine is reduced, what did judge consider?)



August 23, 2017

Brian P. Kelly
Secretary, California State Transportation Agency
915 Capitol Mall, Suite 350B
Sacramento, CA, 95814
Brian.kelly@calsta.ca.gov

Jean Shiimoto
Director, Department of Motor Vehicles
2415 1st Ave., Mail Station F101
Sacramento, CA 95818-2606
Jean.shiimoto@dmv.ca.gov

Re: *DMV responsibilities under AB103, and Hernandez v. DMV*

Dear Secretary Kelly and Director Shiimoto,

I write on behalf of the Plaintiff/petitioners in *Hernandez v. DMV*, Alameda Co. Super. Ct. Case No. RG16836460 to discuss the DMV's responsibilities under AB 103 and how the *Hernandez* defendants (hereinafter the "DMV") plan to comply.¹ We contact you because we hope to come to a mutually beneficial solution rather than resorting to further litigation.

As you know, *Hernandez v. DMV* challenges the DMV's suspension of driver's licenses for failures to pay traffic fines and fees, and failures to appear to contest traffic tickets. The trial court recently overruled the DMV's demurrer on all counts, finding Plaintiffs had sufficiently alleged statutory and constitutional claims against the DMV, and the Court of Appeal denied the DMV's petition for a writ of mandate on that ruling. The case is now moving full-speed ahead towards a trial date of October 12, 2018 and the parties are beginning to engage in robust discovery – including discovery into the practices of 58 county court systems as well as the DMV's internal operating procedures and practices.

¹ As you likely know, communication between attorneys and public officials, even about litigation, is explicitly permitted by the California Rule of Professional Conduct 2-100 (C)(1).

As you also know, the landscape underlying this case shifted significantly with the June 27, 2017 passage of AB 103 (Stats. 2017, Ch. 17, Secs. 51-54). This legislation amended the only statute that authorized the DMV to maintain a license suspension for failure to pay or failure to appear – Vehicle Code section 13365. It also amended the statutes authorizing courts to give notice to DMV of willful failures to pay traffic fines (Vehicle Code sections 40509 and 40509.5) and directing how those suspensions are to be cured.

We write now to inform you that the DMV is violating its responsibilities under the new law. Although the DMV agrees that it may no longer suspend licenses for failure to pay going forward, it continues to violate the law by *maintaining* its legacy database of license suspensions for failures to pay. The maintenance of failure to pay suspensions violates the plain language and meaning of the new statute and unlawfully restricts the driving privileges of hundreds of thousands of drivers solely because they could not afford to pay a traffic ticket.

We believe it would be in the best interests of all parties involved to reach a resolution on this issue and on the litigation as a whole in light of the new legal landscape.

First, the words in Vehicle Code section 13365 are unambiguous: “The suspension shall continue until the suspended person’s driving record does not contain any notification of a violation of subdivision (a) of Section 40508.” Subdivision (a) of Vehicle Code section 40508 describes the misdemeanor offense of failure to appear. Thus, the statute under which plaintiffs and hundreds of thousands of other drivers have suffered suspension, section 13365, now provides that those suspensions may continue only until their records show no failure to *appear*. Accordingly, the DMV may no longer maintain suspensions for failure to pay, for drivers whose records show no failure to appear.

Second, if the Legislature had intended that existing failure-to-pay suspensions continue, it would not have repealed the process and conditions for ending those suspensions. Vehicle Code sections 40509 and 40509.5 are the provisions allowing courts to notify DMV of failures to appear. When DMV receives such notices, it suspends licenses pursuant to § 13365. Prior to AB 103, these notification statutes also provided that courts could notify DMV of willful failures to pay. *See* former Veh. Code sec. 40509(b), 40509.5(b). Importantly for today, these statutes also contained the method for motorists to cure failure-to-pay suspensions: “If [after a court reports a failure to pay to DMV], the fine is fully paid, the magistrate or clerk of the court shall issue and file with the [DMV] a certificate showing the fine has been paid.” *See id.* In other words, a motorist who had fully paid his or her fine was entitled to a process by which court personnel were *required* to notify DMV of the payment, and following

which DMV was in turn required under Section 13365 to lift the suspension because the record would no longer show a failure to pay.

By passing AB 103, however, the Legislature not only removed authority for future failure-to-pay suspensions, *it also deleted the cure provisions of Sections 40509 and 40509.5*. If the continuation of any failure-to-pay suspensions had been anticipated, there would have been no reason to delete these provisions. Indeed, if failure-to-pay suspensions continue, there is now *no* statutory method for a driver to cure the nonpayment and insist upon reinstatement. Statutes should not be read to require such absurd results. *See California School Employees Assn v. Governing Board*, 8 Cal. 4th 333, 340 (1994) (citing cases).

We anticipate that the DMV may argue that Plaintiffs seek a “retroactive” application of AB 103, and that such retroactive application is not lawful, but this is not the case. A retroactive application of law is one that “change[s] the legal consequences of past conduct by imposing new or different liabilities based upon such conduct.” *Californians for Disability Rights v. Mervyn’s*, 39 Cal.4th 223, 230-31. AB 103 did not change the legal consequences of past conduct: underlying driving offenses have not been changed and the fines, fees, probation, and other legal consequences for past conduct have not altered. Instead, the state has abandoned a particular collection mechanism for recouping those fees and the procedure to be followed as to license suspensions has been changed. Applying new statutory procedures to actively maintained suspensions, like applying new procedures to pending cases, is a prospective, not retroactive, application of the law. *See, e.g., Tapia v. Superior Court*, 53 Cal.3d 282, 288 (1991) (a statute that “relate[s] to the procedure to be followed in the future” is prospective, not retroactive).

Finally, these legacy failure-to-pay suspensions are the vestige of practices that have now been largely abandoned. Continuing to maintain the suspensions is not just contrary to law, it is contrary to the policy articulated by the Governor when he proposed the repeal of suspensions for failure to pay, which was ultimately adopted as AB 103:

Repeal of Driver’s License Suspension

In the past, when the State Penalty Fund has faced shortfalls, the solution has often been to further increase fines and penalties. While this approach increases revenues generated by those who pay the amount owed, it places an undue burden on those who cannot afford to pay. This approach has led to an increasing amount of fines and penalties going uncollected. For example, in 2008-09, uncollected debt was \$5.5 billion and has grown to \$9.7 billion in 2015-16 – a 76-percent increase.

One of the collection methods that courts can use to collect outstanding debt is to suspend driver's licenses for failure to pay. Often, the primary consequence of a driver's license suspension is the inability to legally drive to work or take one's children to school. Therefore, the Budget *eliminates the statutory provisions* related to suspending driver's licenses for failure to pay fines and penalties.

See Governor Brown's 2017-18 California State Budget, Full Budget Summary at 35 (emphasis added).² So long as the DMV maintains existing failure-to-pay suspensions, it continues the harms to California families that AB 103 was designed to end.

To avoid unnecessary expenditure of resources, and to meet the policy goals underlying AB 103, we invite you to meet with us to discuss a potential resolution to this issue. We envision that a successful agreement on this issue would also help facilitate a resolution to the litigation. Please let us know by Wednesday, August 29, whether you are amenable to such a meeting.

Sincerely,

/s/

Rebekah Evenson
Bay Area Legal Aid

Christine P. Sun
ACLU of Northern California

Elisa Della-Piana
Lawyers' Committee for Civil Rights of the San Francisco Bay Area

Thomas V. Loran III
Pillsbury Winthrop Shaw Pittman LLP

Clare Pastore
USC Gould School of Law

Antionette Dozier
Western Center on Law and Poverty

² Available at <http://www.ebudget.ca.gov/FullBudgetSummary.pdf>.

Brittany Stonesifer
Legal Services for Prisoners with Children

Theresa Zhen
East Bay Community Law Center

cc (via email only):

Martin Hoshino, California Judicial Council
Cory Jaspersen, California Judicial Council
Rhonda Paschal, California Department of Transportation
Jorge Aguilar, Deputy Attorney General
Miguel Neri, Deputy Attorney General
Fiel D. Tigno, Deputy Attorney General



Conquering Court Debt: Arguing “Ability to Pay” in Traffic Court

Presented by:

Brittany Stonesifer,
Legal Services for Prisoners with Children

Theresa Zhen,
East Bay Community Law Center

Devon Porter,
ACLU of Southern California



Agenda

- Introduction - New Rules, New Toolkit!
- The Life of a California Traffic Ticket
- Individual Advocacy and Intervention Points
- Ideas for Local Policy Change
- Q&A

Why does traffic court matter?

- CA has some of highest traffic fines fees in the country.
 - Average CA ticket: \$490 – over 3x the national average!
- Court debt payment vs. rent, food, bills?
 - People pay more when payments are affordable
- License suspension = job loss, education stagnation, missed family obligations, jail
 - 78% of Californians drive to work
 - Driving jobs are lower-wage jobs
- Racial disparity at every step of the process

The path to change

- **New laws and rules!**

- AB 103 - Eliminating FTP license suspension (*effective June 27, 2017*)
- Rules of Court 4.105-4.107, 4.335 - Ability to Pay determinations; notice; & more
 - Rule 4.335: Ability to Pay Determinations
 - Rule 4.107: Mandatory Reminder Notices
 - Rule 4.105: Prohibits requirement to pay prior to a court appearance
 - Rule 4.106: Expanding categories of “good cause” to warrant a waiver of fees

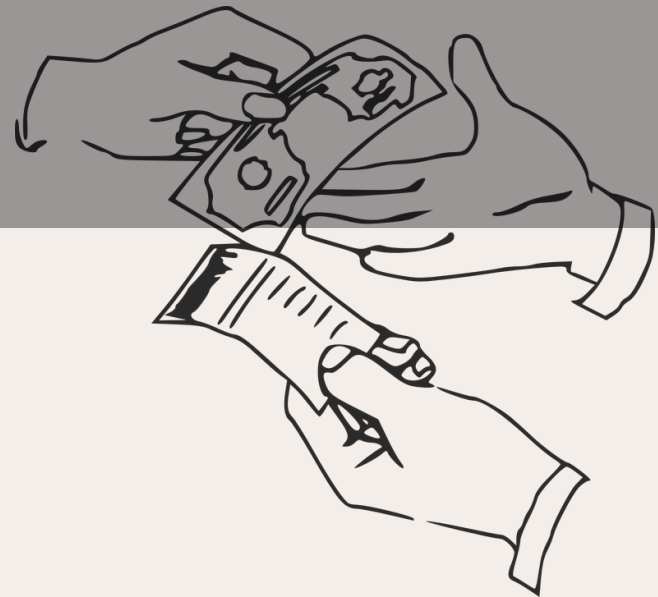
- **Still pending:**

- SB 185 - Ability to Pay standards; FTA license suspensions; & more
- Existing FTP license suspensions - SB 237; *Hernandez v. DMV*

Back on the Road “Ability to Pay” Implementation Toolkit!

- Out today!
- **ebclc.org/category/back-on-the-road/**
- 58 county breakdown on EBCLC website

The Life of a California Traffic Ticket



Key



New law or rule alert!



Advocacy opportunity alert!

Life of a CA Traffic Ticket

1. Receive a citation (TR-130)

- Not just driving-related violations
- Infractions; some misdemeanors
- Base fine + fees & assessments

Cost of an Infraction Citation in California Traffic Court, 2015

	STATUTE	ASSESSMENT	AMOUNT OWED
	BASE FINE (example)	\$100	\$100
State penalty assessment (Penal Code (PC) § 1464)	\$10 for every \$10 base fine		+\$100
State criminal surcharge (PC § 1465.7)	20% surcharge on base fine		+\$20
Court operations assessment (PC § 1465.8)	\$40 fee per fine		+\$40
Court construction (Government Code (GC) § 70372)	\$5 for every \$10 in base fine		+\$50
County fund (GC § 76000)	\$7 for every \$10 in base fine		+\$70
DNA Fund (GC § 76104.6 and § 76104.7)	\$5 for every \$10 in base fine		+\$50
Emergency Medical Air Trans. Fee (GC § 76000.010)	\$4 fee per fine		+\$4
EMS Fund (GC § 76000.5)	\$2 for every \$10 in fine		+\$20
Conviction assessment (GC § 703.73)	\$35 fee per fine		+\$35
Night court assessment (GC § 42006)	\$1 per fine		+\$1
ACTUAL COST OF CITATION			\$490

Not Just a Ferguson Problem: How Traffic Courts Drive Inequality in California, Back on the Road, 2015.

Cost of an Infraction Citation in California Traffic Court, 2015

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ACTUAL COST OF CITATION		\$490

Not Just a Ferguson Problem: How Traffic Courts Drive Inequality in California, Back on the Road, 2015.

Life of a CA Traffic Ticket

2. Reminder notice:

NEW!

- **Rule 4.107**
- Must include at least:
 - Appearance date and location + whether mandatory;
 - Total **bail amount & payment options**;
 - Potential **consequences for FTA/FTP***;
 - **Right to request ATP determination***;
 - Option to pay through **community service & installment plans** (if available);
 - Contact information for court, incl. website.

Life of a CA Traffic Ticket

3. Options after receiving a citation

- Pay ticket (online, call + mail)
- Challenge the ticket
- Request an “Ability to Pay” determination

Challenging a Ticket or Requesting ATP Determination:

*Don't need to **pay** to appear*

NEW!

- **Rule 4.105:**

- Generally, **can challenge ticket** without first paying full bail.
- Bail required for trial by written declaration. May be ordered if didn't sign promise to appear, "unlikely to appear."
- "Courts must **inform** defendants of [this right] in **any instructions** or other materials courts provide for the public that relate to bail for infractions, **including any website information, written instructions, courtesy notices, and forms.**"

NEW!

Ability to Pay Determinations



Rule 4.335:

- “The court, on request of a defendant, **must consider the defendant’s ability to pay.**”
 - *Advisory Comment:* “The **amount and manner of paying** the total fine must be **reasonable** and **compatible** with the defendant’s **financial ability.**”
- “Courts must provide defendants with **notice of their right to request an ability-to- pay determination** and make available instructions or other materials for requesting an ability-to-pay determination.”

A new Judicial Council “Ability to Pay” form?

- **TR-320/CR-320** - Application

“Can’t Afford to Pay Ticket Fine”

- TR-321/CR-321 - Order

- Rule 4.336:

Authorizes use of form
Optional



**TR-320/CR-320 Can't Afford to Pay Ticket Fine:
(Traffic and Other Infractions)**

CONFIDENTIAL

Read this first - then fill out the form

When do I use this form?

- To tell the judge that you don't have enough money to pay your ticket fine.
- To ask for the ticket fine to be reduced to a smaller amount. You can also ask for monthly payments, more time to pay, or to do community service instead of paying the fine.
- If you have more than one ticket fine, fill out one form for each.

What are traffic tickets?

- You can get a traffic ticket for things like speeding or running a red light.
- Traffic tickets are **not** parking tickets. Parking tickets are different. Read your parking ticket to find out what you can do.

What are infractions?

- Infractions are tickets you get for things like littering, drinking alcohol in public, or fishing without a license.
- There are *many* different types of infractions.

What if I want to fight the ticket and tell the judge that I didn't do anything wrong?

- Do **not** use this form. Visit www.courts.ca.gov/selfhelp for more information on fighting tickets.

Please print clearly or type.

① How can the court reach you? (Answer all that apply.)

Name: _____

Mailing address (where I get mail): _____

Phone number (where I receive calls): _____

Is this a cell phone? (check one) ☐ yes ☐ no

E-mail address (if I have one): _____

☐ It would be okay if the court also sends me texts about my case at this phone number.

☐ It would be okay if the court also sends me e-mails about my case at this e-mail address.

Clerk stamps date here when form is filed.

**DRAFT
Not Approved by
the Judicial Council**

Fill in court name and street address:

Superior Court of California, County of _____

Fill in case number and name:

Case Number: _____

Case Name: _____

Name: _____

Case Number: _____

② What type of income do you have?

☐ I get public benefits. (Check all that apply, then skip to #3.)

☐ Food stamps (CalFresh)

☐ State Supplementary Payment (SSP)

☐ Medi-Cal

☐ County Relief/General Assistance

☐ CalWORKS or Tribal TANF

☐ In-Home Supportive Services (IHSS)

☐ Supplemental Security Income (SSI)

☐ Cash Assistance Programs for Immigrants (CAPI)

☐ I do **not** get public benefits, but I have other income.

a. How much money do you earn (take-home pay) or get from other sources (including income received in your family from a husband, wife, or live-in romantic partner)?

\$ _____ every: ☐ Year ☐ 2 weeks ☐ Twice a month
(check one) ☐ Week ☐ Month ☐ Season

Other: _____

b. This money helps support me and _____ other people.

c. If I pay the ticket, I would: (Check all that apply, if any.)

☐ Not have enough money to pay for basic living expenses.

Basic living expenses are things like: housing, food, utilities, childcare, child support, transportation, medication, insurance (medical, car, house, and rental), and student loans.

☐ Not have enough money to pay my debt for other court cases.

☐ Have other problems: _____

③ Do you have anything that shows your public benefits or income or expenses?

Things like an EBT card, pay stubs, tax returns, rent or mortgage checks, or utility bills.

☐ Yes, I have attached *copies* to this form. (Do not give the court your original documents.)

☐ No, I do not have any papers to show because: _____

Name: _____

Case Number: _____

- ④ Have you told the court before that you can't pay this ticket fine? ☐ Yes ☐ No

If no, skip to question #5. If yes, answer both questions:

What did the court do?
(Check all that apply.)

- ☐ Reduced the amount I owed.
☐ Let me pay in monthly payments.
☐ Let me do community service.
☐ Other: _____

What has changed in your life or your family's life
since then? (Check all that apply.)

- ☐ Lost job or reduced hours at work.
☐ Started to receive public benefits.
☐ Suffered a serious illness or disability.
☐ Other: _____

- ⑤ What are you asking the court to do? (Check all that you are willing and able to do)

- ☐ Reduce the amount I owe.
☐ Let me make monthly payments.
☐ Give me more time to pay.
☐ Let me do community service instead of
paying the fine.



Every court is different

- Your court might not offer all of these choices. Some courts do not offer monthly payments, community service, or more time to pay.
- You might have to pay a fee for monthly payments or community service.
- You may not be able to do community service on weekends or evenings.
- Contact your court with any questions.

Name: _____

Case Number: _____

- ⑥ Other information (if any) that you want to share with the court about why you can't pay:

- ⑦ Read all of your answers and attachments again. Make sure everything is correct.
Date and sign the statement below.

I promise that this information is TRUE.

I swear under penalty of perjury, under the laws of the State of California, that all information on or attached to this form is true.

Date: _____

Print Name: _____

Signature _____

- ⑧ File this form with the court listed on your ticket.

If you lost your ticket, file this form with the court in the _____ county where you got your ticket
(www.courts.ca.gov/find-my-court.htm)

- ⑨ **NOTE:** Did you miss a court date? Did you fail to pay your ticket on time? If so, the court might be charging you extra money. Filling out this form **will not** take care of that extra charge. Contact your court to find out what you can do about that extra charge.

Life of a CA Traffic Ticket: Enforcement Mechanisms

4. Failure to Appear

- Guilty via trial in absentia
- “Up to” \$300 **civil assessment fee**
- Bench warrant
- New charge for FTP/FTA (misdo)
- **License suspension**
 - DWSL = another misdo!



STATUTE	ASSESSMENT	OWED
BASE FINE (example)	\$100	\$100
State penalty assessment (Penal Code (PC) § 1464)	\$10 for every \$10 base fine	+\$100
State criminal surcharge (PC § 1465.7)	20% surcharge on base fine	+\$20
Court operations assessment (PC § 1465.8)	\$40 fee per fine	+\$40
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Conviction assessment (GC § 703.73)	\$35 fee per fine	+\$35
Night court assessment (GC § 42006)	\$1 per fine	+\$1
ACTUAL COST OF CITATION		\$490
DMV warrant/hold assessment fee (Vehicle Code (VC) § 40508.6)	\$10 fee	+\$10
Fee for failing to appear (VC § 40508.5)	\$15 fee	+\$15
Civil assessment for failure to appear/pay (PC § 1214.1)	\$300 fee	+\$300
COST OF CITATION IF INITIAL DEADLINE IS MISSED		\$815



Failure to Appear: Vacating or Reducing Civil Assessments

- **Rule 4.106:** After FTA/ FTP, court must **provide notice** of right/ process to **vacate a civil assessment for good cause**.
 - *Advisory Comment:* "Include, but **are not limited to**, the defendant's hospitalization, incapacitation, or incarceration; military duty required of the defendant; death or hospitalization of the defendant's dependent or immediate family member; **caregiver responsibility** for a sick or disabled dependent or immediate family member of the defendant; or **an extraordinary reason**, beyond the defendant's control, that prevented the defendant from making an appearance or payment on or before the date listed on the notice to appear."
- Even without good cause, may reduce or eliminate civil assessment

NEW!

Life of a CA Traffic Ticket: Enforcement Mechanisms

4. Failure to Pay

- “Up to” \$300 **civil assessment fee**
- Bench warrant
- New charge for FTP/FTA (misdo)
- Wage Garnishments/Bank Levy if fine is uncollected



No more license suspension for failures to pay!

- 2017-18 CA Budget (AB 103)
- Removes authority for court to notify DMV *and* authority for DMV to issue or maintain a suspension for failure to **pay**.

NEW!

NEW!

Failure to Pay: Vacating or Reducing Civil Assessments

- **Rule 4.106:** After FTA/ FTP, court must **provide notice** of right/ process to **vacate a civil assessment for good cause.**
 - *Advisory Comment:* “Include, but are not limited to [...] an extraordinary reason, beyond the defendant's control, that prevented the defendant from making an appearance or payment on or before the date listed on the notice to appear.”
- Even without good cause, may reduce or eliminate civil assessment
- May petition to modify payment terms



Individual Advocacy and Intervention Points



Advocacy Opportunities

**to help people who are
experiencing tickets and
license suspensions**





Distribute **Know-Your-Rights** Materials

- Consider adding resources to your organization's self-help library about your court's traffic court process.
- Consider putting up notices/posters about the right to request an Ability-to-Pay hearing



Assist Individuals to Petition for **Ability-to-Pay** Determinations

- Assist individuals in completing and filing ability-to-pay petitions
 - Per Rule 4.335, this petition can be filed at any stage of a case.
 - Before or after an FTA/FTP.
 - Before or after a driver's license has been suspended.
 - If a case has been sent to a collections agency (e.g., GC Services or Alliance One).
 - If a case has been sent to the Franchise Tax Board
- Sample *pro per* petitions are available in our toolkit. If adopted, you can use the Judicial Council form (Rule 1.35)
- Some courts have their own forms. For specific information about your local court's forms, you can visit your local court's website. You can also visit <https://ebcllc.org/reentry-legal-services/> for a 58-county breakdown of ability-to-pay forms and procedures.



Assist Individuals to Petition to Vacate **Civil Assessment** Fees

- Assist individuals in completing and filing petitions to vacate civil assessment fees.
 - Per Rule 4.106, this petition will be granted upon a showing of “good cause.”
 - “Good cause” - death, hospitalization, incapacitation, incarceration, military duty, caretaking of dependent or immediate family member,
- Sample *pro per* petitions are available in our toolkit. If adopted, you can use the Judicial Council form (Rule 1.35)
- Some courts have their own forms. For specific information about your local court's forms, you can visit your local court's website. You can also visit <https://ebcllc.org/reentry-legal-services/> for a 58-county breakdown of civil assessment fee forms and procedures.



Defenses for Veh. Code § 14601.1(a) Driving with a Suspended License

- We interpret AB 103 to invalidate a charge of Veh. Code § 14601.1(a) if the person was charged after Jun 27, 2017 *and* the sole basis of the person's driver's license suspension is one or more FTPs.
 - With respect to "legacy" suspensions, AB103 requires that, going forward, license suspensions for FTP have no legal effect after June 27, 2017.
 - "When the legislature repeals a criminal statute or otherwise removes the State's condemnation from conduct deemed criminal, this action requires the dismissal of a pending criminal proceeding charging such conduct." *People v. Babylon*, 39 Cal. 3d 70, 728 (1985)
- Sample motion to dismiss is available in our toolkit.



Don't Forget! **Holistic Strategies** to Combat Traffic Court Debt

- §41500 Motion: If you have been incarcerated in state prison or county jail for an AB109 sentence, all pending non-felony warrants and citations shall be dismissed.
- Homeless Court / Veteran Stand Down
- Penal Code § 1385 Motion to Dismiss
- Demurrer: If ticket is facially insufficient (e.g., lacks key element of the offense), then it shall be dismissed upon a demurrer motion at arraignment.
- Pleading Not Guilty / Trial / Dismissal if Officer No-Show



Example of Partnership with Alameda County Superior Court: “In-Court Traffic Clinic”

- Partnership to provide services to self-represented litigants in traffic court who are unable to pay their tickets
- On a monthly basis, EBCLC is stationed outside the traffic department and provides one-on-one legal consultations in a nearby vacant courtroom and small intake room.
- On a weekly basis, EBCLC provides information and one-on-one legal consultations to community members at our office.
- EBCLC participates in a Steering Committee on Ability-to-Pay with the Alameda County Court CEO and the Traffic Division Chief and Supervisor of Traffic Clerks.

<https://ebclc.org/reentry-legal-services/>

Reentry Legal Services - East X

Secure | <https://ebclc.org/reentry-legal-services/>

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Reentry Legal Services

Map of California Counties

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Make a difference **DONATE NOW!**

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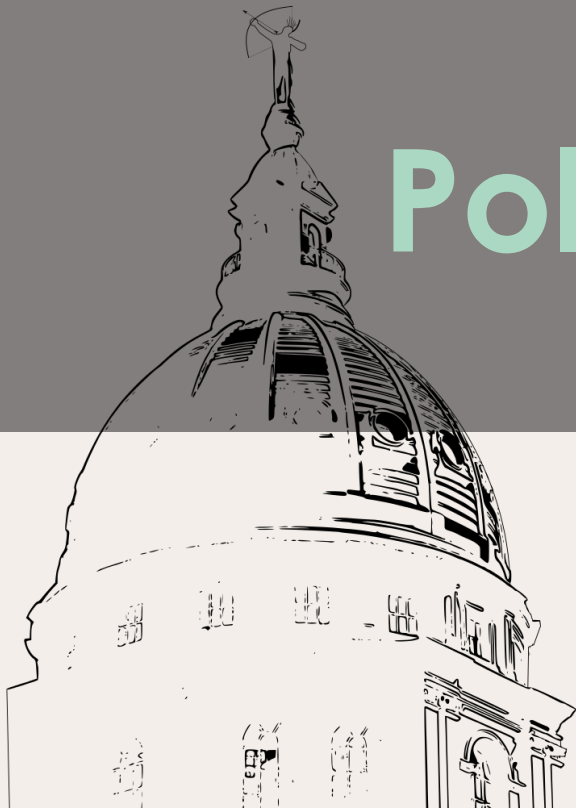
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Ideas for Policy Change

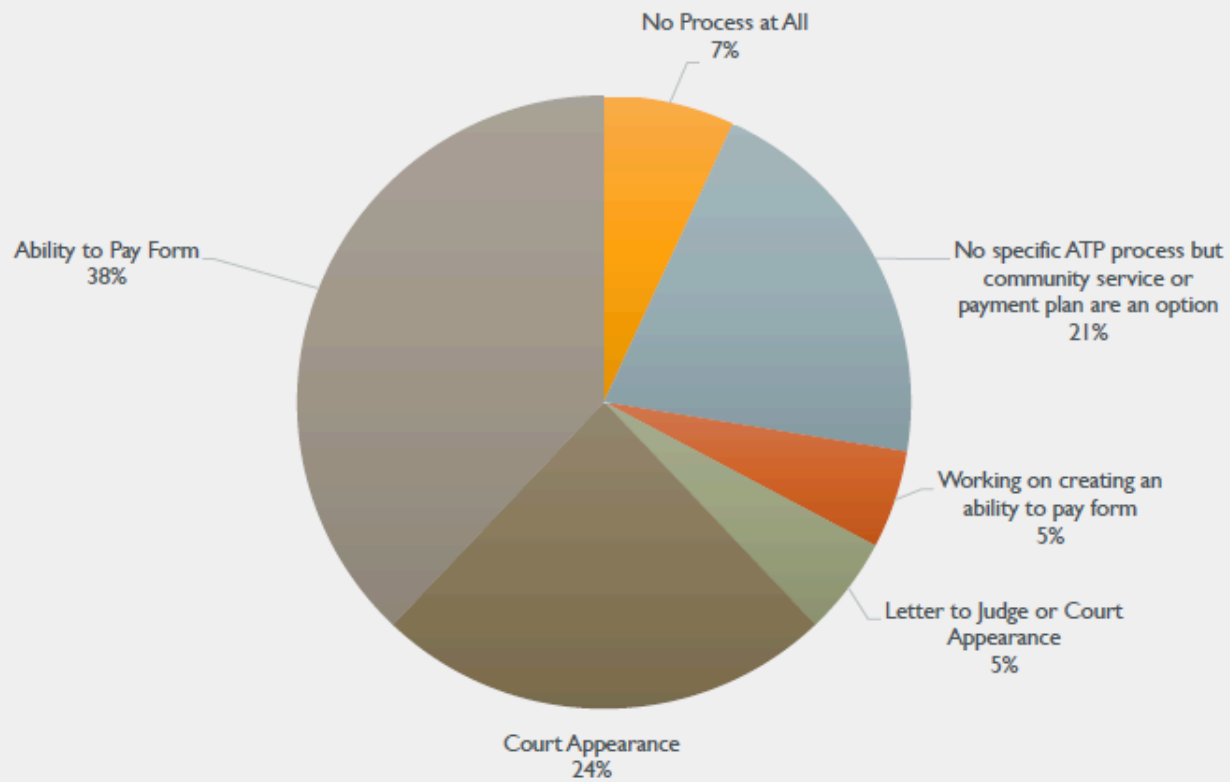




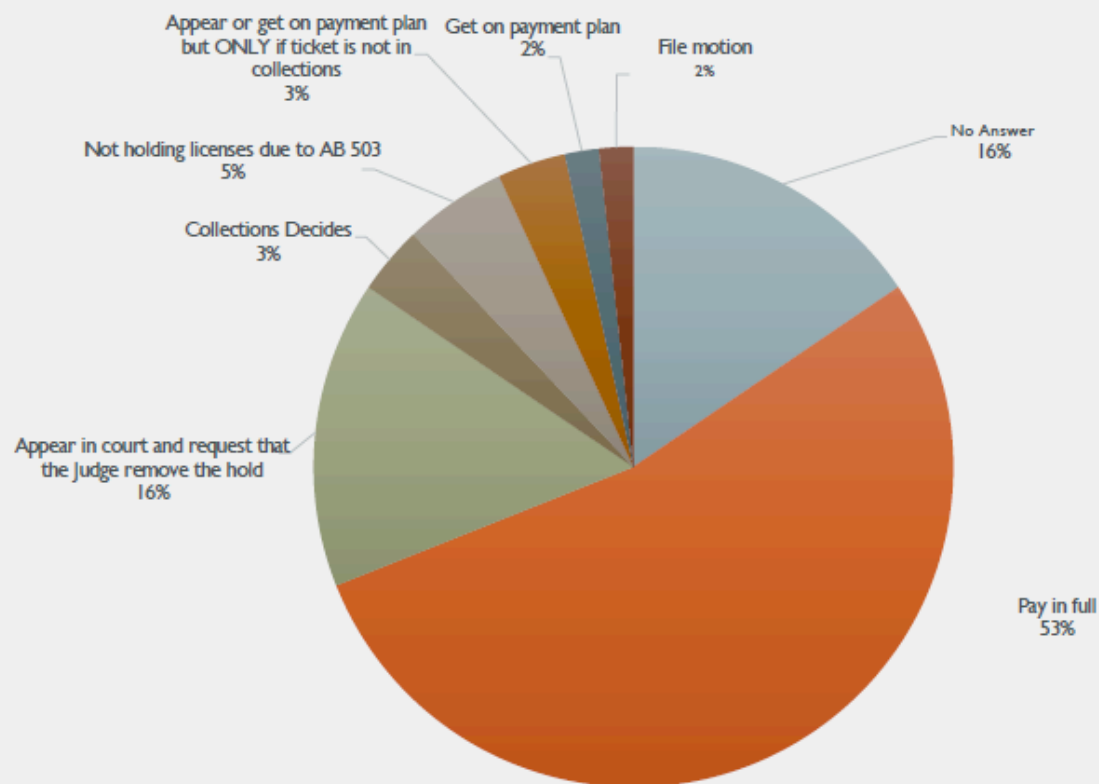
Informal 58-County Phone Survey of Compliance with Rule 4.335

- EBCLC student interns called traffic court clerks in all 58 counties in California during June and July 2017.
- Main Questions:
 - Whether the county has an ability to pay process pursuant to the new Judicial Council rules
 - Description of the process (if any)
 - Process for removing civil assessment fees and license suspensions

SPECIFIC ATP PROCESSES (OR LACK THEREOF)



PROCESS FOR REMOVING LICENSE SUSPENSIONS DUE TO FAILURE TO PAY



**What can I do to help
my local court comply
with these new rules?**



Advocacy Strategies

- File PRA (Public Records Act) requests to gather information
- Form a partnership with your court (case study: EBCLC partnership with Alameda)
- Write a letter to your court CEO or presiding judge (see sample letter in our Toolkit!)
- Set up a meeting with court personnel
- If all else fails, consider filing a lawsuit
 - Examples: Solano County settlement, active Los Angeles County litigation



Advocacy Opportunities for Nonprofit Organizations

- Consider forming a coalition of interested groups in your jurisdiction to seek adequate implementation of your court's practices regarding ability-to-pay proceedings in traffic court.
- Consider expanding your direct legal services to assisting people with suspended driver's licenses and unpaid traffic tickets.



Advocate beyond the “floor”

Advocate for standards beyond the bare minimum, including:

- Flat, standard reductions for low-income people
 - Temporary traffic amnesty program (80% reduction)
 - Alameda (50% reduction)
 - Pilot ability-to-pay program in SF, Santa Clara, Shasta, OC, Tulare
- More expansive views of who qualifies for fee reductions
 - Solano
- Creation of (readable) forms:
 - Solano and Alameda
 - Model Judicial Council form (draft)



Advocate beyond the “floor”

- Restoration of licenses that were suspended for FTP under the old law
 - Alameda
 - Refer to legal arguments made in open letter to DMV (available in toolkit)
- Ending license suspension for FTA
 - San Francisco
- Improving notice to traffic court litigants: mailed notices, court's public website, training for traffic clerks
 - Solano

A local model: Solano County Traffic Court

- *Rubicon v. Solano Superior Court*
- New forms!

Financial Declaration/ “Ability to Pay” form

Courtesy Notice

Know Your Rights form



**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SOLANO
TRAFFIC DIVISION**

4807-TR

☐ Hall of Justice
600 Union Avenue
P.O. Box 2463
Fairfield, CA 94533
(707) 207-7360

☐ Solano Justice Center
321 Tuolumne Street
Vallejo, CA 94590
(707) 561-7860

DECLARATION / ABILITY TO PAY FORM

If you have more than one case, use one form for each case.

1. Your Information

Name: _____
Street or Mailing Address: _____
City: _____ State: _____ Zip: _____
Tel.: _____ Date of Birth: _____
E-mail (optional): _____

Case Number: _____	
Clerk fills out this box	
<input type="checkbox"/> FTA	
<input type="checkbox"/> FTP	
<input type="checkbox"/> A Traffic School Certificate was filed.	
\$ _____	Amount ordered
\$ _____	Due date
\$ _____	Amount paid
\$ _____	Date paid
Balance due: \$ _____	

2. What kind of help do you want from the court? (Check all that apply to your request)

- | | | |
|---|---|--|
| <input type="checkbox"/> 1. Lower the fine | <input type="checkbox"/> 4. Payment plan | <input type="checkbox"/> 8. Release DMV License Hold (Abstract) |
| <input type="checkbox"/> 2. Extend deadline to pay | <input type="checkbox"/> 5. Dismiss the fine/charge | <input type="checkbox"/> 9. Accept Proof of Correction |
| <input type="checkbox"/> 3. Credit for time served in jail or residential treatment program | <input type="checkbox"/> 6. Community Service | <input type="checkbox"/> 10. Dismiss late fee for Failure to Appear or Pay |
| | <input type="checkbox"/> 7. Ask for a Court Date | <input type="checkbox"/> 11. Other (specify): _____ |

3. Can you afford to pay?

- ☐ **Yes** (Skip Sections 4 and 5; Complete Sections 6, 7 and 8)
☐ **No** (If you check this box, you must also fill out Sections 4, 5, 6*, 7 and 8.)

4. Public Benefits – Check any benefits listed below that you are receiving **now**.

If you do *not* receive benefits, go to the next question.

- ☐ Medi-Cal ☐ CalFresh/WIC ☐ CalWorks ☐ CAPI ☐ SSI/SSP ☐ Low-Income Veterans Pension
☐ Tribal TANF ☐ Refugee Cash Assistance ☐ General Assistance ☐ Extended Foster Care ☐ IHSS
☐ Other need-based help (specify): _____

Important! Attach a copy of **any document** that proves you are getting the benefits you checked.

5. Homeless or Temporary Housing

If you are homeless, live in a shelter, or in a transitional living facility, check below.

- ☐ Homeless (Where do you usually sleep?): _____
☐ Shelter or Transitional living facility (Which one?): _____

6. Household Income *(skip this section if you checked any public benefits in Item 4 or any box in Item 5)

Monthly income \$ _____
Number of people in household: _____

Important! Attach a copy of **any document(s)** that proves the amount of gross-monthly income (before tax deductions) for your household. In Item 7, provide any details or special circumstances you want the court to consider.



Superior Court of California, County of Solano

Courtesy Notice You received a ticket for the violation(s) listed below. Take care of this ticket by the **deadline**. If you do not, you may be **fin**ed and your license may be **suspended**. Keep this Notice. You will need it to take care of your ticket.

TO: «ODP_SOL_DEFENDANT_NAME»
«ODP_SOL_DEFENDANT_ADDRESS»
«ODP_SOL_DEFENDANT_CITY», «ODP_SOL_DEFENDANT_STATE_ZIP»

TICKET & FINE INFORMATION

DLN & State	«ODP_GENERAL_DFT_DRIVER_LICENSE» «ODP_GENERAL_LICENSE_STAT»	VIN & State	«ODP_GENERAL_VEH_PLATE_NO» «ODP_GENERAL_VEH_STAT»	Birthdate	«ODP_GENERAL_DFT_DOB»
Ticket Number	«ODP_GENERAL_CASE_CITATION_NO»	Ticketing Agency	«ODP_GENERAL_ARREST_AGCY_ID»	Ticket Date	«ODP_GENERAL_VIOLATION_DATE»
Violation(s):					
* «ODP_GENERAL_DEFENDANT_CHARGES»					
If the violation(s) listed above is marked with an asterisk (*) that means you can fix the problem, go to any law enforcement office to have them sign your ticket as "Proof of Correction." Then send us the signed ticket and this Notice, along with payment of: \$«ODP_GENERAL_LOW_BAIL_AMT» Pay this amount if you are eligible and want to attend Traffic School. The amount includes the State/Court Administrative fee.					
MUST GO TO COURT?	Yes	If Yes, go to: Superior Court, 600 Union Ave. Fairfield, CA 94533—0246 (Tel.: 707—207—7360, 8 a.m.—3 p.m.)			
Court Date & Time	«ODP_GENERAL_DUE_DATE» 9 a.m.	Court Case #	«ODP_GENERAL_CASE_ID»		
May Pay Ticket instead of Going to Court	Yes No				
Eligible for Traffic School?	«ODP_GENERAL_TV_S_ELIGIBLE»	Doing Traffic School keeps points off your DMV record			
If yes, an admin fee was added to your fine.					
Total Fine Due:	\$ «ODP_GENERAL_TOTAL_BAIL»				

See reverse side for information about your options. Then fill out below.

- ☐ PAY FINE IN FULL
☐ ENROLL IN TRAFFIC SCHOOL
☐ REQUEST COURT TO CONSIDER INABILITY TO PAY
☐ CONTEST TICKET IN COURT (PLEAD NOT GUILTY)

If you want to **contest your ticket**, you **must** fill out the grey box below.

☐ I am not guilty of the violation(s) listed above and ask for a

Check one: ☐ Court Trial (no payment required)

☐ Trial by Mail (payment required)

☐ Trial by Mail with Traffic School Option (payment required)

I understand and agree that my trial will take place after the required 45-day period.

Date _____ Sign: _____ Tel # (day): _____

PL Draft 2: p 1 = 460 words; 6.0 RGL

PAYMENT OPTIONS

Check / Money Order	Solano Superior Court P.O. Box 2463 Fairfield, CA 94533
U.S. Mail	
Credit Card	Fairfield: 800—496—4085
(Not for traffic School or for Fix-it Tickets)	Vallejo: 800—687—2069 www.solano.courts.ca.gov (plus a fee to pay online)
Pay in person	At any Solano Court Traffic Window



Este es un aviso sobre una multa que recibí.
Puede ver una traducción de este aviso en [url].

Superior Court of California
Solano County
Case No. _____



Traffic Division

Notice of Rights
(Infractions)

Your Rights

You are here today because of an *infraction* ticket. An infraction is something that is against the law.

You have the following rights

- To have a **lawyer** represent you (at your expense).
- To an **interpreter** if you do not speak English well.
- To have the citation or complaint against you read in open court.
- To a **speedy court trial** within 45 days of arraignment (most likely you will be arraigned today). At that trial, you have the right to not testify against yourself, to subpoena witnesses to testify on your behalf, to confront and cross-examine witnesses by asking them questions.
- To have the court decide your case right away or to postpone sentencing for up to 5 days. Tell the court if you want to postpone sentencing.
- To **appeal** the court's decision.

When the court calls your name

Step to the front of the courtroom. You have the right to say if you are *Guilty, Not guilty* or *No contest*.

If you say...

- **Not guilty** – The court will schedule a trial. You and the officer that gave you the ticket must return to court on that date. You will each have a chance to present evidence and witnesses.
- **Guilty or No contest** – You accept the charge(s) on the ticket. There will not be a trial or witnesses. “No contest” is like saying “guilty,” except that it cannot be used against you if there is a civil lawsuit related to your case.
- **Guilty with explanation** if you accept the charge(s) but want to give the court an explanation.

Can't afford to pay the fine?

If you are unable to pay all or part of your fine due to financial hardship, you may ask the court for a

- lower fine,
- payment plan
- community service (working instead of paying all or some part of the fine), or
- credit for time served (for example, if you have recently been in jail).

DO NOT SIGN UNLESS YOU FULLY UNDERSTAND THE ABOVE RIGHTS

Date: _____

Signed: _____

Address: _____

Telephone: _____

Toolkit for implementation of new ability-to-pay rules



The toolkit includes:

- Primer for advocates on the new rules and AB 103
- Sample advocacy letter to court staff/CEO explaining the new requirements under AB 103 and the Judicial Council rules
- Know Your Rights materials and a flyer geared towards pro per defendants
- Sample motion for an ability-to-pay determination
- 58-county guide to ability-to-pay procedures
- Court-watching guide for court users, law students, and advocates, including ways to report bad practices



Please keep us updated if you use these tools!

We will continue to track which counties are complying with the new rules and where problems persist.

Traffic Court "Ability to Pay" - Local Report Back

For years, expensive traffic court debt and aggressive collections methods have unfairly penalized low-income people and kept many trapped in poverty - but several recent changes to California law and court rules have significantly improved protections for the rights of low income traffic defendants. With your help to ensure that local courts provide meaningful and accessible implementation of new traffic court policies, California can be a leader in protecting the rights of indigent court users!

Please use this form to let us know about your experiences, the advocacy you've been doing, and about traffic court practices in your community!

*** Required**

Which of these best describes you? *

- ☐ I am a legal services provider
- ☐ I am a public defender
- ☐ I am a policy advocate/ community organizer



Past reports

- *Not Just a Ferguson Problem: How Traffic Courts Drive Inequality in California*
 - Released 2015
- *Stopped, Fined, Arrested: Racial Bias in Policing and Traffic Courts in California*
 - Released 2016
- *Paying More for Being Poor: Bias and Disparity in California's Traffic Court System*
 - Released 2017

Questions?

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Los Angeles, CA 90017
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Court Debt: Fines, Fees, and Drivers Licenses

Sept. 1 Task Force
Wade Askew

707-515-4124

waskew@lsnc.net

Debt and License Suspensions: The Problem

- Historically, courts have had the authority to notify the DMV if an individual willfully failed to pay a court-imposed traffic fine or fee or failed to appear for a court date.
- This notification would trigger a license suspension that typically lasted until the fine was paid in full.
- Courts did not offer “Ability-to-Pay” determinations and had no due process mechanisms to determine whether a failure to pay was indeed willful.

Disparate Racial Impact

- Inequality in ticketing
 - Disparity in police stops/ticketing
 - Funding courts with tickets encourages aggressive policing
- Inequality in rates of license suspension
 - Disparity in failure to pay/appear rates
- License suspensions impair ability to work and attend school, beginning a cycle of deeper debt and more frequent tickets.
- License suspensions turn into criminal records – driving without a license is a misdemeanor.
- See “Not Just a Ferguson Problem” for more.
 - <https://www.lccr.com/not-just-ferguson-problem-how-traffic-courts-drive-inequality-in-california/>

(Beginning of) the Solution: AB 103

- June 27, 2017: AB 103 signed.
- DMV no longer has the authority to suspend a driver's license for a failure to pay.
- DMV still has the authority to suspend a driver's license for failure to appear.

Existing Suspensions for Failure to Pay

- DMV is taking the position that it can maintain already existing suspensions for failure to pay.
- Our stance: because DMV no longer has authority to suspend licenses after AB 103, any ongoing suspensions have no legal authority.
- Ongoing litigation (*Hernandez v. DMV*) involves a challenge to DMV's interpretation.
- If this situation arises, please contact me.
- In any case, a defendant who begins a payment plan, community service, etc. should have suspension lifted immediately.

Ability-to-Pay Determinations

- California Rule of Court 4.335 – applies to any infraction case for which the defendant has received a written Notice to Appear.
- Courts must provide defendants notice that they may request an ability-to-pay determination regarding fines and fees in any infraction offense for which a defendant has received a written notice to appear.
- Upon defendant's request, the court must consider defendant's ability to pay. Court must give instructions on how to do so.
- Defendant may request ability-to-pay determination AT ANY TIME
 - At adjudication or while judgment remains unpaid, including when a case is delinquent or has been referred to a comprehensive collection program. Court retains jurisdiction until the debt is satisfied.
- Defendant must be able to request this by written petition unless the court directs a court appearance.

Ability-to-Pay Determinations

- Advisory comment to Rule of Court 4.335(c)(4) states that the “amount and manner of paying the total fine must be reasonable and compatible with the defendant's financial ability.”
- Defendant can request subsequent determinations based on changed circumstances.
- If a defendant fails to make a payment under an installment plan, a court must permit the defendant to appear by written petition to modify payment terms. Rule 4.106(e)(1).
 - A defendant also has the right to request a court appearance, and a court may direct an appearance.
 - If the petition to modify payment terms is based on an inability to pay, Rule 4.335 procedures apply such that the court must reassess the defendant's ability to pay and modify the payment plan accordingly.

Ability-to-Pay Determinations

- Based on the ability-to-pay petition, the court has discretion to:
 - Provide for payment on an installment plan (if available)
 - Allow the defendant to complete community service in lieu of paying the total fine (if available)
 - Suspend the fine in whole or in part
 - Offer an alternative disposition

Civil Assessments and Good Cause

- Civil Assessments (\$300) can be imposed for failure to pay or failure to appear.
- Preexisting law allows a defendant to show good cause for failure to appear, which would eliminate civil assessment. PC § 1214.1(b)(1).
 - See Solano petition to waive civil assessment.
- Rule 4.106(c)(5) expands traditionally accepted categories of good cause. Judicial Council Advisory Committee Comment Subdivision (c)(3) states that good cause includes but is not limited to:
 - Defendant's hospitalization, incapacitation, or incarceration;
 - Military duty required of the defendant;
 - Death or hospitalization of the defendant's dependent or immediate family member;
 - Caregiver responsibility for a sick or disabled dependent or immediate family member; or
 - Any extraordinary reason, beyond the defendant's control, that prevented the defendant from making an appearance or payment on or before the date listed on the notice to appear.

Civil Assessments and Rule 4.106

- Rule 4.106(c)(6) and (7) allow the court additional discretion in deciding whether to vacate a civil assessment.
- The court may consider a defendant's financial circumstances in deciding whether to vacate the civil assessment, in an inquiry that is essentially the same as the evaluation of ability to pay.

Implementing Ability-to-Pay: Notice

- Courtesy notices and all subsequent notices (from the court or collection agency) should provide information regarding ability to pay determinations and contact information for the court.
 - Rule 4.107 – courtesy notice required on all tickets filed in court.
- Encourage courts to post user-friendly, viewable flyers and posters in traffic clerk's windows and traffic courtroom.
- Encourage court to provide clear information about eligibility requirements for ability to pay on its website.
- Encourage courts to distribute “know your rights” information for traffic court defendants (see Solano sample and flow-chart).

Implementing Ability-to-Pay

- Create standard ability-to-pay applications:
 - Judicial Council will have a form soon, but courts should take action.
 - Forms should allow defendants to list whether they receive public benefits, explain relevant financial circumstances.
 - Model policy – Defendants can, but are not required, to attach supporting documents
 - Forms should allow defendants to request fine reduction, payment plan, community service, or other alternatives.
 - Forms should allow defendants to also request that civil assessments be vacated and/or included on payment plan/community service per 4.106(c) and/or because of good cause.
- See Solano model.

Implementing Ability-to-Pay: Model Practices

- Can file by mail, in person, or online.
- 80% reductions on all fines and fees owed, including civil assessment fees, for people who are indigent (consistent with the Traffic Tickets/Infractions Amnesty Program).
 - Applicant presumed indigent if: (1) receipt of public assistance, (2) income is less than 125% of Federal Poverty Level, or (3) less than \$250 of monthly disposable income after covering basic household expenses.
- A discretionary reduction greater than 80% if it is warranted by the person's financial circumstances.
- A \$0/month payment plan for indigent defendants until there is a change in financial circumstances

Implementing Ability-to-Pay: Model Practices

- Immediate notification to DMV to remove any driver license hold upon adjudication of the ability-to-pay request.
- Fine reductions before imposing community service and/or a payment plan.
- No fees for accessing community service or payment plans.
 - Note – there is some question as to whether these fees are consistent with the US and California constitutions. If it comes up, please contact me.
 - Also note – SB 185 (Hertzberg) could make this a moot point. It would outlaw imposing fees for accessing community service or payment plans.
- Community service include broad and flexible program in which socially positive activities such as enrolling in school or seeking job training or treatment services may satisfy required community service hours.

Implementing Ability-to-Pay: Model Practices

- Begin implementation of these policies and practices through the issuance of a memorandum to all court staff advising of new procedures.
- No longer automatically report failure to appear to DMV or enter misdemeanor charge for failure to appear or failure to pay under VC 40508.
 - Solano: charge must be ordered by a judicial officer AFTER the court gives a defendant notice and opportunity to be heard on the charge
- Ability-to-Pay order allow for defendant to request a hearing if they disagree with determination (similar to fee waiver order).
- Ability-to-Pay order allow for judicial officer to withdraw any warrant issued under VC 40515, dismiss any misdemeanors for failures to appear, and notify DMV to lift related license holds/suspensions.

Failure-to-Appeal License Suspensions

- The DMV still has the authority to impose civil assessment and suspend a license if a defendant failed to appear to a hearing.
- Preexisting law: Defendants may appear and show good cause for failure to appear so that suspension will also be removed.
- In addition to good cause for failing to appear, requesting an ability-to-pay determination is an appearance that then ends authority to suspend.
 - Court should notify DMV under VC § 40509.5(a) that the person has appeared in court (via a court form or otherwise) and resolved the case, thus removing authority to hold the individual's license.
- A model ability-to-pay plan should include immediate notification to DMV to remove the driver license hold upon request.

SB 185: Possible Future Relief

- Would prohibit courts from administratively suspending licenses to collect court-ordered debt for non-safety offenses.
- Would require court to reinstate suspended licenses for anyone making a good-faith effort to meet their obligations.
- Would require court to:
 - Provide affordable payment plans
 - Assess individual's ability to pay
 - Reduce the total amount owed by low-income individuals
 - Change payment plans according to changing circumstances
 - Eliminate debt after 4 years for low-income individuals who are unable to pay

Quick note on Juvenile Fines and Fees

- SB 190 would eliminate juvenile fees.
- A few counties have already repealed the imposition of juvenile fines and fees, at least on a temporary basis.
- This could be area of advocacy for young people and families whose children are involved in the juvenile justice system.

Next Steps: Where to Start

- Letter to your local court.
- Review court ability-to-pay forms, courtesy notices, website information, court self-help information, etc.
- Outreach! Make sure ability-to-pay is being properly implemented, especially ensuring no more FTP suspensions.
- If court is not properly implementing ability-to-pay:
 - Meet with court
 - Appear for an ability-to-pay petition
 - File a motion

Contact Info

- Wade Askew – Solano office
- 707-515-4124
- waskew@lsnc.net