

Ability to Pay Implementation in Traffic Court

A Toolkit for Advocates

Back on the Road California
October 2017



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Thank you to the many staff members and interns at the Stanford Design Lab and from the member organizations of the Back on the Road Coalition for making this Toolkit possible.



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"Ability to Pay" Determinations in Traffic Court: A Primer for Advocates¹

California has some of the most expensive court fines and fees in the country.² Having court debt or a suspended driver's license can destabilize many other areas of a low income client's life, from parenting responsibilities to employment options to housing security. In light of the fact that 60% of all court filings in California are for traffic citations,³ the consequences have been far reaching and, often, severe when courts order fines and fees that are not tailored to a defendant's ability to pay.

The good news is that several recent changes to California law and court rules have significantly improved protections for the rights of low income traffic defendants. This primer, along with the rest of the *Back on the Road "Ability to Pay" Toolkit*, is intended to help you better understand those rules and to support you in advocating for full and meaningful implementation of these new rules in your local community.

Real Life Story:

In 2010, when a young mom named Alyssa moved, she missed the ten-day deadline to notify the DMV of her address change and got a ticket as a result. She updated her address, but because she did not realize she still had to pay the ticket, the DMV suspended her license. Without a license, Alyssa lost her job as a bus driver and had to go on CalWORKS to support her children. With penalty assessments, her court debt rose to \$2900, an amount she couldn't afford on her family's limited budget.

I. New Rules and Laws around "Ability to Pay" in California Traffic Court

Fortunately, traffic court reform is on the rise in California, with a new statewide set of court rules issued by the Judicial Council and a new license suspension law created through the 2017-18 state budget.

A. *Elimination of License Suspensions for Failure to Pay: AB 103*

Until very recently, California traffic courts were using license suspension as a debt collection tool for people who missed payments on their traffic tickets - a practice that trapped millions of people in cycles of poverty. Now, effective June 27, 2017, AB 103 eliminates the statutory authority for courts to issue notice to the DMV to suspend a driver's license when that individual fails to pay on a traffic court citation. It also eliminates the statutory authority for the Department of Motor Vehicles to suspend a driver's license for failure to make a payment on a traffic ticket. With respect to the suspensions that existed on or before June 27, 2017, the Back on the Road Coalition contends that the DMV no longer has

¹ Published October 2017.

² *Paying More for Being Poor*, 2017.

³ *Id.*

statutory authority to maintain existing suspensions on the licenses of drivers who failed to pay before June 27 of this year. As of the publication of this primer, DMV policy regarding existing failure to pay suspensions is still under negotiation in a pending lawsuit, *Hernandez v. Department of Motor Vehicles*.⁴

B. Ability to Pay and Notice Requirements: Rules of Court 4.105-4.107, 4.335

The Judicial Council of California has issued multiple changes to the statewide Rules of Court (“the Rules”) that affect many aspects of the traffic court process. The majority of these new Rules took effect on May 1, 2017.

1. Rule 4.105

Rule 4.105 allows a traffic defendant to appear in court to challenge their ticket without having to pay the cost of the ticket (“bail”) up front.⁵ This rule also mandates that defendants be informed of their right to appear in court without the deposit of bail “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.”⁶

2. Rule 4.335

Rule 4.335 states that, upon a defendant’s request, a traffic court must consider a defendant’s ability to pay the full cost of the citation with which they are charged; courts must also provide notice of this right to traffic defendants.⁷ While it remains largely at the discretion of individual judicial officers and courts to decide the appropriate response to an ability to pay request, an advisory comment to this Rule mandates that the “amount and manner of paying the total fine must be reasonable and compatible with the defendant’s financial ability.”⁸

3. Rule 4.106

Civil assessments - penalty fees that can be “up to” \$300 - are another enforcement mechanism regularly used by courts when a traffic defendant has missed a court date or a payment.⁹ Courts have usually charged civil assessments at the full \$300 authorized by statute without consideration for the defendant’s individual circumstances, making the cost of the citation all the more impossible for some to pay off. The Penal Code and, now, Rule 4.106 require that defendants be allowed to request that any

⁴ Traffic courts still have statutory authority to notify the DMV to suspend the licenses of drivers who fail to appear in traffic court. See Vehicle Code section 40509(a) and 40509.5(a). However, because missing a court date is often a result of the challenges caused by poverty and because of the harmful impacts of license suspension can be so severe, we encourage advocates to work with their local superior courts to voluntarily eliminate license suspensions for failures to appear in traffic court.

⁵ Rule of Court 4.105. However, payment of bail is still required for those who wish to submit to trial by written declaration and the court may order payment of bail before appearance if the defendant didn’t sign promise to appear or is otherwise deemed “unlikely to appear.”

⁶ *Id.*

⁷ Rule of Court 4.335.

⁸ Advisory Comment to subdivision (c)(4) of Rule of Court 4.335.

⁹ Penal Code section 1214.1.

civil assessments for a failure to appear or pay be vacated for good cause.¹⁰ The Rule lists provides a range of examples of “good cause,” some of which go beyond the definitions previously used by many courts.¹¹ The Rule also explains that courts may reduce the amount of any civil assessment imposed based, among other reasons, on the defendant’s financial circumstances.¹² Under the new Rule, courts must provide information on the Notice of Civil Assessment regarding good cause and the procedure to vacate or reduce the assessment.¹³

4. Rule 4.107

Under Rule 4.107, courts are now mandated to provide traffic defendants with a reminder notice before their court date which, among other information, must state the total amount of the ticket, payment options including the right to pay through payment plans or community service (if available), and the potential consequences of failing to appear or failing to pay.¹⁴

II. The Future of Traffic Court Justice – Where Do I Come in?

These improved processes and expanded rights are an important step forward, but their passage alone does not ensure that indigent court users will be protected from unaffordable fees and harmful collections methods. In fact, our Coalition’s research and experience has led us to conclude that many California courts are still not in full compliance with the new rules described above. Most notably, some courts have not created any clear “ability to pay” process or have not changed the notices they provide to defendants in traffic court cases.

This is why it’s essential that advocates like you push local courts to engage in robust and accessible implementation of these new rules and laws. Our toolkit is designed to aid advocates in individual representation and county-level policy changes in local courts. Below are the things that you can do to help your clients and your community in traffic court.

In-Court Advocacy for Individual Clients:

- Help individuals file for fee reductions, payment alternatives like community service or affordable installment plans, or license restoration. See Appendix 1A-1B.
- File helpful motions tailored to the traffic defendant’s personal circumstances.¹⁵ These motions can be filed by a party representing themselves or by an attorney. See Appendix 1C-1E.

¹⁰ Rule of Court 4.106.

¹¹ Advisory Comment to subdivision (c)(3) of Rule of Court 4.106.

¹² Rule of Court 4.106.

¹³ *Id.*

¹⁴ Rule of Court 4.107.

¹⁵ See, e.g., Vehicle Code section 41500 and Penal Code section 1385. Criminal defense attorneys may also consider arguments related to underlying inability to pay traffic tickets in representing clients in Penal Code section 14601.1 (driving with a suspended license) cases.

- Assist individuals in filling out ability to pay petitions or petitions to vacate a civil assessment fee. For specific information about your local court's forms, you can visit your local court's website or visit <https://ebclc.org/reentry-legal-services/>.

“Know Your Rights” Information:

- Place materials in your self-help resources library about options defendants have in traffic court. See Appendix 2A-2D.
- Disseminate materials about how to request an ability to pay hearing due to a financial hardship. See Appendix 2A-2D.
- Train local community organizations & other legal services advocates. See Appendix 2E-2F.

Information Gathering:

- Write Public Records Act requests to find out whether your county has adequate policies and practices regarding ability to pay, civil assessments, license suspension, and notice and information provided to traffic defendants.
- Do court-watching to monitor whether judicial officers or court staff are holding ability to pay hearings when requested. See Appendix 3C.

Advocacy with Court Administration and Staff:

- Write to and meet with your local judicial officers and court administrative staff to advocate for reform of inadequate policies or practices. Where possible, encourage courts to go beyond the minimum requirements created by the rules and laws described above so as to more fully meet the needs of indigent court users. See Appendix 3A.
- Encourage your local court administrators to adopt ability to pay application forms, petitions to vacate civil assessments, printed notices, and website language that is reader-friendly and accessible for people of all educational levels and language backgrounds. See Appendix 3B.
- File legal action against your court for inadequate policies or practices, if needed. See Appendix 3B.

III. Conclusion

For years, expensive traffic court debt and aggressive collections methods have unfairly penalized low-income people and kept many trapped in poverty - but now is our moment for change. 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.

We'd love to hear from you as you advocate with your local traffic court! Please keep the Back on the Road Coalition informed on progress and changes in your community by using our Local Report Back Form at www.ebclc.org/back-on-the-road.