

JUDICIAL COUNCIL OF CALIFORNIA
ADMINISTRATIVE OFFICE OF THE COURTS
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Report

TO: Members of the Judicial Council

FROM: Traffic Advisory Committee
Hon. John H. Tiernan, Chair
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DATE: July 17, 2006

SUBJECT: Traffic: Statewide Criteria for Eligibility to Attend Traffic
Violator School (amend Cal. Rules of Court, rule 4.104)
(Action Required)¹

Issue Statement

Rule 4.104 provides criteria for the eligibility of defendants with traffic violations to attend traffic violator school. This proposal will resolve issues with the current rule, which (1) has criteria that are inconsistent with statutory provisions that exclude commercial violations from eligibility for traffic violator school; (2) requires that a 12-hour traffic violator program be licensed to qualify for a judicial officer's order of a dismissal for completion, when there is no statute that authorizes licensing of 12-hour programs; (3) does not incorporate common law decisions holding that a defendant who is otherwise eligible to attend traffic violator school is not made ineligible by entering a plea other than guilty or by exercising his or her right to trial; and (4) contains outdated statutory references to code sections.

Recommendation

The Traffic Advisory Committee recommends that, to conform to California common law and statutes, the Judicial Council, effective January 1, 2007, amend rule 4.104 of the California Rules of Court to clarify procedures and eligibility criteria for attending traffic violator school.

The text of amended rule 4.104 is at pages 5–7 and a comment chart with responses to proposed changes is at pages 8–10.

¹ At its June 30, 2006, meeting, the Judicial Council approved the reorganization and renumbering of the California Rules of Court and Standards of Judicial Administration, effective January 1, 2007. Under the reorganization, rule 851 has been renumbered as rule 4.104, and new format conventions have been adopted. Hence, the proposed amendments to rule 851 are shown throughout this proposal as amendments to rule 4.104, which will become effective January 1, 2007.

Rationale for Recommendation

The proposed amendments to rule 4.104 of the California Rules of Court would clarify eligibility criteria to attend traffic violator school. First, the rule would be amended to be consistent with statutory provisions regarding negligent operator points for offenses requiring a commercial driver's license, certificate, or endorsement as specified in Vehicle Code section 12810.5(b)(2). Second, the rule would be amended to provide that a judicial officer may dismiss a violation within 18 months of an offense dismissed for completion of traffic violator school only if the defendant completes a 12-hour traffic violator program provided by a licensed traffic violator school. Third, a new paragraph would be added to subdivision (c) to provide that a defendant is not made ineligible to attend traffic violator school simply because he or she pleaded no contest or exercised his or her right to trial. Lastly, the rule would be amended to update and add references to code sections that authorize court orders to attend traffic violator school.

First, the committee recommends amending rule 4.104(b)(2)(A) to modify the criteria regarding negligent operator points for offenses requiring a commercial driver's license, certificate, or endorsement. It would be amended to clarify that a clerk may not authorize traffic violator school attendance for a violation by a driver who is required to have a commercial driver's license, certificate, or endorsement for operation of a vehicle and is assessed negligent operator points as specified in Vehicle Code section 12810.5(b)(2).

Currently, rule 4.104(b) lists offenses for which a court clerk is not authorized to grant a request to attend traffic violator school as pretrial diversion by making a request to a court clerk. Several provisions in subdivision (b) address traffic violations involving commercial vehicles and drivers. Rule 4.104(b)(2)(A) currently prohibits a clerk from authorizing traffic violator school attendance for specified violations that are assessed more than one and one-half points or more under section 12810.5(b)(2) and have been committed in circumstances requiring a commercial driver's license, certificate, or endorsement. Under the current rule, a clerk may authorize attendance for violations under section 12810.5(b)(2) that are assessed one and one-half points, which is the minimum amount under the statute's provisions.

To clarify that eligibility for such offenses may be considered by a judicial officer but not a clerk, rule 4.104(b)(2)(A) would be amended to provide that a clerk is not authorized to grant a request to attend traffic violator school for violations assessed one and one-half points or more under Vehicle Code section 12810.5(b)(2). Because all offenses under section 12810.5(b)(2) are assessed at least one and one-half points, a clerk would not be authorized to permit traffic violator school attendance, where a driver is operating a vehicle in circumstances under section 12810.5(b)(2) that require a commercial driver's license, certificate, or endorsement.

For example, the amended rule would prohibit a clerk from granting traffic violator school attendance to a driver without a commercial driver's license endorsement who

is cited for hauling hazardous material in a noncommercial vehicle when a commercial driver's license endorsement is required. This change would improve consistency with restrictions in rule 4.104(b)(2)(H) and (I), which currently prohibit a clerk from authorizing traffic violator school attendance for violations in a commercial vehicle, as defined in Vehicle Code section 15210(b), and by drivers with a class A, class B, or commercial class C driver's license.

Second, the committee recommends amending rule 4.104(c)(2) to clarify that a judicial officer may dismiss an offense that occurred within 18 months of a prior offense that was dismissed for completion of traffic violator school only if the defendant completes a 12-hour traffic violator program provided by a licensed traffic violator school. Most traffic defendants attend 8-hour traffic violator programs. The 12-hour programs are authorized in limited circumstances when a defendant has obtained a previous dismissal for completion of traffic violator school. The current rule incorrectly states that a 12-hour program must be licensed for a judicial officer to order a dismissal. There are no current statutory provisions that require licensing of 12-hour traffic violator programs, but licensed traffic violator schools offer 12-hour programs. The amended rule would allow judicial officers to order attendance of a 12-hour program at a licensed traffic violator school.

Third, the committee recommends adding paragraph (3) to subdivision (c) to clarify that a plea other than guilty or a request for a trial does not make a defendant, if later convicted, ineligible to attend traffic violator school. Courts may not arbitrarily refuse to consider a request to attend traffic violator school because a defendant exercises his or her right to trial by electing to plead not guilty (*People v. Schindler* (1993) 20 Cal.App.4th 431, 433), requests traffic violator school after trial (*People v. Wozniak* (1987) 197 Cal.App.3d Supp. 43, 44), or chooses to plea no contest or offer an explanation before making a request for traffic violator school (*People v. Enochs* (1976) 62 Cal.App.3d Supp. 42, 44).

In light of these cases, rule 4.104(c) would be amended to require that the request must be considered based on the specific circumstances of the case. This provision would not permit a court to have a policy or practice that denies traffic violator school attendance because a defendant pleads other than guilty or requests a trial. The amendment would also expressly recognize that a court is not required to state on the record a reason for granting or denying a request to attend traffic violator school. (*Schindler, supra*, at p. 433.)

Lastly, the committee recommends amending rule 4.104(b)(1), 4.104(c)(1), and 4.104(c)(2) to update and add references to Vehicle Code sections 41501 and 42005, which authorize court orders to attend traffic violator school.

Alternative Actions Considered

No alternative actions were considered. Amendment of rule 4.104 will assist court clerks and judicial officers by providing criteria from current statutes and recent

California cases for allowing attendance and exercising judicial discretion regarding court-ordered traffic violator school.

Comments From Interested Parties

Proposed rule 4.104 was circulated for statewide comment as rule 851. Of the responses received, 11 of 13 comments agreed with the proposed changes, while 2 comments suggested minor changes. All comments are listed in the attached chart, along with the committee's responses. The discussion above addresses the two suggestions submitted in the comments, as explained in the comment chart.

Implementation Requirements and Costs

No implementation costs are expected.

Attachments

Rule 4.104 of the California Rules of Court would be amended, effective January 1, 2007, to read:¹

1 **Rule 4.104. Procedures and eligibility criteria for attending traffic violator school**

2
3 **(a) Purpose**

4
5 The purpose of this rule is to establish uniform statewide procedures and criteria for
6 eligibility to attend traffic violator school.

7
8 **(b) Authority of a court clerk to grant pretrial diversion**

9
10 (1) *Eligible offenses*

11
12 Except as provided in (2), a court clerk is authorized to grant a request to attend
13 traffic violator school when a defendant with a valid driver's license requests to
14 attend an 8-hour traffic violator school as pretrial diversion under Vehicle Code
15 sections 41501(~~b~~)(a) and 42005 for any infraction under divisions 11 and 12
16 (rules of the road and equipment violations) of the Vehicle Code if the violation
17 is reportable to the Department of Motor Vehicles.

18
19 (2) *Ineligible offenses*

20
21 A court clerk is not authorized to grant a request to attend traffic violator school
22 for a misdemeanor or any of the following infractions:

23
24 (A) A violation that carries a negligent operator point count of more than one
25 point under Vehicle Code section 12810 or ~~more than~~ one and one-half
26 points or more under Vehicle Code section 12810.5(b)(2);

27
28 (B) A violation that occurs within 18 months after the date of a previous
29 violation and the defendant either attended or elected to attend a traffic
30 violator school for the previous violation (Veh. Code, § 1808.7);

31
32 (C) A violation of Vehicle Code section 22406.5 (tank vehicles);

33
34 (D) A violation related to alcohol use or possession or drug use or possession;

35
36 (E) A violation on which the defendant failed to appear under Vehicle Code
37 section 40508(a) unless the failure-to-appear charge has been adjudicated
38 and any fine imposed has been paid;

¹ These recommended amendments have been made to the version of this rule adopted by the Judicial Council at its June 30, 2006, business meeting and reflect the text that will be in effect on January 1, 2007. Any amendments approved as part of this proposal will be incorporated into the text of the rule that goes into effect on January 1, 2007.

- 1
2 (F) A violation on which the defendant has failed to appear under Penal Code
3 section 1214.1 unless the civil monetary assessment has been paid;
4
5 (G) A speeding violation in which the speed alleged is more than 25 miles over
6 a speed limit as stated in Chapter 7 (commencing with section 22348) of
7 Division 11 of the Vehicle Code;
8
9 (H) A violation that occurs in a commercial vehicle as defined in Vehicle Code
10 section 15210(b); and
11
12 (I) A violation by a defendant having a class A, class B, or commercial class
13 C driver's license.
14

15 **(c) Judicial discretion**
16

- 17 (1) A judicial officer may in his or her discretion order attendance at a traffic
18 violator school in an individual case for diversion under Vehicle Code section
19 41501(a), ~~41501(b)~~, or 42005(b); sentencing under Vehicle Code section
20 42005(a); or any other purpose permitted by law. A violation by a defendant
21 having a class A, class B, or commercial class C driver's license or that occurs
22 in a commercial vehicle, as defined in Vehicle Code section 15210(b), is not
23 eligible for diversion under Vehicle Code sections 41501 or 42005.
24
25 (2) If a violation occurs within 18 months of a previous violation that was
26 dismissed under Vehicle Code section 41501(a), a judicial officer may order a
27 continuance and dismissal in consideration for completion of a ~~licensed~~
28 program at a licensed school for traffic violators as specified in Vehicle Code
29 section 41501(a). The program must consist of at least 12 hours of instruction as
30 specified in section 41501(a). Under Vehicle Code section 1808.7, a dismissal
31 for completion of the 12-hour program under this subdivision is not
32 confidential.
33
34 (3) A defendant who is otherwise eligible for traffic violator school is not made
35 ineligible by entering a plea other than guilty or by exercising his or her right to
36 trial. A traffic violator school request must be considered based on the
37 individual circumstances of the specific case. The court is not required to state
38 on the record a reason for granting or denying a traffic violator school request.

Advisory Committee Comment

Subdivision (c)(3). Rule 4.104(c)(3) reflects court rulings in cases where defendants wished to plead not guilty and have the court order attendance of traffic violator school if found guilty after trial. A court has discretion to grant or not grant traffic violator school. (*People v. Schindler* (1993) 20 Cal.App.4th 431, 433; *People v. Levinson* (1984) 155 Cal.App.3d Supp. 13, 21.) However, the court may not arbitrarily refuse to consider a request for traffic violator school because a defendant pleads not guilty. (*Schindler, supra*, at p. 433; *People v. Wozniak* (1987) 197 Cal.App.3d Supp. 43, 44; *People v. Enochs* (1976) 62 Cal.App.3d Supp. 42, 44.) If a judicial officer believes that a defendant's circumstances indicate that a defendant would benefit from attending school, such attendance should be authorized and should not be affected by the order in which the plea, explanation, and request for traffic violator school are presented. (*Enochs, supra*, at p. 44.) A court is not required to state its reasons for granting or denying traffic violator school following a defendant's conviction for a traffic violation. (*Schindler, supra*, at p. 433.)

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Traffic: Statewide Criteria for Eligibility to Attend Traffic Violator School
(amend Cal. Rules of Court, rule 4.104 [formerly rule 851])

	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
1.	Hon. Kim Baskett Referee Superior Court of Santa Cruz County, Santa Cruz	A	N	Agree.	None.
2.	Hon. Mark S. Borrell Superior Court of Ventura County, Ventura	A	Y	Agree.	None.
3.	Janet Garcia Court Manager Planning and Research Unit Superior Court of Los Angeles County, Los Angeles	A	Y	Agree.	None.
4.	Tressa S. Kentner Executive Officer Superior Court of San Bernardino County, San Bernardino	A	N	Agree.	None.
5.	Sylvia Lautsch Operations Manager Superior Court of Marin County, San Rafael	A	Y	Agree.	None.
6.	Nelson Lu Deputy Public Defender San Joaquin County Public Defender's Office Stockton	A	Y	Agree.	None.
7.	Debra Meyers Chief of Staff Counsel Services Superior Court of San Bernardino County, San Bernardino	A	N	Agree.	None.

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	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
8.	Julie M. McCoy President Orange County Bar Association Irvine	A	N	Agree.	None
9.	Jill Ramirez Program Manager Superior Court of Solano County, Fairfield	A	Y	Agree.	None
10.	Michael M. Roddy Executive Officer Superior Court of San Diego County, San Diego	A	Y	Agree.	None.
11.	Francisco Rodriguez Attorney at Law Berkley	AM	N	Can we please add that a person who has attended traffic school in the past 18 months can go to 12 hour school at discretion of the Judge by adding the following language in brackets to section 4.104(c)(2) (formerly rule 851(c)(2)): "If a violation occurs within 18 months of a previous violation" [and the defendant previously attended an 8 hour traffic school]", a judicial officer may order a continuance and dismissal in consideration for completion of a licensed program as specified in Vehicle Code section 41501(a).	Agree in part. Vehicle Code section 41501(a) does not specify the length of the traffic school program attended for a previous dismissal. Section 41501(a) also does not require that a 12-hour program be licensed, only that the program be provided by a licensed school for traffic violators. Accordingly, the committee recommends amendment of rule 4.104(c)(2) (formerly rule 851(c)(2)) as follows: "If a violation occurs within 18 months of a previous violation <u>that was dismissed under Vehicle Code section 41501(a)</u> , a judicial officer may order a continuance and dismissal in consideration for completion of a <u>licensed program at a licensed school for traffic violators</u> as specified in Vehicle Code section 41501(a). . . ."
12.	Hon. Deborah M. Talmage	A	N	Agree.	None.

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(amend Cal. Rules of Court, rule 4.104 [formerly rule 851])

	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
	Commissioner Superior Court of Santa Barbara County, Santa Barbara				
13.	Hon. Patricia H. Wong Commissioner Superior Court of Sacramento County, Sacramento	AM	N	Suggests amending the first sentence of rule 4.104(c)(1) (formerly rule 851(c)(1)) to state: “A judicial officer may in his or her discretion order attendance at a traffic violator school in an individual case for diversion under Vehicle Code sections 41501(a) and (b) or 42005(b), for sentencing under Vehicle Code section 42005(a), or for any other purpose permitted by law.”	Agree, in part. To improve clarity, the committee recommends the following amendment: “A judicial officer may in his or her discretion order attendance at a traffic violator school in an individual case for diversion under Vehicle Code section 41501(a), 41501(b) , or 42005(b); sentencing under Vehicle Code section 42005(a); or any other purpose permitted by law.”