

JUDICIAL COUNCIL OF CALIFORNIA
ADMINISTRATIVE OFFICE OF THE COURTS
455 Golden Gate Avenue
San Francisco, California 94102-3688

Report

TO: Members of the Judicial Council

FROM: Policy Coordination and Liaison Committee
Marvin R. Baxter, Chair
Traffic Advisory Committee
John H. Tiernan, Chair
June Clark, Senior Attorney, Office of Governmental Affairs,
916-323-3121, june.clark@jud.ca.gov

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SUBJECT: Traffic Citations: Enforcement of Unsigned "Owner Responsibility" Traffic Citations When the Cited Persons Fail to Appear (Veh. Code, §§ 40002 and 40002.1) (Action Required)

Issue Statement

Courts are currently unable to dispose of a significant portion of traffic cases resulting from the vehicle owner's failure to appear in response to an unsigned owner-responsibility Notice to Appear citation. This is because, under current law, certain violations of the Vehicle Code can be the responsibility of a vehicle owner rather than (or in addition to) the vehicle's driver. Because these citations are issued in the owner's absence, the violator does not sign a "Promise to Appear," as is the case with most traffic citations. Typical examples of this occur at truck scales, where citations may be issued because the vehicle is not properly equipped or is out of compliance with size, weight, or load provisions. These requirements are the responsibility of the owner, not the driver, and the law enforcement officer will issue the citation and mail a copy of the Notice to Appear to the owner.

Existing law provides that a duplicate citation filed with the court is a complaint for purposes of a guilty plea. If, however, the defendant fails to appear in court or does not deposit bail, the district attorney must file a separate formal complaint so that the court may proceed with the case. If the district attorney fails to take action, the court is unable to dispose of the case.

Recommendation

The Policy Coordination and Liaison Committee and the Traffic Advisory Committee recommend that the Judicial Council sponsor legislation to amend sections 40002 and 40002.1 of the Vehicle Code to allow the court, after proper notice to the violator, to report a failure to appear on an unsigned citation issued for an owner-responsibility offense to the Department of Motor Vehicles (DMV) for a hold on the registration of the vehicle involved in the offense. To ensure due process rights are protected, the committee recommends that the vehicle owner be given 21 rather than 10 days to respond to the citation.

The text of the proposed legislation is attached at page 4.

Rationale for Recommendation

When a person fails to appear in response to a signed Notice to Appear, the court may issue an arrest warrant. (See Veh. Code, § 40515; Pen. Code, § 853.8.) After an owner's failure to appear in response to an *unsigned* Notice to Appear, however, current law prohibits a court from imposing the sanction of either a hold on registration or an arrest warrant against the owner until the district attorney has filed a complaint. (See Veh. Code, § 40002.) This leaves the court with unenforceable orders to appear that it can never dispose of. Statewide data are not available to show how many citations go unenforced. The problem appears more pronounced in counties with California Highway Patrol-run truck scales. The Superior Court of Orange County was able to identify that 34 percent (1,134 of 2,925) of its unsigned owner-responsibility citations in 2005 failed to appear.

The Policy Coordination and Liaison Committee and Traffic Advisory Committee believe that it is inappropriate to allow orders to go unenforced, especially when no new information is provided by the formal complaint; the district attorney's complaint includes the same information that is on the citation. Due process rights are protected because it would still be necessary for a formal complaint to be filed before the court would be authorized to issue an arrest warrant for a failure to appear, but this proposal would give the court an alternative method to attempt to enforce the order to appear and dispose of the case in the absence of a formal complaint. The committees believe that with care taken to protect the violator's due process rights—in this case, by providing notice to the violator—it is appropriate to allow the court to take the narrow action of notifying DMV to place a registration hold in order to enforce the notice to appear.

The committees also recommend that the response time be extended from 10 to 21 days. Ten days may be adequate time to protect the violator's due process rights when the violator is handed the ticket. Here, however, the violator is not present when the citation is issued and may not become aware of it until receiving the mailed notice. Therefore, the committee believes that 21 days provides more reasonable due process and will help avoid unnecessary default judgments.

Alternative Actions Considered

The Traffic Advisory Committee initially considered recommending that the Vehicle Code be amended to allow the court to issue an arrest warrant and/or notify the DMV to place a hold on the owner's registration. The committee was concerned, however, that if no notice were issued to the owner-violator who had never signed the Notice to Appear, the procedure would not provide adequate due process protections. The committee was especially concerned about issuance of an arrest warrant in these circumstances. After review and consideration, the committee agreed that, *upon notice to the owner*, a registration hold was a narrower, less-severe sanction that properly balanced the court's interest in enforcing its orders with the need to protect the violator's due process rights.

Comments From Interested Parties

The Department of Motor Vehicles representative on the Traffic Advisory Committee indicated preliminarily that the registration hold would be feasible. The department has not yet taken any formal action on the proposal. This proposal has not been circulated for comment.

Implementation Requirements and Costs

N/A

Attachment

Vehicle Code sections 40002 and 40002.1 would be amended to read:

1 **§ 40002.**

- 2 (a) Whenever a written notice to appear citation has been mailed to an owner of a
3 vehicle or other person referred to in Section 40001, an exact and legible duplicate
4 copy of the ~~notice~~ citation when filed with the magistrate, in lieu of a verified
5 complaint, is a complaint to which the defendant may plead "guilty." When notice
6 of the complaint or citation is given as prescribed by Section 22, registration of the
7 vehicle involved in the offense may be precluded as specified in subdivision (c).
8 ~~If, however, the defendant fails to appear in court or does not deposit lawful bail, or~~
9 ~~pleads other than "guilty" of the offense charged, a complaint shall be filed which~~
10 ~~shall conform to Chapter 2 (commencing with Section 948) of Title 5 of Part 2 of~~
11 ~~the Penal Code, and which shall be deemed to be an original complaint, and~~
12 ~~thereafter proceedings shall be had as provided by law, except that a defendant may,~~
13 ~~by an agreement in writing, subscribed by the defendant and filed with the court,~~
14 ~~waive the filing of a verified complaint and elect that the prosecution may proceed~~
15 ~~upon a written notice to appear.~~
16 (b) A warrant of arrest shall not be issued against an owner of a vehicle or other person
17 referred to in Section 40001 following the filing of a complaint or notice to appear
18 citation for an offense under that section if the owner or person was not driving the
19 vehicle involved unless the owner or other person is given notice of the offense
20 charged in a form which conforms to Chapter 2 (commencing with Section 948) of
21 Title 5 of Part 2 of the Penal Code, and is deemed to be an original complaint, and is
22 informed that unless he or she appears in the court designated in the notice within 10
23 21 days after service of the notice and answers the charge renewal of registration of
24 ~~the vehicle involved in the offense may be precluded or a warrant may be issued~~
25 ~~against him or her. The notice shall be given as prescribed by Section 22.~~
26 (c) Registration of the vehicle involved in the offense referred to in Section 40001 may
27 not be precluded following the filing of a complaint or citation, as specified in
28 subdivision (a), unless the owner or other person referred to in Section 40001 is
29 given notice of the offense charged, as provided in Section 22, and is informed that
30 unless he or she appears in the court designated in the notice within 21 days after
31 service of the notice and answers the charge, or pays the applicable fine and
32 penalties, renewal of registration of the vehicle involved in the offense may be
33 precluded by the department.

34
35 **§ 40002.1.**

- 36 (a) Whenever any person has failed to appear in the court designated in the notice
37 specified in ~~subdivision (b)~~ of Section 40002, following personal service of the
38 notice or deposit in the mail pursuant to Section 22, the magistrate or clerk of the
39 court may give notice of that fact to the department. Whenever thereafter the matter
40 is adjudicated, including a dismissal of the charges upon forfeiture of bail or
41 otherwise, the magistrate or clerk of the court hearing the matter shall immediately

1 (1) endorse a certificate to that effect, (2) provide the person or the person's attorney
2 with a copy of the certificate, and (3) transmit a copy of the certificate to the
3 department.
4 (b) No notice of noncompliance may be transmitted to the department pursuant to
5 subdivision (a) if a warrant of arrest has been issued on the same offense pursuant to
6 subdivision (b) of Section 40002. No warrant of arrest may be issued pursuant to
7 subdivision (b) of Section 40002 if a notice of noncompliance has been transmitted
8 to the department on the same offense pursuant to this section, except that, when a
9 notice has been received by the court pursuant to subdivision (c) of the Section 4766
10 or recalled by motion of the court, a warrant may then be issued.