

**JUDICIAL COUNCIL OF CALIFORNIA
ADMINISTRATIVE OFFICE OF THE COURTS**

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Report

TO: Members of the Judicial Council

FROM: Policy Coordination and Liaison Committee
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Traffic Advisory Committee
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DATE: October 27, 2005

SUBJECT: Traffic/Nontraffic Citations: Electronic Submission of Notice to Appear
Forms (Pen. Code, § 959.1) (Action Required)

Issue Statement

Penal Code section 959.1, which allows law enforcement agencies to electronically submit notice to appear (NTA) citation forms to the courts, contains outdated references to parking citations and outdated provisions regarding electronic signatures and the electronic submission of citations for Vehicle Code violations. The prevalence of handwritten NTA forms reduces the efficiency of judicial administration by increasing the data entry workload of the courts, thereby prolonging delivery and processing time. There is also a greater likelihood of legibility and completeness issues with handwritten notices.

Recommendation

The Policy Coordination and Liaison Committee and the Traffic Advisory Committee recommend that the Judicial Council sponsor legislation to update and clarify the law regarding the standards for electronic submission of notice to appear forms by amending Penal Code section 959.1 to (1) expressly authorize electronic submission of NTA citations for nonparking Vehicle Code violations, (2) require that electronic NTA citations include a digitized signature of the defendant, and (3) exempt electronic NTA citations from existing subscription requirements that apply to the citing officer.

The text of the proposed legislation is attached at pages 4–5.

Rationale for Recommendation

Standardizing the electronic submission of notice to appear forms will (1) improve the efficiency of judicial administration by reducing the data entry workload of the courts, (2) reduce delivery and processing time, and (3) remove the issues of legibility and completeness that occur in handwritten NTAs.

The Judicial Council is authorized to prescribe the form of NTA citations that are issued when a person is arrested for a violation of the Vehicle Code. (Veh. Code, § 40500(b).) Penal Code section 853.9 further authorizes the council to approve NTAs for nontraffic offenses. If verified by the issuing officer, a Judicial Council NTA form constitutes a valid complaint. (Veh. Code, § 40513(b); Pen. Code, § 853.9.) Penal Code section 959.1 authorizes electronic submission of NTAs.

The proposed amendments, which are technical in nature, address the following four issues. First, Penal Code section 959.1(c)(4) currently authorizes courts to receive a notice of parking violation or NTA submitted under article 3 (commencing with § 40200) of chapter 1 of division 17 of the Vehicle Code. However, article 3 was amended in 1993 to decriminalize parking violations and remove them from the courts' jurisdiction. Courts no longer have authority to process and adjudicate parking citations, except on appeal. Second, section 959.1 does not provide express authority for courts to receive electronic NTAs for nonparking Vehicle Code violations. The proposed amendments resolve both of these problems by deleting the outdated references to parking violations and adding express authority for citing nonparking violations of the Vehicle Code.

Third, because section 959.1 was adopted in 1988, it does not require electronic signatures from either the citing officer or defendant. Now that the technology for digitized signatures is available, section 959.1 should be amended to specify that, when transmitted in electronic form, the NTA form satisfies any requirements that the defendant sign it if the transmission includes a digitized facsimile of the defendant's signature. This proposed amendment conforms section 959.1 with current technology and is consistent with the existing practice of the California Highway Patrol. Other law enforcement agencies may need to reprogram their electronic citation systems accordingly.

Fourth, under Penal Code section 853.9 and Vehicle Code section 40513, handwritten NTAs serve as a complaint if verified on a form approved by the Judicial Council. Under Code of Civil Procedure section 2015.5, verification requires the issuing officer to subscribe the NTA under penalty of perjury. The proposed amendments would specify that an electronically filed NTA would not require subscription by the citing officer if the citing officer declares which parts of the NTA are verified and provides his or her name in the declaration. Again, the California Highway Patrol has already instituted this approach, but other agencies may need to reprogram their systems.

This proposal is consistent with the efforts of the Judicial Council's Court Technology Advisory Committee to develop and implement data transfer standards. Section 959.1(d)(2) of the proposed statute simply requires that the data elements of an electronic

NTA be submitted in a form that the court is able to receive, electronically store, and reproduce. Any data transfer standards adopted by the courts can be added at a subsequent time.

Alternative Actions Considered

No alternative actions were considered because the controlling code section presently contains outdated statutory references and omits necessary cross-references to relevant statutory provisions. Because of these deficiencies, the statute should be amended to provide effective authority to continue the current practices for processing electronic NTAs.

Comments From Interested Parties

The proposed amendment of Penal Code section 959.1 was circulated for statewide comment in the spring cycle. Nine comments were received. Six respondents agreed with the proposed amendments, while three suggested changes. A chart of the comments and the committee's responses is attached at pages 6–9. Two principal comments are discussed below.

The Superior Court of San Diego County requested changes to clarify under what circumstances an electronic NTA is considered filed with a court. Proposed subdivision (d)(3) was amended in response to this comment to state that: “A notice to appear that is received under this subdivision is deemed to have been filed when it has been accepted by the court and is in the form approved by the Judicial Council.”

The Superior Court of Orange County requested changes to clarify that electronic submission of an NTA requires that the court must be able to reproduce a printed copy of the electronic NTA form. Proposed subdivision (d)(2) was amended in response to this comment to specify that for an NTA to be submitted to a court in electronic form, a condition is that the court must have the ability to reproduce the electronic NTA and data elements in printed form.

Implementation Requirements and Costs

The proposed changes impose no specific implementation costs on the courts. Each court can choose whether to authorize submission of electronic NTAs based on its ability to cover the cost of such a process. There are also no costs imposed on the California Highway Patrol, which already uses a system for electronic submission of NTAs that complies with the proposal. Other law enforcement agencies may need to reprogram their systems for electronic submission of NTAs in order to comply with the proposed requirements.

Attachments

Penal Code section 959.1 would be amended as follows:

1 **§ 959.1.**

2 (a) Notwithstanding Sections 740, 806, 949, and 959 or any other provision of the law
3 to the contrary, a criminal prosecution may be commenced by filing an accusatory
4 pleading in electronic form with the magistrate or in a court having authority to
5 receive it.

6 (b) As used in this section, accusatory pleadings include, but are not limited to, the
7 complaint, the information, and the indictment., ~~and any citation or notice to~~
8 ~~appear issued on a form approved by the Judicial Council.~~

9 (c) A magistrate or court is authorized to receive and file an accusatory pleading in
10 electronic form if all of the following conditions are met:

11 (1) The accusatory pleading is issued in the name of, and transmitted by, a public
12 prosecutor or law enforcement agency filing pursuant to Chapter 5c
13 (commencing with Section 853.5) or Chapter 5d (commencing with Section
14 853.9), or by a clerk of the court with respect to complaints issued for the
15 offenses of failure to appear, pay a fine, or comply with an order of the court.

16 (2) The magistrate or court has the facility to electronically store the accusatory
17 pleading for the statutory period of record retention.

18 (3) The magistrate or court has the ability to reproduce the accusatory pleading
19 in physical form upon demand and payment of any costs involved.

20 An accusatory pleading shall be deemed to have been filed when it has been
21 received by the magistrate or court.

22 When transmitted in electronic form, the accusatory pleading shall be exempt
23 from any requirement that it be subscribed by a natural person. It is sufficient
24 to satisfy any requirement that an accusatory pleading, or any part of it, be
25 sworn to before an officer entitled to administer oaths, if the pleading, or any
26 part of it, was in fact sworn to and the electronic form indicates which parts
27 of the pleading were sworn to and the name of the officer who administered
28 the oath.

29 ~~(4)~~(d) Notwithstanding any other provision of law, ~~a notice of parking violation or~~
30 ~~a notice to appear issued on a form approved by the Judicial Council~~ may be
31 received and filed by a court in electronic form, if the following conditions
32 are met:

33 ~~(A)~~(1) The ~~notice of parking violation to appear~~ is issued and transmitted
34 by a law enforcement agency prosecuting pursuant to ~~Article 3 (commencing~~
35 ~~with Section 40200) of Chapter 5c (commencing with Section 853.5),~~
36 Chapter 5d (commencing with Section 853.9), or Chapter 42 of Division 17
37 of the Vehicle Code (commencing with Section 40300).

38 ~~(B)~~(2) The court has (a) the ability to receive the notice to appear in
39 electronic format; (b) the facility to electronically store an electronic copy
40 and the data elements of the notice of parking violation to appear for the
41 statutory period of record retention; and (c) the ability to reproduce the
42 electronic copy of the notice to appear and those data elements in printed
43 form upon demand and payment of any costs involved.

1 ~~(C)~~(3) The issuing agency has the ability to reproduce the notice of parking
2 ~~violation to appear~~ in physical form upon demand and payment of any costs
3 involved, as provided in Section 40206.5 of the Vehicle Code.

4 A notice to appear that is received under this subdivision is deemed to have been
5 filed when it has been accepted by the court and is in the form approved by the
6 Judicial Council.

7 When transmitted in electronic form, the notice to appear is deemed to have been
8 signed by the defendant if it includes a digitized facsimile of the defendant's
9 signature on the notice to appear. A notice to appear filed electronically under this
10 subdivision need not be subscribed by the citing officer. An electronically
11 submitted notice to appear need not be verified by the citing officer with a
12 declaration under penalty of perjury if the electronic form indicates which parts of
13 the notice are verified by such a declaration and the name of the officer making
14 the declaration.

LEG 05-06

Legislative Proposal: Traffic/Nontraffic Citations (amend Pen. Code, § 959.1)

	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
1.	Superior Court of California, County of Los Angeles Los Angeles, California (commentator name unknown)	A	N	Agree with proposed changes.	None.
2.	Traffic Managers Superior Court of California, County of Orange Santa Ana, California	AM	Y	Change the word “reproduce” in line 16 and line 39 to “produce”. This will enable courts to provide exact data elements upon demand, without producing an exact replica of the form.	Disagree. Penal Code section 959.1(c)(3), as amended, applies only to accusatory pleadings, as defined in section 959.1(b), which does not include a notice to appear form. Courts need to be able to reproduce the accusatory pleading itself, not data elements.
3.	Hon. Mark S. Borrell Commissioner Superior Court of California, County of Ventura Ventura, California	A	N	Agree with proposed changes.	None.
4.	Ms. Linda A. Gorham Court Manager Superior Court of California, County of San Francisco San Francisco, California	A	N	Agree with proposed changes.	None.
5.	Mr. Stephen V. Love Executive Officer Superior Court of California, County of San Diego San Diego, California	AM	Y	The following comments were received from our court’s executives, manager, and/or supervisors: 1. If a citation is considered filed when received by the magistrate or court, what happens with citations that cannot be entered into the system because of deficiencies and are sent back to the officer for correction? Is it “unfiled” or “refiled”? Should not Penal Code section 959.1 be amended to provide that the citation be considered “received” and then considered “filed” when the electronic citation is actually accepted by the Court?	1. Agree, in part. Section 959.1(d) specifies that an electronic notice to appear form that is issued on a form approved by the Judicial Council may be received and filed by a court. If an electronic notice to appear omits data that is mandatory on an approved council form, it does not satisfy the council’s requirements and therefore the document is not “filed” according to section 959.1. In order to clarify the requirements, subdivision (d)(3) is amended to specify: “A notice to appear that is received under this subdivision is deemed to have been filed when it is accepted by the court and is in the form approved by the Judicial Council.”

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				<p>2. Do you anticipate a problem with the electronic form needing to indicate which part of the citation is verified by an officer's declaration? Does this mean any additional documents?</p>	<p>2. On the notice to appear forms approved by the Judicial Council the officer declares that "the foregoing is true and correct." By attesting to that language, the information that appears before the officer's declaration is verified by the officer to be true and correct. Since section 959.1 requires that the citation form can be reproduced, there is no need to create a separate form for the officer's declaration and the circulated proposal does not need to be revised to address this comment.</p>
6.	<p>Hon. Glenn A. Mahler, Judge Ms. Lynn Branch, Executive Director Superior Court of California, County of Orange Santa Ana, California</p>	AM	Y	<p>PC 959.1(c)(2) reflects that the court must have the facility to electronically store the accusatory pleading, however, subdivision(d)(2) reflects that for a notice to appear, the court need only store the data elements contained in a citation. Simply transmitting a stream of data without transmitting an electronic copy of the citation will not allow the court to ascertain if the current version of a citation form was used, if the form contains all of the required fields, or if a citation form was even prepared.</p> <p>Subdivision(d)(2)also reflects the court's ability to produce the data elements in printed form upon demand. If there is no requirement to store the actual notice to appear, then only the data elements will reproduced on paper for the judicial officer, violator, or other interested party. As noted above, that will not be sufficient to determine if a violator was ever issued a notice to appear.</p> <p>Subdivision (d)(3)reflects that a notice to appear filed under this subdivision shall be deemed to have been filed when it is received by the magistrate or court. However, this appears to</p>	<p>Agree, in part. Section 959.1 provides for different requirements for electronic submission of (1) an "accusatory pleading" other than a notice to appear and (2) a notice to appear issued on a form approved by the Judicial Council.</p> <p>For an accusatory pleading, the section requires that the court has the ability to reproduce the pleading, but not data elements, which are not considered necessary to receive such documents. For a notice to appear citation form, the courts need transmission of discreet data elements in order to automatically populate extensive case management system records without further manual data entry. The ability to electronically reproduce the form, by itself, would not necessarily provide a means to automatically populate the case management system records.</p> <p>Subdivision (d)(3) requires that the issuing agencies are able to reproduce the issued form. Subdivision (d)(2) requires that the court has the ability to receive the form in electronic format and produce the data elements of the</p>

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				<p>contradict (d)(2) as there will be no notice to appear filed, only a stream of data elements received in electronic form.</p> <p>Subdivisions(a),(b),and (c), pertaining to accusatory pleadings, is well written and clearly requires that the accusatory pleading must be filed with the court and stored by the court. Subdivision (d), pertaining to citations, appears only to require that data elements be received and stored by the court. It is recommended that subdivision (d) more closely resemble the requirements set forth in subdivisions (a), (b), and (c).</p>	<p>electronic format in printed form. It is possible to interpret the language to authorize courts to either print a form that follows the electronic format of the submission or print the data elements of the form without regard to the format.</p> <p>The comment provides good reasons for requiring that the courts be able to reproduce the form in addition to the issuing agency. For reasons discussed above, the courts also need to capture discreet data elements of the form. To address both concerns, subdivision (d)(2) should be revised as follows: “<u>The court has (a) the ability to receive the notice to appear in electronic format; (b) the facility to electronically store an electronic copy and the data elements of the notice of parking violation to appear for the statutory period of record retention; and (c) the ability to reproduce the electronic copy of the notice to appear and those data elements in printed form upon demand and payment of any costs involved.</u>”</p> <p>As a practical matter, the California Highway Patrol (CHP) has conducted a model pilot program of an electronic citation program in Ventura County. The CHP program is currently able to transmit both an electronic copy of the form and the data elements of the form. The recommended changes are consistent with the capabilities of the CHP system and would not require modification of the CHP system.</p>

LEG05-06**Legislative Proposal: Traffic/Nontraffic Citations (amend Pen. Code, § 959.1)**

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7.	Ms. Jill Ramirez Program Manager Superior Court of California, County of Solano Fairfield, California	A	N	Agree with proposed changes.	None.
8.	Ms. Karen Richardson Assistant Executive Officer Superior Court of California. County of Marin San Rafael, California	A	N	Agree with proposed changes.	None.
9.	Mr. Dean Zipser President Orange County Bar Association	A	N	Agree with proposed changes.	None.