



Judicial Council of California . Administrative Office of the Courts

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on: June 24, 2011

Title	Agenda Item Type
Traffic: Procedures and eligibility criteria for attending traffic violator school	Action Required
Rules, Forms, Standards, or Statutes Affected	Effective Date
Amend Cal. Rules of Court, Rule 4.104	July 1, 2011
Recommended by	Date of Report
Traffic Advisory Committee	March 10, 2011
Hon. Deborah A. Ryan, Chair	Contact
	Mr. Courtney Tucker, 415-865-7611 courtney.tucker@jud.ca.gov

Executive Summary

The Traffic Advisory Committee recommends amending rule 4.104 of the California Rules of Court regarding procedures and eligibility criteria for attending traffic violator school. The amendments bring the rule into conformance with recent legislation that amends Vehicle Code sections 41501 and 42005 effective July 1, 2011.

Recommendation

The Traffic Advisory Committee recommends that the Judicial Council, effective July 1, 2011, amend rule 4.104 to:

1. Remove references to pretrial diversion that are no longer applicable, effective July 1, 2011, when completion of traffic violator school will be reported to and recorded by DMV as a confidential conviction under sections 1803.5, 41501, and 42005.
2. Clarify the extent of judicial discretion to order a completion of traffic violator school under sections 41501 and 42005.

3. Remove provisions for authority of bench officers to order completion of traffic violator school under section 41501 more than once in an 18-month period. Effective July 1, 2011, a confidential conviction for completion of traffic violator school is permitted under section 41501 only once every 18 months.

The proposed rule is attached at pages 4–6.

Previous Council Action

The Judicial Council adopted former rule 851, effective January 1, 1997, to standardize procedures for processing requests for dismissal of traffic infractions upon completion of traffic violator school. Former rule 851 was amended effective January 1, 1998, July 1, 2001, January 1, 2003, and September 20, 2005; and amended and renumbered as rule 4.104, effective January 1, 2007. The amendments were made primarily to follow changes in the law regarding eligibility for a dismissal of infraction offenses upon completion of traffic violator school. Most recently, the rule was changed to reflect that drivers with a commercial license and drivers of a commercial vehicle were no longer eligible to receive a dismissal under sections 41501 and 42005 for completion of traffic violator school.

Rationale for Recommendation

Vehicle Code sections 41501 and 42005 govern eligibility to attend traffic violator school for an infraction violation of the Vehicle Code. Among other things, Assembly Bill 2499 (Stats. 2010, ch. 599) amended those Vehicle Code sections, effective July 1, 2011, to change court procedures for attendance and completion of traffic violator school from a pretrial diversion and dismissal of charges to reporting of a conviction that is recorded as confidential in the records of the Department of Motor Vehicles (DMV). Sections 41501 and 42005 currently authorize courts, in lieu of adjudicating certain traffic offenses, to order or permit the defendant in certain cases to attend traffic violator school and upon completion, dismiss the charges. Effective July 1, 2011, sections 41501 and 42005 have been revised and recast and instead would authorize courts to order or permit the defendant to attend traffic violator school and, upon completion, report a conviction that DMV will record as confidential.

Amendments to rule 4.104, effective July 1, 2011, include the following changes to follow the new law on procedures and criteria for eligibility to attend traffic violator school in traffic infraction cases: references to pretrial diversion that are no longer applicable are removed to be consistent with statutory amendments in AB 2499, which require that completion of traffic violator school be reported to and recorded by DMV as a confidential conviction; current section (c)(1) is amended to further clarify the extent of judicial discretion to order a completion of traffic violator school under sections 41501 and 42005; and current section (c)(2) of rule 4.104 is deleted to remove the provision to order completion of traffic violator school under section 41501 more than once in an 18-month period, as a confidential conviction for completion of traffic violator school will be permitted only once every 18 months under section 41501.

Comments, Alternatives Considered, and Policy Implications

Proposed rule 4.104 was circulated for statewide comment from January 28 to March 4, 2011. Five individuals or organizations submitted comments. Three agreed with the proposed changes, one did not indicate a position, and one did not agree.

The comment chart and the committee's responses are attached at pages 7–9. In general, the comments relate to issues that are outside the scope of the proposed rule and do not relate to the proposed amendments. Issues raised by the comments regarding statutory changes in AB 2499 that are outside the scope of the proposed rule will be referred, where appropriate, to the Traffic Advisory Committee for future consideration. One comment about the effect of AB 2499 on court procedures for reporting traffic violator school cases to DMV acknowledges that DMV will comply with the new law by accepting the same case abstract reporting from courts as before and updating driving records maintained by DMV to reflect a confidential conviction as required.

No alternatives were considered. Amendment of rule 4.104 is necessary to follow amendment of Vehicle Code sections 41501 and 42005, effective July 1, 2011.

Implementation Requirements, Costs, and Operational Impacts

Courts will need to (1) reprogram court case management systems to properly maintain court records of convictions for completion of traffic violator school, (2) update traffic courtesy notices to properly advise defendants of confidential convictions for completion of traffic violator school, and (3) provide training for court staff and bench officers regarding requests to attend traffic violator school. Courts will be able to use the existing programming and case abstract reporting process for DMV.

Relevant Strategic Plan Goals and Operational Plan Objectives

Adoption of amended rule 4.104 supports Strategic Plan Goal III, Modernization of Management and Administration, and Operational Plan Objective III.5, Develop and implement effective trial and appellate case management rules, procedures, techniques, and practices to promote the fair, timely, consistent, and efficient processing of all types of cases.

Attachments

- A. California Rules of Court, rule 4.104, at pages 4–6.
- B. Chart of comments, at pages 7–9.

Rule 4.104 of the California Rules of Court would be amended effective July 1, 2011, to read:

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~~ a request to attend traffic**
9 **violator school**

10
11 (1) *Eligible offenses*

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

19
20 (2) *Ineligible offenses*

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

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

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

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

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

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

- 1 (F) A violation on which the defendant has failed to appear under Penal
2 Code section 1214.1 unless the civil monetary assessment has been
3 paid;
4
- 5 (G) A speeding violation in which the speed alleged is more than 25 miles
6 over a speed limit as stated in Chapter 7 (commencing with section
7 22348) of Division 11 of the Vehicle Code;
8
- 9 (H) A violation that occurs in a commercial vehicle as defined in Vehicle
10 Code section 15210(b); and
11
- 12 (I) A violation by a defendant having a class A, class B, or commercial
13 class 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) or 42005~~(b); sentencing under Vehicle Code section 42005(a); or~~
20 ~~for~~ any other purpose permitted by law. A ~~violation by a~~ defendant having a
21 class A, class B, or commercial class C driver's license or charged with a
22 violation that occurs in a commercial vehicle, as defined in Vehicle Code
23 section 15210(b), is not eligible for diversion to attend traffic violator school
24 under Vehicle Code sections 41501 or 42005.
25
- 26 (2) ~~If a violation occurs within 18 months of a previous violation that was~~
27 ~~dismissed under Vehicle Code section 41501(a), a judicial officer may order~~
28 ~~a continuance and dismissal in consideration for completion of a program at a~~
29 ~~licensed school for traffic violators as specified in Vehicle Code section~~
30 ~~41501(a). The program must consist of at least 12 hours of instruction as~~
31 ~~specified in section 41501(a). Under Vehicle Code section 1808.7, a~~
32 ~~dismissal for completion of the 12-hour program under this subdivision is not~~
33 ~~confidential.~~
34
- 35 (3) A defendant who is otherwise eligible for traffic violator school is not made
36 ineligible by entering a plea other than guilty or by exercising his or her right
37 to trial. A traffic violator school request must be considered based on the
38 individual circumstances of the specific case. The court is not required to
39 state on the record a reason for granting or denying a traffic violator school
40 request.
41

Advisory Committee Comment

1
2
3 **Subdivision (c)(3)(2).** Rule 4.104(c)(3)(2) reflects court rulings in cases where defendants
4 wished to plead not guilty and have the court order attendance of traffic violator school if found
5 guilty after trial. A court has discretion to grant or not grant traffic violator school. (*People v.*
6 *Schindler* (1993) 20 Cal.App.4th 431, 433; *People v. Levinson* (1984) 155 Cal.App.3d Supp. 13,
7 21.) However, the court may not arbitrarily refuse to consider a request for traffic violator school
8 because a defendant pleads not guilty. (*Schindler*, supra, at p. 433; *People v. Wozniak* (1987) 197
9 Cal.App.3d Supp. 43, 44; *People v. Enochs* (1976) 62 Cal.App.3d Supp. 42, 44.) If a judicial
10 officer believes that a defendant's circumstances indicate that a defendant would benefit from
11 attending school, such attendance should be authorized and should not be affected by the order in
12 which the plea, explanation, and request for traffic violator school are presented. (*Enochs*, supra,
13 at p. 44.) A court is not required to state its reasons for granting or denying traffic violator school
14 following a defendant's conviction for a traffic violation. (*Schindler*, supra, at p. 433.)

SP11-01

Procedures and Eligibility Criteria for Attending Traffic Violator School

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
1.	Gerald H. Genard Danville, California	N	The rules should not follow the case that relieves "judicial officers" of having to state on the record the reasons for denial of traffic school. Our courts have been put on notice more than once that courts must earn the respect of the public-there is no automatic entitlement to it. A rule which allows courts to keep secret the reasons for denial of a request for traffic school is the type of rule which breeds disrespect. Such a rule also increases the difficulty of an appellate review for abuse of discretion.	The comment goes beyond the scope of the current proposal to amend rule 4.104 to follow changes in law enacted by AB 2499. The comment will be considered by the Traffic Advisory Committee in the future to determine whether any further changes should be recommended by rule or legislation.
2.	Superior Court of Los Angeles County Los Angeles, California	A	DMV will need to send out statewide notice to all courts and bench officers informing them that effective July 1, 2011 the DMV will no longer honor any 12-hour traffic school requests.	The committee referred the comment to the Department of Motor Vehicles (DMV) for its attention. The DMV has responded that it will send additional Court Informational Memos regarding all changes that affect the courts (including information regarding the 12-hour traffic school requests) for implementation of AB 2499. In addition to the Court Informational Memos, the DMV will host a series of additional webinars to clarify questions and procedures on implementation of AB 2499.
3.	Superior Court of Napa County by Jodi Leveque Court Division Supervisor Criminal, Minor Offense, Post Court Services Napa, California	A	No specific comment.	No response required.

SP11-01

Procedures and Eligibility Criteria for Attending Traffic Violator School

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	Commentator	Position	Comment	Committee Response
4.	Superior Court of Sacramento County by Robert Turner, ASO II Sacramento, California	NI	<p>The Superior Court of California, County of Sacramento has reviewed the proposed Procedures and Eligibility Criteria for Attending Traffic Violator School (SP11-01) and has the following comments to submit:</p> <p>Our main concerns regarding this legislative change is directed towards number one on the Invitation to Comment and proposes that upon completion of traffic violator school, the violation will be reported as a confidential conviction. Currently when a defendant completes traffic violator school, the violation is reported to DMV as a traffic school dismissal and if the defendant does not submit a completion certificate then the case is updated as a confidential conviction. I have listed the concerns below:</p> <p>(1) Modification to disposition reporting – Requiring that the disposition be entered as a conviction rather than a dismissal for all cases where a defendant elects to complete traffic violator school is a significant change in our current process that would require a modification to our case management system which would be both costly and time consuming. Other courts have expressed the same concern, so DMV has indicated that they will make the programming changes in their system so that the code that currently reports as a dismissal will report as a conviction. This will eliminate the need for any courts to modify their systems. Therefore, it appears that this issue</p>	<p>The comment goes beyond the scope of the current proposal to amend rule 4.104 to follow changes in law enacted by AB 2499. The comment will be considered by the Traffic Advisory Committee in the future to determine whether any further changes should be recommended by rule or legislation.</p> <p>1. Courts will continue to use the existing procedures for reporting case abstracts to DMV and DMV will revise its system to record reports of confidential convictions instead of dismissals.</p>

SP11-01

Procedures and Eligibility Criteria for Attending Traffic Violator School

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	Commentator	Position	Comment	Committee Response
			<p>has been addressed.</p> <p>(2) Impact on appeals – Currently a defendant cannot file an appeal when they have completed traffic violator school because this is a diversion program that results in a dismissal upon completion and not a conviction. Once these cases are reported as convictions, it will need to be determined whether or not defendants will be permitted to file an appeal if they have completed traffic violator school. We asked this question last week during a Webinar with DMV and they did not have an answer, but indicated they will research the issue and respond accordingly.</p> <p>(3) Traffic Violator School convictions as priors – The Uniform Bail and Penalty Schedule requires that the base fine for moving violations shall be enhanced by ten dollars for each “prior” conviction within 36 months of the new alleged offense. Now that these violations will be initially entered as convictions rather than dismissals, it will need to be determined whether or not these charges will be counted as priors for purposes of this enhancement. We asked this question last week during a Webinar with DMV and they did not have an answer, but indicated they will research the issue and respond accordingly.</p>	<p>2. The question of whether a defendant who receives a conviction in exchange for a court’s approval to attend traffic violator school is entitled to an appeal is outside the scope of the current proposal. The Traffic Advisory Committee will consider in the future whether legislation is needed to resolve the question raised by the comment.</p> <p>3. The question of whether a confidential conviction for completion of traffic violator school may be considered a prior conviction for enhancing the fine on a subsequent conviction is beyond the scope of the current proposal. The Traffic Advisory Committee will consider in the future whether legislation is needed to resolve the question raised by the comment.</p>
5.	Superior Court of San Diego County by Michael M. Roddy, Court Executive Officer San Diego, California	A	No specific comment.	No response required.