

JUDICIAL COUNCIL OF CALIFORNIA

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INVITATION TO COMMENT

LEG17-06

Title	Action Requested
Proposed Legislation (Traffic): Uniform Hourly Rate for Community Service in Lieu of Infraction Fine	Review and submit comments by April 28, 2017
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Amend Pen. Code, § 1209.5	January 1, 2019
Proposed by	Contact
Traffic Advisory Committee	Jamie Schechter, 415-865-5327
Hon. Gail Dekreon, Chair	jamie.schechter@jud.ca.gov

Executive Summary and Origin

The Traffic Advisory Committee proposes amending Penal Code section 1209.5 to provide a uniform rate throughout the state for converting infraction fines into community service hours. Specifically, the committee proposes a uniform hourly rate of double the California state minimum wage for community service performed in lieu of paying infraction fines. The committee developed this proposal in response to Judicial Council directives to consider recommendations to promote access to justice in all infraction cases.

Background

Penal Code section 1209.5 governs the imposition of community service in lieu of fines for infraction convictions. Section 1209.5 provides that a court may sentence a defendant to perform community service if payment of the total fine would pose a hardship on the defendant or his or her family. However, each court determines its own hourly rate for defendants who perform community service, leading to different rates throughout the state.

The Proposal

The proposed amendment is designed to provide a uniform and equitable hourly rate for community service in lieu of infraction fines throughout the state. By doing so, it is intended to promote access to justice.

Effective January 1, 2017, California has two schedules for minimum wage, depending on whether the employer has (1) 25 or fewer employees, or (2) more than 25 employees. (Lab.

The proposals have not been approved by the Judicial Council and are not intended to represent the views of the council, its Rules and Projects Committee, or its Policy Coordination and Liaison Committee. These proposals are circulated for comment purposes only.

Code, § 1182.12.) This proposal would equate the applicable community service rate to double the lowest schedule for minimum wage. The lowest schedule is set to increase to \$11 per hour in 2019, the year this proposal would go into effect. (Lab. Code, § 1182.12.) Accordingly, effective January 1, 2019, for each one hour of community service performed, a defendant would be entitled to a credit of \$22 to be deducted from his or her total fine.

Alternatives Considered

The committee considered various formulas before approving this proposal. It considered recommending a specific dollar amount for each hour or each day of community service, but determined that tying the amount to the state minimum wage would help ensure that the rate remained consistent with inflation. The committee also considered proposing only the state minimum wage for the rate of conversion, but determined that double the minimum wage would benefit more defendants for whom payment of the fine poses a hardship. Lastly, the committee considered proposing the higher of the two state minimum wages—the minimum wage for employers with more than 25 employees—but determined that the lower of the two was appropriate given that the rate is to be doubled.

The committee also considered recent legislative changes resulting from [Assembly Bill 2839](#).¹ AB 2839 added language to both Penal Code sections 1205, governing payment of fines and imprisonment for failure to pay fines, and 2900.5, governing custody credit for imprisonment for misdemeanors and felonies, stating “[i]f an amount of the base fine is not satisfied by jail credits, *or by community service*, the penalties and assessments imposed on the base fine shall be reduced by the percentage of the base fine that was satisfied.” (Emphasis added.) It is not clear whether these amendments alter the way community service is calculated. One interpretation could require courts to apply community service rates to the base fine, rather than the total fine, which includes the imposition of assessments, fees, and penalties, therefore extending the amendments of AB 2839 to section 1209.5. The committee considered these legislative changes in developing this proposal. They recognized that potential legal developments in this area may require modifications to the proposal.

Implementation Requirements, Costs, and Operational Impacts

It is possible the proposal could increase the number of defendants who request community service, which could increase workload for courts in administering community service programs.

¹ [Assem. Bill 2839](#) (Stats. 2016, ch. 769).

Request for Specific Comments

In addition to comments on the proposal as a whole, the advisory committee is interested in comments on the following:

- Does the proposal appropriately address the stated purpose?

The advisory committee also seeks comments from *courts* on the following cost and implementation matters:

- Would the proposal provide cost savings? If so, please quantify.
- What would the implementation requirements be for courts? For example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems.
- Would the development of forms to assess hardship and to show the calculation of the hourly rate for each case be helpful? If so, why?
- How well would this proposal work in courts of different sizes?
- Would recent changes to Penal Code sections 1205 and 2900.5 affect how courts implement this proposal? If so, how?
- Please comment on how the proposal may impact the implementation of community service in your jurisdiction.

Attachments and Links

1. Text of proposed amendment to Penal Code section 1209.5, at page 4

Penal Code section 1209.5 would be amended, effective January 1, 2019, as follows:

1 § 1209.5

2
3 Notwithstanding any other provision of law, any person convicted of an infraction may,
4 upon a showing that payment of the total fine would pose a hardship on the defendant or his
5 or her family, ~~be sentenced to perform community service in lieu of the total fine that would~~
6 otherwise be imposed. ~~The defendant shall perform community service at the hourly rate~~
7 ~~applicable to community service work performed by criminal defendants.~~ For purposes of
8 this section, the term “total fine” means the bail or base fine and all assessments, penalties,
9 and additional moneys to be paid by the defendant. For purposes of this section, the hourly
10 rate applicable to community service work by criminal defendants for total fines of up to
11 two thousand dollars (\$2,000) shall be double the lowest schedule for California minimum
12 wage. For a total fine of more than two thousand dollars (\$2,000), the rate of conversion
13 shall be determined by dividing the total fine by the number of hours of community service
14 ordered by the court to be performed in lieu of the total fine. A court may have a local rule
15 to increase the amount that is credited for each hour of community service.
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