

JUDICIAL COUNCIL OF CALIFORNIA

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INVITATION TO COMMENT

SP16-03

Title	Action Requested
Traffic: Installment Payment of Bail Forfeiture and Traffic Violator School Fees	Review and Submit Comments by April 20, 2016
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Revise forms TR-300 and TR-310	October 1, 2016
Proposed by	Contact
Traffic Advisory Committee Hon. Gail Dekreon, Chair	Kim DaSilva, Attorney, 415-865-4534, kimberly.dasilva@jud.ca.gov

Executive Summary and Origin

The Traffic Advisory Committee proposes revision of forms TR-300 and TR-310 for installment payments for traffic infractions. Revision of the forms is recommended to standardize and improve court procedures related to installment payment plans for infraction offenses and advise defendants of rights to request community service or consideration of ability to pay when appearing in court. The proposed revised forms were developed in response to Judicial Council directives to promote access to justice in all infraction cases.

Background

Recent studies and reports on state infraction laws have raised concerns about procedural fairness in infraction proceedings, particularly about procedures relating to deposit of bail before defendants appear for arraignment. In response, the Judicial Council adopted rule 4.105 of the California Rules of Court on an expedited basis, effective June 8, 2015, to require courts to allow traffic infraction defendants to appear as promised for arraignment and trial without prior deposit of bail, unless certain specified exceptions apply, and to require courts to notify defendants of the option to appear in court without deposit of bail in any instructions or other materials regarding bail provided by courts to the public. The Judicial Council also directed the appropriate advisory committees to develop recommendations to expand the application of rule 4.105 and develop other proposals to promote access to justice in all infraction cases.

The Proposal

Vehicle Code sections 40510.5 and 42007 authorize court clerks to accept bail forfeitures and traffic violator school fees in installments for traffic infractions. Sections 40510.5 and 42007 also

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 These proposals are circulated for comment purposes only.

authorize the Judicial Council to adopt forms for court clerks to use for processing the installment payments. Courts are not required to offer installment payment plans, but courts that allow clerks to offer installment payment plans for bail or traffic violator school fees in traffic infraction cases must use forms adopted by the Judicial Council for the intended procedures.

The Traffic Advisory Committee has examined court procedures for infraction cases to develop ways to improve access to justice as directed by the council. As part of that effort, the committee proposes revision of forms to further standardize and improve the imposition of bail, fines, and assessments when the defendant wishes to pay by installment. The Traffic Advisory Committee proposes adoption of revised forms TR-300, *Agreement to Pay and Forfeit Bail in Installments*, and TR-310, *Agreement to Pay Traffic Violator School Fees in Installments*, for use by court clerks to process installment payment plans with expanded advisement of rights in traffic infraction cases.

Form TR-300

As provided in Vehicle Code section 40510.5, existing form TR-300 is used by court clerks to accept payment and forfeiture of bail in installments for traffic infraction violations that do not require a mandatory court appearance. Under current law, a court that uses the form is authorized to continue the case for completion of the payments and report a bail forfeiture to the Department of Motor Vehicles as a conviction on the date of the initial payment. (Veh. Code, § 40510.5(b) and (d).) No trust account is required and payments are distributed when received. (Veh. Code, § 40510.5(f).) If a defendant fails to make a payment as agreed, the court may report the failure to pay to the Department of Motor Vehicles, issue a warrant, or send a notice that a civil assessment would be imposed if the defendant does not show good cause for the failure to pay. (Veh. Code, §§ 40509.5 and 40510.5(e).) For a failure to pay, the court may also impound the defendant's driver's license and order the person not to drive for up to 30 days. (Veh. Code, § 40508(d).) Each bail installment payment made in this procedure for infractions is final and not subject to reconsideration as bail that is deposited for other criminal cases. (Veh. Code, § 40510.5(c).)

Because the installment payment procedure does not require an arraignment or an appearance before a judicial officer in court and there are significant legal consequences for failure to make an installment payment, the form includes an express written advisement of rights and signed waiver of rights by the defendant. The form includes advisements and signed acknowledgements of the consequences for failure to pay or failure to appear at a court hearing, if required.

To enhance procedural fairness for infraction cases, the committee proposes revision of form TR-300 to provide an expanded advisement and waiver of rights. Page 2 of the revised form provides expanded notice of the defendant's rights: "To appear in court without deposit of bail for formal arraignment, plea, and sentencing, including the opportunity to request community service or that the court consider your ability to pay in determining the fee for traffic violator school or the fine, penalties, and fees for the case." By signing form TR-300, the defendant elects to waive the rights in the advisement and pay and forfeit bail in installments.

Additional minor changes to clarify and update form TR-300 include:

- Section 2 is revised to use plain language and state that the appearance date “has not passed.”
- Section 3 is revised to remove as unnecessary the statement by the defendant that: “I am not able to pay the entire amount at the present time. I ask the court to allow me to pay in installments.”
- Section 4 is revised to clarify that: “each violation that is reportable to the Department of Motor Vehicles and has no proof of correction will be reported as a conviction.”
- Section 5 is modified and partially shaded in grey as optional, depending on local court practices, regarding the requirement that: “If I do not make my payments by each due date, I will see the clerk on the next court day after the due date of the missed payment.” The intention is that the shaded area may be omitted or modified to provide flexibility and reflect local court practices such as substitution of a requirement to call the court or use of a different deadline for contacting the clerk about the missed payment.
- Section 5 is revised to clarify the list of possible actions by the court for failure to pay as agreed.

Form TR-310

Form TR-310 is used by court clerks to accept installment payment of traffic violator school fees for eligible traffic infractions. Installment payment agreements on form TR-310 are limited to a maximum length of 90 days. (Veh. Code, § 42007(a)(2).) Proof of completion for attendance of traffic violator school is due at the time of the final payment. (*Id.*) If a defendant fails to pay an installment, the court may convert the fee to bail, declare it forfeited, and report the forfeiture as a conviction under Vehicle Code section 1803. (Veh. Code, § 42007(a)(3).) The court may declare that no further proceedings be had or charge a failure to pay and impose a civil assessment or issue a warrant. (Veh. Code, § 42007(a)(3).)

To further enhance procedural fairness for infraction cases, the committee proposes revision of form TR-310 to provide an expanded advisement and waiver of rights. In accordance with the changes proposed for form TR-300, revised form TR-310 provides notice of the defendant’s rights: “To appear in court without deposit of bail for formal arraignment, plea, and sentencing, including the opportunity to request community service or that the court consider your ability to pay in determining the fee for traffic violator school or the fine, penalties, and fees for the case.” In addition, the advisement is also updated to be consistent with rule 4.105 and state that defendants may “request and have a court trial without deposit of bail, unless the court orders bail.” By signing form TR-310, the defendant elects to waive the rights in the advisement and pay and forfeit the traffic violator school fees in installments.

Additional minor changes to clarify and update form TR-310 include:

- Section 2 is revised to use plain language and state that the appearance date “has not passed.”
- Section 3 is revised to remove as unnecessary the statement by the defendant that: “I am not able to and I ask the court to allow me to pay in installments. I understand that the court has costs and expenses from accepting a request to pay the fees in installments.”
- Section 4 is modified and partially shaded in grey as optional, depending on local court practices, regarding the requirement that: “If I do not make my payments by each due

date, I will see the clerk on the next court day after the due date of the missed payment.” The intention is that the shaded area may be omitted or modified to provide flexibility and reflect local court practices such as substitution of a requirement to call the court or use of a different deadline for contacting the clerk about the missed payment.

- Section 4 is revised to clarify the list of possible actions by the court for failure to pay as agreed.

Alternatives Considered

The committee has considered other alternatives offered by legislative proposals and creation of related new forms. Those proposals, however, typically involve a lengthy process that must be pursued separately and have other implications that are distinct from the procedures addressed in an expedited fashion by the current rule proposal. Accordingly, the committee is separately considering recommendations to promote access to justice by additional proposals.

Implementation Requirements, Costs, and Operational Impacts

Courts may need to provide training for court staff and judicial officers regarding changes for processing infraction cases. No significant costs or operational impacts are projected due to the proposal. Although the proposal includes advisements of additional procedures available in court, the committee believes that those notices can be provided without significant interference with calendar management and any increased burdens are outweighed by the resulting procedural fairness. In addition, although the forms may require courts to modify procedures for infraction cases, because courts will have until October 1, 2016, to implement the forms, the committee does not anticipate significant implementation issues.

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 one month from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?
- How well would this proposal work in courts of different sizes?

Attachments

1. Revised form TR-300, *Agreement to Pay and Forfeit Bail in Installments*, at pages 5–6.
2. Revised form TR-310, *Agreement to Pay Traffic Violator School Fees in Installments*, at pages 7–8.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	<i>FOR COURT USE ONLY</i> <h1 style="margin: 0;">DRAFT</h1>
PEOPLE OF THE STATE OF CALIFORNIA vs. DEFENDANT:	
AGREEMENT TO PAY AND FORFEIT BAIL IN INSTALLMENTS (Vehicle Code, § 40510.5)	

TO BE FILLED OUT BY A COURT CLERK

Read carefully and, if you agree, sign and return the form to the clerk.

CITATION NUMBER:
CASE NUMBER:

1. I am the defendant in this case and I have been charged with the following infraction violation of the Vehicle Code that does not require me to go into court:

a. § _____ b. § _____ c. § _____ d. § _____ e. § _____

2. My court appearance date has not **passed** and I am providing proof of correction for correctable violations.

3. I want to pay and forfeit bail for the violation(s) listed above. I understand that the court does not have to allow me to make installment payments.

4. I understand that by signing below each violation **that is reportable to the Department of Motor Vehicles and has no proof of correction will be reported as a conviction.**

5. TERMS OF THE AGREEMENT:

The total bail (including penalties plus an administrative fee of \$____ to pay in installments) is \$_____ I agree to pay the total amount as follows:

\$ _____ (10 percent or more) immediately and installments of at least \$ _____ due:
 () each month, starting (date): _____ and by the _____ day of each month until paid in full.
 () Other (explain): _____

I agree that: All payments must be made by the due date and there is no grace period.

If I do not make a payment on time, I may have to pay the rest of my unpaid bail immediately.

[If I do not make my payments by each due date, I will see the clerk on the next court day after the due date of the missed payment.] [Optional]

I understand that if I do not make the payment by each due date the court may:

- Charge me with a misdemeanor under Vehicle Code section 40508 and impound my driver's license.
- Charge a civil assessment of up to \$300 (Pen. Code, § 1214.1) or have a warrant issued for my arrest.
- Report the failure to pay to the Department of Motor Vehicles, which may place a hold on my driver's license.
- Assign my case to a collection agency or the State Franchise Tax Board for collection.

I understand that my case will continue to be open until the date that my last installment is paid. On _____, if I pay as agreed, all amounts due will be paid. At that time, if proof of correction has been filed with the clerk as required, my bail forfeiture will be complete and no further proceedings will be held in this matter.

By signing below I declare that I have read and understand my rights printed on the reverse side, which I now choose to give up, and that I have read, understand, and accept the terms and conditions stated above.

(SIGNATURE OF DEFENDANT)	(DATE)	(TYPE OR PRINT NAME)
(DRIVER'S LICENSE/ID NUMBER)	(EXP. DATE)	(ADDRESS)
		(CITY, STATE, AND ZIP CODE)
ACCEPTED (date): _____	BY: _____	CLERK OF THE SUPERIOR COURT
		(DEPUTY CLERK)

ADVISEMENT OF RIGHTS

By choosing to pay and forfeit bail in installments and not go into court, you will be giving up these rights:

- To appear in court without deposit of bail for formal arraignment, plea, and sentencing, including the opportunity to request community service or that the court consider your ability to pay in determining the fee for traffic violator school or the fine, penalties, and fees for the case;
- To request and have a court trial without deposit of bail, unless the court orders bail, and challenge the charges;
- To have a speedy court trial and have the charges dismissed if a speedy trial is requested but not provided;
- To be represented by an attorney at your expense;
- To subpoena or present witnesses and physical evidence using the power of the court at no cost to you and to testify on your own behalf;
- To confront and cross-examine all witnesses under oath testifying against you; and
- To remain silent and not testify.

ADVISEMENT OF RIGHTS

By choosing to pay traffic violator school fees in installments and not go into court, you will be giving up these rights:

- To appear in court **without deposit of bail** for formal arraignment, plea, and sentencing, **including the opportunity to request community service or that the court consider your ability to pay in determining the fee for traffic violator school or the fine penalties and fees for the case;**
- To **request and** have a court trial **without deposit of bail, unless the court orders bail,** and challenge the charges;
- To have a speedy court trial and have the charges dismissed if a speedy trial is requested but not provided;
- To be represented by an attorney at your expense;
- To subpoena or present witnesses and physical evidence using the power of the court at no cost to you and to testify on your own behalf;
- To confront and cross-examine all witnesses testifying under oath against you, and
- To remain silent and not testify.