

# JUDICIAL COUNCIL OF CALIFORNIA

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## INVITATION TO COMMENT

### SP16-04

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Title	Action Requested
Traffic: Online 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
Adopt forms TR-305 and TR-315	October 1, 2016
Proposed by	Contact
Traffic Advisory Committee Hon. Gail Dekreon, Chair	Kim DaSilva, Attorney 415-865-4534 kimberly.dasilva@jud.ca.gov

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### Executive Summary and Origin

The Traffic Advisory Committee proposes adoption of forms TR-305 and TR-315 for online installment payments for traffic infractions. Adoption of the forms is recommended to standardize and improve court procedures related to online 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 forms were developed as part of the modernization project for rules and forms and in response to Judicial Council directives to promote access to justice in all infraction cases.

### Background

The Judicial Council's Information Technology Advisory Committee (ITAC) is leading a multi-year, collaborative effort to comprehensively review and modernize statutes, rules, and forms to facilitate electronic filing and service and foster modern e-business practices. Last year, the Judicial Council's advisory committees completed phase I—an initial round of technical amendments to address language in rules and forms that were incompatible with the current statutes and rules governing electronic filing and service and with e-business practices in general. The Traffic Advisory Committee is now participating in phase II to identify statutes, rules, and forms that may hinder electronic filing and modern e-business practices and develop recommendations for ways to promote and improve e-business practices. ITAC's Rules and Policy Subcommittee provided input on this proposal.

Additionally, recent studies and reports on state infraction laws have raised concerns about procedural fairness in infraction proceedings, particularly about procedures relating to deposit of

*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.*

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 the Judicial Council to adopt forms for court clerks to use for processing 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 forms TR-305, *Online Agreement to Pay and Forfeit Bail in Installments*, and TR-315, *Online Agreement to Pay Traffic Violator School Fees in Installments*, to process installment payment plans online with advisement and waiver of rights in traffic infraction cases.

### **Form TR-305**

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 appearance in court. Under current law, a court that uses form TR-300 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 will 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).) Proposed form TR-305 is drafted to follow similar procedures when the court allows defendants to request installment payments online without having to appear in person at the court for a clerk to process the request. This procedure would facilitate payment plans for many defendants, including those who live in different counties or other states.

Because an online 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 waiver of rights by the defendant to enhance procedural fairness for infraction cases.

Form TR-305 provides an advisement and waiver of rights on page 2 with express 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." The form also includes an advisement that a defendant may "request and have a court trial without deposit of bail, unless the court orders bail." By filing form TR-305, the defendant elects to waive the rights in the advisements and pay and forfeit bail in installments.

Form TR-305 includes the following additional provisions:

- Section 2 has optional shaded text regarding proof of correction for correctable violations. When websites are programmed for online installment payments, there may be systems that are unable to process or track proof of correction for correctable violations. The form includes grey-shaded text in brackets as optional text for courts with systems that must exclude correctable violations from online installment payments.
- Section 5 is 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.
- The form includes an optional provision to request electronic notifications about the installment payments. The shaded text is intended to be optional so that courts can omit the option if the court's system is not able to provide electronic notices.

### **Form TR-315**

Form TR-315 is used for online requests for installment payment of traffic violator school fees for eligible traffic infractions. Installment payments processed by a clerk at the court 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).) Form TR-315 is drafted to follow similar procedures when the court allows defendants to request installment payments online without having to appear in person at the court for a clerk to process the request. This procedure would facilitate payment plans for many defendants, including those who live in different counties or other states.

To further enhance procedural fairness for infraction cases, the committee proposes adoption of form TR-315 with an advisement and waiver of rights. In accordance with proposed form TR-305, form TR-315 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." The form also includes an

advisement that a defendant may “request and have a court trial without deposit of bail, unless the court orders bail.” By filing form TR-315, the defendant elects to waive the rights in the advisements and pay traffic violator school fees in installments.

Form TR-315 includes the following additional provisions:

- Section 2 has optional shaded text regarding proof of correction for correctable violations. When websites are programmed for online installment payments, there may be systems that are unable to process or track proof of correction for correctable violations. The form includes grey-shaded text in brackets as optional text for courts with systems that must exclude correctable violations from online installment payments.
- Section 4 is 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 a missed payment.
- The form includes an optional provision to request electronic notifications about the installment payments. The shaded text is intended to be optional so that courts can omit the option if the court’s system is not able to provide electronic notices.

### **Alternatives Considered**

The committee has considered other alternatives such as legislative proposals and creation of additional new forms. Those additional proposals, however, 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 forms proposal. Accordingly, the committee is separately considering recommendations to promote access to justice by additional proposals in the future.

### **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?
- Are there any additional forms, procedures, or instructions that should be added to the proposal?
- Should the signature and name lines be merged on the forms to read: “(Name/Signature of the Defendant)”?

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. Proposed form TR-305, *Online Agreement to Pay and Forfeit Bail in Installments*, at pages 6–7.
2. Proposed form TR-315, *Online Agreement to Pay Traffic Violator School Fees in Installments*, at pages 8–9.

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

**Read carefully and, if you agree, complete and submit the form.**

TICKET 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 have provided 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 completing this agreement each violation that is reportable to the Department of Motor Vehicles will be reported as a conviction.

**5. TERMS OF THE AGREEMENT:**

The total bail (including penalties and administrative fee of \$ \_\_\_\_\_) is \$ \_\_\_\_\_ Initial Payment (10% minimum): \$ \_\_\_\_\_  
 Remaining balance after first payment: \$ \_\_\_\_\_  
 Online transaction fee (if applicable): \$ \_\_\_\_\_  
 Total amount due today: \$ \_\_\_\_\_

I agree to pay the balance due in monthly installments of at least \$ \_\_\_\_\_ due each month, starting   /  /   and to have the balance paid in full on or before   /  /  .

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.]

I understand that if I do not complete my payment plan the court may:

Charge me with a misdemeanor under Vehicle Code section 40508.

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 the case to a collection agency or the State Franchise Tax Board for collection.

I understand that if I pay as agreed my bail forfeiture will be complete and at that time[, if proof of correction has been filed with the court as required,] the case will be closed.

I understand my rights explained in this agreement and attachment, which I now choose to give up, and I have read, understand, and agree to the terms and conditions. (See Attachment 1)

I understand that by electronically filing this document it will be deemed signed. (Code of Civ. Proc., § 1010.6(b)(2)(A) and Cal. Rules of Court, rule 2.257(b).)

(SIGNATURE OF DEFENDANT)	(NAME)	(DRIVER'S LICENSE/ID NUMBER)
(ADDRESS)	(CITY, STATE, ZIP CODE)	(TELEPHONE NUMBER)
(E-MAIL ADDRESS)	<input type="checkbox"/> <b>[I authorize the court to send me electronic notices regarding payments due by me under this agreement.] [Optional]</b>	

ACCEPTED (date): \_\_\_\_\_

BY: \_\_\_\_\_  
(CLERK OF THE SUPERIOR COURT)

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

## ATTACHMENT 1

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 under oath testifying against you; and
- To remain silent and not testify.