

Judicial Council of California • Administrative Office of the Courts

455 Golden Gate Avenue, San Francisco, California 94102-3688

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INVITATION TO COMMENT

SP11-01

Title	Action Requested
Procedures and eligibility criteria for attending traffic violator school	Review and submit comments by March 4, 2011
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Amend rule 4.104	July 1, 2011
Proposed by	Contact
Traffic Advisory Committee Hon. Deborah A. Ryan, Chair	Mr. Courtney Tucker, courtney.tucker@jud.ca.gov, 415-865-7611

Summary

The Traffic Advisory Committee proposes amendments to California Rules of Court, rule 4.104, to become effective July 1, 2011. The proposed amendments bring the rule into conformance with recent legislation.

Discussion

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. Proposed rule 4.104 provides revised procedures and criteria for eligibility to attend traffic violator school in a traffic infraction case beginning July 1, 2011.

Proposed changes

Proposed changes for rule 4.104 include the following:

1. Amendment of rule 4.104 to remove references to pretrial diversion that are no longer applicable, effective July 1, 2011, when completion of traffic violator school will be reported

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 These proposals are circulated for comment purposes only.

to and recorded by DMV as a confidential conviction under sections 1803.5, 41501, and 42005.

2. Amendment of section (c) of rule 4.104 to clarify the extent of judicial discretion to order a completion of traffic violator school under sections 41501 and 42005.
3. Deletion of current section (c)(2) of rule 4.104 to 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.

Attachment

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;
41

- 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.)

Item SP11-01 Response Form

Title: Procedures and eligibility criteria for attending traffic violator school (amend Cal. Rules of Court, rule 4.104)

- Agree** with proposed changes
- Agree** with proposed changes **if modified**
- Do not agree** with proposed changes

Comments: _____

Name: _____ **Title:** _____

Organization: _____

- Commenting on behalf of an organization**

Address: _____

City, State, Zip: _____

To Submit Comments

Comments may be submitted online, written on this form, or prepared in a letter format. If you are *not* commenting directly on this form, please include the information requested above and the proposal number for identification purposes. Please submit your comments online or email, mail, or fax comments. You are welcome to email your comments as an attachment.

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DEADLINE FOR COMMENT: 5:00 p.m., Friday, March 4, 2011

Circulation for comment does not imply endorsement by the Judicial Council or the Rules and Projects Committee. All comments will become part of the public record of the council's action.