



Via Overnight Mail and Electronic Mail

March 21, 2016

Judicial Council of California
455 Golden Gate Avenue
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judicialcouncil@jud.ca.gov

Re: Traffic Court Practices and Driver's License Suspensions

Dear Members of the Judicial Council:

We write on behalf of the American Civil Liberties Union of Northern California, Bay Area Legal Aid, Lawyers' Committee for Civil Rights, Legal Services for Prisoners with Children, and the Western Center on Law and Poverty. Our coalition of non-profit legal services and civil rights organizations is working in a number of Bay Area counties and statewide to ensure that the rights of low-income and indigent drivers are protected. Thank you for previously meeting with several of us to discuss traffic court policies and procedures. As we mentioned at our November meeting about the amnesty program, we are pursuing both litigation and policy solutions to the broader license suspension crisis, and want to work with the Judicial Council to help achieve needed change.¹

We write to renew our request that the Judicial Council address the very pressing issue of traffic courts acting to suspend low-income individuals' driver's licenses for a failure to pay citation fines and fees, when those drivers do not have the ability to pay. It is our understanding that courts throughout the Bay Area, if not the state as a whole, are referring traffic defendants to the Department of Motor Vehicles ("DMV") for driver's license suspension pursuant to Vehicle Code § 40509(b) and/or § 40509.5(b) in connection with a failure to pay citation fines and fees, without making a proper determination of whether that individual's non-payment was willful, rather than due to the individual's inability to pay.

The amnesty program is not enough.² While it provides an opportunity for reinstatement of licenses for those who learn about the program and can afford installment

¹ We appreciate Chief Justice Tani Cantil-Sakauye's acknowledgement in the recent state of the judiciary address that "[w]e have a system of fines and fees that has morphed from a system of accountability to a system that raises revenue for essential government services," and her statement that there is still much reform needed in the area of fines, fees and assessments.

² *See id.*

payments, the program does not fully resolve the issue of suspended licenses. Indeed, the Judicial Council's most recent statistics show that only a small fraction of persons who may be eligible for amnesty or license reinstatement have successfully applied. As the Judicial Council is aware from our November discussion, the amnesty program is not affordable for many Californians, as a result of the nearly universally-imposed \$50 fee, and courts and debt collectors continuing to establish unaffordable payment plans without regard to ability to pay. Moreover, the amnesty program does not address the root cause of the problem: the suspension of licenses as a tool for collecting court debt—a practice that doesn't work and has contributed to the cycle of poverty for thousands of low-income Californians.

Last year, the Judicial Council unanimously adopted a rule that directed courts to allow people who have traffic tickets to appear for arraignment and trial without deposit of bail, absent certain specified exceptions. Cal. Rule of Court 4.105. The rule also requires that courts provide notice to traffic defendants of this option in any instructions or other materials provided by the court to the public. As described below, we urge the Judicial Council to take similar action to address the critical problem that courts throughout the state suspend licenses for failure to pay without complying with the requirements of the Vehicle Code and the constitutional guarantees of due process.

As outlined in a report authored by many of the signatories to this letter, the policy of suspending licenses in connection with traffic tickets has been a failure—resulting in billions of dollars in court-ordered debt that realistically will never be paid. *See* “Not Just a Ferguson Problem: How Traffic Court is Driving Inequality.”³ A typical \$100 traffic ticket in California can be nearly \$500, consisting of a base fine of \$100 and several hundreds of dollars of additional fees and penalties that are used to generate revenue, such as fees for court construction and to help fund night court. When a person is found to have failed to pay, additional assessments and fines are automatically imposed and can double, triple, or quadruple the original fine. Suspending an indigent or low-income person's driver's license, which is often a necessity for employment, for failure to pay these enormous fines and fees perpetuates the cycle of poverty and serves no public policy purpose. Indeed, the federal Department of Justice recently cautioned that driver's license suspensions for failure to pay fines “raise significant public policy concerns” because among other things, “research has consistently found that having a valid driver's license can be crucial to individuals' ability to maintain a job, pursue educational opportunities, and care for families.”⁴

3 <http://www.lccr.com/wp-content/uploads/Not-Just-a-Ferguson-Problem-How-Traffic-Courts-Drive-Inequality-in-California-4.8.15.pdf>

4 *See* U.S. Department of Justice, Civil Rights Division, Office for Access to Justice, “Dear Colleague Letter,” dated Mar. 14, 2016, available at: <https://www.justice.gov/crt/file/832461/download>.

Traffic courts have a statutory and constitutional duty to provide adequate notice and a meaningful opportunity for defendants to be heard on their ability to pay citation fines and fees. Courts must not refer defendants to the DMV for suspension pursuant to Vehicle Code §§ 40509(b) and 40509.5(b) unless they have made a meaningful determination that a defendant's non-payment was willful.

The Vehicle Code expressly states that the Court may only act to suspend a license for failure to pay if the person "willfully" failed to do so. *See* Veh. Code §§ 40509(b) and 40509.5(b). Under basic statutory construction principles and the plain meaning of the word, "willfully" must be interpreted to mean an intentional act and not due to a person's indigence or financial circumstances. *See* Merriam Webster Collegiate Dictionary, 10th Ed. (defining "willful" as "obstinately and perversely self-willed," or "done deliberately: intentional"); *People v. Hagedorn*, 127 Cal. App. 4th 734, 744 n.6 (2005) ("The word 'willfully' as generally used in the law is a synonym for 'intentionally,' i.e., the defendant intended to do the act proscribed by the penal statute.") (internal quotations omitted).⁵ Accordingly, in interpreting and enforcing sections 40509(b) and 40509.5(b), a traffic court may not act to suspend a license for failure to pay if the nonpayment is due to an inability to pay. *Id.*, *see also* *Bell v. Burson*, 402 U.S. 535, 542 (1971) (due process requires that a state consider essential statutory elements for driver's license suspension before suspending the license).

Moreover, because continued possession of a driver's license is protected by the constitutional guarantees of due process, individuals must be given notice and a meaningful opportunity to be heard on the element of "willfulness." Both the United States and the California supreme courts have held that suspending a driver's license triggers due process protection. *See* *Burson*, 402 U.S. at 539 (noting that a driver's license may be "essential in the pursuit of a livelihood"); *Rios v. Cozen*, 7 Cal. 3d 792, 795-6 (1972). Finally, the law requires that these statutory and constitutional protections regarding notice and opportunity to be heard occur prior to license suspension. *See* *Burson*, 402 U.S. at 542 (rejecting state's argument that post-suspension liability hearings would satisfy due process). The need for a pre-suspension determination on liability is even greater for indigent persons who have a strong interest in uninterrupted access to the statutory entitlement at issue. *See* *Mathews v. Eldridge*, 424 U.S. 319, 341-42 (U.S. 1976).

Based on the experiences of our clients and on the court record request responses we have received from courts throughout the Bay Area, there is a widespread absence of local rules, notices, or forms in traffic courts informing a defendant that she is entitled to an ability to pay evaluation prior to the Court finding that she has "willfully" failed to pay under

⁵ *See also*, Cal. Veh. Code § 38392 ("'Willfully' as used in this section has the same meaning as the meaning of that word prescribed in Section 7 of the Penal Code."). Under the Penal Code's definition, "willfully" implies a "purpose or willingness to commit the act or make the omission[.]" *See* Cal. Penal Code § 7.

Vehicle Code § 40509(b) and § 40509.5(b), thereby violating the individual's right to notice and a meaningful opportunity to be heard. *See id.*; *see also Memphis Light, Gas, & Water Division v. Craft*, 436 U.S. 1, 13 (1978) (“An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.”) (citation omitted); *Turner v. Rogers*, 546 U.S. 2507, 2519 (2011) (notice for contempt proceedings in child support case must inform defendants that “ability to pay” is a critical issue).

Moreover, we are concerned that to the extent a traffic court offers a payment plan to defendants who appear before a judge, those plans are not properly tailored to a person's actual financial circumstances. For most of our clients, who are either on public assistance or have very low income, the amount of the installments are themselves simply not feasible. A court's referral to the DMV of those who are unable to pay the fine or the installments violates the express terms of Vehicle Code § 40509(b) and § 40509.5(b), and the constitutional guarantee of substantive due process. *See Bearden v. Georgia*, 461 U.S. 660, 673-74 (1983) (revoking probation where defendant lacks resources to pay fine violates “fundamental fairness” component of due process); *Williams v. Illinois*, 399 U.S. 235, 242 (1970) (holding that state criminal statute as applied to defendant “works an invidious discrimination solely because he is unable to pay the fine.”). Indeed, the federal Department of Justice has taken the position that, “automatic license suspensions premised on determinations that fail to comport with *Bearden* and its progeny may violate due process.”⁶

Accordingly, we request that the Judicial Council modify its Notice to Appear forms and adopt rules that apply to all traffic courts throughout the state to address these statutory and constitutional violations. First, we request that the Judicial Council use its authority under Vehicle Code § 40500(b) to modify its standard Notice to Appear forms to include a notification of the right to a judicial determination of the person's ability to pay and a warning that a person's driver's license may be suspended for non-payment, unless the court determines that the person does not have the ability to pay. We also ask that the Judicial Council make clear to courts that, prior to notifying the DMV of failures to pay under Vehicle Code § 40509(b) or § 40509.5(b), the traffic court must, at a minimum, inform a defendant of: i) the total amount of fines and fees due, ii) her right to a judicial determination on her ability to pay the fines and fees, and iii) a warning that if the individual doesn't pay the fines or fees, the person's driver's license may be suspended, unless the court determines that the person does not have the ability to pay the fines and fees. We believe that in order to constitute adequate notice, the above information must be included in the initial notice as well as subsequent notices sent to individuals prior to the court referring a license to the DMV for suspension for failure to pay.

⁶ *See supra*, note 4.

We further request that the Judicial Council adopt rules requiring that when determining whether an individual has “willfully” failed to pay, traffic courts must provide a meaningful and pre-deprivation opportunity to be heard on that essential element of the alleged violation prior to acting to suspend the person’s license. Traffic courts must make proper evaluations of an individual’s financial means and circumstances in deciding whether a person has “willfully” failed to pay, and refrain from acting to suspend a license if a person has demonstrated an inability to pay the imposed fine or any installment plan that the court offers.⁷ Appropriate training and guidance to traffic commissioners and all other personnel who handle traffic and other infractions are necessary to ensure consistent and legally-compliant implementation.

In addition, a traffic court’s obligation to provide notice and opportunity for an ability to pay determination does not end with its prospective implementation. That legal obligation also applies to those whose licenses have already been suspended due a court’s referral to DMV under Vehicle Code § 40509 *et seq.* and who have not been provided with a notice and opportunity for an ability to pay determination. While the amnesty program provides an opportunity for reinstatement of licenses for those who learn about the program and can afford installment payments, it is our understanding that there is no consistent practice of conducting mass mailings to all persons whose licenses have been suspended under § 40509 *et seq.* We ask that the Judicial Council provide guidance to all traffic courts, strongly encouraging, if not requiring, that such notices be send to all persons whose licenses have been suspended for failure to pay.

To be clear, it is our view that traffic courts should *not* refer individuals for driver’s license suspension as a means to generate and collect revenue, regardless of the procedural safeguards the courts may implement. Section 40509 *et seq.* expressly states that a traffic court “may” refer persons to the DMV for license suspension for willful failure to pay; there is no mandate to do so. Indeed, there are numerous other statutes available to a traffic court to suspend licenses for public safety reasons. *See, e.g.*, Vehicle Code § 13200 (permitting suspension for speeding or reckless driving); § 13203 (permitting suspension for driver who commits “road rage”); § 13382 (requiring confiscation and suspension of license for driving under the influence); § 12810.5 (permitting suspension for receiving four “points” in a 12 month period and being designated as a “negligent operator”). A traffic court also has available to it other non-punitive options to collect any outstanding debt, such as wage garnishment and tax interception. However, if a traffic court is going to continue a misguided policy of using license suspensions to collect court debt, it must at least comply with its

⁷ To minimize the burden on a traffic court, the Judicial Council could recommend that courts adopt forms similar to the civil fee waiver form. *See* FW-001 Request to Waive Court Fees. To be clear, however, while we believe that meaningful consideration of the information on the form would address many of the problems we have identified, we also believe that defendants must have the right to present argument and evidence to a judge or commissioner on the issue of ability to pay and also be adequately informed of that right.

statutory and constitutional obligations. The Judicial Council has an important role in ensuring that the rights of individuals are not violated in our judicial system, and could ameliorate these unlawful practices through the adoption of proper rules.

We greatly appreciate the Judicial Council's commitment to access to justice and look forward to further working with you to devise a solution that protects the rights of low-income and indigent drivers. We would be more than happy to meet with you in person to discuss the issues we have identified in this letter. Please feel free to contact any of the signatories to this letter to set up a meeting.

Sincerely,



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