



Judicial Council of California

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INVITATION TO COMMENT

SPR24-32

Title

Traffic: Officer's Declaration in Trial by
Written Declaration

Action Requested

Review and submit comments by May 3, 2024

Proposed Rules, Forms, Standards, or Statutes

Revise form TR-235

Proposed Effective Date

January 1, 2025

Proposed by

Traffic Advisory Committee
Hon. Maria Lucy Armendariz, Chair

Contact

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Executive Summary and Origin

The Traffic Advisory Committee proposes changes to form TR-235, *Officer's Declaration*, used in trials by written declaration for certain traffic infractions. The committee proposes to revise the form to state that an officer should verify that the current version of the engineering and traffic survey (ETS) is on file with the court before checking a box that states the ETS is on file. The committee also proposes to amend an out-of-date reference to the length of validity of an ETS and other minor updates to the form.

Background

Vehicle Code section 40902 allows a defendant to contest a citation in writing without having to make a personal court appearance—a procedure called “trial by written declaration.” Trials by written declaration are available in cases involving infraction violations of the Vehicle Code or violations of local ordinances adopted under the Vehicle Code. California Rules of Court, rule 4.210 provides procedures for trials by declaration. As part of the trial by declaration process, the clerk requests a written declaration from the citing officer. (Rule 4.210(b)(5).) The officer's declaration is form TR-235. (Rule 4.210(i)(4).)

For speeding infractions, form TR-235 allows an officer to check a box stating that the ETS is on file with the court. Vehicle Code section 627(a) defines an ETS as “a survey of highway and traffic conditions in accordance with methods determined by the Department of Transportation for use by state and local authorities.” An ETS is a report prepared by civil engineers for

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municipalities; an ETS for speed limits must be conducted at least once every 5, 7, or 14 years, depending on different criteria. (Veh. Code, § 40802.) In 2021, Vehicle Code section 40802 was amended to extend the validity of a survey conducted more than 7 years ago to 14 years; it had previously been 10 years. (Assem. Bill 43 (Stats. 2021, ch. 690).)

Additionally, court staff identified a concern regarding form TR-235 and questioned whether a court is required to have the ETS whenever an officer checks the box stating that the ETS is on file with the court. When a municipality commissions an ETS, the court may or may not have a current copy on file. The ETS can be necessary to prove a foundational element in an infraction case involving speeding. However, no authority was located that requires courts to keep the surveys on file. For courts that do not have the survey on file for a given case, allowing an officer to check a box stating that the ETS is on file, without first verifying that fact, is problematic for the trial-by-written-declaration process.

The Proposal

The committee proposes revising form TR-235 at items 4b and 5b to state that an officer should verify that the ETS is on file with the court before checking the box that states that it is. Further, to comply with Vehicle Code section 40802, the committee proposes revising the form at item 6 to change the maximum length of validity of the ETS conducted more than 7 years ago to 14 years. The committee also proposes some minor rewording for clarity and plain language.

Alternatives Considered

The committee considered correcting only the out-of-date reference in item 6 of the form but determined that the check boxes concerning an ETS being on file with the court should be addressed. The committee also considered combining items 4, 5, and 6, which all concern the ETS, but determined the form closely follows Vehicle Code section 40802 and that changes may not be warranted, especially since no stakeholders had suggested reorganizing the form. The committee, concerned that officers may have an advantage over defendants in filling out the form, also considered removing some of the pre-printed officers' declarations under item 1a. However, the committee determined that the declarations in item 1a are foundational in nature and generally do not provide a substantive account of the facts. The committee may consider revisiting the trial by written declaration forms in the future.

Fiscal and Operational Impacts

Courts may need to make case management system updates and will need to produce new forms.

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 three months 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 and Links

1. Form TR-235, at pages 4–5
2. Link A: Veh. Code, § 40902,
https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=VEH§ionNum=40902
3. Link B: Veh. Code, § 627,
https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=627.&lawCode=VEH
4. Link C: Veh. Code, § 40802,
https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=40802.&lawCode=VEH
5. Link D: Assem. Bill 43 (Stats. 2021, ch. 690),
https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202120220AB43

NAME OF COURT: STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME: TELEPHONE:	FOR COURT USE ONLY	
PEOPLE OF THE STATE OF CALIFORNIA v. DEFENDANT:		
OFFICER'S DECLARATION (Trial by Written Declaration—Vehicle Code, § 40902)		
RETURN DATE:	ARRESTING/CITING OFFICER NAME/ID NO.:	CITATION NUMBER/DATE ISSUED:
AGENCY NAME:	OFFICE [IF ANY]:	CASE NUMBER:

INSTRUCTIONS: The defendant in the case listed above has opted for trial by written declaration under Vehicle Code section 40902. The officer named above must check all statements that apply, date, sign, and complete and return this form to the court named above by the return date.

1. **OFFICER'S DECLARATION:** Except as expressly stated below, I have personal knowledge of the facts stated herein. The events occurred in the County of *(specify)*: _____ at about the date, time, and location stated in the citation.
 - a. At the time of the citation I was a peace officer **on duty** for the exclusive or main purpose of traffic enforcement not for the exclusive or main purpose of traffic enforcement, and I was was not wearing a uniform as required by Vehicle Code section 40800. Any vehicle used by me complied with Vehicle Code section 40800.
 - b. The offense(s) were not committed in my presence.
 - c. Any statement(s) made by the defendant were voluntary, recorded verbatim not verbatim and is/are reasonably complete and accurate in substance.
 - d. Safety is an element of the violation alleged. In my opinion, the defendant's operation of the vehicle was unsafe.
 - e. Any equipment used by me to gather evidence in support of this violation was properly maintained, in good working order, and I have been trained in its use.
 - f. Any traffic sign, signal, or device mentioned was official and properly located, maintained, in good working order, and clearly visible to a driver of a vehicle controlled, governed, or affected by such sign, signal, or device.
 - g. Any diagram(s) submitted is/are not exact or to scale, but is/are reasonably complete, accurate, and fairly depict(s) the location, situation, and events described.
 - h. Speed supported by the patrol vehicle's speedometer was a significant factor. Pursuant to department policy, the patrol vehicle used in connection with this citation was officially calibrated on *(date)*: _____
 The result was *(specify)*: _____
 The calibration was considered by me in determining defendant's speed.
 - i. Defendant was identified by Driver's License or other *(specify)*: _____
2. **THE METHOD(S) USED TO DETERMINE THE SPEED OF THE INVOLVED VEHICLE WAS/WERE:**

a. <input type="checkbox"/> Odometer	e. <input type="checkbox"/> Laser
b. <input type="checkbox"/> Visual estimation	f. <input type="checkbox"/> Aircraft
c. <input type="checkbox"/> Pacing	g. <input type="checkbox"/> Other <i>(specify)</i> : _____
d. <input type="checkbox"/> Radar (see items 4, 5, 6, below)	
3. Engineering and traffic survey (ETS) not required per Vehicle Code section **40802(a)(2)**.
4. ETS completed within five (5) years prior to date of alleged violation.
 - a. ETS attached.
 - b. ETS on file with the court. **(Note: Verify court has a current ETS on file before checking this box.)**
5. ETS completed within five (5) and seven (7) years prior to date of alleged violation.
 - a. ETS attached.

(Continued on reverse)

PEOPLE v. DEFENDANT (Name):	CASE NUMBER:
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- 5. b. ETS on file with the court. (Note: Verify court has a current ETS on file before checking this box.)
 - c. Arresting/citing officer has successfully completed a radar operator course of not less than 24 hours approved and certified by the Commission on Peace Officer Standards and Training (POST).
 - d. Laser or other electronic device was used to measure speed. Arresting/citing officer successfully completed an additional training course of not less than two hours approved and certified by POST.
 - e. The speed measuring device used to measure the speed of defendant (Serial No: _____) meets or exceeds the minimum operational standards of the National Highway Traffic Safety Administration (NHTSA) and was last calibrated on (date): _____ by an independent certified laser/radar repair and testing/calibration facility.
 - f. Equipment accuracy check conducted on (date): _____ at (time): _____ and again on (date): _____ at (time): _____
6. ETS completed within seven (7) and fourteen (14) years prior to the date of the alleged violation.
- a. A registered engineer has evaluated the section of the highway in question and has determined that no significant changes in roadway or traffic conditions have occurred.
 - b. All of the elements marked under item 5, above, that are applicable.
7. **FACTS AND CIRCUMSTANCES** (Type or print only. State what happened):

Continued on attachment.

8. **OTHER EVIDENCE AND STATEMENTS** (Explain any other evidence and statements):

Continued on attachment.

9. **DIAGRAM(S)** (specify):

Attached.

10. Number of pages attached: _____

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

(TYPE OR PRINT NAME)

 _____
(SIGNATURE)

ID Number: _____

Agency NCIC Number: _____

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