



Judicial Council of California
ADMINISTRATIVE OFFICE OF THE COURTS

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Director, Office of Governmental Affairs

June 20, 2014

Hon. Loni Hancock, Chair
Senate Public Safety Committee
State Capitol, Room 2082
Sacramento, California 95814

Subject: AB 2724 (Bradford), as introduced - Oppose
Hearing: Senate Public Safety Committee – June 24, 2014

Dear Senator Hancock:

The Judicial Council regrettably opposes AB 2724, which among other things, (1) provides that the ability to post bail or to pay the civil assessment imposed by the court for failure to appear in court for a proceeding, or failure to pay a fine or bail installment, is not a prerequisite to filing a request that the court vacate the assessment and (2) provides that if an agreement is signed to pay a lawfully-imposed fine in installments or to perform community service in lieu of the fine, as specified, the magistrate or court clerk is required to issue and file with the Department of Motor Vehicles (DMV) a certificate showing that an agreement has been signed and request that the hold on the defendant's driver's license be lifted.

The Judicial Council believes that the bill's requirement that holds on driver's licenses be lifted when a defendant enters an installment agreement will make collection of traffic fines more difficult and more expensive for the court.

Under existing law, whenever a person fails to timely pay (or make and keep an agreement to pay in installments) a traffic fine, the court may impose a civil assessment of up to \$300 in lieu

of issuing a bench warrant. In addition, the court may request that the DMV suspend that person's driver's license. Under current law, when DMV has acted on such request and suspends the license, the court is not required to notify the DMV to end the suspension until after "the fine is fully paid." (Veh. Code § 40509, subd. (b).) AB 2724 would require the court to notify the DMV to end the license suspension when the person simply signs an agreement promising to satisfy the fine in the future by either making installment payments or performing community service.

The council further believes that the most significant shortcoming of AB 2724 lies in the fact that, under existing law and DMV procedures, a license suspension may only be imposed once for the non-payment of a fine. After the suspension is removed, it may not be reinstated regardless of whether any payment under the installment plan has been made or any community service completed. A license suspension is the most effective and efficient means of compelling payment of an overdue fine once the threat of the imposition of a civil assessment has failed. Thus, the requirement that a fine be paid in full before the license suspension is removed makes sense; after a civil assessment for non-payment has been imposed and the suspension has been released, no good options remain to compel collection of the unpaid fine. The council believes the provisions of AB 2724 removing the requirements that the fine be fully paid would strip the court of its most valuable means of collections with the hollow agreement to enter into a payment plan. In exchange for lifting the suspension before the fine is paid, the court would get only the person's written promise to pay a fine already past due, thereby forfeiting all practical means of enforcing that promise.

For these reasons, the Judicial Council opposes AB 2724.

Sincerely,

A handwritten signature in cursive script, reading "Sharon Reilly", followed by the letters "NT" in a slightly larger, bolder cursive font.

Sharon Reilly
Senior Attorney

SR/yc-s

cc: Members, Senate Public Safety Committee
Hon. Steven Bradford, Member of the Assembly/Senate
Mr. Michael Herald, Legislative Advocate, Western Center on Law & Poverty
Ms. Jessica Devencenzi, Counsel, Senate Public Safety Committee
Ms. June Clark, Deputy Legislative Secretary, Office of the Governor
Mr. Eric Csizmar, Consultant, Senate Republican Office of Policy



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July 29, 2014

Hon. Kevin de León, Chair
Senate Appropriations Committee
State Capitol, Room 5108
Sacramento, California 95814

Subject: AB 2724 (Bradford), as introduced – Fiscal Impact
Hearing: Senate Appropriations Committee – August 4, 2014

Dear Senator de León:

AB 2724, among other things, (1) provides that if an installment agreement is signed to pay a lawfully-imposed fine, the magistrate or court clerk shall issue and file with the Department of Motor Vehicles (DMV) a certificate showing that an agreement has been signed, and request that the hold on the defendant's driver's license be lifted; and (2) states that the court shall not require the payment of the authorized bail or civil assessment before the defendant requests that the court vacate a civil assessment imposed pursuant to §1214.1 of the Penal Code. The Judicial Council believes that these elements will incentivize the delay of payment and non-payment of bail, including fines, penalties, assessments, and fees, and, in fact, will make the collection of payments due as authorized by PEN §1214.1 more difficult, resulting in both a loss of revenue and more costs associated with collections. Specifically, the following provisions of AB 2724 will impact collections and revenue:

Premature release of driver's license holds: The bill requires that holds on, commonly known as suspensions of, driver's licenses be lifted when a defendant *enters into an agreement* to pay a fine in installments. Under current law, the court is not required to notify DMV to end the suspension until after "the fine is fully paid." See VEH §40509 (b). The wording of AB 2427 would allow a defendant to enter into an agreement to pay *without requiring that any payment actually be made* towards the fine, and still require the court to notify DMV that the hold on the defendant's driver's license be lifted. This is problematic and will have a significant negative impact on collections because, under current law and DMV procedure, a license suspension may

only be imposed once for the non-payment of a fine. After a suspension is lifted, it may not be reinstated according to DMV, regardless of whether any payment under the installment plan has been made. The suspension of one's license is an effective means of encouraging payment of a lawfully imposed fine. The requirement, under current law, that a fine be paid in full before the license suspension is lifted makes sense; after the suspension has been released, the court lacks the leverage to compel a defendant to satisfy his or her obligation to pay the authorized fine. The Judicial Council believes AB 2724 would strip the courts and the State of California of a reasonable means of collections.

No requirement of payment of assessment prior to setting hearing on assessment: AB 2724 further states that the court shall not require the payment of a bail or civil assessment before a defendant files a motion to request that the court vacate the assessment or the underlying charge. Similar to the premature release provision, this provision frustrates the ability of the court to collect lawfully imposed bails and civil assessments. Under existing law, a defendant must post bail and, if any is applied, pay the civil assessment prior to requesting the court to address the underlying charge. AB 2724 would allow the defendant to petition the court to hear the delinquent matter prior to any payment to the court, thus removing the court's ability to incentivize the payment of bail and civil assessment. A defendant who is delinquent in paying, under the authority that would be created by AB 2724 were it to become law, could petition the court for a hearing on the underlying charges in an effort to delay making payments, and then fail to appear for the hearing, thus adding to case flow and case management burdens on courts that already are understaffed. Additionally, there is no provision within AB 2724 that allows the imposition of a fine or bail if the defendant fails to appear for a scheduled proceeding related to the charge underlying the delinquent bail. The way AB 2724 is written, because the defendant may petition the court on the underlying offense at any time while the defendant is delinquent in answering for that offense, the court would be prohibited from requiring the fine or payment be paid. This awkward situation is ripe for exploitation by a defendant who is likely comfortable with avoiding her or his responsibility to pay the bail and/or civil assessment indefinitely.

The amount of the potential loss of revenue is unknown, but significant. In 2013, it was reported that over 500,000 drivers licenses were suspended in California, and 10,000 licenses reinstated. Under current law, we can presume that the 10,000 drivers paid amounts owing in order to recover their licenses, and that some portion of the remaining 490,000 were paying off their amounts owing via installment plan.

Using a red light violation as an example, the base fine is \$100. The bail amount becomes \$500 based on statutory penalties, fees, and surcharges. Once the \$500 bail amount is past due, a civil assessment of \$300 is added, for a total of \$800 owing. Under current law, the 10,000 drivers whose licenses were returned would have paid a collective \$8 million under this scenario. Under the paradigm created by AB 2724, if just 10% of the 10,000 drivers whose licenses were returned failed to make any payment at all, the loss to the State of California would be \$800,000. A more likely scenario is that more than 10% will pay something, but possibly not the entire amount owing, and the remaining 490,000 people with suspended licenses may or may not make payments if the payments are no longer required as a condition of having their drivers licenses reinstated.

Unfortunately, there is no way to know how many defendants who currently pay their fines, fees, and assessments in full or in installments will stop paying when there is much less incentive to do so, or how many defendants in the future will not pay. The courts do know, however, that many people would gladly look for ways to pay little or nothing towards the fines, fees and assessments they have incurred; AB 2724 provides two such ways.

Complicating matters, the loss of revenue does not threaten just the courts. AB 2724 will result in a loss of revenue, perhaps significant, to the State of California, counties, cities, and a host of agencies and programs including the State General Fund, State Penalty Fund, State Emergency Medical Air Transportation Fund, and the DNA Fund, among others. Courts receive only a fraction of the funds collected, and the rest are distributed via statutory formula to the many local and state entities and funds through a comprehensive system enacted over many years by the Legislature and codified in statute. This bill appears to remove constructive incentives for the payment of those amounts by removing leverage the courts have to encourage compliance.

Finally, by creating a two-pronged disincentive for payment of bail amounts and civil assessments, the courts (and counties) will be required to spend more money on collections to attempt to recover delinquent debt. With courts managing ongoing reductions, court leaders may have to determine if they can afford to allocate more dollars to collections and risk impacts to public access by reducing expenditures elsewhere.

Judicial Council has not taken a position of support or oppose on AB 2724. This letter serves the purpose of explaining the fiscal concerns contemplated by the Judicial Council and its advisory committees regarding the proposed legislation. Please contact me if you have any questions about the information contained in this letter.

Sincerely,



Andi Liebenbaum
Senior Governmental Affairs Analyst

AL/nco

cc: Members, Senate Appropriations Committee

Hon. Steven Bradford, Member of the Assembly

Ms. Jolie Onodera, Consultant, Senate Appropriations Committee

Mr. Matt Osterli, Fiscal Consultant, Senate Republican Fiscal Office

Mr. Mark Kennedy, Counsel, Senate Public Safety Committee

Mr. Eric Csizmar, Consultant, Senate Republican Office of Policy

Ms. June Clark, Deputy Legislative Affairs Secretary, Office of the Governor

Ms. Madelynn McClain, Budget Analyst, Department of Finance