



Judicial Council of California . Administrative Office of the Courts

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on: December 14, 2012

Title

Traffic: Procedures and Eligibility Criteria for Attending Traffic Violator School

Agenda Item Type

Action Required

Effective Date

January 1, 2013

Rules, Forms, Standards, or Statutes Affected

Amend Cal. Rules of Court, rule 4.104

Date of Report

November 16, 2012

Recommended by

Traffic Advisory Committee
Hon. Mark S. Borrell, Chair

Contact

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Executive Summary

The Traffic Advisory Committee recommends amending rule 4.104 of the California Rules of Court to update the rule to conform to recent legislation that becomes effective January 1, 2013. Assembly Bill 1888 (Stats. 2012, ch. 302) amended Vehicle Code section 42005 to permit drivers with a commercial driver's license who are cited for a violation while driving a noncommercial vehicle to attend traffic violator school (TVS). AB 1888 also added Vehicle Code section 1808.10, which limits eligibility for TVS to one traffic violation citation in an 18-month period. Amended rule 4.104 provides updated procedures and eligibility criteria for attending traffic violator school.

Recommendation

The Traffic Advisory Committee recommends that the Judicial Council, effective January 1, 2013, amend rule 4.104 to conform to new law and clarify procedures and eligibility criteria for attending traffic violator school, as follows.

1. Amend subdivision (b)(2)(B) to add a reference to Vehicle Code section 1808.10, which limits eligibility for TVS to one traffic violation citation in an 18-month period;

2. Delete subdivision (b)(2)(I), which prohibits clerks from referring a driver with a commercial driver's license to TVS no matter what type of vehicle was being driven when the violation occurred, while retaining subdivision (b)(2)(H), which prohibits clerks from making a referral to TVS for violations that occur in a commercial vehicle;
3. Amend subdivision (c)(1) to provide that a defendant with a commercial driver's license may request a referral by a judicial officer to TVS if the defendant was operating a noncommercial vehicle;
4. Amend subdivision (c)(1) to specify that completion of TVS by a driver with a commercial driver's license is not reportable as a confidential conviction;
5. Amend subdivision (c)(1) to clarify that a defendant charged with a violation that occurs in a commercial vehicle is not eligible for referral to TVS in lieu of adjudicating an offense, to receive a confidential conviction, or to avoid violator point counts; and
6. Add an advisory committee comment to clarify that the record of drivers that hold a commercial driver's license and complete TVS is not confidential and must be reported to and disclosed by the Department of Motor Vehicles (DMV).

The text of the amended rule 4.104 is attached at pages 4–6.

Previous Council Action

At the Judicial Council meeting on June 24, 2011, the council adopted an amended rule 4.104 to conform to legislation enacted in 2010 that became effective on July 1, 2011.

Rationale for Recommendation

Amendment of rule 4.104 will clarify procedures and eligibility criteria for referrals to attend traffic violator school (TVS) in accordance with enactment of Vehicle Code section 1808.10 and amendment of Vehicle Code section 42005. First, the rule would be amended to add a reference to Vehicle Code section 1808.10, which limits eligibility for TVS to one traffic violation citation in an 18-month period. Second, the rule would be amended to permit a clerk to refer a driver with a commercial driver's license to TVS if the violation occurred while driving a noncommercial vehicle. Third, the rule would be amended to allow a driver with a commercial driver's license to request referral by a judicial officer to TVS if the violation occurred while driving a noncommercial vehicle. Fourth, the rule would be amended to specify that completion of TVS by a driver with a commercial driver's license is not reportable as a confidential conviction. Fifth, the rule would be amended to clarify that a defendant charged with a violation that occurs in a commercial vehicle is not eligible for referral to TVS in lieu of adjudicating an offense, to receive a confidential conviction, or to avoid violator point counts. Lastly, a comment by the advisory committee would be added to further clarify the requirement that completion of TVS by a driver with a commercial driver's license results in a conviction that is not confidential and is disclosed by the Department of Motor Vehicles to insurers for underwriting and rating purposes and as required by federal law.

Amendment of rule 4.104 as recommended will conform the rule to the new legislation and assist courts in processing referrals to TVS. The rule must be updated to reflect the new law so that courts are able to properly process and report referrals to TVS when the new law goes into effect on January 1, 2013.

Comments, Alternatives Considered, and Policy Implications

Amended rule 4.104 was not circulated for statewide comment and no alternatives were considered as the recommended changes are necessary for courts to comply with the new law. The proposed changes are necessary to assist court clerks and judicial officers by providing criteria for making referrals to TVS and for exercising judicial discretion regarding court-ordered TVS in accordance with the new law. The change in law will allow courts to report convictions after completion of TVS for violations by drivers with a commercial driver's license in a noncommercial vehicle without having violation points added to the driving record by the Department of Motor Vehicles.

Implementation Requirements, Costs, and Operational Impacts

To comply with the new law, courts will need to reprogram court case management systems, update courtesy notices, and provide training for court staff and judicial officers on the new eligibility criteria for referral to TVS. Eligibility for referral to TVS for drivers with a commercial license who are cited for violations while driving a noncommercial vehicle may result in fewer contested traffic cases for courts.

Relevant Strategic Plan Goals and Operational Plan Objectives

Amendment of the rule supports Strategic Plan Goal III, Modernization of Management and Administration, and Operational Plan Objective III.4: "Uphold the integrity of court orders, protect court user safety, and improve public understanding of compliance requirements; improve the collection of fines, fees, and forfeitures statewide."

Attachment

1. Cal. Rules of Court, rule 4.104

Rule 4.104 of the California Rules of Court would be amended, effective January 1, 2013, to read:

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 a request to attend traffic violator school**

9
10 (1) *Eligible offenses*

11
12 Except as provided in (2), a court clerk is authorized to grant a request to
13 attend traffic violator school when a defendant with a valid driver's license
14 requests to attend an 8-hour traffic violator school under Vehicle Code
15 sections 41501(a) and 42005 for any infraction under divisions 11 and 12
16 (rules of the road and equipment violations) of the Vehicle Code if the
17 violation is reportable to the Department of Motor Vehicles.
18

19 (2) *Ineligible offenses*

20
21 A court clerk is not authorized to grant a request to attend traffic
22 violator school for a misdemeanor or any of the following infractions:
23

24 (A) A violation that carries a negligent operator point count of more than
25 one point under Vehicle Code section 12810 or one and one-half points
26 or more under Vehicle Code section 12810.5(b)(2);
27

28 (B) A violation that occurs within 18 months after the date of a previous
29 violation and the defendant either attended or elected to attend a traffic
30 violator school for the previous violation (Veh. Code, §§ 1808.7 [and](#)
31 [1808.10](#));
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; [and](#)
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 [as permitted](#) under Vehicle Code section
19 41501(a) or 42005 or for any other purpose permitted by law. A defendant
20 having a class A, class B, or commercial class C driver's license ~~or may~~
21 [request to attend traffic violator school if the defendant was operating a](#)
22 [vehicle requiring only a noncommercial class C or class M license. The](#)
23 [record of conviction after completion of traffic violator school by a driver](#)
24 [who holds a class A, class B, or commercial class C license must not be](#)
25 [reported as confidential. A defendant](#) charged with a violation that occurs in a
26 commercial vehicle, as defined in Vehicle Code section 15210(b), is not
27 eligible to attend traffic violator school under Vehicle Code sections 41501 or
28 42005 [in lieu of adjudicating an offense, to receive a confidential conviction,](#)
29 [or to avoid violator point counts.](#)
30
- 31 (2) A defendant who is otherwise eligible for traffic violator school is not made
32 ineligible by entering a plea other than guilty or by exercising his or her right
33 to trial. A traffic violator school request must be considered based on the
34 individual circumstances of the specific case. The court is not required to
35 state on the record a reason for granting or denying a traffic violator school
36 request.
37

38 **Advisory Committee Comment**
39

40 [Subdivision \(c\)\(1\). Rule 4.104\(c\)\(1\) reflects that under Vehicle Code sections 1808.10, 41501,](#)
41 [and 42005, the record of a driver with a class A, class B, or commercial class C license who](#)
42 [completes a traffic violator school program is not confidential and must be reported to and](#)

1 [disclosed by the Department of Motor Vehicles for purposes of Title 49 of the Federal Code of](#)
2 [Regulations and to insurers for underwriting and rating purposes.](#)

3
4 **Subdivision (c)(2).** Rule 4.104(c)(2) reflects court rulings in cases where defendants wished to
5 plead not guilty and have the court order attendance of traffic violator school if found guilty after
6 trial. A court has discretion to grant or not grant traffic violator school. (*People v. Schindler*
7 (1993) 20 Cal.App.4th 431, 433; *People v. Levinson* (1984) 155 Cal.App.3d Supp. 13, 21.)
8 However, the court may not arbitrarily refuse to consider a request for traffic violator school
9 because a defendant pleads not guilty. (*Schindler, supra*, at p. 433; *People v. Wozniak* (1987) 197
10 Cal.App.3d Supp. 43, 44; *People v. Enochs* (1976) 62 Cal.App.3d Supp. 42, 44.) If a judicial
11 officer believes that a defendant's circumstances indicate that a defendant would benefit from
12 attending school, such attendance should be authorized and should not be affected by the order in
13 which the plea, explanation, and request for traffic violator school are presented. (*Enochs, supra*,
14 at p. 44.) A court is not required to state its reasons for granting or denying traffic violator school
15 following a defendant's conviction for a traffic violation. (*Schindler, supra*, at p. 433.)