



JUDICIAL COUNCIL OF CALIFORNIA

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July 26, 2016

Hon. Lorena Gonzalez, Chair
Assembly Appropriations Committee
State Capitol, Room 2114
Sacramento, California 95814

Subject: SB 881 (Hertzberg), as amended June 29, 2016 – Fiscal Impact Statement
Hearing: Assembly Appropriations Committee – August 3, 2016

Dear Assembly Member Gonzalez:

The Judicial Council respectfully submits this fiscal analysis of SB 881. The information contained here does not constitute a position in favor of or against the proposed legislation.

SB 881, if enacted, would likely result in a significant decrease in the amount of delinquent court-ordered debt that counties and courts collect. The funds collected are deposited with the state for use in the General Fund as well as for specified programs, with cities and counties at the local level, and with California's courts for both construction programs and court operations. The reduction in collections would result from two specific provisions of the bill: (1) the repeal of Vehicle Code section 13365, which provides that a driver's license may be suspended if the driver has failed to appear (FTA) in court on a promise to appear; and (2) a requirement that courts determine if an individual has the ability to pay installments on a payment plan for delinquent court-ordered debt pursuant to Government Code section 68632. In addition to these two provisions, SB 881 is likely to increase trial court operations costs because it appears to require the courts to hold hearings to determine if an individual's failure to appear or failure to pay was "willful" before imposing a civil assessment on the delinquent account. The courts will

incur significant costs to provide hearings every time a driver fails to honor his/or her promise to appear and/or promise to pay on traffic violations.

Impact of prohibition on driver's license suspensions. Counties and courts agree that suspending a driver's license is a useful tool to compel individuals to come into court and address their delinquent court-ordered debt. License suspension is an important factor that provides significant motivation for individuals to address their tickets. If this tool is removed, as proposed in SB 881, notwithstanding how proactive counties and courts are in their collection efforts utilizing all available tools, collections efforts will be impacted negatively. And, while important policy issues are explored regarding whether it is appropriate to rely on fines, fees, penalties, and assessments arising from traffic violations for local, state and court revenues, over \$675 million in delinquent court-ordered debt was collected in fiscal year 2013-14¹ that was distributed to state, local and court budgets. Several courts have attempted to predict the revenue impacts should this provision of SB 881 be enacted. Los Angeles Superior Court, for example, estimates that if SB 881 is signed into law, its collections may decline by as much as \$31 million a year² based on a significant sample of over 200,000 traffic citations in which individuals failed to appear as promised and were subsequently reported to DMV, compared to another cohort of 50,000 citations that was not sent to DMV under those circumstances. The data provided by the Los Angeles Superior Court documented a three- to five-fold *decrease* in collections when the driver's license suspension tool was not utilized. Extrapolated to all 58 counties, of which Los Angeles Superior Court represents approximately 17.5%³, the total annual loss of revenue could exceed \$170 million. It is important to note that this example is illustrative only because collection practices vary across superior courts. Nevertheless, the loss of revenue could be significant; if there is a ten percent decrease in collections because the driver's license suspension tool is no longer available to encourage individuals to pay the amounts they owe, there would be an annual loss of more than \$60 million statewide.

The author recently amended SB 881 to provide that, in lieu of a driver's license suspension for a failure to appear or a failure to pay, the Department of Motor Vehicles shall, for no more than six months, restrict the license of the individual to employment-related, including job training, or medically-related purposes, for the individual or a member of her/his family. The language requires the department to fully reinstate the driving privileges of the individual after six months,

¹ See the "Report to the Legislature on the Statewide Collection of Delinquent Court-Ordered Debt: FY 2013-2014," pursuant to Penal Code section 1463.010; http://www.courts.ca.gov/documents/lr-delinquentcourt-ordereddebt_2013-14.pdf

² See attached: "Driver's license holds significantly increase compliance with traffic citations" prepared by the Los Angeles Superior Court.

³ See FN 1; according to the 2015 report to the Legislature, "Statewide Collection of Delinquent Court-Ordered Debt: FY 2014-2015, as required under Penal Code section 1463.010" Los Angeles collected \$117.9 million (17.5%) of the total delinquent collections for the year of \$675.3 million

even if that individual has not appeared in court or paid any of the fines, fees, penalties, or assessments from the violation. The Judicial Council does not believe this provision addresses the issues surrounding individuals who fail to appear or otherwise address their tickets; in fact, this provision could provide an incentive to avoid payment of delinquent debt by waiting six months until full driving privileges are restored.

Impact of fee waiver language on collections. SB 881 requires courts to use the civil fee waiver provisions in Government Code section 68632 to determine an individual's ability to pay their delinquent court-ordered debt on an installment plan. Government Code section 68632 requires courts to waive the payment of filing fees when those fees are a barrier to low-income individuals gaining access to the courts.⁴ Applying the civil fee waiver provision to the installment plan requirement in SB 881 could be read to require that low-income individuals would be provided with waivers for—in other words, would not have to pay—their fines, fees penalties, or assessments from infraction violations. Calculating the potential loss of revenue if low-income individuals are no longer responsible for paying court-ordered debt requires estimates as to how many individuals may qualify for waivers. Based on census data as well as on the current amnesty program, it is estimated that the state could experience losses of revenue from \$94 million⁵ to \$236 million⁶ in court-ordered debt collections annually.

Based solely on these two elements in SB 881, revenues could be decreased by \$150 million to more than \$400 million annually. Utilizing the distribution allocation included in the LAO report entitled “Improving California’s Criminal Fine and Fee Structure” (January 2016),⁷ the approximate spread of that impact is as follows:

- \$60 million to \$160 million reduction to the judicial branch, including trial court construction programs and trial court operations [40%].
- \$60 million to \$160 million reduction to cities, counties and other local entities [40%].
- \$30 million to \$80 million reduction to the state General Fund and over 50 state special funds (not including judicial branch entities) [20%].

⁴ Under Section 68632, low-income individuals are those receiving public benefits from programs such as SSI/SSP, CalWORKs, SNAP, IHSS, etc.

⁵ According to the U.S. Census and a report issued by the Kaiser Family Foundation on adult poverty by state in the U.S. (<http://kff.org/other/state-indicator/adult-poverty-rate-by-gender/>), the adult poverty rate of Californians between 19 and 64 years old is currently 14%. Based on the \$675.3 million in delinquent court-ordered debt collected in 2014-2015, \$94.5 million, or 14% could be forgiven.

⁶ Based on the latest data (May 2016) from the traffic amnesty program (SB 85, Chapter 26, Statutes of 2015) at least 20,000 (35%) of the more than 58,000 total eligible accounts self-identified as low-income and requested payment plans. If 35% of the individuals with delinquent court-ordered debt are low-income and are eligible for a waiver of their court-ordered debt pursuant to SB 881, the total amount of forgiven debt could exceed \$230 million (35% X \$675.3 million in delinquent court-ordered debt = \$236 million).

⁷ LAO report, “Improving California’s Criminal Fine and Fee Structure” (Jan. 2016), p. 9 (attached)

Unintended consequence. SB 881 also requires the Department of Motor Vehicles to restore the driving privileges of all drivers whose licenses are suspended pursuant to a failure to appear in court (in other words, anyone who has failed to take care of a delinquent ticket by paying it, requesting a trial by written declaration, or appearing in traffic court in a timely fashion) no later than July 1, 2017. Based on the courts' experiences with the current amnesty program, in which a significant number of individuals (up to 33% in some counties) subsequently defaulted after entering into payment plans for the purpose of having their driver's license suspensions lifted, SB 881 may have the unintended consequence of encouraging some individuals to stop paying their court-ordered debt, or avoid addressing their delinquent tickets at all knowing that their driver's licenses will be restored on or before July 1, 2017.

Impact of hearings. In addition to the reduction in revenues listed above, SB 881, in amending Penal Code section 1214.1, could result in a significant increase in workload for the trial courts if hearings are needed to determine whether an individual's failure to appear or failure to pay was willful as a prerequisite to imposing a civil assessment. Currently, if an individual does not appear before a court and/or if judgement is entered against that individual who then fails to pay the ticket, the court may impose a civil assessment. The Legislature enacted Penal Code section 1214.1 allowing courts to impose civil assessments as an alternative to issuing warrants for the arrest of individuals who fail to appear or fail to pay, having determined that the civil assessment was a more appropriate tool to encourage individuals to appear in court and/or to pay their debt. If willfulness hearings are required, in addition to hard costs (postage and paper) to provide notice of the hearings, court operations costs could be significant. Currently, a day in court, including the time of the judicial officer, other court staff inside and out of the court room, as well as infrastructure and appropriate OE&E costs, are calculated at \$6,695 per day. Assuming a hearing under the terms of SB 881 lasts five minutes, the cost would be an estimated \$70 per hearing.⁸ There were over 2.3 million delinquent accounts sent to collections last year.⁹ If, by way of example, 10% of those delinquent accounts required hearings to determine whether an FTA or FTP was willful, the costs to the courts would be more than \$16 million.¹⁰ The cost changes if there are fewer or more hearings than the 10% estimated here, and if the hearings last less than or require more than five minutes. The workload and costs estimated here are in addition to the share of the revenue losses the courts could experience under the other provisions of SB 881, referenced above.¹¹

⁸ \$6,695 divided by 8 hours = \$837; \$837 divided by 12 (the number of five minute increments in an hour) = \$70.

⁹ See the report referenced in FN 1, above.

¹⁰ \$70 multiplied by 235,000 = \$16,450,000.

¹¹ This calculation assumes that hearings to determine willfulness for the purpose of assigning civil assessments are not recoverable among other costs of collecting delinquent court-ordered debt. If, however, such hearings are determined to be costs associated with the collection of delinquent court-ordered debt, the costs would be recoverable pursuant to Penal Code section 1463.007. This would reduce the fiscal impact of the willfulness

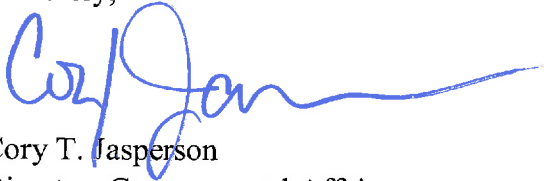
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Please contact me if you have questions about the information contained in this letter.

Sincerely,



Cory T. Jaspersen

Director, Governmental Affairs

CTJ/AL/yc-s

cc: Members, Assembly Appropriations Committee
Hon. Robert Hertzberg, Member of the Senate
Mr. Chuck Nicol, Deputy Chief Consultant, Assembly Appropriations Committee
Mr. Allan Cooper, Fiscal Consultant, Senate Republican Fiscal Office
Mr. Daniel Seeman, Deputy Legislative Secretary, Office of the Governor
Ms. Emma Jungwirth, Budget Analyst, Department of Finance
Mr. Martin Hoshino, Administrative Director, Judicial Council of California

determinations on court operations (because the costs would be recoverable) but would likewise reduce the amount of funds collected and available for distribution to the state, local and court funds as described above.

Driver's license holds significantly increase compliance with traffic citations

When a person fails to fulfill his or her written promise to appear on a traffic citation by the date specified on the citation, that citation is eligible for referral to the Department of Motor Vehicles (DMV) under Vehicle Code section 40509.5. Government Code 13365 then provides that DMV is obligated to suspend the accused person's driver's license until the citation is resolved.

In Los Angeles County, red light enforcement tickets are not referred by the Court in this manner. This creates a natural experiment that allows us to test the impact of driver's license holds on enforcement of traffic laws – by comparing compliance between two otherwise similarly situated groups: accused traffic violators who were and were not subject to license suspensions.¹

Rates of compliance with traffic citations for these two groups, and the resulting fines and fees collected, are shown in Table 1. Table 1 lists, for each fiscal year, the outcomes to-date of efforts to collect on citations on which the accused failed to appear for two groups: "Traffic FTA," subject both to collections efforts by the Court and County's collections vendor, and to license suspensions under GC 13365; and "Red Light FTA," subject to collections efforts alone. For instance, the bottom two lines of Table 1 show the results of citations referred to collections in fiscal year 2012-13. We see that, after 45 months of collections efforts, 39% of the referred amounts subject to license suspension *and* collection efforts were collected, while only 8% of the referred amounts subject solely to collection efforts were collected.

This compliance gap is significant and occurs for all four cohorts. For each of the four cohorts in Table 1, accounts subject to license suspensions are 3-5 times more likely to be collected than those that are not.²

To estimate the loss of collections that would result from eliminating driver's license holds, we apply the non-suspension collections rate to the amount of referral for all "Traffic FTA" citations for each cohort in Table 1. For instance, for the FY12-13 cohort, we project collections on \$151 million at a rate of 8.48%. The projected collections are \$13 million – compared to current collections of \$59 million, this represents a loss of \$46 million for that cohort alone.

By this method we calculate that total collections would be reduced by \$125 million over those 45 months – a loss of \$33 million on an annual basis to Los Angeles collections. Extrapolating these losses across all courts suggests an annual loss of \$189 million to the statewide delinquent collections program.

¹ A possible difference between these two situations is the popular belief that red light camera tickets are easily challengeable in court. To the extent this belief is held, it should *reduce* the rate of failures to appear, as litigants come to court to challenge these tickets.

² While other courts may have higher or lower overall collection rates, there is no reason to believe that other courts' compliance gaps would differ.

LOS ANGELES SUPERIOR COURT
HISTORICAL DELINQUENT ACCOUNT COLLECTION STATS

TRAFFIC FTA vs. RED-LIGHT FTA

Delinquent collections performance reporting by fiscal year of referral with collection activity through March 31, 2016.

Fisal Year of Referral	Reporting Month	Porfolio Age	Case Type	# referral	\$ referral	Collections	Success Rate
FY2015-16	Mar-16	9 months	Traffic FTA	97,334	\$110,552,418	\$11,583,839	10.48%
FY2015-16	Mar-16	9 months	Red Light FTA	22,482	\$17,372,136	\$644,307	3.71%
FY2014-15	Mar-16	21 months	Traffic FTA	173,379	\$161,777,540	\$38,892,837	24.04%
FY2014-15	Mar-16	21 months	Red Light FTA	56,028	\$41,772,188	\$2,395,467	5.73%
FY2013-14	Mar-16	33 months	Traffic FTA	204,941	\$164,704,409	\$53,135,639	32.26%
FY2013-14	Mar-16	33 months	Red Light FTA	47,712	\$33,586,216	\$2,233,591	6.65%
FY2012-13	Mar-16	45 months	Traffic FTA	200,420	\$151,403,737	\$59,218,962	39.11%
FY2012-13	Mar-16	45 months	Red Light FTA	50,334	\$34,455,058	\$2,921,783	8.48%