

JUDICIAL COUNCIL OF CALIFORNIA

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INVITATION TO COMMENT

SP16-09

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| Title | Action Requested |
| Traffic: Installment Payment of Bail Forfeiture and Traffic Violator School Fees | Review and submit comments by August 26, 2016 |
| Proposed Rules, Forms, Standards, or Statutes | Proposed Effective Date |
| Revise forms TR-300 and TR-310 | January 1, 2017 |
| Proposed by | Contact |
| Traffic Advisory Committee Hon. Gail Dekreon, Chair | Jamie Schechter, Attorney 415-865-5327 Jamie.Schechter@jud.ca.gov |

Executive Summary and Origin

The Traffic Advisory Committee proposes revising forms TR-300 and TR-310 for installment payments for traffic infractions. Revision of the forms is recommended to standardize and improve court procedures related to installment payment plans for infraction offenses and to advise defendants of the availability of community service and the right to have their ability to pay bail, court-imposed fines, fees, and assessments considered. The committee developed the revised forms in response to Judicial Council directives to consider recommendations to promote access to justice in all infraction cases. This proposal was previously circulated for public comment this spring. In light of the comments received and other developments, the committee has revised the proposal and recommended its recirculation on an expedited basis to allow it to go into effect on January 1, 2017, if adopted.

Background

Recent studies and reports on state infraction laws have raised concerns about procedural fairness in infraction proceedings, particularly about procedures relating to deposit of bail before defendants appear for arraignment. In response, the Judicial Council adopted rule 4.105 of the California Rules of Court on an expedited basis, effective June 8, 2015, to require courts to allow traffic infraction defendants to appear as promised for arraignment and trial without prior deposit of bail, unless certain specified exceptions apply, and to require courts to include—in any instructions or other materials regarding bail provided by courts to the public—a notice to defendants of the option to appear in court without deposit of bail. The Judicial Council also directed the appropriate advisory committees to consider rule, form, or any other recommendations necessary to promote access to justice in all infraction cases, including

The proposals have not been approved by the Judicial Council and are not intended to represent the views of the council, its Rules and Projects Committee, or its Policy Coordination and Liaison Committee. These proposals are circulated for comment purposes only.

recommendations related to postconviction proceedings or after the defendant has previously failed to appear or pay.

Prior Circulation

This proposal previously circulated for public comment this spring. Based on the comments received, the committee has revised this proposal and is recirculating it on an expedited schedule. Commentators who provided written comments during the first cycle are invited to resubmit those comments if the revised proposal does not address their concerns. Resubmission of comments will ensure that they are presented again to the committee for further consideration.

The Proposal

Vehicle Code sections 40510.5 and 42007 authorize court clerks to accept bail forfeitures and traffic violator school fees in installments for traffic infractions. Sections 40510.5 and 42007 also require the Judicial Council to adopt forms for court clerks to use for processing the installment payments. Courts are not required to offer installment payment plans, but courts that allow clerks to offer installment payment plans for bail or traffic violator school fees in traffic infraction cases must use forms adopted by the Judicial Council for the intended procedures.

The committee has examined court procedures for infraction cases to develop ways to improve access to justice as directed by the council. As part of that effort, the committee proposes revising forms to further standardize and improve the imposition of bail, fines, and assessments when the defendant wishes to pay by installment. The committee proposes adoption of revised forms TR-300, *Agreement to Pay and Forfeit Bail in Installments*, and TR-310, *Agreement to Pay Traffic Violator School Fees in Installments*, for use by court clerks to process installment payment plans with expanded advisement of rights in traffic infraction cases.

Form TR-300

As provided in Vehicle Code section 40510.5, existing form TR-300 is used by court clerks to accept payment and forfeiture of bail in installments for traffic infraction violations that do not require a mandatory court appearance. Under current law, a court that uses the form is required to continue the case for completion of the payments and report a bail forfeiture to the Department of Motor Vehicles (DMV) as a conviction on the date of the initial payment. (Veh. Code, § 40510.5(b), (d).) No trust account is required, and payments are distributed when received. (*Id.*, § 40510.5(f).) If a defendant fails to make a payment as agreed, the court may report the failure to pay to the DMV, issue a warrant, or send a notice that a civil assessment would be imposed if the defendant does not show good cause for the failure to pay. (*Id.*, §§ 40509.5, 40510.5(e).) Each bail installment payment made in this procedure for infractions is final and not subject to reconsideration as is bail that is deposited for other criminal cases. (*Id.*, § 40510.5(c).) The information on form TR-300 is consistent with the above statutes.

Because the installment payment procedure does not require an arraignment or an appearance before a judicial officer in court, and because there are significant legal consequences for failure to make an installment payment, the form includes an express written advisement of rights and a signed waiver of rights by the defendant. The form includes signed acknowledgements of the consequences for failure to pay an installment.

To enhance procedural fairness in infraction cases, the committee proposes revising form TR-300 to provide an expanded advisement and waiver of rights. Page 2 of the revised form would expand notice of the defendant's rights to include: (1) "To ask the court to consider your ability to pay in determining the fine, penalties, and fees for the case;" and (2) "To ask for community service instead of paying the total fine."

Page 2 of the revised form would also provide notice to the defendant of the right to request an ability-to-pay determination at any time before making the final payment, as well as the options available to the court in considering that request:

At any time before your final payment, if you have experienced a change in financial circumstances, you may ask that the court consider your ability to pay. If the court considers your ability to pay, the court may modify your installment plan, allow you to complete community service instead of paying the total fine, or suspend all or part of the fine. The court is not required to offer you any of the above options, and the court may deny your request.

By signing form TR-300, the defendant affirms that he or she has read and understood the advisement and the terms and conditions of the agreement, elects to waive the rights in the advisement, and agrees to pay and forfeit bail in installments.

Additional minor changes to clarify and update form TR-300 would include:

- Revising the instructions at the top of page 1 to indicate that the form is to be "completed by the court." This language would replace the instruction that the form be "filled out by a court clerk" to recognize current practices at some local courts, where case management systems frequently generate these forms, even when defendants enter into installment agreements at the clerk's counter.
- Revising section 1 to include minor stylistic changes to language.
- Revising section 2 to use plain language and state that the appearance date "has not passed."
- Revising section 3 to remove as unnecessary the statement by the defendant that: "I am not able to pay the entire amount at the present time. I ask the court to allow me to pay in installments."
- Revising section 4 to clarify that: "each violation that is reportable to the Department of Motor Vehicles (DMV) and has no proof of correction will be reported as a conviction."
- Revising section 5 and shading in grey as optional the requirement that: "If I do not make my payments by each due date, I will see the clerk on the next court day after the due date of the missed payment." The intention is that the shaded area may be omitted or modified to provide flexibility and reflect local court practices such as substitution of a requirement to call the court or use of a different deadline for contacting the clerk about the missed payment. Optional language would also be provided in grey on page 2 to inform defendants: "If you do not make a payment, please contact the court as soon as possible to make arrangements."
- Revising section 5 to enhance visual clarity and readability and to provide for greater consistency with proposed new form TR-300 (online), which is also being recirculated.

- Revising section 5 to clarify the list of possible actions by the court for failure to pay as agreed.
- Revising for improved readability the notice to defendants at the bottom of the form regarding the consequences of signing the form.
- Revising the bottom of the form to collect the telephone numbers and e-mail addresses of the defendant.
- Revising the bottom of the form to add optional provisions for defendants to request electronic notifications and SMS text messages about the installment payments due under the agreement. The shaded text is intended to be optional so that courts may omit the option if their systems are not able to provide electronic notices or text messages.
- Revising the bottom of the form to remove the space previously provided for entering the expiration date of the defendant’s driver’s license. This revision would provide sufficient space on the form to collect the defendant’s telephone number and e-mail address.
- Revising page 2 to include minor changes to wording to improve readability.

Form TR-310

Form TR-310 is used by court clerks to accept installment payment of traffic violator school fees for eligible traffic infractions. Installment payment agreements are statutorily limited to a maximum length of 90 days. (Veh. Code, § 42007(a)(2).) Proof of completion for attendance of traffic violator school is due at the time of the final payment. (*Ibid.*) If a defendant fails to pay an installment, the court may convert the fee to bail, declare it forfeited, and report the forfeiture as a conviction under Vehicle Code section 1803. (*Id.*, § 42007(a)(3).) The court may declare that no further proceedings be had or charge a failure to pay and impose a civil assessment or issue a warrant. (*Ibid.*) The information on form TR-310 is consistent with the above statutes.

To further enhance procedural fairness for infraction cases, the committee proposes revision of form TR-310 to provide an expanded advisement and waiver of rights. Revised form TR-310 would provide notice of the defendant’s rights: (1) “To appear in court without deposit of bail for formal arraignment, plea, and sentencing;” (2) “To ask the court to consider your ability to pay in determining the fee for traffic violator school and the fine, penalties, and fees for the case;” and (3) “To ask for community service instead of paying the total fine.” In addition, the advisement would also be updated to be consistent with rule 4.105 and state that defendants may “request and have a court trial to challenge the charges without deposit of bail, unless the court orders bail.”

Page 2 of the revised form would also provide notice to the defendant of the right to request an ability to pay determination at any time before making the final payment, as well as the options available to the court in considering that request:

At any time before your final payment, if you have experienced a change in financial circumstances, you may ask that the court consider your ability to pay. If the court considers your ability to pay, the court may modify your installment plan, allow you to complete community service instead of paying the total fine, or suspend all or part of the fine. The court is not required to offer you any of the above options, and the court may deny your request. If the court grants your request, you may no longer be eligible for traffic school.

By signing form TR-310, the defendant affirms that he or she has read and understood the advisement and the terms and conditions of the agreement, elects to waive the rights in the advisement, and agrees to pay and forfeit bail in installments.

Additional minor changes to clarify and update form TR-310 would include:

- Revising the instructions at the top of page 1 to indicate that the form is to be “completed by the court.” This language would replace the instruction that the form be “filled out by a court clerk” to recognize current practices at some local courts, where case management systems frequently generate these forms, even when defendants enter into installment agreements at the clerk’s counter.
- Revising section 1 to include minor stylistic changes to language.
- Revising section 2 to use plain language and state that the appearance date “has not passed.”
- Revising section 3 to remove as unnecessary the statement by the defendant that: “I am not able to and I ask the court to allow me to pay in installments. I understand that the court has costs and expenses from accepting a request to pay the fees in installments.”
- Revising section 4 to enhance visual clarity and readability and to provide for greater consistency with proposed new form TR-310 (online), which is also being recirculated.
- Revising section 4 and partially shading in grey as optional the requirement that: “If I do not make my payments by each due date, I will see the clerk on the next court day after the due date of the missed payment.” The intention is that the shaded area may be omitted or modified to provide flexibility and reflect local court practices such as substitution of a requirement to call the court or use of a different deadline for contacting the clerk about the missed payment. Optional language may also be provided in grey on page 2 to inform defendants: “If you do not make a payment, please contact the court as soon as possible to make arrangements.”
- Revising section 4 to clarify the list of possible actions by the court for failure to pay as agreed.
- Revising the notice to defendants at the bottom of the form regarding the consequences of signing the form to improve readability.
- Revising the bottom of the form to collect the telephone numbers and e-mail addresses of the defendant.
- Revising the bottom of the form to add optional provisions for defendants to request electronic notifications and SMS text messages about the installment payments due under the agreement. The shaded text is intended to be optional so that courts may omit the option if their systems are not able to provide electronic notices or text messages.
- Revising the bottom of the form to remove the space for providing the expiration date of the defendant’s driver’s license. This revision would provide sufficient space on the form to collect the defendant’s telephone number and e-mail address.

Alternatives Considered

The committee has considered other alternatives such as legislative proposals and creating related new forms. Those proposals, however, typically involve a lengthy process that must be pursued separately and have other implications that are distinct from the procedures addressed in

an expedited fashion by the current proposal. Accordingly, the committee is separately considering recommendations to promote access to justice in additional proposals.

Implementation Requirements, Costs, and Operational Impacts

Courts may need to provide training for court staff and judicial officers regarding changes for processing infraction cases. No significant costs or operational impacts are projected due to the proposal. Although the proposal includes advisements of additional procedures available in court, the committee believes that those notices can be provided without significant interference with calendar management and any increased burdens are outweighed by the resulting procedural fairness. The committee has abbreviated the comment period with the goal of presenting the proposal to the Judicial Council during its October meeting. If adopted at that time, courts would have a two-month period to implement the forms by a January 1, 2017, effective date. With this time frame, the committee does not anticipate significant implementation issues.

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?
- Are there any additional forms, procedures, instructions, or advisements that should be added to the proposal?

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.
- Would the proposal increase costs? 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 two 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

1. Revised form TR-300, *Agreement to Pay and Forfeit Bail in Installments*, at pages 7–8.
2. Revised form TR-310, *Agreement to Pay Traffic Violator School Fees in Installments*, at pages 9–10.

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|---|---|
| SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME: | FOR COURT USE ONLY <h1 style="margin: 0;">DRAFT</h1> |
| PEOPLE OF THE STATE OF CALIFORNIA vs. DEFENDANT: | |
| AGREEMENT TO PAY AND FORFEIT BAIL IN INSTALLMENTS (Vehicle Code, § 40510.5) | |

TO BE COMPLETED BY THE COURT

Read carefully and, if you agree, sign and return the form to the clerk.

| |
|------------------|
| CITATION NUMBER: |
| CASE NUMBER: |

1. I am the defendant in this case and I have been charged with the following infraction violation **(s)** of the Vehicle Code that **do** not require me to go into court:
 a. § _____ b. § _____ c. § _____ d. § _____ e. § _____
2. My court appearance date has not **passed**, and I am providing proof of correction for **any** correctable violations.
3. I want to pay and forfeit bail for the violation(s) listed above. I understand that the court does not have to allow me to make installment payments.
4. I understand that by signing below each violation **that is reportable to the Department of Motor Vehicles (DMV) and has no proof of correction will be reported as a conviction.**

5. **TERMS OF THE AGREEMENT:**
Total bail (including penalties and administrative fee of \$ _____) is \$ _____
Initial Payment (10% minimum): \$ _____
Remaining balance after first payment: \$ _____

I agree to pay the remaining balance in monthly installments of at least \$ _____ due on the _____ day of each month, starting on ____/____/____ and until paid in full on or before ____/____/____.

Other (explain): _____

I agree that: All payments must be made by the due date and there is no grace period.
 If I do not make a payment on time, I may have to pay the rest of my unpaid bail immediately.
 [If I do not make my payments by each due date, I will see the clerk on the next court day after the due date of the missed payment.] [Optional]

I understand that if I do not make the payment by each due date the court may:
 Charge me with a misdemeanor under Vehicle Code section 40508.
 Charge a civil assessment of up to \$300 (Pen. Code, § 1214.1) or have a warrant issued for my arrest.
 Report the failure to pay to the **DMV**, which may **suspend or** place a hold on my driver's license.
 Assign my case to a collection agency or the State Franchise Tax Board for collection.

I understand that if I pay as agreed [and if **any** proof of correction has been filed with the court as required], my bail forfeiture will be complete, and at that time, the case will be closed.

By signing below, I affirm that I have read, understood, and accepted the above terms and conditions. I also affirm that I have read and understood my rights printed on the reverse side and that I choose to give them up.

| | | |
|------------------------------|--|--|
| (SIGNATURE OF DEFENDANT) | (DATE) | (TYPE OR PRINT NAME) |
| (DRIVER'S LICENSE/ID NUMBER) | (ADDRESS) | (CITY, STATE, AND ZIP CODE) |
| (TELEPHONE NUMBER) | <input type="checkbox"/> [I have provided a cellular phone number, and I authorize the court to send me SMS text messages regarding payments that I owe under this agreement.] [Optional] | |
| (E-MAIL ADDRESS) | <input type="checkbox"/> [I authorize the court to send me electronic notices regarding payments that I owe under this agreement.] [Optional] | |
| ACCEPTED (date): _____ | BY: _____ | CLERK OF THE SUPERIOR COURT <small>(DEPUTY CLERK)</small> |

ADVISEMENT OF RIGHTS

By choosing to **forfeit and pay** bail in installments and not go into court, you will be giving up these rights:

- To appear in court without deposit of bail for formal arraignment, plea, and sentencing;
- To ask the court to consider your ability to pay in determining the fine, penalties, and fees for the case;
- To ask for community service instead of paying the total fine;
- To request and have a court trial **to challenge the charges** without deposit of bail, unless the court orders bail;
- To have a speedy court trial and have the charges dismissed if a speedy trial is requested but not provided;
- To be represented by an attorney at your expense;
- To subpoena or present witnesses and physical evidence using the power of the court at no cost to you and to testify on your own behalf;
- To confront and cross-examine all witnesses under oath testifying against you; and
- To remain silent and not testify.

At any time before your final payment, if you have experienced a change in financial circumstances, you may ask that the court consider your ability to pay. If the court considers your ability to pay, the court may modify your installment plan, allow you to complete community service instead of paying the total fine, or suspend all or part of the fine. The court is not required to offer you any of the above options, and the court may deny your request.

[If you do not make a payment, please contact the court as soon as possible to make arrangements.]
[Optional]

| | |
|---|--|
| SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME: | <i>FOR COURT USE ONLY</i> <h1 style="margin: 0;">DRAFT</h1> |
| PEOPLE OF THE STATE OF CALIFORNIA vs. DEFENDANT: | |
| AGREEMENT TO PAY TRAFFIC VIOLATOR SCHOOL FEES IN INSTALLMENTS (Vehicle Code, § 42007) | |

TO BE COMPLETED BY THE COURT

Read carefully and, if you agree, sign and return the form to the clerk.

1. I am the defendant in this case. I have been charged with the following infraction violation(s) that do not require me to go into court and that are eligible for confidential conviction(s) for completion of traffic violator school:

a. § _____ b. § _____ c. § _____ d. § _____ e. § _____

2. My court appearance date has not passed, and I am providing proof of correction for any correctable violations.

3. I want to pay the traffic violator school fees for the violation listed above. I understand that the court does not have to allow me to make installment payments.

4. TERMS OF THE AGREEMENT:

The total fee (including an administrative fee of \$ _____) is \$ _____

Initial Payment (10% minimum): \$ _____

Remaining balance after first payment: \$ _____

() I agree to pay the remaining balance within 90 days. I will pay in monthly installments of at least \$ _____ due on the ___ day of each month, starting on ___/___/___ and until paid in full on or before ___/___/___.

() Other (explain): _____

I agree that: All payments must be made by the due date and there is no grace period.
If I do not make a payment on time, I may have to pay the rest of my unpaid fees immediately.
[If I do not make my payments by each due date, I will see the clerk on the next court day after the due date of the missed payment.] [Optional]

I understand that if I do not complete my payment plan the court may:
Charge me with a misdemeanor under Vehicle Code section 40508.
Charge a civil assessment of up to \$300 (Pen. Code, § 1214.1) or have a warrant issued for my arrest.
Report convictions and the failure to pay to the Department of Motor Vehicles, which may suspend or place a hold on my driver's license.

Assign the case to a collection agency or the State Franchise Tax Board for collection.

I understand that my case will continue to be open until the date that my last installment is paid. If I pay as agreed and if my proof of completion of traffic school is reported, a confidential conviction will be reported to the DMV and no further proceedings will be held.

By signing below, I affirm that I have read, understood, and accepted the above terms and conditions. I also affirm that I have read and understood my rights printed on the reverse side and that I choose to give them up.

| | | |
|------------------------------|---|-----------------------------|
| (SIGNATURE OF DEFENDANT) | (DATE) | (TYPE OR PRINT NAME) |
| (DRIVER'S LICENSE/ID NUMBER) | (ADDRESS) | (CITY, STATE, AND ZIP CODE) |
| (TELEPHONE NUMBER) | <input type="checkbox"/> [I have provided a cellular phone number, and I authorize the court to send me SMS text messages regarding payments that I owe under this agreement.] [Optional] | |
| (E-MAIL ADDRESS) | <input type="checkbox"/> [I authorize the court to send me electronic notices regarding payments that I owe under this agreement.] [Optional] | |

CLERK OF THE SUPERIOR COURT

ACCEPTED (date): _____ BY: _____ (DEPUTY CLERK)

ADVISEMENT OF RIGHTS

By choosing to pay traffic violator school fees in installments and not go into court, you will be giving up these rights:

- To appear in court **without deposit of bail** for formal arraignment, plea, and sentencing;
- **To ask the court to consider your ability to pay in determining the fee for traffic violator school and the fine, penalties, and fees for the case;**
- **To ask for community service instead of paying the total fine;**
- To **request and have a court trial to challenge the charges without deposit of bail, unless the court orders bail;**
- To have a speedy court trial and have the charges dismissed if a speedy trial is requested but not provided;
- To be represented by an attorney at your expense;
- To subpoena or present witnesses and physical evidence using the power of the court at no cost to you and to testify on your own behalf;
- To confront and cross-examine all witnesses testifying under oath against you, and
- To remain silent and not testify.

At any time before your final payment, if you have experienced a change in financial circumstances, you may ask that the court consider your ability to pay. If the court considers your ability to pay, the court may modify your installment plan, allow you to complete community service instead of paying the total fine, or suspend all or part of the fine. The court is not required to offer you any of the above options, and the court may deny your request. If the court grants your request, you may no longer be eligible for traffic school.

[If you do not make a payment, please contact the court as soon as possible to make arrangements.]
[Optional]