

RESOLUTION 10-08-2017

DIGEST

Vehicle Code Infractions: Elimination of Penalty Assessments

Amends Penal Code section 1464 to remove Vehicle Code infractions from those violations to which a penalty assessment is assessed.

RESOLUTIONS COMMITTEE RECOMMENDATION

APPROVE IN PRINCIPLE

History:

No similar resolutions found.

Reasons:

This resolution amends Penal Code section 1464 to remove Vehicle Code infractions from those violations to which a penalty assessment is assessed. This resolution should be approved in principle because government should not be funded by assessing additional fees and penalty assessments in lieu of either raising taxes or reprioritizing the expenditure of General Fund monies, the fees and penalty assessments have a disparate impact on poor and low-income people, and the imposition of fines and fees by the courts, who are already underfunded, gives the impression that the courts are imposing fees to fund their operations rather than to administer justice.

Fine, fee, penalty, and assessment structure of California's traffic courts is in need of overhaul. In addition to articles and studies by advocates at the Western Center for Law and Poverty, the ACLU, the Southern Poverty Law Center, and many others, the Judicial Council of California has invested hundreds of hours over the past two years investigating possible solutions to reduce the impacts of traffic violations on low income Californians. The Chief Justice of California convened the Commission on California's Courts ("the Futures Commission") to identify possible solutions to the disparate impact of fines, fees, penalties, and assessments on low income Californians, as well as to address the inherent conflicts of interests in courts levying penalties and assessments that fund their operations. Specifically, an update from the Future's Commission is due to the Judicial Council by the end of this calendar year on the subject of civil adjudication of traffic violations. If the Judicial Council adopts the recommendations, it could be a year or more before the change is enacted.

While the work of the Judicial Council is ongoing, the impact on low-income people in California of the fines, fees, penalties and assessments goes on, and continues to create burdens that can't be overcome by a change in adjudication sometime in the future. Likewise, the Legislature should not simply increase penalties to raise money for government functions including the funding of the courts. Either it must increase revenue fairly, for example via taxes, or it must prioritize how it allocates existing General Fund revenue.

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Penal Code section 1464 to read as follows:

1 § 1464

2 (a) (1) Subject to Chapter 12 (commencing with Section 76000) of Title 8 of the
3 Government Code, and except as otherwise provided in this section, there shall be levied a state
4 penalty in the amount of ten dollars (\$10) for every ten dollars (\$10), or part of ten dollars (\$10),
5 upon every fine, penalty, or forfeiture imposed and collected by the courts for all criminal
6 offenses, including all offenses, except:

7 (i) parking offenses as defined in subdivision (i) of Section 1463, involving a violation of
8 a section of the Vehicle Code or any local ordinance adopted pursuant to the Vehicle Code, and
9 (ii) Vehicle Code infractions.

10 (2) Any bail schedule adopted pursuant to Section 1269b or bail schedule adopted by the
11 Judicial Council pursuant to Section 40310 of the Vehicle Code may include the necessary
12 amount to pay the penalties established by this section and Chapter 12 (commencing with
13 Section 76000) of Title 8 of the Government Code, and the surcharge authorized by Section
14 1465.7, for all matters where a personal appearance is not mandatory and the bail is posted
15 primarily to guarantee payment of the fine.

16 (3) The penalty imposed by this section does not apply to the following:

17 (A) Any restitution fine.

18 (B) Any penalty authorized by Chapter 12 (commencing with Section 76000) of Title 8
19 of the Government Code.

20 (C) Any parking offense subject to Article 3 (commencing with Section 40200) of
21 Chapter 1 of Division 17 of the Vehicle Code.

22 (D) The state surcharge authorized by Section 1465.7.

23 (b) Where multiple offenses are involved, the state penalty shall be based upon the total
24 fine or bail for each case. When a fine is suspended, in whole or in part, the state penalty shall be
25 reduced in proportion to the suspension.

26 (c) When any deposited bail is made for an offense to which this section applies, and for
27 which a court appearance is not mandatory, the person making the deposit shall also deposit a
28 sufficient amount to include the state penalty prescribed by this section for forfeited bail. If bail
29 is returned, the state penalty paid thereon pursuant to this section shall also be returned.

30 (d) In any case where a person convicted of any offense, to which this section applies, is
31 in prison until the fine is satisfied, the judge may waive all or any part of the state penalty, the
32 payment of which would work a hardship on the person convicted or his or her immediate
33 family.

34 (e) After a determination by the court of the amount due, the clerk of the court shall
35 collect the penalty and transmit it to the county treasury. The portion thereof attributable to
36 Chapter 12 (commencing with Section 76000) of Title 8 of the Government Code shall be
37 deposited in the appropriate county fund and 70 percent of the balance shall then be transmitted
38 to the State Treasury, to be deposited in the State Penalty Fund, which is hereby created, and 30
39 percent to remain on deposit in the county general fund. The transmission to the State Treasury
40 shall be carried out in the same manner as fines collected for the state by a county.

41 (f) The moneys so deposited in the State Penalty Fund shall be distributed as follows:

42 (1) Once a month there shall be transferred into the Fish and Game Preservation Fund an
43 amount equal to 0.33 percent of the state penalty funds deposited in the State Penalty Fund
44 during the preceding month, except that the total amount shall not be less than the state penalty
45 levied on fines or forfeitures for violation of state laws relating to the protection or propagation
46 of fish and game. These moneys shall be used for the education or training of department
47 employees which fulfills a need consistent with the objectives of the Department of Fish and
48 Game.

49 (2) Once a month there shall be transferred into the Restitution Fund an amount equal to
50 32.02 percent of the state penalty funds deposited in the State Penalty Fund during the preceding
51 month. Those funds shall be made available in accordance with Section 13967 of the
52 Government Code.

53 (3) Once a month there shall be transferred into the Peace Officers' Training Fund an
54 amount equal to 23.99 percent of the state penalty funds deposited in the State Penalty Fund
55 during the preceding month.

56 (4) Once a month there shall be transferred into the Driver Training Penalty Assessment
57 Fund an amount equal to 25.70 percent of the state penalty funds deposited in the State Penalty
58 Fund during the preceding month.

59 (5) Once a month there shall be transferred into the Corrections Training Fund an amount
60 equal to 7.88 percent of the state penalty funds deposited in the State Penalty Fund during the
61 preceding month. Money in the Corrections Training Fund is not continuously appropriated and
62 shall be appropriated in the Budget Act.

63 (6) Once a month there shall be transferred into the Local Public Prosecutors and Public
64 Defenders Training Fund established pursuant to Section 11503 an amount equal to 0.78 percent
65 of the state penalty funds deposited in the State Penalty Fund during the preceding month. The
66 amount so transferred shall not exceed the sum of eight hundred fifty thousand dollars
67 (\$850,000) in any fiscal year. The remainder in excess of eight hundred fifty thousand dollars
68 (\$850,000) shall be transferred to the Restitution Fund.

69 (7) Once a month there shall be transferred into the Victim-Witness Assistance Fund an
70 amount equal to 8.64 percent of the state penalty funds deposited in the State Penalty Fund
71 during the preceding month.

72 (8) (A) Once a month there shall be transferred into the Traumatic Brain Injury Fund,
73 created pursuant to Section 4358 of the Welfare and Institutions Code, an amount equal to 0.66
74 percent of the state penalty funds deposited into the State Penalty Fund during the preceding
75 month. However, the amount of funds transferred into the Traumatic Brain Injury Fund for the
76 1996–97 fiscal year shall not exceed the amount of five hundred thousand dollars (\$500,000).
77 Thereafter, funds shall be transferred pursuant to the requirements of this section.
78 Notwithstanding any other provision of law, the funds transferred into the Traumatic Brain
79 Injury Fund for the 1997–98, 1998–99, and 1999–2000 fiscal years, may be expended by the
80 State Department of Mental Health, in the current fiscal year or a subsequent fiscal year, to
81 provide additional funding to the existing projects funded by the Traumatic Brain Injury Fund, to
82 support new projects, or to do both.

83 (B) Any moneys deposited in the State Penalty Fund attributable to the assessments made
84 pursuant to subdivision (i) of Section 27315 of the Vehicle Code on or after the date that Chapter
85 6.6 (commencing with Section 5564) of Part 1 of Division 5 of the Welfare and Institutions Code
86 is repealed shall be utilized in accordance with paragraphs (1) to (8), inclusive, of this
87 subdivision.

(Proposed new language underlined; language to be deleted stricken)

PROPOSERS: Bar Association of San Francisco

STATEMENT OF REASONS

The Problem: Tickets for all Vehicle Code violations include supplemental fees for various state and local programs, with one exception for “parking offenses.” For example, Penal Code § 1464 doubles the base fine to fund these programs:

Restitution
Peace Officer’s Training
Driver Training Penalty Assessment
Corrections Training, and
Local Public Prosecutors and Public Defenders Training

And Government Code §§ 70372 and 76000 add fees for:

Courthouse Construction
Criminal Justice Facilities Construction
Automated Fingerprint Identification
Emergency Medical Service, and
DNA Identification

Due to these ten supplemental fees, a Vehicle Code violation with a \$100 base fine results in a \$490 total fine. “Not Just a Ferguson Problem,” 10, <http://www.lccr.com/not-just-ferguson-problem-how-traffic-courts-drive-inequality-in-california/>. If a person cannot afford to pay, then a \$300 late fee will apply. And then the court will order the DMV to suspend the person’s driver’s license. Vehicle Code § 13365. According to the US Department of Justice, these governmental supplemental fees and driver’s license suspensions are harmful because they force individuals into escalating debt and unnecessary incarceration, leading to job loss and becoming trapped in a cycle of poverty. *See* <https://www.justice.gov/opa/pr/justice-department-announces-resources-assist-state-and-local-reform-fine-and-fee-practices>.

The Solution: A Vehicle Code infraction with a base fine of \$100 should have a total cost of a little over \$100. If this were the case, then many people would pay what they owe, and the \$100 would go to the local court. However, when a \$100 ticket ends up costing \$500, then many people decide to pay nothing. As a result, the court does not collect its \$100 and the ten supplemental fees are not collected either.

Instead of addressing the supplemental fees, California’s “solution” has been to create a Traffic Ticket Amnesty Program. *See* Vehicle Code § 42008.8. During the first seven months of the 2015-2017 Amnesty Program, the Senate shared that “more than 132,000 delinquent debt cases” had been resolved. SB 881 (Hertzberg, 2016) Senate Floor Analysis (Aug. 24, 2016). However, according to “Not Just a Ferguson Problem: How Traffic Court Drive Inequality in California

(Report),” our courts have 10 billion dollars in outstanding debt for traffic tickets. (Report, at 6.) Thus, the amnesty approach has been an epic failure.

SB 185’s goal is to improve California’s amnesty program. For example, the bill would require the courts to offer an “indigency” determination for each person with a traffic ticket. If the person is found to be indigent, then the court shall reduce the traffic ticket fee by 80%. As a result, SB 185’s will create an overly-burdensome administrative program to allow courts to take a \$100 ticket that was inflated to \$500 back down to \$100 – for people who can file paperwork to prove that they are poor.

Charging \$500 for a \$100 traffic ticket is not reasonable – no matter what a person’s economic status is. Because Penal Code § 1464 has caused 10 billion in uncollected debt, it must be repealed.

IMPACT STATEMENT

The resolution does not affect any other law, statute or rule other than those expressly identified.

CURRENT OR PRIOR RELATED LEGISLATION

SB 185 (Hertzberg, 2017): People with traffic tickets for Vehicle Code infractions will have the right to request an “indigency” determination. If the court finds the person to be indigent, then the court will reduce the fine and fees by 80%. In addition, if the person does not pay the fees within a 4-year period, then the debt will be vacated, in the interest of justice.

SB 85 (Committee on Budget and Fiscal Review, 2015): established the 2015-2017 Traffic Ticket Amnesty Program in Vehicle Code § 42008.8.

SB 881 (Hertzberg, 2016): clarified procedures for the courts to administer the 2015-2017 Amnesty Program.

AB 1657 (Wieckowski, 2012): proposed adding another supplemental fee for spinal cord injury research, and was vetoed by the Governor.

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