

Date of Hearing: July 10, 2017

ASSEMBLY COMMITTEE ON TRANSPORTATION  
Jim Frazier, Chair  
SB 185 (Hertzberg) – As Amended May 26, 2017

**SENATE VOTE:** 34-6

**SUBJECT:** Crimes: infractions

**SUMMARY:** For traffic fine violations, requires courts to determine a defendant's ability to pay; also requires courts to make accommodations if the defendant is indigent, and prohibits courts from suspending or holding an individual's driver's license for certain violations. Specifically, **this bill:**

- 1) Reduces the penalty for failure to appear and failure to pay a traffic citation from a misdemeanor to an infraction.
- 2) Requires the court to send reminder notices to defendants, as specified, for traffic violations.
- 3) Provides that failure to receive a reminder notice does not relieve the defendant of his or her obligation to appear.
- 4) Requires the court to send the defendant prior notice, as specified, if the case is sent to a comprehensive collection program to recover delinquent debt.
- 5) Requires the court, for traffic violations, to inform defendants that they may be eligible to have their fines and fees reduced if they are determined to be indigent, as defined.
- 6) Requires the court, if a defendant is found to be indigent, to reduce fines and fees by 80%.
- 7) Requires the court to restore fines and fees to the full amount if it is determined that the defendant willfully provided fraudulent information with regard to his or her indigent status.
- 8) Requires the court to conduct an indigency determination on the same day as their court appearance, for cases that are adjudicated, or as soon as possible prior to determining whether a person willfully failed to pay.
- 9) Requires the court to provide alternatives to immediate payment, including payment plans with monthly payments that do not exceed 5% of the defendant's monthly income, as specified.
- 10) Requires the court to offer \$0 payment per month, as specified, if an indigent individual is unable to pay until his or her financial circumstances and to discharge the remaining amount owed if there is no change in the individual's financial status over a 48 month period.
- 11) Requires the court, when community service is provided in lieu of payment, to calculate the number of hours required after the appropriate reductions are established based on the defendant's indigency status.

- 12) Requires the court to calculate community service at a rate of 150% of minimum wage, as specified.
- 13) Requires the court to change a defendant's payment plan, upon request, if the individual's income is subsequently reduced.
- 14) Requires the court, if a person misses the deadline to pay or appear, to provide an "ability to pay determination", as specified, without first paying any bail, fine, or fee.
- 15) Requires the court to remove a driver's license hold or suspensions for individuals who enter into or resume a payment plan.
- 16) Recasts provisions preventing courts from suspending a defendant's driver's license for failure to pay a fine for a traffic citation.
- 17) Requires the court to mail a courtesy notice to the defendant, as specified, before sending a notice to DMV that the defendant failed to appear in court.
- 18) Prohibits DMV from refusing to issue or renew a defendant's driver's license for failure to pay a traffic citation.
- 19) Declares that it is not the Legislature's intent to alter existing law related to suspension of the driving privilege for violations related to unsafe driving behaviors such as reckless driving or driving under the influence of drugs or alcohol.

**EXISTING LAW:**

- 1) Authorizes the court, in cases related to traffic violations, to consider the defendant's ability to pay, as specified.
- 2) Authorizes the court, for penalties involving fines, to allow payments to be made within a specified time or in specified installments.
- 3) Authorizes the court to impose penalties when a promise to appear in court is violated including holding or suspending the individual's driver's license.
- 4) Requires, when a person is arrested for any non-felony traffic violation, that the arresting officer prepare, in triplicate, a written notice to appear in court and deliver one copy of the notice to the arrested person and that the arrested person appear in court on the date specified.
- 5) Prohibits a driver's license suspension for failure to pay a fine on a traffic violation.

**FISCAL EFFECT:** According to the Senate Appropriations Committee, this bill would result in unknown costs to the General Fund to provide new notices and to conduct determination hearings with regard to an individual's indigent status. Additionally, this bill is expected to also result in reductions, in millions and potentially tens of millions of dollars, in fine, fee, and

assessment collection. This bill would also result in one-time costs to DMV of \$330,000 and ongoing costs of \$380,000 to verify licenses and failure to appear status.

**COMMENTS:** Base fines and penalties established in statute are generally tied to the seriousness of the violation. For example, minor motor vehicle infractions typically begin at \$25 and increase with the severity of the offense. When a person cited for a motor vehicle infraction goes to pay their fine, however, they are often surprised that the total cost is substantially (oftentimes by three and four times) higher than the base fine. The increase (over and above the base fine) results from penalty assessments (or surcharges), authorized in statute, that are to help pay for state and local programs and services. For example, a jaywalking citation, which carries a base fine of \$25, totals \$197 once assessments are added. Similarly, parking near a sidewalk access ramp for disabled persons carries a base fine of \$250 but totals \$1,105 with penalty assessments.

While courts are responsible for determining the amount of fines and fees owed by individuals, local jurisdictions, for the most part, are statutorily responsible for collecting payment. Individuals who plead guilty or are convicted of traffic violations are typically required to provide full payment immediately or set up installment payment plans with a collection program. If an offender does not pay on time, the amount owed becomes delinquent, at which time, the law authorizes the collection program to use a variety of tools or sanctions (such as wage garnishments or holding or suspending driving privileges) to motivate offenders to pay their debt. Additionally, in lieu of issuing an arrest warrant, state law authorizes collection programs to impose a civil assessment of up to \$300 against any offender who fails to either make payment or appear in court.

While paying costly fines is unpleasant, for low-income (or indigent) individuals these costly fines can represent a significant portion of their income. Not only is it difficult to pay the initial fine, mounting late fees and penalties can substantially increase what the individual owes, making payment even more difficult. This is particularly true when penalties result in the suspension of the driving privilege, since a person's ability to maintain a job and earn income often depend on their ability to use a vehicle. When an individual's driver's license is suspended, the person very often loses their employment and, with that, the ability to maintain their household, much less repay their debt.

To address this issue, in 2015, the Governor proposed an amnesty program to provide a legal remedy for persons who had their driver's licenses suspended for a failure to appear in court or pay a traffic fine. The Legislature adopted the Governor's proposal as part of the 2015-16 budget and, beginning in October 2015, the courts began accepting applications under the amnesty program. To date, the amnesty program has restored driving privileges to approximately 200,000 Californians; however, the amnesty program expired on March 31, 2017.

According to the Judicial Council, courts have taken a number of steps to promote procedural fairness. For example, the California Rules of the Court were recently modified to, among other things, require that trial courts send reminder notices to traffic defendants before their initial appearance, to standardize and improve court procedures and notifications regarding ability-to-pay determinations, and allow defendants who have outstanding traffic tickets to appear for arraignment and trial without a deposit of bail.

Despite the benefits of the amnesty program and the court's efforts, the author argues that statutory changes are needed to provide meaningful, sustained relief for indigent individuals who are not able to pay costly traffic fines. To achieve this, the author introduced this bill to provide a way for low-income defendants to retain their driving privilege, reduce their debt, and create a uniform ability to pay standard. This bill also includes a variety of provisions to help courts determine whether or not a defendant is indigent and to provide those individuals with accommodations to inform and help them come into compliance with the law.

As it relates to driver's license holds and suspensions, this bill contains provisions that are duplicative of provisions contained in the recently enacted budget bill [AB 103 (Committee on Budget), Chapter 17, Statutes of 2017], that, among other things, limited the courts to initiating driver's license suspension or hold actions only for failure to pay. Remaining provisions in this bill focus primarily on court procedures with respect modifying fine payment processes for indigent individuals which will be addressed in more detail when the bill is heard in the Assembly Public Safety Committee.

Writing in support of this bill, the Western Center on Law and Poverty (WCLP), the co-sponsor of the bill, notes that currently hundreds of thousands of Californians have had their driver's license suspended for failure to appear in court or failure to pay a court-ordered debt. WCLP argues that once a driver's license is suspended, there is no legal remedy except paying off the entire amount owed, something that is difficult for poor individuals to do, creating a cycle of poverty that is nearly impossible to escape.

Writing in opposition to this bill, the California Association of County Treasurers and Tax Collectors (CACTTC), points out that without meaningful consequences, such as losing a driver's license, it is difficult, if not impossible, for County Treasurer's (who serve as the revenue recovery departments in most jurisdictions) to compel payment and that eliminating driver's license suspension as a tool will only serve to diminish revenue recovery, creating a situation where there is no real consequence for persons who fail to appear in court or pay their citations. To illustrate this point, the CACTTC points to data from Butte County showing that 82% of 2015 amnesty program participants whose driver's licenses were suspended never returned to fulfill their remaining, albeit small, obligation.

*Committee comments:*

- 1) This bill should be amended to reflect recently-enacted provisions in AB 103 with respect to suspension of the driving privilege.
- 2) This bill is but one of many bills aimed at addressing issues related to excessively high fine amounts that result when penalty assessments are applied. While lowering fine amounts and adjusting penalties, as proposed in this bill, provides some relief to certain individuals, it does nothing to address the underlying problem that excessively high penalty assessments increase fine amounts well beyond what is needed to shape behavior and making the fines overly punitive. Rather than simply "nibbling around the edges" of this issue by modifying penalties and assessments, the Legislature may wish to consider addressing the practice of funding state and local programs and services through penalty assessments and restoring penalties to base fine amounts.

*Double referral:* This bill will be referred to the Assembly Committee on Public Safety should it pass out of this committee.

*Related legislation:* AB 503 (Lackey) creates a process that allows indigent individuals with outstanding parking citations to repay their fines and penalties while preserving their ability to register and drive their vehicles. AB 503 is set to be heard by the Senate Transportation and Housing Committee on July 11, 2017.

AB 412 (Ting) requires the court to vacate a civil assessment (monetary fine) imposed for failure to appear in court or pay a fine, if the defendant establishes that he or she had good cause to not appear or not pay a fine, or is unable to pay the assessment. AB 412 was held in the Assembly Appropriations Committee on the Suspense File.

AB 390 (Santiago) would authorize pedestrians to enter a crosswalk when pedestrian signal timers are displayed, in part, to address costly fines (due primarily to penalty assessments) that are issued to pedestrians. AB 390 is set to be heard by the Senate Transportation and Housing Committee on July 11, 2017.

*Previous legislation:* AB 103 (Committee on Budget), Chapter 17, Statutes of 2017, among other things, limited the courts to initiating driver's license suspension or hold actions only for failure to appear in court.

SB 881 (Hertzberg), Chapter 779, Statutes of 2016, modified the traffic amnesty program as follows: a) requires a court, when notifying the DMV that an individual with a suspended license has appeared in court, paid the fine, or otherwise satisfied the requirements of the amnesty program, to do so within 90 days; b) required a court, for amnesty applications submitted prior to January 1, 2017, that are still outstanding as of that date, to notify the DMV no later than March 31, 2017, of individuals who have satisfied the requirements of the program; c) provided, for applications submitted on or before March 31, 2017, that all terms and procedures related to the participant's payment plans shall remain in effect after March 31, 2017; and, d) required an individual to file a request with the court by March 31, 2017, in order to be eligible for the amnesty program.

SB 405 (Hertzberg), Chapter 385, Statutes of 2015, required courts to allow individuals to schedule court proceedings, even if bail or civil assessment has been imposed, and clarified the traffic amnesty program.

SB 85 (Committee on Budget and Fiscal Review), Chapter 26, Statutes of 2015 authorized an 18-month traffic amnesty program, by October 1, 2015, for delinquent debt. The program expired on March 31, 2017.

## **REGISTERED SUPPORT / OPPOSITION:**

### **Support**

American Civil Liberties Union of California (Co-Sponsor)  
Community Housing Partnership (Co-Sponsor)  
East Bay Community Law Center (Co-Sponsor)  
Lawyers' Committee for Civil Rights (Co-Sponsor)

Legal Services for Prisoners with Children (Co-Sponsor)  
Western Center on Law & Poverty (Co-Sponsor)  
A New Way of Life  
Alameda County Public Defender's Office  
Alliance for Children's Rights  
Bay Area Legal Aid  
Black Women Organized for Political Action  
California Attorneys for Criminal Justice  
California Catholic Conference, Inc.  
California Immigrant Policy Center  
California Opportunity Youth Network  
California Partnership  
Californians for Safety and Justice  
Children's Defense Fund, California  
City and County of San Francisco  
Coalition on Homelessness San Francisco  
Coleman Advocates  
Community Housing Partnership  
Contra Costa County Defenders Association  
County of Santa Cruz  
Courage Campaign  
Ella Baker Center for Human Rights  
Equal Justice Society  
Filipino Bar Association of Northern California  
First Place for Youth  
Foster Care Counts  
Friends Committee on Legislation of California  
Homeboy Industries  
Honorable Dave Jones, Commissioner, California Department of Insurance  
Honorable Jeff Adachi, San Francisco Public Defender  
Jobs with Justice San Francisco  
Law Enforcement Action Partnership  
Law Foundation of Silicon Valley  
League of California Community Foundations  
Legal Aid Association of California  
Legal Services of Northern California  
Los Angeles Conservation Corps  
Los Angeles County Professional Peace Officers  
Mental Health Advocacy Services  
Monterey County Public Defender's Office  
National Association of Social Workers  
National Center for Lesbian Rights  
National Center for Youth Law  
National Employment Law Project  
Prison Policy Initiative  
Rabbi Suzanne Singer  
Root and Rebound  
Rubicon Programs  
San Diego Volunteer Lawyer Program

Santa Cruz County Board of Supervisors  
Silicon Valley Community Foundation  
Supportive Housing Providers Network  
W. Haywood Burns Institute  
Women Organizing Resources Knowledge and Services  
Young Women's Freedom Center  
4 private citizens

**Opposition**

California District Attorneys Association  
California Association of County Treasurers and Tax Collectors

**Analysis Prepared by:** Victoria Alvarez / TRANS. / (916) 319-2093