
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair

2017 - 2018 Regular

Bill No: SB 185 **Hearing Date:** April 25, 2017
Author: Hertzberg
Version: March 20, 2017
Urgency: No **Fiscal:** Yes
Consultant: MK

Subject: *Crimes: Infractions*

HISTORY

Source: American Civil Liberties Union
Californians for Safety and Justice
EBCLC
LCCR
Legal Services for Prisoners with Children
Western Center on Law and Poverty

Prior Legislation: SB 881 (Hertzberg) Chapter 779, Stats. 2016
SB 405 (Hertzberg) Chapter 385, Stats. 2015

Support: A New Way of Life Re Entry Project; Alameda County Public Defender; Alliance for Children's Rights; Bay Area Legal Aid; Black Women Organized for Political Action; California Attorneys for Criminal Justice; California Catholic Conference; California Department of Insurance; California Opportunity Youth Network; California Partnership; California Public Defenders Association; Children's Defense Fund-California; Coalition on Homelessness San Francisco; Coleman Advocates for Children and Youth; Community Housing Partnership; Contra Costa County Defenders Association; Courage Campaign; East Bay Community Law Center; Ella Baker Center for Human Rights; Equal Justice Society; Filipino Bar Association of Northern California; First Place for Youth; Foster Care Counts; Homeboy Industries; Jobs with Justice San Francisco; Law Enforcement Action Partnership; Law Foundation of Silicon Valley; Legal Aid Association of California; Legal Services of Northern California; Los Angeles Conservation Corps; Los Angeles County Professional Peace Officers Association; Mental Health Advocacy Services, Inc.; Monterey County Public Defender's Office; National Association of Social Workers, California Chapter; National Employment Law Project; National Center for Lesbian Rights; National Center for Youth Law; Prison Policy Initiative; Riverside Temple Beth El; Root & Rebound; Rubicon Programs; Santa Cruz County Board of Supervisors; Santa Cruz County Public Defenders; San Diego Volunteer Lawyer Program, Inc; San Francisco Public Defender; Supportive Housing Providers Network; W. Haywood Burns Institute; Western Center on Law and Poverty; Women Organizing Resources Knowledge and Services; Young Women's Freedom Center; One Individual

Opposition: California Association of County Treasurers and Tax Collectors; California District Attorneys Association

PURPOSE

The purpose of this bill is to, with regards to vehicle violations: require a court to determine a defendant's ability to pay and make specified accommodations if it determines the defendant to be indigent; prohibit the court from issuing a driver's license hold for a failure to pay or failure to appear; require the court to issue specified notices to a defendant in relation to requirements to appear or pay; and make provisions for cases where a defendant willfully fails to appear or pay.

Existing law authorizes a court to notify the state Department of Motor Vehicles (DMV) when an individual fails to pay a traffic fine (FTP), fails to appear in court (FTA), or fails to comply with a court order (FTC). Existing law requires the court to notify the DMV if the individual later pays the fine. (Vehicle Code § 40509.5)

Existing law requires DMV to suspend the driver's license of an individual when DMV receives a notice from the court of an FTP or FTA for that individual, until the individual's driving record is cleared. (Vehicle Code §§ 13365 *et seq.*)

Existing law provides that, in addition to any other penalty in infraction, misdemeanor, or felony cases, the court may impose a civil assessment of up to \$300 against a defendant who fails, after notice and without good cause, to appear in court for proceeding authorized by law or who fails to pay all or any portion of a fine ordered by the court or to pay an installment of bail. This assessment shall be deposited in the Trial Court Trust fund. (Penal Code § 1214.1 (a))

Existing law provides that the \$300 assessment shall not become effective until at least 20 calendar days after the court mails a warning to the defendant by first-class mail to the address on the notice to appear to the defendant's last known address. If the defendant appears within the time specified in the notice and shows good cause for the failure to appear or the failure to pay a fine or installment of bail, the court shall vacate the assessment. (Penal Code § 1241.1 (b))

Existing law provides that payment of bail, fines, penalties, fees, or a civil assessment shall not be required to schedule a court hearing on a pending underlying charge. (Penal Code § 1241.1(b)(2))

Existing law provides that the \$300 civil assessment shall be subject to the due process requirements governing defense and collection civil money judgments generally. (Penal Code § 1241.1(d))

Existing law provides that any county or court that operates a comprehensive collection program may deduct the costs of operating that program, excluding capital expenditures, from any revenues collected under that program. (Penal Code § 2463.007)

Existing law provides that a comprehensive collection program is a separate and distinct revenue collection activity that meets the following criteria: the program identifies and collects amounts arising from delinquent court-ordered debt, whether or not a warrant has been issued against the alleged violator. (Penal Code 1463.007(c))

This bill provides that comprehension collection program also shall meet the following criteria: for infraction violations of the Vehicle Code, the program provides a payment plan option based on the debtor's ability to pay and the program shall not assess an administrative fee for entering into a payment plan or making recurring payments. The program is responsible for notifying the defendant of his or her right to an indigency determination.

Existing law provides that a person willfully violating his or her written promise to appear in court or before a person authorized to receive a deposit of bail is guilty of a misdemeanor regardless of the disposition of the charge upon which he or she was originally arrested. (Vehicle Code § 40508)

This bill provides instead that a person willfully violating his or her written promise to appear on more than one case within the past five years, or willfully violating a lawfully granted continuance of his or her promise to appear in court or before a person authorized to receive a deposit of bail on more than one case in the past five years, is guilty of an infraction regardless of the disposition of the charge upon which he or she was originally arrested.

Existing law provides that a person willfully failing to pay bail in installments as agreed to or a lawfully imposed fine for a violation of a provision of this code or a local ordinance adopted pursuant to this code within the time authorized by the court and without lawful excuse having been presented to the court on or before the date the bail or fine is due is guilty of a misdemeanor regardless of the full payment of the bail or fine after that time. (Vehicle Code § 40508 (b))

This bill deletes Vehicle Code section 40508(b) and provides instead that a person willfully violating his or her written promise to appear for the first time, or willfully violating a lawfully granted continuance of his or her promise to appear in court or before a person authorized to receive a deposit of bail for the first time, is not guilty of an infraction. The person shall be instructed to appear before a judge or a clerk of the court to schedule a new hearing date within 60 days of the willful violation. A person failing within the 60 days is guilty of an infraction.

Existing law provides that if a person violates the promise to appear or pay a fine the court may give notice of the FTA or FTP to DMV and if the fine is subsequently paid the court shall inform DMV of that fact. (Vehicle Code §§ 40509 and 4509.5)

This bill provides instead that if a person has violated a FTA the court shall issue a notice that the person has to appear in court within 60 days. That notice shall include notice of the right to an indigency determination.

This bill provides that if the person does not appear after the 60 days then the court may notice DMV of the FTA. If the person later appears or otherwise satisfies the order then the DMV shall be notified and any driver's license hold shall be removed.

This bill states that the court shall not issue a bench warrant for an FTA.

Existing law provides that any person who FTA as provided by law may be deemed to have elected to have a trial by written declaration upon any alleged infraction, as charged by the citing officer. (Vehicle Code § 40903 (a))

This bill states that the trial by written declaration only after the person has not shown good cause for failure to appear within 20 days of the appearance date.

This bill requires the court to determine whether a defendant in any traffic infraction case is indigent, as specified, no less than 20 days prior to determining whether the defendant willfully failed to pay.

This bill prohibits the court from determining a defendant to have willfully failed to pay if it has determined that the defendant is indigent.

This bill requires the court, if it determines that the defendant is indigent, to reduce the base fine, penalty assessments, any state or local fees, and any civil assessments, by 80% on all charges pending against the defendant.

This bill requires the court to provide alternative options, including a reasonable payment plan as specified, for the amount remaining after the indigency reduction, or for a person who has been found not to be indigent. It prohibits the court from charging a fee for the payment plan.

This bill requires the court to place a defendant who has been determined indigent on a payment plan of \$0 per month until his or her financial circumstances change.

This bill allows an individual who enters into a payment plan with the court and whose income is subsequently reduced to request a change in payment plan.

This bill provides that if the defendant's circumstances have not changed after 48 months, the court shall discharge the remaining amount owed.

This bill requires the court, if it provides community service as an alternative to payment of fees and fines, to calculate the requisite number of hours after making the 80% indigency reduction, as specified.

This bill prohibits the court from charging a fee for the community service option.

This bill provides that if a defendant selects community service, he or she shall choose the county in which to perform the service.

This bill requires the court to consider the defendant's ability to perform and provides that community service shall not conflict with employment, education, government-mandated activities, or any other obligation disclosed by the defendant.

This bill requires the court to determine ability to pay for any individual who misses a deadline to pay or appear on a citation without first paying any bail, fine, or fee.

This bill requires the court, if the individual thereafter enters into or resumes a payment plan, to notify DMV and for any driver's license hold to be removed.

This bill authorizes an individual to request at any time that the court review the payment plan if he or she believes there was an error in the calculation. Requires the court to affirm, reverse, or modify any such judgment or order or direct a new trial or further proceeding.

COMMENTS

1. Need for This Bill

According to the author:

Nationwide, traffic offenses represent the largest number of cases in state and local courts, according to the American Association of Motor Vehicle Administrators (AAMVA). California law allows the courts to impose hundreds of dollars in administrative penalties (civil assessments) if a defendant misses a court date or misses a payment. This may ultimately lead to a suspended driver's license – not for driving behavior but as administrative punishment.

Suspending a license is appropriate for unsafe driving behavior, but is overly harsh for failure to pay since the practice undermines a defendant's ability to earn the necessary wages to pay the ticket; most people who lose their licenses also lose income. The debt that working Californians are saddled with from these penalties push low-income individuals into poverty and even jail. The practice disproportionately affects the middle class, poor people, and communities of color, and represents a significant burden for those who can least afford it. Furthermore, courts frequently do not make a determination of a defendant's ability pay a ticket, as required by law; and when payment plans are offered, the payments required may be just as unaffordable for some defendants as the original costs due to the lack of an ability to pay determination.

This bill prohibits courts from administratively suspending a driver's licenses to collect court-ordered debt for non-safety offenses. SB 185 also requires courts to re-instate suspended licenses for anyone making a good-faith effort to meet their obligations. The bill excludes reckless and drunk driving offenses. The bill requires courts to (1) provide affordable payment plans, (2) assess an individual's ability to pay, (3) reduce the total amount owed by low-income individuals, (4) change payment plans according to an individual's changing economic circumstances, and (5) eliminate debt after 4 years for low-income individuals who are unable to make payments due to economic status.

2. Driver's License Suspension for not Paying Fine

The intended purpose of suspending a driver's license in response to a failure to appear or failure to pay is to coerce that individual into compliance. The DMV reports that 612,000 Californians currently have a license suspended solely for having an FTA or FTP. More than 4.5 million Californians have received FTAs or FTPs since 2006 that could lead to their license being suspended at any time. WCLP states that "if license suspension was an effective tool for encouraging cooperation, the state would not have such high numbers." In addition, the state currently has billions of dollars of uncollected court-ordered debt, further calling into question the effectiveness of license suspension.

3. Background

In the 2015-2016 budget act the Legislature adopted the Governor's proposal for amnesty program to provide a remedy for people who got their licenses suspended for an FTA or FTP. Beginning in October 2015 the courts began accepting applications and approximately 200,000 California's have taken advantage of the program and had their driving privilege restored. That amnesty program ended April 4.

4. Permanent Solution

Even while amnesty was in effect, the courts were still imposing civil assessments for FTA and FTP and suspending licenses. This bill would set up a permanent solution for people who have trouble paying fines including:

- Requiring a court to make a determination of indigency and to reduce the payments accordingly.
- Require reasonable payment plans and no fees for participating in such a plan.
- To not require a payment of fees before coming to court to show that the FTA was not willful
- To prohibit fees for participating in community service.
- Allowing suspension for FTA only if the defendant willfully failed to appear twice in 5 years.
- Eliminates the ability to suspend a license for failure to pay debts but maintains authority for the courts to suspend licenses for up to 30 days for a failure to pay.
- Require a 60 day notice to appear in court or to make payments.
- If a person is still indigent after 4 years require the debt be dismissed.

Western Center on Law and Poverty argues that this bill:

[W]ill increase the ability of courts to collect court ordered debt. If signed into law, SB 185 will allow people to keep their job, get new jobs, and establish payment plans at an amount that our clients can actually afford to make. Reinstating driver's licenses as called for by SB 185 will extend the benefits of the amnesty will help these individuals and prevent countless others from falling into the same debt trap.

5. Current Budget proposal

The Governor's proposed 2017-18 budget includes three proposals related to the state's criminal fine and fee system:

- Eliminate the statutory formulas dictating how State Penalty Fund revenues are distributed and instead appropriate these revenues directly to specific programs (not necessarily the same programs that currently receive these revenues).
- Provide a \$1.1 million augmentation from the Court Collection Account for the Franchise Tax Board's Court-Ordered Debt Collection Program to maintain existing service levels and eliminate a backlog.
- Eliminate the ability to use driver's license holds and suspensions as a sanction for an individual's failure to pay.