
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Loni Hancock, Chair

2015 - 2016 Regular

Bill No: SB 405 **Hearing Date:** April 28, 2015
Author: Hertzberg
Version: April 6, 2015
Urgency: No **Fiscal:** Yes
Consultant: MK

Subject: *Vehicles: Infraction and Misdemeanor Violations: Amnesty*

HISTORY

Source: Western Center on Law and Poverty
A New Way of Life Reentry Project
East Bay Community Law Center
Lawyers Committee for Civil Rights
Legal Services for Prisoners with Children

Prior Legislation: SB 366 (Wright) held Senate Appropriations 2014
AB 2724 (Bradford) held in Assembly Appropriations 2014
AB 1358 (Fuentes) Ch. 662, Stats. 2011
SB 857 (Committee on Budget and Fiscal Review) Ch. 720, Stats. 2010

Support: ACLU; American Friends Service Committee; Ella Baker Center for Human Rights; California Association of Highway Patrolmen; California Attorneys for Criminal Justice; California Catholic Conference, Inc.; California Immigrant Policy Center; California In-Home Supportive Services Consumer Alliance; California Partnership; Courage Campaign; California Public Defenders Association; Los Angeles Community Action Network; Personal Insurance Federation of California; PICO California; Rubicon Programs; St. Mary's Center; Western Regional Advocacy Project

Opposition: None known

PURPOSE

The purpose of this bill is to allow people who participate in an amnesty program to pay off existing fines and have their driver's licenses reinstated.

Existing law provides that an infraction is not punishable by imprisonment and that a person charged with an infraction is not entitled to a jury trial or a public defender. (Penal Code § 19.6.)

Existing law sets forth the duties of the court, probation officers, and probationers in determining the terms and conditions of probation including providing that the court shall determine if there are any facts in mitigation that would be served by granting probation. (Penal Code § 1203.)

Existing law provides that any person convicted of an infraction may, upon a showing that payment of the total fine would pose a hardship on the defendant, be sentenced to perform community service in lieu of the total fine that would be otherwise imposed. (Penal Code § 1209.5.)

Existing law provides that in addition to any other penalty in an infraction, misdemeanor or felony the court may impose a civil penalty up to \$300 against any defendant who fails to appear in court for any proceeding or fails to pay any portion of the fine ordered by the court. (Penal Code § 1214.1.)

Existing law provides that the assessment shall not become effective until at least 10 calendar days after the court mails a warning to the defendant and the court shall vacate the order for the assessment if the person appears in time. (Penal Code § 1214.1(b).)

Existing law provides that the assessment imposed shall be subject to the due process requirements governing defense and collection of civil money judgments generally. (Penal Code § 1214.1)

Existing law provides that if any person has failed to pay a fine within the time authorized by the court to pay a fine, the magistrate or clerk of the court may give notice to DMV for any violation. If the fine is later fully paid then the court shall inform DMV. (Vehicle Code §§ 40509(b) and 40509.5(b).)

Existing law provides that in any case when a person appears before a traffic referee or judge of the superior court for adjudication of a violation of the Vehicle Code, the court, upon request of the defendant shall consider the defendant's ability to pay and sets forth the process for making that determination. If the court determines that the defendant has the ability to pay all or part of the costs, the court shall set the amount to be reimbursed and order the defendant to pay that sum to the county in the manner in which the court believes reasonable and compatible with the defendant's financial ability, or if the defendant is placed on probation the court shall order the probation officer to set the amount. In making a determination of whether a defendant has the ability to pay, the court shall take into account the amount of any fine imposed up on the defendant and any amount the defendant has been ordered to pay in restitution. (Vehicle Code § 42003(c).)

Existing law allows a person owing a fine or bail that is eligible for amnesty under this program to pay to the superior or juvenile court 70 percent of the total fine or bail, or \$100 for an infraction or \$500 for a misdemeanor, either amount of which must be accepted by the court in full satisfaction of the delinquent fine or bail. The one-time, voluntary amnesty program is to be conducted in accordance with Judicial Council guidelines for a period of not less than 120 days, and not longer than six months from the date the court initiated the program. (Vehicle Code § 42008.5.)

Existing law requires each county to establish a one-time infraction amnesty program for fines and bail providing relief to individuals who are financially unable to pay traffic bail or fines with due dates prior to January 1, 2009, thereby allowing courts and counties to resolve older delinquent cases and focus limited resources on collecting on more recent cases. Fifty percent of the fine or bail shall be paid under the amnesty program. Payment of a fine or bail under these amnesty programs shall be accepted beginning January 1, 2012, and ending June 30, 2012. The

Judicial Council shall adopt guidelines for the amnesty program no later than November 1, 2011, and each program shall be conducted in accordance with Judicial Council guidelines. (Vehicle Code § 42008.7.)

This bill provides that a county that establishes a one-time amnesty program for fines and bail shall conduct the program in accordance with guidelines provided by the Judicial Council which shall be adopted by March 1, 2016. Prior to the adoption of those guidelines each program shall be initially conducted in accordance with the Judicial Council guidelines created in accordance with Vehicle Code § 42008.7)

This bill provides that unless agreed otherwise by the court and the county, the government entities that are responsible for the collection of delinquent court-ordered debt shall be responsible for the implementation of the amnesty program as to that debt.

This bill provides that commencing January 1, 2016, until January 1, 2018, each amnesty program shall accept in full satisfaction of any eligible fine or bail, of which the due date for payment was on or before January 1, 2013, the following amounts:

- 80% of the fine or bail if the person has income that exceeds 200% of the federal poverty level.
- 50% of the fine or bail if the person has income that is greater than 150% of, but not more than 200% of the federal poverty level.
- 20% of the fine or bail if the person has income that is not more than 150% of the federal poverty level.

This bill provides that nothing shall limit the court's ability to issue an earnings withholding order or to order the person to perform community services in lieu of paying the amounts specified.

This bill provides that DMV shall restore the driving privilege of a participant in the amnesty program whose driver's license was suspended due to failure to pay fines.

This bill provides that DMV shall provide a notice to each person's whose license has been suspended regarding his or her potential eligibility for the amnesty program.

This bill provides that no criminal action shall be brought against a person for a delinquent fine or bail paid under the amnesty program.

This bill provides that each court or county implementing an amnesty program shall file, not later than one year after establishing the program a written report with the Judicial Council with information about the number of cases resolved, the amount of money collected and the operating costs of the amnesty program.

This bill sunsets January 1, 2018.

RECEIVERSHIP/OVERCROWDING CRISIS AGGRAVATION

For the past eight years, this Committee has scrutinized legislation referred to its jurisdiction for any potential impact on prison overcrowding. Mindful of the United States Supreme Court ruling and federal court orders relating to the state's ability to provide a constitutional level of health care to its inmate population and the related issue of prison overcrowding, this Committee has applied its "ROCA" policy as a content-neutral, provisional measure necessary to ensure that the Legislature does not erode progress in reducing prison overcrowding.

On February 10, 2014, the federal court ordered California to reduce its in-state adult institution population to 137.5% of design capacity by February 28, 2016, as follows:

- 143% of design bed capacity by June 30, 2014;
- 141.5% of design bed capacity by February 28, 2015; and,
- 137.5% of design bed capacity by February 28, 2016.

In February of this year the administration reported that as "of February 11, 2015, 112,993 inmates were housed in the State's 34 adult institutions, which amounts to 136.6% of design bed capacity, and 8,828 inmates were housed in out-of-state facilities. This current population is now below the court-ordered reduction to 137.5% of design bed capacity."(Defendants' February 2015 Status Report In Response To February 10, 2014 Order, 2:90-cv-00520 KJM DAD PC, 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (fn. omitted).

While significant gains have been made in reducing the prison population, the state now must stabilize these advances and demonstrate to the federal court that California has in place the "durable solution" to prison overcrowding "consistently demanded" by the court. (Opinion Re: Order Granting in Part and Denying in Part Defendants' Request For Extension of December 31, 2013 Deadline, NO. 2:90-cv-0520 LKK DAD (PC), 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (2-10-14). The Committee's consideration of bills that may impact the prison population therefore will be informed by the following questions:

- Whether a proposal erodes a measure which has contributed to reducing the prison population;
- Whether a proposal addresses a major area of public safety or criminal activity for which there is no other reasonable, appropriate remedy;
- Whether a proposal addresses a crime which is directly dangerous to the physical safety of others for which there is no other reasonably appropriate sanction;
- Whether a proposal corrects a constitutional problem or legislative drafting error; and
- Whether a proposal proposes penalties which are proportionate, and cannot be achieved through any other reasonably appropriate remedy.

COMMENTS

1. Need for This Bill

According to the author:

Due to an increase in fines and fees and reduced access to courts, a staggering number of Californians have suspended driver licenses. These suspensions make it harder for people to retain employment, harm credit ratings, and raise public safety concerns. The loss of the ability to drive is a threat to a family's economic security.

Suspended licenses can trap working poor in an impossible situation: unable to reinstate their licenses without gainful employment and unable to access employment without a license, keeping people in cycles of poverty that are difficult to overcome. A New Jersey study found that when a license was suspended, 42% of drivers lost their jobs. Of those, 45% were unable to find a new job and 88% of persons with suspended licenses reported a reduction in their income. This jeopardizes economic stability in the state and limits the workforce available. Employers are affected by having to internalize the cost to replace workers and face the challenge of finding qualified workers with valid driver licenses.

By imposing fees that cannot be paid and effectively creating permanent license suspensions, the system also threatens public safety. Those with suspended licenses often drive without insurance; if there is an accident they don't have coverage.

The Governor has proposed a Traffic Amnesty program in the 2015-16 Budget for \$10 billion of uncollected court-ordered debt. However, any such attempt to collect, through an amnesty program or otherwise, requires the ability to pay, one which is generally lacking without the ability to drive.

2. Amnesty Program Under This Bill

This bill provides that a county which establishes an amnesty from January 1, 2016 until January 1, 2018 for fines and bail that were due on or before January 1, 2013 shall follow the guidelines adopted by Judicial Council. The entity in a county that is in charge of collections shall run the program and the bill sets forth the amount of the fines that shall be collected. A person who had their license suspended who participates in the program shall have their license reinstated.

While this bill talks about an amnesty program it does not clearly state that a county may adopt an amnesty program. This should be clarified.

Amnesty programs under this bill would apply to fines due on or before January 1, 2013. Is this the appropriate time frame?

3. Federal Poverty Level

Under this bill, the payments under the amnesty program shall be made as follows:

- 80% of the fine or bail if the person has income that exceeds 200% of the federal poverty level.
- 50% of the fine or bail if the person has income that is greater than 150% of, but not more than 200% of the federal poverty level.
- 20% of the fine or bail if the person has income that is not more than 150% of the federal poverty level.

Is the federal poverty level the appropriate measure in California? Would the supplemental poverty level be more appropriate since it should more accurately recognize the cost of living in California?

4. License Reinstated

This bill provides that DMV shall reinstate the license of a participant in the amnesty program whose license was suspended under Vehicle Code Section 13365. The intent is that the license suspension will be removed as soon as the participant signs up for the amnesty program but this should be clarified. The remaining issue is what if a participant stops making payments as part of the amnesty program, should their license be suspended again? How will that work?

5. Notice by DMV

This bill provides that DMV shall provide notice to each person whose driver's license has been suspended under Vehicle Code Section 13365 for failure to pay fines regarding his or her potential eligibility for the amnesty program. The sponsors believe past amnesty programs have not been totally successful because of a lack of notice and believes that DMV notice in multiple languages should help that.

This is not a mandatory amnesty program, is DMV supposed to send it to everyone with a suspended license even if only a few counties adopt the amnesty program or just those in the impacted counties? Do people with suspended licenses keep their addresses current with DMV so that they will receive notice?

6. Report

This bill requires those counties participating in the amnesty programs to file a written report with Judicial Council including the number of cases involved, the amount of money collected and the operating costs of the program. The Judicial Council shall then submit a report to the legislation summarizing the information from the various programs.

7. Sunset

The amnesty programs under this bill will remain in effect only until January 1, 2018.