
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Loni Hancock, Chair

2015 - 2016 Regular

Bill No: SB 881 **Hearing Date:** April 19, 2016
Author: Hertzberg
Version: March 17, 2016
Urgency: No **Fiscal:** Yes
Consultant: MK

Subject: *Vehicles: Violations*

HISTORY

Source: Western Center on Law & Poverty
American Civil Liberties Union—California
A New Way of Life Reentry Project
California Public Defenders Association
East Bay Community Law Center
Lawyers' Committee for Civil Rights
Legal Services for Prisoners with Children

Prior Legislation: SB 85 (Budget and Fiscal Review) Chapter 26, Stats. 2015
SB 405 (Hertzberg) Chapter 385, Stats. 2015

Support: California Latinas for Reproductive Justice; Community Housing Partnership;
Courage Campaign; Drug Policy Alliance; Ella Baker Center for Human Rights;
Forward Together; Law Foundation of Silicon Valley; Mental Health Advocacy
Services; National Lawyers Guild; Prison Policy Initiative; Rubicon Programs;
San Diego Volunteer Lawyer Program; W. Haywood Burns Institute

Opposition: None known

PURPOSE

The purpose of this bill is to eliminate suspension of driver's licenses as a means of collecting court-ordered debt associated with non-safety traffic offenses.

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))

This bill requires that the failure to appear be willful.

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))

This bill deletes the language stating that if the person appears within the 20 days the court shall vacate the assessment.

This bill 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.

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

This bill provides that the ability to pay the assessment shall not be a prerequisite to arraignment, trial or other court proceedings.

This bill makes a number of changes and deletions so that license suspension will no longer occur when a person has a failure to appear for a non-safety related traffic offense.

This bill provides that by July 1, 2017, at the request of the suspended driver, DMV shall restore all driving suspensions that were previously taken that would not be allowed under this bill.

This bill specifically states that it does not apply to reckless driving or driving under the influence cases.

RECEIVERSHIP/OVERCROWDING CRISIS AGGRAVATION

For the past several 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 December of 2015 the administration reported that as “of December 9, 2015, 112,510 inmates were housed in the State’s 34 adult institutions, which amounts to 136.0% of design bed capacity, and 5,264 inmates were housed in out-of-state facilities. The current population is 1,212 inmates below the final court-ordered population benchmark of 137.5% of design bed capacity, and has been under that benchmark since February 2015.” (Defendants’ December 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).) One year ago, 115,826 inmates were housed in the State’s 34 adult institutions, which amounted to 140.0% of design bed capacity, and 8,864 inmates were housed in out-of-state facilities. (Defendants’ December 2014 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 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 the Bill

According to the author:

A ticket in California for an infraction such as a broken tail light, expired tags, or fare evasion, can ultimately lead to a suspended driver’s license if a defendant does not pay or make a court appearance. Studies show that people who lose their driver’s licenses often lose their jobs, too. That makes it tougher for them to pay any fines or fees charged for minor traffic offenses. In addition, unnecessary driver’s license suspensions add to the burden – and costs – of state agencies, law enforcement, and courts.

The American Association of Motor Vehicle Administrators has recommended that states eliminate the use of license suspensions to collect debt while keeping suspensions in place for serious public safety violations. SB 881 follows this recommendation by eliminating the authority to suspend licenses for non-public safety violations. SB 881 maintains all other suspension authorities in the Vehicle Code. SB 881 explicitly declares that reckless and drunk driving offenses are not included in this change.

2. Background

The state Judicial Council annually adopts a uniform traffic penalty schedule for all non-parking infractions outlined in the Vehicle Code. In addition to a base fine there are an additional approximately 310% penalty assessments added to the base fine. For many individuals, a traffic violation can become prohibitively expensive and can lead to a suspended driver's license. To address this concern, the 2015-16 budget agreement authorized an 18-month traffic amnesty program for delinquent debt. Under this program, the \$300 civil assessment imposed by collection programs for an FTA or FTP is waived. Individuals then receive a 50% reduction in the total amount of court-ordered debt owed for traffic infractions and certain traffic misdemeanors as long as specified criteria are met. In addition, participants in the amnesty program, as well as individuals currently making payments for the same violations included in the amnesty program, can have their driver's licenses reinstated. Moreover, SB 405 (Hertzberg, Chapter 385, Statutes of 2015) requires courts to allow individuals to schedule court proceedings even if bail or civil assessment has been imposed.

2. \$300 Civil Assessment

When a person fails to appear in addition to the fines, penalty assessments and other penalties, the courts impose a civil assessment of \$300. This bill would require that the failure to appear be willful. Currently, a court has no ability to waive the civil assessment even if the court believes the person had a valid reason to fail to appear.

Under existing statute a person must pay the civil assessments before challenging a traffic violation in court. However, California Rules of Court, rule 4.105 provides for appearances at arraignment and trial in infraction cases without prior deposit of bail and includes provisions requiring that courts consider the totality of the circumstances in determining bail amounts for infractions.

This bill makes it clear in statute that the ability to pay the civil assessment shall not be required to schedule a court hearing on the pending underlying charge.

3. No Suspended License for a Failure to Appear

Under existing law a person who fails to pay a traffic citation is found to be guilty of failing to appear. The court then notifies the DMV and the person's license is suspended or they can't renew their license until they take care of paying their fines. This bill removes the ability to suspend or deny a driver's license for failing to appear on a non-safety traffic violation. It will not impact the more serious violations that have as part of their punishment a license suspension.

According to one of the sponsors the Western Center on Law and Poverty:

While WCLP has long advocated for policies to reduce poverty in California by increasing public benefit assistance, expanding affordable housing opportunities and ensuring that all Californians have access to affordable health care, in recent years we have begun to work on changing policies that reduces family income due to the cost of debt and traps them in poverty.

As with all our work, this new direction is a reflection of the issues that low income families bring into local legal service programs for resolution. In 2012, we began to hear that CalWORKs families were not able to succeed in their welfare to work activities because they did not have a driver's license. The lack of a license made it hard to get to work and school on time. The lack of a license was a major barrier to employment because many employers will not hire a person without a license or one who has had their license suspended. As we talked with legal service partners across the state we learned that the issues related to license suspensions were widespread and also linked to an inability to pay court ordered debt due to traffic tickets.

In 2015 a coalition of legal service organizations, including WCLP, published a report, *Not Just a Ferguson Problem, How California Courts are Driving Inequality*.ⁱ The report documented that more than 4 million Californians had been cited by courts for failure to appear in traffic court (FTA) or failure to pay a traffic ticket (FTP). Under California's Vehicle Code a person with an FTA or an FTP can have their license suspended and the license is not restored until all the fees, fines and assessments are paid off in full. As the report documented, many people lost their jobs when they got their license suspended and could not get a new one. Thus the license suspension did not have the desired impact of encouraging cooperation with the courts but actually impeded cooperation.

The report also stated that most California courts would not let a person contest an FTA or an FTP until they paid all the money they owed in advance to the court. Thus even if a person had good cause for not appearing or not paying they could not tell the judge unless they had the money to get their day in court. The effect of these so-called "Pay to Play" rules effectively created two systems of justice in California: If one has resources they could see a judge and have their day in court but if they did not have the resources they did not get their day in court and were saddled with hundreds or even thousands of dollars in debt that they could do nothing about

The *Not Just a Ferguson Problem* report garnered widespread media coverage which resulted in immediate action by all three branches of state government. The Governor proposed and passed an amnesty program that reduced court ordered debt and allowed people to immediately get their license restored.ⁱⁱ The Chief Justice responded by passing urgency regulations that allowed some persons to see judges without paying all their debts in advance.ⁱⁱⁱ The Legislature approved the Governor's amnesty plan and unanimously passed Senator Hertzberg's SB 405 to further limit the "pay to play" practice.^{iv}

The response to the new amnesty program has been strong. The Judicial Council has reported more than a half a million hits to the webpage on amnesty and in the

first few months of the program nearly 40,000 persons were in the process of having their driver's license renewed.^v We believe the reason for the success of the program is that it provides discounts on debt that is seen by our clients as an insurmountable burden and, perhaps most importantly, it immediately restores the driving privilege to persons who agree to make payments on the debt. Combined, amnesty participation reduces the stress many of our clients experience daily and provides an opportunity to escape from their current situation.

Despite all these impressive accomplishments the fact remains that thousands of Californians continue to be caught up in traffic ticket debt every week. The fees, fines and assessments are as high as ever. Persons continue to have their licenses suspended simply because they are poor. People are being arrested and jailed for driving on a suspended license because they have no other choice.

SB 881 proposes a fundamental shift in state policy that will reduce the negative consequences from minor traffic infractions. The bill proposes to eliminate license suspensions as a punishment for failure to appear for or pay minor traffic tickets. While state law has many grounds for suspending a license, SB 881 ONLY eliminates the authority for failures to appear or failures to pay under Vehicle Code section 13365. There are many reasons why the time has come to end this practice.

-- END --

ⁱ The report can be viewed at <http://wclp.org/wp-content/uploads/2015/04/Not-Just-a-Ferguson-Problem-How-Traffic-Courts-Drive-Inequality-in-California.pdf>.

ⁱⁱ For more information on amnesty see the Judicial Council's webpage at <http://www.courts.ca.gov/trafficamnesty.htm> or the advocate's website Backontheroadca.org.

ⁱⁱⁱ The Judicial Council passed an expedited rule of court (Rule 4.105) in early June that can be found at http://www.courts.ca.gov/documents/2015-07-08_2015-06-08_mtg_rule-4_105.pdf. The Judicial Council later amended Rule 4.105 in October. This rule can be viewed at <https://jcc.legistar.com/View.ashx?M=F&ID=4069617&GUID=142F9D7F-438B-4DEC-B837-CC0791C4663E>.

^{iv} The text of SB 405 can be viewed at http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201520160SB405.

^v The Judicial Council provided an statutorily mandated update on the first quarter of amnesty activity in March 2016. The data can be viewed at <http://newsroom.courts.ca.gov/news/traffic-amnesty-provides-relief-to-thousands-of-californians>