

# Traffic trials should be reformed, chief says

By America Hernandez



California Chief Justice Tani G. Cantil-Sakauye urged the Judicial Council to set a statewide standard to bar courts from demanding up front payment from people contesting a traffic fine.

Concerned many California courts create unequal access by requiring people to pay before contesting a traffic ticket, state Supreme Court Chief Justice Tani G. Cantil-Sakauye called on the Judicial Council this week to fast-track a rule prohibiting the practice statewide.

The move comes at a time when, after years of rising traffic fine costs, the courts' total uncollected debt stands at \$10 billion, while more than 4 million residents, or 17 percent of adults statewide, have suspended licenses for failure to pay, according to a study published in April by the Western Center on Law and Poverty.

"This is pretty unprecedented," said Judge Harry E. Hull Jr., who chairs the Rules and Projects Committee of the Judicial Council. "But we recognize the unfairness of requiring people to forward the cost of a fine before being able to challenge the infraction if they feel they are not guilty."

In a statement Monday, Cantil-Sakauye said, "We need a court rule that makes it clear that Californians do not have to pay for a traffic infraction before being able to appear in court."

A proposed rule would be finished by June 8 to meet the emergency timeline, Hull said.

In the wake of tough budget cuts to the judiciary, several groups expressed concern over the practice of passing on the costs to individuals, many of whom are low-income and self-represented litigants.

Earlier this year, the American Civil Liberties Union of Northern California, with San Francisco civil attorney Marley F. Degner of Pillsbury Winthrop Shaw Pittman LLP, warned eight counties that requiring advance payment was a possible constitutional violation. But the practice appears to be more widespread than eight counties.

Los Angeles, Riverside, San Bernardino, San Diego and Orange counties all require a fund deposit of the full fine amount prior to setting a trial date to contest a ticket. Court officials in Los Angeles County said individuals could ask to be released on their own recognizance at

the arraignment to avoid the bail deposit. This is also the case in Shasta and San Diego counties, and in Orange County is it done by filling out a form.

Yet in all those counties, bail is only required for the trial date, not the arraignment. When consulting those courts' websites on how to contest a traffic ticket, it is not clear bail could be avoided by scheduling an arraignment to enter a plea in person instead of directly contesting a ticket online.

San Francisco County does not require a bail deposit, though several attorneys who declined to be named shared stories of certain judges requiring it in their courtrooms, and others in various counties who only required the bail when the individual came without a lawyer.

"Requiring a 'bail' deposit prior to trial is a deprivation of property, albeit temporary, which comes within the purview of the due process clause," stated the letter from the ACLU that was sent to superior courts in Shasta, Fresno, Mendocino, Tulare, Tuolumne, Mariposa, Del Norte and Madera counties.

"Moreover, a criminal fine is a type of punishment, and due process prohibits the government from imposing criminal punishment 'prior to an adjudication of guilt,'" the letter read.

The criminal fines referenced are the mandatory penalties, and state and local fees, added to a traffic ticket's base amount that vastly increases the total. In Los Angeles County, \$29 is added to each \$10 of a single ticket, meaning the lowest fine of \$35 balloons to \$151, and the highest of \$100 becomes \$390 after automatic penalties are applied. Missed or late payments and failure to appear result in an extra \$300 civil assessment fee.

After being late, individuals must pay the total amount, referred to as "bail," before being allowed back into court to explain why they missed a hearing, to contest a ticket or they must begin paying the fine. That money is returned or applied to the ticket, depending on the final verdict.

Degner, who spent a year working with the ACLU of Northern California in 2012 as part of her firm's pro bono fellowship program for associates, applauded the chief justice's call and said she looked forward to seeing the proposed rule, which she said is badly needed.

"I know a man in Napa who showed up for his trial date, didn't have the money and was turned away by the clerk," she said. "Even though he was there, he was found guilty without a trial based on his 'failure to appear.'"

Courts say their hands are tied because fees are set by statute.

Legislative advocate Michael Herald of the Western Center on Law and Poverty, which conducted the study on the effects of such fines, said not enough courts are using the discretion the statute provides to lower the amounts.

"Courts routinely impose the full \$300 civil assessment for each incident, and have their computers programmed to apply the maximum, when the statute says it can be 'up to \$300,'" he said.

Vehicle Code section 42007(a)(1) also authorizes courts to consider a reduction based on the defendant's inability to pay if they request it. Courts that lower fines are the exception, not the rule, according to the study.

"The judiciary have not used their discretion wisely on this, and many of our legal service programs have had to set up separate units within just to handle the volume of clients coming in seeking assistance with driver's license suspensions due to inability to pay," Herald said.

While the report did not have statistics showing how many Californians lose their jobs after a suspended license, New Jersey reported that it occurred 42 percent of the time in that state.

"The system does need a tool to collect revenue, but this practice pushes people out of the workforce and onto public assistance," Herald said. "Frankly, the penalty doesn't fit the crime."

But Gwen Vieau, public information officer for the Orange County Superior Court, said the penalties and fees added to traffic fines don't cover the cost of collection. "Ninety-five percent of those fines and fees are distributed to the state, county, cities and local agencies," she said.

Steven F. Miller, chief executive officer of the GetDismissed smartphone application, which allows people to electronically submit a trial by declaration contesting their ticket by answering a series of questions, highlighted the method as a potential cost-saving measure for underfunded courts seeking to reduce the in-person caseload.

With trials by declaration, defendants submit their testimony in writing, as do police officers, and a judge rules based on the documents. If the ticket is not dismissed, individuals can still do a trial de novo in person.

"You do still have to post bail, but it's one of the only ways in the court system you really get two bites at the apple," Miller said. "I wouldn't be surprised if one day the Legislature requires all defendants to go through a trial by declaration because there's so much money wasted by people showing up in person when they can show up in writing first."