



**Via Overnight Mail and Facsimile**

April 19, 2016

Hon. Robert C. Fracchia, Presiding Judge  
Superior Court of Solano County  
Hall of Justice  
600 Union Avenue  
Fairfield, CA 94533  
Fax: (707) 426-1631

**Re: Traffic Court Practices and Driver's License Suspensions**

Dear Honorable Judge Fracchia:

I write on behalf of the American Civil Liberties Union of Northern California, Lawyers' Committee for Civil Rights, Legal Services for Prisoners with Children, and the Western Center on Law and Poverty to express our serious concern with the Solano County Superior Court's practice of suspending the driver's licenses of those who fail to pay traffic court fines and fees, without making a determination that the person does in fact have the ability to pay.

As outlined in a series of reports authored by many of the signatories to this letter, low income and indigent Californians are increasingly unable to afford minor traffic citations, the cost of which has skyrocketed due to numerous fees tacked on to generate revenue for the operation of the state courts and other basic functions of state government. *See* "Not Just a Ferguson Problem: How Traffic Court is Driving Inequality" (2015).<sup>1</sup> When people do not pay the citations on time, courts routinely refer the drivers to the Department of Motor Vehicles ("DMV") to have their licenses suspended. As a result of these practices, as of the end of 2015, over 1.9 million Californians, many of whom are unemployed, disabled or homeless, had suspended licenses for failure to appear or failure to pay on citations. It is our understanding that in Solano County alone, as of the end of 2015, there were nearly 33,000 suspended licenses for a combination of failure to pay and failure to appear on a traffic citation, which is about 7.5% of the county's total population. More than 11,000 of those suspensions are solely for failure to pay.

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<sup>1</sup> *Available at:* <http://www.lccr.com/wp-content/uploads/Not-Just-a-Ferguson-Problem-How-Traffic-Courts-Drive-Inequality-in-California-4.8.15.pdf>.

These non-safety related suspensions make it harder for people to get and keep jobs, harm credit ratings, increase county financial burdens in support of health and welfare and make it less likely that the court fines and fees will ever get paid. For low-income and indigent drivers, fines and fees create an insurmountable obstacle to the reinstatement of a driver's license. Moreover, communities of color are disproportionately impacted by the license suspension policies and attendant disproportionate arrests for driving on a suspended license due to racial profiling by law enforcement and other biases built into the system. *See* "Stopped, Fined, Arrested: Racial Bias in Policing and Traffic Courts in California" (2016).<sup>2</sup> Finally, the practice of license suspensions for failure to pay and appear has also been an economic failure—resulting in billions of dollars in court-debt that realistically will never be paid.

It has come to our attention that the Court is violating California law and the state and federal constitutions by not providing sufficient notice and opportunity for a traffic court defendant to be heard on her ability to pay and by referring individuals for driver's license suspension without making a proper determination that the individual's non-payment was willful. Because the Court's policy of suspending licenses for failure to pay causes serious and irreparable harm to our clients and other low-income and indigent residents of Solano County, we demand that the Court implement the changes we outline in this letter. Otherwise, we will have no option but to seek relief from a court of law.

### **Statutory and Constitutional Background**

The Vehicle Code expressly states that the Court may only act to suspend a license for failure to pay if the person "willfully" failed to do so. *See* Veh. Code §§ 40509(b) and 40509.5(b). Under basic statutory construction principles and the plain meaning of the word, "willfully" must be interpreted to mean an intentional act and not due to a person's indigence or financial circumstances. *See* Merriam Webster Collegiate Dictionary, 10<sup>th</sup> Ed. (defining "willful" as "obstinately and perversely self-willed," or "done deliberately: intentional"); *People v. Hagedorn*, 127 Cal. App. 4th 734, 744 n.6 (2005) ("The word 'willfully' as generally used in the law is a synonym for 'intentionally,' i.e., the defendant intended to do the act proscribed by the penal statute.") (internal quotations omitted).<sup>3</sup> Accordingly, in interpreting and enforcing §§ 40509(b) and 40509.5(b), the Court may not act to suspend a license for failure to pay if the nonpayment is due to an inability to pay. *Id.*, *see also Bell v. Burson*, 402 U.S. 535, 542 (1971) (due process requires that a state consider essential statutory elements for driver's license suspension before suspending the license).

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<sup>2</sup> Available at: <http://ebclc.org/backontheroad/problem/>.

<sup>3</sup> *See also*, Cal Veh. Code § 38392 ("'Willfully' as used in this section has the same meaning as the meaning of that word prescribed in Section 7 of the Penal Code."). Under the Penal Code's definition, "willfully" implies a "purpose or willingness to commit the act or make the omission[.]" *See* Cal. Penal Code § 7.

Moreover, both the United States and the California supreme courts have held that suspending a driver's license triggers due process protection. *See Burson*, 402 U.S. at 539 (noting that a driver's license may be "essential in the pursuit of a livelihood"); *Rios v. Cozen*, 7 Cal. 3d 792, 795-6 (1972). Because continued possession of a driver's license is protected by the constitutional guarantees of due process, individuals must be given notice and a meaningful opportunity to be heard on the element of "willfulness" and on their ability to pay. Adequate notice requires that the individual be apprised of the action in such a way that they are able to defend themselves against the potential consequences. *See Memphis Light, Gas, & Water Division v. Craft*, 436 U.S. 1, 13 (1978) ("An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.") (citation omitted); *Turner v. Rogers*, 546 U.S. 2507, 2519 (2011) (notice for contempt proceedings in child support case must inform defendants that "ability to pay" is a critical issue). Finally, the law requires that these statutory and constitutional protections regarding notice and opportunity to be heard occur prior to license suspension. *See Burson*, 402 U.S. at 542 (rejecting state's argument that post-suspension liability hearings would satisfy due process). The need for a pre-suspension determination on liability is even greater for indigent persons who have a strong interest in uninterrupted access to the statutory entitlement at issue. *See Mathews v. Eldridge*, 424 U.S. 319, 341-42 (U.S. 1976).

### **The Court Does Not Provide Notice or Opportunity to Be Heard on Ability to Pay, Nor Does it Make a Determination on Willfulness Prior to Suspension**

None of the courtesy notices or failure to appear or failure to pay notices sent by the Court contain any information about the defendant's right to an ability to pay determination, the process through which a defendant may access that determination, or about the availability of installment plans, community service or bail reduction. The absence of local rules, notices, or forms in Solano County Superior Court informing a defendant that she is entitled to a meaningful ability to pay evaluation prior to the Court finding that she has "willfully" failed to pay under Vehicle Code §§ 40509(b) or 40509.5(b), violates the right to notice and a meaningful opportunity to be heard. *See id.*; *see also Memphis Light, Gas, & Water Division v. Craft*, 436 U.S. at 13; *Turner v. Rogers*, 546 U.S. at 2519.

Moreover, at arraignment, the Court does not notify defendants of the right to an ability to pay determination, nor does it solicit financial information by which that determination could be made, nor does it offer the possibility of individualized installment plans or community service. Although the Court sometimes offers extensions to defendants, the extensions appear to be in set increments of 30 days, 90 days, or six months, which does not take into account an individual's specific financial circumstances or ability to pay the full amount in that time period. For defendants who are either on public assistance – which can

sometimes mean receiving only a few hundred dollars a month – or have very low income, payment within the extension period may simply not be feasible.

Although it appears the Court has a declaration form by which a defendant can request an extension, bail reduction, or community service, it is not clear when and how this form is given to defendants. It does not appear to be included in materials mailed to defendants and does not appear to be offered to defendants at arraignment. It is also not clear what standards would govern the Court's decision on whether to grant the request. Finally, to the extent the Court does grant a request for an extension pursuant to this form, it appears the only options on the form are for three or six month extensions.

The Court's suspension of driver's licenses of those who are unable to make payments without a determination that the non-payment was willful, rather than due to an inability to pay, violates the express terms of sections 40509 and 40509.5 and the constitutional guarantee of substantive due process. *See Bearden v. Georgia*, 461 U.S. 660, 673-74 (1983) (revoking probation where defendant lacks resources to pay fine violates "fundamental fairness" component of due process); *Williams v. Illinois*, 399 U.S. 235, 242 (1970) (holding that state criminal statute as applied to defendant "works an invidious discrimination solely because he is unable to pay the fine."). Indeed, in its recent "Dear Colleague" letter, the federal Department of Justice took the position that, "automatic license suspensions premised on determinations that fail to comport with *Bearden* and its progeny may violate due process."<sup>4</sup>

## **Demands**

Accordingly, we request that the Court cease referring individuals for driver's license suspensions. To the extent that the Court will continue to act to suspend driver's licenses for failure to pay, we demand that prior to notifying the DMV of failures to pay under Vehicle Code §§ 40509(b) or 40509.5(b), the Court, at a minimum, inform the defendant of: i) the total amount of fines and fees due; ii) her right to a judicial determination on her ability to pay the fines and fees; iii) the options available to the defendant if she cannot afford to pay, such as the possibility of an installment plan; and iv) a warning that if an individual doesn't pay the fines or fees, the person's driver's license may be suspended, unless the Court determines that the person does not have the ability to pay the fines and fees. In order to constitute adequate notice, the above information must be included in the initial courtesy notice as well as all subsequent notices sent to individuals prior to the Court acting to suspend a license for failure to pay.

In determining whether an individual has "willfully" failed to pay, the Court must provide a meaningful and pre-deprivation opportunity to be heard on that essential element prior

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<sup>4</sup> Available at: <https://www.justice.gov/crt/file/832461/download>.

to acting to suspend the person's license. The Court must also make proper evaluations of an individual's financial means and circumstances in deciding whether a person has "willfully" failed to pay, and refrain from acting to suspend a license if a person has demonstrated an inability to pay the imposed fine or any installment plan that the Court offers.<sup>5</sup> Appropriate training and guidance to traffic commissioners and all other personnel who handle traffic and other infractions are necessary to ensure consistent and legally-compliant implementation.

The Court's obligation to provide notice and opportunity for an ability to pay determination does not end with its prospective implementation. That legal obligation also applies to those whose licenses have already been suspended due to the Court's referral to DMV under Vehicle Code §§ 40509(b) or 40509.5(b), and who have not been provided with a notice and opportunity for an ability to pay determination. While the amnesty program provides an opportunity for reinstatement of licenses for those who learn about the program and can afford installment payments, it does not appear the Court has conducted a mass mailing to all persons whose licenses have been suspended pursuant to Vehicle Code §§ 40509(b) or 40509.5(b). It now has a responsibility to do so, along with providing an opportunity for an ability to pay determination. As mentioned above, offering fixed installment plans or extensions that are not based on a meaningful and individualized assessment of a defendant's ability to pay does not comply with due process or the Vehicle Code.

To be clear, it is our view that the Court should *not* refer individuals for driver's license suspension as a means to generate and collect revenue, regardless of the procedural safeguards it may implement. Sections 40509(b) and 40509.5(b) expressly state that the Court "may" refer persons to the DMV for license suspension for willful failure to pay; there is no mandate to do so. There are numerous other statutes available to the Court to suspend licenses for public safety reasons if the Court has reason to do so. *See, e.g.*, Vehicle Code § 13200 (permitting suspension for speeding or reckless driving); § 13203 (permitting suspension for driver who commits "road rage"); § 13382 (requiring confiscation and suspension of license for driving under the influence); § 12810.5 (permitting suspension for receiving four "points" in a 12 month period and being designated as a "negligent operator"). The Court also has available to it other, less-punitive options to collect any outstanding debt, such as wage garnishment or tax interception. However, if the Court is going to continue this failing policy of using license suspensions to collect court debt, it must at least comply with its statutory and constitutional obligations.

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<sup>5</sup> To minimize the burden on the Court, the Court could consider adopting a form similar to the civil fee waiver form. However, although we believe that meaningful consideration of the information on the form would address many of the problems we have identified, we believe that defendants also must have the right to present argument and evidence to a judge or commissioner on the issue of ability to pay, and also must be adequately informed of that right.

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Please contact us by May 17, 2016 at 5 p.m. to confirm that you have immediate plans to implement the above demands and to inform us of any other changes the Court anticipates. Please direct any communication or questions to Christine Sun at 415.621.2493, ex. 360.

Sincerely,



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