

# **TRAFFIC COURT PROCEEDINGS**

**[REVISED 2017]**



**JUDICIAL COUNCIL  
OF CALIFORNIA**

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OPERATIONS AND PROGRAMS DIVISION  
CENTER FOR JUDICIAL EDUCATION AND RESEARCH

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**TABLE OF STATUTES****TABLE OF CASES****I. [§82.1] SCOPE OF BENCHGUIDE**

This benchguide covers procedures for handling traffic court proceedings involving infractions and misdemeanors under the Vehicle Code. It may be used by traffic commissioners and by judges who are assigned to handle a traffic calendar. The benchguide includes procedural checklists for handling the arraignment and trial calendars and includes charts listing common Vehicle Code infractions and misdemeanors with the applicable penalties that may be imposed. It describes evidentiary and sentencing considerations that are specific to traffic cases, and includes spoken forms that may be used in connection with arraignment and trial.

This benchguide also covers procedures for handling juvenile traffic offenses.

Procedures for handling DUI offenses are covered in California Judges Benchguide 81: *DUI Proceedings* (Cal CJER). General procedures regarding misdemeanor arraignments are covered in California Judges Benchguide 52: *Misdemeanor Arraignment* (Cal CJER). General procedures regarding misdemeanor sentencing are covered in Benchguide 75: *Misdemeanor Sentencing* (Cal CJER).

**II. PROCEDURAL CHECKLISTS****A. [§82.2] Checklist: Arraignment Calendar**

(1) *Call the calendar.*

(2) *Advise the defendants of their constitutional rights, i.e., the right to be represented by an attorney, to cross-examine the arresting officer and any other prosecution witnesses, to subpoena witnesses to testify on the defendant's behalf, to refuse to testify, to have a trial within 45 days of the arraignment, and to have a jury trial in a misdemeanor case. See Cal Const art I, §15. For a script that might be used, see §82.106.*

☛ **JUDICIAL TIP:** It is a best practice to record the advisement of rights on video or on a self-playing PowerPoint presentation for the bailiff or clerk to play at the start of each arraignment calendar. This provides a consistent and accurate advisement for each calendar.

(3) *Call the first group of defendants forward, and ask the first defendant to step up to the podium.*

(4) *Inform the defendant of the charge, and ask the defendant how he or she wishes to plead.* At the commencement of the calendar, many judges advise the assembled defendants of their options regarding pleas and the consequences of each plea. See §82.49.

(5) *If the defendant pleads guilty or no contest, impose sentence, assuming the defendant has waived time for sentencing.* See §82.50. If the defendant refuses to waive time, the judge must set date for judgment and sentencing. On factors to consider in sentencing, see §§82.15, 82.17 (infractions), 82.23–82.24 (misdemeanors), 82.63–82.73 (general considerations).

(6) *If the defendant pleads not guilty, ask the defendant if he or she waives time for trial. If not, set the case for trial within 45 days.* If the defendant is charged with an infraction, the judge should ask the defendant if he or she wishes to proceed with a trial by written declaration (see §82.13). If the defendant is charged with a misdemeanor, the judge should ask the defendant if he or she wishes a court trial or a jury trial. In some courts, when a defendant pleads not guilty or guilty with an explanation (hoping to receive a reduced or suspended fine), the judge (or commissioner) refers the defendant to the district attorney's representative for a conference. If the defendant changes his or her plea to guilty or no contest, the judge imposes sentence.

#### **B. [§82.3] Checklist: Trial Calendar**

- (1) *Welcome the parties to the courtroom.*
- (2) *Dispose of any preliminary matters, e.g., any motions for a continuance, a dismissal, a change of venue (see §82.5), disqualification of the judge, or exclusion of witnesses.*
- (3) *Advise the defendants of their legal rights, e.g., to change the plea to the charge, to remain silent, to confront witnesses, to have sentencing delayed (see §82.73), and to appeal (see §82.91).* For a script that might be used, see §82.107.
- (4) *Advise the defendants regarding the trial procedure.* Some courts give defendants a written form describing the trial procedure. For a script that might be used, see §82.108.
- (5) *Ask if any defendant or witness will require an interpreter.* If a defendant cannot understand English, the court must continue the defendant's case until an interpreter is appointed. Cal Const art I, §14 (defendant unable to understand English has right to interpreter throughout criminal proceedings); *People v Carreon* (1984) 151 CA3d 559, 567, 198 CR 843 (court must appoint interpreter on showing of need). See Cal Rules

of Ct, Standards of J Admin 2.10, which outlines the procedures for determining the need for a court interpreter.

(6) *Ask the clerk to administer the oath to all witnesses who will testify.*

(7) *Ask the clerk to call the name of the first case.*

(8) *Ask the defendant if his or her name on the calendar is his or her true name.* If the defendant states that another name is his or her true name, the clerk should correct the record. See Pen C §989.

(9) *Ask the defendant and the officer or the District Attorney's representative to take the appropriate seats in the courtroom.*

(10) *Advise the defendant of the charged offense (e.g., a violation of Veh C §22350 for speeding) and the date of the offense.*

(11) *Ask the clerk to ask the officer to state his or her full name and to spell his or her last name for the record.*

(12) *If a member of the District Attorney's office represents the people, ask him or her to proceed with the people's case.* Otherwise, the judge should ask the officer to proceed with his or her testimony. The judge should have any exhibits used by the officer marked as People's Exhibit No. 1, No. 2, etc.

➤ **JUDICIAL TIP:** If there is no District Attorney prosecuting the case, note that the officer is not a party to the action. The officer may not object, cross-examine, or offer an argument. It is important that the court maintain the status of the officer as merely a witness and not an interested party in the outcome.

(13) *Proceed with the testimony of any other witnesses for the prosecution.*

(14) *After each prosecution witness completes his or her testimony, give the defendant an opportunity to cross-examine the witness.* On completion of the defendant's cross-examination, the judge should ask the officer or the district attorney's representative for any redirect examination.

(15) *On completion of the prosecution case, ask the defendant to present his or her case.* Generally, the defendant's case will consist solely of testimony. If the defendant has diagrams, photographs, or other exhibits, the judge should have them marked as Defendant's Exhibit A, Exhibit B, etc., and should give the officer or the district attorney's representative an opportunity to examine the exhibits before proceeding.

(16) *After each of the defendant's witnesses completes his or her testimony, give the District Attorney's representative an opportunity to*

*cross-examine the witness.* On completion of the cross-examination, the judge should ask the defendant for any redirect examination.

(17) *On completion of the defendant's case, ask the officer or the District Attorney's representative if he or she has anything further to add.* If the prosecution introduces additional matters, the judge should give the defendant the opportunity for rebuttal.

(18) *Allow the prosecution to present its summation, the defendant to present his or her argument, and the prosecution to present a closing argument.* Pen C §1093(e); see *People v Douglas* (1973) 31 CA3d Supp 26, 27-28, 106 CR 611 (traffic court conviction reversed because of court's refusal to allow defendant to make closing argument in nonjury trial).

(19) *Ask the parties to submit the case for decision.*

(20) *Inform the parties of your decision.* For scripts that might be used, see §82.109-82.110.

(21) *If the defendant is found not guilty of all the charges, advise the defendant that he or she is free to leave at this time.*

(22) *If the defendant is found guilty, impose sentence.* On factors to consider, see §82.15, 82.17 (infractions), 82.23-82.24 (misdemeanors), 82.63-82.73 (general considerations).

(23) *Call the next case that is ready to proceed, i.e., that has both the defendant and the officer present.*

(24) *At the end of the calendar, call the cases in which the officer or the defendant has failed to appear.* If the officer has failed to appear, the judge should consider dismissing the case. In most cases, the court will dismiss on the officer's failure to appear. The court might continue the case if the defendant has previously failed to appear for trial or been granted a continuance of the trial date *and* there is a question about whether the officer's schedule was checked before the new trial date was set. If the defendant has failed to appear, issue a Veh C §40508 warrant or a bench warrant (see §82.35).

☛ **JUDICIAL TIP:** When the officer fails to appear, and there has been no request to continue for an exigent circumstance, dismissal is appropriate. If the defendant fails to appear without a similar request to continue, conduct the trial. A failure to appear is deemed an election for trial by written declaration. Veh C §40903(a). When neither appear without notice, announce on the record that a trial will be conducted under Veh C §40903(a). Later, in chambers, obtain the notice to appear and rule on the basis of the testimony therein. Veh C §40903(b).

### III. APPLICABLE LAW

#### A. [§82.4] Jurisdiction Over Traffic Offenses

Superior courts have jurisdiction over all misdemeanors and infractions committed within the county, except those over which the juvenile court is given jurisdiction (see §82.102). See Pen C §§19.7, 1462.2.

#### B. [§82.5] Venue Over Traffic Offenses

The notice to appear (see §82.25) will require the traffic offender to appear in the court that is nearest or most accessible to the place where the arrest was made. See Veh C §40502(a). The traffic offender may request a change of venue to the court at the seat of the county in which the offense was committed if the offender’s residence or principal place of employment is closer to the county seat than to the court that is nearest or most accessible to the place where the arrest was made. See Veh C §40502(b); *People v Beltran* (1981) 124 CA3d 335, 340, 177 CR 262 (in Los Angeles County, any branch court in the city of Los Angeles qualifies as a “county seat” court). The request must be made at the arraignment. See Pen C §1462.2.

#### 🔑 JUDICIAL TIPS

- Under Veh C §40502(b) the notice to appear must cite the defendant to the county seat “upon demand of the person arrested.” Some bench officers read this requirement to mean that the request for transfer to a county seat must be made at the time of the citation, and that failure to do so waives that right. If the defendant proves that the request was timely made in that fashion, the court may transfer the case to the county seat courthouse.
- In large counties it is strongly recommended that the arraignment judge not take a plea but instead continue the arraignment to be held before the county seat courthouse judge and, out of an abundance of caution, take a general time waiver of the 45-day speedy trial deadline under Pen Code §1382(a)(3) (see §82.47). Make sure the waiver is placed on the record so that the county seat courthouse judge can address any speedy trial motions to dismiss. This is particularly true in large counties where the transfer procedure may easily consume the 45 days. This will avoid any gamesmanship by defendants to run out the speedy trial clock while awaiting transfer.

#### C. [§82.6] Traffic Commissioners and Referees

Article VI, §22 of the California Constitution permits trial courts to appoint officers such as commissioners to perform subordinate judicial duties. Under this authority, many courts use traffic commissioners or

referees to handle many aspects of the traffic caseload. For procedures for appointment and authority, see Govt C §§70214(d), 72190–72190.2.

A court commissioner or traffic referee has the authority to exercise the same powers and duties as a judge with respect to traffic infractions. See Govt C §§70214(d), 72190–72190.2; *In re Kathy P.* (1979) 25 C3d 91, 98, 157 CR 874; *Branson v Martin* (1997) 56 CA4th 300, 305, 65 CR2d 401.

With respect to Vehicle Code misdemeanor violations, a commissioner or referee may (Govt C §§72401(a)–(b), 72402):

- Fix the amount of bail,
- Grant continuances,
- Arraign defendants,
- Hear and recommend orders to be made on demurrers and motions,
- Take pleas,
- Set cases for hearing or trial,
- Impose a fine following a plea of guilty or no contest,
- Suspend all or a portion of any fine, and
- Order a defendant to attend traffic violator school.

A commissioner also has the authority to issue a bench warrant for the arrest of a defendant who fails to appear or to perform any act required by a court order. Govt C §72190.2.

## **D. Infractions**

### **1. [§82.7] General Classification of Vehicle Code Violations as Infractions**

Unless otherwise provided, Vehicle Code violations are infractions. See Veh C §40000.1. Numerous violations have been designated as misdemeanors. See Veh C §§40000.5–40000.26; discussion in §82.24. Other specified offenses are punishable as felonies. See Veh C §40000.3. Registration and equipment violations and all but the most serious moving violations are infractions.

### **2. Overview of Procedure**

#### **a. [§82.8] Appearance Without Deposit of Bail**

A person who has received a written notice to appear in court on an infraction (see §82.25) may appear in court by the appearance date for arraignment and trial to contest the alleged traffic infraction without the deposit of bail. Cal Rules of Ct 4.105(a)–(b). However, the court may require payment of bail at arraignment before trial if:

- A defendant who has appeared in court does not sign a written promise to return to court on a future date and time as ordered by the court (Cal Rules of Ct 4.105(c)(2); Advisory Committee Comment to Cal Rules of Ct 4.105) or
- The court determines (and states reasons for the finding) that the defendant is unlikely to appear as ordered without a deposit of bail. The court should consider, among other factors, whether previous failures to pay or appear were willful or involved adequate notice (Cal Rules of Ct 4.105(c)(3); Advisory Committee Comment to Cal Rules of Ct 4.105).

The court must require bail when the defendant elects a statutory procedure that requires the deposit of bail. Cal Rules of Ct 4.105(c)(1); see §82.9.

In determining the amount of bail, the court must consider the totality of the circumstances, including whether the bail amount would impose an undue hardship on the defendant. Cal Rules of Ct 4.105(c)(4); Advisory Committee Comment to Cal Rules of Ct 4.105.

The court must inform defendants of the option to appear in court without the deposit of bail in any instructions or other materials courts provide for the public that relate to bail for infractions, including any website information, written instructions, reminder notices, and forms. Cal Rules of Ct 4.105(d).

#### **b. [§82.9] Deposit of Bail in Lieu of Appearance or Before Appearance Date**

Various statutory provisions authorize persons who have received a written notice to appear on an infraction to elect to deposit the appropriate bail (see §§82.15, 82.17) and penalty assessment (see §82.70) in lieu of appearing in court or in advance of the notice to appear date. These include the following:

- *Deposit of bail and forfeiture.* See Veh C §§40510(a), 40521(a). Defendants may pay bail to avoid having to appear in court by allowing the court to declare forfeiture of the posted bail in uncontested cases.
- *Declaration of intention to plead not guilty.* The defendant may elect, before the appearance date, to deposit bail and declare the intention to plead not guilty. Veh C §§40519(a). The defendant may choose whether to have an arraignment and trial on the same day or on separate days. Veh C §§40519(a). The deposit of bail does not constitute entry of a plea or a court appearance; a plea of not guilty must be made in court at the arraignment. Veh C §40519(a). If the defendant does not appear in court on that date, he or she is declared

guilty, the bail is declared forfeited, and the case is closed. See Veh C §§40512(a)(1), 40512.5(a).

- *Written not guilty plea.* The defendant may elect, before the appearance date, to plead not guilty in writing. Veh C §§40519(b). The defendant must deposit bail when the plea is filed with the court. Thereafter the arraignment and trial are set on the same day, unless the defendant requests separate dates and the case proceeds to trial as if the defendant had appeared in person to enter the plea. Veh C §§40519(b).
- *Trial by written declaration.* Defendants cited for certain infractions may elect to have a trial by written declaration. Veh C §40902(a). The defendant must deposit bail when the declaration is submitted. Veh C §§40902(b). If the defendant elects this option, the case will proceed by submission of testimony and evidence without the defendant appearing in person. See §82.13.

A person who has not posted bail on or before the date on which he or she is required to appear must appear in court on that date for an arraignment hearing at which he or she may enter a plea of guilty, no contest, or not guilty. For a discussion of the arraignment, see §§82.47–82.50.

### c. [§82.10] Payment of Bail in Installments

If an infraction violation of the Vehicle Code or an infraction violation of an ordinance adopted under the code does not require a court appearance, the court clerk may accept a payment and forfeiture of bail in installments. Veh C §40510.5(a). An initial installment payment of at least 10 percent of the total bail amount for each infraction violation must be made to the clerk before the date on which the defendant promised to appear, before the expiration of any continuance, or on receipt of information that an action has been filed and before the scheduled court date. Veh C §40510.5(a). As a condition of payment of bail installments, the defendant must sign an Agreement To Pay and Forfeit Bail in Installments (form TR-300), which sets out the terms of the installment payment schedule as agreed on with the court. Veh C §40510.5(a)(4). The defendant must also submit proof of correction when such proof is mandatory for a correctable offense. Veh C §40510.5(a)(2).

A court may use an online interface to enter into installment payment agreements with traffic infraction defendants under Veh C §40510.5. Cal Rules of Ct 4.108(a)(1). Before entering into an installment payment agreement, the online interface must provide defendants with the Advisement of Rights stated in Attachment 1 of an Online Agreement To Pay and Forfeit Bail in Installments (form TR-300 (online)). Cal Rules of Ct 4.108(a)(2).

When the clerk accepts the agreement for payment and forfeiture of bail installments, the clerk must continue the appearance date to the date scheduled for completion of payment and forfeiture of bail in the agreement. Veh C §40510.5(b).

The defendant must pay to the clerk or collection agency a fee equal to the administrative and clerical costs of processing installment accounts as determined by the board of supervisors or the court, up to a maximum of \$35. Veh C §40510.5(g).

If the defendant fails to make an installment payment according to the agreement, the court may charge a failure to appear or pay under Veh C §40508 (see §§82.35, 82.74–82.78) and impose a civil assessment as provided under Pen C §1214.1, or issue an arrest warrant for a failure to appear. Veh C §40510.5(e).

If the defendant does not make an installment payment as agreed and fails to appear at a compliance hearing, either in person or by counsel, the court may continue the arraignment to a date beyond the date of the last installment payment date, issue an arrest warrant, or impose a civil assessment as provided under Pen C §1214.1 for the failure to appear. Veh C §40512(b)(1). If the defendant has paid all the required bail funds and does not appear at a compliance hearing, the court may declare bail forfeited and order that no further proceedings take place in the case, with specified exceptions. Veh C §40512(b)(2).

In infraction cases for which the defendant received a written notice to appear and has failed to make a payment under an installment plan as provided in Veh C §40510.5, the court must allow the defendant to appear by written petition to modify the payment terms. Alternatively, the defendant may request or the court may direct a court appearance. Cal Rules of Ct 4.106(e)(1). The court may not require payment of bail, fines, penalties, fees, or assessments to consider the petition. Cal Rules of Ct 4.106(e)(2). The petition to modify the payment terms does not stay the operation of any order requiring the payment of bail, fines, penalties, fees, or assessments unless specifically ordered by the court. Cal Rules of Ct 4.106(e)(3). If the defendant petitions to modify the payment terms based on an inability to pay, the procedures stated in Cal Rules of Ct 4.335 apply (see §82.78). Cal Rules of Ct 4.106(e)(4). If the petition to modify the payment terms is not based on an inability to pay, the court may deny the defendant's request to modify the payment terms and order no further proceedings if the court determines that:

- An unreasonable amount of time has passed, or
- The defendant has made an unreasonable number of requests to modify the payment terms. Cal Rules of Ct 4.106(e)(5).

If the court chooses to grant the defendant's request, the court may modify the payment terms by reducing or suspending the base fine, lowering the

payments, converting the remaining balance to community service, or otherwise modifying the payment terms as the court sees fit. Advisory Committee Comment to Cal Rules of Ct 4.106.

**d. [§82.11] Pleading Not Guilty**

A person who pleads not guilty to an infraction has the right to a trial before a traffic commissioner or referee. See §82.6. There is no right to a jury trial or to a court-appointed attorney. See Pen C §19.6; *People v Lucas* (1978) 82 CA3d 47, 51–52, 147 CR 235 (“[a]ttorneys rarely appear in infraction cases for the simple reason that the stakes are not worth the cost”), although a person charged with an infraction has the right to be represented by private counsel (see *People v Kriss* (1979) 96 CA3d 913, 917, 158 CR 420). Without a showing of special circumstances, it is not necessary for the judge to advise an unrepresented defendant charged with a traffic infraction of his or her right to be represented by privately retained counsel. It is also unnecessary for the judge to obtain a waiver of the right to counsel before accepting a defendant’s plea of guilty or no contest to the infraction or before trying the defendant without counsel if the defendant pleads not guilty. *People v Prince* (1976) 55 CA3d Supp 19, 32–34, 127 CR 296. “Special circumstances” that might warrant an advisement and waiver include the possible imposition of multiple maximum penalties or proof of gross physical, linguistic, or mental inability of the defendant to represent himself or herself or to understand the right to employ counsel and the means of employing counsel. 55 CA3d Supp at 34 n10.

**e. [§82.12] Calling and Examining Witnesses**

Generally, the only witnesses at the trial are the officer and the defendant. There is usually no prosecutor. See *People v Marcroft* (1992) 6 CA4th Supp 1, 4, 8 CR2d 544 (“economic realities preclude the presence of prosecuting attorneys at most infraction trials”). If the officer fails to appear at the trial, the judge may dismiss the case or proceed with the case by examining the witnesses himself or herself. See Evid C §775 (judge’s authority to call and question witnesses). A trial of a traffic infraction conducted without a prosecutor is proper as long as the judge’s conduct, including the judge’s calling and questioning of witnesses, is fair and properly limited in scope. See *People v Carlucci* (1979) 23 C3d 249, 256–259, 152 CR 439; *People v Marcroft*, *supra*, 6 CA4th Supp at 4. In *People ex rel Kottmeier v Municipal Court* (1990) 220 CA3d 602, 269 CR 542, the Court of Appeal overruled a municipal court’s policy requiring the attendance of prosecutors at the trial of traffic infractions. It noted that Govt C §26500 does not require the attendance of a prosecutor at an infraction trial. 220 CA3d at 608, 610; *People v Daggett* (1988) 206 CA3d Supp 1, 253 CR 195 (in accord). It emphasized, however, that, in the absence of a

prosecutor, the judge must not appear to assist one side or the other: “This principle should be most carefully and rigorously followed where the party being questioned appears for the prosecution, to avoid the inference that the court and law enforcement are ‘in cahoots’ and the result of the trial a foregone conclusion.” *People ex rel Kottmeier v Municipal Court*, *supra*, 220 CA3d at 611–612. In conducting an infraction trial without a prosecutor, the judge must be most circumspect in avoiding an appearance of lack of impartiality. The judge must exercise utmost care to preserve not only the reality but also the appearance of fairness and lack of bias. *People v Marcroft*, *supra*, 6 CA4th Supp at 4. It is within the judge’s discretion to request the presence of a prosecutor in an unusual case. *People ex rel Kottmeier v Municipal Court*, *supra*, 220 CA3d at 612.

At trial, the officer testifies first, the defendant has an opportunity to cross-examine the officer, and then the defendant testifies. After all testimony, including that of any other witnesses, the judge usually gives his or her decision and, if the defendant is found guilty, imposes sentence immediately. For further discussion of the trial, see §§82.51–82.61.

#### **f. [§82.13] Trial by Written Declaration**

A defendant may elect to have a trial by written declaration on any Vehicle Code infraction. Veh C §40902(a). See Cal Rules of Ct 4.210; *People v Cooper* (2002) 101 CA4th Supp 1, 4–5, 125 CR2d 188 (defendant’s request for a traffic trial by declaration was properly denied because the request was untimely and not in written form). If the clerk receives from the defendant a written request for a trial by written declaration on or before the appearance date indicated on the notice to appear, the clerk must, within 15 calendar days of receiving the request, extend the appearance date 25 calendar days, and must give or mail the defendant notice of the extended due date on a Request for Trial by Written Declaration (form TR-205) with a copy of the Instructions to Defendant (form TR-200) and any other required forms. Cal Rules of Ct 4.210(b)(2), 4.210(i)(1)–(2). The defendant must file the Request for Trial by Written Declaration with the clerk on or before the appearance date indicated on the notice to appear (or any extended appearance date). This form must be filed in addition to the defendant’s written request for a trial by written declaration, unless that request was made on this form. Cal Rules of Ct 4.210(b)(3).

A defendant who makes this election must submit bail in the amount established in the Uniform Traffic Bail and Penalty Schedule under Veh C §40310 (see §82.70) at the time of submitting the declaration. Veh C §40902(b); Cal Rules of Ct 4.210(b)(4). If the defendant is found not guilty or the charges are otherwise dismissed, the amount of the bail must be promptly refunded to the defendant. Veh C §40902(b).

On receiving the defendant's Request for Trial by Written Declaration and bail by the due date, the clerk must deliver or mail to the arresting officer's agency a Notice and Instructions to Arresting Officer (form TR-210) and Officer's Declaration (form TR-235), with a copy of the notice to appear and a specified return date for receiving the officer's declaration. Cal Rules of Ct 4.210(b)(5), (i)(3)–(4). On receipt of the officer's declaration or at the close of the return date, the clerk must submit the case file to the court for decision with all declarations and other evidence received. Cal Rules of Ct 4.210(b)(5). Testimony and other relevant evidence may be introduced in the form of a notice to appear, a business record or receipt, and the sworn declarations of the arresting officer and the defendant. Veh C §40902(c); Cal Rules of Ct 4.210(f).

After the court decides the case and returns the file and decision, the clerk must immediately mail the Decision and Notice of Decision (form TR-215) to the defendant and arresting agency. Cal Rules of Ct 4.210(b)(6), (i)(5). The defendant may request a trial de novo by filing a Request for New Trial (form TR-220) within 20 calendar days after the date on which the decision was mailed. Veh C §40902(d); Cal Rules of Ct 4.210(b)(7), (i)(6). The clerk must set a trial date within 45 calendar days of receipt of the defendant's request and must deliver or mail to the defendant and to the arresting officer's agency the Order and Notice to Defendant of New Trial (form TR-225). Cal Rules of Ct 4.210(b)(7), (i)(7). The case is closed if the defendant fails to make a timely request for a trial de novo. Cal Rules of Ct 4.210(b)(7).

Although the rules state that a new trial must be set within 45 days of the receipt of the request, the remedy for failure to set within 45 days is not automatic dismissal. *People v Benhour* (2009) 177 CA4th 1308, 1320–1322, 99 CR3d 827 (trial set 57 days after receipt of notice).

The court may deny a trial by written declaration to a defendant who does not file a Request for Trial by Written Declaration or deposit bail with the clerk within the specified time limits. Cal Rules of Ct 4.210(e).

The court is not limited to imposing a monetary penalty in the amount of the bail the defendant has deposited with the clerk, unless this amount is the maximum and the only lawful penalty. Cal Rules of Ct 4.210(g).

A person who fails to appear as provided by law may be deemed to have elected to have a trial by written declaration on any alleged Vehicle Code infraction. Veh C §40903(a). Relevant evidence may be introduced in the form of a notice to appear, a business record or receipt, a sworn declaration of the arresting officer, or a written statement or letter signed by the defendant. Veh C §40903(b). When the court issues a judgment under Veh C §40903 and the defendant requests a trial de novo within the time permitted, the court may require the defendant to deposit bail. Cal Rules of Ct 4.106(f).

### **g. [§82.14] Misdemeanor Provisions Generally Applicable to Infractions**

Except as otherwise provided by law, all provisions of law relating to misdemeanors apply to infractions, including jurisdiction, periods for commencing the action and for bringing the case to trial, and the burden of proof. Pen C §19.7. Application of misdemeanor law is limited to the specific provisions in Pen C §19.7; this code may not be interpreted as including the requirements of due process of law in the enforcement of infraction laws. *People v Prince* (1976) 55 CA3d Supp 19, 32–33, 127 CR 296 (trial court not required to admonish unincarcerated infraction defendant of his or her right to privately employed counsel or obtain an express waiver of that right if the defendant is not so represented).

### **3. [§82.15] General Penalties for Infraction Conviction**

Except as otherwise provided with respect to specified infractions (see §82.17), the penalties for general infractions are as follows:

- A first offense is punishable by a fine of up to \$100. Veh C §42001(a)(1).
- A second offense within 1 year of a prior conviction is punishable by a fine of up to \$200. Veh C §42001(a)(2).
- A third or subsequent offense within 1 year of two or more prior convictions is punishable by a fine of up to \$250. Veh C §42001(a)(3).

See also Pen C §19.8(b) (Except in cases where a different punishment is prescribed, every offense declared to be an infraction is punishable by a fine not exceeding \$250).

A penalty assessment is added to the base fine. See §82.70. A jail term may not be imposed. Pen C §19.6; *People v Schindler* (1993) 20 CA4th 431, 434, 26 CR2d 255.

On factors to consider in imposing sentence, see §§82.63–82.73.

### **4. [§82.16] Infraction Charged as Misdemeanor After Three or More Violations**

An offense that would otherwise be an infraction may be charged as a misdemeanor if:

- The defendant has been convicted of three or more Vehicle Code violations within 1 year immediately preceding the commission of the offense, and
- The prior convictions are alleged in an accusatory pleading or admitted by the defendant. Veh C §40000.28.

For this purpose, a bail forfeiture is deemed a conviction of the charged offense. Veh C §40000.28. The 1-year period referred to in the statute relates to the date of the conviction, not of the offense. *People v Pickett* (1981) 128 CA3d Supp 11, 15, 181 CR 97.

If the offense is charged as a misdemeanor, the defendant has a right to a jury trial and, if unable to afford an attorney, has a right to court-appointed counsel. See §82.20.

It is reversible error for the court to deny a defendant's offer to admit three prior infractions within a 1-year period in order to transform the current charge into a misdemeanor and secure the right to a jury trial. *People v Shults* (1978) 87 CA3d 101, 103–106, 150 CR 747 (court may not grant prosecutor's motion to strike the prior convictions over defendant's objection). It is not error, however, for a court to deny a defendant's motion to strike the three prior infractions without affirmatively advising the defendant of his or her constitutional rights and obtaining a waiver of those rights. *People v Pickett, supra*, 128 CA3d Supp at 13–14.

### 5. [§82.17] Chart: Penalties for Specific Infractions

The following chart lists infractions for which the Vehicle Code provides a specific penalty. A penalty assessment is added to the specified base fines. See §82.70. On factors to consider in imposing sentence, see §§82.63–82.73.

Veh C §§	Infractions	Penalties
2815, 42001.1	Disregarding traffic signal or direction of crossing guard.	First offense: \$50–\$100 fine. Second offense within 1 year of prior conviction: \$100–\$200 fine. Third or subsequent offense within 2 years of two or more prior convictions: \$250–\$500 fine. Court may also order license suspension for up to 30 days.
4000, 42001.8	Driving an unregistered vehicle.	Fine of \$50–\$250.

Veh C §§	Infractions	Penalties
4463(e)	Falsifying a Clean Air Sticker; passing as true a false, forged, or counterfeit sticker; or acquiring or selling genuine or counterfeit sticker with fraudulent intent.	First offense: \$100–\$250 fine. Second offense: \$250–\$500 fine. Third or subsequent offense: \$500–\$1000 fine.
5201(c), 5201.1	Selling product or device that obscures, or is intended to obscure, the reading or recognition of a license plate; operating vehicle that violates these provisions; or erasing reflective coating or altering license plate.	Fine of \$250 per item sold or per violation.
9853.8(b)	Operating an undocumented and unnumbered vessel that does not comply with specified emissions standards.	\$250 fine.
12814.6 (b), (e)	Violating restrictions on provisional driving license.	First offense: Fine of up to \$35; community service of no less than 8 hours nor more than 16 hours. Second or subsequent offense: Fine of up to \$50; community service of no less than 16 hours nor more than 24 hours.
16020, 16025	Failing to exchange information, including evidence of insurance, with other driver involved in accident.	Fine of up to \$250. Veh C §16025(b). DMV must suspend driver's license for 1 year unless driver establishes financial responsibility. Veh C §16070. On driver's application, DMV may restrict rather than suspend license. Veh C §16072.
16028, 16029	Failing to provide proof of insurance on request of officer or traffic collision investigator during a traffic stop.	First offense: \$100–\$200 fine. Subsequent offense within 3 years of prior conviction: \$200–500 fine. Court has discretion to impound vehicle for good cause. For further discussion, see §82.18.

Veh C §§	Infractions	Penalties
21070, 42001.19	Unsafe operation of motor vehicle proximately causing bodily injury or great bodily injury.	Violation causing bodily injury: \$70 fine. Violation causing great bodily injury: \$95 fine.
21367, 40000.14	Failing to obey instructions of person controlling and directing traffic at highway construction site or to comply with directions of control devices provided to regulate traffic.	A willful violation is a misdemeanor. If committed with wanton disregard for safety of persons, violation is punishable by imprisonment in county jail for up to 1 year. Additional penalties are set forth in Veh C §42009.
21453(a), (c), 21454(c), 21457(a), 42001.15	Failing to stop at steady or flashing red light signal.	\$100 fine.
21655.5, 21655.8, 42001.11	Unauthorized use of lane for high-occupancy vehicles.	First offense: \$100–\$150 fine. Second offense within 1 year of prior conviction: \$150–\$200 fine. Third or subsequent offense within 2 years of two or more prior convictions: \$250–500 fine.
21712(c)– (e)	Driving motor vehicle while knowingly permitting person to ride in trunk; riding in trunk.	First offense: \$100 fine. Second offense within 1 year of prior conviction: \$200 fine. Third or subsequent offense within 1 year of two or more prior convictions: \$250 fine. No violation point for conviction of Veh C §21712(d) (riding in trunk). Veh C §12810(i)(3).
21760(b)– (d)	Unsafe passing of bicycle.	\$35 fine. If collision occurs resulting in bodily injury to the bicyclist: \$220 fine.
21806, 42001.12	Failing to yield right-of-way to emergency vehicle.	First offense: \$100–\$250 fine. Second offense within 1 year of prior conviction: \$150–\$500 fine. Third or subsequent offense within 3 years of two or more prior convictions: \$250–\$500 fine.

Veh C §§	Infractions	Penalties
21809	Failing to change lane or slow down when passing stationary emergency vehicle, tow truck, or DOT vehicle with flashing lights.	Fine of up to \$50.
21951, 42001.17	Passing vehicle stopped at crosswalk.	First offense: \$100 fine. Second offense within 1 year of prior conviction: fine of up to \$200. Third or subsequent offense within 1 year of two or more prior convictions: fine of up to \$250.
21971, 42001.18	Causing injury to pedestrian.	First offense: \$220 fine. Second offense within 1 year of prior conviction: \$320 fine. Third or subsequent offense within 1 year of two or more prior convictions: \$370 fine.
22348(b), 42000.1	Speeding at more than 100 miles per hour.	First offense: Fine of up to \$500; court may order license suspension for up to 30 days. Veh C §13200.5. Second offense within 3 years of prior conviction: fine of up to \$750; 6-month mandatory license suspension or restriction. Veh C §13355(a). Third offense within 5 years of two or more prior convictions: fine of up to \$1000; 1-year mandatory license suspension or restriction. Veh C §13355(b). Conviction carries 2 traffic violation points. Veh C §12810(d)(1).

Veh C §§	Infractions	Penalties
22451– 22452, 42001.16	Failure of vehicle, truck, or buses to stop at railroad crossing.	First offense: \$100 fine. Second offense within 1 year of prior conviction: fine of up to \$200. Third offense within 1 year of two or more prior convictions: fine of up to \$250.
22454– 22454.5	Meeting or overtaking school bus displaying flashing red light signal.	First offense: \$150–\$250 fine. Second offense: \$500–\$1000 fine. Third or subsequent offense within 3 years of two or more prior convictions: mandatory 1-year license suspension by DMV.
22500(i), (l), 42001.5	Parking along curbside space authorized for loading and unloading bus passengers or parking in front of or on curb constructed to provide wheelchair access to sidewalk.	Minimum \$250 fine. Court may suspend that portion of fine above \$100. Fine may be paid in installments if court determines defendant is unable to pay entire amount in one payment.
22507.8, 40203.5, 42001.13	Parking in space designated for disabled persons.	Issuance of a notice of parking violation imposing a civil penalty of \$250–\$1000 Or Issuance of criminal notice to appear and on conviction for an infraction: First offense: \$250–\$500 fine. Second offense: \$500–\$750 fine. Third or subsequent offense: \$750–\$1000 fine. No portion may be suspended, except the court may suspend fine if defendant possessed valid special identification license plate or placard at time of offense but failed to display it. Fine may be paid in installments if court determines defendant is unable to pay entire amount in one payment. Additional assessments must be imposed under Pen C §§1465.5, 1465.6, and Veh C §40203.6. Additional penalty of \$100 may be imposed under Veh C §4461.3.

Veh C §§	Infractions	Penalties
22523	Abandoning vehicle on highway or on public or private property.	Minimum \$100 fine. Fine may not be suspended, but may be paid in installments if court determines that defendant is unable to pay entire amount in one payment. Defendant must also provide proof that costs of removing and disposing of vehicle have been paid. This proof is not required if defendant furnishes proof that vehicle was stolen before abandonment.
22526(a)–(b), 42001.1	Obstructing passage of vehicles by entering intersection or marked crosswalk.	First offense: \$50–\$100 fine. Second offense within 1 year of prior conviction: \$100–\$200 fine. Third or subsequent offense within 2 years of two or more prior convictions: \$250–\$500 fine. No violation point for conviction. Veh C §12810.4.
22526(c)–(d), 42001.16	Obstructing passage of railway vehicle by entering railroad or rail transit crossing.	First offense: \$100 fine. Second offense within a year: fine of up to \$200. Third offense within a year of two others: fine of up to \$250. No violation point for conviction. Veh C §12810.4.

Veh C §§	Infractions	Penalties
23111– 23112, 23113(a), 42001.7	Littering on public highway.	<p>First offense: mandatory fine of \$100–\$1000 and at least 8 hours picking up litter or cleaning up graffiti.</p> <p>Second offense: mandatory fine of \$500–\$1000 and at least 16 hours picking up litter or cleaning up graffiti.</p> <p>Third or subsequent offense: mandatory fine of \$750–\$1000 and at least 24 hours picking up litter or cleaning up graffiti.</p> <p>Court may not suspend mandatory fines unless interest of justice would best be served by suspending fine. When suspending fine, court must require offender to pick up litter or clean up graffiti for at least 8 hours for every \$100 of fine suspended.</p>
23117, 42001.4	Transporting animal in back of vehicle without proper restraint or enclosure.	<p>First offense: \$50–\$100 fine.</p> <p>Second offense within 1 year of prior conviction: \$75–\$200 fine.</p> <p>Third or subsequent offense within 1 year of two or more prior convictions: \$100–\$250 fine.</p>
23123	Driving while using a wireless telephone unless telephone is designed and configured to allow hands-free operation and is used in that manner.	<p>First offense: \$20 fine.</p> <p>Second offense: \$50 fine.</p> <p>No violation point for conviction. Veh C §12810.3.</p>
23123.5	Driving while holding and operating a handheld wireless telephone or an electronic wireless communications device unless the phone or device is designed and configured to allow voice-operated and hands-free operation, and is used in that manner.	<p>First offense: \$20 fine.</p> <p>Second offense: \$50 fine.</p> <p>No violation point for conviction. Veh C §12810.3.</p>

Veh C §§	Infractions	Penalties
23124	Person under age 18 driving motor vehicle while using wireless telephone or electronic wireless communications device.	First offense: \$20 fine. Second offense: \$50 fine. No violation point for conviction. Veh C §12810.3
23140, 42001.25	Person under age 21 driving under the influence of alcohol.	First offense: \$100 fine. Second offense within 1 year of prior conviction: \$200 fine. Third or subsequent offense within 1 year of two or more prior convictions: \$300 fine. Conviction carries 2 traffic violation points. Veh C §12810(d)(2).
23222(b)	Possession of not more than 1 ounce of marijuana while driving motor vehicle.	Fine of not more than \$100.
27000(b)– (c), 42001.20	Violation of refuse or garbage truck safety provisions.	First offense: \$150 fine. Second offense within 1 year of prior conviction: \$200 fine. Third or subsequent offense within 1 year of two or more prior convictions: \$250 fine.
27156, 42001.14	Disconnecting, modifying, or altering required pollution control device.	First offense: \$50–\$100 fine. Subsequent offense: \$100–\$250 fine.
27315(d)– (f), (h)	Violating mandatory seat belt law.	First offense: maximum fine of \$20; instead of imposing fine and penalty, court may permit violator to attend traffic violator school. See §82.64. Subsequent offense: maximum penalty of \$50. No violation point for conviction. Veh C §12810.2.

Veh C §§	Infractions	Penalties
27360(a), 27360.6	Failing to use child passenger restraint system for child under 8 years of age.	First offense: \$100 fine. Subsequent offense: \$250 fine. Court may reduce or waive fine for economically disadvantaged defendant, and may instead refer defendant to community education program on installation and use of child safety restraint. Conviction carries 1 traffic violation point. Veh C §12810(h).
27360(b), 27360.5	Failing to use rear-facing child passenger restraint system for child under 2 years of age.	First offense: \$100 fine. Subsequent offense: \$250 fine. Court may reduce or waive fine for economically disadvantaged defendant, and may instead refer defendant to community education program on installation and use of child safety restraint. Conviction carries 1 traffic violation point. Veh C §12810(h).
27360.5, 27360.6	Failing to use child passenger restraint system or safety belt for child passenger 8 years of age or older, but less than 16 years of age.	First offense: \$100 fine Subsequent offense: \$250 fine. Court may reduce or waive fine for economically disadvantaged defendant, and instead refer defendant to child restraint education program. Conviction carries 1 traffic violation point. Veh C §12810(h).
38020, 42001.10	Operating unregistered off-highway motor vehicle. Riding in violation of seasons established by §§2412 and 2415 of Title 13 of the California Code of Regulations also is a violation of Veh C §38020.	First offense: minimum \$50 fine. Subsequent offense: maximum \$250 fine.

Veh C §§	Infractions	Penalties
38301	Operating off-highway motor vehicle in an area closed to that vehicle.	First offense: \$50 fine. Second offense within 7 years of prior conviction: \$75 fine. Third or subsequent offense within 7 years of two or more prior convictions: \$150 fine. Court may also assess costs sufficient to repair property damage. No violation point for conviction. Veh C §12810(i)(5).

## 6. [§82.18] Mandatory Insurance Law

Under the mandatory insurance provisions of the Vehicle Code, all drivers must carry evidence of financial responsibility and must provide that evidence to an officer on request. The evidence may be provided by using a mobile electronic device. A driver who fails to provide proof of insurance on request by an officer or a traffic collision investigator during a traffic stop (that is not for the sole purpose of determining whether the driver has insurance) is guilty of an infraction. Veh C §§16028(a), 16029(a); see *Mercury Ins. Group v Superior Court* (1998) 19 C4th 332, 341, 79 CR2d 308 (purpose of law requiring owners and operators of motor vehicles to be “financially responsible” for any bodily injury or property damage they may cause is primarily to ensure compensation for their victims); see also Veh C §4000.37 (requirement to furnish proof of financial responsibility to DMV on registration renewal), Veh C §4000.38 (suspension, cancellation, or revocation of registration by DMV for lack of insurance coverage). The financial responsibility requirements are satisfied if the driver of the vehicle has insurance, even if the owner of the vehicle does not. *Goodson v Perfect Fit Enters., Inc.* (1998) 67 CA4th 508, 512–513, 79 CR2d 102. See *Montes v Gibbens* (1999) 71 CA4th 982, 987–988, 84 CR2d 324 (employee operating employer’s vehicle need not establish financial responsibility); see Veh C §§16021, 16054.2 (establishing proof of financial responsibility).

On a first conviction for not complying with the financial responsibility law, the court must impose a fine of \$100 to \$200. Veh C §16029(a). If there is a subsequent conviction within 3 years of a prior conviction, the court must impose a fine of \$200 to \$500. Veh C §16029(b). Penalty assessments are added to the fines. Veh C §16029(a)–(b). See §82.70.

Any driver involved in an accident must present, at the accident scene, evidence of insurance to the peace officer or traffic collision investigator and all involved drivers. Veh C §§16025(a)(2), 16028(c). Failure to do so

constitutes an infraction punishable by a fine not to exceed \$250. Veh C §16025(b).

A violator who had insurance at the time of the citation but who did not have proof of insurance to show the officer may provide proof of insurance to the clerk of the court either by mail or in person. In such event, all further proceedings on the violation are dismissed on payment of a \$25 transaction fee. Veh C §§16028(e), 40611. Vehicle Code §16028(e) authorizes a “fixit” dismissal for failing to show evidence of valid insurance on request of a police officer (Veh C §16028(a)), but not for failing to show evidence of insurance at the scene of an accident (Veh C §§16025(a)(2), 16028(c)). In the later scenario, however, it is common for the fine to be reduced on a showing that the vehicle was insured at the time of the accident.

A violator who does not have insurance at the time of the citation but obtains insurance before the charge is adjudicated is eligible for the minimum fine. Veh C §16029(e)(1). A violator who fails to obtain insurance before the date of the court appearance must receive a fine greater than the minimum. However, the judge may grant a continuance for a reasonable period of time to allow the violator to obtain insurance. If the violator furnishes proof of insurance to the court within this time, the judge may reduce the fine to the minimum level. Veh C §16029(e)(1). A judge does not have authority to impose a fine that is less than the minimum or greater than the maximum. Veh C §16029(e)(1). To ensure continued compliance with the mandatory insurance law, the court may issue an order impounding the violator’s car or directing the violator to maintain insurance coverage for at least 1 year from the date of the order. Veh C §16029(c), (e)(1).

If the violator claims an inability to pay both the insurance and the fine or claims other financial hardship, the court may allow the violator to make installment payments or to pay the entire amount within a specified time. The court may, in its discretion, reduce or waive the fine based on the violator’s inability to pay, but the Legislature specifically declared that it is in the interest of justice that the minimum fines for violations be enforced. Veh C §16029(e)(2). See §82.71. In a case of extreme financial hardship, the court may allow a violator to substitute community service for payment of the fine. If the violator fails to pay the fine (or to complete community service), the court may issue a warrant for failure to pay or obey a court order, may assess additional fines, and may impound the violator’s driver’s license. See §§82.74–82.81. A motorist who knowingly provides false evidence of financial responsibility is guilty of a misdemeanor. Veh C §16030(a); see §82.24.

## 7. [§82.19] Remote Video Proceedings in Infraction Cases

A superior court may by local rule permit arraignments, trials, and related proceedings concerning traffic infractions to be conducted by two-way remote video communication methods. Cal Rules of Ct 4.220(a). The minimum procedural requirements and options for courts that conduct remote video proceedings are outlined in Cal Rules of Ct 4.220(d)–(p).

The Superior Court of Fresno County is the only court that currently conducts remote video proceedings. For a description of the Fresno Court’s program, visit [www.fresno.courts.ca.gov/traffic/rvp.php](http://www.fresno.courts.ca.gov/traffic/rvp.php).

## E. Misdemeanors

### 1. Overview of Procedure

#### a. [§82.20] Arraignment

An arraignment is required in every misdemeanor case. For a discussion of the arraignment, see §§82.47–82.50.

#### b. [§82.21] Trial

If the defendant pleads not guilty at the arraignment, a trial must be held within 45 days, unless the defendant waives time. Pen C §1382(a)(3). The defendant is entitled to a jury trial. See Cal Const art I, §16. The defendant is also entitled to be represented by an attorney at all stages of the proceedings, and is entitled to court-appointed counsel if he or she cannot afford to employ private counsel. See Cal Const art I, §15; Pen C §§858, 987(a). The judge must advise defendants in misdemeanor cases of their right to counsel, either individually or collectively. *People v Prince* (1976) 55 CA3d Supp 19, 24–25, 32, 127 CR 296. A collective advisement of the right to counsel given to all defendants in the courtroom for arraignment is sufficient unless there is proof of its inadequacy concerning a particular defendant. *In re Johnson* (1965) 62 C2d 325, 329–333, 42 CR 228. See §82.106 for such an advisement.

Misdemeanor cases are prosecuted by a District Attorney or, in some jurisdictions, by a city attorney. The trial of a misdemeanor case in traffic court proceeds in much the same way as a trial in any other misdemeanor case, except that it is more likely that the defendant will appear in pro per. For further discussion of the trial, see §§82.51–82.61.

**c. [§82.22] Jury Instructions**

A number of special jury instructions applicable to specified Vehicle Code misdemeanors are contained in CALCRIM and CALJIC, including the following:

- CALCRIM 2181, 2182; CALJIC 12.85, 16.890: elements of a Veh C §2800.1 violation (flight from pursuing officer) and Veh C §2800.2 violation (driving with willful or wanton disregard for safety of others while fleeing from pursuing officer).
- CALCRIM 2180; CALJIC 12.86: elements of a Veh C §2800.3(a) violation (flight from pursuing officer causing serious bodily injury; punishable as wobbler).
- CALCRIM 2241; CALJIC 1.28: definition of “driver” and “driving.”
- CALCRIM 2180–2182; CALJIC 12.87: definition of “distinctively marked” vehicle.
- CALCRIM 1821; CALJIC 16.620: elements of a Veh C §10852 violation (tampering with vehicle).
- CALCRIM 2221; CALJIC 16.630–16.631: elements of a Veh C §12500 violation (driving without a valid license).
- CALCRIM 2222; CALJIC 16.632: elements of a Veh C §12951(b) violation (failure to present driver’s license to officer).
- CALCRIM 2220; CALJIC 16.640–16.641: definition of driving when license is suspended or revoked in violation of Veh C §14601(a), §14601.1(a), §14601.2, or §14601.5.
- CALCRIM 2150–2151; CALJIC 16.650, 16.652: elements of a Veh C §20002(a) violation (“hit-and-run”).
- CALCRIM 2200; CALJIC 16.840–16.841: elements of a Veh C §23103 violation (reckless driving).
- CALJIC 16.842: elements of a Veh C §23104(a) violation (reckless driving causing bodily injury).
- CALJIC 12.82: elements of a Veh C §23105(a) violation (reckless driving causing specified bodily injuries; punishable as wobbler).
- CALCRIM 2201; CALJIC 16.860: elements of a Veh C §23109(a) violation (engaging in a speed contest).
- CALCRIM 2202; CALJIC 16.870: elements of a Veh C §23109(c) violation (engaging in an exhibition of speed).
- CALJIC 12.83: elements of a Veh C §23109.1(a) violation (speed contest causing specified bodily injuries; punishable as wobbler).

- CALCRIM 2240; CALJIC 16.880: elements of a Veh C §40508(a) violation (willful failure to appear).

## 2. [§82.23] General Penalties for Misdemeanor Conviction

Unless a different penalty is expressly provided (see §82.24), conviction of a misdemeanor violation of the Vehicle Code is punishable by a fine of up to \$1000 and/or by imprisonment in the county jail for up to 6 months. Veh C §42002. A penalty assessment is also added to the base fine. See §82.70. On factors to consider in imposing sentence, see §§82.63–82.73.

## 3. [§82.24] Chart: Penalties for Specific Misdemeanors

The following chart lists misdemeanors for which the Vehicle Code provides a specific penalty. A penalty assessment is added to the specified base fine. See §82.70. On factors to consider in imposing sentence, see §§82.63–82.73.

Veh C §§	Misdemeanors	Penalties
Designated misdemeanor violations of 2800, 2801, or 2803, 42002.1.	Failure to stop and submit to inspection of equipment or for an unsafe condition endangering a person or violations regarding hazardous waste placards or number of passengers.	First offense: fine of up to \$50 or up to 5 days in county jail. Second offense within 1 year of prior conviction: fine of up to \$100 and/or up to 10 days in county jail. Third or subsequent offense within 1 year of two or more prior convictions: fine of up to \$500 and/or up to 6 months in county jail.
2800.1, 40000.7(a)(3)	Fleeing from officer.	Fine of up to \$1000 and up to 1 year in county jail. Pen C §672. Court may suspend defendant's license for up to 6 months. Veh C §13201(d). Vehicle may be impounded for up to 30 days. Veh C §14602.7(a).
2800.2	Driving with willful or wanton disregard for safety of others while fleeing from pursuing officer.	May be treated as either misdemeanor or felony, punishable by imprisonment in state prison or county jail for 6 months to 1 year and/or by \$1000–\$10,000 fine. Court may suspend defendant's license for up to 6 months. Veh C §13201(d). Conviction carries 2 traffic violation points. Veh C §12810(d)(1).

Veh C §§	Misdemeanors	Penalties
2800.3(a)	Causing serious bodily injury while fleeing from pursuing officer.	May be treated as either misdemeanor or felony, punishable by 3–7 years in state prison or up to 1 year in county jail and/or by \$2000–\$10,000 fine. Veh C §§12810(d)(1), 13201(d), discussed under Veh C §2800.2, also apply.
2800.4	Driving in wrong direction while fleeing from pursuing officer in violation of Veh C 2800.1.	May be treated as either misdemeanor or felony; punishable by imprisonment in state prison or county jail for 6 months to 1 year and/or by \$1000–\$10,000 fine. Court may suspend defendant's license for up to 6 months. Veh C §13201(d).
4461(b)–(d), 4461.5, 40000.7(a)(7)	Lending of disabled person placard to person not entitled to placard, and permitting its use by the borrower.	Issuance of a notice of parking violation imposing a civil penalty of \$250–\$1000 Or Punishable as a misdemeanor as follows: \$250–\$1000 fine and/or 6 months in county jail. In addition to or instead of fine, court may impose civil penalty of up to \$1500 for each conviction. Additional penalty of \$100 may be imposed under Veh C §4461.3.
4463(b), 4463.3, 40000.7(a)(7)	Falsifying disabled-person placard with fraudulent intent.	\$500–\$1000 fine and/or 6 months in county jail. In addition to, or instead of, fine, court may impose civil penalty of up to \$2500 for each conviction.
4463(c), 4463.3, 40000.7(a)(7)	Displaying falsified placard with fraudulent intent.	Issuance of a notice of parking violation imposing a civil penalty of \$250–\$1000 Or Punishable as a misdemeanor as follows: \$250–\$1000 fine and/or 6 months in county jail. In addition to or instead of fine, court may impose civil penalty of up to \$2500 for each conviction.

Veh C §§	Misdemeanors	Penalties
10501, 40000.9	Filing false report of vehicle theft with a law enforcement agency.	First offense: general penalty applies. Subsequent offense: may be treated as either misdemeanor or felony, punishable by imprisonment in state prison and fine of up to \$10,000, or by imprisonment in county jail for up to 1 year and fine of up to \$1000. Pen C §672.
10751, 42002.4	Purchase, sale, receipt, or possession of vehicles or components with removed or altered vehicle identification numbers.	Up to 6 months in county jail and fine of up to \$1000 if value of property does not exceed \$950. Up to 1 year in county jail and fine of up to \$1000 if value of property is more than \$950. Pen C §672.
10752	Acquiring, possessing, selling, or offering for sale genuine or counterfeit vehicle identification number with intent to defraud.	May be treated as either misdemeanor, punishable by imprisonment in county jail for 90 days to 1 year, or as a felony, punishable by imprisonment in county jail for 16 months or 2 years or 3 years, and by \$250–\$5000 fine.
10852– 10853, 40000.9	Injuring or tampering with vehicle.	General penalty applies, except: Bailee may be given fine of up to \$1000 and/or sentence of up to 1 year in county jail. Veh C §10854. Defendant may be given fine of up to \$2000 and/or sentence of up to 1 year in county jail for tampering with vehicle modified for disabled person. Veh C §42002.5.

Veh C §§	Misdemeanors	Penalties
12951(b), 40000.11(i)	Refusing to present driver's license when demanded to do so by officer who is enforcing provisions of Vehicle Code.	Court must dismiss charge if motorist produces license in court that was valid at time of his or her arrest. On third or subsequent charge, dismissal is within court's discretion. If motorist produces temporary, interim, or duplicate license, court may not dismiss charge unless motorist also furnishes proof from DMV that license was issued before arrest, that motorist was eligible for license, and that license has not been suspended or revoked. General penalty applies.
13004.1	Manufacture or sale of fraudulent DMV identification cards.	\$250–\$1000 fine and mandatory 24 hours of community service. Court may not waive or suspend fine and community service. Alternatively, up to 1 year in county jail and fine of up to \$1000.
14601.1, 40000.11(l)	Driving after license has been suspended or revoked for other reasons other than reckless or negligent driving, when motorist has knowledge of suspension or revocation. Knowledge is rebuttably presumed if DMV has mailed notice of suspension or revocation to motorist by first-class mail and notice was not returned as undeliverable or unclaimed. Veh C §13106(a).	First offense: \$300–\$1000 fine and/or up to 6 months in county jail. Second offense within 5 years of prior conviction for driving with suspended or revoked license: \$500–\$2000 fine and 5 days to 1 year in county jail. Court may allow defendant to serve sentence on consecutive weekends. Veh C §14601.8. Veh C §§12810(e), 14607.6, 14607.8, discussed under Veh C §14601, also apply. Under specified circumstances, court must, with certain exceptions, order installation of ignition interlock device on vehicle under Veh C §23575 for up to 3 years from date of conviction.

Veh C §§	Misdemeanors	Penalties
14601.3	Habitual traffic offender because of specified driving history record during period of license suspension or revocation.	<p>First offense: \$1000 fine and 30 days in county jail.</p> <p>Second offense within 7 years of prior conviction: \$2000 fine and 180 days in county jail.</p> <p>Veh C §§12810(e), 14607.6, 14607.8, discussed under Veh C §14601, also apply.</p>
14601.4	Causing bodily injury while driving with suspended or revoked license under Veh C §14601.2.	<p>Defendant convicted of causing bodily injury is not eligible for any release program before serving minimum county jail term prescribed by Veh C §14601.2. On granting probation, court must require defendant to serve minimum county jail term as condition of probation.</p> <p>Veh C §§12810(e), 14607.6, 14607.8, discussed under Veh C §14601, also apply.</p> <p>Under specified circumstances, court must, with certain exceptions, order installation of ignition interlock device on vehicle under Veh C §23575 for up to 3 years from date of conviction.</p> <p>DMV will not reinstate driving privileges until it receives proof that ignition interlock device has been installed as ordered.</p> <p><i>Note:</i> DMV is responsible for mandating installation of ignition interlock device when a person has been convicted of Veh C §14601.4 within 10 years of prior conviction of Veh C §14601.2, §14601.4, §14601.5, §23103.5, §23152, or §23153. DMV will require the installation of an ignition interlock device for 1, 2, or 3 years. Veh C §23573(j).</p>

Veh C §§	Misdemeanors	Penalties
14610.1	Manufacture or sale of fraudulent drivers' licenses.	\$250–\$1000 fine and mandatory 24 hours of community service. Court may not waive or suspend the fine or community service. Alternatively, up to 1 year in county jail and fine of up to \$1000.
16030	Giving false evidence of insurance to officer or court, including an expired or cancelled insurance policy.	Fine of up to \$750 and/or up to 30 days in county jail. Court must suspend or restrict driver's license for 1 year. Suspension may not be terminated until 1 year from date of suspension and until defendant files proof of financial responsibility. Suspension must be reinstated if defendant fails to maintain proof of financial responsibility for 3 years.
20001, 20003–20004	Hit-and-run causing injury or death.	May be treated as either misdemeanor or felony, punishable by imprisonment in state prison or county jail for up to 1 year and/or \$1000–\$10,000 fine. Violation resulting in death or permanent serious injury: 2–4 years in state prison or 90 days to 1 year in county jail, and/or \$1000–\$10,000 fine. Court may reduce or eliminate minimum term of imprisonment in interests of justice and for reasons stated in record. In imposing minimum fine, court must consider defendant's ability to pay, and may reduce amount of fine to less than the minimum in interests of justice and for reasons stated in record. DMV must revoke defendant's license for 1 year. Veh C §13350(a)(1), (c). Conviction carries 2 traffic violation points. Veh C §12810(a).

Veh C §§	Misdemeanors	Penalties
20002, 40000.13(b)	Hit-and-run causing property damage.	Up to \$1000 fine and/or up to 6 months in county jail. Court may also suspend defendant's license for up to 6 months. Veh C §13201(a). DMV may also suspend defendant's license. Veh C §13361(a). Court may condition probation on payment of restitution to owner of damaged property. See <i>People v Carbajal</i> (1995) 10 C4th 1114, 1123, 43 CR2d 681. Case may be resolved by civil compromise under Pen C §1377. See <i>People v Tischman</i> (1995) 35 CA4th 174, 176–181, 40 CR2d 650. Conviction carries 2 traffic violation points. Veh C §12810(a).
21464	Defacing or interfering with traffic control devices; purchasing, manufacturing, installing, or selling devices designed to interfere with traffic control devices.	Willful violation resulting in injury or death: May be treated as either misdemeanor, punishable by imprisonment in county jail for up to 6 months, or as a felony, punishable by imprisonment in county jail for 16 months, 2 years or 3 years, and by \$5000–\$10,000 fine. Willful violation not resulting in injury or death: Fine of up to \$5000. Court may allow offender to perform community service in place of all or part of fine.
21651(b), 40000.13(d)	Driving wrong way on divided highway.	General penalty applies, except that willful violation resulting in injury or death may be treated as either misdemeanor, punishable by imprisonment in county jail for up to 6 months, and by \$1000 fine, or as a felony, punishable by imprisonment in county jail for 16 months, 2 years, or 3 years, and \$10,000 fine (Pen C §672). Conviction carries 2 traffic violation points. Veh C §12810(d)(1).

Veh C §§	Misdemeanors	Penalties
23104, 40000.15	Reckless driving that proximately causes bodily injury.	\$220–\$1000 fine and/or 30 days to 6 months in county jail. When defendant has prior conviction under Veh C §23103, §23104, §23105, §23109, §23109.1, §23152, or §23153, charge may be treated as either misdemeanor, punishable by imprisonment in county jail for 30 days to 6 months, or as felony, punishable by imprisonment in county jail for 16 months, 2 years, or 3 years, and/or \$220–\$1000 fine. Court may suspend defendant's license for up to 6 months. Veh C §13201(b). DMV must revoke license for 1 year. Veh C §13350(a)(3), (c).
23105	Reckless driving causing specified bodily injuries.	May be treated as either misdemeanor, punishable by imprisonment in county jail for 30 days to 6 months, or as felony, punishable by imprisonment in county jail for 16 months, 2 years, or 3 years, and/or \$220–\$1000 fine. Court may suspend defendant's license for up to 6 months. Veh C §13201(b). DMV must revoke license for 1 year. Veh C §13350(a)(3), (c).
23109(a), (e)–(f), 40000.15	Engaging in speed contest on highway.	First offense: \$355–\$1000 fine and/or 24 hours to 90 days in county jail. 40 hours of community service required. Court may suspend or restrict defendant's license for 90 days to 6 months. Veh C §13352(a)(8). First offense proximately causing bodily injury: \$500–\$1000 fine and/or 30 days to 6 months in county jail. Second offense within 5 years of prior conviction: \$500–\$1000 fine and 4 days to 6 months in county jail. If the second offense proximately causes bodily injury, the minimum

23109(a), (e)–(f), 40000.15 ( <i>cont.</i> )	Engaging in speed contest on highway.	<p>county jail term is 30 days. If the second offense proximately causes serious bodily injury, the offense is punishable as either a misdemeanor or felony, punishable by imprisonment in state prison or county jail for 30 days to 1 year and \$500–\$1000 fine. Court may also suspend or restrict defendant's license for 6 months; license may not be reinstated without proof of financial responsibility. Veh C §13352(a)(9). Court may order probation in suitable case. As condition of probation, defendant must serve 48 hours to 6 months in county jail, and defendant's license must be suspended or restricted for 6 months. Court may not strike prior conviction to avoid imposing minimum county jail term as part of sentence or term of probation, or to avoid revoking, suspending, or restricting defendant's license. Veh C §23109.5(a). Court must mark any restriction on defendant's license and notify DMV. Court may permit defendant to serve sentence on his or her days off.</p> <p>If vehicle is registered to defendant, court may impound it for 1–30 days. If vehicle was impounded at time of arrest and defendant was not authorized by registered owner to operate the vehicle, court must order defendant to reimburse owner for towing, storage, and administrative charges incurred to obtain possession of vehicle. Veh C §23109.2.</p> <p>Conviction carries 2 traffic violation points. Veh C §12810(d)(1).</p>
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Veh C §§	Misdemeanors	Penalties
23109(b)–(d), (i), 40000.15	Engaging in exhibition of speed on a highway; aiding or abetting speed contest or exhibition; obstructing or placing barricade or obstruction on highway for purpose of facilitating speed contest or exhibition.	Up to \$500 fine and/or up to 90 days in county jail. If vehicle was impounded at time of arrest for violation of Veh C §23109(c) and defendant was not authorized by registered owner to operate the vehicle, court must order defendant to reimburse the owner for towing, storage, and administrative charges incurred to obtain possession of vehicle. Veh C §23109.2. Conviction of Veh C §23109(c) carries 2 traffic violation points. Veh C 12810(d)(1).
23109.1	Engaging in speed contest causing specified bodily injuries.	May be treated as either a misdemeanor, punishable by imprisonment in county jail for 30 days to 6 months or as a felony, punishable by imprisonment in county jail for 16 months, 2 years, or 3 years, and/or by \$500–\$1000 fine. Court may suspend or restrict defendant's license for 90 days to 6 months. Veh C §13352(a)(8). DMV must revoke license for 1 year. Veh C §13350(a)(3), (c). Court may not strike prior conviction to avoid imposing minimum county jail term as part of sentence or term of probation, or to avoid revoking, suspending, or restricting defendant's license. Veh C §23109.5(a). Conviction carries 2 traffic violation points. Veh C §12810(d)(1).
23110(a)	Throwing any substance at a vehicle or an occupant of a vehicle on a highway.	General penalty applies, except that willful violation with intent to do great bodily injury is a felony, punishable by imprisonment in state prison. Veh C §23110(b).

Veh C §§	Misdemeanors	Penalties
23114, 40000.16	Second or subsequent violation of Veh C §23114, relating to failure to prevent contents of vehicle from spilling on highway, within 2 years of prior violation.	Treated as misdemeanor, not infraction. General penalty applies.
23224	Possession of alcoholic beverage in vehicle by driver or passenger under age 21.	Fine of up to \$1000 and/or up to 6 months in county jail. Court must suspend defendant's license for 1 year. Veh C §13202.5(a), (d)(4). Court may impound defendant's vehicle for 1-30 days.
23223, 23225, 40000.20	Third or subsequent violation relating to storage or possession of open container by driver of vehicle used to provide transportation services.	General penalty applies.
23247(e)-(g)	Driving of vehicle not equipped with functioning ignition interlock device by person with restricted license under Veh C §13352, §23575, or §23700.	Fine of up to \$5000 and/or up to 6 months in county jail. If defendant's driving privilege is restricted under Veh C §13352, court must notify DMV to terminate restriction and to suspend or revoke defendant's license for the remainder of original suspension or revocation period and until all reinstatement requirements under Veh C §13352 are met. If defendant's driving privilege is restricted under Veh C §23575 or §23700, court must notify DMV to suspend defendant's license for 1 year.
23573(g)(2), (i)	Driving in violation of terms of exemption from ignition interlock device installation requirements.	Fine of up to \$5000 and/or up to 6 months in county jail.

Veh C §§	Misdemeanors	Penalties
38316, 40000.24(b)	Reckless driving of off-highway motor vehicle.	\$50–\$500 fine and/or 5–90 days in county jail.
38317, 40000.24(c)	Reckless driving of off-highway motor vehicle causing personal injury.	\$100–\$1000 fine and/or 30 days to 6 months in county jail.
40008(a)–(b)	Interference with driver, driving too closely, or reckless driving with intent to capture picture, sound recording, or other physical impression for commercial purpose; endangering child.	Fine of up to \$2500 and/or up to 6 months in county jail. If child is endangered, fine of up to \$5000 and/or up to 1 year in county jail.

## F. Notice To Appear

### 1. General Requirements

#### a. [§82.25] Signature Allows Release

In most infraction and misdemeanor traffic cases, by signing a notice to appear on a form prescribed by the Judicial Council, the motorist is released from arrest and does not have to post bail. See 80 Ops Cal Atty Gen 111, 116 (1997); *People v Monroe* (1993) 12 CA4th 1174, 1180, 16 CR2d 267 (“in the vast majority of cases the violator will not be taken into custody”). When a minor Vehicle Code violation is involved, the “arrest” is complete when, after an investigatory stop, the officer determines that there is probable cause to believe a traffic violation has been committed and begins the process of citing the violator to appear in court. 12 CA4th at 1181. See *People v Wohlleben* (1968) 261 CA2d 461, 463, 67 CR 826 (minor traffic violation is not basis for custodial arrest). If the motorist does not have sufficient evidence of identity in his or her possession, the officer may require the motorist to place a thumbprint or fingerprint on the notice to appear. Veh C §40305(a) (nonresident offender), Veh C §40500(a).

#### b. [§82.26] Contents of Notice To Appear

The notice to appear must contain the motorist’s true full name, address, and driver’s license or identification card number; the license number of his or her vehicle; the name and address of the registered owner, if available; the offense charged; the court in which the motorist must appear; and the date on which he or she must appear. See Veh C §§40500(a)–(b), 40504(a). A notice to appear that charges a speed violation

must specify the approximate speed at which the motorist is alleged to have driven, the maximum speed limit, and any other applicable speed limit. Veh C §40503. One copy of the notice is given to the motorist, one is transmitted to the court, and one is for the officer's files. See Veh C §§40500(d), 40504(a), 40506. The notice to appear may also contain a thumbprint or fingerprint of the motorist if the motorist did not have sufficient proof of identity. Veh C §§40305, 40500.

**c. [§82.27] Reminder Notice**

Each court must send a reminder notice to the address shown on the notice to appear, unless the defendant otherwise notifies the court of a different address. Cal Rules of Ct 4.107(a)(1). The court may send the notice electronically, including by e-mail or text message, to the defendant. By providing an electronic address or number to the court or to a law enforcement officer at the time of signing the promise to appear, a defendant consents to receiving the reminder notice electronically at that electronic address or number. Cal Rules of Ct 4.107(a)(2). The failure to receive a reminder notice does not relieve the defendant of the obligation to appear by the date stated in the notice to appear. Cal Rules of Ct 4.107(a)(3).

In addition to information obtained from the notice to appear, the reminder notice must contain at least the following information (Cal Rules of Ct 4.107(b)):

- An appearance date and location;
- Whether a court appearance is mandatory or optional;
- The total bail amount and payment options;
- The notice about traffic school required under Veh C §42007, if applicable;
- Notice that a traffic violator school will charge a fee in addition to the administrative fee charged by the court;
- The potential consequences for failure to appear, including a driver's license hold or suspension, a civil assessment of up to \$300, a new charge for failure to appear, a warrant of arrest, or some combination of these consequences, if applicable;
- The potential consequences for failure to pay a fine, including a driver's license hold or suspension, a civil assessment of up to \$300, a new charge for failure to pay a fine, a warrant of arrest, or some combination of these consequences, if applicable;
- The right to request an ability-to-pay determination;
- Notice of the option to pay bail through community service (if available) and installment plans (if available);
- Contact information for the court, including the court's website;

- Information regarding trial by declaration, informal trial (if available), and telephone or website scheduling options (if available); and
- Correction requirements and procedures for correctable violations.

**d. [§82.28] Notice as Constituting Verified Complaint**

A notice to appear that is filed with the court serves as a verified complaint to which the defendant-motorist may plead guilty or no contest. Veh C §40513(a). If the defendant violates his or her promise to appear or enters a plea other than guilty or no contest, a verified complaint conforming to the requirements of Pen C §§948–964 must be filed, unless the defendant executes a written waiver of this requirement and an election to proceed on the notice to appear. Veh C §40513(a). Notwithstanding Veh C §40513(a), if the notice to appear was prepared on a form approved by the Judicial Council, a duplicate copy of that notice filed with the court constitutes a complaint to which the defendant may enter any plea, *i.e.*, guilty, no contest, or not guilty. Veh C §40513(b). The notice to appear may be filed in place of a formal, verified complaint even if the defendant pleads not guilty and the case proceeds to trial. *People v Barron* (1995) 37 CA4th Supp 1, 3–5, 44 CR2d 348. See *Heldt v Municipal Court* (1985) 163 CA3d 532, 537–539, 209 CR 579 (notice to appear also constitutes valid complaint under Pen C §853.9). If the notice is verified, a warrant may be issued on it. If it is not verified, the defendant may request at the time of arraignment that a verified complaint be filed. Veh C §40513(b).

A notice to appear that is issued on an approved Judicial Council form for certain violations may be received and filed in an electronic format. Pen C §959.1(d)–(f).

There is no right to a verified complaint when the citation is issued on a form approved by the Judicial Council. See *People v Barron, supra*, 37 CA4th Supp at 3–5.

In the case of an infraction violation for a minor defendant, the defendant may enter a plea at the arraignment on a written notice to appear. Consent of the minor is not required before a hearing is conducted on a written notice to appear. Veh C §40513(b).

**e. [§82.29] Continuance of Promise To Appear**

Before the date on which the defendant promised to appear (and without depositing bail), he or she may request a continuance of his or her written promise to appear. Veh C §40506.5.

**f. [§82.30] Motorist’s Signature on Notice**

Signing a notice to appear with a false or fictitious name is a misdemeanor (it could even be charged as a felony under Pen C §529) even

if the original charge is an infraction. See Veh C §§40000.25, 40504(b). A motorist who refuses to sign a notice to appear must be taken into custody and brought before a magistrate. See Veh C §40302(b); 80 Ops Cal Atty Gen 111, 116–117 (1997); discussion in §82.43.

### **g. Notice Based on Automatic Traffic Enforcement System**

#### **(1) [§82.31] Initial Requirements for System**

A notice to appear may issue based on photographs of a license plate and driver produced by an automated traffic enforcement system (ATES), also called red-light enforcement. The ATES must comply with specific requirements, such as clear signs at the intersection identifying the system, proper installation and calibration, adherence to minimum yellow light change intervals, and regular inspection. See Veh C §§21455.5(a), (c)(2), 21455.7.

Signs must be posted within 200 feet of an intersection where an ATES is operating; these signs must clearly indicate the system's presence and must be visible to traffic approaching from all directions in which the system is being utilized to issue citations. No signs are required for traffic approaching from directions not subject to the ATES. Veh C §21455.5(a)(1), (j) (replacement of existing signs).

Operation of an ATES must be preceded by a public announcement and an initial 30-day period during which warning notices are given instead of citations. Veh C §21455.5(b). These notice and warning requirements pertain not just to the initial installation of an ATES within a municipality, but also to each later installation of ATES at additional intersections. *People v Gray* (2014) 58 C4th 901, 905–908, 168 CR3d 710. However, a municipality's compliance with the requirements of Veh C §21455.5(b) is not a jurisdictional precondition to enforcement of the red light traffic law, and therefore the prosecution need not prove compliance to establish a red light traffic violation. 58 C4th at 908–911.

#### **(2) [§82.32] Notice To Appear**

Notices to appear for red-light enforcement are limited to the following violations (Veh C §40518(a)):

- Failing to comply with a traffic signal. Veh C §§21453, 21455.
- Making an illegal turn at an intersection. Veh C §22101.
- Driving over a railroad crossing despite a flashing red signal. Veh C §22451.

The notice must be delivered by mail, within 15 days of the alleged violation, to the current address of the registered owner of the vehicle on file with the DMV, along with a certificate of mailing, which constitutes evidence of service. Veh C §40518(a). An exact and legible duplicate copy

of the notice filed with the court constitutes a complaint to which the defendant may enter a plea. Veh C §40518(a).

The notice must contain the owner's name and address, the license plate number of the vehicle, the charged violation (including a description of the offense), and the time and place when and where the owner must appear in court or before a person authorized to receive a deposit of bail. The time specified must be at least 10 days after the notice is delivered. Veh C §40518(b)(1). The notice must also contain the methods by which the registered owner or alleged violator may view and discuss the evidence used to substantiate the violation, and the issuing agency's contact information. Veh C §40518(b)(2).

The automated system must obtain clear photographs of the driver and the vehicle's license plate. Veh C §210. Local systems may also photograph the vehicle entering and exiting the intersection. The registered owner or the person identified by the owner as the driver at the time of the alleged violation has a right to review this photographic evidence. Veh C §21455.5(g). The notice to appear often includes one or more photographs and may identify where to view photographs, such as a local website. See also §82.57.

### **(3) [§82.33] Notice of Nonliability**

The issuing agency or the manufacturer or supplier of the ATES may mail a notice of nonliability (also called a "courtesy notice") to the registered owner or alleged violator before issuing a notice to appear. Veh C §§40518(c)(1), 40520(c). For example, when a police officer cannot match the photograph of the driver to that of the registered owner, a courtesy notice may be mailed.

The notice of nonliability must be substantively identical to the form provided in Veh C §40518(c)(1).

### **(4) [§82.34] Dismissal**

If, after the notice to appear has been issued, the citing peace officer or qualified employee of a law enforcement agency determines that, in the interest of justice, the citation or notice should be dismissed, the citing agency may recommend, in writing, to the magistrate or judge that the case be dismissed. The recommendation must cite the reasons for the recommendation and must be filed with the court. If the magistrate or judge makes a finding that there are grounds for dismissal, the finding must be entered on the record and the infraction must be dismissed. Veh C §40518(b)(1).

A citation may also be dismissed if it is based on a notice or other Judicial Council form that has been materially altered. Veh C §40518(d).

## 2. [§82.35] Failure To Appear

A willful violation of a promise to appear in court or of a lawfully granted continuance of a promise to appear is a misdemeanor even if the original charge is an infraction; *i.e.*, it is punishable by a fine of up to \$1000 (plus the penalty assessment) and/or by up to 6 months in jail (see §82.23). Veh C §§40000.25, 40508(a). The prosecutor or the court may reduce the charge of a failure to appear to an infraction. See Pen C §§17(d), 19.8(a). Appearance by counsel is sufficient compliance with a promise to appear. Veh C §40507. See Pen C §§977(a)(1), 1429 (defendant may appear at arraignment hearing through counsel).

When a defendant fails to appear, the court may:

- Issue a bench warrant for the defendant's arrest. See Veh C §40515. See also Veh C §40509.5(d) (when bench warrant may not be issued).
- Treat the failure to appear as an election to have a trial by written declaration on any alleged infraction. See Veh C §40903.
- Impose a civil assessment. See §82.36.
- Notify the DMV of the defendant's failure to appear. See §82.38.

A vehicle owner who is not the driver also may fail to appear in response to an unsigned owner-responsibility notice to appear, *e.g.*, after a citation is issued at truck scales because a vehicle is not properly equipped or not in compliance with size, weight, or load provisions. See Veh C §40001(b). If the owner-defendant fails to either appear, deposit bail, or plead guilty, a verified complaint must be filed that informs the owner-defendant that unless he or she appears in court and answers the charge within 21 days from receipt (rather than the usual 10 days), the court may notify the DMV to put a hold on the vehicle's registration or may issue an arrest warrant. Veh C §§40002(a), 40002.1(a).

### a. Civil Assessment

#### (1) [§82.36] In General

The court may impose a civil assessment penalty of up to \$300 against a defendant who fails, after notice, to appear in court. Pen C §1214.1(a). The assessment does not become effective until at least 20 calendar days after mailing a warning notice by first-class mail to the defendant to the address shown in the notice to appear or to the defendant's last known address. Pen C §1214.1(b)(1). If the defendant appears within the time specified in the notice and shows good cause for the failure to appear, the court must vacate the assessment. Pen C §1214.1(b)(1). Payment of bail, fines, penalties, fees, or a civil assessment is not required in order for the court to vacate the assessment at the time of defendant's appearance.

Payment of a civil assessment is not required to schedule a court hearing on a pending underlying charge. Pen C §1214.1(b)(2). If a civil assessment is imposed, no bench warrant or arrest warrant may be issued because of the failure to appear, and any outstanding, unserved warrant must be recalled. Pen C §1214.1(c).

### **(2) [§82.37] Vacating Civil Assessment in Infraction Cases**

In infraction cases for which the defendant received a written notice to appear and has failed to appear, the notice of a civil assessment under Pen C §1214.1(b) must inform the defendant of his or her right to petition that the civil assessment be vacated for good cause and must include information about the process for vacating or reducing the assessment. Cal Rules of Ct 4.106(a), (c)(1). When a notice of civil assessment is given, a defendant may, within the time specified in the notice, move by written petition to vacate or reduce the assessment without paying any bail, fines, fees, or assessments. Cal Rules of Ct 4.106(c)(2)–(3). The petition to vacate an assessment does not stay the operation of any order requiring the payment of bail, fines, penalties, fees, or assessment unless specifically ordered by the court. Cal Rules of Ct 4.106(c)(4).

The court must vacate the assessment if the defendant shows good cause under Pen C §1214.1(b)(1) for the failure to appear. Cal Rules of Ct 4.106(c)(5). Circumstances that indicate good cause may include, but are not limited to, the defendant's hospitalization, incapacitation, or incarceration; military duty required of the defendant; death or hospitalization of the defendant's dependent or immediate family member; caregiver responsibility for a sick or disabled dependent or immediate family member of the defendant; or an extraordinary reason, beyond the defendant's control, that prevented the defendant from making an appearance on or before the date listed on the notice to appear. Advisory Committee Comment to Cal Rules of Ct 4.106.

If the defendant fails to establish good cause, the court may still exercise its discretion under Pen C §1214.1(b) to reconsider whether a civil assessment should be imposed, and if so, the amount of the assessment. Cal Rules of Ct 4.106(c)(6). In exercising its discretion, the court may consider such factors as a defendant's due diligence in appearing after notice of the assessment has been given under Pen C §1214.1(b)(1) and the defendant's financial circumstances. Cal Rules of Ct 4.106(c)(7).

### **b. [§82.38] Notice to DMV**

The court may notify the DMV of the defendant's violation of a promise to appear in court or of a lawfully granted continuance of a promise to appear. Veh C §§40509(a), 40509.5(a). The court must mail a courtesy warning notice to the defendant at least 10 days before sending notice to the

DMV. Veh C §40509.5(c). Until the DMV receives a certificate from the court that the defendant has subsequently appeared or otherwise satisfied the charge, the DMV may not issue or renew a driver's license for the defendant. Veh C §12807(c). If notice is given under Veh C §40509(a), the DMV must suspend the defendant's driving privileges if the defendant's driving record contains one or more prior notifications of a violation issued under Veh C §40509 or Veh C §40509.5, and the driving privileges are not currently suspended under this section. Veh C §13365(a)(1). If notice is given under Veh C §40509.5(a), the DMV must suspend the defendant's driving privileges if those privileges are not currently suspended under this section. Veh C §13365(a)(2).

### **3. Identification by Thumbprint**

#### **a. [§82.39] Thumbprint**

A person may be required to provide a right thumbprint on a notice if he or she does not have satisfactory identification. Prints obtained in this manner may not be used in any database except for law enforcement purposes. Veh C §§40303(a), 40305(a), 40500(a), 40504(a).

#### **b. [§82.40] Contesting Identification**

A person may contest a charge by claiming under penalty of perjury not to be the person to whom the notice to appear was issued when identification was made by thumbprint or fingerprint. The person must submit a thumbprint or fingerprint for comparison with the thumbprint or fingerprint on the notice. The court may forward the submitted print and the print on the notice to the prosecuting attorney for comparison. If there is no print on the notice or if a comparison of the prints is inconclusive, the court must refer the notice back to the issuing agency for further investigation, unless it determines that a referral is not in the interest of justice. Veh C §§40303(c), 40305(b), 40500(e), 40504(c).

This process will result in the continuance of the case and tolling of the speedy trial period for 45 days. Veh C §§40303(c)(2), 40305(b)(2), 40305.5(b), 40500(e)(2), 40504(c)(2).

The court may make a finding of factual innocence under Pen C §530.6(b) if one of the following occurs:

- The prosecuting attorney or agency does not respond within 45 days.
- The court determines there is insufficient evidence that the person cited is the person charged. In this case the court has the alternative of determining that a finding of factual innocence is not in the interest of justice. Veh C §§40303(c)(3)–(4), 40305(b)(3)–(4), 40305.5(g)(3)–(4), 40500(e)(3)–(4), 40504(c)(3)–(4).

## **G. Notice To Correct Registration, License, and Equipment Violations**

### **1. [§82.41] When Applicable**

A notice to correct violation is issued when a person is arrested for any of the following infractions (Veh C §40610(a)):

- A registration infraction. Veh C §40303.5(a).
- A driver's license infraction relating to possession of a driver's license. Veh C §40303.5(b).
- An all-terrain vehicle safety certificate violation. Veh C §38501.
- An infraction involving an equipment violation. Veh C §40303.5(d).

The notice to correct violation must be on a form approved by the Judicial Council. In addition to the owner's or operator's address and identifying information, the notice must contain an estimate of the reasonable time required for correction and proof of correction of the particular defect. This time may not exceed 30 days or 90 days for the all-terrain vehicle safety certificate violation. Veh C §40610(d). A copy of the notice must be given to the motorist at the time he or she signs the notice. Veh C §40612.

An officer may not issue a notice to correct violation, but may take other appropriate enforcement action, if the officer finds evidence of fraud or persistent neglect, finds that the violation presents an immediate safety hazard, or finds that the motorist does not agree to or cannot promptly correct the violation. Veh C §40610(b)–(c). If a citation does not indicate that an offense is eligible for correction, the court may presume that the offense is noncorrectable. *California Highway Patrol v Superior Court* (2008) 158 CA4th 726, 740, 70 CR3d 280.

Signing a notice to correct a violation with a false or fictitious name is a misdemeanor (or in some instances could be charged as a felony under Pen C §529). Veh C §40614.

### **2. [§82.42] Proof of Correction**

If proof of correction is not received by the issuing agency within the time specified in the notice, the issuing agency may deliver the promise to correct to the court having jurisdiction of the violation along with a certification that proof of correction has not been received. If prepared on a form approved by the Judicial Council, the promise to correct and the certification constitute a complaint to which the defendant-motorist may enter a plea and on which a warrant may be issued if the complaint is verified. Veh C §40618.

If the defendant presents proof of correction to the court, either by mail or in person, on or before the date on which he or she has promised to appear

and pays a \$25 fee per violation, the court must dismiss the charge. Veh C §§40522, 40611.

Proof of correction may consist of a certification by an authorized representative of one of the following agencies that the alleged violation has been corrected:

- Driver's license and registration violations may be certified as corrected by the DMV or by any clerk or deputy clerk of a court. Veh C §40616(b).
- Any violation may be certified as correct by a police department, the CHP, a sheriff, a marshal, or other law enforcement agency regularly engaged in enforcement of the Vehicle Code. Veh C §40616(c).
- Brake, lamp, smog device, or muffler violations may be certified as corrected by any station that is licensed to make such inspections and certifications under the Business and Professions Code. Veh C §40616(a).

A willful violation of a promise to correct or a willful failure to deliver proof of correction is a misdemeanor. Veh C §40616. Most judges will grant a defendant a continuance to obtain proof of correction.

## H. Arrests in Traffic Cases

### 1. [§82.43] Mandatory Appearance Before Magistrate

A person arrested for a Vehicle Code misdemeanor or infraction must be arrested, taken into custody, and brought before a magistrate without unnecessary delay if he or she

- Fails to present a driver's license or other satisfactory evidence of identity and an unobstructed view of his or her full face for examination by the arresting officer. Veh C §40302(a). This statute confers discretion on the arresting officer to determine what "satisfactory evidence" of identity is under the circumstances. The decision of whether to accept some evidence of identity other than a driver's license or its functional equivalent is within the officer's discretion. The officer may, but is not required to, accept verifiable oral assertions of identity or make inquiries to elicit this evidence; *e.g.*, the officer has the discretion to determine that only reliable, written evidence will do, or to determine that the violator's oral statements of promise to appear are sufficiently reliable to allow citation and release. *People v McKay* (2002) 27 C4th 601, 622, 117 CR2d 236 (officer had discretion to accept or not accept oral identification of bicyclist; discretion subject to review for invalid criteria such as race or religion, but not subject to Fourth Amendment criteria); *People v Monroe* (1993) 12 CA4th 1174,

1182–1183, 1185–1189, 16 CR2d 267 (applying statute to passenger in vehicle in which officer saw open alcoholic beverage container).

- Refuses to give a written promise to appear in court. Veh C §40302(b).
- Demands an immediate appearance before a magistrate. Veh C §40302(c).
- Is charged with a violation of Veh C §23152 (DUI). Veh C §40302(d).

If the charged Vehicle Code violation is a felony, the arrest procedures are the same as for any other felony arrest. See Veh C §40301; *People v Superior Court (Simon)* (1972) 7 C3d 186, 199, 101 CR 837.

## **2. [§82.44] Appearance Before Magistrate at Officer's Discretion**

When a person is arrested for one of the following violations, the arresting officer has the discretion either to give the person a 10-day notice to appear in court (see discussion in §82.40 of motorist who contests identity based on thumbprints) or to take the person without unnecessary delay before a magistrate:

- Veh C §2800, insofar as it relates to (1) a failure or refusal to stop and submit to an inspection or test of a vehicle's lights under Veh C §2804 or to a brake test; (2) a refusal to submit a vehicle and load to an inspection, measurement, or weighing under Veh C §2802; (3) a refusal to adjust the load or obtain a permit under Veh C §2803; (4) a driver's continuing to drive after being lawfully ordered not to drive by a member of the CHP for violating the driver's hours of service or driver's log regulations under Veh C §34501(a); or (5) a pedestrian's second violation of Veh C §21962 within 24 hours. Veh C §40303(b)(3)–(7), (15).
- Veh C §2813, relating to a refusal to stop and submit a vehicle to an inspection of its size, weight, and equipment. Veh C §40303(b)(13).
- Veh C §10852 or §10853, relating to injuring or tampering with a vehicle. Veh C §40303(b)(1).
- Veh C §14601, §14601.1, §14601.2, or §14601.5, relating to driving while the privilege to operate a motor vehicle is suspended or revoked. Veh C §40303(b)(10).
- Veh C §20002 or §20003, relating to the duty to stop in the event of an accident. Veh C §40303(b)(8).
- Veh C §21200.5, relating to riding a bicycle while under the influence. Veh C §40303(b)(16).

- Veh C §21221.5, relating to operating a motorized scooter while under the influence of alcohol or drugs. Veh C §40303(b)(17).
- Veh C §21461.5, insofar as it relates to a pedestrian's second violation of that section within 24 hours. Veh C §40303(b)(14).
- Veh C §23103 or §23104, relating to reckless driving. Veh C §40303(b)(2).
- Veh C §23109, relating to participating in a speed contest or an exhibition of speed. Veh C §40303(b)(9).
- Veh C §2800(b)–(d), relating to a failure or refusal to comply with a lawful out-of-service order. Veh C §40303(b)(7).
- Veh C §23332, relating to persons on vehicular crossings. Veh C §40303(b)(12).

The officer may also exercise this discretion when

- The person arrested has attempted to evade arrest. Veh C §40303(b)(11).
- The motorist has been involved in a traffic accident or is obstructing traffic, and the officer has reason to believe the motorist was driving under the influence of alcohol or drugs. Veh C §40300.5.
- The officer is a member of the CHP and has arrested the person for violating a vehicular provision of state law not found in the Vehicle Code. Veh C §40304.
- The officer arrests a nonresident for a Vehicle Code violation and the nonresident fails to furnish satisfactory evidence of identity and a California address where he or she can be located. Veh C §40305(a) (see discussion in §82.40 of motorist who contests identity based on thumbprints).

An officer may arrest a motorist for committing an infraction in the officer's presence, regardless of whether an accident, a traffic obstruction, or another event has occurred. 80 Ops Cal Atty Gen 111, 112–114 (1997).

### **3. [§82.45] Procedure Before Magistrate**

When a person arrested for a misdemeanor or an infraction is taken before a magistrate, the arresting officer must file a complaint with the magistrate stating the charged offense. Veh C §40306(a). The defendant is entitled to a continuance of at least 5 days to plead and prepare for trial unless the defendant waives such time in writing or in open court. Veh C §40306(b).

The defendant must be released on his or her own recognizance (OR) (see Pen C §§1270, 1318) or on bail as fixed by the magistrate (see Pen C §§1269b, 1275). Veh C §40306(c); *People v Monroe* (1993) 12 CA4th

1174, 1185 n8, 16 CR2d 267. For a comprehensive discussion of bail and OR procedures, see California Judges Benchguide 55: *Bail and Own-Recognizance Release* (Cal CJER).

#### **4. [§82.46] Procedure When Magistrate Is Unavailable**

When the arresting officer attempts to take a traffic offender before a magistrate and the magistrate is unavailable, the officer must take the offender before one of the following (Veh C §40307(a)):

- The magistrate’s clerk, who must admit the offender to bail for the full amount set for the offense in the county bail schedule. Veh C §40307(a).
- The officer in charge of the most accessible jail, who may admit the offender to bail for the full amount set for the offense in the county bail schedule or release the offender on his or her written promise to appear.

When the offender has failed to present a driver’s license or other satisfactory proof of identity to the arresting officer, the officer in charge of the jail may detain the offender for a reasonable time, not to exceed 2 hours, to verify his or her identity. Veh C §40307(b). The offender need not be offered the opportunity to post bail before being detained for this 2-hour period, and an inventory search of the offender may be conducted incident to this detention. *People v Benz* (1984) 156 CA3d 483, 487–489, 203 CR 28.

### **I. Arraignment**

#### **1. [§82.47] General Considerations**

A judge or commissioner handling a traffic court arraignment calendar faces unique challenges. The calendar is generally lengthy. Most traffic offenders appear in pro per, and many of them are having their first experience with the judicial system. They are, therefore, unfamiliar with court proceedings and may be somewhat ill at ease. In presiding over the calendar, the judge or commissioner must be patient, dignified, courteous, and fair. The judge or commissioner must handle the calendar efficiently and expeditiously, but must also take the time to ensure that each person appearing before the court is adequately informed of the nature of the proceedings and of his or her rights, and is satisfied that he or she has received a fair hearing.

As one appellate court has noted, “the trial of traffic infraction cases calls for the talents of a person who understands the special societal function of traffic law enforcement, who is committed to its educational objective and who has the personal capability of dealing with people expeditiously,

fairly, and in good spirit.” *People v Lucas* (1978) 82 CA3d 47, 54, 147 CR 235.

## **2. [§82.48] Calendar Call**

Traffic court judges and commissioners handle the calendar call in various ways. Some have prepared a videotape that is played in the courtroom at the beginning of the calendar, before the judge or commissioner takes the bench. The purpose of the videotape is to give the defendants an overview of their procedural rights, their options regarding pleas, the range of sentences, the consequences of particular pleas, the traffic violation points that may be assessed, the effect that a particular plea may have on their insurance rates, the option of attending traffic violator school, and how to arrange for payment of any fine that may be imposed. Other judicial officers prefer to cover these matters in person immediately after taking the bench. Some judicial officers give the defendants a printed advisement in place of or in addition to an oral advisement. An advisement that might be used in either spoken or written form is provided in [§82.106](#).

Some judicial officers have found that an efficient way to manage the arraignment calendar is to advise the defendants that their names will be called in alphabetical order and that they should have their documents, such as proof of registration, insurance, or correction, in hand to show to the court. When they hear their name called, they should come forward to the podium, state their plea, and present any documents to the clerk. Many judicial officers call several defendants forward at a time (*e.g.*, all defendants whose last names begin with the letters A through D). They ask the first defendant to take his or her place at the podium, and ask the others to line up in the aisle outside the rail. Calling several defendants forward and asking them to be ready to proceed speeds up the disposition of cases, saving time for both the court and the defendants.

## **3. [§82.49] Informing Defendant of Charge and Receiving Plea**

Once a defendant has taken his or her place at the podium, the judge or commissioner informs the defendant of the charge, and asks the defendant how he or she wishes to plead. See Pen C §988. The defendant may plead guilty, not guilty, or no contest. See Pen C §1016. A no-contest plea has the same legal effect as a guilty plea, except that it may not be used against the defendant as an admission in any civil suit based on the same act. A no-contest plea is subject to the court’s approval. Pen C §1016(3). In traffic court, defendants sometimes plead guilty with an explanation, hoping to receive a reduced or suspended sentence. Such a plea has the same effect as a guilty plea in that it constitutes an admission to each element of the charged offense.

When a defendant pleads guilty or no contest, the judge or commissioner imposes sentence, assuming that the defendant has waived the right to delay sentencing under Pen C §1449. On general considerations in imposing sentence, see §§82.63–82.73. On the range of sentences that may be imposed for specific infractions, see the chart in §82.17. On the general penalties that may be imposed for an infraction, see §82.15. On the range of sentences that may be imposed for specific misdemeanors, see the chart in §82.24. On the general penalties that may be imposed for a misdemeanor, see §82.23.

A defendant who pleads not guilty is given a trial date. See §82.50.

Many judicial officers generally try to discourage defendants from pleading not guilty to minor traffic violations such as registration or equipment violations. They may suggest to a defendant charged with these offenses that he or she plead no contest and tell the defendant that, depending on the explanation for the violation, they will consider waiving the fine or substantially reducing it.

#### **4. [§82.50] Setting Case for Trial If Defendant Pleads Not Guilty**

When a defendant pleads not guilty, the case must be set for trial within 45 days unless the defendant waives time. See Pen C §1382(a)(3). If the defendant is not represented by an attorney, the judge or commissioner must explain to the defendant his or her right to a trial within 45 days. Pen C §1382(c). If the defendant does not waive time and is not tried within 45 days, the charges must be dismissed. Pen C §1382(a).

A defendant charged with an infraction may be offered the option of a trial by declaration, in which the defendant and the officer or other witnesses file written declarations with the court and the court determines the appropriate disposition of the case solely on the basis of these declarations. See §82.13. A defendant charged with a misdemeanor is entitled to a jury trial. See §82.21.

If a defendant does not appear on the trial date, the court should determine whether the absence is knowing and voluntary before proceeding to trial. See Veh C §§40512.5(a); Pen C §1043(e); *People v Disandro* (2010) 186 CA4th 593, 601–604, 111 CR3d 857.

### **J. Trial**

#### **1. Evidence**

##### **a. [§82.51] Accident and Police Reports**

An accident report may not be used as evidence in any trial of the accident, whether criminal or civil. Veh C §20013. See *Box v California Date Growers Ass’n* (1976) 57 CA3d 266, 270–271, 129 CR 146 (judge

properly refused to admit into evidence either entire accident report or diagram of accident contained in report). The reason for this prohibition is that if the accident report were introduced into evidence, there is a danger that the jury would consider it to be “official” and give it more weight than that to which it fairly is entitled. *Sherrell v Kelso* (1981) 116 CA3d Supp 22, 31, 172 CR 667. The officer who made the report may use it to refresh his or her recollection. 116 CA3d Supp at 32.

The defendant may cross-examine the officer concerning the report and, if the officer’s statements in court are in conflict with the statements in the report, the defendant may impeach the officer. The defendant may ask the officer whether a fact stated in the report is true, and may inquire whether the officer asked a witness certain questions. See Evid C §771(b); 116 CA3d Supp at 33. If, after reading the report, the officer has no full and accurate memory of the incident, the officer is required to read into evidence the statements, otherwise admissible, directly from the report. 116 CA3d Supp at 33. The court may also permit the officer to read into evidence as a past recollection recorded the statement of a witness contained in the report that is inconsistent with the witness’s testimony at trial. 116 CA3d Supp at 28, 35–36.

If a defendant pleads guilty to a Vehicle Code violation, the court may not receive or consider any written or verbal report of any police or traffic officer or of any witness of the offense, at any time before pronouncing sentence, without fully informing the defendant of all statements in the report and giving him or her an opportunity to answer the report or produce rebuttal witnesses. For this purpose, the court must grant a continuance before pronouncing sentence if the defendant requests it. Veh C §40806.

## **b. Speed Trap Evidence**

### **(1) [§82.52] Definition of “Speed Trap”**

Evidence obtained from use of a speed trap is inadmissible in proceedings on a charge involving the speed of a vehicle. See Veh C §§40801, 40803(a), 40805. A “speed trap” is either of the following:

- A section of a highway measured as to distance and with boundaries marked, designated, or otherwise determined in order that a vehicle’s speed may be calculated by securing the time it takes the vehicle to travel the known distance. Veh C §40802(a)(1); or
- A section of a highway that has a prima facie speed limit, provided by the Vehicle Code or local ordinance under Veh C §22352(b)(1), or established under Veh C §22354, §22357, §22358, or §22358.3, that is not justified by an engineering and traffic survey conducted within 5 years before the date of the alleged violation, and where enforcement involves the use of radar or other electronic devices that measure the speed of moving objects. Veh C §40802(a)(2). This

provision does not apply to local streets, roads, or school zones as defined in Veh C §40802(b). Veh C §40802(a)(2).

Thus, when radar or another electronic device is used to enforce a prima facie speed limit on a nonlocal road, the speed trap law is invoked, and a current engineering and traffic survey is needed to justify the speed limit. *People v Cooper* (2002) 101 CA4th Supp 1, 7, 125 CR2d 188. If a survey conducted within 5 years before the date of the alleged violation justifies the prima facie speed limit, the speed trap law does not apply. Veh C §40802(a)(2).

A survey may be extended to 7 or 10 years, and the speed trap law will also not apply if the prosecution proves all of the following (Veh C §40802(c)(1)):

- If radar was used, the arresting officer has successfully completed a radar operator course of at least 24 hours on the use of police traffic radar, and this course has been approved and certified by the Commission on Peace Officer Standards and Training (POST);
- If laser or any other electronic device (*e.g.*, light detection and ranging (LIDAR)) was used, and the arresting officer has successfully completed a 24-hour POST-certified radar course and at least 2 hours of additional POST-certified training on use of the device;
- An engineering and traffic survey that justifies the prima facie speed limit has been conducted within the past 7 years or within the past 10 years if a registered engineer evaluates the section of the highway and determines that no significant changes in roadway or traffic conditions have occurred, including, but not limited to, changes in adjoining property or land use, roadway width, or traffic volume (Veh C §40802(c)(2)(B));
- Before the arresting officer issued the notice to appear, the officer established that the radar, laser, or other electronic device used to measure the defendant's speed meets or exceeds the minimal operational standards of the National Traffic Highway Safety Administration and has been calibrated by an independent certified laser or radar repair and testing or calibration facility within 3 years before the date of the alleged violation; and
- The accused's speed was unsafe for the conditions present at the time of the violation—unless the citation was for a violation of Veh C §22349 (exceeding 65 mph or 55 mph), Veh C §22356 (exceeding posted 70 mph), or Veh C §22406 (exceeding 55 mph in specified vehicles).

## **(2) [§82.53] Prosecution's Burden**

In any prosecution of a charge involving the speed of a vehicle when enforcement involved the use of radar or another electronic device to measure speed, the prosecution must establish, as part of its prima facie case, that the evidence or testimony presented is not based on a speed trap as defined in Veh C §40802(a). Veh C §40803(b). Evidence that a traffic and engineering survey has been conducted within 5 years of the date of the alleged violation under Veh C §40802(a)(2) or within 7 or 10 years of the alleged violation under Veh C §40802(c)(2) or evidence that the offense was committed on a local street or road constitutes a prima facie case that the evidence or testimony is not based on a speed trap as defined in Veh C §40802(a)(2). Veh C §40803(c). The original survey or a certified copy must be produced. *People v Earnest* (1995) 33 CA4th Supp 18, 23, 40 CR2d 304. A mere summary of the survey is insufficient (*People v Ellis* (1995) 33 CA4th Supp 25, 40 CR2d 111), as is the officer's testimony about the contents of the survey (*People v Earnest, supra*, 33 CA4th Supp at 20–21).

If the defendant is charged with violating the basic speed law (Veh C §22350), the prosecution must prove either that the defendant drove at a speed that endangered people or property *or* that the defendant drove at a speed that was unreasonable for the driving conditions. *People v Behjat* (2000) 84 CA4th Supp 1, 3–4, 101 CR2d 193 (no testimony was presented on this issue and no facts bearing on this issue were set forth in radar speed survey that was introduced). If the prosecution establishes that the speed was greater than the prima facie speed limit, the burden shifts to the defendant to establish that the speed did not violate the basic speed law at the time and place and under the existing conditions. Veh C §22351(b).

## **(3) [§82.54] Engineering and Traffic Survey**

When the officer's means of determining a defendant's speed included the use of radar or another electronic device, the prosecutor must produce a current engineering and traffic survey to meet its burden of establishing a prima facie case that there was no speed trap. Without a current engineering and traffic survey, the arresting officer is incompetent to testify about the speed of the defendant's vehicle even if the officer's testimony is confined to his or her visual determination of speed. See Veh C §40804(a); *People v Conzelman* (1994) 33 CA4th Supp 6, 8–9, 39 CR2d 156. The speed trap laws compel exclusion of all evidence of the defendant's speed when the prosecution fails to justify the posted speed limit with proof of a timely traffic and engineering survey. *People v Studley* (1996) 44 CA4th Supp 1, 3, 52 CR2d 461.

The survey must comply with methods determined by the Department of Transportation. It must consider prevailing speeds, accident records, and conditions not readily apparent to motorists. It may also consider residential

density, as well as pedestrian and bicyclist safety. Veh C §627; *People v Goulet* (1992) 13 CA4th Supp 1, 9–10, 17 CR2d 801. The speed limit must be justified by the survey; *i.e.*, the survey must show that the speed limit is just and based on sufficient lawful reason. 13 CA4th Supp at 9. The speed limit should be set at the nearest 5-mph increment to the 85th percentile critical speed (the speed at or below which 85 percent of the traffic is moving) unless the survey lists other factors justifying a reduction. Cal Manual on Uniform Traffic Control Devices (MUTCD) §2B.13.

If the court determines that the speed limit is not justified by the facts stated in the survey, the speeding charge must be dismissed. 13 CA4th Supp at 15. If the court determines that the speed limit is justified, the court must then decide whether guilt is proved beyond a reasonable doubt.

The speed trap laws do not apply to evidence of speed from a speedometer without the use of radar. 13 CA4th Supp at 3.

#### **(4) [§82.55] Cases Involving Maximum Prescribed Speed Limit**

The rules and procedures governing speed traps and the use of radar are inapplicable to cases in which the Legislature has mandated a maximum speed of a vehicle, *e.g.*, a maximum speed of 25 miles per hour in a school zone when children are present (Veh C §22352(b)(2)). *People v Goodrich* (1994) 33 CA4th Supp 1, 4–5, 39 CR2d 154; *People v Miller* (1979) 90 CA3d Supp 35, 153 CR 192.

#### **c. [§82.56] Evidence of Actions Taken by DMV**

No record of an action taken by the DMV against a person's privilege to operate a motor vehicle and no testimony about the hearing held in connection with the action is admissible as evidence in any criminal action. Veh C §40807. This provision does not limit the admissibility of testimony or DMV records (1) as necessary to enforce the Vehicle Code provisions relating to operating a motor vehicle without a valid driver's license or when the person's driving privilege has been suspended or revoked; (2) in a prosecution for failing to disclose any matter at the hearing that the person is required to disclose; or (3) when the testimony or records are introduced solely for impeachment purposes. Veh C §40807.

#### **d. [§82.57] "Photo Enforcement" Evidence**

Printed representations of computer-generated information, video, or photographic images stored by an automated traffic enforcement system (ATES) do not constitute an out-of-court hearsay statement by a declarant. Veh C §21455.5(e). *People v Goldsmith* (2014) 59 C4th 258, 273–275, 172 CR3d 637. These printed representations are presumed to be accurate representations of the information or images they purport to represent. Evid

C §§1552(a)–(b), 1553(a)–(b). In *Goldsmith*, ATES evidence was adequately authenticated at a trial for failing to stop at a red light, although no witness with special expertise in the operation and maintenance of the ATES computers testified regarding the system’s operation. The presumptions provided by Evid C §§1552 and 1553 supported a finding, in the absence of contrary evidence, that the printed versions of ATES images and data were accurate representations of the images and data stored in the ATES equipment. 59 C4th at 266–272. A police department investigator’s testimony regarding the independent operation of the camera system supported an inference that, when triggered, the system automatically and contemporaneously recorded the images of the intersection and the data imprinted on the photographs. 59 C4th at 271.

In *People v Rekte* (2015) 232 CA4th 1237, 1244–1247, 181 CR3d 912, a defense expert’s testimony that the yellow light interval was less than the minimum interval required by the California Manual on Uniform Traffic Control Devices rebutted the presumptions of Evid C §§1552 and 1553 that the ATES printouts and videos were correct, thus shifting the burden of producing evidence to authenticate the printouts and videos to the city to establish that the printouts and videos were admissible in the defendant’s trial for failing to stop at a red light. The prosecution failed to meet that burden with an ATES operator’s testimony that the yellow light interval met or exceeded the minimum interval because the operator was not a percipient witness to the violation. To the extent that the trial court relied on the declaration of an ATES technician in ruling that the photographs and printouts generated by the ATES were admissible, such reliance violated the defendant’s constitutional right to confrontation because the technician did not testify and the declaration constituted testimonial hearsay.

## **2. Presumptions**

### **a. [§82.58] Speed Limits**

In an action involving unlawful speed on a highway that has been posted with speed restriction signs, there is a rebuttable presumption that existing facts authorize the erection of the signs and that the *prima facie* speed limit is the limit stated on the signs. Veh C §41100.

### **b. [§82.59] Official Signs and Traffic-Control Devices**

There is a rebuttable presumption that traffic signs or control devices placed in a position approximately conforming to the requirements of the Vehicle Code were placed by official acts of lawful authorities. Veh C §41101(a). Traffic signs or devices that purport to conform to the requirements of the Vehicle Code are presumed to comply unless competent evidence establishes the contrary. Veh C §41101(b). Similarly, milepost markers placed on highways by Caltrans and the CHP may be presumed to

be properly placed. *People v Zunis* (2005) 134 CA4th Supp 1, 5, 36 CR3d 489.

### **3. Defenses**

#### **a. [§82.60] Prior Conviction or Acquittal**

It is a sufficient defense to an alleged Vehicle Code violation to show that the defendant was prosecuted in a criminal trial in another state or in a federal court on the same act or omission, and that the defendant was convicted or acquitted. Veh C §41400.

#### **b. [§82.61] Violations Required by Law**

No person may be prosecuted for a violation of the Vehicle Code if the violation was required by federal law, rule, regulation, directive, or order (Veh C §41401), or if the violation was necessary to comply with an order of the governor under the California Emergency Services Act (Veh C §41402).

### **4. [§82.62] When Evidence Establishes Non-Cited Violation**

On occasion, the testimony of the officer and the defendant may establish a violation other than the cited violation. If the evidence established a violation of a lesser included offense to the charged offense, the court may find the defendant not guilty of the charged offense, but guilty of the lesser offense. If the offense established by the evidence is not a lesser included offense, the court defendant must simply find the defendant not guilty of the charged offense. Examples of situations where the evidence establishes a related Vehicle Code violation other than the one cited include the following:

- The defendant is charged with speeding at more than 100 miles per hour (Veh C §22348(b)). The evidence establishes that the defendant was driving at only 75 miles per hour. The defendant may be found guilty of speeding in excess of 65 miles per hour (Veh C §22349).
- The defendant is charged with driving with an unsecured child under 8 years of age (Veh C §27360(a)). The evidence establishes that the child was over 8 years of age in violation of driving with an unsecured child between 8 and 16 years of age (Veh C §27360.5).
- The defendant is charged in failing to stop at a red light (Veh C §21453(a)). The evidence establishes that the defendant stopped but failed to yield before turning on red (Veh C §21453(b)).

In some jurisdictions, courts characterize the new offense established by the evidence as a different offense rather than a lesser of the cited

offense. For instance, these courts may maintain that the related offenses in the last two examples above are not lessers at all. The practice in many of these jurisdictions is to allow the arresting officer to amend the citation to conform to the proof at the trial. However, this approach is fraught with Constitutional perils such as Due Process, Separation of Powers, and Double Jeopardy, and should only be undertaken with great caution and due deliberation.

## K. Sentencing

### 1. [§82.63] General Considerations

In minor traffic cases, it is usually the desire of both the court and the defendant that sentence be pronounced immediately following a plea or finding of guilty. Immediate sentencing can be facilitated if the court includes in the arraignment advisement to defendants an explanation of “waiving time,” *i.e.*, that a defendant may waive the 6-hour postponement of sentencing after a plea or finding of guilty that is required by Pen C §1449.

After the presentation of evidence and argument, the court may enter a decision immediately, in the defendant’s presence, together with a brief explanation of the basis for the decision. Because an appearance in traffic court is often the only contact most defendants will have with the court system, it is important that the proceedings not only be fair and just but also appear to be fair and just. Delaying a decision until the defendant has left the courtroom and notifying the defendant of the decision and judgment by mail may appear to be arbitrary. As one appellate court has noted, an “appearance of arbitrariness is to be avoided, even in the crowded conditions of traffic court proceedings. . . . It is of advantage to the fair administration of justice that all proceedings be conducted in open court.” *People v Kriss* (1979) 96 CA3d 913, 921, 158 CR 420.

However, there may be cases in which it appears more fair and just for the court to take the case under submission to consider the evidence presented and any legal memoranda filed with the court, or possibly to visit the scene. In such event, the court must advise the defendant of his or her right to be present when judgment is given unless the defendant waives this right. If the judge intends to visit the scene, the judge must also inform the defendant of his or her right to be present unless the defendant waives this right.

The general penalties for an infraction are provided in §82.15. Penalties for specified infractions are listed in the chart in §82.17. The general penalties for a misdemeanor are provided in §82.23. Penalties for specified misdemeanors are listed in the chart in §82.24. Suggested base fines are listed in the Uniform Traffic Bail and Penalty Schedule adopted by the Judicial Council. See §82.70.

Some traffic courts have established informal sentencing guidelines for particular offenses. Judicial officers should take steps to ensure that these guidelines are applied consistently to avoid the appearance of favoritism and let the litigants and their attorneys know what to expect from the court.

## **2. [§82.64] Traffic Violator School**

After a deposit of bail and bail forfeiture, a plea of guilty or no contest, or a conviction, the court may order a continuance of a proceeding against a person who received a notice to appear for violating a statute relating to the safe operation of a motor vehicle, in consideration for successful completion of a course of instruction at a licensed traffic violator school. The court may order that the conviction be held confidential in accordance with Veh C §1808.7, but must notify the person that only one conviction within 18 months will be held confidential. Veh C §41501(a).

A court also has the authority to order or permit a person who holds a noncommercial class C, class M1, or class M2 driver's license and pleads guilty or no contest or is convicted of a traffic offense to attend a licensed traffic violator school. Veh C §42005(a).

The court may, after deposit of the uniform traffic school fee or bail, order or permit a person who holds a class A, class B, or commercial class C driver's license and who pleads guilty or no contest or is convicted of a traffic offense to complete a course of instruction at a licensed traffic violator school if the person *was operating a vehicle requiring only a noncommercial class C or a class M license*. Veh C §42005(b) (court must conform to 49 CFR regarding transportation providers); Cal Rules of Ct 4.104(c)(1). In such circumstances, the court may not order that the record of conviction be kept confidential, and the record must be disclosed to insurers by the department for insurance underwriting and rating purposes. Veh C §42005(b); Cal Rules of Ct 4.104(c)(1). The conviction, however, must not be added to a violation point count for purposes of determining whether the driver is presumed to be a negligent operator. Veh C §§1808.10, 42005(b).

Court-approved driving instruction programs for defendant motorcyclists may include motorcyclist safety courses—for example, the Basic Rider Course (BRC) offered through the California Highway Patrol's California Motorcyclist Safety Program. More information about this course can be found on the California Motorcyclist Safety Program's website at <http://cmsp.msi5.com/>.

The court clerk or hearing officer must prepare an abstract of the record indicating that the person was convicted and ordered to complete a traffic violator program; certify the abstract to be true and correct; and forward it to the DMV's Sacramento office within 5 days after receipt of proof that the program was completed or after the due date to which the proceeding was continued, whichever comes first. Veh C §1803.5(a). The record in any

18-month period is confidential, and no violation point may be assessed. Veh C §1808.7(a). The record is not confidential, however, if any of the following applies (Veh C §1808.7(b)):

- The person convicted holds a commercial driver's license as defined in Veh C §15210(a).
- The person convicted holds a commercial driver's license in another state in accordance with 49 CFR §383.
- The violation occurred in a commercial motor vehicle as defined in Veh C §15210(b).
- The conviction carries a violation point count of more than one point under Veh C §12810.

Subject to the court's discretion, a court clerk is authorized to grant a request to attend traffic violator school when a defendant with a valid driver's license requests to attend an 8-hour traffic violator school under Veh C §§41501(a) and 42005 for any infraction under Divisions 11 and 12 of the Vehicle Code (rules of the road and equipment violations) if the violation is reportable to the DMV. Cal Rules of Ct 4.104(b)(1). A court clerk is not authorized to grant a request to attend traffic violator school for a misdemeanor or those infractions designated in Cal Rules of Ct 4.104(b)(2).

**a. [§82.65] Eligibility Restrictions**

*Violation that occurs in commercial vehicle.* A defendant charged with a violation that occurs in a commercial vehicle, as defined in Veh C §15210(b), is not eligible to attend traffic violator school under Veh C §41501 or §42005 in lieu of adjudicating an offense, to receive a confidential conviction, or to avoid violator point counts. Cal Rules of Ct 4.104(c)(1); Veh C §42005(c)(1).

*Violation of specified offenses.* The court may not order or permit a defendant to attend a traffic violator school under Veh C §41501(a) if the defendant receives a notice to appear as to, or is otherwise charged with, any of the following two-point violations listed in Veh C §12810(a)–(e) (Veh C §41501(b)):

- Pen C §191.5(b) or §192(c) (vehicular manslaughter offenses).
- Veh C §2800.2 or §2800.3 (fleeing from pursuing officer).
- Veh C §14601, §14601.1, §14601.2, §14601.3, or §14601.5 (driving while privileges suspended).
- Veh C §20001 or §20002 (failure to stop at the scene of an accident).
- Veh C §21651(b) (driving wrong way on divided highway).
- Veh C §22348(b) (speeding in excess of 100 miles per hour).

- Veh C §23103, §23104, or §23105 (reckless driving).
- Veh C §23109(a), §23109(c), or 23109.1 (engaging in speed contests and exhibitions of speed).
- Veh C §23140 (DUI under age 21).
- Veh C §23152 or §23153 (DUI offenses).
- Veh C §31602 (transporting explosives without proper license).

Additionally, Veh C §42005(c) provides that the court may not order or permit traffic school attendance under Veh C §42005 if any of the following applies:

- The offense is a violation of Veh C §§20001 and 20002 (failure to stop at the scene of an accident), Veh C §§23103, 23104, and 23105 (reckless driving), Veh C §§23140, 23152, and 23153 (DUI offenses), or Veh C §23103 as specified in Veh C §23103.5 (wet reckless).
- The offense is a violation described in Veh C §12810(d) or (e).

#### **b. [§82.66] Payment of Traffic Violator School Fee**

A person who is ordered or permitted to attend traffic violator school must pay to the court a fee equal to the applicable fine (or “total bail”) for the charged offense (see Veh C §42007(a)(1)), plus an additional fee of \$49 (see Veh C §42007.1). If multiple offenses are charged in a single notice to appear, the “total bail” is the amount applicable for the greater of the qualifying offenses. In addition, the court must impose a conviction assessment; for purposes of this assessment, “conviction” includes the dismissal of a traffic violation on the condition that the defendant attend a court-ordered traffic violator school. Govt C §70373(a)(2). The court may also charge a fee to defray the costs of any court assistance program used to process traffic violators (Veh C §11205.2(c)), and a fee to defray the costs of routine monitoring of traffic violator schools (Veh C §11208(c)). Veh C §42007.1(a). These fees are in addition to the cost of instruction charged by the traffic violator school. See Veh C §42007(a)(1). The court may permit payment of a reduced fee on a showing that the defendant is unable to pay the full amount. Veh C §42007(a)(1).

#### **c. [§82.67] Payment of Fee in Installments**

The court clerk may accept payment of the traffic violator school fee required under Veh C §42007(a)(1) in installments. Veh C §42007(a)(2). The defendant must make an initial installment payment of at least 10 percent of the fee and sign an Agreement To Pay Traffic Violator School Fees in Installments (form TR-310), which sets out the terms of the installment payment schedule as agreed on with the court. Veh C

§42007(a)(2). The court must continue the case to the date specified in the agreement for completing payment of the fee and submitting the certification of completion of traffic violator school to the court. Veh C §42007(a)(2). In addition, the clerk must collect a fee of up to \$35 to cover administrative and clerical costs for processing the installment payment. Veh C §42007(a)(2).

A court may use an online interface to enter into installment payment agreements with traffic infraction defendants under Veh C §42007. Cal Rules of Ct 4.108(a)(1). Before entering into an installment payment agreement, the online interface must provide defendants with the Advisement of Rights stated in Attachment 1 of an Online Agreement To Pay Traffic Violator School Fees in Installments (form TR-310 (online)). Cal Rules of Ct 4.108(a)(2).

If the defendant fails to make an installment payment according to the agreement, the court may convert the fee to bail, declare it forfeited, and report the forfeiture as a conviction under Veh C §1803. The date the bail is declared forfeited is reported as the date of conviction. Veh C §42007(a)(3). The court may also charge a failure to pay under Veh C §40508 (see §§82.74–82.78) and impose a civil assessment, as provided under Pen C §1214.1, or issue an arrest warrant for a failure to pay. Veh C §42007(a)(3).

In infraction cases for which the defendant received a written notice to appear and has failed to make a payment under an installment plan as provided in Veh C §42007, the court must allow the defendant to appear by written petition to modify the payment terms. Alternatively, the defendant may request or the court may direct a court appearance. Cal Rules of Ct 4.106(e)(1). The court may not require payment of bail, fines, penalties, fees, or assessments to consider the petition. Cal Rules of Ct 4.106(e)(2). The petition to modify the payment terms does not stay the operation of any order requiring the payment of bail, fines, penalties, fees, or assessments unless specifically ordered by the court. Cal Rules of Ct 4.106(e)(3). If the defendant petitions to modify the payment terms based on an inability to pay, the procedures stated in Cal Rules of Ct 4.335 apply (see §82.78). Cal Rules of Ct 4.106(e)(4). If the petition to modify the payment terms is not based on an inability to pay, the court may deny the defendant's request to modify the payment terms and order no further proceedings if the court determines that:

- An unreasonable amount of time has passed or
- The defendant has made an unreasonable number of requests to modify the payment terms. Cal Rules of Ct 4.106(e)(5).

If the court chooses to grant the defendant's request, the court may modify the payment terms by reducing or suspending the base fine, lowering the payments, converting the remaining balance to community

service, or otherwise modifying the payment terms as the court sees fit. Advisory Committee Comment to Cal Rules of Ct 4.106.

**d. [§82.68] Granting Request To Attend Traffic Violator School**

It is within the court’s discretion to grant or deny a defendant’s request to attend traffic violator school. Cal Rules of Ct 4.104(c)(1); *People v Schindler* (1993) 20 CA4th 431, 433–435, 26 CR2d 255. The court must base its decision to grant or deny a request on the circumstances of the specific case. Cal Rules of Ct 4.104(c)(2). If the court believes that a defendant’s circumstances indicate that he or she would benefit from attending traffic violator school, attendance should be authorized. *People v Enochs* (1976) 62 CA3d Supp 42, 44, 133 CR 363. The court may not arbitrarily refuse to entertain such a request because the defendant enters a plea other than guilty or exercises his or her right to trial. Cal Rules of Ct 4.104(c)(2); *People v Enochs, supra* (court’s ruling on the request should not be affected by the order in which plea, explanation, and request for school are presented; judge’s policy of denying requests made after plea and explanation was capricious and arbitrary); *People v Schindler, supra*, 20 C4th at 433; *People v Wozniak* (1987) 197 CA3d Supp 43, 44, 243 CR 686. The court is not required to state on the record its reasons for granting or denying a traffic violator school request. Cal Rules of Ct 4.104(c)(2); *People v Schindler, supra*.

Traffic violator schools must notify the court of successful course completions by posting the information on the DMV’s web-based database. This database allows the DMV, the courts, and traffic violator schools to monitor, report, and track course participation and completion. Veh C §§11200(d), 11205(c).

**e. [§82.69] Failure To Comply With Court’s Order**

A defendant who willfully fails to comply with a court order to attend traffic violator school is guilty of a misdemeanor. Veh C §§40000.25, 42005(e). If a defendant has elected or is ordered to attend traffic violator school and has paid the full traffic violator school fee under Veh C §42007, but fails to submit proof of completion within the time ordered by the court (or any extension of that time), the court may, after notice, order that the fine paid by the defendant be converted to bail, declare the bail forfeited, and close the case. Veh C §40512.6(a).

**3. [§82.70] Fines and Penalty Assessments**

A traffic fine consists of a base fine (or “base bail” or “bail”) plus a penalty assessment and miscellaneous fees. The penalty assessment is a combination of assessments and a surcharge (see Govt C §§70372, 70373,

76000(e), 76000.5, 76000.10(c), 76104.6, 76104.7; Pen C §§1464, 1465.7) that can total approximately 300 percent of the base fine. The penalty assessment is a state tax that is used to pay for a variety of programs such as peace officer training, a DNA identification fund, courthouse and jail construction, and emergency medical services (EMS). Other possible assessments and fees include amounts for court security, maintaining a record of prior convictions, and operating a night court. See Pen C §1465.8; Veh C §§40508.6, 42006. A separate penalty is assessed for every fine imposed for a parking violation infraction. Govt C §76000.3.

Suggested base fines are listed in the Uniform Bail and Penalty Schedules adopted by the Judicial Council. See Pen C §1269b(d); Veh C §40310; Cal Rules of Ct 4.102. Although judges in each county may adopt their own countywide bail and penalty schedule, they generally adopt the amounts listed in the uniform schedule. Courts in 30 counties can increase bail amounts when authorized by their county boards of supervisors. See Pen C §1463.28.

Courts may download the Uniform Bail and Penalty Schedules from the California Courts' website at <http://www.courts.ca.gov/7532.htm>. The schedules can also be obtained by contacting Criminal Justice Services, Judicial Council of California, 455 Golden Gate Avenue, San Francisco, California 94102-3688; (415) 865-8994.

The fine may be paid by a personal check that meets the requirements of the court's written policy governing the acceptance of personal checks. Veh C §40510(b)-(d).

#### **4. [§82.71] Considerations in Imposing Fine**

The amount of the fine to be imposed depends on the circumstances of the particular case. Important factors to consider are the existence of any prior convictions (see §82.72) and the defendant's ability to pay.

Before imposing a fine for conviction of a Vehicle Code violation, the court must, on the defendant's request, consider the defendant's ability to pay. The defendant has the burden of demonstrating his or her lack of ability to pay. The court need not make express findings about the factors bearing on the amount of the fine. Veh C §42003(c). In cases of demonstrated financial hardship, the court may consider waiving the fine, allowing the defendant to pay the fine in installments, or allowing the defendant to perform community service in place of paying a fine.

A judgment imposing a fine for conviction of an infraction may provide for the payment to be made within a specified time or in specified installments. Veh C §42003(a). The judgment must contain an order that, if the defendant fails to pay the fine or any installment by the date it is due, the defendant must appear in court on that date for further proceedings. A willful violation of the order is punishable as contempt. Veh C §42003(a).

The judgment imposing a fine for conviction of a misdemeanor may also order that the defendant be imprisoned until the fine is satisfied. The extent of the imprisonment may not exceed 1 day for every \$30 of the fine and may not extend beyond the term for which the defendant might be sentenced for the misdemeanor of which he or she was convicted. Veh C §42003(b).

At the time of rendering the judgment, the court must advise the defendant of the right to petition the court to modify or vacate the judgment during its pendency on the grounds of a change in circumstances with regard to the defendant's ability to pay. Veh C §42003(e).

In infraction cases for which the defendant received a written notice to appear and has failed to make a payment under an installment plan as provided in Veh C §42003, the court must allow the defendant to appear by written petition to modify the payment terms. Alternatively, the defendant may request or the court may direct a court appearance. Cal Rules of Ct 4.106(e)(1). The court may not require payment of bail, fines, penalties, fees, or assessments to consider the petition. Cal Rules of Ct 4.106(e)(2). The petition to modify the payment terms does not stay the operation of any order requiring the payment of bail, fines, penalties, fees, or assessments unless specifically ordered by the court. Cal Rules of Ct 4.106(e)(3). If the defendant petitions to modify the payment terms based on an inability to pay, the procedures stated in Cal Rules of Ct 4.335 apply (see §82.78). Cal Rules of Ct 4.106(e)(4). If the petition to modify the payment terms is not based on an inability to pay, the court may deny the defendant's request to modify the payment terms and order no further proceedings if the court determines that:

- An unreasonable amount of time has passed; or
- The defendant has made an unreasonable number of requests to modify the payment terms. Cal Rules of Ct 4.106(e)(5).

If the court chooses to grant the defendant's request, the court may modify the payment terms by reducing or suspending the base fine, lowering the payments, converting the remaining balance to community service, or otherwise modifying the payment terms as the court sees fit. Advisory Committee Comment to Cal Rules of Ct 4.106.

### **5. [§82.72] Use of Priors To Increase Penalty**

For many offenses a second or subsequent conviction carries a heavier penalty than that which may be imposed for a first offense. See §§82.15, 82.17, 82.24. For purposes of determining the penalty to be imposed, the court may consider a written report from the DMV containing information regarding prior convictions. The report is prima facie evidence of the convictions if the defendant admits them, regardless of whether the complaint commencing the proceedings alleged any prior convictions. Veh

C §42004. If the defendant denies a prior conviction, it must be pleaded and proved before the increased penalty for a subsequent conviction may be imposed. See Veh C §42004; *People v Ford* (1964) 60 C2d 772, 794, 36 CR 620.

For sentencing purposes, a prior bail forfeiture is deemed a conviction of the charged offense. Veh C §42004.

## **6. [§82.73] Twenty-Four-Hour Suspension of Sentence**

A defendant sentenced to a jail term for a nonfelony violation of the Vehicle Code is entitled to a 24-hour suspension of the execution of the sentence, on his or her demand, unless the court determines that the defendant is unlikely to return. If the court grants a suspension and the defendant fails to deliver himself or herself into custody for commencement of the jail term, the failure to appear is a misdemeanor. Veh C §42004.5.

## **L. Failure To Pay Fine**

### **1. [§82.74] Misdemeanor**

A willful failure to pay bail in installments as agreed under Veh C §40510.5 (see §82.10) or a fine imposed by the court for a Vehicle Code violation within the time authorized by the court and without presenting a lawful excuse to the court before the fine is due is a misdemeanor, even if the bail or fine is paid in full after that time. Veh C §§40508(b), 40000.25. A late charge in the amount of 50 percent of the total initial fine must be added to any traffic fine that it not paid within 20 days following mailing of a notice that the fine has been assessed. Veh C §40310.

### **2. Civil Assessment**

#### **a. [§82.75] In General**

The court may impose a civil assessment penalty of up to \$300 against a defendant who fails, after notice, to appear in court. Pen C §1214.1(a). The assessment does not become effective until at least 20 calendar days after the court mails a warning notice to the defendant by first-class mail to the address shown on the notice to appear or to the defendant's last known address. Pen C §1214.1(b)(1). If the defendant appears within the time specified in the notice and shows good cause for the failure to pay the fine or installment of bail, the court must vacate the assessment. Pen C §1214.1(b)(1). Payment of bail, fines, penalties, fees, or a civil assessment is not required in order for the court to vacate the assessment at the time of defendant's appearance. Payment of a civil assessment is not required to schedule a court hearing on a pending underlying charge. Pen C §1214.1(b)(2). If a civil assessment is imposed, no bench warrant or arrest warrant may be issued with respect to the failure to pay the fine or

installment of bail, and any outstanding, unserved warrant must be recalled. Pen C §1214.1(c).

### **b. [§82.76] Vacating Civil Assessment in Infraction Cases**

In infraction cases for which the defendant received a written notice to appear and has failed to pay a fine, the notice of a civil assessment under Pen C §1214.1(b) must inform the defendant of his or her right to petition that the civil assessment be vacated for good cause and must include information about the process for vacating or reducing the assessment. Cal Rules of Ct 4.106(a), (c)(1). When a notice of civil assessment is given, a defendant may, within the time specified in the notice, move by written petition to vacate or reduce the assessment without paying any bail, fines, fees, or assessments. Cal Rules of Ct 4.106(c)(2)–(3). The petition to vacate an assessment does not stay the operation of any order requiring the payment of bail, fines, penalties, fees, or assessment unless specifically ordered by the court. Cal Rules of Ct 4.106(c)(4).

The court must vacate the assessment if the defendant shows good cause under Pen C §1214.1(b)(1) for failure to pay. Cal Rules of Ct 4.106(c)(5). Circumstances that indicate good cause may include, but are not limited to, the defendant's hospitalization, incapacitation, or incarceration; military duty required of the defendant; death or hospitalization of the defendant's dependent or immediate family member; caregiver responsibility for a sick or disabled dependent or immediate family member of the defendant; or an extraordinary reason, beyond the defendant's control, that prevented the defendant from making a payment on or before the date listed on the notice to appear. Advisory Committee Comment to Cal Rules of Ct 4.106.

If the defendant fails to establish good cause, the court may still exercise its discretion under Pen C §1214.1(b) to reconsider whether a civil assessment should be imposed, and if so, the amount of the assessment. Cal Rules of Ct 4.106(c)(6). In exercising its discretion, the court may consider such factors as a defendant's due diligence in making a payment after notice of the assessment has been given under Pen C §1214.1(b)(1) and the defendant's financial circumstances. Cal Rules of Ct 4.106(c)(7).

### **3. [§82.77] No Notice to DMV**

Effective June 27, 2017, the court no longer has the authority to notify the DMV of a failure to pay a fine or bail. Language in Veh C §§40509(b) and §40509.5(b) providing the court discretion to notify the DMV of the defendant's willful failure to pay a lawfully imposed fine or an installment of bail has been repealed. See 2007 ch. 17 §§51–54 (AB 103).

#### **4. [§82.78] Impoundment of License**

If a defendant convicted of an infraction fails to pay bail in installments, as agreed under Veh C §40510.5 (§82.10), or to pay a fine or any installment of a fine within the time authorized by a judge, the court may impound the defendant's driver's license and order the defendant not to drive for up to 30 days. Veh C §40508(d). The court must endorse on the reverse side of the license that the defendant has been ordered not to drive, the period for which the order is made, and the name of the court making the order. If the defendant has a class C or M driver's license and satisfies the court that impounding the license and ordering the defendant not to drive would affect his or her livelihood, the court may limit the defendant's driving to what the court determines is essential for the defendant's employment, for up to 30 days. Veh C §40508(d). A violation of the order constitutes contempt of court. Veh C §40508(d). The court must notify the DMV of the impoundment or limitation within 5 days of the order. Veh C §1803(c).

#### **5. [§82.79] Unpaid Bail Referred to Collection Program**

When a case has not been adjudicated and a court refers unpaid bail to a comprehensive collection program as provided in Pen C §1463.007(b)(1) as delinquent debt, the defendant may schedule a hearing for adjudication of the underlying charge(s) without payment of the bail amount. Cal Rules of Ct 4.106(d)(1).

The defendant may request an appearance date by written petition or alternative method provided by the court. Alternatively, the defendant may request or the court may direct a court appearance. Cal Rules of Ct 4.106(d)(2).

A court may require a deposit of bail before adjudication of the underlying charges if the court finds that the defendant is unlikely to appear as ordered without a deposit of bail and the court expressly states the reasons for the finding. The court must not require payment of the civil assessment before adjudication. Cal Rules of Ct 4.106(d)(3).

#### **6. [§82.80] Ability To Pay Determinations**

Vehicle Code section 42003, governing payment of fines and costs for Vehicle Code violations, provides that, on request of a defendant, the court must consider the defendant's ability to pay. California Rules of Court 4.335 standardizes and improves procedures for ability-to-pay determinations for all infraction cases. This rule provides the following:

- Courts must provide defendants notice of the right to request an ability-to-pay determination and make instructions or other materials available on how to request that determination. Cal Rules of Ct 4.335(b). This notice may be provided on the reminder notice

required by Cal Rules of Ct 4.107, the notice of any civil assessment under Pen C §1214.1, a court's website, or any other notice provided to the defendant. Advisory Committee Comment to Rules of Ct 4.335.

- The court, on request of a defendant, must consider the defendant's ability to pay. Cal Rules of Ct 4.335(c)(1). In determining the defendant's ability to pay, the court should take into account the following: (1) receipt of public benefits under Supplemental Security Income (SSI), State Supplementary Payment (SSP), California Work Opportunity and Responsibility to Kids (CalWORKS), Federal Tribal Temporary Assistance for Needy Families (Tribal TANF), Supplemental Nutrition Assistance Program, California Food Assistance Program, County Relief, General Relief (GR), General Assistance (GA), Cash Assistance Program for Aged, Blind, and Disabled Legal Immigrants (CAPI), In Home Supportive Services (IHSS), or Medi-Cal and (2) a monthly income of 125 percent or less of the current poverty guidelines, updated periodically in the Federal Register by the U.S. Department of Health and Human Services under 42 USC §9902(2). Advisory Committee Comment to Rules of Ct 4.335.
- A defendant may request an ability-to-pay determination at adjudication, or while the judgment remains unpaid, including when a case is delinquent or has been referred to a comprehensive collections program. Cal Rules of Ct 4.335(c)(2).
- The court must permit the defendant to make the request by written petition, unless the court directs a court appearance. This request must include any information or documentation the defendant wished the court to consider. The judicial officer has the discretion to conduct the review on the written record or to order a hearing. Cal Rules of Ct 4.335(c)(3).
- Based on the ability-to-pay determination, the court may exercise its discretion to
  - Provide for payment on an installment plan (if available);
  - Allow the defendant to complete community service in lieu of paying the total fine (if available);
  - Suspend the fine in whole or in part;
  - Offer an alternative disposition. Cal Rules of Ct 4.335(c)(4).
- A defendant ordered to pay on an installment plan or to complete community service may request to have an ability-to-pay determination at any time during the pendency of the judgment. Cal Rules of Ct 4.335(c)(5).

- If the defendant has already had an ability-to-pay determination, the defendant may request a subsequent ability-to-pay determination based on changed circumstances. Rules of Ct 4.335(c)(6).

The amount and manner of paying the total fine must be reasonable and compatible with the defendant's financial ability. Even if the defendant has not demonstrated an inability to pay, the court may still exercise discretion. Regardless of whether the defendant has demonstrated an inability to pay, the court in exercising its discretion under this subdivision may consider the severity of the offense, among other factors. While the base fine may be suspended in whole or in part in the court's discretion, this subdivision is not intended to affect the imposition of any mandatory fees. Advisory Committee Comment to Rules of Ct 4.335.

### **M. [§82.81] Failure To Comply With Court Order**

A willful failure to comply with a court order concerning a Vehicle Code violation—*e.g.*, an order to attend traffic school or to perform community service instead of paying a fine—is a misdemeanor regardless of subsequent compliance with the order. Veh C §40508(c). When a defendant has willfully failed to comply with a court order, except a failure to appear, to pay a fine, or to attend traffic violator school, the court may notify the DMV of this fact. Veh C §40509.1.

### **N. License Suspension or Revocation**

#### **1. By Court**

##### **a. [§82.82] Grounds for Suspension or Revocation**

The court has the authority to suspend or revoke the driver's license of a defendant who is convicted of certain traffic violations. Provisions concerning specified misdemeanor violations are discussed in [§82.24](#). In addition, the court has the authority to suspend or revoke a defendant's license under the following provisions:

- *Excessive speed.* Whenever a person is convicted of a violation of any provision of the Vehicle Code relating to the speed of vehicles, the court may suspend the person's license for up to 30 days on a first conviction, up to 60 days on a second conviction, or up to 6 months on any subsequent conviction, unless the Vehicle Code mandates revocation by the DMV. Veh C §13200.
- *Insurance fraud.* The court may suspend or restrict for up to 6 months the license of any person who knowingly causes or participates in a vehicular collision for the purpose of presenting a fraudulent insurance claim. Veh C §13201(e).

- *Prostitution.* The court may suspend for up to 30 days the license of a person convicted under Pen C §647(b) of soliciting or engaging in prostitution when the violation was committed with the use of a vehicle within 1000 feet of a private residence. Veh C §13201.5(a). The court may also suspend for up to 30 days the license of a person convicted under Pen C §647(a), if a peace officer witnessed the violator picking up a person who was loitering with the intent to commit prostitution and the violator engaged in a lewd act with that person within 1000 feet of a private residence and with the use of a vehicle. Veh C §13201.5(b). In either case, instead of ordering a license suspension, the court may restrict the violator’s license for up to 6 months, except for travel to and from the violator’s place of employment or education. Veh C §13201.5(c).

*Controlled substances.* The court may suspend or order the DMV to revoke for up to 3 years the license of a person convicted of any offense related to controlled substances, as defined in Health & S C §§11000–11651, when use of a motor vehicle was involved in or incidental to the commission of the offense. Veh C §13202(a), (c). The court must order the DMV to revoke for up to 3 years the license of a person convicted of violating Health & S C §11350, §11351, §11352, §11353, §11357, §11359, §11360, or §11361, when a motor vehicle was involved in or incidental to the commission of the offense. Veh C §13202(b)–(c).

- *Alcohol offense.* The court must suspend for 1 year the license of a person under age 21 who is convicted of a drug- or alcohol-related offense specified in Veh C §13202.5(d). Veh C §13202.5(a). The court may also require the installation of a certified ignition interlock device. Veh C §13202.8.
- *Road rage.* The court may suspend the license of any person convicted of “road rage” under Pen C §245(a) for 6 months for a first offense or for 1 year for a subsequent offense. Veh C §13210. It is within the court’s discretion to order the commencement of the suspension either on the date of the person’s conviction or on the person’s release from confinement or imprisonment. Veh C §13210. In place of or in addition to the suspension, the court may order the person to complete a court-approved anger management or “road rage” course. Veh C §13210. On receipt of a duly certified abstract of a court record showing that the court has ordered the suspension of the person’s license, the DMV must suspend the license in accordance with the order. Veh C §13351.8.

The court may suspend or revoke a defendant’s license only if suspension or revocation is specifically permitted by statute. *People v Harper* (2000) 82 CA4th 1413, 1419–1420, 98 CR2d 894.

For purposes of suspension or revocation, a plea of no contest, a guilty plea, a judgment of guilty (whether or not probation is granted), or a bail forfeiture is a conviction. Veh C §13103.

The court may suspend or revoke the privilege of a nonresident to operate a vehicle in this state under any of the provisions of the Vehicle Code that give the court the authority to suspend or revoke the license of a resident. Veh C §13205.

The court may not suspend or restrict a defendant's license for a period of time longer than that specified in the Vehicle Code. Veh C §13203.

#### **b. [§82.83] Surrender of License to Court**

When the court suspends a defendant's license, the court must require the defendant to surrender the license to the court. Veh C §13206. A suspension applies to all driver's licenses held by the defendant, and all licenses must be surrendered to the court. Veh C §13207. Failure to surrender the licenses constitutes an infraction. See Veh C §40000.1. The court may also caution the defendant that driving after his or her license has been suspended is a misdemeanor, punishable by a fine and/or a jail sentence. See Veh C §§14601.1, 40000.11(*l*).

If the defendant is convicted of an offense for which the DMV must suspend or revoke the defendant's license, the court must forward the license to the DMV with a report of the conviction within 10 days after conviction. Veh C §13550. In all other cases, the court retains the license during the suspension period and returns it to the defendant at the end of the period, after endorsing the record of suspension on it. Veh C §13206.

#### **c. [§82.84] Recommendation to DMV**

In a criminal proceeding, without regard to its disposition, in which the defendant is charged with a violation of Veh C §§21000–23336, the court may, if it has reason to believe that any of the conditions for refusing to issue or renew a license specified in Veh C §12805 or §12806 exists, recommend to the DMV that an investigation be conducted to determine whether the defendant's license should be suspended or revoked. The court must state the basis for its belief that the condition exists and must state whether the defendant relied on the condition as part of his or her defense. Veh C §13208.

### **2. By DMV**

#### **a. [§82.85] Grounds for Suspension or Revocation**

The DMV has authority to suspend or revoke the driver's license of a defendant who is convicted of certain traffic violations. Provisions concerning specified infractions are discussed in [§82.17](#). Provisions

concerning specified misdemeanors are discussed in §82.24. In addition, under the following provisions the DMV:

- Must revoke for 1 year the license of a person convicted of reckless driving causing bodily injury. Veh C §13350(a)(3).
- May suspend the license of a person convicted of a second or subsequent offense of reckless driving. Veh C §13361(b).
- Must revoke for 3 years the license of a person convicted of manslaughter resulting from the operation of a motor vehicle. Veh C §13351(a)(1), (b).
- Must revoke for 3 years the license of a person convicted of three or more violations of Veh C §20001, §20002, §23103, §23104, or §23105 within a 12-month period. Veh C §13351(a)(2), (b).
- Must revoke for 3 years the license of a person convicted of a violation of Pen C §191.5(a), Pen C §192.5(a), or Veh C §2800.3 that caused serious bodily injury resulting in a serious impairment of physical condition. Veh C §13351(a)(3), (b).
- May suspend the license of a person convicted of manslaughter resulting from the operation of a motor vehicle under Pen C §192(c)(2). Veh C §13361(c).
- Must suspend the license of a person who has failed for a period of 30 days to satisfy a judgment rendered against him or her for property damage of more than \$750 or for injury or death resulting from the person's operation of a motor vehicle. Veh C §§16250–16251, 16370. The suspension remains in effect until the judgment is satisfied in full and the person gives proof of insurance. Veh C §16371.

When the DMV is required to suspend or revoke a defendant's license for a conviction of violating the Vehicle Code, the suspension or revocation begins on a plea, finding, or verdict of guilty. Veh C §13366. Any plea or verdict of guilty, plea of no contest, finding of guilty in a trial without a jury, or bail forfeiture is deemed a conviction for purposes of imposing a license suspension or revocation, notwithstanding subsequent action under Pen C §1203.4 or §1203.4a allowing withdrawal of a guilty plea, setting aside a verdict of guilty, or dismissing an accusation or information. Veh C §13375. See §82.89.

Except as otherwise specifically provided, a license suspension by the DMV may not exceed 6 months. However, the DMV may suspend a license for up to 12 months in those cases in which a discretionary revocation is authorized. Veh C §13556(a).

The DMV may suspend or revoke the privilege of a nonresident to operate a vehicle in this state under any of the provisions of the Vehicle

Code that give the DMV the authority to suspend or revoke the license of a resident. Veh C §13552(a). A nonresident who operates a motor vehicle on a highway in this state after his or her privilege to do so has been suspended or revoked is in violation of Veh C §14601 or §14601.1. Veh C §13552(b).

If the DMV receives notification of an administrative action or conviction of a commercial licenseholder in a state, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or the Dominion of Canada, the department must impose a suspension, revocation, or disqualification action on that person's commercial driving privilege based on violations that would result in an administrative action or a conviction under California law. Veh C §15326. Further discussion of commercial licenses is beyond the scope of this publication.

#### **b. [§82.86] Traffic Violation Point Counts**

The DMV may suspend or revoke the driver's license of a person whose driving record shows 4 or more traffic violation points in 12 months, 6 or more points in 24 months, or 8 or more points in 36 months. See Veh C §12810.5(a), (c). Certain misdemeanor violations of the Vehicle Code are given specified traffic violation point counts. See [§82.24](#). Any conviction of reckless driving carries 2 traffic violation points. Veh C §12810(c). A motorist is given 1 point for any accident for which he or she is responsible. Veh C §12810(g). Any other traffic violation involving the safe operation of a vehicle carries 1 traffic violation point (Veh C §12810(f)), with specified exceptions (Veh C §12810(i)).

#### **c. [§82.87] Surrender of License to DMV**

When the DMV suspends or revokes a defendant's license, the suspension or revocation applies to all driver's licenses held by the defendant. Veh C §13551(a). The defendant must surrender all those licenses to the DMV not already surrendered to the court. The DMV must return the licenses to the defendant or may issue the defendant new licenses when the period of suspension or revocation expires, if the defendant is otherwise eligible for a driver's license. Veh C §13551(a).

### **3. [§82.88] Unlicensed Driver**

When a court or the DMV suspends or revokes the privilege of any person to operate a motor vehicle and the person does not hold a valid driver's license or has never applied for or received a driver's license in California, the person is subject to all the penalties and disabilities provided in the Vehicle Code for a violation of the terms and conditions of a license suspension or revocation. Veh C §13553. For example, a police officer may arrest a person for driving with a suspended or revoked license and may

impound the vehicle. Veh C §14602.6(a)(1); *California Highway Patrol v Superior Court* (2008) 162 CA4th 1144, 1150–1152, 76 CR3d 578.

#### **4. [§82.89] Termination of Probation and Dismissal of Charges**

A termination of probation and dismissal of charges under Pen C §1203.4 or a dismissal of charges under Pen C §1203.4a does not affect any revocation or suspension of a defendant's driver's license by the court or the DMV. The defendant's prior conviction is considered a conviction for the purpose of revoking, suspending, or restricting the defendant's license on the ground of two or more convictions. Veh C §13555.

#### **5. [§82.90] Judicial Review of DMV Revocation or Suspension**

A court of competent jurisdiction may review any order of the DMV refusing, canceling, suspending, or revoking a driver's license. Veh C §14400. Any action seeking judicial review must be filed within 90 days of notice of the order. Veh C §14401(a). On final completion of all administrative appeals, the DMV must give written notice of the right to seek judicial review of the its decision to the person whose license was refused, canceled, suspended, or revoked. Veh C §14401(b).

### **O. Appeal of Infraction or Misdemeanor Conviction**

#### **1. [§82.91] Defendant's Right To Appeal**

A defendant may appeal a conviction on a Vehicle Code infraction or misdemeanor to the appellate division of the superior court. The notice of appeal must be filed within 30 days of the conviction. See Cal Rules of Ct 8.853(a), 8.902(a), 8.850(a) (misdemeanor cases defined). An appeal does not stay execution of the sentence unless the trial judge or the appellate division so orders. The granting or refusal of a stay is discretionary. See Pen C §1467.

#### **2. [§82.92] Record on Appeal in General**

The record on appeal generally is governed by Cal Rules of Ct 8.860 (misdemeanor cases) and Cal Rules of Ct 8.910 (infraction cases). The normal record on appeal includes a record of the *written documents* from the trial court proceedings, often in the form of a clerk's transcript. Cal Rules of Ct 8.860(a)(1)(A), 8.910(a)(1)(A); see Cal Rules of Ct 8.861, 8.862, 8.867, 8.912, 8.913, 8.920. Or, if permitted by local rule, the record of written documents may consist of the original trial court file. Cal Rules of Ct 8.860(a)(1)(B), 8.910(a)(1)(B); see Cal Rules of Ct 8.863, 8.914.

If an appellant wants to raise any issue that requires consideration of the *oral proceedings* in the trial court, the record on appeal must include a record of the oral proceedings, which may be in the form of a *statement on*

*appeal.* Cal Rules of Ct 8.860(a)(2)(C), 8.910(a)(2)(A). A statement on appeal is a summary of the trial court proceedings that is approved by the trial court. Cal Rules of Ct 8.869(a), 8.916(a). Alternatively, a record of oral proceedings may be in the form of an official electronic recording if permitted by local rule, a reporter's transcript, or a transcript prepared from an official electronic recording. Cal Rules of Ct 8.860(a)(2)(A)–(B), 8.910(a)(2)(B)–(C); see Cal Rules of Ct 8.865–8.868, 8.917–8.920.

If, before the record is certified, the appellant and the respondent stipulate in writing that any part of the record is not required for proper determination of the appeal and file that stipulation in the trial court, that part of the record must not be prepared or sent to the appellate division. Cal Rules of Ct 8.860(b), 8.910(b).

- ➡ JUDICIAL TIP: Instruct the appeals clerk to include in the record on appeal the transcript of any recording, video, or PowerPoint that presented the advisement of rights at arraignment or trial.

### 3. [§82.93] Election of Record

The appellant must notify the trial court whether he or she elects to proceed with or without a record of the oral proceedings in the trial court. If the appellant elects to proceed with a record of oral proceedings, the notice must specify which form of the record of the oral proceedings the appellant elects to use. Cal Rules of Ct 8.864(a), 8.915(a). For infractions, the election must be filed with the notice of appeal. Cal Rules of Ct 8.915(b). For misdemeanors, the election must be filed either within 10 days after appointment of counsel or denial of appointment or within 20 days after the notice of appeal is filed, whichever is later, or—if no application for appointment of counsel is filed—within 20 days after the notice of appeal is filed. Cal Rules of Ct 8.864(b). The election may be made on Judicial Council Form CR-134 (misdemeanors) or CR-142 (infractions).

*Infraction cases.* If the appellant does not file an election within the time specified in Cal Rules of Ct 8.915(b), the trial court clerk must promptly notify the appellant in writing that the election must be filed within 15 days after the notice is sent. Cal Rules of Ct 8.915(c), 8.924. If the defendant fails to comply, the trial court clerk must promptly notify the appellate division of the default and the appellate division may proceed on the clerk's transcript or other record of the written documents from the trial court proceedings. Cal Rules of Ct 8.924.

*Misdemeanor cases.* If the appellant does not file an election within the time specified in Cal Rules of Ct 8.864(b), the trial court clerk must promptly notify the appellant in writing that the election must be filed within 15 days after the notice is sent. Cal Rules of Ct 8.864(c), 8.874(a). If the defendant fails to comply, the trial court clerk must promptly notify the

appellate division of the default, and the appellate division may impose sanctions under Cal Rules of Ct 8.874.

#### **4. [§82.94] Reporter’s Transcript or Electronic Recording**

If any portion of the oral proceedings to be included in the reporter’s transcript was not reported or cannot be transcribed, the trial court clerk must so notify the parties in writing. The notice must indicate the date it was sent and whether the identified proceedings were officially electronically recorded. Cal Rules of Ct 8.866(f)(1), 8.919(f)(1). Within 15 days after this notice is sent by the clerk, the appellant must serve and file a notice with the court stating whether the appellant elects to proceed with or without record of the identified proceedings. Cal Rules of Ct 8.866(f)(2), 8.919(f)(2). The appellant may elect to proceed with a record of these oral proceedings subject to the following (Cal Rules of Ct 8.866(f)(2), 8.919(f)(2)):

If the clerk’s notice indicates the proceedings were officially electronically recorded, the appellant’s notice must specify which form of the record listed in Cal Rules of Ct 8.864(a) (misdemeanors) or Cal Rules of Ct 8.915(a) (infractions) other than a reporter’s transcript the appellant elects to use.

- If the clerk’s notice indicates that the proceedings were not officially electronically recorded, the appellant must prepare, serve, and file a proposed statement on appeal within 20 days after serving and filing the notice.

If the trial court proceedings were officially recorded electronically but a portion of the oral proceedings to be included in the transcript were not officially electronically reported or cannot be transcribed, the trial court clerk must so notify the parties in writing. The notice must indicate the date it was sent and whether the identified proceedings were reported by a court reporter. Cal Rules of Ct 8.868(f), 8.917(f)(1). Within 15 days after this notice is sent by the clerk, the appellant must serve and file a notice with the court stating whether the appellant elects to proceed with or without record of the identified proceedings. Cal Rules of Ct 8.868(f)(2), 8.917(f)(2). The appellant may elect to proceed with a record of these oral proceedings subject to the following (Cal Rules of Ct 8.868(f)(2), 8.917(f)(2)):

- If the clerk’s notice indicates the proceedings were reported by a court reporter, the appellant’s notice must specify which form of the record listed in Cal Rules of Ct 8.864(a) (misdemeanors) or Cal Rules of Ct 8.915(a) (infractions) other than an official electronic recording or transcript or transcript prepared from an officially electronic recording the appellant elects to use.

- If the clerk's notice indicates that the proceedings were not reported by a court reporter, the appellant must prepare, serve, and file a proposed statement on appeal within 20 days after serving and filing the notice.

## **5. Statement on Appeal**

### **a. [§82.95] Preparing the Proposed Statement**

If the appellant elects to use a statement on appeal, the appellant must prepare and file a proposed statement within 20 days after filing the record preparation election. If the defendant is the appellant and the prosecuting attorney appeared in the case, the defendant must serve a copy of the proposed statement on the prosecuting attorney. Cal Rules of Ct 8.869(b)(1), 8.916(b)(1). Appellants who are not represented by an attorney must file their proposed statements on Judicial Council Form CR-135 (misdemeanors) or CR-143 (infractions). For good cause, the court may permit the filing of a statement on another form. Cal Rules of Ct 8.869(b)(2), 8.916(b)(2).

### **b. [§82.96] Contents of Proposed Statement**

The proposed statement must contain the following:

- The points the appellant is raising on appeal. The appeal is limited to those points unless the appellate division determines that the record permits full consideration of another point. Cal Rules of Ct 8.869(c)(1), 8.916(c)(1).
  - The statement must specify the intended grounds of appeal by clearly stating each point to be raised but need not identify each particular ruling or matter to be challenged.
  - If one of the grounds is insufficiency of the evidence, the statement must specify how the evidence is insufficient. Cal Rules of Ct 8.869(c)(1), 8.916(c)(1).
- A summary of the trial court's rulings and the sentence imposed on the defendant. Cal Rules of Ct 8.869(c)(2), 8.916(c)(2).
- A condensed narrative of the oral proceedings that the appellant believes necessary for the appeal. The condensed narrative must include a concise factual summary of the evidence and witness testimony that are relevant to the points being raised on appeal. Any evidence or portion of a proceeding not included will be presumed to support the judgment or order appealed from. Cal Rules of Ct 8.869(c)(3)(A), 8.916(c)(3). If one of the grounds of appeal challenges the giving, refusal, or modification of a jury instruction in a misdemeanor case, the condensed narrative must include any

instructions submitted orally and not in writing and must identify the party that requested the instruction and any modification. Cal Rules of Ct 8.869(c)(3)(B).

**c. [§82.97] Review of Proposed Statement**

Within 10 days after the appellant files the proposed statement, the respondent may serve and file proposed amendments. Cal Rules of Ct 8.869(d)(1), 8.916(d)(1). No later than 10 days after the respondent files proposed amendments or after the time to do so expires, a party may request a hearing to review and correct the proposed statement. No hearing will be held unless ordered by the trial court judge, and the judge will not ordinarily order a hearing unless there is a *factual dispute* about a material aspect of the trial court proceedings. Cal Rules of Ct 8.869(d)(2), 8.916(d)(2).

If no hearing is ordered, the trial court judge must review the proposed statement and any proposed amendments and must take one of the following actions no later than 10 days after the time for requesting a hearing expires (Cal Rules of Ct 8.869(d)(3), 8.916(d)(3)):

- If the proposed statement does not contain the material required under Cal Rules of Ct 8.869(c) or 8.916(c), the trial court judge may order the appellant to prepare a new proposed statement. The order must identify the additional material that must be included in the statement and the date by which the new proposed statement must be served and filed. If the appellant does not serve and file a new proposed statement as directed, the court may impose sanctions under Cal Rules of Ct 8.874 (misdemeanors) or Cal Rules of Ct 8.924 (infractions).
- If the trial court judge does not order the preparation of a new proposed statement, the trial court judge must either:
  - Make any corrections or modifications to the statement necessary to ensure that it is an accurate summary of the evidence and witness testimony that are relevant to the points which the appellant states are being raised on appeal; or
  - Identify the necessary corrections and modifications and order the appellant to prepare a statement incorporating these corrections and modifications.

If a hearing is ordered, the court must promptly set the hearing date and provide the parties with at least 5 days' written notice of the hearing date. Cal Rules of Ct 8.869(d)(4), 8.916(d)(4). No later than 10 days after the hearing, the trial court judge must either (Cal Rules of Ct 8.869(d)(4), 8.916(d)(4)):

- Make any corrections or modifications to the statement necessary to ensure that it is an accurate summary of the evidence and witness testimony that are relevant to the points that the appellant states are being raised on appeal; or
- Identify the necessary corrections and modifications and order the appellant to prepare a statement incorporating these corrections and modifications.

Alternatively, if the proceedings were reported by a court reporter or officially recorded electronically, the trial court judge may determine that it would save court time and resources to either transmit the electronic recording as the record of the oral proceedings (if permitted by local rule) or order that a transcript be prepared as a record of the oral proceedings (if permitted by local rule). Cal Rules of Ct 8.869(d)(6), 8.916(d)(6).

The trial court judge may not eliminate the appellant's specification of grounds of appeal from the proposed statement. Cal Rules of Ct 8.869(d)(5), 8.916(d)(5).

#### **d. [§82.98] Review of Corrected or Modified Statement**

If the trial court judge corrects or modifies the statement, the clerk must serve copies of the corrected or modified statement on the parties. Cal Rules of Ct 8.869(e)(1), 8.916(e)(1). If the trial court judge orders the appellant to prepare a statement incorporating corrections and modifications, the appellant must serve and file the corrected or modified statement within the time ordered by the court. If the appellant does not serve and file the statement as directed, the trial court may impose sanctions under Cal Rules of Ct 8.874 (misdemeanors) or Cal Rules of Ct 8.924 (infractions). Cal Rules of Ct 8.869(e)(1), 8.916(e)(1).

The parties have 10 days to serve and file proposed modifications or objections to the statement. Cal Rules of Ct 8.869(e)(2), 8.916(e)(2).

Within 10 days after the time for filing proposed modifications or objections has expired, the judge must review the corrected or modified statement and any proposed modifications or objections to the statement filed by the parties. The procedures in Cal Rules of Ct 8.869(d)(3)–(4) or 8.916(d)(3)–(4) apply if the judge determines that further corrections or modifications are necessary to ensure that the statement is an accurate summary of the evidence and witness testimony that are relevant to the points that the appellant states are being raised on appeal. Cal Rules of Ct 8.869(e)(3), 8.916(e)(3).

#### **e. [§82.99] Certification of Statement**

If the judge does not make or order corrections or modifications to the proposed statement and does not order either the use of an official electronic recording or preparation of a transcript in lieu of correcting the proposed

statement, the judge must promptly certify the statement. Cal Rules of Ct 8.869(f), 8.916(f).

## **P. Judicial Review of Final Administrative Decision**

### **1. [§82.100] On Contested Parking Violation**

Within 30 calendar days after mailing or personal delivery of the final administrative decision on a contested parking violation, the contestant may seek review of that decision by filing an appeal with the court. The court hears the matter de novo. Veh C §40230(a). It must receive in evidence (1) the processing agency's file in the case and (2) a copy of the notice of the parking violation, which is prima facie evidence of the facts stated in it. The contestant must serve a copy of the notice of appeal on the processing agency by personal delivery or first-class mail. For purposes of computing the 30-calendar-day period for filing the appeal, CCP §1013 applies. Veh C §40230(a). This proceeding is a limited civil case. Veh C §40230(a).

The court must request that the processing agency forward its file on the case to the court within 15 calendar days of the request. The court must notify the contestant of the appearance date by mail or personal delivery. Veh C §40230(b). The fee for filing the notice of appeal is \$25. Veh C §40230(b); Govt C §70615. The court retains the fee regardless of the outcome of the appeal. Veh C §40230(b). If the court finds in the contestant's favor, the processing agency must reimburse the filing fee to the contestant. The processing agency must refund any deposit of the parking penalty in accordance with the court's judgment. Veh C §40230(b). The appeal may be heard by a traffic commissioner or another subordinate judicial official. Veh C §40230(c).

The court's determination of liability for a parking violation under Veh C §40230 is not an appealable judgment. *Smith v City of Los Angeles Dep't of Transp.* (1997) 59 CA4th Supp 7, 8, 73 CR2d 838.

### **2. [§82.101] On Contested Toll Evasion Violation**

Within 20 days after mailing of the final administrative decision on a contested toll evasion violation, the contestant may seek review of that decision by filing an appeal with the court. The court hears the matter de novo. Veh C §40256(a). It must receive in evidence (1) the processing agency's file in the case and (2) a copy of the notice of toll evasion violation, which is prima facie evidence of the facts stated in it. The contestant must serve a copy of the notice of appeal on the processing agency by personal delivery or first-class mail. For purposes of computing the 20-day period for filing the appeal, CCP §1013 applies. Veh C §40256(a). This proceeding is a limited civil case. Veh C §40256(a).

If the court finds in the contestant's favor, the processing agency must reimburse the contestant for the \$25 fee for filing the notice of appeal. The

processing agency must refund any deposit of the toll evasion penalty in accordance with the court's judgment. Veh C §40256(b). The appeal may be heard by a traffic commissioner or another subordinate judicial official. Veh C §40256(c).

## **Q. Traffic Offenses Involving Juveniles**

### **1. [§82.102] Appointment of Judge or Referee as Traffic Hearing Officer**

The superior court, sitting as the juvenile court, has jurisdiction over juvenile traffic cases. See Welf & I C §§255, 256, 602(a). Judges of the superior court may be appointed by the presiding judge of the juvenile court to serve as traffic hearing officers under the juvenile court law. Welf & I C §255. A referee may also serve as a traffic hearing officer. Welf & I C §248.

Under Welf & I C §603.5(a), the superior court has jurisdiction over traffic infractions committed by juveniles. Welf & I C §603.5(a), (d). These cases are not governed by juvenile court procedures. Welf & I C §603.5(b). For example, juvenile court law provisions restricting attendance by the public at juvenile court proceedings do not apply. The procedures for bail specified in the Penal Code apply. Welf & I C §603.5(c). A superior court may refer to the juvenile court for adjudication a traffic case involving a minor who has been adjudicated a ward of the juvenile court or who has other matters pending in the juvenile court. Welf & I C §603.5(a).

A traffic hearing officer may hear and dispose of a charge other than an alcohol-related charge (see Veh C §§23136, 23140, 23152, 23153) against a person who was under 18 years of age at the time of the offense if the charge alleges a nonfelony violation of the Vehicle Code or a violation of any local traffic ordinance. Welf & I C §256. A minor who was under 18 years of age at the time of the alleged offense but has turned 18 before appearing in court may waive juvenile court jurisdiction and request that the case be heard in adult court. The traffic hearing officer has discretion to grant or deny the request. See *In re Rodney F.* (1988) 203 CA3d 177, 182–183, 249 CR 424.

When a minor is cited for a traffic violation in a county other than his or her residence, the citation may be transferred to the minor's county of residence. See Welf & I C §263.

### **2. [§82.103] Procedure**

A juvenile traffic case is normally initiated by issuance of a notice to appear. See §82.25. The notice to appear takes the place of the petition by which juvenile court proceedings are usually initiated under Welf & I C §650. 63 Ops Cal Atty Gen 232, 234 (1980). A hearing may be conducted on the notice to appear without the minor's consent. Veh C §40513(b); Welf & I C §257(a)(2).

There are three ways in which juvenile traffic court proceedings may be initiated: (1) the minor signs a promise to appear in a specific court on a specified date, (2) the minor signs a promise to appear in court at a date and location to be specified in a subsequent notice given by the court to the minor and the minor's parents, or (3) the District Attorney files a petition under Welf & I C §658.

To ensure that the minor and his or her parents have notice of the hearing date, the court should mail notice addressed to the minor's parents. A personal appearance by the minor is required; *i.e.*, the traffic hearing officer may not accept a forfeiture of bail in place of an appearance by the minor. Welf & I C §214; 63 Ops Cal Atty Gen 232, 237, 240 (1980). Normally, in traffic violation cases, at least one parent is also required to attend the hearing. See Welf & I C §§338, 661. Parental presence in a traffic case ensures that the parents are aware of the citation, understand the reasons for the disposition made in the case, and can cooperate in the imposition of appropriate sanctions.

A minor's failure to appear in juvenile court as promised in the notice to appear is a misdemeanor under Welf & I C §214, and the minor may be adjudged a ward of the juvenile court under Welf & I C §602. 63 Ops Cal Atty Gen 232, 235 (1980). A juvenile hearing officer may request that the juvenile court judge or referee issue an arrest warrant against a minor who is issued and signs a written notice to appear for any violation listed in Welf & I C §256 and fails to appear at the time and place designated in the notice. The juvenile court judge or referee may issue and have delivered for execution an arrest warrant against a minor within 20 days after the minor's failure to appear as promised or within 20 days after the minor's failure to appear after a lawfully granted continuance of his or her promise to appear. A juvenile hearing officer who is also a referee or juvenile court judge may issue the arrest warrant. Welf & I C §256.5.

Some courts apply a mandatory appearance policy to certain equipment violations, including unsafe vehicle, modified vehicle or smog device, an accident in which an equipment violation is cited, or multiple or repeated violations. Other equipment violations as well as registration violations are generally disposed of by presenting proof of correction and payment of a fine to the court, either in person or by mail, if the minor does not contest the charge. See §82.42.

Juvenile cases should be confidential and hearings should be conducted in private. See Welf & I C §§345–346. In the interests of judicial economy, joint hearings may be conducted when several minors are involved in the same incident. The minor has the right to be represented by an attorney. See Welf & I C §218. If the minor is charged with a misdemeanor and cannot afford counsel, the court must appoint counsel for the minor. See *In re Kevin G.* (1985) 40 C3d 644, 646, 648–650, 221 CR 146. If the minor admits to the offense, a disposition may be made without

further evidence of the alleged violation. See Welf & I C §258; discussion in [§82.104](#).

### 3. [§82.104] Dispositions

If the minor admits to or is found to have committed the charged offense, the traffic hearing officer may

- Reprimand the minor and take no further action. Welf & I C §258(a)(1).
- Impose a fine in addition to or in place of any of the orders listed below. The court may waive all or any portion of the fine if the minor is unable to pay. In determining the minor's ability to pay, the court may not consider the ability of the minor's family to pay. The amount of the fine that may be ordered is the same as that for an adult unless the offense is otherwise specified in Welf & I C §258; for these offenses, the maximum fine is \$250. See Welf & I C §258(a)(3).
- Order the minor to pay restitution to the victim in place of all or a portion of the fine. The total dollar amount of the fine, restitution, and any program fees ordered may not exceed the maximum fine that may be imposed under Welf & I C §258(a)(3). Welf & I C §258(a)(4).
- Order the minor to attend traffic violator school (see [§82.64](#)) and complete it within 60 days of the court's order. Welf & I C §258(a)(6).
- If the charged offense was an equipment violation, order the minor to provide satisfactory evidence that the vehicle has been corrected to conform to the requirements of the Vehicle Code. Welf & I C §258(a)(7). See [§§82.41–82.42](#).
- Order the minor to perform community service work in a public entity or private nonprofit entity for up to 50 hours over a period of 60 days, during times other than the minor's hours of school attendance or employment. The work may not exceed 30 hours during any 30-day period. These time frames may not be modified except in unusual cases when the interests of justice would best be served. When the order is made by a referee or traffic hearing officer, it must be approved by a juvenile court judge. Welf & I C §258(a)(8).
- Withhold, suspend, or revoke the minor's driver's license for up to 30 days, unless the Vehicle Code permits or mandates a longer suspension. Welf & I C §258(a)(5).

If the offense is a misdemeanor, order that the minor complete a counseling or education program (or, if the offense involved a controlled

substance law, a drug treatment program) if one is available. Any fees for participation are subject to a hearing about the minor's ability to pay. The sum of the fees plus any fine or restitution order may not exceed the maximum amount that may be ordered under Welf & I C §258(a)(3). Welf & I C §258(a)(9).

- Require that the minor attend a school program and incur no unexcused absences. Welf & I C §258(a)(10).
- If the offense is a misdemeanor committed between 10 p.m. and 6 a.m., require that the minor be at his or her legal residence during some or all of those hours each day, to be specified by the hearing officer, except for a medical or other emergency or unless the minor is accompanied by his or her parent or guardian or another person in charge of the minor. The maximum length of this order is 6 months. Welf & I C §258(a)(11).
- Order the minor to submit to supervision by a probation officer for up to 6 months in addition to or in place of one of the orders listed above. Welf & I C §258(a)(2).

These possible dispositions are exclusive. 63 Ops Cal Atty Gen 232, 237 (1980).

The traffic hearing officer must promptly furnish a written report of his or her findings to the juvenile court clerk, who must promptly transmit an abstract of these findings and orders to the DMV. Welf & I C §260.

The traffic hearing officer's jurisdiction continues until the minor has complied with all orders. Welf & I C §258(b). An order by a traffic hearing officer is effective immediately unless a motion to set it aside or modify it or to obtain a rehearing is filed in the juvenile court by the minor or by the minor's parent or guardian, or unless the juvenile court grants a rehearing or sets aside or modifies the order on its own motion. Welf & I C §§261-262.

**R. [§82.105] Source Materials for Judges Hearing Traffic Cases**

Important source materials for a judge handling a traffic calendar include the following:

- The Vehicle Code, Penal Code, Evidence Code, and Standard California Desk Codes.
- The Judicial Council's Uniform Traffic Bail and Penalty Schedule.
- City and county ordinances dealing with traffic matters.
- Title 13 of the California Code of Regulations dealing with vehicle regulations.
- A Thomas Brothers map for the county.
- An electronic map application such as Google Maps, Mapquest, or Apple Maps.

**IV. SCRIPTS****A. [§82.106] Advisements to Defendants at Commencement of Arraignment Regarding Rights and Penalties****RIGHTS**

You have the following rights as a defendant in this court:

To have the citation or complaint against you read in open court.

To be represented by an attorney. If you are charged with a misdemeanor and cannot afford an attorney, the court will appoint an attorney to represent you.

To enter a plea to the charges against you. You may plead guilty, not guilty, or no contest. A plea of no contest has the same effect as a plea of guilty except that it cannot be used against you in any civil action. If you wish to plead guilty with an explanation to the court, you may do so. Your guilty plea, however, is an admission of the charged traffic violation, and your explanation will be considered only in determining the appropriate penalty.

To subpoena witnesses to testify on your behalf.

To confront and cross-examine witnesses called by the prosecution.

To refuse to testify. This is your constitutional privilege against self-incrimination.

To have your case tried within 45 days if you plead not guilty, unless you waive this right. If you do not waive this right and your case is not tried within 45 days, all charges against you must be dismissed.

To have a jury trial, if you are charged with a misdemeanor.

To delay sentencing if you plead guilty or no contest. You have the right to postpone your sentencing for 6 hours; sentence must, however, be imposed within 5 days. Because it may be inconvenient for you to return to court for sentencing at a later time, the court will presume that you prefer to be sentenced immediately unless you request a delay.

To appeal the court's decision.

If you do not understand any of these rights, please request a further explanation from the court.

## PENALTIES

If you are convicted of an infraction, you may be fined, and any subsequent convictions may result in increased fines. If you are convicted of a misdemeanor, you may be fined and/or imprisoned, and for certain violations you may have your license suspended or revoked.

You may be eligible to attend traffic violator school. You must still pay any fine imposed for the violation of which you were convicted, as well as the traffic violator's school fee, but if you attend traffic violator school in accordance with this court's order, the charges against you will be dismissed and may not appear on your traffic record. If you wish to attend traffic violator school, please tell the court.

## **B. [§82.107] Advisements to Defendants at Commencement of Trial Regarding Rights**

### RIGHT TO CHANGE PLEA

You still have the opportunity to change your mind about going to trial. You may withdraw your plea of not guilty and enter a plea of guilty or no contest to the charges against you. Or you may enter a plea of guilty with an explanation. If I find your explanation to be reasonable, I will consider imposing a reduced penalty for the charged offense.

*[If this is an accident case, add:]*

You may wish to enter a no-contest plea because it will have no effect on any civil lawsuit or claim brought against you for injuries or property damage.

*[If several cases are set on the judge's trial calendar, add:]*

After the advisement is given, I will call for those persons who wish to change their plea and will immediately process their cases before the rest of the calendar.

## RIGHT TO REMAIN SILENT

If you still want to go to trial, you have the right not to testify in your case. This is your constitutional right to remain silent. Once you hear the officer or the people's witnesses testify in establishing a case against you, you may want to testify to your version of the facts and your defenses. If you choose to testify, you will waive, or give up, the right to remain silent and will be subject to cross-examination by me or the District Attorney's representative on matters that you have brought up in your testimony, as well as other related matters.

## RIGHT TO CONFRONT WITNESSES

You also have the right to confront or cross-examine the people's witnesses who testify against you. After each of these witnesses testifies, I will ask you whether you want to cross-examine the witness. Cross-examination means asking the witness questions about matters brought up in his or her testimony and other matters concerning the case. It does not mean introducing your own testimony at that time. I will warn you if I hear you testifying at that stage of the trial.

## RIGHT TO HAVE SENTENCING DELAYED

If I find you guilty, you have the right to have the sentencing delayed for a period of at least 6 hours but no than 5 days. If you want to come back to this court during that period and then have this court issue its sentence, please ask for this delay. If you do not request this delay, I will assume that you want to be sentenced immediately.

## RIGHT TO APPEAL

If I find you guilty, you have the right to appeal my decision. You must file your appeal within 30 days from today. Please ask the fines clerk about the procedure for filing an appeal. Any fine that I may impose must be paid pending any appeal. If you win the appeal, any fine you have paid will be refunded to you.

### **C. [§82.108] Advisements to Defendants at Commencement of Trial Regarding Trial Procedure**

When the case is called, the defendant, the officer, and any witnesses to the case should step forward to the counsel table. [*Point to the appropriate seat.*] If you have any photographs or written documents that you want me to consider, please give them to the bailiff at that time. The officer will take the witness stand, and the other witnesses can be seated in the front row. The officer will testify first and state the facts that led to issuance of the citation.

After the officer testifies, the defendant may cross-examine the officer. At this time you may ask any questions that you have of the officer. The questioning of the officer may serve several purposes:

The first purpose is to clear up any factual questions you have regarding the circumstances of the offense.

Second, you may want to ask questions to set the stage for your testimony.

Third, you may want to ask questions to confirm your own observations.

At this time, please do not testify about your side of what happened and please do not argue with the witness. Later, you will have a full opportunity to explain your side. Let me know when you have finished asking questions.

If there are no other witnesses against you, it is then your turn to present your side of the case. You always have a constitutional right to remain silent, but you may give up that right and testify. You may also call witnesses on your own behalf and present any photographs, charts, or other written materials that you want.

The case is normally submitted on the evidence—in other words without closing arguments. However, you may make a closing argument if you wish to do so.

Once both sides have been heard, I will announce my decision. If you are found not guilty or if your case is dismissed, you are free to leave. If you are found guilty, most likely a fine will be assessed. You can pay the fine in three ways: today; later but within 30 days; or in installment payments. If you do not pay the fine today, a processing fee will be added to your fine. If you cannot pay the fine, you may be able to satisfy the fine by performing community service.

If you are found guilty, you may appeal the decision. Any appeal must be made within 30 days. An appeal is not a new trial, and you are not allowed to submit new or different evidence. Rather, another judge will review a record of today's trial to determine whether good cause exists to support the decision of this court. If that judge upholds the decision of this court, the decision will stand. If you win on appeal, your traffic record will be corrected and any fines you have paid will be refunded. Even though you may wish to appeal, you still must pay your fine in one of the three ways I described.

**D. [§82.109] Finding of Guilty**

On due consideration and review of the evidence in this case, both oral and written, I find the defendant guilty of a violation of Section [*add section number*] of the Vehicle Code. The following sentence is imposed: [*add sentence*].

**E. [§82.110] Finding of Not Guilty**

On due consideration and review of the evidence in this case, both oral and written, I find that there is reasonable doubt that the defendant committed a violation of Section [*add section number*] of the Vehicle Code. Therefore, this court finds the defendant not guilty. The defendant is free to leave at this time.

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Amend IV

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| Carbajal, People v (1995) 10<br>C4th 1114, 43 CR2d 681:<br><a href="#">§82.24</a>                              | Goodson v Perfect Fit Enters.,<br>Inc. (1998) 67 CA4th 508, 79<br>CR2d 102: <a href="#">§82.18</a> |
| Carlucci, People v (1979) 23 C3d<br>249, 152 CR 439: <a href="#">§82.12</a>                                    | Goulet, People v (1992) 13<br>CA4th Supp 1, 17 CR2d 801:<br><a href="#">§82.54</a>                 |
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| Cooper, People v (2002) 101<br>CA4th Supp 1, 125 CR2d 188:<br><a href="#">§§82.13, 82.52</a>                   | Heldt v Municipal Court (1985)<br>163 CA3d 532, 209 CR 579:<br><a href="#">§82.28</a>              |

- In re Johnson (1965) 62 C2d 325, 42 CR 228: §82.21
- In re Kathy P. (1979) 25 C3d 91, 157 CR 874: §82.6
- In re Kevin G. (1985) 40 C3d 644, 221 CR 146: §82.103
- In re Rodney F. (1988) 203 CA3d 177, 249 CR 424: §82.102
- Johnson, In re (1965) 62 C2d 325, 42 CR 228: §82.21
- Kathy P., In re (1979) 25 C3d 91, 157 CR 874: §82.6
- Kevin G., In re (1985) 40 C3d 644, 221 CR 146: §82.103
- Kottmeier, People ex rel v Municipal Court (1990) 220 CA3d 602, 269 CR 542: §82.12
- Kriss, People v (1979) 96 CA3d 913, 158 CR 420: §§82.11, 82.63
- Lucas, People v (1978) 82 CA3d 47, 147 CR 235: §§82.11, 82.47
- Marcroft, People v (1992) 6 CA4th Supp 1, 8 CR2d 544: §82.12
- McKay, People v (2002) 27 C4th 601, 117 CR2d 236: §82.43
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- Miller, People v (1979) 90 CA3d Supp 35, 153 CR 192: §82.55
- Monroe, People v (1993) 12 CA4th 1174, 16 CR2d 267: §§82.25, 82.43, 82.45
- Montes v Gibbens (1999) 71 CA4th 982, 84 CR2d 324: §82.18
- People v \_\_\_\_\_. See name of defendant.
- Pickett, People v (1981) 128 CA3d Supp 11, 181 CR 97: §82.16
- Prince, People v (1976) 55 CA3d Supp 19, 127 CR 296: §§82.11, 82.14, 82.21
- Rekte, People v (2015) 232 CA4th 1237, 181 CR3d 912: §82.57
- Rodney F., In re (1988) 203 CA3d 177, 249 CR 424: §82.102
- Schindler, People v (1993) 20 CA4th 431, 26 CR2d 255: §§82.15, 82.68
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- Studley, People v (1996) 44 CA4th Supp 1, 52 CR2d 461: §82.54
- Superior Court, People v (Simon) (1972) 7 C3d 186, 101 CR 837: §82.43
- Tischman, People v (1995) 35 CA4th 174, 40 CR2d 650: §82.24
- Wohlleben, People v (1968) 261 CA2d 461, 67 CR 826: §82.25
- Wozniak, People v (1987) 197 CA3d Supp 43, 243 CR 686: §82.68
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**Opinions of the Attorney  
General of California**

63 Ops Cal Atty Gen 232 (1980):

§§[82.103](#), [82.104](#)

80 Ops Cal Atty Gen 111 (1997):

§§[82.25](#), [82.30](#), [82.44](#)