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# SENATE COMMITTEE ON PUBLIC SAFETY

Senator Aisha Wahab, Chair

2023 - 2024 Regular

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**Bill No:** AB 1266                      **Hearing Date:** June 27, 2023  
**Author:** Kalra  
**Version:** March 22, 2023  
**Urgency:** No                                      **Fiscal:** Yes  
**Consultant:** MK

**Subject:** *Infractions: warrants and penalties*

## HISTORY

**Source:** Committee for Civil Rights of the San Francisco Bay Area  
Western Center on Law and Poverty

**Prior Legislation:** AB 2746 (Friedman) Chapter 800, Stats. 2022

**Support:** ACLU California Action; California-Hawaii State Conference of The NAACP; City and County of San Francisco; Jose Cisneros, Treasurer, City and County of San Francisco; Democrats of Rossmoor; Friends Committee on Legislation of California; Initiate Justice; National Association of Social Workers, California Chapter; National Consumer Law Center, INC.; Prosecutors Alliance California; Secure Justice; Smart Justice California

**Opposition:** California District Attorneys Association (unless amended); California State Sheriffs' Association

**Assembly Floor Vote:** 50 - 19

## PURPOSE

*The purpose of this bill is to eliminate the authority to issue a bench warrant for the failure to pay, or to appear in court, on an infraction ticket.*

*Existing law* provides that an infraction is not punishable by incarceration, and that a person charged with an infraction is not entitled to a jury trial or the representation by a public defender, except as specified. (Penal Code §19.6.)

*Existing law* states that, except as otherwise provided by law, all provisions of law relating to misdemeanors apply to infractions. (Penal Code § 19.7.)

*Existing law* allows an officer who arrests a person for an infraction to require evidence of identification and then release the person on a written promise to appear contained in a notice to appear. (Penal Code § 853.5 (a).)

*Existing law* provides that a willful violation of a written promise to appear will result in a misdemeanor, regardless of the disposition of the charge upon which the defendant was originally arrested. (Penal Code § 853.7 & Vehicle Code § 40508 (a).)

*Existing law* provides that a bench warrant may be issued when a person signs a written promise to appear in court and does not. (Penal Code §§ 853.8 & 978.5.)

*Existing law* provides that the willful failure to pay a lawfully imposed fine for a violation of the Vehicle Code within the time authorized by the court and without a lawful excuse having been presented to the court on or before the date the fine is due is guilty of a misdemeanor. (Vehicle Code § 40508 (b).)

*Existing law* requires the court to notify the DMV if a person was convicted of specified offenses. States that a forfeiture of bail on violations is equivalent to a conviction. (Vehicle Code, § 1803 (a).)

*Existing law* does not require court notification to the DMV for other specified Vehicle Code violations. (Vehicle Code § 1803 (b).)

*This bill* states legislative intent to eliminate arrest warrants for infractions.

*This bill* exempts the issuance of a bench warrant for an infraction from the general rule that all laws relating to misdemeanors apply to infractions.

*This bill* prohibits the issuance of a bench warrant for the failure to pay an infraction ticket.

*This bill* prohibits the issuance of a bench warrant for the failure to appear in court on a written promise to appear when the underlying charge is an infraction.

*This bill* removes the requirement that a court inform the Department of Motor Vehicles (DMV) of a willful failure to pay bail in installments or pay the fine for a Vehicle Code infraction.

*This bill* includes legislative findings and declarations.

*This bill* makes conforming changes to other provisions of law.

## COMMENTS

### 1. Need for This Bill

According to the author:

Infraction bench warrants have functioned as a debtor's prison, creating a system where people who have money for fines never have to appear in court and are merely inconvenienced, while those who can't pay are arrested for minor tickets. AB 1266 addresses the disparate punishment of low-income people that has done little to further public safety by prohibiting the issuance of a bench warrant if the underlying charge is an infraction. This will ensure minor citations only subject to a fine do not unfairly turn into jail time simply for what is essentially a crime of poverty.

## 2. Background

An infraction is an offense that is not punishable with incarceration. (Penal Code § 19.6.) Because the punishment for an infraction does not implicate the same loss of liberty, the same constitutional rights that apply to other criminal offenses do not apply. (*Ibid.*; see also *People v. Prince* (1976) 55 Cal.App.3d Supp 19.) However, for the most part, all provisions of law applicable to misdemeanors also apply to infractions. (Penal Code § 19.7.)

Generally, a person arrested for an infraction must be released on signing a written notice to appear. (Penal Code, § 853.6 (a).) After a person has been released on a promise to appear, a bench warrant for arrest can issue if the person fails to appear in court and/or fails to deposit the bail. (Penal Code §§ 853.6(f) & 853.8; see also Vehicle Code § 40514.) A willful violation of a promise to appear is a misdemeanor, even if the original offense was an infraction. (Penal Code § 853.7.)

This bill would prohibit the court from issuing a bench warrant for failure to appear in court on a written promise to appear for an infraction.

## 3. Impact of Infractions on the Criminal Justice System

The Judicial Council's 2021 Court Statistics Report notes that in FY 2019-20, out of all the criminal case filings, comprised of felonies, misdemeanors, and infractions, the overwhelming majority were infractions. There were 174,553 felony cases filings, 636,112 misdemeanor filings, and 3,243,819 infraction cases. (*2021 Court Statistics Report*, Judicial Council of California, pp. 3-4, [2021-Court-Statistics-Report.pdf \(ca.gov\)](#).) And the majority of infractions were traffic infractions. (*Id.* at p. 55.) There were over 1,000,000 bail forfeitures for traffic infractions and over 19,000 bail forfeitures for non-traffic infractions. (*Id.* at p. 84.)

## 4. Argument in Support

According to the author:

ACLU California Action supports this bill stating:

AB 1266 tackles an important racial and economic justice issue. Under current state law, people who have money to pay fines for traffic violations or tickets for infractions like loitering never have to go to court, but courts can issue a bench warrant for a person's arrest if they are unable to pay the penalty or if they experience barriers to appear in court. In California, Black people who earn low incomes are overrepresented at every stage of the criminal legal system, especially regarding bench warrants for infractions. For instance, data from San Francisco County shows that, though Black people only make up 5.8% of the local population, due to systemic racism and unjust policing, they make up 48.7% of those arrested for "failure to appear or pay" traffic court warrants. AB 1266 would help bring the state in line with the California Reparations Committee's recommendation to "eliminate the over-policing of predominantly Black communities."

Arresting someone who cannot pay does not give them the means to pay but only further punishes people living in poverty while also exacerbating racial inequality. Similarly, issuing a bench warrant for someone's arrest ignores structural issues in people's lives, especially as many people who earn low incomes —primarily Black and brown people—face barriers, including transportation, risk of losing employment, childcare, that can prevent them from being able to appear in court. AB 1266 will continue the trajectory of fine and fee justice in California. Recognizing the broad harm caused by civil assessment fees, Governor Newsom signed AB 199 into law, which erased retroactive debt for civil assessment fees and capped the fee at \$100. AB 1266 builds on this important work, ensuring that families won't be separated because they cannot pay a traffic fine or make a court hearing.

Eliminating bench warrants for infractions will help end one pipeline to the legal system and allow families to focus on what matters —devoting their limited time and resources to meeting critical needs.

## 5. Argument in Opposition

The California District Attorneys Association opposes this bill unless amended stating:

The California District Attorneys Association (CDAA) opposes AB 1266 (Kalra) unless amended because it would prohibit the issuance of an arrest warrant, bench warrant, or the filing of a new misdemeanor whenever the underlying offense is an infraction, and the offender violates a written promise to appear. This bill eliminates any consequence for the numerous offenders who simply ignore appearing in court and prevents their underlying infraction from being adjudicated.

Requested Amendments: AB 1266 should either limit its application to the Vehicle Code (or any local ordinance adopted pursuant to the Vehicle Code) or propose an analogous provision to Vehicle Code § 4093 that is applicable to all California codes. If a mechanism were added to allow adjudication of the underlying infractions, AB 1266 could hold individuals accountable while, at the same time, doing so without the threat of incarceration or arrest.

Although AB 1266 would apply to all California codes, only infractions currently identified in the Vehicle Code may be adjudicated by declaration and, in the event the offender fails to appear, in the offender's absence. Pursuant to Vehicle Code § 40903, "[a]ny person who fails to appear as provided by law may be deemed to have elected to have a trial by written declaration upon any alleged infraction, as charged by the citing officer, involving a violation of this code or any local ordinance adopted pursuant to this code." Therefore, the underlying vehicle code infraction may be adjudicated in the offender's absence and, if found guilty, any associated penalty could be sent to civil collections without the need for the court to issue a warrant or the prosecutor to file a misdemeanor charge for failing to appear. This is not the case, however, for the hundreds of infractions that are contained in other California codes.

Because there is no analogous provision to Vehicle Code § 40903 in other California codes, eliminating the court's authority to issue warrants ensures that numerous infractions will never be adjudicated, and offenders will not be held accountable. Oftentimes, these infractions directly impact public safety or public health.

In addition, AB 1266 may result in several unintended consequences that run contrary to the purpose of the bill:

- Currently numerous violations provide prosecutors with the discretion to file misdemeanor charges instead of an infraction (commonly known as a “wobblette”). Without a mechanism to adjudicate underlying infractions, AB 1266 would incentivize the filing of misdemeanor charges over unenforceable infractions.
- Several infractions currently contain an escalating penalty structure in which multiple infraction violations will ultimately lead to a misdemeanor offense. AB 1266 would nullify any graduated penalty schemes.
- Certain infractions currently involve the imposition of community service hours or other probation obligations, such as restitution, if convicted. By prohibiting courts from issuing a warrant, AB 1266 would deprive courts of their ability to monitor and ensure that offenders are in compliance with their post-conviction obligations.

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