
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair

2019 - 2020 Regular

Bill No: SB 164 **Hearing Date:** March 26, 2019
Author: McGuire
Version: January 24, 2019
Urgency: No **Fiscal:** No
Consultant: JK

Subject: *Infractions: Community Service*

HISTORY

Source: Author

Prior Legislation: SB 1233 (McGuire), 2018, failed passage in Senate Appropriations
AB 2532 (Jones-Sawyer), Ch. 280, Stats. 2018
SB 185 (Hertzberg), 2017, failed passage in Assembly Appropriations
SB 405 (Hertzberg), Ch. 385, Stats. 2015

Support: AFSCME, AFL-CIO; American Civil Liberties Union California; California Attorneys for Criminal Justice; California Public Defenders Association; Community Housing Partnership; Courage Campaign; Disability Rights California; Friends Committee on Legislation California; Further the Work; Legal Services for Prisoners with Children; LSS of Northern California; Individual

Opposition: None Known

PURPOSE

The purpose of this bill is to allow a person who has been convicted of an infraction to elect to perform that community service in either the county in which the infraction violation occurred, or the county of the person's residence.

Existing law authorizes a court to notify the state Department of Motor Vehicles (DMV) when an individual fails to pay a traffic fine (FTP), fails to appear in court (FTA), or fails to comply with a court order (FTC). Existing law requires the court to notify the DMV if the individual later pays the fine. (Vehicle Code, §40509.5)

Existing law requires DMV to suspend the driver's license of an individual when DMV receives a notice from the court of an FTP or FTA for that individual, until the individual's driving record is cleared. (Vehicle Code, §13365 *et seq.*)

Existing law provides that, in addition to any other penalty in infraction, misdemeanor, or felony cases, the court may impose a civil assessment of up to \$300 against a defendant who fails, after notice and without good cause, to appear in court for proceeding authorized by law or who fails to pay all or any portion of a fine ordered by the court or to pay an installment of bail. This assessment shall be deposited in the Trial Court Trust fund. (Pen. Code, § 1214.1 (a))

Existing law provides that payment of bail, fines, penalties, fees, or a civil assessment shall not be required to schedule a court hearing on a pending underlying charge. (Pen. Code, § 1241.1(b)(2))

Existing law provides that any county or court that operates a comprehensive collection program may deduct the costs of operating that program, excluding capital expenditures, from any revenues collected under that program. (Pen. Code, § 2463.007)

Existing law states that except in cases where a different punishment is prescribed, every offense declared to be an infraction is punishable by a fine not exceeding \$250. (Pen. Code, § 19.8 (c).)

Existing law provides that a comprehensive collection program is a separate and distinct revenue collection activity that meets the following criteria: the program identifies and collects amounts arising from delinquent court-ordered debt, whether or not a warrant has been issued against the alleged violator. (Penal Code, §1463.007(c))

Existing law provides that a person willfully violating his or her written promise to appear in court or before a person authorized to receive a deposit of bail is guilty of a misdemeanor regardless of the disposition of the charge upon which he or she was originally arrested. (Vehicle Code, §40508)

Existing law provides that a person willfully failing to pay bail in installments as agreed to or a lawfully imposed fine for a violation of a provision of this code or a local ordinance adopted pursuant to this code within the time authorized by the court and without lawful excuse having been presented to the court on or before the date the bail or fine is due is guilty of a misdemeanor regardless of the full payment of the bail or fine after that time. (Vehicle Code, §40508 (b).)

Existing law provides that if a person violates the promise to appear or pay a fine the court may give notice of the FTA or FTP to DMV and if the fine is subsequently paid the court shall inform DMV of that fact. (Vehicle Code, § 40509 and 4509.5.)

Existing law provides that any person who FTA 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. (Vehicle Code, §40903 (a).)

Existing law states that the court can permit a person convicted of an infraction to perform community service in lieu of a fine, upon showing that payment of the total fine would pose a hardship on the defendant or the defendant's family. (Pen. Code, § 1209.5 (a).)

Existing law provides that infractions are not punishable by imprisonment, a Person charged with infractions are not entitled to a trial by jury or a public defender unless they are arrested and not released. (Pen. Code, § 19.6.)

Existing law states that for the purpose of this section "total fine" refers to the total bail, including the base fine and all assessments, penalties, and additional moneys to be paid by the defendant. (Pen. Code, § 1209.5 (b).)

Existing law provides that "ability to pay" means the overall capability of the defendant to reimburse the costs, or a portion of the costs, and shall include, but shall not be limited to, the following:

- 1) The defendant's present financial situation.
- 2) The defendant's future financial position. In no event shall the court consider a period of more than six months from the date of the hearing.
- 3) Likelihood that the defendant shall be able to obtain employment within the six month period.
- 4) Any other factor or factors which may bear upon the defendant's financial capability to reimburse the county for the costs.

Existing law states that the applicable community service's hourly rate is double the minimum wage set for the applicable calendar year, based on the schedule for an employer who employs 25 or fewer employees as defined in the Labor. (Pen. Code, § 1209.5 (c)(1).)

Existing Law states that a court may by local rule increase the amount that is credited for each hour of community service performed to exceed the hourly rate (Pen. Code, § 1209.5 (c)(1).)

This bill states that the person may choose to perform their community service in either the county in which the infraction violation occurred, or in the county of the person's residence.

This bill states that regardless of which county the person elects to perform community service, the court shall retain jurisdiction until the community service has been verified as complete.

COMMENTS

1. Need for this Bill

According to the author of this bill:

The community service alternative, which should be an incredible opportunity for both nonprofit service providers who benefit from the hours donated to their activities, and the individuals who perform the community services and give back to the community, can become an inaccessible option when the service must be performed in a jurisdiction far from where the defendant lives. For a low-income individual, completing community service hours away from home can become a hindrance and have negative consequences for maintaining employment, attending school, and caring for family. Likewise, it is very difficult for individuals and service organizations to develop lasting bonds if the individual and community service opportunities are not in the same community.

2. Infractions Generally

Infractions are the lowest level criminal offense, as well as the most common. In 2018, there were 4,518,482 criminal filings and of those criminal filings there were 3,562,687 infraction cases.¹ Infractions do not subject a defendant to incarceration, being placed on probation, a jury, or free defense counsel. They are usually cited using a "ticket". Infraction tickets are most commonly seen in traffic violations, i.e. speeding ticket, parking ticket, etc. Individual

¹ <https://www.courts.ca.gov/documents/2018-Court-Statistics-Report.pdf>

infractions cannot exceed \$250; however, when other processing fees are included costs can add up. For example, a \$250 can add up to \$1,030 if all penalty assessments are included.

If a defendant proves that the cost would pose economic “hardship”, then they can participate in a community service activity in lieu of their fines. The court will decide “hardship” based on:

- 1) The defendant’s present financial situation.
- 2) The defendant’s future financial position. In no event shall the court consider a period of more than six months from the date of the hearing.
- 3) Likelihood that the defendant shall be able to obtain employment within the six month period.
- 4) Any other factor or factors which may bear upon the defendant’s financial capability to reimburse the county for the costs.

3. Burdens to Low-Income Individuals

If a defendant is expected to complete their community service in a county outside of their residence, their community service can pose additional hindrances, including an inability to maintain employment, attend school, and care for their family. With more options, defendants also have the opportunity to participate in community service that they connect to or interest them.

4. Arguments in Support

According to the California Public Defenders Association (CPDA):

Under current law, a defendant convicted of an infraction (such as jaywalking) can be ordered to pay a fine. Where the court determines that the defendant lacks the ability to pay the fine, the court can authorize the conversion of the fine to community service hours. The problem is that indigent Californians are frequently convicted of an infraction in a county in which they do not live. Thus, a low-income defendant who receives a speeding ticket in San Diego, but lives in Sacramento, is required by law to travel back to San Diego to perform his or her community service.

Such an outcome is nonsensical, since travelling may be far more expensive than paying the fine, and is therefore more likely to lead to uncompleted community service for those who simply lack the financial ability to return to the originating county. Further, because failing to appear on such cases can ultimately lead to criminal charges, this gap in the law has the potential to result in jail time based on simple poverty.

According to Disability Rights California (DRC):

Individuals with disabilities often have limited financial resources and payment of a total fine will often pose a significant hardship. Many such individuals also have limited access to affordable and accessible transportation. Therefore, the option to perform community service in the individual’s county of residence that would be available pursuant to SB 164 will benefit many people with disabilities.

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