

CALIFORNIA JUDGES BENCHGUIDES

Benchguide 82

TRAFFIC COURT PROCEEDINGS

[REVISED 2013]



**ADMINISTRATIVE OFFICE
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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 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 §82.98.

(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 §82.45.

(5) *If the defendant pleads guilty or no contest, impose sentence, assuming the defendant has waived time for sentencing.* See §82.46. 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), 82.22–82.23 (misdemeanors), 82.58–82.68 (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 declaration (see §82.8). 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 to exclude witnesses.*
- (3) *Advise the defendants of their legal rights, e.g., the right to change the plea to the charge, to remain silent, to confront witnesses, to have sentencing delayed (see §82.68), and to appeal (see §82.83). For a script that might be used, see §82.99.*
- (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 §82.100.
- (5) *Ask if any defendant or witness will require an interpreter.* If the defendant is unable to 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., and should rule on requests to take judicial notice of speedometer calibrations, engineering surveys or studies, etc.*

(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 put on 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 an opening argument, the defendant to present his or her argument, and the prosecution to present a closing argument. 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 §§82.101–82.102.

(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), 82.22–82.23 (misdemeanors), 82.58–82.68 (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 has been granted a continuance of the trial date, and there is a question about whether the officer’s schedule has been checked before setting the new trial date. If the defendant has failed to appear, issue a Veh C §40508 warrant or a bench warrant (see §82.34).

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 §82.94). See Pen C §§19.7, 1462.2.

B. [§82.5] Venue Over Traffic Offenses

The notice to appear (see §82.24) 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 county seat of the county in which the offense was committed if the offender’s residence or principal place of employment is located 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.

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:

- 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. Govt C §70214(d).

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 misdemeanors. See Veh C §§40000.5–40000.26; discussion in §82.23. 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] Payment of Fine

A person who has received a written notice to appear in court on an infraction (see §82.24) may post the appropriate bail (see §§82.15, 82.17) and penalty assessment (see §82.65) to the county clerk before the date on which he or she is required to appear as stated in the notice. See Veh C §§40510(a), 40519, 40521(a). A deposit of bail under Veh C § 40519 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 person 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), 40519; *People v Monroe* (1993) 12 CA4th 1174, 1180, 16 CR2d 267.

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 §§82.43–82.46.

b. [§82.9] Payment of Fine 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, or before to 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 upon 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).

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). For purposes of reporting violations to the DMV under Veh C §1803, the date that the defendant signs an agreement to pay and forfeit in installments is reported as the date of conviction. Veh C §40510.5(d).

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 §§82.34, 82.69–82.72) 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).

Vehicle Code §40512 provides that if the defendant does not make an installment payment as agreed and fails to appear at a compliance appearance, 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).

c. [§82.10] Pleading Not Guilty

A person who pleads not guilty to an infraction has the right to a trial before a *commissioner or traffic 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.

d. [§82.11] 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.” 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 §§82.47–82.57.

e. [§82.12] Documentary Evidence

A court may establish special rules under Veh C §40901 for the trial of Vehicle Code infractions. Veh C §40901(a). These rules may provide for testimony and other relevant evidence to be introduced in the form of a notice to appear and a business record or receipt (notwithstanding the hearsay rules set forth in Evid C §§1200–1380). Veh C §40901(b). The

court must inform the defendant of the summary nature of a proceeding under the court's rules and of his or her right to confront and cross-examine witnesses, to subpoena witnesses, and to be represented by an attorney. The court must ascertain that the defendant knowingly and voluntarily waives these rights before proceeding. Veh C §40901(c). In a jurisdiction having a non-English-speaking population exceeding 5 percent of the total population in any one language, a written explanation of the court's summary procedures must be made available in that language. Veh C §40901(d).

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), (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 §82.65) 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 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 the notice to appear, a business record or receipt, and the sworn declarations of the arresting officer and of 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 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).

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 defendants of their right to privately employed counsel or require an express waiver of that right be obtained if they are 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 one 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 one year of two or more prior convictions is punishable by a fine of up to \$250. Veh C §42001(a)(3).

A penalty assessment is also added to the base fine. See §82.65. 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 §§82.58–82.68.

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 one 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 one-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 charged as a misdemeanor, the defendant has a right to a jury trial and, if unable to afford an attorney, to court-appointed counsel. See §82.19.

It is reversible error for the court to deny a defendant's offer to admit three prior infractions within a one-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 §82.65. On factors to consider in imposing sentence, see §§82.58-82.68.

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 2 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.
4463(e)	Falsifying a Clean Air Sticker; passing as true a false, forged or counterfeit sticker; or acquisition or sale of 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.	Not less than 8 hours nor more than 16 hours of community service for first offense; not less than 16 hours nor more than 24 hours for second or subsequent offense. Fine of not more than \$35 for first offense, and not more than \$50 for second or subsequent offense.
16020, 16025	Failing to exchange information with other driver involved in accident, including evidence of insurance.	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, plus penalty assessments. See §82.42. Subsequent offense within 3 years of prior conviction: \$200–500 fine, plus penalty assessments. Court has discretion to impound vehicle

Veh C §§	Infractions	Penalties
16028, 16029 (<i>cont.</i>)		for good cause. For further discussion, see §82.18.
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 one 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 2 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 2 or more prior convictions: \$250 fine. No violation point for conviction of Veh C §21712(d) (riding in trunk). Veh C §12810(i)(3).
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 2 or more prior convictions: \$250–\$500 fine.
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.

Veh C §§	Infractions	Penalties
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 2 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 2 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. Second offense with 3 years of prior conviction: fine of up to \$750. Third offense within 5 years of 2 or more prior convictions: fine of up to \$1000. Court may also order license suspension for up to 30 days for first offense. Veh C §13200.5. Six-month mandatory license suspension for second conviction within 3 years of prior conviction. Veh C §13355(a). One-year mandatory license suspension for third or subsequent conviction within 5 years of 2 or more prior convictions. Veh C §13355(b). Conviction has traffic violation point count of two points. Veh C §12810(d)(1).
22451– 22452, 42001.16	Stops at railroad crossings by vehicles, trucks, and buses.	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.
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 2 or more prior convictions: mandatory 1-year license suspension by DMV.

Veh C §§	Infractions	Penalties
22500(i), (l), 42001.5	Parking along curbside space authorized for loading and unloading bus passengers, or parking in front of or upon curb constructed to provide wheelchair accessibility to sidewalk.	\$250 minimum 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.	<p>Issuance of a notice of parking violation imposing a civil penalty of \$250–\$1000</p> <p>Or</p> <p>Issuance of notice to appear punishable as an infraction as follows:</p> <p>First offense: \$250–\$500 fine.</p> <p>Second offense: \$500–\$750 fine.</p> <p>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.</p> <p>Additional assessments must be imposed under Pen C §§1465.5, 1465.6, and Veh C §40203.6.</p> <p>Additional penalty of \$100 may be imposed under Veh C §4461.3.</p>
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 judge 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 the through passage of vehicles by entering intersection or marked crosswalk.	<p>First offense: \$50–\$100 fine.</p> <p>Second offense within 1 year of prior conviction: \$100–\$200 fine.</p> <p>Third or subsequent offense within 2 years of 2 or more prior convictions: \$250–\$500 fine.</p> <p>No violation point for conviction of these offenses. Veh C §12810.4.</p>

Veh C §§	Infractions	Penalties
22526(c)-(d), 42001.16	Obstructing the through 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.
23111- 23112, 23113(a), 42001.7	Littering on public highway.	First offense: mandatory fine of \$100-\$1000, plus at least 8 hours picking up litter or cleaning up graffiti. Second offense: mandatory fine of \$500-\$1000, plus at least 16 hours picking up litter or cleaning up graffiti. Third or subsequent offense: mandatory fine of \$750-\$1000, plus at least 24 hours picking up litter or cleaning up graffiti. 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.
23117, 42001.4	Transporting an animal in the back of a vehicle without proper restraint or enclosure.	First offense: \$50-\$100 fine. Second offense within 1 year of prior conviction: \$75-\$200 fine. Third or subsequent offense within 1 year of 2 or more prior convictions: \$100-\$250 fine.
23123	Driving while using a wireless telephone unless telephone is designed and configured to allow hands-free operation and is used in that manner.	First offense: \$20 fine. Second offense: \$50 fine. No violation point for conviction. Veh C §12810.3.
23123.5	Driving while using an electronic wireless communications device to write, send, or read text message; exception for voice-operated and hands-free device.	First offense: \$20 fine. Second offense: \$50 fine. No violation point for conviction. Veh C §12810.3.
23124	Person under age 18 driving motor vehicle while using a wireless telephone or mobile service device.	First offense: \$20 fine. Second offense: \$50 fine. No violation point for conviction. Veh C §12810.3.

Veh C §§	Infractions	Penalties
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 2 or more prior convictions: \$300 fine. Conviction has traffic violation point count of 2 points. Veh C §12810(d)(2).
23222(b)	Possession of not more than one 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 2 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. Subsequent offense: maximum penalty of \$50. Instead of imposing fine and penalty, court may permit person convicted of first offense to attend traffic violator school. See §82.59. No violation point for conviction. Veh C §12810.2.
27360, 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 has traffic violation point count of one 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 has traffic violation point count of one point. Veh C §12810(h).

Veh C §§	Infractions	Penalties
38020, 42001.10	Operating an 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.
38301	Operating an 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 2 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 an electronic mobile device. A driver who fails to provide proof of insurance on request by an officer or traffic collision investigator during a traffic stop (but not for the sole purpose of determining whether the driver has insurance) is guilty of an infraction. Veh C §§16028(a), (f), 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 of furnishing proof of financial responsibility to DMV on registration renewal), 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 three 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 §82.65.

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.

A violator who does not have insurance at the time of the citation but who obtains insurance before the charge is adjudicated is eligible for the minimum fine. Veh C §16029(e)(1). If a violator fails to obtain insurance before the date of the court appearance, 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. Violators who have not obtained insurance before the court appearance must receive a fine greater than the minimum. Veh C §16029(e)(1). A judge does not have authority to impose a fine that is less than the minimum fine or that is greater than the maximum fine. 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 one year from the date of the order. Veh C §16029(c), (e)(1).

If the violator claims an inability to pay both for insurance and the fine or 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 §82.66. 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 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 §§82.69–82.73. A motorist who knowingly provides false evidence of financial responsibility is guilty of a misdemeanor. Veh C §16030(a); see §82.15.

E. Misdemeanors

1. Overview of Procedure

a. [§82.19] Arraignment

An arraignment is required in every misdemeanor case. For a discussion of the arraignment, see §§82.43–82.46.

b. [§82.20] 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 §82.98 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 §§82.47–82.57.

c. [§82.21] 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 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 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 injury 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. [§82.22] General Penalties for Misdemeanor Conviction

Unless a different penalty is expressly provided (see §82.23), 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 six months. Veh C §42002. A penalty assessment is also added to the base fine. See §82.65. On factors to consider in imposing sentence, see §§82.58–82.68.

3. [§82.23] 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 fines. See §82.65. On factors to consider in imposing sentence, see §§82.58–82.68.

Veh C §§	Misdemeanors	Penalties
Designated misdemeanor violations of Veh C §2800, §2801, or §2803; Veh C §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 2 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 fine of \$1000-\$10,000. Court may suspend defendant's license for up to 6 months. Veh C §13201(d). Conviction has traffic violation point count of 2 points. Veh C §12810(d)(1).
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 \$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 fine of \$1000-\$10,000. 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 and permitting use of disabled person placard to person not entitled to placard.	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.

Veh C §§	Misdemeanors	Penalties
4463(b), 4463.3, 40000.7(a)(7)	Falsifying a 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.
5500, 40000.7(a)(10)	Failure to deliver to DMV: certificate of ownership, registration card, and license plates for vehicle before dismantling it.	First offense: \$50–\$500 fine and/or 5 days to 6 months in county jail. Subsequent offense: \$250–\$1000 fine and/or 30 days to 1 year in county jail.
10501, 40000.9	Filing a false report of a 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	Acquire, possess, sell, or offer 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 two years or three years, and by fine of \$250–\$5000.
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
12500(a), 40000.11(b)	Driving without a valid driver's license.	On a first conviction, the court must inform the defendant that a motor vehicle is subject to forfeiture as a nuisance if it is driven on a highway in this state by an unlicensed driver who is a registered owner of the vehicle and has a prior misdemeanor conviction for a violation of Veh C §12500(a), §14601, §14601.1, §14601.2, §14601.3, §14601.4, or §14601.5. Veh C §§14607.6, 14607.8. Exemptions to licensing requirement. Veh C §12502(a).
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, 40000.11(l)	Driving after license has been suspended or revoked for reckless or negligent driving under Veh C §12806(a), (c), §12809(e), §12810.5, §23103, §23104, or §23105, 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 the notice was not returned as undeliverable or unclaimed. Veh C §13106(a).	First offense: \$300-\$1000 fine plus 5 days to 6 months in county jail. Second offense within 5 years of prior conviction for driving with suspended or revoked license: \$500-\$2000 fine plus 10 days to 1 year in county jail. As condition of probation, defendant must serve at least 10 days in county jail. Court may allow defendant to serve sentence on consecutive weekends. Veh C §14601.8. 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 the date of conviction. On a first conviction, the court must inform the defendant that a motor vehicle is subject to forfeiture as a nuisance if it is driven on a highway in this state by a driver with a suspended or revoked license, who is a registered owner of the

Veh C §§	Misdemeanors	Penalties
14601, 40000.11(l) (cont.)		vehicle and has a prior misdemeanor conviction for a violation of Veh C §12500(a), §14601, §14601.1, §14601.2, §14601.3, §14601.4, or §14601.5. Veh C §§14607.6, 14607.8. Conviction has traffic violation point count of two points. Veh C §12810(e).
14601.1, 40000.11(l)	Driving after license has been suspended or revoked for other reasons, 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 the 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 plus 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 the date of conviction.
14601.2, 40000.11(l)	Driving after license has been suspended or revoked for driving under the influence.	First offense: \$300-\$1000 fine plus 10 days to 6 months in county jail. As condition of probation, defendant must serve at least 10 days in county jail. Second offense within 5 years of prior conviction for driving with suspended or revoked license: \$500-\$2000 fine plus 30 days to 1 year in county jail. As condition of probation, defendant must serve at least 30 days in county jail. <i>Note:</i> If conviction occurred within 7 years, but over 5 years, of the prior conviction, defendant must serve at least 10 days in county jail. If defendant designated as habitual offender under Pen C §193.7, Veh C §23546(b), §23550(b), §23550.5(d), or §23566(d), the punishment is a \$2000 fine plus 180 days in county jail. Veh C §14601.3(e)(3). Veh C §§12810(e), 14607.6, 14607.8, discussed under Veh C §14601, also apply. Court must order installation of ignition interlock device on vehicle under Veh C §23575 for up to 3 years from the date of

Veh C §§	Misdemeanors	Penalties
14601.2, 40000.11(l) (cont.)		conviction. <i>Note:</i> DMV is responsible for mandating the installation of an ignition interlock device when a person has been convicted of Veh C §14601.2 within 10 years of a prior conviction of Veh C §14601.2, §14601.4, §14601.5, §23103.5, §23152, or §23153. The DMV will require the installation of an ignition interlock device for one, two, or three years. Veh C §23573(j).
14601.3	Habitual traffic offender because of specified driving history record during period of license suspension or revocation.	First offense: \$1000 fine plus 30 days in county jail. Second offense within 7 years of prior conviction: \$2000 fine plus 180 days in county jail. Veh C §§12810(e), 14607.6, 14607.8, discussed under Veh C §14601, also apply.
14601.4	Causing bodily injury while driving with suspended or revoked license under Veh C §14601.2	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. 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 the date of conviction. DMV will not reinstate driving privileges until the department receives proof that an ignition interlock device has been installed as ordered. <i>Note:</i> DMV is responsible for mandating the installation of an ignition interlock device when a person has been convicted of Veh C §14601.4 within 10 years of a prior conviction of Veh C §14601.2, §14601.4, §14601.5, §23103.5, §23152, or §23153. The DMV will require the installation of an ignition interlock

Veh C §§	Misdemeanors	Penalties
14601.4 (<i>cont.</i>)		device for one, two, or three years. Veh C §23573(j).
14601.5, 40000.11(l)	Driving after license has been suspended or revoked for failing to submit to blood, breath, or urine test, or preliminary alcohol screening, or for having blood alcohol concentration of 0.08 or more, 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 the notice was not returned as undeliverable or unclaimed. Veh C §13106(a).	<p>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 plus 10 days to 1 year in county jail. Court must consider defendant's ability to pay minimum fine and may reduce fine to less than statutory minimum in interest of justice and for reasons stated in record.</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 the date of conviction.</p> <p>DMV will not reinstate driving privileges until the department receives proof that an ignition interlock device has been installed as ordered.</p> <p><i>Note:</i> DMV is responsible for mandating the installation of an ignition interlock device when a person has been convicted of Veh C §14601.5 within 10 years of a prior conviction of Veh C §14601.2, §14601.4, §14601.5, §23103.5, §23152, or §23153. The DMV will require the installation of an ignition interlock device for one, two, or three years. Veh C §23573(j).</p>
14610.1	Manufacture or sale of fraudulent drivers' licenses.	<p>\$250-\$1000 fine and mandatory 24 hours of community service. Court may not waive or suspend fine and community service.</p> <p>Alternatively, up to 1 year in county jail and fine of up to \$1000.</p>
16030	Giving false evidence of insurance to officer or court, including an expired or cancelled insurance policy.	<p>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</p>

Veh C §§	Misdemeanors	Penalties
16030 (cont.)		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 is punishable by imprisonment in state prison for 2-4 years, imprisonment in county jail for 90 days to 1 year, 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. Violation resulting in other injury is punishable by imprisonment in state prison, imprisonment in county jail for up to 1 year, and/or \$1000-\$10,000 fine. 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)(3), (c). Conviction has traffic violation point count of 2 points. Veh C §12810(a).
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 also 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 has traffic violation point count of 2 points. Veh C §12810(a).
21464	Defacing or interfering with traffic control devices; purchasing, manufacturing, installing, or selling 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

Veh C §§	Misdemeanors	Penalties
21464 (<i>cont.</i>)	designed to interfere with traffic control devices.	imprisonment in county jail for 16 months, or two years or three years, and by \$5000–\$10,000 fine; willful violation not resulting in injury or death is punishable by a fine of not more than \$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, or as a felony, punishable by imprisonment in county jail for 16 months, or two years or three years; \$1000 fine (misdemeanor) or \$10,000 fine (felony) (Pen C §672). Conviction has traffic violation point count of 2 points. Veh C §12810(d)(1).
23103, 40000.15	Reckless driving.	\$145–\$1000 fine and/or 5–90 days in county jail. Court may suspend defendant’s license for up to 30 days on first conviction, up to 60 days on second conviction, and up to 6 months on any subsequent conviction. Veh C §13200. DMV may also suspend license on second or subsequent conviction. Veh C §13361(b). Vehicle may also be impounded for up to 30 days. Veh C §14602.7(a). Conviction has traffic violation point count of 2 points. Veh C §12810(c). See also Veh C §40008. If vehicle impounded at time of arrest, and defendant was not authorized by registered owner to operate the vehicle, the court must order the defendant to reimburse the owner for towing, storage, and administrative charges incurred to obtain possession of the vehicle. Veh C §23109.2.
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,

Veh C §§	Misdemeanors	Penalties
23104, 40000.15 (<i>cont.</i>)		punishable by imprisonment in county jail for 16 months, or two or three years, and/or by \$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, or two or three years, and/or by \$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.	<p>First offense: \$355-\$1000 fine or 24 hours to 90 days in county jail or by both fine and imprisonment. 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).</p> <p>Second offense within 5 years of prior conviction: \$500-\$1000 fine plus 4 days to 6 months in county jail. If the second offense proximately causes bodily injury, the minimum 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, which may not be reinstated w/o 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 for sentencing purposes to avoid imposing, as part of sentence or term of probation, minimum county jail term, or to avoid revoking, suspending,</p>

Veh C §§	Misdemeanors	Penalties
<p>23109(a), (e)–(f), 40000.15 (<i>cont.</i>)</p>		<p>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.</p> <p>If vehicle impounded at time of arrest, and defendant was not authorized by registered owner to operate the vehicle, the court must order the defendant to reimburse the owner for towing, storage, and administrative charges incurred to obtain possession of the vehicle. Veh C §23109.2.</p> <p>Conviction has traffic violation point count of 2 points. Veh C §12810(d)(1).</p>
<p>23109(b)–(d), (i), 40000.15</p>	<p>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.</p>	<p>Up to \$5000 fine and/or up to 6 months in county jail.</p> <p>If vehicle impounded at time of arrest for violation of Veh C §23109(c), and defendant was not authorized by registered owner to operate the vehicle, the court must order the defendant to reimburse the owner for towing, storage, and administrative charges incurred to obtain possession of the vehicle. Veh C §23109.2.</p> <p>Conviction of Veh C §23109(c) has traffic violation point count of 2 points. Veh C §12810(d)(1).</p>
<p>23109.1</p>	<p>Engaging in speed contest causing specified bodily injuries.</p>	<p>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, or two or three 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).</p> <p>Court may not strike prior conviction for sentencing purposes to avoid imposing, as part of sentence or term of probation, minimum county jail term, or to avoid revoking, suspending, or restricting defendant’s license. Veh C §23109.5(a).</p>

Veh C §§	Misdemeanors	Penalties
23109.1 (<i>cont.</i>)		Conviction has traffic violation point count of 2 points. Veh C §12810(d)(1).
23110(a)	Throwing any substance at a vehicle or 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).
23112.5, 40000.70	Failing to notify CHP or other appropriate agency as soon as possible of hazardous spill on highway caused by motorist.	Treated as misdemeanor, not infraction. Mandatory fine of at least \$2000.
23114, 40000.16	Second or subsequent violation of Veh C §23114, relating to preventing 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.
23225, 23223, 40000.20	Third or subsequent violation relating to storage or possession of open container by passenger charter or party carrier driver.	General penalty applies.
23247(e)-(g)	Driving by person with restricted license under Veh C §13352, §23575, or §23700 of vehicle not equipped with functioning ignition interlock device.	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 the restriction and to suspend or revoke defendant's license for the remaining period of the originating suspension or revocation 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.

Veh C §§	Misdemeanors	Penalties
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.
23573(i)	Willful failure to install ignition interlock device within 30 days.	Fine of up to \$5000 and/or up to 6 months in county jail.
27317	Install, tamper with, alter, or modify for compensation, vehicle's computer system or supplemental restraint system, or knowingly distribute or sell previously deployed air bag.	Fine of up to \$5000 and/or up to one year in county jail.
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. [§82.24] 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). Motorists without sufficient identification may still be released if the officer requires the

motorist to place a thumbprint or fingerprint on the notice to appear (Veh C §§40500(a), 40305(a) (nonresident offender)).

b. [§82.25] Contents of Notice To Appear

The notice to appear must contain the motorist's true full name and address, 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. It 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. [§82.26] Courtesy Notice

Each court should promptly mail a “courtesy notice” to the address shown on the Notice To Appear. The date of mailing should allow for the plea-by-mail option in infraction cases. Cal Rules of Ct, Standards of J Admin 4.41(a). In addition to information obtained from the Notice To Appear, the courtesy notice should contain the following information (Cal Rules of Ct, Standards of J Admin 4.41(b)–(c)):

- An appearance date, time, and location;
- Whether a court appearance is mandatory or optional;
- The total bail amount if forfeitable;
- The procedure required for remitting bail;
- The plea-by-mail option in infraction cases and the number of appearances required when a trial is requested;
- The consequences of a failure to appear;
- A telephone number to call for additional information;
- If appropriate, the informal trial, trial by declaration, traffic violators' school, and telephone scheduling options; and
- If appropriate, correction requirements and procedures.

d. [§82.27] 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.*, a plea of guilty, a plea of no contest, or a plea of 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. A defendant who contends that the notice to appear is defective must raise the issue before trial by filing a demurrer. See Pen C §§1004(2), 1012; *People v Gompper* (1984) 160 CA3d Supp 1, 8-9, 207 CR 534.

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

e. [§82.28] 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. [§82.29] 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 §82.39.

g. Notice Based on Automatic Traffic Enforcement System

(1) [§82.30] Initial Requirements for System

A notice to appear may be issued based on use of an automated traffic enforcement system (ATES), also called red-light enforcement, that photographs the license plate and driver. 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 a system is operating that clearly indicate the system's presence and are 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 system. Veh C §21455.5(a)(1) (operative Jan. 1, 2013), (j) (replacement of existing signs). The previous practice of some local jurisdictions of placing signs at city entrances does not satisfy the 200-foot requirement. See Assembly Comm on Transportation (SB 1303, June 25, 2012) p 4.

A municipality must make public announcements and issue warnings (Veh C §21455.5(b)) only when it commences operation of the system, but not each time the system is placed in operation at each new intersection. *People v Gray* (2012) 204 CA4th 1041, 1046-1051, 139 CR3d 489. Even assuming a municipality fails to comply with the notice requirements of Veh C §21455.5(b), compliance with the statute is not an element of the charged offense and noncompliance does not require exclusion of ATES evidence. 204 CA4th at 1051-1052.

(2) [§82.31] 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 past 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, 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 ten 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 §82.53.

(3) [§82.32] Notice of Nonliability

The issuing agency or 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). For example, when a police officer is unable to 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 §40520(c). Veh C §40518(c)(1).

(4) [§82.33] 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 the judge that the case be dismissed. The recommendation must cite the reasons for the recommendation and 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. [§82.34] 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 six months in jail (see §82.22). 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(e) (when bench warrant may not be issued).
- Treat the failure to appear as an election to have a trial by written declaration upon any alleged infraction. See Veh C §40903.
- Impose a civil assessment penalty of up to \$300 for a continued failure to appear ten days after mailing a warning notice to the defendant by first-class mail to the address shown in the notice to appear or to the defendant's last known address. Pen C §1214.1(a)–(b). 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). 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).
- Notify the DMV of the defendant's failure to appear. Veh C §§40509(a), 40509.5(a). The court must mail a courtesy warning notice to the defendant at least ten days before sending notice to the DMV. Veh C §40509.5(d). 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 the notice is given under Veh C §40509.5, the DMV must suspend the defendant's license. Veh C §13365(a)(2). If the notice is given under Veh C §40509, the DMV may only suspend the defendant's license for two or more violations of Veh C §40509 or Veh C §40509.5. Veh C §13365(a)(1).

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 defendant fails to appear, deposit bail, or plead guilty, a verified complaint must be filed that informs the defendant that unless he or she appears in court within 21 days from receipt and answers the charge (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).

3. Identification by Thumbprint

a. [§82.35] 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. [§82.36] 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 refer the print submitted together with the print on the notice to the prosecuting attorney for comparison. If there is no print on the notice or 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), 40500(e)(2), 40504(c)(2).

The court may make a finding of factual innocence under Pen C §530.6 if the court determines there is insufficient evidence that the person cited is the person charged or if the prosecuting attorney or agency does not respond within 45 days. Except in the latter case, the court may determine that a finding of factual innocence is not in the interest of justice. Veh C §§40303(c)(3)–(4), 40305(b)(3)–(4), 40500(e)(3)–(4), 40504(c)(3)–(4).

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

1. [§82.37] 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).
- 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. The notice to correct is generally issued with a notice to appear in which the motorist promises to appear in court on a specified date or offer proof of correction on or before that date.

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, that the violation presents an immediate safety hazard, or 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. [§82.38] 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 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, sheriff, 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. [§82.39] 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 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 may be in 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 identity and 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. [§82.40] 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 ten-day notice to appear in court (see discussion at §82.36 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 the vehicle's lights under Veh C §2804 or to a brake test, (2) a refusal to submit the 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 who continues 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 who commits a second violation of Veh C §21962 within 24 hours. Veh C §40303(b)(3)-(7), (15).
- Veh C §2813, relating to the 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 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 who commits a 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 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 at §82.36 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, traffic obstruction, or other event has occurred. 80 Ops Cal Atty Gen 111, 112–114 (1997).

3. [§82.41] 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 five days to plead and prepare for trial. The defendant is not required to plead or be tried within the five days unless the defendant waives this time in writing or in open court. Veh C §40306(b).

The defendant must be released on his or her own recognizance (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. [§82.42] 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 two 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 two-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. [§82.43] 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 for many of them, their appearance

in traffic court is 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. [§82.44] Calendar Call

Traffic court judges and commissioners handle the calendar call in various ways. Some have prepared a videotape which 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 a particular plea, 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 form that might be used as either a spoken or written form is set forth in §82.98.

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, etc.). 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. [§82.45] 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 will 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 §§82.58-82.68. 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 §82.8. On the range of sentences that may be imposed for specific misdemeanors, see the chart in §82.23. On the general penalties that may be imposed for a misdemeanor, see §82.22.

A defendant who pleads not guilty is given a trial date. See §82.46.

Many judicial officers generally try to discourage defendants from pleading not guilty to minor traffic violations, *e.g.*, registration or equipment violations. They will often suggest to defendants charged with these offenses that they plead no contest, and that, depending on the explanation for the violation, they will consider waiving the fine or substantially reducing it.

4. [§82.46] 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 §82.8. A defendant charged with a misdemeanor is entitled to a jury trial. See §82.19.

If a defendant does not appear on the trial date, the court should determine if the absence is knowing and voluntary before proceeding to trial. See Veh C §§40512.5(a), 40901(c); Pen C §1043(e); *People v Disandro* (2010) 186 CA4th 593, 601–604, 111 CR3d 857.

J. Trial

1. Evidence

a. [§82.47] 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 was 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 the defendant an opportunity to answer the report or produce rebuttal witnesses. For this purpose, the court must grant a continuance before pronouncing sentence if requested by the defendant. Veh C §40806.

b. Speed Trap Evidence

(1) [§82.48] 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 particular 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 particular section of a highway with a prima facie speed limit provided by the Vehicle Code or local ordinance that is not justified by an engineering and traffic survey conducted within *five* years before the date of the alleged violation, and when 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 there is a survey conducted within five years before the date of the alleged violation that justifies the prima facie speed limit, the speed trap law does not apply. Veh C §40802(a)(2).

A survey may be extended to seven or ten 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, plus at least two hours of additional POST-certified training on use of the device;
- The arresting officer has complied with these training requirements and that an engineering and traffic survey that justifies the prima facie speed limit has been conducted within the past seven years or

within the past ten years if a registered engineer evaluates the section of the highway and determines that no significant changes in roadway or traffic conditions have occurred (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 three 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), §22356 (exceeding posted 70 mph), or §22406 (exceeding 55 mph in specified vehicles).

(2) [§82.49] Prosecution's Burden

In any prosecution of a charge involving the speed of a vehicle when enforcement involved the use of radar or other electronic devices 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 five years of the date of the alleged violation under Veh C §40802(a)(2), or within seven or ten 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) or (c). 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 as to 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) [§82.50] 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 based on use of a speedometer without any use of radar. 13 CA4th Supp at 3. Nor do they apply to the following:

- To a local street or road (Veh C §40802(b)(1)),
- To a posted school zone while children are present (Veh C §40802(b)(2)),
- To a senior center zone (Veh C §22352(a)(2)(C)), or
- To highways with statutory maximum speed limits (*e.g.*, Veh C §22349(a)–(b) (exceeding 65 mph or 55 mph)).

(4) [§82.51] 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(a)(2)(B)). *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. [§82.52] Evidence of Actions Taken by DMV

No record of any action taken by the DMV against a person’s privilege to operate a motor vehicle, nor any 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 provisions of the Vehicle Code 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 introduced solely for impeachment purposes. Veh C §40807.

d. [§82.53] “Photo Enforcement” Evidence

The printed representation of computer-generated information, video, or photographic images stored by an automated traffic enforcement system (ATES) does not constitute an out-of-court hearsay statement by a declarant. Veh C §21455.5(e). These printed representations are presumed to be accurate representations of the information or images they purport to represent. This presumption affects the burden of producing evidence. Evid C §§1552(a)–(b), 1553(a)–(b).

As amended by SB 1303 (effective January 1, 2013), these code sections basically establish that ATES photographs are not hearsay, and thus no hearsay exception is required. Assembly Comm on Judiciary (SB 1303, June 26, 2012) p 9. The legislation resolves a conflict between two Second District Court of Appeal cases. Both cases have been granted review by the California Supreme Court in *People v Goldsmith* (S201443) and *People v Borzakian* (S201474).

2. Presumptions

a. [§82.54] 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. [§82.55] 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 the contrary is established by competent evidence. 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. [§82.56] 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 a federal court on the same act or omission, and that the defendant was convicted or acquitted. Veh C §41400.

b. [§82.57] 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).

K. Sentencing

1. [§82.58] 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 the defendants an explanation of “waiving time,” *i.e.*, that a defendant may waive the six-hour postponement of sentencing after a plea or finding of guilty required by Pen C §1449. An explanation of “waiving time” is contained in paragraph 9 of the script set forth in §82.98.

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 to possibly 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 set forth in §82.15. Penalties for specified infractions are set forth in the chart in §82.17. The general penalties for a misdemeanor are set forth in §82.22. Penalties for specified misdemeanors are set forth in the chart in §82.23. Suggested base fines are listed in the Uniform Traffic Bail and Penalty Schedule adopted by the Judicial Council. See §82.65.

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

2. [§82.59] 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 receives 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); CRC 4.104(c)(1).

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 who pleads guilty or no contest or is convicted of a traffic offense to attend a licensed

traffic violator school. Veh C §42005(a); Cal Rules of Ct 4.104(c)(1). The person may choose which school to attend. Veh C §42005(d).

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. See <http://www.ca-msp.org>.

Attendance at a traffic violator school and confidentiality is not available for violations listed in Veh C §12810(a)–(e) (specified two-point violations). Veh C §41501(b). Nor may the court order that a conviction be kept confidential or that a person complete a traffic violator program *if the offense occurred in a commercial vehicle*, or is a specified violation. Veh C §42005(c); Cal Rules of Ct 4.104(c)(1).

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, 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 class C or a class M license*. Veh C §42005(b) (court must conform to 49 CFR regarding transportation providers). In such circumstances, the court may not order that the record of conviction be kept confidential, and must be disclosed to insurers by the department for insurance underwriting and rating purposes. 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).

The court clerk or hearing officer must prepare an abstract of the record that indicates 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 five days after receiving proof that the program was completed or 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 (see Veh C §15210(a)).
- The person convicted holds a commercial driver's license in another state (see 49 CFR part 383).
- The violation occurred in a commercial motor vehicle (see Veh C §15210(b)).
- The conviction would result in a violation point count of more than one point (see Veh C §12810).

a. [§82.60] Eligibility To Attend Traffic Violator School

In general, a defendant with a valid driver's license is eligible to attend traffic violator school 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 defendant is not eligible to attend traffic violator school if the violation (see Cal Rules of Ct 4.104(b)(2)):

- Occurred within 18 months of a previous violation for which the defendant attended or elected to attend traffic violator school.
- Carries a negligent operator point count of more than one point under Veh C §12810 or one and one-half points or more under Veh C §12810.5(b)(2) (see §82.78);
- Is related to alcohol or drug use or possession;
- Is a violation of Veh C §22406.5 (tank vehicles);
- Is a violation on which the defendant failed to appear under Veh C §40508(a), unless the failure-to-appear charge has been adjudicated and any fine imposed has been paid; or
- Is a violation on which the defendant failed to appear under Pen C §1214.1, unless the civil monetary assessment has been paid.
- Is a speeding violation in which the speed alleged is 25 miles over the speed limit.
- Is a violation that occurs in a commercial vehicle as defined in Veh C §15210(b).
- Is a violation by a defendant having a class A, class B, or commercial class C driver's license.

The court may not make an order 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)(2) provides that the court may not order or permit traffic school attendance if 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), and Veh C §23103 as specified in Veh C §23103.5 (wet reckless).

b. [§82.61] 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(d)), 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. [§82.62] 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 upon with the court. Veh C §42007(a)(2). The court must continue the case to the date in the agreement to complete payment of the fee and submit 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).

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 §§82.69–82.72) 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).

d. [§82.63] 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 individual 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 it reasons for granting or denying a traffic violator school request. Cal Rules of Ct 4.104(c)(2); *People v Schindler, supra*.

A hearing-impaired defendant is not entitled to a court-appointed interpreter for traffic violator school. See *People v Levinson* (1984) 155 CA3d Supp 13, 16 n2, 203 CR 426.

Traffic violator schools must notify the court by posting information regarding successful course completions 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. [§82.64] 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. [§82.65] 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 various programs, such as peace officer training, a DNA identification fund, courthouse and jail construction, or 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 county-wide 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. Otherwise there is a moratorium on increases in filing fees until July 1, 2013, except as provided in Govt C §70602.5 regarding supplemental first-paper filing fees. Govt C §70602(a); see Govt C §70602.6.

Courts may obtain copies of the Uniform Bail and Penalty Schedules by contacting the Office of General Counsel, Administrative Office of the Courts, 455 Golden Gate Avenue, San Francisco, California 94102-3688; or online at <http://www.courts.ca.gov/7532.htm>.

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

4. [§82.66] Considerations in Imposing Fine

The amount of the fine to be imposed necessarily depends on the circumstances of the particular case. Important factors to consider are the existence of any prior convictions (see §82.67) 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 as to 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 may be imprisoned until the fine is satisfied. The extent of the imprisonment may not exceed one day for every \$30 of the fine, nor 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).

5. [§82.67] 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, 82.23. For purposes of determining the penalty to be imposed, the court may consider a written report from the DMV containing information from its records showing 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 the 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. [§82.68] 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 would not 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. [§82.69] Misdemeanor

A willful failure to pay bail in installments as agreed under Veh C §40510.5 (see §82.9) 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, *i.e.*, it is punishable by a fine of up to \$1000 and/or by up to six months in jail. Veh C §§40000.25, 40508(b). A late charge in the amount of 50 percent of the total initial fine must be added to any traffic fine that is not paid within 20 days following mailing of a notice that the fine has been assessed. Veh C §40310.

2. [§82.70] Penalty Assessment

In addition, the court may impose a civil assessment of up to \$300 after notice to the defendant. Pen C §1214.1(a). The assessment does not become effective until at least ten 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. 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). 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).

3. [§82.71] Notice to DMV

The court may notify the DMV of the defendant's willful failure to pay a lawfully imposed fine or to pay bail in installments, as agreed under Veh C §40510.5 (see §82.9), within the time authorized by the court. See

Veh C §§40509(b), 40509.5(b). Until the DMV receives a certificate from the court that the defendant has subsequently paid the fine in full, the DMV may not issue or renew a driver's license for the defendant. Veh C §12807(c). When the DMV receives notice of two or more violations under Veh C §40509 for a particular defendant, it must suspend the defendant's license until it receives certificates indicating the violations have been satisfied. Veh C §13365.

4. [§82.72] Impoundment of License

If a defendant convicted of an infraction fails to pay bail in installments, as agreed under Veh C §40510.5 (§82.9), 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. The court may limit for a period of up to 30 days the defendant's driving to what the court determines is essential for the defendant's employment when 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 will affect his or her livelihood. 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 five days of the order. Veh C §1803(c).

M. [§82.73] Failure To Comply With Court Order

A willful failure to comply with a court order concerning a Vehicle Code violation is a misdemeanor, regardless of subsequent compliance with the order, *e.g.*, an order to attend traffic school or to perform community service instead of paying a fine. 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. [§82.74] 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 various traffic violations. Specific provisions are discussed in §82.23 in connection with specified

misdemeanor violations. 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, for up to 60 days on a second conviction, and for up to six 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 six 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), when a peace officer witnessed the violator picking up a person engaged in loitering with the intent to commit prostitution, and the violator engaged with that person in a lewd act 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 six 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 three 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 three 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 one year the license of a person under age 21 who is convicted of a drug and 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 six months for a first offense, and for one 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 only suspend or revoke a defendant’s license in a case in which 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. [§82.75] 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 the report of the conviction within ten days after the 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. [§82.76] Recommendation to DMV

In any 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 whether the defendant relied on the condition as part of his or her defense. Veh C §13208.

2. By DMV

a. [§82.77] Grounds for Suspension or Revocation

The DMV has authority to suspend or revoke the driver's license of a defendant who is convicted of various traffic violations. Specific provisions are discussed in §82.17 in connection with specified infractions, and in §82.23 in connection with specified misdemeanors. In addition, under the following provisions the DMV:

- Must revoke for one 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 three 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 three 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 three 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 causing 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, a 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 §82.81.

Except as otherwise specifically provided, a license suspension by the DMV may not exceed six 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. [§82.78] Traffic Violation Point Counts

The DMV may suspend or revoke the driver's license of a person whose driving record shows a traffic violation point count of four or more points in 12 months, six or more points in 24 months, or eight or more points in 36 months. See Veh C §12810.5(a), (c). Various misdemeanor

violations of the Vehicle Code are given specified traffic violation point counts. See §82.23. Any conviction of reckless driving is given a traffic violation point count of two points. Veh C §12810(c). A motorist is given one 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 is given a traffic violation point count of one point (Veh C §12810(f)), with specified exceptions (Veh C §12810(i)).

c. [§82.79] 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). Unless previously surrendered to the court, the defendant must surrender all those licenses to the DMV. The DMV must return the licenses to the defendant, or may issue the defendant new licenses, on the expiration of the period of suspension or revocation, if the defendant is otherwise eligible for a driver's license. Veh C §13551(a).

3. [§82.80] 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 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. [§82.81] 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. [§82.82] 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 the person whose license was refused, canceled, suspended, or revoked, written notice of the right to seek judicial review of the DMV's decision. Veh C §14401(b).

O. Appeal of Infraction or Misdemeanor Conviction

1. [§82.83] 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); see Cal Rules of Ct 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. [§82.84] Record on Appeal in General

The record on appeal generally is governed by Cal Rules of Ct 8.860 (misdemeanor cases) and 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).

3. [§82.85] 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 the 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). The election must be filed with the notice of appeal for infractions. Cal Rules of Ct 8.915(b). For misdemeanors, the election must be filed either 10 days after appointment of counsel or denial of appointment or 20 days after the notice of appeal is filed, whichever is later, or, if no application for appointment of counsel is filed, 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).

If the appellant does not file an election within the specified time, the trial court clerk must promptly notify the appellant by mail that the election must be filed within 15 days after the notice is mailed and that failure to comply will result in the appeal proceeding without a record of the oral proceedings. Cal Rules of Ct 8.864(c), 8.915(c).

4. [§82.86] Reporter's Transcript or Electronic Recording

If the appellant elects to use a reporter's transcript or a transcript prepared from an official electronic recording or the recording itself, the court clerk must notify the appellant within 10 days after the appellant files this election if any portion of the oral proceedings was not reported or officially recorded electronically or cannot be transcribed. The notice must indicate that the appellant may use a statement on appeal as the record of this portion of the proceedings. Cal Rules of Ct 8.864(d)(1), 8.915(d)(1). Within 15 days after this notice is mailed by the clerk, the appellant must serve and file a notice with the court stating whether the appellant elects to use a statement on appeal as the record of the portion of the proceedings that was not recorded or cannot be transcribed. Cal Rules of Ct 8.864(d)(2), 8.915(d)(2).

5. Statement on Appeal

a. [§82.87] 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 form 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. [§82.88] Contents of Proposed Statement

The proposed statement must contain the following:

- A condensed narrative of the oral proceedings that the appellant believes necessary for the appeal and a summary of the trial court's holding and the sentence imposed. Subject to the court's approval, the appellant may present some or all of the evidence by question and answer. Cal Rules of Ct 8.869(c)(1), 8.916(c)(1).
- 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)(2), 8.916(c)(2). 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).
 - 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.
 - The statement must include as much of the evidence or proceeding as necessary to support the stated grounds. Any evidence or portion of a proceeding not included will be presumed to support the judgment or order appealed from.
 - If one of the grounds is insufficiency of the evidence, the statement must specify how it is insufficient.
 - If one of the grounds of appeal challenges the giving, refusal, or modification of a jury instruction in a misdemeanor case, the statement must include any instructions submitted orally and identify the party that requested the instruction and any modification. Cal Rules of Ct 8.869(c)(2)(A)–(D), 8.916(c)(2)(A)–(C).

c. [§82.89] Review of Proposed Statement

Within 10 days after the appellant files the proposed statement, the respondent may serve and file proposed amendments. No later than 10 days after the respondent files proposed amendments or 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. 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)(1)–(3), 8.916(d)(1)–(3).

If no hearing is ordered, no later than 10 days after the time for requesting a hearing expires, the trial court judge must review the proposed statement and any proposed amendments and make any corrections or modifications to the statement necessary to ensure that it is an accurate summary of the trial court proceedings. If a hearing is ordered, the judge must correct or modify the statement within 10 days after the hearing. Cal Rules of Ct 8.869(d)(4), 8.916(d)(4).

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 no local rule provides otherwise). Cal Rules of Ct 8.869(d)(6), 8.916(d)(6).

d. [§82.90] Review of Corrected Statement

If the trial court judge corrects or modifies the statement, the clerk must resubmit the statement to the parties. The parties have 10 days to serve and file proposed modifications or objections to the statement. Cal Rules of Ct 8.869(e), 8.916(e).

e. [§82.91] Certification of Statement

If the judge does not change the proposed statement or direct a transcript to be prepared, he or she must promptly certify the statement. If the judge does make changes, then within five days after any responses have been filed, he or she must review any proposed changes, correct or modify the statement necessary to ensure that it is an accurate summary of the trial court proceedings, and certify the statement. Cal Rules of Ct 8.869(f), 8.916(f).

P. Judicial Review of Final Administrative Decision

1. [§82.92] 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 the processing agency to 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 to the contestant the filing fee. 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 other 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. [§82.93] 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 to the contestant 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 other subordinate judicial official. Veh C §40256(c).

Q. Traffic Offenses Involving Juveniles

1. [§82.94] 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 who 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. [§82.95] Procedure

A juvenile traffic case is normally initiated by issuance of a notice to appear. See §82.24. 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 the juvenile court judge or referee to 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 who 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 §82.38.

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 hearing 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 the offense, a disposition may be made

without further evidence of the alleged violation. See Welf & I C §258; discussion in §82.96

3. [§82.96] Dispositions

If the minor admits 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 and penalty assessment in addition to or in place of any of the following orders. 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 an adult might be ordered to pay for the same offense, 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 and penalty 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 §82.59), to be completed within 60 days of the court's order. Welf & I C §258(a)(6).
- Order the minor to provide satisfactory evidence that a vehicle in an unsafe mechanical condition or not equipped as required has been corrected to conform to the requirements of the Vehicle Code if the charged offense was an equipment violation. Welf & I C §258(a)(7). See §§82.37-82.38.
- 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. The foregoing 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 suspension for a longer period. Welf & I C §258(a)(5).
- In the case of 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 such a program is available. Any fees for participation are subject to a hearing as to the minor’s ability to pay. The fees may not, together with any fine or restitution order, 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 with 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 at hours to be specified by the hearing officer between those hours, except for a medical or other emergency, unless the minor is accompanied by his or her parent or guardian, or other person in charge of the minor. The maximum length of this order is six months. Welf & I C §258(a)(11).
- Order the minor to submit to supervision by a probation officer for up to six 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 the juvenile court grants a rehearing or sets aside or modifies the order on its own motion. Welf & I C §§261–262.

R. [§82.97] 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.
- <http://www.mapquest.com> for electronic sources of maps

IV. SCRIPTS

A. [§82.98] 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 six hours; sentence must, however, be imposed within five 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 so advise the court.

B. [§82.99] 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. You may also 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 not have any effect on a 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. Upon hearing the officer or the people's witnesses testify in establishing a case against you, you may want to waive the right to remain silent by testifying to your version of the facts and your defenses. If you choose to testify, you 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. Upon completion of the testimony by each of these witnesses, 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 related matters concerning the case. It does not mean introducing your own testimony at that time. I will warn you if you are testifying, because at that stage of the trial, you have not waived your right against self-incrimination.

RIGHT TO HAVE SENTENCING DELAYED

If I find you guilty, you have the right to have the sentencing delayed for a period of not less than six hours nor more than five days from this date. 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 30 days from today. Please ask the fines clerk regarding 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. [§82.100] 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 witnesses can be seated in the front row. The officer will testify first and state the facts that led to issuance of the citation.

At the conclusion of the officer's testimony, 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 to your side of what happened or 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. 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, in 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 of today's date. An appeal is not a new trial, and you are not allowed to submit new or different evidence. On appeal, another judge will review a record of today's trial to determine whether good cause exists to support the decision of this court. If this 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 must still pay your fine in one of the three ways I have stated.

D. [§82.101] Finding of Guilty

Upon due consideration and review of the evidence in this case, both oral and written, I find the defendant guilty of a violation of Section _____ of the Vehicle Code. The following sentence is imposed:
_____.

E. [§82.102] Finding of Not Guilty

Upon 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 _____ 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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