



Via U.S. Mail and Email

June 22, 2021

Hon. John M. Monterosso
Presiding Judge
Superior Court of Riverside County
4050 Main Street
Riverside, CA 92501

W. Samuel Hamrick, Jr.
Court Executive Officer
Superior Court of Riverside County
Court Executive Office
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Riverside, CA 92501
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Dear Presiding Judge Monterosso and CEO Hamrick,

We write on behalf of the Western Center on Law & Poverty and the American Civil Liberties Union of Southern California to request that Riverside County Superior Court stop imposing civil assessments under Penal Code Section 1214.1. The Court's current practice of imposing \$300 civil assessments, without individualized evaluation, violates California law, and the state and federal constitutions. It also exacerbates poverty and racial inequality by subjecting the people least able to pay their fines or appear in court, disproportionately overpoliced Black and Brown people, to inordinately harsh punishments. For this reason, we request an end to the Court's imposition of civil assessments. At a minimum, we request that the Court bring its civil assessment policies and practices into compliance with the law.

Our organizations have deep expertise in protecting the rights of low-income Californians. Collectively, we have logged thousands of hours representing people in California's court system, including traffic courts. These efforts have led to multiple systemic reforms, including successful litigation against the

DMV for unlawful license suspensions for failure to pay and appear¹ and changes to inadequate ability-to-pay procedures at superior courts around the State.²

Civil assessment fines have long been a contributor to California's outsized system of fines and fees. For most traffic offenses, the legislature has imposed a \$50 or \$100 base fine as the just penalty. To charge \$300 for missing a payment deadline or the appearance date on an infraction ticket is exponentially more than the punishment for the underlying offense.

Penal Code Section 1214.1 provides that courts “*may* impose a civil assessment of *up to* three hundred dollars (\$300)” when someone fails to pay or appear. In Riverside, court forms and policies demonstrate that the full \$300 is added to each eligible case without providing for any case-by-case evaluation of the appropriateness of the amount given the offense, individual circumstances known to the Court such as prior failure to appear, an ability to pay determination, and whether there is good cause for the failure to appear or pay.³ Court forms and policies also provide that multiple \$300 civil assessments can be imposed in a single case.⁴ In addition, the Court limits an individual's ability to vacate a civil assessment in ways that are contrary to the language of Section 1214.1. The court form for addressing civil assessments artificially restricts the good cause bases for vacating a civil assessment by providing check boxes only for three specific reasons (medical incapacitation/hospitalization, incarceration, and military orders).⁵ And the court information form instructs that relief from a civil assessment must be sought within 10 days, although the statute provides for 20.⁶

As detailed below, the Court's policy and practice is unlawful. Specifically, the Court contravenes Penal Code Section 1214.1 by failing to exercise the discretion that the statute requires. It violates people's due process and equal protection rights by imposing costs without regard for their ability to pay, and it is an excessive fine under the State and US Constitutions. The Court's interest in receiving income from these fees creates a conflict of interest.

The Court's policy and practice of imposing multiple \$300 civil assessments in individual cases also causes predictable harm to communities that the Court serves. By dramatically increasing court costs, civil assessments exponentially increase the cost of an infraction and create a debt trap for many low-income people. We have seen this happen first-hand through our work serving clients. The imposition of civil assessments on top of already expensive traffic fines can result in years of collection activities,

¹ Hernandez v. Dep't of Motor Vehicles, 49 Cal. App. 5th 928 (2020).

² Settlement Requires L.A. Superior Court to Consider Drivers' Inability to Pay Traffic Fines, ACLU–Southern California, Oct. 8, 2018 [available at: <https://www.aclusocal.org/en/press-releases/settlement-requires-la-superior-court-consider-drivers-inability-pay-traffic-fines>].

³ Riverside Superior Court Form # RI-OTS38-INFO, REQUEST TO ADDRESS CIVIL ASSESSMENT FOR FAILURE TO APPEAR OR FAILURE TO PAY- INSTRUCTION AND INFORMATION SHEET [Rev. 10/13/17] (noting that a “civil assessment of \$300 is imposed on anyone charged with a traffic, misdemeanor or felony offense who (after notice) fails to appear and/or fails to pay a court ordered fine by the due date”).

⁴ See, e.g., id. (“Can there be more than one Civil Assessment added to my case? Yes. It is possible to have a civil assessment added for each failure to appear or failure to pay.”)

⁵ Riverside Superior Court Form # RI-OTS38, REQUEST TO ADDRESS CIVIL ASSESSMENT FOR FAILURE TO APPEAR OR FAILURE TO PAY- PC §1214.1(a) [Rev. 10/13/17].

⁶ Compare Riverside Superior Court Form # RI-OTS38-INFO (“Is there a grace period? If you respond within the 10-day time frame shown on the warning notice and show good cause for not appearing on the date you were supposed to appear, the court may vacate the assessment.”) with Penal Code § 1214.1(b)(1) (“The assessment imposed pursuant to subdivision (a) shall not become effective until at least 20 calendar days after the court mails a warning notice to the defendant by first-class mail to the address shown on the notice to appear or to the defendant's last known address.” (Emphasis added.)).

income tax refund offsets, and suspended licenses. This in turn impacts many clients' employment opportunities, which then further constrains their ability to pay their debt. Other clients are forced to choose between paying their court costs or their rent. Some have to drive to care for children or elderly parents, and high fees mean greater risk of failure-to-appear suspensions. And yet others avoid the courthouse completely, even when they need crucial assistance for things like domestic violence, because they fear the consequences of being delinquent on their debts.

These consequences do not affect all populations equally. Because civil assessments punish those who face added barriers to payment or court appearance, they disproportionately target low-income people, people of color, people with unstable housing, and people with disabilities. Thus the Court's policy serves chiefly to widen inequality and punish people for factors beyond their control.

The Court's policy of automatically imposing \$300 civil assessments in all eligible cases is an abuse of discretion that contravenes Penal Code § 1214.1's statutory language and denies defendants a fair hearing as provided for by the statute.

As set forth below, the mandatory imposition of \$300 maximum civil assessments violates due process and equal protection. To the extent there is any ambiguity in the statute, the statute must be construed to avoid the serious constitutional concerns posed by blanket \$300 civil assessments. The Legislature's use of the words "may" and "up to" in Penal Code Section 1214.1 shows its intent for courts to exercise discretion before imposing a civil assessment.⁷ Rather than allowing for exercise of this discretion, the Court automatically imposes the maximum amount permitted in all eligible cases. By use of this policy and practice, the Court unlawfully presumes, in every instance, that \$300 is an appropriate amount for the offense and any individual circumstances known to the Court, that the person can pay that amount, and that no good cause exists.

When the law requires courts to exercise judicial discretion, a failure to do so effects "a denial of a fair hearing and a deprivation of fundamental procedural rights[.]"⁸ For a court to practice discretion, it must consider the particularities of the case before it.⁹ Court-wide policies that do not differentiate between cases cannot serve as a substitute for discretion.¹⁰ Rather, such policies apply "a preconceived determination applicable to all cases[.]"¹¹ By adopting a one-size fits all civil assessment policy, the Court fails to exercise the discretion required by law and thereby violates defendants' fundamental rights afforded by the statute.

⁷ See, e.g., *Tarrant Bell Property, LLC v. Superior Court*, 51 Cal. 4th 538, 542, 544 (2011) (reasoning courts "'ordinarily' construe the word 'may' as permissive and the word 'shall' as mandatory, 'particularly' when a single statute uses both terms" and holding the Legislature's use of "may" in Civ. Proc. Code § 638 means the described action—appointing a referee for the specified dispute—is discretionary as opposed to mandatory); *Lopez v. Medical Board*, 6 Cal. App. 4th 693, 696-697 (1992) (rejecting appellant's "interpretation of [Bus. & Prof. Code] section 2084[, which] would convert the permissive word 'may' into a mandatory 'shall'"); *Peters v. Superior Court*, 212 Cal. App. 3d 218, 223 (1989) ("The word 'shall' is ordinarily 'used in laws, regulations, or directives to express what is mandatory.' The word 'may,' by contrast, is usually permissive and denotes 'to have power.'" (citations omitted)).

⁸ *People v. Penoli*, 46 Cal. App. 4th 298, 306 (1996).

⁹ See *People v. Hernandez*, 51 Cal. 4th 733, 744 (2011) (holding trial court abused its discretion by relying on a standard practice of stationing a deputy at the witness stand, including during the defendant's testimony, "instead of on individualized facts showing that defendant posed a safety risk or flight risk, or a risk of otherwise disrupting the proceedings").

¹⁰ *Reifler v. Superior Ct.*, 39 Cal. App. 3d 479, 481 (1974).

¹¹ *Penoli*, 46 Cal. App. 4th at 303.

The Court’s policy of imposing civil assessments without considering ability to pay is a violation of defendants’ due process and equal protection rights under the California and U.S. Constitutions.

Taken together, the guarantees of Due Process and Equal Protection call for procedures “which allow no invidious discriminations between persons and different groups of persons.”¹² Accordingly, both the U.S. Constitution and the California Constitution prohibit effecting punishments on defendants on the basis of their poverty.¹³

By imposing civil assessments without considering ability to pay, the Court ensures that indigent defendants will sustain punishments beyond those faced by wealthier defendants. A \$300 civil assessment imposed on an indigent defendant opens the door to reduced employment opportunities, harassment by debt collectors, and financial instability.¹⁴ Meanwhile, defendants with the means to pay face none of these consequences. The policy generates “additional punishment . . . for those unable to pay”¹⁵ and thereby violates indigent defendants’ due process and equal protection rights.

The Court’s failure to determine an individual’s ability to pay violates the prohibition on excessive fines under the Eighth Amendment and the California Constitution.

Civil assessments imposed under Penal Code Section 1214.1 are subject to the excessive fines clause. The excessive fines prohibition in the Eighth Amendment and under article I, Section 17 of the California Constitution limits the imposition of civil and criminal penalties.¹⁶ “[A] monetary sanction that cannot ‘fairly be said *solely* to serve a remedial purpose’ will be subject to scrutiny as an Eighth Amendment fine if it ‘can only be explained as serving in part to punish.’”¹⁷ Here, Section 1214.1(a)’s statutory language characterizing it as a “penalty” clearly shows the legislature intended the civil assessment to be punishment.¹⁸ It is therefore subject to the excessive fines clause.

The Eighth Amendment and the California Constitution require, at a minimum, that defendants be able to demonstrate their inability to pay.¹⁹ Imposing a civil assessment without first giving “an opportunity to present evidence and argument why such monetary exactions exceed [] ability to pay” runs afoul of state and federal constitutional safeguards.²⁰ The Court does not provide for such an opportunity in its forms for addressing civil assessments.

Under the current trial court funding scheme, the Court’s financial interest in automatically imposing the full \$300 civil assessment violates defendants’ due process right to an impartial decision-maker.

Due process entitles defendants to a hearing by an impartial decision-maker.²¹ If a judicial procedure “offer[s] a possible temptation to the average man as a judge to forget the burden of proof required to convict the defendant,” or “might lead him not to hold the balance nice, clear and true between the State

¹² Griffin v. Illinois, 351 U.S. 12, 17 (1956).

¹³ In re Antazo, 3 Cal. 3d 100, 115 (1970).

¹⁴ People v. Dueñas, 30 Cal. App. 5th 1157, 1168 (2019), review denied (Mar. 27, 2019).

¹⁵ Dueñas at 1168, supra note 14. (citing People v. Neal, 29 Cal.App.5th 820, 827 (2018)).

¹⁶ People v. Cowan, 47 Cal.App.5th 32, 44 (2020) (citing Timbs v. Indiana, 139 S.Ct. 682, 686 (2019)); see also Austin v. United States 509 U.S. 602, 610 (1993).

¹⁷ People v. Cowan, 47 Cal.App.5th at 44-45.

¹⁸ See People v. Ruiz, 4 Cal. 5th 1100, 1100-18 (2018) (reasoning legislature’s use of word “penalty” was a “clear indicator[] of legislative intent”).

¹⁹ Cowan at 48, supra note 23 (citing People v. Cota, 45 Cal.App.5th 786, 799 (2020)).

²⁰ Cowan at 48, supra note 23.

²¹ Tumey v. State of Ohio, 273 U.S. 510, 535 (1927).

and the accused,” then it “denies the latter due process of law.”²² “[T]hat ‘possible temptation’ may [] exist when the [government]’s executive responsibilities for village finances may make him partisan to maintain the high level of contribution from the [government]’s court.”²³

Here, the trial court funding scheme more than satisfies the “possible temptation” test. The Presiding Judge has the power to “control, authorize, and direct expenditures” for the Court.²⁴ Along with this authority comes a responsibility to steward the Court’s finances and an interest in accruing revenue. The primary source of available revenue is the Trial Court Trust Fund (“TCTF”), which funds “trial court operations, salaries and benefits of superior court judges, court interpreter services, assigned judge services, and local assistance grants[.]”²⁵ Since 2005, the TCTF has been funded, in part, by civil assessment payments.²⁶ The Court thus has a direct interest in imposing more and larger civil assessments because increased payments expand the TCTF monies available to trial courts. Even more directly, the Court has an interest in increasing civil assessment revenue because it receives more TCTF money, relative to other trial courts, if it exceeds its civil assessment buyout.²⁷ This funding structure rewards courts for imposing more civil assessments. It is thus no surprise that some courts, including Riverside County Superior Court, have explicitly turned to civil assessments to generate revenue.²⁸

The Judicial Council Trial Court Budget Advisory Committee acknowledged the conflict-of-interest problem as recently as April 2020 when it proposed changes to the current funding system to reduce the “perceived conflict of interest” and to reduce reliance on this “[u]nstable funding” stream, which “makes it impossible to provide fair, equitable and timely justice to all litigants.”²⁹ The state Department of Finance rejected the proposal.

The Court’s civil assessment policy, borne of this conflict of interest, violates defendants’ due process right to a determination by an impartial decision-maker.

The Court’s current policy exacerbates poverty and racial inequality.

The Court’s approach to civil assessments also makes for bad policy. The current practice results in exceptionally harsh punishments imposed on already-struggling Californians for conduct that typically results from poverty. This does not advance the purpose of the Court and has severe and harmful consequences for the communities it serves.

When the Court imposes civil assessments for failure to pay, it creates debt for people who are likely already indigent.³⁰ It is irrational and cruel to penalize people for being poor, especially during a

²² *Id.* at 532.

²³ *Ward v. Vill. of Monroeville, Ohio*, 409 U.S. 57, 60 (1972).

²⁴ Cal. Govt. Code § 71601.

²⁵ *Trial Court Trust Fund*, Department of Finance Manual of State Funds (Revised Feb. 2013) [available at: https://www.dof.ca.gov/budget/Manual_State_Funds/find_a_fund/documents/0932.pdf]; see also Cal. Gov. Code § 68085 (establishing the TCTF and explaining that it serves to fund trial court operations).

²⁶ Materials for the Trial Court Budget Advisory Committee, Judicial Council [available at: <http://www.courts.ca.gov/documents/tcbac-20180405-materials.pdf>].

²⁷ *Civil Assessment Programs and Revenues*, Judicial Council p. 2 (Aug. 21, 2007) [available at: <https://www.courts.ca.gov/documents/083107item9.pdf>].

²⁸ See Meeting Notes of the Executive Committee for the Riverside County Superior Court (Feb. 5, 2010) (on-file with author) (agreeing to impose civil assessments for failure to pay on misdemeanors and felonies in order to increase revenue).

²⁹ <https://www.courts.ca.gov/documents/tcbac-20200430-materials.pdf>.

³⁰ Back on the Road Coalition, *Stopped, Fined, Arrested: Racial Bias in Policing and Traffic Courts in California* at 7 (April 2016) (providing data suggesting that FTPs occur at higher rates in lower-income zip codes).

pandemic that has had catastrophic impacts for low-income Californians.³¹ There can be no doubt that this practice principally targets poor people; though the court-wide practice “may appear to apply equally to both the rich offender and the poor one, actually the former has the opportunity to escape his [assessment] while the right of the latter to pay what he cannot, is a hollow one.”³² Imposing a financial penalty on those without the means to pay serves to advance economic inequality and fails to achieve its coercive policy goal.

Imposing civil assessments for failure to appear makes for similarly senseless policy. Our experience with low-income Californians suggests that failures to appear are more often than not the result of poverty, including inability to pay a traffic ticket and lack of access to legal assistance in resolving a citation. In working with clients, we see first-hand how often failures to appear result from inadequate public transportation systems, lack of access to vehicles, insufficient childcare, inflexible work schedules, disability, and homelessness. These are largely conditions of poverty. As such, they should not be punished at all, and especially not through the imposition of further fees.

The Court’s policy also has the effect of disproportionately punishing people from marginalized populations. Black and Latinx people face over-policing and are thus more vulnerable to citations and the civil assessments that can result.³³ Additionally, because of the racial wealth gap,³⁴ these defendants are likely to face more barriers to paying for their citations and appearing in court. This means they are likely to be extremely overrepresented in the population receiving civil assessments. Homeless defendants are also at a heightened risk of receiving civil assessments, in their case because housing instability may prevent them from receiving notifications about court dates. Likewise, other people who face unstable housing environments, like juveniles in foster-care and domestic violence survivors, have added challenges to appearing in court and are thus more susceptible to civil assessments. The barriers to payment and appearance that these communities face are largely born of social disadvantage. Civil assessments punish them for factors beyond their control and compound the disadvantages they already experience.

Because of the legal violations outlined above, the Court must cease imposing civil assessments until its policies are changed to comply with statutory and constitutional requirements.

The Court’s current policy violates the requirements of Section 1214.1, and the state and federal constitutions. Accordingly, we request that the Court cease imposing civil assessments. If the Court chooses to continue imposing them, it should, at a minimum, bring its policies and practices into compliance with the law. We are happy to meet to discuss options on how to do this in a manner responsive to the needs of court users, particularly from marginalized communities.

The Court should also reconsider its use of civil assessments altogether, given that they are a blunt tool with harmful and inequitable impacts. Penal Code Section 1214.1 expressly states that the Court “may” impose a civil assessment; there is no mandate to do so. The Court has other tools available for resolving

³¹ Times Editorial Board, [Newsom is Right: Let’s Get More Money in Poor Californians’ Pockets Now](https://www.latimes.com/opinion/story/2021-01-11/golden-state-stimulus), Los Angeles Times, Jan. 11, 2021 [available at: <https://www.latimes.com/opinion/story/2021-01-11/golden-state-stimulus>] (discussing long food-bank lines, rent paid with credit cards, and other evidence of the economic damage wrought on low-income Californians by the Covid-19 pandemic).

³² [Antazo](#) at 103–04, [supra](#) note 20.

³³ [Stopped, Fined, Arrested](#) at 21, [supra](#) note 37.

³⁴ Anne Helen Petersen, [The Mirage of the Black Middle Class](https://www.vox.com/the-goods/22245223/black-middle-class-racism-reparations), Vox, Jan. 26, 2021 [available at: <https://www.vox.com/the-goods/22245223/black-middle-class-racism-reparations>] (discussing systematic, historically-rooted barriers preventing many Black Americans from entering and remaining in the middle class).

cases in the event of non-appearance, such as trial by declaration.³⁵ It also has other methods of collecting outstanding debts.

The Court's existing Ability to Pay³⁶ process for infraction offenses is inadequate to meet this need, as it does not account for the pre-imposition hearing that should have taken place before issuing civil assessments. In addition, the Court's resolution of Ability to Pay petitions for low-income defendants – requiring community service specifically served with the Sheriff's work program – is an inadequate remedy. This practice imposes unreasonable burdens on low-income individuals who lack access to childcare, who cannot take time off from work, who live out-of-county or otherwise lack transportation to reach the Sheriff's program site, who are victims of domestic violence, and/or who have a disability but are unable to obtain required medical authorization of inability to participate in the Sheriff's community service program.

Please contact us by August 5, 2021, to confirm the Court's plans to address the issues outline above. We also welcome the opportunity to meet to discuss possible changes to court policy.

Sincerely,



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³⁵ See Cal. Veh. Code § 40903 (providing for trial by written declaration when the defendant fails to appear).

³⁶ Petition for Ability-to-Pay Determination, Riverside County Superior Court (last viewed on June 21, 2021) [available at: <https://riverside.courts.ca.gov/FormsFiling/LocalForms/ri-tr018.pdf>].