



JUDICIAL COUNCIL OF CALIFORNIA

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on November 16–17, 2017

Title	Agenda Item Type
Judicial Council–Sponsored Legislation: Uniform Hourly Rate for Community Service in Lieu of Infraction Fine	Action Required
Rules, Forms, Standards, or Statutes Affected	Effective Date
Amend Pen. Code, § 1209.5	November 17, 2017
Recommended by	Date of Report
Policy Coordination and Liaison Committee Hon. Kenneth K. So, Chair Traffic Advisory Committee Hon. Gail Dekreon, Chair	September 15, 2017
	Contact
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Executive Summary

The Policy Coordination and Liaison Committee and the Traffic Advisory Committee recommend that Penal Code section 1209.5 be amended to provide a uniform rate throughout the state for converting infraction fines into community service hours. Specifically, the committees propose a uniform hourly rate of double the California state minimum wage for community service performed in lieu of paying infraction fines. This proposal is in response to Judicial Council directives to consider recommendations to promote access to justice in infraction cases.

Recommendation

The Policy Coordination and Liaison Committee and Traffic Advisory Committee recommend that the Judicial Council sponsor legislation to amend Penal Code section 1209.5, as follows:

- Provide a uniform hourly rate for infractions of double the lowest schedule for California minimum wage.
- Permit a court by local rule to increase the uniform rate.

Previous Council Action

None.

Rationale for Recommendation

Penal Code section 1209.5 governs the imposition of community service in lieu of fines for infraction convictions. Section 1209.5 provides that a court may sentence a defendant to perform community service if payment of the total fine would pose a hardship on the defendant or his or her family. Currently, each court determines its own hourly rate for defendants who perform community service, resulting in different rates throughout the state.

The proposal

The proposed amendment is designed to provide a uniform and equitable minimum hourly rate for community service in lieu of payment of infraction fines throughout the state. By doing so, it is intended to promote access to justice.

Effective January 1, 2017, California has two schedules for minimum wage, depending on whether the employer has (1) 25 or fewer employees, or (2) more than 25 employees. (Lab. Code, § 1182.12.) This proposal would equate the applicable community service rate to double the lowest schedule for minimum wage. The lowest schedule is set to increase to \$11 per hour in 2019, the year this proposal would go into effect. (*Ibid.*) Accordingly, effective January 1, 2019, for each hour of community service performed, a defendant would be entitled to a credit of \$22 to be deducted from his or her total fine.

Comments, Alternatives Considered, and Policy Implications

Comments

This legislative proposal was circulated for public comment this spring. A total of seven commenters provided input on this proposal; four agreed with the proposal, one agreed with the proposal if modified, and two did not indicate a position. There were several notable comments.

The proposal should apply to misdemeanors as well as infractions. One commenter requested that the proposal apply to misdemeanors as well as infractions. The Traffic Advisory Committee (committee) declined to pursue this recommendation because it is outside the scope of the present proposal and the committee's purview. The committees may refer the suggestion to the appropriate advisory committee for future consideration.

Double the minimum wage should be the minimum permissible amount rather than the maximum. One commenter requested that double the minimum wage per hour should be the minimum permissible, rather than the maximum permissible. The committee agrees with the suggestion. The proposal provides that every defendant will receive at least double the minimum wage for community service credit. A court may have a local rule to increase the amount that is credited for each hour. Additionally, the committee noted a judge may continue to exercise

discretion to reduce the total amount owed, thereby also reducing a defendant's outstanding court-ordered debt burden.

The relevant amount should apply to the base fine instead of the total fine. Two commenters requested the proposal specify that the rate apply to the base fine rather than the total fine.¹ The committee considered the requested change but determined the existing proposal would allow defendants to perform fewer hours of community service without creating inequality among infraction defendants. For example, if a defendant committed a violation of speeding less than 15 miles per hour over the speed limit (Veh. Code, § 22349(a)), the base fine would be \$35 and the total bail would be approximately \$238. If the committee changed the proposal to apply only to the base fine, a defendant could complete one hour of community service to satisfy the base fine, whereas a defendant who paid the fine would owe \$238; a defendant working at a minimum wage job might have to work more than 21 hours to pay off the total bail.²

After careful consideration, the committee recommended that the community service conversion apply to the total fine, and intends for this proposed legislation to clarify going forward how community service will be calculated for infractions.

The rate should be the same as the custody credit rate for Penal Code sections 1205 and 2900.5. One commenter wondered if the Traffic Advisory Committee considered having the conversion rate for community service be the same as custody credits under Penal Code sections 1205 and 2900.5, as it might be easier for staff who are doing the conversion calculations to have both rates be the same. The current daily credit rate for time served is \$125.

The committee considered the suggestion and agreed that it might be easier for staff to have both rates be the same, but declined to adopt it because having two different rates will not be an excessive burden on staff and, overall, the proposal is more equitable as currently drafted.

The rate should be minimum wage and not double the minimum wage. One commenter requested the rate be tied to minimum wage but not doubled, as doubling the minimum wage will put it out of line with the monetary credit defendants receive for each day in custody. As with the previous comment, this commenter is concerned the proposal is out of line with the amount defendants are credited for each day in custody, which is \$125.

¹ In support of their position, one commenter pointed to Assembly Bill 2839, which added the following language to both Penal Code sections 1205 (governing payment of fines and imprisonment for failure to pay fines) and 2900.5 (governing custody credit for imprisonment for misdemeanors and felonies): “If an amount of the base fine is not satisfied by jail credits, *or by community service*, the penalties and assessments imposed on the base fine shall be reduced by the percentage of the base fine that was satisfied.” (Assem. Bill 2839 (Stats. 2016, ch. 769), italics added.) AB 2839 did not amend Penal Code section 1209.5, and the committees do not take a position on the application of AB 2839 to existing section 1209.5.

² This example is for illustrative purposes only. Actual calculations and fine amounts might vary.

The Traffic Advisory Committee initially considered recommending the minimum wage in developing this proposal, but instead elected to propose double the lowest schedule for the state minimum wage to provide defendants with a greater benefit. Also a defendant in jail remains in custody 24 hours a day, whereas a day of labor is based on only eight hours of work. The committee reconsidered its position in light of this comment, but declined to change the proposal.

Double the minimum wage should apply for conversion of total bail amounts over \$2,000. The proposal as circulated read, “For a total fine of more than two thousand dollars (\$2,000), the rate of conversion shall be determined by dividing the total fine by the number of hours of community service ordered by the court to be performed in lieu of the total fine.” One commenter requested the calculation be double the minimum wage instead of the original calculation for fines over \$2,000.

The committee agreed with the suggestion because a \$2,000 cutoff is arbitrary. The committee revised the proposal to eliminate the \$2,000 cutoff. It also noted that the proposal allows a court to increase the amount that is credited for each hour by local rule, and that judges may continue to exercise discretion to reduce the total amount of fines owed for individual defendants.

A uniform community service rate should be graduated to reflect the time spent on the job. One commenter noted that it takes great effort for nonprofits to incorporate the contribution of labor for defendants seeking community service credit for fines, and nonprofits hope to turn the defendant into a future volunteer. The commenter noted that if a defendant receives double the minimum wage credit against fines, the defendant will be less likely to later volunteer without compensation. The commenter also noted that other volunteers who work for the nonprofit will resent working alongside a defendant who receives credit of double the minimum wage. The commenter believes that a uniform rate is good, but suggested a graduated rate. For example, the first specified number of hours would be credited at minimum wage, plus a dollar more an hour for each specified number of additional hours; or, let the nonprofit determine the rate.

The committee noted that the commenter raised interesting concerns about a defendant’s dedication to a nonprofit. However, a defendant’s ongoing commitment to a nonprofit community service provider is a positive by-product, not the primary goal, of the proposal. Moreover, implementing a graduated rate or, alternatively, having the nonprofit determine the rate, is too impractical. The committee declined to pursue the suggestion.

Alternatives considered

The Traffic Advisory Committee considered various formulas before approving the one in this proposal. It considered recommending a specific dollar amount for each hour or each day of community service, but determined that tying the amount to the state minimum wage would help ensure that the rate remained consistent with inflation. The committee also considered proposing only the state minimum wage for the rate of conversion, but determined that double the minimum wage would benefit more defendants for whom payment of the fine, either in cash or

by service, poses a hardship. The committee considered proposing the higher of the two state minimum wages—the minimum wage for employers with more than 25 employees—but determined that the lower of the two was appropriate given that the rate is to be doubled. Based on comments received, the committee considered whether the rate should apply to the base fine only or the total fine, whether the day rate should be the same for community service as it is for custody credits, and whether the rate should be tied only to the minimum wage. After considering all of the alternatives, the committee determined the rate in the proposal is the most equitable.

Policy implications

There is some concern the proposal could increase the number of defendants who request community service, which would increase the workload for courts in administering community service requests and completion.

Relevant Strategic Plan Goals and Operational Plan Objectives

The proposed amendments support the policies underlying Goal IV, Quality of Justice and Service to the Public, of the judicial branch's strategic plan.

Attachments and Links

1. Penal Code section 1209.5, at page 6
2. Chart of comments, at pages 7–13

Penal Code section 1209.5 would be amended, effective January 1, 2019, as follows:

1 **§ 1209.5**

2
3 Notwithstanding any other provision of law, any person convicted of an infraction may,
4 upon a showing that payment of the total fine would pose a hardship on the defendant or his
5 or her family, ~~be sentenced to perform community service in lieu of the total fine that would~~
6 ~~otherwise be imposed. The defendant shall perform community service at the hourly rate~~
7 ~~applicable to community service work performed by criminal defendants.~~ For purposes of
8 this section, the term “total fine” means the bail or base fine and all assessments, penalties,
9 and additional moneys to be paid by the defendant. For purposes of this section, the hourly
10 rate applicable to community service work by criminal defendants shall be double the
11 lowest schedule for California minimum wage. A court may have a local rule to increase the
12 amount that is credited for each hour of community service.

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Proposed Legislation (Traffic): Uniform Hourly Rate for Community Service in Lieu of Infraction Fine

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
1.	Amy Dreskin Anderson	A	I am in favor of the doubled minimum wage uniformly applied in payment alternatives work programs for tickets, so long as this option is available for misdemeanors.	Proposed response: The committee appreciates Ms. Anderson’s input. The committee declines to pursue this recommendation because it is outside the scope of the present proposal and the committee’s purview. The committee may refer the suggestion to the appropriate advisory committee for future consideration.
2.	California Public Defenders Association By: Charles Denton President	N/I	The California Public Defenders Association (CPDA), a statewide organization of public defenders, private defense counsel, and investigators tentatively supports the Committee's proposal to allow the conversion of infractions to community service at a rate of double the minimum wage at the request of the defendant, but urges the Committee to make changes designed to avoid overburdening the already poor. Specifically, we would suggest that, as with criminal fines, the amount per hour set in Penal Code section 1209.5 be “the minimum” permissible amount, rather than a maximum, that the relevant amount be the base fine, rather than the fine plus “penalties and assessments,” and that double the minimum wage also be the <u>minimum</u> permissible conversion credit for fines over two thousand dollars. We make these suggestions because we believe that the vast majority of those who will ask for conversion of their infraction fines to	Proposed response: The committee appreciates the California Public Defender’s Association’s input. The committee agrees with the suggestion that the amount per hour be the minimum permissible amount. The proposal as currently drafted provides that every defendant will receive at least double the minimum wage for community service credit. A court may have a local rule to increase the amount that is credited for each hour. Additionally, the committee noted a judge may exercise discretion to reduce the total amount owed, thereby also reducing a defendant’s burden. The committee considered the requested change from “total fine” to “base fine” but determined the existing proposal would allow defendants to

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			<p>community service are the poor. Given that most impoverished defendants already live hand to mouth, we believe that imposing overly large amounts of community service hours in lieu of infraction fines will cause harm to them and to their families. For example, under the current proposal, a \$2000 fine would take an able-bodied adult more than ninety hours (two weeks of work) to complete. Given that only last year the Legislature expressed its preference that courts use the “base” fine when converting a fine to community service, we believe that the use of the base fine and not the fine plus penalties and assessments is also appropriate in the infraction context. (See AB 2839 (2016).)</p> <p>Thus, we would suggest the following amendment to section 1209.5:</p> <p>§ 1209.5</p> <p>Notwithstanding any other provision of law, any person convicted of an infraction may, upon a showing that payment of the fine would pose a hardship on the defendant or his or her family, perform community service in lieu of the fine that would otherwise be imposed. For purposes of this section, the term “fine” means the bail or base fine to be paid by the defendant. For purposes of this section, the minimum hourly rate applicable to community service work by</p>	<p>perform fewer hours of community service without creating inequality among infraction defendants. After careful consideration, the committee recommends that the community service conversion apply to the total fine, and intends for this proposed legislation to clarify going forward how community service will be calculated for infractions. The committee declines to pursue this suggestion.</p> <p>The committee agrees with the suggestion because a \$2,000 cut off was arbitrary. It revised the proposal to eliminate the \$2,000 cut off. The committee also noted that the proposal allows a court to increase the amount that is credited for each hour by local rule and that judges may exercise discretion to reduce the total amount of fines owed for individual defendants.</p>

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			<p>criminal defendants for total fines of up to two thousand dollars (\$2,000) shall be double the lowest schedule for California minimum wage. For a total fine of more than two thousand dollars (\$2,000), the rate of conversion shall be determined by dividing the total fine by the number of hours of community service ordered by the court to be performed in lieu of the total fine, but shall in no event be lower than double the lowest schedule for California minimum wage. A court may have a local rule to increase the amount that is credited for each hour of community service.</p>	
3.	<p>Albert De La Isla Principal Administrative Analyst Superior Court of California, Orange County</p>	N/I	<p>If uniform rate for infractions is imposed, a new conversion chart for community service in lieu of fines on infractions will need to be created.</p> <p><input type="checkbox"/> Does the proposal appropriately address the stated purpose?</p> <p>Response: Yes</p> <p><input type="checkbox"/> Would the proposal provide cost savings? If so, please quantify.</p> <p>Response: Would be a significant savings for the defendant, but would increase costs for the courts as more defendants would want community service.</p> <p><input type="checkbox"/> What would the implementation requirements be for courts? For example, training staff (please identify position and expected hours of training), revising processes and procedures</p>	<p>Proposed Response: The committee appreciates Mr. De La Isla’s input.</p>

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			<p>(please describe), changing docket codes in case management systems, or modifying case management systems.</p> <p>Response: Courts would need to update their community service conversion rates and educate courtroom clerks, judges and other staff authorized to grant community service in lieu of a fine.</p> <p><input type="checkbox"/> Would the development of forms to assess hardship and to show the calculation of the hourly rate for each case be helpful? If so, why?</p> <p>Response: Yes.</p> <p><input type="checkbox"/> How well would this proposal work in courts of different sizes?</p> <p>Response: Unknown.</p> <p><input type="checkbox"/> Would recent changes to Penal Code sections 1205 and 2900.5 affect how courts implement this proposal? If so, how?</p> <p>Response: It is suggested that the community service credit be applied to the base fine ordered and any related penalties be reduced as well. Taking it off the total amount due would cause challenges for calculations.</p>	<p>The committee may develop forms in the future.</p> <p>The committee considered the requested change but determined the existing proposal would allow defendants to perform fewer hours of community service without creating inequality among infraction defendants and would not be an excessive burden on staff. After careful consideration, the committee recommends that the community service conversion apply to the total fine, and intends for this proposed legislation to</p>

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			<p><input type="checkbox"/> Please comment on how the proposal may impact the implementation of community service in your jurisdiction.</p> <p>Response: At double the minimum wage, the public would request community service at a higher rate. This could impact the amount of hearings, warrants for non-completion etc. . . Therefore, it is suggested that the rate be tied to the minimum wage, but not doubled. Doing so will put it way out of line with the amount defendants get for each day in custody.</p>	<p>clarify going forward how community service will be calculated for infractions. The committee declines to pursue this suggestion.</p> <p>The committee initially considered recommending just the minimum wage in developing this proposal, but instead elected to propose double the lowest schedule for the state minimum wage to provide defendants with a greater benefit. Based on this comment, the committee reconsidered its position, but declines to change the proposal.</p>
4.	Orange County State Bar Association By: Michael L Baroni President	A	<p>Fines imposed under a conviction for an infraction may be converted into hours of community service by the court where hardship is shown pursuant to Penal Code §1209.5. Currently, there is no uniform hourly rate for community service and each court sets its own rate.</p> <p>In order to promote fairness and</p>	<p>Proposed Response: The committee appreciates the Orange County State Bar Association’s input.</p>

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			<p>uniformity, it is proposed that section 1209.5 be amended to set an hourly rate for community service at double the lowest schedule for the California minimum wage for total fines up to \$2,000. By setting the rate to the minimum wage, inflation will be taken into account. For a total fine of more than \$2,000, the rate of conversion is to be determined by dividing the total fine by the number of hours of community service. Local courts may also raise the minimum hourly rate.</p> <p>The proposal addresses the stated purpose.</p>	
5.	Susan Spalding Former Community Service Worker	AM	<p>It takes a great deal of effort on the part of the non-profit agency to incorporate the contribution of labor for people seeking credit against court-ordered fines. Generally, the non profit hopes to turn a debtor into a future volunteer. The debtor who receives double the minimum wage for community service is less likely to be willing to later volunteer their time without any compensation Plus, the volunteers who work for the non profit will resent working alongside a less dedicated person who is compensated at double the minimum wage in credit off a fine they owe. A uniform rate is good but should be graduated to reflect time on the job. First x hours of community service for the same non profit should be credited at minimum wage and a dollar more an hour for each additional x hours. Or let the nonprofit determine the rate of compensation between</p>	<p>Proposed Response: The committee appreciates Ms. Spalding’s input. The committee notes that the commenter raises valid concerns about a defendant’s dedication to a non-profit. However, implementing a graduated rate or having the non-profit determine the rate is too impractical. The committee declines to pursue the suggestion.</p>

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			minimum and double minimum wage.	
6.	Superior Court of California, County of Los Angeles	A	It has been years since the conversion of a fine to community labor has been updated. This is a reasonable proposal and should have no operational impact on the court, other than to update fine conversion charts.	Proposed Response: The committee appreciates the Superior Court of Los Angeles County’s input.
7.	Superior Court of California, County of San Diego By: Mike Roddy Executive Officer	A	Has the Judicial Council Committee writing this proposal considered that this new proposed rate would be significantly higher than the rate established for custody credits under PC 1205 and 2900.5? It may be easier for staff who are doing conversion calculations to have both rates be the same.	Proposed Response: The committee appreciates the Superior Court of San Diego County’s input. The committee considered this suggestion. Although the committee agrees that it would be slightly easier for staff to have both rates be the same, it declines to pursue the suggestion because having two different rates would not be an excessive burden on staff, and because overall the proposal is more equitable as currently drafted.