

COMMITTEE ON JUDICIARY

PROPOSED STANDARDS OF
NATIONAL CONFERENCE ON CRIMINAL JUSTICE
(Working Papers, January 1973)

STANDARD 8.2
ADMINISTRATIVE DISPOSITION OF CERTAIN MATTERS NOW TREATED
AS CRIMINAL OFFENSES

All traffic violation cases, except certain serious offenses such as driving while intoxicated, reckless driving, driving while a license is suspended or revoked, homicide by motor vehicle, and eluding police officers in a motor vehicle, should be made infractions subject to administrative disposition or trial by a judicial officer other than a judge. Penalties for such infractions should be limited to fines and suspension or revocation of driver's license.

Still higher on the scale are the States of Idaho, Illinois, and Oklahoma, in which the function of adjudicating misdemeanors is performed by the statewide trial court of general jurisdiction. In 1973, Iowa will join this category. All judges of the trial courts are full time and have law degrees, with the exception of some holdovers from the previous systems who are beneficiaries of a grandfather clause. These courts are subject to centralized State administration and State financing.

No State yet has achieved a true one-level trial court; however, Illinois and Oklahoma, the first States to abolish two levels of trial courts, created a separate department of the trial court for the trial of misdemeanors.

Procedures for disposition of such cases should include the following:

1. Violators should be permitted to enter pleas by mail, except where the violator is a repeat violator or where the infraction allegedly has resulted in a traffic accident.
2. No jury trial should be available.
3. A hearing, if desired by the alleged infractor, should be held before a lawtrained referee or a judicial officer. The alleged infractor should be entitled to be present, to be represented by counsel, and to present evidence and arguments in his own behalf. The government should be required to prove the commission of the infraction by clear and convincing evidence. Rules of evidence should not be applied strictly.

Where traffic matters are handled by an administrative agency, appeal should be permitted to an appellate division of the agency. The determination of the administrative agency should be subject to judicial review only for abuse of discretion. Where traffic matters are disposed of by a judicial officer other than the judge, review by the judge of the trial court of general jurisdiction should be available for abuse of discretion.

Consideration should be given, in light of experience with traffic matters, to similar treatment of certain nontraffic matters such as public drunkenness.

COMMENTARY

Much of the work of adult lower courts involves simple fact situations related to intoxication charges and traffic charges such as speeding or failure to heed a stop sign. In fiscal year 1969, for example, 78 percent of all criminal offenses filed in California's adult misdemeanor court were traffic cases. The 1970 Uniform Crime Report indicated that approximately 25 percent of all arrests that year were for drunkenness.

Minor criminal and traffic offenses pose two problems for the lower courts and their judges. First, the large number of these cases and the overwhelming part of the docket they consume prevent courts from devoting sufficient time and energy to the balance of their criminal calendars. Second, these types of cases are simple in facts and law and soon become routine. Judges who hear routine presentations many times a day find it difficult to give cases or defendants individualized attention or concern. These monotonous cases dull the creative energies of the sitting judges, and are a major factor in discouraging talented, able lawyers from seeking criminal court judgeships. These factors help create opposition to a unified trial court system. Sitting judges often oppose unification of the trial courts because they do not want to handle these cases. The cases tie up court resources that could be used to process more serious cases.

To meet this situation, the standard proposes that traffic matters be recognized as not essentially criminal and that they be handled accordingly. The exceptions are traffic matters of

sufficient seriousness to require more stringent penalties; they would not be appropriate for administrative disposition.

New York State, the leader in this area, takes a more limited approach by authorizing administrative dispositions only in cities of over 1,000,000 population. (N.Y. Veh. Traf. Law § 155 (McKinney Supp. 1966).)

If the only purpose of the standard were to identify and deal with those situations in which traffic cases pose the greatest problems, it might be appropriate to limit the proposed program to metropolitan centers. But even where traffic cases do not overburden judges of the general jurisdiction trial court, it is clear that combining traffic cases and criminal jurisdiction in one tribunal endangers the quality of the administration of the criminal jurisdiction. Therefore, the standard proposes the administrative solution or the trial of such cases by a judicial officer other than the judge for all communities, whether or not the judges of the general trial court are able to handle the traffic caseload.

The commission strongly feels that traffic cases should not be handled by the judges of the unified trial court of general jurisdiction. However, it did not have sufficient information, based on experience, to choose between the handling of such cases by a judicial officer who, under Standard 8.1, may preside at initial appearances or preliminary hearings, and the creation of a separate administrative agency to handle such matters.

By dispensing with jury trial, the standard eliminates one of the major causes of delay and confusion in traffic cases. Where the penalties are as limited as this standard proposes, a traffic case does not justify the use of a jury in criminal litigation. Since juries cannot be provided for more than a few traffic violators, uneven distribution of jury trials is inevitable. Under existing constitutional law, the elimination of the jury seems permissible, (Baldwin v. New York, 399 U.S. 66 (1970).)

The standard also provides for entry of pleas by mail, which would eliminate costly and confusing personal appearances that serve little purpose. Although there is some sentiment--as yet unsubstantiated--that permitting plea by mail reduces the impact of the penalty on the violator, the primary impact should be financial, and the disruption inevitably caused by personal entry of plea outweighs any deterrent benefits personal appearances may have.

The burden of proof upon the government clearly is less than the burden in a criminal case; the burden of proof beyond a reasonable doubt is replaced by a requirement only of clear and convincing evidence. Yet the difference between these proceedings and a civil suit is recognized by the requirement of more proof than the preponderance (sic) of the evidence a civil litigant must meet. Rules of evidence also are relaxes (sic). Although it seems clear that the intricacies of the hearsay rule should not be applied, certain rules of privilege still may deserve enforcement. Rather than attempt an item-by-item consideration

of these matters, the standard simply states the general approach to be taken.

Where traffic cases are handled administratively, the administrative officer should have legal training, although it is not essential that he be an experienced member of the bar of the jurisdiction. Thus, legally trained is used in the standard to describe the essential qualification rather than a requirement that he be an attorney. Although limited access to the courts is provided, the need for judicial involvement should be minimized by a provision for internal review within the agency. In a large agency, it is anticipated that a separate unit performing only review functions would be established. In smaller agencies, the appellate board might consists (sic) of various members of the agency meeting together periodically for review purposes.

The final paragraph of Standard 8.2 suggests that there may be other areas in which the same approach could be used; public intoxication seems a likely candidate. The standard takes the position that experience with administrative and similar dispositions is so limited that the concept as it applies to the traffic area should be evaluated before it is applied to other criminal prosecution situations.