

Committee on Judiciary
Reference Paper
(April 1974)

Gene Hallman
Donald L. Paillette

SUBJECT: SURVEY OF TRAFFIC OFFENSE CLASSIFICATION AND ADJUDICATION
SYSTEMS OF STATES WITH DECRIMINALIZED CODES OR SUMMARY
COURT PROCEDURES.

I. INTRODUCTION

At the present time only the State of New York employs an "administrative adjudication" system for handling most moving traffic offenses. Since the middle of 1970 the New York Department of Motor Vehicles has had the responsibility for adjudicating "traffic infractions" with that responsibility extended to the cities of Rochester and Buffalo since early in 1973. (See Reference Paper, "The New York Administrative Adjudication System" (November 1973).)

Six other states have traffic offense classification or procedural innovations that are departures from the traditional criminal approach used by most states. These six states, California, Minnesota, Wisconsin, Pennsylvania, Ohio and Vermont, have not eliminated the court and judge from the traffic case picture as has New York, but, nevertheless, have vehicle systems that are worthy of examination in connection with the vehicle code revision project. This memorandum is for that purpose.

II. CLASSIFICATION OF TRAFFIC OFFENSES

California

California has adopted a system, effective January 1, 1974, whereby all violations of the vehicle code, unless otherwise specified, are "infractions". (Vehicle Code §40000.1). An infraction is not a crime. (Penal Code §16). It is not punishable by imprisonment and the defendant is not entitled to a jury trial or a court appointed attorney. (Penal Code §19c). Penalties for infractions are set out in §42001 of

the vehicle code; not more than \$50 for first offense, \$100 for second offense within one year, and \$250 for third offense within one year.

While the vehicle code has a general scheme of classification of violations as infractions there are numerous exceptions. Sections 40000.5 to 40000.28 set out specific violations which are considered to be misdemeanors. These include the Oregon "major traffic offenses", i.e., DUIL and DWS, as well as crimes involving false statements to police officers, various dealer violations, failure to obey officers, speed contests, transportation of dangerous cargo, major overload violations and others. Three or more violations, which otherwise would be infractions, within 12 months are misdemeanors, if the prior convictions are admitted by the defendant or alleged in the accusatory pleading. (Vehicle Code §40000.28). If a person convicted of an infraction fails to pay his fine, he may be held in contempt. (Vehicle Code §42003).

Minnesota

In 1971 Minnesota adopted a system of classification similar to California's whereby all violations of the vehicle code, unless otherwise specified, are "petty misdemeanors". (M.S.A. §169.89(1)). Although not specifically stated, it appears that a petty misdemeanor is a crime. However, a defendant charged with a petty misdemeanor is not entitled to a jury trial and does not have the right to a court appointed counsel. (M.S.A. §169.89(2), §611.07). There is no jail sentence authorized for a petty misdemeanor. A defendant may be fined not more than \$100. (M.S.A. §169.89(2)).

Minnesota has substantially fewer exceptions to the petty misdemeanor classification than does California to its infraction

classifications. Generally, the counterpart of Oregon's major traffic offenses are treated as misdemeanors rather than petty misdemeanors. A third conviction within a 12 month period is a misdemeanor.

(M.S.A. §169.89(1)(b)). Finally, a violation, which would otherwise be a petty misdemeanor, if "committed in a manner or under circumstances so as to endanger or be likely to endanger any person or property" is a misdemeanor. (M.S.A. §169.89(1)(a)). One charged with a misdemeanor is entitled to a jury. (M.S.A. §169.89(1)).

Pennsylvania

Pennsylvania's system of classification of vehicle code violations differs substantially from that of either California or Minnesota. With the exception of DUIL, driving without lights to avoid arrest and speed contests, all violations of the vehicle code are "summary offenses". (Vehicle Code §§1037, 1038 and 1041). Provisions for both a fine and a jail sentence are provided for all offenses. The most common penalty is a \$10 fine and/or 5 days imprisonment.

There is no right to a jury for a summary offense. (Pa. Rules of Crim. Pro., Rule 142). There is a right to assigned counsel only in those cases where "there is a likelihood that imprisonment will be imposed." (Rule 318(b)).

Ohio

Generally, traffic violations are treated as "minor misdemeanors". (ORC 4511.99(C&D)). The penalty for a minor misdemeanor is a fine of up to \$100. No jail term is provided. (ORC 2929.21(D)). A second violation within one year, certain speeding violations and speeding in a school zone are treated as fourth degree misdemeanors. (ORC 4511.99(C&D)). The penalty for a fourth degree misdemeanor is up

to 30 days in jail or \$250 fine or both. (ORC 2929.21(B)(4)&(C)(4)). A third violation within one year is treated as a third degree misdemeanor. (ORC 4511.99(D)). The penalty is up to 60 days and \$500. (ORC 2929.21(B)(3)&(C)(3)).

DUIL and driving under influence of drugs (ORC 4511.19), drag racing (4511.251) and violation of time limits for commercial drivers (4511.80) are considered first degree misdemeanors. (ORC 4511.99(A&E)). The maximum penalty is six months in jail or \$1000 fine or both. (ORC 2929.21(B)(1)&(C)(1)). A three day jail sentence is mandatory for DUIL and driving under influence of drugs. (ORC 4511.99(A)).

Driving while suspended is not classified but carries a fine of up to \$500 and imprisonment of not less than two days or more than six months. (ORC 4507.99).

Vermont

A "traffic offense" is a violation of the motor vehicle code where no penalty is provided or where the penalty is less than \$100. (Vt. Stat. Ann. §2201). Most statutes provide for specific fines of less than \$100. For example, the penalty for speed violations is up to \$50 for the first offense and \$100 for subsequent offenses (the statute merely states "subsequent offenses" and not offenses within one year as in most other statutes). (§1144).

Major violations such as DUIL (§1183), failure to leave name and address (§1005) and negligent operation (§1182) provide for both fines and imprisonment.

Wisconsin

A "traffic regulation" is a provision of the vehicle code for which the penalty for violation is a forfeiture. (Wisc. Stat. Ann. 345.20 (1973)). With a very few exceptions, Wisconsin has amended

its vehicle code to provide for forfeitures rather than criminal fines for vehicle code violations. The criminal definitions for felony and misdemeanor specifically exclude motor vehicle offenses. (§939.62)

For a first offense, a jail sentence is authorized for driving while suspended (§343.44), reckless driving, DUIL (§346.65), herding animals with snowmobiles or permitting operation or operating a snowmobile while under the influence (§350.11). For a second offense within one year, a jail sentence is authorized for speeding (§346.60) and failure to leave name and address (§346.74).

III. PROCEDURE FOR ADJUDICATION OF TRAFFIC OFFENSES

California

With regard to adjudication procedures, California appears to follow a traditional approach for getting the case into court. With the exception of an arrest for misdemeanor drunk driving or driving under the influence of narcotics (Veh Code §§23102 and 23105) the officer has the option of citing the person and releasing him. (Veh Code §40302). A person cited is given a time to appear and generally the option to forfeit bail. (Veh Code §§40500, 40511).

As noted before, the defendant has no right to a jury or court appointed counsel when he is charged with an infraction. The California Penal Code, §1042.5, makes special provisions when a defendant is charged with both an infraction and a crime. Both charges may be tried to the jury, or the court may make the decision on the infraction or the infraction may be separated from the crime and tried in a separate proceeding.

California provides for the appointment of traffic referees for municipal courts having more than three judges. If a court has more

than three judges, it may appoint one referee. If it has more than 20 judges, it may appoint two. (Calif. Gov. Code §72400 et seq). A traffic referee must be a member of the bar or have five years experience within the last eight years as a justice of the peace. (Gov. Code §72400).

For any misdemeanor or infraction violation of the vehicle code a referee may fix bail, grant continuances, arraign the defendant, hear and recommend orders on motions and demurrers, take pleas and set cases for trial. (Gov. Code §72401(a) and (b)). With four misdemeanor statutes regarding vehicle inspections the referee may also impose a fine on a guilty plea and order the defendant to attend traffic school. (Gov. Code §72401(b)). He may not sentence the defendant to jail although a jail sentence is provided in those statutes. For infractions the referee may impose a fine after a guilty plea and order the defendant to attend traffic school. A traffic referee may suspend payment of the fine but in no case may he impose express conditions of probation. (Gov. Code §72401).

If the defendant pleads not guilty he apparently goes through a trial before a municipal judge with the same procedures (with the exception of no jury or court appointed counsel for infractions) as any other criminal trial.

Minnesota

Minnesota follows a traditional approach with regard to adjudication of traffic violations. When a person is charged with most traffic violations, either misdemeanors or petty misdemeanors, he is cited unless there is a reasonable ground for believing he will not appear or he has refused to sign the citation. In a few serious

cases (negligent homicide, DUIL, hit and run or an offense causing a personal injury accident) he must be brought before the magistrate. (M.S.A. §169.91). The defendant may plead guilty by mail and forfeit bail. (M.S.A. §169.99).

Courts having jurisdiction over misdemeanors have jurisdiction over petty misdemeanors. (M.S.A. §169.891). As previously noted, a defendant charged with a petty misdemeanor has no right to a jury trial or appointed counsel. In all other respects the trial of a petty misdemeanor appears to follow misdemeanor trial procedures.

Pennsylvania

The trial of summary offenses in Pennsylvania is considerably less formal than the trial of other criminal actions. As in California and Minnesota the procedure is begun with a citation. (Pa. Rules of Criminal Pro., Rule 131). The defendant is allowed to plead guilty by mail. (Rule 137).

If there has been no plea as of the time of trial the defendant shall be arraigned and plead immediately prior to trial. (Rule 142). If the defendant pleads not guilty the trial is conducted as are trials where the jury has been waived. (Rule 142).

At trial the defendant has a right to retained counsel, (Rule 141(b)), and, if there is a likelihood of imprisonment, a right to court appointed counsel (Rule 318(b)). The state is represented by a prosecutor. (Rule 141(a)). If the defendant fails to appear at the time of trial he is considered to have consented to trial in his absence. The court then hears the evidence and makes its determination of guilt. If the defendant is found guilty, his security is forfeited. (Rules 135 and 136).

Ohio

Rule 44(c) of the Ohio Rules of Criminal Procedure provides that the court may assign counsel in petty cases. No sentence of confinement may be imposed unless counsel is assigned or waived.

Under Ohio Traffic Rule (Supreme Court Rules for traffic cases in inferior courts) a traffic case is initiated with the filing of a Uniform Traffic Ticket. Arraignment is then conducted in open court. (Rule 10, 19).

Ohio Traffic Rule .18 provides that a court may create a traffic violation bureau and appoint a traffic referee. Except in certain specified serious offenses the referee may accept a waiver of trial and a plea of guilty and assess a fine in accordance with a fine schedule provided by the court. (Rule .18(b) & (d)(2)).

If the volume of cases of a court exceeds 75 persons per day, the court may assign a referee who has the qualifications of a judge to take pleas, hear statements in explanation or mitigation and recommend fines in traffic cases. This may be done only with the consent of the defendant. (Rule .18(f)). In addition, if the burden on the traffic court is great the court may allow a referee to take evidence and make written reports and recommendations to the judge in contested cases. (Rule .18(f)). This also is only with the consent of the defendant.

Vermont

Prosecution for traffic offenses are commenced with the filing of a Uniform Traffic Complaint. (§2203). A schedule of fines is established (apparently statewide) by three district judges appointed by the court administrator. (§2205(b)). The defendant may, with consent of the prosecutor, waive personal appearance and trial and plead guilty or nolo contendere and pay the fine in the schedule.

§2205(b)). The defendant shall not be fined more than \$100 and may be subjected to a 30 day suspension by the commissioner. (§2205(c)).

Vermont provides that the Supreme Court may make additional rules of procedure for traffic offenses (§2207), although none appear to have been made. The Vermont Rules of Criminal Procedure are applicable in traffic cases. (V.R.Cr.P. 54).

Wisconsin

When a defendant is charged with violation of a traffic regulation he is subjected to a forfeiture proceeding. The procedure is set out generally in the vehicle code. (§345.20 et seq) If the procedure is not covered in the vehicle code the court is to follow the procedure as set out in Chapter 299, Procedure in County Court in Small Claims Type Actions.

When the defendant is arrested for violation of a traffic regulation the officer may release him. The officer shall release the defendant when the defendant (1) makes a deposit, (2) makes a stipulation of no contest and deposit, or (3) deposits his license with the officer. The officer then issues a temporary license good until the appearance date. (§345.23). For a DUIL arrest the officer must hold the defendant for four hours unless (1) the test shows less than .05% alcohol, or (2) the defendant is released to parent, spouse, attorney, or other responsible adult. (§345.24).

A deposit is accomplished by the defendant, as directed by the officer, placing the scheduled amount in an envelope and mailing it at a mail box near a place authorized to accept deposits or by taking the amount in person to a place authorized to accept deposits. If the

If defendant does not appear, he is deemed to have pleaded no contest and submitted to a forfeiture. (§345.26).

A stipulation of no contest may accompany a deposit as above. The defendant may also mail the stipulation within five days to a place designated by the officer. If the defendant does make a stipulation, the officer must inform him of certain suspension or revocation consequences as provided in §343.27. The court may relieve any person from a stipulation or subsequent judgment. (§345.27).

At arraignment the defendant is informed of his right to a continuance and to a jury trial. He may plead guilty, not guilty or no contest. If he pleads guilty, he may be immediately sentenced. If he pleads not guilty, he may be tried immediately with his consent and the consent of the plaintiff (state). (§345.34).

If the defendant fails to appear and has not made a deposit a warrant may issue. If he has made deposit the court may (1) consider that the defendant has pleaded no contest, accept the plea and forfeit or (2) reject the plea of no contest and issue a summons. If the defendant fails to appear for the summons a warrant may issue. If the defendant has deposited his license the court shall order his license suspended for 30 days or until the completion of the case, whichever is longer. The defendant may move to vacate the suspension within 10 days. (§345.37).

A plea of no contest is not admissible as an admission against interest in any proceeding arising out of the same occurrence. (§345.38).

The defendant is entitled to a jury trial upon payment of jury fees. (§§345.425, 345.43).

If the defendant is found guilty he shall be ordered to pay an amount up to the maximum amount of forfeiture. He may be imprisoned for failure to pay. The defendant may be allowed work release and apply his earnings to the forfeiture. When the forfeiture is paid the defendant must immediately be released. (§§345.47, 345.49).