

**SAN DIEGO POLICE DEPARTMENT
PROCEDURE**

DATE: JUNE 13, 2017
NUMBER: 7.10 - TRAFFIC
SUBJECT: TRIAL BY WRITTEN DECLARATION
RELATED POLICY: N/A
ORIGINATING DIVISION: TRAFFIC
NEW PROCEDURE:
PROCEDURAL CHANGE:
SUPERSEDES: DP 7.10 –105/02/2014

I. PURPOSE

This Department procedure establishes guidelines for Trial by Written Declaration cases involving traffic infractions.

II. SCOPE

This procedure applies to all members of the Department.

III. BACKGROUND

California Vehicle Code section 40902 authorizes defendants to elect a trial by written declaration for cases involving infraction violations of the Vehicle Code or of local ordinances adopted under the Vehicle Code. The California Rules of Court (CRC Rule 4.210) establish the minimum procedural requirements for trials by written declaration.

The San Diego Superior Court has implemented procedures for Trials by Written Declaration at both the South County Branch and the Kearny Mesa Branch. The San Diego County Superior Court Rules, Rule 3.1.5, "Trial by Declaration," says "A defendant may elect to have a trial by written declaration as provided under Vehicle Code section 40902 on an alleged infraction, unless the offense involves alcohol or drugs pursuant to Article 2 (commencing with section 23152) of Chapter 12 of Division 11 of the Vehicle Code."

IV. PROCEDURES

A. Defendant

1. If a defendant is cited for a qualifying violation, the court notifies the defendant that he or she may elect to have a trial by written declaration.
2. If a defendant elects to have a trial by written declaration, the court sends the defendant a Request for Trial by Written Declaration form (TR-205) which the defendant completes and returns to the court.
3. After the court receives the defendant's Request for Trial by Written Declaration, the court notifies the issuing officer.

B. Issuing Officer

1. Upon a defendant's request for trial by written declaration, the court sends notice to the issuing officer.
2. The court sends the issuing officer the Officer's Declaration (Judicial Council form TR-235), along with the Notice and Instructions (Judicial Council form TR-210).
3. The court will note on the Notice and Instructions a "return by date," which the sworn declaration must be returned to the Court.

C. Command Responsibilities

1. The issuing officer's command will maintain a tracking log for all Trial by Declaration requests, documenting when requests are received; and,
2. The issuing officer's command will ensure the declaration is returned to the court within ten days of being received.

D. Officer Responsibilities

1. The officer must complete the Declaration based on personal knowledge, except where expressly noted otherwise.
2. The officer will give a complete and accurate written account of the violation(s), and if it will assist in the prosecution or clarify the written portion of the Declaration; attach a prepared, comprehensive diagram or photograph.
3. The following items shall be covered in the Declaration, if applicable:

- a. Weather conditions;
 - b. Lighting;
 - c. Road conditions (pedestrians, traffic flow, residential or business area, visibility, number of driveways, etc.);
 - d. How the defendant was identified;
 - e. Location of the defendant when first observed;
 - f. Location of the issuing officer;
 - g. Essential elements of the violation;
 - h. Location and method of stop;
 - i. Passengers in the defendant's vehicle;
 - j. Any conversation with the defendant;
 - k. Presence of a partner; and,
 - l. If speed is an element, speedometer calibration, date, and actual speed correction.
4. If Radar was used, a copy of the speed survey and data sheet should be attached to the Officer's Declaration.
- a. A copy of the engineering speed survey may be obtained from Traffic Court at 8950 Clairemont Mesa Boulevard, San Diego.
 - b. Officers assigned to third watch at the time they receive the Trial by Declaration may contact the Kearny Mesa Court Liaison Officer at (858) 634-1822 in order to receive a copy of the speed survey and data sheet. The request shall be made at least five days in advance and must include specific information so that the correct survey(s) can be provided. A call back telephone number must also be provided.
 - c. If a copy is not included, the officer should give the specific reason explaining why it was not.
5. In the space for report time at the bottom of the form, the officer will record the actual time spent preparing the report.

6. The officer will sign and date the form under penalty of perjury.
7. The declaration and diagram will be reviewed by a supervisor for accuracy and completeness and then signed by the supervisor.
8. The officer will return the completed declaration to their command's subpoena clerk prior to the Court "return by date." The subpoena clerk will log and forward it, via interoffice mail, to the Traffic Court Operations Clerk at MS 36.
9. The preparing officer will submit one copy of the completed declaration and associated paperwork to Records Division. Records Division will attach the paperwork to the original citation. Records Division will retain the declaration for two years from the date the citation was issued.