

# Judicial Council of California • Administrative Office of the Courts

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## INVITATION TO COMMENT LEG13-01

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Title	Action Requested
Proposed Legislation: Criminal Procedure: Intercounty Probation Case Transfers	Submit Comments by June 19, 2013
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Amend Penal Code section 1203.9	January 1, 2015
Proposed by	Contact
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### Executive Summary and Origin

The Criminal Law Advisory Committee proposes amending Penal Code section 1203.9 to prohibit the intercounty transfer of misdemeanor cases and require transferring courts to determine the amount of any restitution owed by the probationer before transferring the case. The proposal was developed at the request of numerous criminal judges who expressed concerns that (a) receiving courts are often unable to determine victim restitution amounts because most of the information needed for the determination is not accessible in the receiving county, and (b) some probationers go unsupervised after transfer because some county probation departments do not supervise misdemeanor probationers.

### Background

#### Misdemeanors

Penal Code section 1203.9 governs intercounty probation transfer procedure. “Probation” as used in section 1203.9 means a “conditional release in the community *under the supervision of a probation officer*.” (Pen. Code, § 1203(a); emphasis added.) Conditional release under the supervision of a probation officer is commonly referred to as “formal probation.”

Courts are authorized to grant formal probation in misdemeanor cases. (Pen. Code, § 1203(a).) Some county probation departments, however, do not supervise misdemeanor probationers. Thus, if a misdemeanor case is transferred to a county in which the probation department does not supervise misdemeanor probationers, the receiving court cannot fulfill its obligation to ensure compliance with the terms of probation. As a result, misdemeanor probationers often remain unsupervised after transfer.

*The proposals have not been approved by the Judicial Council and are not intended to represent the views of the council, its Rules and Projects Committee, or its Policy Coordination and Liaison Committee. These proposals are circulated for comment purposes only.*

## **Victim Restitution**

Transferring courts must consider restitution orders and victim issues before deciding the appropriateness of a proposed intercounty transfer. (Pen. Code, § 1203.9(e)(3).) With regard to restitution orders, transferring courts must consider “whether transfer would impair the ability of the receiving court to determine a restitution amount or impair the ability of the victim to collect court-ordered restitution.” (Cal. Rules of Court, rule 4.530(f)(3).) In addition, “[t]o the extent possible, the transferring court must establish any amount of restitution owed by the probationer before it orders the transfer.” (Cal. Rules of Court, rule 4.530(g)(2).)

Despite the above requirements, courts often transfer cases without first determining victim restitution amounts. As a result, receiving courts are often unable to determine accurate restitution amounts because the relevant witnesses and information are not readily available in the receiving county. Such transfers also create significant hardships on victims who risk losing restitution if they are unable to travel to the receiving county to clarify a request for restitution in person.

## **The Proposal**

To address concerns that some probationers remain unsupervised after transfer because some county probation departments do not supervise misdemeanor probationers, the committee proposes amending Penal Code section 1203.9 to prohibit the transfer of misdemeanors, while still allowing the transfer of felony probationers. In addition, to address concerns that receiving courts are often unable to determine victim restitution amounts because most of the information needed for the determination is not accessible in the receiving county, the committee proposes amending Penal Code section 1203.9 to require transferring courts to determine the amount of any restitution owed by the probationer before transferring the case.

## **Alternatives Considered**

No alternatives considered.

## **Implementation Requirements, Costs, and Operational Impacts**

No implementation requirements, costs, or operational impacts are expected. As described above, the proposal ease burdens associated with determining victim restitution amounts after transfer.

## Request for Specific Comments

In addition to comments on the proposal as a whole, the advisory committee is interested in comments on the following:

- Does the proposal reasonably achieve the stated purpose?
- Would this proposal have an impact on public's access to the courts? If a positive impact, please describe. If a negative impact, what changes might lessen the impact?

The advisory committee also seeks comments from *courts* on the following cost and implementation matters:

- Would the proposal provide costs savings? If so, please quantify. If not, what changes might be made that would provide savings, or greater savings?
- What would the implementation requirements be for courts? For example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems.
- Would twelve months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?
- If this proposal would be cumbersome or difficult to implement in a court of your size, what changes would allow the proposal to be implemented more easily or simply in a court of your size?

### Attachments and Links

The text of the proposed legislation is attached at page 4.

Section 1203.9 of the Penal Code would be amended to read as follows:

**§ 1203.9. Probation or mandatory supervision; transfer of cases; jurisdiction; rules**

(a) Whenever a person is released on probation **on a felony** or mandatory supervision, the court, upon noticed motion, shall transfer the case to the superior court in any other county in which the person resides permanently, meaning with the stated intention to remain for the duration of probation or mandatory supervision, unless the transferring court determines that the transfer would be inappropriate and states its reasons on the record. **If victim restitution was ordered as a condition of probation or mandatory supervision, the transferring court must determine the amount of restitution before transferring the case.** Upon notice of the motion for transfer, the court of the proposed receiving county may provide comments for the record regarding the proposed transfer, following procedures set forth in rules of court developed by the Judicial Council for this purpose, pursuant to subdivision (e). The court and the probation department shall give the matter of investigating those transfers precedence over all actions or proceedings therein, except actions or proceedings to which special precedence is given by law, to the end that all those transfers shall be completed expeditiously.

(b) The court of the receiving county shall accept the entire jurisdiction over the case.

(c) Notwithstanding subdivision (a), whenever a person is granted probation **on a felony** under [Section 1210.1](#), the sentencing court shall transfer jurisdiction of the entire case, upon a finding by the receiving court of the person's permanent residency in the receiving county, unless there is a determination on the record that the transfer would be inappropriate.

(d) The order of transfer shall contain an order committing the probationer or supervised person to the care and custody of the probation officer of the receiving county and, if applicable, an order for reimbursement of reasonable costs for processing the transfer to be paid to the sending county in accordance with [Section 1203.1b](#). A copy of the orders and any probation reports shall be transmitted to the court and probation officer of the receiving county within two weeks of the finding that the person does permanently reside in or has permanently moved to that county, and thereafter the receiving court shall have entire jurisdiction over the case, with the like power to again request transfer of the case whenever it seems proper.

(e) The Judicial Council shall promulgate rules of court for procedures by which the proposed receiving county shall receive notice of the motion for transfer and by which responsive comments may be transmitted to the court of the transferring county. The Judicial Council shall adopt rules providing factors for the court's consideration when determining the appropriateness of a transfer, including, but not limited to, the following:

- (1) Permanency of residence of the offender.
- (2) Local programs available for the offender.
- (3) Restitution orders and victim issues.