



Judicial Council of California . Administrative Office of the Courts

455 Golden Gate Avenue · San Francisco, California 94102-3688

www.courtinfo.ca.gov

REPORT TO THE JUDICIAL COUNCIL

For business meeting on: April 23, 2010

Title	Agenda Item Type
Criminal Procedure: Intercounty Probation Case Transfer	Action Required
Rules, Forms, Standards, or Statutes Affected	Effective Date
Adopt Cal. Rules of Court, rule 4.530	July 1, 2010
Recommended by	Date of Report
Criminal Law Advisory Committee Hon. Steven Z. Perren, Chair	April 2, 2010
	Contact
	Arturo Castro, 415-865-7702 arturo.castro@jud.ca.gov

Executive Summary

The Criminal Law Advisory Committee recommends that the Judicial Council adopt a rule of court to govern intercounty probation case transfer procedure and prescribe factors for the court to consider when determining whether transfer is appropriate. The rule is required by recently enacted legislation that modified intercounty transfer procedure under Penal Code section 1203.9.

Recommendation

The Criminal Law Advisory Committee recommends that the Judicial Council, effective July 1, 2010, adopt rule 4.530 of the California Rules of Court to:

1. Prescribe specific requirements and deadlines concerning notice of the transfer motion, including a requirement that notice be given at least 60 days before the date set for hearing on the motion;

2. Establish procedures by which receiving courts may provide comments to transferring courts regarding proposed transfers, including a requirement that the receiving court provide any comments no later than 10 days before the date set for hearing on the motion;
3. Require transferring courts, when determining whether transfer is appropriate, to consider the permanency of the probationer's residence, restitution orders, victim issues, and the availability of appropriate programs; and
4. Prescribe specific transfer requirements and deadlines, including a requirement that any jail sentence imposed before transfer must be served in the transferring county unless otherwise authorized by law.

The text of the proposed rule is attached at pages 5–8.

Previous Council Action

There is no previous Judicial Council action to report.

Rationale for Recommendation

Senate Bill 431 (Benoit; Stats. 2009, ch. 588) recently amended Penal Code section 1203.9 to modify intercounty probation case transfer procedure to:

- Eliminate courtesy supervision;
- Require transfer of the case to the probationer's county of residence unless the transferring court determines that transfer would be inappropriate and states its reasons on the record;
- Require that the receiving court be given notice of the transfer motion; and
- Authorize the receiving court to provide comments to the transferring court regarding the propriety of transfer.

The bill also requires the Judicial Council to adopt rules of court that prescribe procedures by which the receiving court is to receive notice of the transfer motion and provide comments to the transferring court and that establish factors for the transferring court to consider when determining whether transfer is appropriate.

The bill was sponsored by the Chief Probation Officers of California (CPOC) and is designed to address longstanding concerns about the ineffectiveness of courtesy supervision and lack of procedural guidance under the previous statutory framework. The purpose of the proposed rule, which the committee developed in conjunction with representatives of CPOC, is to improve public safety by enhancing communication between courts and facilitating the timely and effective exchange of probation supervision between counties.

Comments, Alternatives Considered, and Policy Implications

The proposed rule was circulated for public comment during the winter 2010 cycle. A total of 12 comments were received. Of those, 4 agreed with the proposal, and 8 agreed with the proposal if modified. A chart providing all of the comments received and the committee responses is attached at pages 9–23.

Notable comments and committee responses

The committee revised the proposed rule in response to the following notable concerns:

- ***Certified copies of the court file.*** To address concerns about the cost and burden of requiring the transferring court to transmit certified copies of the entire court file to the receiving court, the committee revised (g)(5) to instead require transmission of the entire court file except exhibits. The committee also added an advisory committee comment to encourage transferring courts to consider retaining copies of the file in the event of an appeal or a writ.
- ***Records of payments.*** In response to concerns that the proposed rule would not ensure the transmission of records of payments maintained by entities other than courts and probation departments, the committee revised the proposed rule to require the transferring court and probation department to transmit any and all “records of payments” regardless of where those records are maintained.
- ***Notice to the receiving court.*** To address concerns that the proposed rule does not sufficiently clarify how the receiving court is to receive notice of the transfer motion, the committee revised (d)(1) and (d)(3) to specify that notice must be provided to the receiving court’s presiding judge or his or her designee.
- ***Reporting deadline.*** To address public safety concerns about allowing probationers 30 days to report to the probation officer of the receiving county, the committee revised (g)(7) to authorize transferring courts to order shorter reporting deadlines on a case-by-case basis.

Notable alternative considered

The committee considered but declined to revise the proposed rule in response to the following concern:

- ***Transfers at sentencing.*** Two commentators requested that the proposed rule require transfers at the time of sentencing because notice and comment procedures are too time-consuming and will increase the workload of probation departments. The committee declined to modify the rule because notice and comment procedures are expressly required by Penal Code section 1203.9, which applies only to persons already “released on probation.” (Pen. Code, § 1203.9(a).)

Disbursement of fines, fees, and restitution

Several commentators suggested that the proposed rule should prescribe how fines, fees, and restitution must be disbursed after transfer. Because disbursement requirements are prescribed by statute, the committee declined to modify the rule as requested. However, the committee acknowledges the complexity of statutory disbursement requirements and the difficulty of compliance after transfer. Thus, the committee will review and consider ways to properly address this concern at future meetings. In the meantime, to avoid inadvertently frustrating existing local collection and disbursement practices, the committee deleted the phrase “and is responsible for enforcing all outstanding fines, fees, and restitution” from subdivision (g)(3). The committee expects local courts and counties to continue to implement existing practices until a more comprehensive solution is developed.

Additional change

To avoid unnecessary delays in bringing transfer motions to the transferring court, the committee, on its own review, also added the following to (d)(2):

- A 30-day deadline for the probation officer to decide whether to make the motion on behalf of the probationer; and
- A requirement that failure by the probation officer to notify the probationer of the decision by the 30-day deadline must be deemed a refusal to make the motion.

Implementation Requirements, Costs, and Operational Impacts

Expected costs and operational impacts include the creation of new forms and local protocols to implement the notice and comment procedures and any associated judicial and court staff training.

Attachments

1. Cal. Rules of Court, rule 4.530, at pages 5–8
2. Chart of Comments, at pages 9–23
3. Attachment A: Penal Code section 1203.9

Rule 4.530 of the California Rules of Court is adopted, effective July 1, 2010, to read:

1 **Rule 4.530. Inter county probation case transfer**

2
3 **(a) Application**

4
5 This rule applies to intercounty probation case transfers under Penal Code
6 section 1203.9. It does not apply to transfers of cases in which probation has
7 been granted under Penal Code section 1210.1.

8
9 **(b) Definitions**

10 As used in this rule:

11
12
13 (1) “Transferring court” means the superior court of the county in which
14 the probationer is supervised on probation.

15
16 (2) “Receiving court” means the superior court of the county to which
17 transfer of the case and probation supervision is proposed.

18
19 **(c) Motion**

20
21 Transfers may be made only after noticed motion in the transferring court.

22
23 **(d) Notice**

24
25 (1) If transfer is requested by the probation officer of the transferring
26 county, the probation officer must provide written notice of the date,
27 time, and place set for hearing on the motion to:

28
29 (i) The presiding judge of the receiving court or his or her designee;

30 (ii) The probation officer of the receiving county or his or her
31 designee;

32 (iii) The prosecutor of the transferring county;

33 (iv) The victim (if any);

34 (v) The probationer; and

35 (vi) The probationer’s last counsel of record (if any).

36
37 (2) If transfer is requested by any other party, the party must first request in
38 writing that the probation officer of the transferring county notice the
39 motion. The party may make the motion to the transferring court only if
40 the probation officer refuses to do so. The probation officer must notify
41 the party of his or her decision within 30 days of the party’s request.

1 Failure by the probation officer to notify the party of his or her decision
2 within 30 days is deemed a refusal to make the motion.

3
4 (3) If the party makes the motion, the motion must include a declaration
5 that the probation officer has refused to bring the motion, and the party
6 must provide written notice of the date, time, and place set for hearing
7 on the motion to:

8
9 (i) The presiding judge of the receiving court or his or her designee;

10 (ii) The probation officers of the transferring and receiving counties
11 or their designees;

12 (iii) The prosecutor of the transferring county;

13 (iv) The probationer; and

14 (v) The probationer's last counsel of record (if any).

15
16 Upon receipt of notice of a motion for transfer by a party, the probation
17 officer of the transferring county must provide notice to the victim, if
18 any.

19
20 (4) Notice of a transfer motion must be given at least 60 days before the
21 date set for hearing on the motion.

22
23 (5) Before deciding a transfer motion, the transferring court must confirm
24 that notice was given to the receiving court as required by (1) and (3).

25
26 **(e) Comment**

27
28 (1) No later than 10 days before the date set for hearing on the motion, the
29 receiving court may provide comments to the transferring court
30 regarding the proposed transfer.

31
32 (2) Any comments provided by the receiving court must be in writing and
33 signed by a judge and must state why transfer is or is not appropriate.

34
35 (3) Before deciding a transfer motion, the transferring court must state on
36 the record that it has received and considered any comments provided
37 by the receiving court.

38
39 **(f) Factors**

40
41 The transferring court must consider at least the following factors when
42 determining whether transfer is appropriate:

1 (1) The permanency of the probationer’s residence. As used in this
2 subdivision, “residence” means the place where the probationer
3 customarily lives exclusive of employment, school, or other special or
4 temporary purpose. A probationer may have only one residence. The
5 fact that the probationer intends to change residence to the receiving
6 county, without further evidence of how, when, and why this is to be
7 accomplished, is insufficient to transfer probation;
8

9 (2) The availability of appropriate programs for the offender, including
10 substance abuse, domestic violence, sex offender, and collaborative
11 court programs;
12

13 (3) Restitution orders, including whether transfer would impair the ability
14 of the receiving court to determine a restitution amount or impair the
15 ability of the victim to collect court-ordered restitution; and
16

17 (4) Victim issues, including:
18

19 (i) The residence and places frequented by the victim, including
20 school and workplace; and

21 (ii) Whether transfer would impair the ability of the court, law
22 enforcement, or the probation officer of the transferring county to
23 properly enforce protective orders.
24

25 **(g) Transfer**
26

27 (1) If the transferring court determines that the permanent residence of the
28 probationer is in the county of the receiving court, the transferring court
29 must transfer the case unless it determines that transfer would be
30 inappropriate and states its reasons on the record.
31

32 (2) To the extent possible, the transferring court must establish any amount
33 of restitution owed by the probationer before it orders the transfer.
34

35 (3) Upon transfer of the case, the receiving court must accept the entire
36 jurisdiction over the case.
37

38 (4) The orders for transfer must include an order committing the
39 probationer to the care and custody of the probation officer of the
40 receiving county and an order for reimbursement of reasonable costs
41 for processing the transfer to be paid to the county of the transferring
42 court in accordance with Penal Code section 1203.1b.
43

W10-05**Criminal Procedure: Intercounty Probation Case Transfer** (adopt Cal. Rules of Court, rule 4.530)

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

	Commentator	Position	Comment	Advisory Committee Response
1.	Mark J. Bonini Chief Probation Officer Amador County Probation Department	AM	<p>[1] 60 days [notice of the transfer motion] is way too long. This should be no more than 30 days. I feel it is important to keep transfers moving.</p> <p>[2] [T]here is no need for [subdivision (e)] as it serves no real purpose.</p> <p>[3] [Subdivisions (f)(2), (3) and (4)] are not needed. These [factors] don't matter [because] the defendant's case is being transferred due to residence being in another county. If the case was not transferred, services provided by the county where the defendant does not live would not be [accessible] since defendant does not live in said county. The same thing could be said in the opposite situation. The most important thing here is/should be [that the] defendant is supervised in his home county.</p>	<p>[1] Although the committee agrees that it is important to process transfer motions promptly, some probation departments and courts need more than 30 days to investigate and comment on the propriety of transfer.</p> <p>[2] The comment procedure in subdivision (e) is required by Penal Code section 1203.9.</p> <p>[3] Factors in addition to the permanency of the probationer's residence are required by Penal Code section 1203.9.</p>
2.	Rick Chavez Director Fresno County Probation	AM	<p>[1] One of the biggest issues with this piece of legislation is the timelines imposed on the respective courts and probation departments. There is no way given both the volume of the work involved and number of cases that these timeframes can be met, at least given the responsibilities required from the probation departments. These requirements will add another layer of work to an already overworked and understaffed adult probation services operation.</p>	<p>[1] Although the comment and notice procedures may increase the workload of certain probation departments, both procedures are required by Penal Code section 1203.9.</p>

W10-05**Criminal Procedure: Intercounty Probation Case Transfer** (adopt Cal. Rules of Court, rule 4.530)

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

	Commentator	Position	Comment	Advisory Committee Response
			<p>[2] If we are supposed to give 60 days notice on the hearing, how will the receiving court have time to provide comments regarding the transfer 10 days before the hearing, assuming the receiving county still does an investigation?</p> <p>[3] Will the requirement that [copies of the orders and probation reports] be transmitted to the court and probation officer of the receiving county within two weeks of the [transfer order] fall on the court?</p> <p>[4] Clearly this process is going to be more time consuming and increase the workload for both the courts and probation departments. With all of the required notifications, I think they need to streamline the process as much as possible or transfer jurisdiction at time of sentencing, if possible.</p> <p>[5] Could there be a tie in with the Interstate Compact on-line system (ICOTS). Such a system would make it easier to meet the timelines and provide easier communication</p>	<p>[2] The proposed rule provides receiving courts and probation departments 50 days from receipt of notice to investigate and comment on the propriety of transfer.</p> <p>[3] To avoid the cost and burden of transmitting certified copies of the court file, the committee revised subdivision (g)(5) to instead require the transferring court to transmit any records of payments and the entire court file except exhibits. In addition, subdivision (g)(6) requires the probation officer of the transferring county to transmit, at a minimum, any court orders, probation reports, case plans, and all records of payments.</p> <p>[4] Although the notice and comment procedures may be time consuming and increase the workload of certain courts and probation departments, both procedures are expressly required by Penal Code section 1203.9. In addition, section 1203.9 applies only to transfers of persons already “released on probation.” (Pen. Code, § 1203.9(a).) Even so, the proposed rule does not expressly proscribe initiation of the notice and comment procedures before sentencing whenever feasible.</p> <p>[5] The rule does not endorse or proscribe the use of any electronic systems. Local courts and probation departments may use any electronic systems that suit local needs and practices.</p>

W10-05**Criminal Procedure: Intercounty Probation Case Transfer** (adopt Cal. Rules of Court, rule 4.530)

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

	Commentator	Position	Comment	Advisory Committee Response
			<p>between counties.</p> <p>[6] [Subdivision (g)(7)] states, “Any jail sentence imposed as a condition of probation prior to transfer must be served in the transferring county.” We will not transfer ... jurisdiction until the defendant has served his sentence in the transferring county.</p> <p>[7] “The transferring [c]ourt must transmit a complete certified copy of the court file, including all transfer, probation reports, and protective orders, to the court of the receiving county within two weeks of the transfer order.” What will happen if the file is not received within the two week[s]?</p> <p>[8] [Subdivision (d)(1)] states, “If transfer is requested by the [probation officer] of the transferring county, the [probation officer] must provide written notice of the date, time, and place set for hearing on the motion to the receiving court, the [probation officer] of the receiving county, the [prosecutor] of transferring county, the victim (if any), the probationer, and the probationer’s last counsel of record (if any).” This is unclear. Are we to set an actual court hearing to address the motion? What if we are unable to contact all parties? Do all parties need to be present? What if the defendant fails to appear at the</p>	<p>[6] No response required.</p> <p>[7] To address concerns about the cost and burden of transmitting certified copies of the court file, the committee revised subdivision (g)(5) to instead require the transferring court to transmit any records of payments and the entire court file, except exhibits, to the receiving court within two weeks of the transfer order. The committee, however, declines to prescribe remedies for noncompliance.</p> <p>[8] The proposed rule requires a noticed motion. The proposed rule does not prescribe remedies for noncompliance or require all parties to be present. Notice must be provided 60 days before the date set for the hearing on the motion. Although the notice procedure may increase the workload of some probation departments, it is required by Penal Code section 1203.9.</p>

W10-05**Criminal Procedure: Intercounty Probation Case Transfer** (adopt Cal. Rules of Court, rule 4.530)

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

	Commentator	Position	Comment	Advisory Committee Response
			<p>hearing? How many days notice are to be given to all parties? Quite frankly all these notices place an unreasonable burden on the transferring department.</p> <p>[9] [Subdivision] (e)(3) addresses comments from the “receiving [c]ourt.” It is unclear if there is a provision to include comments from the receiving probation department.</p> <p>[10] A significant problem is if there is restitution owed to a “victim.” All counties most likely have a different process in place to collect and track restitution. In our county this task is handled by [the] county revenue reimbursement division. We are not involved in any collection of restitution and fines.</p>	<p>[9] Only the receiving court is authorized to submit comments under Penal Code section 1203.9 and the proposed rule.</p> <p>[10] To ensure that receiving courts receive complete information about any money owed by the probationer, the committee revised subdivision (g)(5) to specify that the transferring court must transmit, in addition to the entire court file, “any records of payments” made in the case. In addition, subdivision (g)(6) requires the probation officer of the transferring county to transmit “all records of payments” to the probation officer of the receiving county.</p>
3.	Orange County Bar Association Lei Lei Wang Ekvall President	A	No additional comments.	No response required.
4.	Sally Pina Manager Comprehensive Collections Unit Superior Court of San Francisco County	AM	Would the money from fines, fees, penalties, and assessments that would typically go to the county where the offense was committed be kept by the receiving county? If so, that means the sending county where the offense was committed would lose that portion of [the] fines, fees, penalties, and assessments that according to the “Manual of Accounting and	The disbursement of fines and fees in criminal cases is prescribed by statute and the proposed rule does not modify existing statutory disbursement requirements. However, the committee acknowledges the complexity of statutory disbursement requirements and the difficulty of compliance after transfer. Thus, the committee will carefully review and consider

W10-05**Criminal Procedure: Intercounty Probation Case Transfer** (adopt Cal. Rules of Court, rule 4.530)

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

	Commentator	Position	Comment	Advisory Committee Response
			Audit Guidelines for the Trial Courts” are [to be] distributed within that county. Has the fact that sending counties would lose portions of fines, fees, etc., been considered with this legislation?	ways to properly address this concern at future meetings. In the meantime, to avoid inadvertently frustrating existing local collection and disbursement practices, the committee deleted the phrase “and is responsible for enforcing all outstanding fines, fees, and restitution” from subdivision (g)(3). The committee expects local courts and counties to continue to implement existing collection and disbursement practices until a more comprehensive solution is developed.
5.	Laura Rusk Court Supervisor Superior Court of Kern County	A	Although I agree with the proposal, I am a bit concerned about the notice requirements. I foresee a problem with noticing a large court such as Los Angeles and confirming that notice was received. Would notice be to the presiding judge, the clerk of the court, or the criminal division?	To clarify how the receiving court is to receive notice of the transfer motion, the committee revised the proposed rule to specify that notice must be provided to the receiving court’s presiding judge or his or her designee.
6.	Patrick Boyd Chief Probation Officer San Francisco Adult Probation Department	AM	This will be a major improvement over the past practice and should facilitate improved public safety... [1] Transfers at sentencing: A substantial portion of the intercounty cases [involve probationers who] live in their county of residence at the time they are being sentenced in a different county where the offense occurred and was prosecuted. The rule as proposed does not seem to allow for a judicial determination [of] residence and intercounty transfer at the time of sentencing. Rather, it appears that the process would have to be initiated after	[1] Although the notice and comment procedures may be time consuming and increase the workload of certain courts and probation departments, both procedures are expressly required by Penal Code section 1203.9. In addition, section 1203.9 applies only to transfers of persons already “released on probation.” (Pen. Code, § 1203.9(a).) Even so, the proposed rule does not expressly proscribe initiation of the notice and comment procedures before sentencing

W10-05**Criminal Procedure: Intercounty Probation Case Transfer** (adopt Cal. Rules of Court, rule 4.530)

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

	Commentator	Position	Comment	Advisory Committee Response
			<p>sentencing. There would be a more timely transfer, and less additional court and probation workload, if the rule provided for the judicial determination and intercounty transfer at the time of sentencing...</p> <p>[2] The notice "at least 60 days before the date set for hearing the motion" seems excessive. [I] suggest [that the notice requirement] be changed to "at least 30 days...."</p> <p>[3] Probationer reporting to receiving county— The allowance to "report to the probation officer of the receiving county no later than 30 days after transfer" gives an excessive period prior to reporting and builds in a public safety problem. It will create a month during which the probationer cannot realistically be required to report to the [transferring] probation department because [the transferring probation department] no longer has jurisdiction, and [the probationer] is not required to report to the receiving probation department for a month. The transfer is only to be approved "if the transferring court determines that the permanent residence is in the county of the receiving court." If so, the probationer should easily be able to report to the receiving probation officer no later than the [third] business day after notification. (This will require immediate notification to the receiving probation department so they know who is supposed to</p>	<p>whenever feasible.</p> <p>[2] Although the committee agrees that it is important to process transfer motions promptly, some probation departments and courts need more than 30 days to investigate and comment on the propriety of transfer.</p> <p>[3] To address public safety concerns that the 30-day deadline to report is too long, the committee revised subdivision (g)(7) to authorize courts to order shorter reporting deadlines on a case-by-case basis.</p>

W10-05**Criminal Procedure: Intercounty Probation Case Transfer** (adopt Cal. Rules of Court, rule 4.530)

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

	Commentator	Position	Comment	Advisory Committee Response
			report).	
7.	Michael Martinez Assistant Deputy Chief Probation Officer San Joaquin County Probation Department	AM	The sending county should transmit along with the jurisdictional transfer order a complete breakdown of all fiscal balances to be collected, including the amount of fines owed by the probationer, fees owed by the probationer, and restitution owed by the probationer (to include the code section authorizing the charge to make it easier for the receiving county to set up the account).	To ensure that receiving courts receive complete information about any money owed by the probationer, the committee amended subdivision (g)(5) to specify that the transferring court must transmit, in addition to the entire court file, “any records of payments” made in the case. In addition, subdivision (g)(6) requires the probation officer of the transferring county to transmit “all records of payments” to the probation officer of the receiving county. However, to avoid imposing an additional burden on court and probation staff, the committee declines to require that the records of payments specify code sections as requested.
8.	Jeff Bosworth Chief Probation Officer Sierra County Probation Department	A	I agree with the proposal, but have some questions I would like to clarify. [1] Is this for formal and informal probation? The way it reads now it would seem to apply to both, but can’t imagine they would want to go through all this trouble for court/summary probation cases. [2] Could you address civil fees in criminal cases? It makes sense that supervision fees would transfer but not the public defender fees or the cost of the probation report. I am guessing the new county collects them but sends the actual money to the original county?	[1] Penal Code section 1203.9 applies to transfers of persons released on “probation,” which is defined as “the order of conditional and revocable release in the community under the supervision of a probation officer.” (Pen. Code, § 1203(a).) [2] The disbursement of fines and fees in criminal cases is prescribed by statute and the proposed rule does not modify existing statutory disbursement requirements. However, the committee acknowledges the complexity of statutory disbursement requirements and the difficulty of compliance after transfer. Thus, the committee will carefully review and consider

W10-05**Criminal Procedure: Intercounty Probation Case Transfer** (adopt Cal. Rules of Court, rule 4.530)

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

	Commentator	Position	Comment	Advisory Committee Response
				ways to properly address this concern at future meetings. In the meantime, to avoid inadvertently frustrating existing local collection and disbursement practices, the committee deleted the phrase “and is responsible for enforcing all outstanding fines, fees, and restitution” from subdivision (g)(3). The committee expects local courts and counties to continue to implement existing collection and disbursement practices until a more comprehensive solution is developed.
9.	Judge Robert L. Tamietti Superior Court of Nevada County	AM	<p>[1] Regarding fines and fees: The order of transfer must include an accounting of any fines, fees, and restitution paid to the transferring court up to the date of transfer. As drafted, the rule only requires a probation officer’s report. Some jurisdictions do not use probation to perform collections of fines or fees. Requiring an accounting in the order of transfer would ensure that the receiving court receives the most accurate and up to date information. It also gives the probationer the right to ask the transferring court to make any corrections to the accounting, and gets the receiving court out of that discussion of pre-transfer payments.</p> <p>[2] The rule should expressly require that any probation supervision fees be prorated as of the date of transfer. Any monthly supervision fees paid by the probationer to the transferring court for a period after the date of transfer (in advance) should be paid to the receiving court</p>	<p>[1] To ensure that receiving courts receive complete information about any money owed by the probationer, the committee revised subdivision (g)(5) to specify that the transferring court must transmit, in addition to the entire court file, “any records of payments” made in the case. In addition, subdivision (g)(6) requires the probation officer of the transferring county to transmit “all records of payments” to the probation officer of the receiving county.</p> <p>[2] The committee declines to revise the proposed rule to require proration of probation supervision fees. The committee believes that the imposition and collection of probation supervision fees is the purview of local courts and probation departments under Penal Code section 1203.1b.</p>

W10-05**Criminal Procedure: Intercounty Probation Case Transfer** (adopt Cal. Rules of Court, rule 4.530)

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

	Commentator	Position	Comment	Advisory Committee Response
			<p>by the transferring court.</p> <p>[3] The rule should provide direction about how fines that are collected after the transfer are to be disbursed by the receiving court. Each county and municipality has different fine allocations. If the receiving court is expected to pay those allocations to the transferring court's jurisdictions, the rule should so state, and the rule should require that the order of transfer include the appropriate fine allocation for the transferring jurisdiction. If the receiving court is permitted to allocate the fines collected to its local jurisdictions, then the rule should so state.</p> <p>[4] Regarding restitution: The rule should require the transferring court to provide to the receiving court the identity and contact information for any recipient of restitution to be collected by the receiving court. The rule should require that such information be provided in a sealed format and not be made available to the defendant/probationer. Perhaps a standard form for this victim information to be appended to the transfer order in a sealed envelope would be appropriate.</p>	<p>[3] The disbursement of fines and fees in criminal cases is prescribed by statute and the proposed rule does not modify existing statutory disbursement requirements. However, the committee acknowledges the complexity of statutory disbursement requirements and the difficulty of compliance after transfer. Thus, the committee will carefully review and consider ways to properly address this concern at future meetings. In the meantime, to avoid inadvertently frustrating existing local collection and disbursement practices, the committee deleted the phrase "and is responsible for enforcing all outstanding fines, fees, and restitution" from subdivision (g)(3). The committee expects local courts and counties to continue to implement existing collection and disbursement practices until a more comprehensive solution is developed.</p> <p>[4] To avoid imposing an additional burden on court staff, the committee declines to require the transferring court to transmit sealed victim contact information. Many courts do not maintain such information in the court file or have such information readily available. The committee believes that victim contact information should be exchanged between probation departments to ensure confidentiality.</p>

W10-05**Criminal Procedure: Intercounty Probation Case Transfer** (adopt Cal. Rules of Court, rule 4.530)

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

	Commentator	Position	Comment	Advisory Committee Response
10.	Michael M. Roddy Court Executive Officer Superior Court of San Diego	A	No additional comments.	No response required.
11.	Sandi May Court Manager Superior Court of San Joaquin County	AM	I noted that the issue of local jail time and victim restitution was addressed; however, I did not see any mention of the court fines [and] fees. Is this being addressed? Will the transferring county continue to collect the court fines [and] fees due to the distribution of money to the local arresting agencies and programs?	The disbursement of fines and fees in criminal cases is prescribed by statute and the proposed rule does not modify existing statutory disbursement requirements. However, the committee acknowledges the complexity of statutory disbursement requirements and the difficulty of compliance after transfer. Thus, the committee will carefully review and consider ways to properly address this concern at future meetings. In the meantime, to avoid inadvertently frustrating existing local collection and disbursement practices, the committee deleted the phrase “and is responsible for enforcing all outstanding fines, fees, and restitution” from subdivision (g)(3). The committee expects local courts and counties to continue to implement existing collection and disbursement practices until a more comprehensive solution is developed.
12.	Trial Court Presiding Judges Advisory Committee and Court Executives Advisory Committee Joint Working Group on Rules	AM	[1] Consider: <ul style="list-style-type: none"> • including language that probationer remain in the transferring county until completion of any jail term; • include language as contained in [Penal Code section] 1203.9 that the court may 	[1] <ul style="list-style-type: none"> • The committee revised subdivision (g)(7) to require that the probationer serve any jail time imposed as a condition of probation in the transferring county “unless otherwise authorized by law.” • The proposed rule requires the transferring court to consider the

W10-05

Criminal Procedure: Intercounty Probation Case Transfer (adopt Cal. Rules of Court, rule 4.530)

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

	Commentator	Position	Comment	Advisory Committee Response
			<p>consider whether probationer intends to remain in the proposed receiving county for the duration of probation;</p> <ul style="list-style-type: none"> • that an exemplified copy, rather than a certified copy, of the court file be sent to the receiving court; • seek funding to meet unfunded costs incurred to implement this rule... <p>[2] This proposed rule could have a potential fiscal impact on the courts. Per the proposed rule, the receiving court must accept entire jurisdiction over the case and is responsible for enforcing all outstanding fines, fees, and restitution. In accepting entire jurisdiction over the case, the receiving court would receive the</p>	<p>permanency of the probationer’s residence. Regarding the probationer’s stated intention to reside in the receiving county, subdivision (f)(1) states: “The fact that the probationer intends to change residence to the receiving county, without further evidence of how, when, and why this is to be accomplished, is insufficient to transfer probation.”</p> <ul style="list-style-type: none"> • To avoid the cost and burden of transmitting certified copies of the court file, the committee revised subdivision (g)(5) to instead require the transferring court to transmit the entire court file except exhibits. The committee also added an advisory committee comment to suggest that transferring courts consider retaining copies of the file in the event of an appeal or a writ. • This suggestion has been referred to the Finance Division of the Administrative Office of the Courts for further consideration. <p>[2] To address concerns about the burden and cost of transmitting certified copies of the court file, the committee revised subdivision (g)(5) to instead require the transferring court to transmit the entire court file except exhibits. The committee also added an advisory committee comment to suggest that transferring courts</p>

W10-05

Criminal Procedure: Intercounty Probation Case Transfer (adopt Cal. Rules of Court, rule 4.530)

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

	Commentator	Position	Comment	Advisory Committee Response
			<p>entire probation and court case file. Currently, entire case files are not always transferred to the receiving court. The transferring court would have increased costs in processing, copying, and postage, which would not be collected [because] Penal Code [section] 1203.1b refers to costs associated with probation efforts to transfer the case. Those costs would be payable to the county, and not the court. Both courts (sending and receiving) would be fiscally impacted by having to allocate (limited) resources to new unfunded tasks including but not limited to photocopying outgoing cases, processing and intake of transfer cases, data entry, storage of files, exhibits, and processing violation of probation hearings. In the event of an appeal, the transferring court would be required to maintain a file to take action as directed on remittitur.</p> <p>[3] The collection of transferred fees and fines may be difficult where partial payments were made in the transferring court. Efforts will have to be made to ensure the prorated distribution is properly accounted for, so future payments are properly distributed pursuant to the law and State Controller’s manual and so the correct agencies are being distributed their pro-rata share of fees, fines, and restitution. If the defendant is on a payment schedule with a collections agency, arrangements would need to be made to transfer the account to the receiving court’s collection unit or the probation or court</p>	<p>consider retaining copies of the file in the event of an appeal or a writ.</p> <p>[3] To ensure that receiving courts receive complete information about any money owed by the probationer, the committee revised subdivision (g)(5) to specify that the transferring court must transmit, in addition to the entire court file, “any records of payments” made in the case. In addition, subdivision (g)(6) requires the probation officer of the transferring county to transmit “all records of payments” to the probation officer of the receiving county.</p>

W10-05**Criminal Procedure: Intercounty Probation Case Transfer** (adopt Cal. Rules of Court, rule 4.530)

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

	Commentator	Position	Comment	Advisory Committee Response
			<p>for compliance.</p> <p>[4] [Workload Issues]:</p> <ul style="list-style-type: none"> • The proposed rule could require the development of local forms. The proposed rule would eliminate “courtesy” supervision. (Pen. Code, § 1203.9(b).) Courts would need to modify their existing probation transfer forms to eliminate references to “courtesy” supervision. Even with the statewide rule, additional local protocols will be needed to deal with the regular tasks of intake, forms, calendaring, storage of exhibits and notice for destruction, coordination of pending appeals and accounts receivable, and interface with local probation department. • The proposed rule could have a potential impact on court training needs. There would be a fair amount of training as to the procedure in implementing transfers, but no more than the annual training required at the beginning of each new year, when new legislation takes effect. Successful implementation will require both judicial and staff training for handling these transfers, but most importantly the local probation departments and law 	<p>[4]</p> <ul style="list-style-type: none"> • The proposed rule does not expressly require adoption of local forms, but the committee agrees that the elimination of courtesy supervision will likely require courts to modify local protocols. • No response required.

W10-05**Criminal Procedure: Intercounty Probation Case Transfer** (adopt Cal. Rules of Court, rule 4.530)

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

	Commentator	Position	Comment	Advisory Committee Response
			<p>enforcement will need to be properly trained on their role, duties, and impact.</p> <ul style="list-style-type: none"> • The workload of court staff in the receiving court may increase as the receiving courts would have jurisdiction over the case and receive the entire case file. Currently entire case files are not always transferred to the receiving court. The receiving court will have responsibility for enforcing all outstanding fines, fees, and restitution, which could also impact staff workload. Court staff would also have additional responsibilities in the processing of transfer motions. Under the proposed rule, the receiving court may provide comments to the transferring court for the record regarding the proposed transfer, which must be in writing and signed by the court, and the transferring court must state on record it has received and considered comments provided by the receiving court. • While the core responsibilities of the presiding judge and/or supervising judge, as outlined in the California Rules of Court, would not change with this rule proposal, Senate Bill 431 requires the Judicial Council to adopt rules of court that, in part, provide 	<ul style="list-style-type: none"> • Although the proposed comment and notice procedures may increase the workload of certain courts and probation departments, both procedures are expressly required by Penal Code section 1203.9. • No response is required.

W10-05**Criminal Procedure: Intercounty Probation Case Transfer** (adopt Cal. Rules of Court, rule 4.530)

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

	Commentator	Position	Comment	Advisory Committee Response
			<p>factors for the transferring court to consider when determining whether transfer is appropriate. The proposed rule outlines the factors for consideration. Judge[s] would need to follow these new guidelines when determining whether transfer is appropriate.</p> <ul style="list-style-type: none"> • Many defendants on probation are transient and move on a regular basis. The ability of a judge to consider whether the defendant intends to remain in the proposed receiving county for the duration of probation... in determining whether to transfer a case will eliminate potential abuse of the rule by continually requesting transfers. 	<ul style="list-style-type: none"> • The proposed rule requires the transferring court to consider the permanency of the probationer's residence. Regarding the probationer's stated intention to reside in the receiving county, subdivision (f)(1) states: "The fact that the probationer intends to change residence to the receiving county, without further evidence of how, when, and why this is to be accomplished, is insufficient to transfer probation."

Penal Code section 1203.9: Probation; transfer of cases; jurisdiction; rules

(a) Whenever a person is released on probation, 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, unless the transferring court determines that the transfer would be inappropriate and states its reasons on the record. 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 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 to the care and custody of the probation officer of the receiving county and 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 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.