

# JUDICIAL COUNCIL OF CALIFORNIA

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## INVITATION TO COMMENT

### LEG16-06

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Title	Action Requested
Criminal Procedure: Transfer Back to Receiving Court for Limited Purpose after Intercounty Transfer	Review and submit comments by June 14, 2016
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Amend Penal Code section 1203.9	January 1, 2018
Proposed by	Contact
Criminal Law Advisory Committee Hon. Tricia Ann Bigelow, Chair	Kim DaSilva, 415-865-4534 kim.dasilva@jud.ca.gov

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### Executive Summary and Origin

The Criminal Law Advisory Committee proposes amending Penal Code section 1203.9 to authorize a receiving court to transfer a case of a person on probation or mandatory supervision back to the transferring court for a limited purpose when needed to best suit the needs of the court, the litigation at issue, or the parties. The proposal was developed at the request of criminal judges who expressed concerns about the inability of transferring courts to do so under current law.

### Background

Penal Code section 1203.9 governs intercounty transfer procedures for all probation and mandatory supervision cases. Under the statute a court must transfer a case to the court of the county in which the supervisee resides permanently unless the transferring court determines that the transfer would be inappropriate and states its reasons on the record. (Pen. Code § 1203.9(a)(1).) Under current law, a receiving court may provide comments to the transferring court on the propriety of a proposed transfer. (See Pen. Code § 1203.9(a) (2) and Rule 4.530(e).) Before ruling on the transfer motion, the transferring court must state on the record that it received and considered the receiving court's comments. (Rule 4.530(e)(3).) Although a receiving court may transfer a case back to the transferring court if the defendant moves back to that county, the receiving court has no ability to transfer the case back under other circumstances.

However, there are instance when transferring a case back to the transferring court for a limited purpose would benefit the court, the litigation at issue, or the parties. Examples of this include

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post-conviction challenges such as habeas corpus petitions, re-sentencing or appellate related proceedings, or instances in which probation violation hearings require testimony from witnesses who are only available in the original jurisdiction.

### **The Proposal**

To address these instances when the court, the litigation at issue, or the parties would benefit from the ability of a receiving court to transfer a case back to the transferring court for a limited purpose the committee proposes amending Penal Code section 1203.9 to add a subdivision (f) to authorize a receiving court to refer a particular hearing or other court proceeding back to the transferring court for the limited purpose of conducting the proceeding if the receiving court determines, based upon the geographic location of the parties, victims, witnesses, or evidence, that the matter would more appropriately be conducted by the transferring court.

### **Alternatives Considered**

No alternatives were considered.

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

No implementation requirements, costs, or operational impacts are expected. As described above, the proposal would ease burdens currently associated with litigating proceedings in a receiving court that are more efficiently litigated in the transferring court.

## **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 appropriately address the stated purpose?

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

- Would the proposal provide cost savings? If so please quantify.
- 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 two months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?
- How well would this proposal work in courts of different sizes?

### **Attachments**

1. The text of the proposed amendment to Penal Code section 1203.9, at page 3

Section 1203.9 of the Penal Code would be amended, effective January 1, 2018, to read:

1 **§ 1203.9. Probation or mandatory supervision; transfer of cases; jurisdiction; payment of**  
2 **fees and penalties; rules**

3  
4 (a) \* \* \* (e) \* \* \*

5 (f) The receiving court may refer a particular hearing or other court proceeding back to the  
6 transferring court for the limited purpose of conducting the proceeding if the receiving court  
7 determines, based upon the geographic location of the parties, victims, witnesses, or evidence,  
8 that the matter would more appropriately be conducted by the transferring court. The Judicial  
9 Council shall adopt rules of court to govern referrals under this subdivision, including factors for  
10 consideration when determining the propriety of the referral and related procedural requirements.

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

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

19 (h) The Judicial Council shall consider adoption of rules of court as it deems appropriate to  
20 implement the collection, accounting, and disbursement requirements of subdivisions (d) and (e).  
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