



## Judicial Council of California . Administrative Office of the Courts

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# REPORT TO THE JUDICIAL COUNCIL

For business meeting on: February 28, 2012

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|-----------------------------------------------------------------|-------------------------------------------------------------------------------------------------------|
| Title                                                           | Agenda Item Type                                                                                      |
| Criminal Procedure: Intercounty Probation Transfer Forms        | Action Required                                                                                       |
| Rules, Forms, Standards, or Statutes Affected                   | Effective Date                                                                                        |
| Adopt forms CR-250, CR-251, and CR-252                          | July 1, 2012                                                                                          |
| Recommended by                                                  | Date of Report                                                                                        |
| Criminal Law Advisory Committee<br>Hon. Steven Z. Perren, Chair | February 15, 2012                                                                                     |
|                                                                 | Contact                                                                                               |
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### Executive Summary

The Criminal Law Advisory Committee proposes adoption of three new mandatory forms to be used by petitioners and courts to facilitate intercounty probation transfer procedure under Penal Code section 1203.9 and rule 4.530 of the California Rules of Court.

### Recommendation

The Criminal Law Advisory Committee recommends that the Judicial Council, effective July 1, 2012, adopt:

1. *Notice and Motion for Transfer* (form CR-250) for use by petitioners to request intercounty probation transfer orders from courts;
2. *Order for Transfer* (form CR-251) for use by courts to order intercounty probation transfers; and
3. *Receiving Court Comment Form* (form CR-252) for use by receiving courts to submit comments to the transferring court regarding the propriety of a proposed transfer.

The proposed forms are attached at pages 5–7.

## Previous Council Action

Senate Bill 431 (Benoit; Stats. 2009, ch. 588) recently amended Penal Code section 1203.9 to modify intercounty probation transfer procedure and require the Judicial Council to adopt rules of court that prescribe new notice and comment procedures and establish factors for the transferring court to consider when determining whether transfer is appropriate. In response, the Judicial Council adopted rule 4.530 of the California Rules of Court, which became effective July 1, 2010.

## Rationale for Recommendation

Rule 4.530 prescribes various intercounty transfer requirements, including deadlines, notice, mandatory orders, factors for the transferring court to consider, and a procedure whereby receiving courts submit comments to the transferring court about the propriety of the proposed transfer. There are currently no Judicial Council forms to facilitate the new requirements prescribed by the rule. Rather, courts and probation departments across the state have developed their own forms, which vary considerably, cause confusion, and create significant administrative burdens. As a result, numerous courts and probation departments have requested uniform forms for statewide use.

The purpose of the proposed forms is to assist courts and probation departments in implementing the new notice and comment requirements by including all relevant procedural and administrative information. The proposal includes three forms:

- ***Notice and Motion for Transfer.*** *Notice and Motion for Transfer* (form CR-250) is designed for use by petitioners to request intercounty probation transfers. The form includes instructions and relevant information regarding the motion, notice, deadlines, the underlying case, and factors the court must consider when determining whether transfer is appropriate.
- ***Order for Transfer.*** *Order for Transfer* (form CR-251) is designed for use by courts to issue transfer orders. The form contains all required findings and orders, including a file transfer order and a finding that notice was properly provided.
- ***Receiving Court Comment Form.*** *Receiving Court Comment Form* (form CR-252) is designed for use by receiving courts to provide comments to transferring courts regarding the propriety of transfer as authorized by rule 4.530(e). The form includes all relevant instructions in a text box below the heading and provides space for receiving courts to provide comments to the transferring court.

The forms are proposed for mandatory use to promote uniformity.

## Comments, Alternatives Considered, and Policy Implications

The proposal was circulated for public comment during the spring 2011 cycle. A total of 12 comments were received. Of those, 2 agreed with the proposal, 7 agreed with the proposal if

modified, 1 did not specify a position, and 2 disagreed with the proposal. A chart providing all of the comments received and the committee responses is attached at pages 8–15.

### **Notable comments and committee responses**

In response to concerns that the *Order for Transfer* (CR-251) and *Receiving Court Comment Form* (CR-252) do not include sufficient probationer identifying information, the committee added a date of birth field to the headings of both forms but declined to include other identifying information, such as social security or driver's license numbers, which are subject to identity theft.

The committee also considered but declined to revise the proposed forms in response to the following suggestions:

- ***Notice and Proof of Service.*** Two commentators suggested that *Notice and Motion for Transfer* (form CR-250) should include specific notice and proof-of-service information for courts to confirm that notice was properly provided. The committee declined the suggestions so as to avoid interfering with local court discretion to determine on a case-by-case basis whether notice was properly provided. Requiring written proof of service would also create a burden on courts and petitioners that is not otherwise required by rule or statute.
- ***Optional Order for Transfer Form.*** A commentator suggested that the *Order for Transfer* (CR-251) should be optional because the court's minute orders will include the same orders contained on the form. The committee declined the suggestion because the recently modified transfer procedure requires various specific orders and findings that courts frequently fail to include in minute orders. To facilitate the new procedural requirements, the proposed form includes *all* necessary orders and findings. In addition, the committee strongly favors mandatory forms to promote uniformity and reduce the confusion caused by the widely varied forms currently in use.
- ***Address Information.*** A commentator suggested that the probationer's address information be included in the *Notice and Motion to Transfer* (form CR-250) to enable the receiving court and probation department to verify the address. The committee declined the suggestion because the form already includes petitioner address information in the heading of the form. If the petitioner is not the probationer, the probation officer will separately provide address information when providing notice to the receiving court and probation department as required by rule 4.530(d).

### **Notable alternatives considered**

The committee alternatively considered declining or postponing the proposal in response to concerns raised by the Trial Court Presiding Judges Advisory Committee and Court Executives Advisory Committee Joint Rules Working Group regarding the potential operational and fiscal impacts on courts in light of the severe statewide fiscal crisis. After careful consideration, the committee unanimously agreed to recommend the proposal for several reasons.

First, the proposal was developed *at the request* of numerous courts and probation departments to alleviate the burdens associated with processing transfers and to reduce the confusion caused by the widely varied forms currently in use. Second, transfers have increased dramatically because of the recent amendments to Penal Code section 1203.9 and adoption of rule 4.530, resulting in greater need for these forms. In the absence of standardized forms, courts frequently exchange insufficient information and orders, which renders the process extremely cumbersome for courts. By including all relevant instructions, orders, and information, the committee believes that the forms will facilitate court implementation and reduce confusion, thereby easing—not increasing—the burdens resulting from the recent changes in the law. In addition, any required court staff training will be minimal and can be incorporated into training already required for the new procedures prescribed by the rule and recently revised statute.

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

Expected costs and operational impacts include the production of new forms and any associated judicial and court staff training.

### **Attachments**

1. *Notice and Motion for Transfer* (form CR-250), *Order for Transfer* (form CR-251), and *Receiving Court Comment Chart* (form CR-252), at pages 5–7
2. Chart of Comments, at pages 8–15

|                                                                                                                                                |                                                                                                                    |
|------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------|
| PROBATION DEPARTMENT OR OTHER MOVING PARTY <i>(Name and address)</i> :<br><br><br>TELEPHONE NO.: _____ FAX NO.: _____<br>E-MAIL ADDRESS: _____ | FOR COURT USE ONLY<br><br><br><b>DRAFT ONLY</b><br><b><i>Not approved by</i></b><br><b><i>Judicial Council</i></b> |
| PEOPLE OF THE STATE OF CALIFORNIA<br>v.<br>DEFENDANT:                                                                                          |                                                                                                                    |
| SUPERIOR COURT OF CALIFORNIA, COUNTY OF _____<br>STREET ADDRESS: _____<br>CITY AND ZIP CODE: _____<br>BRANCH NAME: _____                       |                                                                                                                    |
| <b>NOTICE AND MOTION FOR TRANSFER</b><br><b>(Pen. Code, § 1203.9 &amp; Cal. Rules of Court, rule 4.530)</b>                                    | CASE NUMBER: _____                                                                                                 |

**NOTICE**

- *Before filing this form, petitioners should consult with local court staff to schedule the date, time, and place for the hearing on the motion for transfer in item 1. In addition, notice must be provided as set forth below at least **60 days** before the date specified in item 1.*
- *If transfer is requested by a probation officer of the transferring county, notice must be provided to (a) the presiding judge (or designee) of the receiving court; (b) the probation officer (or designee) of the receiving county; (c) the prosecutor of the transferring county; (d) the victim, if any; (e) the probationer; and (f) the probationer's last counsel of record, if any.*
- *If transfer is requested by any other party, the party must first request in writing that the probation officer of the transferring county notice the motion, and the probation officer must decide within 30 days. Only after the probation officer has refused may the party make the motion. Failure by the probation officer to decide within 30 days is deemed a refusal. If the party makes the motion, the motion must include a declaration that the probation officer has refused to bring the motion, and the party must provide notice to (a) the presiding judge (or designee) of the receiving court; (b) the probation officers (or designees) of the receiving and transferring courts; (c) the prosecutor of the transferring county; (d) the probationer; and (e) the probationer's last counsel of record, if any. Upon receipt of this notice, the probation officer of the transferring county must provide notice to the victim, if any.*

1. A hearing on this motion for intercounty probation case transfer has been scheduled in the above-entitled court on:

|             |             |             |
|-------------|-------------|-------------|
| Date: _____ | Time: _____ | Dept: _____ |
|-------------|-------------|-------------|

Regarding probationer *(name)*: \_\_\_\_\_ Date of birth: \_\_\_\_\_

2. Probationer was placed on probation for the following offenses:  
 on *(date)*: \_\_\_\_\_ for a period of: \_\_\_\_\_

3. I *(print name)*: \_\_\_\_\_  
 hereby request transfer of the case to the Superior Court in the County of *(specify)*: \_\_\_\_\_

4. I am *(select one)*:
- A probation officer of the transferring county. I have verified that the probationer's residence is in the above county.
  - Not a probation officer of the transferring county. I have asked the probation officer of the transferring county to notice this motion for me. I am making this motion only because the probation officer has either refused or failed to notify me of his or her decision within 30 days. (Cal. Rules of Court, rule 4.530(d)(2) and (3).)

5. If the court determines that the probationer's permanent residence is in the county specified above, the court must transfer the case unless it determines that transfer would be inappropriate and states its reasons on the record. The court must consider at least the following factors (Cal. Rules of Court, rule 4.530(f)(1)):
- a. The permanency of the probationer's residence;
  - b. The availability of appropriate programs for the probationer;
  - c. Restitution orders, including whether transfer would impair the collection of restitution; and
  - d. Victim issues, including the residence of the victim and whether transfer would impair enforcement of a protective order.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: \_\_\_\_\_ \_\_\_\_\_  
SIGNATURE



|                                                                                                                                 |                                                                                                                                                                                   |
|---------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p><b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b></p> <p>STREET ADDRESS:<br/>CITY AND ZIP CODE:<br/>BRANCH NAME:<br/>DEPT.:</p> | <p><i>FOR COURT USE ONLY</i></p> <p style="font-size: 24pt; font-weight: bold;">DRAFT</p> <p style="font-size: 18pt; font-weight: bold;">Not Approved by<br/>Judicial Council</p> |
| <p>PEOPLE OF THE STATE OF CALIFORNIA<br/>v.<br/>DEFENDANT: _____ DATE OF BIRTH: _____</p>                                       |                                                                                                                                                                                   |
| <p><b>ORDER FOR TRANSFER</b><br/>(Pen. Code, § 1203.9 and Cal. Rules of Court, rule 4.530)</p>                                  | <p>CASE NUMBER: _____</p>                                                                                                                                                         |

1. A motion for intercounty probation transfer in the above-entitled case was heard by this court on *(date)*:
2. Notice of the motion was provided as required by California Rules of Court, rule 4.530(d).
3. Before deciding the motion, the court considered:
  - a. Any comments provided by the receiving court; and
  - b. At least the following factors: (1) the permanency of the probationer's residence, (2) the availability of appropriate programs for the probationer, (3) restitution orders, and (4) victim issues.
4. The motion for transfer is *(select one)*:
  - Denied** for the reasons stated on the record.
  - Granted.** The court has determined the probationer's county of residence and the case is hereby ordered transferred to the Superior Court of the County of:
    - a. The court of the receiving county must accept entire jurisdiction over the case.
    - b. The probationer is committed to the care and custody of the probation officer of the receiving county. Reimbursement of the reasonable costs for processing this transfer are to be paid by the probationer to the county of the transferring court in accordance with Penal Code section 1203.1b.
    - c. The entire original court file, including any records of payments, but excluding exhibits, must be transmitted to the receiving court within two weeks of this order.
    - d. The probation officer of the transferring county must transmit, at a minimum, any court orders, probation reports, case plans, and all records of payments to the probation officer of the receiving county within two weeks of this order.
    - e. The probation officer of the transferring county must notify the probationer of this transfer order.
    - f. The probationer must report to the probation officer of the receiving county *(select one)*:
      - Within 30 days of this order.
      - Within *(specify)*: \_\_\_\_\_ days of this order.
      - Within 30 days of release from custody.
      - Within *(specify)*: \_\_\_\_\_ days of release from custody.
    - g. Any jail sentence imposed as a condition of probation prior to transfer must be served in the transferring county unless otherwise authorized by law.

Date: \_\_\_\_\_

By: \_\_\_\_\_  
(JUDICIAL OFFICER)

|                                  |
|----------------------------------|
| <p><i>FOR COURT USE ONLY</i></p> |
|----------------------------------|

|                                                                                                                       |                                                                                                |
|-----------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------|
| <b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b><br><br>STREET ADDRESS:<br>CITY AND ZIP CODE:<br>BRANCH NAME:<br>DEPT.: | FOR COURT USE ONLY<br><br><b>DRAFT</b><br><i>Not approved by<br/>         Judicial Council</i> |
| PEOPLE OF THE STATE OF CALIFORNIA<br>v.<br>DEFENDANT: _____ DATE OF BIRTH: _____                                      | CASE NUMBER: _____                                                                             |
| <b>RECEIVING COURT COMMENT FORM</b><br>(Pen. Code, § 1203.9 and Cal. Rules of Court, rule 4.530)                      |                                                                                                |

*Under California Rules of Court, rule 4.530(e), any proposed receiving court may provide comments to the transferring court regarding the proposed transfer. Any comments must be provided **no later than 10 days before the date set for hearing** and must be in writing, be signed by a judge, and state why transfer is or is not appropriate. Before deciding a transfer motion, the transferring court must state on the record that it has received and considered any comments provided by the proposed receiving court.*

1. This court has received notice that a motion for intercounty probation transfer is scheduled to be heard in the above case as follows:

Date:  
 Time:  
 Superior Court of the County of:  
 Address:  
  
 Dept.:

2. Under rule 4.530(e) of the California Rules of Court, the court provides the following comments regarding the proposed transfer:

Date: \_\_\_\_\_ By: \_\_\_\_\_  
 (JUDICIAL OFFICER)

|                    |
|--------------------|
| FOR COURT USE ONLY |
|--------------------|

**SPR11-32****Criminal Procedure: Intercounty Probation Transfer Forms** (Adopt forms CR-250, CR-251, and CR-252)

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

|    | <b>Commentator</b>                                                                                                          | <b>Position</b> | <b>Comment</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | <b>Advisory Committee Response</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
|----|-----------------------------------------------------------------------------------------------------------------------------|-----------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1. | Amador County Probation Department<br>Mr. Deron Brodehl<br>Adult Unit Supervisor                                            | AM              | <ul style="list-style-type: none"> <li>I think the notice form ... should include a section entitled "NOTICE TO:" for names of parties and addresses (non-confidential of course) so the court can verify [that] all parties [listed in rule 4.530(d)(1)(A-F)] were appropriately noticed as required [by rule] 4.530(d)(5). This information is already on the forms currently in use by most counties. I can forward an example if needed.</li> <li>What's the reason this can't apply to probation cases granted under 1210.1 (Prop 36 probation)? It's not like it's super double secret probation or anything. Feel free to contact me. Thank you.</li> </ul> | <ul style="list-style-type: none"> <li>The committee declines to include additional notice information as suggested to avoid infringing on local court discretion to determine, on a case-by-case basis, whether notice was properly provided. In addition, requiring courts and petitioners to confirm in writing that notice was provided would create a burden not otherwise required by rule 4.530 or Penal Code section 1203.9.</li> <li>The committee appreciates but declines the suggestion because it exceeds the scope of this form proposal. The committee, however, will separately consider the suggestion at a future meeting.</li> </ul> |
| 2. | Hon. Steven C. Bailey<br>Superior Court of El Dorado County                                                                 | A               | Providing for the uniform transfer of probationers between counties is a continuing problem. Probation offices in the receiving county are often unwilling to assist in confirming addresses. I support both the form change and the rules change....                                                                                                                                                                                                                                                                                                                                                                                                              | No response is required.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| 3. | Orange County Bar Association<br>Mr. John Hueston<br>President                                                              | A               | No additional comments provided.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | No response required.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| 4. | Trial Court Presiding Judges Advisory Committee/Court Executives Advisory Committee (TCPJAC/CEAC) Joint Rules Working Group | N               | While the TCPJAC/CEAC Joint Rules Working Group agrees with merits of this proposal, it has taken the position of "Do not agree with the proposed changes" in recognition of the current fiscal crisis and its impact on court operations.                                                                                                                                                                                                                                                                                                                                                                                                                         | Although the committee greatly appreciates the comments and carefully considered postponing the proposal as suggested, the committee unanimously approved the proposal for recommendation to the council for several                                                                                                                                                                                                                                                                                                                                                                                                                                    |

**SPR11-32**

**Criminal Procedure: Intercounty Probation Transfer Forms** (Adopt forms CR-250, CR-251, and CR-252)

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

|  | Commentator | Position | Comment                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | Advisory Committee Response                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
|--|-------------|----------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|  |             |          | <p>The proposals create numerous and significant operational and fiscal impacts upon trial courts that are grappling with one of the worst economies in recent U.S. history. The new requirements created by the proposals, while well-intended, will only worsen the financial condition of the courts. At a time when courts are facing severe budget reductions, potential layoffs, possible court closures, and other urgent matters, rules of court should not create new responsibilities unless absolutely necessary and driven by statutory mandates. The trial courts must use this time to focus on ensuring continuation of the most critical services rather than on dedicating new resources to new requirements.</p> <p>The working group recommends that the committee re-evaluate how the proposals can be implemented with minimal impact to court operations. The committee could consider only moving forward the most critical and clearly mandated proposals, moving back or phasing in implementation deadlines, and identifying all available alternatives to lessen negative impacts to the courts.</p> <p>Operational impacts identified by the working group:<br/>           ...<br/> <b>Increased Training Needs</b><br/>           There would be a fair amount of training involved for the transferring court’s staff to understand how to fill out the forms ....</p> | <p>reasons.</p> <p>First, the proposal was developed <i>at the request</i> of numerous courts and probation departments to alleviate the burdens associated with processing transfers and reduce the confusion caused by the widely varied forms currently in use.</p> <p>Second, because of the recent amendments to Penal Code section 1203.9 and adoption of rule 4.530, the volume of transfers has increased dramatically. In the absence of standardized forms, courts frequently exchange insufficient information and orders, which renders the process extremely cumbersome for courts. By including all relevant instructions, orders, and information, the committee believes that the forms will facilitate court implementation and reduce confusion, thereby easing—not increasing—the burdens resulting from the recent changes in the law.</p> <p>In addition, any required court staff training will be minimal and can be incorporated into training already required for the new procedures prescribed by the rule and recently revised statute.</p> |

**SPR11-32**

**Criminal Procedure: Intercounty Probation Transfer Forms (Adopt forms CR-250, CR-251, and CR-252)**

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

|    | <b>Commentator</b>                                                                            | <b>Position</b> | <b>Comment</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | <b>Advisory Committee Response</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
|----|-----------------------------------------------------------------------------------------------|-----------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 5. | Sacramento County Probation Department<br>Ms. Kristina Thompson<br>Assistant Division Chief   | AM              | Modify forms CR-251 and CR-252 to include a DOB (date of birth) line as an identifier. It's on form CR-250; however, it is needed on the above forms as well.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | The committee agrees to add probationer date of birth information to forms CR-251 and CR-252.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| 6. | Sonoma County Probation Department<br>Ms. Sheralynn Freitas<br>Deputy Chief Probation Officer | NI              | <p>On the first form (CR-250):</p> <ul style="list-style-type: none"> <li>We need to have the defendant's address listed. As it is now, when these forms come to probation for address verification, the only info the receiving county has, and uses to send notices to the defendant is the defendant's address, listed on the form. Additional information that would be helpful is a phone number, [social security number, and a California driver's license or identification number].</li> <li>Could use the date probation is due to expire, due to violations this date may not be exactly 3, 4 or 5 years out (tolling of time).</li> <li>On form CR-252: Should a comment space and signature line be provided for the probation officer who does the verification?</li> </ul> | <ul style="list-style-type: none"> <li>The committee declines the suggestion because the form already includes petitioner address information in the heading of the form. If the petitioner is not the probationer, the probation officer will separately provide address information when providing notice to the receiving court and probation department as required by rule 4.530(d). The committee declines to include other identifying information because it is subject to identity theft.</li> <li>Although the committee agrees that the date probation is expected to expire is useful, the expiration date should be decided by courts, not petitioners. Courts should not rely on a petitioner's calculation of the expiration date.</li> <li>The committee declines the suggestion as unnecessary because under rule 4.530(e)(2) comments must be in writing and signed by a judge, not a probation officer.</li> </ul> |

## SPR11-32

### Criminal Procedure: Intercounty Probation Transfer Forms (Adopt forms CR-250, CR-251, and CR-252)

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

|     | Commentator                                                                          | Position | Comment                                                                                                                                                                                                                                                                       | Advisory Committee Response                                                                                                                                                                                                                                                                                                                                                                                                                             |
|-----|--------------------------------------------------------------------------------------|----------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 7.  | Superior Court of Monterey County<br>Ms. Rebecca Hayes<br>Operations Manager         | AM       | [I] recommend that proof of service be added as page 2 of form CR-250 [because proof of service is] required by [rule] 4.530(d)(1).                                                                                                                                           | The committee declines to add proof of service information to the <i>Notice and Motion for Transfer</i> (form CR-250) because the committee prefers to allow local courts to determine, on a case-by-case basis, whether notice was properly provided. Requiring courts and petitioners to confirm proof of service in writing would create a burden not otherwise required by rule 4.530 or Penal Code section 1203.9.                                 |
| 8.  | Superior Court of Orange County<br>Criminal Division Managers                        | AM       | [We] suggest [making] the receiving court comment form optional.                                                                                                                                                                                                              | The committee strongly favors mandatory forms to promote uniformity and reduce the confusion caused by the widely varied forms currently used by local courts and probation departments.                                                                                                                                                                                                                                                                |
| 9.  | Superior Court of Placer County<br>Sharry Shumaker<br>Operations Director            | AM       | <ul style="list-style-type: none"> <li>On form CR-250: [We] suggest that a #6 be added as a space for additional information.</li> <li>On form CR-251: [We] suggest a section for reimbursement fees pursuant to 1203.9(d) and suggest a section for other orders.</li> </ul> | <ul style="list-style-type: none"> <li>The committee declines the suggestion as unnecessary because the form is designed to include all necessary and relevant information on one page for ease of reference.</li> <li>The committee declines the suggestions as unnecessary because (a) the reimbursement order is already included, and (b) the form already contains all relevant and necessary orders on one page for ease of reference.</li> </ul> |
| 10. | Superior Court of Sacramento County<br>Mr. Robert Turner, ASO II<br>Finance Division | N        | <ul style="list-style-type: none"> <li>There is no information on ... mandatory form [CR-250 <i>Notice and Motion for Transfer</i>] that indicates that the probationer's address in the</li> </ul>                                                                           | <ul style="list-style-type: none"> <li>Item 4 on form CR-250 <i>Notice and Motion for Transfer</i> has been amended to require probation officer petitioners to verify that the probationer's residence is</li> </ul>                                                                                                                                                                                                                                   |

**SPR11-32**

**Criminal Procedure: Intercounty Probation Transfer Forms** (Adopt forms CR-250, CR-251, and CR-252)

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

|  | Commentator | Position | Comment                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | Advisory Committee Response              |
|--|-------------|----------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------|
|  |             |          | <p>receiving county has been verified. How is the court to make findings that the probationer lives in the receiving county if the address is not verified by the probation department? In Sacramento, our probation department verifies residency by contacting the receiving county probation department BEFORE the motion to transfer is scheduled in our court. On their current version of the motion to transfer, Sacramento probation officers include information that residency was verified. This information should be included in #2 on the proposed new form:</p> <p>“The defendant was convicted of a violation of Section(s) (<i>insert information</i>) of the (<i>insert information</i>) Code on (<i>date</i>). On (<i>date</i>), the Court suspended imposition of sentence and placed the defendant on formal probation for a period of (<i>length</i>) years. On (<i>date</i>), the (<i>receiving</i>) County Probation Officer verified that the above-named defendant resides at (<i>physical address</i>), and intends to remain in (<i>receiving</i>) County for the duration of his/her probation term.”</p> <p>We find that many of the cases transferred into our county have never had their address verified by our</p> | <p>in the proposed receiving county.</p> |

**SPR11-32**

**Criminal Procedure: Intercounty Probation Transfer Forms** (Adopt forms CR-250, CR-251, and CR-252)

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

|     | Commentator                                                                           | Position | Comment                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | Advisory Committee Response                                                                                                                                                                                                                                                              |
|-----|---------------------------------------------------------------------------------------|----------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|     |                                                                                       |          | <p>probation department and this leads to unnecessary transfers and are resulting in violation of probation petitions because the probationer’s actual location/address is unknown. Also, because the probationer’s address is unknown, it is difficult to identify which county the case should be transferred to instead.</p> <ul style="list-style-type: none"> <li>• We do not agree with the requirement for a <i>mandatory</i> form for the [order for transfer] as it creates a new workload requiring the court to prepare the form. All of the information on the CR-251 form is already currently contained in the minute order transferring the case and the original case file is then forwarded to the receiving court. If the information is included in the minute order transferring the case, there is no need to repeat the information on a form. CR-251 should be an optional form and only used if that language is not already on the minute order.</li> <li>• We have no comment on the mandatory form [CR-252 <i>Receiving Court Comment Form</i>].</li> </ul> | <ul style="list-style-type: none"> <li>• The committee strongly favors mandatory forms to promote uniformity and reduce the confusion caused by the widely varied forms and orders currently used by local courts and probation departments.</li> <li>• No response required.</li> </ul> |
| 11. | Superior Court of San Diego County<br>Mr. Michael M. Roddy<br>Court Executive Officer | AM       | The following changes are recommended to be made to form CR-251:                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |                                                                                                                                                                                                                                                                                          |

**SPR11-32**

**Criminal Procedure: Intercounty Probation Transfer Forms** (Adopt forms CR-250, CR-251, and CR-252)

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

|  | Commentator | Position | Comment                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | Advisory Committee Response                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
|--|-------------|----------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|  |             |          | <ul style="list-style-type: none"> <li>• Pursuant to rule 4.530(g)(1), the court must state reasons for denial of transfer. Space should be added to item number 4 to provide the reasons.</li> <li>• Pursuant to rule 4.530(g)(4), item 4(b) should cite to Penal Code [section] 1203.1b.</li> <li>• Item 4(c): What about co-defendant cases in relation to proposed rule 4.530(g)(5)?</li> <li>• Pursuant to rule 4.530(g)(2), the court must, if able, establish the amount of restitution owed; therefore, space should be added on the form for this item.</li> <li>• Add a new item 3 that reads: "Proper notice being given and absent any comments from the receiving court, this court determines there is no opposition to the transfer." Renumber current items 3 and 4, 4 and 5 respectively.</li> </ul> | <ul style="list-style-type: none"> <li>• The committee declines the suggestion because rule 4.530(g)(1) only requires the court to state the reasons for a denial of transfer "on the record," not in writing.</li> <li>• The committee agrees. Item 4b will be amended to refer to Penal Code section 1203.1b.</li> <li>• The committee is separately considering a proposal to amend rule 4.530(g)(5) to authorize courts to transmit certified copies of the court file instead of the entire original file in cases involving codefendants. Because the proposal is still under consideration, any related form amendments would be premature.</li> <li>• The committee declines to require restitution information on the order because the restitution amount, if established at the time of transfer, will already be included in a separate order in the court file, which is transmitted to the receiving county upon transfer.</li> <li>• The committee declines the suggestion because courts are not required to note lack of opposition to the motion.</li> </ul> |

**SPR11-32****Criminal Procedure: Intercounty Probation Transfer Forms (Adopt forms CR-250, CR-251, and CR-252)**

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

|     | <b>Commentator</b>                                     | <b>Position</b> | <b>Comment</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | <b>Advisory Committee Response</b>                                                                                                                                                       |
|-----|--------------------------------------------------------|-----------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 12. | Superior Court of Shasta County<br>Hon. James Ruggiero | AM              | <p>I see a problem with the procedure. The transferring court is required to order the probationer to report to the receiving county's probation department. However, the probationer is not required to be present, and so far, in my experience, the probationer is not present because he or she is living in the receiving county. I am concerned that without the probationer being present there would be no way to hold the probationer to account should the probationer not report to the receiving county's probation department.</p> <p>It seems to me the probationer either needs to be present at the hearing to transfer, or some other proof must be required that the probationer is sufficiently notified of the actual order to report to be found in violation of probation should the probationer not comply with the initial report order.</p> | The committee appreciates but declines the suggestion because it exceeds the scope of the proposal. The committee will, however, separately consider the suggestion at a future meeting. |