

# Judicial Council of California • Administrative Office of the Courts

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## INVITATION TO COMMENT SP12-08

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Title	Action Requested
Criminal Justice Realignment: Intercounty Transfer Procedures	Review and submit comments by September 27, 2012
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Amend Cal. Rules of Court, rule 4.530 and revise forms CR-250, CR-251, and CR-252	November 1, 2012
Proposed by	Contact
Criminal Law Advisory Committee Hon. Steven Z. Perren, Chair	Arturo Castro, Senior Attorney, Office of the General Counsel, 415-865-7702 arturo.castro@jud.ca.gov

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### Executive Summary and Origin

The Criminal Law Advisory Committee proposes amendments to rule 4.530 of the California Rules of Court and revisions to the Judicial Council's *Notice and Motion for Transfer* (form CR-250), *Order for Transfer* (form CR-251), and *Receiving Court Comment Form* (form CR-252) in response to recent criminal justice realignment legislation that amended Penal Code section 1203.9 to apply intercounty probation transfer procedures to mandatory supervision cases under Penal Code section 1170(h)(5)(B). In addition, to facilitate verification of a supervised person's county of residence, the committee also proposes adding a data field to form CR-250 for petitioners to note the supervised person's address.

### Background

The Legislature amended Penal Code section 1203.9 in 2009<sup>1</sup> to modify intercounty probation transfer procedures and require 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.

In response, the Judicial Council adopted rule 4.530 of the California Rules of Court, which became effective July 1, 2010. The rule prescribes various procedural requirements, including notice, orders, deadlines, and a comment process. The Judicial Council also adopted, effective

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<sup>1</sup> Senate Bill 431 (Benoit; Stats. 2009, ch. 588).

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 These proposals are circulated for comment purposes only.*

July 1, 2012, *Notice and Motion for Transfer* (form CR-250), *Order for Transfer* (form CR-251), and *Receiving Court Comment Form* (form CR-252). The forms are mandatory and designed to promote uniformity and facilitate implementation of the various requirements prescribed by rule 4.530.

Criminal justice realignment legislation implemented sweeping changes to long-standing felony sentencing laws, including eliminating prison as a sentence option for certain eligible defendants and authorizing courts to impose a period of “mandatory supervision” upon a defendant’s release from county jail under newly added Penal Code section 1170(h)(5)(B). The new mandatory supervision scheme became effective October 1, 2011.

### **The Proposal**

Recent legislation<sup>2</sup> amended Penal Code section 1203.9 to apply intercounty probation transfer procedures to mandatory supervision cases under Penal Code section 1170(h)(5)(B). As a result, courts are now authorized to transfer jurisdiction of probation *and* mandatory supervision cases to the court in the county of the supervised person’s residence.

This proposal would amend rule 4.530 and revise forms CR-250, CR-251, and CR-252 to include transfers of mandatory supervision as required by the recent modifications to Penal Code section 1203.9. The proposal would also add a data field to form CR-250 for petitioners to note the supervised person’s address. This additional revision is designed to facilitate court and probation department verification of the supervised person’s county of residence. Specifically, the proposal would:

- Amend rule 4.530(a) to clarify that the rule applies to transfers of mandatory supervision;
- Amend rule 4.530 to include mandatory supervision and replace the word “probationer” with the phrase “supervised person”;
- Add a data field to item 1 on form CR-250 for petitioners to note the supervised person’s address, if any;
- Revise forms CR-250 and CR-251 to include mandatory supervision and replace the word “probationer” with the phrase “supervised person”; and
- Revise form CR-252 to delete the word “probation” from item 1.

### **Alternatives Considered**

In response to privacy concerns, the committee considered not proposing that a data field be added to form CR-250 for the petitioner to note the supervised person’s address. The committee concluded, however, that privacy concerns are minimal because the supervised person’s address

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<sup>2</sup> Senate Bill 1023 (Committee on Budget and Review; Stats. 2012, ch. 43).

is often included in other documents filed with the court, including presentence investigation reports. The committee decided to propose adding the data field because courts and probation departments in both the receiving and transferring counties need the address information to verify the supervised person's county of residence and determine the propriety of a proposed transfer.

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

No implementation requirements, costs, or operational impacts are expected.

## **Request for Specific Comments**

In addition to comments on the proposal as a whole, the advisory committee is interested in whether the proposal appropriately addresses 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 a case management system, or modifying a case management system?
- Would five days 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 and Links**

1. Cal. Rules of Court, rule 4.530, at pages 4–7
2. Form CR-250, at page 8
3. Form CR-251, at page 9
4. Form CR-252, at page 10

Rule 4.530 of the California Rules of Court, would be amended effective November 1, 2012, to read:

1 **Rule 4.530. Intercounty ~~probation case transfer~~ of probation and mandatory**  
2 **supervision cases**

3  
4 **(a) Application**

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6 This rule applies to intercounty transfers of probation and mandatory supervision  
7 cases ~~transfers~~ under Penal Code section 1203.9. It does not apply to transfers of  
8 cases in which probation has been granted under Penal Code section 1210.1.  
9

10 **(b) Definitions**

11 As used in this rule:

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13  
14 (1) “Transferring court” means the superior court of the county in which the  
15 supervised person ~~probationer~~ is supervised on probation or mandatory  
16 supervision.  
17

18 (2) “Receiving court” means the superior court of the county to which transfer of  
19 the case and probation or mandatory supervision is proposed.  
20

21 **(c) Motion**

22 Transfers may be made only after noticed motion in the transferring court.  
23  
24

25 **(d) Notice**

26  
27 (1) If transfer is requested by the probation officer of the transferring county, the  
28 probation officer must provide written notice of the date, time, and place set  
29 for hearing on the motion to:  
30

31 (A)–(D) \* \* \*

32  
33 (E) The ~~probationer~~ supervised person; and

34  
35 (F) The ~~probationer’s~~ supervised person’s last counsel of record (if any).  
36

37 (2) \* \* \*

38  
39 (3) If the party makes the motion, the motion must include a declaration that the  
40 probation officer has refused to bring the motion, and the party must provide  
41 written notice of the date, time, and place set for hearing on the motion to:  
42

1 (A)–(C) \* \* \*

2  
3 (D) The ~~probationer~~-supervised person; and

4  
5 (E) The ~~probationer's~~ supervised person's last counsel of record (if any).

6  
7 Upon receipt of notice of a motion for transfer by a party, the probation  
8 officer of the transferring county must provide notice to the victim, if any.

9  
10 (4)–(5) \* \* \*

11  
12 (e) \* \* \*

13  
14 **(f) Factors**

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16 The transferring court must consider at least the following factors when  
17 determining whether transfer is appropriate:

18  
19 (1) The permanency of the ~~probationer's~~ supervised person's residence. As used  
20 in this subdivision, “residence” means the place where the ~~probationer~~  
21 supervised person customarily lives exclusive of employment, school, or  
22 other special or temporary purpose. A ~~probationer-supervised person~~ may  
23 have only one residence. The fact that the ~~probationer-supervised person~~  
24 intends to change residence to the receiving county, without further evidence  
25 of how, when, and why this is to be accomplished, is insufficient to transfer  
26 ~~probation-supervision~~;

27  
28 (2) The availability of appropriate programs for the ~~offender-supervised person~~,  
29 including substance abuse, domestic violence, sex offender, and collaborative  
30 court programs;

31  
32 (3)–(4) \* \* \*

33  
34 **(g) Transfer**

35  
36 (1) If the transferring court determines that the permanent residence of the  
37 ~~probationer-supervised person~~ is in the county of the receiving court, the  
38 transferring court must transfer the case unless it determines that transfer  
39 would be inappropriate and states its reasons on the record.

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41 (2) To the extent possible, the transferring court must establish any amount of  
42 restitution owed by the ~~probationer-supervised person~~ before it orders the  
43 transfer.

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- (3) Upon transfer of the case, the receiving court must accept the entire jurisdiction over the case.
- (4) The orders for transfer must include an order committing the ~~probationer~~ supervised person 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 county of the transferring court in accordance with Penal Code section 1203.1b.
- (5) The transferring court must transmit any records of payments and the entire court file, except exhibits, to the receiving court within two weeks of the transfer order.
- (6) The probation officer of the transferring county must transmit, at a minimum, any court orders, probation or mandatory supervision reports, case plans, and all records of payments to the probation officer of the receiving county within two weeks of the transfer order.
- (7) Upon transfer of the case, the probation officer of the transferring county must notify the ~~probationer~~ supervised person of the transfer order. The ~~probationer~~ supervised person must report to the probation officer of the receiving county no later than 30 days after transfer unless the transferring court orders the ~~probationer~~ supervised person to report sooner. If the ~~probationer~~ supervised person is in custody at the time of transfer, the ~~probationer~~ supervised person must report to the probation officer of the receiving county no later than 30 days after being released from custody unless the transferring court orders the ~~probationer~~ supervised person to report sooner. Any jail sentence imposed as a condition of probation or mandatory supervision prior to transfer must be served in the transferring county unless otherwise authorized by law.

**Advisory Committee Comment**

Subdivision (g)(5) requires the transferring court to transmit the entire court file, except exhibits, to the court of the receiving county. Before transmitting the court file, transferring courts should consider retaining copies of the court file in the event of an appeal or a writ.

Subdivision (g)(7) clarifies that any jail sentence imposed as a condition of probation or mandatory supervision before transfer must be served in the transferring county unless otherwise authorized by law. For example, Penal Code section 1208.5 authorizes the boards of supervisors of two or more counties with work furlough programs to enter into agreements to allow work-

- 1 furlough-eligible persons sentenced to or imprisoned in one county jail to transfer to another
- 2 county jail.

PROBATION DEPARTMENT OR OTHER MOVING PARTY (Name and address):   TELEPHONE NO.: _____ FAX NO.: _____ E-MAIL ADDRESS: _____	<b>FOR COURT USE ONLY</b>
PEOPLE OF THE STATE OF CALIFORNIA v. DEFENDANT:	
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b>  STREET ADDRESS: CITY AND ZIP CODE:  BRANCH NAME:	
<b>NOTICE AND MOTION FOR TRANSFER</b> <b>(Pen. Code, § 1203.9 and 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 supervised person; and (f) the supervised person'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 supervised person; and (e) the supervised person'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 case transfer has been scheduled in the above-entitled court on:

Date:	Time:	Dept:
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Regarding (name of supervised person): \_\_\_\_\_ Date of birth: \_\_\_\_\_  
 Address, if any: \_\_\_\_\_

2. The supervised person was placed on (select one):  probation  mandatory supervision 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 supervised person'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 supervised person'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 supervised person's residence;
- b. The availability of appropriate programs for the supervised person;
- 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

<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b>  STREET ADDRESS: CITY AND ZIP CODE: BRANCH NAME: DEPT.:	<i>FOR COURT USE ONLY</i>
PEOPLE OF THE STATE OF CALIFORNIA v. DEFENDANT:	DATE OF BIRTH:
<b>ORDER FOR TRANSFER</b> <b>(Pen. Code, § 1203.9 and Cal. Rules of Court, rule 4.530)</b>	CASE NUMBER:

1. A motion for intercounty 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 supervised person's residence, (2) the availability of appropriate programs for the supervised person, (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 supervised person'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 supervised person 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 supervised person 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 or mandatory supervision 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 supervised person of this transfer order.
    - f. The supervised person 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 or mandatory supervision prior to transfer must be served in the transferring county unless otherwise authorized by law.

Date:

By: \_\_\_\_\_

(JUDICIAL OFFICER)

<i>FOR COURT USE ONLY</i>
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<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b>  STREET ADDRESS: CITY AND ZIP CODE: BRANCH NAME: DEPT.:	FOR COURT USE ONLY
PEOPLE OF THE STATE OF CALIFORNIA v. DEFENDANT:	DATE OF BIRTH:
<b>RECEIVING COURT COMMENT FORM</b> (Pen. Code, § 1203.9 and Cal. Rules of Court, rule 4.530)	CASE NUMBER:

*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 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**