



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

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# REPORT TO THE JUDICIAL COUNCIL

For business meeting on December 13, 2013

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Title	Agenda Item Type
Judicial Council–Sponsored Legislation: Intercounty Transfers	Action Required
Rules, Forms, Standards, or Statutes Affected Amend Pen. Code, § 1203.9	Effective Date December 13, 2013
Recommended by Policy Coordination and Liaison Committee Hon. Kenneth K. So, Chair Criminal Law Advisory Committee Hon. Tricia Ann Bigelow, Chair	Date of Report November 15, 2013
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## Executive Summary

The Policy Coordination and Liaison Committee and the Criminal Law Advisory Committee recommend that the Judicial Council sponsor legislation amending Penal Code section 1203.9 to modify intercounty transfer procedures. The proposal would modify those procedures to require transferring courts to determine the amount of any victim restitution before transfer unless the court is unable to determine the amount within a reasonable time and to prohibit transfers of misdemeanor cases unless (1) they involve certain sex crimes, firearms, violence, or multiple driving-under-the-influence offenses; and (2) the court determines that the continued supervision of the probationer in the county of residence is in the best interests of the public or any victim.

## Recommendation

The Policy Coordination and Liaison Committee and the Criminal Law Advisory Committee recommend that the Judicial Council sponsor legislation to amend Penal Code section 1203.9, effective January 1, 2015, to:

- Add subdivision (a)(3) to:
  - Require transferring courts to determine the amount of any victim restitution before transfer unless the court finds that the determination may not be made within a reasonable time from the date of the motion for transfer;
  - Clarify that if a case is transferred without a prior determination of any victim restitution amount, the transferring court must retain jurisdiction to determine the amount as soon as practicable; and
  - Clarify that, in all other aspects, the receiving court receives full jurisdiction over the matter upon transfer; and
  
- Add subdivision (e) to prohibit transfers of misdemeanor cases unless:
  - They involve certain sex crimes, use of a firearm, violence, or three or more driving violations involving the use of alcohol or drugs; and
  - The court “determines that the continuing supervision of the probationer in the county of residence is in the best interests of the public or any victim.”

### **Previous Council Action**

Penal Code section 1203.9 was amended in 2009 (Sen. Bill 431 [Benoit]; Stats. 2009, ch. 588) to modify intercounty transfer procedures and require the Judicial Council to adopt rules of court to govern the new procedures, including factors for transferring courts to consider when determining the propriety of a proposed transfer. In response, the Judicial Council adopted rule 4.530 of the California Rules of Court, effective July 1, 2010. There is no other relevant previous council action to report.

### **Rationale for Recommendation**

#### **Background**

Penal Code section 1203.9<sup>1</sup> governs intercounty transfer procedures for all probation and mandatory supervision cases. Transferring courts are vested with broad discretion to determine the propriety of a proposed transfer, subject to review of factors proscribed by the Judicial Council and any comments submitted by the proposed receiving court. (§ 1203.9(a).)

#### **Victim Restitution**

Transferring courts must consider restitution orders and victim issues before deciding the appropriateness of a proposed intercounty transfer. (§ 1203.9(e)(3).) With regard to restitution orders, transferring courts must consider “whether transfer would impair the ability of the receiving court to determine a restitution amount or impair the ability of the victim to collect

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<sup>1</sup> All further statutory references are to the Penal Code.

court-ordered restitution.” (Cal. Rules of Court, rule 4.530(f)(3).) In addition, “[t]o the extent possible, the transferring court must establish any amount of restitution owed by the supervised person before it orders the transfer.” (Cal. Rules of Court, rule 4.530(g)(2).)

Despite the above requirements, courts often transfer cases without first determining victim restitution amounts and with no indication that the restitution amount was properly considered. As a result, receiving courts are often unable to determine accurate restitution amounts because the relevant witnesses and information are not readily available in the receiving county. Those transfers also create significant hardships on victims who risk losing restitution if they are unable to travel to the receiving county to pursue or clarify a request for restitution in person.

To improve victim access to restitution and promote efficiencies in determining restitution amounts, the committee recommends sponsoring legislation amending section 1203.9 to (1) prohibit transfers until restitution amounts have been determined *unless* a transferring court finds that a determination cannot be made within a reasonable amount of time from the date of the motion to transfer, (2) require courts that transfer cases without first determining restitution to retain jurisdiction to determine the amount as soon as practicable, and (3) clarify that, in all other aspects, the receiving court receives full jurisdiction over the matter upon transfer.

Statutorily requiring the transferring court to determine restitution amounts, without obstructing the transfer of the case in all other respects, will facilitate the collection of victim restitution without compromising public safety.

### **Misdemeanors**

*Probation* as used in the Penal Code means a “conditional and revocable release in the community under the supervision of a probation officer” (§ 1203(a)), commonly referred to as “formal probation.” Although most courts reserve formal probation only for felony cases, courts are statutorily authorized to grant formal probation in misdemeanor cases. (§ 1203(a).) Section 1203.9 currently applies to transfers of all formal probation cases, regardless of whether the case involves a misdemeanor or a felony.

Most courts and county probation departments, however, only formally supervise certain misdemeanor probationers, typically reserving their limited resources for more serious offenders. If a court transfers a supervised misdemeanor case to a county in which the probation department will not supervise the case, the court in the receiving county will be unable to fulfill its obligation to enforce compliance with the terms of supervision. As a result, many misdemeanor probationers remain unsupervised after transfer.

To enhance probation supervision in misdemeanor cases, the committee recommends that the Judicial Council sponsor legislation to limit transfers of misdemeanor cases to those that involve serious offenses—sex crimes where registration is ordered under section 290, cases involving use of a firearm, crimes of violence, or three or more violations of driving under the influence of alcohol or drugs—but only after the court determines that the continued supervision of the probationer is in the best interests of the public or any victim.

By limiting transfers of misdemeanors to the small category of serious offenses listed above, contingent on case-by-case determinations by the court regarding the best interests of the public and any victims, the committee believes this recommendation will (1) promote public safety and victim interests, (2) reduce the number of misdemeanor cases that remain unsupervised after transfer, and (3) promote more effective use of supervision resources by limiting transfers to only those cases that warrant continued supervision in the probationer's county of residence.

### **Comments, Alternatives Considered, and Policy Implications**

The proposal was circulated for public comment during the spring 2013 cycle. Seven comments were received. Of those, four agreed with the proposal, including the Superior Courts of Orange, Los Angeles, and San Diego Counties. Two commentators, including the Chief Probation Officers of California (CPOC), agreed with the proposal if modified. One commentator did not specify a position. A chart of comments received and committee responses is attached at pages 8–19.

#### **Victim Restitution**

As originally circulated, the proposal would have required transferring courts—without exception—to determine the amount of any restitution owed by the probationer before transferring the case. Although all commentators agreed that transferring courts are best suited for determining restitution amounts, two commentators raised concerns about how delays that are common to determining restitution amounts will result in indefinite postponements of transfers, unduly delaying the proper supervision of the probationer in the county of residence.

To address concerns about delays common to determinations of victim restitution, the committee modified the proposal by creating an exception to allow courts to transfer cases without first determining restitution *but only if* the court determines that it is unable to determine the amount within a reasonable time of the date of the motion for transfer. The committee also modified the proposal to clarify that if a case is transferred without a prior determination of the restitution amount, the transferring court must retain jurisdiction to determine the amount as soon as practicable.

#### **Misdemeanors**

As originally circulated, the proposal would have prohibited the transfer of all misdemeanor cases without regard for the nature of the underlying offense. Several commentators, however, suggested that certain misdemeanors warrant continued formal supervision in the probationers' counties of residence. To promote public safety and improve effective supervision practices in misdemeanor cases, the committee decided to modify the proposal to create an exception for misdemeanors involving sex crimes, firearms, violence, and three or more violations of driving under the influence of alcohol or drugs, *but only if* the transferring court determines that the continued supervision of the probationer is in the best interests of the public or any victim.

### **Additional Alternatives Considered**

After the committee modified the proposal in response to comments received during the comment period as described above, the committee solicited additional feedback on the revised proposal from CPOC and the Trial Court Presiding Judges and Court Executives Advisory Committees' Joint Legislation Working Group (JLWG). The JLWG raised no concerns about the revised proposal. Although CPOC remains generally supportive of the proposal and raised no concerns about the revisions to the restitution provisions, CPOC expressed some concerns that the categories of misdemeanor cases that may be transferred are insufficiently defined. What, for example, constitutes "violence" or a "sex offense"?

In response, the committee revised the proposal to clarify the categories of misdemeanors by (1) specifying that a sex crime means a case in which "registration is ordered under Section 290," (2) clarifying that an offense involving a firearm means "an offense where the defendant used a firearm as a means of offense or defense," and (3) replacing cases that involve "driving violations" with cases in which the defendant "has been convicted of three or more violations of driving under the influence of alcohol or drugs." The committee, however, declined to elaborate on the meaning of a crime "involving violence"; instead, the committee prefers to provide courts with broad discretion to determine what constitutes violence for purposes of continued supervision in the county of residence.

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

Expected costs and operational impacts are limited to associated training of court staff and judicial officers. The committee expects that the proposal will eliminate various costs and burdens associated with determining restitution amounts after intercounty transfers.

### **Relevant Strategic Plan Goals and Operational Plan Objectives**

The proposal supports the policies underlying Goal III, Modernization of Management and Administration, and the related operation plan objective III.B.5: "Develop and implement effective trial and appellate case management rules, procedures, techniques, and practices to promote the fair, timely, consistent, and efficient processing of all types of cases."

### **Attachments**

1. Proposed amendments to Penal Code section 1203.9, at pages 6–7
2. Chart of comments, at pages 8–19

Section 1203.9 of the Penal Code is amended, effective January 1, 2015, to read as follows:

**1 Penal Code Section 1203.9**

2 (a) (1) Whenever a person is released on probation or mandatory supervision, the court, upon  
3 noticed motion, shall transfer the case to the superior court in any other county in which the  
4 person resides permanently, meaning with the stated intention to remain for the duration of  
5 probation or mandatory supervision, unless the transferring court determines that the transfer  
6 would be inappropriate and states its reasons on the record.

7 (2) Upon notice of the motion for transfer, the court of the proposed receiving county may  
8 provide comments for the record regarding the proposed transfer, following procedures set forth  
9 in rules of court developed by the Judicial Council for this purpose, pursuant to subdivision (ed).

10 (3) If victim restitution was ordered as a condition of probation or mandatory supervision, the  
11 transferring court must determine the amount of restitution before transfer unless the court finds  
12 that the determination may not be made within a reasonable time from the motion for transfer. If  
13 a case is transferred without the determination of restitution, the transferring court must complete  
14 the determination as soon thereafter as practicable. In all other aspects, the court of the receiving  
15 county shall have full jurisdiction over the matter upon transfer as provided in subdivision (b).

16 (4) The court and the probation department shall give the matter of investigating those transfers  
17 precedence over all actions or proceedings therein, except actions or proceedings to which  
18 special precedence is given by law, to the end that all those transfers shall be completed  
19 expeditiously.

20  
21 (b) The court of the receiving county shall accept the entire jurisdiction over the case.  
22

23 ~~(c) Notwithstanding subdivision (a), whenever a person is granted probation under Section~~  
24 ~~1210.1, the sentencing court shall transfer jurisdiction of the entire case, upon a finding by the~~  
25 ~~receiving court of the person's permanent residency in the receiving county, unless there is a~~  
26 ~~determination on the record that the transfer would be inappropriate.~~  
27

28 ~~(d)~~ The order of transfer shall contain an order committing the probationer or supervised person  
29 to the care and custody of the probation officer of the receiving county and, if applicable, an  
30 order for reimbursement of reasonable costs for processing the transfer to be paid to the sending  
31 county in accordance with Section 1203.1b. A copy of the orders and any probation reports shall  
32 be transmitted to the court and probation officer of the receiving county within two weeks of the  
33 finding that the person does permanently reside in or has permanently moved to that county, and  
34 thereafter the receiving court shall have entire jurisdiction over the case, with the like power to  
35 again request transfer of the case whenever it seems proper.  
36

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

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

4

5 (e) This section shall not apply to misdemeanor cases unless the defendant was placed on  
6 probation for a sex crime where registration is ordered under section 290, an offense involving  
7 violence, or an offense where the defendant used a firearm as a means of offense or defense; or  
8 the defendant was placed on probation after having been convicted of three or more violations of  
9 driving under the influence of alcohol or drugs; and the court determines that the continued  
10 supervision of the probationer in the county of residence is in the best interests of the public or  
11 any victim.

12

**LEG13-01**

**Proposed Legislation: Criminal Procedure: Intercounty Probation Case Transfers** (amend Penal Code Section 1203.9)

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

	Commentator	Position	Comment	Committee Response
1.	Chief Probation Officers of California, Ms. Danielle Higgs Legislative Representative	AM	<p>On behalf of the Chief Probation Officers of California (CPOC), we write in response to the invitation to comment on the “Proposed Legislation: Criminal Procedure: Intercounty Probation Case Transfers” which proposes to amend penal code section 1203.9.</p> <ul style="list-style-type: none"> <li>• We support the proposal to amend Penal Code section 1203.9 to require transferring courts to determine the amount of any restitution owed by the probationer before transferring the case. We believe the sending courts are best positioned with the facts of the case to make those determinations and set restitution amounts.</li> </ul>	<ul style="list-style-type: none"> <li>• To address concerns about frequent delays in determining restitution amounts, the committee modified the proposal to (a) prohibit transfers until restitution amounts have been determined <i>unless</i> a transferring court finds that the determination cannot be made within a reasonable amount of time from the motion to transfer, (b) require courts that transfer cases without first determining restitution to retain jurisdiction to determine the amount as soon as practicable, and (c) clarify that, in all other aspects, the receiving court receives full jurisdiction over the matter upon transfer. By requiring the responsibility to determine restitution amounts to remain with the court best suited for those determinations, without obstructing the transfer of the case in all other respects, the committee believes that the recommendation will enhance the collection of victim restitution without compromising public safety.</li> </ul>



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			<ul style="list-style-type: none"> <li>Regarding the second proposal to prohibit the transfer of misdemeanors, we have some concerns relative to how this proposal would impact specific domestic violence or sex offender cases. While we recognize the rationale for this proposal that not all probation departments supervise misdemeanor probationers, prohibiting the transfer of all cases could have a significant negative impact on cases that warrant intensive supervision, programming and active monitoring like domestic violence and sex offender cases. We would encourage the Judicial Council to consider the impact of this proposal on these types of cases and respectfully request options to be considered for addressing the transfer of certain cases.</li> </ul> <p>We appreciate the opportunity to comment on these proposals and look forward to further discussions. Please do not hesitate to contact me if I can be of further assistance.</p>	<ul style="list-style-type: none"> <li>To address concerns about prohibiting the transfer of <i>all</i> misdemeanor cases without regard for the underlying offense, the committee decided to modify the proposal to prohibit transfer of misdemeanors <i>unless</i> they involve sex crimes where registration is ordered under section 290, an offense involving violence, and offense where the defendant used a firearm, or cases in which the defendant has been convicted of three or more violations of driving under the influence of alcohol or drugs, and the transferring court determines that the continued supervision of the probationer is in the best interests of the public or any victim.</li> </ul>
2.	Mr. Ed Berberian Marin County District Attorney	A	<p>I agree with the proposal since the reduction in funding is hitting not only the courts but the county agencies working with the courts. This results in priority settings that will likely put probation transfers low on the list -- particularly when we are talking about misdemeanor offenses.</p> <p>We should be looking to the best option for</p>	No additional response is required.

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			<p>making restitution decisions. Our victims will be best served if the committing jurisdiction makes the restitution determinations. I believe Marsy's Law is best served with the proposed approach.</p>	
3.	<p>Orange County Bar Association, Mr. Wayne R. Gross President</p>	AM	<p>Determination of restitution by the transferring court prior to transfer is efficient and logical. However, denial of transfer for any misdemeanor without regard for the underlying circumstances of the offense, the availability of local programs in the receiving county or the individual circumstances of the probationer does not further rehabilitation. In some cases, the unavailability can interfere with probationer's compliance with the terms and conditions of the court's orders.</p> <p>For instance, in cases of restitution, misdemeanor probationers must go to where they may find work which may not be locally; sometimes, a probationer may have an appropriate support group (family) which increases the likelihood of rehabilitation and probation compliance in another county; or a probationer may have committed an offense while in southern CA but in actuality permanently resides in northern CA. The variation in possible scenarios is limitless and is inconsistent with the goals of realignment.</p> <p>Finally, the court presently has discretion in denying transfer where it finds the transfer inappropriate.</p>	<p>To address concerns about prohibiting the transfer of <i>all</i> misdemeanor cases without regard for the underlying offense, the committee decided to modify the proposal to prohibit transfer of misdemeanors <i>unless</i> they involve sex crimes where registration is ordered under section 290, an offense involving violence, and offense where the defendant used a firearm, or cases in which the defendant has been convicted of three or more violations of driving under the influence of alcohol or drugs, and the transferring court determines that the continued supervision of the probationer is in the best interests of the public or any victim.</p>

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4.	Orange County Probation Department Mr. Keith Gotts Division Director Adult Court Services	N/I	<p><u>Misdemeanors</u></p> <p>The current PC 1203.9 statute references the transfer of all formal probation cases when permanent residence is established or intended to be established in a county other than where the court of jurisdiction is located. The proposed modification ... will preclude misdemeanor offenders on formal probation from transfer. The rationale provided is that some probation departments do not supervise formal misdemeanor offenders therefore the transfer of these cases places the court in a position where it cannot fulfill its obligation to ensure compliance with the terms of probation. At present the vast majority of misdemeanor convictions do not result in formal probation status. For those misdemeanants that do receive formal probation the number requesting transfer is also a small minority. In Orange County generally only more serious misdemeanants are placed on formal probation and they typically pose a risk to community safety, however it is recognized that other counties may have differing practices. These offenses usually involve sex crimes, violence, multiple DUIs, and firearms possession. In many cases the misdemeanor conviction is the result of a plea bargain from a felony or an inability to obtain a conviction for a felony offense, however the underlying case dynamics pose the same community safety risks as a felony conviction. These offenders are lawfully allowed to reside</p>	<p><u>Misdemeanors</u></p> <p>To address concerns about prohibiting the transfer of <i>all</i> misdemeanor cases without regard for the underlying offense, the committee decided to modify the proposal to prohibit transfer of misdemeanors <i>unless</i> they involve sex crimes where registration is ordered under section 290, an offense involving violence, and offense where the defendant used a firearm, or cases in which the defendant has been convicted of three or more violations of driving under the influence of alcohol or drugs, and the transferring court determines that the continued supervision of the probationer is in the best interests of the public or any victim.</p>

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			<p>anywhere in the State as long as their location would not further future criminality or not be in the best interest of their rehabilitation. Many times these misdemeanor offenders live in a different county than the one that their offense is committed in. Even the Interstate Compact for transfer of offenders between states has rules for the transfer of misdemeanor offenders convicted for sex offenses, violence, firearms or multiple DUI offenses and these offenders are not allowed to transfer between states without the benefit of the compact, due to community safety concerns (ISC Rule 2.105 Misdemeanants).</p> <p>Precluding all misdemeanants from transfer under PC 1203.9 would potentially create more unsupervised misdemeanor probationers throughout the State than the number envisioned in the description of the background information in the Invitation to Comment. This modification would also place probation departments throughout the State in the challenging position of being responsible for the formal supervision of misdemeanor formal probationers with no ability to supervise them out of county or transfer their case to ensure appropriate supervision. Misdemeanor offenders placed on probation in their county of residence could move to another county and the probation department, as well as the Court, in the prior county would have no ability to fulfill their obligations for supervision. This could also occur as the result of an offender being</p>	

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			<p>convicted of a crime with formal probation in a county other than their own, and returning to their own county of residence. As examples: In the case of misdemeanor child abuse or domestic violence a probationer could move out of county with their family/ spouse, unless prohibited by court order, without probation supervision. Misdemeanor sex offenders (child pornography, indecent exposure, annoy or molest child, sexual battery) who are required to register pursuant to 290 PC could reside in one county while the probation department responsible for their supervision/ engagement in appropriate treatment was located in another county. Offenders with multiple DUI convictions on misdemeanor probation could move out of their county of residence and not be subject to supervision by the local probation department. In addition, without a transfer to the probation department of the county of residence, local law enforcement would not be aware of the probationers residing in their area or their terms of supervision. Under these circumstances any probation violation or warrant would require transportation from the county of residence to the county of jurisdiction as well.</p> <p>It is understandable that some probation departments throughout the State are unable to supervise many types of offenders due to extensive workloads and a lack of resources. All probation departments have been in the position of prioritizing their supervision resources. The Penal Code provides the</p>	

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			<p>authority for the Chief Probation Officer to determine the level and type of supervision for all offenders placed on formal probation, consistent with the orders of the court. It would seem more beneficial for community safety to allow for supervision of all formal probationers to occur as the probation statutes intended. This would allow those departments still choosing to actively supervise misdemeanor probationers who pose a significant risk to the community to do so. Other probation departments may choose to place all misdemeanor probationers in a banked caseload based on their internal prioritization. While it may be expedient to preclude all misdemeanor formal probationers from Intercounty transfer under PC 1203.9 it does not benefit community safety. The Interstate Compact for the transfer of offenders recognizes this as well.</p> <p>Alternates for Consideration:</p> <p>Since the number of misdemeanor formal probation transfers is relatively small it may be of benefit to not modify the law to preclude them from transfer and rely on the flexibility inherent in the Penal Code to allow local probation departments to determine the appropriate level and type of supervision subsequent to any transfer. Should the Judicial Council/ AOC continue with support for legislation modifying PC 1203.9 related to misdemeanor offenders; it is recommended that these modifications be consistent with the rules</p>	

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			<p>of the Interstate Compact. This would limit transfers of formal misdemeanor cases to sex offenses, violence, firearms and multiple DUI cases as an alternative.</p> <p><u>Victim Restitution</u></p> <p>The proposed modification is to require that the sending Court determine restitution prior to transferring jurisdiction of the case rather than the current requirement to consider the ability to determine or collect restitution. A requirement to determine restitution prior to transfer could cause significant delays in transfer and the accompanying supervision. In reality most transfers are processed with the offender already residing in the receiving county. Under current law and Rules of Court these transfers take approximately 70 days at a minimum to accomplish. The efforts to make contact with, get a response from, and then seek clarification/documentation from victims may delay this process even longer. In addition, this additional requirement would delay transfer of jurisdiction and supervision significantly longer for cases with restitution where a contested restitution hearing is required. There can be frequent continuances for contested restitution hearings which would continue the time delays wherein the offender is living unsupervised and unknown to local law enforcement, in the receiving county. Such a delay in transfer and supervision may actually cause community safety concerns. Restitution is also an issue that</p>	<p><u>Victim Restitution</u></p> <p>To address concerns about frequent delays in determining restitution amounts, the committee modified the proposal to (a) prohibit transfers until restitution amounts have been determined <i>unless</i> a transferring court finds that the determination cannot be made within a reasonable amount of time from the motion to transfer, (b) require courts that transfer cases without first determining restitution to retain jurisdiction to determine the amount as soon as practicable, and (c) clarify that, in all other aspects, the receiving court receives full jurisdiction over the matter upon transfer. By requiring the responsibility to determine restitution amounts to remain with the court best suited for those determinations, without obstructing the transfer of the case in all other respects, the committee believes that the recommendation will enhance the collection of victim restitution without compromising public safety.</p>

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			<p>can be reopened by a victim for ongoing costs such as therapy and could be subject to change, which would create additional complications prior to transfer. Even if restitution is set at zero it could be subject to modification in the future should a victim come forward. It is certainly understandable to make every effort to determine restitution prior to transfer.</p> <p>Alternate for Consideration:</p> <p>The goal of this modification is laudable and considers the rights of victims as a priority. It should be the standard of practice in most cases of jurisdictional transfer. There are certain cases where restitution issues are extremely complicated or contested for long periods of time. The Judicial Council/ AOC may consider an alternative that requires a court that orders a transfer where restitution has not been determined, to state on the record the reasons why the transfer is proceeding without a restitution determination.</p>	
5.	Superior Court of Los Angeles County	A	<p>We recommend adding a mechanism by which the receiving court can transfer the case back to the sentencing court when, during the probationary period, contested issues arise that:</p> <ol style="list-style-type: none"> <li>1. call into question the sentencing court's factual and/or discretionary determinations; or</li> <li>2. require an evidentiary hearing and the witnesses reside in the county of the sentencing</li> </ol>	The committee declined the suggestions because they exceed the scope of the proposal. The committee, however, appreciates the suggestions and will consider them at a future meeting.



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			<p>court. This is particularly necessary for post conviction contested issues that arise from jury trials.</p> <p>In those cases, the sentencing court is in the unique position to have heard and evaluated the trial testimony.</p>	
6.	Superior Court of Orange County Ms. Kelli Beltran Branch Manager	A	<p>Orange County's Criminal Operations Managers generally agree with the proposal. We agree that restitution amounts should be determined prior to transferring the case. Without knowing how many of the county probation departments do not supervisor misdemeanor probationers it is difficult to provide complete agreement. In regards to prohibiting misdemeanor probation transfers, we believe this could increase non-compliance activities if a probationer is not able to easily get to the originating county to take care of any outstanding obligations or probation reporting requirements. An alternative to prohibiting the transfer of all misdemeanor cases would be to include a factor in the rules that pertains to the receiving probation department's availability to provide supervision to a misdemeanor probationer.</p> <p>If the proposal is implemented as written, there will be slight cost savings. On average, Orange County receives 10 misdemeanor transfers per month. Costs savings would be in staff resources, copy work and FedEx costs associated with processing probation transfers.</p>	<p>To address concerns about prohibiting the transfer of <i>all</i> misdemeanor cases without regard for the underlying offense, the committee decided to modify the proposal to prohibit transfer of misdemeanors <i>unless</i> they involve sex crimes where registration is ordered under section 290, an offense involving violence, and offense where the defendant used a firearm, or cases in which the defendant has been convicted of three or more violations of driving under the influence of alcohol or drugs, and the transferring court determines that the continued supervision of the probationer is in the best interests of the public or any victim.</p>

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	Commentator	Position	Comment	Committee Response
			<p><b>Implementation requirements:</b></p> <ul style="list-style-type: none"> <li>• Notification/Collaboration with Probation Department</li> <li>• Notification to judicial officers, court staff, self- help, attorneys</li> <li>• Change in procedures to clarify process applicable to felony offenses only</li> <li>• Change in forms to specify applicable to felony offenses only and to include a section for Probation to fill in the restitution amount information</li> <li>• Case management system docket code changes</li> <li>• Staff training</li> <li>• Public website update</li> </ul> <p>12 months will provide sufficient time for implementation.</p>	
7.	Superior Court of San Diego County, Mr. Michael Roddy Court Executive Officer	A	<ul style="list-style-type: none"> <li>• Our court supports the proposed legislation to prohibit transfer of misdemeanor cases by amending Pen. Code §1203.9. In many counties, including San Diego, misdemeanants are usually placed “on probation to the court”. There is no probation officer monitoring the defendant. The only time the court has contact with the misdemeanant is when he or she has a new case or violates conditions of his or her current probation. As it is, the courts have their hands full with their own caseload of misdemeanor cases.</li> </ul>	<ul style="list-style-type: none"> <li>• To address concerns about prohibiting the transfer of <i>all</i> misdemeanor cases without regard for the underlying offense, the committee decided to modify the proposal to prohibit transfer of misdemeanors <i>unless</i> they involve sex crimes where registration is ordered under section 290, an offense involving violence, and offense where the defendant used a firearm, or cases in which the defendant has been convicted of three or more violations of driving under the influence of alcohol or drugs, and the transferring court determines that the continued supervision</li> </ul>

**LEG13-01**

**Proposed Legislation: Criminal Procedure: Intercounty Probation Case Transfers** (amend Penal Code Section 1203.9)

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

	Commentator	Position	Comment	Committee Response
			<ul style="list-style-type: none"> <li>The other portion of this proposed legislation is to require transferring courts to determine the amount of restitution owed by the defendant before transferring the case. There is already a mechanism in place for San Diego (SD) cases that are granted transfer to other jurisdictions. Part of SD Probation’s responsibility is to provide the court with a Revenue &amp; Recovery printout of fines/fees, including restitution, the defendant still owes on his felony case. This information is transferred together with the original minutes from the court file, once the motion to transfer the case is granted. If there are courts that do not provide this information, the legislation is appropriate to make sure the information is available to collect the restitution and protect the victim.</li> </ul>	<p>of the probationer is in the best interests of the public or any victim.</p> <ul style="list-style-type: none"> <li>To address concerns about frequent delays in determining restitution amounts, the committee modified the proposal to (a) prohibit transfers until restitution amounts have been determined <i>unless</i> a transferring court finds that the determination cannot be made within a reasonable amount of time from the motion to transfer, (b) require courts that transfer cases without first determining restitution to retain jurisdiction to determine the amount as soon as practicable, and (c) clarify that, in all other aspects, the receiving court receives full jurisdiction over the matter upon transfer. By requiring the responsibility to determine restitution amounts to remain with the court best suited for those determinations, without obstructing the transfer of the case in all other respects, the committee believes that the recommendation will enhance the collection of victim restitution without compromising public safety.</li> </ul>