

JUDICIAL COUNCIL OF CALIFORNIA

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INVITATION TO COMMENT

LEG20-01

Title

Proposal for Judicial Council–Sponsored
Legislation: Notification of Reduced or
Dismissed Convictions for Probation
Transfer Cases

Proposed Rules, Forms, Standards, or Statutes

Amend Pen. Code, §§ 1203.425, 1203.9, and
13151

Proposed by

Criminal Law Advisory Committee
Hon. J. Richard Couzens, Chair

Action Requested

Review and submit comments by June 9,
2020

Proposed Effective Date

January 1, 2022

Contact

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Executive Summary and Origin

The Criminal Law Advisory Committee recommends that the Judicial Council sponsor legislation to amend Penal Code sections 1203.425, 1203.9, and 13151 to require notification between receiving courts and transferring courts of reductions of felonies to misdemeanors and dismissals of convictions in probation transfer cases.

Background

Under California law, when probation is transferred, the receiving court accepts “the entire jurisdiction over the case effective the date that the transferring court orders the transfer.” (Pen. Code, § 1203.9(b).) This includes jurisdiction to adjudicate petitions to reduce a felony to a misdemeanor or dismiss a conviction under Penal Code section 1203.4 and multiple other statutes. However, no statute or rule of court currently requires (1) the transferring court to limit access to the transferred case file; (2) probation transfers to be reported to the Department of Justice (DOJ); (3) the receiving court to notify the transferring court when a reduction or dismissal occurs; or (4) the transferring court to update its records if it receives notice of a reduction or dismissal from the receiving court. If a receiving court reduces or dismisses a conviction but does not notify the transferring court, publicly accessible conviction documents in a transferring court’s case file may be inaccurate.

*This proposal has not been approved by the Judicial Council and is not intended to represent the views of the council, its Rules Committee, or its Legislation Committee.
It is circulated for comment purposes only.*

In 2018 and 2019, the Legislature passed two significant automated record relief bills, which removed the burden of seeking record relief from a defendant-petitioner and made it the responsibility of government agencies. Assembly Bill 1793 (Stats. 2018, ch. 993) enacted Health and Safety Code section 11361.9, automating relief for marijuana convictions under Proposition 64, which reduced or repealed designated marijuana-related offenses. Assembly Bill 1076 (Stats. 2019, ch. 578) requires the DOJ, in relevant part, to grant automatic record relief to individuals meeting specified criteria, including completing probation without revocation and not currently serving a sentence for any offense. A court may not disclose information concerning a conviction granted automatic record relief or a dismissal under Penal Code sections 1203.4, 1203.4a, 1203.41, or 1203.42, except in limited circumstances.

Automatic marijuana conviction relief would likely go through the transferring court, not the receiving court.¹ Under the new law, DOJ is responsible for identifying marijuana convictions that may be eligible for relief under Prop. 64 and notifying the prosecuting agency of all eligible cases in its jurisdiction. The prosecuting agency is required to inform the court if it is or is not challenging the resentencing of a case. For any case in which the court grants relief, the court must notify DOJ, which in turn modifies the state summary criminal history information database. Because DOJ has disposition information only from the county of conviction (the transferring court), it would likely contact the prosecution in that county, which would lead to proceedings in the transferring court. If a probation transfer case is granted automated relief in the transferring court and the receiving court is not notified, the receiving court may have inaccurate publicly accessible conviction documents in its case file.

Similarly, automatic record relief would also likely go through the transferring court. Under AB 1076, DOJ is directed to review records in the statewide criminal justice databases for eligible cases and to notify “the superior court having jurisdiction over the criminal case, informing the court of all cases for which a complaint was filed in that jurisdiction and for which relief was granted pursuant to this section.” (Pen. Code, § 1203.425(c).) Arguably, the receiving court has jurisdiction over the transferred criminal case, but DOJ would likely notify the transferring court because probation transfers are not reported to the DOJ and because the complaint was filed in the transferring court’s jurisdiction.

Section 1203.425’s requirement that a court not disclose information concerning a conviction granted automated record relief or dismissal under Penal Code sections 1203.4, 1203.4a, 1203.41, or 1203.42 may be problematic to apply in probation transfer cases with court files across multiple jurisdictions. For example, a receiving court may dismiss a case under section

¹ In *People v. Thor Sinthavong Chanthasone* (July 11, 2018, E068935 [nonpub. opn.]), the Fourth Appellate District held that requests for relief under Health and Safety Code section 11361.8 (resentencing or dismissal of marijuana conviction under Proposition 64) should be filed in the sentencing court, even in the case of a probation transfer, based on the statutory language directing petitions to go “before the trial court that entered the judgment of conviction.” (Health & Saf. Code, § 11361.8(a).) The court relied on the Supreme Court’s ruling in *People v. Adelmann* (2018) 4 Cal.5th 1071, which held that a defendant is required to file a Proposition 47 petition in the court in which the defendant was sentenced, regardless of whether the matter was later transferred to another superior court.

1203.4 and not disclose information as required under the new law, but if the transferring court does not receive any notice of this changed disposition, its court file would not be similarly restricted. Although AB 1076 does not address probation transfer scenarios, the intent appears to be for all courts to similarly restrict the release of conviction information after designated relief has been granted.

The Proposal

This proposal aims to create a framework for notification of reduced or dismissed cases between receiving and transferring courts through existing court procedures and by adding elements addressing probation transfers to the automated record cleaning statute.

Specifically, the proposal amends Penal Code sections 1203.9 and 13151 to require a transferring court to report a probation transfer to the DOJ as a subsequent action to a case. The disposition update will occur once the case was accepted by the receiving court and will identify the receiving court and new case number, if any. The proposal also amends Section 1203.9 to require the receipt of records from the receiving court to the transferring court to include the receiving court's new case number, if any. This requirement will give DOJ the court and case information it needs to notify all involved courts of any future reduction or disposition change in a transferred case, whether petition-based or automated.

Finally, the proposal amends Penal Code section 1203.425 to require electronic notice of a reduction or dismissal from DOJ to all involved courts and require courts to update records to reflect a reduction or dismissal. The proposal also further clarifies how provisions of the existing statute apply to probation transfer cases, including that a petition in opposition to automated record cleaning may be filed by the prosecuting agency or probation department in either the transferring court or the receiving court, in the county of current jurisdiction.

Alternatives Considered

The committee discussed amending Rule of Court 4.530, Intercounty transfer of probation and mandatory supervision cases, at length. Part of the discussion focused on how to avoid additional court workload by leveraging existing court procedures and how DOJ could play a role in managing the notification between courts. The committee concluded that a rule of court was limited in its ability to fully address the issue and that a legislative proposal provided a more robust solution.

Fiscal and Operational Impacts

The major fiscal and operational impacts of this proposal fall on DOJ, which, to comply with new reporting and notification requirements, will need to add probation transfer disposition codes to the criminal disposition reports and create a mechanism to provide electronic notice to all involved courts of subsequent reductions or dismissals.

The fiscal and operational impacts to the courts result from (1) requiring transferring courts to report the transfer to DOJ; (2) requiring receiving courts to notify transferring courts of the new case numbers, if any; and (3) requiring all courts to update their records if notified by DOJ of a reduction or dismissal affecting the case. However, the proposal adds minor additions to existing court procedures and seeks to lessen the burden on courts by shifting notification duties to DOJ.

Request for Specific Comments

In addition to comments on the proposal as a whole, the advisory committee is interested in comments on the following:

- Does the proposal appropriately address the stated purpose?

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

- Would the proposal provide cost savings? If so, please quantify.
- What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems?
- Would 12 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?
- How well would this proposal work in courts of different sizes?

Attachments and Links

1. Pen. Code, §§ 1203.425, 1203.9, and 13151, at pages 5–7

Penal Code sections 1203.425, 1203.9, and 13151 would be amended, effective January 1, 2022, to read:

1 **§ 1203.425.**

2
3 (a)–(b) * * *

4
5 (c)

6
7 (1) On a monthly basis, the department shall electronically submit a notice to the
8 superior court having jurisdiction over the criminal case, informing the court
9 of all cases for which a complaint was filed in that jurisdiction and for which
10 relief was granted pursuant to this section. Commencing on February 1, 2021,
11 for any record retained by the court pursuant to Section 68152 of the
12 Government Code, except as provided in subdivision (d), the court shall not
13 disclose information concerning a conviction granted relief pursuant to this
14 section or Section 1203.4, 1203.4a, 1203.41, or 1203.42, to any person or
15 entity, in any format, except to the person whose conviction was granted
16 relief or a criminal justice agency, as defined in Section 851.92.

17
18 (2)

19
20 (A) If probation is transferred pursuant to Section 1203.9, the department
21 shall electronically submit a notice as provided in paragraph (1) to both
22 the transferring court and any subsequent receiving court. The
23 electronic notice shall be in a mutually agreed upon format.

24
25 (B) If a receiving court reduces a felony to a misdemeanor pursuant to
26 section 17(b), or dismisses a conviction pursuant to law—including,
27 but not limited to, sections 1203.4, 1203.4a, 1203.41, 1203.42,
28 1203.43, or 1203.49—it shall furnish a disposition report to the
29 department with the original case number and CII number from the
30 transferring court, and the department shall electronically submit a
31 notice to the superior court that sentenced the defendant. If probation is
32 transferred multiple times, the department shall electronically submit a
33 notice to all other involved courts. The electronic notice shall be in a
34 mutually agreed upon format.

35
36 (C) If a court receives notification from the department pursuant to
37 subparagraph (B), the court shall update its records to reflect the
38 reduction or dismissal. If a court receives notification that a case was
39 dismissed pursuant to this section or Section 1203.4, 1203.4a, 1203.41,
40 or 1203.42, the court shall update its records to reflect the dismissal and
41 shall not disclose information concerning a conviction granted relief to
42 any person or entity, in any format, except to the person whose

Penal Code sections 1203.425, 1203.9, and 13151 would be amended, effective January 1, 2022, to read:

1 conviction was granted relief or a criminal justice agency, as defined in
2 Section 851.92.

3
4 (d)–(g) * * *

5
6 (h)

7
8 (1) The prosecuting attorney or probation department may, no later than 90
9 calendar days before the date of a person’s eligibility for relief pursuant to
10 this section, file a petition to prohibit the department from granting automatic
11 relief pursuant to this section, based on a showing that granting such relief
12 would pose a substantial threat to the public safety. If probation was
13 transferred pursuant to Section 1203.9, the prosecuting attorney or probation
14 department in either the receiving county or the transferring county shall file
15 the petition in the county of current jurisdiction.

16
17 (2)–(5) * * *

18
19 (6) If the court grants a petition pursuant to this subdivision, the court shall
20 furnish a disposition report to the Department of Justice pursuant to Section
21 13151, stating that relief pursuant to this section was denied, and the
22 department shall not grant relief pursuant to this section. If probation was
23 transferred pursuant to section 1203.9, the department shall electronically
24 submit a notice that relief pursuant to this section was denied to the
25 transferring court, and, if probation was transferred multiple times, to all
26 other involved courts.

27
28 (7) A person denied relief pursuant to this section may continue to be eligible for
29 relief pursuant to Section 1203.4 or 1203.4a. If the court subsequently grants
30 relief pursuant to one of those sections, the court shall furnish a disposition
31 report to the Department of Justice pursuant to Section 13151, stating that
32 relief was granted pursuant to the applicable section, and the department shall
33 grant relief pursuant to that section. If probation was transferred pursuant to
34 section 1203.9, the department shall electronically submit a notice that relief
35 was granted pursuant to the applicable section to the transferring court and, if
36 probation was transferred multiple times, to all other involved courts.

37
38 (i) * * *

Penal Code sections 1203.425, 1203.9, and 13151 would be amended, effective January 1, 2022, to read:

1 **§ 1203.9.**

2
3 (a)

4
5 (1)–(3) * * *

6
7 (4) The receipt of records from the receiving court to the transferring court shall
8 include the new case number, if any.

9
10 (5) Pursuant to section 13151, the transferring court shall report to the
11 Department of Justice that probation was transferred, once the receiving court
12 accepts the transfer. A probation transfer report shall identify the receiving
13 court and the new case number, if any.

14
15
16 (b)–(g) * * *

17
18 **§ 13151.**

19
20 (a) The superior court that disposes of a case for which an arrest was required to be
21 reported to the Department of Justice pursuant to Section 13150 or for which
22 fingerprints were taken and submitted to the Department of Justice by order of the
23 court shall ensure that a disposition report of a case containing the applicable data
24 elements enumerated in Section 13125, including the CII number and the court
25 docket number, or Section 13151.1 if the disposition is one of dismissal, is
26 furnished to the Department of Justice within 30 days according to the procedures
27 and in a format prescribed by the department. The court shall also furnish a copy of
28 the disposition report to the law enforcement agency having primary jurisdiction to
29 investigate the offense alleged in the complaint or accusation. When a court orders
30 an action subsequent to the initial disposition of a case, the court shall similarly
31 report the proceedings to the department, including a transfer of probation pursuant
32 to Section 1203.9 by the transferring court, once the case is accepted by the
33 receiving court. A probation transfer report shall identify the receiving superior
34 court and the new case number, if any. When filing a case with the court, the
35 criminal justice agency shall include the CII number in the filing.

36
37 (b) * * *