

Judicial Council of California • Administrative Office of the Courts

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INVITATION TO COMMENT

SPR11-32

Title	Action Requested
Criminal Procedure: Intercounty Probation Transfer Forms	Review and submit comments by June 20, 2011
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Adopt forms CR-250, CR-251, and CR-252	January 1, 2012
Proposed by	Contact
Criminal Law Advisory Committee Hon. Steven Z. Perren, Chair	Arturo Castro, 415-865-7702 arturo.castro@jud.ca.gov

Summary

The Criminal Law Advisory Committee proposes adoption of *Notice and Motion for Transfer* (form CR-250), *Order for Transfer* (form CR-251), and *Receiving Court Comment Form* (form CR-252). These mandatory forms would 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.

Discussion

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, which became effective July 1, 2010.¹

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. Currently, however, there are no Judicial Council forms to facilitate the new requirements prescribed by the rule. As a result, courts and probation departments across the state have developed their own forms, which vary considerably.

¹ In a companion proposal, the Criminal Law Advisory Committee also seeks to amend rule 4.530 to clarify file transfer requirements and prescribe a procedure for the collection and disbursement of fines, fees, and restitution after transfer.

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 These proposals are circulated for comment purposes only.

To assist courts and probation departments in implementing the new requirements, the committee proposes the following three forms:

- ***Notice and Motion for Transfer (form CR-250)***. This proposed form would be used by petitioners to request intercounty transfers. The form contains all relevant notice and motion information, including:
 - Notice requirements and deadlines (in a text box below the heading);
 - Date, time, and place scheduled for the hearing on the motion;
 - Relevant case information, including case number, probationer's name and date of birth, information about the underlying conviction, length of the grant of probation, and the date on which probation was granted;
 - Factors the court is required to consider when determining whether transfer is appropriate; and
 - Relevant information about the petitioner, including the declaration required under rule 4.530(d)(2) and (3).

- ***Order for Transfer (form CR-251)***. This order form would be used by courts to issue the transfer order. The form contains all required findings and orders, including:
 - A finding that notice was provided as required by rule 4.530(d);
 - A finding that before deciding the motion, the court considered any comments provided by the receiving court and the factors required by rule 4.530(f);
 - An order to transmit the entire original file, including any records of payments, excluding exhibits, to the receiving court within two weeks of the transfer order; and
 - Deadlines for probationers to report to the probation officer of the receiving county.

- ***Receiving Court Comment Form (form CR-252)***. This form would be used by proposed receiving courts to provide comments to the transferring court 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 three forms are proposed for mandatory use to promote uniformity.

Attachments

PROBATION DEPARTMENT OR OTHER MOVING PARTY <i>(Name and address)</i> : TELEPHONE NO.: _____ FAX NO. <i>(Optional)</i> : _____ E-MAIL ADDRESS <i>(Optional)</i> : _____	FOR COURT USE ONLY <h2 style="margin: 0;">DRAFT ONLY</h2> <h3 style="margin: 0;">Not approved by Judicial Council</h3>
PEOPLE OF THE STATE OF CALIFORNIA v. DEFENDANT: _____	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF _____ STREET ADDRESS: _____ CITY AND ZIP CODE: _____ BRANCH NAME: _____	
NOTICE AND MOTION FOR TRANSFER (Pen. Code, § 1203.9 & Cal. Rules of Court, rule 4.530)	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: _____
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Regarding probationer *(name)*: _____ Date of birth *(specify)*: _____

2. Probationer was placed on probation for the following offense(s): _____
on *(specify 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.
 - 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: _____ By: _____
SIGNATURE

SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: CITY AND ZIP CODE: BRANCH NAME: DEPT.:	FOR COURT USE ONLY <h2 style="text-align: center;">DRAFT</h2> <h3 style="text-align: center;"><i>Not Approved by Judicial Council</i></h3>
PEOPLE OF THE STATE OF CALIFORNIA v. DEFENDANT:	
ORDER FOR TRANSFER (Pen. Code, § 1203.9 and Cal. Rules of Court, rule 4.530)	CASE NUMBER:

1. A motion for intercounty probation transfer in the above-entitled case was heard by this court on: _____
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.
 - Granted. 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 1203.1.
 - 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)

FOR COURT USE ONLY

SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: CITY AND ZIP CODE: BRANCH NAME: DEPT.:	FOR COURT USE ONLY <p style="text-align: center;">DRAFT <i>Not approved by Judicial Council</i></p>
PEOPLE OF THE STATE OF CALIFORNIA v. DEFENDANT:	
<p style="text-align: center;">RECEIVING COURT COMMENT FORM (Pen. Code, § 1203.9 and Cal. Rules of Court, rule 4.530)</p>	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 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

Item SPR11-32 Response Form

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

- Agree with proposed changes
- Agree with proposed changes **if modified**
- Do not agree** with proposed changes

Comments: _____

Name: _____ **Title:** _____

Organization: _____

- Commenting on behalf of an organization**

Address: _____

City, State, Zip: _____

To Submit Comments

Comments may be submitted online, written on this form, or prepared in a letter format. If you are *not* commenting directly on this form, please include the information requested above and the proposal number for identification purposes. Please submit your comments online or email, mail, or fax comments. You are welcome to email your comments as an attachment.

Internet: www.courts.ca.gov/policyadmin-invitationstocomment.htm

Email: invitations@jud.ca.gov

Mail: Ms. Camilla Kieliger
Judicial Council, 455 Golden Gate Avenue
San Francisco, CA 94102

Fax: (415) 865-7664, Attn: Camilla Kieliger

DEADLINE FOR COMMENT: 5:00 p.m., Monday, June 20, 2011

Circulation for comment does not imply endorsement by the Judicial Council or the Rules and Projects Committee. All comments will become part of the public record of the council's action.