

### Invitation to Comment

Title	Criminal Law: Intercounty Probation Case Transfer (adopt Cal. Rules of Court, rule 4.530)
Summary	The proposed rule responds to recently enacted legislation that revised intercounty probation case transfer procedure. The legislation requires the Judicial Council to adopt rules of court to govern the new procedure and provide factors for the court to consider when determining whether transfer is appropriate.
Source	Criminal Law Advisory Committee Justice Steven Z. Perren, Chair
Staff	Arturo Castro, Committee Counsel, 415-865-7702, arturo.castro@jud.ca.gov

### Discussion

Senate Bill 431 (Benoit; Stats. 2009, ch. 588) recently amended Penal Code section 1203.9 to modify intercounty probation case transfer procedure to:

- Eliminate “courtesy” supervision (Pen. Code, § 1203.9(b));
- Require the transferring court to transfer the case to the court of the probationer’s county of permanent residence unless the transferring court determines that transfer would be inappropriate and states its reasons on the record (Pen. Code, § 1203.9(a));
- Require that the receiving court be provided notice of the transfer motion (*ibid*); and
- Authorize the receiving court to provide comments to the transferring court for the record regarding the proposed transfer (*ibid.*).

Senate Bill 431 also requires the Judicial Council to adopt rules of court that provide (1) procedures by which the receiving court is to receive notice of the transfer motion and provide comments to the transferring court; and (2) factors for the transferring court to consider when determining whether transfer is appropriate, including the permanency of the probationer’s residence, availability of local programs, restitution orders, and victim issues. (Pen. Code, § 1203.9(e).)

Proposed rule 4.530 would prescribe (1) specific notice requirements and deadlines, including a requirement that notice be given at least 60 days before the date set for hearing on the motion; (2) a procedure by which the receiving court may provide comments regarding the proposed transfer to the transferring court, including a requirement that the

receiving court provide any comments no later than 10 days before the date set for hearing on the motion; (3) several factors that the transferring court must consider when determining whether transfer is appropriate; and (4) specific transfer requirements and deadlines.

Attachment

Rule 4.530 of the California Rules of Court would be adopted, effective July 1, 2010, to read:

1 **Rule 4.530. Intercounty probation case transfer**

2  
3 **(a) Application**

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5 This rule applies to intercounty probation case transfers under Penal Code  
6 section 1203.9. It does not apply to transfers of cases in which probation has  
7 been granted under Penal Code section 1210.1.

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9 **(b) Definitions**

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11 As used in this rule:

12  
13 (1) “Transferring court” means the superior court of the county in which  
14 the probationer is supervised on probation.

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16 (2) “Receiving court” means the superior court of the county to which  
17 transfer of the case and probation supervision is proposed.

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19 **(c) Motion**

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21 Transfers may be made only after noticed motion in the transferring court.

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23 **(d) Notice**

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25 (1) If transfer is requested by the probation officer of the transferring  
26 county, the probation officer must provide written notice of the date,  
27 time, and place set for hearing on the motion to the receiving court, the  
28 probation officer of the receiving county, the prosecutor of the  
29 transferring county, the victim (if any), the probationer, and the  
30 probationer’s last counsel of record (if any).

31  
32 (2) If transfer is requested by any other party, the party must first request in  
33 writing that the probation officer of the transferring county notice the  
34 motion on behalf of the party. The party may make the motion to the  
35 transferring court only if the probation officer declines to do so. If the  
36 party makes the motion, the motion must include a declaration that the  
37 probation officer has declined to bring the motion, and the party must  
38 provide written notice of the date, time, and place set for hearing on the  
39 motion to the receiving court, the probation officer of the transferring  
40 and receiving counties, the prosecutor of the transferring county, the  
41 probationer, and the probationer’s last counsel of record (if any). Upon  
42 receipt of notice of a motion for transfer by a party, the probation

1 officer of the transferring county must provide notice to the victim, if  
2 any.

3  
4 (3) Notice of a transfer motion must be given at least 60 days before the  
5 date set for hearing on the motion.

6  
7 (4) Before deciding a transfer motion, the transferring court must confirm  
8 that notice was given to the receiving court as required by (1) and (2).

9  
10 **(e) Comment**

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12 (1) No later than 10 days before the date set for hearing on the motion, the  
13 receiving court may provide comments to the transferring court for the  
14 record regarding the proposed transfer.

15  
16 (2) Any comments provided by the receiving court must be in writing and  
17 signed by the court, and must state why transfer is or is not appropriate.

18  
19 (3) Before deciding a transfer motion, the transferring court must state on  
20 the record that it has received and considered any comments provided  
21 by the receiving court.

22  
23 **(f) Factors**

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

27  
28 (1) The permanency of the probationer’s residence. As used in this  
29 subdivision, “residence” means the place where the probationer  
30 customarily lives exclusive of employment, school, or other special or  
31 temporary purpose. A probationer may have only one residence. The  
32 fact that the probationer intends to change residence to the receiving  
33 county, without further evidence of how and why this is to be  
34 accomplished, is insufficient to change residences;

35  
36 (2) The availability of appropriate programs for the offender, including  
37 substance abuse, domestic violence, sex offender, and collaborative  
38 court programs;

39  
40 (3) Restitution orders, including whether transfer would impair the ability  
41 of the court to determine a restitution amount or impair the ability of  
42 the victim to collect court-ordered restitution; and  
43

1           (4) Victim issues, including (i) the residence and places frequented by the  
2 victim including school and workplace, and (ii) whether transfer would  
3 impair the ability of the court, law enforcement, or the probation officer  
4 of the transferring county to properly enforce protective orders.  
5

6 **(g) Transfer**  
7

8           (1) If the transferring court determines that the permanent residence of the  
9 probationer is in the county of the receiving court, the transferring court  
10 must transfer the case unless it determines that transfer would be  
11 inappropriate and states its reasons on the record.  
12

13           (2) To the extent possible, the transferring court must establish any amount  
14 of restitution owed by the probationer before it orders the transfer.  
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16           (3) Upon transfer of the case, the receiving court must accept the entire  
17 jurisdiction over the case and is responsible for enforcing all  
18 outstanding fines, fees, and restitution.  
19

20           (4) The order for transfer must include an order committing the probationer  
21 to the care and custody of the probation officer of the receiving county  
22 and an order for reimbursement of reasonable costs for processing the  
23 transfer to be paid to the county of the transferring court in accordance  
24 with Penal Code section 1203.1b.  
25

26           (5) The transferring court must transmit a complete certified copy of the  
27 court file, including all transfer, probation, and protective orders, to the  
28 court of the receiving county within two weeks of the transfer order.  
29

30           (6) The probation officer of the transferring county must transmit, at a  
31 minimum, any court orders, probation reports, case plans, and records  
32 of payments from the probation file to the probation officer of the  
33 receiving county within two weeks of the transfer order.  
34

35           (7) Upon transfer of the case, the probation officer of the transferring  
36 county must notify the probationer of the transfer orders. The  
37 probationer must report to the probation officer of the receiving county  
38 no later than 30 days after transfer. If the probationer is in custody at  
39 the time of transfer, the probationer must report to the probation officer  
40 of the receiving county no later than 30 days after being released from  
41 custody. Any jail sentence imposed as a condition of probation prior to  
42 transfer must be served in the transferring county.

## Item W10-05 Response Form

**Title:** Criminal Law: Intercounty Probation Case Transfer (adopt Cal. Rules of Court, rule 4.530)

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

Comments: \_\_\_\_\_

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**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:** <http://www.courtinfo.ca.gov/invitationstocomment/>

**Email:** [invitations@jud.ca.gov](mailto: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

<b>DEADLINE FOR COMMENT: 5:00 p.m., Friday, January 22, 2010</b>
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*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.*