THE SUPREME COURT OF THE STATE OF CALIFORNIA

PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff and Appellant, v. STEVEN ANDREW ADELMANN, Defendant and Respondent.	S237602 Court of Appeal No. E064099 (Riverside County Superior Court No. SWF1208202)

RESPONDENT'S ANSWERING BRIEF TO THE AMICUS BRIEF FILED BY THE CALIFORNIA PUBLIC DEFENDER'S ASSOCIATION AND LAW OFFICES OF THE PUBLIC DEFENDER FOR RIVERSIDE COUNTY

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Issue Presented for Review

If a case is transferred from one county to another for purposes of probation (Pen. Code, § 1203.9), must a Proposition 47 petition to recall sentence be filed in the court that entered the judgment of conviction or in the superior court of the receiving county?

Summary of Argument

The amicus brief presented by the California Public Defender's Association and the Law Offices of the Public Defender for Riverside County (collectively referred to as "CPDA" or "amici") discusses at length something that is not a relevant issue in this case. According to CPDA, when the Legislature enacted Penal Code section 1203.9, [1] the term "entire jurisdiction" used in the statute referred only to the territorial jurisdiction, not subject matter jurisdiction.

But the fact that only territorial jurisdiction is transferred under section 1203.9 has no bearing on the issue before the Court. The takeaway from section 1203.9, California Rules of Court, rule 4.530,[2] and the relevant case law, is that in enacting section 1203.9 and adopting rule 4.530, the Legislature and the Judicial Council created a detailed process for transfer of jurisdiction. Once that process is complete, the case *in its entirety* is transferred to the receiving county. (See, e.g., *People v. Klockman* (1997) 59 Cal.App.4th 621, 627.) There is no concurrent jurisdiction over the case between multiple counties.

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[1] All further unassigned statutory references are to the Penal Code.

[2] All further unassigned rule references are to the California Rules of Court.

CPDA fares no better with the argument that "plain language" of section 1170.18 reflects the voters' intent to condition Proposition 47 relief for section 1203.9 transferees on their consent to jurisdiction of the original court of conviction. As the Court of Appeal correctly found, plain language of section 1170.18 does not resolve the issue of where a request for Proposition 47 relief must originate if jurisdiction had been transferred pursuant to section 1203.9. (*People v. Adelmann* (2016) 2 Cal.App.5th 1188, 1195, review granted November 9, 2016, S237602; see also *In re I.S.* (2016) 6 Cal.App.5th 517, 523.) The subsections cited by CPDA (and the People) – section 1170.18, subdivisions (a) and (f) – do not address in which court Proposition 47 relief must be sought if jurisdiction over the case had been transferred under section 1203.9

Moreover, section 1170.18, subdivision (l), supports the Court of Appeal's conclusion that section 1203.9 receiving court has authority to consider a request for relief under Proposition 47. It states that if the original sentence judge is not available, the presiding judge must reassign the request to another judge. As Couzens and Bigelow (a leading publication on the implementation of Proposition 47) concludes, when the entire jurisdiction is transferred under section 1203.9, the original sentencing judge also becomes "unavailable" under

section 1170.18, subdivision (l). (Couzens and Bigelow, Cases Transferred to a Different County, p. 86.)

In addition, CPDA's proposed reading of section 1170.18 is contrary to the voters' intent in enacting Proposition 47 to generate money savings and channel them into rehabilitation and victim services programs. In light of that goal, it is implausible that the voters intended to force an entire class of Proposition 47 beneficiaries to seek such relief away from their county of residence and at a location that neither has jurisdiction nor the court file. This would place unjustified legal and practical obstacles in front of a significant number of the very people Proposition 47 was enacted to benefit.

Also, CPDA's proposed reading of sections 1170.18 and 1203.9 is contrary to the legislative intent behind the 2009 amendment to section 1203.9. That amendment eliminated the transferee court's ability to accept less than the entire jurisdiction over the case and mandated every transfer under this statute to be jurisdictional. There is no such thing as concurrent jurisdiction over a case in multiple counties.

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The reason behind the 2009 amendment was to remedy a situation, where 10 to 40 percent of probationers were living in a county other than the one that has jurisdiction over their case. This had created wasteful duplication of probation efforts and created public safety concerns.

But if amici's (and the People's) proposed reading of the statutes were adopted, in section 1203.9 transfer cases, the original county in order to entertain a petition / application would have to somehow regain or reassert jurisdiction. Respondent sees only two possibilities. One -- the original county will have resumed complete jurisdiction with its attendant wasteful duplication and problems with probation supervision, which the Legislature had fixed with the 2009 amendment to section 1203.9. Two – the re-transfer is only temporary (with re-transfer back to the mandated county of residence) for the mere litigation of the request for Proposition 47 relief. Though temporary, such a transfer would still require unnecessary expenditure of judicial resources (e.g., transfer of judicial files to and fro) for little or no reason in a vast number of cases. There is no evidence that in enacting Proposition 47, the voters intended to cause this mischief while ameliorating punishments and saving expenses.

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Finally, amici's (and the People's) reading of the statutes in question would create significant practical concerns. First, section 1203.9 transferees would have to litigate their requests for Proposition 47 relief away from the county of residence, and there is absolutely no justification for it. A great majority of Proposition 47 requests for relief is likely to be applications to designate prior felony a misdemeanor for persons who have already completed their sentence. Those applications do not require a current dangerousness finding, and most of these applications can be resolved based on the information contained in the court file, which is located at the section 1203.9 receiving court. And to the extent that some minimal percentage of these cases would require an evidentiary hearing in the county of conviction, section 1203.9, subdivision (c), gives courts authority to transfer the case back to the original court of conviction. In other words, a very small tail should not be wagging a very large dog.

CPDA's response on this point is that even under the Court of Appeal's reading of the statutes, those section 1203.9 transferees who have completed probation in the receiving county and then moved to yet another county would have to seek Proposition 47 relief away from their county of residence. But while it may be true that those individuals would have to seek Proposition 47 relief

away from their county of residence no matter how the Court interprets sections 1170.18 and 1203.9, the Court of Appeal's harmonized reading of these statutes it is still the most pragmatic construction of the statutes available. (*United States v. Granderson* (1994) 511 U.S. 39, 55 [the court may construe a statute in a particular way when no other solution yields a more sensible reading].) For those section 1203.9 transferees who continue to live in the transferee county, section 1203.9 receiving court *is* the most convenient location to seek Proposition 47 relief.

Second, adopting the CPDA's proposed reading of the statutes would mean section 1203.9 transferees must seek Proposition 47 relief not only away from their county of residence, but also in a court that does not have the original court file. (Rule 4.530(g)(5).) CPDA's brief does not directly dispute this point, but makes an unsupported reference to some courts having done away with a physical file and to a statewide case management system. (CPDA Brief at p. 7.) But CPDA's brief cites no sources subject to judicial notice in support of these allegations. We do not know, for example, how many courts have gone to electronic-only model, or whether those courts retain an electronic copy of the court file when it is transferred under section 1203.9. This is a slender reed on which to hang an interpretation of a statute.

We *do* know, from sources properly subject to judicial notice, that California courts do not yet have a single case or document management system.[3] We have recent anecdotal evidence that following termination of the statewide case management project in 2012, different counties throughout the state are using different case management systems created by different private companies. (http://www.courthousenews.com/california-judiciary-taking-bids-e-filing-managers (as of 08/02/2017).) We also do know from the facts of this case that absence of the original court file can be become a real practical obstacle to obtaining Proposition 47 relief.

More to the point, this Court should not interpret sections 1170.18 and 1203.9 in a way that is both contrary to the voters' intent and requires acceptance of unsupported statements or improvised solutions to these practical problems. The Court of Appeal's reading of sections 1170.18 and 1203.9 allows section 1203.9 transferees to obtain relief in the county of residence, in a court that actually has their court file, and where the Legislature has declared the court enjoys "entire jurisdiction." It is also the only reading that is supported by

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[3]A copy of this Judicial Council report can be found at http://www.courts.ca.gov/documents/jc-20150417-itemG.pdf. Appellant will file a separate motion to take judicial notice of this Judicial Council report.

statutory text, gives effect to both statutes, and is faithful to the voters' intent in enacting Proposition 47 and the legislative intent in making section 1203.9 transfers jurisdictional.

Argument

There Is No Evidence of Voters' Intent to Condition Availability of Proposition 47 Relief for Defendants Whose Probation Had Been Transferred Under Penal Code Section 1203.9 on Waiver of the Right to Obtain Such Relief in Section 1203.9 Receiving Court

A. Transfer Under Penal Code Section 1203.9 Results in Complete Transfer of Jurisdiction to the Receiving County; There is No Concurrent Jurisdiction for Multiple Counties

CPDA's brief makes much of the fact that even though the Legislature used the phrase "entire jurisdiction" in section 1203.9, the transfer under this scheme is only of territorial jurisdiction, not subject matter jurisdiction. (CPDA's Brief at pp. 9-12.) It is true that when a transfer from one county to another occurs, only territorial jurisdiction is transferred because subject matter jurisdiction to hear a felony case for a crime committed in California always rests

in any superior court within the state.[4] (*People v. Peoples* (2016) 62 Cal.4th 718, 791; *People v. Simon* (2001) 25 Cal.4th 1082, 1096.)

However, this academic point has no bearing on the issue before this Court. The salient fact here is that when a transfer under section 1203.9 takes place, the jurisdiction over the entire case is transferred to the receiving county; there is no concurrent jurisdiction with the transferring court to hear the case.

As discussed in the defendant's Answering Brief on the Merits ("ABM"), section 1203.9 creates a process for a jurisdictional transfer of a case, where, following the grant of probation, a probationer moves to another county. This statute delineates a "detailed process for the transfer of jurisdiction" and "jurisdiction rests exclusively in the county in which probation is granted until it is transferred."[5] (*People v. Klockman* (1997) 59 Cal.App.4th 621, 627.) Section 1203.9, subdivision (b), provides that, when a probationer's case is transferred to another county, "[t]he court of the receiving county shall accept the entire

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[4] CPDA's brief incorrectly refers to territorial jurisdiction over the entire case as "jurisdiction over a person." (*Simon*, 25 Cal.4th at p. 1096, citing § 777; Witkin & Epstein, Cal. Criminal Law (4th Ed.) § 47.)

[5] The procedures and criteria for the transfer request are set forth in rule 4.530.

jurisdiction over the case effective the date that the transferring court orders the transfer."[6]

Conversely, once a case is transferred, the transferring court no longer has jurisdiction. (*Klockman, supra,* 59 Cal.App.4th at p. 627 [jurisdiction over probation rests exclusively in the county in which probation is granted until the case is transferred under section 1203.9].) Consistently with that command, rule 4.530(g)(5) requires the transferring court to transmit the entire court file to the receiving court.

A section 1203.9 transfer is not a path of no return. Pursuant to section 1203.9, subdivision (c), when the receiving court accepts jurisdiction over the entire case, it also has "the like power to again request transfer of the case whenever it seems proper."

One further observation concerning section 1203.9 transfer process is necessary. Amici are mistaken in describing this jurisdictional transfer process as being based on the probationer's "consent" to jurisdiction of the receiving

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[6] Following a 2009 amendment, the receiving court under section 1203.9 has no option, but to accept transfer of the entire jurisdiction of the case if the probationer qualifies for a transfer. (Stats. 2009, c. 588 (S.B. 431), § 1; § 1203.9, subds. (b) and (c).)

court. (CPDA's brief at p. 13.) Under section 1203.9, the court determines whether a transfer is proper based primary on whether a probationer permanently resides in the receiving county and whether that county has the necessary treatment programs. (§ 1203.9, subd. (a); Rule 4.530(f)(1) and (2).)

B. There Is No Evidence of Legislative Intent to Condition Proposition 47 Relief for Section 1203.9 Transferees on Their Waiver of the Right to Have the Request Decided in Section 1203.9 Receiving Court

CPDA's brief does not appear to dispute that when a section 1203.9 transfer occurs, the entire jurisdiction over the case rests in the receiving county and the court file must be transferred to that county. Instead, the CPDA is arguing that since territorial jurisdiction can be waived by a defendant's consent or failure to object, by enacting section 1170.18, the Legislature must have intended to condition Proposition 47 relief for section 1203.9 transferees on their consent to jurisdiction in the original court of conviction. (CPDA's brief at pp. 12-13.)

But much like the People, amici misread the applicable statutes. Section 1170.18 does not support their position; instead, when the statute is considered as a whole (including § 1170.18, subd. (l)), it supports the Court of Appeal's interpretation of the statutes. Also, the Court of Appeal's interpretation reflects

the voters' intent in enacting Proposition 47 and legislative intent in enacting section 1203.9, and is also the most pragmatic construction of the statutes available.

1. Legal principles concerning statutory interpretation

Much like the People, amici claim that the issue before the Court is resolved by the plain language of section 1170.18. (CPDA's brief at pp. 12-13.) However, the Court of Appeal was correct in holding that the issue is *not* resolved solely by the statutory text, that resort to extrinsic source of voters' intent is proper, and that the most reasonable and pragmatic interpretation of the statutes available gives section 1203.9 receiving court authority to rule on a Proposition 47 request. (*Adelmann, supra*, 2 Cal.App.5th at p. 1195.)

Under California law, penal statutes are not strictly construed and the key factor in interpreting a statute is its legislative purpose.[7] (*Bailon v. Appellate Div.* (2002) 98 Cal.App.4th 1331, 1344; 1 Cal. Crim. Law (3d 1997), *Introduction to Crimes*, § 118, pp. 41-42.) Of course, in determining the voters' intent in passing Proposition 47, this Court must first examine the language of the initiative,

[7] In interpreting a voter initiative, the Court applies the same principles that govern statutory construction. (*People v. Rizo* (2000) 22 Cal.4th 681, 685.)

giving the words their usual and ordinary meaning. (*In re Derrick B.* (2006) 39 Cal.4th 535, 539, citing *Trope v. Katz* (1995) 11 Cal.4th 274, 280.) "When the statutory language is clear, we need go no further." (*Derrick B., supra,* 39 Cal.4th at p. 539.)

However, when, as here, the language of section 1170.18 does not resolve the issue of voter intent, this Court would look to a variety of extrinsic aids, "including the objects to be achieved, the evils to be remedied, the legislative history, the statutory scheme of which the statute is a part, and contemporaneous administrative construction, as well as questions of public policy. [Citations.]" (*Derrick B., supra,* 39 Cal.4th at pp. 539-540.)

In addition, the Court examines the relevant statutory language not in isolation, "but in the context of the statutory framework as a whole in order to determine [the statute's] scope and purpose and to harmonize the various parts of the enactment." (*Ailanto Properties v. City of Half Moon Bay* (2006) 142 Cal.App.4th 572, 582.)

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2. The plain language of section 1170.18 does not support the amici's reading of the statutes

Amici's proposed reading of the statutes rests exclusively on the text of section 1170.18, subdivisions (a) and (f). Those subdivisions require a petition for resentencing (for someone currently serving a felony sentence) or an application to designate a prior felony offense a misdemeanor (for individuals who have already completed their sentence) to be filed "before the trial court that entered the judgment of conviction in his or her case."

However, there is nothing in those subsections that supports the CPDA (and the People's) reading of section 1170.18.

Furthermore, when considering a rule that statutes are interpreted as a whole, the entire language of section 1170.18 supports the Court of Appeal's reading of the statutes. (*Ailanto Properties, supra,* 142 Cal.App.4th at p. 582.) When the original sentencing judge is unavailable, the presiding judge shall reassign the request to another judge. (§ 1170.18, subd. (l).)

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Couzens and Bigelow, the leading publication on implementation of Proposition 47, analogizes a section 1203.9 transfer to a situation where the original sentencing judge becomes unavailable under subdivision (l):

> When a case is transferred, "[t]he court of the receiving county shall accept the entire jurisdiction over the case." (§ 1203.9(b).) Because the receiving county has exclusive jurisdiction over the case, the original sentencing judge is no longer available as a matter of law. The request for relief may be handled by any judge appointed by the presiding judge. (§ 1170.18(l)).

(Couzens and Bigelow, Cases Transferred to a Different County, p. 86.)

CPDA's brief is conspicuously silent about section 1170.18, subdivision (l).

There is more. CPDA's reading of the statutes is not tenable when one considers that section 1203.9 entails "detailed process for the transfer of jurisdiction" to the receiving county, and rule 4.530 also mandates the transfer of the court file to the receiving county. (*Klockman, supra,* 59 Cal.App.4th at p. 627.) It is wholly implausible that a voter initiative, which does not mention section 1203.9, was nevertheless intended to override the jurisdictional effect of section 1203.9 transfer process in Proposition 47 cases. Voters are presumed to be aware of existing laws. If the drafters of Proposition 47 wanted any relief under it to be requested in the original court of conviction notwithstanding section 1203.9 transfers, they would have made it sufficiently clear that section 1170.18 is

intended to override the effect of section 1203.9 in Proposition 47 cases. (Cf. *Ni v. Slocum* (2011) 196 Cal.App.4th 1636, 1647 [use of phrase "notwithstanding any other provision of law expresses legislative intent to have the specific statute control despite existence of other law which might otherwise govern"].)

3. The amici's reading of the statutes is contrary to the voters' intent behind Proposition 47

Aside from the fact that CPDA's brief disclaims any reliance on any extrinsic evidence of voters' intent, their proposed reading of section 1170.18 is contrary to the voters' intent in enacting Proposition 47. (*Derrick B.*, 39 Cal.4th at p. 539.)

The key issue in statutory interpretation is legislative intent and one recognized source of voters' intent is ballot pamphlet materials. (*Amador Valley Joint Union High Sch. Dist. v. State Bd. Of Equalization* (1978) 22 Cal.3d 208, 245-246 [ballot summary and arguments and analysis presented to the electorate in connection with a particular measure may be helpful in determining the probable meaning of uncertain initiative language].)

The voters' goal, as reflected in the ballot materials, was to focus prison spending on violent and serious offenders, to maximize non-prison alternatives

for non-violent and non-serious crimes, and to channel the resulting savings into crime prevention, victim services, and mental health and drug treatment.[8] (*Proposition 47: Text of Proposed Law*, California Ballot Pamphlet: General Election Nov. 4, 2014 ("Voter Guide") at pp. 38, 70.) The declaratory sections of Proposition 47, as well as ballot arguments in favor of this proposition, emphasize the same goals. (*Id.* at pp. 38, 70; accord *People v. Romanowski* (2017) 2 Cal.5th 903, 907 [Proposition 47's purpose was to save money].)

In light of the voters' goal to save money, it is implausible that the voters intended to force *every* section 1203.9 transferee to seek Proposition 47 relief away from their county of residence regardless of the facts of the case. Such a rule would likely significantly inconvenience an entire class of people whom Proposition 47 was intended to benefit.

It is equally implausible that voters who intended to generate monetary savings would force section 1203.9 transferees to seek Proposition 47 relief in the original county of conviction without addressing the problem that the county of conviction no longer has the court file. This is especially true since, as described

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[8] Respondent has already asked this Court to take judicial notice of the Voter Guide.

in more detail in the defendant's Answer Brief, section 1203.9 already provides an established mechanism to transfer the case back *if* there is a case-specific need for it.

Conversely, as explained in the Answer Brief, the Court of Appeal's harmonized reading of sections 1170.18 and 1203.9 as giving the receiving court authority to rule on a request for Proposition 47 relief is consistent with the voters' intent to generate money savings. The Court of Appeal's interpretation allows section 1203.9 transferees to seek Proposition 47 relief at a location that is likely the closest to their residence and without creating undue costs for the judicial branch and the responsible public agencies. (ABM at pp. 32-36.)

4. The amici's reading of the statutes is contrary to the legislative intent behind the 2009 amendment to section 1203.9

Moreover, CPDA's proposed reading of the statutes is contrary to the legislative intent behind the operative version of section 1203.9. As noted in the Answer Brief, following a 2009 amendment, the receiving court under section 1203.9 has no option, but to accept transfer of the entire jurisdiction over the case if the probationer qualifies for transfer (as determined primarily by his or her county of residence and availability of treatment programs in that county).

(Stats. 2009, c. 588 (S.B. 431), § 1; § 1203.9, subds. (b) and (c).) Before the amendment, the statute had authorized probation supervision on courtesy basis (without a jurisdictional transfer) and gave both transferring and receiving courts discretion whether to approve the transfer.

Legislative history of this amendment demonstrates that elimination of non-jurisdictional transfers was motivated by a widely shared concern that such transfers created practical problems and public safety issues. Those concerns are reflected in the Public Safety Committee notes regarding the amendment, which asked the rhetorical questions:

> DOES THE ABILITY OF THE PROBATIONER'S COUNTY OF RESIDENCE TO ACCEPT TRANSFER OF THE CASE ONLY FOR "COURTESY SUPERVISION" CREATE CONFUSION AND INCONSISTENT PRACTICES AMONG COUNTIES?
>
> SHOULD THE ABILITY OF THE PROBATIONER'S COUNTY OF RESIDENCE TO ACCEPT TRANSFER OF LESS THAN COMPLETE JURISDICTION OVER THE CASE BE CURTAILED?

(Request for Judicial Notice of Legislative History of 2009 Amendment to § 1203.9, Exhibit A, p. 100.)

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The same concerns were expressed by law enforcement organizations and the Judicial Council. For example, in a letter supporting the 2009 amendment, Chief Probation Officers of California described that "approximately 10-40 % of adult probationers reside in a county other than the sentencing county, thereby posing a significant public safety risk due to inadequate supervision in the county of residence."[9] (Request for Judicial Notice of Legislative History of 2009 Amendment to § 1203.9, Exhibit A, p. 55.) This organization sponsored this amendment making the acceptance of the entire jurisdiction mandatory because, in their view, it "affords an appropriate and more clearly defined level of discretion to the courts while enabling probation departments to identify probationers under their jurisdiction and more suitable use limited probation resources for supervision." (*Id.* at p. 55.)

A letter from California Probation, Parole, and Correctional Association in support of the 2009 amendment likewise criticized the courtesy transfers and judicial discretion in both transferring and receiving counties as "operationally problematic." The letter cited the proposed jurisdictional transfers to the county

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[9] Concurrently with this brief, respondent submits a request for judicial notice of the legislative history of the 2009 amendment to section 1203.9, subdivision (b).

of residence as one of the provisions, which would "[enhance] public safety by creating a more clearly defined transfer while still according an appropriate level of judicial discretion." (Request for Judicial Notice of Legislative History of 2009 Amendment to § 1203.9, Exhibit A, p. 27.)

Similarly, in supporting the amendment, Judicial Council described a variety of problems arising out of non-jurisdictional courtesy transfers. These informal arrangements between counties often resulted in "less than adequate supervision of a probationer, and courts and probation departments [were] not always aware of where their probationers are or of how many probationers residing in their county were granted probation in a different county."[10] (Request for Judicial Notice of Legislative History of 2009 Amendment to § 1203.9, Exhibit A, p. 63.) They also created practical problems, "such as which court retains jurisdiction to issue a warrant for a probationer under 'courtesy supervision." (*Id.* at p. 50.) Judicial Council believed that key features of the amendment, which includes making all section 1203.9 transfers jurisdictional, would address these problems. (*Id.* at pp. 62-63.)

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[10] In a separate memo outlining problems with courtesy probation transfers, Judicial Council also cites "practical considerations, such as which court retains warrant for a probationer under 'courtesy' supervision." (Request for Judicial Notice of Legislative History of 2009 Amendment to § 1203.9, Exhibit A, p. 50.)

Unfortunately, if the CPDA's (and the People's) interpretation of the statutes were to be accepted, it would subvert the Legislature's intent behind the 2009 amendment to section 1203.9. Under CPDA's and the People's reading of section 1170.18, if a section 1203.9 transferee who is still on active probation seeks Proposition 47 relief in the county of conviction, this would transfer jurisdiction over the case back to that court because there is no concurrent jurisdiction between multiple counties. (§ 1203.9, subd. (b); *Klockman, supra*, 59 Cal.App.4th at p. 627.)

As previously discussed, there are two possible scenarios for the original county's resumption of jurisdiction; both are problematic. One possibility is that the original county will have resumed complete jurisdiction with its attendant wasteful duplication and problems with probation supervision. These are the very problems that caused the Legislature to amend section 1203.9 in 2009 to make every transfer under this statute a jurisdictional one.

Another possibility is that the re-transfer is only temporary (with mandated re-transfer back to the county of residence) only for the litigation of request for Proposition 47 relief, but with an unnecessary expenditure of judicial resources (transfer of judicial files back and forth) for little or no reason in a vast

number of cases. There is absolutely no evidence that this was the voters' intent when they enacted Proposition 47.

C. CPDA's Proposed Reading of Sections 1170.18 and 1203.9 Would Create Significant and Unjustified Practical Difficulties

In construing a statute, this Court may "reject a construction that, while arguably consistent with the section's language, is almost certainly not what the Legislature intended." (*In re Reeves* (2005) 35 Cal.4th 765, 771.) As the Court recently reiterated in *People v. Valencia*, when (as here) the language of the enactment is not dispositive on the issue of voter intent, "consideration should be given to the consequences that will flow from a particular interpretation." (*People v. Valencia* (2017) 2 Cal.5th _, 2017 WL 2837124, * 6, quoting *Dyna-Med, Inc. v. Fair Employment & Housing Com.* (1987) 43 Cal.3d 1379, 1387.)

Here, amici's proposed reading of sections 1170.18 and 1203.9 would force many section 1203.9 transferees to seek Proposition 47 relief away from their county of residence. CPDA's brief acknowledges this fact, but concludes that no matter how the Court interprets the statute, someone would be inconvenienced. (CPDA Brief at p. 8.) While it is true that an individual who has completed probation and moved *to yet another county* would have to seek Proposition 47

relief away from the county of residence no matter what the Court does here, that is of no moment to the issue before the Court.[11] Once a defendant is no longer in custody – whether the defendant completes probation or is released from prison on parole or mandatory supervision – the county to seek Proposition 47 relief under section 1170.18, subdivision (f), would be the county that last had jurisdiction, regardless of where that person lives.

Nevertheless, the Court of Appeal's reading remains the most pragmatic construction available. For those section 1203.9 transferees still on active probation, the inconvenience resulting from CPDA's reading of the statutes is both avoidable and unjustified. Most of the requests for Proposition 47 relief going forward are likely to be applications to designate filed by those individuals who have completed their sentences. The courts adjudicating those applications do not make a current dangerousness finding. (ABM at pp. 38-39.)

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[11] For active probationers, section 1203.9, in effect, mandates (with a few, limited exceptions), they be supervised in their county of residence. That means, not only that probation be transferred from the county of conviction to a county in which a probationer resides at the time probation is granted, but also that during the period of probation, if the probationer lawfully secures residence in another county, a new transfer of complete jurisdiction takes place.

Also, most of the questions concerning the defendant's eligibility for Proposition 47 relief would be addressed by documents that are likely to be found in the court file in the section 1203.9 receiving county. (ABM at pp. 38-39.) In drug possession cases, there would be no disputes regarding valuation or quantity. (Health & Saf. Code, §§ 11350, 11377.) In theft cases, while eligibility for Proposition 47 relief may turn on valuation of property, the valuation issue would likely be addressed by documents in the court record, such as a probation report or a plea agreement. (§§ 459.5, 473, 476a, 490.2, 496.) Those documents are likely to be found in the court file located in the section 1203.9 receiving court. And to the extent there is a small percentage of requests for Proposition 47 relief where there is a legitimate need for an evidentiary hearing in the original county of conviction, there is authority under section 1203.9, subdivision (c), to transfer the case back.

The bottom line is this. There is no need to force *every* section 1203.9 transferee, *regardless of the circumstances of their case,* to litigate their Proposition 47 requests for relief at an inconvenient location. (ABM at pp. 39-40.) Also, as previously explained, neither the CPDA's nor the People's proposed reading of

the statute convincingly addresses the problem of adjudicating requests for Proposition 47 relief in a court that does not have the defendant's court file.

In contrast, the Court of Appeal's interpretation avoids or minimizes all of these practical concerns. Reading the statutes as giving the section 1203.9 transferee court authority to rule on requests for Proposition 47 relief allows section 1203.9 transferees to seek such relief at a location that is convenient, and has both complete jurisdiction and the court file.

Conclusion

Based on the foregoing, when a case has been transferred from the original court of conviction to another county pursuant to section 1203.9, the receiving court has complete jurisdiction over the case. Hence, section 1203.9 receiving court has the authority to consider a request for relief under Proposition 47. The judgment of the Court of Appeal should be affirmed.

DATE: August 2, 2017 By: _____

Gene D. Vorobyov
Attorney for Respondent
STEVEN ADELMANN

Certificate of Word Count

I certify that this brief consists of 5,259 words (including footnotes, but excluding this certificate, proof of service, and tables), as indicated by the Microsoft Word program in which the brief is prepared.

DATE: August 2, 2017 By: _____

Gene D. Vorobyov
Attorney for Respondent
STEVEN ADELMANN

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Proof of Service

I declare that I am an active member of the California Bar, not a party to this action, and my business address is 450 Taraval Street, # 112, San Francisco, CA 94116. On the date shown below, I served the within RESPONDENT'S BRIEF IN RESPONSE TO THE AMICUS CURIAE BRIEF FILED BY THE CALIFORNIA PUBLIC DEFENDER'S ASSOCIATION AND THE LAW OFFICE OF THE PUBLIC DEFENDER OF RIVERSIDE COUNTY, to the following parties hereinafter named by:

X E-serving the following parties, pursuant to rule 8.71(a)(2), as follows:

Fourth District Court of Appeal, Division Two (via Truefiling);

Howard C. Cohen, Staff Attorney, Appellate Defenders, Inc. (Via Truefiling);

Laura Arnold, Deputy Public Defender (Via Truefiling)

Donald W. Ostertag, Deputy District Attorney (Via Truefiling);

Riverside County Superior Court (via Truefiling)

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X Placing a true copy thereof, enclosed in a sealed envelope with postage thereon fully prepaid, in the United States mail at San Francisco, California, addressed as follows:

Steven Andrew Adelmann
33545 Nandina Lane
Murrieta, CA 92563

I declare under penalty of perjury the foregoing is true and correct.

Executed on August 3, 2017, at San Francisco, California.

/s/ Gene D. Vorobyov