

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

SUPREME COURT
FILED

AUG 03 2017

Jorge Navarrete Clerk

Deputy

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)

**MOTION FOR JUDICIAL NOTICE OF (1) LEGISLATIVE
HISTORY OF THE 2009 AMENDMENT TO PENAL CODE
SECTION 1203.9, AND (2) 2015 JUDICIAL COUNCIL REPORT
REGARDING CASE MANAGEMENT SYSTEM FUNDING**

[Evid. Code, § 459; Rule of Court 8.252]

GENE D. VOROBYOV, California Bar No. 200193

LAW OFFICE OF GENE VOROBYOV

450 Taraval Street, # 112

San Francisco, CA 94116

Telephone: (415) 425-2693; gene.law@gmail.com

Attorney for Respondent

STEVEN ANDREW ADELMANN

SUMMARY OF ARGUMENT

Pursuant to Evidence Code sections 452, subdivision (d) and 459, subdivision (a), and California Rules of Court, rules 8.54(a) and 8.252(a), respondent Steven Andrew Adelman respectfully moves this Court for an order taking judicial notice of (1) legislative history of the 2009 amendment to Penal Code section 1203.9, and (2) 2015 Judicial Council memorandum regarding case management system funding. A copy of the legislative history is attached hereto as Exhibit A. A copy of the Judicial Council memo is attached hereto as Exhibit B.¹

Existence *and* contents of these documents are relevant to respondent's arguments made in the brief responding to the amicus curiae brief filed by the California Public Defender's Association and Law Office of the Public Defender for Riverside County (collectively, "CPDA" or "amici"). The legislative history is relevant to demonstrate that Penal Code section 1203.9 transfers are (and were

¹ It can also be found online at <http://www.courts.ca.gov/documents/jc-20150417-itemG.pdf> (as of July 24, 2017).

intended to be) *complete* jurisdictional transfers, and that by enacting Proposition 47, the voters did not intend to abandon or overcome the jurisdictional nature of those transfers in Proposition 47 cases. It also necessary to demonstrate significant practical consequences flowing from the CPDA's (and the People's) proposed reading of the statutes.

The Judicial Council report is relevant to show that contrary to amici's argument, there is no statewide unified case management system that would negate the practical difficulties for forcing section 1203.9 transferees to seek Proposition 47 relief in a county that does not have their court file.

Argument

A. The Subject Documents Are a Proper Subject of Judicial Notice

Evidence Code section 459 provides that "a reviewing court may take judicial notice of any matter specified in Section 452."

It is well established that courts can take judicial notice of official records of Judicial Council of California. (*Whittaker v.*

Superior Court (1968) 68 Cal.2d 357, 362, fn. 4 [official records of the Judicial Council are proper matters for judicial notice]; *Butler-Rupp v. Lourdreaux* (2007) 154 Cal.App.4th 918, 926 [appellate court took judicial notice of Judicial Council report prepared in connection with revision of a court rule]; *Vidrio v. Hernandez* (2009) 172 Cal.App.4th 1443, 1457, fn. 7 [appellate court took judicial notice of reports to Judicial Council recommending amendment to a rule of court].)

Similarly, legislative history of a statute (such as committee reports, statements of legislative purpose, and analysis of prior versions of the bill, which shed light on how the Legislature arrived at the ultimately enacted statute) is properly subject to judicial notice. (*Hutnick v. United States Fidelity & Guaranty Co.* (1988) 47 Cal.3d 456, 465, fn. 7; accord *People v. Superior Court* (2005) 132 Cal.App.4th 1525, 1532.)

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B. The Subject Documents Are Relevant In This Case

The legislative history of the 2009 amendment to section 1203.9 is relevant to establish the jurisdictional nature of the section 1203.9 transfers. It is also relevant to demonstrate significant practical problems that would flow from the CPDA's proposed reading of sections 1170.18 and 1203.9. In amending section 1203.9 in 2009, the Legislature attempted to address problems arising out of then-existing non-jurisdictional "courtesy" probation transfers. Under that regime, as many as 10 to 40 percent of probationers had lived in a county other than the one that had legal jurisdiction over their case. This resulted in duplication of probationary efforts and public safety concerns. (Respondent's Brief in Reply to CPDA Amicus Brief, pp. 7-8, 19-24.)

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Also, the Judicial Council memo is relevant to respond to CPDA's argument that improperly minimizes practical difficulties resulting from forcing section 1203.9 transferees to seek Proposition 47 relief away from the court that has their file. CPDA's brief dismisses these concerns based, in significant part, on the supposed existence of a single statewide case management system. (CPDA's brief, p. 7.) This memo shows that there is presently no single statewide case or document management system. (Respondent's Brief in Reply to CPDA Amicus Brief, pp. 7-8.)

CONCLUSION

For the foregoing reasons, this Court should take judicial notice of existence and contents of (1) legislative history of the 2009 amendment to Penal Code section 1203.9; (2) 2015 Judicial Council Memo regarding case management system funding.

DATE: August 2, 2017

By: _____

Gene D. Vorobyov
Attorney for Appellant
STEVEN ADELMANN

**[proposed] ORDER GRANTING MOTION FOR JUDICIAL
NOTICE**

BY THE COURT:

Good cause appearing, this Court takes judicial notice of the following documents:

- Legislative history of the 2009 amendment to Penal Code section 1203.9;
- 2015 Judicial Council Memo regarding case management system funding.

It is so ordered.

CHIEF JUSTICE

PROOF OF SERVICE

I declare that I am over the age of 18, not a party to this action and my business address is 450 Taraval Street, # 112, San Francisco, CA 94116. Pursuant to California Rule of Court 8.71, on the date shown below, I transmitted a PDF version of APPELLANT'S MOTION FOR JUDICIAL NOTICE AND PROPOSED ORDER GRANTING THE MOTION to the following e-mail addresses:

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

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

Laura Arnold, Deputy Public Defender (Via Truefiling)

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

Respondent's Request for Judicial Notice

Exhibit A

[Legislative History of 2009 amendment to Penal Code § 1203.9]



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Judicial Council of California

ADMINISTRATIVE OFFICE OF THE COURTS

OFFICE OF GOVERNMENTAL AFFAIRS

770 "L" Street, Suite 700 • Sacramento, California 95814-3393
Telephone 916-323-3121 • Fax 916-323-4347 • TDD 800-735-2929

RONALD M. GEORGE
Chief Justice of California
Chair of the Judicial Council

WILLIAM C. VICKREY
Administrative Director of the Courts

RONALD G. OVERHOLT
Chief Deputy Director

CURTIS L. CHILD
Director, Office of Governmental Affairs

September 30, 2009

Hon. Arnold Schwarzenegger
Governor of California
State Capitol, First Floor
Sacramento, California 95814

Subject: SB 431 (Benoit) – Request for Signature

Dear Governor Schwarzenegger:

The Judicial Council supports SB 431, which would require a court, when granting probation to an individual who permanently resides in a county other than the county of conviction, to transfer legal jurisdiction of the case to the county in which that person permanently resides, unless the court determines on the record that the transfer would be inappropriate. The bill also requires the court in the county of the probationer's residence to accept legal jurisdiction over the case. Lastly, the Judicial Council would be required to adopt rules of court providing factors for the court's consideration when determining the appropriateness of a transfer.

The Judicial Council supports SB 431 because it would address issues and concerns that have been raised over the years about the disparate transfer practices and around the state.

In December 2008, Chief Probation Officers of California (CPOC) asked the Judicial Council's Criminal Law Advisory Committee (CLAC) to work with them to develop ways to improve the handling of cross-jurisdictional probation transfers. A workgroup was formed to resolve these issues collaboratively. The workgroup's goal was to revise the statutory transfer process to improve public safety by making probation supervision more effective and enhancing the efficiency of case transfers. This would require improving the process of identifying the most appropriate jurisdiction for probation supervision, and improving the actual process of transferring jurisdiction.

Hon. Arnold Schwarzenegger

September 30, 2009

Page 2

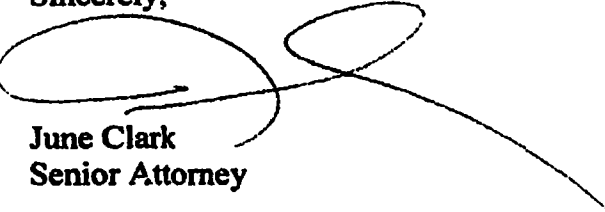
The council and CPOC ultimately agreed that permanent residency should be the primary, but not exclusive, determinant of where probation and legal jurisdiction should lie. Other factors are also important, such as the availability of appropriate programs in the receiving county. Therefore, the bill would create a presumption that legal jurisdiction and probation supervision shall be where the probationer permanently resides, but would allow the transferring court to overcome the presumption if it determines that the transfer would be inappropriate and states its reasons on the record.

The bill also eliminates the concept of courtesy supervision from the law. In the absence of clear statutory directive, courtesy supervision has come to mean different things to different counties, but generally is an informal arrangement between probation departments that does not require transferring legal jurisdiction to the receiving county's court. The result is often less than adequate supervision of a probationer, and courts and probation departments often are not always aware of where their probationers are or of how many probationers residing in their county were granted probation in a different county.

The bill sets up a process whereby courts and probation departments in both the sentencing county and the receiving county must work closely together within specific timeframes, but provides that only one court – the sentencing court – should have authority to decide not to transfer a case upon determining permanent residence elsewhere.

For these reasons, the Judicial Council requests your signature on SB 431.

Sincerely,



June Clark
Senior Attorney

JC/yt

cc: Ms. Karen Pank, Executive Director, Chief Probation Officers of California
Hon. John Benoit, Member of the Senate
Mr. Mike Proso, Chief Deputy, Legislative Affairs Secretary, Office of the Governor
Ms. Kirsten Kolpitcke, Deputy Director of Legislation, Governor's Office of Planning and Research

ENROLLED BILL MEMORANDUM TO GOVERNOR

BILL: SB 431 **AUTHOR:** Benoit **DATE:** 9/10/09 **DUE:** 10/11/09
SENATE: 36-0 **ASSEMBLY:** 74-0 **CONCURRENCE:** 35-0
PRESENTED BY: Aaron Maguire **RECOMMEND:** Sign Veto

SUMMARY

This bill will provide that when a person is released upon probation, the court, upon noticed motion, shall transfer the case to a superior court in the county in which the person resides permanently, unless there is a determination that the transfer will be inappropriate and states the reasons on the record.

SPONSOR: Chief Probation Officers of California
SUPPORT: Governor's Office of Planning and Research
Department of Finance
California Peace Officers' Association
California Probation, Parole and Correctional Association
CRLA Foundation
Golden State Manufactured-Home Owners League
League of California Cities
Western Center on Law & Poverty
OPPOSITION: None Received

FISCAL IMPACT

The Judicial Council notes that the required adoption of rules of court providing factors for the court's consideration when determining the appropriateness of a transfer will result in one-time, minor, and fully absorbable costs. The Judicial Council has existing, ongoing resources dedicated to the development and adoption of such rules.

PREVIOUS ACTION/SIMILAR LEGISLATION

AB 1306 (Leno, Chapter 30, Statutes of 2004) authorized a court to transfer probation and jurisdiction to the defendant's county of permanent residence if he or she is receiving treatment pursuant to Proposition 36.

NOTES

UNOFFICIAL BALLOT

2009-2010 Votes - ROLL CALL

MEASURE: SB 431
 TOPIC: Probation: transfers.
 DATE: 08/17/09
 LOCATION: SEN. FLOOR
 MOTION: Special Consent #14 SB431 Benoit
 (AYES 35. NOES 0.) (PASS)

AYES

Aanestad	Alquist	Ashburn	Benoit
Calderon	Cedillo	Cogdill	Corbett
Correa	Cox	Denham	DeSaulnier
Dutton	Florez	Hancock	Harman
Hollingsworth	Huff	Kehoe	Leno
Liu	Lowenthal	Negrete McLeod	Padilla
Pavley	Price	Runner	Simitian
Steinberg	Strickland	Walters	Wiggins
Wolk	Wyland	Yee	

NOES

NO VOTE RECORDED

Ducheny	Maldonado	Oropeza	Romero
Wright			

UNOFFICIAL BALLOT

2009-2010 Votes - ROLL CALL

MEASURE: SB 431
 TOPIC: Probation: transfers.
 DATE: 07/09/09
 LOCATION: ASM. FLOOR
 MOTION: SB 431 Benoit Consent Calendar Second Day Regular Session
 (AYES 74. NOES 0.) (PASS)

AYES

Adams	Ammiano	Anderson	Arambula
Beall	Bill Berryhill	Tom Berryhill	Blakeslee
Block	Blumenfield	Brownley	Buchanan
Caballero	Carter	Chesbro	Conway
Cook	Coto	Davis	De La Torre
De Leon	DeVore	Emmerson	Eng
Evans	Feuer	Fletcher	Fong
Fuentes	Fuller	Furutani	Gaines
Galgiani	Garrick	Gilmore	Hagman
Hall	Harkey	Hayashi	Hernandez
Hill	Huber	Huffman	Jeffries
Knight	Lieu	Logue	Bonnie Lowenthal
Ma	Mendoza	Miller	Monning
Nestande	Niello	Nielsen	John A. Perez
V. Manuel Perez	Portantino	Ruskin	Salas
Saldana	Silva	Skinner	Smyth
Solorio	Audra Strickland	Swanson	Torlakson
Torres	Torrico	Tran	Villines
Yamada	Bass		

NOES

ABSENT, ABSTAINING, OR NOT VOTING

Charles Calderon	Duvall	Jones	Krekorian
Nava	Vacancy		

UNOFFICIAL BALLOT

2009-2010 Votes - ROLL CALL

MEASURE: SB 431
 TOPIC: Probation: transfers.
 DATE: 05/11/09
 LOCATION: SEN. FLOOR
 MOTION: Special Consent #3 SB431 Benoit
 (AYES 36. NOES 0.) (PASS)

AYES

Aanestad
 Cogdill
 Denham
 Florez
 Huff
 Lowenthal
 Padilla
 Steinberg
 Wolk

Alquist
 Corbett
 DeSaulnier
 Hancock
 Kehoe
 Maldonado
 Pavley
 Strickland
 Wright

Ashburn
 Correa
 Ducheny
 Harman
 Leno
 Negrete McLeod
 Romero
 Walters
 Wyland

Benoit
 Cox
 Dutton
 Hollingsworth
 Liu
 Oropeza
 Runner
 Wiggins
 Yee

NOES

NO VOTE RECORDED

Calderon

Cedillo

Simitian

Vacancy



CONFIDENTIAL-Government Code §6254(l)		
DEPARTMENT/BOARD: OFFICE OF PLANNING AND RESEARCH - LEGISLATIVE UNIT	AUTHOR: BENOIT	BILL NUMBER/VERSION DATE: SB 431 JUNE 4, 2009
SPONSOR: CHIEF PROBATION OFFICERS OF CALIFORNIA <input type="checkbox"/> ADMIN SPONSORED PROPOSAL NO.	RELATED BILL(S) N/A	CHAPTERING ORDER (IF KNOWN) N/A <input type="checkbox"/> ATTACHMENT
SUBJECT: PROBATION: TRANSFERS.		

SUMMARY

This bill would provide that when a person is released upon probation, the court, upon noticed motion, shall transfer the case to a superior court in the county in which the person resides permanently, unless there is a determination that the transfer would be inappropriate and states the reasons on the record.

RECOMMENDATION AND SUPPORTING ARGUMENTS

SIGN. This bill would clarify the law governing jurisdiction over probation to provide more effective supervision of probationers who live in a county other than the one in which they were sentenced.

PURPOSE OF THE BILL

The Chief Probation Officers of California is the sponsor of this bill.

When a person is convicted of a criminal offense, the sentencing court may impose probation in lieu of jail time or a fine. The probation order generally contains numerous terms and conditions, the breach of which will lead to the revocation of probation. Each county maintains a probation department which supervises probationers to ensure that these terms and conditions are met. While most offenders are residents of the county in which they were prosecuted, some are not. In either case, the county of the sentencing court is initially given jurisdiction over the case. Although the county probation department may seek to have jurisdiction transferred to the county of

DEPARTMENTS THAT MAY BE AFFECTED			
<input type="checkbox"/> NEW / INCREASED FEE	<input type="checkbox"/> GOVERNOR'S APPOINTMENT	<input type="checkbox"/> LEGISLATIVE APPOINTMENT	<input type="checkbox"/> STATE MANDATE <input type="checkbox"/> URGENCY CLAUSE
POSITION <input checked="" type="checkbox"/> SIGN <input type="checkbox"/> VETO <input type="checkbox"/> DEFER TO:			
DEPUTY DIRECTOR <i>Thomas E. Towne</i>	DATE 8/18/09	DIRECTOR <i>Cynthia Berg</i>	DATE 8-20-09

residence, the county of residence is not required to accept the transfer. Consequently, a probationer may be supervised by a probation department in a county other than the one in which he or she resides, or by both probation departments. According to the author, the former scenario is impractical, while the latter is duplicative and wasteful. Accordingly, the author has introduced SB 431, which would provide that when a person is released upon probation and there is noticed motion, jurisdiction over the case must be transferred to the superior court in the county in which the person resides permanently, unless there is a determination that the transfer would be inappropriate. In so doing, the author hopes to ensure that a probationer is supervised by the probation department in his or her county of residence.

ANALYSIS

Existing law (Penal Code section 1203.9(a)) provides that, when a person is released upon probation, the case *may* be transferred to a court of the same rank in another county in which the person resides permanently (i.e. a county in which the person has stated an intention to remain for the duration of probation), provided that the court of the receiving county is first given an opportunity to determine whether the person does reside in and has stated an intention to remain in that county for the duration of probation. If the court finds that the person does not reside in or has not stated an intention to remain in that county for the duration of probation, the court may refuse to accept the transfer. The court and the probation department must give the matter of investigating those transfers precedence over all other actions or proceedings, except actions or proceedings to which special precedence is given by law, to the end that all those transfers are completed expeditiously.

This bill would provide that, whenever a person is released upon probation, the court, upon noticed motion, shall transfer the case to the superior court in another county in which the person resides permanently, unless the transferring court determines that the transfer would be inappropriate and states its reasons on the record. Upon notice of the motion for transfer, the court of the proposed receiving county may provide comments for the record regarding the proposed transfer. Judicial Council would be required to develop rules of court for this purpose.

Existing law (Penal Code section 1203.9(b)) provides that, if the court of the receiving county finds that the person does permanently reside in or has permanently moved to the county, the court *may*, in its discretion, either accept the entire jurisdiction over the case, or assume supervision of the probationer on a courtesy basis.

This bill would provide that the court of the receiving county shall accept the entire jurisdiction over the case.

Existing law (Penal Code section 1203.9(c)) provides that, if a person is granted probation for a nonviolent drug possession offense under Proposition 36, the sentencing court *may*, in its discretion, transfer jurisdiction of the entire case, upon a finding by the receiving court of the person's permanent residency in the receiving county.

This bill would provide that, if a person is granted probation for a nonviolent drug possession offense under Proposition 36, the sentencing court shall transfer jurisdiction of the entire case, upon a finding by the receiving court of the person's permanent residency in the receiving county, unless there is a determination on the record that the transfer would be inappropriate.

Existing law (Penal Code section 1203.9(d)) provides that the order of transfer must contain an order committing the probationer to the care and custody of the probation officer of the receiving

county and an order for reimbursement of reasonable costs for processing the transfer, to be paid to the sending county. A copy of the orders and probation reports must be transmitted to the court and probation officer of the receiving county within two weeks of the finding by that county that the person does permanently reside in or has permanently moved to that county, and thereafter the receiving court has entire jurisdiction over the case, with the like power to again request transfer of the case if it seems proper.

This bill would delete the requirement that the finding be done "by the county" and provide that the Judicial Council promulgate rules of court for procedures by which the proposed receiving county shall receive notice of the motion for transfer and by which responsive comments may be transmitted to the court of the transferring county. The Judicial Council must adopt rules providing factors for a court's consideration when determining the appropriateness of a transfer, including the following:

- Permanency of residence of the offender.
- Local programs available for the offender.
- Restitution orders and victim issues.

Discussion

This bill would clarify the law governing jurisdiction over probation to provide more effective supervision of probationers who live in a county other than the one in which they were sentenced. Counties are divided over the jurisdiction issue that results when a probationer resides in one county, but was sentenced in another. Although some counties are reluctant to accept jurisdiction in these cases, the state has an interest in ensuring that criminal offenders are properly supervised. Transferring counties that wish to retain jurisdiction over a probationer who resides in a different county – if, for example, the probationer has substantial contacts with the sentencing county – would be entitled to maintain sole jurisdiction under this bill, if the sentencing court makes a finding that transfer would be inappropriate.

LEGISLATIVE HISTORY

Previous Legislation

Assembly Bill 306 (Aguiar, Chapter 273, Statutes of 1993) authorized a court to order a probationer to pay all or a portion of the reasonable costs of processing a transfer to supervision in another county and of processing a request for out-of-state supervision; required the order of transfer committing a probationer to the care and custody of the probation officer of another county to contain an order for reimbursement of reasonable costs of processing the transfer to be paid to the sending county; required a probationer to reimburse the county that has jurisdiction over his or her probation case for the reasonable cost of processing his or her request for interstate compact supervision; and included specified factors for an "ability to pay" determination.

Assembly Bill 1306 (Leno, Chapter 30, Statutes of 2004) authorized a court to transfer probation and jurisdiction to the defendant's county of permanent residence if he or she is receiving treatment pursuant to Proposition 36.

PROGRAM BACKGROUND

Under Proposition 36, approved by California voters in 2000, an offender convicted of a nonviolent drug possession offense is generally sentenced to probation, instead of state prison, county jail, or probation (without drug treatment). As a condition of probation, the offender is required to complete a drug treatment program. Proposition 36 defined a nonviolent drug possession offense as a felony or misdemeanor criminal charge for being under the influence of illegal drugs or for

possessing, using, or transporting illegal drugs for personal use. The definition excludes cases involving possessing for sale, producing, or manufacturing of illegal drugs.

OTHER STATES' INFORMATION

No information has been obtained.

FISCAL IMPACT

No appropriation is provided. This bill would not create a state-mandated local program.

ECONOMIC IMPACT

This bill would not appear to have an adverse impact on the state's economic or business climate.

LEGAL IMPACT

This bill would not appear to result in any increased liability for the state or conflict with any state or federal laws.

SUPPORT/OPPOSITION

Support: Chief Probation Officers of California; California Probation, Parole and Correctional Association; Judicial Council of California and Taxpayers for Improving Public Safety.

Opposition: This bill has no known opposition.

ARGUMENTS

Pro: This bill would clarify the law governing jurisdiction over probation to provide more effective supervision of probationers who live in a county other than the one in which they were sentenced.

Con: Some counties may not wish to supervise probationers that were convicted of a crime in a different county.

VOTES:

Senate – May 11 2009

Ayes – 36

Noes – 0

Assembly – July 9, 2009

Ayes – 74

Noes – 0

Concurrence – August 18, 2009

Ayes – 35

Noes – 0

LEGISLATIVE STAFF CONTACT

Contact	Work
Cynthia Bryant, Director	445-3637
Cathleen Cox, Chief Deputy Director	322-2318
Kirstin Kolpitzke, Deputy Director	445-4831

DEPARTMENT OF FINANCE ENROLLED BILL REPORT

AMENDMENT DATE: June 4, 2009
 RECOMMENDATION: Sign

BILL NUMBER: SB 431
 AUTHOR: J. Benoit

ASSEMBLY: 74/0
 SENATE: 35/0

BILL SUMMARY: Probation: Transfers

This bill would require that a court transfer a person released on probation to a court in the county in which the person resides permanently, with specified exceptions.

FISCAL SUMMARY

The Judicial Council notes that the required adoption of rules of court providing factors for the court's consideration when determining the appropriateness of a transfer would result in one-time, minor, and fully absorbable costs. The Judicial Council has existing, ongoing resources dedicated to the development and adoption of such rules.

COMMENTS

Finance recommends that this bill be signed as it might help ensure appropriate supervision of probationers depending on their county of residence.

This bill would require that a case for a person released on probation be transferred to the court in the county in which the person resides permanently. According to an Assembly Committee on Public Safety analysis, the intent is to address the inadequate supervision that results from a person on probation residing in a county other than the sentencing county.

Under existing law, when a person is released upon probation, the case may be transferred to the court in the county in which the person resides permanently, under specified conditions. If a receiving court finds that the person does not reside in or has not stated an intention to remain in that county for the duration of probation, it may refuse to accept the transfer.

The bill would require the Judicial Council to promulgate rules of court for procedures by which the proposed receiving county shall receive notice of the motion for transfer and by which responsive comments may be transmitted to the court of the transferring county. The Judicial Council would also have to adopt rules providing factors for the courts' consideration when determining the appropriateness of a transfer. The Judicial Council supports this measure.

Code/Department Agency or Revenue Type	(Fiscal Impact by Fiscal Year)								Fund Code	
	(Dollars in Thousands)									
	SO	LA	CO	PROP	RV	98	FC	FC		FC
0250/Jud Branch	SO	No							No/Minor Fiscal Impact	0001

Analyst/Principal (0211) J. Osborn <i>J. Osborn</i>	Date 8/19/09	Program Budget Manager Todd Jerue <i>Todd Jerue</i>	Date 8/19/09
Department Director <i>Miriam F. ...</i>	Date 8/19/09		

ENROLLED BILL REPORT

Form DE-43 (Rev. 03/05 Print)

SENATE RULES COMMITTEE	SB 431
Office of Senate Floor Analyses	
1020 N Street, Suite 524	
(916) 651-1520 Fax: (916)	
327-4478	

UNFINISHED BUSINESS

Bill No: SB 431
 Author: Benoit (R) and Leno (D)
 Amended: 6/4/09
 Vote: 21

SENATE PUBLIC SAFETY COMMITTEE : 7-0, 4/28/09
 AYES: Leno, Benoit, Cedillo, Hancock, Huff, Steinberg,
 Wright

SENATE FLOOR : 36-0, 5/11/09 (Consent)
 AYES: Aanestad, Alquist, Ashburn, Benoit, Cogdill,
 Corbett, Correa, Cox, Denham, DeSaulnier, Ducheny,
 Dutton, Florez, Hancock, Harman, Hollingsworth, Huff,
 Kehoe, Leno, Liu, Lowenthal, Maldonado, Negrete McLeod,
 Oropeza, Padilla, Pavley, Romero, Runner, Steinberg,
 Strickland, Walters, Wiggins, Wolk, Wright, Wyland, Yee
 NO VOTE RECORDED: Calderon, Cedillo, Simitian, Vacancy

ASSEMBLY FLOOR : 74-0, 7/9/09 (Consent) - See last page for
 vote

SUBJECT : Adult probation: transfers

SOURCE : Chief Probation Officers of California

DIGEST : This bill requires that a court transfer a

person released on probation to a court in the county in which the person resides permanently, with specified exceptions.

CONTINUED

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Assembly Amendments (1) restated procedures to include a noticed motion, and (2) required the Judicial Council to promulgate rules of court for procedures.

ANALYSIS :

Existing law provides for transfer of probation as follows:

1. Whenever any person is released upon probation, the case may be transferred to any court of the same rank in any other county in which the person resides permanently, meaning the stated intention to remain for the duration of probation, provided that the court of the receiving county shall first be given an opportunity to determine whether the person does reside in and has stated the intention to remain in that county for the duration of probation. If the court finds that the person does not reside in or has not stated an intention to remain in that county for the duration of probation, it may refuse to accept the transfer. The court and the probation department shall give the matter of investigating those transfers precedence over all actions or proceedings therein, except actions or proceedings to which special precedence is given by law, to the end that all those transfers shall be completed expeditiously.
2. Except where the person is granted probation for drug treatment pursuant to Proposition 36, if the court of the receiving county finds that the person does permanently reside in or has permanently moved to the county, it may, in its discretion, either accept the entire jurisdiction over the case, or assume supervision of the probationer on a courtesy basis.
3. Whenever a person is granted probation under Section

1210.1 (Proposition 36), the sentencing court may, in its discretion, transfer jurisdiction of the entire case, upon a finding by the receiving court of the person's permanent residency in the receiving county.

4. The order of transfer shall contain an order committing the probationer to the care and custody of the probation officer of the receiving county and an order for reimbursement of reasonable costs for processing the

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transfer to be paid to the sending county in accordance with Section 1203.1b. A copy of the orders and probation reports shall be transmitted to the court and probation officer of the receiving county within two weeks of the finding by that county that the person does permanently reside in or has permanently moved to that county, and thereafter the receiving court shall have entire jurisdiction over the case, with the like power to again request transfer of the case whenever it seems proper. (Section 1203.9 of the Penal Code)

This bill amends #1 above to instead provide that whenever a person is released on probation, the court, upon noticed motion, shall transfer the case to the superior court in any other county in which the person resides permanently, meaning with the stated intention to remain for the duration of probation, unless the transferring court determines that the transfer would be inappropriate and states its reasons on the record. Upon notice of the motion for transfer, the court of the proposed receiving county may provide comments for the record regarding the proposed transfer, following procedures set forth in rules of court developed by the Judicial Council for this purpose, pursuant to subdivision (e). The court and the probation department shall give the matter of investigating those transfers precedence over all actions or proceedings therein, except actions or proceedings to which special precedence is given by law, to the end that all those transfers shall be completed expeditiously.

This bill provides that, notwithstanding the above, when a person is released on probation, the sentencing court shall transfer the entire jurisdiction of the case to the county in which that person permanently resides, unless the court determines on the record that the transfer would not be appropriate. The receiving county must accept the entire jurisdiction over the case, unless it determines that the probationer does not intend to reside permanently in that county.

This bill requires the Judicial Council to promulgate rules of court for procedures by which the proposed receiving county shall receive notice of the motion for transfer and by which responsive comments may be transmitted to the

SB 431
Page

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court of the transferring county.

This bill also applies these provisions to transfers of persons granted probation under Proposition 36 for drug treatment.

This bill requires the Judicial Council to adopt rules providing factors for the court's consideration when determining the appropriateness of transfer, including, but not limited to, (1) permanency of residency of the offender, (2) local programs available for the offender, and (3) restitution orders and victim issues.

FISCAL EFFECT: Appropriation: No Fiscal Com.: No
Local: No

SUPPORT: (Verified 7/9/09)

Chief Probation Officers of California (source)
California Probation, Parole and Correctional Association
Judicial Council of California

ARGUMENTS IN SUPPORT: According to the author:

"Current law results in a significant risk to public safety with thousands of adult probationers being supervised ineffectively by Probation Departments outside of their County of residence.

"Under current law, California County Probation Departments are responsible for the supervision of adult offenders placed on probation by the Superior Court. Most of those placed on probation reside in the County where the crime, prosecution, and grant of probation occurred. This means that the Probation Department supervises the Probationer residing in the Probation Department's geographical jurisdiction (County), which facilitates probation monitoring and supportive services that promote public safety.

"However, thousands of adult probationers reside in a different County than the probation department responsible for their supervision. Some of these adult probationers are concurrently under the wasteful,

SB 431
Page

5

duplicative probation supervision of multiple probation departments. Probation departments do not have the capacity to provide for effective supervision of adult probationers living in other counties.

"SB 431 would establish the Probation Department of the adult probationer's County of residence as the Probation Department responsible for probation supervision."

According to the bill's sponsor, the Chief Probation Officers of California, the current system has resulted in very few transfers but many probationers living in a different county than the probation department with jurisdiction over them. The sponsors state that this has resulted in wasteful duplication of effort and a potential threat to public safety.

ASSEMBLY FLOOR :

AYES: Adams, Ammiano, Anderson, Arambula, Beall, Bill
Berryhill, Tom Berryhill, Blakeslee, Block, Blumenfield,
Brownley, Buchanan, Caballero, Carter, Chesbro, Conway,
Cook, Coto, Davis, De La Torre, De Leon, DeVore,
Emmerson, Eng, Evans, Feuer, Fletcher, Fong, Fuentes,
Fuller, Furutani, Gaines, Galgiani, Garrick, Gilmore,
Hagman, Hall, Harkey, Hayashi, Hernandez, Hill, Huber,
Huffman, Jeffries, Knight, Lieu, Logue, Bonnie Lowenthal,
Ma, Mendoza, Miller, Monning, Nestande, Niello, Nielsen,
John A. Perez, V. Manuel Perez, Portantino, Ruskin,
Salas, Saldana, Silva, Skinner, Smyth, Solorio, Audra
Strickland, Swanson, Torlakson, Torres, Torrico, Tran,
Villines, Yamada, Bass
NO VOTE RECORDED: Charles Calderon, Duvall, Jones,
Krekorian, Nava, Vacancy

RJG:mw 7/10/09 Senate Floor Analyses

SUPPORT/OPPCSION: SEE ABOVE

****** END ******

Senate Floor: 37-0 (04/23/09)

(AYE: All Republicans; except, ABS: Harman)

Assembly Floor: 74-0 (07/09/09)

(AYE: All Republicans, except; ABS: Duvall)

Vote requirement: 21

Version Date: 06/04/2009

Quick Summary

Assembly amendments further clarify the mandatory court process for transferring probationers required by this bill and provide that the Judicial Council shall promulgate rules of court and procedures by which the receiving county shall respond to a motion to transfer.

Requires that when a person is placed on probation, the sentencing court is required to transfer the "entire jurisdiction" of the case to the county in which that person permanently resides, unless the sentencing court determines on the record that the transfer would be inappropriate. Provides that the county of the probationer's residence must accept the entire jurisdiction over the case. Provides that the Judicial Council is required to adopt rules providing factors for the court's consideration when determining the appropriateness of transfer of jurisdiction over probationers

Fiscal Effect

MINOR STATE COSTS

Minor, absorbable costs for the Judicial Council to promulgate rules of court, as required.

Fiscal Consultant: Matt Osterli

Analysis

Arguments in Support:

Under current law there are some cases can result in duplicative supervision or, in some cases, no supervision for individuals placed on probation in a county that is not the county of their permanent residence. This bill is a attempt by the Chief Probation Officers of California and the courts to clarify which county is responsible for supervision and the proper court procedures for the transfer of an individual that will maximize public safety and compliance with mandated programming.

According to the Chief Probation Officers of California, "Under current law, county probation departments are responsible for the supervision of adult offenders placed on probation by the superior court. Most of those placed on probation reside in the county where the crime, prosecution, and grant of probation occurred, thereby facilitating the provision of probation supervision and supportive services to promote public safety. However, there are an undetermined number of adult probationers who reside in a different county than the probation department responsible for their supervision. Some of these adult probationers are under the wasteful duplicative probation supervision of multiple departments, while others are entirely unsupervised by either the sentencing county or the county in which they reside. Based on a snapshot of several medium sized counties, approximately 10-40% of adult probationers reside in a county other than the sentencing county, therefore posing a significant public safety risk due to inadequate supervision in the county of residence. Current law, under Penal Code Section 1203.9, allows for jurisdictional transfer of adult probationers between counties to facilitate supervision in the county of residence. However, the process and discretion allowed by PC 1203.9 does not provide for the orderly transfer of cases to their county of residence as current law allows for courtesy supervision and authorizes discretion to both the sending and receiving counties for transfer. SB 431 would require the transfer of jurisdiction to the county of residence unless a determination is made on the record by the sentencing court that the transfer would be inappropriate. Additionally, it requires a noticed motion of the transfer which allows the court of the proposed receiving county to provide comments for the record regarding the suitability of the transfer. It also allows the courts to promulgate rules to guide the transfer and identify circumstances in which a sentencing court may retain jurisdiction. This bill 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 suitably use limited probation resources for supervision."

Arguments in Opposition:

Probation transfers are already authorized under current law. We should not be removing judicial discretion. Judges and probation departments already have access to information that allows them to make the best decision for both the community and the offender.

Digest

Removes discretion in current law, and provides that if a person who is placed on probation resides in a different county from the sentencing court, the court of the person's residence is required to accept jurisdiction over his or her probation.

Removes a provision in current law allowing the court in the receiving county to hold a hearing to determine if the probationer does reside in that county and

has stated his or her intention to remain in that county

Provides that when an individual is released on probation his/her case shall be transferred to the county of his/her permanent residence unless the transferring court determines that the transfer would be inappropriate and states the reasons on the record.

Removes the discretion of the receiving county to accept probationary supervision of the transferred case but not otherwise assume "entire jurisdiction" of the case.

Upon motion for transfer the court of the proposed receiving county may provide comments for the record regarding the proposed transfer, following procedures set forth in rules of court developed by the Judicial Council for this purpose.

Requires the court of that county shall accept jurisdiction over the case unless there is a finding that the transfer would be inappropriate.

Requires the Judicial Council to adopt rules providing factors for the courts consideration when determining the appropriateness of a probation case transfer. The factors shall include at a minimum:

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

Makes other non-substantive changes.

Background

Existing law provides that a person placed on probation by a court shall be under the supervision of the county probation officer who shall determine both the level and type of supervision consistent with the court-ordered conditions of probation. (PC § 1202.8)

Existing law provides that when a person is released upon probation, the case may be transferred to any court in any other county in which the person resides permanently. If the court of the receiving county finds that the person does permanently reside in or has permanently moved to the county, it may, in its discretion, either accept the entire jurisdiction over the case, or assume supervision of the probationer on a courtesy basis. The sentencing court may also, in its discretion, transfer jurisdiction of the entire case, upon a finding by the receiving court of the person's permanent residency in the receiving county. (PC § 1203.9)

Author's Statement:

According to the author, "Under current law, California County Probation

Departments are responsible for the supervision of adult offenders placed on probation by the Superior Court. Most of those placed on probation reside in the county where the crime, prosecution, and grant of probation occurred.

This means that the Probation Department supervises the probationer residing in the Probation Department's geographical jurisdiction (county), which facilitates monitoring and supportive services for probationers. However, there are currently an undetermined number of adult probationers who reside in a county other than the county responsible for their supervision. Some of these adult probationers are concurrently under the wasteful, duplicative probation supervision of multiple probation departments; others are entirely unsupervised by either the sentencing county or the county in which they reside. Based on a snapshot of several medium size counties, up to 40% of adult probationers reside in a county other than the sentencing county, therefore posing a significant public safety risk due to inadequate supervision in the county of residence."

Related Legislation

AB 1306 (Leno, 2004) added section 1203.9 (c) to the California Penal Code to specify that any person who is sentenced to probation under Proposition 36, the Substance Abuse and Crime Prevention Act of 2000, would be eligible for transfer to his or her County of residence.

AB 306 (Aguiar, 1993) amended section 1203.9 (c) of the California Penal Code to provide for reasonable reimbursement to the sending County by the receiving County for processing a probationer's transfer.

Support & Opposition Received

Support: Chief Probation Officers of California (Sponsor); California Probation, Parole and Correctional Association; Judicial Council of California.

Opposition: None

Senate Republican Office of Policy/ Eric Csizmar

STATE CAPITOL
SACRAMENTO, CA 95814
TEL (916) 651-4037
FAX (916) 327-2187

DISTRICT OFFICES
25 CANYON CREST DRIVE
SUITE 360
RIVERSIDE, CA 92507
TEL (951) 680-6730
FAX (951) 680-6757

1710 FRED WARING DRIVE
SUITE 108
PALM DESERT, CA 92260
TEL (760) 588-0408
FAX (760) 588-1501

WWW.SENATE.CA.GOV/BENOIT

California State Senate

SENATOR
JOHN J. BENOIT
THIRTY-SEVENTH SENATE DISTRICT



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AND RETIREMENT
JOINT COMMITTEE ON RULES

August 17, 2009

Governor Arnold Schwarzenegger
Attn: Michael Prozio
Legislative Unit
State Capitol, First Floor
Sacramento, CA 95814

RE: SENATE BILL 431 — REQUEST FOR SIGNATURE

Dear Governor Schwarzenegger:

I write to respectfully request your signature on Senate Bill 431, as passed by the Assembly (74-0) and the Senate (36-0). This bill will increase public safety by clarifying probation law, providing for more effective probation supervision.

Currently, up to 40% of adult probationers reside in a different county than the county responsible for their probation supervision. Some of these adult probationers are concurrently under the wasteful, duplicative probation supervision of multiple county probation departments; others are entirely unsupervised by either the sentencing county or the county in which they reside, posing a significant risk to public safety due to inadequate supervision.

SB 431 would require the Probation Department in the probationer's county of residence to be the sole authority over the probationer's supervision, unless there is a determination on the record that such an action would be inappropriate.

This bill is sponsored by the Chief Probation Officers of California (CPOC). It is also supported by the California Judicial Council and has no opposition. For all of these reasons, I believe SB 431 merits your signature. Thank you for your consideration of this request. If I may be of further assistance, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink that reads "John J. Benoit".

JOHN J. BENOIT
Senator, 37th District

JJB:gbb



September 21, 2009

Honorable Arnold Schwarzenegger
Governor of the State of California
State Capitol
Sacramento, CA 95814

Dear Governor Schwarzenegger:

The California Peace Officers' Association represents the entire range of the law enforcement profession. We are in support of Senate Bill 431 by Senator Benoit. This bill will permit the transfer of probationers to the county of their residence in those circumstances where the probationer has committed a crime in a non-resident county. By permitting the transfer of the probationer to the county of residence, it is possible to more closely supervise the probationer by using the resources available in his/her residence county.

This is a bill that not only promotes efficiency, but public safety, as well. The California Peace Officers' Association respectfully requests your signature on Senate Bill 431.

Thank you for considering the views of the California Peace Officers' Association.

Sincerely,

A handwritten signature in cursive script that reads "John Standish".

John Standish
President

CC: Honorable John Benoit, Member of the Senate



September 21, 2009

The Honorable Arnold Schwarzenegger
Governor, State of California
State Capitol
Sacramento, California

Re: SB 398 (Correa) — Signature Requested

Dear Governor Schwarzenegger:

We are writing to respectfully request your signature on SB 398 (Correa), which will help improve local fire code enforcement in mobilehome parks.

Last year's devastating wildfires in Southern California damaged, among other property, hundreds of mobilehomes. Following the fire, the Senate Select Committee on Manufactured Homes and Communities convened hearings on the issue of fire safety in mobilehome parks. This bill addresses two issues identified in those hearings.

The first, relates to those local governments who have assumed full mobilehome park code enforcement duties from the state Department of Housing, including fire code enforcement. The bill clarifies that those local governments have the power to delegate the fire code enforcement duties to the local fire district. The second issue relates to those local governments who have assumed only limited fire code enforcement. For those local governments, the bill expands the categories of fire risk that a local enforcement agency can enforce.

Together, these measures will help improve fire code enforcement in mobilehome parks and ensure better protection of life and property. For these reasons we respectfully request your signature on this very important legislation.

Sincerely,

Christine Minnehan

Christine Minnehan
Director of Legislative Advocacy
Western Center on Law & Poverty
(916) 442-0753 x 14

Brian August

Brian August
Staff Attorney
CRLA Foundation
(916) 446-9241

Tim Sheahan

Tim Sheahan
President
GSMOL
(760) 727-4495

cc: The Honorable Lou Correa
~~Michael White, Sacramento Office~~
Traci Stevens, Deputy, Business, Transportation & Housing Agency

September 21, 2009

The Honorable Arnold Schwarzenegger
Governor, State of California
State Capitol Building, First Floor
Sacramento, CA 95814

**RE: SB 398 (Correa): Mobile Home Parks: Fire Code Enforcement
Request for Signature**

Dear Governor Schwarzenegger:

The League of California Cities respectfully requests your signature on Senate Bill (SB) 398. This legislation ensures that local fire authorities that are responsible for putting out fires have the ability to enforce fire code issues in mobilehome parks.

Currently, the Mobilehome Parks Act requires the Department of Housing and Community Development (HCD) to adopt fire protection standards for mobilehome parks. At the same time, local fire districts adopt local protection standards that cover mobilehome parks in their jurisdiction. SB 398 simply states that the regulations adopted by HCD do not apply to a mobilehome park that is already served by a special district that provides fire protection services. The intent of this legislation is to eliminate conflicting or duplicative fire protection standards.

SB 398 would allow a local agency that has deferred to the state to nevertheless elect to enforce fire protection provisions. The benefit of SB 398 is that it allows for comprehensive local fire protection – which is very important in fire prone areas in San Diego, Santa Barbara and Los Angeles Counties, among other areas.

For these reasons, the League requests your signature on SB 398. If you have any questions about the League's position, please do not hesitate to contact me at (916) 658-8249.

Sincerely,



Bill Higgins
Legislative Representative

cc: Senator Lou Correa



Chief Probation Officers of California

August 17, 2009

The Honorable Arnold Schwarzenegger
Governor
State of California
State Capitol Building
Sacramento, CA 95814

Re: SB 431 (Benoit) – Request for Signature

Dear Governor Schwarzenegger:

On behalf of the Chief Probation Officers of California (CPOC) we respectfully request your signature on SB 431 which would require the transfer of jurisdiction for adult probationers to the county of residence.

Under current law, county probation departments are responsible for the supervision of adult offenders placed on probation by the superior court. Most of those placed on probation reside in the county where the crime prosecution, and grant of probation occurred thereby facilitating the provision of probation supervision and supportive services to promote public safety.

However, there are an undetermined number of adult probationers who reside in a different county than the probation department responsible for their supervision. Some of these adult probationers are under the wasteful duplicative probation supervision of multiple departments while others are entirely unsupervised by either the sentencing county or the county in which they reside. Based on a snapshot of several medium size counties approximately 10-40% of adult probationers reside in a county other than the sentencing county, therefore posing a significant public safety risk due to inadequate supervision in the county of residence.

Current law, under Penal Code Section 1203.9, allows for jurisdictional transfer of adult probationers between counties to facilitate supervision in the county of residence. However, the process and discretion allowed by PC 1203.9 does not provide for the orderly transfer of cases to their county of residence as current law allows for courtesy supervision and authorizes discretion to both the sending and receiving counties for transfer.

SB 431 would require the transfer of jurisdiction to the county of residence unless a determination is made on the record by the sentencing court that the transfer would be inappropriate. Additionally, it requires a noticed motion for the transfer which allows the court of the proposed receiving county to provide comments for the record regarding the suitability of the transfer. It also allows the courts to promulgate rules to guide the transfer and identify circumstances in which a sentencing court may retain jurisdiction. This bill 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 suitably use limited probation resources for supervision. For these reasons, we are pleased to sponsor SB 431 and respectfully request your signature on this bill.

Sincerely,

Karen A. Pank
Executive Director

**Cc: The Honorable John Benoit, Member, California State Senate
Aaron Maguire, Deputy Legislative Secretary, Office of the Governor**

1415 L Street, Suite 200 • Sacramento, CA 95814

Phone: (916) 447-2762 • Fax: (916) 442-0850 • Email: cpoc@cpoc.org • Web Site: www.cpoc.org

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**CALIFORNIA PROBATION, PAROLE AND CORRECTIONAL ASSOCIATION**

August 17, 2009

The Honorable Arnold Schwarzenegger
Governor
State of California
State Capitol Building
Sacramento, CA 95814

Re: SB 431 (Benoit) – CPPCA Request for Signature

Dear Governor Schwarzenegger:

On behalf of the California Probation Parole and Correctional Association (CPPCA) we are pleased to support SB 431 and respectfully request your signature on this bill.

While Penal Code Section 1203.9 authorizes the transfer of probation supervision to the county in which a probationer resides, the provisions allowing courtesy supervision and judicial discretion to both the sentencing county and county of residence are operationally problematic. These provisions are too broad to provide for the orderly transfer of jurisdiction to the appropriate county.

SB 431 would clarify the process for jurisdictional transfer of adult probation cases by requiring the transfer of jurisdiction to the county of residence unless a determination is made on the record by the sentencing court. Further, it directs the Judicial Council to develop and promulgate rules of court to create guidelines for the transfer of cases and allows the proposed receiving county to provide comments on the record regarding the suitability of the transfer.

This bill enhances public safety by creating a more clearly defined process of jurisdictional transfer while still affording an appropriate level of judicial discretion to the courts.

For these reasons, we are pleased to support SB 431 and respectfully request your signature on this bill.

Sincerely,

A handwritten signature in cursive script that reads "Nick Warner".

Nick Warner
Legislative Director

**Cc: The Honorable John Benoit, Member, California State Senate
Aaron Maquire, Deputy Legislative Secretary, Office of the Governor**



LEGISLATIVE COUNSEL
Diane F. Boyer-Vine

A TRADITION OF TRUSTED LEGAL SERVICE
TO THE CALIFORNIA LEGISLATURE

LEGISLATIVE
COUNSEL
BUREAU

LEGISLATIVE COUNSEL BUREAU
925 L STREET
SACRAMENTO, CALIFORNIA 95814
TELEPHONE (916) 341-8000
FACSIMILE (916) 341-8020
INTERNET WWW.LEGISLATIVECOUNSEL.CA.GOV

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Arman G. Yazdi
Jenny C. Yun
Jack Zorman

August 20, 2009

Honorable Arnold Schwarzenegger
Governor of California
Sacramento, CA 95814


SENATE BILL NO. 431

Dear Governor Schwarzenegger:

Pursuant to your request, we have reviewed the above-numbered bill authored by Senator Benoit and, in our opinion, the title and form are sufficient and the bill, if chaptered, will be constitutional. The digest on the printed bill as adopted correctly reflects the views of this office.

Very truly yours,

Diane F. Boyer-Vine
Legislative Counsel


Romulo I. Lopez
Principal Deputy

RIL:slw

Two copies to Honorable John J. Benoit,
pursuant to Joint Rule 34.

Senate Floor: 37-0 (04/23/09)

(AYE: All Republicans; except, ABS: Harman)

Assembly Floor: 74-0 (07/09/09)

(AYE: All Republicans, except; ABS: Duvall)

Vote requirement: 21

Version Date: 06/04/2009

Quick Summary

Assembly amendments further clarify the mandatory court process for transferring probationers required by this bill and provide that the Judicial Council shall promulgate rules of court and procedures by which the receiving county shall respond to a motion to transfer.

Requires that when a person is placed on probation, the sentencing court is required to transfer the "entire jurisdiction" of the case to the county in which that person permanently resides, unless the sentencing court determines on the record that the transfer would be inappropriate. Provides that the county of the probationer's residence must accept the entire jurisdiction over the case. Provides that the Judicial Council is required to adopt rules providing factors for the court's consideration when determining the appropriateness of transfer of jurisdiction over probationers

Fiscal Effect

No 6/4/09

MINOR STATE COSTS

Minor, absorbable costs for the Judicial Council to promulgate rules of court, as required.

Fiscal Consultant: Matt Osterli

Analysis

Arguments in Support:

Under current law there are some cases can result in duplicative supervision or, in some cases, no supervision for individuals placed on probation in a county that is not the county of their permanent residence. This bill is a attempt by the Chief Probation Officers of California and the courts to clarify which county is responsible for supervision and the proper court procedures for the transfer of an individual that will maximize public safety and compliance with mandated programming.

According to the Chief Probation Officers of California, "Under current law, county probation departments are responsible for the supervision of adult offenders placed on probation by the superior court. Most of those placed on probation reside in the county where the crime, prosecution, and grant of probation occurred, thereby facilitating the provision of probation supervision and supportive services to promote public safety. However, there are an undetermined number of adult probationers who reside in a different county than the probation department responsible for their supervision. Some of these adult probationers are under the wasteful duplicative probation supervision of multiple departments, while others are entirely unsupervised by either the sentencing county or the county in which they reside. Based on a snapshot of several medium sized counties, approximately 10-40% of adult probationers reside in a county other than the sentencing county, therefore posing a significant public safety risk due to inadequate supervision in the county of residence. Current law, under Penal Code Section 1203.9, allows for jurisdictional transfer of adult probationers between counties to facilitate supervision in the county of residence. However, the process and discretion allowed by PC 1203.9 does not provide for the orderly transfer of cases to their county of residence as current law allows for courtesy supervision and authorizes discretion to both the sending and receiving counties for transfer. SB 431 would require the transfer of jurisdiction to the county of residence unless a determination is made on the record by the sentencing court that the transfer would be inappropriate. Additionally, it requires a noticed motion of the transfer which allows the court of the proposed receiving county to provide comments for the record regarding the suitability of the transfer. It also allows the courts to promulgate rules to guide the transfer and identify circumstances in which a sentencing court may retain jurisdiction. This bill 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 suitably use limited probation resources for supervision."

Arguments in Opposition:

Probation transfers are already authorized under current law. We should not be removing judicial discretion. Judges and probation departments already have access to information that allows them to make the best decision for both the community and the offender.

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Removes discretion in current law, and provides that if a person who is placed on probation resides in a different county from the sentencing court, the court of the person's residence is required to accept jurisdiction over his or her probation.

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has stated his or her intention to remain in that county

Provides that when an individual is released on probation his/her case shall be transferred to the county of his/her permanent residence unless the transferring court determines that the transfer would be inappropriate and states the reasons on the record.

Removes the discretion of the receiving county to accept probationary supervision of the transferred case but not otherwise assume "entire jurisdiction" of the case.

Upon motion for transfer the court of the proposed receiving county may provide comments for the record regarding the proposed transfer, following procedures set forth in rules of court developed by the Judicial Council for this purpose.

Requires the court of that county shall accept jurisdiction over the case unless there is a finding that the transfer would be inappropriate.

Requires the Judicial Council to adopt rules providing factors for the courts consideration when determining the appropriateness of a probation case transfer. The factors shall include at a minimum:

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

Makes other non-substantive changes.

Background

Existing law provides that a person placed on probation by a court shall be under the supervision of the county probation officer who shall determine both the level and type of supervision consistent with the court-ordered conditions of probation. (PC § 1202.8)

Existing law provides that when a person is released upon probation, the case may be transferred to any court in any other county in which the person resides permanently. If the court of the receiving county finds that the person does permanently reside in or has permanently moved to the county, it may, in its discretion, either accept the entire jurisdiction over the case, or assume supervision of the probationer on a courtesy basis. The sentencing court may also, in its discretion, transfer jurisdiction of the entire case, upon a finding by the receiving court of the person's permanent residency in the receiving county. (PC § 1203.9)

Author's Statement:

According to the author, "Under current law, California County Probation

Departments are responsible for the supervision of adult offenders placed on probation by the Superior Court. Most of those placed on probation reside in the county where the crime, prosecution, and grant of probation occurred.

This means that the Probation Department supervises the probationer residing in the Probation Department's geographical jurisdiction (county), which facilitates monitoring and supportive services for probationers. However, there are currently an undetermined number of adult probationers who reside in a county other than the county responsible for their supervision. Some of these adult probationers are concurrently under the wasteful, duplicative probation supervision of multiple probation departments; others are entirely unsupervised by either the sentencing county or the county in which they reside. Based on a snapshot of several medium size counties, up to 40% of adult probationers reside in a county other than the sentencing county, therefore posing a significant public safety risk due to inadequate supervision in the county of residence."

Related Legislation

AB 1306 (Leno, 2004) added section 1203.9 (c) to the California Penal Code to specify that any person who is sentenced to probation under Proposition 36, the Substance Abuse and Crime Prevention Act of 2000, would be eligible for transfer to his or her County of residence.

AB 306 (Aguilar, 1993) amended section 1203.9 (c) of the California Penal Code to provide for reasonable reimbursement to the sending County by the receiving County for processing a probationer's transfer.

Support & Opposition Received

Support: Chief Probation Officers of California (Sponsor); California Probation, Parole and Correctional Association; Judicial Council of California.

Opposition: None

Senate Republican Office of Policy/ Eric Csizmar

SB 431 (BENOIT, J)
PROBATION: TRANSFERS.

Version: 6/4/09 Last Amended
Vote: Majority
Support

Vice-Chair: Curt Hagman
Tax or Fee Increase: No

Requires that when a person is placed on probation, the sentencing court is required to transfer the "entire jurisdiction" of the case to the county in which that person permanently resides, unless the sentencing court determines on the record that the transfer would be inappropriate. Provides that the county of the probationer's residence must accept the entire jurisdiction over the case. Provides that the Judicial Council is required to adopt rules providing factors for the court's consideration when determining the appropriateness of transfer of jurisdiction over probationers.

Policy Question

Should the county of a probationer's residence be required (not merely authorized as it is under current law) to accept transfer of jurisdiction over the case from the county in which that probationer was convicted, unless the sentencing court determines that the transfer would be inappropriate and states its reasons on the record?

Summary

This bill:

1. Removes discretion in current law, and provides that if a person who is placed on probation resides in a different county from the sentencing court, the court of the person's residence is required to accept jurisdiction over his or her probation. (Current law permits this on a "courtesy basis.") However, it provides that the receiving county proposed receiving county may provide comments for the record of the court in the sentencing county regarding the

proposed transfer, following procedures set forth in rules of court developed by the Judicial Council for this purpose. It provides that this is a "noticed motion" so that the receiving county may have an opportunity to provide these comments.

2. Removes the discretion in current law and, instead, provides that upon a finding that a person permanently resides in another county by a court in that county, and upon placing the person on probation, the sentencing court is required to transfer jurisdiction over the entire case to a court in the person's county of residence, unless the transferring court determines that the transfer would be inappropriate and states its reasons on the record.
3. Removes a provision in current law allowing the court in the receiving county to hold a hearing to determine if the probationer does reside in that county and has stated his or her intention to remain in that county.
4. Removes the discretion of the receiving county to accept probationary supervision of the transferred case but not otherwise assume "entire jurisdiction" of the case.
5. Provides that in Proposition 36 cases, the court in the sentencing county may determine that the transfer is inappropriate, using the same language as in Summary #2. (There is no requirement that this be made on the record under current law in these types of cases.)
6. Provides that the Judicial Council is required to promulgate rules of court for procedures by which the proposed receiving county receives notice of the motion for transfer and by which responsive comments may be transmitted to the court of the transferring county.
7. Requires the Judicial Council to adopt rules providing factors for the court's consideration when determining the appropriateness of a transfer, including, but not limited to, the following: (1) Permanency of residence of the

Senate Republican Floor Votes (36-0) 5/11/09

Ayes: All Republicans
Noes: None
Abs. / NV: None

Assembly Republican Public Safety Votes (7-0) 6/16/09

Ayes: Hagman, Gilmore
Noes: None
Abs. / NV: None

Assembly Republican Appropriations Votes (15-0) 7/1/09

Ayes: Nielsen, Duvall, Harkey, Miller, Strickland
Noes: None
Abs. / NV: None

Assembly Republican Votes (0-0) 1/1/09

Ayes: None
Noes: None
Abs. / NV: None

offender. (2) Local programs available for the offender. (3) Restitution orders and victim issues.

8. Makes other non-substantive changes.

Support

Chief Probation Officers of California (sponsor); Judicial Council of California; California Probation, Parole and Correctional Association.

Opposition

None on file.

Arguments In Support of the Bill

According to the Chief Probation Officers of California, "Under current law, county probation departments are responsible for the supervision of adult offenders placed on probation by the superior court. Most of those placed on probation reside in the county where the crime, prosecution, and grant of probation occurred, thereby facilitating the provision of probation supervision and supportive services to promote public safety. However, there are an undetermined number of adult probationers who reside in a different county than the probation department responsible for their supervision. Some of these adult probationers are under the wasteful duplicative probation supervision of multiple departments, while others are entirely unsupervised by either the sentencing county or the county in which they reside. Based on a snapshot of several medium sized counties, approximately 10-40% of adult probationers reside in a county other than the sentencing county, therefore posing a significant public safety risk due to inadequate supervision in the county of residence. Current law, under Penal Code Section 1203.9, allows for jurisdictional transfer of adult probationers between counties to facilitate supervision in the county of residence. However, the process and discretion allowed by PC 1203.9 does not provide for the orderly transfer of cases to their county of residence as current law allows for courtesy supervision and authorizes discretion to both the sending and receiving counties for transfer. SB 431 would require the transfer of jurisdiction to the county of residence unless a determination is made on the record by the sentencing court that the transfer would be inappropriate. Additionally, it requires a noticed motion of the transfer which allows the court of the proposed receiving county to provide comments for the record regarding the suitability of the transfer. It also allows the courts to promulgate rules to guide the transfer and identify circumstances in which a sentencing court may retain jurisdiction. This bill 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 suitably use limited probation resources for supervision."

Arguments In Opposition to the Bill

Opponents might argue that this bill is unnecessary. Probation transfers are already authorized under current law.

Fiscal Effect

As Adopted in Assembly Appropriations Committee July 1, 2009.

NO STATE COST.

Comments

1. **Author's Statement:** According to the author, "Under current law, California County Probation Departments are responsible for the supervision of adult offenders placed on probation by the Superior Court. Most of those placed on probation reside in the county where the crime, prosecution, and grant of probation occurred. This means that the Probation Department supervises the probationer residing in the Probation Department's geographical jurisdiction (county), which facilitates monitoring and supportive services for probationers. However, there are currently an undetermined number of adult probationers who reside in a county other than the county responsible for their supervision. Some of these adult probationers are concurrently under the wasteful, duplicative probation supervision of multiple probation departments; others are entirely unsupervised by either the sentencing county or the county in which they reside. Based on a snapshot of several medium size counties, up to 40% of adult probationers reside in a county other than the sentencing county, therefore posing a significant public safety risk due to inadequate supervision in the county of residence."
2. **Current Law:** Under current law, whenever any person is released upon probation, the case may be transferred to any court of the same rank (this is an outdated reference to the pre-trial court consolidation structure of superior and municipal courts) in any other county in which the person resides permanently, meaning the stated intention to remain for the duration of probation, provided that the court of the receiving county is required to first be given an opportunity to determine whether the person does reside in and has stated the intention to remain in that county for the duration of probation. If the court finds that the person does not reside in or has not stated an intention to remain in that county for the duration of probation, it may refuse to accept the transfer. The court and the probation department are required to give the matter of investigating those transfers precedence over all actions or proceedings therein, except actions or proceedings to which special precedence is

given by law, to the end that all those transfers will be completed expeditiously. Except where the person is granted probation for drug treatment pursuant to Proposition 36, if the court of the receiving county finds that the person does permanently reside in or has permanently moved to the county, it may, in its discretion, either accept the entire jurisdiction over the case, or assume supervision of the probationer on a courtesy basis. Whenever a person is granted probation under Penal Code § 1210.1 (Proposition 36), the sentencing court may, in its discretion, transfer jurisdiction of the entire case, upon a finding by the receiving court of the person's permanent residency in the receiving county. The order of transfer is required to contain an order committing the probationer to the care and custody of the probation officer of the receiving county and an order for reimbursement of reasonable costs for processing the transfer to be paid to the sending county in accordance with Penal Code § 1203.1b. A copy of the orders and probation reports are required be transmitted to the court

and probation officer of the receiving county within two weeks of the finding by that county that the person does permanently reside in or has permanently moved to that county, and thereafter the receiving court has jurisdiction over the case, with the power to again request transfer of the case whenever it seems proper. (Penal Code § 1203.9.)

3. **Comments:** These are appropriate changes. In most cases, it is better for the probation department and court in the county where the probationer resides to have jurisdiction and supervision over him or her.
4. **Similar Legislation:** **AB 1306 (Leno) (Ch. 30, Stats. of 2004)** allowed judges to transfer supervision of Proposition 36 probationers to another county when the defendant is a resident of that other county. It passed the Assembly (69-1). All Republicans voted "Aye," except Assembly Member La Suer voted "No" and Assembly Members Cox, Harman, and Leslie were absent, abstained, or did not vote.

Policy Consultant: Gary Olson 7/6/2009

Fiscal Consultant: Allan Cooper 6/24/2009

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2009-2010 SB431 - Probation: transfers. (Version: 93 - Chaptered 10/11/09)

[Bill History](#)[Switch Order](#)**Date Action**

10/11/09 Chaptered by Secretary of State. Chapter 588, Statutes of 2009.
 10/11/09 Approved by Governor.
 9/10/09 Enrolled. To Governor at 11 a.m.
 9/8/09 Ordered held in Engrossing and Enrolling.
 9/8/09 Returned by the Governor at the request of the Senate.
 8/24/09 Enrolled. To Governor at 1 p.m.
 8/17/09 Senate concurs in Assembly amendments. (Ayes 35. Noes 0. Page 1841.) To enrollment.
 7/15/09 To Special Consent Calendar.
 7/9/09 In Senate. To unfinished business.
 7/9/09 Read third time. Passed. (Ayes 74. Noes 0. Page 2450.) To Senate.
 7/6/09 Read second time. To Consent Calendar.
 7/2/09 (Heard in committee on July 1.)
 7/2/09 From committee: Do pass. To Consent Calendar. (Ayes 15. Noes 0.)
 6/16/09 (Heard in committee on June 16.)
 6/16/09 From committee: Do pass, but first be re-referred to Com. on APPR. with recommendation: To Consent Calendar. (Ayes 7. Noes 0.) Re-referred to Com. on APPR.
 6/4/09 From committee with author's amendments. Read second time. Amended. Re-referred to Com. on PUB. S.
 5/21/09 To Com. on PUB. S.
 5/11/09 In Assembly. Read first time. Held at Desk.
 5/11/09 Read third time. Passed. (Ayes 36. Noes 0. Page 827.) To Assembly.
 5/6/09 To Special Consent Calendar.
 4/30/09 Read second time. To third reading.
 4/29/09 From committee: Do pass. (Ayes 7. Noes 0. Page 705.)
 4/22/09 From committee with author's amendments. Read second time. Amended. Re-referred to Com. on PUB. S.
 4/20/09 From committee with author's amendments. Read second time. Amended. Re-referred to Com. on PUB. S.
 4/16/09 Set for hearing April 28.
 4/13/09 Re-referred to Com. on PUB. S.
 4/2/09 From committee with author's amendments. Read second time. Amended. Re-referred to Com. on RLS.
 3/12/09 To Com. on RLS.
 2/27/09 From print. May be acted upon on or after March 28.
 2/26/09 Introduced. Read first time. To Com. on RLS. for assignment. To print.

SECRETARY OF STATE, ALEX PADILLA
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SRB 431, 2009

JRF

Governor's Chaptered Bill Files
SB 431, Chapter 588, 2009

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SENATE COMMITTEE ON PUBLIC SAFETY

Senator Mark Leno, Chair
2009-2010 Regular Session

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SB 431 (Benoit)
As Amended April 22, 2009
Hearing date: April 28, 2009
Penal Code
SM:mc

ADULT PROBATION: TRANSFERS

HISTORY

Source: Chief Probation Officers of California

Prior Legislation: None directly on point

Support: California Probation, Parole and Correctional Association

Opposition: None known

KEY ISSUE

SHOULD THE COUNTY OF A PROBATIONER'S RESIDENCE BE REQUIRED TO ACCEPT TRANSFER OF JURISDICTION OVER THE CASE FROM THE COUNTY IN WHICH THE PROBATIONER IS CONVICTED, EXCEPT AS PROVIDED?

PURPOSE

The purpose of this bill is to require that (1) when a person is released on probation, the sentencing court shall transfer the entire jurisdiction of the case to the county in which that person permanently resides, unless the court determines on the record that the transfer would not be appropriate; (2) the county of the probationer's residence accept the entire jurisdiction over the case, unless that county determines the probationer does not intend to reside within the county throughout the period of probation; (3) these same provisions be applied to cases where the person is placed on probation for the purpose of drug treatment, pursuant to Proposition 36; and (4) the Judicial Council adopt rules providing factors for the court's consideration when determining the appropriateness of transfer.

Existing law provides for transfer of probation as follows:

- Whenever any person is released upon probation, the case *may* be transferred to any court of the same rank in any other county in which the person resides permanently, meaning the stated intention to remain for the duration of probation, provided that the court of the receiving county shall first be given an opportunity to determine whether the person does reside in and has stated the intention to remain in that county for the duration of probation. If the court finds that the person does not reside in or has not stated an intention to remain in that county for the duration of probation, it may refuse to accept the transfer. The court and the probation department shall give the matter of investigating those transfers precedence over all actions or proceedings therein, except actions or proceedings to which special precedence is given by law, to the end that all those transfers shall be completed expeditiously.
- Except where the person is granted probation for drug treatment pursuant to Proposition 36, if the court of the receiving county finds that the person does permanently reside in or has permanently moved to the county, it may, in its discretion, either accept the entire jurisdiction over the case, or assume supervision of the probationer on a courtesy basis.
- Whenever a person is granted probation under Section 1210.1 (Proposition 36), the sentencing court may, in its discretion, transfer jurisdiction of the entire case, upon a finding by the receiving court of the person's permanent residency in the receiving county.
- The order of transfer shall contain an order committing the probationer to the care and custody of the probation officer of the receiving county and an order for reimbursement of reasonable costs for processing the transfer to be paid to the sending county in accordance with Section 1203.1b. A copy of the orders and probation reports shall be transmitted to the court and probation officer of the receiving county within two weeks of the finding by that county that the person does permanently reside in or has permanently moved to that county, and thereafter the receiving court shall have entire jurisdiction over the case, with the like power to again request transfer of the case whenever it seems proper. (Penal Code § 1203.9.)

This bill provides that, when a person is released on probation, the sentencing court shall transfer the entire jurisdiction of the case to the county in which that person permanently resides, unless the court determines on the record that the transfer would not be appropriate. The receiving county must accept the entire jurisdiction over the case, unless it determines that the probationer does not intend to reside permanently in that county.

This bill would also apply these provisions to transfers of persons granted probation under Proposition 36 for drug treatment.

This bill requires the Judicial Council to adopt rules providing factors for the court's consideration when determining the appropriateness of transfer, including but not limited to:

- permanency of residency of the offender;
- local programs available for the offender; and
- restitution orders and victim issues.

RECEIVERSHIP/OVERCROWDING CRISIS AGGRAVATION

California continues to face a severe prison overcrowding crisis. The Department of Corrections and Rehabilitation (CDCR) currently has about 170,000 inmates under its jurisdiction. Due to a lack of traditional housing space available, the department houses roughly 15,000 inmates in gyms and dayrooms. California's prison population has increased by 125% (an average of 4% annually) over the past 20 years, growing from 76,000 inmates to 171,000 inmates, far outpacing the state's population growth rate for the age cohort with the highest risk of incarceration.¹

In December of 2006 plaintiffs in two federal lawsuits against CDCR sought a court-ordered limit on the prison population pursuant to the federal Prison Litigation Reform Act. On February 9, 2009, the three-judge federal court panel issued a tentative ruling that included the following conclusions with respect to overcrowding:

No party contests that California's prisons are overcrowded, however measured, and whether considered in comparison to prisons in other states or jails within this state. There are simply too many prisoners for the existing capacity. The Governor, the principal defendant, declared a state of emergency in 2006 because of the "severe overcrowding" in California's prisons, which has caused "substantial risk to the health and safety of the men and women who work inside these prisons and the inmates housed in them." . . . A state appellate court upheld the Governor's proclamation, holding that the evidence supported the existence of conditions of "extreme peril to the safety of persons and property." (citation omitted) The Governor's declaration of the state of emergency remains in effect to this day.

. . . the evidence is compelling that there is no relief other than a prisoner release order that will remedy the unconstitutional prison conditions.

. . .

Although the evidence may be less than perfectly clear, it appears to the Court that in order to alleviate the constitutional violations California's inmate population must be reduced to at most 120% to 145% of design capacity, with some institutions or clinical programs at or below 100%. We caution the parties, however, that these are not firm figures and that the Court reserves the right –

¹ "Between 1987 and 2007, California's population of ages 15 through 44 – the age cohort with the highest risk for incarceration – grew by an average of less than 1% annually, which is a pace much slower than the growth in prison admissions." (2009-2010 Budget Analysis Series, Judicial and Criminal Justice, Legislative Analyst's Office (January 30, 2009).)

until its final ruling – to determine that a higher or lower figure is appropriate in general or in particular types of facilities.

...

Under the PLRA, any prisoner release order that we issue will be narrowly drawn, extend no further than necessary to correct the violation of constitutional rights, and be the least intrusive means necessary to correct the violation of those rights. For this reason, it is our present intention to adopt an order requiring the State to develop a plan to reduce the prison population to 120% or 145% of the prison's design capacity (or somewhere in between) within a period of two or three years.²

The final outcome of the panel's tentative decision, as well as any appeal that may be in response to the panel's final decision, is unknown at the time of this writing.

This bill does not appear to aggravate the prison overcrowding crisis outlined above.

COMMENTS

1. Need for This Bill

According to the author:

Current law results in a significant risk to public safety with thousands of adult probationers being supervised ineffectively by Probation Departments outside of their County of residence.

Under current law, California County Probation Departments are responsible for the supervision of adult offenders placed on probation by the Superior Court. Most of those placed on probation reside in the County where the crime, prosecution, and grant of probation occurred. This means that the Probation Department supervises the Probationer residing in the Probation Department's geographical jurisdiction (County), which facilitates probation monitoring and supportive services that promote public safety.

However, thousands of adult probationers reside in a different County than the probation department responsible for their supervision. Some of these adult probationers are concurrently under the wasteful, duplicative probation supervision of multiple probation departments. Probation departments do not have the capacity to provide for effective supervision of adult probationers living in other counties.

² Three Judge Court Tentative Ruling, *Coleman v. Schwarzenegger*, *Plata v. Schwarzenegger*, in the United States District Courts for the Eastern District of California and the Northern District of California United States District Court composed of three judges pursuant to Section 2284, Title 28 United States Code (Feb. 9, 2009).

SB 431 would establish the Probation Department of the adult probationer's County of residence as the Probation Department responsible for probation supervision.

2. Probation Transfers

Currently, when a person is found guilty of a criminal offense and the court places the defendant on probation, the court in the county where the conviction takes place retains jurisdiction over the matter. Additionally, the probation department in that county is responsible for the supervision of that person on probation and for seeing that the terms and conditions of probation, imposed by the court, are enforced.

This bill addresses the issue of which county will have jurisdiction over the case if the probationer lives in a county other than the county where he or she was convicted and placed on probation. Under current law there is a system of transfer whereby the sentencing court may request that the probationer's county of residence accept a transfer of jurisdiction of the case but there is no requirement that the county of residence accept the complete transfer of jurisdiction. Alternatively, the county of residence may accept supervision of the probationer on a "courtesy" basis whereby it agrees to supervise the probationer, but jurisdiction of the case does not transfer. In cases where the person is granted probation for drug treatment pursuant to Proposition 36, the county of residence must accept jurisdiction of the case, unless it determines the probationer does not intend to live in that county for the duration of probation.

According to the sponsors, the Chief Probation Officers of California, the current system has resulted in very few transfers but many probationers living in a different county than the probation department with jurisdiction over them. The sponsors state that this has resulted in wasteful duplication of effort and a potential threat to public safety.

To remedy this situation, this bill would require that the sentencing court transfer jurisdiction over any person it places on probation to the county where that person resides unless the sentencing court makes findings on the record that the transfer would be inappropriate. The county of residence would be required to accept jurisdiction unless it determines the probationer does not live there permanently. In essence, this bill would eliminate the option for the receiving county of accepting the probationer on "courtesy supervision" without accepting full jurisdiction over the case.

One aspect of current law that has apparently resulted in inconsistent practices in different counties is the fact that "courtesy supervision" is not defined. This leaves some ambiguity over which county may issue a warrant for the probationer's arrest if he or she is found to be in violation of the terms and conditions of probation.

The sponsors acknowledge that there is not unanimity of opinion among counties over how to resolve this issue. Some counties do not want to accept cases involving their residents who are

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One aspect of current law that has apparently resulted in inconsistent practices in different counties is the fact that "courtesy supervision" is not defined. This leaves some ambiguity over which county may issue a warrant for the probationer's arrest if he or she is found to be in violation of the terms and conditions of probation.

The sponsors acknowledge that there is not unanimity of opinion among counties over how to resolve this issue. Some counties do not want to accept cases involving their residents who are

convicted of crimes in other counties. Other counties do not want to relinquish authority over persons convicted and sentenced in their courts to the probationer's county of residence. As to the latter concern, the bill allows the sentencing court to retain jurisdiction if it makes findings on the record that transfer would be inappropriate.

The bill requires the Judicial Council to adopt rules providing factors to guide the sentencing court's discretion in determining the appropriateness of transferring the case to the county of residence. Those factors are to include, but are not limited to:

- permanency of residency of the offender;
- local programs available for the offender; and
- restitution orders and victim issues.

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?

SENATE COMMITTEE ON PUBLIC SAFETY

Room 2031, State Capitol, 651-4118

BACKGROUND INFORMATION

Please complete this form and return it to the Senate Committee on Public Safety. *Please e-mail your author's statement* (or any other lengthy material that may be excerpted in our analysis) to committee assistants Barbara Reynolds or Mona Cano. **PLEASE NOTE THE FOLLOWING:**

- Call the Committee as soon as possible to set your bill.
- The Committee WILL NOT automatically set any bill.
- Your bill may not be set until this form is completed and returned to the Committee.
- This form is two pages. Please complete every question.
- You are encouraged to send a copy of this completed form and any attachments to the Committee's Minority Policy Consultant, Eric Csizmar (eric.csizmar@sen.ca.gov (651-1772)).

1. What is the name and phone number of the person on your staff responsible for this measure?

Name: Gary B. Bell

Phone Number: (916) 651-4037

2. Which agency, organization or individual requested the introduction of this bill?

Chief Probation Officers of California (CPOC)

3. Which agencies, organizations, or individuals (outside of the sponsor) have expressed support? Please attach copies of letters. Support will not be noted in an analysis if the Committee has not received a letter of support in a timely manner.

The Judicial Council of California

4. Which agencies, organizations or individuals have expressed opposition? Please attach copies of letters.

None received.

5. If a similar bill has been introduced in this or any previous session, what was the number and year of its introduction?

None known.

6. What problem or deficiency under current law does the bill seek to remedy? Please be specific as possible, and include any legal or empirical information upon which the bill is based.

NOTE: Some or all of this statement may be quoted verbatim in the Committee's analysis.

Current law results in a significant risk to public safety with thousands of adult probationers being supervised ineffectively by Probation Departments outside of their County of residence.

Under current law, California County Probation Departments are responsible for the supervision of adult offenders placed on probation by the Superior Court. Most of those placed on probation reside in the County where the crime, prosecution, and grant of probation occurred. This means that the Probation Department supervises the Probationer residing in the Probation Department's geographical jurisdiction (County), which facilitates probation monitoring and supportive services that promote public safety.

However, thousands of adult probationers reside in a different County than the probation department responsible for their supervision. Some of these adult probationers are concurrently under the wasteful, duplicative probation supervision of multiple probation departments. Probation departments do not have the capacity to provide for effective supervision of adult probationers living in other counties.

SB 431 would establish the Probation Department of the adult probationer's County of residence as the Probation Department responsible for probation supervision.

7. Are you planning any amendments to be offered before the Committee hearing? YES NO
If so, please describe the amendments. **NOTE THAT THE HEARING OF A BILL MAY BE DELAYED IF 1 SIGNED AND 6 UNSIGNED COPIES OF THE AMENDMENTS IN LEGISLATIVE COUNSEL FORM ARE NOT PROVIDED TO THE COMMITTEE IN A TIMELY MANNER.**

8. If you have any further background information or material relating to this measure (letters of support or opposition, reports, court cases, Legislative Counsel Opinions, citations, etc.), please attach copies or state where such information is available.

COPY



Judicial Council of California
ADMINISTRATIVE OFFICE OF THE COURTS

455 Golden Gate Avenue • San Francisco, California 94102-3688
Telephone 415-865-4200 • Fax 415-865-4205 • TDD 415-865-4272

MEMORANDUM

Date November 20, 2008	Action Requested For discussion.
To Criminal Law Advisory Committee	Deadline N/A
From Arturo Castro	Contact Arturo Castro 415-865-7702 phone 415-865-7664 fax arturo.castro@jud.ca.gov
Subject Probation Transfers Under Penal Code Section 1203.9	

This discussion regarding probation transfers between counties under Penal Code section 1203.9 will be introduced by Mr. Jerry Powers, Chief Probation Officer of Stanislaus County and President of the Chief Probation Officers of California, and Mr. Richard Stickney, Special Advisor to the Chief Probation Officer of Los Angeles County.

Probation Transfers Under Penal Code Section 1203.9

Under section 1203.9, whenever a person is released on probation, the case may be transferred to the court in the county in which the probationer resides permanently, which means "the stated intention to remain for the duration of probation." (Pen. Code, § 1203.9(a).) The receiving court must first be given an opportunity to determine whether the probationer resides, and has stated the intention to remain, in that court's county for the duration of probation. (*Ibid.*)

If the receiving court finds that the probationer resides in the receiving county permanently, it may, in its discretion, either accept entire jurisdiction over the case or assume supervision of the probationer on a "courtesy basis." (Pen. Code, § 1203.9(b).) If, on the other hand, the receiving court finds that the probationer does *not* reside in the receiving county permanently, it retains discretion to *refuse* to accept the transfer. (*Ibid.*) There is one notable exception: In Prop 36 cases, if the receiving court finds that the probationer's permanent residency is in the receiving county, the *sentencing* court retains discretion to transfer jurisdiction of the entire case. (Pen. Code, § 1203.9(c).)

Transfer Procedure

The transfer order must contain an order “committing the probationer to the care and custody of the probation officer of the receiving county” and an order for reimbursement of “reasonable costs for processing the transfer to be paid to the sending county.” (Pen. Code, § 1203.9(d).) Copies of the orders and probation reports must be transmitted to the receiving court and probation officer within two weeks of the finding that the probationer permanently resides there. (*Ibid.*) Thereafter, the receiving court “shall have entire jurisdiction over the case, with the like power to again request transfer of the case whenever it seems proper.” (*Ibid.*) To expedite transfers, the receiving court and its probation department must give precedence to the investigation of transfers over all other actions or proceedings, except for those with special precedence “given by law.” (Pen. Code, § 1203.9(a).)

Discussion

Cross jurisdictional probation transfers pose a significant public safety issue, yet current law provides very little procedural guidance to courts or probation departments, leaving many aspects of the transfer procedure unresolved. For example, section 1203.9 does not define “courtesy” supervision and fails to prescribe how probation fees are to be collected and disbursed. Other practical considerations, such as which court retains jurisdiction to issue a warrant for a probationer under “courtesy” supervision, are also unclear. As a result, transfer procedures vary considerably across the state.

Representatives of the Chief Probation Officers of California seek this committee’s assistance in resolving some of these issues by providing courts and probation departments with more guidance. Potential solutions include developing rules of court to: (a) create standards to determine a probationer’s county of residence; (b) define “courtesy” supervision; (c) clarify how restitution, fees, fines, and probation costs are to be collected and disbursed; and (d) prescribe specific time limits for transfers. The committee could also develop forms to instruct courts on transfer procedure and standardize transfer orders, and/or recommend that the Judicial Council sponsor legislation to enhance Penal Code section 1203.9.

The full text of Penal Code section 1203.9 and a sample Judicial Council form for juvenile court transfer orders are attached for your review.

§ 1203.9. Probation; transfer of cases; jurisdiction

(a) Whenever any person is released upon probation, the case may be transferred to any court of the same rank in any other county in which the person resides permanently, meaning the stated intention to remain for the duration of probation; provided that the court of the receiving county shall first be given an opportunity to determine whether the person does reside in and has stated the intention to remain in that county for the duration of probation. If the court finds that the person does not reside in or has not stated an intention to remain in that county for the duration of probation, it may refuse to accept the transfer. The court and the probation department shall give the matter of investigating those transfers precedence over all actions or proceedings therein, except actions or proceedings to which special precedence is given by law, to the end that all those transfers shall be completed expeditiously.

(b) Except as provided in subdivision (c), if the court of the receiving county finds that the person does permanently reside in or has permanently moved to the county, it may, in its discretion, either accept the entire jurisdiction over the case, or assume supervision of the probationer on a courtesy basis.

(c) Whenever a person is granted probation under Section 1210.1, the sentencing court may, in its discretion, transfer jurisdiction of the entire case, upon a finding by the receiving court of the person's permanent residency in the receiving county.

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

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):

FOR COURT USE ONLY

TELEPHONE NO.: FAX NO. (Optional):
E-MAIL ADDRESS (Optional):
ATTORNEY FOR (Name):

SUPERIOR COURT OF CALIFORNIA, COUNTY OF

STREET ADDRESS:
MAILING ADDRESS:
CITY AND ZIP CODE:
BRANCH NAME:

CASE NAME:

JUVENILE COURT TRANSFER ORDERS

§ 300 For Disposition Of Dependency
 § 601 § 602 For Disposition Of Wardship

CASE NUMBER:

1. Child's name: _____ Date of birth: _____
2. a. Date of hearing: _____ Dept. _____ Room: _____
b. Judicial officer (name): _____
c. Persons present:
 Child Child's attorney Mother Mother's attorney Father Father's attorney
 Guardian Deputy district attorney Probation officer/Social worker
 Deputy county counsel CASA Other: _____
3. The court has read and considered the report of the social worker the report of the probation officer
 other relevant evidence.
4. The court finds and orders under Welfare and Institutions Code section 375 750 and rule 5.610:
 - a. The legal residence of the child is that of Parents Mother Father Guardian
 Other with whom the WARD resides with approval of the court (name and relationship):
(address): _____
 - b. Transfer of the child's case is in the child's best interests.
 - c. The child currently resides (specify name and address):
WITH Parents Mother Father Guardian Foster home (name):
 Group home Residential facility (name):
 Relative (name and relationship):
 Other (name): _____
 - d. The child is detained placed.
 - e. The child's case is ordered transferred to the county of (specify): _____
 - f. (1) The child shall remain at the present address.
(2) The child shall be transported in custody to the receiving county within seven judicial days.
(3) Under prior orders of this court.
 - (i) The child was detained on (date): _____
 - (ii) The child was found to be described by section 300
 (a) (b) (c) (d) (e) (f) (g) (h) (i) * (j)
on (date): _____
 - (iii) Dependency was declared on (date): _____
 - (iv) The child was found to be described by section 601 602 on (date): _____
 - (v) Wardship was declared on (date): _____
 - (vi) The last hearing was on (date): _____ For: _____
 - (vii) A hearing has been set on (date): _____ For: _____
 - g. A hearing should be set for disposition review other: _____
 - h. Other

Date: _____

JUDICIAL OFFICER OF THE JUVENILE COURT

See important information on reverse.

JUVENILE COURT TRANSFER ORDERS

CASE NAME:

CASE NUMBER:

NOTICE

California Rules of Court, rule 5.610 requires that:

- (1) A child who is ordered transferred in custody must be delivered to the receiving county within seven court days. All court files and other documents must be delivered with the child;
- (2) The court files and other documents for a child whose case is transferred, but who is not transported in custody, must be transmitted to the receiving county within ten court days.

California Rules of Court, rule 5.612 requires that:

- (1) For a child who is transported in custody, the receiving court must conduct a transfer-in hearing within two court days after the child is delivered to the receiving county, if the child remains in custody;
- (2) For a child who is not detained in custody, the receiving court must conduct a transfer-in hearing within ten court days after the documents are received by the clerk of the receiving county.



CALIFORNIA PROBATION, PAROLE AND CORRECTIONAL ASSOCIATION

April 20, 2009

The Honorable John Benoit
California State Senate
State Capitol Building
Sacramento, CA 95814

Re: SB 431 – CPPCA Support

Dear Senator Benoit:

On behalf of the California Probation Parole and Correctional Association (CPPCA) we are pleased to support SB 431.

While Penal Code Section 1203.9 authorizes the transfer of probation supervision to the county in which a probationer resides, the provisions allowing courtesy supervision and judicial discretion to both the sentencing county and county of residence are operationally problematic. These provisions are too broad to provide for the orderly transfer of jurisdiction to the appropriate county.

SB 431 would clarify the process for jurisdictional transfer of adult probation cases by requiring the transfer of jurisdiction to the county of residence unless a determination is made on the record by the sentencing court. Further, it directs the Judicial Council to develop and promulgate rules of court to create guidelines for the transfer of cases.

This bill enhances public safety by creating a more clearly defined process of jurisdictional transfer while still affording an appropriate level of judicial discretion to the courts.

For these reasons, we are pleased to support SB 431.

Sincerely,

Nick Warner
Legislative Director

Cc: The Honorable Mark Leno, Chair, Senate Public Safety Committee



Chief Probation Officers of California

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Yolo County

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Riverside County

Executive Director
Karen A. Pank

April 20, 2009

The Honorable John Benoit
California State Senate
State Capitol Building
Sacramento, CA 95814

Re: SB 431 – CPOC SPONSOR

Dear Senator Benoit:

On behalf of the Chief Probation Officers of California (CPOC) we are pleased to sponsor SB 431, which would require the transfer of jurisdiction for adult probationers to the county of residence.

Under current law, county probation departments are responsible for the supervision of adult offenders placed on probation by the superior court. Most of those placed on probation reside in the county where the crime, prosecution, and grant of probation occurred thereby facilitating the provision of probation supervision and supportive services to promote public safety.

However, there are an undetermined number of adult probationers who reside in a different county than the probation department responsible for their supervision. Some of these adult probationers are under the wasteful duplicative probation supervision of multiple departments while others are entirely unsupervised by either the sentencing county or the county in which they reside. Based on a snapshot of several medium size counties, approximately 10-40% of adult probationers reside in a county other than the sentencing county, therefore posing a significant public safety risk due to inadequate supervision in the county of residence.

Current law, under Penal Code Section 1203.9, allows for jurisdictional transfer of adult probationers between counties to facilitate supervision in the county of residence. However, the process and discretion allowed by PC 1203.9 does not provide for the orderly transfer of cases to their county of residence as current law allows for courtesy supervision and authorizes discretion to both the sending and receiving counties for transfer.

SB 431 would require the transfer of jurisdiction to the county of residence unless a determination is made on the record by the sentencing court. Additionally, it allows for the courts to develop and promulgate rules of court to create guidelines for transfer and identify circumstances in which a sentencing court may retain jurisdiction. This bill 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 suitably use limited probation resources for supervision.

For these reasons, we are pleased to sponsor SB 431.

Sincerely,

Karen A. Pank
Executive Director

Cc: The Honorable Mark Leno, Chair, Senate Public Safety Committee

1415 L Street, Suite 200 • Sacramento, CA 95814

Phone: (916) 447-2762 • Fax: (916) 442-0850 • Email: cpoc@cpoc.org • Web Site: www.cpoc.org

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c Pub. S.
SB 431, 2009

SECRETARY OF STATE, ALEX PADILLA
The Original of This Document is in
CALIFORNIA STATE ARCHIVES
1020 "O" STREET
SACRAMENTO, CA 95814

056



CALIFORNIA PROBATION, PAROLE AND CORRECTIONAL ASSOCIATION

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Sincerely,

Nick Warner
Legislative Director

Cc: The Honorable Mark Leno, Chair, Senate Public Safety Committee



CALIFORNIA PROBATION, PAROLE AND CORRECTIONAL ASSOCIATION

June 8, 2009

The Honorable Jose Solorio
Chair, Assembly Public Safety Committee
California State Assembly
State Capitol Building
Sacramento, CA 95814

Re: SB 431 (Benoit) – CPPCA Support

Dear Assembly Member Solorio:

On behalf of the California Probation Parole and Correctional Association (CPPCA) we are pleased to support SB 431.

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SB 431 would clarify the process for jurisdictional transfer of adult probation cases by requiring the transfer of jurisdiction to the county of residence unless a determination is made on the record by the sentencing court. Further, it directs the Judicial Council to develop and promulgate rules of court to create guidelines for the transfer of cases and allows the proposed receiving county to provide comments on the record regarding the suitability of the transfer.

This bill enhances public safety by creating a more clearly defined process of jurisdictional transfer while still affording an appropriate level of judicial discretion to the courts.

For these reasons, we are pleased to support SB 431.

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Nick Warner
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Cc: The Honorable Curt Hagman, Vice-Chair, Assembly Public Safety Committee



Chief Probation Officers of California

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059

**CALIFORNIA PROBATION, PAROLE AND CORRECTIONAL ASSOCIATION**

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April 20, 2009

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However, there are an undetermined number of adult probationers who reside in a different county than the probation department responsible for their supervision. Some of these adult probationers are under the wasteful duplicative probation supervision of multiple departments while others are entirely unsupervised by either the sentencing county or the county in which they reside. Based on a snapshot of several medium size counties, approximately 10-40% of adult probationers reside in a county other than the sentencing county, therefore posing a significant public safety risk due to inadequate supervision in the county of residence.

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For these reasons, we are pleased to sponsor SB 431.

Sincerely,

Karen A. Pank
Executive Director

Cc: The Honorable Mark Leno, Chair, Senate Public Safety Committee

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Judicial Council of California
ADMINISTRATIVE OFFICE OF THE COURTS

OFFICE OF GOVERNMENTAL AFFAIRS

770 L Street, Suite 700 • Sacramento, California 95814-3393
Telephone 916-323-3121 • Fax 916-323-4347 • TDD 415-865-4272

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Chair of the Judicial Council

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Administrative Director of the Courts

RONALD G. OVERHOLT
Chief Deputy Director

CURTIS L. CHILD
Director, Office of Governmental Affairs

June 5, 2009

Hon. John J. Benoit
Member of the Senate
State Capitol, Room 4066
Sacramento, California 95814

Subject: SB 431 (Benoit), as amended June 4, 2009 – Support
Hearing: Assembly Public Safety Committee – June 16, 2009

Dear Senator Benoit:

The Judicial Council supports SB 431, which would require a court, when granting probation to an individual who permanently resides in a county other than the county of conviction, to transfer legal jurisdiction of the case to the county in which that person permanently resides, unless the court determines on the record that the transfer would be inappropriate. The bill also requires the court in the county of the probationer's residence to accept legal jurisdiction over the case. Lastly, the Judicial Council would be required to adopt rules of court providing factors for the court's consideration when determining the appropriateness of a transfer.

The Judicial Council supports SB 431 because it would address issues and concerns that have been raised over the years about the disparate transfer practices and around the state.

In December 2008, Chief Probation Officers of California (CPOC) asked the Judicial Council's Criminal Law Advisory Committee (CLAC) to work with them to develop ways to improve the handling of cross-jurisdictional probation transfers. A workgroup was formed to resolve these

JUN 10 2009

Hon. John J. Benoit
June 5, 2009
Page 2

issues collaboratively. The workgroup's goal was to revise the statutory transfer process to improve public safety by making probation supervision more effective and enhancing the efficiency of case transfers. This would require improving the process of identifying the most appropriate jurisdiction for probation supervision, and improving the actual process of transferring jurisdiction.

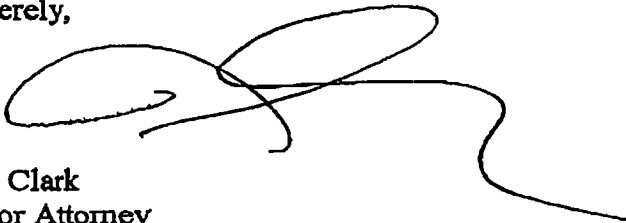
The council and CPOC ultimately agreed that permanent residency should be the primary, but not exclusive, determinant of where probation and legal jurisdiction should lie. Other factors are also important, such as the availability of appropriate programs in the receiving county. Therefore, the bill would create a presumption that legal jurisdiction and probation supervision shall be where the probationer permanently resides, but would allow the transferring court to overcome the presumption if it determines that the transfer would be inappropriate and states its reasons on the record.

The bill also eliminates the concept of courtesy supervision from the law. In the absence of clear statutory directive, courtesy supervision has come to mean different things to different counties, but generally is an informal arrangement between probation departments that does not require transferring legal jurisdiction to the receiving county's court. The result is often less than adequate supervision of a probationer, and courts and probation departments often are not always aware of where their probationers are or of how many probationers residing in their county were granted probation in a different county.

The bill sets up a process whereby courts and probation departments in both the sentencing county and the receiving county must work closely together within specific timeframes, but provides that only one court – the sentencing court – should have authority to decide not to transfer a case upon determining permanent residence elsewhere.

For these reasons, the Judicial Council supports SB 431.

Sincerely,



June Clark
Senior Attorney

JC/yt

cc: Ms. Karen Pank, Executive Director, Chief Probation Officers of California
Mr. Michael Pro시오, Legislative Affairs Secretary, Office of the Governor
Ms. Kirsten Kolpitzke, Deputy Director of Legislation, Governor's Office of Planning and Research

063



Chief Probation Officers of California

June 8, 2009

The Honorable Jose Solorio
Chair, Assembly Public Safety Committee
State Capitol Building
Sacramento, CA 95814

Re: **SB 431 – CPOC SPONSOR**

Dear Assembly Member Solorio:

On behalf of the Chief Probation Officers of California (CPOC) we are pleased to sponsor SB 431, which would require the transfer of jurisdiction for adult probationers to the county of residence.

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SB 431 would require the transfer of jurisdiction to the county of residence unless a determination is made on the record by the sentencing court that the transfer would be inappropriate. Additionally, it requires a noticed motion for the transfer which allows the court of the proposed receiving county to provide comments for the record regarding the suitability of the transfer. It also allows the courts to promulgate rules to guide the transfer and identify circumstances in which a sentencing court may retain jurisdiction. This bill 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 suitably use limited probation resources for supervision. For these reasons, we are pleased to sponsor SB 431.

Sincerely,


Karen A. Pank
Executive Director

Cc: The Honorable Curt Hagman, Vice-Chair, Assembly Public Safety Committee
The Honorable John Benoit, Member, California State Senate

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B 431, 2009

SECRETARY OF STATE, ALEX PADILLA
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065

SENATE RULES COMMITTEE

SB 431

Office of Senate Floor Analyses

1020 N Street, Suite 524

(916) 651-1520 Fax: (916) 327-4478

UNFINISHED BUSINESS

Bill No: SB 431
Author: Benoit (R) and Leno (D)
Amended: 6/4/09
Vote: 21

SENATE PUBLIC SAFETY COMMITTEE: 7-0, 4/28/09

AYES: Leno, Benoit, Cedillo, Hancock, Huff, Steinberg, Wright

SENATE FLOOR: 36-0, 5/11/09 (Consent)

AYES: Aanestad, Alquist, Ashburn, Benoit, Cogdill, Corbett, Correa, Cox, Denham, DeSaulnier, Ducheny, Dutton, Florez, Hancock, Harman, Hollingsworth, Huff, Kehoe, Leno, Liu, Lowenthal, Maldonado, Negrete, McLeod, Oropeza, Padilla, Pavley, Romero, Runner, Steinberg, Strickland, Walters, Wiggins, Wolk, Wright, Wyland, Yee

NO VOTE RECORDED: Calderon, Cedillo, Simitian, Vacancy

ASSEMBLY FLOOR: 74-0, 7/9/09 (Consent) - See last page for vote

SUBJECT: Adult probation: transfers

SOURCE: Chief Probation Officers of California

DIGEST: This bill requires that a court transfer a person released on probation to a court in the county in which the person resides permanently, with specified exceptions.

Assembly Amendments (1) restated procedures to include a noticed motion, and (2) required the Judicial Council to promulgate rules of court for procedures.

ANALYSIS:

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2. Except where the person is granted probation for drug treatment pursuant to Proposition 36, if the court of the receiving county finds that the person does permanently reside in or has permanently moved to the county, it may, in its discretion, either accept the entire jurisdiction over the case, or assume supervision of the probationer on a courtesy basis.
3. Whenever a person is granted probation under Section 1210.1 (Proposition 36), the sentencing court may, in its discretion, transfer jurisdiction of the entire case, upon a finding by the receiving court of the person's permanent residency in the receiving county.
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FISCAL EFFECT: Appropriation: No Fiscal Com.: No Local: No

SUPPORT: (Verified 7/9/09)

Chief Probation Officers of California (source)
California Probation, Parole and Correctional Association
Judicial Council of California

ARGUMENTS IN SUPPORT: According to the author:

“Current law results in a significant risk to public safety with thousands of adult probationers being supervised ineffectively by Probation Departments outside of their County of residence.

“Under current law, California County Probation Departments are responsible for the supervision of adult offenders placed on probation by the Superior Court. Most of those placed on probation reside in the County where the crime, prosecution, and grant of probation occurred. This means that the Probation Department supervises the Probationer residing in the Probation Department’s geographical jurisdiction (County), which facilitates probation monitoring and supportive services that promote public safety.

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“SB 431 would establish the Probation Department of the adult probationer’s County of residence as the Probation Department responsible for probation supervision.”

According to the bill’s sponsor, the Chief Probation Officers of California, the current system has resulted in very few transfers but many probationers living in a different county than the probation department with jurisdiction over them. The sponsors state that this has resulted in wasteful duplication of effort and a potential threat to public safety.

ASSEMBLY FLOOR:

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NO VOTE RECORDED: Charles Calderon, Duvall, Jones, Krekorian, Nava, Vacancy

RJG:mw 7/10/09 Senate Floor Analyses

SUPPORT/OPPOSITION: SEE ABOVE

**** END ****

SENATE RULES COMMITTEE

Office of Senate Floor Analyses
1020 N Street, Suite 524
(916) 651-1520 Fax: (916) 327-4478

SB 431

UNFINISHED BUSINESS

Bill No: SB 431
Author: Benoit (R) and Leno (D)
Amended: 6/4/09 ~~in Assembly~~
Vote: 21

SENATE PUBLIC SAFETY COMMITTEE: 7-0, 4/28/09
AYES: Leno, Benoit, Cedillo, Hancock, Huff, Steinberg, Wright

SENATE FLOOR: 36-0, 5/11/09 (Consent)
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FISCAL EFFECT: Appropriation: No Fiscal Com.: No Local: No

SUPPORT: (Verified 7/9/09)

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RJG:mw 7/10/09 Senate Floor Analyses

SUPPORT/OPPOSITION: SEE ABOVE

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NO VOTE RECORDED: Charles Calderon, Duvall, Jones, Krekorian,
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RJG:mw 7/10/09 Senate Floor Analyses

SUPPORT/OPPOSITION: SEE ABOVE

**** **END** ****

SENATE RULES COMMITTEE

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1020 N Street, Suite 524
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SB 431

UNFINISHED BUSINESS

Bill No: SB 431
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Amended: 6/4/09 in Assembly
Vote: 21

SENATE PUBLIC SAFETY COMMITTEE: 7-0, 4/28/09
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NO VOTE RECORDED: Calderon, Cedillo, Simitian, Vacancy

ASSEMBLY FLOOR: 74-0, 7/9/09 (Consent) - See last page for vote

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This bill also applies these provisions to transfers of persons granted probation under Proposition 36 for drug treatment.

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FISCAL EFFECT: Appropriation: No Fiscal Com.: No Local: No

SENATE
CALIFORNIA LEGISLATURE



JOHN J. BENOIT
SENATOR, THIRTY SEVENTH DISTRICT
STATE CAPITOL, ROOM 4066
TEL: 916.651.4037
FAX: 916.327.2187

FAX COVER SHEET

DATE: Friday, July 10, 2009

TO: Robert Graham (916) 327-4478

FROM: Gary B. Bell (916) 327-2187

PAGES: 3 (including cover sheet)

RE: SB 431 Support Letter

Hi Robert,

Please find attached a copy of a support letter from Judicial Council relative to SB 431.

Thanks,
Gary B. Bell



Judicial Council of California
ADMINISTRATIVE OFFICE OF THE COURTS
OFFICE OF GOVERNMENTAL AFFAIRS

770 L Street, Suite 700 • Sacramento, California 95814-3393
Telephone 916-323-3121 • Fax 916-323-4347 • TDD 415-865-4272

RONALD M. GEORGE
Chief Justice of California
Chair of the Judicial Council

WILLIAM C. VICKREY
Administrative Director of the Courts

RONALD G. OVERHOLT
Chief Deputy Director

CURTIS L. CHILD
Director, Office of Governmental Affairs

June 5, 2009

Hon. John J. Benoit
Member of the Senate
State Capitol, Room 4066
Sacramento, California 95814

Subject: SB 431 (Benoit), as amended June 4, 2009 – Support
Hearing: Assembly Public Safety Committee – June 16, 2009

Dear Senator Benoit:

The Judicial Council supports SB 431, which would require a court, when granting probation to an individual who permanently resides in a county other than the county of conviction, to transfer legal jurisdiction of the case to the county in which that person permanently resides, unless the court determines on the record that the transfer would be inappropriate. The bill also requires the court in the county of the probationer's residence to accept legal jurisdiction over the case. Lastly, the Judicial Council would be required to adopt rules of court providing factors for the court's consideration when determining the appropriateness of a transfer.

The Judicial Council supports SB 431 because it would address issues and concerns that have been raised over the years about the disparate transfer practices and around the state.

In December 2008, Chief Probation Officers of California (CPOC) asked the Judicial Council's Criminal Law Advisory Committee (CLAC) to work with them to develop ways to improve the handling of cross-jurisdictional probation transfers. A workgroup was formed to resolve these

JUN 10 2009

Hon. John J. Benoit
June 5, 2009
Page 2

issues collaboratively. The workgroup's goal was to revise the statutory transfer process to improve public safety by making probation supervision more effective and enhancing the efficiency of case transfers. This would require improving the process of identifying the most appropriate jurisdiction for probation supervision, and improving the actual process of transferring jurisdiction.

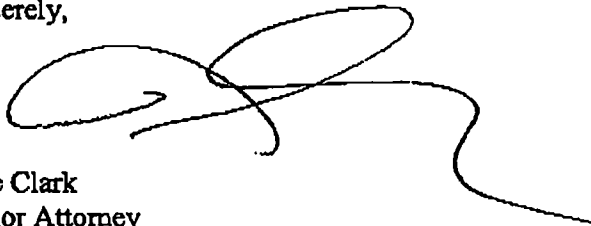
The council and CPOC ultimately agreed that permanent residency should be the primary, but not exclusive, determinant of where probation and legal jurisdiction should lie. Other factors are also important, such as the availability of appropriate programs in the receiving county. Therefore, the bill would create a presumption that legal jurisdiction and probation supervision shall be where the probationer permanently resides, but would allow the transferring court to overcome the presumption if it determines that the transfer would be inappropriate and states its reasons on the record.

The bill also eliminates the concept of courtesy supervision from the law. In the absence of clear statutory directive, courtesy supervision has come to mean different things to different counties, but generally is an informal arrangement between probation departments that does not require transferring legal jurisdiction to the receiving county's court. The result is often less than adequate supervision of a probationer, and courts and probation departments often are not always aware of where their probationers are or of how many probationers residing in their county were granted probation in a different county.

The bill sets up a process whereby courts and probation departments in both the sentencing county and the receiving county must work closely together within specific timeframes, but provides that only one court – the sentencing court – should have authority to decide not to transfer a case upon determining permanent residence elsewhere.

For these reasons, the Judicial Council supports SB 431.

Sincerely,



June Clark
Senior Attorney

JC/yt

cc: Ms. Karen Pank, Executive Director, Chief Probation Officers of California
Mr. Michael Pro시오, Legislative Affairs Secretary, Office of the Governor
Ms. Kirsten Kolpitcke, Deputy Director of Legislation, Governor's Office of Planning and Research

This SFA has not been filed.

SENATE RULES COMMITTEE

SB 431

Office of Senate Floor Analyses

1020 N Street, Suite 524

(916) 651-1520 Fax: (916) 327-4478 Version:

UNFINISHED BUSINESS

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ASSEMBLY FLOOR: - , 7/9/09 (Consent)

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This bill requires the Judicial Council to promulgate rules of court for procedures by which the proposed receiving county shall receive notice of the motion for transfer and by which responsive comments may be transmitted to the court of the transferring county.

This bill also applies these provisions to transfers of persons granted probation under Proposition 36 for drug treatment.

This bill requires the Judicial Council to adopt rules providing factors for the court's consideration when determining the appropriateness of transfer, including, but not limited to, (1) permanency of residency of the offender, (2) local programs available for the offender, and (3) restitution orders and victim issues.

FISCAL EFFECT: Appropriation: No Fiscal Com.: No Local: No

SUPPORT: (Verified 4/30/09)

5/19

4037

Chief Probation Officers of California (source)
California Probation, Parole and Correctional Association

OPPOSITION: (Verified) >

>

ARGUMENTS IN SUPPORT: According to the author:

“Current law results in a significant risk to public safety with thousands of adult probationers being supervised ineffectively by Probation Departments outside of their County of residence.

“Under current law, California County Probation Departments are responsible for the supervision of adult offenders placed on probation by the Superior Court. Most of those placed on probation reside in the County where the crime, prosecution, and grant of probation occurred. This means that the Probation Department supervises the Probationer residing in the Probation Department’s geographical jurisdiction (County), which facilitates probation monitoring and supportive services that promote public safety.

“However, thousands of adult probationers reside in a different County than the probation department responsible for their supervision. Some of these adult probationers are concurrently under the wasteful, duplicative probation supervision of multiple probation departments. Probation departments do not have the capacity to provide for effective supervision of adult probationers living in other counties.

“SB 431 would establish the Probation Department of the adult probationer’s County of residence as the Probation Department responsible for probation supervision.”

According to the bill’s sponsor, the Chief Probation Officers of California, the current system has resulted in very few transfers but many probationers living in a different county than the probation department with jurisdiction over them. The sponsors state that this has resulted in wasteful duplication of effort and a potential threat to public safety.

ARGUMENTS IN OPPOSITION: >

RIG:mw 7/7/09 Senate Floor Analyses

SUPPORT/OPPOSITION: SEE ABOVE

SUPPORT/OPPOSITION: NONE RECEIVED

**** END ****

SENATE RULES COMMITTEE
Office of Senate Floor Analyses
1020 N Street, Suite 524
(916) 651-1520 Fax: (916) 327-4478

W
SB 431

~~THIRD READING~~ *WB DO ahead*

Bill No: SB 431
Author: Benoit (R) and Leno (D)
Amended: 4/22/09
Vote: 21

SENATE PUBLIC SAFETY COMMITTEE: 7-0, 4/28/09
AYES: Leno, Benoit, Cedillo, Hancock, Huff, Steinberg, Wright

*See floor POC 5/11 36-0
As floor POC —*

SUBJECT: Adult probation: transfers

SOURCE: Chief Probation Officers of California

DIGEST: This bill requires that (1) when a person is released on probation, the sentencing court shall transfer the entire jurisdiction of the case to the county in which that person permanently resides, unless the court determines on the record that the transfer would not be appropriate, (2) the county of the probationer's residence accept the entire jurisdiction over the case, unless that county determines the probationer does not intend to reside within the county throughout the period of probation, (3) these same provisions be applied to cases where the person is placed on probation for the purpose of drug treatment, pursuant to Proposition 36, and (4) the Judicial Council adopt rules providing factors for the court's consideration when determining the appropriateness of transfer.

*A
from
Jury*

*An Amend 1) Restate procedures to include a noticed motion
nd 2) require the Judicial Council to promulgate
rules of court for procedures.*

ANALYSIS:

Existing law provides for transfer of probation as follows:

1. Whenever any person is released upon probation, the case may be transferred to any court of the same rank in any other county in which the person resides permanently, meaning the stated intention to remain

AMENDMENT DATE: June 4, 2009
POSITION: Neutral

BILL NUMBER: SB 431
AUTHOR: J. Benoit

BILL SUMMARY: Probation: Transfers

This bill would require that a court transfer a person released on probation to a court in the county in which the person resides permanently, with specified exceptions.

A

FISCAL SUMMARY

The Judicial Council notes that the required adoption of rules of court providing factors for the court's consideration when determining the appropriateness of a transfer would result in one-time, minor, and fully absorbable costs. The Judicial Council has existing, ongoing resources dedicated to the development and adoption of such rules.

COMMENTS

Under existing law, when a person is released upon probation, the case may be transferred to the court in the county in which the person resides permanently, under specified conditions. If a receiving court finds that the person does not reside in or has not stated an intention to remain in that county for the duration of probation, it may refuse to accept the transfer.

This bill would require that a case for a person released on probation be transferred to the court in the county in which the person resides permanently. According to an Assembly Committee on Public Safety analysis, the intent is to address the inadequate supervision that results from a person on probation residing in a county other than the sentencing county.

The bill would require the Judicial Council to promulgate rules of court for procedures by which the proposed receiving county shall receive notice of the motion for transfer and by which responsive comments may be transmitted to the court of the transferring county. The Judicial Council would also have to adopt rules providing factors for the courts' consideration when determining the appropriateness of a transfer. The Judicial Council supports this measure.

Code/Department Agency or Revenue Type	(Fiscal Impact by Fiscal Year)								Fund Code		
	SO	LA	CO	PROP	FC	2009-2010	FC	2010-2011		FC	2011-2012
0250/Jud Branch	SO	No				No/Minor	Fiscal	Impact			0001

Analyst/Principal (0211) J. Osborn	Date 6/23/09	Program Budget Manager Todd Jetue	Date 6/23/09
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Department Deputy Director Original Signed By: Miriam Barcellona Ingentore	ORIGINAL JUN 24 2009	Date
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Governor's Office:	By:	Date: JUN 24 2009	Position Approved <input checked="" type="checkbox"/>	Position Disapproved
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BILL ANALYSIS Form DF-43 (Rev 03/95 Buff)

for the duration of probation, provided that the court of the receiving county shall first be given an opportunity to determine whether the person does reside in and has stated the intention to remain in that county for the duration of probation. If the court finds that the person does not reside in or has not stated an intention to remain in that county for the duration of probation, it may refuse to accept the transfer. The court and the probation department shall give the matter of investigating those transfers precedence over all actions or proceedings therein, except actions or proceedings to which special precedence is given by law, to the end that all those transfers shall be completed expeditiously.

[Handwritten scribble]

- 2. Except where the person is granted probation for drug treatment pursuant to Proposition 36, if the court of the receiving county finds that the person does permanently reside in or has permanently moved to the county, it may, in its discretion, either accept the entire jurisdiction over the case, or assume supervision of the probationer on a courtesy basis.
- 3. Whenever a person is granted probation under Section 1210.1 (Proposition 36), the sentencing court may, in its discretion, transfer jurisdiction of the entire case, upon a finding by the receiving court of the person's permanent residency in the receiving county.
- 4. The order of transfer shall contain an order committing the probationer to the care and custody of the probation officer of the receiving county and an order for reimbursement of reasonable costs for processing the transfer to be paid to the sending county in accordance with Section 1203.1b. A copy of the orders and probation reports shall be transmitted to the court and probation officer of the receiving county within two weeks of the finding by that county that the person does permanently reside in or has permanently moved to that county, and thereafter the receiving court shall have entire jurisdiction over the case, with the like power to again request transfer of the case whenever it seems proper. (Section 1203.9 of the Penal Code)

If this bill amends #1 above to instead provide that IX from bus (not withdrawing the above)

This bill provides that, when a person is released on probation, the sentencing court shall transfer the entire jurisdiction of the case to the county in which that person permanently resides, unless the court determines on the record that the transfer would not be appropriate. The receiving county must accept the entire jurisdiction over the case, unless it determines that the probationer does not intend to reside permanently in that county.

This bill also applies these provisions to transfers of persons granted probation under Proposition 36 for drug treatment.

The bill requires 2X

This bill requires the Judicial Council to adopt rules providing factors for the court's consideration when determining the appropriateness of transfer, including, but not limited to, (1) permanency of residency of the offender, (2) local programs available for the offender, and (3) restitution orders and victim issues.

FISCAL EFFECT: Appropriation: No Fiscal Com.: No Local: No

SUPPORT: (Verified 4/30/09)

Chief Probation Officers of California (source)
California Probation, Parole and Correctional Association

ARGUMENTS IN SUPPORT: According to the author:

“Current law results in a significant risk to public safety with thousands of adult probationers being supervised ineffectively by Probation Departments outside of their County of residence.

“Under current law, California County Probation Departments are responsible for the supervision of adult offenders placed on probation by the Superior Court. Most of those placed on probation reside in the County where the crime, prosecution, and grant of probation occurred. This means that the Probation Department supervises the Probationer residing in the Probation Department's geographical jurisdiction (County), which facilitates probation monitoring and supportive services that promote public safety.

“However, thousands of adult probationers reside in a different County than the probation department responsible for their supervision. Some of these adult probationers are concurrently under the wasteful, duplicative probation supervision of multiple probation departments. Probation departments do not have the capacity to provide for effective supervision of adult probationers living in other counties.

“SB 431 would establish the Probation Department of the adult probationer's County of residence as the Probation Department responsible for probation supervision.”

According to the bill's sponsor, the Chief Probation Officers of California, the current system has resulted in very few transfers but many probationers living in a different county than the probation department with jurisdiction over them. The sponsors state that this has resulted in wasteful duplication of effort and a potential threat to public safety.

RJG:mw 4/30/09 Senate Floor Analyses

SUPPORT/OPPOSITION: SEE ABOVE

**** **END** ****

THIRD READING / CONSENT / (DO AHEAD)

Bill No.: SB 431
Author: Benoit (R) and Leno (D)
Amended: 4/22
Vote Required: 21

SEN. PS COM.: Vote 7-0, Date 4/28
SEN. APPROP. COM.: Vote _____, Date _____ / 28.8 / NONFISCAL
SEN. FLOOR: Vote _____, Date _____ / ASSY FLOOR: Vote _____, Date _____

SUBJECT: X
SOURCE: Y

DIGEST: A

ANALYSIS: B1, B2

FISCAL EFFECT: Appropriation: NO Fiscal Committee: NO Local: NO

SUPPORT: Verification Date 4/30
Y
#1

4037

OPPOSITION: Verification Date 4/30
none

ARGUMENTS IN SUPPORT: 01, 02, 03

ARGUMENTS IN OPPOSITION:

SENATE COMMITTEE ON PUBLIC SAFETY

Senator Mark Leno, Chair
2009-2010 Regular Session

S
B

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1

SB 431 (Benoit)
As Amended April 22, 2009
Hearing date: April 28, 2009
Penal Code
SM:mc

X ADULT PROBATION: TRANSFERS

HISTORY

Source: Y Chief Probation Officers of California

Prior Legislation: None directly on point

#1 Support California Probation, Parole and Correctional Association

Opposition: None known

KEY ISSUE

SHOULD THE COUNTY OF A PROBATIONER'S RESIDENCE BE REQUIRED TO ACCEPT TRANSFER OF JURISDICTION OVER THE CASE FROM THE COUNTY IN WHICH THE PROBATIONER IS CONVICTED, EXCEPT AS PROVIDED?

PURPOSE

A *The purpose of this bill is to require that (1) when a person is released on probation, the sentencing court shall transfer the entire jurisdiction of the case to the county in which that person permanently resides, unless the court determines on the record that the transfer would not be appropriate; (2) the county of the probationer's residence accept the entire jurisdiction over the case, unless that county determines the probationer does not intend to reside within the county throughout the period of probation; (3) these same provisions be applied to cases where the person is placed on probation for the purpose of drug treatment, pursuant to Proposition 36; and (4) the Judicial Council adopt rules providing factors for the court's consideration when determining the appropriateness of transfer.*

(More)

Existing law provides for transfer of probation as follows:

- Whenever any person is released upon probation, the case *may* be transferred to any court of the same rank in any other county in which the person resides permanently, meaning the stated intention to remain for the duration of probation, provided that the court of the receiving county shall first be given an opportunity to determine whether the person does reside in and has stated the intention to remain in that county for the duration of probation. If the court finds that the person does not reside in or has not stated an intention to remain in that county for the duration of probation, it may refuse to accept the transfer. The court and the probation department shall give the matter of investigating those transfers precedence over all actions or proceedings therein, except actions or proceedings to which special precedence is given by law, to the end that all those transfers shall be completed expeditiously.
- Except where the person is granted probation for drug treatment pursuant to Proposition 36, if the court of the receiving county finds that the person does permanently reside in or has permanently moved to the county, it may, in its discretion, either accept the entire jurisdiction over the case, or assume supervision of the probationer on a courtesy basis.
- Whenever a person is granted probation under Section 1210.1 (Proposition 36), the sentencing court may, in its discretion, transfer jurisdiction of the entire case, upon a finding by the receiving court of the person's permanent residency in the receiving county.
- The order of transfer shall contain an order committing the probationer to the care and custody of the probation officer of the receiving county and an order for reimbursement of reasonable costs for processing the transfer to be paid to the sending county in accordance with Section 1203.1b. A copy of the orders and probation reports shall be transmitted to the court and probation officer of the receiving county within two weeks of the finding by that county that the person does permanently reside in or has permanently moved to that county, and thereafter the receiving court shall have entire jurisdiction over the case, with the like power to again request transfer of the case whenever it seems proper. (Penal Code § 1203.9.)

This bill provides that, when a person is released on probation, the sentencing court shall transfer the entire jurisdiction of the case to the county in which that person permanently resides, unless the court determines on the record that the transfer would not be appropriate. The receiving county must accept the entire jurisdiction over the case, unless it determines that the probationer does not intend to reside permanently in that county.

This bill would also apply these provisions to transfers of persons granted probation under Proposition 36 for drug treatment.

This bill requires the Judicial Council to adopt rules providing factors for the court's consideration when determining the appropriateness of transfer, including but not limited to:

(More)

- permanency of residency of the offender;
- local programs available for the offender; and
- restitution orders and victim issues.

RECEIVERSHIP/OVERCROWDING CRISIS AGGRAVATION

California continues to face a severe prison overcrowding crisis. The Department of Corrections and Rehabilitation (CDCR) currently has about 170,000 inmates under its jurisdiction. Due to a lack of traditional housing space available, the department houses roughly 15,000 inmates in gyms and dayrooms. California's prison population has increased by 125% (an average of 4% annually) over the past 20 years, growing from 76,000 inmates to 171,000 inmates, far outpacing the state's population growth rate for the age cohort with the highest risk of incarceration.¹

In December of 2006 plaintiffs in two federal lawsuits against CDCR sought a court-ordered limit on the prison population pursuant to the federal Prison Litigation Reform Act. On February 9, 2009, the three-judge federal court panel issued a tentative ruling that included the following conclusions with respect to overcrowding:

No party contests that California's prisons are overcrowded, however measured, and whether considered in comparison to prisons in other states or jails within this state. There are simply too many prisoners for the existing capacity. The Governor, the principal defendant, declared a state of emergency in 2006 because of the "severe overcrowding" in California's prisons, which has caused "substantial risk to the health and safety of the men and women who work inside these prisons and the inmates housed in them." . . . A state appellate court upheld the Governor's proclamation, holding that the evidence supported the existence of conditions of "extreme peril to the safety of persons and property." (citation omitted) The Governor's declaration of the state of emergency remains in effect to this day.

. . . the evidence is compelling that there is no relief other than a prisoner release order that will remedy the unconstitutional prison conditions.

. . .

Although the evidence may be less than perfectly clear, it appears to the Court that in order to alleviate the constitutional violations California's inmate population must be reduced to at most 120% to 145% of design capacity, with some institutions or clinical programs at or below 100%. We caution the parties, however, that these are not firm figures and that the Court reserves the right –

¹ "Between 1987 and 2007, California's population of ages 15 through 44 – the age cohort with the highest risk for incarceration – grew by an average of less than 1% annually, which is a pace much slower than the growth in prison admissions." (2009-2010 Budget Analysis Series, Judicial and Criminal Justice, Legislative Analyst's Office (January 30, 2009).)

(More)

until its final ruling – to determine that a higher or lower figure is appropriate in general or in particular types of facilities.

...
Under the PLRA, any prisoner release order that we issue will be narrowly drawn, extend no further than necessary to correct the violation of constitutional rights, and be the least intrusive means necessary to correct the violation of those rights. For this reason, it is our present intention to adopt an order requiring the State to develop a plan to reduce the prison population to 120% or 145% of the prison's design capacity (or somewhere in between) within a period of two or three years.²

The final outcome of the panel's tentative decision, as well as any appeal that may be in response to the panel's final decision, is unknown at the time of this writing.

This bill does not appear to aggravate the prison overcrowding crisis outlined above.

COMMENTS

1. Need for This Bill

According to the author:

Current law results in a significant risk to public safety with thousands of adult probationers being supervised ineffectively by Probation Departments outside of their County of residence.

Under current law, California County Probation Departments are responsible for the supervision of adult offenders placed on probation by the Superior Court. Most of those placed on probation reside in the County where the crime, prosecution, and grant of probation occurred. This means that the Probation Department supervises the Probationer residing in the Probation Department's geographical jurisdiction (County), which facilitates probation monitoring and supportive services that promote public safety.

However, thousands of adult probationers reside in a different County than the probation department responsible for their supervision. Some of these adult probationers are concurrently under the wasteful, duplicative probation supervision of multiple probation departments. Probation departments do not have the capacity to provide for effective supervision of adult probationers living in other counties.

² Three Judge Court Tentative Ruling, *Coleman v. Schwarzenegger, Plata v. Schwarzenegger*, in the United States District Courts for the Eastern District of California and the Northern District of California United States District Court composed of three judges pursuant to Section 2284, Title 28 United States Code (Feb. 9, 2009).

(More)

SB 431 would establish the Probation Department of the adult probationer's County of residence as the Probation Department responsible for probation supervision.

2. Probation Transfers

Currently, when a person is found guilty of a criminal offense and the court places the defendant on probation, the court in the county where the conviction takes place retains jurisdiction over the matter. Additionally, the probation department in that county is responsible for the supervision of that person on probation and for seeing that the terms and conditions of probation, imposed by the court, are enforced.

This bill addresses the issue of which county will have jurisdiction over the case if the probationer lives in a county other than the county where he or she was convicted and placed on probation. Under current law there is a system of transfer whereby the sentencing court may request that the probationer's county of residence accept a transfer of jurisdiction of the case but there is no requirement that the county of residence accept the complete transfer of jurisdiction. Alternatively, the county of residence may accept supervision of the probationer on a "courtesy" basis whereby it agrees to supervise the probationer, but jurisdiction of the case does not transfer. In cases where the person is granted probation for drug treatment pursuant to Proposition 36, the county of residence must accept jurisdiction of the case, unless it determines the probationer does not intend to live in that county for the duration of probation.

According to the sponsors, the Chief Probation Officers of California, the current system has resulted in very few transfers but many probationers living in a different county than the probation department with jurisdiction over them. The sponsors state that this has resulted in wasteful duplication of effort and a potential threat to public safety.

To remedy this situation, this bill would require that the sentencing court transfer jurisdiction over any person it places on probation to the county where that person resides unless the sentencing court makes findings on the record that the transfer would be inappropriate. The county of residence would be required to accept jurisdiction unless it determines the probationer does not live there permanently. In essence, this bill would eliminate the option for the receiving county of accepting the probationer on "courtesy supervision" without accepting full jurisdiction over the case.

One aspect of current law that has apparently resulted in inconsistent practices in different counties is the fact that "courtesy supervision" is not defined. This leaves some ambiguity over which county may issue a warrant for the probationer's arrest if he or she is found to be in violation of the terms and conditions of probation.

The sponsors acknowledge that there is not unanimity of opinion among counties over how to resolve this issue. Some counties do not want to accept cases involving their residents who are

(More)

convicted of crimes in other counties. Other counties do not want to relinquish authority over persons convicted and sentenced in their courts to the probationer's county of residence. As to the latter concern, the bill allows the sentencing court to retain jurisdiction if it makes findings on the record that transfer would be inappropriate.

The bill requires the Judicial Council to adopt rules providing factors to guide the sentencing court's discretion in determining the appropriateness of transferring the case to the county of residence. Those factors are to include, but are not limited to:

- permanency of residency of the offender;
- local programs available for the offender; and
- restitution orders and victim issues.

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?

enate Rules
SB 431, 2009

SECRETARY OF STATE, ALEX PADILLA
The Original of This Document is in
CALIFORNIA STATE ARCHIVES
1020 "O" STREET
SACRAMENTO, CA 95814

Date of Hearing: June 16, 2008
 Counsel: Gabriel Caswell

C.O.P.S.

ASSEMBLY COMMITTEE ON JUDICIAL SERVICES
 Juan Arambula, Chair

SB 431 (Benoit) – As Amended: June 4, 2009

SUMMARY: Requires the county of a probationer's residence to accept transfer of jurisdiction over the case from the county in which the probationer is convicted, with specified exceptions. Specifically, this bill:

- 1) Requires that when a person is released on probation, the sentencing court shall transfer the entire jurisdiction of the case to the superior court in the county in which that person permanently resides, unless the transferring court determines that the transfer would be inappropriate.
 - a) Specifies that the court must state its reasons on the record.
 - b) Provides that upon notice of the motion for transfer, the court of the proposed receiving county may provide comments for the record regarding the proposed transfer following procedures set forth in rules of court developed by the Judicial Council.
- 2) States that the same provisions shall be applied to cases where the person is placed on probation for the purpose of drug treatment, pursuant to Proposition 36, the Substance Abuse and Crime Prevention Act of 2000.
- 3) Provides that the Judicial Council shall promulgate rules of court for procedures by which the proposed receiving county shall receive notice and the motion for transfer and by which responsive comments may be transmitted to the court of the transferring county. The Judicial Council shall adopt rules providing factors for the court's consideration when determining the appropriateness of a transfer, including but not limited to the following:
 - a) Permanency of residence of the offender;
 - b) Local programs available for the offender; and,
 - c) Restitution orders and victim issues.

EXISTING LAW:

- 1) Provides, whenever any person is released upon probation, the case may be transferred to any court of the same rank in any other county in which the person resides permanently, meaning the stated intention to remain for the duration of probation; provided that the court of the receiving county shall first be given an opportunity to determine whether the person does reside in and has stated the intention to remain in that county for the duration of probation. If the court finds that the person does not reside in or has not stated an intention to remain in

that county for the duration of probation, it may refuse to accept the transfer. The court and the probation department shall give the matter of investigating those transfers precedence over all actions or proceedings therein, except actions or proceedings to which special precedence is given by law, to the end that all those transfers shall be completed expeditiously. [Penal Code Section 1203.9(a).]

- 2) States that except as specified, if the court of the receiving county finds that the person does permanently reside in or has permanently moved to the county, it may, in its discretion, either accept the entire jurisdiction over the case, or assume supervision of the probationer on a courtesy basis. [Penal Code Section 1203.9(b).]
- 3) Specifies that whenever a person is granted probation as specified, the sentencing court may, in its discretion, transfer jurisdiction of the entire case, upon a finding by the receiving court of the person's permanent residency in the receiving county. [Penal Code Section 1203.9(c).]
- 4) Mandates that the order of transfer shall contain an order committing the probationer to the care and custody of the probation officer of the receiving county and an order for reimbursement of reasonable costs for processing the transfer to be paid to the sending county as specified. A copy of the orders and probation reports shall be transmitted to the court and probation officer of the receiving county within two weeks of the finding by that county that the person does permanently reside in or has permanently moved to that county, and thereafter the receiving court shall have entire jurisdiction over the case, with the like power to again request transfer of the case whenever it seems proper. [Penal Code Section 1203.9(d).]

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Author's Statement:** According to the author, "There are currently an undetermined number of adult probationers who reside in a county other than the county responsible for their supervision. Some of these adult probationers are concurrently under the wasteful, duplicative probation supervision of multiple probation departments; others are entirely unsupervised by either the sentencing county or the county in which they reside. Based on a snapshot of several medium size counties, up to 40% of adult probationers reside in a county other than the sentencing county, therefore posing a significant public safety risk due to inadequate supervision in the county of residence."
- 2) **Background:** According to the background submitted by the author, "[u]nder current law, California County Probation Departments are responsible for the supervision of adult offenders placed on probation by the Superior Court. Most of those placed on probation reside in the county where the crime, prosecution, and grant of probation occurred. This means that the Probation Department supervises the probationer residing in the Probation Department's geographical jurisdiction (county), which facilitates monitoring and supportive services for probationers.

"However, there are currently an undetermined number of adult probationers who reside in a county other than the county responsible for their supervision. Some of these adult probationers are concurrently under the wasteful, duplicative probation supervision of

multiple probation departments; others are entirely unsupervised by either the sentencing county or the county in which they reside. Based on a snapshot of several medium size counties, up to 40% of adult probationers reside in a county other than the sentencing county, therefore posing a significant public safety risk due to inadequate supervision in the county of residence."

- 3) **Elimination Courtesy Supervision:** Under current law, when a defendant is granted probation he or she is placed on probation in the county where the conviction occurred. In most cases, this rule makes perfect sense. However, when the offense occurs in a county in which the defendant does not intend to permanently reside, a number of problems occur. As a general rule, defendants placed on probation are expected to participate in programs, treatment, community service and generally work when appropriate. If the defendant permanently resides in a county other than the county in which he or she was convicted, requiring him or her to participate in probation in the county of conviction is counter-productive.

Currently, the county in which the defendant was convicted maintains jurisdiction over the probationer during the period of probation. However, the attorney for the defendant or the county probation department may request a "courtesy supervision" of the defendant's county of permanent residence while he or she is on probation. Under this loosely defined "courtesy supervision" system, the county where the defendant was convicted maintains jurisdiction over the defendant, but he or she is allowed to return to the county of permanent residency and is, in fact, monitored by the probation department in the county of residence.

There are no uniform rules for the accepting or granting of "courtesy supervision" by the county of permanent residence. The county of residence has sole authority to accept or deny the transfer for any reason.

This bill eliminates the need for courtesy supervision by requiring that the county of permanent residence accept the transfer of jurisdiction upon that county's permanent residence for the period of probation.

- 4) **Uniformity and Consistency:** This bill creates uniformity in the location of a defendant for the period of his or her probation. In most cases, defendants reside in the counties in which they are convicted of offenses requiring supervised probation. However, this bill remedies the minority of cases in which the defendant is convicted of an offense in a county in which he or she does not permanently reside. Subject to limited exceptions, this bill creates a uniform rule that will require a county to accept jurisdiction over a probationer who permanently resides in that county, whether or not the defendant was convicted in the county of permanent residence. This will aid a defendant in the successful completion of probation and re-integration into the community in which he or she intends to permanently reside. A probationer participating in the rehabilitation program will do so in his or her own home county. An offender required to work while on probation will be employing himself or herself in the county in which he or she intends to permanently reside. A probationer will not have to relocate to the county in which he or she committed the offense and then relocate again at the conclusion of probation to return to his or her county of permanent residence.
- 5) **Exceptions:** This bill requires the Judicial Council to develop guidelines for judges to follow when deciding whether or not the transfer of probation is inappropriate. These guidelines have several clear considerations for the Judicial Council to consider when outlining the rules

for judges to follow. Specifically, courts should consider the following:

- a) Whether or not the probationer is in fact a permanent resident of the county;
 - b) Whether local programs are available in the respective counties for the probationer and his or her specific needs; and
 - c) Issues related to victims and victim restitution compensation.
- 6) Separation of Powers and Nondelegation: This bill requires the Judicial Council to "adopt rules providing factors for the court's consideration when determining the appropriateness of the transfer." The Council is expected to consider three factors, but they are not limited to those factors. Generally, the three branches of government are not allowed to delegate their duties to one of the other three branches of government. This principle is known as the "non-delegation doctrine." In this case, one could argue that the California Legislature is delegating legislative powers (to determine the exceptions and rules related to the inappropriateness of a transfer of probation) to the Judicial Council.

However, the non-delegation doctrine has been narrowly defined in modern jurisprudence. In *Mistretta v. United States*, 488 U.S. 361 (1989), the United States Supreme Court unanimously rejected a non-delegation challenge to the Sentencing Reform Act of 1984. This Act charged the United States Sentencing Commission (a predominantly judicial body) with developing sentencing guidelines to assure greater predictability and uniformity in the sentencing received for violations of federal criminal laws. The Supreme Court found that Congress had set forth its goals on the face of the statute and, therefore, the Act did not violate the non-delegation doctrine. Further, the Commission was given limits on its authority within the legislation.

In the present case, this bill outlines three basic principles for the Judicial Council consider, but they are not limited to those considerations.

- 7) Argument in Support: According to the Chief Probation Officers of California (the sponsor of this bill), "We are pleased to sponsor AB 431, which would require the transfer of jurisdiction for adult probationers to the county of residence.

"Under current law, county probation departments are responsible for the supervision of adult offenders placed on probation by the superior court. Most of those placed on probation reside in the county where the crime, prosecution, and grant of probation occurred thereby facilitation the provision of probation supervision and supportive services to promote public safety.

"However, there are an undetermined number of adult probationers who reside in a different county than the probation department responsible for their supervision. Some of these adult probationers are under the wasteful duplicative probation supervision of multiple departments while others are entirely unsupervised by either the sentencing county or the county in which they reside. Based on a snapshot of several medium sized counties, approximately 10% to 40% of adult probationers reside in a county other than the sentencing county, therefore posing a significant public safety risk due to inadequate supervision in the county of residence.

"Current law, under Penal Code Section 1203.9, allows for a jurisdictional transfer of adult probationers between counties to facilitate supervision on the county of residence. However, the process and discretion allowed by Penal Code Section 1203.9 does not provide for the orderly transfer of cases to their county of residence as current law allows for courtesy supervision and authorizes discretion to both the sending and receiving counties for transfer.

"SB 431 would require the transfer of jurisdiction to the county of residence unless a determination is made on the record by the sentencing court. Additionally, it allows for the courts to develop and promulgate rules of court to create guidelines for transfer and identify circumstances in which a sentencing court may retain jurisdiction. This bill 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 suitably use limited resourced for supervision."

8) Prior Legislation:

- a) AB 306 (Aguiar), Statutes of 1993, Chapter 273, provides for reasonable reimbursement to the sending county by the receiving county for processing a probationer's transfer.
- b) AB 1306 (Leno) Statutes of 2004, Chapter 30, specifies that any person who is sentenced to probation under Proposition 36, the Substance Abuse and Crime Prevention Act of 2000, is eligible for transfer to his or her county of residence

REGISTERED SUPPORT / OPPOSITION:

Support

California Probation, Parole and Correctional Association
Chief Probation Officers of California
Judicial Council of California
Taxpayers for Improving Public Safety

Opposition

None

Analysis Prepared by: Gabriel Caswell / PUB. S. / (916) 319-3744

**THE PEOPLE OF THE STATE OF CALIFORNIA DO
ENACT AS FOLLOWS:**

SECTION 1. Section 4576 is added to the Penal Code, to read:

4576. (a) Except as otherwise authorized by law, or when authorized by the person in charge of the prison or other institution subject to this section or by an officer of the institution empowered to give that authorization, and except as provided in subdivision (b), any inmate or ward who possesses any cellular telephone or other wireless communication device or any component thereof, including, but not limited to, a subscriber identity module (SIM card) or memory storage device, or any person who possesses with the intent to deliver, or delivers, to an inmate or ward in the custody of the Department of Corrections and Rehabilitation any cellular telephone or other wireless communication device or any component thereof, including, but not limited to, a subscriber identity module (SIM card) or memory storage device, is guilty of a misdemeanor, punishable by a fine not to exceed five thousand dollars (\$5,000).

(b) If a person visiting an inmate *or ward* in the custody of the Department of Corrections and Rehabilitation, upon being searched or subjected to a metal detector, is found to be in possession of a cellular telephone or other wireless communication device or any component thereof, including, but not limited to, a subscriber identity module (SIM card) or memory storage device, that device or component shall be subject to confiscation. Notice of this provision shall be posted in all areas where visitors are searched prior to visitation with an inmate *or ward* in the custody of the Department of Corrections and Rehabilitation.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

SENATE COMMITTEE ON PUBLIC SAFETY
Senator Mark Leno, Chair
2009-2010 Regular Session

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SB 431 (Benoit)
As Amended April 22, 2009
Hearing date: April 28, 2009
Penal Code
SM:mc

ADULT PROBATION: TRANSFERS

HISTORY

Source: Chief Probation Officers of California

Prior Legislation: None directly on point

Support: California Probation, Parole and Correctional Association

Opposition:None known

KEY ISSUE

SHOULD THE COUNTY OF A PROBATIONER'S RESIDENCE BE REQUIRED TO ACCEPT TRANSFER OF JURISDICTION OVER THE CASE FROM THE COUNTY IN WHICH THE PROBATIONER IS CONVICTED, EXCEPT AS PROVIDED?

PURPOSE

The purpose of this bill is to require that (1) when a person is released on probation, the sentencing court shall transfer the

entire jurisdiction of the case to the county in which that

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SB 431 (Benoit)

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person permanently resides, unless the court determines on the record that the transfer would not be appropriate; (2) the county of the probationer's residence accept the entire jurisdiction over the case, unless that county determines the probationer does not intend to reside within the county throughout the period of probation; (3) these same provisions be applied to cases where the person is placed on probation for the purpose of drug treatment, pursuant to Proposition 36; and (4) the Judicial Council adopt rules providing factors for the court's consideration when determining the appropriateness of transfer.

Existing law provides for transfer of probation as follows:

- * Whenever any person is released upon probation, the case may be transferred to any court of the same rank in any other county in which the person resides permanently, meaning the stated intention to remain for the duration of probation, provided that the court of the receiving county shall first be given an opportunity to determine whether the person does reside in and has stated the intention to remain in that county for the duration of probation. If the court finds that the person does not reside in or has not stated an intention to remain in that county for the duration of probation, it may refuse to accept the transfer. The court and the probation department shall give the matter of investigating those transfers precedence over all actions or proceedings therein, except actions or proceedings to which special precedence is given by law, to the end that all those transfers shall be completed expeditiously.
- * Except where the person is granted probation for drug treatment pursuant to Proposition 36, if the court of the

receiving county finds that the person does permanently reside in or has permanently moved to the county, it may, in its discretion, either accept the entire jurisdiction over the case, or assume supervision of the probationer on a courtesy basis.

- * Whenever a person is granted probation under Section 1210.1 (Proposition 36), the sentencing court may, in its

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SB 431 (Benoit)

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discretion, transfer jurisdiction of the entire case, upon a finding by the receiving court of the person's permanent residency in the receiving county.

- * The order of transfer shall contain an order committing the probationer to the care and custody of the probation officer of the receiving county and an order for reimbursement of reasonable costs for processing the transfer to be paid to the sending county in accordance with Section 1203.1b. A copy of the orders and probation reports shall be transmitted to the court and probation officer of the receiving county within two weeks of the finding by that county that the person does permanently reside in or has permanently moved to that county, and thereafter the receiving court shall have entire jurisdiction over the case, with the like power to again request transfer of the case whenever it seems proper. (Penal Code 1203.9.)

This bill provides that, when a person is released on probation, the sentencing court shall transfer the entire jurisdiction of the case to the county in which that person permanently resides, unless the court determines on the record that the transfer would not be appropriate. The receiving county must accept the entire jurisdiction over the case, unless it determines that the probationer does not intend to reside permanently in that county.

This bill would also apply these provisions to transfers of persons granted probation under Proposition 36 for drug treatment.

This bill requires the Judicial Council to adopt rules providing factors for the court's consideration when determining the appropriateness of transfer, including but not limited to:

- * permanency of residency of the offender;
- * local programs available for the offender; and
- * restitution orders and victim issues.

RECEIVERSHIP/OVERCROWDING CRISIS AGGRAVATION

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California continues to face a severe prison overcrowding crisis. The Department of Corrections and Rehabilitation (CDCR) currently has about 170,000 inmates under its jurisdiction. Due to a lack of traditional housing space available, the department houses roughly 15,000 inmates in gyms and dayrooms. California's prison population has increased by 125% (an average of 4% annually) over the past 20 years, growing from 76,000 inmates to 171,000 inmates, far outpacing the state's population growth rate for the age cohort with the highest risk of incarceration.<1>

In December of 2006 plaintiffs in two federal lawsuits against CDCR sought a court-ordered limit on the prison population pursuant to the federal Prison Litigation Reform Act. On February 9, 2009, the three-judge federal court panel issued a tentative ruling that included the following conclusions with respect to overcrowding:

No party contests that California's prisons are overcrowded, however measured, and whether considered

in comparison to prisons in other states or jails within this state. There are simply too many prisoners for the existing capacity. The Governor, the principal defendant, declared a state of emergency in 2006 because of the "severe overcrowding" in California's prisons, which has caused "substantial risk to the health and safety of the men and women who work inside these prisons and the inmates housed in them." . . . A state appellate court upheld the Governor's proclamation, holding that the evidence supported the existence of conditions of "extreme peril to the safety of persons and property."

<1> "Between 1987 and 2007, California's population of ages 15 through 44 - the age cohort with the highest risk for incarceration - grew by an average of less than 1% annually, which is a pace much slower than the growth in prison admissions." (2009-2010 Budget Analysis Series, Judicial and Criminal Justice, Legislative Analyst's Office (January 30, 2009).)

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(citation omitted) The Governor's declaration of the state of emergency remains in effect to this day.

. . . the evidence is compelling that there is no relief other than a prisoner release order that will remedy the unconstitutional prison conditions.

. . . .

Although the evidence may be less than perfectly clear, it appears to the Court that in order to alleviate the constitutional violations California's inmate population must be reduced to at most 120% to 145% of design capacity, with some institutions or clinical programs at or below 100%. We caution the

parties, however, that these are not firm figures and that the Court reserves the right - until its final ruling - to determine that a higher or lower figure is appropriate in general or in particular types of facilities.

. . .

Under the PLRA, any prisoner release order that we issue will be narrowly drawn, extend no further than necessary to correct the violation of constitutional rights, and be the least intrusive means necessary to correct the violation of those rights. For this reason, it is our present intention to adopt an order requiring the State to develop a plan to reduce the prison population to 120% or 145% of the prison's design capacity (or somewhere in between) within a period of two or three years.<2>

<2> Three Judge Court Tentative Ruling, Coleman v. Schwarzenegger, Plata v. Schwarzenegger, in the United States District Courts for the Eastern District of California and the Northern District of California United States District Court composed of three judges pursuant to Section 2284, Title 28 United States Code (Feb. 9, 2009).

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The final outcome of the panel's tentative decision, as well as any appeal that may be in response to the panel's final decision, is unknown at the time of this writing.

This bill does not appear to aggravate the prison overcrowding crisis outlined above.

COMMENTS

1. Need for This Bill

According to the author:

Current law results in a significant risk to public safety with thousands of adult probationers being supervised ineffectively by Probation Departments outside of their County of residence.

Under current law, California County Probation Departments are responsible for the supervision of adult offenders placed on probation by the Superior Court. Most of those placed on probation reside in the County where the crime, prosecution, and grant of probation occurred. This means that the Probation Department supervises the Probationer residing in the Probation Department's geographical jurisdiction (County), which facilitates probation monitoring and supportive services that promote public safety.

However, thousands of adult probationers reside in a different County than the probation department responsible for their supervision. Some of these adult probationers are concurrently under the wasteful, duplicative probation supervision of multiple probation departments. Probation departments do not have the capacity to provide for effective supervision of adult probationers living in other counties.

SB 431 would establish the Probation Department of the

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adult probationer's County of residence as the Probation Department responsible for probation supervision.

2. Probation Transfers

Currently, when a person is found guilty of a criminal offense and the court places the defendant on probation, the court in the county where the conviction takes place retains jurisdiction over the matter. Additionally, the probation department in that county is responsible for the supervision of that person on probation and for seeing that the terms and conditions of probation, imposed by the court, are enforced.

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This bill addresses the issue of which county will have jurisdiction over the case if the probationer lives in a county other than the county where he or she was convicted and placed on probation. Under current law there is a system of transfer whereby the sentencing court may request that the probationer's county of residence accept a transfer of jurisdiction of the case but there is no requirement that the county of residence accept the complete transfer of jurisdiction. Alternatively, the county of residence may accept supervision of the probationer on a "courtesy" basis whereby it agrees to supervise the probationer, but jurisdiction of the case does not transfer.

In cases where the person is granted probation for drug treatment pursuant to Proposition 36, the county of residence must accept jurisdiction of the case, unless it determines the probationer does not intend to live in that county for the duration of probation.

According to the sponsors, the Chief Probation Officers of California, the current system has resulted in very few transfers but many probationers living in a different county than the probation department with jurisdiction over them. The sponsors state that this has resulted in wasteful duplication of effort and a potential threat to public safety.

To remedy this situation, this bill would require that the sentencing court transfer jurisdiction over any person it places on probation to the county where that person resides unless the sentencing court makes findings on the record that the transfer would be inappropriate. The county of residence would be required to accept jurisdiction unless it determines the probationer does not live there permanently. In essence, this bill would eliminate the option for the receiving county of accepting the probationer on "courtesy supervision" without accepting full jurisdiction over the case.

One aspect of current law that has apparently resulted in inconsistent practices in different counties is the fact that "courtesy supervision" is not defined. This leaves some ambiguity over which county may issue a warrant for the

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probationer's arrest if he or she is found to be in violation of the terms and conditions of probation.

The sponsors acknowledge that there is not unanimity of opinion among counties over how to resolve this issue. Some counties do not want to accept cases involving their residents who are convicted of crimes in other counties. Other counties do not want to relinquish authority over persons convicted and sentenced in their courts to the probationer's county of residence. As to the latter concern, the bill allows the sentencing court to retain jurisdiction if it makes findings on the record that transfer would be inappropriate.

The bill requires the Judicial Council to adopt rules providing factors to guide the sentencing court's discretion in determining the appropriateness of transferring the case to the county of residence. Those factors are to include, but are not limited to:

- * permanency of residency of the offender;
- * local programs available for the offender; and
- * restitution orders and victim issues.

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?

SENATE RULES COMMITTEE	SB 431
Office of Senate Floor Analyses	
1020 N Street, Suite 524	
(916) 651-1520 Fax: (916)	
327-4478	

THIRD READING

Bill No: SB 431
 Author: Benoit (R) and Leno (D)
 Amended: 4/22/09
 Vote: 21

SENATE PUBLIC SAFETY COMMITTEE: 7-0, 4/28/09
 AYES: Leno, Benoit, Cedillo, Hancock, Huff, Steinberg,
 Wright

SUBJECT: Adult probation: transfers

SOURCE: Chief Probation Officers of California

DIGEST: This bill requires that (1) when a person is released on probation, the sentencing court shall transfer the entire jurisdiction of the case to the county in which that person permanently resides, unless the court determines on the record that the transfer would not be appropriate, (2) the county of the probationer's residence accept the entire jurisdiction over the case, unless that county determines the probationer does not intend to reside within the county throughout the period of probation, (3) these same provisions be applied to cases where the person is placed on probation for the purpose of drug treatment, pursuant to Proposition 36, and (4) the Judicial Council adopt rules providing factors for the court's consideration

when determining the appropriateness of transfer.

ANALYSIS :

CONTINUED

SB 431

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Existing law provides for transfer of probation as follows:

1. Whenever any person is released upon probation, the case may be transferred to any court of the same rank in any other county in which the person resides permanently, meaning the stated intention to remain for the duration of probation, provided that the court of the receiving county shall first be given an opportunity to determine whether the person does reside in and has stated the intention to remain in that county for the duration of probation. If the court finds that the person does not reside in or has not stated an intention to remain in that county for the duration of probation, it may refuse to accept the transfer. The court and the probation department shall give the matter of investigating those transfers precedence over all actions or proceedings therein, except actions or proceedings to which special precedence is given by law, to the end that all those transfers shall be completed expeditiously.
2. Except where the person is granted probation for drug treatment pursuant to Proposition 36, if the court of the receiving county finds that the person does permanently reside in or has permanently moved to the county, it may, in its discretion, either accept the entire jurisdiction over the case, or assume supervision of the probationer on a courtesy basis.
3. Whenever a person is granted probation under Section 1210.1 (Proposition 36), the sentencing court may, in its discretion, transfer jurisdiction of the entire case, upon a finding by the receiving court of the person's permanent residency in the receiving county.
4. The order of transfer shall contain an order committing

the probationer to the care and custody of the probation officer of the receiving county and an order for reimbursement of reasonable costs for processing the transfer to be paid to the sending county in accordance with Section 1203.1b. A copy of the orders and probation reports shall be transmitted to the court and probation officer of the receiving county within two weeks of the finding by that county that the person does permanently reside in or has permanently moved to that

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county, and thereafter the receiving court shall have entire jurisdiction over the case, with the like power to again request transfer of the case whenever it seems proper. (Section 1203.9 of the Penal Code)

This bill provides that, when a person is released on probation, the sentencing court shall transfer the entire jurisdiction of the case to the county in which that person permanently resides, unless the court determines on the record that the transfer would not be appropriate. The receiving county must accept the entire jurisdiction over the case, unless it determines that the probationer does not intend to reside permanently in that county.

This bill also applies these provisions to transfers of persons granted probation under Proposition 36 for drug treatment.

This bill requires the Judicial Council to adopt rules providing factors for the court's consideration when determining the appropriateness of transfer, including, but not limited to, (1) permanency of residency of the offender, (2) local programs available for the offender, and (3) restitution orders and victim issues.

FISCAL EFFECT : Appropriation: No Fiscal Com.: No
Local: No

SUPPORT : (Verified 4/30/09)

Chief Probation Officers of California (source)
California Probation, Parole and Correctional Association

ARGUMENTS IN SUPPORT: According to the author:

"Current law results in a significant risk to public safety with thousands of adult probationers being supervised ineffectively by Probation Departments outside of their County of residence.

"Under current law, California County Probation Departments are responsible for the supervision of adult offenders placed on probation by the Superior Court.

CONTINUED

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Most of those placed on probation reside in the County where the crime, prosecution, and grant of probation occurred. This means that the Probation Department supervises the Probationer residing in the Probation Department's geographical jurisdiction (County), which facilitates probation monitoring and supportive services that promote public safety.

"However, thousands of adult probationers reside in a different County than the probation department responsible for their supervision. Some of these adult probationers are concurrently under the wasteful, duplicative probation supervision of multiple probation departments. Probation departments do not have the capacity to provide for effective supervision of adult probationers living in other counties.

"SB 431 would establish the Probation Department of the adult probationer's County of residence as the Probation Department responsible for probation supervision."

According to the bill's sponsor, the Chief Probation Officers of California, the current system has resulted in

very few transfers but many probationers living in a different county than the probation department with jurisdiction over them. The sponsors state that this has resulted in wasteful duplication of effort and a potential threat to public safety.

RJG:mw 4/30/09 Senate Floor Analyses

SUPPORT/OPPOSITION: SEE ABOVE

**** END ****

CONTINUED



Judicial Council of California
ADMINISTRATIVE OFFICE OF THE COURTS

OFFICE OF GOVERNMENTAL AFFAIRS

770 L Street, Suite 700 • Sacramento, California 95814-3393
Telephone 916-323-3121 • Fax 916-323-4347 • TDD 415-865-4272

RONALD M. GEORGE
Chief Justice of California
Chair of the Judicial Council

WILLIAM C. VICKREY
Administrative Director of the Courts

RONALD G. OVERHOLT
Chief Deputy Director

CURTIS L. CHILD
Director, Office of Governmental Affairs

June 5, 2009

Hon. Jose Solorio, Chair
Assembly Public Safety Committee
State Capitol, Room 2196
Sacramento, California 95814

Subject: SB 431 (Benoit), as amended June 4, 2009 - Support
Hearing: Assembly Public Safety Committee – June 16, 2009

Dear Assembly Member Solorio:

The Judicial Council supports SB 431, which would require a court, when granting probation to an individual who permanently resides in a county other than the county of conviction, to transfer legal jurisdiction of the case to the county in which that person permanently resides, unless the court determines on the record that the transfer would be inappropriate. The bill also requires the court in the county of the probationer's residence to accept legal jurisdiction over the case. Lastly, the Judicial Council would be required to adopt rules of court providing factors for the court's consideration when determining the appropriateness of a transfer.

The Judicial Council supports SB 431 because it would address issues and concerns that have been raised over the years about the disparate transfer practices and around the state.

In December 2008, Chief Probation Officers of California (CPOC) asked the Judicial Council's Criminal Law Advisory Committee (CLAC) to work with them to develop ways to improve the handling of cross-jurisdictional probation transfers. A workgroup was formed to resolve these issues collaboratively. The workgroup's goal was to revise the statutory transfer process to improve public safety by making probation supervision more effective and enhancing the

efficiency of case transfers. This would require improving the process of identifying the most appropriate jurisdiction for probation supervision, and improving the actual process of transferring jurisdiction.

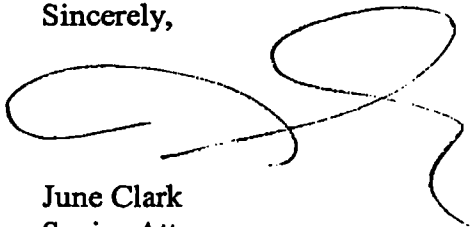
The council and CPOC ultimately agreed that permanent residency should be the primary, but not exclusive, determinant of where probation and legal jurisdiction should lie. Other factors are also important, such as the availability of appropriate programs in the receiving county. Therefore, the bill would create a presumption that legal jurisdiction and probation supervision shall be where the probationer permanently resides, but would allow the transferring court to overcome the presumption if it determines that the transfer would be inappropriate and states its reasons on the record.

The bill also eliminates the concept of courtesy supervision from the law. In the absence of clear statutory directive, courtesy supervision has come to mean different things to different counties, but generally is an informal arrangement between probation departments that does not require transferring legal jurisdiction to the receiving county's court. The result is often less than adequate supervision of a probationer, and courts and probation departments often are not always aware of where their probationers are or of how many probationers residing in their county were granted probation in a different county.

The bill sets up a process whereby courts and probation departments in both the sentencing county and the receiving county must work closely together within specific timeframes, but provides that only one court – the sentencing court – should have authority to decide not to transfer a case upon determining permanent residence elsewhere.

For these reasons, the Judicial Council supports SB 431.

Sincerely,



June Clark
Senior Attorney

JC/yt

cc: Members, Assembly Public Safety Committee

Ms. Karen Pank, Executive Director, Chief Probation Officers of California

Mr. Gabriel Caswell, Counsel, Assembly Public Safety Committee

Mr. Michael Pro시오, Legislative Affairs Secretary, Office of the Governor

Ms. Kirsten Kolpitke, Deputy Director of Legislation, Governor's Office of Planning and Research

Mr. Gary Olson, Consultant, Assembly Republican Office of Policy



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June 5, 2009

Hon. Jose Solorio, Chair
Assembly Public Safety Committee
State Capitol, Room 2196
Sacramento, California 95814

Subject: SB 431 (Benoit), as amended June 4, 2009 - Support
Hearing: Assembly Public Safety Committee – June 16, 2009

Dear Assembly Member Solorio:

The Judicial Council supports SB 431, which would require a court, when granting probation to an individual who permanently resides in a county other than the county of conviction, to transfer legal jurisdiction of the case to the county in which that person permanently resides, unless the court determines on the record that the transfer would be inappropriate. The bill also requires the court in the county of the probationer's residence to accept legal jurisdiction over the case. Lastly, the Judicial Council would be required to adopt rules of court providing factors for the court's consideration when determining the appropriateness of a transfer.

The Judicial Council supports SB 431 because it would address issues and concerns that have been raised over the years about the disparate transfer practices and around the state.

In December 2008, Chief Probation Officers of California (CPOC) asked the Judicial Council's Criminal Law Advisory Committee (CLAC) to work with them to develop ways to improve the handling of cross-jurisdictional probation transfers. A workgroup was formed to resolve these issues collaboratively. The workgroup's goal was to revise the statutory transfer process to improve public safety by making probation supervision more effective and enhancing the

efficiency of case transfers. This would require improving the process of identifying the most appropriate jurisdiction for probation supervision, and improving the actual process of transferring jurisdiction.

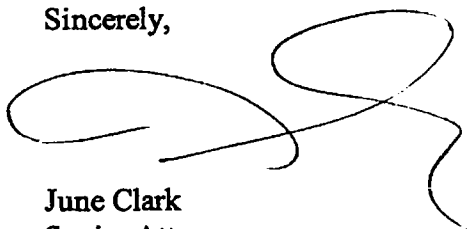
The council and CPOC ultimately agreed that permanent residency should be the primary, but not exclusive, determinant of where probation and legal jurisdiction should lie. Other factors are also important, such as the availability of appropriate programs in the receiving county. Therefore, the bill would create a presumption that legal jurisdiction and probation supervision shall be where the probationer permanently resides, but would allow the transferring court to overcome the presumption if it determines that the transfer would be inappropriate and states its reasons on the record.

The bill also eliminates the concept of courtesy supervision from the law. In the absence of clear statutory directive, courtesy supervision has come to mean different things to different counties, but generally is an informal arrangement between probation departments that does not require transferring legal jurisdiction to the receiving county's court. The result is often less than adequate supervision of a probationer, and courts and probation departments often are not always aware of where their probationers are or of how many probationers residing in their county were granted probation in a different county.

The bill sets up a process whereby courts and probation departments in both the sentencing county and the receiving county must work closely together within specific timeframes, but provides that only one court – the sentencing court – should have authority to decide not to transfer a case upon determining permanent residence elsewhere.

For these reasons, the Judicial Council supports SB 431.

Sincerely,



June Clark
Senior Attorney

JC/yt

cc: Members, Assembly Public Safety Committee

Ms. Karen Pank, Executive Director, Chief Probation Officers of California

Mr. Gabriel Caswell, Counsel, Assembly Public Safety Committee

Mr. Michael Proso, Legislative Affairs Secretary, Office of the Governor

Ms. Kirsten Kolpitcke, Deputy Director of Legislation, Governor's Office of Planning and Research

Mr. Gary Olson, Consultant, Assembly Republican Office of Policy



CALIFORNIA PROBATION, PAROLE AND CORRECTIONAL ASSOCIATION

June 8, 2009

The Honorable Jose Solorio
Chair, Assembly Public Safety Committee
California State Assembly
State Capitol Building
Sacramento, CA 95814

Re: SB 431 (Benoit) – CPPCA Support

Dear Assembly Member Solorio:

On behalf of the California Probation Parole and Correctional Association (CPPCA) we are pleased to support SB 431.

While Penal Code Section 1203.9 authorizes the transfer of probation supervision to the county in which a probationer resides, the provisions allowing courtesy supervision and judicial discretion to both the sentencing county and county of residence are operationally problematic. These provisions are too broad to provide for the orderly transfer of jurisdiction to the appropriate county.

SB 431 would clarify the process for jurisdictional transfer of adult probation cases by requiring the transfer of jurisdiction to the county of residence unless a determination is made on the record by the sentencing court. Further, it directs the Judicial Council to develop and promulgate rules of court to create guidelines for the transfer of cases and allows the proposed receiving county to provide comments on the record regarding the suitability of the transfer.

This bill enhances public safety by creating a more clearly defined process of jurisdictional transfer while still affording an appropriate level of judicial discretion to the courts.

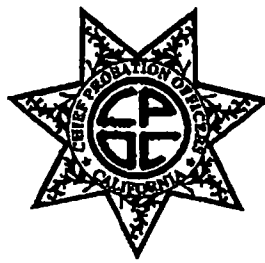
For these reasons, we are pleased to support SB 431.

Sincerely,

A handwritten signature in black ink, appearing to read "Nick Warner", is written over a faint, larger version of the same signature.

Nick Warner
Legislative Director

Cc: The Honorable Curt Hagman, Vice-Chair, Assembly Public Safety Committee



Chief Probation Officers of California

June 8, 2009

The Honorable Jose Solorio
Chair, Assembly Public Safety Committee
State Capitol Building
Sacramento, CA 95814

Re: **SB 431 – CPOC SPONSOR**

Dear Assembly Member Solorio:

On behalf of the Chief Probation Officers of California (CPOC) we are pleased to sponsor SB 431, which would require the transfer of jurisdiction for adult probationers to the county of residence.

Under current law, county probation departments are responsible for the supervision of adult offenders placed on probation by the superior court. Most of those placed on probation reside in the county where the crime, prosecution, and grant of probation occurred thereby facilitating the provision of probation supervision and supportive services to promote public safety.

However, there are an undetermined number of adult probationers who reside in a different county than the probation department responsible for their supervision. Some of these adult probationers are under the wasteful duplicative probation supervision of multiple departments while others are entirely unsupervised by either the sentencing county or the county in which they reside. Based on a snapshot of several medium size counties, approximately 10-40% of adult probationers reside in a county other than the sentencing county, therefore posing a significant public safety risk due to inadequate supervision in the county of residence.

Current law, under Penal Code Section 1203.9, allows for jurisdictional transfer of adult probationers between counties to facilitate supervision in the county of residence. However, the process and discretion allowed by PC 1203.9 does not provide for the orderly transfer of cases to their county of residence as current law allows for courtesy supervision and authorizes discretion to both the sending and receiving counties for transfer.

SB 431 would require the transfer of jurisdiction to the county of residence unless a determination is made on the record by the sentencing court that the transfer would be inappropriate. Additionally, it requires a noticed motion for the transfer which allows the court of the proposed receiving county to provide comments for the record regarding the suitability of the transfer. It also allows the courts to promulgate rules to guide the transfer and identify circumstances in which a sentencing court may retain jurisdiction. This bill 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 suitably use limited probation resources for supervision. For these reasons, we are pleased to sponsor SB 431.

Sincerely,

Karen A. Pank
Executive Director

Cc: The Honorable Curt Hagman, Vice-Chair, Assembly Public Safety Committee
The Honorable John Benoit, Member, California State Senate

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June 10, 2009

SB 324 - SUPPORT

The Honorable Jose Solorio
Chairperson, Assembly Committee on Public Safety
State Capitol
Sacramento, CA 95814

Dear Assemblyman Solorio:

On behalf of TiPS, I write in support of SB 324, by Senator Cedillo. This bill would allow a court, with the consent of a manufacturer and a trademark registrant, to dispose of counterfeit goods by donating them to nonprofit organizations to be distributed at no charge to the indigent instead of destroying them. In a time of great economic hardship, the merits of this proposal are overwhelming and self explanatory.

The further benefit of the proposal is that it recognizes that there are too many people in need for whom these products would provide a functional use. The trademark registrant whose products were pirated would not ever expect that the pirated items would appear within the normal market for the product because of the economic divide between those that purchase the product and those that will receive the donation. And, more importantly, the trademark registrant will be making a significant donation to those most in need without any real cost.

One important beneficiary of this legislation could be individuals who are released from prison who have no clothes to wear. At a time when CDCR's budget exceeds 10% of the entire State budget, the use of these items, especially for woman, would create an extraordinary savings to the State, and the legislation should be amended to authorize CDCR to accept these items for distribution to released inmates.

The most obvious argument in opposition to the legislation is that somehow those who receive the donation will sell it to a person who would use it to pass off as the real item. However, the actual chance of that occurring is so minute as to make the fear unrealistic.

TiPS is a non-partisan consortium of California taxpayers, business interests, and persons within the prison reform community who seek to improve public safety through meaningful and cost-effective measures which best utilize taxpayer dollars. TiPS believes that the promotion of prevention, intervention, rehabilitation, and opportunity ought to always be the first consideration in determining the best public safety policy for California. For the aforementioned reasons and more, TiPS supports SB 324 and asks for your support as well.

Sincerely,

Matt Gray
Matt Gray

Cc: Office of Senator Gilbert Cedillo

Building Partnerships

Reforming Corrections

Improving Public Safety

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Jose Solorio, Chair

BACKGROUND INFORMATION REQUEST SHEET

MEASURE: SB 431 DATE SENT: 5/21
AUTHOR: Benoit DUE DATE: A.S.A.P.
STAFF CONTACT: Gary B. Bell PHONE: 916-651-4037

Estimated time to present bill in Committee: 5 Minutes

Names of Witness(es): Karen Pank (CPOC & CPPCA)

BILL ORIGIN:

- 1) **Source:** What person, organization, or governmental entity requested introduction? Please include the name, address, and phone number of the contact person.

The Chief Probation Officers of California (CPOC)
Karen Pank and Danielle Higgs
Warner & Pank, LLC
(916) 443-7318

- 2) **Similar Legislation:** Has a similar bill been previously introduced? Please identify the bill number, author, appropriate legislative session, and disposition of the bill.

AB 306 (Aguilar, 1993) - Chaptered: provided for reasonable reimbursement to the sending County by the receiving County for processing a probationer's transfer.

AB 1306 (Leno, 2004) - Chaptered: specified that any person who is sentenced to probation under Proposition 36, the Substance Abuse and Crime Prevention Act of 2000, would be eligible for transfer to his or her County of residence

BACKGROUND:

- 1) What is the problem or deficiency in existing law which this bill will remedy?

Under current law, California County Probation Departments are responsible for the supervision of adult offenders placed on probation by the Superior Court. Most of those placed on probation reside in the county where the crime, prosecution, and grant of probation occurred. This means that the Probation Department supervises the probationer residing in the Probation Department's geographical jurisdiction (county), which facilitates monitoring and supportive services for probationers.

However, there are currently an undetermined number of adult probationers who reside in a county other than the county responsible for their supervision. Some of these adult probationers are concurrently under the wasteful, duplicative probation supervision of multiple probation departments; others are entirely unsupervised by either the sentencing county or the county in which they reside. Based on a snapshot of several medium size

counties, up to 40% of adult probationers reside in a county other than the sentencing county, therefore posing a significant public safety risk due to inadequate supervision in the county of residence.

- 2) If there has been an interim committee report on the bill, please identify the report and the committee which prepared the report.

Senate Public Safety Committee analysis (04/28/2009)

- 3) Please include an author's statement as you wish it to appear on the Committee analysis.

There are currently an undetermined number of adult probationers who reside in a county other than the county responsible for their supervision. Some of these adult probationers are concurrently under the wasteful, duplicative probation supervision of multiple probation departments; others are entirely unsupervised by either the sentencing county or the county in which they reside. Based on a snapshot of several medium size counties, up to 40% of adult probationers reside in a county other than the sentencing county, therefore posing a significant public safety risk due to inadequate supervision in the county of residence.

- 4) Two copies of the following information that cannot be e-mailed should be flagged as "background material" and **hand delivered** to the Assembly Public Safety Committee, 1020 "N" Street, Room 111:

- a) Background material which explains the bill and any press release issued.
- b) Letters of support or opposition. Please immediately forward any letters received after submitting this background request.
- c) Previous committee or Senate votes.

AMENDMENTS:

- 1) Do you plan ANY amendments to this bill prior to hearing? If so, please submit a copy of the language submitted to Legislative Counsel to the Committee as soon as possible.

No.

- 2) **AUTHOR'S AMENDMENTS WILL NOT BE ACCEPTED LATER THAN WEDNESDAY, 12:00 NOON, PRIOR TO THE COMMITTEE HEARING AT WHICH THE BILL HAS BEEN SET. AMENDMENTS (ORIGINAL, SIGNED BY MEMBER, PLUS NINE COPIES IN LEGISLATIVE COUNSEL FORM) MUST BE HAND DELIVERED TO THE COMMITTEE AT 1020 "N" STREET, ROOM 111. DO NOT SEND AMENDMENTS THROUGH INTER-AGENCY MAIL.**

Please e-mail this completed background request as soon as possible to Elizabeth Potter with the Assembly Public Safety Committee, and to Gary Olson with the Assembly Republican Office of Policy.



JOHN J. BENOIT

SENATOR, THIRTY-SEVENTH DISTRICT
STATE CAPITOL, ROOM 4066
TEL: 916.651.4037
FAX: 916.327.2187

LOCAL PROBATION REINTEGRATION (SB 431)

PURPOSE

To increase public safety through clarifying probation law, thus providing for more effective probation supervision.

SUMMARY

SB 431 would require the Probation Department in the probationer's county of residence to be the sole authority over the probationer's supervision, unless there is a determination on the record that such an action would be inappropriate.

BACKGROUND

Under current law, California County Probation Departments are responsible for the supervision of adult offenders placed on probation by the Superior Court. Most of those placed on probation reside in the county where the crime, prosecution, and grant of probation occurred. This means that the Probation Department supervises the probationer residing in the Probation Department's geographical jurisdiction (county), which facilitates monitoring and supportive services for probationers.

However, there are an undetermined number of adult probationers who reside in a different county than the Probation Department responsible for their supervision. Some of these adult probationers are concurrently under the

wasteful, duplicative probation supervision of multiple probation departments; others are entirely unsupervised by either the sentencing county or the county in which they reside. Based on a snapshot of several medium size counties, approximately 10-40% of adult probationers reside in a county other than the sentencing county, therefore posing a significant public safety risk due to inadequate supervision in the county of residence.

Previous legislation:

AB 1306 (2004, Leno) added section 1203.9 (c) to the California Penal Code to specify that any person who is sentenced to probation under Proposition 36, the Substance Abuse and Crime Prevention Act of 2000, would be eligible for transfer to his or her County of residence. This provision increased the effectiveness of the probation and expedited the rehabilitation process.

AB 306 (1993, Aguiar) amended section 1203.9 (c) of the California Penal Code to provide for reasonable reimbursement to the sending County by the receiving County for processing a probationer's transfer.

SUPPORT

- Chief Probation Officers of California – CPOC (Sponsor)
- California Probation, Parole and Correctional Association - CPPCA

FOR MORE INFORMATION

Staff:

Gary B. Bell

Legislative Aide

Phone: (916) 651-4037

Fax: (916) 327-218

Sponsor:

Karen Pank and Danielle Higgs

Representing CPOC

Phone: (916) 443-7318

Fax: (916) 446-4318



CALIFORNIA PROBATION, PAROLE AND CORRECTIONAL ASSOCIATION

April 20, 2009

The Honorable John Benoit
California State Senate
State Capitol Building
Sacramento, CA 95814

Re: SB 431 – CPPCA Support

Dear Senator Benoit:

On behalf of the California Probation Parole and Correctional Association (CPPCA) we are pleased to support SB 431.

While Penal Code Section 1203.9 authorizes the transfer of probation supervision to the county in which a probationer resides, the provisions allowing courtesy supervision and judicial discretion to both the sentencing county and county of residence are operationally problematic. These provisions are too broad to provide for the orderly transfer of jurisdiction to the appropriate county.

SB 431 would clarify the process for jurisdictional transfer of adult probation cases by requiring the transfer of jurisdiction to the county of residence unless a determination is made on the record by the sentencing court. Further, it directs the Judicial Council to develop and promulgate rules of court to create guidelines for the transfer of cases.

This bill enhances public safety by creating a more clearly defined process of jurisdictional transfer while still affording an appropriate level of judicial discretion to the courts.

For these reasons, we are pleased to support SB 431.

Sincerely,

Nick Warner
Legislative Director

Cc: The Honorable Mark Leno, Chair, Senate Public Safety Committee



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Sutter County

South Region
Chief Alan M. Crogan
Riverside County

Executive Director
Karen A. Pank

April 20, 2009

The Honorable John Benoit
California State Senate
State Capitol Building
Sacramento, CA 95814

Re: SB 431 – CPOC SPONSOR

Dear Senator Benoit:

On behalf of the Chief Probation Officers of California (CPOC) we are pleased to sponsor SB 431, which would require the transfer of jurisdiction for adult probationers to the county of residence

Under current law, county probation departments are responsible for the supervision of adult offenders placed on probation by the superior court. Most of those placed on probation reside in the county where the crime, prosecution, and grant of probation occurred thereby facilitating the provision of probation supervision and supportive services to promote public safety.

However, there are an undetermined number of adult probationers who reside in a different county than the probation department responsible for their supervision. Some of these adult probationers are under the wasteful duplicative probation supervision of multiple departments while others are entirely unsupervised by either the sentencing county or the county in which they reside. Based on a snapshot of several medium size counties, approximately 10-40% of adult probationers reside in a county other than the sentencing county, therefore posing a significant public safety risk due to inadequate supervision in the county of residence.

Current law, under Penal Code Section 1203.9, allows for jurisdictional transfer of adult probationers between counties to facilitate supervision in the county of residence. However, the process and discretion allowed by PC 1203.9 does not provide for the orderly transfer of cases to their county of residence as current law allows for courtesy supervision and authorizes discretion to both the sending and receiving counties for transfer.

SB 431 would require the transfer of jurisdiction to the county of residence unless a determination is made on the record by the sentencing court. Additionally, it allows for the courts to develop and promulgate rules of court to create guidelines for transfer and identify circumstances in which a sentencing court may retain jurisdiction. This bill 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 suitably use limited probation resources for supervision.

For these reasons, we are pleased to sponsor SB 431.

Sincerely,

Karen A. Pank
Executive Director

Cc: The Honorable Mark Leno, Chair, Senate Public Safety Committee

1415 L Street, Suite 200 • Sacramento, CA 95814

Phone: (916) 447-2762 • Fax: (916) 442-0850 • Email: cpoc@cpoc.org • Web Site: www.cpoc.org

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2009-2010 SB 431 - Probation: transfers. (Version: 96 - Amended Senate 4/22/09)

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Go To:

Votes

Date	Result	Location	Ayes	Noes	NVR	Motion
-5/11/09	(PASS)	Senate Floor	36	0	3	Special Consent #3 SB431 Benoit Ayes: Aanestad, Alquist, Ashburn, Benoit, Cogdill, Corbett, Correa, Cox, DeSaulnier, Denham, Ducheny, Dutton, Florez, Hancock, Harman, Hollingsworth, Huff, Kehoe, Leno, Liu, Lowenthal, Maldonado, Negrete McLeod, Oropeza, Padilla, Pavley, Romero, Runner, Steinberg, Strickland, Walters, Wiggins, Wolk, Wright, Wyland, Yee Noes: No Vote Recorded: Calderon, Cedillo, Simitian
-4/28/09	(PASS)	Sen Public Safety	7	0	0	Do pass. Ayes: Benoit, Cedillo, Hancock, Huff, Leno, Steinberg, Wright Noes: No Vote Recorded:

UNOFFICIAL BALLOT

2009-2010 Votes - ROLL CALL

MEASURE: SB 431
 TOPIC: Probation: transfers.
 DATE: 04/28/09
 LOCATION: SEN. PUB. S.
 MOTION: Do pass.
 (AYES 7. NOES 0.) (PASS)

AYES

Leno	Benoit	Cedillo	Hancock
Huff	Steinberg	Wright	

NOES

NO VOTE RECORDED

UNOFFICIAL BALLOT

2009-2010 Votes - ROLL CALL

MEASURE: SB 431
 TOPIC: Probation: transfers.
 DATE: 05/11/09
 LOCATION: SEN. FLOOR
 MOTION: Special Consent #3 SB431 Benoit
 (AYES 36. NOES 0.) (PASS)

AYES

Aanestad	Alquist	Ashburn	Benoit
Cogdill	Corbett	Correa	Cox
Denham	DeSaulnier	Ducheny	Dutton
Florez	Hancock	Harman	Hollingsworth
Huff	Kehoe	Leno	Liu
Lowenthal	Maldonado	Negrete McLeod	Oropeza
Padilla	Pavley	Romero	Runner
Steinberg	Strickland	Walters	Wiggins
Wolk	Wright	Wyland	Yee

NOES

NO VOTE RECORDED

Calderon	Cedillo	Simitian	Vacancy
----------	---------	----------	---------

Public Safety

Date of Hearing: 06/16/2009

BILL NO.	SB 431	SB 434	SB 447	SB 449
ACTION VOTED ON	Do pass; re-refer to Cmte on Appr, Rec. Consent	Do pass as amended and re-refer to the Cmte on Appr	Do pass; re-refer to Cmte on Appr, Rec. Consent	Do pass as amended and re-refer to the Cmte on Appr
	Aye : No	Aye : No	Aye : No	Aye : No
Arambula (Chair)	X :	X :	X :	X :
Hagman (V. Chair)	X :	X :	X :	X :
Ammiano	X :	Not Voting	X :	X :
Purutani	X :	X :	X :	Absent
Bilmore	X :	X :	X :	X :
Hill	X :	X :	X :	X :
Ma	X :	X :	X :	X :
	Ayes: 7 Noes: 0	Ayes: 6 Noes: 0	Ayes: 7 Noes: 0	Ayes: 6 Noes: 0

RECEIVED: _____

_____, Chair

lc Pub. S.

SB 431, 2009

SECRETARY OF STATE, ALEX PADILLA
The Original of This Document is in
CALIFORNIA STATE ARCHIVES
1020 "O" STREET
SACRAMENTO, CA 95814

SENATE
CALIFORNIA LEGISLATURE



JOHN J. BENOIT
SENATOR, THIRTY SEVENTH DISTRICT
STATE CAPITOL, ROOM 4066
TEL: 916.651.4037
FAX: 916.327.2187

FAX COVER SHEET

DATE: Thursday, April 23, 2009

TO: Eric Csizmar (916) 445-3105

FROM: Gary B. Bell (916) 327-2187

PAGES: 11 (including cover sheet)

RE: SB 431

Hi Eric,

I've attached additional background info for SB 431. Talk to you soon.

Request for CPOC Sponsored Legislation 2009

1. Proposed Language/Legislative Proposal:

Revise PC 1203.9 to establish the Probation Department of the Adult Probationer's county of residence as the Probation Department responsible for Probation supervision.

2. What is the deficit, issue, or concern in current law?

Current law results in a significant risk to public safety with thousands of Adult Probationers being supervised ineffectively by Probation Departments outside of their County of residence.

Under current law California County Probation Departments are responsible for the supervision of adult offenders placed on Probation by the Superior Court. Most of those placed on Probation reside in the county where the crime, prosecution and grant of Probation occurred. This means that the Probation Department supervises the Probationer residing in the Probation Department's geographical jurisdiction (county) which facilitates provision of Probation monitoring and supportive services to promote Public Safety.

However, there is an undetermined number of Adult Probationers (thousands) who reside in a different county than the Probation Department responsible for their supervision. Some of these Adult Probationers are concurrently under the wasteful duplicative Probation supervision of multiple Probation Departments, (sometimes including the Department responsible for their county of residence). Probation Departments do not have the capacity to provide for effective supervision of Adult Probationers living in other counties.

Current law, PC 1203.9 allows for Jurisdictional Transfer of Adult Probationers between counties to facilitate supervision in the county of residence. However, the process required and the discretion allowed by PC 1203.9 do not provide for the orderly transfer of cases to their county of residence. Very few cases are transferred each year.

3. What is the benefit to CPOC or probation?

Improves Public Safety and uses limited Probation resources more effectively by eliminating duplicative responsibility for the same Adult Probationer by multiple Probation Departments, and assigning supervision responsibility to the Probation Department best able to provide for supervision of the Adult Probationer.

4. Do you anticipate potential opposition or support to this proposal?

Significant support is anticipated to promote public safety through more effective supervision of Adult Probationers.

Some opposition is also anticipated. Some counties do not want responsibility for their residents convicted and placed on Probation in other counties. Some Counties do not want to relinquish authority over their cases to the County of residence.

5. What are the fiscal impacts to the state general fund? How will the proposal be funded?

No state general fund impact is anticipated.

There will be some statewide probation supervision cost savings to Counties as duplicative supervision of individual Adult Probationers by multiple Probation Departments is eliminated. There might be some shifting of probation supervision expense between counties, if some counties decrease total adult probation counts while others increase total adult probation counts based on crime and residence patterns.

6. Other background or reference materials:

This issue has previously been addressed through discussion and agreement among the Chief Probation Officers to follow the provisions of "PC1203.9" with negligible impact on the problem. The public safety problem has not been resolved.



Judicial Council of California
ADMINISTRATIVE OFFICE OF THE COURTS

455 Golden Gate Avenue • San Francisco, California 94102-3688
Telephone 415-865-4200 • Fax 415-865-4205 • TDD 415-865-4272

MEMORANDUM

Date November 20, 2008	Action Requested For discussion.
To Criminal Law Advisory Committee	Deadline N/A
From Arturo Castro	Contact Arturo Castro 415-865-7702 phone 415-865-7664 fax arturo.castro@jud.ca.gov
Subject Probation Transfers Under Penal Code Section 1203.9	

This discussion regarding probation transfers between counties under Penal Code section 1203.9 will be introduced by Mr. Jerry Powers, Chief Probation Officer of Stanislaus County and President of the Chief Probation Officers of California, and Mr. Richard Stickney, Special Advisor to the Chief Probation Officer of Los Angeles County.

Probation Transfers Under Penal Code Section 1203.9

Under section 1203.9, whenever a person is released on probation, the case may be transferred to the court in the county in which the probationer resides permanently, which means "the stated intention to remain for the duration of probation." (Pen. Code, § 1203.9(a).) The receiving court must first be given an opportunity to determine whether the probationer resides, and has stated the intention to remain, in that court's county for the duration of probation. (*Ibid.*)

If the receiving court finds that the probationer resides in the receiving county permanently, it may, in its discretion, either accept entire jurisdiction over the case or assume supervision of the probationer on a "courtesy basis." (Pen. Code, § 1203.9(b).) If, on the other hand, the receiving court finds that the probationer does *not* reside in the receiving county permanently, it retains discretion to *refuse* to accept the transfer. (*Ibid.*) There is one notable exception: In Prop 36 cases, if the receiving court finds that the probationer's permanent residency is in the receiving county, the *sentencing* court retains discretion to transfer jurisdiction of the entire case. (Pen. Code, § 1203.9(c).)

Transfer Procedure

The transfer order must contain an order "committing the probationer to the care and custody of the probation officer of the receiving county" and an order for reimbursement of "reasonable costs for processing the transfer to be paid to the sending county." (Pen. Code, § 1203.9(d).) Copies of the orders and probation reports must be transmitted to the receiving court and probation officer within two weeks of the finding that the probationer permanently resides there. (*Ibid.*) Thereafter, the receiving court "shall have entire jurisdiction over the case, with the like power to again request transfer of the case whenever it seems proper." (*Ibid.*) To expedite transfers, the receiving court and its probation department must give precedence to the investigation of transfers over all other actions or proceedings, except for those with special precedence "given by law." (Pen. Code, § 1203.9(a).)

Discussion

Cross jurisdictional probation transfers pose a significant public safety issue, yet current law provides very little procedural guidance to courts or probation departments, leaving many aspects of the transfer procedure unresolved. For example, section 1203.9 does not define "courtesy" supervision and fails to prescribe how probation fees are to be collected and disbursed. Other practical considerations, such as which court retains jurisdiction to issue a warrant for a probationer under "courtesy" supervision, are also unclear. As a result, transfer procedures vary considerably across the state.

Representatives of the Chief Probation Officers of California seek this committee's assistance in resolving some of these issues by providing courts and probation departments with more guidance. Potential solutions include developing rules of court to: (a) create standards to determine a probationer's county of residence; (b) define "courtesy" supervision; (c) clarify how restitution, fees, fines, and probation costs are to be collected and disbursed; and (d) prescribe specific time limits for transfers. The committee could also develop forms to instruct courts on transfer procedure and standardize transfer orders, and/or recommend that the Judicial Council sponsor legislation to enhance Penal Code section 1203.9.

The full text of Penal Code section 1203.9 and a sample Judicial Council form for juvenile court transfer orders are attached for your review.

§ 1203.9. Probation; transfer of cases; jurisdiction

(a) Whenever any person is released upon probation, the case may be transferred to any court of the same rank in any other county in which the person resides permanently, meaning the stated intention to remain for the duration of probation; provided that the court of the receiving county shall first be given an opportunity to determine whether the person does reside in and has stated the intention to remain in that county for the duration of probation. If the court finds that the person does not reside in or has not stated an intention to remain in that county for the duration of probation, it may refuse to accept the transfer. The court and the probation department shall give the matter of investigating those transfers precedence over all actions or proceedings therein, except actions or proceedings to which special precedence is given by law, to the end that all those transfers shall be completed expeditiously.

(b) Except as provided in subdivision (c), if the court of the receiving county finds that the person does permanently reside in or has permanently moved to the county, it may, in its discretion, either accept the entire jurisdiction over the case, or assume supervision of the probationer on a courtesy basis.

(c) Whenever a person is granted probation under Section 1210.1, the sentencing court may, in its discretion, transfer jurisdiction of the entire case, upon a finding by the receiving court of the person's permanent residency in the receiving county.

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

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and Address)

FOR COURT USE ONLY

TELEPHONE NO.: FAX NO. (Color):
E-MAIL ADDRESS (Optional):
ATTORNEY FOR (Name):

SUPERIOR COURT OF CALIFORNIA, COUNTY OF

STREET ADDRESS:
MAILING ADDRESS:
CITY AND ZIP CODE:
BRANCH NAME:

CASE NAME:

JUVENILE COURT TRANSFER ORDERS

CASE NUMBER

- § 300 For Disposition Of Dependency
- § 601 § 602 For Disposition Of Wardship

1. Child's name: _____ Date of birth: _____
2. a. Date of hearing: _____ Dept. _____ Room: _____
 b. Judicial officer (name): _____
 c. Persons present:
 Child Child's attorney Mother Mother's attorney Father Father's attorney
 Guardian Deputy district attorney Probation officer/Social worker
 Deputy county counsel CASA Other: _____
3. The court has read and considered the report of the social worker the report of the probation officer
 other relevant evidence.
4. The court finds and orders under Welfare and Institutions Code section 375 750 and rule 5.610:
 a. The legal residence of the child is that of Parents Mother Father Guardian
 Other with whom the WARD resides with approval of the court (name and relationship):
 (address): _____
 b. Transfer of the child's case is in the child's best interests.
 c. The child currently resides (specify name and address):
 WITH Parents Mother Father Guardian Foster home (name):
 Group home Residential facility (name):
 Relative (name and relationship):
 Other (name): _____
 d. The child is detained placed.
 e. The child's case is ordered transferred to the county of (specify): _____
 f. (1) The child shall remain at the present address.
 (2) The child shall be transported in custody to the receiving county within seven judicial days.
 (3) Under prior orders of this court.
 (i) The child was detained on (date): _____
 (ii) The child was found to be described by section 300
 (a) (b) (c) (d) (e) (f) (g) (h) (i) (j)
 on (date): _____
 (iii) Dependency was declared on (date): _____
 (iv) The child was found to be described by section 601 602 on (date): _____
 (v) Wardship was declared on (date): _____
 (vi) The last hearing was on (date): _____ For: _____
 (vii) A hearing has been set on (date): _____ For: _____
 g. A hearing should be set for disposition review other.
 h. Other

Date:

JUDICIAL OFFICER OF THE JUVENILE COURT

See important information on reverse.

JUVENILE COURT TRANSFER ORDERS

Form Adopted for Mandatory Use
Judicial Council of California
JV-550 (Rev. January 1, 2007)

Welfare and Institutions Code, §§ 300, 375, 601, 602, 750;
CJ Rules of Court, rules 5.610, 5.612
www.courtinfo.ca.gov

American LegalNet, Inc.
www.FormsWorflow.com

CASE NAME:

CASE NUMBER:

NOTICE

California Rules of Court, rule 5.610 requires that:

- (1) A child who is ordered transferred in custody must be delivered to the receiving county within seven court days. All court files and other documents must be delivered with the child;
- (2) The court files and other documents for a child whose case is transferred, but who is not transported in custody, must be transmitted to the receiving county within ten court days.

California Rules of Court, rule 5.612 requires that:

- (1) For a child who is transported in custody, the receiving court must conduct a transfer-in hearing within two court days after the child is delivered to the receiving county, if the child remains in custody;
- (2) For a child who is not detained in custody, the receiving court must conduct a transfer-in hearing within ten court days after the documents are received by the clerk of the receiving county.

2/10/2009

Bell, Gary

From: Seekatz, Scott
Sent: Friday, February 06, 2009 12:09 PM
To: Bell, Gary
Subject: probation stuff
Follow Up Flag: Follow up
Due By: Tuesday, February 10, 2009 4:00 PM
Flag Status: Flagged

See below and attached.

=====
Scott Seekatz
Legislative Aide
Office of Senator John J. Benoit
(916) 651-4037
www.sen.ca.gov/benoit

-----Original Message-----

From: Danielle Higgs [mailto:Danielle@warnerandpank.com]
Sent: Friday, January 30, 2009 4:30 PM
To: Seekatz, Scott
Cc: Karen Pank
Subject: 1203.9 - County numbers

Scott,

Following up on Karen's previous email, several counties have provided us with some additional data on the number of probationers residing in other counties. We are continuing to receive additional responses and will send those as well, but we wanted to give you a snapshot of what we have so far to give you some context to frame the problem.

Thanks,
Danielle

Danielle Higgs
Legislative Analyst
Warner & Pank, LLC
1415 L Street, Suite 200
Sacramento, CA 95814
P: (916) 443-7318
F: (916) 446-4318

02/10/2009

P. 9/11

T: 9164453105

149

From: SENATOR JOHN BENOIT

916 651-4037

10:52 From: SENATOR JOHN BENOIT

County
San Bernardino
Marin
Humboldt
Yolo
Stanislaus
Contra Costa
Trinity

Comments	
The total number of Adult Courtesy cases (people sentenced in our Courts who reside in other counties) is 2,334 + an additional 300 that are not in our centralized courtesy supervision unit. Total: 2,634 or 13%	
30-40% of caseload resides in other counties	
Snapshot of our current population: 110 probationers out of county, but within the state, 25 probationers living out of state or deported	
Yolo County has 734 adult probationers that live in Sacramento County; about 19%	
We have 271 that we know of.	
Contra Costa County Probation has 527 Adult Probationers who do not reside in our County.	
I also did a one day snapshot a number of years ago... I had 31% living outside the county. After our pilot project we have dropped those numbers to approximately 17%. My sense of it is that we have at least that number (17%) living in the county who are on probation who are not known to us.	

2009 10:53



JOHN J. BENOIT

SENATOR, THIRTY-SEVENTH DISTRICT
STATE CAPITOL, ROOM 4066
TEL: 916.651.4037
FAX: 916.327.2187

LOCAL PROBATION REINTEGRATION (SB 431)

PURPOSE

To increase public safety through clarifying probation law, thus providing for more effective probation supervision.

SUMMARY

SB 431 would require the Probation Department in the probationer's county of residence to be the sole authority over the probationer's supervision, unless there is a determination on the record that such an action would be inappropriate.

BACKGROUND

Under current law, California County Probation Departments are responsible for the supervision of adult offenders placed on probation by the Superior Court. Most of those placed on probation reside in the county where the crime, prosecution, and grant of probation occurred. This means that the Probation Department supervises the probationer residing in the Probation Department's geographical jurisdiction (county), which facilitates monitoring and supportive services for probationers.

However, there are an undetermined number of adult probationers who reside in a different county than the Probation Department responsible for their supervision. Some of these adult probationers are concurrently under the

wasteful, duplicative probation supervision of multiple probation departments; others are entirely unsupervised by either the sentencing county or the county in which they reside. Based on a snapshot of several medium size counties, approximately 10-40% of adult probationers reside in a county other than the sentencing county, therefore posing a significant public safety risk due to inadequate supervision in the county of residence.

Previous legislation:

AB 1306 (2004, Leno) added section 1203.9 (c) to the California Penal Code to specify that any person who is sentenced to probation under Proposition 36, the Substance Abuse and Crime Prevention Act of 2000, would be eligible for transfer to his or her County of residence. This provision increased the effectiveness of the probation and expedited the rehabilitation process.

AB 306 (1993, Aguiar) amended section 1203.9 (c) of the California Penal Code to provide for reasonable reimbursement to the sending County by the receiving County for processing a probationer's transfer.

SUPPORT

- Chief Probation Officers of California – CPOC (Sponsor)
- California Probation, Parole and Correctional Association - CPPCA

FOR MORE INFORMATION

Staff:

Gary B. Bell

Legislative Aide

Phone: (916) 651-4037

Fax: (916) 327-218

Sponsor:

Karen Pank and Danielle Higgs

Representing CPOC

Phone: (916) 443-7318

Fax: (916) 446-4318

AMENDED IN SENATE APRIL 22, 2009

AMENDED IN SENATE APRIL 20, 2009

AMENDED IN SENATE APRIL 2, 2009

SENATE BILL

No. 431

Introduced by ~~Senator Benoit~~ *Senators Benoit and Leno*

February 26, 2009

An act to amend Section 1203.9 of the Penal Code, relating to probation.

LEGISLATIVE COUNSEL'S DIGEST

SB 431, as amended, Benoit. Probation: transfers.

Existing law provides that whenever any person is released upon probation, the case may be transferred to any court of the same rank in any other county in which the person resides permanently, provided that the court of the receiving county shall first be given an opportunity to determine whether the person does reside in and has stated the intention to remain in that county for the duration of probation. Existing law provides that if the court finds that the person does not reside in or has not stated an intention to remain in that county for the duration of probation, it may refuse to accept the transfer.

This bill would provide that the transfers would be mandatory, unless, in certain cases, ~~the receiving court makes~~ *there is* a determination on the record that the transfer would be inappropriate, as specified.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1203.9 of the Penal Code is amended to
2 read:

3 1203.9. (a) Whenever any person is released upon probation,
4 the case shall be transferred to any court of the same rank in any
5 other county in which the person resides permanently, meaning
6 *with the stated intention to remain for the duration of probation,*
7 *unless there is a determination on the record that the transfer*
8 *would be inappropriate;* provided that the court of the receiving
9 county shall first be given an opportunity to determine whether
10 the person does reside in and has stated the intention to remain in
11 that county for the duration of probation. If the court finds that the
12 person does not reside in or has not stated an intention to remain
13 in that county for the duration of probation, the court may refuse
14 to accept the transfer. The court and the probation department shall
15 give the matter of investigating those transfers precedence over
16 all actions or proceedings therein, except actions or proceedings
17 to which special precedence is given by law, to the end that all
18 those transfers shall be completed expeditiously.

19 (b) If the court of the receiving county finds that the person does
20 permanently reside in or has permanently moved to the county,
21 the court shall accept the entire jurisdiction over the case.

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

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

1 power to again request transfer of the case whenever it seems
2 proper.

3 (e) The Judicial Council shall adopt rules providing factors for
4 the court's consideration when determining the appropriateness
5 of a transfer, including, but not limited to, the following:

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

O

SECTION 1. Section 1203.9 of the Penal Code is amended to read:

1203.9. (a) Whenever any person is released upon probation, the case shall be transferred to any court of the same rank in any other county in which the person resides permanently, meaning the stated intention to remain for the duration of probation; provided that the court of the receiving county shall first be given an opportunity to determine whether the person does reside in and has stated the intention to remain in that county for the duration of probation. If the court finds that the person does not reside in or has not stated an intention to remain in that county for the duration of probation, the court may refuse to accept the transfer. The court and the probation department shall give the matter of investigating those transfers precedence over all actions or proceedings therein, except actions or proceedings to which special precedence is given by law, to the end that all those transfers shall be completed expeditiously.

(b) If the court of the receiving county finds that the person does permanently reside in or has permanently moved to the county, the court shall accept the entire jurisdiction over the case. ; ~~unless there is a determination on the record that the transfer would be inappropriate.~~

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

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

(e) *The Judicial Council shall adopt rules providing factors for the court's consideration when determining the appropriateness of transfer, including but not limited to the following:*

- (1) Permancy of residency of the offender.*
- (2) Local programs available for the offender.*
- (3) Restitution orders and victim issues.*



CALIFORNIA PROBATION, PAROLE AND CORRECTIONAL ASSOCIATION

April 20, 2009

The Honorable John Benoit
California State Senate
State Capitol Building
Sacramento, CA 95814

Re: SB 431 – CPPCA Support

Dear Senator Benoit:

On behalf of the California Probation Parole and Correctional Association (CPPCA) we are pleased to support SB 431.

While Penal Code Section 1203.9 authorizes the transfer of probation supervision to the county in which a probationer resides, the provisions allowing courtesy supervision and judicial discretion to both the sentencing county and county of residence are operationally problematic. These provisions are too broad to provide for the orderly transfer of jurisdiction to the appropriate county.

SB 431 would clarify the process for jurisdictional transfer of adult probation cases by requiring the transfer of jurisdiction to the county of residence unless a determination is made on the record by the sentencing court. Further, it directs the Judicial Council to develop and promulgate rules of court to create guidelines for the transfer of cases.

This bill enhances public safety by creating a more clearly defined process of jurisdictional transfer while still affording an appropriate level of judicial discretion to the courts.

For these reasons, we are pleased to support SB 431.

Sincerely,

A handwritten signature in cursive script, appearing to read "Nick Warner", is written over a horizontal line.

Nick Warner
Legislative Director

Cc: The Honorable Mark Leno, Chair, Senate Public Safety Committee



Chief Probation Officers of California

Officers

President

Chief Don L. Meyer
Yolo County

President Elect

Chief Isabelle Voit
Solano County

Treasurer

Chief Robert Taylor
Los Angeles County

Secretary

Chief Linda Penner
Fresno County

Legislative Chair

Chief Jerry Powers
Stanislaus County

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Stanislaus County

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Chief Donald Blevins
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Chief Rick Dupree
Madera County

North Region

Chief Steve Bordin
Colusa County

Sacramento Region

Chief Christine Odom
Sutter County

South Region

Chief Alan M. Crogan
Riverside County

Executive Director

Karen A. Pank

April 20, 2009

The Honorable John Benoit
California State Senate
State Capitol Building
Sacramento, CA 95814

Re: SB 431 – CPOC SPONSOR

Dear Senator Benoit:

On behalf of the Chief Probation Officers of California (CPOC) we are pleased to sponsor SB 431, which would require the transfer of jurisdiction for adult probationers to the county of residence.

Under current law, county probation departments are responsible for the supervision of adult offenders placed on probation by the superior court. Most of those placed on probation reside in the county where the crime, prosecution, and grant of probation occurred thereby facilitating the provision of probation supervision and supportive services to promote public safety.

However, there are an undetermined number of adult probationers who reside in a different county than the probation department responsible for their supervision. Some of these adult probationers are under the wasteful duplicative probation supervision of multiple departments while others are entirely unsupervised by either the sentencing county or the county in which they reside. Based on a snapshot of several medium size counties, approximately 10-40% of adult probationers reside in a county other than the sentencing county, therefore posing a significant public safety risk due to inadequate supervision in the county of residence.

Current law, under Penal Code Section 1203.9, allows for jurisdictional transfer of adult probationers between counties to facilitate supervision in the county of residence. However, the process and discretion allowed by PC 1203.9 does not provide for the orderly transfer of cases to their county of residence as current law allows for courtesy supervision and authorizes discretion to both the sending and receiving counties for transfer.

SB 431 would require the transfer of jurisdiction to the county of residence unless a determination is made on the record by the sentencing court. Additionally, it allows for the courts to develop and promulgate rules of court to create guidelines for transfer and identify circumstances in which a sentencing court may retain jurisdiction. This bill 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 suitably use limited probation resources for supervision.

For these reasons, we are pleased to sponsor SB 431.

Sincerely,

Karen A. Pank
Executive Director

Cc: The Honorable Mark Leno, Chair, Senate Public Safety Committee

1415 L Street, Suite 200 • Sacramento, CA 95814

Phone: (916) 447-2762 • Fax: (916) 442-0850 • Email: cpoc@cpoc.org • Web Site: www.cpoc.org

Csizmar, Eric

From: Bell, Gary
Sent: Thursday, April 16, 2009 2:24 PM
To: Csizmar, Eric
Subject: FW: SB 431 Amendments



12039

ndments 4-13-09.doc

Hi Eric,

I've attached a copy of the proposed amendments to SB 431. The bill has been referred to Public Safety and we're going to set it for the 28th. I just wanted to give you a chance to look over the language and pass on any thoughts you had before we submitted it to the Committee - Steve Meinrath has given us a deadline of TODAY to get something to him. Thanks and talk to you soon.

Gary B. Bell
Senate Fellow/Legislative Aide
Senator John J. Benoit (37th District)
Office: (916) 651-4037
Fax: (916) 327-2187

-----Original Message-----

From: Danielle Higgs [mailto:Danielle@warnerandpank.com]
Sent: Monday, April 13, 2009 9:49 AM
To: Karen Pank; Bell, Gary
Subject: RE: SB 431 Amendments

Gary,

Based on the feedback we received from the Chiefs, there is concern that if you give both the sending jurisdiction and the receiving jurisdiction the same language to state on the record whether a determination is made not to transfer, that we could end up in a situation similar to the construct under the current statute. Attached is updated language (based on the 4/2 amendments now in print) that applies the exception only to the sentencing court. We are still waiting on the high sign from AOC, but wanted to get this to you prior to the committee deadline.

Thanks,
Danielle

-----Original Message-----

From: Karen Pank
Sent: Friday, April 10, 2009 2:24 PM
To: 'Gary.Bell@sen.ca.gov'; Danielle Higgs
Subject: Re: SB 431 Amendments

Thanks Gary. We should have something for you soon.

----- Original Message -----

From: Bell, Gary <Gary.Bell@sen.ca.gov>
To: Danielle Higgs; Karen Pank
Sent: Fri Apr 10 11:41:51 2009
Subject: SB 431 Amendments

Hi Danielle and Karen,

Thanks for keeping me in the loop regarding discussions on the SB 431 amendments. I spoke

with Steve Meinrath in the Senate Public Safety Committee and he has set a deadline of the 16th of April for amendments to be to the Committee. Just an update for future discussions.

Talk to you soon,

Gary B. Bell

Senate Fellow/Legislative Aide

Senator John J. Benoit (37th District)

Office: (916) 651-4037

Fax: (916) 327-2187

AMENDED IN ASSEMBLY JUNE 4, 2009

AMENDED IN SENATE APRIL 22, 2009

AMENDED IN SENATE APRIL 20, 2009

AMENDED IN SENATE APRIL 2, 2009

SENATE BILL

No. 431

Introduced by Senators Benoit and Leno

February 26, 2009

An act to amend Section 1203.9 of the Penal Code, relating to probation.

LEGISLATIVE COUNSEL'S DIGEST

SB 431, as amended, Benoit. Probation: transfers.

Existing law provides that whenever any person is released upon probation, the case may be transferred to any court of the same rank in any other county in which the person resides permanently, provided that the court of the receiving county shall first be given an opportunity to determine whether the person does reside in and has stated the intention to remain in that county for the duration of probation. Existing law provides that if the court finds that the person does not reside in or has not stated an intention to remain in that county for the duration of probation, it may refuse to accept the transfer.

This bill would provide that the transfers would be mandatory, unless, ~~in certain cases~~, there is a determination on the record that the transfer would be inappropriate, as specified. *The bill would require a noticed motion for the transfer for certain cases, as specified, and would require the Judicial Council to promulgate rules of court pertaining to the motion procedures, as specified.*

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.
 State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1203.9 of the Penal Code is amended to
 2 read:

3 1203.9. (a) ~~Whenever any person is released upon probation;~~
 4 ~~the case shall be transferred to any court of the same rank a person~~
 5 ~~is released on probation, the court, upon noticed motion, shall~~
 6 ~~transfer the case to the superior court in any other county in which~~
 7 ~~the person resides permanently, meaning with the stated intention~~
 8 ~~to remain for the duration of probation, unless there is a~~
 9 ~~determination on the record the transferring court determines that~~
 10 ~~the transfer would be inappropriate; provided that the court of the~~
 11 ~~receiving county shall first be given an opportunity to determine~~
 12 ~~whether the person does reside in and has stated the intention to~~
 13 ~~remain in that county for the duration of probation. If the court~~
 14 ~~finds that the person does not reside in or has not stated an intention~~
 15 ~~to remain in that county for the duration of probation, the court~~
 16 ~~may refuse to accept the transfer and states its reasons on the~~
 17 ~~record. Upon notice of the motion for transfer, the court of the~~
 18 ~~proposed receiving county may provide comments for the record~~
 19 ~~regarding the proposed transfer, following procedures set forth~~
 20 ~~in rules of court developed by the Judicial Council for this purpose,~~
 21 ~~pursuant to subdivision (e).~~ The court and the probation department
 22 shall give the matter of investigating those transfers precedence
 23 over all actions or proceedings therein, except actions or
 24 proceedings to which special precedence is given by law, to the
 25 end that all those transfers shall be completed expeditiously.

26 (b) ~~If the~~ The court of the receiving county finds that the person
 27 ~~does permanently reside in or has permanently moved to the~~
 28 ~~county, the court shall accept the entire jurisdiction over the case.~~

29 (c) ~~Whenever~~ Notwithstanding subdivision (a), whenever a
 30 person is granted probation under Section 1210.1, the sentencing
 31 court shall transfer jurisdiction of the entire case, upon a finding
 32 by the receiving court of the person's permanent residency in the
 33 receiving county, unless there is a determination on the record that
 34 the transfer would be inappropriate.

1 (d) The order of transfer shall contain an order committing the
2 probationer to the care and custody of the probation officer of the
3 receiving county and an order for reimbursement of reasonable
4 costs for processing the transfer to be paid to the sending county
5 in accordance with Section 1203.1b. A copy of the orders and
6 probation reports shall be transmitted to the court and probation
7 officer of the receiving county within two weeks of the finding by
8 ~~that county~~ that the person does permanently reside in or has
9 permanently moved to that county, and thereafter the receiving
10 court shall have entire jurisdiction over the case, with the like
11 power to again request transfer of the case whenever it seems
12 proper.

13 (e) *The Judicial Council shall promulgate rules of court for*
14 *procedures by which the proposed receiving county shall receive*
15 *notice of the motion for transfer and by which responsive comments*
16 *may be transmitted to the court of the transferring county. The*
17 *Judicial Council shall adopt rules providing factors for the court's*
18 *consideration when determining the appropriateness of a transfer,*
19 *including, but not limited to, the following:*

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

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LEGISLATIVE INFORMATION SYSTEM

Bills	Codes	Tracking	Reports	Forum
Bill Detail	Full Text	Votes	History	My Notes
My Bill Lists				

2009-2010 SB 431 - Probation: transfers. (Version: 95 - Amended Assembly
6/4/09)

Prev Next
Go
To:

As Amends The Law

SECTION 1. Section 1203.9 of the Penal Code is amended to read:

1203.9. (a) Whenever ~~any~~ *a* person is released upon probation, the case may be transferred to any court of the same rank on probation, the court, upon noticed motion, shall transfer the case to the superior court in any other county in which the person resides permanently, meaning with the stated intention to remain for the duration of probation, provided that the probation, unless the transferring court determines that the transfer would be inappropriate and states its reasons on the record. Upon notice of the motion for transfer, the court of the receiving county shall first be given an opportunity to determine whether the person does reside in and has stated the intention to remain in that county for the duration of probation. If the court finds that the person does not reside in or has not stated an intention to remain in that county for the duration of probation, it may refuse to accept the transfer. ~~proposed receiving county may provide comments for the record regarding the proposed transfer, following procedures set forth in rules of court developed by the Judicial Council for this purpose, pursuant to subdivision (e).~~ The court and the probation department shall give the matter of investigating those transfers precedence over all actions or proceedings therein, except actions or proceedings to which special precedence is given by law, to the end that all those transfers shall be completed expeditiously.

(b) ~~Except as provided in subdivision (e), if the~~ The court of the receiving county finds that the person does permanently reside in or has permanently moved to the county, it may, in its discretion, either shall accept the entire jurisdiction over the case, or assume supervision of the probationer on a courtesy basis. ~~case.~~

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

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

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

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

SRP
SB 431, 2009

SECRETARY OF STATE, ALEX PADILLA
The Original of This Document is in
CALIFORNIA STATE ARCHIVES
1020 "O" STREET
SACRAMENTO, CA 95814

Respondent's Request for Judicial Notice

Exhibit B

[2015 Judicial Council Memo]



JUDICIAL COUNCIL OF CALIFORNIA

455 Golden Gate Avenue · San Francisco, California 94102-3688

www.courts.ca.gov

REPORT TO THE JUDICIAL COUNCIL

For business meeting on: April 16, 2015

Title

Technology: V3 Interim Case Management
System Funding

Agenda Item Type

Action Required

Effective Date

July 1, 2015

Rules, Forms, Standards, or Statutes Affected

None

Date of Report

April 7, 2015

Recommended by

Judicial Council Technology Committee
Hon. James E. Herman, Chair
Hon. David De Alba, Vice-Chair

Contact

Jessica Craven, 818-558-3103
jessica.craven@jud.ca.gov

Kathleen Fink, 415-865-4094
kathleen.fink@jud.ca.gov

Renea Stewart, 818-558-4184
renea.stewart@jud.ca.gov

Executive Summary

In April 2014, the Judicial Council directed the Judicial Council Technology Committee (JCTC) to make a recommendation on a plan to eliminate funding from the Improvement and Modernization Fund (IMF) and Trial Court Trust Fund (TCTF) for the V3 Case Management System (V3). In February 2015, the council adopted the joint recommendation from the JCTC and the Trial Court Budget Advisory Committee (TCBAC) that the JCTC continue to work with the affected courts to align V3 and Sustain Justice Edition case management systems with JCTC strategy. The V3 courts consider taking on maintenance and operations costs for V3, as well as funding a replacement case management system for V3, to be a major challenge due to the judicial branch budget, the need to replace case management systems for other case types, the lack of control the V3 courts have over the cost of V3 operations and maintenance, and the

negative impact of the Workload-Based Allocation and Funding Methodology (WAFM) on their budgets. The V3 courts also committed significant resources to the development and deployment of V3 as well as subject matter expertise to the development of the terminated CCMS case management system. The JCTC has collaborated with the V3 courts on a path forward that will allow the courts time to transition to another case management system or assume the costs for V3, previously allocated from the IMF or TCTF.

Recommendation

The Judicial Council Technology Committee recommends that the Judicial Council approve the following changes to the V3 interim case management system programs:

1. After a period of four years starting on July 1, 2015 and ending June 30, 2019, branch funding for the V3 case management system will stop; and
2. V3 will be funded the first fiscal year (July 1, 2015 to June 30, 2016). A working group comprised of members of the Judicial Council Technology Committee (JCTC) and Trial Court Budget Advisory Committee (TCBAC) will work together on the source of funding for the remaining three years.

Previous Council Action

In March 2012, the Judicial Council voted to terminate deployment of the California Court Case Management System (CCMS) as a statewide court technology solution. The council directed the CCMS Internal Committee to work in partnership with the trial courts to develop timelines and recommendations to the council for strategies to assist trial courts with existing critical case management system needs, to establish a judicial branch court technology governance structure that would best serve the implementation of technology solutions, and to provide technology solutions in the near term to improve efficiencies in court operations by maximizing the value of document management systems, e-filing capabilities, and e-delivery services for the benefit of litigants, attorneys, justice partners, and the public.

In June 2012, the Judicial Council updated the name and structure of the CCMS Internal Committee to the JCTC to be in alignment with the Judicial Council direction. The new committee charge was to oversee the council's policies concerning technology, with responsibility in partnership with the courts for coordinating with the Administrative Director and all internal committees, advisory committees, commissions, working groups, task forces, justice partners, and stakeholders—on technological issues relating to the branch and the courts.

In October 2012, the JCTC hosted a Judicial Branch Technology Summit where branch stakeholders assembled for a collaborative discussion on branch technology governance, vision, and planning. The discussions and feedback from the summit reinforced the need for a new governance and funding model and a long-term strategic plan for branch technology.

In February 2013, the Chief Justice authorized the creation of the Technology Planning Task Force (TPTF). The task force was charged with working collaboratively to define judicial branch technology governance in terms of statewide versus local decision-making, to develop a strategic plan for technology across all court levels that provides a vision and direction for technology within the branch, and to develop recommendations for a stable, long-term funding source for supporting branch technology, as well as a delineation of technology funding sources.

In January 2014, the Judicial Council approved the concept of the court technology governance and strategic plan, prepared by the Technology Planning Task Force, based on the information provided in the executive summary for the governance and funding model and plans.

At its April 24, 2014 business meeting, the council tasked the JCTC with developing a plan to eventually eliminate funding from the TCTF and State Trial Court IMF to courts for V3 (civil, small claims, probate, and mental health) case management system and Sustain Justice Edition costs.

In August 2014, the Judicial Council approved the Court Technology Governance and Strategic Plan. The chair of the JCTC stated that the plan would return to the council with updates related to language access.

In October 2014, the Judicial Council approved the update to the Court Technology Governance and Strategic Plan.

In February 2015, the Judicial Council approved recommendations that included input from court executive officers and court information officers on changes to a number of statewide technology programs to achieve approximately \$1 million in savings in the State Trial Court IMF; forming a working group or tasking an existing council committee to focus on technology-related efficiencies and cost-saving measures for small courts; and directing its Information Technology office to consider replacing its external contractors with employees, as well as adopting the joint recommendation from the JCTC and the TCBAC that the JCTC continue to work with the affected courts to align V3 and Sustain Justice Edition case management systems with JCTC strategy.

Rationale for Recommendation

This recommendation recognizes the investments the V3 courts made in a statewide CMS, as well as their lack of funds to deploy a new civil CMS. It takes into consideration that three of the courts (Orange, Sacramento, and San Diego) are donor courts under the WAFM and recognizes that overall, it is counterproductive to expect the courts to pick up operational and maintenance costs for V3, at the same time as they expend funds to transition to a new CMS. The same three courts also have major projects underway to replace other failing case management systems, projects that have consumed their resources and funds. This recommendation assists the V3 courts in bridging the gap to transition from V3 and the statewide CMS strategy to the new judicial branch technology strategy.

Comments, Alternatives Considered, and Policy Implications

Comments

The JCTC has thoroughly examined, with the participation and collaboration of the V3 courts, the Judicial Council directive to develop a plan to eventually eliminate the funding from TCTF and IMF to the V3 courts. Following the council's decision to stop CCMS as a statewide CMS in 2012, the Judicial Branch Information Technology Working Group reporting to the JCTC formed the V2 and V3 Workstream so the courts could make recommendations on their CMS. The courts were unable to reach a consensus on a path forward.

In July 2014, the JCTC sent a letter to the V3 courts requesting that they advise of their plans for V3. Representatives from the JCTC met with the V3 courts in August 2014 to get their input and ideas. The JCTC has reviewed possible costing models for the V3 courts. JCTC representatives met with each of the V3 courts in March 2015 to invite further feedback and to best understand their plans. In March, the JCTC also met with the V3 courts in a closed meeting, to allow for sharing of confidential information, and an open meeting to allow public discussion and to vote on a recommendation.

On March 11, 2015, the TCBAC's Revenue and Expenditure Subcommittee voted to recommend to the TCBAC that the IMF support for V3 and Sustain Justice Edition (also known as the Intermediate Case Management System or ICMS) be reduced by 20% starting in FY 2015–2016 and the costs be passed on to the trial courts. The subcommittee reconvened on April 2, 2015 to reconsider this recommendation. The subcommittee revised the recommendation to freeze the 2015–2016 IMF allocations for V3 and ICMS to the FY 2014–2015 funding levels. In addition, they voted to reduce the IMF allocations for V3 and ICMS by 10% starting in FY 2015–2016 if the IMF FY 2015–2016 ending fund balance is projected to be below \$300,000. The costs would not be passed on to the V3 courts as previously recommended. Judicial Council staff were asked to identify ways the costs could be absorbed within the Judicial Council Information Technology budget or eliminated through reduction in services.

Judicial Council Information Technology staff are working on the potential impact of these recommendations. As of the time of this report, the analysis has not been completed. Suggested next steps for assisting the V3 courts include exploring potential sources of funding to deploy replacement CMSs and developing a business case for funding replacement CMSs.

Impacts and equity issues

WAFM “donor” courts. The funding issues are exacerbated in the case of WAFM “donor” courts (the Superior Courts of Orange, Sacramento, and San Diego Counties in FY 2014–2015), by their reduction in allocations. Reductions are at 15% in FY 2014–2015 and go to 30% in FY 2015–2016.

Limited staff resources. From the meetings with the V3 courts, the JCTC learned that each of the courts has had significant reductions in staff. Existing staff is committed to supporting judicial officers and also assisting with the current projects to replace failing case management systems. There are no available staff resources to also support the transition to a new civil CMS.

1% cap on reserves. With the 1% cap on reserves, the trial courts no longer have the ability to save for a new case management system.

Pending Gap analysis. Tyler has agreed to perform a Gap analysis for the Superior Court of Orange County comparing Tyler Odyssey to V3. This will identify areas that Tyler needs to modify in its case management system, so that the efficiencies and cost savings the court depends on in V3 will not be lost. Examples of these efficiencies are streamlined e-filing processing and the Electronic Legal File (which enables a paperless courtroom). These improvements in Tyler's Odyssey will be available to and will benefit all courts moving to Odyssey and could be used even by courts working with other vendors to potentially identify areas for improvement and efficiency.

Feedback from courts. The courts have offered feedback regarding the directive of the Judicial Council in their April 2014 meeting:

Beginning in 2005, seven courts volunteered to assist the branch in developing a new case management system. The new system was intended to serve the entire branch, not just the seven courts, and the costs of developing and maintaining the CMS was assumed to be funded from trial court funding sources before allocation to the trial courts. During the development and testing of the branch-wide CMS these seven courts provided substantial additional resources, both operations and IT resources, to help develop and test the V2, V3, and V4 prototypes. Moreover, the people assisting were highly skilled "subject matter experts" whose efforts were dedicated to developing the best system for all courts, and not available to the volunteer courts to do their daily work. These resources were from each court's base allocations, not from the trial court funding sources.

The courts also point out that in the audit of the CCMS development, the California State Auditor found that:

the seven superior courts that have implemented the criminal [V2] and civil [V3] systems reported to us [CSA] that they spent nearly \$44 million in staffing, equipment, and consulting costs to test, deploy and support the interim systems beyond the roughly \$49 million that they [the V3 courts] paid directly to the development vendor [to assist in the deployment of prototypes]. Even this \$44 million is likely understated because one superior court—the Superior Court of San Diego County (San Diego)—also reported that in fiscal years 2005–06 and 2006–07 between 120 and 130 of its staff worked part-time to full-time on

implementation of the civil system but it was unable to quantify the cost related to their efforts.

California State Auditor, Report No. 2010-102, Administrative Office of the Courts: The Statewide Case Management Project Faces Significant Challenges Due to Poor Project Management (Feb. 2011), pp. 45–46.

According to the V3 courts, although the Judicial Council provided administrative grants to assist the V3 courts with their costs to support CCMS development, it was quite nominal compared to the costs spent by the courts to support CCMS development as noted above. The V3 courts made significant investments in a CMS that was intended to benefit all courts.

Alternatives Considered

Two funding strategy alternatives were evaluated. These were:

1. Sunset of V3 in three to five years, which was refined to four years
2. Incremental transitioning of costs using a cost-sharing formula

Additionally, regardless of the alternative chosen, the V3 courts may seek funding for replacement CMSs with the idea that Judicial Council staff would assist if desired by the V3 courts.

Alternative 1: Sunset of V3 in four years. This alternative included:

- No change to the current source of V3 funding. Funding would continue to come from the TCTF or IMF for a set period, proposed between three and five years and refined to four years.
- At the end of that period, V3 courts will either have deployed a replacement civil CMS, taken on support for V3, or will assume the full costs for V3.

The rationale for this alternative was that it recognizes that the combination of the WAFM changes and an immediate start to a glide path or transition will increase the difficulty for the V3 courts to fund a replacement CMS. This gives the V3 courts time to deploy a replacement civil CMS or take on support for V3.

Alternative 2: Incremental transitioning of costs using a cost-sharing formula. This alternative included:

- The V3 courts will incrementally take on more of the V3 costs, with the funds from IMF or TCTF decreasing as court contributions increase, until 100% of the costs are allocated to the V3 courts.
- The progression, percentages, and length of time, need to be determined. A five-year glide path is consistent with the WAFM and with current models for economic planning.

Four cost-sharing models for this alternative were evaluated. These include:

- Allocation proportional to court budget does not take usage into account, but does take court fiscal realities into account. As the WAFM is implemented, the courts' budgets should become more representative of usage.
- Allocation by filings is an accepted cost model for service providers, but costs fall disproportionately on the smaller courts.
- Allocation by users is an accepted cost model for software vendors, but less so for service providers, and costs fall disproportionately on the smaller courts.
- Equal allocation distributes costs disproportionately to the smaller courts.

The rationale for this alternative was that it spreads out the impact on the V3 courts of absorbing the costs for V3; however, this alternative has an additional impact for three V3 courts (the Superior Courts of Orange, Sacramento, and San Diego Counties), which is the challenge of starting a project to deploy a replacement civil CMS while they have resources committed to completing projects already underway to replace other failing CMSs. This results in courts transitioning from V3 and no longer participating in cost sharing for V3 at significantly different times. Related to this alternative is the issue of how to minimize the fiscal impact to the remaining courts as one or more courts convert to another civil CMS and how those costs will be absorbed by the IMF or TCTF.

Option for either alternative: Seek funding for replacement case management systems

This option could be used for either alternative. The V3 courts may develop a business case for V3 CMS replacement using the Superior Court of Fresno County's V2 CMS replacement as a model, or develop another model. The courts may request funds from the Judicial Council (emergency funds or a loan) or from the state via a budget change proposal (BCP) in implementing replacement civil CMSs. When the V3 courts are fully transitioned, in four years or less, funding will no longer be needed from the TCTF or IMF.

Implementation Requirements, Costs, and Operational Impacts

The implementation requirements, costs, and operational impacts are detailed in the recommendation section above.

Relevant Strategic Plan Goals and Operational Plan Objectives

This recommendation will address the strategic plan goals of Access, Fairness, and Diversity (Goal I), Modernization of Management and Administration (Goal III), and Quality of Justice and Service to the Public (Goal IV). The Judicial Council approved the Court Technology Governance and Strategic Plan, which includes the strategic and tactical plans for technology.