

JUDICIAL COUNCIL OF CALIFORNIA

455 Golden Gate Avenue · San Francisco, California 94102-3688
www.courts.ca.gov/policyadmin-invitationstocomment.htm

INVITATION TO COMMENT

SPR16-12

Title	Action Requested
Criminal Procedure: Intercounty Probation and Mandatory Supervision Transfer	Review and submit comments by June 14, 2016
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Amend rule 4.530	January 1, 2017
Proposed by	Contact
Criminal Law Advisory Committee Hon. Tricia Ann Bigelow, Chair	Kimberly DaSilva, 415-865-4534 kimberly.dasilva@jud.ca.gov

Executive Summary and Origin

The Criminal Law Advisory Committee proposes amendments to rule 4.530 of the California Rules of Court to (1) clarify file transfer requirements after intercounty transfer under Penal Code section 1203.9, (2) require receiving courts to notify transferring courts when the receiving court either reduces a felony to a misdemeanor or dismisses a case after transfer, and (3) make the rule consistent with Assembly Bill 673's amendments to section 1203.9 .

The Proposal

File Transfer Requirements

Rule 4.530(g)(5) requires a transferring court to transmit “the entire court file, except exhibits, to the receiving court within two weeks of the transfer order” after an intercounty transfer under Penal Code section 1203.9. (Cal. Rules of Court, rule 4.530(g)(5).) The advisory committee comment on subdivision (g)(5) suggests, however, that “[b]efore transmitting the court file, transferring courts should consider retaining copies of the court file in the event of an appeal or a writ.” The rule was designed to ensure that receiving courts are provided complete case information and that transferring courts do not incur the cost and burden of providing receiving courts with certified copies. Transferring courts, however, often require the original court file to adjudicate codefendant proceedings still pending at the time of transfer.

The proposals have not been approved by the Judicial Council and are not intended to represent the views of the council, its Rules and Projects Committee, or its Policy Coordination and Liaison Committee. These proposals are circulated for comment purposes only.

Once a person on either probation or mandatory supervision has been transferred to his or her county of permanent residence under Penal Code section 1203.9, rule 4.530(g)(5) requires the transferring court to transmit “any records of payments and the *entire court file*, except exhibits, to the receiving court within two weeks of the transfer order.” (Italics added.) The advisory committee comment to the rule explains the provision as follows:

Subdivision (g)(5) requires the transferring court to transmit the entire court file, except exhibits, to the court of the receiving county. Before transmitting the court file, transferring courts should consider retaining copies of the court file in the event of an appeal or a writ.

The requirement that the transferring court transmit the entire court file is designed to ensure that receiving courts are provided complete case information, while transferring courts do not incur the cost and burden of providing certified copies. Transferring courts, however, often require the original court file to adjudicate codefendant proceedings that are still pending at the time of transfer.

The proposal would amend rule 4.530(g)(5) to emphasize that the transferring court must transmit the entire *original* court file and add an exception to the file transfer requirements for cases involving codefendants. In codefendant cases, the proposal would require transferring courts instead, to transmit *certified copies* of the entire original court file. The proposal would also amend the related advisory committee comment to explain that transferring courts should retain the original court file to properly adjudicate any pending or future codefendant proceedings.

Prior Circulation

This proposal was circulated for public comment during the spring of 2011 in conjunction with another proposal to amend rule 4.530, which would have prescribed a posttransfer procedure for collection and disbursement of fines, fees, and restitution. While the file transfer portion of the proposal received only a few comments, the proposal concerning collection and disbursement of fines, fees, and restitution generated numerous divergent viewpoints among important stakeholders. As a result, both proposals were deferred.

The proposal to clarify file transfer requirements under rule 4.530 is being recirculated at this time because these requirements may have been overshadowed by the fines, fees, and restitution portion of the invitation to comment, as well as the fact that the comment period was nearly five years ago.

Subsequent Reduction and Disposition Notification

This portion of the proposal responds to requests from court executive officers for notification of disposition changes after intercounty transfers so that courts can provide accurate information to the public when requested. The proposal would amend rule 4.530 to require receiving courts to notify transferring courts when the receiving court either reduces a felony to a misdemeanor or dismisses a transferred case.

Under rule 4.530, subdivision (g)(5), once a probation or mandatory supervision case is transferred to the supervisee's county of permanent residence, the transferring court transmits the entire court file, with specified exceptions, to the receiving court. After transfer, rule 4.530 requires no additional communication between the two courts regarding the status of the case.

Because transferring courts' case management systems do not show any changes to the status of a case unless those changes are manually entered into their systems, reductions from a felony to a misdemeanor or dismissals in a receiving court after transfer are not recorded by the transferring court. As a result those cases continue to be categorized, inaccurately, as felonies or as active cases by the receiving court. Consequently, when members of the public search for cases concerning those defendants, the information provided by the transferring court is inaccurate. Inaccurate felony convictions and/or active cases attached to a defendant may lead to improper denials of employment and housing and may have other negative collateral consequences.

This portion of the proposal would amend rule 4.530 to add a subdivision (h), which would require that receiving courts notify transferring courts in writing of reductions from felonies to misdemeanors and of dismissals in cases transferred under Penal Code section 1203.9.

Compliance with AB 673 (Collection and Disbursement of Court-Ordered Debt)

Assembly Bill 673 changed court jurisdiction over the collection and distribution of court-ordered debt after intercounty transfer. The bill was chaptered on September 3, 2015, and became effective January 1, 2016. Although receiving courts continue to accept entire jurisdiction over cases transferred under Penal Code section 1203.9,¹ as of January 1, jurisdiction over the collection and disbursement of fines, forfeitures, penalties, assessments, and restitution ordered by the transferring court but not fully paid, remains with the transferring court unless the receiving court elects to collect and the transferring court approves the arrangement. The bill also made other changes as set forth below.

Specifically, AB 673 made the following changes to Penal Code section 1203.9:

¹ With the exception of jurisdiction over undetermined victim restitution, pursuant to section 1203.9, subdivision (a)(3), which also remains with the transferring court.

- Changes the effective date of transfer to the date the transferring court makes the order of transfer (subdivision (b)).
- Requires courts to order that unpaid fines, fees, forfeitures, penalties, assessments, or restitution at the time of transfer be paid by the defendant to the collection program for the transferring court for distribution and accounting once collected (subdivision (d)(1)).
- Allows receiving courts and county probation departments to impose additional local fees and costs as authorized and requires that they notify the collection program for the transferring court of those changes (subdivision (d)(2)).
- Requires that local fees imposed by receiving courts and county probation departments be paid by the defendant to the collection program for the transferring court, which shall remit those fees and costs to the receiving court for accounting and distribution (subdivision (d)(3)).
- Allows a receiving court, upon approval of the transferring court, to elect to collect all of the court-ordered payments from a defendant attributable to the case under which the defendant is being supervised and requires that the receiving court's collection program transmit the revenue collected to the collection program for the transferring court for deposit, accounting, and distribution. In this situation, the collection program for the receiving court shall not charge administrative fees without a written agreement with the transferring court's collection program and the collection program for the receiving court shall not report revenue owed or collected on behalf of the collection program for the transferring court in annual reports to the Judicial Council (subdivisions (e)(1), (2)).
- The bill also requires that the Judicial Council consider the adoption of rules of court as it deems appropriate to implement the collection, accounting, and disbursement requirements of the bill (subdivision (g)).

The following proposal would bring California Rules of Court, rule 4.530—which implements Penal Code section 1203.9—into compliance with these recent changes.

The proposal would make the following amendments to rule 4.530:

- Change the effective date of the transfer to the date of the transfer order, as required by AB 673;
- Require the transferring court to retain records of payment upon transfer of the court file to the receiving court;
- Require the probation officer of the transferring county to retain records of payment upon transfer of the file to the receiving county;
- Delete the two-week holding period of the transferring court and probation files on the transferred case;
- Add a subdivision detailing the new jurisdictional requirements regarding court-ordered debt; and,
- Require court collection, accounting, and disbursement of court-ordered debt procedures to be consistent with Judicial Council fiscal procedures located on the Budget and

Finance page of the Judicial Council website. It is anticipated that the Judicial Council will adopt specific fiscal procedures addressing AB 673 during its June 2016 meeting.

Alternatives Considered

The committee considered creating a form for receiving courts to notify transferring courts when the receiving court either reduces a felony to a misdemeanor or dismisses a transferred case. However, because the development of new forms can be expensive and burdensome to courts and because many courts either have transitioned or will soon be transitioning to new case management systems, the committee recommends a rule amendment, which will provide courts with a more cost-effective and flexible approach; courts would be able to fashion a method of notification which best matches their individual systems.

Also, it is anticipated that subsequent proposals for form changes related to compliance with AB 673 will circulate for public comment during a future cycle.

Implementation Requirements, Costs, and Operational Impacts

No significant implementation requirements, costs, or operational impacts for courts are expected as a result of this proposal. It is anticipated that courts will either use regular mail or electronic mail to provide the proposed notification of subsequent reductions or dismissals by the receiving court and although implementation requirements, costs, and operational impacts were required pursuant to AB 673, nothing additional would be required by this rule proposal, which merely clarifies existing law.

Request for Specific Comments

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

- Does the proposal appropriately address the stated purpose?

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

- Would the proposal provide cost savings? If so please quantify.
- What would the implementation requirements be for courts? For example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems.
- Would 2 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?
- How well would this proposal work in courts of different sizes?

Attachments and Links

1. Cal. Rules of Court, rule 4.530, at pages 7–9
2. SPR11-33, previous Invitation to Comment, circulated in 2011, “Criminal Procedure: Intercounty Probation Transfer Rule”

Rule 4.530 of the California Rules of Court would be amended, effective January 1, 2017, to read:

1 **Rule 4.530. Intercounty transfer of probation and mandatory supervision cases**

2
3 (a)–(f) * * *

4
5 (g) **Transfer**

- 6
7 (1) If the transferring court determines that the permanent residence of the
8 supervised person is in the county of the receiving court, the transferring
9 court must transfer the case unless it determines that transfer would be
10 inappropriate and states its reasons on the record.
11
12 (2) To the extent possible, the transferring court must establish any amount of
13 restitution owed by the supervised person before it orders the transfer.
14
15 (3) Transfer is effective the date the transferring court orders the transfer. Upon
16 transfer of the case, the receiving court must accept the entire jurisdiction
17 over the case.
18
19 (4) The orders for transfer must include an order committing the supervised
20 person to the care and custody of the probation officer of the receiving county
21 and an order for reimbursement of reasonable costs for processing the
22 transfer to be paid to the county of the transferring court in accordance with
23 Penal Code section 1203.1b.
24
25 (5) Upon transfer of the case, the transferring court must transmit any records
26 of payments and the entire original court file, except exhibits, to the receiving
27 court within two weeks of the transfer order in all cases in which the
28 supervisee is the sole defendant, except the transferring court shall not
29 transfer (A) exhibits or (B) any records of payments.
30
31 If transfer is ordered in a case involving more than one defendant, the
32 transferring court must transmit any records of payments and certified copies
33 of the entire original court file, except exhibits, to the receiving court within
34 two weeks of the transfer order.
35
36 (6) Upon transfer the probation officer of the transferring county must transmit,
37 at a minimum, any court orders, probation or mandatory supervision reports,
38 and case plans, and all records of payments to the probation officer of the
39 receiving county within two weeks of the transfer order.
40
41 (7) Upon transfer of the case, the probation officer of the transferring county
42 must notify the supervised person of the transfer order. The supervised
43 person must report to the probation officer of the receiving county no later

1 than 30 days after transfer unless the transferring court orders the supervised
2 person to report sooner. If the supervised person is in custody at the time of
3 transfer, the supervised person must report to the probation officer of the
4 receiving county no later than 30 days after being released from custody
5 unless the transferring court orders the supervised person to report sooner.
6 Any jail sentence imposed as a condition of probation or mandatory
7 supervision prior to transfer must be served in the transferring county unless
8 otherwise authorized by law.

9
10 **(h) Reductions or dispositions following transfer**

11
12 The receiving court must provide written notice to the transferring court when:

- 13
14 (1) The receiving court reduces the supervised person's conviction from a felony
15 to a misdemeanor; or
16
17 (2) The receiving court otherwise disposes of a supervisee's case.

18
19 **(i) Court-ordered debt**

20
21 (1) In accordance with Penal Code section 1203.9(d) and (e):

22
23 (A) If the transferring court has ordered the defendant to pay fines, fees,
24 forfeitures, penalties, assessments, or restitution, the transfer order must
25 require that those and any other amounts ordered by the transferring
26 court that are still unpaid at the time of transfer be paid by the
27 defendant to the collection program for the transferring court for proper
28 distribution and accounting once collected.

29
30 (B) The receiving court and receiving county probation department may
31 impose additional local fees and costs as authorized.

32
33 (C) Upon approval of a transferring court, a receiving court may elect to
34 collect all of the court-ordered payments from a defendant attributable
35 to the case under which the defendant is being supervised.

36
37 (2) Policies and procedures for implementation of the collection, accounting, and
38 disbursement of court-ordered debt under this rule must be consistent with
39 Judicial Council fiscal procedures available at www.courts.ca.gov.

40
41 **Advisory Committee Comment**
42

1 Subdivision (g)(5) requires the transferring court to transmit the entire original court file, except
2 exhibits and any records of payments, to the court of the receiving county in all cases in which
3 the supervisee is the sole defendant. Before transmitting the entire original court file, transferring
4 courts should consider retaining copies of the court file in the event of an appeal or a writ. In
5 cases involving more than one defendant, subdivision (g)(5) requires the transferring court to
6 transmit certified copies of the entire original court file to ensure that transferring courts are able
7 to properly adjudicate any pending or future codefendant proceedings.

8
9 Subdivision (g)(7) clarifies that any jail sentence imposed as a condition of probation or
10 mandatory supervision before transfer must be served in the transferring county unless otherwise
11 authorized by law. For example, Penal Code section 1208.5 authorizes the boards of supervisors
12 of two or more counties with work furlough programs to enter into agreements to allow work-
13 furlough-eligible persons sentenced to or imprisoned in one county jail to transfer to another
14 county jail.

Judicial Council of California • Administrative Office of the Courts

455 Golden Gate Avenue · San Francisco, California 94102-3688
www.courts.ca.gov/policyadmin-invitationstocomment.htm

INVITATION TO COMMENT

SPR11-33

Title	Action Requested
Criminal Procedure: Intercounty Probation Transfer Rule	Review and submit comments by June 20, 2011
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Amend Cal. Rules of Court, rule 4.530	January 1, 2012
Proposed by	Contact
Criminal Law Advisory Committee Hon. Steven Z. Perren, Chair	Arturo Castro, 415-865-7702 arturo.castro@jud.ca.gov

Summary

The Criminal Law Advisory Committee proposes amendments to rule 4.530 of the California Rules of Court to clarify file transfer requirements and prescribe a procedure for the collection and disbursement of fines, fees, and restitution after intercounty transfer under Penal Code section 1203.9.

Discussion

The Criminal Law Advisory Committee proposes two amendments to rule 4.530, which governs intercounty probation transfer procedure under Penal Code section 1203.9.¹

Collection and Disbursement of Fines, Fees, and Restitution After Transfer

Probationers often owe various fines, fees, and restitution at the time of intercounty transfer. Although rule 4.530 prescribes various transfer requirements—including deadlines, notice, and mandatory orders—the rule fails to specify which entity is responsible for collecting and disbursing fines, fees, and restitution *after* transfer. As a result, transfers cause considerable confusion between local entities² responsible for collections. Some local collection entities prefer to continue to collect after cases are transferred, while others prefer to transfer collection responsibilities to the local collection entity of the receiving county.

¹ In a companion proposal, the Criminal Law Advisory Committee also proposes three new mandatory forms—*Notice and Motion for Transfer* (form CR-250), *Order for Transfer* (form CR-251), and *Receiving Court Comment Form* (CR-252)—for use by petitioners and courts to facilitate intercounty probation transfer procedure under Penal Code section 1203.9 and rule 4.530.

² The collection of fines, fees, and restitution owed by probationers is conducted by local courts, probation departments, county collections programs, or collection agencies.

The proposals have not been approved by the Judicial Council and are not intended to represent the views of the council, its Rules and Projects Committee, or its Policy Coordination and Liaison Committee. These proposals are circulated for comment purposes only.

Complex disbursement requirements, which are unique to each county, add to the confusion. Only the collection entity in the county in which the fines and fees were imposed is sufficiently familiar with local disbursement requirements to properly disburse any money collected.

In the absence of guidance, disparate practices have emerged statewide. As a result, many local courts and probation departments desire uniformity and have requested that rule 4.530 be amended to prescribe a collection and disbursement procedure.³

To promote a uniform posttransfer collection and disbursement procedure, the committee proposes adding the following subdivision to rule 4.530:

(h) Collection of fines, fees, and restitution after transfer

- (1) As used in this subdivision, the phrase “local collection entity” means the superior court, probation department, county collection program, or any other collection agency responsible for collecting fines, fees, and restitution in criminal cases.
- (2) Upon transfer of the case, the local collection entity of the receiving county must collect any fines, fees, and restitution owed by the probationer and must transmit any money collected to the local collection entity of the transferring county for distribution.

The proposed amendment would require collection to occur in the county of the receiving court, which, by statute, must accept entire jurisdiction over a case after transfer. (Pen. Code, §§ 1203.9(b) & (d).) To ensure compliance with complex local disbursement requirements, the proposal would also require that any money collected be transmitted back to the local collection entity of the transferring county for proper disbursement.

To provide local collection agencies with additional guidance—including, for example, instructions and information about accounts receivable and disbursement prioritizations—the committee will also collaborate with the Administrative Office of the Courts to propose future amendments to the Trial Court Financial Policy and Procedure Manual.

File Transfer Requirements

Rule 4.530(g)(5) requires the transferring court to transmit “any records of payments and the *entire court file*, except exhibits, to the receiving court within two weeks of the transfer order.” (Italics added.) The advisory committee comment to the rule explains the provision as follows:

³ To develop the proposal, the Criminal Law Advisory Committee consulted with various stakeholders, including judges, court executive officers, court finance managers, chief probation officers, and representatives of the State Controller’s Office, Probation Business Managers Association, and the AOC Finance Division.

The proposals have not been approved by the Judicial Council and are not intended to represent the views of the council, its Rules and Projects Committee, or its Policy Coordination and Liaison Committee. These proposals are circulated for comment purposes only.

Subdivision (g)(5) requires the transferring court to transmit the entire court file, except exhibits, to the court of the receiving county. Before transmitting the court file, transferring courts should consider retaining copies of the court file in the event of an appeal or a writ.

The requirement is designed to ensure that receiving courts are provided complete case information while transferring courts do not incur the cost and burden of providing certified copies. Transferring courts, however, often require the original court file to adjudicate codefendant proceedings that are still pending at the time of transfer.

The proposal would amend rule 4.530(g)(5) to emphasize that the transferring court must transmit the entire *original* court file and add an exception to the file transfer requirements for cases involving codefendants. Specifically, the proposal would require transferring courts to transmit certified copies of the entire original court file in cases involving more than one defendant. The proposal would also amend the related advisory committee comment to explain that transferring courts should retain the original court file to properly adjudicate any pending or future codefendant proceedings.

Rule 4.530 of the California Rules of Court would be amended, effective January 1, 2012, to read:

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

2
3 **(a)–(f) * * ***

4
5 **(g) Transfer**

6
7 (1)–(4) * * *

8
9 (5) The transferring court must transmit any records of payments and the entire
10 original court file, except exhibits, to the receiving court within two weeks of
11 the transfer order in all cases in which the probationer is the sole defendant. If
12 transfer is ordered in a case involving more than one defendant, the
13 transferring court must transmit any records of payments and certified copies
14 of the entire original court file, except exhibits, to the receiving court within
15 two weeks of the transfer order.

16
17 (6)–(7) * * *

18
19 **(h) Collection and disbursement of fines, fees, and restitution after transfer**

20
21 (1) As used in this subdivision, the phrase “local collection entity” means the
22 superior court, probation department, county collection program, or any other
23 collection agency responsible for collecting fines, fees, and restitution in
24 criminal cases.

25
26 (2) Upon transfer of the case, the local collection entity of the receiving county
27 must collect any fines, fees, and restitution owed by the probationer and must
28 transmit any money collected to the local collection entity of the transferring
29 county for distribution.

30
31
32
33 **Advisory Committee Comment**

34
35 Subdivision (g)(5) requires the transferring court to transmit the entire original court file, except
36 exhibits, to the court of the receiving county in all cases in which the probationer is the sole
37 defendant. Before transmitting the entire original court file, transferring courts should consider
38 retaining copies of the court file in the event of an appeal or a writ. In cases involving more than
39 one defendant, subdivision (g)(5) requires the transferring court to transmit certified copies of the
40 entire original court file to ensure that transferring courts are able to properly adjudicate any
41 pending or future codefendant proceedings.

1 Subdivision (g)(7) clarifies that any jail sentence imposed as a condition of probation before
2 transfer must be served in the transferring county unless otherwise authorized by law. For
3 example, Penal Code section 1208.5 authorizes the boards of supervisors of two or more counties
4 with work furlough programs to enter into agreements to allow work-furlough-eligible persons
5 sentenced to or imprisoned in one county jail to transfer to another county jail.

Item SPR11-33 Response Form

Title: Criminal Procedure: Intercounty Probation Transfer Rule (amend Cal. Rules of Court, rule 4.530)

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

Comments: _____

Name: _____ **Title:** _____

Organization: _____

- Commenting on behalf of an organization**

Address: _____

City, State, Zip: _____

To Submit Comments

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

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

Email: invitations@jud.ca.gov

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

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

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

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