



Judicial Council of California · Administrative Office of the Courts

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

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REPORT TO THE JUDICIAL COUNCIL

For meeting on October 26, 2012

Title	Agenda Item Type
Criminal Justice Realignment: Intercounty Transfer Procedures	Action Required
Rules, Forms, Standards, or Statutes Affected	Effective Date
Amend Cal. Rules of Court, rule 4.530 and revise forms CR-250, CR-251, and CR-252	November 1, 2012
Recommended by	Date of Report
Criminal Law Advisory Committee Hon. Steven Z. Perren, Chair	September 28, 2012
	Contact
	Arturo Castro, 415-865-7702 arturo.castro@jud.ca.gov

Executive Summary

The Criminal Law Advisory Committee recommends amendments to rule 4.530 of the California Rules of Court and revisions to three related Judicial Council forms in response to recent criminal justice realignment legislation that amended Penal Code section 1203.9 to apply intercounty probation transfer procedures to mandatory supervision cases under Penal Code section 1170(h)(5)(B). In addition, to facilitate verification of a supervised person's county of residence, the committee also recommends adding a data field to one of the forms, form CR-250, for petitioners to note the supervised person's address.

Recommendation

The Criminal Law Advisory Committee recommends that the Judicial Council, effective November 1, 2012:

1. Amend rule 4.530(a) of the California Rules of Court to clarify that the rule applies to transfers of mandatory supervision;

2. Add the phrase “mandatory supervision” and replace the word “probationer” with the phrase “supervised person” throughout rule 4.530;
3. Add a data field to item 1 on the *Notice and Motion for Transfer* (form CR-250) for petitioners to note the supervised person’s address;
4. Revise form CR-250 and the *Order for Transfer* (form CR-251) to include mandatory supervision and replace the word “probationer” with the phrase “supervised person”;
5. Add a data field to item 4a on form CR-251 for courts to note the balance of time remaining on supervision on the date of transfer; and
6. Add check boxes to item 1 on both form CR-251 and the *Receiving Court Comment Form* (form CR-252) for courts to note whether each form applies to a probation or mandatory supervision case.

The text of the amended rule is attached at pages 5–8. The revised forms are attached at pages 9–11.

Previous Council Action

The Judicial Council adopted rule 4.530 effective July 1, 2010, and forms CR-250, CR-251, and CR-252 effective July 1, 2012. There is no other relevant previous council action to report.

Rationale for Recommendation

The Legislature amended Penal Code section 1203.9 in 2009¹ to modify intercounty probation transfer procedures and require the Judicial Council to adopt rules of court that prescribe procedures by which the receiving court is to receive notice of the transfer motion and provide comments to the transferring court and that establish factors for the transferring court to consider when determining whether transfer is appropriate.

In response, the Judicial Council adopted rule 4.530 effective July 1, 2010. The rule sets forth various procedural requirements, including notice, orders, deadlines, and a comment process. The Judicial Council also adopted forms CR-250, CR-251, and CR-252, effective July 1, 2012. The forms are mandatory and designed to promote uniformity and facilitate implementation of rule 4.530’s requirements.

Realignment

Criminal justice realignment legislation implemented sweeping changes to long-standing felony sentencing laws, including eliminating prison as a sentence option for certain eligible defendants and authorizing courts to impose a period of “mandatory supervision” upon a defendant’s release

¹ Sen. Bill 431 (Benoit; Stats. 2009, ch. 588).

from county jail under newly added Penal Code section 1170(h)(5)(B). The new mandatory supervision scheme became effective October 1, 2011.

Rationale

Recent legislation² amended Penal Code section 1203.9 to apply intercounty probation transfer procedures to mandatory supervision cases under Penal Code section 1170(h)(5)(B). As a result, courts are now authorized to transfer jurisdiction of probation *and* mandatory supervision cases to the court in the county of the supervised person's residence.

The committee recommends amending rule 4.530 and revising forms CR-250, CR-251, and CR-252 to include transfers of mandatory supervision as required by the recent amendments to Penal Code section 1203.9. To facilitate court and probation department verification of the supervised person's county of residence, the recommendations would also add a data field to form CR-250 for petitioners to note the supervised person's address.

Comments, Alternatives Considered, and Policy Implications

The proposal was circulated for public comment from September 13 to September 27, 2012. A total of two comments were received, both of which agreed with the proposal. A chart with the comments and committee responses is attached at pages 12–13.

To enhance the information on the *Order for Transfer* (form CR-251) and *Receiving Court Comment Form* (form CR-252), the committee agreed with suggestions to add (1) check boxes to item 1 on both forms for courts to note whether the proposed transfer applies to a probation or mandatory supervision case, and (2) a data field to item 4a on form CR-251 for courts to note the balance of time remaining on supervision on the date of transfer.

The committee also considered but declined a suggestion to delay the November 1, 2012, effective date to allow courts more time to implement the proposed changes. Although the committee acknowledges the burdens associated with the implementation of form revisions, including training and case management updates, the committee declined the suggestion because the proposed changes are required by recent statutory amendments that took effect immediately in June. As such, the existing rule and forms are obsolete and updated versions require the earliest possible effective date to avoid confusion.

Implementation Requirements, Costs, and Operational Impacts

Expected costs and implementation requirements include training, case management system updates, and the production of new forms.

Attachments

1. Cal. Rules of Court, rule 4.530, at pages 5-7;

² Sen. Bill 1023 (Committee on Budget and Review; Stats. 2012, ch. 43).

2. Forms CR-250, CR-251, and CR-252, at pages 8–10;
3. Comment chart, at pages 11–12.

Rule 4.530 of the California Rules of Court, is amended effective November 1, 2012, to read:

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

3
4 **(a) Application**

5
6 This rule applies to intercounty transfers of probation and mandatory supervision
7 cases ~~transfers~~ under Penal Code section 1203.9. It does not apply to transfers of
8 cases in which probation has been granted under Penal Code section 1210.1.
9

10 **(b) Definitions**

11 As used in this rule:

12
13
14 (1) “Transferring court” means the superior court of the county in which the
15 supervised person ~~probationer~~ is supervised on probation or mandatory
16 supervision.
17

18 (2) “Receiving court” means the superior court of the county to which transfer of
19 the case and probation or mandatory supervision is proposed.
20

21 **(c) Motion**

22 Transfers may be made only after noticed motion in the transferring court.
23
24

25 **(d) Notice**

26
27 (1) If transfer is requested by the probation officer of the transferring county, the
28 probation officer must provide written notice of the date, time, and place set
29 for hearing on the motion to:
30

31 (A)–(D) * * *

32 (E) The ~~probationer~~ supervised person; and

33 (F) The ~~probationer’s~~ supervised person’s last counsel of record (if any).
34

35 (2) * * *
36

37
38
39 (3) If the party makes the motion, the motion must include a declaration that the
40 probation officer has refused to bring the motion, and the party must provide
41 written notice of the date, time, and place set for hearing on the motion to:
42

1 (A)–(C) * * *

2
3 (D) The ~~probationer~~-supervised person; and

4
5 (E) The ~~probationer's~~ supervised person's last counsel of record (if any).

6
7 Upon receipt of notice of a motion for transfer by a party, the probation
8 officer of the transferring county must provide notice to the victim, if any.

9
10 (4)–(5) * * *

11
12 (e) * * *

13
14 **(f) Factors**

15
16 The transferring court must consider at least the following factors when
17 determining whether transfer is appropriate:

18
19 (1) The permanency of the ~~probationer's~~ supervised person's residence. As used
20 in this subdivision, “residence” means the place where the ~~probationer~~
21 supervised person customarily lives exclusive of employment, school, or
22 other special or temporary purpose. A ~~probationer-supervised person~~ may
23 have only one residence. The fact that the ~~probationer-supervised person~~
24 intends to change residence to the receiving county, without further evidence
25 of how, when, and why this is to be accomplished, is insufficient to transfer
26 ~~probation-supervision~~;

27
28 (2) The availability of appropriate programs for the ~~offender-supervised person~~,
29 including substance abuse, domestic violence, sex offender, and collaborative
30 court programs;

31
32 (3)–(4) * * *

33
34 **(g) Transfer**

35
36 (1) If the transferring court determines that the permanent residence of the
37 ~~probationer-supervised person~~ is in the county of the receiving court, the
38 transferring court must transfer the case unless it determines that transfer
39 would be inappropriate and states its reasons on the record.

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41 (2) To the extent possible, the transferring court must establish any amount of
42 restitution owed by the ~~probationer-supervised person~~ before it orders the
43 transfer.

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- (3) Upon transfer of the case, the receiving court must accept the entire jurisdiction over the case.
- (4) The orders for transfer must include an order committing the ~~probationer~~ supervised person 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 county of the transferring court in accordance with Penal Code section 1203.1b.
- (5) * * *
- (6) The probation officer of the transferring county must transmit, at a minimum, any court orders, probation or mandatory supervision reports, case plans, and all records of payments to the probation officer of the receiving county within two weeks of the transfer order.
- (7) Upon transfer of the case, the probation officer of the transferring county must notify the ~~probationer~~ supervised person of the transfer order. The ~~probationer~~ supervised person must report to the probation officer of the receiving county no later than 30 days after transfer unless the transferring court orders the ~~probationer~~ supervised person to report sooner. If the ~~probationer~~ supervised person is in custody at the time of transfer, the ~~probationer~~ supervised person must report to the probation officer of the receiving county no later than 30 days after being released from custody unless the transferring court orders the ~~probationer~~ supervised person to report sooner. Any jail sentence imposed as a condition of probation or mandatory supervision prior to transfer must be served in the transferring county unless otherwise authorized by law.

Advisory Committee Comment

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.

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

PROBATION DEPARTMENT OR OTHER MOVING PARTY (Name and address): TELEPHONE NO.: _____ FAX NO.: _____ E-MAIL ADDRESS: _____	FOR COURT USE ONLY
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PEOPLE OF THE STATE OF CALIFORNIA v. DEFENDANT:

SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: CITY AND ZIP CODE: BRANCH NAME:

NOTICE AND MOTION FOR TRANSFER (Pen. Code, § 1203.9 and Cal. Rules of Court, rule 4.530)	CASE NUMBER:
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NOTICE

- Before filing this form, petitioners should consult with local court staff to schedule the date, time, and place for the hearing on the motion for transfer in item 1. In addition, notice must be provided as set forth below at least **60 days** before the date specified in item 1.
- If transfer is requested by a probation officer of the transferring county, notice must be provided to (a) the presiding judge (or designee) of the receiving court; (b) the probation officer (or designee) of the receiving county; (c) the prosecutor of the transferring county; (d) the victim, if any; (e) the supervised person; and (f) the supervised person's last counsel of record, if any.
- If transfer is requested by any other party, the party must first request in writing that the probation officer of the transferring county notice the motion, and the probation officer must decide within 30 days. Only after the probation officer has refused may the party make the motion. Failure by the probation officer to decide within 30 days is deemed a refusal. If the party makes the motion, the motion must include a declaration that the probation officer has refused to bring the motion, and the party must provide notice to (a) the presiding judge (or designee) of the receiving court; (b) the probation officers (or designees) of the receiving and transferring courts; (c) the prosecutor of the transferring county; (d) the supervised person; and (e) the supervised person's last counsel of record, if any. Upon receipt of this notice, the probation officer of the transferring county must provide notice to the victim, if any.

1. A hearing on this motion for intercounty case transfer has been scheduled in the above-entitled court on:

Date:	Time:	Dept:
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Regarding (name of supervised person): _____ Date of birth: _____

Address: _____

2. The supervised person was placed on (select one): probation mandatory supervision on (date): _____ for a period of: _____

3. I (print name): _____ hereby request transfer of the case to the Superior Court in the County of (specify): _____

4. I am (select one)

a probation officer of the transferring county. I have verified that the supervised person's residence is in the above county.

not a probation officer of the transferring county. I have asked the probation officer of the transferring county to notice this motion for me. I am making this motion only because the probation officer has either refused or failed to notify me of his or her decision within 30 days. (Cal. Rules of Court, rule 4.530(d)(2) and (3).)

5. If the court determines that the supervised person's permanent residence is in the county specified above, the court must transfer the case unless it determines that transfer would be inappropriate and states its reasons on the record. The court must consider at least the following factors (Cal. Rules of Court, rule 4.530(f)(1)):

- a. The permanency of the supervised person's residence;
- b. The availability of appropriate programs for the supervised person;
- c. Restitution orders, including whether transfer would impair the collection of restitution; and
- d. Victim issues, including the residence of the victim and whether transfer would impair enforcement of a protective order.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: _____ _____
SIGNATURE

SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: CITY AND ZIP CODE: BRANCH NAME: DEPT.:	FOR COURT USE ONLY
PEOPLE OF THE STATE OF CALIFORNIA v. DEFENDANT: _____ DATE OF BIRTH: _____	
ORDER FOR TRANSFER (Pen. Code, § 1203.9 and Cal. Rules of Court, rule 4.530)	CASE NUMBER: _____

1. A motion for intercounty transfer of *(select one)*: probation mandatory supervision in the above-entitled case was heard by this court on *(date)*:
2. Notice of the motion was provided as required by California Rules of Court, rule 4.530(d).
3. Before deciding the motion, the court considered
 - a. any comments provided by the receiving court; and
 - b. at least the following factors: (1) the permanency of the supervised person's residence, (2) the availability of appropriate programs for the supervised person, (3) restitution orders, and (4) victim issues.
4. The motion for transfer is *(select one)*:
 - Denied** for the reasons stated on the record.
 - Granted**. The court has determined the supervised person's county of residence and the case is hereby ordered transferred to the Superior Court of the County of:
 - a. The court of the receiving county must accept entire jurisdiction over the case.
The balance of time remaining on supervision is *(specify)*:
 - b. The supervised person is committed to the care and custody of the probation officer of the receiving county. Reimbursement of the reasonable costs for processing this transfer are to be paid by the supervised person to the county of the transferring court in accordance with Penal Code section 1203.1b.
 - c. The entire original court file, including any records of payments, but excluding exhibits, must be transmitted to the receiving court within two weeks of this order.
 - d. The probation officer of the transferring county must transmit, at a minimum, any court orders, probation or mandatory supervision reports, case plans, and all records of payments to the probation officer of the receiving county within two weeks of this order.
 - e. The probation officer of the transferring county must notify the supervised person of this transfer order.
 - f. The supervised person must report to the probation officer of the receiving county *(select one)*:
 - within 30 days of this order.
 - within *(specify)*: _____ days of this order.
 - within 30 days of release from custody.
 - within *(specify)*: _____ days of release from custody.
 - g. Any jail sentence imposed as a condition of probation or mandatory supervision prior to transfer must be served in the transferring county unless otherwise authorized by law.

Date: _____

By: _____
(JUDICIAL OFFICER)

FOR COURT USE ONLY

SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: CITY AND ZIP CODE: BRANCH NAME: DEPT.:	<i>FOR COURT USE ONLY</i>
PEOPLE OF THE STATE OF CALIFORNIA v. DEFENDANT:	DATE OF BIRTH:
RECEIVING COURT COMMENT FORM (Pen. Code, § 1203.9 and Cal. Rules of Court, rule 4.530)	CASE NUMBER:

*Under California Rules of Court, rule 4.530(e), any proposed receiving court may provide comments to the transferring court regarding the proposed transfer. Any comments must be provided **no later than 10 days before the date set for hearing** and must be in writing, be signed by a judge, and state why transfer is or is not appropriate. Before deciding a transfer motion, the transferring court must state on the record that it has received and considered any comments provided by the proposed receiving court.*

1. This court has received notice that a motion for intercounty transfer of (select one): probation mandatory supervision is scheduled to be heard in the above case as follows:

Date:
 Time:
 Superior Court of the County of:
 Address:

 Dept.:

2. Under rule 4.530(e) of the California Rules of Court, the court provides the following comments regarding the proposed transfer:

Date: _____ By: _____
 (JUDICIAL OFFICER)

<i>FOR COURT USE ONLY</i>

SP12-08**Criminal Justice Realignment: Intercounty Transfer Procedures** (amend Cal. Rules of Court, rule 4.530 and revise forms CR-250, CR-251, and CR-252)

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
1.	Hon. Helios Joe Hernandez Superior Court of Riverside County	A	I have reviewed [both proposals circulated for public comment by the Criminal Law Advisory Committee] and recommend that both be approved. Each of the proposals is designed to conform [the] Rules of Court and forms to the new Realignment procedures. I have informally [polled] the judges on the [California Judges Association] Criminal Law Committee and they are all in favor. Since we have not had time to have an official committee meeting or to run this through our Executive Committee it is not the official position of the California Judges Association.	No committee response required.
2.	Superior Court of Orange County Ms. Cherie Garofalo Criminal Operations Director	A	<p>Orange County agrees with the proposed changes to [rule] 4.530 and offers no comments in this regard.</p> <ul style="list-style-type: none"> • We offer the following suggestions to [forms] CR-251 and CR-252: On both of these forms add to item #1 a check box to select probation or mandatory supervision. • Additional Comments: There should be a place on the Order to notify the receiving county of the probation or mandatory supervision time remaining at the time transfer is approved. 	<ul style="list-style-type: none"> • To ensure that the forms clearly indicate whether the transfer applies to a probation or mandatory supervision case, the committee agreed to add check boxes to the <i>Order for Transfer (CR-251)</i> and <i>Receiving Court Comment Form (CR-252)</i>. • To enhance the information on the <i>Order for Transfer (CR-251)</i>, the committee agreed to add a data field for the transferring court to note the balance of supervision time on the date the case is transferred.

SP12-08

Criminal Justice Realignment: Intercounty Transfer Procedures (amend Cal. Rules of Court, rule 4.530 and revise forms CR-250, CR-251, and CR-252)

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			<p>Responses to request for specific comments by the advisory committee:</p> <p>Would the proposal provide cost savings? No</p> <p>What would the implementation requirements be for the courts? Changes to these forms would require procedure updating, training of approximately 40+ staff, case management system updates, docket code review, [Department of Justice] reporting requirements, analysis, etc. all of which are time consuming and costly.</p> <p>Would five days from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? No. We would recommend 3 months post approval.</p>	<p>Although the committee acknowledges the burdens associated with the implementation of form revisions, including training and case management updates, the committee declined to recommend delaying the proposed November 1, 2012, effective date. As noted in the Judicial Council report, the proposed changes are required in response to recent statutory amendments that were included in a budget trailer bill that took effect immediately in June. Accordingly, the committee believes that the rule and forms are obsolete and require the earliest possible effective date to avoid confusion.</p>