



## JUDICIAL COUNCIL OF CALIFORNIA

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# REPORT TO THE JUDICIAL COUNCIL

For business meeting on: December 16, 2016

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Title	Agenda Item Type
Judicial Council-Sponsored Legislation (Criminal Procedure): Transfer Back to Receiving Court for Limited Purpose after Intercounty Transfer	Action Required
	Effective Date
	December 16, 2016
Rules, Forms, Standards, or Statutes Affected	Date of Report
Amend Pen. Code, § 1203.9	October 28, 2016
Recommended by	Contact
Policy Coordination and Liaison Committee Hon. Kenneth K. So, Chair Criminal Law Advisory Committee Hon. Tricia A. Bigelow, Chair	Kimberly DaSilva, 415-865-4534 <a href="mailto:kimberly.dasilva@jud.ca.gov">kimberly.dasilva@jud.ca.gov</a> Sharon Reilly, 916-323-3121 <a href="mailto:sharon.reilly@jud.ca.gov">sharon.reilly@jud.ca.gov</a>

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### Executive Summary

The Policy Coordination and Liaison Committee and Criminal Law Advisory Committee recommend that the Judicial Council sponsor legislation to amend Penal Code section 1203.9 to authorize a receiving court to transfer a case of a person on probation or mandatory supervision back to the transferring court for a limited purpose when needed to best suit the needs of the court, the litigation at issue, or the parties. The proposal was developed at the request of criminal judges who expressed concerns about the inability of transferring courts to do so under current law.

### Recommendation

The Policy Coordination and Liaison Committee and Criminal Law Advisory Committee recommend that the Judicial Council sponsor legislation to amend Penal Code section 1203.9,<sup>1</sup> as follows:

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<sup>1</sup> All statutory references are to the Penal Code.

- Add subdivision (f) that reads: “The receiving court may refer a particular hearing or other court proceeding back to the transferring court for the limited purpose of conducting the proceeding if the receiving court determines, based upon the geographic location of the parties, victims, witnesses, or evidence, or for any other reason, that the matter would more appropriately be conducted by the transferring court. The Judicial Council shall adopt rules of court to govern referrals under this subdivision, including factors for consideration when determining the propriety of the referral and related procedural requirements.”

### **Previous Council Action**

Since the enactment of the Criminal Justice Realignment Act in 2009, the Judicial Council has sponsored or supported several measures relating to intercounty transfers. Most recently, in 2014, the Judicial Council sponsored Assembly Bill 2645 (Dababneh; Stats. 2014, ch. 111), which modified intercounty transfer procedures to require transferring courts to determine the amount of any victim restitution before transfer unless the court is unable to determine the amount within a reasonable time.

In 2013, the Judicial Council supported AB 492 (Quirk; Stats. 2013, ch. 13), which explicitly requires transferring courts to make the determination of the probationer’s county of residence for Proposition 36 probation cases. In doing so, the council noted that the Criminal Law Advisory Committee had developed a legislative proposal to eliminate the separate transfer requirements for Prop. 36 probation cases, serving no ostensible purpose, which was scheduled to circulate for public comment that spring. Because AB 492 sought to accomplish the same goal as the committee’s proposal, the council supported AB 492.

In 2009, the Judicial Council supported Senate Bill 431 (Benoit; Stats. 2009, ch. 588), which required a court, when granting probation to an individual who permanently resides in a county other than the county of conviction, to transfer 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 required the court in the county of the probationer’s residence to accept jurisdiction over the case and required the council to adopt rules of court providing factors for the court’s consideration when determining the appropriateness of a transfer (see Cal. Rules of Court, rule 4.530). The Judicial Council supported SB 431 because it addressed issues and concerns that have been raised over the years about the disparate transfer practices around the state.

### **Rationale for Recommendation**

Currently, section 1203.9(a)(2) and California Rules of Court, rule 4.530(e) allow a receiving court to provide comments for the record regarding the proposed transfer. Before deciding the transfer motion, the transferring court must state on the record that it received and considered those comments. (Cal. Rules of Court, rule 4.530(e)(3).) Although a receiving court may transfer a case back to the original court if the defendant moves there, that court has no ability to transfer

back under other circumstances. However, there are instances when sending a case back to the transferring court for a limited purpose would benefit the court, the litigation at issue, or the parties. Examples of this include postconviction challenges such as habeas corpus petitions, resentencing matters, appellate-related proceedings, and probation violation hearings that require testimony from witnesses only available in the jurisdiction of the transferring court.

To address these instances the committee proposes amending section 1203.9 to add subdivision (f) to authorize a receiving court to refer a particular hearing or other court proceeding back to the transferring court for the limited purpose of conducting the proceeding if the receiving court determines, based upon the geographic location of the parties, victims, witnesses, evidence, or for any other reason that the matter would more appropriately be conducted by the transferring court.

### **Comments, Alternatives Considered, and Policy Implications**

The proposal was circulated for public comment from April 15 to June 14, 2016. A total of eight comments were received: two agreed with the proposal, two did not indicate a position, and four did not agree with the proposal. The committee considered all of the comments. Noteworthy comments are described below, and a chart of all comments received is attached.

While maintaining its usefulness in some situations, the Superior Court of Orange County expressed a concern that the proposal would lead to more hearings than originally contemplated under this proposal. Anticipating this concern, the proposal requires the Judicial Council to adopt rules of court to govern referrals under the proposal, including factors for consideration when determining the propriety of the referral and related procedural requirements.

Both the Superior Courts of Orange and Los Angeles Counties commented that if enacted, the proposal would require the development of procedures (including rules and forms) to guide courts on the logistics of the limited transfers. Anticipating this need as well, the proposal requires the Judicial Council to adopt rules of court to govern referrals under the proposal, including factors for consideration when determining the propriety of the referral and related procedural requirements.

The Superior Court of Sacramento County expressed a concern that, due to the high volume of transfers, the proposal could prove costly in some jurisdictions due to the necessary involvement of court staff and support services. The committee considered this concern. However, the proposal is designed to ease burdens currently associated with litigating proceedings in a receiving court that are more efficiently litigated in the transferring court.

Both the Superior Court of Sacramento County and San Bernardino County Probation noted that the proposal does not address probation supervision during the limited transfer. The committee considered this comment and determined that the proposal should not alter existing law because probation supervision responsibility appropriately lies in the receiving court for continuity of supervision.

The Orange County Bar Association expressed concern that the proposal would change the practice of the courts in Prop. 47 cases, from reviewing the petitions in the receiving court, to reviewing them in the transferring court. The committee considered this issue. There is currently a split among two Courts of Appeal as to which court, transferring or receiving, is the proper court to hear a petition to recall a sentence under Prop. 47. *People v. Curry* (2106) 1 Cal.App.5th 1073, 1076, holds that petitions for recall of sentences under Prop. 47 are properly filed in the transferring court, resolving a conflict between the requirements of section 1170.18(a) (Prop. 47) and section 1203.9 (intercounty transfers) in favor of the language of Prop. 47.<sup>2</sup> However, *People v. Adelmann*, No. E064099 (Cal. Ct. App., Aug. 31, 2016), decided after *Curry*, resolves that same conflict in favor of section 1203.9.<sup>3</sup> Thus, *Adelmann* holds that petitions for recall of sentences under Prop. 47 are properly filed in the receiving court, creating a split among the Courts of Appeal on this issue.<sup>4</sup>

Consistent with the Criminal Law Advisory Committee’s (CLAC) discussion, the cochairs clarified the proposal to add “or for any other reason” as a possible factor for the referral. The clarification is intended to provide flexibility to the proposal and to prevent the need for further amendment, however this conflict is resolved.

CLAC approved this proposal on September 8, 2016, after a discussion of the impact of *Curry*. During that meeting the committee approved the proposal with modifications in light of *Curry*. However, after that meeting *People v. Adelmann* came to the committee’s attention. Because of this split and consistent with the committee’s discussion, the chairs clarified the proposal to add “or for any other reason” as a possible factor for a referral back to the original transferring court. The clarification is intended to provide flexibility to the proposal and to prevent the need for further amendment, however this conflict is resolved.

Additionally, during its meeting on October 13, 2016, the Joint Legislative Subcommittee of the Trial Court Presiding Judges Advisory Committee and the Court Executives Advisory

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<sup>2</sup> In reaching its decision, *Curry* states: “... this is one of the rare Proposition 47 cases when all we need is the plain statutory language, specifically, the language in the proposition that a ‘petition for a recall of sentence’ by a probationer, or a former probationer, is to be filed with the ‘trial court that entered the judgment of conviction’” (*Id.* at p. 1076).

<sup>3</sup> Specifically, *Adelmann* held: “Based on a practical, reasonable, commonsense analysis, allowing the court that currently has entire jurisdiction over a case to decide a section 1170.18 petition is the wisest and most appropriate policy.”

<sup>4</sup> While *Adelmann* distinguishes itself from *Curry* by narrowing application of *Curry*’s holding to Post Release Community Service cases, the committee does not agree with the distinction. (See *People v. Adelmann*, *id.* at p. 4.) Note that *Adelmann* relies upon the legal treatise, *Sentencing California Crimes*, authored by Judge Richard Couzens and Justice Tricia Bigelow, in support of its conclusion that Prop. 47 petitions must be filed in the receiving court. Yet, Couzens and Bigelow, cochairs of this committee, dispute *Adelmann*’s narrow reading of *Curry*. And *Curry* explicitly includes probationers in its holding. (See *People v. Curry*, *supra* at 1076: “...this is one of the rare Proposition 47 cases when all we need is the plain statutory language, specifically, the language in the proposition that a ‘petition for recall of sentence’ by a probationer, or a former probationer, is to be filed with the ‘trial court that entered the judgment of conviction...’.”)

Committee (JLS) echoed the comments concerning probation supervision, the possibility of creating more hearings for the sentencing court, and the anticipated need for the development of rules of court and forms to guide courts' implementation. JLS approved of the committee's responses, including the continuation of supervision by receiving courts, the anticipation that the proposal would reduce the burden on the courts overall, and the proposal's explicit provision for the development of rules and forms by the Judicial Council. JLS also questioned whether the sentencing court would have the ability to refuse a referral under the proposal and expressed approval that the sentencing court would not have that ability. JLS voted to recommend the proposal be approved for Judicial Council sponsorship.

### **Alternatives**

The committees determined that the proposal was appropriate for recommendation to the Judicial Council and did not consider alternatives to this proposal.

### **Implementation Requirements, Costs, and Operational Impacts**

While transferring courts would have added proceedings, receiving courts would have fewer. The overall cost to the court system, as well as the burden on individual witnesses, would be reduced because witnesses from the original jurisdiction would not be required to travel to the receiving county. The proposal is designed to ease burdens currently associated with litigating proceedings in a receiving court that are more efficiently litigated in the transferring court.

### **Relevant Strategic Plan Goals and Operational Plan Objectives**

The proposed amendment to section 1203.9 supports the policies underlying Goal 3, Modernization of Management and Administration. Specifically, this proposed amendment supports Goal 3, Objective 5, "Develop and implement effective trial and appellate case management rules, procedures, techniques, and practices to promote the fair, timely, consistent, and efficient processing of all types of cases."

### **Attachments**

1. Text of proposed Penal Code section 1203.9, at page 6
2. Chart of comments, at pages 7–20

Section 1203.9 of the Penal Code would be amended, effective January 1, 2018, to read:

1 **§ 1203.9. Probation or mandatory supervision; transfer of cases; jurisdiction; payment of**  
2 **fees and penalties; rules**

3  
4 (a)–(e) \* \* \*

5  
6 (f) The receiving court may refer a particular hearing or other court proceeding back to the  
7 transferring court for the limited purpose of conducting the proceeding if the receiving court  
8 determines, based upon the geographic location of the parties, victims, witnesses, or evidence, or  
9 for any other reason, that the matter would more appropriately be conducted by the transferring  
10 court. The Judicial Council shall adopt rules of court to govern referrals under this subdivision,  
11 including factors for consideration when determining the propriety of the referral and related  
12 procedural requirements.

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

19  
20 (1) Permanency of residence of the offender.

21  
22 (2) Local programs available for the offender.

23  
24 (3) Restitution orders and victim issues.

25  
26 (h) The Judicial Council shall consider adoption of rules of court as it deems appropriate to  
27 implement the collection, accounting, and disbursement requirements of subdivisions (d) and (e).  
28

**LEG16-06**

**Criminal Procedure: Transfer Back to Receiving Court for Limited Purpose after Intercounty Transfer**

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	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
1.	Albert De La Isla Principal Administrative Analyst Superior Court of California, Orange County		<p>This proposal can be useful for specific hearings, however, there is concern that this provision will open the flood gates for many more hearings than for which this was intended. We are currently working through some challenges with Financial Hearings after transfer that I believe would benefit from this change, however, I do not agree with it.</p> <p>If this is passed, procedures, requirements for findings in the record and forms for notice to parties, notice to the transferring court need to be developed to ensure the right hearings are transferred and for the right reasons.</p> <p>For the hearings I mention above, the big question is, do we inconvenience the defendant by going to another county for a hearing or the probation office that is collecting the fines and fees? I believe that county probation departments should work together and represent each other at financial hearings so that the case remains at the receiving court and the defendant is not required to travel (and incur the undue hardship related to travel) when asking to review the financial aspects of their case.</p> <p>Request for Specific Comments In addition to comments on the proposal as a whole, the advisory committee is interested in comments on the following:</p> <ul style="list-style-type: none"> <li>• Does the proposal appropriately address the</li> </ul>	<p>The committee anticipated this concern. The proposal requires the Judicial Council to adopt rules of court to govern referrals under the proposal, including factors for consideration when determining the propriety of the referral and related procedural requirements.</p> <p>The committee anticipated this need. The proposal requires the Judicial Council to adopt rules of court to govern referrals under the proposal, including factors for consideration when determining the propriety of the referral and related procedural requirements.</p>

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			<p>stated purpose? Response: Yes, but with the modifications I noted above.</p> <p>The advisory committee also seeks comments from courts on the following cost and implementation matters:</p> <ul style="list-style-type: none"> <li>• Would the proposal provide cost savings? If so please quantify. Response: No.</li> <li>• 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. Response: Very limited, procedures would need to be developed to hear these cases after transfer.</li> <li>• Would two months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? Response: Yes, provided the proper rules and forms are published along with this change.</li> <li>• How well would this proposal work in courts of different sizes? Response: Yes.</li> </ul>	
2.	Trish Marez		Amendment to PC 1203.9 to allow the receiving	



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	<p>Director of Criminal Operations Sacramento Superior Court</p>		<p>court to transfer a case back to the transferring court for limited jurisdiction purposes i.e. Habeas Corpus Petitions, re-sentencing, appellate related proceedings, or probation violation hearings which require testimony from witnesses in the transferring county.</p> <p>Background:</p> <p>Penal Code section 1203.9 governs the intercounty transfer of post-judgment cases when the defendant is on Probation or Mandatory Supervision.</p> <p>Current law relevant language:</p> <p>CRC 4.530</p> <ul style="list-style-type: none"> <li>•Sets parameters for filing the transfer motion including required notices and allows for the receiving court to comment on the motion.</li> <li>•Factors that must be considered are:               <ul style="list-style-type: none"> <li>—Permanent residence of supervisee.</li> <li>—Availability of appropriate programs.</li> <li>—Effects on restitution orders.</li> <li>—Victim issues re: residence and ability to enforce protective orders.</li> </ul> </li> <li>•Case must be transferred if permanent residence of supervisee is determined to be in the receiving county unless determination is made deeming in inappropriate.</li> <li>•Restitution must be determined prior to</li> </ul>	

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			<p>transfer.</p> <ul style="list-style-type: none"> <li>•Entire jurisdiction must be accepted by the receiving court.</li> <li>•Costs of transfer paid by supervisee.</li> <li>•Jail sentence must be completed prior to transfer.</li> </ul> <p>PC 1203.9</p> <ul style="list-style-type: none"> <li>•Transfers case to court of permanent residency of supervisee for the remaining duration of probation unless inappropriate.</li> <li>•Outstanding fines/fees etc. remain owed in transferring court for collection and distribution.</li> <li>•Additional fees from receiving court/probation also collected by transferring court.</li> <li>•If elected, receiving court may take over collection of owed fines/fees etc. and transmit to transferring court.</li> </ul> <p>Current Court Processes:</p> <p>Transfer-Out</p> <ul style="list-style-type: none"> <li>•Pre-Motion Court processes (Support Staff)</li> <li>•Recommendation from Probation</li> <li>•Court hearing conducted</li> <li>•Minute order prepared</li> <li>•Order processed and conformed</li> <li>•File updated in JIMS (Probation Terminated in Sacramento)</li> <li>•File sent to records (change of venue desk)</li> <li>•Copy of entire file made</li> <li>•Original file sent to receiving court by certified mail</li> </ul>	

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	Commentator	Position	Comment	Committee Response
			<ul style="list-style-type: none"> <li>•JIMS entries</li> <li>•Certified mail receipt received and placed in file</li>   <li>Transfer-In</li> <li>•Receive file and review</li> <li>•Create case in JIMS</li> <li>•Enter Probation information, charges, fees, etc. and refer to Probation dept.</li> <li>•Physical file created</li> <li>•Court hearing conducted upon filing of violation</li>   <li>Transfer Back-In</li> <li>•Receive file and review</li> <li>•Remove probation termination from JIMS and refer to Probation dept.</li> <li>•Enter any violations and sentencing information if applicable</li> <li>•File sent to records (change of venue desk)</li> <li>•Copies replaced with original documents and JIMS entries are done</li> <li>•Court hearing conducted upon filing of violation</li>   <li>Requests for Specific Comments:</li>   <li>1.Does the proposal appropriately address the stated purpose?</li>   <li>Yes and No. The specific purpose of the proposal is clear; however it does not address the logistics of the back and forth transfer of</li> </ul>	

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			<p>cases between counties. Currently entire jurisdiction is transferred to the receiving county. Within this proposal a case may be transferred back for limited jurisdictional purposes only. In these limited transfers will the court file be transferred each time? Will each Court maintain their own file and inform the other county of the hearings and dispositions?</p> <p>Which County's Probation Department will supply information to the Court?</p> <p>2. Would the proposal provide cost savings?</p> <p>No. This proposal would require additional funds from each Court for additional staffing hours, copies and mailings.</p> <p>3. What would the implementation requirements be for courts? Training Staff, revising processes and procedures, case management system codes or modifications)</p> <p>Depending on the final instruction regarding physical file transfers, this is difficult to answer. Training staff on a new process can take many hours. This process would require new procedures written as well as potential modification to our case management system. All modifications would be dependent on whether each county would be required to maintain a case record of the same case file.</p>	<p>The committee considered this comment and determined that the proposal should not alter existing law. Probation supervision responsibility lies in the receiving court for continuity of supervision.</p>

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			<p>More information is needed to access the actual impacts on processes and staff training.</p> <p>4. Would two months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?</p> <p>Yes. During this two month period procedures would be reviewed and modified. Upon procedures being created staffing would be informed and trained.</p> <p>5. How well would this proposal work in courts of different sizes?</p> <p>Considering the main financial impacts would be to staffing hours this process has the potential to disrupt smaller court processes. In larger courts the additional staffing hours would be absorbed easier than in a court with only a few staff members. Also, depending on the details required within the court's case management system courts impacts would range widely.</p> <p><b>IMPACTS</b></p> <p>Accurate impacts are difficult to determine with the limited information available. Definite adaptations will include court process changes and new written procedures. The initial transfer process may require modification to address the</p>	

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			<p>maintenance of files and communication between courts and with Probation. The possibility of cases returning for limited jurisdiction purposes will require the transfer of information between courts several times and may result in possible delays in the enforcement of judicial orders. Electronic Communication with the Sac Probation Department would need altering as well due to the current termination of probation process.</p> <p>There have been 134 transfers granted from 1/1/16 through 4/25/16. With approximately 400 cases transferred out annually, this revision could prove costly. According to this revision all cases could potentially be returned for a limited purpose without prior knowledge. Costs would be incurred for each court and probation department at each transfer for support services and in court staffing. More information is needed to determine the probability of how many of these cases will have issues that require limited purpose transferring.</p>	<p>The committee has considered this concern. However, the proposal is designed to ease burdens currently associated with litigating proceedings in a receiving court that are more efficiently litigated in the transferring court.</p>
3.	Orange County Bar Association by Todd Friedland President	N	<p>The proposal suggests amendments to Penal Code section 1203.9, the statute which governs intercounty transfer procedures for all probation and mandatory supervision cases. Typically, the statute is used when a probationer or supervisee resides in a county other than the county in which the case was adjudicated. When a case is ordered transferred, the transfer</p>	

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	Commentator	Position	Comment	Committee Response
			<p>is for all purposes and the case cannot be heard in the county of origin unless transferred back under the statute. The proposal suggests an amendment to the statute which would allow the receiving court to transfer the case back to the transferring court for limited purposes where it would benefit the court, the litigation at issue, or the parties. The proposal lists the following examples: “post conviction challenges such as habeas corpus petitions, re-sentencing or appellate related proceedings, or instances in which probation violation hearings require testimony from witnesses who are only available in the original jurisdiction.”</p> <p>The examples, particular the one concerning re-sentencing, raise considerable access to justice concerns for defendants in criminal actions. With the passage of Proposition 47, thousands of defendants state-wide have been resentenced and will be continued to be resentenced on cases impacted by the initiative. In cases transferred to other counties under section 1203.9, there was initially considerable confusion throughout the state about whether those petitions for resentencing can be handled in the receiving court or whether they need to be transferred back to the court or origin. Currently, those cases are being handled in the receiving jurisdiction in accordance with the statutory mandate that the “receiving county shall accept the entire jurisdiction over the case.” (Pen. Code, § 1203.9, subd. (b).) Under the proposal,</p>	<p>The committee considered this issue at length. There is currently a split among the appellate courts as to which court, transferring or the receiving, is the proper court to hear a petition to recall a sentence under Proposition 47. Consistent with the committee’s discussion, the proposal has been clarified to add “or for any other reason” as a possible factor for the referral. The clarification is intended to provide flexibility to the proposal and prevent the need for further amendment however this conflict is resolved.</p>

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			courts would have the discretion to send those cases back to transferring courts which would impose considerable hardship—in terms of travel, expense and time—on individuals seeking the relief they are entitled to under the law.	
4.	San Bernardino County Probation By Stacy Thacker Executive Secretary III	N	1. The proposal does not address probation supervision. If a case is transferred back to the transferring county for limited purposes, will the receiving county continue to provide supervision or will supervision also be transferred back to the transferring county? The proposal does not address/clarify the status of probation supervision, whether retained or transferred, during the period of transfer to the transferring county for limited purposes. If retained and a violation of probation occurs during that period, which county addresses the violation.	The committee considered this comment and determined that probation supervision during the limited transfer would remain in the receiving court for continuity of supervision.
5.	San Diego County District Attorney By David Greenberg Chief Deputy District Attorney	N	This will add too much confusion. I believe the court receiving the case can handle all matters pertaining to it. It provides finality.	No response required.
6.	Sierra Co Probation – California By Jeff Bosworth Chief Probation Officer	N	I think that the proposal is open to some abuse; here are some examples of why I don't think it would work very well:  Example one (concurrent): 1st county: sentences defendant to 16 months county jail. 2nd county sentences defendant to 3 years	



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			<p>county jail but has them served concurrent to case in 1st county. 2nd county then orders the terms to be served in 1st county, even though the majority of the time is from 2nd county case.</p> <p>Example two (consecutive): 1st county sentences defendant to 16 months in jail. 2nd county sentences def to three years in jail, consecutive This becomes a total of 3 years (from county #2) and 8 months (county #1) 2nd county then orders the terms to be served in 1st county, even though the majority of the time is from 2nd county case.</p> <p>Example three (split sentence): 1st county sentences defendant to 16 months split: 8 jail &amp; 8 on mandatory supervision 2nd county sentences defendant to 2 years with a split: 1 mo jail, 1 year 23 months supervision (so can go to rehab) At time of 2nd sentencing, def has 8 months jail credit on what is now an 8 month subordinate term By the rules stated above, the 2nd court could order the defendant to do their supervision time in 1st county – even though they are time served there.</p> <p>Here is an alternative suggestion I think would be better</p> <p>As usual, starts with decisions by second sentencing judge, who makes these findings:</p>	<p>This comment is beyond the scope of the proposal.</p>

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			<ul style="list-style-type: none"> <li>• The permanent residence of defendant</li> <li>• Which county term has longest remaining exposure – after allowances for credits, subordinate terms, etc.</li> </ul> <p>Concurrent sentence:</p> <ul style="list-style-type: none"> <li>• Def to be housed at county that has longest remaining custody exposure</li> <li>• After completion of actual custody time, def will be supervised for any split portion at county of residence</li> <li>• If it so desires, the county sheriff wherein defendant is doing actual custody may bill other county for 50% of costs of concurrent jail stay</li> <li>• If second county sheriff prefers, they may accept custody of individual at their facility rather than deal with billing (they could not bill first county).</li> </ul> <p>The idea with the billing is to put an equal share of the costs on both counties during time when custody is joint. This is important to small counties.</p> <p>Some larger counties may decide billing isn't worth the trouble, so would not have to. Also, some counties may prefer to house defendant at their own place, rather than pay half.</p> <p>Consecutive sentencing:</p> <ul style="list-style-type: none"> <li>• Def is housed at county that has principal term</li> <li>• If def permanent residence is county of</li> </ul>	

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	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
			<p>principal term, then def stays put and finishes rest of sentence and any MS time at county of residence</p> <ul style="list-style-type: none"> <li>o The principal county may bill subordinate term county for cost of incarceration during subordinate term</li> <li>• If def permanent residence is county of subordinate term, then upon completion of principal term, the defendant is transferred in custody to county of subordinate term where they will complete their jail sentence and any mandatory supervision that is required.</li> </ul>	
7.	Superior Court of California, Los Angeles	A	<p>The Criminal Law Advisory Committee proposes amending Penal Code section 1203.9 to authorize a receiving court to transfer a case of a person on probation or mandatory supervision back to the transferring court for a limited purpose when needed to best suit the needs of the court, the litigation at issue, or the parties. There are instances when transferring a case back to the transferring court for a limited purpose would benefit the court, the litigation at issue, or the parties. Examples of this include post-conviction challenges such as habeas corpus petitions, re-sentencing or appellate related proceedings, or instances in which probation violation hearings require testimony from witnesses who are only available in the original jurisdiction.</p> <p>This would give bench officers more flexibility in handling such matters and is discretionary in any event.</p> <p>A new process will need to be created to</p>	The committee anticipated this need. The proposal

**LEG16-06****Criminal Procedure: Transfer Back to Receiving Court for Limited Purpose after Intercounty Transfer**

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

	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
			establish limited transfers between counties. Parameters for the use of this type of transfer need to be established by the Judicial Council. This proposal will have a greater impact on our criminal court locations that are in close proximity to neighboring counties. A new form to address this process will be required.	requires the Judicial Council to adopt rules of court to govern referrals under the proposal, including factors for consideration when determining the propriety of the referral and related procedural requirements.
8.	Superior Court of California, County of San Diego By Mike Roddy	A		No response required.