



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: June 23–24, 2016

Title	Agenda Item Type
Collections: Intercounty Probation Case Transfer Statewide Fiscal Procedures	Action Required
Rules, Forms, Standards, or Statutes Affected	Effective Date
None	July 1, 2016
Recommended by	Date of Report
Judicial Council Staff	June 10, 2016
Zlatko Theodorovic, Director and Chief Financial Officer, Finance	Contact
	Maria Lira, 818-558-3081 maria.lira@jud.ca.gov

Executive Summary

The Judicial Council Finance staff recommend that council approve the attached *Intercounty Probation Case Transfer Statewide Fiscal Procedures*, which outline a uniform process and establish responsibility for the proper collection, accounting, and distribution of any and all court-ordered payments made by the defendant to the transferring or receiving court, or its authorized collection program, pursuant to Penal Code section 1203.9. The sample agreement satisfies the statutory requirement for a written agreement that allows a receiving court to charge administrative fees for collecting payments from a defendant on behalf of the transferring court.

Recommendation

Judicial Council staff recommend that the council, effective July 1, 2016:

1. Approve the *Intercounty Probation Case Transfer Statewide Fiscal Procedures* and sample agreement (see attached) and direct each superior court to collaborate with its county, as necessary, to implement the procedures.

2. Delegate authority to Judicial Council Finance, Administrative Division, to revise the procedures in response to any rule amendments or related action affecting the transfer of probation cases.

Previous Council Action

There has been no previous Judicial Council action related to this report.

Rationale for Recommendation

The recommendation is made as a result of amendments to Penal Code section 1203.9 under Assembly Bill 673 (Stats. 2015, ch. 251) which, among other things, establishes responsibility for the collection of any court-ordered debt that is unpaid at the time a case is transferred. As amended, the statute provides that if the transferring court has ordered the defendant to pay fines, fees, forfeitures, penalties, assessments, or restitution, the transfer order shall require that those and any other amounts ordered by the transferring court, that are still unpaid at the time of transfer, be paid by the defendant to the collection program for the transferring court for proper distribution and accounting, unless—and with approval from the transferring court—the receiving court elects to collect payments from the defendant on behalf of the transferring court.

In July 2010, the council adopted rule 4.530 of the California Rules of Court to implement an intercounty probation case transfer process, as required by Penal Code section 1203.9. In 2012, the council revised forms CR-250, CR-251, and CR 252 to assist with the intercounty transfer process, including the Notice of Motion, Order for Transfer, and the Receiving Court Comment Form—none of which include collections procedures. The *Intercounty Probation Case Transfer Statewide Fiscal Procedures* outline a uniform process for the proper collection, accounting, and distribution of any and all court-ordered debt from transferred probation cases.

The statute also requires that the council consider adoption of rules of court to implement the collection, accounting, and distribution requirements for intercounty probation case transfers. The Criminal Law Advisory Committee (CLAC) has released for public comment a proposal to amend rule 4.530, which will refer to these procedures as Judicial Council fiscal procedures and require court compliance.

Comments, Alternatives Considered, and Policy Implications

The procedures and sample agreement were developed by staff with considerable guidance from a working group of court and county representatives with collections expertise, created under the purview of Judicial Council Finance. Also, the procedures were shared with a representative of the Chief Probation Officers of California. The group and Judicial Council staff met by phone five times between February 19 and May 5, 2016, to provide their input and guidance on the procedures and sample agreement. This effort was facilitated by significant support from staff of various Judicial Council offices, including Criminal Justice Services, Legal Services, and Finance.

Earlier draft versions of the procedures and agreement were presented to the Executive Committee of the Court Executives Advisory Committee (CEAC) for its review and input at its March 16, 2016 business meeting. Discussions during that meeting resulted in minor nonsubstantive changes to the procedures, and a recommendation for a multilateral agreement. As a result, Legal Services staff of the Judicial Council developed a sample agreement that may be executed as a multilateral or court-to-court agreement, providing greater flexibility for the courts. Finance staff worked in consultation with the chair and vice-chair of CEAC to finalize the procedures and agreement. In May 2016, these final versions were submitted by e-mail to the members of CEAC for their information.

Implementation Requirements, Costs, and Operational Impacts

There is no anticipated operational impact related to the implementation of these procedures, as the intercounty transfer of probation cases is currently administered by the courts, as mandated by Penal Code section 1203.9.

The transferring court may recover allowable operating costs incurred for the collection of delinquent court-ordered debt collected from transferred cases, as authorized by Penal Code section 1463.007.

Relevant Strategic Plan Goals and Operational Plan Objectives

The recommendations contained in this report pertain to statutory requirements.

The procedures support operational plan, Objective III.A.4, as it pertains to upholding the integrity of court orders, by improving the collection of fines, fees, penalties, and assessments statewide.

Attachments

1. *Intercounty Probation Case Transfers Fiscal Procedures*, at pages 4–10
2. Sample Agreement, at pages 11–13

Intercounty Probation Case Transfer Statewide Fiscal Procedures

1. Background

Penal Code section 1203.9 governs intercounty transfers of probation and mandatory supervision cases. On September 3, 2015, [Assembly Bill 673](#) (Stats. 2015, ch. 251) amended [Penal Code section 1203.9](#) to, among other things, establish responsibility for the collection of any court-ordered debt that is unpaid at the time a case is transferred. The statute provides that if the transferring court has ordered the defendant to pay fines, fees, forfeitures, penalties, assessments, or restitution, the transfer order shall require that those and any other amounts ordered by the transferring court, that are still unpaid at the time of transfer, be paid by the defendant to the collection program for the transferring court for proper distribution and accounting once collected. Nonetheless, with the transferring court's approval, the receiving court may elect to collect all of the court-ordered payments from a defendant.

The following procedures for the collection, accounting, and distribution of any outstanding fines, fees, forfeitures, penalties, assessments, and restitution from a transferred case, must be followed by the transferring or receiving court, county agency, or its authorized collection program.

2. Terms As Used in This Procedure

- (1) "Transferring court" means the superior court of the county in which the supervised person is supervised, on probation, or on mandatory supervision.

- (2) "Receiving court" means the superior court of the county to which transfer of the case and probation or mandatory supervision is proposed.

- (3) "County Agency" means any agency within the county such as the Department of Revenue, Probation Department, or the Treasurer and Tax Collector.

- (4) "Collection program" means a superior court, county, private vendor, intrabranch program, or Franchise Tax Board authorized to collect unpaid court-ordered fines, fees, forfeitures, penalties, assessments, and restitution.

- (5) "Administrative fee" as referenced in [Penal Code section 1203.9](#) means the *actual* collections cost that a receiving court may charge for collecting unpaid court-ordered fines, fees, forfeitures, penalties, and assessments from a defendant on behalf of the transferring court or its authorized collection program. These fees are in addition to any administrative fee assessed for administering an accounts receivables or installment payment plan ([Pen. Code, § 1205\(e\)](#)) and the 15 percent (15%) that can be added to the total amount ordered to offset the administrative cost of collecting restitution ([Pen. Code, § 1203.1\(l\)](#)).

Intercounty Probation Case Transfer Statewide Fiscal Procedures

(6) “Additional local fees and costs” as referenced in Penal Code section 1203.9(d)(2) means any fees or costs authorized by Board of Supervisors resolution, local county ordinance, or California code that may be imposed by a receiving court or receiving county probation department.

3. The Order for Transfer

If the transferring court determines that the permanent residence of the supervised person is in the county of the receiving court, the transferring court must transfer the case, unless it determines that transfer would be inappropriate and states its reasons on the record. ([Cal. Rules of Court, rule 4.530\(g\)\(1\).](#))

The transferring court shall do the following as it pertains to the transfer order:

- Complete and file form [CR-250, Notice and Motion for Transfer.](#)
- Complete and file form [CR-251, Order for Transfer.](#)
- Include an order committing the defendant to the care and custody of the probation officer of the receiving court 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.](#) ([Cal. Rules of Court, rule 4.530\(g\)\(4\)](#)); [Pen. Code, § 1203.9 \(c\).](#))
- Transmit any records of payments and the entire court file, except exhibits, to the receiving court within two weeks of the transfer order. ([Cal. Rules of Court, rule 4.530\(g\)\(5\).](#))
- Transmit, at minimum, any court orders, probation or mandatory supervision reports, case plans, and all records of payments to the probation officer of the receiving court within two weeks of the transfer order. ([Cal. Rules of Court, rule 4.530\(g\)\(6\).](#))
- The court file should include all financial information, such as:
 - The total amount of outstanding debt/accounts receivables.
 - The installment payment amount and due date.
 - Specific fine, fee, penalty assessment, and restitution amounts that were assessed and the current balance of each assessment, including the amount and type of administrative fee(s) assessed under [Penal Code section 1205\(e\).](#)
- State on the record who is the responsible entity for collecting payments from the defendant; transferring or receiving court (or its authorized collection program).

4. Collections

There are two options in intercounty transfers regarding the collection of unpaid fines, fees, forfeitures, penalties, assessments, and restitution:

- a. Transfers where the transferring court or county agency is responsible for collections.
- b. Transfers where the receiving court or county agency is responsible for collections.

Intercounty Probation Case Transfer Statewide Fiscal Procedures

4a. Transfers where the transferring court or county agency is responsible for collections:

The transferring court or county agency, or its authorized collection program, shall do the following:

- Collect all unpaid court-ordered fines, fees, forfeitures, penalties, assessments, and restitution included in a transfer order, using the guidelines and practices established by [Penal Code section 1463.010](#).
- Collect any local fees or costs imposed by the receiving court or receiving county probation department, upon receiving notification from the receiving court, county agency, or its authorized collection program of the amount imposed and the installment payment amount ([Pen. Code, § 1203.9\(d\)\(3\)](#)). Remit all revenue collected to the receiving court, for proper accounting and distribution, using established practices for the deposit and accounting of all collected court-ordered debt.
- Refer to the Judicial Council's *Guidelines and Standards for Cost Recovery* available at <http://www.courts.ca.gov/partners/455.htm>.

4b. Transfers where the receiving court or county agency is responsible for collections

With approval from the transferring court, the receiving court may elect to collect all of the court-ordered payments from a defendant, including any fines, fees, forfeitures, penalties, assessments, restitution, or any other amounts ordered by the transferring court. ([Pen. Code, § 1203.9\(e\)\(1\)](#).) If the receiving court chooses to collect, the receiving court, county agency, or its authorized collection program shall do the following:

- Collect on behalf of the transferring court all unpaid fines, fees, forfeitures, penalties, assessments, restitution, and any other amounts, using the guidelines and practices established by [Penal Code section 1463.010](#).
- Mail a notice to the defendant informing them of the unpaid balance amount and direct them to submit payment to the authorized collection program.
- Notify the transferring court, county agency, and/or its authorized collection program of any change (to case file) resulting from the imposition of local fees and costs (including the total amount imposed, installment payment amount, and due date). ([Pen. Code, § 1203.9\(d\)\(2\)](#).)
- Notify the defendant of any additional local fees or costs imposed and direct them to make payments to the authorized collection program.
- Notify the transferring court of any change to case status. For example, if a case transferred as non delinquent becomes delinquent while the receiving court is collecting, the transferring court must be notified. The notice should include the date the case became delinquent.
- Add a fee to offset the cost of administering an installment payment or accounts receivable plan for a transferred case ([Pen. Code, § 1205\(e\)](#)), only if the fee **has not** been previously added by the transferring court.

Intercounty Probation Case Transfer Statewide Fiscal Procedures

- Remit gross collections to the transferring court and charge (invoice) for administrative fees equal to the *actual* cost of collecting unpaid court-ordered fines, fees, forfeitures, penalties, and assessments, and up to 15 percent (15%) for restitution, as agreed to in writing. (See sample agreement.)

5. Victim Restitution

If victim restitution was ordered as a condition of probation or mandatory supervision, the transferring court shall determine the amount of restitution *before* the transfer unless the court finds that the determination cannot be made within a reasonable time from when the motion for transfer is made. If the case is transferred without a determination of the amount of restitution, the transferring court must complete the determination as soon as practicable. ([Pen. Code, § 1203.9 \(a\)\(3\).](#))

- If the transferring court makes a determination after the transfer, the receiving court must be notified of the restitution amount.
- If the receiving court, county agency, or its authorized collection program obtains any information on the victim or if the victim submits a claim, the transferring court should be contacted to expedite the completion of the determination.

6. Transfer Fee

The order for transfer shall contain, if applicable, an order for reimbursement of reasonable costs for processing the transfer to be paid to the transferring county in accordance with Penal Code section 1203.1b. ([Pen. Code, § 1203.9\(c\).](#))

- Transfer fees must be ordered by the transferring court at the time the transfer order is made.
- Reasonable costs ordered for processing the transfer shall not exceed actual cost.
- The transferring county must notify the defendant of the order for reimbursement of reasonable costs, including the total amount ordered.

7. Additional Local Fees and Costs

The receiving court or receiving county probation department may impose additional local fees and costs as authorized, and shall notify the authorized collection program for the transferring court of those changes. ([Pen. Code, § 1203.9\(d\)\(2\).](#))

8. Payments, Distribution, and Accounting

The transferring court will perform all distribution activities for any and all revenue collected from a transferred case. The SCO's [Trial Court Revenue Distribution Guidelines](#) (formerly Appendix C) and [Assembly Bill 3000 Court Surcharge Distribution Guidelines](#) may be used as references.

Intercounty Probation Case Transfer Statewide Fiscal Procedures

- The transferring or receiving court, county agency, and its authorized collections program must notify each other of any and all payments made.
- All payments made by the defendant shall be remitted to the transferring court for distribution.
- The transferring court, county agency, or its authorized collection program will perform all accounting activities for any and all revenue collected from a transferred case, including any local fees or costs imposed by the receiving court or receiving county probation department, using established practices for the deposit and accounting of all collected court-ordered debt.
- The receiving court must deposit all revenue collected in a separate account for remittance to the transferring court, using established practices for the deposit and accounting of all collected court-ordered debt.
- The receiving court shall not perform distribution activities on any amount of revenue collected, including any local fees or costs imposed by the receiving court or receiving county probation department.

9. Cost of Collections

All operating costs associated with the collection of **delinquent** fines, fees, forfeitures, penalties, assessments, or any other amounts ordered, including any additional local fees or costs imposed by the receiving court, are recoverable under [Penal Code section 1463.007](#). Costs associated with the collection of victim restitution are recoverable, up to 15 percent (15%), ([Pen. Code, § 1203.1\(1\)](#)). Refer to the Judicial Council's *Guidelines and Standards for Cost Recovery*, available at <http://www.courts.ca.gov/partners/455.htm>.

10. Reporting

- The receiving court, county agency, or its authorized collection program shall not report revenue owed or collected on behalf of the transferring court on the annual [Collections Reporting Template](#).
- The transferring court shall report all revenue collected from transferred cases on the Annual Financial Report, per the *Collections Reporting Template Instructions*, the [Report of Revenue \(ROR\)](#), the [State Controller's Office TC 31](#) report, the [Quarterly Financial Statements \(QFS\)](#), and any other reports, as required or mandated.

Intercounty Probation Case Transfer Statewide Fiscal Procedures

Statute

Penal Code section 1203.9. (a) (1) Except as provided in paragraph (3), whenever a person is released on probation or mandatory supervision, 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 or mandatory supervision, unless the transferring court determines that the transfer would be inappropriate and states its reasons on the record.

(2) 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 (f). 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.

(3) If victim restitution was ordered as a condition of probation or mandatory supervision, the transferring court shall determine the amount of restitution before the transfer unless the court finds that the determination cannot be made within a reasonable time from when the motion for transfer is made. If a case is transferred without a determination of the amount of restitution, the transferring court shall complete the determination as soon as practicable. In all other aspects, except as provided in subdivisions (d) and (e), the court of the receiving county shall have full jurisdiction over the matter upon transfer as provided in subdivision (b).

(b) The court of the receiving county shall accept the entire jurisdiction over the case effective the date that the transferring court orders the transfer.

(c) The order of transfer shall contain an order committing the probationer or supervised person to the care and custody of the probation officer of the receiving county and, if applicable, 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 any probation reports shall be transmitted to the court and probation officer of the receiving county within two weeks of the finding that the person does permanently reside in or has permanently moved to that county, and the receiving court shall have entire jurisdiction over the case, except as provided in subdivisions (d) and (e), with the like power to again request transfer of the case whenever it seems proper.

(d) (1) Notwithstanding subdivision (b) and except as provided in subdivision (e), if the transferring court has ordered the defendant to pay fines, fees, forfeitures, penalties, assessments, or restitution, the transfer order shall require that those and any other amounts ordered by the transferring court that are still unpaid at the time of transfer be paid by the defendant to the collection program for the transferring court for proper distribution and accounting once collected.

Intercounty Probation Case Transfer Statewide Fiscal Procedures

(2) The receiving court and receiving county probation department may impose additional local fees and costs as authorized, and shall notify the responsible collection program for the transferring court of those changes.

(3) Any local fees imposed pursuant to paragraph (2) shall be paid by the defendant to the collection program for the transferring court which shall remit the additional fees and costs to the receiving court for proper accounting and distribution.

(e) (1) Upon approval of a transferring court, a receiving court may elect to collect all of the court-ordered payments from a defendant attributable to the case under which the defendant is being supervised, provided, however, that the collection program for the receiving court transmits the revenue collected the collection program for the transferring court for deposit, accounting, and distribution. A collection program for the receiving court shall not charge administrative fees for collections performed for the collection program for the transferring court without a written agreement with the other program.

(2) A collection program for a receiving court collecting funds for a collection program for a transferring court pursuant to paragraph (1) shall not report revenue owed or collected on behalf of the collection program for the transferring court as part of those collections required to be reported annually by the court to the Judicial Council.

(f) 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.

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

INTERCOUNTY PROBATION CASE TRANSFER COLLECTIONS AGREEMENT

This Agreement (“Agreement”) is entered into by and between the Superior Court of _____ County and the Superior Court of _____ County. **[Note: if the courts want to sign a multilateral agreement, this can be rephrased as: *This Agreement is entered into by, between, and among the courts listed on Appendix A...*]**

WHEREAS, Penal Code section 1203.9 (amended by Assem. Bill 673; Stats. 2015, ch. 251) establishes that, upon approval of a court transferring a case (“Transferring Court”) to another court (“Receiving Court”), the Receiving Court may elect to collect all of the Transferring Court-ordered payments from a defendant attributable to a probation and mandatory supervision case under which the defendant is being supervised; and

WHEREAS, the purpose of this Agreement is to establish a written agreement, as required by Penal Code section 1203.9(e), to enable the collection program for a Receiving Court to charge administrative fees for collections that the Receiving Court performs on behalf of the collection program of a Transferring Court;

NOW, THEREFORE, the parties agree as follows:

1. Administrative Fees for Collection Services

1.1 The parties agree that when a case is transferred between the courts, the Receiving Court elects to collect all court-ordered payments from a defendant, on behalf of the Transferring Court and the Transferring Court approves such election, unless either court decides otherwise in an individual case. The parties agree to the following (if neither court decides otherwise in an individual case):

1.2 **Administrative Fees.** Under this Agreement and consistent with Penal Code section 1203.9(e)(1) and California Rules of Court, rule 4.530, the collection program for the Receiving Court may charge administrative fees for collections performed for the collection program for the transferring court consistent with applicable Judicial Council fiscal procedures (available at www.courts.ca.gov).

2. Term; Termination

2.1 This Agreement is effective as of _____. A party may terminate its participation in the Agreement by giving [___] days written notice to the other party[ies]. In the event of notice of termination by a court, any pending collections of court-ordered payments for transferred cases shall be completed by the collections program for the Receiving Court before termination.

3. **Counterparts.** This Agreement may be executed in counterparts, each of which is considered an original, and all of which taken together constitute a single document.

**INTERCOUNTY PROBATION CASE TRANSFER COLLECTIONS
AGREEMENT**

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, to be effective as of the date written in Section 2.

Superior Court of _____, County
of _____

Superior Court of _____, County of

By: _____

By: _____

Title/Name for Court

Title/Name for Court

Date _____

Date _____

SAMPLE

**INTERCOUNTY PROBATION CASE TRANSFER COLLECTIONS
AGREEMENT**

Attachment 1

(Sample Exception Notice)

For Case No. _____, the Superior Court of _____, County of _____ has opted out of either the approval of or election to collect court-ordered payments, as outlined in Section 1.1 of the Intercounty Probation Case Transfer Collections Agreement (“Agreement”) entered into between the Superior Court of _____, County of _____ (“Transferring Court”) and the Superior Court of _____, County of _____ (“Receiving Court”) and effective on [_____]. Accordingly, the Agreement does not apply to this case.

By: _____
Name/Title for Court

Date: _____

SAMPLE