



## JUDICIAL COUNCIL OF CALIFORNIA

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# REPORT TO THE JUDICIAL COUNCIL

*Item No.: 20-063*

For business meeting on: November 13, 2020

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**Title**

Judicial Council–Sponsored Legislation:  
Notification of Reduced or Dismissed  
Convictions for Probation Transfer Cases

**Rules, Forms, Standards, or Statutes Affected**

Pen. Code, §§ 1203.425, 1203.9, and 13151

**Recommended by**

Legislation Committee  
Hon. Marla O. Anderson, Chair  
Criminal Law Advisory Committee  
Hon. Brian M. Hoffstadt, Chair

**Agenda Item Type**

Action Required

**Effective Date**

November 13, 2020

**Date of Report**

October 21, 2020

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### Executive Summary

The Legislation Committee and the Criminal Law Advisory Committee recommend that the Judicial Council sponsor legislation to amend Penal Code sections 1203.425, 1203.9, and 13151 to require notification of reductions of felonies to misdemeanors and dismissals of convictions in probation transfer cases between receiving courts and transferring courts.

### Recommendation

The Legislation Committee and the Criminal Law Advisory Committee recommend that the Judicial Council sponsor legislation to amend Penal Code sections 1203.425, 1203.9, and 13151, effective January 1, 2022, to require notification of reductions of felonies to misdemeanors and dismissals of convictions in probation transfer cases between receiving courts and transferring courts.

The text of the proposed legislation is attached at pages 6–8.

## **Relevant Previous Council Action**

Since the enactment of the Criminal Justice Realignment Act in 2009, the Judicial Council has sponsored or supported several legislative 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, 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.

## **Analysis/Rationale**

Under California law, when probation is transferred from one jurisdiction to another within California, the receiving court accepts "the entire jurisdiction over the case effective the date that the transferring court orders the transfer." (Pen. Code, § 1203.9(b).) This includes jurisdiction to adjudicate petitions to reduce a felony to a misdemeanor, or dismiss a conviction under Penal Code section 1203.4 and multiple other statutes. However, no statutes or rules of court address these issues: (1) limits by the transferring court on access to the transferred case file; (2) reports of probation transfers to the Department of Justice (DOJ); (3) notification by the receiving court to the transferring court when a reduction or dismissal occurs; or (4) updates by the transferring court of its records upon receipt of notice of a reduction or dismissal from the receiving court. If a receiving court reduces or dismisses a conviction but does not notify the transferring court, publicly accessible conviction documents in a transferring court's case file may be inaccurate. Due to the absence of statutory authority, there is no consistency among transferring and receiving courts on how records are maintained or updated when a reduction or dismissal occurs.

In 2018 and 2019, the Legislature passed two significant automated record relief bills, which removed the burden of seeking record relief from a defendant-petitioner, and, instead, made it the responsibility of government agencies. Assembly Bill 1793 (Stats. 2018, ch. 993) enacted Health and Safety Code section 11361.9 providing automated relief for marijuana convictions under Proposition 64, which reduced or repealed designated marijuana-related offenses. Assembly Bill 1076 (Stats. 2019, ch. 578) requires the DOJ, in relevant part, to grant automatic record relief to individuals meeting specified criteria, including completing probation without revocation and not currently serving a sentence for any offense. A court may not disclose information concerning a conviction granted automatic record relief or a dismissal under Penal Code sections 1203.4, 1203.4a, 1203.41, or 1203.42, except in limited circumstances.

Automatic marijuana conviction relief would likely be addressed by the transferring court, not the receiving court.<sup>1</sup> Under section 11361.9, the Department of Justice (DOJ) is responsible for identifying marijuana convictions that may be eligible for relief under Prop. 64 and notifying the prosecuting agency of all eligible cases in its jurisdiction. The prosecuting agency is then required to inform the court whether it is challenging the resentencing. For any case in which the court grants relief, the court must notify DOJ, which in turn modifies the state summary criminal history information database. (Health & Saf. Code, § 11361.9.)

Procedurally, because DOJ has disposition information only from the county of conviction (the transferring court), it would likely contact the prosecuting agency in that county, leading to proceedings for automated relief in the transferring court, not the receiving court. If a probation transfer case is granted automated relief in the transferring court and the receiving court is not notified, the receiving court may have inaccurate publicly accessible conviction documents in its case file.

Similarly, automatic record relief would also likely be addressed by the transferring court. Under AB 1076, DOJ is directed to review records in the statewide criminal justice databases for eligible cases and to notify “the superior court having jurisdiction over the criminal case, informing the court of all cases for which a complaint was filed in that jurisdiction and for which relief was granted pursuant to this section.” (Pen. Code, § 1203.425(a)(3).) Arguably, the receiving court has jurisdiction over the transferred criminal case, but DOJ would likely notify the transferring court because probation transfers are not reported to the DOJ and because the complaint was filed in the transferring court’s jurisdiction.

The requirement in section 1203.425 that a court not disclose information concerning a conviction granted automated record relief or dismissal under Penal Code sections 1203.4,

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<sup>1</sup> In *People v. Thor Sinthavong Chanthasone* (July 11, 2018, E068935 [nonpub. opn.]), the Fourth Appellate District held that requests for relief under Health and Safety Code section 11361.8 (resentencing or dismissal of marijuana conviction under Prop. 64) should be filed in the sentencing court, even in the case of a probation transfer, based on the statutory language directing petitions to go “before the trial court that entered the judgment of conviction.” (Health & Saf. Code, § 11361.8(a).) The court relied on the Supreme Court’s ruling in *People v. Adelman* (2018) 4 Cal.5th 1071, which held that a defendant is required to file a Prop. 47 petition in the court in which the defendant was sentenced, regardless of whether the matter was later transferred to another superior court.

1203.4a, 1203.41, or 1203.42 may be problematic to apply in probation transfer cases with court files across multiple jurisdictions. For example, a receiving court may dismiss a case under section 1203.4 and not disclose information as required under the new law, but if the transferring court does not receive any notice of this changed disposition, its court file would not be similarly restricted. Although AB 1076 does not address probation transfer scenarios, the intent appears to be for all courts to similarly restrict the release of conviction information after designated relief has been granted. Amending Penal Code sections 1203.425, 1203.9, and 13151 to require notification of reductions of felonies to misdemeanors and dismissals of convictions in probation transfer cases between receiving courts and transferring courts will address this issue.

### **Policy implications**

Since the enactment of the Criminal Justice Realignment Act in 2009, the Judicial Council has sponsored or supported several measures relating to intercounty transfers to address issues that have arisen for courts since that act became law. This proposal addresses gaps in the law regarding the updating of publicly accessible court records across multiple jurisdictions when a case is dismissed or reduced, and promotes consistency across courts in restricting the release of conviction information after designated relief has been granted.

### **Comments**

This proposal circulated for comment from April 10 to June 9, 2020, and received three comments. All commenters agreed with the proposal, and none provided any substantive comments.

### **Alternatives considered**

The committee discussed amending rule 4.530 of the California Rules of Court, Intercounty transfer of probation and mandatory supervision cases, at length. Part of the discussion focused on how to avoid additional court workload by leveraging existing court procedures, and how DOJ could play a role in managing the notification between courts. The committee concluded that a rule of court was limited in its ability to fully address the issue, and that a legislative proposal provided a more robust solution.

### **Fiscal and Operational Impacts**

The major fiscal and operational impacts of this proposal fall on DOJ, which, to comply with new reporting and notification requirements, will need to add probation transfer disposition codes to the criminal disposition reports and create a mechanism to provide electronic notice to all involved courts of subsequent reductions or dismissals.

The fiscal and operational impacts to the courts result from (1) requiring transferring courts to report the transfer to DOJ; (2) requiring receiving courts to notify transferring courts of the new case numbers, if any; and (3) requiring all courts to update their records if notified by DOJ of a reduction or dismissal affecting the case. However, the proposal adds minor additions to existing court procedures and seeks to lessen the burden on courts by shifting notification duties to DOJ.

## **Attachments and Links**

1. Pen. Code, §§ 1203.425, 1203.9, and 13151, at pages 6–8
2. Chart of comments, at page 9

Penal Code sections 1203.425, 1203.9, and 13151 would be amended, effective January 1, 2022, to read:

1   **§ 1203.425.**

2  
3   (a)(1)–(2) \* \* \*

4  
5       (3)

6           (A) Commencing July 1, 2022, and subject to an appropriation in the  
7               annual Budget Act, on a monthly basis, the department shall  
8               electronically submit a notice to the superior court having jurisdiction  
9               over the criminal case, informing the court of all cases for which a  
10              complaint was filed in that jurisdiction and for which relief was granted  
11              pursuant to this section. Commencing on August 1, 2022, for any  
12              record retained by the court pursuant to Section 68152 of the  
13              Government Code, except as provided in paragraph 4, the court shall  
14              not disclose information concerning a conviction granted relief  
15              pursuant to this section or Section 1203.4, 1203.4a, 1203.41, or  
16              1203.42, to any person or entity, in any format, except to the person  
17              whose conviction was granted relief or a criminal justice agency, as  
18              defined in Section 851.92.

19  
20           (B) If probation is transferred pursuant to Section 1203.9, the department  
21           shall electronically submit a notice as provided in paragraph (1) to both  
22           the transferring court and any subsequent receiving court. The  
23           electronic notice shall be in a mutually agreed upon format.

24  
25           (C) If a receiving court reduces a felony to a misdemeanor pursuant to  
26           section 17(b), or dismisses a conviction pursuant to law—including,  
27           but not limited to, sections 1203.4, 1203.4a, 1203.41, 1203.42,  
28           1203.43, or 1203.49—it shall furnish a disposition report to the  
29           department with the original case number and CII number from the  
30           transferring court, and the department shall electronically submit a  
31           notice to the superior court that sentenced the defendant. If probation is  
32           transferred multiple times, the department shall electronically submit a  
33           notice to all other involved courts. The electronic notice shall be in a  
34           mutually agreed upon format.

35  
36           (D) If a court receives notification from the department pursuant to  
37           subparagraph (B), the court shall update its records to reflect the  
38           reduction or dismissal. If a court receives notification that a case was  
39           dismissed pursuant to this section or Section 1203.4, 1203.4a, 1203.41,  
40           or 1203.42, the court shall update its records to reflect the dismissal and  
41           shall not disclose information concerning a conviction granted relief to  
42           any person or entity, in any format, except to the person whose

conviction was granted relief or a criminal justice agency, as defined in  
Section 851.92.

~~(4)~~–(6) \* \* \*

(b)

(1) The prosecuting attorney or probation department may, no later than 90 calendar days before the date of a person’s eligibility for relief pursuant to this section, file a petition to prohibit the department from granting automatic relief pursuant to this section, based on a showing that granting that relief would pose a substantial threat to the public safety. If probation was transferred pursuant to Section 1203.9, the prosecuting attorney or probation department in either the receiving county or the transferring county shall file the petition in the county of current jurisdiction.

~~(2)~~–(5) \* \* \*

(6) If the court grants a petition pursuant to this subdivision, the court shall furnish a disposition report to the Department of Justice pursuant to Section 13151, stating that relief pursuant to this section was denied, and the department shall not grant relief pursuant to this section. If probation was transferred pursuant to section 1203.9, the department shall electronically submit a notice that relief pursuant to this section was denied to the transferring court, and, if probation was transferred multiple times, to all other involved courts.

(7) A person denied relief pursuant to this section may continue to be eligible for relief pursuant to Section 1203.4 or 1203.4a. If the court subsequently grants relief pursuant to one of those sections, the court shall furnish a disposition report to the Department of Justice pursuant to Section 13151, stating that relief was granted pursuant to the applicable section, and the department shall grant relief pursuant to that section. If probation was transferred pursuant to section 1203.9, the department shall electronically submit a notice that relief was granted pursuant to the applicable section to the transferring court and, if probation was transferred multiple times, to all other involved courts.

(c) \* \* \*

**§ 1203.9.**

(a)

1 (1)–(3) \* \* \*

2  
3 (4) The receipt of records from the receiving court to the transferring court shall  
4 include the new case number, if any.

5  
6 (5) Pursuant to section 13151, the transferring court shall report to the  
7 Department of Justice that probation was transferred, once the receiving court  
8 accepts the transfer. A probation transfer report shall identify the receiving  
9 court and the new case number, if any.

10  
11 (b)–(h) \* \* \*

12  
13 **§ 13151.**

14  
15 (a) The superior court that disposes of a case for which an arrest was required to be  
16 reported to the Department of Justice pursuant to Section 13150 or for which  
17 fingerprints were taken and submitted to the Department of Justice by order of the  
18 court shall ensure that a disposition report of a case containing the applicable data  
19 elements enumerated in Section 13125, including the CII number and the court  
20 docket number, or Section 13151.1 if the disposition is one of dismissal, is  
21 furnished to the Department of Justice within 30 days according to the procedures  
22 and in a format prescribed by the department. The court shall also furnish a copy of  
23 the disposition report to the law enforcement agency having primary jurisdiction to  
24 investigate the offense alleged in the complaint or accusation. When a court orders  
25 an action subsequent to the initial disposition of a case, the court shall similarly  
26 report the proceedings to the department, including a transfer of probation pursuant  
27 to Section 1203.9 by the transferring court, once the case is accepted by the  
28 receiving court. A probation transfer report shall identify the receiving superior  
29 court and the new case number, if any. When filing a case with the court, the  
30 criminal justice agency shall include the CII number in the filing.

31  
32 (b) \* \* \*



## LEG20-01

Proposal for Judicial Council–Sponsored Legislation: Notification of Reduced or Dismissed Convictions for Probation Transfer Cases (Amend Pen. Code, §§ 1203.425, 1203.9, and 13151)

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

|    | Commenter   | Position | Comment   | Committee Response    |
|----|---|----------|---|-----------------------|
| 1. | Child Support Directors Association<br>by Terrie Hardy-Porter, Director | A        | The proposal aims to create a framework for notification of reduced or dismissed cases between receiving and transferring courts through existing court procedures and by adding elements addressing probation transfers to the automated record cleaning statute. As written, it appears that the aim is accomplished by the proposal. | No response required. |
| 2. | Orange County Bar Association<br>by Scott B. Garner, President          | A        | No specific comment   | No response required. |
| 3. | Superior Court of San Diego County<br>by Mike Roddy, Executive Officer  | A        | No specific comment   | No response required. |

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated