
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Loni Hancock, Chair

2015 - 2016 Regular

Bill No: AB 673 **Hearing Date:** June 23, 2015
Author: Santiago
Version: May 26, 2015
Urgency: No **Fiscal:** No
Consultant: JM

Subject: *Probation and Mandatory Supervision: Jurisdiction*

HISTORY

Source: Chief Probation Officers of California

Prior Legislation: AB 2645 (Dababneh)
AB 492 (Quirk) Ch. 13, Stats. 2013
SB 431 (Benoit), Ch. 588, Stats. 2009
AB 306 (Aguiar) Ch. 273, Stats. 1993

Support: California District Attorneys Association; California Probation, Parole and Correctional Association; Association of Deputy District Attorneys; AFSCME; Judicial Council; Local 685; Los Angeles Probation Officers' Union; Riverside Sheriffs' Association

Opposition: None known

Assembly Floor Vote: 79 - 0

PURPOSE

The purpose of this bill is to: 1) provide that where a defendant's case has been transferred from the county of conviction to the superior court in another county for purposes of probation or mandatory supervision, the receiving court shall accept full jurisdiction over the case at the time the transfer is ordered; 2) provide that the defendant shall continue to pay outstanding restitution, fines, fees and other costs to the collection program in the county from which the case was transferred; and 3) authorize the receiving court, with the approval of the court that transferred the case, to collect payments from the defendant.

Existing law provides that whenever a person is released upon probation or mandatory supervision the court, upon noticed motion, shall transfer the case to the superior court in any other the person resides permanently, meaning the stated intention to remain for the duration of probation or mandatory supervision, unless the transferring court determines that the transfer is inappropriate and states its reasons on the record. 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. The court and the probation department shall give the matter of investigating those

transfers precedence over all actions and 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. (Pen. Code, § 1203.9, subd. (a).)

Existing law requires the court of the receiving county to accept the entire jurisdiction over the case. (Pen. Code, § 1203.9, subd. (b).)

Existing law mandates that the order of transfer contain an order committing the probationer 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 sending county as specified. A copy of the orders and probation reports shall be transmitted to the court and probation officer of the receiving county within two weeks of the finding by that county that the person does permanently reside in or has permanently moved to that county, and thereafter the receiving court shall have entire jurisdiction over the case, with the like power to again request transfer of the case whenever it seems proper. (Pen. Code, § 1203.9, subd. (c).)

Existing law requires that the order of transfer 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 as specified. 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 by that county that the person does permanently reside in or has permanently moved to that county, and thereafter the receiving court shall have entire jurisdiction over the case, with the like power to again request transfer of the case whenever it seems proper. (Pen. Code, § 1203.9(d).)

Existing law requires the Judicial Council to adopt rules providing factors for the court's consideration when determining the appropriateness of a transfer, including but not limited to the following:

- Permanency of residence of the offender;
- Local programs available for the offender; and,
- Restitution orders and victim issues. (Pen. Code, § 1203.9, subd. (d).)

Existing law states that the transferring court must consider at least the following factors when determining whether transfer is appropriate:

- The permanency of the supervised person's residence;
- The availability of appropriate programs for the supervised person;
- Restitution orders, including inability to determine restitution amount and the victim's ability to collect; and
- Other victim issues, including residence and places frequented by the victim and enforcement of protective orders. (Cal. Rules of Court, rule 4.530(f).)

Existing law states that, to the extent possible, the transferring court must establish any amount of restitution owed by the supervised person before it orders the transfer. (Cal. Rules of Court, rule 4.530(g)(2).)

This bill provides that when probation or mandatory supervision is transferred to the superior court in another county, along with jurisdiction over the entire case, the receiving court shall accept jurisdiction as of the date that the transferring court orders the transfer.

This bill provides that, notwithstanding the fact that jurisdiction over the case transfers to the receiving court effective the date that the transferring court orders the transfer, if the transferring court has ordered the defendant to pay fines, fees, or restitution, the transfer order shall require that those and any other collections ordered by the transferring court be paid by the defendant to the collection program for the transferring court for proper distribution and accounting.

This bill states that the receiving court and receiving county probation department may amend financial orders and add additional local fees as authorized, and shall notify the responsible collection program of those changes.

This bill provides that any local fees imposed by the receiving court shall be collected by the collection agency for the transferring court, which shall remit the payments to the receiving court for distribution.

This bill allows a receiving court, with the approval of the transferring court, to collect "court-ordered payments" from a defendant. The collection agency for the receiving court shall transmit funds collected from the defendant to the collection program for the transferring court for deposit and accounting. A collection program for the receiving court shall not charge administrative fees for collections completed for the transferring without an agreement with the other agency.

This bill provides that a collection program for a receiving court shall not report funds collected on behalf of the transferring court as part of those collections required to be annually reported to the Administrative Office of the courts.

This bill provides that the Judicial Council shall consider adopting rules of court to implement the statutory provisions concerning collection of restitution, fines, fees and other costs when supervision of a probationer or person on mandatory supervision is transferred to a court other than the court of conviction.

RECEIVERSHIP/OVERCROWDING CRISIS AGGRAVATION

For the past eight years, this Committee has scrutinized legislation referred to its jurisdiction for any potential impact on prison overcrowding. Mindful of the United States Supreme Court ruling and federal court orders relating to the state's ability to provide a constitutional level of health care to its inmate population and the related issue of prison overcrowding, this Committee has applied its "ROCA" policy as a content-neutral, provisional measure necessary to ensure that the Legislature does not erode progress in reducing prison overcrowding.

On February 10, 2014, the federal court ordered California to reduce its in-state adult institution population to 137.5% of design capacity by February 28, 2016, as follows:

- 143% of design bed capacity by June 30, 2014;
- 141.5% of design bed capacity by February 28, 2015; and,
- 137.5% of design bed capacity by February 28, 2016.

In February of this year the administration reported that as “of February 11, 2015, 112,993 inmates were housed in the State’s 34 adult institutions, which amounts to 136.6% of design bed capacity, and 8,828 inmates were housed in out-of-state facilities. This current population is now below the court-ordered reduction to 137.5% of design bed capacity.”(Defendants’ February 2015 Status Report In Response To February 10, 2014 Order, 2:90-cv-00520 KJM DAD PC, 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (fn. omitted).

While significant gains have been made in reducing the prison population, the state now must stabilize these advances and demonstrate to the federal court that California has in place the “durable solution” to prison overcrowding “consistently demanded” by the court. (Opinion Re: Order Granting in Part and Denying in Part Defendants’ Request For Extension of December 31, 2013 Deadline, NO. 2:90-cv-0520 LKK DAD (PC), 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (2-10-14). The Committee’s consideration of bills that may impact the prison population therefore will be informed by the following questions:

- Whether a proposal erodes a measure which has contributed to reducing the prison population;
- Whether a proposal addresses a major area of public safety or criminal activity for which there is no other reasonable, appropriate remedy;
- Whether a proposal addresses a crime which is directly dangerous to the physical safety of others for which there is no other reasonably appropriate sanction;
- Whether a proposal corrects a constitutional problem or legislative drafting error; and
- Whether a proposal proposes penalties which are proportionate, and cannot be achieved through any other reasonably appropriate remedy.

COMMENTS

1. Need for This Bill

According to the author:

Penal Code 1203.9 was enacted to establish a process whereby persons on probation could have their supervision and case transferred from the sentencing county to their county of residence. Currently, this section calls for the transfer of the “entire case” to the new jurisdiction. However, PC 1203.9 is silent on court ordered debt as it relates to the transfer and the process for collection and distribution once transferred. Therefore, there are varying degrees of how the collection and distribution of these funds are handled.

AB 673 streamlines existing probation and court processes relative to the transfer of fines and fees that a probationer is responsible for by creating a single, uniform process statewide. The bill would keep the responsibility for collection of fines and fees with the sentencing county and the sentencing county would then disburse the payments received accordingly. This construct is particularly useful in cases where a probationer transfers residences multiple times since they would always make payments to their sentencing county which handled the case. This also serves a great benefit to victims seeking restitution as it would create a singular contact for the victim that would always know where the case is currently

being supervised in the event the victim needs to get in touch with the supervising agency.

2. Recent History of Probation and Mandatory Supervision Transfer Bills

This is the most recent in a series of bills that are intended to streamline and improve the process of transferring cases involving supervised inmates who reside in the county of transfer. AB 1306¹ (Leno) in 2004 required the receiving court to accept the transfer of jurisdiction over the entire case in which the defendant residing in the receiving county was a participant in a SACPA² drug treatment program. In other circumstances, the receiving court could continue to provide only courtesy supervision. SB 431³ (Benoit) in 2009 required the court in the receiving county to accept the case unless the transferring court found in a noticed hearing that the transfer was inappropriate after considering comments from the proposed county of transfer. SB 431 did not change the rule that the court in the county of conviction shall transfer a SACPA case without the requirement of a noticed hearing. AB 492⁴ (Quirk) in 2013 eliminated the distinction between transfers of SACPA probation and other forms of supervision. AB 2645 (Dababneh) in 2014 directed transferring courts to determine restitution issues prior to transfer

It appears that the constitutionally-compelled requirement of full victim restitution, and the expansion of specialized probation programs, including SACPA and collaborative courts, has created a need for consistent programs and procedures in supervision cases. The explanation by the Judicial Council of AB 2645 in 2014 is a good example of the circumstances that have driven amendments to the probation transfer laws over the past 10 years. As edited to reflect current law, the Judicial Council explained:

To improve victim access to restitution and promote efficiencies in determining restitution amounts, AB 2645 [amended] section 1203.9 to (1) prohibit transfers until restitution amounts have been determined unless a transferring court finds that a determination of restitution cannot be made within a reasonable amount of time from the date of the motion to transfer; (2) require courts that transfer cases without first determining restitution to retain jurisdiction to determine the amount as soon as practicable; and (3) clarify that, in all other respects, the receiving court receives full jurisdiction over the matter

3. Defendants Supervised in One County but Paying Fines, Fees and Costs to Another; Clarifying Amendment

This bill provides that where a probation or mandatory supervision case is transferred to a county other than the county of conviction, the defendant shall continue to pay any outstanding restitution, fines and fees to the collection program in the county of transfer/conviction. The bill also authorizes the county receiving the probation matter to impose local fees and fine. The defendant also pays the local fees and costs imposed by the receiving county to the transferring county.

However, the bill also provides that the receiving court, with the approval of the transferring court, may “elect to collect *court-ordered payments* from the defendant and remit those to the

¹ AB 1306 (Leno) - Ch. 30, Stats.2004

² The Substance Abuse and Crime Prevention Act - Proposition 36 of the 2000 General Election

³ SB 431 (Benoit) Ch. 588, Stats. 2009

⁴ AB 492 (Quirk) Ch. 13, Stats. 2013

transferring court “for deposit, accounting and distribution.” It appears that this would be interpreted to mean that where the receiving court elects to collect payments from the defendant, the receiving court collect all restitution, fines, fees and costs imposed on the defendant, including orders made by the transferring court and local fees and costs imposed by the receiving court or the probation department. That is, a receiving court would not likely elect to collect some, but not all, of the restitution, fines fees and costs imposed on the defendant by both, or all counties. This is particularly true as to costs and fees imposed by the receiving court, as the bill directs the receiving court to send money collected from the defendant to the transferring court for accounting and remittance back to the receiving court. However, that is not explicitly stated. Perhaps the bill should specify that the receiving court, with the approval of the transferring court, may “elect to collect all of the court ordered payments attributable to the case under which the defendant is being supervised.”

In discussions with committee staff, the sponsor of the bill – Chief Probation Officers of California (CPOC) – has expressed agreement with the suggested amendment. CPOC also requests a technical amendment to clarify that a transferring court shall remit fees collected on behalf of the receiving county for proper *accounting* and distribution.

SHOULD THE BILL BE AMENDED TO SPECIFY THAT WHERE THE RECEIVING COURT ELECTS TO COLLECT COURT-ORDERED PAYMENTS FROM A DEFENDANT ON PROBATION OR MANDATORY SUPERVISION, THE RECEIVING COURT SHALL COLLECT ALL OF THE COURT ORDERED PAYMENTS ATTRIBUTABLE TO THE CASE UNDER WHICH THE DEFENDANT IS BEING SUPERVISED?

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