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I N S E N A T E

May 1, 2012

Introduced by Sen. RANZENHOFER -- read twice and ordered printed, and
when printed to be committed to the Committee on Codes

AN ACT to amend the criminal procedure law, in relation to authorizing
the transfer of interim probation supervision

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY,
DO ENACT AS FOLLOWS:

1 Section 1. Subdivisions 1 and 2 of section 410.80 of the criminal
2 procedure law, subdivision 1 as amended by section 51 of part A of chap-
3 ter 56 of the laws of 2010 and subdivision 2 as amended by chapter 191
4 of the laws of 2007, are amended to read as follows:
5 1. Authority to transfer supervision. Where a probationer OR INTERIM
6 PROBATIONER at the time of sentencing resides in another jurisdiction
7 within the state, the sentencing court shall transfer supervision to the
8 appropriate probation department in such other jurisdiction. Where,
9 after a probation sentence OR INTERIM PROBATION SUPERVISION is
10 pronounced, a probationer OR INTERIM PROBATIONER desires to reside in
11 another jurisdiction within the state that is not served by the sentenc-
12 ing court, such court, in its discretion, may approve a change in resi-
13 dency and, upon approval, shall transfer supervision to the appropriate
14 probation department serving the county of the probationer's proposed
15 new residence. Any transfer under this subdivision must be in accordance
16 with rules adopted by the commissioner of the division of criminal
17 justice services.
18 2. Transfer of powers. (A) Upon completion of transfer OF PROBATION as
19 authorized pursuant to subdivision one, the probation department in the
20 receiving jurisdiction shall assume all powers and duties of the
21 probation department in the jurisdiction of the sentencing court. Upon
22 completion of transfer, the appropriate court within the jurisdiction of
23 the receiving probation department shall assume all powers and duties of
24 the sentencing court and shall have sole jurisdiction in the case
25 including jurisdiction over matters specified in article twenty-three of
26 the correction law. Further, the sentencing court shall immediately
27 forward its entire case record to the receiving court.

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets
[] is old law to be omitted.

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1 (B) In transfers involving a defendant sentenced to probation upon
2 conviction of a felony, the court served by the probation department to
3 which supervision is transferred shall be the superior court within the
4 jurisdiction of the probation department. In transfers involving a
5 defendant sentenced to probation upon conviction of a misdemeanor, the
6 receiving court served by the probation department to which supervision
7 is transferred shall be the appropriate criminal court within the juris-
8 diction of the probation department. The sending probation department
9 shall consult with the probation department to which supervision will be
10 transferred to determine the appropriate criminal court to receive the
11 case.

12 (C) WHERE THE TRANSFER IS AUTHORIZED FOR INTERIM PROBATION SUPER-
13 VISION, PURSUANT TO SUBDIVISION ONE OF THIS SECTION, THE SENTENCING
14 COURT SHALL RETAIN JURISDICTION DURING THE PERIOD OF INTERIM PROBATION
15 OF SUCH PROBATIONER.

16 S 2. Subdivision 8 of section 216.05 of the criminal procedure law, as
17 added by section 4 of part AAA of chapter 56 of the laws of 2009, is
18 amended to read as follows:

19 8. (A) During the period of a defendant's participation in the judi-
20 cial diversion program, the court shall retain jurisdiction of the
21 defendant. The court may require the defendant to appear in court at
22 any time to enable the court to monitor the defendant's progress in
23 alcohol or substance abuse treatment. The court shall provide notice,
24 reasonable under the circumstances, to the people, the treatment provid-
25 er, the defendant and the defendant's counsel whenever it orders or
26 otherwise requires the appearance of the defendant in court. Failure to
27 appear as required without reasonable cause therefor shall constitute a
28 violation of the conditions of the court's agreement with the defendant.

29 (B) WHERE THE DEFENDANT RESIDES IN ANOTHER JURISDICTION WITHIN THE
30 STATE DURING HIS OR HER PARTICIPATION IN THE JUDICIAL DIVERSION PROGRAM,
31 THE SENTENCING COURT SHALL TRANSFER SUPERVISION TO THE APPROPRIATE
32 PROBATION DEPARTMENT IN SUCH OTHER JURISDICTION. WHERE, AFTER THE START
33 OF THE JUDICIAL DIVERSION PROGRAM, THE DEFENDANT DESIRES TO RESIDE IN
34 ANOTHER JURISDICTION WITHIN THE STATE THAT IS NOT SERVED BY THE COURT
35 AUTHORIZING THE JUDICIAL DIVERSION PROGRAM, SUCH COURT, IN ITS
36 DISCRETION, MAY APPROVE A CHANGE IN RESIDENCY AND, UPON APPROVAL, SHALL
37 TRANSFER SUPERVISION TO THE APPROPRIATE PROBATION DEPARTMENT SERVING THE
38 COUNTY OF THE DEFENDANT'S PROPOSED NEW RESIDENCE. ANY TRANSFER UNDER
39 THIS SUBDIVISION MUST BE IN ACCORDANCE WITH RULES ADOPTED BY THE COMMIS-
40 SIONER OF THE DIVISION OF CRIMINAL JUSTICE SERVICES. AS ESTABLISHED IN
41 PARAGRAPH (A) OF THIS SUBDIVISION, THE COURT SHALL RETAIN JURISDICTION
42 OF THE DEFENDANT.

43 S 3. This act shall take effect immediately.