

7190--A

Cal. No. 940

I N   S E N A T E

May 1, 2012

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Introduced by Sens. RANZENHOFER, GALLIVAN -- read twice and ordered printed, and when printed to be committed to the Committee on Codes -- reported favorably from said committee, ordered to first report, amended on first report, ordered to a second report and ordered reprinted, retaining its place in the order of second report

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 at the time  
6 of sentencing OR AN INTERIM PROBATIONER AT THE TIME OF THE IMPOSITION OF  
7 THE PERIOD OF INTERIM PROBATION SUPERVISION resides in another jurisdic-  
8 tion within the state, the sentencing court shall transfer supervision  
9 to the appropriate probation department in such other jurisdiction.  
10 Where, after a probation sentence OR INTERIM PROBATION SUPERVISION is  
11 pronounced, a probationer OR INTERIM PROBATIONER desires to reside in  
12 another jurisdiction within the state that is not served by the sentenc-  
13 ing court, such court, in its discretion, may approve a change in resi-  
14 dency and, upon approval, shall transfer supervision to the appropriate  
15 probation department serving the county of the probationer's proposed  
16 new residence. Any transfer under this subdivision must be in accordance  
17 with rules adopted by the commissioner of the division of criminal  
18 justice services.  
19     2. Transfer of powers. (A) Upon completion of transfer OF PROBATION as  
20 authorized pursuant to subdivision one, the probation department in the  
21 receiving jurisdiction shall assume all powers and duties of the  
22 probation department in the jurisdiction of the sentencing court. Upon  
23 completion of transfer, the appropriate court within the jurisdiction of  
24 the receiving probation department shall assume all powers and duties of  
25 the sentencing court and shall have sole jurisdiction in the case

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

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1 including jurisdiction over matters specified in article twenty-three of  
2 the correction law. Further, the sentencing court shall immediately  
3 forward its entire case record to the receiving court.

4 (I) In transfers involving a defendant sentenced to probation upon  
5 conviction of a felony, the RECEIVING court served by the probation  
6 department to which supervision is transferred shall be the superior  
7 court within the jurisdiction of the probation department.

8 (II) In transfers involving a defendant sentenced to probation upon  
9 conviction of a misdemeanor, the receiving court served by the probation  
10 department to which supervision is transferred shall be the appropriate  
11 criminal court within the jurisdiction of the probation department. The  
12 sending probation department shall consult with the probation department  
13 to which supervision will be transferred to determine the appropriate  
14 criminal court to receive the case.

15 (B) WHERE A TRANSFER IS AUTHORIZED FOR A DEFENDANT ON INTERIM  
16 PROBATION SUPERVISION PURSUANT TO SUBDIVISION ONE OF THIS SECTION, THE  
17 SENTENCING COURT SHALL RETAIN JURISDICTION DURING THE PERIOD OF INTERIM  
18 PROBATION. THE PROBATION DEPARTMENT IN THE RECEIVING JURISDICTION  
19 SHALL ASSUME ALL POWERS AND DUTIES OF THE ORIGINAL PROBATION DEPARTMENT  
20 IN THE JURISDICTION OF THE SENTENCING COURT.

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

24 8. During the period of a defendant's participation in the judicial  
25 diversion program, the court shall retain jurisdiction of the defendant,  
26 PROVIDED, HOWEVER, THAT THE COURT MAY ALLOW SUCH DEFENDANT TO RESIDE IN  
27 ANOTHER JURISDICTION WHILE PARTICIPATING IN A JUDICIAL DIVERSION PROGRAM  
28 UNDER CONDITIONS SET BY THE COURT AND AGREED TO BY THE DEFENDANT PURSU-  
29 ANT TO SUBDIVISIONS FIVE AND SIX OF THIS SECTION. The court may require  
30 the defendant to appear in court at any time to enable the court to  
31 monitor the defendant's progress in alcohol or substance abuse treat-  
32 ment. The court shall provide notice, reasonable under the circum-  
33 stances, to the people, the treatment provider, the defendant and the  
34 defendant's counsel whenever it orders or otherwise requires the appear-  
35 ance of the defendant in court. Failure to appear as required without  
36 reasonable cause therefor shall constitute a violation of the conditions  
37 of the court's agreement with the defendant.

38 S 3. This act shall take effect immediately.