

UNSHACKLED

by

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PROPOSED CHANGE TO REGULATIONS ADMITS CDCR ROLE IN FALSE IMPRISONMENT OF PRISONERS. CDCR TO HONOR RELEASE UPON DEMAND.

California Department of Corrections and Rehabilitation (CDCR) Associate Director, Office of Appeals, Division of Correctional Policy Research and Internal Oversight, Howard Moseley, in a June 19, 2022 notification to Governor Newsom, CDCR Employees and Prisoners-- that the legal conviction and commitment of adult felons to the state prison is not supported by documentary evidence and that the law requires the custodial agent of the prisons to release persons affected --proposed a "Change to Regulations" and a plan for the "Release of Affected Persons", making the following comments, admissions, and statements:

"The Correctional Policy Research and Internal Oversight Management Branch of CDCR has been made aware of the delivery to, and imprisonment of, persons without the document required by law evidencing a legal commitment of the person to the custody of CDCR. This oversight is believed traceable to an ambiguous regulation regarding the intake of inmates which has been misinterpreted. It is for the purpose of clarifying the offending regulation and effecting remedy for those persons adversely affected that the following change to the regulation is proposed.

This Notice announces the proposed amendment of Section 3075(e) of the California Code of Regulations (CCR), Title 15, Crime Prevention and Corrections, Division 3, Chapter 1, Article 6.5, Section 3075 Initial Intake, Subdivision (e).

Heretofore, CDCR has received inmates accompanied "either by a minute order or an abstract of the judgment" per regulation 15 § 3075(e) but without the required documentary evidence of a person's commitment to the Director of Corrections as required by Penal Code § 1202a. Statutory Authority: None.

TEXT OF PROPOSED REGULATION CHANGE

In the following text, [] indicates deleted text, an underline indicates added text.

15 § 3075(e).

Inmates received by the department shall be accompanied by [either a copy of the minute order or an abstract of the judgment] a copy of the judgment signed by the judge and certified by the clerk of the court or judge to be a copy of the judgment entered. The judgment and [C]confidential medical/mental health documents indicating that the inmate is medically capable for transport are required upon delivery. The inmate's identity shall be verified by staff from the judgment to prevent inadvertent acceptance of a person not legally committed to the department.

Hereafter, inmates delivered to, and received by, CDCR, shall be accompanied by a copy of the judgment signed by the judge and certified by the clerk of the court as entered in the record. Statutory Authority: Penal Code §§ 1202a, 1207, 1213, 1216, 2900. The proposed change to the regulation will incorporate the Legislative statutory authority enacting the regulation.

This action will:

Provide legal authority for the department to receive "inmates" as that term is constructed in the regulations, "Inmate" ... applies to any person who is or has been committed to the custody of the Director of Corrections...".
CCR 15 § 2000(a)(3).

Identify the specific instrument required by law providing legal authority for the delivery of persons to the department and the necessary accompanying documents.

Prevent inadvertent acceptance of a person not legally committed to the department.

Provide legal basis for determining release date or calculating an EPED.

INTRODUCTION AND PROBLEM STATEMENT

In a criminal case, the law mandates that a written judgment signed by a judge be entered in the court's records shortly after the verdict or court decision is rendered and in no case is a judgment effectual for any purpose until entered.

If the judgment is for imprisonment in the state prison, in order to transfer the defendant from county (jail) to state (prison) jurisdiction, the law requires the Director (Secretary) of CDCR receive from the Sheriff of the County with delivery of the defendant to prison, a certified copy of the judgment ("judgment of conviction" [a legal document signed by a judge]) specifically directing that the defendant be delivered into the custody of the Director of CDCR.

A judgment is jurisdictional. There is no document other than a judgment of conviction upon which the Director of CDCR may rely for authority to receive custody of a person and for the department to receive an inmate. If the department is not able to produce the judgment upon demand, the prisoner must be discharged from custody.

Penal Code § 1202a, cited in the regulation as authority enacting subdivision (e) of section 3075, has not been, and is not now, being enforced by CDCR, notwithstanding the fact that the language in PC § 1202a specifies that if the judgment is for imprisonment in the state prison the judgment shall direct delivery of defendant into the custody of the Director. Penal Code § 1202a has not been declared unconstitutional.

California Constitution, Article III, Section 3.5 provides that a State agency may not declare a statute unconstitutional or refuse to enforce a constitutional statute.

In order to avoid conclusion that CDCR has declared Penal Code § 1202a unconstitutional or that CDCR has refused to enforce the statute by failing to require a copy of the judgment with the delivery of a defendant to CDCR as a condition precedent to intake, requires the amendment of regulation 3075(e).

MATERIALS RELIED UPON

In interpreting and making specific the requirement for receipt of a judgment by the department in section 3075(e) of the proposed amendment, the department relies on the following court decision: Ex parte Gibson (Cal. 1867), 31 Cal. 619, 622-623.

Release of Affected Persons

Under the Federal and State Constitutions and codified in the California Penal Code, a person unlawfully imprisoned may prosecute a writ of habeas corpus to inquire into the cause of his or her imprisonment or, use any other remedy; and if no legal cause is shown for such imprisonment, a court or judge or offending custodian must discharge the party from the custody under which he is held.

Therefore, at such time written demand for release is made to the custodian (CDCR/Warden) by, or on behalf of, the person for whom no judgment of conviction is found in the custodian's files, and inasmuch as it cannot be shown by CDCR that the person is in custody by virtue of process of any Court of this State, or Judge or officer thereof, the Secretary of CDCR will stipulate to and not contest the written demand for release, but will honor the demand, to the end expeditious release of the prisoner by CDCR will be effected, civil rights preserved, liability to the State limited, and justice served.

Howard Moseley, Chief"

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ANALYSIS

Chief Moseley, as CDCR's law enforcement officer in charge of deciding the continued imprisonment or liberty of State prisoners presenting their legal cause for release, has the duty to act and follow the law which mandates the release of persons who have not been legally committed to the custody of the Director of Corrections (Effective 2005, "Director" is now "Secretary" Penal Code (PC) § 5050).

The proposed change eliminates the confusion experienced for over 70 years by the public employees of CDCR and its predecessor agencies as to the legal documentation required for reception of persons by CDCR for imprisonment in the State's prisons. The confusion has resulted in the unlawful imprisonment of tens of thousands of persons. The change will also provide a legal basis for future imprisonment of offenders and limit the State's liability for false arrest and false imprisonment.

On behalf of CDCR, Chief Moseley offers immediate relief for those persons currently in the custody of CDCR unlawfully; by the person, family, or friends simply making written demand for their release to CDCR, Warden or Parole Officer.²

Simplifying the release process by avoiding the courts--who failed to produce the required documentation (judgment of conviction) in the first instance and cannot do so now --will provide a significant cost saving to the State, reduce congestion in the courts and eliminate prolonged deprivation of the liberty of affected persons.

The plan offered by CDCR "written demand for release... will be honored", is approved and supported by Governor Gavin Newsom, CDCR Secretary Kathleen Allison and CSP Solano Warden Gigi Matteson as submitted to them by their attorney of record in this matter, Attorney General Rob Bonta.³

The relief offered to the affected persons by Chief Moseley as spokesperson for CDCR is sound and avoids litigation in which CDCR cannot prevail under any circumstances; inasmuch as this matter has been repeatedly settled in favor of the requirement for a "judgment of conviction" to precede imprisonment and, utterly without exception, by every court confronted with this issue from the 1860s' until today. CDCR either possesses the required judgment or it does not: and CDCR admits it does not.

No court in state history has ever held that a warden may imprison or otherwise accept or maintain custody of any human without "entry on record" of a "judgment of conviction", a certified copy of which MUST accompany every person upon delivery of the body "to a [custodian] warden." The law has always demanded release when the unthinkable "no judgment" does occur. Ref: Ex parte Gibson (Cal 1867), 31 Cal. 619, 622-623;

People v. Mendoza (2009) 171 Cal.App.4th 1142, 1150; and federal alignment: United States v. Arpaio (9th Cir. 2020) 951 F.3d 1001, 1004.

CCR Title 15 cites no legislative authority for the enactment of present Section 3075(e). Penal Code § 1202a does not contemplate nor reference an "abstract of the judgment or minute order" as documents required to accompany an "inmate" upon delivery to the department. Rather, Section 1202a specifies a judgment to be the necessary document to effect sentence to the state prison and commitment of a person to the Director of Corrections.

Present CCR Title 15 § 3075 subdivision (e):

Inmates received by the department shall be accompanied by either a copy of the minute order or an abstract of the judgment certified by the clerk of the court or judge. Confidential medical/mental health documents indicating that the inmate is medically capable for transport are required upon delivery. The inmate's identity shall be verified by staff to prevent inadvertent acceptance of a person not legally committed to the department.

Proposed CCR 15 § 3075 subdivision (e):

Inmates received by the department shall be accompanied by a copy of the judgment signed by the judge and certified by the clerk of the court or judge to be a copy of the judgment entered. The judgment and confidential medical/mental health documents indicating that the inmate is medically capable for transport are required upon delivery. The inmate's identity shall be verified by staff from the judgment to prevent inadvertent acceptance of a person not legally committed to the department.

Regulation change's primary enacting statutory authority:

Penal Code § 1202a: "If the judgment is for imprisonment in the state prison the judgment shall direct that the defendant be delivered into the custody of the Director of Corrections at the state prison or institution designated by the Director of Corrections as the place for the reception of persons convicted of felonies except when the judgment is for death in which case the defendant shall be taken to the warden of the California State Prison at San Quentin."

CCR 15 § 3075(e) addresses a particular class of persons "inmates" defined in CCR 15 § 2000(a)(3) as "persons committed to the custody of the Director of Corrections". The only Penal Code authorizing imprisonment in a state prison and commitment of a person to the Director of Corrections is PC § 1202a; and the manner for commitment is by a certified copy of the judgment of conviction. (PC §§ 1213, 1216 [Effective 1951 word "abstract" substituted for "copy" (of the judgment)].)

Penal Code § 1202a is the only authority provided by the Legislature authorizing imprisonment in the state prison and for the Director (Secretary) of Corrections to take custody of a defendant. Refusal by CDCR to enforce P.C. § 1202a is a violation of Article III, § 3.5 of the California Constitution and Government Code § 815.6; as § 1202a is designed to protect against false imprisonment.

Prison rules and regulations are promulgated pursuant to constitutional and statutory authority. California Constitution Article X, § 1, Penal Code §§ 5054, 5058.

Penal Code § 5054 in pertinent part provides "the supervision, management and control of the state prisons and, the responsibility for the... custody... of persons confined therein are vested in the Secretary of the Department of Corrections and Rehabilitation."

Penal Code § 5058(a)(1) "The director may prescribe and amend rules and regulations for the administration of the prisons and for the administration of the parole of persons sentenced under Section 1170 except those persons who meet the criteria set forth in Section 2962."

Nowhere in the Penal Code, from whence CCR Title 15 derives authority, has the Legislature given the Secretary authority to promulgate law for the mode of sentence and execution thereof, such as occurred when the Secretary declared Subdivision (e) of Section 3075 authorizes substitution of an "abstract of judgment" for the judgment. "The Abstract of Judgment is the Judgment of Conviction for imprisonment in state prison with the California Department of Corrections and Rehabilitation".⁴

The usurpation of Legislative power by an Executive Branch agency violates the separation of powers prohibition of Article III, § 3 of the California Constitution. "The powers of state government are legislative, executive, and judicial. Persons charged with the exercise of one power may not exercise either of the others except as permitted by this Constitution."

Such Constitutional violation nullifies any authority CDCR might have enjoyed to receive and detain adult felons.

Therefore, if it is true that intake of "inmates" by the department is restricted by law and regulation to persons who are or have been committed to the custody of the Director of Corrections (CCR 15 §§ 2000(a)(3), 3075(e)), and, if it is true that a judgment directing that the defendant be delivered into the custody of the Director of Corrections is the required commitment document (PC § 1202a) which must be filed with the papers in the case and a certified copy delivered to the executing officer for delivery with the person to the Director (PC §§ 1207, 1213);

then it must also be true that without possession of a judgment so directing the defendant's disposition, the Director does not enjoy legal custody and CDCR lacks authority to receive and detain any person.

The present language of CCR 15 § 3075(e) referenceing an "abstract of the judgment" or "minute order" as documents accompanying an "inmate", has led to the misinterpretation by CDCR that said documents may be substituted for a "judgment" committing a defendant to CDCR. Not so!

The California Supreme Court has observed "The Court of Appeal first noted that an abstract of judgment "is not a judgment of conviction" or even "an order of the court" but is merely "a form prepared and signed by the clerk of the court" that cannot add to or modify the judgment which it purports to digest or summarize." People v. Mitchell (2001) 25 Cal.4th 181, 186 2001 Cal LEXIS 4596.

But it should be obvious to the most casual observer unlearned in the law, that an "abstract" (summary/digest) of some judgment cannot have validity when there is no underlying judgment entered on any court record. See "OATH **BREAKERS**" and "Attorney General Chokes on Red Herring" at **withoutoneplea.com** for exposure of the fallacious "abstract of judgment" theory and points and authorities debunking it as a document committing a person to the custody of the Director of Corrections.

Absent a judgment, no abstract thereof and no custody of a person by the Director can exist. It is fundamental that the Department (an Executive Branch administrative agency) may not exercise a power not granted to it by the Legislature. CDCR--without production of a judgment directing that a person ("defendant") be delivered into the custody of the Director of Corrections as required by law (PC § 1202a) --can show no legal cause for the imprisonment of a person and must discharge any person inadvertently accepted by the department pursuant to an "abstract of judgment" or "minute order".

Imprisonment of a person without any authority is unlawful and known as false arrest and false imprisonment: liability for which the State and public employees do not enjoy immunity.

SUMMARY

CDCR's custody of, and the Board of Parole Hearings' (BPH) denial/granting of parole to, any person, is illegal for lack of jurisdiction, i.e., for want of a judgment of conviction.

CCR Title 15 § 3075(e) is the sole regulation CDCR relies upon for initial intake of persons (inmates) received by the department.

An "inmate" "prisoner" or "parolee" is a particular class of person and pursuant to CCR 15 § 2000(a)(3) the term applies to "any person who is or has been committed to the custody of the Director of Corrections...".

Board of Parole Hearings (BPH), a division of CDCR, has jurisdiction of this same class of persons (presuming "inmates" to be adult felons). Definitions: Board of Parole Hearings: "Persons under the board's jurisdiction are all adult felons committed by superior courts to the Director of Corrections..." CCR 15 § 2000(b)(10).

The problem is... CCR 15 § 3075(e) is not married to any Legislative law authorizing implementation of the regulation.

Although CCR 15 § 3075 references PC § 1202a as Statutory Authority, § 1202a mandates a "judgment" as the document directing delivery of a person to the Director of Corrections. "If the judgment is for imprisonment in the state prison the judgment shall direct that the defendant be delivered into the custody of the Director of Corrections...".

Notwithstanding CDCR and BPH long-standing reliance on 15 § 3075(e) "abstract of the judgment or minute order" for authority, without an implementing statute and an underlying judgment for support, said documents can not, and do not exist in law and are fraudulent documents.

Therefore, absent a judgment signed by a judge in a person's Central File specifying imprisonment in the state prison and directing delivery to the Director of Corrections, CDCR and BPH lack jurisdiction of that person and continued detention is false imprisonment.

The survival of CDCR hangs by the thread of change to regulation 15 § 3075(e). Inasmuch as it is now recognized as unlawful to accept inmates without a judgment, intake of such persons by CDCR must cease. It appears emergency implementation of the changed regulation is imperative.

If it be true that people are illegally imprisoned, without any authority from the Legislature or the Judiciary (Courts), isn't that commonly called "false imprisonment"? And if so, isn't false imprisonment against the law, liability for which the state, agency and public employees do not enjoy immunity?

I believe so... see Government Code § 820.4 "Nothing in this section exonerates a public employee from liability for false arrest or false imprisonment." "False imprisonment is the unlawful violation of the personal liberty of another, the inference being absolutely unlawful and without authority." Jackson v. City of San Diego (Cal. App. 4th District July 14, 1981) 121 Cal. App 3d 579 1981 Cal.App. LEXIS 1962.

"False arrest and imprisonment causes of action are viable actions against public employees pursuant to Government Code § 820.4, excluding public employees from any immunity for a cause of action for false arrest or false imprisonment." Allison v. County of Ventura (Cal. App. 2d Dist. Mar. 3, 1977) 68 Cal. App. 3d 689 1977 LEXIS 1356.

Not waiting for a written demand, a review of all "inmates" Central File to determine whether a judgment signed by a judge, committing the person to the Director of Corrections resides therein, is in order. PC § 2081.5 contemplates the court record entries in each case being available for CDCR and BPH review. If the judgment is not entered in the record, it isn't valid. "In no case is a judgment effectual for any purpose until entered." California Code of Civil Procedure § 664; Phillips v. Phillips (Cal. Dec. 24, 1953), 41 Cal. 2d 869, 874.

And if no such document is found, the law demands the public employees of CDCR do everything in their power to effect those persons' immediate and unconditional release from state prison... or be found in violation of their oath of office to support and defend the state and federal Constitutions... and liable for the consequences of false imprisonment.

Remove the shackles!

C O N C L U S I O N

There can be no question but that under California law, its Constitution, its statutes and clear legislative intent, loss of personal freedom by State imprisonment is authorized only upon entry of a signed and certified copy of a "judgment of conviction" provided to a County Sheriff and presented to the state Director of Corrections as authorization to take custody of a prisoner.

Your author, Lonnie G. Schmidt, victim aggrieved, herein alleges that no "judgment of conviction" exists on record as mandated by multiple California statutes, State and Federal law in substantial conformity, for Lonnie G. Schmidt or, for any person who is presently detained in the state prison, or has been, since at least 1951; and neither proof nor evidence to the contrary is revealed or offered by the Secretary of CDCR.

It appears plain that no response confirms the fact that the Warden of each state prison, CDCR Secretary and involved Executive Branch officials, do not now and have never held lawful custody of any person, have not now and have never acquired a certified copy of any judgment of conviction naming any person and signed by a Superior Court Judge and entered on record, and therefore lack standing to do otherwise than honor a written demand for release from prison or parole.

WHEREFORE, for the foregoing reasons, Lonnie G. Schmidt One of the People, respectfully requests the People of California uphold California law, the intent of our California Legislature, and demand of CDCR the immediate and unconditional release of all those persons imprisoned without a judgment of conviction.

EPILOG

"Mr. Schmidt, you see things as they ought to be, not as they are." Lawrence K. Karlton, Senior Judge USDC, EDC (1996)

Things as they ought to be.

As used in CCR 15 § 3075(e) "Inmates received by the department...", the term "inmate" applies to any person who is or has been committed to the custody of the Director of Corrections. CCR 15 § 2000(a)(3).

Persons under the Board of Parole Hearings' jurisdiction are all adult felons committed by superior courts to the Director of Corrections. CCR 15 § 2000(b)(10).

Persons are committed to the custody of the Director of Corrections by a judgment signed by a judge, entered on the superior court's record by the Clerk and a certified copy of the judgment given to the executing officer for delivery with the defendant, to the Director of Corrections for imprisonment in the state prison. Penal Code §§ 1202a, 1207, 1213.

If there is no judgment at time of delivery of the defendant to the Director, there is no proof of commitment, and the defendant shall not be accepted by the Director... and CDCR (the department) has no "inmate" to receive. **No problem.**

Things as they are.

No judgment. Big problem.

Without a judgment, CDCR has no authority for custody and, of course, the Board has no jurisdiction for review of sentence. Penal Code §§ 1216, 2900.

The Director is the only "door" through which a person may enter state prison and the judgment is the key. CDCR is an exclusive Club: **No judgment - no prison. Period.**

Indulge me for a moment, please. Freedom from prison is good, within reach, and for a lifetime. Freedom from sin is better, within reach while in this life, and forever. I would be remiss if I didn't share with you what God has shown me concerning release from prison. I would also be remiss if I didn't share with you what I've learned to be true concerning His love for us and His offer of an abundant life... right here, right now.

The revelation of this enigma (how the Director of CDCR could be both a slaveholder and a champion of rehabilitation) has presented a conundrum (how public employees were able to build such a massive prison industry without any foundation in law). The answer lies somewhere between either a well kept criminal conspiratorial secret or innocent error-- which has continued unabated for more than 70 years.

It was only when your author approached the Ultimate Counselor with a call for help in understanding how this travesty of justice could happen in America, that the answer came. "Call to Me, and I will answer you, and show you great and mighty things, which you do not know." Jeremiah 33:3 NKJV. And He did. "I will instruct you and teach you in the way you should go; I will guide you with my eye." Psalm 32:8 NKJV. And He did.

And now, "inmate", you benefit. You didn't do anything to earn or deserve your freedom... it is a free gift. All you have to do is believe and ask. God has heard the prayers of thousands of prisoners who "just want to go home." And He has answered. That's just how He is. Don't forget to thank Him!

Heaven is an exclusive Club. Jesus is the only "door" for entry and faith is the key. **No Jesus - No Heaven. Period.**

Jesus said... "I am the way, the truth, and the life. No one comes to the Father except through Me." John 14:6 NKJV. All we have to do is believe and ask... Heaven is His free gift to us. Want to know how to ask? Romans 10:9-13 NKJV.

Life is short, eternity is real. You will want to make the right decision as to where you'll spend it!

NOTES

- 1 **withoutoneplea.com** (click on "state") see "CDCR Proposed Regulation Change and Prisoner Release Plan", June 16, 2022, Notice of Intent To Publish Statement of Chief Moseley, page 6.
- 2 See N1, supra, DEMAND FOR RELEASE, page 5.
A demand for release by an "inmate" or "parolee" may be made in any form. However, each institution is familiar with the Form CDCR 602 Inmate/Parolee Appeal outlined in CCR Title 15 §§ 3084 - 3084.7. Family and friends may demand prisoner release via a Citizen's Complaint Against Employees of CDCR on CDCR Form 2142.
Section 3391(b) of Title 15 specifies that an allegation by a non-inmate of misconduct (false imprisonment) by a departmental peace officer may be made per Penal Code § 832.5. Form available at CDCR website or "The California Prison and Parole Law Handbook". Demanding party may want to include a copy of "UNSHACKLED" and reference the page demanding release and the state's offer to honor the demand.
- 3 See N1, supra, copied individuals, June 16, 2022, page 10; COVER LETTER, June 19, 2022, page 2.
- 4 See N1, supra, Claimant Appeal Claims Decision Response, H. Moseley, Chief, October 25, 2021, attachment.
After having his decision error pointed out (see N1, supra, April 24, 2022 CDCR 602, pages 3-4), Chief Moseley had an epiphany: CCR 15 § 3075, subdivision (e) is not supported by any enacting statutory authority! Penal Code § 1202a must be enforced! Those unlawfully imprisoned must be released! And the Chief has stepped forward.