
The Chain of Failure

California law sets out a precise path from arrest to lawful imprisonment. At each step, a public official has a duty to follow a specific procedure, and a specific document must change hands. When the document does not exist, or when the procedure is skipped, the official who acted next was required by law to refuse to act.

Without One Plea has reviewed more than five hundred California felony case files. The same pattern of procedural failure appears in all of them.

What follows is the chain, step by step. Each link names the role that failed, the statute or regulation it failed to follow, and the specific defect that defines the failure.

1

The District Attorney

WHAT THE LAW REQUIRED

A California felony prosecution must be founded on a grand jury indictment — the formal accusation a grand jury returns after finding probable cause to charge. A felony complaint is a different instrument — it is a charging document at the magistrate level. Without an indictment of record, the superior court does not acquire authority to try the case.

(Cal. Const. Art. I § 14; Pen. Code §§ 737, 738, 948, 949; Serna v. Superior Court (1985) 40 Cal.3d 239, 257; People v. Smith (1986) 187 Cal.App.3d 1222, 1224.)

THE DEFECT

The District Attorney filed a felony complaint and let it stand as the operative charging instrument. No conversion to indictment ever occurred. The case proceeded as if the superior court had trial jurisdiction. It did not. Every step downstream was built on a court that never acquired the authority to act in the first place.

2

The Superior Court Judge

WHAT THE LAW REQUIRED

When a defendant is convicted, the sentencing judge must enter a judgment on the court record. The Penal Code calls this the judgment of conviction. It is the document that fixes the term of imprisonment and orders delivery of the defendant to CDCR. *(Pen. Code § 1207.)* Two things make it a judgment: the judge must sign it *(Payne v. Madigan (9th Cir. 1960) 274 F.2d 702)*, and the clerk must enter it in the minutes. Until entered, “no judgment is effectual for any purpose.”

(Code Civ. Proc. § 664.)

THE DEFECT

No signed judgment of conviction was entered on the court record. Sentencing proceedings occurred. Minute orders, transcripts, and abstracts were filed. But the one document the law requires the judge to sign and the clerk to enter — the judgment itself — was never created. Without it, the conviction has no record on which to rest, and the defendant has no order from which to appeal.

3

The Court Clerk

WHAT THE LAW REQUIRED

When the judge signs and files a judgment, the clerk prepares an Abstract of Judgment — a summary form drawn from the judgment, used to transfer the prisoner to CDCR. The Penal Code contemplates the abstract being delivered with the judgment, not in place of it. (*Pen. Code § 1213.*) The abstract is a clerk-prepared summary. It is not itself a judicial order, and it has no force absent the judgment behind it.

THE DEFECT

The clerk issued an Abstract of Judgment and let it stand as the operative custody document. The judgment it was supposed to summarize did not exist. The abstract, in effect, summarizes a record that was never written — and is presented to CDCR as if it were the original.

4

The County Sheriff

WHAT THE LAW REQUIRED

When sentence is pronounced, the clerk must furnish a certified copy of the judgment to the officer responsible for executing it — the County Sheriff. (*Pen. Code §§ 1202a, 1213.*) The California Supreme Court was explicit on this in 1867: a commitment to state prison that does not contain a certified copy of the judgment is “not merely defective, but is wholly unknown to the laws of this State.” (*Ex parte Gibson (1867) 31 Cal. 619, 622–623.*)

THE DEFECT

The sheriff delivered the prisoner to CDCR carrying an Abstract of Judgment rather than a certified copy of a judgment. No certified judgment could have been delivered, because none had been entered. The sheriff did not refuse the delivery. The office proceeded as if the abstract were enough.

5

The CDCR Receiving Sergeant

WHAT THE LAW REQUIRED

Every prisoner arriving at a CDCR reception center is processed by a Receiving and Release sergeant. The Department’s own Operations Manual fixes the verification rule: “Verify that new/additional commitments are valid and certified. The court order is deemed certified if it has any two of the following: original judge’s signature; original county/court clerk’s signature; original county seal. ... Make a print of arrival’s right index finger on the commitment document.” (*CDCR DOM § 72020.4.1.*) The two-of-three framework presumes a judicial order to authenticate.

THE DEFECT

The document presented to the sergeant bears no judge’s signature on its face. There is no underlying judicial order for the certification framework to verify. The sergeant accepts custody anyway, treating a clerk-certified summary as if it were a court order — and affixes the prisoner’s fingerprint to it as required by the same regulation.

6

The CDCR Legal Processing Unit

WHAT THE LAW REQUIRED

After intake, the Legal Processing Unit calculates the prisoner's sentence using CDCR Forms 188 (determinate sentencing) or 678 (indeterminate). The calculation must be drawn from the judgment. (*CDCR DOM § 72020.5.4.1; Pen. Code §§ 2900, 2901.*) The Penal Code is explicit: "The term of imprisonment fixed by the judgment ... commences to run only upon the actual delivery of the defendant into the custody of the Director of Corrections." (*Pen. Code § 2900.*)

THE DEFECT

There is no judgment for the Legal Processing Unit to draw from. The term gets calculated anyway, using the abstract as if it were the underlying judicial order. With no fixed term established by judgment, the scheduled release date is, by definition, indeterminate. The prisoner is held to a sentence that no court ever signed.

7

The CDCR Secretary

WHAT THE LAW REQUIRED

The Secretary of CDCR has a duty to confine each person committed to state prison pursuant to a court order (Judgment) and only for so long as the law authorizes that confinement. The constitutional and statutory framework above establishes what that authorization looks like: a judgment of conviction, signed by a judge, certified, and delivered with the prisoner. (*Cal. Const. Art. I § 14; Pen. Code §§ 1202a, 1207, 1213, 2900.*) No judgment, no authorization.

THE DEFECT

Custody continues without a judgment. In 2020, CDCR Secretary Ralph Diaz publicly acknowledged the Department has no authority to confine prisoners absent a judgment of conviction. That admission has not been retracted. Successors to Diaz have continued the same custody on the same paperwork — while the Department's own former Secretary stated the paperwork is insufficient. (See Section 3.)

8

The Attorney General

WHAT THE LAW REQUIRED

The Attorney General supervises every county District Attorney in California. The supervisory duty is constitutional, and it carries a corollary: an official who acts outside the scope of statutory authority enjoys no immunity for the act. (*Gov. Code § 820.4.*) When the office becomes aware that the District Attorneys it supervises are systematically operating outside the statutory framework, it has a duty to intervene.

THE DEFECT

On November 26, 2019, a Citizen Complaint was filed with the Attorney General formally noticing the pattern documented in this report. As of the date of this publication, the pattern has not been corrected, and no public response addressing the substance has been issued. The Attorney General was notified. The Attorney General did not act.

STATUTORY TEMPLATE

These are the two documents the chain depends on. The following two pages set out what each one must contain to be lawful — reconstructed from the statutes, so you know what to look for in the file. If you have a loved one in custody, consider printing these two pages and mailing them, so the file can be checked against what the law requires.

Indictment

What a valid Indictment must contain.

Not a copy of any real document. A reconstruction of the elements California law requires the operative felony charging instrument to contain.

SUPERIOR COURT OF CALIFORNIA
COUNTY OF [COUNTY NAME]

THE PEOPLE OF THE STATE OF
CALIFORNIA,
Plaintiff, vs.
[Defendant Name], Defendant.

Case No.
[CASE NUMBER]

INDICTMENT

1
Penal Code §§ 949, 951

2 An indictment may be in substantially the following form: The people of the State of California against A.B. In the superior court of the State of California, in and for the county of _____. The grand jury of the county of _____ hereby accuses A.B. of a felony (or misdemeanor), to wit: (giving the name of the crime, as murder, burglary, etc.), in that on or about the ___ day of _____, 19____, in the county of _____, State of California, he (here insert statement of act or omission, as for example, “murdered C.D.”).

4 FILED
[Month] [Year]
Clerk of the Superior Court
By: [Deputy], Deputy Clerk

3 A TRUE BILL
[Foreperson], Foreperson of the
Grand Jury
Presented by: [Name], District
Attorney

· NOT A REAL DOCUMENT

1 Indictment

Felony prosecution must be initiated by indictment. A felony complaint cannot substitute. Cal. Const. Art. I § 14; Pen. Code §§ 948, 949.

2 Sufficient factual allegations

Each count must state facts sufficient to apprise the defendant of the charge. Pen. Code § 950; Serna v. Superior Court (1985) 40 Cal.3d 239.

3 Grand jury’s endorsement

The indictment must bear the grand jury’s return endorsement — “a true bill,” signed by the foreperson. Pen. Code § 944.

4 Filed of record

Filing establishes the timing required for speedy trial under Pen. Code § 1382 and for the superior court’s acquisition of trial jurisdiction.

Judgment of Conviction

What a valid Judgment of Conviction must contain.

Not a copy of any real document. A reconstruction of the elements California law requires before a person may be lawfully delivered to the custody of the Department of Corrections and Rehabilitation.

SUPERIOR COURT OF CALIFORNIA
COUNTY OF [COUNTY NAME]

Case No.
[CASE NUMBER]

THE PEOPLE OF THE STATE OF
CALIFORNIA vs.
[Defendant Name], Defendant.

JUDGMENT OF CONVICTION

The defendant, [Defendant Name], having been duly arraigned upon a valid Indictment, and having entered a plea of [plea], and having been tried by jury / found by the court / pleaded guilty, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED:

2 That the said defendant has been convicted of the offense(s) of [Penal Code violation(s)], felony, committed on or about [date(s)], as charged in [Count(s)] of the Indictment herein;

3 And the said defendant is hereby committed to the custody of the Director of the California Department of Corrections and Rehabilitation for the term prescribed by law, to wit: [term].

Done in open court this [day] day of [month], [year].

1 Judge of the Superior
Court ATTEST:

HONORABLE [JUDGE NAME]

5 Clerk of the Superior Court
By: [Deputy], Deputy Clerk



· NOT A REAL DOCUMENT

1 Judge's signature — indispensable

"Judgment of conviction is one signed by the judge." Payne v. Madigan (9th Cir. 1960) 274 F.2d 702.

2 Recital of conviction

Must state the offense and basis (plea, verdict, or finding). Pen. Code § 1207.

3 Sentence imposed

Must fix the term and direct delivery to CDCR. Pen. Code §§ 1202a, 2900.

4 Court seal

Authenticates the document as an act of the court.

5 Clerk's attestation

The clerk attests to the judge's signature. The clerk's signature does not substitute for it.

6 Entered of record

"In no case is a judgment effectual for any purpose until entered." Code Civ. Proc. § 664.

7 Right-index fingerprint

Affixed by the CDCR R&R sergeant at intake (DOM § 72020.4.1).