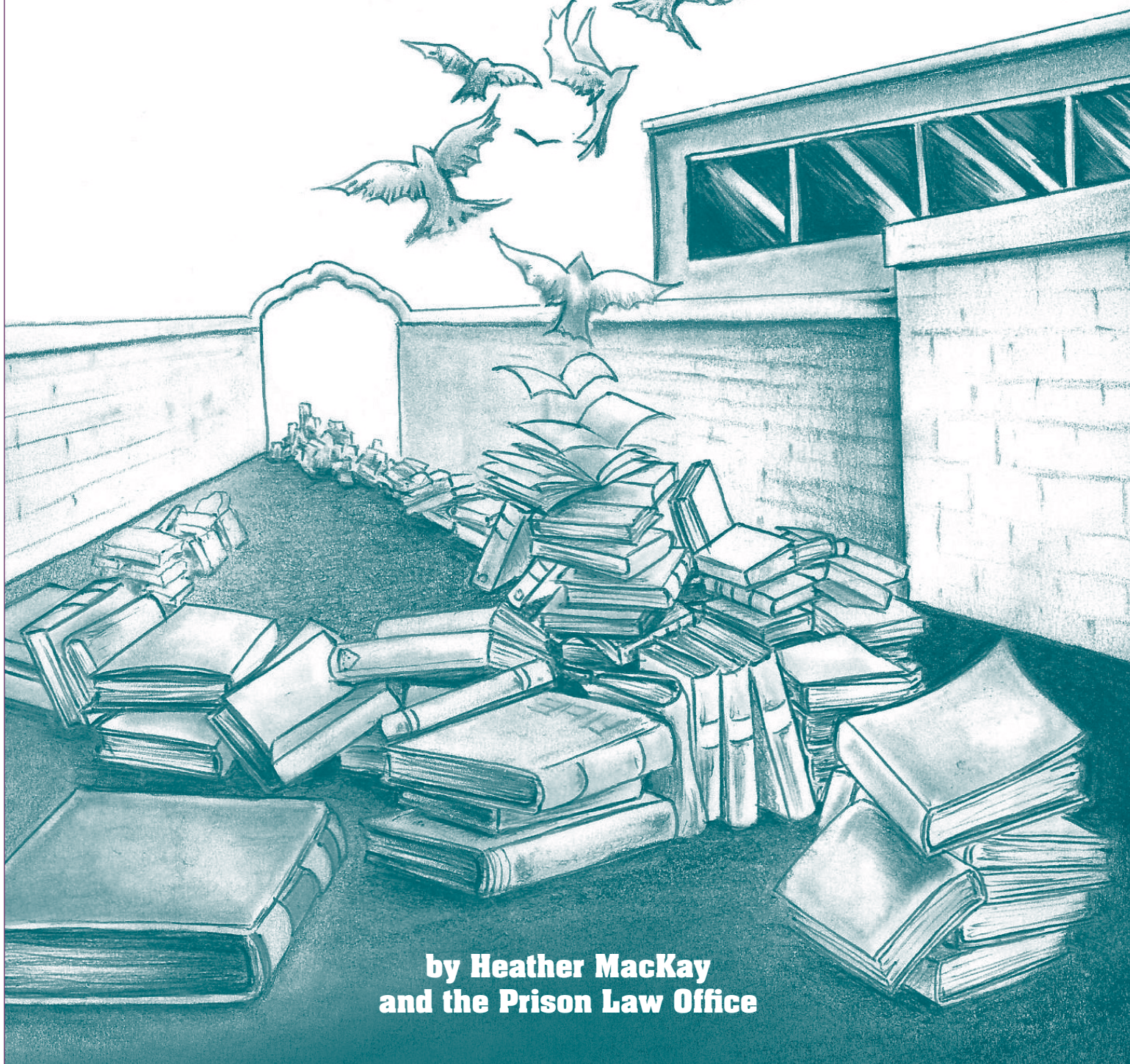


# **The California Prison and Parole Law Handbook**



**by Heather MacKay  
and the Prison Law Office**

# THE CALIFORNIA PRISON & PAROLE LAW HANDBOOK

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&  
THE PRISON LAW OFFICE

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The Prison Law Office is a non-profit public interest law firm that strives to protect the rights and improve the living conditions of people in state prisons, juvenile facilities, jails and immigration detention in California and elsewhere. The Prison Law Office represents individuals, engages in class actions and other impact litigation, educates the public about prison conditions, and provides technical assistance to attorneys throughout the country.

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## **YOUR RESPONSIBILITY WHEN USING THIS HANDBOOK**

When we wrote *The California Prison and Parole Law Handbook*, we did our best to provide useful and accurate information because we know that people in prison and on parole often have difficulty obtaining legal information and we cannot provide specific advice to everyone who requests it. However, the laws are complex change frequently, and can be subject to differing interpretations. Although we hope to publish periodic supplements updating the materials in the Handbook, we do not always have the resources to make changes to this material every time the law changes. If you use the Handbook, it is your responsibility to make sure that the law has not changed and is applicable to your situation. Most of the materials you need should be available in a prison law library or in a public county law library.

# CHAPTER 19

## LEGAL RESEARCH, WRITING, AND STRATEGIES

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## § 19.1

### 19.1 Introduction

Bringing a legal action in court is sometimes necessary to challenge criminal charges, conditions of confinement, and actions taken by prison officials. To litigate a claim effectively while in prison or on parole, a person must understand the basics of legal research and writing, as well as the resources and types of legal actions that are available. Therefore, this chapter begins by describing the rights of people in prison and on parole to access the courts and legal assistance, and then provides an overview of the legal system, legal research tools, and tips for finding the law. Finally, this chapter explains the types of legal actions that can be brought and offers general guidance for deciding what type of action to file.

## OBTAINING LEGAL INFORMATION, ASSISTANCE, AND SUPPLIES

### 19.2 Constitutional Rights of Access to the Courts

Under the U.S. Constitution's First and Fourteenth Amendments, people in prison are guaranteed the rights of access to the courts and to petition the government to address their grievances.<sup>1</sup> Thus, people in prison are entitled to file and litigate lawsuits on their own behalf, and prison officials are forbidden from creating barriers that unduly interfere with that right.<sup>2</sup> This includes a right to be free from retaliation for bringing legal actions.<sup>3</sup>

However, people in prison do *not* have a constitutional right to access to legal materials other than those needed to challenge their criminal convictions, sentences, or conditions of confinement. Further, people in prison do not have an absolute right to a law library or to legal assistance; this means courts defer to prison officials' decisions about how to provide legal access, and will not find that a constitutional violation occurred unless inadequacies in a law library or legal assistance program caused "actual injury." In other words, to bring a successful claim that their rights of access to the courts were violated, a person must show that shortcomings in the law library or legal assistance prevented them from being able to file a legal action on an arguably valid issue, or caused their action to be dismissed due to their inability to satisfy a technical requirement.<sup>4</sup>

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<sup>1</sup> *Bounds v. Smith* (1977) 430 U.S. 817, 828 [97 S.Ct. 1491, 1498; 52 L.Ed.2d 72]; *In Ex Parte Hull* (1941) 312 U.S. 546, 549 [61 S.Ct. 640; 85 L.Ed. 1034] (striking down prison officials' practice of screening habeas corpus petitions to weed out ones they did not like).

<sup>2</sup> *Silva v. Di Vittorio* (9th Cir. 2011) 658 F.3d 1090, 1102-1103.

<sup>3</sup> *Vance v. Barrett* (9th Cir. 2003) 345 F.3d 1083 (prison officials unconstitutionally retaliated against exercise of constitutional rights); *Gomez v. Vernon* (9th Cir. 2001) 255 F.3d 1118 (officials illegally retaliated for use of legal procedures).

<sup>4</sup> *Lewis v. Casey* (1996) 518 U.S. 343, 351, 355 [116 S.Ct. 2174; 135 L.Ed.2d 606].

### 19.3 Legal Representation or Assistance from a Lawyer

Under the U.S. Constitution’s Fourteenth Amendment, people in prison and on parole generally do *not* have a due process right to assistance from an attorney.<sup>5</sup>

However, in some situations, people in prison or on parole *do* have a right to be appointed an attorney under either federal or state law if they are “indigent” (do not have enough money to hire an attorney). Matters for which people have the right to an appointed attorney include:

- ◆ criminal trials, plea bargains, and sentencing; recall of sentence and re-sentencing hearings; and criminal direct appeals (see Chapter 14);<sup>6</sup>
- ◆ parole suitability hearings for people serving indeterminate life sentences, as well as youth offender parole hearings, elderly parole hearings, and medical parole hearings<sup>7</sup> (see Chapter 9);
- ◆ parole or post-release community supervision (PRCS) revocation hearings<sup>8</sup> (see Chapter 11);
- ◆ MDO and SVP commitment trials<sup>9</sup> (see Chapter 12);
- ◆ state habeas corpus proceedings, *if* the court issues an order to show cause (see Chapter 15);<sup>10</sup>
- ◆ actions to end parental rights or make a child a dependent of the court (an incarcerated parent also has the right to attend the hearing, unless they are on death row).<sup>11</sup>

For some legal matters, a court has a duty to assure that incarcerated people have meaningful access to the courts or a meaningful opportunity to be heard – but the court does *not* necessarily have to appoint counsel to fulfill this duty. For example, when an indigent person in prison files a civil

<sup>5</sup> *Lassiter v. Department of Social Services* (1982) 452 U.S. 17 [101 S.Ct. 2153; 68 L.Ed.2d 640 (presumption that due process does not require counsel unless physical freedom is at risk, though presumption might be overcome if case involves extremely important interest).

<sup>6</sup> *Gideon v. Wainwright* (1963) 372 U.S. 335 [83 S.Ct. 792; 9 L.Ed.2d 799]; *Douglas v. California* (1963) 372 U.S. 353 [83 S.Ct. 814; 9 L.Ed. 811].

<sup>7</sup> Penal Code §§ 3041.5-3041.7; Penal Code § 3051; Penal Code § 3055; Penal Code § 3550(f); 15 CCR § 2256; BPH, *Memorandum: Elderly Parole Program* (June 16, 2014); BPH, *Memorandum: Expanded Medical Parole* (June 16, 2014).

<sup>8</sup> Penal Code § 1203.2(b)(2).

<sup>9</sup> Penal Code § 2966(b); Welfare & Institutions Code § 6603(a).

<sup>10</sup> California Rules of Court, rule 4.551(c).

<sup>11</sup> Penal Code § 2625; Welfare & Institutions Code § 366.26(f)(2). See also *Jesusa V.* (2014) 32 Cal.4th 588 [10 Cal.Rptr.3d 205] (right to attend hearing, though violation may sometimes be a harmless error); *In re M.M.* (2015) 236 Cal.App.4th 955 [187 Cal.Rptr.3d 19]. Also, for any other action in which an incarcerated person’s parental rights are at stake, the person may ask the court to exercise its discretion to order the person’s transportation to court. Penal Code § 2625(e). An incarcerated parent who is notified of a legal action involving their parental rights should send a letter or motion to the court declaring that they have little or no money, requesting appointment of counsel, and asking to be present at any hearings.

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action involving personal or property interests, the trial court can choose to ensure meaningful access in a number of ways. One way is to appoint counsel for the indigent person; however, the court can choose instead to defer (postpone) the action until the person is released from prison, use depositions instead of personal appearances, hold the trial in prison, conduct hearings by telephone or video, or order written discovery. The court has discretion to decide which of these options, if any, are appropriate.<sup>12</sup> Likewise, if an indigent person in prison is sued in a civil action that threatens their property rights or other fundamental rights, the court must determine what measures are needed to protect the person's rights. One option is to order a continuance (postponement) of the hearing until the person is either released from prison or appointed an attorney.<sup>13</sup>

In some cases where a person in prison has no absolute right to an appointed attorney – such as federal habeas petitions and federal civil rights actions –the person can file the initial documents and then request that the court ask an attorney to represent them. (See Chapters 16 and 17 for information about how to request an attorney for these types of cases.) If the request for an appointed attorney is not successful, the person will either have to go forward without an attorney, try to hire an attorney, or try to find an attorney to take the case *pro bono* (without pay) or on a contingency basis (meaning that the person's attorney will get paid only if the person wins the case, and the attorney will take their payment out of the amount awarded to the person).

The Constitution does not provide people in prison any right to be represented by an attorney in most administrative matters, such as disciplinary hearings, segregation hearings, classification hearings, or administrative appeals.<sup>14</sup> California statutes and CDCR regulations also do not provide a right to counsel for these proceedings. Even if a person facing such proceedings in prison is able to hire a private attorney, the attorney cannot participate directly in those proceedings. However, a lawyer may still assist with such matters in a number of ways, such as: by gathering information or statements from witnesses; by advising the person about their rights and tactical strategies; or by helping the person fill out administrative appeal paperwork. A lawyer can also quickly draw prison officials' attention to violations of the person's rights or new relevant information by contacting the person's correctional counselor or the prison's litigation coordinator by phone, fax, or email.

Some organizations provide legal assistance to people in California prisons or on California parole on various types of issues. Several organizations provide information and forms to help people represent themselves, and a few can also provide representation on specific matters and/or referrals to lawyers who might take a case. A list of some of these organizations is included as Appendix 19-A.

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<sup>12</sup> *Wantuch v. Davis* (1995) 32 Cal.App.4th 786, 792 [39 Cal.Rptr.2d 47]; *Apollo v. Gyaami* (2008) 167 Cal.App.4th 1468, 1482-1485 [85 Cal.Rptr.3d 127] (unrepresented plaintiff in civil case was denied meaningful access to the courts where he vigorously pursued his claim to the best of his ability and made reasonable though unsuccessful attempts at effecting service, filing timely motions, and appearing at hearings); *Jameson v. Desta* (2009) 179 Cal.App.4th 672, 682-684 [101 Cal.Rptr.3d 345] (court abused its discretion in a state tort case when it authorized an incarcerated person to appear telephonically at a case management conference, then dismissed the case because the person did not appear, even though the person had informed the court that prison staff were not allowing him to appear by telephone); but see *Simmons v. Sacramento County Superior Court* (9th Cir. 2003) 318 F.3d 1156, 1161 (a person incarcerated in jail during a civil trial in which he was the plaintiff was not denied his constitutional right to access to the courts when the court denied his request for transport to the trial while the person was represented by counsel).

<sup>13</sup> *Yarbrough v. Superior Court* (1985) 39 Cal.3d 197 [216 Cal.Rptr. 425]; *Payne v. Superior Court* (1976) 17 Cal.3d 908 [132 Cal.Rptr. 405].

<sup>14</sup> See *Baxter v. Palmigiano* (1976) 425 U.S. 308, 316 [96 S.Ct. 1551, 1557; 47 L.Ed.2d 810].

See §§ 2.13, § 2.16, and § 2.20 for discussion of an incarcerated person’s rights to confidential legal visits, correspondence and phone calls with attorneys.

## 19.4 Legal Assistance from Other People in Prison

The law provides some protections for “jailhouse lawyers.” Under federal and California law, unless public officials are providing adequate legal assistance for people in prison, they may not prohibit people in prison from giving legal assistance to each other.<sup>15</sup> However, there are no special rights to correspondence or communication between people in prison for purposes of legal assistance.<sup>16</sup> Prison officials may impose reasonable restrictions on the activities of “jailhouse lawyers,” but courts have prohibited some restrictions as unreasonable.<sup>17</sup>

Under CDCR regulations, people in prison may assist each other with legal work so long as no compensation is exchanged. Incarcerated individuals may have in their possession the legal papers of other incarcerated individuals whom they are assisting. However, they may be barred from providing legal assistance if they violate rules relating to such activities.<sup>18</sup> A person in prison who wants to correspond about legal matters with a person incarcerated at a different prison facility must get advance permission from prison officials; the officials at the two prisons generally have discretion to grant or deny permission (but requests to correspond with any person who is known to be affiliated with a prison gang, terrorist group, or racketeering enterprise will be denied).<sup>19</sup>

## 19.5 Access to a Law Library

As part of the constitutional right of access to the courts, people in prison have the right to use the law library for reasonable amounts of time. However, prison officials are not legally required to provide unlimited access; they may limit when and how people use the law library.<sup>20</sup>

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<sup>15</sup> *Johnson v. Avery* (1969) 393 U.S. 483, 490 [89 S.Ct. 747; 21 L.Ed.2d 718]; *In re Harrell* (1970) 2 Cal.3d 675, 686 [87 Cal.Rptr. 504].

<sup>16</sup> *Shaw v. Murphy* (2001) 532 U.S. 223, 228-232 [121 S.Ct. 1475; 149 L.Ed.2d 420] (jailhouse lawyer’s correspondence could be subject to prison regulations if reasonably related to legitimate penological interests); see also *Blaisdell v. Frappiea* (9th Cir. 2013) 729 F.3d 1237 (allowing person who served another person’s legal documents on a prison staff member to be punished under Hawaii prison rule prohibiting possession of other persons’ legal documents without permission of prison officials).

<sup>17</sup> *Newell v. Sauser* (9th Cir. 1996) 79 F.3d 115, 118 (incarcerated law clerk in Alaska could not be disciplined for keeping another person’s legal papers in his cell, where regulation did not give notice that this was not allowed); *In re Harrell* (1970) 2 Cal.3d 675, 685-688 [87 Cal.Rptr. 504] (striking down former California regulation forbidding people in prison from possessing other peoples’ legal papers); but see *Schenck v. Edwards* (E.D. Wash. 1996) 921 F.Supp. 679, 684-685 (upholding regulation prohibiting people in prison from drafting legal pleadings for each other, on the reasoning that the rule reduced indebtedness between them).

<sup>18</sup> 15 CCR § 3163.

<sup>19</sup> 15 CCR § 3139.

<sup>20</sup> *Lindquist v. Idaho Board of Corrections* (9th Cir. 1985) 776 F.2d 851, 858; see also *Toussaint v. McCarthy* (9th Cir. 1986) 801 F.2d 1080, 1106-1110, 1113-1114 (establishing a law library for people in the SHU at San Quentin, who previously had access only through a “paging system”).



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CDCR regulations also require that all people incarcerated in California prisons be allowed access to a law library so that they may have meaningful access to the courts.<sup>21</sup> People who are not facing court deadlines are on General Legal User (GLU) status and should receive a minimum of two hours per calendar week of physical law library access *if* “resources are available.”<sup>22</sup> People who are not represented by an attorney in an active case and who are facing a statutory or court deadline may apply for Priority Legal User (PLU) status. People who are granted PLU status should receive a minimum of 4 hours per calendar week of physical law library access, if resources are available; PLU status entitles them to higher priority access to law library resources.<sup>23</sup>

Under CDCR regulations, a person should be allowed to have physical access to the law library except under “extraordinary circumstances,” such as when (1) the facility is under lockdown or a modified program; (2) the person is under restricted movement due to medical status; or (3) the person has been suspended from physical access to the law library pending investigation of a serious rule violation. In addition, if a person is found guilty of a serious rule violation involving law library resources, facilities, or staff, their physical access to the library may be suspended for up to 90 calendar days.<sup>24</sup> When access is limited due to a lockdown, the CDCR should try to restore access within 16 calendar days unless a high security risk continues to justify prohibiting law library access. When physical access is limited for any reason, people should be allowed to request that library staff deliver legal materials to them; this is called “paging.” Law library staff must deliver the requested material to a person’s cell no later than 16 calendar days after the request.<sup>25</sup>

People who do not speak English, who are disabled, or who do not read and write well may require additional assistance to assure their right of access to the courts; sometimes this assistance might be provided by incarcerated “law clerks” who have received paralegal-type training.<sup>26</sup>

There is no definitive answer to the question of what makes a prison law library constitutionally adequate. In the past, the U.S. Supreme Court has cited to guidelines proposed by the American Correctional Association, the American Bar Association, and the American Association of Law Libraries, which recommend that prison law libraries provide at least the following items: state codes (statutes); portions of an annotated U.S. Code pertaining to crimes and criminal procedure, habeas corpus, civil procedure, appellate procedure, and civil rights actions; federal and state case law reporters from 1960 to the present; statewide and local Rules of Court; the Criminal Law Reporter; Shepard’s citation volumes (for determining if cases are still good law); a law dictionary; and treatises.<sup>27</sup> (See §§ 19.15-19.27 for more information about these legal sources).

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<sup>21</sup> 15 CCR § 3122(a).

<sup>22</sup> 15 CCR § 3122(b); 15 CCR § 3123.

<sup>23</sup> 15 CCR § 3122(b); 15 CCR § 3123(b).

<sup>24</sup> 15 CCR § 3123.

<sup>25</sup> 15 CCR § 3123; see also *Hebbe v. Pfler* (9th Cir. 2010) 627 F.3d 338 (incarcerated person had triable claim that First Amendment right of access to the courts was violated because he was denied access to the prison law library during lockdowns and was never informed about the paging system).

<sup>26</sup> *Lindquist v. Idaho Board of Corrections* (9th Cir. 1985) 776 F.2d 851, 855-857; see also § 2.29 for information about the CDCR’s duties to provide reasonable accommodations so that peoples with disabilities can use prison services.

<sup>27</sup> *Bounds v. Smith* (1977) 430 U.S. 817, 819 fn. 4 [97 S.Ct. 1491; 52 L.Ed.2d 72]; see also *Lindquist v. Idaho Board of Corrections* (9th Cir. 1985) 776 F.2d 851, 856.

The CDCR regulations and the DOM list the minimum resources that California prison law libraries are required to have, and also require that library staff keep materials up to date and replace lost or damaged materials.<sup>28</sup> Some materials – *Corpus Juris Secundum*, *California Jurisprudence* and *Federal Rules Decisions* or their equivalents – are available only from a “circulating law library” upon requests made to the local institution law librarian.<sup>29</sup> The CDCR has also begun to make electronic research databases available in California prison law libraries.

## 19.6 Access to Legal Supplies

The right of effective access to the courts includes the right to get basic supplies necessary to communicate with the courts. According to the U.S. Supreme Court, all prisons must provide people who are indigent (do not have money) with paper and something to write with, as well as postage to mail legal documents to the courts.<sup>30</sup> However, people in prison do not have a constitutional right to use a typewriter to prepare legal documents.<sup>31</sup>

CDCR regulations state that indigent people shall be provided with free postage for mailing documents to the courts and to the Attorney General’s office.<sup>32</sup>

The CDCR also provides for photocopying of legal documents so that people may send required copies to the courts and opposing parties, as well as keep copies for their own records. Necessary legal documents shall be copied free of charge for people who are indigent; however, people with \$1.00 or more in their trust account must pay for copies. The legal documents may be no more than 50 pages long, unless the person explains the need for more pages. Prison officials may restrict a person’s use of legal document photocopying services if the person abuses the services to an extent that deprives others of access or creates unnecessary expense to the state; however, such restrictions must not interfere with the person’s right of access to the courts.<sup>33</sup>

Under CDCR’s property rules, people in the prison’s general population may possess a typewriter.<sup>34</sup>

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<sup>28</sup> 15 CCR § 3124(a); DOM §§ 101120.11-101120.13. For nearly four decades, a court injunction set requirements for the contents of California prison law libraries; however, the injunction was terminated in 2010. *Gilmore v. Lynch* (N.D. Cal. 1970) 319 F.Supp. 105; *Gilmore v. Lynch* (N.D. Cal. Oct. 16, 1972) No. 66-45878, Order Directing Adoption of Regulations to Implement Previous Order Granting Relief; *Gilmore v. California* (N.D. Cal. Apr. 4, 2010) No. 66- 45878 Order Granting Defendants’ Motion to Terminate Injunction.

<sup>29</sup> 15 CCR § 3124(b); DOM § 101120.14.

<sup>30</sup> *Bounds v. Smith* (1977) 430 U.S. 817, 824-825 [97 S.Ct. 1491; 52 L.Ed.2d 72].

<sup>31</sup> *Nevada Dept. of Corrections v. Greene* (9th Cir. 2011) 648 F.3d 1014 (Nevada prison ban on personal possession of typewriters did not infringe upon the right to court access); *Jackson v. Arizona* (9th Cir. 1989) 885 F.2d 639, 641; *Lindquist v. Idaho Board of Corrections* (9th Cir. 1985) 776 F.2d 851, 858.

<sup>32</sup> 15 CCR § 3138(h). This is in addition to the right of indigent people to receive five free stamped envelopes a week for general correspondence. See 15 CCR § 3138(a).

<sup>33</sup> 15 CCR § 3138(h); 15 CCR § 3162.

<sup>34</sup> DOM Appendix, Authorized Personal Property Schedule.

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### 19.7 Access to Legal Property

The Fourteenth Amendment federal constitutional guarantee of access to the courts protects an incarcerated person's right of access to their own legal documents. This prohibits prison officials from permanently depriving people of access to reasonable amounts of their legal documents. However, federal courts have permitted temporary restrictions on access to legal documents where there is no showing that the deprivation cause specific harm to the person.<sup>35</sup>

The CDCR has special rules regarding possession and storage of “legal materials” such as law books, court transcripts, pleadings, research notes, and attorney-client communications. Such materials generally count toward the maximum six-cubic-foot property limit that applies to all people in California state prisons; however, people with active cases may keep possession of up to one additional cubic foot of legal materials related to their active cases.

People in prison may request that the institution store and provide access to excess legal materials — except law books — that are related to their active cases.<sup>36</sup> Otherwise, excess legal materials must be sent home or returned to the sender at the person's expense, donated to a charity or to the prison, or destroyed.<sup>37</sup>

## GATHERING AND DESCRIBING THE FACTS

### 19.8 Overview

Every legal action should start with gathering the facts and evidence that support the claim, followed by preparing a written statement of the facts. To win a legal action, it is vital to state the necessary facts clearly, and then prove them. The following sections provide an overview of how to gather and present factual information.

The following sections of this Chapter are a self-help guide to factual and legal research and litigation for people in prison. The information is presented in a second-person format (using “you”) to make the material easier to understand.

For more information about discovery of evidence and evidentiary hearings during legal actions, see the Chapters in this *Handbook* that discuss specific types of legal actions – state petitions for writ of habeas corpus and mandate (Chapter 15), federal petitions for writ of habeas corpus (Chapter 16), federal civil rights lawsuits (Chapter 17), and state tort actions (Chapter 18).

### 19.9 Reviewing the Central File

You may need to attach CDCR or BPH documents to your administrative appeals or legal actions to explain and prove the points you want to make. The CDCR Central File (“C-File”) is the main resource for a person in prison or on parole to find information about actions taken by the

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<sup>35</sup> *Lewis v. Casey* (1996) 518 U.S. 343, 351-355, 361-362 [116 S.Ct. 2174; 135 L.Ed.2d 606]; *Vigliotto v. Terry* (9th Cir. (1989) 873 F.2d 1201, 1202-1203; *Sands v. Lewis* (9th Cir. 1989) 886 F.2d 1166, 1171.

<sup>36</sup> 15 CCR § 3161.

<sup>37</sup> 15 CCR § 3161; 15 CCR § 3191(c).

CDCR or the BPH. It also contains some basic information about your commitment offense and sentence and prior juvenile, criminal, and social history.

The CDCR creates and keeps a Central File for each person incarcerated in the California prison system.<sup>38</sup> Central Files used to be in paper form (and then converted to microfiche when a person was released from prison), but they are now kept in electronic formats known as ERMS (Electronic Records Management System, for paper records that were scanned into computer form) and SOMS (Strategic Offender Management System, for electronic data entry forms).

Your Central File should contain all documents and reports that the CDCR generates or receives about you. These include documents related to the commitment offense and prior criminal and social history, classification documents; “chronos” or reports written by custodial or program staff, and disciplinary reports. A list of the documents that should appear in the Central File is included as Appendix 19-B.

CDCR officials are required to provide you with copies of all non-confidential documents about you at the time those documents are created.<sup>39</sup> In addition, you have the right to conduct a review of your Central File and get copies of all non-confidential documents contained in that file (although you may have to pay for copies if you have money to do so). This is called an “*Olson* review,” named after the court case that established the right of people to view their non-confidential prison records.<sup>40</sup>

To conduct an *Olson* review, you should make a request to your correctional counselor. CDCR staff should then prepare a CD (compact disk) containing all the non-confidential documents in the file and a form listing any confidential documents being withheld, and the counselor should arrange an appointment for you to review the file.<sup>41</sup>

Your lawyer can also review the Central File and obtain copies of non-confidential documents in the file. If the lawyer is the your attorney of record for an upcoming parole hearing (meaning that you have submitted a signed BPH Form 1003 notifying the BPH that you have retained this attorney for the hearing), the prison’s BPH Desk should ensure that an electronic version of the Central File will be made available to the lawyer about 90 days before from the scheduled hearing date. In that case, the lawyer should be able to review the Central File electronically from any location by logging into a secure browser on any computer.

In all other circumstances – that is, if your lawyer wishes to review the Central File earlier than 90 days before an upcoming parole hearing, or if you do not have an upcoming parole hearing – the first step is for the lawyer to get you to sign a legal authorization form. (A sample authorization form is included as Appendix 19-C.) Some litigation coordinators may require the lawyer to sign a statement acknowledging the penalties for obtaining personal information from a state agency under false pretenses (included in Appendix 19-C). The lawyer should then contact the prison’s litigation coordinator to request and schedule a Central File review. The Central File review ordinarily will take place at the prison where you are housed, although prison staff may be able to arrange another location

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<sup>38</sup> DOM §§ 72030.1-72030.9.

<sup>39</sup> 15 CCR § 3375(h).

<sup>40</sup> *In re Olson* (1974) 37 Cal.App.3d 783 [112 Cal.Rptr. 579].

<sup>41</sup> DOM §§ 13030.16-13030.17.2.

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for the review since the files are now electronic. Alternatively, a lawyer can ask prison staff to send an electronic or paper copy of all or part of the file; some prisons charge for these copies.<sup>42</sup>

If you have been discharged from your CDCR term or placed on PRCS, you or your authorized representative can obtain Central File documents by contacting:

CDCR Departmental Archives  
2015 Aerojet Rd. Suite D  
Rancho Cordova, CA 95742  
tel: (916) 358-1521  
fax: (916) 358-1554

If you are on parole, you or your authorized representative can obtain Central File documents by contacting:

Division of Adult Parole Operations  
Case Records  
9160 Cleveland Ave. Suite 101  
Rancho Cucamonga, CA 91730  
tel: (909) 484-3700

Parolees and their legal representatives can also request to view parole files like their parole field file, parole outpatient clinic file, or parolee ERMS data. The process is similar as for prison files except that the request should be submitted to the regional parole office Litigation Coordinator. The CDCR has specific policies on how parole file review requests are to be handled.<sup>43</sup>

### 19.10 Reviewing the Health Care File

A person in prison may review their own health care file. You also may give authorization for other people, such as a lawyer, to examine your health care file; prison officials will not allow someone else to look at the file unless you authorizes the disclosure. You can request their own records or authorize someone else to get you records by filling out and signing a CDCR Form 7385 Authorization for Release of Information (sample attached as Appendix 7-B). You should send the completed Form 7385 to the prison health records office. On the form, you should state which documents you want to see or have someone else see. If you are not sure which documents to request, or if someone requests the entire record, health records staff will meet with you and discuss what documents should be produced. Copies of the documents should be provided within 15 days after the Form 7385 is accepted by the health care records staff.<sup>44</sup>

If you ask for your entire health file and/or do not have money in their trust account, you should not be charged for copies of the health care documents. If you have money in your trust account and is provided with selected documents, you will be charged \$.10 per page.<sup>45</sup>

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<sup>42</sup> DOM §§ 13030.16-13030.17.2.

<sup>43</sup> DOM §§ 86070.1-86070.14.

<sup>44</sup> California Correctional Health Care Services, *IMSP&P*, Vol. 6, Ch. 4.2, F.

<sup>45</sup> California Correctional Health Care Services, *IMSP&P*, Vol. 6, Ch. 4.2, B, F.

Ordinarily, you or someone who is authorized to view your health records should be allowed to view any documents in the file. However, occasionally a document might be deemed confidential and not disclosed. Health records may be classified as confidential if there is a substantial risk of significant adverse or detrimental consequences in the patient seeing or receiving a copy of their records. Records may also be deemed confidential if disclosing them would create an undue risk of harm to prison security or the safety of others.<sup>46</sup>

When a person dies in prison, prison staff must write a report and notify various local and state officials about the death.<sup>47</sup> The prison staff must also notify anyone that the person listed in their records as someone who should be notified if they die or have a serious illness or injury.<sup>48</sup>

Sometimes people want to get copies of their CDCR health care records after they have paroled or discharged. If you are on parole, your health care records are stored at the regional parole office for the area where the person is on parole (addresses of the regional parole offices can be found in Appendix 11-A). If you have discharged from CDCR term, your records will be at the CDCR Health Records Center, as are the health records of people on who die while on parole. Records are kept for 10 years after a person is discharged from their prison term.<sup>49</sup> The address is: Health Records Center, P.O. Box 5588500, Elk Grove, CA 95758, tel: (916) 229-0475, fax (916) 229-0608.

## 19.11 Gathering Other Documents and Witness Statements

When filing an administrative appeal or legal action, you may need to gather and attach information other than CDCR documents support the claim. Depending on the type of claim, it may be necessary or useful to attach documents related to a person's criminal case, parole revocation hearing transcripts, health care records, or statements by witnesses or experts. Below are some basic tips for gathering these forms of information.

For information about your criminal case, the first places to look are the courts and your prior criminal case attorneys. The attorney who represented you in taking a plea, at trial, or at sentencing, may have a file with documents about the case. In cases where you directly appealed your conviction, your appellate attorney may have a case file, possibly including transcripts of superior court proceedings.<sup>50</sup>

For cases involving medical care or disability issues, you may want to contact your prior outside health care, education, or other service providers to request copies of their records.

In some situations, it may be useful to obtain written statements from people who witnessed events, people with relevant information about you or about what happened to you, or experts in a field. You may want to give each potential witness a list of topics to address in their statement, to ensure that all points necessary for the legal claim are presented. You should ask potential witnesses

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<sup>46</sup> California Correctional Health Care Services, *IMSPe&P*, Vol. 6, Ch. 4.2, G.

<sup>47</sup> Penal Code § 5021.

<sup>48</sup> Penal Code § 5022; 15 CCR §§ 3357(e)-(f).

<sup>49</sup> California Correctional Health Care Services, *IMSPe&P*, Vol. 6, Chs. 9.2, 11.

<sup>50</sup> *In re Henderson* (1964) 61 Cal.2d 541, 542 [39 Cal.Rptr. 373].

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to write their statements in a signed and dated declaration in which they include a statement that they “swear under penalty of perjury that the information provided is true.”

Sometimes your own statement of what happened can be useful or necessary to your legal claim. Like any other witness, you should present your statement in a declaration sworn to be true under penalty of perjury. Sometimes you can use a legal form (like the state habeas petition form for people in prison) to state the facts under penalty of perjury.

### 19.12 Writing a Statement of Facts

Every court action will require a written statement of the facts, usually in the initial petition, complaint, or other document that starts the legal action. To maximize the chances of winning a case, it is crucial for you to present the facts clearly and thoroughly, and without irrelevant or over-lengthy discussion.

Your statement of facts must describe what happened, when and where it happened, and who was involved. In most situations, it is best to describe the events in the order they happened. The tone should not be argumentative, over-dramatic, or generalized, and should be clear and specific. For example, the description of who was involved in an event should include full names, if possible and/or other identifying details. Don’t just say that “Officer Doe assaulted me and caused great bodily injury,” put in details like “Officer Doe hit me hard in the face twice with a closed fist and broke my nose.”

You also should clearly and concisely describe the case status – that is, the legal and administrative proceedings that have happened so far in the case. This can be in the statement of facts or in a separate section titled the “statement of the case.” In a criminal case or a parole revocation case, the description of the case status should include the date and outcome of any plea, trial, sentencing, or other disposition. In a case involving prison or parole issues, the statement should describe what administrative appeals were filed and when and what responses were received and when. If you have filed other legal actions on the same issue, you should state what type of action, when it was filed, and the outcome.

If you have not satisfied procedural requirements but have a good reason for not doing so, the statement of the facts or statement of the case is the place to set forth that good reason. For example, if it took you a long to file a state habeas corpus petition because of unconstitutional inadequacies in the law library, you should describe those inadequacies. Likewise, if you were unable to exhaust administrative remedies because a prison official wrongfully screened out your administrative appeal, you should spell out the facts showing when you filed your appeal, when it was screened out, and why the screen-out was wrong.

In the statements of the case and facts, you should refer to the documents that prove the facts that you describe and that are being attached to the administrative appeal or legal document. You can call the documents “Exhibits” and label them with letters or numbers like “Exhibit A” or “Exhibit 1.” For example, a statement of facts might say, “Jo Doe was found guilty of a rule violation report on January 1, 2018 (see Exhibit A: Rule Violation Report, log # 18-0001).” If there are a lot of exhibits, you might want to make a one- or two-page table that lists all of the exhibits, and place that Table of Exhibits between the legal document and the pile of attached exhibits.

The statement of facts generally should not include legal citations, arguments, or discussions. Those legal matters belong in a separate part of the brief, petition, or other pleading. § 19.29 provides general tips for writing the legal argument portion of a document.

## LEARNING AND USING THE LAW

### 19.13 Overview of the Legal System

As a first step toward becoming a skilled legal researcher, it is important to have a working knowledge of the different law-makers and laws that affect your rights. The purpose of the following sections are to ensure that you understand these basics.

People in California are governed by two separate legal systems: federal (U.S.) and state (California). Federal law generally applies across all the states in the United States; California state law applies within the state of California. Like California, every state has its own legal system that is distinct from the federal legal system and generally is not supposed to conflict with it. The federal system has its own framework of institutions, rules, and protections; and California has its own framework as well.

For people in California state prisons, most of the relevant legal rights will be found in the criminal, prison, and parole laws of the state of California. However, people in state prisons do have *some* protections under federal law. For example, the U.S. Constitution, the Americans with Disabilities Act (ADA), and the Prison Rape Elimination Act (PREA) are federal laws that protect *all* people serving prison terms in the United States, including people in state prisons.

Both the federal and state law systems have similar types of law-making institutions. In both the federal system and the state system, the three branches of government are the legislature, the executive, and the judiciary. Each branch plays a distinct role in making, carrying out, and interpreting legal rules.

First, making and passing new laws is mostly the task of an elected legislative body. In the federal system, this is the U.S. Congress, which is responsible for enacting and amending the U.S. Constitution, as well as federal statutes such as the ADA. In California, the California State Legislature enacts and amends state constitutional provisions, as well as state statutes like the California Penal Code. California voters sometimes also make laws by drafting and passing propositions. In recent years, the California laws related to criminal convictions and sentences, prison, and parole have changed quite often due to enactments and amendments by the legislature and the voters.

Second, carrying out or implementing laws is usually the role of the executive branch. In the federal system, the head of the executive branch is the U.S. President, who oversees federal administrative agencies like the Department of Homeland Security, Bureau of Prisons, Department of Defense, and Environmental Protection Agency. The head of the California executive branch is the state Governor, who oversees the state's administrative agencies like the CDCR and the BPH. These agencies are responsible for day-to-day operations that carry out different existing laws. To carry out their purposes, agencies may make and enforce regulations, hear and decide administrative matters, and create administrative appeals processes.

Third, interpreting and applying laws to specific cases is mostly the task of courts (the judicial branch). As courts resolve specific disputes, courts interpret and apply the constitutional, statutory,



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and regulatory laws. By publishing decisions that explain their legal reasoning in each case, courts create “case law.” Usually, courts follow the principle of *stare decisis*, which means they will rely on the legal rules and reasoning set by previous court decisions in similar cases; this is called “following precedent”. However, sometimes a court overrules past cases and creates a new rule; this is called “establishing new precedent”. Alternatively, a court may point to ways in which a case is different from previously decided cases, and thus decide that the outcome should be different; this is called “distinguishing” a case from precedent. The legislative and executive branches must obey the decisions of the courts.

### 19.14 Overview of Legal Research

As discussed above, the law is made up of constitutions, statutes, administrative regulations, and court case decisions. Whether you are preparing to bring a legal action or simply trying to understand your rights, your main task as a legal researcher will be to find the current laws that apply to your case.

When you read about the law, or when you write your own research notes or write legal documents, the legal authorities are identified by citations. A citation is a formal, shorthand way to refer to the source of the information, such as a court decision, a statute, a regulation. It’s easiest to put the citation in the text right after the sentence; alternatively, a citation can be in a footnote (like the citations in this *Handbook*). For example, a sentence in your notes or legal brief might look like this: “Poor health care in prison is unconstitutional cruel and unusual punishment if prison officials act with deliberate indifference to serious medical, dental, or mental health needs. (U.S. Constitution, Eighth Amendment; *Estelle v. Gamble* (1976) 429 U.S. 97, 103-104.)” Sometimes a legal writer will include a note about a specific point or circumstance; for example “(*Hunt v. Dental Dept.* (9th Cir. 1989) 865 F.2d 198, 200 [Eighth Amendment applies to dental care]).” Also, sometimes citations will have “introductory signals” that inform the reader about the relationship between the statement of law and the citation. You should know what they mean when you see them in cases or treatises:

- ◆ no introductory signal: the source directly supports the statement made by the writer
- ◆ *e.g.*: the source provides a good example that supports a general statement
- ◆ *see*: the source indirectly supports the statement
- ◆ *see also*: the source is additional material that supports a statement
- ◆ *cf.*: comparing the statement and the source logically supports the statement
- ◆ *compare*: comparing the two sources supports the statement
- ◆ *contra*: the source directly contradicts the statement
- ◆ *but see*: the source indirectly contradicts the statement
- ◆ *but cf.*: the source is logically contradictory to the statement

The federal courts and California state courts use slightly different rules about the format of citations.<sup>51</sup> As a non-lawyer litigating your own case, you don't need to worry too much about getting the format of your citations exactly right; the important thing is that that judge or other person reading the brief has enough information to identify and find the source of the law that you are relying upon. More information about the format of citations for legal sources is in §§ 19.15-19.25.

In the past, legal research always was done using printed materials in books and binders. Nowadays, most legal researchers access information through electronic databases, such as LexisNexis and Westlaw. Even the CDCR now provides electronic research kiosks (stations) in most prison law libraries. This Chapter gives an overview of the steps for conducting legal research, but does not cover details of finding materials in a print library or an electronic databases. If you do not know how to use an electronic database, or don't know where to locate particular books, you may be able to get help from law library staff or clerks, or from a user's manual.<sup>52</sup>

Whether you are using books or a computer, the basic steps of legal research are the same: first, identify what type of information you need to find; second, identify the source or sources that could contain this information; third, locate relevant sections in the source by browsing the table of contents or index; finally, read the relevant sections, which may then help you identify other sources of information that you should look at.

If you already know the title or citation for a Penal Code section, CDCR regulation section, or court decision you want to read, you can locate that item in an electronic database by running a search for that title and/or citation. If the item is in book form, you should be able to find the volume with that section or case and flip through it to find the correct page.

Alternatively, if you don't know exactly what case, regulation, or statute you're looking for, but you want to find the laws that apply to a specific topic, you can start by looking for information in a treatise that provides an overview of the topic and citations to key legal rules. (See § 19.25 for more on treatises.) For example, this *Handbook* is a treatise. If you have access to an electronic database, you can also run a **descriptive word search** by asking a plain-English question in the search bar (such as “What are the due process rights at parole revocation hearings?”); or you can run a **keyword search** by typing key words and phrases into the search bar (such as “parole revocation” and “due process”). Once you have run a search, you can then apply different kinds of “filters” to narrow down your search results. For example, you can narrow your search so that it includes only cases from a certain time span, only decisions by particular courts, or only cases that involve specific legal issues. For more detailed advice on how to run a search to find what you need, you may want to seek help from law library staff or clerks.

Any area of law – including criminal law, prison law, and parole law – can change significantly over time. For this reason, when researching the law and preparing to bring a legal claim, you should always take care in figuring out which version of a law applies to your case, and make sure you rely on the correct version. For most prison and parole issues, it is appropriate to rely on the most recent version of the law. However, for many criminal law issues, it is appropriate to rely on the version of

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<sup>51</sup> Anyone who wants more information about citation formats should refer to the *California Style Manual* (for the format used by California courts) or *The Bluebook: A Uniform System of Citation* (for the format used by federal courts).

<sup>52</sup> Also, there are many free sources of information on the internet, if you are on the outside or have a person on the outside who can help you. By using search engines, you can find federal or state court cases, statutes, regulations, and forms, as well as self-help information.

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the law that was in place when you (at least allegedly) committed the crime. (See §§ 19.26-19.27 for guidance on how to make sure you are relying on the most current version of the law.)

When conducting legal research about a potential legal claim, you will need to understand the main types of legal authorities (constitutions, statutes, regulations, and court cases) that may govern your case, as well as how to find relevant material within each authority. When preparing legal documents presenting your claim to an administrative agency or a court, you also need to know how to cite (refer) to authorities that support your position. Therefore, the following sections describe the main types of federal and state legal authorities relevant to criminal, prison and parole issues, how each one is organized and published, and what a typical citation to each authority should look like in your legal document.

**Note:** Latin words and phrases are commonly used in legal sources, including treatises and court decisions. The definitions of these Latin terms (and other legal terms) can be found in a legal dictionary, which should be available in the law library. Some regular dictionaries may also define these terms. Appendix 19-D is a list of the most common Latin phrases and their meanings.

### 19.15 Federal Constitution

The United States (federal) Constitution, which was adopted in 1789, is the highest law of the nation. The U.S. Constitution creates general areas of authority for each branch of government and sets general limits on government powers. It is written in broad language, and courts have interpreted its requirements in dramatically different ways over time. The Constitution contains numbered Articles, followed by 26 numbered Amendments in the order in which they were adopted. A citation to the federal Constitution looks like this: U.S. Constitution, Amendment V *or* U.S. Constitution, Fifth Amendment *or* U.S. Constitution, 5th Amendment. The citation can be abbreviated like this: U.S. Const., Amend. V *or* U.S. Const., Fifth Amend. *or* U.S. Const., 5th Amend. (It doesn't matter which format you use in your own writing, but it is best to pick and use it throughout your document.)

The first 10 amendments to the U.S. Constitution, called the “Bill of Rights,” list important rights and liberties that are supposed to protect people from unfair government oppression. The Bill of Rights is the foundation for many of the rights held by people who are accused of crimes, incarcerated in prison, and under parole supervision. For example, the Fourth Amendment gives people a right to be free from unreasonable searches and seizures, the Fifth Amendment protects people against being forced to incriminate themselves, the Sixth Amendment gives people accused of a crime with the right to the assistance of counsel, and the Eighth Amendment gives people a right to be free from punishments that are cruel or unusual. Under the Due Process Clause of the Fourteenth Amendment, almost all of the Bill of Rights applies to state government actions as well as to federal government actions.

The U.S. Constitution is sometimes printed in a volume of its own. It also is included in the books that contain the federal statutes: the United States Code (U.S.C.), the United States Code Annotated (U.S.C.A.), and the United States Code Service (U.S.C.S.). These all contain the same constitutional text; they are just published by different organizations or companies. At least one of these sets of books should be available in the law library in book form or through the electronic research database.

The U.S.C.A. and U.S.C.S. are annotated. This means that in addition to having the words of the constitutional articles and amendments, the publishers provide additional information such as

summaries of court cases that have interpreted or applied each article or amendment. These summaries can be very useful in helping you find relevant cases. With an electronic legal research tool, you will usually see links that you can click on to find court decisions interpreting the constitution. With books, you will have to write down the citation for the court cases and then go look them up in the case law reporters.

## 19.16 Federal Statutes

The elected lawmakers of the U.S. Congress write and adopt federal statutes, also called codes. Federal statutes, which are arranged by title numbers, are published in the United States Code (U.S.C.), the United States Code Annotated (U.S.C.A.), and the United States Code Service (U.S.C.S.). These three sources are published by different organizations, but they all contain the same statutes organized and numbered in the same way. When referring to a federal statute in a legal brief, you need to cite only *one* of these three sources. An example of a citation to a federal statute is 42 U.S.C. § 12101; the volume number is 42, the name of the publication is the United States Code, and the section number is 12101.

Some federal statutes contain provisions that protect people from unfair actions by the state government and allow them to enforce their federal constitutional and statutory rights. The federal habeas corpus statutes (28 U.S.C. §§ 2241-2254) allow people in state prisons and under state parole supervision to challenge the length and validity of their custody in federal court. The federal Civil Rights Act (42 U.S.C. § 1983) allows people in state prisons and under state parole supervision to sue prison officials or other state employees who have violated their federal rights. Federal habeas corpus is discussed in more detail in Chapter 16, and federal civil rights suits are discussed in Chapter 17.

Other federal laws create additional rights that apply to people incarcerated in state prisons, such as the Americans with Disabilities Act (ADA) (42 U.S.C. §§ 12101 et seq.), the Religious Land Use and Institutionalized Persons Act (RLUIPA) (42 U.S.C. § 2000cc et seq.), and the Prison Rape Elimination Act (PREA) (42 U.S.C. § 15601). The ADA is discussed in § 2.29, RLUIPA is discussed in § 2.22, and the PREA is discussed in § 3.9.

The Immigration and Nationality Act (INA), which is in Volume 8 of the United States Code, is another federal statute that can affect people in state prisons and under state parole supervision. The INA contains laws about the immigration and deportation of people who are not U.S. citizens. Immigration and deportation issues that affect people in state prisons are discussed in Chapter 13.

Volume 18 of the United States Code describes activities that are crimes under federal law and penalties for violating those laws. Any person in this country who engages in those activities is subject to conviction and punishment under federal law. (Some acts are crimes under both federal and state law, and can be prosecuted by either state or federal authorities.) Volume 18 also includes laws about prison conditions, but those apply only to people in federal prisons.

The U.S.C.A. and U.S.C.S. are annotated. This means that the text of each statute – both in the printed book and in the electronic database – will be followed by summaries of court decisions that have interpreted or applied that statute.

If you are looking for a federal statute that covers a specific topic, but you don't know which section of the code discusses that topic, it can be helpful to look in the index to the codes. For most types of statute books, you can usually find an index at the end of the last volume in a set. The index

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contains an alphabetical list of all topics covered in the statutes with the section numbers that cover each topic. Another strategy is to look at the table of contents at the front of a volume, or at the list of contents usually provided for sub-portions of the codes. When researching with an electronic database, you can also do a descriptive word search or keyword search of the code for the topic you want to find.

### 19.17 Federal Regulations

Federal agencies, which carry out the purposes of the federal statutes, often adopt specific regulations and policies to govern their day-to-day operations. All federal regulations are published in the Code of Federal Regulations (CFR). A citation to the federal regulations looks like this: 8 C.F.R. § 1240.26(c)(4). The volume number is 8, the name of the publication is the Code of Federal Regulations, and the section number is 1240.26, subdivision (c)(4).

Most federal regulations are not relevant to people in state prisons. One important exception is the portion of the CFR that deals with immigration issues. A related body of law are the decisions of the Board of Immigration Appeals (BIA), which is the federal agency that decides disputes in immigration and deportation cases. These administrative decisions are cited similar to court cases, for example: *Matter of Pickering* (BIA 2003) 23 I. & N. Dec. 621. Pickering is the person whose case is being decided, BIA is the agency making the decision, 2003 is the year of the decision, 23 is the volume number, I & N Dec. stands for Immigration and Nationality Decisions, and 621 is the page number on which the decision starts.

### 19.18 Federal Court Cases

Generally, federal courts have the power to decide only issues that are based in federal law (the U.S. Constitution, U.S. Codes, or Code of Federal Regulations). For example, although a federal court can decide whether a CDCR officer's use of force was cruel and unusual punishment in violation of the Eighth Amendment to the U.S. Constitution, it cannot decide whether the failure to investigate the CDCR's officer's use of force violated California statutes or CDCR regulations.

However, in federal civil rights cases, federal courts *can* decide state law claims that are closely related to the federal claims in the case (this is called "pendant jurisdiction"). Returning to the example in the paragraph above, if the case raises *both* federal and state law issues that are based on the same facts and similar legal principles, a federal court might be able to decide whether the CDCR officer's use of force violated both the U.S. Constitution *and* the California constitution, statutes, or regulations.

There are three levels of courts in the federal judicial system:

- ◆ **United States District Courts** are the federal trial courts, the lowest level of the federal courts. In California, there are four federal districts; some have courthouses in more than one location. The districts are: Central District (C.D. Cal.) in Los Angeles; Eastern District (E.D. Cal.) in Sacramento and Fresno; Northern District (N.D. Cal.) in San Francisco, Oakland, and San Jose; and Southern District (S.D. Cal.) in San Diego. Appendix 16-A lists the addresses for all the federal courts in California and shows which prisons are in each district. Each district court must follow the decisions of the U.S. Supreme Court, the U.S. Court of Appeals that covers the district, and its own prior

written decisions. The district courts may consider the decisions of other district courts but do not have to follow them.

A district court can decide whether or not to publish its opinion in a particular case; in the federal courts, you can cite both published and unpublished federal decisions as precedent.<sup>53</sup> The published district court opinions are in a source called the Federal Supplement (F.Supp.). The opinions are arranged by the date they were decided. An example of a citation to a federal district court case is *Osumi v. Giurbino* (C.D. Cal. 2006) 445 F.Supp.2d 1152. The plaintiff or petitioner was Osumi, the defendant or respondent was Giurbino, the case was decided by the District Court for the Central District of California in the year 2006; it is published in volume 445, in the second series of the Federal Supplement, starting on page 1152.<sup>54</sup> Note that when volume numbers get too large, the publisher starts another series of reporters. This is shown by a number after the F.Supp. The “F.Supp.2d” shows that the case is in the second series of the Federal Supplement.

- ◆ The United States Courts of Appeals are the middle level of the federal court system; they handle appeals from district court decisions. The **Ninth Circuit Court of Appeals** handles cases from California, Arizona, Nevada, Idaho, Montana, Washington, Oregon, Alaska, and Hawaii. Federal court of appeals decisions are binding on the district courts in their own circuit; this means the district courts in California must follow the decisions of the Ninth Circuit Court of Appeals. Federal court of appeals decisions are not binding on courts in other circuits, but can be influential.

The opinions of the federal courts of appeals are published in the Federal Reporter (F. or F.2d or F.3d). An example of a citation to a federal appellate court case is *Blaisdell v. Frappiea* (9th Cir. 2013) 729 F.3d 1237.

- ◆ The **United States Supreme Court** is the highest court of the nation; all lower federal courts and all state courts must follow its decisions. The U.S. Supreme Court reviews decisions of the federal courts of appeals and decisions of the highest state courts (such as the California Supreme Court). The U.S. Supreme Court takes only cases that raise very important issues with a wide impact.

The written opinions of the U.S. Supreme Court are published in three different sets of case reporters. The official reports are the United States Reports (U.S.), published by the court. West Publishing publishes the Supreme Court Reporter (S.Ct.), and LexisNexis prints the United States Supreme Court Reports – Lawyer’s Edition (L.Ed. or L.Ed.2d). Each of these publishers numbers the volumes and pages in different ways; the S.Ct. and L.Ed. versions include additional material, such as headnotes and case summaries that can help a researcher more quickly understand what the case is about and help them find other related cases. An example of a citation that includes all three reporters is *Rhodes v. Chapman*

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<sup>53</sup> Federal Rule of Appellate Procedure, rule 32.1 (applies to cases issued on or after January 1, 2007; if the opinion or order is not available in an electronic database, the party citing it must attach a copy to their brief).

<sup>54</sup> The California court citation style is to put the year – and, where needed, the name of the court – directly after the case name; the federal courts put the year and name of the court at the very end of the citation. It doesn’t really matter which style a *pro se* plaintiff uses as long as all the information is included.

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(1981) 452 U.S. 337 [101 S.Ct. 2392; 69 L.Ed.2d 59].<sup>55</sup> When you write legal documents, it is fine to cite just one of the reporters, preferably the United States Reports (U.S.) version if it is available; such a citation would look like this: *Rhodes v. Chapman* (1981) 452 U.S. 337.

### 19.19 Federal Rules of Court

In every court, including federal courts, there are rules of procedure that govern how cases should be brought before that particular court. The rules include deadlines, formatting requirements for briefs, and procedures for filing motions and scheduling hearings.

The Federal Rules of Civil Procedure apply to federal civil rights cases in the federal district courts, the Federal Rules of Appellate Procedure apply in the federal appellate courts, the U.S. Supreme Court Rules apply in the U.S. Supreme Court, and special Federal Rules of Habeas Corpus apply to habeas corpus cases filed in federal court. These rules should be available in the prison law library, either in book form and/or on an electronic legal research database.

In addition to these general rules that apply in the federal system, most individual courts have local rules of their own. Therefore, before filing a legal action in any court, it is important to be aware of local rules. The local rules for the federal district courts in California and the Ninth Circuit Court of Appeals can be found in the *California Rules of Court (State and Federal)*, a book that groups the rules by topic and identifies them by number. The rules for each court can also be found on their websites. Upon request, court clerks can sometimes provide free copies of the local rules. See Appendix 16-A for the addresses of the federal courts.

### 19.20 California Constitution

Like all the other states, California has a state constitution. Many parts of it are similar to the U.S. Constitution. Article 1 of the California Constitution contains most of the protections that apply specifically to people accused of crimes and people in prison. Unfortunately, California courts are mostly required to interpret the state Constitution as providing no greater protection for the rights of people accused of crimes than the U.S. Constitution. In most matters *not* involving criminal charges, California courts have discretion to interpret the state Constitution as providing more rights than the federal Constitution, if they choose to do so.<sup>56</sup>

The California Constitution is published together with the California statutes. There are two companies (Deering and West) who each publish the California Constitution, numbered in the same way. Like the U.S. Constitution, the California Constitution should be available in the law library in book form and/or through the electronic database. A citation to the California Constitution looks like this: California Constitution, Article 1, § 7; it can be abbreviated as Cal. Const., Art. 1, § 7.

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<sup>55</sup> If you know the citation for a case in one publication, and you want to find the citation for the same case in another publication (called a “parallel” citation), you have several options. If you have access to an electronic research database, simply run a search for the citation you have, and the database will then display the parallel citations. Also, you can check publications called *Shepard's United States Case Citations* and *Shepard's Federal Case Citations*, which list cases by name and give the full parallel citations.

<sup>56</sup> California Constitution, Article 1, § 24.

If you are looking for a part of the California Constitution that covers a specific topic, but you do not know which Article or section includes that topic, it can be helpful to look at the table of contents that comes before the constitutional text. When researching with electronic tools, you can browse the table of contents and click on any of the Articles or sections, and you can also run a word search for a topic by typing key terms or a question into the search field.

## 19.21 California Statutes

The California statutes or codes, which are organized by topic and then by section number, set forth requirements and penalties that apply to every person in California. California's criminal laws – statutes that classify certain activities as crimes and set forth punishments for committing those crimes – are in the Penal Code, the Health and Safety Code, and the Vehicle Code. California's juvenile justice laws and civil commitment laws can be found in the Welfare and Institutions Code. An example of a citation to a California statute is Penal Code § 2600(a) (the code name, followed by the section number and any subsection letter or number); it can be abbreviated Pen. Code § 2600(a).

There are two main publishing companies, Deering and West, which publish the California statutes, both in printed books and in electronic databases. (Deering is now part of LexisNexis and West is now part of Thompson Reuters.) They publish “desktop” volumes that just have text of specific codes in them. They also publish full “annotated” versions of all the statutes. An annotated version includes the actual words of each statute, along with additional information (“annotations”) that may be useful to researchers, including the history of amendments to the statute, summaries of court cases that have discussed or applied the statute, and cross-references to other sources dealing with the same topic.

If you are looking for a California statute that covers a specific topic, but you do not know what section of the statute covers that topic, it can be helpful to look in the indexes. When researching with printed books, look for a “General Index” at the end of each set of statutes. The index contains an alphabetical list of all topics covered in the statute, providing the section numbers that cover each topic. Another strategy is to look at the detailed table of contents provided at the beginning of each particular statute (such as the Penal Code), or the table of contents usually provided for sub-portions of codes (titles and articles). When using electronic research tools, you can likewise browse the indexes and tables of contents, and you can also search the text of an entire statute by typing key terms or a question into the search field.

If you are on the outside or have an assistant on the outside with internet access, you can visit the California Legislature's website ([www.leginfo.legislature.ca.gov](http://www.leginfo.legislature.ca.gov)) for free access to all the California statutes, plus information about bills (to enact new statutes) or amendments to statutes that the Legislature is considering. It also is a useful resource to find legislative history – analyses of the legislature's intent and purpose when a proposed law was being considered and information about how the proposed law was changed before the final version was enacted. The California Secretary of State's website ([www.sos.ca.gov/elections](http://www.sos.ca.gov/elections)) provides free access to the text of new propositions that will be presented to the voters in the next election, as well as the text of propositions that were voted on in the past few elections.



## 19.22 California Regulations and Policies

All state agencies, such as the CDCR and the BPH, have the job of carrying out activities that are broadly defined by the state's laws. Each state agency makes written regulations that govern that agency's policies and practices. However, regulations do not have as much authority as statutes or constitutions. If a regulation conflicts with a statute or part of the constitution, then courts should declare that regulation invalid.

All California agency regulations are published in the California Code of Regulations (CCR or Cal. Code Regs.), organized into titles that cover various topics. An example of a citation to a California regulation is 15 CCR § 3327; the regulation is in Title 15 of the California Code of Regulations at section 3327.

Title 15 of the CCR, which is called "Crime Prevention and Corrections," contains the regulations of the CDCR (§§ 3000 et seq.) and the BPH (§§ 2000 et seq.). Every person in a California prison should receive a copy of the CDCR regulations contained in Title 15. Also, every California prison law library should have the CDCR and BPH regulations contained in Title 15, in print form and/or through the electronic database. The regulations include a table of contents that can be used for locating sections that discuss particular topics. Researchers with internet access can view and print the CDCR and BPH regulations, as well as information about recent and pending changes to the CDCR and BPH regulations, by visiting the CDCR website ([www.cdcr.ca.gov](http://www.cdcr.ca.gov)). For a discussion of rule-making procedures and the duty of the CDCR and the BPH to follow their own regulations, see §§ 2.4-2.7.

In addition to its regulations, the CDCR has a Department Operations Manual (DOM) with information about how its policies are carried out and which staff persons are responsible for various tasks. The CDCR is not *required* to comply with the DOM, but the DOM may be used as evidence as to what the CDCR practices are and what CDCR staff should be expected to do. (However, beware that some of the DOM sections have not been updated in a long time, and may be outdated or in conflict with current practices.) The DOM is printed in one volume with nine chapters covering broad topics such as Custody and Security Operations (Chapter 5), Classification (Chapter 6), Case Records Information (Chapter 7), Parole Operations (Chapter 8), Health Care Services (Chapter 9), and Programs (Chapter 10). A table of contents lists the sections that discuss specific topics. Printed copies should be available in each prison law library. The DOM is also available on the CDCR website ([www.cdcr.ca.gov](http://www.cdcr.ca.gov)).

The CDCR and the BPH sometimes issue memoranda or notices describing new policies or practices, and sometimes they attempt to distribute copies of these memoranda or notices to every person in prison affected by the changes. These memoranda and notices should be available in each prison law library, and some are available on the CDCR website ([www.cdcr.ca.gov](http://www.cdcr.ca.gov)).

In addition to being governed by CDCR regulations, each prison can adopt its own local Operational Procedures (OPs), and each prison's law library should contain a copy of its local OPs. As with the DOM, although local OPs are not legally binding on prison officials, they might serve as evidence of a prison's policies and practices.

## 19.23 California Court Cases

Appendix 15-A provides a list of all the California state courts, their addresses, and the prisons and counties within each state court's authority.

There are three main levels of state courts in California:<sup>57</sup>

- ◆ Despite their name, **Superior Courts** are the lowest-level state courts in California. These courts conduct criminal trials and sentencing hearings, parole revocation hearings, civil commitment trials, state tort law trials and (in some cases) federal civil rights law trials; they also hear first-level habeas corpus and mandate petitions. Every county in California has a superior court; some counties have multiple court branches. In some counties, the superior court also has special divisions for handling specific types of matters, such as juvenile cases or drug cases. Superior court opinions and rulings are not published and cannot be relied on as legal authority.
- ◆ The **Courts of Appeal** are the middle-level state courts in California. These courts handle appeals from the state superior courts. California is divided up into six appellate districts, and each appellate court has authority over one district; some of these districts are further divided up into multiple “divisions.” When a state Court of Appeal decides a case, it also decides whether or not to publish its written opinion in the law books. Published decisions are binding legal authority on other courts in that appellate district, but not in other appellate districts. Unpublished opinions may not be cited as authority for a legal point – except in some narrow circumstances where the cases involve the same parties.<sup>58</sup>

In California, there are two sets of reporters that contain the published appellate cases. The “official” version is the California Appellate Reports (Cal.App. through Cal.App.5th). West Publishing has another set of volumes called the California Reporter (Cal.Rptr through Cal.Rptr.3d.). Both sets contain the same opinions arranged by the date they were decided, but the numbering of volumes and pages is different. An example of a citation to a California appellate decision is: *Apollo v. Gyaami* (2008) 167 Cal.App.4th 1468 [85 Cal.Rptr.3d 127]; the case was decided in 2008, and is in volume 167 of the California Appellate Reports fourth series starting at page 1468, and also in volume 85 of the

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<sup>57</sup> Other states have similar multi-level court systems, though they may use different terms for the court levels. There are cases reporters for the decisions published by other states' courts, as well as reporters that publish cases from various regions of the country. For example, an Arizona court of appeals case may appear in both the Arizona Appeals Reporter and the Pacific Reporter. The citation would look like this: *Cardwell v. Hogan* (1975) 23 Ariz.App. 475 [534 P.2d 283]. The decisions of courts in other states are not binding on California courts, and the reporters that cover other states' courts are not likely to be available in a California prison law library, but it can be useful to recognize a citation to a court opinion from another state.

<sup>58</sup> California Rules of Court, rule 8.1115.

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California Reporter third series starting at page 127. In a legal document, it is fine to use the citation for only one of the books, preferably the California Appellate Reports.<sup>59</sup>

- ◆ The **California Supreme Court** is the highest state court in California. This court reviews decisions of the California appellate courts. Usually, the Supreme Court has discretion to decide whether or not to hear a case; most of the cases it takes are those in which lower courts have disagreed about how to interpret a law on a particular issue.<sup>60</sup> All Supreme Court opinions are published and *must* be followed by all lower state courts.<sup>61</sup>

There are two published sets of the California Supreme Court's opinions. The official case reporter is the California Reports (Cal. through Cal.5th). The other publication is the California Reporter (Cal.Rptr through Cal.Rptr.3d.), which contains the opinions of both the California Supreme Court and the Courts of Appeal in one set. The two publishers print the same cases, but they use different numbering systems. For example, a California Supreme Court case citation that refers to both publishers would be *People v. Jackson* (1980) 28 Cal.3d 264 [68 Cal.Rptr. 603]. This case was decided in 1980; it is in volume 28 of the California Reports third series starting at page 264; it is also in volume 68 of the California Reporter starting at page 603. In a legal document, you need to cite only one publication, preferably the California Reports.

### 19.24 California Rules of Court

A person filing a case in any state court should be aware of both the statewide and local court rules. Court rules cover information like the maximum number of pages for a brief or petition, what information should be included in a brief or petition, filing deadlines and requests for extensions of time, and procedures for scheduling a hearing.

The California Rules of Court are statewide rules of practice and procedure that apply to *all* California state courts. These rules are published in volumes of the California Codes and also in stand-alone volumes of court rules; they are and are also available on the California state court website ([www.courts.ca.gov](http://www.courts.ca.gov)). For people in prison, the statewide court rules most likely to be of interest are those for criminal trials and sentencing (rules 4.1-4.480), petitions for writ of habeas corpus (rules 4.550-4.551 and 8.380-8.388), direct appeals (rules 8.1-8.368), and petitions for review in the California Supreme Court (rules 8.500-8.516).

In addition to being governed by the California Rules of Court, every California state court makes local procedural rules that govern how cases are brought before it. Copies of local court rules

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<sup>59</sup> If you have the citation to a case in one publication, and you want to find the citation for the same case in another publication, you have several options. If you have access to an electronic research database, the easiest option is to run a search for the citation you have, and the database will then display the other ("parallel") citations. If you have the paper version of the California Reporter, look at the table at the beginning of the volume, where you'll see parallel citations to the California Appellate Reports and California Reports. Finally, you can consult *Shepard's California Citations*, a publication that lists cases by name and gives their full parallel citations.

<sup>60</sup> The rules about what types of cases the California Supreme Court will review are in California Rules of Court, rule 8.500(b).

<sup>61</sup> *Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450 [20 Cal.Rptr 321]; California Rules of Court, rule 8.1105(a).

can sometimes be obtained on the court’s website or by writing to the court clerk. Local rules may also be available in a law library.

## 19.25 Treatises and Legal Manuals

The materials discussed above – constitutions, statutes, regulations, cases, and court rules -- are “primary sources” of the law, meaning they contain the words of the actual laws. In contrast, “secondary sources” summarize and explain the laws in a clear and organized way. One example of a secondary source is *The California Prison and Parole Law Handbook*. Some other helpful books or resources on particular topics are described in various chapters of this *Handbook*.

Treatises are books that contain discussions of law organized by topic, with citations to primary sources. Because treatises summarize and explain the law in plain language, they are good starting points if you want to learn about the law on a specific topic but do not know where to begin.

Here is a short list of some useful treatises that may be available in the law library, either in paper or electronic form:

- ◆ *Corpus Juris Secundum*, an encyclopedia of United States law at the federal and state levels;
- ◆ *California Jurisprudence*, a legal encyclopedia focusing on California law;
- ◆ *Witkin* treatises, a comprehensive summary of California law with useful commentary and analysis. There are four sets: *Summary of California Law*, *California Evidence*, *California Procedure*, and *California Criminal Law*. *Witkin* is known as the “bible” of California law and sometimes is even cited by courts.
- ◆ *California Criminal Law Procedure and Practice and Appeals and Writs in Criminal Cases*, published by the Continuing Education of the Bar (CEB).

When using a treatise, a good way to start is by looking either at the table of contents or at the index. When working with books, you’ll find the table of contents in the front of the volume and the index in the back. If the resource is in an electronic database, you may find a table of context at the top of the text and the index at the bottom.

The table of contents will show what topics are covered and how they are organized in the resource; sometimes, in addition to a general table of contents, there is a more detailed table of contents at the start of each chapter. The index will provide an alphabetical list of all topics covered in the resource, along with page numbers or sections numbers showing where those topics are discussed. When publishers make an index, they try to use common words that come to mind when people think about a topic; if you cannot find the topic you want in the index, try to think of another word or phrase that expresses the same idea.

If you want to learn about a particular statute or case, and you know the number of the statute or the name of the case, look for that law in the table of authorities (usually toward the end of the book) to see all the places where that law is mentioned throughout the resource. In an electronic research database, you may be able to do a word search for the title or citation of the statute or case.

In addition to treatises, there are organizations and advocacy groups that produce information packets about laws and legal developments affecting people in prison and on parole. Some of these

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organizations post topical information packets on their websites and will mail these packets to people in prison upon request. The Prison Law Office has many such packets; electronic versions are available on the Resources page of its website ([www.prisonlaw.com](http://www.prisonlaw.com)), and paper copies can be requested by writing to Prison Law Office, General Delivery, San Quentin, CA 94964. Contact information for other organizations that may be able to provide legal information or assistance is in Appendix 19-A.

### **19.26 Finding Recent Changes to Constitutions, Statutes, and Regulations**

The law changes over time, and sometimes changes a lot in just a few months or years. You must make sure that the sources you are relying on are up-to-date, and that the laws you are citing in your legal documents are still “good law.” This section explains how to check the status of constitutions, statutes, and regulations when using books and electronic tools. § 19.27 explains how to check the status of a court case.

Many printed sources of law, including books of statutes, provide supplement volumes or “pocket parts” that describe recent changes to the law. Supplements are softcover booklets usually placed on the library shelf at the end of the hardcover book set. Pocket parts are small packets are pasted in the back of the volume to which they apply. As a researcher, once you find a relevant statute in a book of codes, you should look for the corresponding supplement volume or pocket part to see if that provision has changed since the date the main volume was published.

The California Code of Regulations is sometimes printed in a loose-leaf binder so that pages can be taken out and inserted as the law changes; the date of the most recent changes should be printed in the bottom corner of the page. Also, after each regulation section, there should be a list of the past dates on which the section has been amended

The CDCR publishes a new volume of the Title 15 regulations every year; the date of publication should be on the cover. Also, after each regulation section, there should be a list of the past dates on which the section has been amended. This volume should be available in all prison law libraries, and an electronic version is posted on the CDCR website ([www.cdcr.ca.gov/Regulations/](http://www.cdcr.ca.gov/Regulations/)). The CDCR also publishes notices of pending and newly adopted changes to Title 15, as well as recent changes to the DOM, which should be available in the law libraries and on the CDCR website.

Electronic databases also provide regular updates to the changing laws they contain. Unlike the supplements and pocket-part updates used for print materials, electronic updates are made directly to the text of the legal sources. When you look up any statute or regulation, the database will show the most current text of that statute or regulation, and it should also indicate the date of the most recent change to that law.

If you want to see an older version of a statute or regulation in an electronic database, first access the current version, then look to see if the screen shows dates on which previous versions of the statute or regulation took effect. You may be able view the previous versions by clicking on the dates shown. You might want to see an older version of a statute if, for example, you were convicted of a crime many years ago and want to see what the law said at that time, or if you want to see how many sentence credits you should have earned under laws that were in effect at earlier times.

## 19.27 “Shepardizing” to Find Applications, Interpretations, or Changes to the Law

Just as constitutions, statutes, and regulations change, the courts’ interpretation and applications of the laws can change over time. Also, a lower court decision may no longer be “good” case law if it has been overruled or disapproved by a higher court. Even very recent court decisions can get modified by rehearing, depublished by the California Supreme Court, or reversed or criticized by a higher state or federal court. Sometimes, lower courts may disagree with each other about how to interpret a certain law; during those periods, the different appellate courts may issue many decisions that conflict with each other, leaving the law unsettled until the California Supreme Court grants review and settles the issue. In other cases, the reasoning in one court decision may be further explained or refined in later decisions. In still other cases, a court decision may stop being “good law” because the court was interpreting a statute or regulation, and that statute or regulation later was changed.

Because of all these dynamics, it is crucial for a legal researcher to make sure a case is still “good law” before relying on or citing it in a legal document. It is also important to know whether there are any later court decisions that conflict with or limit the conclusion in a court case, as well as whether there are any later decisions that support the original court’s reasoning, expand its holding, or apply it in different circumstances. This section explains the important process of tracing the positive and negative treatment of a court decision since its publication. This process – which every legal researcher should learn – is commonly called “Shepardizing.”

The term “Shepardizing” comes from *Shepard’s Citations*, a set of books designed to make it easier for legal researchers to check the current status of published court decisions, as well as to view the history of each decision since it was published. The *Shepard’s* book sets – which include *Shepard’s United States Citations*, *Shepard’s Federal Citations* and *Shepard’s California Citations* – provide lists showing every time a court decision was cited or discussed in later court decisions and other legal authorities.

In electronic databases, Shepardizing can be easier than it is with the *Shepard’s* books. Some electronic systems have a symbol or note about the status of the case at the top of the screen showing the first page of the case; this might be a red flag (meaning that the case is no longer good law on some or all points), a yellow flag (meaning that the case is still good law but has been criticized, narrowed, or distinguished by other cases), or a note. By clicking on the symbol or note, you can get a list of newer court decisions and other materials that have cited the court decision you started with. Other types of electronic search systems require you to select a Shepard’s database and then type in the citation for a court case in order to get a list of the cases and other materials that cite that original case.

Once you have the list of citations, you can see, at a glance, how extensively each of the newer cases discussed the original case, and whether each new case discussed the original case in a favorable or negative way. By using a filtering tool, you may be able to narrow down the list of cases to show only those that addressed certain topics, or from particular courts or a specific time period. You can then access each of those court cases by clicking on their listing. Looking at the information about which headnote or topic of the original case is discussed in each later case is helpful if the original case discussed a lot of different topics and you are only interested in one or two of those topics. Also, if a later case really discussed the original case (rather than just citing it in passing) there will be an indicator such as “followed,” “criticized,” or “overruled;” cases with these types of indicators are important to check because they have the most effect on the development of the law.

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In addition to Shepardizing court decisions to ensure they are still “good law,” it is important to keep an eye out for new court decisions that may affect your case. If you are working with paper case reporter books, one way to do this is to check for “advance sheets,” which are softcover volumes that are usually placed on the bookshelf after the last hardcover reporter volume. (Advance sheets provide updates to case reporters in the same way that supplemental volumes and pocket parts provide updates to statute books.) Advance sheets also contain other information, such as a table of statutes and cases, an index, and a subsequent history table that lists any changes to the opinion since the date it was issued. A new court decision will typically appear in an advance sheet between one and three weeks after the court decided the case and ordered it to be published.

Another good practice is to keep an eye on legal newspapers that report on new legal developments, such as the *Los Angeles Daily Journal*, *San Francisco Daily Journal*, and *Recorder*. Legal newspapers should be available in the law libraries. Each day’s newspaper should come with a volume containing the text of court decisions that were published in the prior few days. The insert enclosed in the *Daily Journals* is called the Daily Appellate Reports (D.A.R.), and the insert in the *Recorder* is called the California Daily Opinion Service (C.D.O.S.). The D.A.R. and C.D.O.S. include all published California Court of Appeal and California Supreme Court cases, all California Supreme Court orders granting review, all U.S. Supreme Court cases, and all published Ninth Circuit Court of Appeal cases. If you need to cite a very recent decision in a legal brief, you can use the D.A.R. or C.D.O.S. citation. The correct citation will appear on the title page for the case and should look like this: *People v. Espinoza* (May 27, 2014) 2014 D.J.D.A.R. 6521; 2014 is the year of the publication, D.J.D.A.R. is the abbreviation for the publication, and 6521 is the page number on which the case starts.

### 19.28 Putting it All Together – A Legal Research Strategy

A legal research strategy is a plan for finding all the legal rules – including constitutional provisions, court decisions, statutes, and/or regulations – that apply to your case and your potential legal claim. You will need to understand all the current, relevant legal rules in order to know what legal claims you can bring, as well as what your strongest arguments might be. This section provides a general legal research strategy – an overview of steps you can take to find the legal information you need to prepare your legal claim. As you go through these steps, you should keep notes about the most materials you find; you may also want to make copies of the most important materials. To keep track of your research process, you may also want to take notes on what steps you have done and what materials you have read.

If you have little or no knowledge of the law governing your situation, you may want to start by consulting a **treatise**. For example, suppose you are a person serving an indeterminate life term, and you want to know if the BPH violated your rights by finding you unsuitable for parole based on your commitment offense and substance abuse history. If you don’t know much about the parole suitability process and criteria, and/or you don’t know how to identify the main statutes, regulations, or court decisions that govern parole suitability, you could start by looking for that information in a treatise. You might start with a treatise that specifically deals with criminal law and prison issues – for example, this *Handbook*, or CEB’s *California Criminal Law and Procedure*. You could also look at a general treatise like Witkin’s *California Criminal Law* or *California Jurisprudence* or *Corpus Juris Secundum*. By looking at the tables of contents and indexes, you can identify what sections or chapters in these resources contain information about parole suitability hearings. Reading those sections or chapters can provide you with basic background information and help you identify the main legal rules to be aware of, including the relevant statutes, regulations, and court decisions. If you have access to an electronic

database, you should be able to browse the tables of contents and indexes of treatises electronically, and you can get access to the topics you want by clicking on them.

Another possible way to start is by searching an **electronic database** for legal materials and information related to your issue. One approach is to do a descriptive word search by of databases of cases, statutes, and/or regulations by typing in a plain-English question like “When can the parole board find a person unsuitable due to commitment offense and substance abuse?” Another way to search is by entering key terms like “parole,” “unsuitability,” “commitment offense,” and “substance abuse,” possibly adding restrictions about how close together the terms should appear. The top search results will probably identify key legal rules or court cases, and maybe even some helpful secondary sources. You can start by reading those items; and then, as discussed below, you can branch out further by reading annotations and by Shepardizing. If you are not sure how to search the electronic database and sort your search results, you may be able to get training and assistance from law library staff or clerks.

*Note:* Depending on your case issues, different sources of law might be more or less important to your legal claim. For example, if you are raising a constitutional issue, such as the issue of whether your sentence violates the Eighth Amendment ban on “cruel and unusual punishment,” your argument might rely mainly on court decisions interpreting that provision. On the other hand, if you are raising an issue about how your sentence credits are calculated, your argument might depend mostly on the language of a statute or regulation, with little or no discussion of court decisions. And for still other legal claims, you may need to rely on *both* the statutory or regulatory language *and* court decisions interpreting that language. Because it may be difficult to find your way among all these possibilities, treatises are a good place to start because they can help you identify which legal rules are most relevant, and some treatises may even offer advice for finding the best approach to argue your claim.

Once you have identified any **statutory rules** relevant to your case, you may want to look up an annotated version of those rules so that you can read the actual text and also check the annotations for useful information. Among other things, the annotations may direct you to relevant **regulations** that govern how the statutory rules are carried out. If so, you should look up an annotated version of the regulations as well. (For example, if your case involves BPH parole suitability criteria, you should look at not only the statutory rules listing those criteria, but also the BPH regulations spelling out how those criteria should be applied.) When viewing this information in an electronic database, you can access materials cited in the annotation by clicking on the citations. When working with paper materials, be sure to consult any supplements, pocket parts, or notices of changes to regulations to ensure you are relying on up-to-date versions of the rules.

After reviewing the relevant statutory and/or regulatory provisions, you will want to find relevant **court decisions** – commonly called “**case law**” – that apply and interpret those provisions. There are many ways to find court decisions that are relevant to your case. Treatises can help you identify the most important legal rules, including case law, in each topic area. Likewise, annotations to statutes often cite to relevant case law. You can also Shepardize the statute to find court decisions that have analyzed those provisions. When viewing a relevant statute on an electronic database, look for links you can click to access court decisions that cite the statute. Once you find some relevant court decisions, you may then want to read the older cases cited by those decisions, and/or read newer cases that cite the decisions you have already found.



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When researching the law that applies to your specific circumstances, there are often a few higher-level court decisions setting general rules on the issue, and a larger number of lower-level court decisions applying the rules in particular circumstances that may be more or less like your case. You may want to start by identifying any California Supreme Court or U.S. Supreme Court cases setting general rules for cases like yours; and then look for any California Court of Appeal, federal 9th Circuit Court of Appeals and federal district court decisions addressing cases involving facts similar to yours. (For example, if your case involves a BPH parole denial based on the commitment offense and substance abuse history, you will find a few California Supreme Court decisions that have set general rules on parole suitability, and a much larger number of appellate decisions addressing challenges to BPH parole denials – including some based on the commitment offense and substance abuse history, and some based on other factors.)

As noted above, always check that court decisions are still “good law” before relying on them. It is a good general practice to Shepardize any cases you rely on, whether using books or an electronic database. If you have an electronic database, a quick initial step is to ensure the decision is not marked by a red flag. Regularly skimming legal newspapers and their daily appellate report inserts can also be helpful, especially if your case involves an area of law that is actively changing. For example, the law governing parole suitability changed significantly in 2008 (when the California Supreme Court overturned its main parole suitability decisions from the early and mid-2000s) and again in 2011 (when the U.S. Supreme Court rejected a line of parole suitability cases decided by the Ninth Circuit Court of Appeals during the prior decade). If you are unaware of these changes and rely on the old case law, your legal arguments will not be persuasive.

### **19.29 Effective Legal Writing**

This section provides guidelines for writing the legal argument portion of a document. Section § 19.12 provides tips on how to write statements of the facts and case status. In other chapters of this *Handbook* that discuss specific types of legal actions, you can read more about the various formats and forms for bringing legal claims (see Chapters 14, 15, 16, 17 and 18).

Judges and court staff are very busy and may not have the patience to read your claim closely, especially if they find it confusing. Thus, when writing your argument, you should present the issues in a way that makes it easy for them to understand. Avoid using “legalese” or big words; instead, use plain and direct language. Fancy language does not impress a judge, and it will not help to make your points clear. Although you may sometimes need to use technical terms that are part of a legal rule, aim to make your explanations and arguments as clear and straightforward as possible. Most legal concepts can be boiled down to a simple concern for fairness and reasonableness, or a plain reading of a statute or regulation.

Especially if your brief, complaint, or petition is very long, you should organize your argument carefully. Break your argument up into sections in a way that makes sense, with headers that clearly summarize what you are saying in each section. In many cases, it is very helpful to start the whole legal argument part of the document with an introduction paragraph that gives a big-picture overview of the problem and the gist of your claims.

As for the substance of your argument, it is important to get the level of detail right. It is not enough just to say your rights have been violated and quote some general language from a statute or court decision. For each piece of your argument, start with a short (no more than a few sentences)

summary of what you are going to say in the section. Then state the general law and legal standards, this includes any rules on the standard of review that the court is supposed to apply to the issue (in other words, can the court exercise its independent judgment (de novo review) or must it show some level of deference to a CDCR or BPH decision or a lower court ruling (one example is review for abuse of discretion). Then describe any court decisions that interpreted or applied the law in situations similar to your case: explain what each court's reasoning was, explain how your situation is similar, and explain why the court should now rule in your favor. Sometimes, you may also need to explain how your situation is *different* from cases where the outcomes were not favorable.

Some court decisions will be more helpful than others to your legal argument. If a certain decision is “on point” for your case (meaning that it addresses a case with very similar facts), that decision is likely to be either “controlling” (meaning that the court *must* follow it in your case) or very persuasive (meaning that the court will probably give it great weight in your case). If no existing court decisions are exactly “on point” for your case, you will need to rely on decisions that address cases involving somewhat similar facts; these may not be controlling, but they can still be persuasive.

When reading court decisions to find language that will help your argument, be aware that not every statement in a decision holds the same level of authority. The crucial part of a court decision is the “**holding**,” which is the reasoning that is *necessary* to answer the central legal question and determine the parties' rights in the case. A court's holding has “precedential value,” which means it is considered a rule of law; therefore, it must be followed by that court and any lower courts when deciding similar cases in the future – until that holding is overturned. Aside from the holding, a court's decision usually includes other general statements or discussions that are *not necessary* to deciding the legal question presented in the case; these general statements are called “**dicta**.” Dicta has little precedential value, which means it is not considered a rule of law; courts deciding later cases can choose to either consider it or disregard it.

In presenting your case, do not ignore case law that is unfavorable to your position. Instead, make an argument about why the court should not follow the unfavorable decisions in deciding your case. You might be able to argue that those cases involved different circumstances, and therefore the unfavorable rule established for those cases does not apply to your case. You might also argue that the unfavorable court decisions did not fully analyze the issue or did not consider the same legal arguments you are now raising. If there are conflicting court decisions on your legal question – meaning some are favorable, and others are unfavorable – you can argue that the favorable cases are more on-point or better-reasoned than the unfavorable ones. On some issues where the case law is unfavorable overall, you might even be able to argue that the court should give new consideration to the issue because of significant changes in science, moral standards, and/or public opinion.

When bringing a legal claim about your specific situation, it is advisable to think of *all* the legal issues presented by the situation, and make a legal argument on each issue. For example, suppose you want to bring a legal claim because CDCR staff refused to let you possess a religious book. You might be able to raise three legal issues at once by arguing that this action by CDCR violated your rights under the First Amendment of the U.S. Constitution, the federal Religious Land Use and Incarcerated Persons Act (RLUIPA), *and* the CDCR regulations. Each of these arguments involves a distinct legal standard, and they should be discussed under three separate headings in your brief. By raising all three arguments, you increase the probability that the court will find a reason to grant you relief. For example, even if you lose on the First Amendment issue, the court might still rule in your favor on the RLUIPA issue and/or the CDCR regulation issue.

## § 19.30

### 19.30 Choosing What Sort of Legal Action to File

One of the hardest parts of enforcing legal rights is figuring out what sort of legal action you can file for a particular issue and what procedural requirements you have to meet. Sometimes an issue can be raised in any of several different types of actions; you will have to consider the pros and cons of each action in order to make a good decision about which type of action to use. The main considerations in picking what type of case to file will be what sort of legal issues you want to raise (federal or state), what sort of remedy you are seeking (money damages, a court order/injunction, or both), how complicated the court procedures are, and whether you have taken all the steps necessary to preserve your right to file that type of case (such as exhausting administrative appeals and meeting filing deadlines).

The Chart in Appendix 19-E summarizes the main types of court actions that people incarcerated in California prisons can use to challenge a California criminal conviction or sentence or other court actions that result in custody, such as parole revocations or civil MDO or SVP commitments. The Chart also summarizes the common court actions that can be used to challenge prison conditions, actions taken by CDCR officials, and parole denials, parole conditions, and other actions by CDCR and BPH parole staff. The Chart refers to the chapters in this *Handbook* where you can get more information on each type of legal action.

## **Legal Assistance, Advocacy, and Information Resources for People in Prison and on Parole in California**

### **California Coalition for Women Prisoners**

CCWP is a grassroots social justice organization, with members inside and outside prison, that challenges the institutional violence imposed on women, transgender people, and communities of color. CCWP has a visiting program in California's women's prisons, partners with women and trans people inside to publish the Fire Inside newsletter, and builds campaigns like DROP LWOP to win freedom. CCWP has an information manual on applications for commutations and pardons. CCWP, 1540 Market Street, Suite 490, San Francisco, CA 94102. Phone: (415) 255-7036 x4. ([www.womenprisoners.org](http://www.womenprisoners.org))

### **California Innocence Project**

The California Innocence Project provides free legal assistance to people who claim factual innocence as to the crime(s) for which they were convicted, where there is new, strong evidence of innocence. The California Innocence Project only accepts cases where the conviction occurred in the following counties: Imperial, Kern, Los Angeles, Orange, Riverside, San Bernardino, San Diego, San Luis Obispo, Santa Barbara, and Ventura. For a screening questionnaire and more information, contact: California Innocence Project, 225 Cedar Street, San Diego, CA 92101. ([www.californiainnocenceproject.org](http://www.californiainnocenceproject.org))

### **Ella Baker Center for Human Rights**

Ella Baker Center organizes people to shift resources away from prisons and punishment, and towards opportunities that make our communities safe, healthy, and strong. Provides information on proposed criminal and juvenile law reform legislation and other justice activities. Ella Baker Center for Human Rights, 1970 Broadway, Suite 1125, Oakland, CA 94612. Phone: (510)428-3939. ([ellabakercenter.org](http://ellabakercenter.org))

### **Justice Now**

Justice Now focuses on the needs of women prisoners. They work on alternative sentencing, documenting human rights abuses in prison, providing legal services around women's healthcare access, and offer assistance with compassionate release. Justice Now, 1322 Webster St, Suite 210, Oakland, CA 94612. Phone: collect call line for women inside -- 510-832-4357, 1pm-4pm, Tuesday-Friday. ([www.justicenow.org](http://www.justicenow.org))

### **Legal Services for Prisoners with Children**

LSPC organizes communities impacted by the criminal justice system and advocates to release incarcerated people, to restore human and civil rights and to reunify families and communities. LSPC's strategies include legal support, trainings, advocacy, public education, grassroots mobilization, and developing community partnerships. LSPC publishes several free legal information manuals for people in prison who are pregnant or who are parents and for grandparent caregivers, as

well as information on Proposition 47. Legal Services for Prisoners with Children, 1540 Market St., Suite 490, San Francisco, CA 94102. Phone: (415) 255-7036. ([www.prisonerswithchildren.org](http://www.prisonerswithchildren.org))

### **Loyola Law School Center for Juvenile Law and Policy**

Loyola Law School has several programs in which law students provide free legal services. These include a Collateral Consequences of Conviction Justice Project assists people with past criminal justice involvement in navigating and overcoming many of the collateral consequences of conviction with the goal of facilitating successful reintegration into society. There also a Juvenile Innocence and Fair Sentencing Clinic in which students represent persons who have been convicted of offenses committed when they were under 18. Center for Juvenile Law & Policy, Founders Hall 2nd Floor, 919 Albany St., Los Angeles, CA 90015 Phone: (213) 736-8339. ([www.lls.edu/academics/experientiallearning/clinics](http://www.lls.edu/academics/experientiallearning/clinics))

### **Northern California Innocence Project**

NCIP assists people with viable innocence claims where there is new evidence such as DNA or witness testimony. For NCIP to consider a case, a person must be actually innocent of the crimes for which he or she is convicted, there must be a significant chance that substantial new evidence may be found to support a claim of innocence, and the person must have been convicted of a serious felony in one of the 48 Northern and Central California counties from Monterey, Kings, Tulare and Inyo County up to the Oregon border. For more information or a screening questions, contact Northern California Innocence Project, 500 El Camino Real, Santa Clara, CA 95053 ([www.ncip.org](http://www.ncip.org))

### **Prison Law Office**

The Prison Law Office is a nonprofit public interest law firm that provides free legal services to incarcerated adults and juveniles to improve their conditions of confinement. The office provides direct services to thousands of people each year, advocates for policy changes, and engages in impact litigation. The Prison Law Office monitors several conditions class action lawsuits in CDCR prisons including the following cases: *Plata* (health care), *Coleman* (mental health care), *Armstrong* (sight, hearing, mobility, and learning disabilities), and *Clark* (developmental disabilities). The Prison Law Office provides many free information materials on legal issues of interest to people in prison and on parole in California, and publishes *The California Prison and Parole Law Handbook*. Prison Law Office, General Delivery, San Quentin, CA 94964. ([www.prisonlaw.com](http://www.prisonlaw.com))

### **Prison Legal News**

Prison Legal News is an independent 72-page monthly magazine that provides review and analysis of prisoners' rights, court rulings, and news concerning criminal justice-related issues from across the U.S. Subscriptions are \$30/year for incarcerated people, \$35/year for non-incarcerated people and \$90/year for lawyers, government agencies, and corporations. Prison Legal News, P.O. Box 1151, Lake Worth, FL 33460. ([www.prisonlegalnews.org](http://www.prisonlegalnews.org))

### **Prisoner Advocacy Network**

PAN is a volunteer network of activists, attorneys, legal workers, and law students that corresponds with and advocates on behalf of people in California prisons. Prisoner Advocacy Network, National Lawyers Guild, San Francisco Bay Area Chapter, 558 Capp St. San Francisco, CA 94110  
Phone: (415) 285-5067. ([www.nlgsf.org/projects](http://www.nlgsf.org/projects))

### **Rosen Bien Galvan and Grunfeld.**

RBGG provides legal representation to people who are vulnerable, disenfranchised, or unable to fight for their rights. RBGG represents people in prison and on parole who suffer unconstitutional and abusive conditions, or are victims of discrimination or violence. RBGG is one of the law firms that monitors the *Coleman* (mental health care) and *Armstrong* (disability access) prison conditions class action lawsuits, and has information letters about policies and rights under those lawsuits. Rosen Bien Galvan, & Grunfeld, 50 Fremont Street, 19th Floor, San Francisco, CA 94105. Phone: 415-433-6830. ([www.rbgg.com](http://www.rbgg.com))

### **Root and Rebound**

Root & Rebound's mission is to transfer power and information to the people most impacted by the criminal justice system through public education, direct legal services, and policy advocacy. Root and Rebound publishes several guides and toolkits to assist people in reentering the outside community, including a comprehensive *Roadmap to Reentry Guide*. Root and Rebound, 1730 Franklin Street, Suite 300, Oakland, CA 94612. Free Reentry Legal Hotline every Friday from 9:00 a.m.-5:00 p.m. (accepts collect calls): (510) 279-4662. ([www.rootandrebound.org](http://www.rootandrebound.org))

### **The State Bar of California**

The state bar of California tracks contact information for attorneys, investigates complaints about attorneys, and provides legal referral assistance and information. The State Bar of California, 180 Howard St., San Francisco, CA 94105. Phone: 415-538-2000. ([www.calbar.org](http://www.calbar.org))

### **Transgender, Gender Variant, Intersex, Justice Project**

Transgender, Gender Variant, Intersex, Justice Project's mission is to challenge and end the human rights abuses committed against transgender, gender variant/genderqueer, and intersex people in California prisons and beyond. Transgender, Gender Variant, Intersex, Justice Project, 234 Eddy St, San Francisco, CA 94102. Phone: (415) 554-8491. ([www.tgijp.org](http://www.tgijp.org))

### **Transgender Law Center**

Transgender Law Center has a Detention Project that works to end the abuses transgender and gender nonconforming (TGNC) people experience in prisons, jails, immigration detention, state hospitals, and other forms of detention, and at the hands of law enforcement. Transgender Law Center Detention Project, PO Box 70976, Oakland, CA 94612. Phone: 510-380-8229 (accepts collect calls). ([www.transgenderlawcenter.org](http://www.transgenderlawcenter.org))

**UnCommon Law**

UnCommon Law is a small non-profit law firm based in Oakland, California that provides counseling and legal representation for people serving life sentences with the possibility of parole in California. UCL also provides training for prisoners, attorneys, family members, and law students to improve the overall quality of representation people receive in their parole hearings. UnCommon Law, 220 4th Street, Suite 103 Oakland, CA 94607. Phone: (510) 271-0310. ([www.uncommonlaw.org](http://www.uncommonlaw.org))

**University of California at Davis Prison Law Clinic**

UC Davis law students in the Prison Law Clinic use their legal skills to assist people with problems related to incarceration in CDCR prisons. UC Davis School of Law, Clinical Legal Education, One Shields Avenue, Davis, CA 95616. (530) 752-6943. ([www.law.ucdavis.edu/clinics/prison-law-clinic.html](http://www.law.ucdavis.edu/clinics/prison-law-clinic.html))

**University of Southern California Post-Conviction Justice Project**

The PCJP is a program run by professors and certified student legal interns that represents parole-eligible inmates serving indeterminate life sentences for murder in California state prisons. For consideration, contact PCJP with a brief description of the case. Post-Conviction Justice Project, USC Gould School of Law, 699 Exposition Blvd., Los Angeles, CA 90089. ([www.uspcjp.com](http://www.uspcjp.com))

## **CENTRAL FILE SECTIONS AND DOCUMENTS**

(Central Files are now in electronic format -- a mix of electronically-generated documents and scanned versions of paper documents. Many of the numbered CDCR and BPH forms that were commonly used by the CDCR in the past have been replaced by electronically generated forms. This is a general list of the sorts of documents that appear in Central Files, grouped by topic. Not all of these forms will be in every Central File, and exact titles of some of the documents may vary.

### **Case Summary**

- Chronological Inmate History
- Legal Status Sheet (LSS)
- Probation Officer's Report (POR)
- Criminal Identification and Information (CI&I)/FBI State Summaries – Criminal History
- Penal Code § 1203.03 (90-day diagnostic) reports
- Penal Code § 1170(d) (sentencing) reports
- Time Credit Waiver
- Other related forms and documents

### **Legal Documents**

- Legal Status Audit Sheets
- Legal Processing Unit (LPU) Document Transmittal
- Personal/Confidential Information Disclosure/Access Log Information
- Minute Order
- Abstract of Judgment (AOJ)
- Sentencing Transcript
- Court Decisions
- Penal Code § 1203.01 Statements of Judge and District Attorney
- Legal Correspondence
- Body Receipt
- Fingerprints Cards
- Other related forms and documents

### **Classification**

- Institution Staff Recommendation Summary
- Custody Classification – Assignment
- Classification Score Sheet
- Re-Classification Score Sheet
- Notice of Critical Case Information – Safety of Persons
- Notice of Critical Information – Prison Gang Identification
- Notice of Critical Information – Disruptive Group Identification
- Order and Hearing for Placement in Segregated Housing



**Classification (cont.)**

Classification Chronos  
Other related forms and documents

**Disciplinary**

Notice of Pending CDCR Rule Violate Report  
Rules Violation Reports  
Security Housing Unit (SHU) Term of Initial Confinement  
Re-Determination of SHU Confinement Term  
District Attorney (DA) Responses to Referrals  
Incident Reports

**General Chronos**

Custodial Counseling Chronos  
Applications for Restoration of Credit  
General Chronos  
Work and School Reports  
Other related forms and documents

**Miscellaneous Section**

Administrative Appeal Forms and Responses  
Miscellaneous Correspondence  
Power of Attorney and Authorization for Deposit  
Temporary Community Leave (TCL) Requests  
Agreements to Participate in Community Work Furlough Program  
Other related forms and documents

**Detainers Section**

Detainer Summary  
Detainers  
All Non-confidential Notices  
Advance Release Notices  
Other related forms and documents

**Parole Section**

Release Statement  
Notice and Conditions of Parole  
Notice of Registration Requirement  
Release Program Study  
Parole Activity Reports  
Parole Hold and Violation Reports  
Parole Revocation Hearing documents (from older BPH parole violation hearings)  
Other related forms and documents

**BPH**

Board-generated psychological evaluations  
Staff reports to the Parole Board  
Board Decision Forms  
BPH Administrative Appeals  
Other related forms and documents

**Confidential Section**

Material designated as confidential

AUTHORIZATION

This document, or photocopy thereof, will verify that \_\_\_\_\_ (Cal. Bar # \_\_\_\_\_) is my legal representative and will authorize \_\_\_\_\_ and their agents and employees to communicate with my previous attorneys, all divisions of the California Department of Corrections and Rehabilitation, the California Board of Parole Hearings, probation and parole officers, and all other persons or agencies having information which my legal representative deems necessary in representing me; and to examine and photocopy all communications, correspondence, investigation reports, parole and probation reports, custodial files, medical evaluations and files, employment records, and other documents pertaining to me in the possession of such persons or agencies.

Further, this document authorizes my previous attorneys, all divisions of the California Department of Corrections and Rehabilitation, the California Board of Parole Hearings, probation and parole officers, and all other persons and agencies, to release to my legal representative, and their agents and employees, for examination and photocopying, all such communications, correspondence, investigation reports, parole and probation reports, custodial files, medical evaluations and files, employment records and other documents pertaining to me in their possession.

This authorization is valid for two years from the date below.

Date: \_\_\_\_\_

(Signature)

(Print Name)

(CDCR Number)

(Date of Birth)

STATE OF CALIFORNIA  
IPA STATEMENT OF PENALTIES  
CDC 1019 (Rev 7/94)

DEPARTMENT OF CORRECTIONS

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Section 1798.56 of the Civil Code provides that any person who willfully requests or obtains any record containing personal or confidential information from a state agency under false pretenses shall be guilty of a misdemeanor and fined \$5,000 or imprisoned not more than one year, or both.

I HEARBY ACKNOWLEDGE THAT I HAVE READ AND UNDERSTAND THE PENALTIES FOR WILLFULLY OBTAINING PERSONAL INFORMATION UNDER FALSE PRETENSES AS STATED ABOVE.

DESIGNEE'S SIGNATURE	DESIGNEE'S PRINTED NAME	DATE SIGNED
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## COMMON LATIN TERMS USED IN THE LAW

<b>a fortiori</b>	- with strong reason; all the more
<b>a priori</b>	- from the cause to the effect; from what goes before
<b>ab initio</b>	- from the beginning; from the first act
<b>amicus curiae</b>	- a friend of the court; a person who has no right to appear, but is allowed to introduce argument to further his or her interests
<b>ante</b>	- before
<b>arguendo</b>	- in arguing; in the course of argument
<b>corpus delicti</b>	- the core elements of a crime
<b>en banc</b>	- heard by all the judges of a court, instead of by a panel of just a few judges
<b>et seq.-</b>	and the following
<b>ex parte</b>	- on one side only; by or for one party
<b>ex post facto</b>	- after the fact; a law passed after the commission of an act that changes the legal consequences of the act. This is the opposite of <u>ab initio</u> .
<b>habeas corpus</b>	- “you have the body”; the name of the writ used to bring a party before the court. This is an action a prisoner can bring to challenge a conviction or a condition of confinement.
<b>in camera</b>	- in court chambers; in private
<b>in limine</b>	- at the very beginning; preliminary. This usually refers to a motion regarding admission of evidence in an upcoming trial.
<b>in re</b>	- in the matter of; concerning
<b>in toto</b>	- in the whole; completely
<b>infra</b>	- below; in the following text
<b>inter alia</b>	- among other things
<b>ipso facto</b>	- by the fact itself; by the mere fact
<b>ipse dixit</b>	- he himself said it; a bare assertion resting on the authority of an individual; “it is because I say so”
<b>non sequitur</b>	- it does not follow
<b>nunc pro tunc</b>	- “now for then”; a phrase applied to acts allowed to be done after the time when they should have been done, with a

	retroactive effect
<b>obiter dictum</b>	- words of a prior opinion entirely unnecessary for the decision in the present case. Also known as dicta.
<b>prima facie</b>	- on the face of it; at first sight
<b>pro per</b> (or <u>pro se</u> )	- representing oneself in a court case without a lawyer
<b>pro tempore</b>	temporarily; provisionally
<b>quasi</b>	- as if; almost as it were; resembling another but with differences
<b>quid pro quo</b>	- something for something; giving one thing for another
<b>ratio decidendi</b>	- the ground of decision; the point that determines the judgment
<b>sine qua non</b>	- “without which not”; an indispensable thing
<b>stare decisis</b>	- to abide by or adhere to decided cases
<b>status quo</b>	- the existing state of things
<b><u>sua sponte</u></b>	- of its own will or motion; voluntarily; without prompting
<b><u>sui generis</u></b>	- of its own kind or class; the only one of its kind
<b><u>supersedeas</u></b>	- a type of writ containing a command to stay the proceedings at law
<b>supra</b>	- above; earlier in the text

## DECIDING WHAT TYPE OF LEGAL ACTION TO FILE

You will need to determine which type of claims you can bring and where you should file them. In making these determinations, you will need to consider the facts of your particular case and the types of issues you are raising. You may also want to consider other logistical factors, such as which actions are easier to litigate and which will allow you the best chances of getting appointed counsel. The charts on the following pages give a very general overview and comparison of the options. Specific requirements and exceptions to the general rules are in other chapters of this book.

### Criminal, Parole Revocation, and Civil Commitment Cases

	Issues that Can Be Raised	Other Requirements	Exhaustion Requirements	Filing Deadline	Where to File Initial Case <sup>1</sup>
<b>Direct Appeal</b> Chapter 14	State and federal law issues based on trial, plea, and/or sentencing proceedings.	Sometimes plea agreements limit people in prison from filing direct appeals.	N/A. But if an issue was not raised in trial court, the appellant may have to convince the court that the issue was not forfeited.	60 days after judgment or order was issued.	State court of appeal for the district where the trial occurred (not where the person is currently incarcerated.)
<b>State Habeas Corpus Petition</b> Chapter 15	State and federal law issues based on information not presented in superior court during trial, plea, and/or sentencing proceedings.	Petitioner must be in custody (includes parole, other forms of supervised release, and civil commitment).	N/A. Note that habeas corpus cannot be used to raise issues that could have been raised on direct appeal.	No set deadline, but don't delay. (State habeas needs to be completed without delay in order not to miss deadline for federal habeas petition.)	Usually, state superior court in the county where the trial occurred; sometimes in court of appeal if related issue is pending in direct appeal.
<b>State Mandate Petition</b> Chapter 15	State and federal law issues requiring officials to perform their legal duties.	NO requirement that petitioner be in custody.  There must be no other available plain, speedy, and adequate type of legal remedy.	N/A	No set deadline, but don't delay.	Usually, state superior court.
<b>Federal Habeas Corpus Petition</b> Chapter 16	Federal law issues.	Petitioner must be in custody (includes parole and other forms of supervised release).	Must first present all issues to the state courts, all the way up through the California Supreme Court.	1 year after judgment on direct appeal becomes final. Properly-filed state habeas petition tolls the time. Equitable tolling in some circumstances.	Federal district court.

<sup>1</sup> Options for the losing party to appeal or re-file the case to the next level are discussed in the Chapters discussing each type of action.

**Prison Conditions, Parole Conditions, and Parole Denial Cases**

(All claims arising out of an event should be raised in one lawsuit; bringing one type of lawsuit on an issue usually will bar a person from bringing another type of lawsuit raising the same issue.)

Type of Action	Issues that Can Be Raised	Exhaustion Requirements	Remedies Available	Deadline for Filing	Where to File Initial Case <sup>2</sup>	Other Considerations
<b>State Habeas Corpus Petition</b> Chapter 15	State and federal law issues about prison conditions or events, parole denials or conditions.	Must exhaust administrative appeals (see Chapter 1).	Injunctive relief (order for officials to do or stop doing something).	No set deadline, but don't delay.	State superior court.	Relatively simple procedures; fast processing. If court issues an Order to Show Cause and petitioner cannot afford a lawyer, court must appoint a lawyer.
<b>Federal Habeas Corpus Petition</b> Chapter 16	Federal law issues arising from actions of prison or parole officials affecting length of custody.  (Example: denial or loss of credits, some issues about denial or length of parole.)	Must first present all issues to state courts up through the California Supreme Court (see Chapters 14 and 15).	Injunctive relief.	1 year after judgment on direct appeal becomes final.  Properly-filed state habeas petition tolls the time. Equitable tolling in some circumstances.	Federal district court.	In exceptional circumstances, court will appoint attorney for indigent person in prison.

**(continued on next page)**

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<sup>2</sup> Options for the losing party to appeal or re-file the case to the next level are discussed in the Chapters on each type of action.



**Prison and Parole Issues Cases (continued)**

(All claims arising out of an event should be raised in one lawsuit; bringing one type of lawsuit on an issue usually will bar a person from bringing another type of lawsuit raising the same issue.)

<p><b>Federal Civil Rights (§ 1983) Lawsuit</b> Chapter 17</p>	<p>Violation of federal law; may also consider related “pendant” state tort or state civil rights issues.</p>	<p>Must exhaust available administrative appeals (see Chapter 1).</p>	<p>Money damages and/or injunctive relief.</p>	<p>For an injunctive relief claim brought by a person in prison, at least 2 years after the claim arose.  For a money damages claim brought by a person in prison, at least 4 years after the claim arose.  Can be longer for some types of claims or due to tolling. If case also raises state tort claims, it should be filed within time limits for state tort cases.</p>	<p>Either state superior court or federal district court (federal court is usually preferred).</p>	<p>Bringing a case to trial is complicated; court may try to find an attorney to represent an indigent person in prison.</p>
<p><b>State Tort Lawsuit</b> Chapter 18</p>	<p>Violations of state tort, negligence, or civil rights law.</p>	<p>Must exhaust available administrative appeals (see Chapter 1).  Must also complete Government Claim process (see Chapter 18).</p>	<p>Money damages and/or injunctive relief.</p>	<p>Within 6 months of receiving notice of a Government Claim decision; or, if no decision, within 2 years from the time the claim arose.</p>	<p>State superior court.</p>	<p>Bringing a case to trial is complicated. Court is unlikely to appoint counsel.</p>
<p><b>Small Claims Lawsuit</b> Chapter 18</p>	<p>Violations of federal or state law.</p>	<p>Must exhaust available administrative appeals (see Chapter 1).  Must also complete Government Claim process (see Chapter 18).</p>	<p>Money damages, limited to no more than \$10,000.</p>		<p>State small claims court.</p>	<p>Fairly simple procedures.</p>