

DATE:	MAY 13, 2022
NUMBER:	U.7
SUBJECT:	TEMPORARY RELEASES BY COURT ORDER
RELATED SECTIONS:	I.5 , Q.6 , Q.8 ; CSB E.18

PURPOSE

To ensure court-ordered or court-requested temporary releases from jail comply with applicable statutory requirements and are processed appropriately.

POLICY

An order for the temporary release of an incarcerated person from the custody of the Sheriff will be treated as a judicially ordered sentence modification or modification of a pre-sentence custody order and will be followed under all circumstances in which the authenticity of the order is verified. The order will be followed pursuant to Part II of this policy.

A court document that references California Penal Code section 4018.6 or makes clear that the court is “requesting” a temporary release, or uses other such permissive rather than mandatory language, shall be construed as a request by the Court for a temporary release at the discretion of the Sheriff, pursuant to California Penal Code section 4018.6. In such circumstances, the request will be considered pursuant to Part III of this policy.

A court order that references California Penal Code section 4004 or requires that an incarcerated person be released from jail but remain in the custody of the Sheriff, shall be examined pursuant to Part IV of this policy.

I. INITIAL REVIEW

Upon receipt of a court document requesting or ordering a temporary release, the watch commander will determine whether the court document calls for the incarcerated person's release from jail, or release from Sheriff's custody. If the watch commander is unsure, they shall contact Sheriff's Legal Affairs.

If the court document calls for an incarcerated person to be temporarily released from jail but remain in the custody of the Sheriff, the watch commander shall follow the procedures set forth in Part IV of this policy.

If the court document calls for an incarcerated person to be temporarily released from Sheriff's custody, the watch commander shall determine whether the court document is an order or a request pursuant to California Penal Code section 4018.6. If the watch commander is unsure, they shall contact Sheriff's Legal Affairs for assistance.

If the court document is an order, the watch commander shall follow the procedures set forth in Part II of this policy.

If the court document is a request, or invokes California Penal Code section 4018.6, the watch commander shall follow the procedures set forth in Part III of this policy.

II. REVIEW OF ORDERS FOR TEMPORARY RELEASES FROM SHERIFF'S CUSTODY

An order from the Superior Court that temporarily releases an incarcerated person from Sheriff's custody shall be followed unless it appears to the watch commander that the document is a forgery (not actually issued by a judge). If the watch commander suspects forgery, they shall attempt to contact the court to determine the authenticity of the order. If the court cannot be reached, the watch commander shall contact Sheriff's Legal Affairs.

If the incarcerated person is the subject of a state or federal hold, the watch commander shall contact Sheriff's Legal Affairs and transmit to them all documentation of the hold. A representative of Sheriff's Legal Affairs will contact the judge issuing the order and notify the judge of the hold. If the judge reaffirms the order, the watch commander shall notify the agency that placed the hold of the incarcerated person's temporary release prior to releasing the incarcerated person.

If the incarcerated person's Jail Information Management System (JIMS) history reveals incidents of violence while in custody, the watch commander shall contact Sheriff's Legal Affairs.

III. REVIEW OF REQUESTS FOR TEMPORARY RELEASES FROM SHERIFF'S CUSTODY

- A. The Sheriff's Department believes that although the Sheriff has the power to temporarily release an incarcerated person from custody, such releases should be rare and only at the urging of the Superior Court. The criteria and procedures listed below are intended to ensure that:
1. Only those incarcerated persons who don't pose a risk to the safety of the public and are not a "flight" risk are released
 2. Release pursuant to California Penal Code section 4018.6 occurs in only the most exceptional of circumstances
 3. The Sheriff's Department has sufficient time to evaluate the request
 4. An incarcerated person who is temporarily released remains in the presence of a responsible person.
- B. Upon receiving a court document requesting a temporary release from Sheriff's custody, the watch commander of the facility where the incarcerated person is housed shall take the following action:
1. Verify the order calls for the release of the incarcerated person not less than 48 hours (excluding weekends and holidays) from the time the order is presented to the Sheriff's Department. This requirement may be waived if the watch commander is satisfied, they have sufficient time and resources to properly review the order.

2. Verify the court order specifies the release is to allow the incarcerated person to attend to a funeral for, or critical illness of, an immediate family member (spouse, sibling, parent, step-parent, child, stepchild or grandparent).
 3. Verify the order states the incarcerated person may not leave San Diego County, and the order specifies the location of the funeral/family emergency.
 4. Verify the order states the incarcerated person must remain at all times in the custody of a relative, chaplain or other responsible person. Any temporary release order must specify the name and address of the person in whose custody the incarcerated person is to be released.
 5. A temporary release order shall state the incarcerated person is to return at a specific time. In no event shall the release last longer than seventy-two (72) hours.
 6. Verify the incarcerated person has a record of conduct within the detention facility that is free of any instances of violence, threats of violence or any major disciplinary actions.
 7. Verify the incarcerated person has no prior record of violence or is not charged with any crime of violence.
 8. Verify the incarcerated person is not charged with violating a statute that would require registration as a sex offender pursuant to California Penal Code section 290.
 9. Verify the incarcerated person is not classified as an escape risk.
 10. Verify the incarcerated person is not subject to a state or federal "hold," or is in the lawful custody of any state or federal agency.
 11. Verify the incarcerated person is not charged with an offense that could result in a sentence of twenty-five (25) or more years in state prison (e.g., "two-strikers").
 12. Verify the incarcerated person has not been denied bail, or whose total bail is over \$50,000.
 13. Verify the incarcerated person has not been sentenced to state prison.
 14. Verify the incarcerated person has no record of any prior failure to appear in court.
- C. The watch commander will notify their respective Detention Services Bureau (DSB) Commander of the request and which (if any) of the above conditions have not been met. The Commander or Sheriff's Legal Affairs shall notify the watch commander as to whether the Sheriff's Department will temporarily release the incarcerated person pursuant to California Penal Code section 4018.6. If the decision is made to not grant the temporary release of the incarcerated person, Sheriff's Legal Affairs shall notify the judge who issued the order and the defendant's attorney.

IV. REVIEW OF ORDERS GRANTING TEMPORARY RELEASES FROM JAIL OF INCARCERATED PERSONS WHO WILL REMAIN IN CUSTODY

The California Court of Appeal in *Block v. Superior Court (Downey) (1998)* 62 Cal. App. 4th 363, 370 wrote that such orders for temporary releases, “will only be issued in exceptional circumstances, and then only rarely.”

The procedures and criteria below are intended to ensure: (1) Only those incarcerated persons who pose minimal risk to the safety of the public and to the Sheriff’s employees qualify for such orders; (2) Release pursuant to California Penal Code section 4004 occurs in only the most exceptional of circumstances; (3) When such orders are issued, they allow the Sheriff’s Department sufficient time to plan for such an operation; and (4) Such orders do not result in an unjustifiable diversion of resources away from the other operations.

Upon receipt of an order temporarily releasing an incarcerated person from jail in the custody of the Sheriff, the watch commander shall take the following action:

- A. Verify the order calls for the release of the incarcerated person not less than seventy-two (72) hours (excluding weekends and holidays) from the time the order is presented to the Sheriff’s Department.
- B. Verify the court order specifies a compelling reason for the release that involves emergency or exigent circumstances. Examples include a funeral for, or critical illness of, an immediate family member (spouse, sibling, parent, step-parent, child, stepchild or grandparent). Normal milestones or life events of family members do not constitute emergency or exigent circumstances.
- C. Verify the order calls for transport within San Diego County.
- D. Verify the incarcerated person has a record of conduct within the detention facility that is free of any instances of violence, threats of violence or any major disciplinary actions.
- E. Verify the incarcerated person has no prior record of violence or is not charged with any crime of violence.
- F. Verify the order requires payment of transportation costs by the incarcerated person to the Sheriff.
- G. Notify the DSB Commander overseeing the Sheriff’s Transportation Unit (STU) of the transport order. The incarcerated person will not be released if, in the judgment of the DSB command staff, the transportation of the incarcerated person presents a substantial danger to the public that would require an unacceptable use of Sheriff’s resources to provide necessary security, or presents a substantial danger to Sheriff’s employees, or if the Sheriff’s operational needs do not permit the diversion of Sheriff’s resources. The watch commander must provide the DSB Commander with the incarcerated person’s booking history, as well as their criminal history.

If any of the above criteria for release are not met, the watch commander shall advise Sheriff’s Legal Affairs. Sheriff’s Legal Affairs shall discuss the order with the issuing judge, and report back to the watch commander whether the incarcerated person is to be transported.

If the order requires payment to the Sheriff for transportation charges, such charges must be paid prior to the incarcerated person’s temporary release. The STU sergeant or lieutenant will assume responsibility for determining needed security. Once determined, the STU In-County deputy will

complete the *Transportation of Incarcerated Persons for Outside Services (J-153)* form and collect fees. Upon completion of the trip, the person responsible for the escort will report the actual cost information to Sheriff's Financial Services. Final costs will be determined at that time. Cash, cashier's check and money order are acceptable form of payment. All transactions and money exchanges are to occur at the originating facility. All checks are to be made out to the San Diego County Sheriff's Department. A Miscellaneous Receipt (Auditors 200) will be provided to the person making the payment. Funds and forms will be forwarded to the facility accounting staff. Once fees have been deposited, the accounting staff will forward the paperwork to Sheriff's Financial Services.

V. TEMPORARY RELEASED INCARCERATED PERSONS RETURNING TO CUSTODY

All facilities shall accept custody of incarcerated persons returning from being temporarily released on their own recognizance by court order unless the temporary release order specifically directs the incarcerated person to return to court rather than the jail facility. Incarcerated persons will not be turned away for not having valid credentials verifying their identification.

Incarcerated persons returning to custody will need to be accurately identified by the accepting facility. Deputies will verify the returning incarcerated person's identity using the livescan and JIMS. Deputies will contact CAL-ID prior to fingerprinting to request an identity only number (IDN) and provide them with the incarcerated persons' name and California Criminal Identification (CII) number from JIMS. After a positive identification has been obtained, the incarcerated person will continue through the booking process.

In the event of not being able to obtain positive identification using the livescan, refer to Detention Policy and Procedure Q.6 *Unidentified Person (AKA: John and Jane Does)*.

If an incarcerated person refuses or is unable to be fingerprinted, refer to Detention Policy and Procedure Q.8 *Refusal to Cooperate with the Booking Process*.

VI. FAILURE TO RETURN TO CUSTODY

If an incarcerated person who was temporarily released from custody fails to return to custody at the appointed time, they shall be deemed an escape (California Penal Code section 4532). The judge who issued the release order shall be notified. The watch commander shall commence procedures set forth in Detention Policy and Procedure I.5 *Emergency Escape Procedures of Incarcerated Persons*.