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OPINION	:	No. 80-403
	:	
of	:	<u>May 9, 1980</u>
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SUBJECT: INCARCERATION TIME—The Director of the Youth Authority may not keep a person who is subject to the provisions of section 290 of the Penal Code incarcerated beyond the time which the Youthful Offender Parole Board has scheduled for his release on parole in order to meet the 45 day notice requirement of that section.

Deputy The Director of the Youth Authority has requested an opinion on a question which we have revised as follows:

May the Director of the Youth Authority keep a person who is subject to the provisions of Penal Code section 290 incarcerated beyond the time which the Youthful Offender Parole Board has scheduled for his release on parole in order to meet the 45 day notice requirement of that section?

CONCLUSION

The Director of the Youth Authority may not keep a person who is subject to the provisions of section 290 incarcerated beyond the time which the Youthful Offender Parole

Board has scheduled for his release on parole in order to meet the 45 day notice requirement of that section.

ANALYSIS

The instant opinion concerns the following factual situation. A person is convicted of a felony, which would make him subject to the registration provisions of Penal Code section 290. He is committed to the Youth Authority as a youthful offender. (See Welf. & Inst. Code, § 1731 *et seq.*)¹ Thereafter the Youthful Offender Parole Board sets a parole date which is less than 45 days subsequent to the board action. (See § 1766.)

Penal Code section 290 requires the person convicted of certain sex offenses to register with local authorities after being released or paroled from a place of confinement. Subdivision (b) of section 290 provides:

“Any person who, after the first day of August, 1950, is discharged or paroled from a jail, prison, school, road camp, or other institution where he was confined because of the commission or attempt to commit one of the above-mentioned offenses or is released from a state hospital to which he was committed as a mentally disordered sex offender under the provisions of Article 1 (commencing with Section 6300) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code shall, prior to such discharge, parole, or release, be informed of his duty to register under this section by the official in charge of the place of confinement or hospital and the official shall require the person to read and sign such form as may be required by the Department of Justice, stating that the duty of the person to register under this section has been explained to him. The official in charge of the place of confinement or hospital shall obtain the address where the person expects to reside upon his discharge, parole, or release and shall report such address to the Department of Justice. *The official in charge of the place of confinement or hospital shall give one copy of the form to the person, and shall send two or, if the conviction which makes the person subject to this section is a felony conviction, shall, not later than 45 days prior to the scheduled release of such person, send four copies to the Department of Justice,* which, in turn, shall forward one copy to the appropriate law enforcement agency having local jurisdiction where the person expects to reside upon his discharge, parole, or release, and, if the conviction which makes the person subject to this section is a felony conviction, one copy to the prosecuting agency which prosecuted the person and one copy to the court where he was prosecuted. All such

¹ Hereinafter all unidentified section references will be to the Welfare and Institutions Code.

forms shall, if the conviction which makes the person subject to this section is a felony conviction, be transmitted within such times as to be received by the local law enforcement agency, prosecuting agency and court 30 days prior to the discharge, parole or release of the person.” (Emphasis added.)

A “place of confinement” within the meaning of subdivision (b) would include a Youth Authority facility. (See Pen. Code, § 290, subd. (g).) The Director of the Youth Authority wants to know whether, in order to meet the 45 days notice requirement provided in subdivision (b), the Youth Authority must delay the release of the person mentioned in the situation above beyond the date set by the Youthful Offender Parole Board. We conclude that the Director of the Youth Authority has no authority to keep such a person incarcerated beyond the date set for parole.

The Director of the Youth Authority, as head of the Department of the Youth Authority, is charged with the powers, duties and functions, pertaining to the care and treatment of wards committed to his or her care, not specifically and expressly assigned to the Youthful Offender Parole Board. The Director has “the final right to determine the policies and classification, transfer, discipline, training and treatment” of persons committed to his or her care. (§ 1714.) On the other hand, included among the duties of the Youthful Offender Parole Board are the “return of persons to the court of commitment for redispotion by the court, discharge of commitment, orders to parole and conditions thereof, revocation or suspension of parole, recommendation for treatment program, determination of the date of next appearance, return of nonresident persons to the jurisdiction of the state of legal residence.” (§ 1719; see also §§ 1765, 1766.) As to those duties it is the Board, not the Director, which has final responsibility. (§§ 1712, 1714.)

In the situation presented, “the official in charge of the place of confinement” within the meaning of Penal Code section 290, subdivision (b) is the Director of the Youth Authority or the person authorized by the Director to be in charge of such facility. (See § 1751.) Such person would have no authority to keep a person incarcerated beyond the date set for parole by the board.

The basis for the incarceration of a youthful offender is the judgment of conviction of a crime. (§§ 1731.5, 1735.5.) The law prescribes the manner by which such incarceration is to terminate, namely by parole or discharge. (§ 1766.) The authority to determine the date of parole is vested in the Youthful Offender Parole Board. (§ 1766.)

The purpose of Penal Code section 290, subdivision (b) is to provide notice to local authorities of the release of an inmate. Subdivision (b) provides that the official in charge of the place of confinement shall send four copies of the form signed by the inmate to the Department of Justice “not later than 45 days prior to the scheduled release of such

person..(Emphasis added.) We have found nothing in the language of section 290 which would suggest that the Legislature intended by that section to grant authority to the official in charge of the place of confinement to “reschedule” the release of a person to comply with the 45 day notice requirement. (*Cf. In re Smith* (1949) 33 Cal. 2d 797, 804.)

Thus, we conclude that the Director of the Youth Authority is required to comply with the parole order of the Youthful Offender Parole Board. The Director has no authority to delay a release of an inmate contrary to the terms of the order.

In the situation presented above, where the parole order is issued less than 45 days from the date of release, it is impossible for the Director to comply with the notice requirement of Penal Code section 290, subdivision (b). “A direction to an officer cannot be said to be mandatory when the law furnishes him no means of obeying the direction.” (*County of Fresno v. Canal Co.* (1886) 68 Cal. 359, 361.) Accordingly, the Director would be required in such a case to make the notification as soon as possible after the order was issued.

We conclude, therefore, that the Director of the Youth Authority may not keep a person who is subject to the provisions of Penal Code section 290 incarcerated beyond the time which the Youthful Offender Parole Board has scheduled for his release on parole in order to meet the 45 day notice requirement of that section.²

² We do not address the issue of the propriety of action by the Youthful Offender Parole Board in ordering the parole of a person confined to the Youth Authority on a date which would make compliance with the notice requirements or subdivision (b) of Penal Code section 290 impossible.