

§ 7.3

Books: Primary Authority

The Law

IN RE SANDS Cal. 863
135 Cal.Rptr. 777
Crim. 19363

In re Kathleen SANDS on Habeas Corpus.
Crim. 19363.
Supreme Court of California,
In Bank.
Jan. 6, 1977.

Petitioner, convicted of knowing failure to disclose a material fact in order to obtain aid under the aid to families with dependent children program, sought to overturn her conviction by means of habeas corpus. The Supreme Court, Tobriner, J., held that the failure of the state to seek restitution prior to filing a criminal complaint was not such fundamental jurisdictional error as to entitle petitioner to relief by writ of habeas corpus.

Key Number

1. Habeas Corpus ¶25.10(1)
Habeas corpus ordinarily does not lie to review rulings respecting admission or exclusion of evidence.

2. Habeas Corpus ¶36(1)
Because it is collateral attack on judgment, habeas corpus does not lie unless asserted defect in proceedings constitutes fundamental jurisdictional or constitutional error.

3. Habeas Corpus ¶25
Concept of fundamental jurisdictional error, for purpose of writ of habeas corpus, is not strictly limited to cases in which trial court wholly lacks jurisdiction over person of defendant or subject matter of proceeding; but concept encompasses any error of sufficient magnitude that trial court may be said to have acted in excess of jurisdiction.

4. Habeas Corpus ¶27
State's failure to seek restitution prior to filing criminal complaint charging accused with knowing failure to disclose material fact in order to obtain aid under aid to families with dependent children program did not constitute fundamental jurisdictional error entitling accused to relief from conviction by writ of habeas corpus. West's Ann. Welfare & Inst. Code, §§ 11482, 11483.

5. Fraud ¶68.10(1)
Restitution does not constitute defense to crime of welfare fraud. West's Ann. Welfare & Inst. Code, § 11482.

6. Fraud ¶68.10(1)
Crime of obtaining aid to families with dependent children aid by misrepresenting or concealment is completed with taking of money, not with state's subsequent demand for return of money, and such demand is therefore not element of crime. West's Ann. Welfare & Inst. Code, § 11482.

Frank L. Williams, Jr., Public Defender, and Kenneth D. Cook, Deputy Public Defender, for petitioner.

Warren D. Weinstein, Daniel S. Brunner, San Pedro, Albert H. Meyerhoff, Marysville, Ralph Santiago Abascal, San Francisco, Maxine N. Bach and Bach & Bach, Chicago, as amici curiae on behalf of petitioner.

Evelle J. Younger, Atty. Gen., Jack R. Winkler, Chief Asst. Atty. Gen., Daniel J. Krewer, Asst. Atty. Gen., Alan S. Meth and Patricia D. Benke, Deputy Attys. Gen., for respondent.

Tobriner, Justice.

[1] On February 19, 1975, petitioner was convicted in the Municipal Court for the Central Orange County Judicial District of a violation of Welfare and Institutions Code section 11482, which proscribes among other things the knowing failure to disclose a material fact in order to obtain aid under the aid to families with dependent children program (hereafter referred to as the AFDC program). Affirming the conviction, the appellate department of the superior court refused to certify the case to the Court of Appeal for further appeal. Petitioner now seeks to overturn her conviction by means of habeas corpus.

Opinion from law library book

Primary authority is law. This section introduces the major law library publications that publish the law, and their online counterparts published on *Westlaw* and *Lexis*.

CASES: REPORTS AND REPORTERS

A case is a published court opinion. *West* is the major reporter of case law, although there are a few exceptions. The *Reporter System* is how *West Publishing Company* publishes cases from various regions of the country, in addition to the federal cases found in the *Federal Reporter* (first, second, and third series), the *Federal Supplement* (first and second series), and the *Supreme Court Reporter*. Other publications containing federal cases include the *Federal Rules Decisions*, the *Federal Appendix*, and subject matter reporters, such as the *Bankruptcy Reporter* and the *Military Justice Reporter*.

Lawyer's Cooperative Publishing Company also publishes cases, but only the *U.S. Supreme Court Reports, Lawyer's Edition* (first and second series). All the publications mentioned above are unofficial publications because they are published privately, not by the government.

Distinguished by In re Spears | Cal.App. 4 Dist. | June 29, 1984

Original image of 558 P.2d 863 (PDF)
View Cal./Cal.App. version

18 Cal.3d 851
Supreme Court of California,
In Bank.

In re Kathleen SANDS on Habeas Corpus.

Crim. 19363.
Jan. 6, 1977.

Synopsis
Petitioner, convicted of knowing failure to disclose a material fact in order to obtain aid under the aid to families with dependent children program, sought to overturn her conviction by means of habeas corpus. The Supreme Court, Tobriner, J., held that the failure of the state to seek restitution prior to filing a criminal complaint was not such fundamental jurisdictional error as to entitle petitioner to relief by writ of habeas corpus.

Petition denied.

West Headnotes (6)

1. **Habeas Corpus** Evidence
Habeas corpus ordinarily does not lie to review rulings respecting admission or exclusion of evidence.

2. **Habeas Corpus** Deprivation of fundamental or constitutional rights; miscarriage of justice
Because it is collateral attack on judgment, habeas corpus does not lie unless asserted defect in proceedings constitutes fundamental jurisdictional or constitutional error.

SELECTED TOPICS

Habeas Corpus
Particular Defects and Authority for Detention
Federal Habeas Review of State Trial Court Allegedly Erroneous Evidentiary Ruling

Grounds for Relief, Illegality of Restraint
Appeal Denial of Pretrial Writ of Habeas Corpus

Criminal Responsibility
Materially False, Fictitious, or Fraudulent Statements

Secondary Sources
Giving false information to federal department or agency as violation of 18 U.S.C.A. sec. 1001, making it criminal offense to make false statements in any matter under jurisdiction of department or agency of United States
111 A.L.R. Fed. 295 (Originally published in 1993)
...The broad range of conduct potentially proscribed by 18 U.S.C.A. § 1001, coupled with Congress' limited guidance as to specific behavior within the statute's scope, has provided ample opportunity for a...
§ 46. Ineffective assistance of counsel, generally
36 Cal. Jur. 3d Habeas Corpus § 46
...A criminal defendant's right to counsel entitles the defendant not to some bare assistance but rather to effective assistance of legal counsel. To be effective, before

Opinion from online research site

Many states also publish court opinions. The *Washington Reports* are published by the state of Washington and are an official publication. Some states also publish appellate court opinions within their state. Michigan has the *Michigan Reports* for Michigan Supreme Court cases and the *Michigan Appellate Reports* for the Michigan Court of Appeals. Cases are law and are therefore primary authority.

Advance Sheets

This softbound pamphlet is published in advance of the hardbound publication to give the reader quick access. (See green and white pamphlets in the image.) Advance sheets are usually associated with reports and reporters and are placed at the end of the set. The advance sheet is discarded when the new hardbound book is published.



While critical when researching cases in the law library, *Advance Sheets* are irrelevant in online legal research since cases are digitally published almost immediately. Thus, there is no longer the driving need to maintain a system for delivering opinions prior to hardbound volumes being printed.

Reports and Reporters Functions

- available on *Westlaw* [Database: ALLSTATES, ALLFEDS, other]
- available on *Lexis* [CASES]
- helps to find the law
- contains the law
- helps to use the law
- acts as a reference, form book, or other usage

CODE OF FEDERAL REGULATIONS (CFR)

§ 262.7 Notice to Indian tribes of possible harm to cultural or religious sites.
Code of Federal Regulations | Title 25. Indians (Approx. 3 pages)

Document | Notes of Decisions | History | Citing References | Context & Analysis | Powered by KeyCite

Return to list | 5 of 13 results | Original terms

Code of Federal Regulations
Title 25. Indians
Chapter I. Bureau of Indian Affairs, Department of the Interior
Subchapter L. Heritage **Preservation**
Part 262. Protection of Archaeological Resources (Refs & Annos)

25 C.F.R. § 262.7

§ 262.7 Notice to Indian tribes of possible harm to cultural or religious sites.

[Currentness](#)

When consent by an Indian tribe to proposed excavation or removal of archaeological resources from Indian lands it or its agent has jurisdiction contains all of the information written as prescribed and advised in § 262.5(c)(1), it may be taken to mean that, on such terms and conditions as the tribe might specify, issuance of a permit for the proposed work will not result in harm to any site of religious or cultural importance. No further notification is necessary, unless the Area Director has reason to believe that proposed work might harm or destroy a site of religious or cultural importance to another tribe or Native American group. In such cases, then follow the notification procedures at 43 CFR 7.7. Those procedures must also be followed when proposed work might harm or destroy Indian individuals over which there is no tribal jurisdiction or public lands owned or administered by the BIA.

SOURCE: 58 FR 65249, Dec. 13, 1993, unless otherwise noted.

AUTHORITY: 16 U.S.C. 470aa-11.

Relevant Additional Resources
Additional Resources listed below contain your search terms.

LAW REVIEWS

The Native American plight: Protection and **preservation** of sacred sites. 8 Widener L. Symp. J. 443 (2002).

Current through October 1, 2020, 85 FR 62140.

CODE OF FEDERAL REGULATIONS
CFR
40 Protection of Environment
Parts 100 to 135
Revised as of July 1, 2017
OFFICE OF THE FEDERAL REGISTER

The C.F.R. is a collection of softbound pamphlets containing regulations for federal agencies. These regulations are law; hence, primary authority.

Code of Federal Regulations Functions

- available on *Westlaw* [Database: CFR]
- available on *Lexis* [Database: CFR]
- helps to find the law
- contains the law
- helps to use the law
- acts as a reference, form book, or other usage

FEDERAL REGISTER (FED. REG.)

Significant New Use Rules on Certain Chemical Substances (20-2.5e)
 85 FR 64280-01 | 2020 WL 5970766 | October 9, 2020 (Approx. 54 pages)

Document

[Return to list](#) | 3 of 10 results

85 FR 64280-01, 2020 WL 5970766(F.R.)
 PROPOSED RULES
 ENVIRONMENTAL PROTECTION AGENCY
 40 CFR Part 721
 [EPA-HQ-OPPT-2020-0131; FRL-10011-86]
 RIN 2070-AB27

Significant New Use Rules on Certain Chemical Substances (

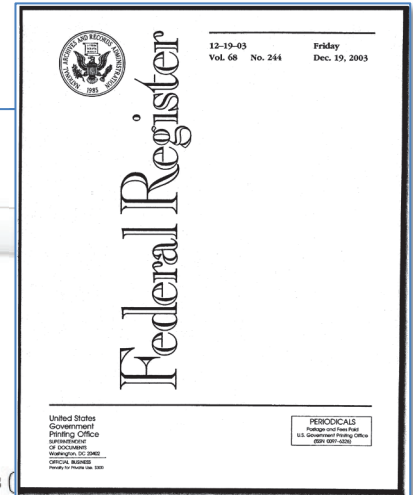
Friday, October 9, 2020

AGENCY: Environmental Protection Agency (EPA).

***64280 ACTION:** Proposed rule.

SUMMARY: EPA is proposing significant new use rules (SNURs) under the Toxic Substances Control Act (TSCA) for chemical substances that were the subject of premanufacture notices (PMNs). The SNURs require persons who intend to manufacture (defined by statute to include import) or process any of these chemical substances for an activity that is proposed as a significant new use by this rule to notify EPA at least 90 days before commencing that activity. The required notification initiates EPA's evaluation of the use, under the conditions of use for that chemical substance, within the applicable review period. Persons may not commence manufacture or processing for the significant new use until EPA has conducted a review of the notice, made an appropriate determination on the notice, and has taken such actions as are required by that determination.

DATES: Comments must be received on or before November 9, 2020.



The *Federal Register* reports daily summaries of administrative agencies, including proposed laws and actions taken by those agencies.

Federal Register Functions

- available on *Westlaw* [Database: FR]
- available on *Lexis* [Database: FEDREG]
- helps to find the law
- contains the law
- helps to use the law
- acts as a reference, form book, or other usage

RULES OF COURT

Rule 16. Discovery and Inspection
 FRCP Rule 16 | United States Code Annotated | Federal Rules of Criminal Procedure for the United States District Courts (Approx. 12)

Document | Notes of Decisions (2,110) | History (98) | Citing References (59,522) | Context & Analysis (449)

Return to list | 2 of 43 results | Original terms

United States Code Annotated
 Federal Rules of Criminal Procedure for the United States District Courts (Refs & Annos)
 Title IV. Arraignment and Preparation for Trial

Federal Rules of Criminal Procedure, Rule 16

Rule 16. **Discovery** and Inspection

Currentness

(a) Government's Disclosure.

(1) Information Subject to Disclosure.

(A) Defendant's Oral Statement. Upon a defendant's request, the government must disclose to the defendant, before or after arrest, in response to interrogation by a government agent if the government intends to use the statement at trial:

(B) Defendant's Written or Recorded Statement. Upon a defendant's request, the government must disclose to the defendant, and make available for inspection, copying, or photographing, all of the following:

(i) any relevant written or recorded statement by the defendant if:

- the statement is within the government's possession, custody, or control; and
- the attorney for the government knows—or through due diligence could know—that the statement exists;

(ii) the portion of any written record containing the substance of any relevant oral statement made before or after arrest if the defendant made the statement in response to interrogation by a person the defendant knew was a government agent; and

(iii) the defendant's recorded testimony before a grand jury relating to the charged offense.

FEDERAL
 RULES OF
 CRIMINAL
 PROCEDURE

2020 EDITION

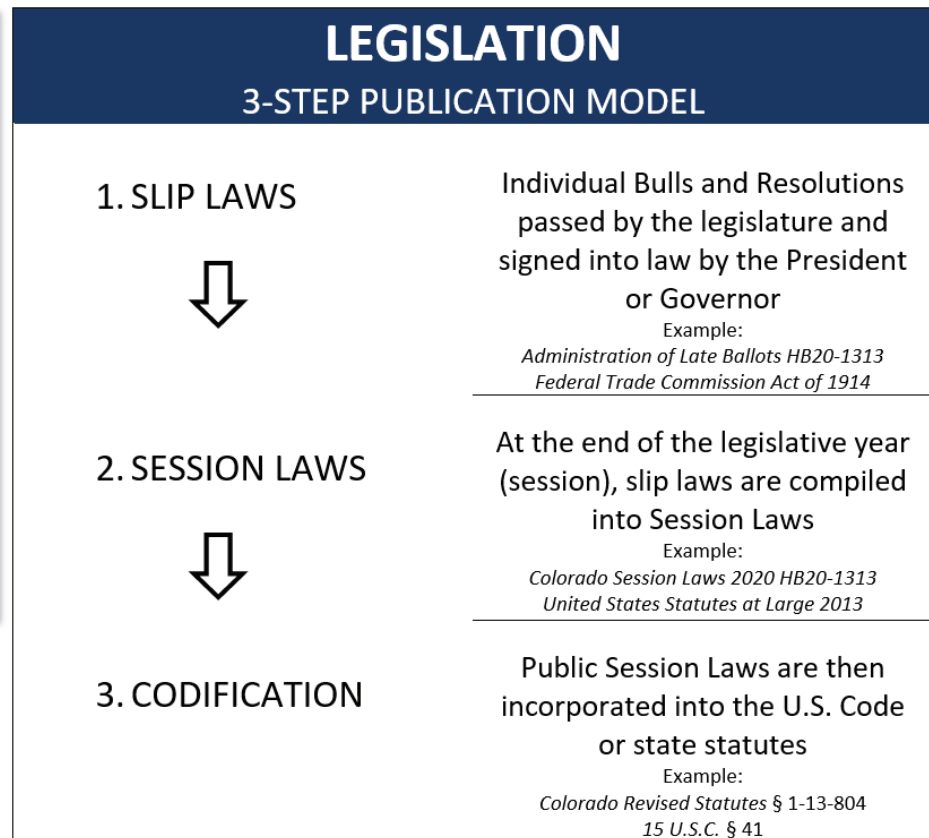
QUICK DESK REFERENCE SERIES™
 Michigan Legal Publishing Ltd.

Rules of court govern the procedural aspects of civil or criminal trials. Court rules are law, therefore, primary authority. The court rules for every state and federal court are published on *Westlaw* and *Lexis* and are also available by using a Google search. In addition, it is likely that your law firm will have a physical copy of the rules.

Rules of Court Functions

- available on *Westlaw*
- available on *Lexis*
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SESSION LAWS (STATUTES AT LARGE)



Legislative acts and bills are first published as individual “slip laws,” and are then collected in sets of hardbound books called Session Laws, Statutes at Large, or some similar term. Most legislatures meet every year and each year has its own set of Session Laws. The acts or bills will then be incorporated within the regular set of statutes for that state the next time they are published. The researcher rarely uses or quotes the Session Laws since they are quickly included in the published statutes.

Session Laws Functions

- helps to find the law
- contains the law
- helps to use the law
- acts as a reference, form book, or other usage

UNITED STATES CODE - UNITED STATES CODE ANNOTATED - UNITED STATES CODE SERVICE

§ 10102. Interference with freedom of elections
 52 USCA § 10102 | United States Code Annotated | Title 52. Voting and Elections (Approx. 2 pages)

Document | Notes of Decisions (2) | History (5) | Citing References (115) | Context & Analysis (1) Powered

Return to list | 4 of 209 results | Original terms

United States Code Annotated
 Title 52. Voting and Elections (Refs & Annos)
 Subtitle I. Voting Rights
 Chapter 101. Generally

52 U.S.C.A. § 10102
 Formerly cited as 42 USCA § 1972

→ [§ 10102. **Interference** with freedom of **elections**
 Currentness

→ [No officer of the Army, Navy, or Air Force of the United States shall prescribe or fix, or attempt to prescribe or fix, by proclamation, order, or otherwise, the qualifications of voters in any State, or in any manner **interfere** with the freedom of any **election** in any State, or with the exercise of the free right of suffrage in any State.

CREDIT(S)

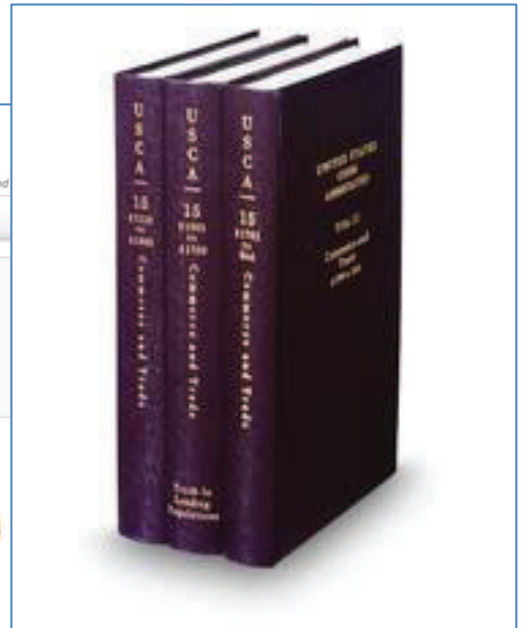
(R.S. § 2003.)

Relevant Notes of Decisions (1) [View all 2](#)

Notes of Decisions listed below contain your search terms.

Indictments

→ [An indictment for unlawfully preventing certain citizens of African descent from registering or voting at a municipal **election** should charge that the acts were done on account of race, color, or previous condition of servitude. *U.S. v. Petersburg Judges of Election*, C.C.Va.1874, Fed.Cas. No. 16,036.



Federal statutes are published in three publications: U.S.C. (official Government publication), U.S.C.A. (*West*), and U.S.C.S. (*Lawyers Coop.*) Only U.S.C. is official, but all three publications contain primary authority. However, always cite to the official, U.S.C. The United States Code can be found on both *Westlaw* (U.S.C.A.) and *Lexis* (U.S.C.S.). You may also conduct a Google search to find the U.S. Code.

United States Code Functions

- available on *Westlaw* [Database: USCA]
- available on *Lexis* [Database: USCS]
- helps to find the law
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CHAPTER 7

Wrap-Up

WHAT YOU SHOULD KNOW

After reading this chapter you should know the following:

- How to locate databases on *Westlaw*
- How to locate databases on *Lexis*
- The various publications containing secondary authority
- The various publications containing primary authority

ASSIGNMENTS

There are no assignments for this chapter.