



# HUY

11320 Roosevelt  
Seattle, WA 98125  
206.691.3631

Pronounced "hoyt", Huy means "see you again/we never say goodbye" in the Coast Salish language.

## **Huy Urges Tribal & Coalition Opposition to State of California's Proposed Violation of American Indian Prisoners' Religious Freedoms**

In February, the California Department of Corrections and Rehabilitation ("CDCR") provisionally outlawed, on a so-called "emergency" basis, American indigenous prisoners' religious use of: tribal sacred medicines like kinnikinnick, copal, and osha root; indigenous sacred items like pipes and pipe bags, drums and other instruments, and water dippers; and tribal religious necessities like cloth for prayer ties, beads and beading supplies, and animal hides and teeth. It appears the indigenous prisoners' sweatlodge ceremonies have also been curtailed being reduced from occurring every weekend to only one or two times per month.

Any person, group or tribe may submit written comments about what remains a proposed CDCR religious property regulation to CDCR, Regulation and Policy Management Branch (RPMB), P.O. Box 942883, Sacramento, CA 94283-0001, or by fax to (916) 324-6075, or by e-mail to [RPMB@cdcr.ca.gov](mailto:RPMB@cdcr.ca.gov). **All written comments must be received by the close of the public comment period May 7, 2013, at 5:00 p.m. Also, a public hearing will be held on May 7, 2013 from 10:00 a.m. to 11:00 a.m. in Sacramento**, specifically in the Kern room, located at 151 S Street, North Building, 95811. The CDCR will then consider comments, evaluate proposed alternatives, and issue a final rule. We urge your timely written and public comment in opposition to the State of California's unlawful effort to unduly restrict American indigenous prisoners' freedom to believe, express and exercise traditional indigenous religion.

### **Proposed Regulation § 3190(b) & Revisions to Authorized Personal Property Schedule**

On February 21, 2013, the California Department of Corrections and Rehabilitation ("CDCR") filed a proposal to amend sections of the California Code of Regulations, Title 15, Division 3 concerning inmate religious property. Because this amendment was undertaken as an emergency regulatory action, the new regulations took effect immediately, pending final adoption in accordance with the Administrative Procedures Act ("APA"). See Notice of Approval of Emergency Regulatory Action, OAL File No. 2013-0206-01 EON. The proposed regulations significantly limit the types of religious property that prisoners are allowed to possess. Additionally, the new regulations, seeking to standardize permissible religious property, took decision-making power away from local religious review committees, making it more difficult for Native prisoners to get religious items approved for possession.

#### Board of Directors:

Frances Charles, Lower Elwah Klallam  
Brian Cladoosby, Swinomish  
Francis Cullooyah, Kalispel  
Gabe Galanda, Round Valley

Claudia Kauffman, Nez Perce  
Winona Stevens, Ho Chunk  
Eldon Vail, Past Department of Corrections Secretary

The proposed regulations violate the Free Exercise Clause of the First Amendment, the Equal Protection Clause of the Fourteenth Amendment, the federal Religious Land Use and Institutionalized Persons Act, and Article I § 4 of the California Constitution. Additionally, the regulation violates international law protecting indigenous peoples' religious freedoms, as articulated in the United Nations Declaration on the Rights of Indigenous Peoples, endorsed by the United States in 2010, and the International Covenant on Civil and Political Rights, which the United States ratified in 1992.

Previous regulations<sup>1</sup> allowed prisoners to possess "religious artifacts." Religious artifacts were defined as "any bag, cross, medallion, totem, bible, pipe, *or any other item in which the possessor places religious or spiritual significance.*" 15 CA ADC § 3000 (emphasis added). An Authorized Personal Property Schedule ("APPS") listed items prisoners were allowed to possess. § 3190(b). In terms of religious property, the APPS stated that inmates were allowed to possess "Religious Items (As approved by the local religious review committees...)." California Department of Corrections and Rehabilitation Operations Manual (2013), Article 43, Inmate Property (Revised 2-1-08) [hereinafter Operations Manual].

The Operations Manual defined religious items broadly, stating that "[r]eligious artifacts are those items which American Indians wear on religious/ceremonial occasions and include their tribal designations, personal and religious totems and items which have spiritual significance in their lives." Operations Manual § 101060.10. The Operations Manual stated that religious items included but were not limited to chokers, eagle feathers, headbands, wristbands, and medicine bags. *Id.* Additionally, the Operations Manual allowed personal religious items for sweat lodge ceremonies, including but not limited to sacred pipes, pipe bags, kinnikinnick, eagle feathers, sage, sweet grass, buffalo or deer skulls, antlers, lava or river rocks, water, non-metallic dippers, and non-metallic buckets. Operations Manual § 101060.9.1. Further, the Operations Manual mandated that "[c]ustody staff shall consult institutional chaplains and spiritual leaders whenever possible when considering the disapproval of religious items." Operations Manual § 54040.10.9.

A Soledad Prison order from May 9, 2011 provides an example of the variety of items inmates were allowed to possess. The order allowed for items including but not limited to sacred herbs, including sage, sweet grass, cedar, kinninnick, copal, bitter root and osha root; prayer fans; beaded items such as wristbands, headbands, bandannas; cloth to be used for prayer ties, beads and beading supplies including needles, looms, and thread; pipes and pipe bags; hand drums, flutes, rattles, and clap stick; gourd water dippers; soft leather from a variety of animals; and coyote and bear teeth. See Department of Corrections and Rehabilitation, CDC-128 B (8-87) (May 9, 2011).

In contrast, the new regulations<sup>2</sup> remove religious items from the APPS, instead promulgating a separate Religious Property Matrix. Text of Proposed Regulations, § 3190(b); Proposed Revisions to APPS. The new regulations retain the broad definition of religious items in § 3000, including "item[s] in which the possessor places religious or spiritual significance."

---

<sup>1</sup> Previous regulations are available at

[http://www.cdcr.ca.gov/Regulations/Adult\\_Operations/docs/Title15-2012.pdf](http://www.cdcr.ca.gov/Regulations/Adult_Operations/docs/Title15-2012.pdf).

<sup>2</sup> The Text of Proposed Regulations, Religious Property Matrix, Proposed Revisions to APPS, and Initial Statement of Reasons were included as attachments to the Notice of Change to Regulations (NCR 13-01), available at [http://www.cdcr.ca.gov/Regulations/Adult\\_Operations/Pending\\_Rules\\_Page.html#IRP](http://www.cdcr.ca.gov/Regulations/Adult_Operations/Pending_Rules_Page.html#IRP).

However, the Matrix itself states that “[i]nmates are only permitted personal religious items listed in this Matrix.” Religious Property Matrix (12/1/12). The Matrix then lists 24 items that are allowed.

The Matrix’s list of approved items is extremely limited, failing to include items that have previously been allowed. For instance, herbs are restricted to mint, cedar, lavender, sweet grass, and sage. Thus, important herbs such as kinninnick, copal, and osha root are now prohibited. The Matrix also does not include cloth for prayer ties, beads or beading supplies, pipes or pipe bags, drums or other instruments, water dippers, leather, teeth, or other items. The regulations regarding tobacco have not been amended. None of the recently prohibited items present any threat to prison security or to the orderly operation of penal institutions.

Additionally, the Matrix is only amendable a maximum of twice a year and must be amended by the Wardens Advisory Group/Religious Review Committee in accordance with the rulemaking requirements of the APA. Text of Proposed Regulations, § 3190(b). Thus, the process for getting an item approved is a much more burdensome one for prisoners because determinations about specific permissible religious items is no longer left to local religious review committees.

Finally, it is unclear why imposition of this overly restrictive Matrix qualified as an emergency. California law states that “[a] finding of emergency based only upon expediency, convenience, best interest, general public need, or speculation, shall not be adequate to demonstrate the existence of an emergency.” Cal. Gov’t Code Ann. § 11346.1 (West). The CDCR has since articulated that its reasons for amending the religious property regulations include “(1) providing statewide standardization concerning allowable religious items for inmates, (2) compliance with existing court mandates, (3) reducing potential inmate litigation, (4) reducing the ability for inmates to barter or trade religious property, and (5) ensuring security and safety in the institutions.” Initial Statement of Reasons. The CDCR must have provided some basis for emergency action in its initial filing. However, the imposition of these unduly restrictive regulations before an opportunity for notice and comment, which could have broadened the Matrix’s scope, has placed a significant and immediate burden on Native prisoners’ religious rights.

For additional information, contact Huy Chairman Gabriel S. Galanda, at (206) 300-7801 or [gabe@galandabroadman.com](mailto:gabe@galandabroadman.com).