

PETITION FOR A STATE WRIT OF HABEAS CORPUS – CRIMINAL CONVICTIONS AND DETENTION FACILITIES

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A Petition for Writ of Habeas Corpus is a relatively fast and easy way to get a judge to decide an issue regarding either your rights in a state detention facility (conditions of confinement) or the legality of your confinement. The form and instructions are for filing a Petition for Writ of Habeas Corpus in California state courts.

I. PREPARING THE PETITION

General Considerations

- 1) Read the entire petition form and these instructions before filling out the form.
- 2) Fill out the form as clearly as possible in black ink, if possible, or by typing your answers. Take your time when filling out the form. It might be a good idea to practice on a blank sheet of paper first.
- 3) If you don't have enough space to answer a question, finish your answer(s) on (an) additional page(s) and attach them to the back of the petition form. Note on the petition form that your answer is "continued on additional page(s)."
- 4) Attach copies of any documents which support your claim or which the court will need in order to understand your claim. For example, if you were put into isolation without sufficient grounds, you might wish to include the copies of any complaints you've filed. It is important to do this because the court may deny your petition if it does not have enough evidence.
- 5) Normally you must have "exhausted your administrative remedies" (finished the grievance/complaint and appeals process at your place of detention) before a court is willing to hear your petition.
- 6) There is no filing fee for a habeas corpus petition in state court. However, you may have to pay fees if the court appoints an attorney to represent you, or if an expert witness is required. There is a form to request a waiver of court fees if you cannot afford those expenses.

II. FILING THE PETITION

In the Superior Court, all you are required to do is send the original to the court clerk. It is advisable to send a second copy with a stamped self-addressed envelope so that the court can return a stamped copy to you, showing the case number and when it was filed. If you are challenging a criminal conviction and are filing a petition in Superior Court, you should file it in the county that made the order. If you are challenging the conditions of your confinement and are filing a petition in the Superior Court, you should file it in the county in which you are confined. At the Court of Appeal level, if you are not represented by an attorney, you only need to file an original, but at the Supreme Court level you must file an original and ten copies.

III. WHAT TO EXPECT AFTER YOU FILE YOUR WRIT PETITION

A court may:

- Deny the petition. Possible grounds are that a previous petition on this issue was denied by the same court, the petition fails to show that an appeal is inadequate, or the claim is frivolous. The petition may be denied without any explanation at all.
- Issue an order to show cause, which means that the court has taken your allegations as true and you will be entitled to relief if your allegations are proved. However, by issuing an order to show cause the court also allows a return or response to be filed by the person (detention facility) whose custody you are in to counter your allegations. An order to show cause does not grant the relief requested in the petition.
- Request an informal response from the respondent (detention facility). After reviewing the informal response, the court may request more information, issue an order to show cause, or deny the petition.

You should hear back from the court within 60 days.

IV. WHAT TO DO IF THE WRIT PETITION IS DENIED

If the Superior Court has denied your petition for writ of habeas corpus, you may file a new petition for writ of habeas corpus first in the Court of Appeal and then, if the Court of Appeal denies the petition, the Supreme Court of California. If your California Supreme Court petition is denied, you do not file a notice of appeal—you file a new petition instead.

V. INSTRUCTIONS FOR (MC-275) WRIT PETITION FORM

A blank form can be found included in this packet as Attachment A and at the following link: <http://www.courts.ca.gov/documents/mc275.pdf>. It may be helpful to refer to it when reading these directions.

A. Blanks at the Front of the Petition Form

- 1) Fill in **your name and the name and address of the facility** where you are currently and your **ID number**
- 2) The next two lines are for the **name of the court** you are filing the writ in. If you are challenging a criminal conviction and are filing a petition in Superior Court, you should file it in the county that made the order. If you are challenging the conditions of your confinement and are filing a petition in the Superior Court, you should file it in the county in which you are confined.
- 3) You are the **petitioner** and the **respondent** is the name of the state agency (California Department of Corrections or Sheriff's Department) confining you.
- 4) Leave the line under "**Petition for Writ of Habeas Corpus**" blank. The court clerk will fill in the case number for your writ (it is different than the case number you have with the court of your conviction).
- 5) Under "**This petition concerns**", choose the box that applies or you can check "other" and write in either "conditions in jail/prison" "rights violation", "length of criminal conviction", etc.

B. Numbered Questions

- 1) Write your name again and where you are confined. Check the box for "Criminal Conviction."
- 2) Fill out "a" through "i" as accurately as possible. Fill in the last plea you entered and what kind of trial you had.
- 3) For #6 and #7, put either what right you think has been denied or why you think you are illegally confined. Give supporting facts/cases (if known).

Clearly describe the **rights** that are being denied you while you are confined, and the **date(s)** on which the violation(s) occurred. You can challenge the denial of any right which you are entitled to under state or federal law (including the constitution, court cases, statutes and administrative regulations) or under the policies of the facility in which you are being held. These might include such rights as the right to access to your possessions, the right to have visitors, the right to make phone calls and send and receive mail, the right not to be secluded or restrained inappropriately or excessively, etc. As noted above, it will be helpful (but is not necessary) for you to refer in your petition to the statute number, policy number, case citation, etc. guaranteeing the(se) right(s).

Usually, you can only protest when rights are **currently** being denied you or when you have evidence you will be denied your rights **in the foreseeable future**.

List the reasons you believe your confinement to be illegal.

- 4) Questions 8, 9 and 10 are mostly relevant if you are contesting the legality of your confinement. Fill out as appropriate.
- 5) Question 11 is regarding the grievance or complaint process within the facility that you are confined. Normally, you must finish (exhaust) all of the grievance or complaint levels before filing a petition for a writ of habeas corpus.
- 6) Questions 12, 13, and 14 relate to previous requests for relief from your current confinement. If you have filed such requests then fill in the requested information.

- 7) Question 15 relates to if there has been a delay since you feel your sentence became illegal and you filing the request for a writ.
- 8) Question 16 and 17 relate to currently pending cases you have and whether you currently have an attorney.
- 9) If you are not filing in the Superior Court, explain why not.
- 10) Date and sign your name at the bottom of page 6.

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For legal assistance call 800-776-5746 or complete a [request for assistance form](#). For all other purposes call 916-504-5800 (Northern CA); 213-213-8000 (Southern CA).

Disability Rights California is funded by a variety of sources, for a complete list of funders, go to <http://www.disabilityrightsca.org/Documents/ListofGrantsAndContracts.html>.

ATTACHMENT A

Name:

Address:

CDC or ID Number:

(Court)

_____ Petitioner	vs.	_____ Respondent
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PETITION FOR WRIT OF HABEAS CORPUS

No.

(To be supplied by the Clerk of the Court)

INSTRUCTIONS—READ CAREFULLY

- **If you are challenging an order of commitment or a criminal conviction and are filing this petition in the Superior Court, you should file it in the county that made the order.**
- **If you are challenging the conditions of your confinement and are filing this petition in the Superior Court, you should file it in the county in which you are confined.**

- Read the entire form *before* answering any questions.
- This petition must be clearly handwritten in ink or typed. You should exercise care to make sure all answers are true and correct. Because the petition includes a verification, the making of a statement that you know is false may result in a conviction for perjury.
- Answer all applicable questions in the proper spaces. If you need additional space, add an extra page and indicate that your answer is "continued on additional page."
- If you are filing this petition in the superior court, you only need to file the original unless local rules require additional copies. Many courts require more copies.
- If you are filing this petition in the Court of Appeal in paper form and you are an attorney, file the original and 4 copies of the petition and, if separately bound, 1 set of any supporting documents (unless the court orders otherwise by local rule or in a specific case). If you are filing this petition in the Court of Appeal electronically and you are an attorney, follow the requirements of the local rules of court for electronically filed documents. If you are filing this petition in the Court of Appeal and you are *not* represented by an attorney, file the original and one set of any supporting documents.
- If you are filing this petition in the California Supreme Court, file the original and 10 copies of the petition and, if separately bound, an original and 2 copies of any supporting documents.
- Notify the Clerk of the Court in writing if you change your address after filing your petition.

Approved by the Judicial Council of California for use under rule 8.380 of the California Rules of Court (as amended effective January 1, 2007). Subsequent amendments to rule 8.380 may change the number of copies to be furnished to the Supreme Court and Court of Appeal.

This petition concerns:

- A conviction Parole
 A sentence Credits
 Jail or prison conditions Prison discipline
 Other (*specify*):

1. Your name:
2. Where are you incarcerated?
3. Why are you in custody? Criminal conviction Civil commitment

Answer items a through i to the best of your ability.

- a. State reason for civil commitment or, if criminal conviction, state nature of offense and enhancements (for example, "robbery with use of a deadly weapon").
- b. Penal or other code sections:
- c. Name and location of sentencing or committing court:
- d. Case number:
- e. Date convicted or committed:
- f. Date sentenced:
- g. Length of sentence:
- h. When do you expect to be released?
- i. Were you represented by counsel in the trial court? Yes No *If yes, state the attorney's name and address:*
4. What was the LAST plea you entered? (*Check one*):
- Not guilty Guilty Nolo contendere Other:
5. If you pleaded not guilty, what kind of trial did you have?
- Jury Judge without a jury Submitted on transcript Awaiting trial

6. GROUNDS FOR RELIEF

Ground 1: State briefly the ground on which you base your claim for relief. For example, "The trial court imposed an illegal enhancement." (If you have additional grounds for relief, use a separate page for each ground. State ground 2 on page 4. For additional grounds, make copies of page 4 and number the additional grounds in order.)

a. Supporting facts:

Tell your story briefly without citing cases or law. If you are challenging the legality of your conviction, describe the facts on which your conviction is based. *If necessary, attach additional pages.* CAUTION: You must state facts, not conclusions. For example, if you are claiming incompetence of counsel, you must state facts specifically setting forth what your attorney did or failed to do and how that affected your trial. Failure to allege sufficient facts will result in the denial of your petition. (See *In re Swain* (1949) 34 Cal.2d 300, 304.) A rule of thumb to follow is, *who* did exactly *what* to violate your rights at what time (*when*) or place (*where*). (If available, attach declarations, relevant records, transcripts, or other documents supporting your claim.)

b. Supporting cases, rules, or other authority (*optional*):

(Briefly discuss, or list by name and citation, the cases or other authorities that you think are relevant to your claim. If necessary, attach an extra page.)

7. **Ground 2 or Ground _____** *(if applicable)*:

a. Supporting facts:

b. Supporting cases, rules, or other authority:

8. Did you appeal from the conviction, sentence, or commitment? Yes No If yes, give the following information:
- a. Name of court ("Court of Appeal" or "Appellate Division of Superior Court"):
 - b. Result:
 - c. Date of decision:
 - d. Case number or citation of opinion, if known:
 - e. Issues raised: (1)
(2)
(3)
 - f. Were you represented by counsel on appeal? Yes No If yes, state the attorney's name and address, if known:
9. Did you seek review in the California Supreme Court? Yes No If yes, give the following information:
- a. Result:
 - b. Date of decision:
 - c. Case number or citation of opinion, if known:
 - d. Issues raised: (1)
(2)
(3)
10. If your petition makes a claim regarding your conviction, sentence, or commitment that you or your attorney did not make on appeal, explain why the claim was not made on appeal:
11. Administrative review:
- a. If your petition concerns conditions of confinement or other claims for which there are administrative remedies, failure to exhaust administrative remedies may result in the denial of your petition, even if it is otherwise meritorious. (See *In re Muszalski* (1975) 52 Cal.App.3d 500.) Explain what administrative review you sought or explain why you did not seek such review:
 - b. Did you seek the highest level of administrative review available? Yes No
Attach documents that show you have exhausted your administrative remedies.

12. Other than direct appeal, have you filed any other petitions, applications, or motions with respect to this conviction, commitment, or issue in any court? Yes If yes, continue with number 13. No If no, skip to number 15.

13 a. (1) Name of court:

(2) Nature of proceeding (for example, "habeas corpus petition"):

(3) Issues raised: (a)

(b)

(4) Result (attach order or explain why unavailable):

(5) Date of decision:

b. (1) Name of court:

(2) Nature of proceeding:

(3) Issues raised: (a)

(b)

(4) Result (*attach order or explain why unavailable*):

(5) Date of decision:

c. *For additional prior petitions, applications, or motions, provide the same information on a separate page.*

14. If any of the courts listed in number 13 held a hearing, state name of court, date of hearing, nature of hearing, and result:

15. Explain any delay in the discovery of the claimed grounds for relief and in raising the claims in this petition. (See *In re Swain* (1949) 34 Cal.2d 300, 304.)

16. Are you presently represented by counsel? Yes No If yes, state the attorney's name and address, if known:

17. Do you have any petition, appeal, or other matter pending in any court? Yes No If yes, explain:

18. If this petition might lawfully have been made to a lower court, state the circumstances justifying an application to this court:

I, the undersigned, say: I am the petitioner in this action. I declare under penalty of perjury under the laws of the State of California that the foregoing allegations and statements are true and correct, except as to matters that are stated on my information and belief, and as to those matters, I believe them to be true.

Date:



(SIGNATURE OF PETITIONER)