



*California's Protection & Advocacy System
Toll-Free (800) 776-5746*

PETITION FOR A STATE WRIT OF HABEAS CORPUS – PENAL COMMITMENT

May 2014, Pub #5111.01

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 the hospital (conditions of confinement) or the legality of your confinement. These forms and instructions are for filing a petition for writ of habeas corpus in California state courts.

PREPARING THE PETITION

General Considerations

- 1) Read the entire form and these instructions before filling out the form.
- 2) Decide if you want to file the Short (MC-270) or the Long (MC-275) Petition for Writ of Habeas Corpus form. Depending on your issue or your personal preferences, one may seem better to you than the other at presenting or explaining your issue to the court. Only fill out one of the two petition forms.
- 3) 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.
- 4) 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)."

- 5) 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 in restraints without sufficient grounds, you might wish to include the copies of any complaints you've filed or copies from your medical chart. It is important to do this because the court may deny your petition if it does not have enough evidence.
- 6) Normally you must have "exhausted your administrative remedies" (finished the patients' rights complaint and appeals process) before a court is willing to hear your petition.
- 7) 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.

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. 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. Addresses for the superior courts for the counties where each of the five state hospitals are located are included in this packet.

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 that allows a return to be filed by the person (state hospital) whose custody the petitioner is in.
- Request an informal response from the respondent (state hospital). 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 (the time recently was changed from 30 to 60 days).

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 petition is denied, you do not file a notice of appeal—you file a new petition instead.

ADDRESSES OF SUPERIOR COURTS IN COUNTIES WHERE STATE HOSPITALS ARE LOCATED

DSH-Atascadero

San Luis Obispo Superior Court
1050 Monterey Street, Rm. 220
San Luis Obispo, CA 93408

DSH-Coalinga

Fresno County Superior Court
1100 Van Ness Avenue
Fresno, CA 93724-0002

DSH-Metropolitan

Los Angeles County Superior Court
12720 Norwalk Avenue
Norwalk, CA 90650

DSH-Napa

Napa County Superior Court
825 Brown Street
Napa, CA 94559-0880

DSH-Patton

San Bernardino County Superior Court
351 N. Arrowhead Ave
San Bernardino CA 92415

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INSTRUCTIONS FOR THE ONE PAGE (MC-270) WRIT PETITION FORM

A blank form can be found at the following link: <http://www.courts.ca.gov/documents/mc270.pdf>. It may be helpful to refer to it when reading the directions below.

A. Boxes at the Top of the Petition Form

- 1) Fill in your **name**, the **facility name and address**, and the **phone number (with area code)** at which you can receive calls.
- 2) In the box that says "SUPERIOR COURT OF CALIFORNIA, COUNTY OF: " write the **name of the county where you are presently hospitalized**.
- 3) Below the phrase "IN THE MATTER OF (NAME):" write your **full name**.
- 4) Leave the box which says "CASE NUMBER" blank. The court will assign you a case number after your petition is filed.

B. Numbered questions/statements

- 1) Write the **name of the hospital** in which you are being held. The **name of persons having custody** would be the name of the Hospital Executive Director, Sheriff, etc.
- 2) Write the **date of your admission** next to the phrase "(date)" on the first line of this section. Then, **check** the box that states your legal status. For example, if you are held as not guilty by reason of insanity, check the box that says, PC section 1026.
- 3) **If you are challenging the legitimacy of your confinement:**

Check box "a", and list the reasons you believe your confinement to be illegal. For example, if you feel you have met the criteria for restoration of sanity, in that you are no longer a danger to yourself or others, state this, and provide any information you have to support that you are no longer a danger to yourself or others. Use extra sheets if you need to.

4) **If you are challenging the conditions of your confinement:**

Check box "b", and 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, the right not be involuntarily medicated on a nonemergency basis, etc. (For examples, see 9 CCR 883 and 884) 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**.

- 5) If you have filed a petition for a writ of habeas corpus asking for release from or a change of the conditions of your involuntary commitment answer "YES." If you answered YES to this question, list each request for your relief you made along with the following information: the date of the request, the court to which it was addressed, the violation(s) you were protesting in that petition, and the result. Also include any petitions to be released to the Conditional Release Program you have filed.
- 6) Check boxes a, b, c, and d. If you cannot afford an attorney to represent you in the habeas proceeding, next to or below box "d," you should write "including appointment of counsel to represent me in this action, as I am indigent."

C. Verification and Signature

Print or type your name on the line in the bottom, left corner. Sign your name on the line in the bottom, right corner.

INSTRUCTIONS FOR THE SIX PAGE (MC-275) WRIT PETITION FORM

A blank form can be found 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** you are currently at and your **ID number**
- 2) The next two lines are for the **name of the court** you are filing the writ in. Usually a writ is started in the superior court of either the county of confinement (for alleged rights violations) or the county of commitment (for legitimacy of confinement questions).
- 3) You are the **petitioner** and the **respondent** is the name of the state agency (California Department of State Hospitals) 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 committing court for your confinement).
- 5) Under “**This petition concerns**”, usually you will check “other” and write in either “conditions in state hospital”, “rights violation”, “length of civil commitment”, etc.

B. Numbered Questions

- 1) Write your name again and where you are committed. Check the box for “Civil Commitment”.
- 2) Fill out a through i as accurately as possible. Substitute “commitment” for “sentence”.
- 3) Fill in the last plea you entered and what kind of trial you had.

- 4) 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, the right not be involuntarily medicated on a nonemergency basis, etc. (For examples, see 9 CCR 883 and 884) 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. For example, if you feel you have met the criteria for restoration of sanity, in that you are no longer a danger to yourself or others, state this, and provide any information you have to support that you are no longer a danger to yourself or others.

- 5) Questions 8, 9 and 10 are mostly relevant if you are contesting the legality of your confinement. Fill out as appropriate.
- 6) Question 11 is regarding the Patients' Rights Complaint Process. There are four levels (the complaint with the patients' rights advocate and then three levels of appeal). Normally you must finish (exhaust) all of the levels before filing a petition for a writ of habeas corpus.

- 7) Questions 12, 13, and 14 relate to previous requests for relief from your current commitment. If you have filed such requests then fill in the requested information.
- 8) Question 15 relates to if there has been a delay since you feel your sentence became illegal and you file the request for a writ.
- 9) Question 16 and 17 relate to currently pending cases you have and whether you currently have an attorney.
- 10) If you are not filing in the Superior Court, explain why not.
- 11) Date and sign your name at the bottom of page 6.

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>.