



PRISON LAW OFFICE
General Delivery, San Quentin, CA 94964
Telephone (510) 280-2621 ☐ Fax (510) 280-2704
www.prisonlaw.com

Director:
Donald Specter

Managing Attorney:
Sara Norman

Staff Attorneys:
Rana Anabtawi
Patrick Booth
Steven Fama
Alison Hardy
Sophie Hart
Corene Kendrick
Rita Lomio
Margot Mendelson
Shira Tevah

Your Responsibility When Using this Information:

This information is not intended to be legal advice about the facts in your case, but it will give you more information about your rights and what you can do to help yourself. When we wrote this document we did our best to give you useful and accurate information, because we know that people often have difficulty obtaining legal information in prison or jail and we cannot provide specific advice everyone who requests it. Also, the laws change frequently and are subject to differing interpretations. We do not always have the resources to make changes to this material every time the law changes. If you use this document, it is your responsibility to make sure that the law has not changed and applies to your situation.

**“COLLATERAL” CHALLENGES TO CALIFORNIA CRIMINAL CONVICTIONS:
STATE HABEAS CORPUS, FEDERAL HABEAS CORPUS, AND OTHER OPTIONS**
(revised January 2020)

We have received your request for help challenging your California criminal conviction or sentence if you did not file a direct appeal, if you did not raise a particular issue in your direct appeal, or if your direct appeal has been denied. Unfortunately, we cannot assist with individual criminal cases, and we cannot refer you to an attorney. We hope this letter will give you an overview of the possible options and where to get additional information.

A “collateral challenge” is an “indirect” or “secondary” challenge to your conviction or sentence that you make after or instead of a direct appeal. The two main types of collateral challenges are state court habeas corpus petitions and federal court habeas corpus petitions. State and federal habeas corpus petitions are very different from each other, and this letter will summarize the basic rules that apply to each. This letter will also discuss other ways to challenge a conviction or sentence, some of which are available only for certain types of cases. In addition, this letter will try to point you to resources where you can get more information on the details of litigating state and federal habeas corpus cases.

Board of Directors

Penelope Cooper, President • Michele WalkinHawk, Vice President • Marshall Krause, Treasurer
Harlan Grossman • Christiane Hipps • Margaret Johns • Cesar Lagleva
Laura Magnani • Michael Marcum • Ruth Morgan • Seth Morris

State Court Habeas Corpus Petitions

A state court habeas petition is a way to ask the California state courts to review a criminal case issue that was not raised in a direct appeal. Usually, a person files a state habeas corpus petition to raise an issue that relies on either information that was not presented in the trial court or court of appeal, new evidence that was not discovered until after the trial, or new law that affects the case. You cannot use a state habeas corpus petition to raise an issue that you could have raised in an appeal or that you already raised in an appeal. One type of issue often raised in state habeas corpus petitions is that a trial or appellate attorney provided ineffective assistance because they failed to fully investigate the case, did not present important evidence, or did not raise all of the valid legal issues. If you have more than one issue, you should try to raise them all in one petition because the courts will let you file multiple petitions only in limited circumstances.

A state habeas corpus petition can be filed while you have a direct appeal going in state courts or after your direct appeal has been denied. There are no set time limits for filing a state habeas petition, but you should do it as soon as possible to avoid the risk that a court might deny your petition as being substantially delayed without good reason; if possible, try to file your petition within 60 days after your direct appeal is over or after you discover new evidence or law that supports your petition. Also, if you might want to later raise your issues in a federal habeas petition, you will want to take into account the very strict time rules for federal habeas petitions (see more information below in the section on federal habeas petitions).

Normally, you should file a state habeas corpus petition challenging your criminal conviction or sentence in the superior court for the county where you were convicted and sentenced. If your petition is denied, you cannot appeal. However, you can re-file your petition in the Court of Appeal, and then re-file your petition or ask for review in the California Supreme Court.

The petition should be on an official “Petition for Writ of Habeas Corpus” form (HC-001), which should be available in the prison law library. You can attach additional pages and you should also attach documents and declarations that support your issues. There is no court fee for filing a state habeas petition. When you file the petition, you must serve (send) a copy of the petition to the district attorney; if you are in state prison, you should also send a copy to the attorney general’s office.

There is no right to have a lawyer appointed to prepare your state court habeas corpus petition. However, if you do not have money to hire a lawyer, and you file a petition on your own, and the judge issues an “order to show cause” (an order requiring the district attorney or attorney general to submit a formal response, called a “return”), then the judge also must appoint a lawyer to represent you at state expense for the rest of the proceedings.

The procedural rules for filing state habeas corpus petitions are in the California Rules of Court, rules 4.550 through 4.552 (county superior courts) and rules 8.380 through 8.388 (courts of appeal and California Supreme Court). Upon request, the Prison Law Office can send you a free manual on state habeas corpus, with the petition form and court addresses; the manual also is available under the Resource tab at www.prisonlaw.com. *The California Prison and Parole Law Handbook* (2019) has a chapter on state habeas corpus; this book should be in the prison law library, can be ordered from the Prison Law Office, and is available free under the Resource tab at www.prisonlaw.com. Another

good resource is *Appeals and Writs in Criminal Cases*, published by the Continuing Education of the Bar (C.E.B.) in Oakland, CA.

Federal Court Habeas Corpus Petitions

A federal court habeas corpus petition is a way to ask the federal courts to review a criminal case issue that was raised and denied in the California state courts. The federal courts will review only legal arguments that are based on federal law such as the United States Constitution. Federal courts can grant a habeas petition only if the state courts' decision on an issue (1) was contrary to, or was an unreasonable application of, clearly established federal law as determined by the United States Supreme Court, or (2) was based on an unreasonable determination of the facts in light of the evidence.

You must "exhaust state judicial remedies" before a federal court will consider your issues. This means that you first have to raise each of your legal issues in the state courts all the way through the California Supreme Court, either in a direct appeal or a state habeas corpus petition. In addition, you should try to raise all of your issues in one federal habeas petition because courts will consider a second federal habeas petition only in very limited circumstances.

There are strict time limits for filing federal habeas corpus petitions. The general rule is that you must file your petition within one year of either: (1) the conclusion of direct review or time for seeking such review; (2) the date that an unconstitutional impediment to filing the petition was removed; (3) the date that a newly recognized right was created by the U.S. Supreme Court; or (4) the date the facts behind the claim could have been discovered through the exercise of "due diligence." If you filed a direct criminal appeal followed by a petition for review in the California Supreme Court, the one-year time line for filing a federal habeas petition on those issues starts running 90 days after the date that the California Supreme Court issues an order denying review. However, the time limits can be "tolled" (meaning the clock does not run) in some circumstances, including while a "properly filed" state habeas corpus petition is pending and when there are "extraordinary circumstances" beyond the person's control that make it impossible to file a petition on time.

You should file your federal habeas corpus petition in the United States District Court that covers the county in which you were convicted and sentenced. If your petition is denied, you can request a "certificate of appealability" to allow you to appeal to the Ninth Circuit Court of Appeals. If your petition is still denied, you can file a petition for writ of certiorari in the United States Supreme Court.

Each federal district court in California has its own form for filing a federal habeas corpus petition; these forms should be available in the prison law library. You do not have to serve a copy of the petition on the district attorney or attorney general; if the court allows your petition to proceed, the court will serve a copy of your petition on the attorney general's office.

There is a \$5.00 fee for filing a federal habeas corpus petition. If you do not have money, you can file an application to proceed "in forma pauperis" (without paying the fee), along with a certificate

from prison staff confirming that you have no or very little money in your trust account. The form should be available in the prison law library

You do not have a right to be appointed a lawyer in a federal habeas corpus case (there is an exception for people with death sentences). However, in extraordinary circumstances the federal courts can appoint a lawyer if it is in the interests of justice. Also, a court must appoint a lawyer if an evidentiary hearing is necessary, if counsel is required for effective discovery, or if it is necessary for due process, particularly in complex cases. If you want to ask that a lawyer be appointed to represent you at no charge, you should file a motion for appointment of an attorney along with your habeas corpus petition, and explain why you cannot adequately pursue the case on your own.

The rules regarding federal habeas petitions are in volume 28 of the United States Codes in sections §§ 1915, and 2241 through 2254 and in the Federal Rules of Habeas Corpus and Federal Rules of Appellate Procedure. Upon request, the Prison Law Office can send you a manual on federal habeas corpus that includes court addresses. There is also information in *The California Prison and Parole Law Handbook* (2019); which should be in the prison law library, can be ordered from the Prison Law Office, and is available free under the Resource tab at www.prisonlaw.com. Other helpful books are *Appeals and Writs in Criminal Cases*, published by the Continuing Education of the Bar (C.E.B.) in Oakland, CA and Hertz & Liebman, *Federal Habeas Corpus Practice & Procedure*, published by Lexis-Nexis. In addition, some of the

Other Ways to Challenge a Conviction or Seek Resentencing

Some people may be able to challenge their convictions or sentences through other types of petitions or actions. The options that are available may depend on factors like the date and type of the offense or the person's age or military record. Some of the ways to get sentencing relief are listed here. More detailed information about the criteria and processes for each of these types of actions is available upon request from the Prison Law Office or under the Resources tab at www.prisonlaw.com.

- [Petition for Resentencing a Theft-Related or Drug Possession Felony to a Misdemeanor \(Prop. 47; Penal Code § 1170.18\)](#)
Some people with theft-related or drug possession convictions dating from before early November 2014 can petition the sentencing court to reduce those convictions from felonies to misdemeanors.
- [Petition for Reduction of Cannabis Offense \(Prop. 64; Health & Safety Code § 11631.8.\)](#)
Some people who have cannabis offense convictions dating from before early November 2016 can petition the sentencing court to reduce those convictions from felonies to misdemeanors or, in some cases, to dismiss the convictions.
- [Petition for Resentencing Due to Military/Veteran's Trauma \(AB 865; Penal Code § 1170.91\)](#)
Some people who were sentenced prior to January 1, 2015 to determinate (set length) terms and who served in the military can petition the sentencing court to resentence them to lower terms if they suffer from trauma, substance abuse, or mental health problems related to their service and the sentencing court did not consider that as a mitigating factor.

- Petition for Reduction/Resentencing of Felony Murder or “Natural and Probable Consequences” Murder (SB 1437; Penal Code § 1170.95)
Some people who were convicted based on a “felony” murder or “natural and probable causes” murder prior to January 1, 2019 can petition for reduction of their convictions to lesser crimes if they did not personally kill, did not intend to kill, or did not act with “reckless indifference” to life as a “major participant” in an underlying felony.
- Youth Offender Resentencing (SB 9; Penal Code § 1170(d)(2))
Some people who have life without the possibility of parole (LWOP) convictions for crimes committed when they were under 18 years old can petition for resentencing to lower terms after they have served part of their sentences.
- CDCR or District Attorney Recommendation for Recall of Sentence (Penal Code § 1170(d)(1))
The CDCR and the District Attorney can recommend that sentencing judges consider resentencing people to lower terms in the interests of justice. The CDCR sometimes makes recommendations when there are new favorable sentencing law reforms that don’t automatically apply to people with older convictions, and it can also make recommendations in other circumstances.
- Commutation or Pardon (California Constitution, Article V, § 8)
The Governor has the authority to grant people commutations (reducing their sentences) or pardons (forgiving their crimes); in some cases, the California Supreme Court must also approve the Governor’s decision. Recent Governors have granted commutations in approximately one or two dozen cases per year.