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CALIFORNIA STATE COURT
PETITIONS FOR WRIT OF HABEAS CORPUS
 (revised June 2019)

Your Responsibility When Using the Information Provided Below:

When putting this material together, we did our best to give you useful and accurate information because we know that people in prison often have trouble getting legal information and we cannot give specific advice to all who ask for it. The laws change often and can be looked at in different ways. We do not always have the resources to make changes to this material every time the law changes. If you use this information, it is your responsibility to make sure that the law has not changed and still applies to your situation. Most of the materials you need should be available in your facility’s law library.

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1. What is a Petition for Writ of Habeas Corpus?

State court petitions for writ of habeas corpus are useful legal actions for people in California prisons and on California parole. California habeas corpus actions have a broad scope: “Every person unlawfully imprisoned or restrained of his liberty, under any pretense, may prosecute a writ of habeas corpus to inquire into the cause of his or her imprisonment or restraint.”¹ State habeas corpus petitions

¹ Penal Code § 1473(a); see also California Constitution, Article 1, § 11 (“Habeas corpus may not be suspended unless required by public safety in cases of rebellion or invasion”). Even a person who has been declared a vexatious litigant under Code of Civil Procedure § 391 still has the right to file a petition for writ of habeas corpus without any additional procedural barriers. *In re Bittaker* (1997) 55 Cal.App.4th 1004, 1006 [64 Cal.Rptr.2d 679].

can be used for both criminal law issues and prison or parole law issues, and can be based on state law, federal law, or both. The process is fairly simple and speedy. If a state habeas case reaches a certain stage, the court is required to appoint a free lawyer for a person who wants a lawyer but cannot afford one.

Be aware that *federal* court habeas corpus petitions are not the same as *state* court habeas petitions. Federal habeas petitions are used for more limited purposes (reviewing challenges to criminal convictions, parole revocations, and civil commitments that have been denied by the state courts), can only be based on federal law, and have different rules and procedures. If you want information about federal habeas corpus, send a request to Prison Law Office, General Delivery, San Quentin, CA 94964. Information is also in *The California Prison and Parole Law Handbook* (Prison Law Office, 2019), which should be in prison law libraries. The *Handbook* and other information are also on the Prison Law Office website at www.prisonlaw.com, under the Resources tab.

This manual explains how someone without a lawyer can file a petition for writ of habeas corpus in the California state courts. The information focuses on petitions filed by people in California prisons or on parole in California. This information may also be helpful to people in California county jails, in California state hospitals, or on probation, post-release community supervision (PRCS), or mandatory supervision. Note that lawyers who file petitions for their clients may be subject to different or additional requirements.

At the end of the manual there is a state habeas corpus petition flow chart, as well as the standard habeas corpus form, a sample proof of service, and court address lists. Additional information is also available in *The California Prison and Parole Law Handbook* (Prison Law Office, 2019), which should be in prison law libraries. The *Handbook* and other information are also on the Prison Law Office website at www.prisonlaw.com, under the Resources tab.

2. Who Can File a State Habeas Corpus Petition?

Any person who is “**in custody**” of California state or local officials may file a state petition for writ of habeas corpus about the legality of the custody or the conditions of the custody. If you are in state prison, county jail, or juvenile detention you are “in custody.” You are “in custody” if you have been committed to a state hospital under Sexually Violent Predator (SVP) or Mentally Disordered Offender (MDO) laws.² You are in custody if you are on conditional release, such as parole, post-release community supervision (PRCS), mandatory supervision, or probation.³ Even if you are physically in another state or in a federal facility you may still be in California “custody” *if* the custody is authorized by the State of California, such as if you are serving a California criminal sentence or

² *People v. Qawi* (2004) 32 Cal.4th 1, 12-13 [7 Cal.Rptr.3d 780] (person classified as MDO challenged involuntary medication via habeas corpus); *People v. Johnson* (2015) 235 Cal.App.4th 80, 88 [185 Cal.Rptr.3d 135] (SVP commitment may be challenged by habeas corpus); *People v. Talheim* (2000) 85 Cal.App.4th 400, 404-405 [102 Cal.Rptr.2d 150] (same).

³ *People v. Villa* (2009) 45 Cal.4th 1063, 1069 [90 Cal.Rptr.3d 244]; *In re Jones* (1962) 57 Cal.2d 860, 861, fn. 1 [22 Cal.Rptr. 478] (parole); *In re Hochberg* (1970) 2 Cal.3d 870, 874, fn. 3 [87 Cal.Rptr. 681] (probation).

parole term.⁴

You cannot file a state habeas corpus petition if you are no longer “in custody” for the criminal conviction, juvenile adjudication, or civil commitment you want to challenge, even if you are still being affected by it in other ways. For example, if you only owe a criminal fine you are not “in custody” unless you can be put in jail or prison for failure to pay.⁵ Having a sex, drug, or gang offender registration requirement is not being “in custody,” even though failure to register might result in a new conviction.⁶ Also, you are not in California custody if you have finished serving your California term and you are placed in federal detention for deportation proceedings, even if the deportation case is due to your conviction.⁷ If you are not in state custody you still may be able to raise your claims by filing a different kind of state petition called a petition for writ of mandate.⁸

3. Do I Have to File a CDCR 602 or other Administrative Appeal Before I File a Petition?

Are you challenging a court decision like a criminal conviction or sentence, civil commitment, or parole or PRCS revocation? – No. You do NOT need to file a 602 or other administrative appeal before filing a petition for writ of habeas corpus.

Are you challenging a prison or parole condition, prison or parole policy, or an action taken by prison or parole staff? – Yes. As a general rule, you DO need to file a 602 or other administrative appeal before filing a petition for writ of habeas corpus. This is called “exhaustion of administrative remedies.”⁹ However, there are some situations in which courts may allow a person to proceed with a habeas corpus petition without first exhausting administrative remedies.

A person who wants to exhaust administrative remedies must figure out what, if any, administrative appeal process is available, and pursue that administrative appeal to the highest level. For example, if you want to challenge a CDCR action, condition, or policy you should pursue a CDCR Form 602 (most issues), Form 602-HC (health care) or Form 1824 (disability accommodation). No

⁴ *People v. Villa* (2009) 45 Cal.4th 1063, 1073 [90 Cal.Rptr.3d 244]; *In re Shapiro* (1975) 14 Cal.3d 711, 715 [122 Cal.Rptr. 768] (person was in state custody when he was in federal jail based on California parole detainer).

⁵ *Lloyd v. Superior Court* (1982) 133 Cal.App.3d 896, 899, fn.1 [184 Cal.Rptr. 467] (order to pay fine not custody); *In re Catalano* (1981) 29 Cal.3d 1, 8-9 [171 Cal.Rptr. 667] (fine ordered payable in 30 days upon threat of arrest was custody).

⁶ *People v. Picklesimer* (2010) 48 Cal.4th 330, 339 [106 Cal.Rptr.3d 239]; *In re Douglas* (2011) 200 Cal.App.4th 236, 248 [132 Cal.Rptr.3d 582] (applying rule where person in custody on new case for failing to register); *In re Stier* (2007) 152 Cal.App.4th 63, 82-83 [61 Cal.Rptr.3d 181].

⁷ *People v. Villa* (2009) 45 Cal.4th 1063, 1071-1073 [90 Cal.Rptr.3d 344]; *In re Azurin* (2001) 87 Cal.App.4th 20, 26 [104 Cal.Rptr.2d 284].

⁸ If you want more information about petitions for writ of mandate, send a request to Prison Law Office, General Delivery, San Quentin, CA 94964. Information is also in *The California Prison and Parole Law Handbook* (Prison Law Office, 2019), which should be in prison law libraries. The *Handbook* and other information are also on the Prison Law Office website at www.prisonlaw.com, under the Resources tab.

⁹ *In re Strick* (1983) 148 Cal.App.3d 906, 911 [196 Cal.Rptr. 293]; *In re Dexter* (1979) 25 Cal.3d 921, 925 [160 Cal.Rptr. 118]; *In re Muszalski* (1975) 52 Cal.App.3d 500, 503-505, 508 [125 Cal.Rptr. 286].

matter which type of administrative appeal you use, you should do your best to finish the appeal through the Third (Director's) Level of Review before filing a petition.

For most Board of Parole Hearings (BPH) policies or decisions, there is no administrative appeal process and thus no administrative remedies to exhaust. The BPH does have administrative appeal processes for requests for disability accommodations, so prisoners and parolees with disability-related BPH issues should exhaust administrative remedies by filing Form 1073 ("Notice of Rights and Request for Reasonable Accommodation") and Form 1074 ("Review of Reasonable Accommodation Request and Grievance Process"). The BPH also has procedures for challenging factual errors in risk assessments (psychological evaluations), and challenging denials of non-violent offender (Prop. 57) parole or youth offender parole.

If you want more information about administrative appeals, send a request to: Prison Law Office, General Delivery, San Quentin, CA 94964. Information is also in *The California Prison and Parole Law Handbook* (Prison Law Office, 2019), which should be in prison law libraries. The Handbook and other information are also on the Prison Law Office website at www.prisonlaw.com, under the Resources tab. *Be aware that there are time limits for filing administrative appeals and that it is important for you to do your best to meet those deadlines.*

Courts have the authority to make exceptions to the exhaustion of administrative remedies requirement, to allow a case to proceed even if you have not completed an administrative appeal process.¹⁰ Situations in which a court may make an exception include the following:

- ◆ No administrative remedy is available or the administrative appeal process is inadequate to address the issue.¹¹
- ◆ Seeking an administrative remedy would be futile (useless) because the CDCR has a clear policy or rule or because CDCR officials have defended the policy or rule against similar challenges.¹² This exception does not apply if it is reasonably possible the CDCR will change or override its policy based on unusual facts in your case.¹³

¹⁰ *Ogo Associates v. City of Torrance* (1974) 37 Cal.App.3d 830, 834 [112 Cal.Rptr. 761].

¹¹ *Glendale City Employee's Assn., Inc. v. City of Glendale* (1975) 15 Cal.3d 328, 342-343 [124 Cal.Rptr. 513] (issue fell outside scope of matters covered by city grievance procedure); *In re Hudson* (2006) 143 Cal.App.4th 1, 7-8 [49 Cal.Rptr.3d 74] (regional parole administrator did not respond at second level of review and regulations did not say what further action the person on parole should take); *In re Mitchell* (2000) 81 Cal.App.4th 653, 655-656 [97 Cal.Rptr.2d 41] (interpreting statute on prison credits was a matter for a court to decide, not CDCR); *In re Strick* (1983) 148 Cal.App.3d 906, 911 (similar).

¹² *In re Trejo* (2017) 10 Cal.App.5th 972, 979 [216 Cal.Rptr.3d 855]; *In re Mitchell* (2000) 81 Cal.App.4th 653, 655-656 [97 Cal.Rptr.2d 41]; *In re Locks* (2000) 79 Cal.App.4th 890, 893-894 [94 Cal.Rptr.2d 495], abrogated on other grounds by *In re Qawi* (2004) 32 Cal.4th 1 [7 Cal.Rptr.3d 780]; *In re Arias* (1986) 42 Cal.3d 667, 678-679 [230 Cal.Rptr. 505], superseded by statute on other grounds, see *Thompson v. California Dept. of Corrections* (2001) 25 Cal.4th 117, 130 [105 Cal.Rptr.2d 46]; *In re Thompson* (1985) 172 Cal.App.3d 256, 262-263 [218 Cal.Rptr. 192]; *In re Reina* (1985) 171 Cal.App.3d 638, 642 [217 Cal.Rptr. 535]; *In re Dexter* (1979) 25 Cal.3d 921, 925 [160 Cal.Rptr. 118].

¹³ *Bockover v. Perko* (1994) 28 Cal.App.4th 479, 491 [34 Cal.Rptr.2d 423]; *In re Serna* (1978) 76 Cal.App.3d 1010, 1014 [143 Cal.Rptr. 350].

- ◆ Taking the time to exhaust administrative remedies would cause you an unreasonable risk of irreparable (un-fixable) harm.¹⁴ There could be a risk of irreparable harm if medical or safety concerns are causing you great pain or high risk of serious injury, or if you are being held past your lawful release date. However, the violation of a constitutional right does not in itself necessarily amount to irreparable harm.¹⁵

It is usually a good idea to at least start the administrative appeal process before filing a habeas corpus petition, even if a court might allow an exception to the exhaustion requirement. Filing an appeal will show that you are attempting to resolve the problem. Also, if the court denies your petition due to failure to exhaust administrative remedies, you won't risk having your administrative appeal rejected as untimely and will be able to get back into court more quickly.

If you file a state habeas corpus petition before completing the administrative appeal process you should explain in the petition why the court should make an exception to the exhaustion requirement. You should also describe any efforts you have made to inform prison or parole officials about the problem. You should attach any documents that support your position that the court should go ahead and hear your case.

4. Can I Use a Petition to Challenge My Criminal Conviction or Sentence, Parole or PRCS or Probation Revocation, or SVP or MDO Commitment?

Yes – sometimes. However, procedural rules limit the issues that can be raised on habeas corpus, particularly when the issue was or could have been raised in a direct appeal filed in a state court of appeal. Because of these rules, habeas corpus is most useful when the issue relies on new information that was not presented in the original court case or when there has been a change in the laws since the original court case.

The following rules limit the circumstances in which you can use a habeas corpus petition for challenge a court decision in a criminal, juvenile, civil commitment, or parole or probation revocation case:

- ◆ A habeas corpus petition cannot substitute for a direct appeal. This means that you cannot use a habeas corpus petition to make an argument that you could have (but did not) raise in a direct appeal.¹⁶ However, you *can* raise an argument in a habeas corpus petition if the issue relies on information that was not presented “on the record” in the original court proceeding and thus was not part of the direct appeal. One example is a claim that your attorney provided *ineffective assistance of counsel (IAC)*; to win an IAC claim you will usually need to present declarations from yourself or from your attorney or other documents showing that your attorney did not have a valid reason for their actions and how the

¹⁴ *Abelleira v. District Court of Appeal* (1941) 17 Cal.2d 280, 296-297; *Ogo Associates v. City of Torrance* (1974) 37 Cal.App.3d 830, 834 [112 Cal.Rptr. 761].

¹⁵ *In re Serna* (1978) 76 Cal.App.3d 1010, 1014-1015 [143 Cal.Rptr. 350].

¹⁶ *In re Harris* (1993) 5 Cal.4th 813, 829 [21 Cal.Rptr.2d 373]; *In re Dixon* (1953) 41 Cal.2d 756.

outcome of your case would have been better if your attorney had acted differently.¹⁷ Another example is an argument that your *guilty plea was not voluntary or intelligent*; to win such a claim you may need to present a declaration or evidence that you did not understand the plea and that you would not have entered the plea if you had understood the rights you were waiving and the consequences of the plea.¹⁸ A third example is when there is important *new evidence*.¹⁹

- ◆ A habeas corpus petition cannot act as a second direct appeal. This means you cannot use a habeas corpus petition to make the same argument that you previously raised in a direct appeal.²⁰ However, see the previous bullet point for situations in which you may be able to raise an argument that is based on the same legal grounds as a direct appeal issue, but relies on information that was not presented in the original court proceeding.
- ◆ You cannot use a habeas corpus petition to argue that evidence was obtained through an illegal search and seizure that violated the U.S. Constitution's Fourth Amendment.²¹
- ◆ You cannot use a habeas petition to argue that the evidence was insufficient to support your conviction.²²

Courts may make exceptions to these rules. Courts can and should allow you to go ahead with a habeas corpus petition if:

¹⁷ Framing an issue as an IAC claim can help you overcome an argument by the state that an issue was forfeited because no objection or motion was made during the original proceedings. See *In re Seaton* (2004) 34 Cal.4th 193, 199-200 [17 Cal.Rptr.3d 633]. To win an IAC claim, you must show that (1) the attorney's performance fell below an objective standard of reasonableness under prevailing professional norms and (2) there is a reasonable probability that but for the attorney's errors the result would have been more favorable. *Strickland v. Washington* (1984) 466 U.S. 668 [104 S.Ct. 2052; 80 L.Ed.2d 674]; *People v. Ledesma* (1987) 43 Cal.3d 171, 215-218 [233 Cal.Rptr. 404]. Courts presume that an attorney had good reasons for their actions, so proving IAC usually requires evidence from outside the court record. *People v. Pope* (1979) 23 Cal.3d 412, 426 [152 Cal.Rptr. 732]; see, e.g., *People v. Williams* (1999) 77 Cal.App.4th 436, 462 [92 Cal.Rptr.2d 1]; *People v. Mendoza-Tello* (1997) 15 Cal.4th 264, 267-268 [62 Cal.Rptr.2d 437].

¹⁸ See e.g., *In re Moser* (2993) 6 Cal.4th 342 [24 Cal.Rptr.2d 723].

¹⁹ Sometimes the reason evidence was not discovered prior to trial was due to a defense attorney's IAC in failing to investigate the case fully. Other times, the defense may not have learned about the evidence because the prosecutor improperly failed to disclose it. *United States v. Bagley* (1985) 473 U.S. 667, 674-678 [105 S.Ct. 3375; 87 L.Ed.2d 481]; *In re Seaton* (2004) 34 Cal.4th 193, 200 [17 Cal.Rptr.3d 633]. This is commonly called a "Brady" claim. See *Brady v. Maryland* (1963) 373 U.S. 83 [83 S.Ct. 1194; 10 L.Ed.2d 215]. In other cases, it may be discovered that evidence presented by the prosecution was actually false. Penal Code § 1473(b)-(e). Occasionally, new evidence arises that simply was unavailable at the time of trial. Penal Code § 1473(b).

²⁰ *In re Harris* (1993) 5 Cal.4th 813, 829 [21 Cal.Rptr.2d 373]; *In re Waltreus* (1965) 62 Cal.2d 218, 225 [42 Cal.Rptr. 9].

²¹ *In re Reno* (2012) 55 Cal.4th 428, 452 [146 Cal.Rptr.3d 297]; *In re Harris* (1993) 5 Cal.4th 813 [21 Cal.Rptr.2d 373].

²² *In re Reno* (2012) 55 Cal.4th 428, 452 [146 Cal.Rptr.3d 297]; *People v. Stanworth* (1974) 11 Cal.3d 588 [114 Cal.Rptr. 250].

- ◆ Your issue is one “where the claimed constitutional error is both clear and fundamental, and strikes at the heart of the trial process.” This usually is limited to the types of “structural errors” which would require automatic reversal in a direct appeal case,²³
- ◆ The court that made the original decision lacked fundamental jurisdiction, meaning the court did not have the legal authority to decide your case,²⁴
- ◆ The court that made the original decision acted in excess of its jurisdiction, such as entering a conviction or selecting a sentence that was not authorized by the law;²⁵ or
- ◆ There has been a change in the law that affects you. However, not all changes in the law apply retroactively. The general rule for new statutes is that a new law does not affect cases that are already final, *unless the legislature or the voters specifically say the law applies retroactively*.²⁶ A new legal rule announced by a court usually applies to cases that are already final if the new rule (1) is a substantive rule that forbids criminal punishment of some kind of conduct or prohibits a certain type of punishment for some group of people or (2) is a “watershed” rule of criminal procedure necessary for fundamental fairness of criminal proceedings.²⁷

²³ *In re Reno* (2012) 55 Cal.4th 428, 478 [146 Cal.Rptr.3d 297]; *In re Harris* (1993) 5 Cal.4th 813, 829-838 [21 Cal.Rptr.2d 373]; see also *Arizona v. Fulminante* (1991) 499 U.S. 279, 309 [111 S.Ct. 1246; 113 L.Ed.2d 302] (standard for structural errors).

²⁴ See *In re Hoddinott* (1996) 12 Cal.4th 992 [50 Cal.Rptr.2d 706] (court had no jurisdiction to sentence on probation violation because probation officer failed to notify the court within 30 days of receiving Penal Code § 1203.2a demand for sentencing).

²⁵ Examples of unauthorized convictions or sentences include *In re Lynch* (1972) 8 Cal.3d 410 [105 Cal.Rptr. 217] (sentence was unconstitutionally cruel and unusual); *In re Brown* (1973) 9 Cal.3d 612 [108 Cal.Rptr. 465] (given undisputed facts, the law did not prohibit the petitioner’s conduct); *In re Kay* (1970) 1 Cal.3d 930 [83 Cal.Rptr. 686] (conviction based on overbroad interpretation of statute); *In re Demillo* (1975) 14 Cal.3d 598 [121 Cal.Rptr. 725] (statute of limitations was violated); *In re Birdwell* (1996) 50 Cal.App.4th 926 [58 Cal.Rptr.2d 244] (first degree murder conviction where jury did not enter verdict on degree); *In re Hess* (1955) 45 Cal.2d 171 (sentence imposed for crime that was not charged or proven); *In re Huffman* (1986) 42 Cal.3d 552 [229 Cal.Rptr. 789] (sentence not authorized by any statute); *In re Haygood* (1975) 14 Cal.3d 802 [122 Cal.Rptr. 760] (sentence term erroneously calculated); *In re Adams* (1975) 14 Cal.3d 629 [122 Cal.Rptr. 73] (invalid multiple punishment for single criminal act).

²⁶ Penal Code § 3.

²⁷ *Montgomery v. Louisiana* (2016) ___ U.S. ___ 136 S.Ct. 718, 728; 193 L.Ed.2d 599]; *Schriro v. Summerlin* (2004) 542 U.S. 348, 352, n. 4 [124 S.Ct. 2519; 159 L.Ed.2d 442].

5. Can I Use a Petition to Try to Solve Problems I am Having in Prison or on Parole?

You may use a habeas corpus petition to ask a court to declare and enforce any legal right regarding prison or parole.²⁸ For example, people have brought petitions to challenge attorney visiting restrictions,²⁹ denial of an impartial disciplinary hearing officer,³⁰ and lack of evidence to support a gang validation.³¹ You can also use a habeas petition to challenge a Board of Parole Hearings (BPH) finding of unsuitability for parole³² or to challenge an unlawful condition of parole.³³

If you are no longer suffering from the wrong that is the subject of the petition, courts can dismiss the petition as being “moot.”³⁴ However, you should argue that the case is not moot if prison or parole officials have not provided all of the relief you are requesting in the petition or if you are still having ongoing problems closely related to the claims you raised in your petition.³⁵

Even when a case is moot, you can ask a court to exercise its discretion to decide the legal issues presented by the petition because otherwise it is likely that those issues will never be reviewed. There are two types of situations in which courts are likely to hear a moot case: one is where the same problem is likely to arise again for you³⁶; a second is where the issue is likely to affect many people and come up over and over again, your case is a good example of the problem and it thoroughly presents the facts and law.³⁷ Thus, in these circumstances you should argue that it is in the interests of the courts to resolve the dispute now rather than face repeated cases raising the same issue.

²⁸ *In re Davis* (1979) 25 Cal.3d 384 [158 Cal.Rptr. 384]; *In re Harrell* (1970) 2 Cal.3d 675, 682 [87 Cal.Rptr. 504]. California courts still retain jurisdiction to decide habeas corpus cases involving claims of inadequate medical care, even though a federal court appointed a Receiver to take control of California’s prison medical care system. *In re Estevez* (2008) 165 Cal.App.4th 1445 [83 Cal.Rptr.3d 479].

²⁹ *In re Roark* (1996) 48 Cal.App.4th 1946 [56 Cal.Rptr.2d 582].

³⁰ See *People v. Superior Court (Hamilton)* (1991) 230 Cal.App.3d 1592 [281 Cal.Rptr. 900].

³¹ *In re Cabrera* (2013) 216 Cal.App.4th 1522 [158 Cal.Rptr.3d 121].

³² *In re Lawrence* (2008) 44 Cal.4th 1181 [82 Cal.Rptr.3d 169].

³³ *In re Taylor* (2015) 60 Cal.4th 1044 [184 Cal.Rptr.3d 682].

³⁴ See, e.g., *In re Miranda* (2011) 191 Cal.App.4th 757 [120 Cal.Rptr.461]; *In re Stevens* (2004) 119 Cal.App.4th 1228, 1240 [15 Cal.Rptr.3d 168].

³⁵ See *In re Estevez* (2008) 165 Cal.App.4th 1445 [83 Cal.Rptr.3d 479] (claim of inadequate medical care was allowed to proceed even though the person had subsequently undergone the requested surgery, since the person had also asked for proper post-surgical care and alleged in subsequent pleadings that such was not being provided).

³⁶ See e.g., *In re Scott* (2004) 119 Cal.App.4th 871, 877, fn. 1 [15 Cal.Rptr.3d 32] (deciding challenge to parole suitability denial even though lifer had subsequently had another hearing and again been denied parole).

³⁷ See, e.g., *In re Garcia* (1998) 67 Cal.App.4th 841, 843-844 [79 Cal.Rptr.2d 357] (deciding case involving CDCR policy on correspondence between people in California prisons); *People v. Superior Court (Hamilton)* (1991) 230 Cal.App.3d 1592 [281 Cal.Rptr. 900] (deciding case involving which prison staff may hear disciplinary matters); *In re Stevens* (2004) 119 Cal.App.4th 1228, 1240 [15 Cal.Rptr.3d 168] (deciding case to provide guidance on scope of parole conditions limiting internet use); see also *Alfredo A. v. Superior Court* (1994) 6 Cal.4th 1212, 1218-1219 [26 Cal.Rptr.2d 623] [discussing reasons for deciding otherwise moot case regarding short-term pre-trial detention].

6. Can I Use Habeas Corpus to Get Money Damages for Personal Injuries or Lost or Damaged Property?

No. Habeas corpus cannot be used to seek money compensation for personal injuries or for lost or damaged property. If you want money damages for personal injuries, you can file a federal civil rights (“section 1983”) lawsuit, a state tort lawsuit or a small claims lawsuit (for damages of less than \$10,000). If you want the CDCR to return or pay for property lost or destroyed by prison staff, you can file a state tort lawsuit or a small claims lawsuit (for amounts less than \$10,000). For more information about these types of lawsuits, send a written request to Prison Law Office, General Delivery, San Quentin, CA 94964. Information is also in *The California Prison and Parole Law Handbook* (Prison Law Office, 2019), which should be in prison law libraries. The *Handbook* and other information are also on the Prison Law Office website at www.prisonlaw.com, under the Resources tab.

7. I Already Filed a Petition. Can I File Another One?

Generally no, but there are some exceptions.

The general rule is that if you file a habeas corpus petition and it is denied, you cannot bring another petition raising the same issue unless: (1) you have discovered new facts since your previous petition was decided,³⁸ (2) the law has changed since your previous petition was decided,³⁹ or (3) your previous petition was denied because of a procedural problem that you have now fixed.⁴⁰

Courts also discourage filing multiple petitions about the same matter, even if the petitions raise different issues. However, the courts have discretion to allow such multiple petitions if you can explain and justify why you did not present the issue in your prior petition.⁴¹

8. Is There a Time Limit for Filing a Petition?

There is no specific deadline for filing a state petition for writ of habeas corpus -- but to avoid problems, you should file your petition as soon as you can.⁴²

For most types of issues, a court can deny your petition if it finds that there was a “substantial

³⁸ Penal Code § 1473(b)(3); *In re Clark* (1993) 5 Cal.4th 750, 774 [21 Cal.Rptr.2d 509].

³⁹ *In re Reno* (2012) 55 Cal.4th 428, 466 [146 Cal.Rptr.3d 297].

⁴⁰ *In re Crow* (1971) 4 Cal.3d 613 [94 Cal.Rptr. 254].

⁴¹ *In re Clark* (1993) 5 Cal.4th 750, 774 [21 Cal.Rptr.2d 509]. At least in a death penalty case, a court also may allow you to bring a second petition if: (1) there was significant constitutional error without which no reasonable jury would have convicted you, (2) you are actually innocent, (3) the death penalty was imposed by a court that had a grossly misleading profile of you without which it would not have imposed the death penalty, or (4) you were convicted or sentenced under an invalid statute. *In re Reno* (2012) 55 Cal.4th 428, 472 [146 Cal.Rptr.3d 297].

⁴² *In re Douglas* (2011) 200 Cal.App.4th 236, 242 [132 Cal.Rptr.582]; *Gomez v. Superior Court* (2012) 54 Cal.4th 293, 309 [142 Cal.Rptr.3d 808].

delay” in filing.⁴³ Courts measure timeliness from the date that you knew or should have known the information supporting your petition.⁴⁴ If it has been more than a couple of months between that date and when you file your petition, you should tell the court why you did not file the petition earlier.⁴⁵

Filing your petition as soon as possible will also help protect your rights if you might want to file a federal habeas corpus petition after you finish with your state habeas corpus petition. There are strict federal habeas timelines.⁴⁶ Those federal time limits are “tolled” (the time clock stops running) in some circumstances, including while you have a “properly filed” state habeas corpus petition in the courts.⁴⁷ However, the rules about tolling are complicated, and some or all of the time when you were trying to file a state habeas corpus petition might not be tolled if there was an “unreasonable” delay in bringing the state habeas petition or in filing the state petition to the next court level.⁴⁸ A period of 30 to 60 days between a lower court denial and the filing of a habeas petition in a higher court is presumptively reasonable.⁴⁹ Otherwise, there is no “bright-line” rule about how much delay is “unreasonable” and courts have reached various decisions.⁵⁰

⁴³ *In re Reno* (2012) 55 Cal.4th 428, 459 [146 Cal.Rptr.3d 297]; *In re Harris* (1993) 5 Cal.4th 813, 828 [21 Cal.Rptr.2d 373]. A petition that challenges a conviction or sentence that is not authorized by law may be brought at any time. *In re Harris* (1993) 5 Cal.4th 813, 842 [21 Cal.Rptr.2d 373]. Also, a court may excuse delay in a death penalty case if: (1) there was significant constitutional error without which no reasonable jury would have convicted you, (2) you are actually innocent, (3) the death penalty was imposed by a court that had a “grossly misleading profile of the you” without which it would not have imposed the death penalty, or (4) you were convicted or sentenced under an invalid statute. *In re Reno* (2012) 55 Cal.4th 428 [146 Cal.Rptr.3d 297].

⁴⁴ *In re Douglas* (2011) 200 Cal.App.4th 236 [132 Cal.Rptr.3d 582]; *In re Lucero* (2011) 200 Cal.App.4th 38 [132 Cal.Rptr.3d 499]. For example, if there is a change in the law that applies retroactively, you should file your claim based on the new law within a reasonable time after the date on which the change took effect. *In re Lucero* (2011) 200 Cal.App.4th 38 [132 Cal.Rptr.3d 499] (petition filed ten months after change in law went into effect deemed timely because petitioner had limited legal access).

⁴⁵ *In re Reno* (2012) 55 Cal.4th 428 [146 Cal.Rptr.3d 297]; *In re Clark* (1993) 5 Cal.4th 750 [21 Cal.Rptr.2d 509]; *In re Swain* (1949) 34 Cal.2d 300; *In re Moss* (1985) 175 Cal.App.3d 913 [221 Cal.Rptr. 645]; *In re Sanders* (1999) 21 Cal.4th 697 [87 Cal.Rptr.2d 899] (good cause for delay in a capital case where an attorney had essentially abandoned the petitioner).

⁴⁶ A federal habeas petition usually must be filed within one year of either: 1) the conclusion of the state court review; 2) the date that an unconstitutional impediment to filing was removed; 3) the date a newly recognized retroactive right was recognized by the U.S. Supreme Court; or 4) the date that the facts behind the claim “could have been discovered” through “the exercise of due diligence.” 28 U.S.C. § 2244(d)(2).

⁴⁷ 28 U.S.C. § 2244(d)(2); *Artuz v. Bennett* (2000) 531 U.S. 4 [121 S.Ct. 361; 148 L.Ed.2d 213]; *Smith v. Duncan* (9th Cir. 2001) 274 F.3d 1245

⁴⁸ *Carey v. Saffold* (2002) 536 U.S. 214 [122 S.Ct. 2134; 153 L.Ed.2d 260]; *Evans v. Chavis* (2006) 546 U.S. 189 [126 S.Ct. 846; 163 L.Ed.2d 684].

⁴⁹ *Evans v. Chavis* (2006) 546 U.S. 189 [126 S.Ct. 846; 163 L.Ed.2d 684].

⁵⁰ *Chaffer v. Prosper* (9th Cir. 2010) 592 F.3d 1046, 1048 (no tolling for 115 days between denial of habeas petition by superior court and refiling in the court of appeal, or for 101 days between denial of petition by the court of appeal and filing in the California Supreme Court); *Waldrip v. Hall* (9th Cir. 2008) 548 F.3d 729, 734 (no tolling during an unjustified eight-month delay between denial of habeas petition by a lower court and refiling in the California Supreme Court); *Gaston v. Palmer* (9th Cir. 2006) 447 F.3d 1165, 1167 (no tolling for unexplained gaps of 15 months, 18 months and 10 months); *Culver v. Director of Corrections* (C.D. Cal. 2006) 450 F.Supp.2d 1135, 1140-1141 (intervals of 97 and 71 days between state petitions were unreasonable); *Osumi v. Giurbino* (C.D. Cal. 2006) 445 F.Supp.2d 1152, 1158-1159 (96 and 98 day intervals were not unreasonable in complex case).

9. Do I Have to Use a Special Form? How Do I Fill Out the Form?

There is an official form (Judicial Council Form HC-001) for filing a state petition for writ of habeas corpus. A copy of the form is attached to this manual; the form should also be available in the prison law library and on the California courts' website at www.courts.ca.gov/documents/hc001.pdf. The rules of court require that *pro se* petitioners (people who are not represented by a lawyer) use this form, though for good cause the court may make an exception.⁵¹ Do your best to fill out the form completely and to write or type clearly. Your goal is to put in all the information that the court needs to rule in your favor, in a well-organized way so that it is easy to follow, and without overloading the court with information that is not really relevant to the issue you are raising.

Page 1

Write your name, address and CDCR number in the top left corner.

On the centered lines, write the name of the court in which you are filing the petition (for example, "Fresno County Superior Court"). (A list of courts and the state prisons that are in those court districts is attached to this manual)

On the line for "Petitioner," write your name.

On the line for "Respondent," write the name of the official who has custody of you. Usually this will be the Warden of the prison where you are housed. If you don't know the warden's name, you can just write ("Warden of [name of prison]").

You don't need to fill in the court case number. The court clerk will give your petition a number when it is filed.

Page 2

This page asks for information about why you are filing the petition and where and why you are in custody, including details about your criminal conviction and sentence. Your criminal case details might not matter if you are challenging a prison or parole condition, action, or policy, but you should fill the information in anyway. If you don't know the answer to one of the questions, you can write "I don't know" or "Unknown."

Pages 3 and 4

These pages are where you describe the one or two issues you are raising (grounds for relief), the facts of your case, and the law that supports your position. (See Sections 4 through 6, above, for more information about the types of issues you can and cannot raise.) State clearly what happened and why it was wrong. You can present multiple grounds for relief in a petition, and you can attach additional pages if you want to raise more than two issues or you just need more space. However, raising numerous weak arguments is not likely to be helpful, and it is generally better to present only the strongest issues.

⁵¹ California Rules of Court, rule 4.551(a)(1)-(2).

- ◆ **Grounds for relief:** This should be a one or two sentence statement of what action is being challenged, what laws were violated, and what you want the court to do. For example, if you are challenging a guilty disciplinary finding, a ground for relief might be, “My rule violation finding of guilt should be vacated because the hearing officer refused to allow me to ask relevant questions of important eyewitnesses at my hearing.”
- ◆ **Supporting facts:** This is where you say who did what and when they did it. In our example, you would want to describe what type of rule violation you were charged with, when the rule violation hearing was held and who the hearing officer was, who you wanted to question, what types of questions you wanted to ask, the reasons the hearing officer gave for refusing your request to question the witnesses, the outcome of the hearing, and the punishment you received for the rule violation. If you need more space, you can attach additional pages to the petition form. You should also attach any documents that support your claim, such as the rule violation report; other helpful documents might include any written statements you might be able to get from the witnesses you wanted to question.
- ◆ **Supporting cases, rules, or other authorities:** This section is where you list the legal authorities that support your claim that your rights are being violated. A petition may be based on either federal law or California law; if you think you might someday take your case to federal court, then you should cite at least one federal constitutional law or case. You can rely on constitutions, statutes (like the Penal Code), court cases, regulations (like Title 15 of the California Code of Regulations [CCR]), or CDCR policies (like the DOM or CDCR memos). For example, Penal Code section 2932 and 15 CCR 3315(e) create rights to ask relevant questions of witnesses at disciplinary hearings. *In re Fratus* (2012) 204 Cal.App.4th 1339 is a good case enforcing those rights. Also, the U.S. Constitution’s Fourteenth Amendment guarantees a right to due process and *Wolff v. McDonnell* (1974) 418 U.S. 539 applies due process protections to disciplinary hearings. You can attach additional pages to the petition form if you need more space to discuss the laws and how the law requires the court or prison or parole officials to act or not act in a certain way toward you; you might title this discussion “Memorandum of Points and Authorities.” If you want more information on how to do legal research and cite to legal authorities, write to the Prison Law Office, General Delivery, San Quentin, CA 94964 and ask for Chapter 19 of *The California Prison and Parole Law Handbook*; this information is also on the web at www.prisonlaw.com under the resources tab.

Pages 5 and 6

These pages are where you tell the court about any previous actions you have taken to raise these issues, explain any delay in filing your petition, and tell the court if you have an attorney or if you want the court to appoint one. As with other pages, do your best to answer all the questions; if you don’t know the answer, you can write “I don’t know.”

Questions 8-10 are about whether you appealed your conviction or sentence, and what issues you raised on appeal or in a petition for review. Filling in this information is important if your habeas corpus petition is about your criminal case. This information most likely will not be relevant if you are raising issues about a prison or parole condition, action, or policy, but fill it in if you can; otherwise write “I don’t know” or “N/A” (not applicable).

Question 11 is about whether you have exhausted your administrative remedies (see section 3, above). It is important to fill out this section if you are raising issues about a prison or parole condition, action, or policy. You also must attach your administrative appeal and any responses that you received. If your issues are all about your criminal conviction of sentence, write “N/A” (not applicable).

Questions 12 through 14 ask whether you have filed any court actions (other than a direct appeal/petition for review) about the same matter. You need to answer this question no matter what type of issues you are raising; it applies to both challenges to criminal convictions or sentences and challenges to prison or parole conditions, actions or policies. If you have the orders from any prior court actions, you should attach those to your petition.

Question 15 is where you can tell the court that you filed your petition as quickly as you could, and explain any reasons why there was a delay in getting your petition filed. The goal is to either show that your petition is timely or that the court should excuse any delay and let your case go ahead anyway (see Section 8, above).

Question 16 is where you tell the court whether you have a lawyer for this case and, if so, the attorney’s name and address. If you don’t have an attorney, check the “No” box. If you do not have a lawyer, and you do not have enough money to hire a lawyer yourself, you can say that on the lines below the check boxes. You can also say that you want the court to appoint an attorney to represent you at no cost to you (see Section 11, below, on the rules about when the court has to appoint an attorney for you).

Question 17 asks whether you have any other legal actions currently going in any court.

Question 18 asks you to explain any reasons you have for not filing your petition in the lowest court. See section 13 for information about which court you should file your petition in, and sections 23-25 for how you can file your petition to higher levels of courts if you are not successful in the first court.

At the bottom of page 6, you need to sign and date the petition.

10. What Documents Should I Attach to Support My Petition?

You can attach any documents that show what happened and help prove your points. Attaching supporting documents can be crucial in helping the court understand your issues and, hopefully, decide that you have proven everything you need to win your case.

- ◆ If your issues involve prison or parole conditions, actions, or policies, you should attach any CDCR or BPH documents relevant to the issue such as chronos, rule violation reports (RVRs), parole hearing transcripts, medical records, or policy notices or memoranda. Also copies of any informal grievances or administrative appeal that you filed and any responses that you received.
- ◆ If your issues involve your criminal convictions or sentence, you should attach relevant documents that might include court trial or court hearing transcripts, motions or forms

that were filed in court, written orders made by the court, your Abstract of Judgment, documents that were presented as evidence or that you think should have been presented as evidence.

- ◆ Any prior written court decisions (by the same or other courts) addressing the same issue that you are raising in your petition
- ◆ Written statements from people (including yourself) who have information about what happened; these are called “declarations” or “affidavits.” The person should write their statement, and then end with the words: “I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on [date] at [name of city and state].” The person making the statement must sign and date the declaration.

In most situations, there is no right to get “discovery” (disclosure of information) from the other side or another person, company, or agency before you file your habeas corpus petition. There are a few exceptions. A person serving an indeterminate sentence of 15 years (or more) to life with the possibility of parole, life without the possibility of parole (LWOP), or death can get a court order requiring the District Attorney to produce information about their criminal case so that they can file a habeas corpus petition, if the person cannot get the information from their own defense lawyer.⁵² There is also a procedure for a person to request post-conviction testing of DNA evidence.⁵³ If you want more information about these procedures, send a request to Prison Law Office, General Delivery, San Quentin, CA 94964. More information about state habeas petitions is also in Chapter 15 of *The California Prison and Parole Law Handbook* (Prison Law Office, 2019), which should be in prison law libraries. The *Handbook* is also on the Prison Law Office website at www.prisonlaw.com, under the Resources tab.

If you do not have a document that is important to your issues, you should explain in your statement of facts what attempts you have made to get the document and why you could not get it.

If you want to help the court keep track of the documents, you can put a cover page in front of each document and identify the document as “Exhibit A,” “Exhibit “B,” etc. If there are more than a few exhibits, it can be helpful to include a list of all the exhibits right before the exhibits themselves.

11. Can I Get the Court to Appoint a Lawyer at No Cost to Me?

Yes – but usually only after the court issues an order to show cause.

Courts rarely appoint lawyers to help a person prepare and file their habeas corpus petition. The most common exception is that if you have a criminal direct appeal going, your appeal lawyer might be able to get permission to file a habeas corpus petition on an issue related to your direct appeal case. Also, people with death penalty cases usually have a round of state habeas corpus proceedings with an appointed lawyer. Otherwise, unless you have money to hire a lawyer or you can find a lawyer who will prepare your petition for free (or with the hope of later being awarded attorney’s fees by the

⁵² Penal Code § 1054.9.

⁵³ Penal Code § 1405.

court), you will most likely be on your own in getting your habeas corpus petition prepared and filed.

However, if you file a petition and the court agrees that you have a good issue, then you should get representation by a lawyer. The rules of court say that if a court issues an “order to show cause” in a habeas corpus case (see Section, 16 below), the court must appoint a lawyer for you if you want an attorney and do not have enough money to hire one; the court will pay the lawyer.⁵⁴

You can use section 16 of the HC-001 form to tell the court that you don’t have a lawyer, that you can’t afford to hire a lawyer, and that you want the court to appoint a lawyer for you.

12. My Problem is Urgent! Can I Get the Court to Act Quickly?

Yes, if you can show a very good reason why the court should do so.

The normal timelines for a court to decide a habeas corpus petition are discussed in Sections 16-21, below. Generally, it may be up to two months before the court responds to your petition, and if the court allows your petition to go forward it usually takes at least several more months for the court to receive further informal and/or formal briefing and make a decision.

In some situations, you might have good reasons to fear that you will suffer serious irreparable (can’t be fixed) harm if the court does not act more quickly on your petition. For example, you might have been endorsed for transfer to a facility where your life would be in danger, you might not be receiving adequate medical care for a potentially life-threatening condition, or a credit error may be keeping you in prison past your lawful release date. In these types of emergency situations, there are two things you can ask the court to do:

- ◆ **file a request for an expedited (fast-tracked) proceeding**, and/or
- ◆ **issue a preliminary injunction** ordering the other side (the respondent) to do something (or stop doing something) while the case is being fully considered by the court.⁵⁵

You can file a “Request for an Expedited Proceeding” and/or a “Request for a Preliminary Injunction” when you file your petition. To help make sure that your request is not overlooked, it is a good idea to file this as a separate document. Put the same type of information at the top of the first page as on the HC-001 form – your name and contacting information, the title of the case, the name of the court in which you are filing the document, and the name of the type of request you are filing. Then explain what harm you are facing and why the court should grant your request. If there is a last possible date before some irreparable harm is likely to happen, then the request should state that date. If you are asking for a preliminary injunction, tell the court what you want the respondent to do or stop doing while your case is being considered.

⁵⁴ California Rules of Court, rule 4.551(c)(2).

⁵⁵ Penal Code § 1484 [court in a habeas proceeding has “full power and authority . . . to do and perform all other acts and things necessary to a full and fair hearing and determination of the case”]; see e.g., *In re Alcalá* (1990) 222 Cal.App.3d 345, 352 & n.4 [271 Cal.Rptr. 674] (noting that temporary restraining order had been issued); *Faucette v. Dunbar* (1967) 253 Cal.App.2d 338, 340, 346 [61 Cal.Rptr. 97] (affirming preliminary injunction issued in habeas case).

13. In What Court Should I File the Petition?

If you are challenging your criminal conviction or sentence or your civil commitment, you should file in the superior court in the county where you were convicted or committed.

If you are challenging a BPH or Governor’s decision denying, reversing, or rescinding parole, you should file in the superior court in the county where you were convicted and sentenced.⁵⁶

If you are challenging a CDCR decision, action, or policy, you should file in the superior court for the county where you are incarcerated or where you are on parole.⁵⁷

The county superior courts, courts of appeal and California Supreme Court all have power to decide habeas corpus petitions.⁵⁸ However, higher level courts usually refuse to hear a petition that was not previously filed in a lower court, especially if the case involves factual disputes.⁵⁹ Thus, it is almost always best to file your habeas corpus petition in a county superior court, rather than in a court of appeal or the California Supreme Court.

Even if you file in the wrong county, that court should transfer the petition to the appropriate court if it determines the petition states a possible case for relief but the petitioner has filed the case with the wrong court.⁶⁰

A list of the addresses of all the state courts, and the CDCR prisons in those court districts, is included at the end of this manual.

⁵⁶ *In re Roberts* (2005) 36 Cal.4th 575 [31 Cal.Rptr.3d 458].

⁵⁷ Courts sometimes make exceptions to this general practice. See *In re Coca* (1978) 85 Cal.App.3d 493 [149 Cal.Rptr. 465] (person incarcerated in Solano County, who had a grave illness that was the subject of orders by the sentencing court in San Bernardino County, was allowed to proceed with a medical care petition in the county of conviction).

⁵⁸ California Constitution, Article VI, § 10; Penal Code § 1508; *Griggs v. Superior Court* (1976) 16 Cal.3d 341 [128 Cal.Rptr. 223]; *In re Van Heflin* (1976) 58 Cal.App.3d 131 [128 Cal.Rptr. 257]. A superior court can take jurisdiction over an issue even when an appeal is pending, so long as the issue is not being raised on appeal and is based on facts outside the record. *In re Carpenter* (1995) 9 Cal.4th 634 [38 Cal.Rptr.2d 665]; but see *People v. Mayfield* (1993) 5 Cal.4th 220 [19 Cal.Rptr.2d 877] (superior court couldn’t grant habeas in capital case while same issue pending on appeal in Supreme Court, even where there was evidence outside appellate record).

⁵⁹ *In re Hillery* (1962) 202 Cal.App.2d 293 [20 Cal.Rptr. 759]. Also, when a petition that requires an evidentiary hearing is filed in a court of appeal or the Supreme Court, the court may order that the case be sent to the county superior court for resolution. *In re Orosco* (1978) 82 Cal.App.3d 924 [147 Cal.Rptr. 463]; see also *People v. Singer* (1990) 226 Cal.App.3d 23 [275 Cal.Rptr. 911]. One exception is that a person who has an active direct appeal from a conviction, commitment or parole/PRCS revocation, and who wants to raise related issues on habeas corpus, may file their petition in the court of appeal and ask that the appeal and petition be heard together. *People v. Cotton* (1990) 230 Cal.App.3d 1072 [284 Cal.Rptr. 757]. If the appellate court dismisses the writ without prejudice, petitioner may re-file the petition in the superior court while the appeal is still pending. *People v. Baker* (1988) 206 Cal.App.3d 493 [253 Cal.Rptr. 615].

⁶⁰ *Griggs v. Superior Court* (1976) 16 Cal.3d 341, 347 [128 Cal.Rptr. 223]; *In re Serna* (2001) 94 Cal.App.4th 836, 839 [115 Cal.Rptr.2d 22].

14. How Do I File the Petition?

After you complete the HC-001 form, gather supporting documents, and write up any requests for an expedited proceeding or preliminary injunction (as described in Sections 12, above), you can file these papers by mailing them to the court, using the prison legal mail. You do not need to send additional copies. Also, there is no filing fee for a habeas corpus petition.⁶¹

It is a good idea to send the court an extra copy of the first page of the petition (and any requests for an expedited proceeding or preliminary injunction), along with a self-addressed stamped envelope. The court clerk can stamp the filing date and case number on the page and return it to you so that you will have proof that the court received and filed your petition.

You should also keep a copy of everything you send to the court, even if it is only a hand-written duplicate.

15. Do I Have to Serve (Send) Copies of the Petition on Anyone When I File It?

Generally, no. If you are an unrepresented person in custody, the court will review your petition. If the court does not deny your petition summarily (without further briefing or hearing), it will most likely have the court clerk make a copy of your petition and send it to the county District Attorney or the state Attorney General (depending on the type of issue you are raising), who will represent the respondent. Sending a document to another party in a case is called “service of process” and a “proof of service” is a form that lets the court know that the documents have been sent to the other parties.

If you want to serve the respondent, you can do so. Also, it is possible that a court will order you to serve the petition on the respondent. In addition, if the court orders or allows you to file further briefing (see Sections 18 and 21, below), then you will need to serve your briefs on the other side.

To formally serve a document in a habeas corpus case, you do the following:

- ◆ Make a copy of the document you are sending to the court.
- ◆ Put the copy of the document in an envelope addressed to the lawyer for the respondent and mail it in the prison legal mail. For a superior court petition that challenges a criminal conviction or civil commitment, this will be the county District Attorney. For a superior court petition that challenges a BPH or CDCR condition, action, or policy, this will be the state Attorney General. You should be able to find addresses for these offices in the law library, or the addresses may be on documents from your prior case proceedings. Also, a list of the Attorney General’s offices is at the end of the state court list attached to this manual.
- ◆ Send a proof of service form to the court saying what document you sent, where you sent it, and the date you sent it on. Most often, people attach the proof of service form at the

⁶¹ Government Code § 6101.

end of the original document(s) they are sending to the court. You can also send the proof of service form separately. A form that you can use for a proof of service is attached to this manual.

16. What Will the Court Do When It Gets My Petition?

A superior court is supposed to take action on a habeas corpus petition within 60 days after the petition is filed.⁶² The court's options are:

- ◆ If the court finds that the petition does not show adequate grounds for relief, the court can **summarily deny** it without any further proceedings. The court must explain its reasons for denying the petition.⁶³
- ◆ If the court is interested in getting more information about your issues, the court can **order the respondent to submit an informal response brief**.⁶⁴
- ◆ If the superior court finds you have made a good case for relief, it **must issue an “order to show cause” (“OSC”)**. The order to show cause will order the respondent to file a “return” presenting any reasons why the relief you requested should not be granted. The court can issue an order to show cause either with or without first requesting an informal response. A court cannot grant a habeas petition without issuing an order to show cause and giving the respondent an opportunity to file a return.⁶⁵

If the court does not act on your petition within 60 days, you can send a “notice and request for ruling” to the court. The notice must include a declaration from you (which you swear to be true under penalty of perjury) stating (1) the date on which you sent your petition for filing (or the actual filing date, if you know it), (2) the date on which you are mailing the notice and request for ruling, and (3) that you have not yet received a ruling. You must also send a copy of your original habeas corpus petition. When the court receives a complete “notice and request for ruling,” action should be taken by the court within 30 days.⁶⁶

⁶² California Rules of Court, rule 4.551(a)(3)(A).

⁶³ California Rules of Court, rule 4.551(a)(4)(B) and (g). Court commissioners, who are lesser judicial officials than judges, have the authority to summarily deny petitions for writ of habeas corpus or writ of mandate. Code of Civil Procedure § 259; *Gomez v. Superior Court* (2012) 54 Cal.4th 293 [142 Cal.Rptr.3d 808].

⁶⁴ California Rules of Court, rule 4.551(a)(4)(c).

⁶⁵ California Rules of Court, rule 4.551(a)(4)(A) and (c); *In re Campbell* (2017) 11 Cal.App.5th 742 [217 Cal.Rptr.3d 752] (court could not grant petition without first issuing an OSC); *In re Scott* (1994) 27 Cal.App.4th 946 [33 Cal.Rptr.2d 27]. *In re Hochberg* (1970) 2 Cal.3d 870 [87 Cal.Rptr. 681]; *People v. Romero* (1994) 8 Cal.4th 728 [35 Cal.Rptr.2d 270].

⁶⁶ California Rules of Court, rule 4.551(a)(3)(B).

17. Will the Other Side Have a Chance to Tell the Court Their Position?

Yes, unless the court denies your petition summarily, the court must give the respondent an opportunity to tell the court their position. The respondent should serve (send) you copies of any briefs or other documents that the respondent sends to the court, unless the documents are so sensitive or confidential that the court agrees to file them “under seal” (without disclosing them to anyone else).⁶⁷

Often, a court will ask the respondent to file an **informal response** so that the court will have more information before it takes formal action. The informal response will be a letter in which the respondent will say whether they agree or disagree with your petition and give their reasoning. The usual deadline for the respondent to submit an informal response is 15 days, though the court may set a shorter or longer deadline; the respondent may also ask for an extension of time.⁶⁸

Before a court can grant a habeas corpus petition, it must issue an order to show cause giving the respondent an opportunity to file a “**return**,” which is a formal response to a petition. In the return, the respondent will admit or deny any allegations (statements) you made in your petition and may set forth their own allegations; any allegation that you made in the petition that is not disputed in the return will be considered to be true. A court will usually give the respondents 30 days to file a return, but can order the respondents to file the return more quickly or can grant a request for an extension of time.⁶⁹

18. Will I Be Allowed to Submit Any Other Legal Briefs in the Case?

Yes, if the court allows your case to go forward. If the respondent files any document in response to your petition (see Section 17, above), then you will have an opportunity to file a document in reply. You can also ask the court to allow you to file supplemental briefing.

If the court directs the respondent to file an informal response, you will have an opportunity to file an **informal reply**. Your informal reply should be in the form of a letter to the court, stating whether you agree or disagree with what the respondent said in their informal response and your reasons. Generally, the deadline for your informal reply will be 15 days after the date the respondent sent you the informal response; the court can shorten or lengthen this timeline.⁷⁰ If you need more time, you should send a request to the court asking it for an “extension of time” to file your informal reply.⁷¹ You should serve your informal reply by mailing a copy to the respondent and sending a proof

⁶⁷ For example, a court does not have authority to order prison officials to disclose confidential information from informants. Instead, the court should allow the prison officials to file the confidential information under seal and then hold an *in camera* hearing (meaning closed chamber, without you or your lawyer present) to determine how much can be disclosed to your lawyer without revealing the identity of the informants. *Ochoa v. Superior Court* (2011) 199 Cal.App.4th 1274 [132 Cal.Rptr.3d 233].

⁶⁸ California Rules of Court, rule 4.551(b).

⁶⁹ California Rules of Court, rule 4.551(d), (h).

⁷⁰ California Rules of Court, rule 4.551(b).

⁷¹ California Rules of Court, rule 4.551(h) (authorizing courts to shorten or extend time).

of service to the court (see Section 15, above).

If the court issues an order to show cause and orders the respondent to file a formal return, it should appoint a lawyer to represent you if you have told the court that you do not have money to hire a lawyer and you want the court to appoint one for you (see Section 11, above). The lawyer may be a public defender or may be a private attorney who takes cases on appointment by the court. The court will order your lawyer to file and serve a formal brief on your behalf, which is called a “**denial**” (it is also called a “traverse”). In the denial, your attorney will admit or deny the allegations made by the respondent in the return, make any arguments about why the court should grant your petition, and attach any additional supporting documents. Your attorney will usually have 30 days to file the denial brief, but the court can shorten or extend the time.⁷²

As your case goes along, you might realize that there are additional grounds for relief that you should have raised in your habeas corpus petition. You cannot raise the new issues in your informal response or in the denial. However, you can prepare a **supplemental or amended petition** with the new grounds for relief and request that the court add those grounds for relief to your case and order the respondent to address those grounds. Also, if the court believes there are important issues that were not discussed in your original petition, the court can invite you to file a supplemental or amended petition.⁷³

19. Will the Court Grant Discovery (Require Additional Information) or Hold an Evidentiary Hearing?

Maybe -- if the court issues an order to show cause, and you can demonstrate why the additional information is necessary. The court can order discovery or an evidentiary hearing on the request of either side in the case or on the court’s own motion.

If you think the respondent possesses evidence that will help your case, you can ask the court to order the respondent to produce that evidence; this is called a request for “discovery.” Examples of information that can be obtained through discovery are copies of official documents or transcripts of prior administrative hearings. You can also ask the court to have a court reporter produce transcripts of prior court hearings. The power to order discovery in a habeas case arises only after the court has issued an order to show cause (with two exceptions described in Section 16, above).⁷⁴

If there is a dispute about “material” (important) facts, you can ask the court to hold an

⁷² California Rules of Court, rule 4.551(e), (h).

⁷³ *Board of Prison Terms v. Superior Court (Ngo)* (2005) 130 Cal.App.4th 1212, 1241-1242 [31 Cal.Rptr.3d 70].

⁷⁴ Penal Code § 1484; *In re Scott* (2003) 29 Cal.4th 783, 814 [129 Cal.Rptr.2d 605]; *In re Avena* (1996) 12 Cal.4th 694, 730 [49 Cal.Rptr.2d 413]; *Board of Prison Terms v. Superior Court (Ngo)* (2005) 130 Cal.App.4th 1212, 1241-1242 [31 Cal.Rptr.3d 70]. See, for example, *In re Elkins* (2006) 144 Cal.App.4th 475, 522, fn. 12 [50 Cal.Rptr.3d 503] (discovery of the Executive Case Summary prepared by the BPH for the Governor’s review of a grant of parole); *In re Lewis* (2009) 172 Cal.App.4th 13 [91 Cal.Rptr.3d 72] (court ordered the BPH to produce thousands of parole suitability hearing transcripts relevant to the question of whether the BPH had a practice of failing to apply parole suitability and unsuitability factors properly).

evidentiary hearing to take testimony and receive other evidence about the facts.⁷⁵ If the court decides to hold a hearing, both sides can subpoena witnesses to attend the hearing or produce documents at the hearing.⁷⁶ The court should order prison officials to bring you to attend the evidentiary hearing unless the court finds there is good cause to make an exception.⁷⁷

20. Will I or My Lawyer Have an Opportunity to Present an Oral Argument to the Court?

Usually no. The superior court does not have to hold any in-person arguments about the case, but a court might hear oral arguments in rare cases.

21. When and How Will the Court Announce Its Decision?

If the court denies your petition summarily (without ordering any briefing), it should do so within 60 days after you file your petition.⁷⁸

If the court orders informal briefing, it has 45 days after the respondent files an informal response to either deny the petition or issue an order to show cause.⁷⁹

If the court issues an order to show cause and orders formal briefing, the court has 30 days after the denial if filed (or time to file a denial runs out) to either grant or deny the petition or order an evidentiary hearing.⁸⁰

These timelines are not hard and fast; the court can extend or shorten them.⁸¹

The court's decision should be in writing and the court should send you (or your lawyer) a copy. If the court's decision is in your favor, the court will write an order granting relief (or the court may ask your lawyer to write an order for the court to sign). The respondent's lawyer should ensure that the order is followed. If this does not happen in a timely fashion, you or your lawyer should take steps to follow up.

⁷⁵ California Rules of Court, rule 4.551(f); *In re Johnson* (1992) 1 Cal.4th 689 [4 Cal.Rptr.2d 170]; *In re Rhoades* (2017) 10 Cal.App.5th 896, 907-908 [217 Cal.Rptr.3d 187].

⁷⁶ Penal Code § 1484.

⁷⁷ California Rules of Court, rule 4.551(f).

⁷⁸ California Rules of Court, rule 4.551(a)(3)(A).

⁷⁹ California Rules of Court, rule 4.551(a)(5).

⁸⁰ California Rules of Court, rule 4.551(f).

⁸¹ California Rules of Court, rule 4.551(h).

22. If the Court Grants My Petition, Can the Other Side Ask for Reconsideration or Appeal?

A court may reconsider and potentially vacate an order granting habeas relief if the respondent files a motion to reconsider within 60 days from the date of the order.⁸²

If a court grants a habeas corpus petition, the respondent can appeal the decision;⁸³ the appeal will be heard by the district court of appeal that covers the county court where the petition was decided. A respondent has 60 days from the date of the order to file a notice of appeal.⁸⁴ If the respondent does file a notice of appeal, and you do not have enough money to hire a lawyer, you should ask the Court of Appeal to appoint a lawyer to represent you against the state's appeal.

The superior court order in your case should be in effect and followed while the appeal is pending. However, the respondent may file a petition for writ of supersedeas asking the superior court and/or the court of appeal to “stay” (stop) the order granting relief.⁸⁵ Your lawyer can file an opposition to the respondent's petition. If a court grants a stay, the order will not take effect unless and until the appeal is resolved in your favor.

23. If the Court Denies My Petition, What Can I Do?

You *cannot* file an appeal from an order denying habeas relief.⁸⁶ However, you *can* file your habeas corpus petition in the next level court.⁸⁷

If your original petition was denied by a county superior court, you can file a new petition in the court of appeal in the appellate district in which the superior court is located. The addresses of the courts of appeal and which counties are covered by each of them is attached to this manual.

There is no set timeline to file your petition in the court of appeal. A good practice is to file no later than 60 days after the superior court denial. If you delay too long, you risk the court denying your petition as being untimely; also, if you are challenging your conviction or sentence, delay could affect whether you can meet the timeline for filing a federal habeas corpus petition if you are not successful in the state courts (see Section, 8, above).

You can file your court of appeal petition using the Judicial Council Form HC-001. The new petition form should state on page 1 that you are filing in the court of appeal for the appropriate district and should include all the information that was in the form you filed in the lower court. You will need to add information on page 6 of the HC-001 about the petition you filed in the superior

⁸² *Jackson v. Superior Court* (2010) 189 Cal.App.4th 1051 [118 Cal.Rptr.3d 81].

⁸³ Penal Code § 1506; California Rules of Court, rule 8.388.

⁸⁴ California Rules of Court, rule 8.104(a).

⁸⁵ See Penal Code §§ 1506-1507.

⁸⁶ Penal Code § 1506; see also *In re Crow* (1971) 4 Cal.3d 613, 621 n. 8 [94 Cal.Rptr. 254].

⁸⁷ *People v. Gallardo* (2000) 77 Cal.App.4th 971 [92 Cal.Rptr.2d 217]; *People v. Garrett* (1998) 67 Cal.App.4th 1419 [79 Cal.Rptr.2d 803].

court. You should attach all of the same supporting documents as you filed in the superior court, plus a copy of the lower court decision denying your petition. You can attach additional relevant documents; such documents produced in discovery and a transcript of any evidentiary hearing held in the lower court should also be filed as exhibits. (If you are without funds you should be able to get a transcript of your evidentiary hearing free of charge by sending a request asking the superior court to order the court reporter to prepare and provide a transcript of the evidentiary hearing for the purposes of taking your habeas petition to a higher level court;⁸⁸ if the court does not comply, you can file a motion in the Court of Appeal asking the court to order preparation of a hearing transcript.)

Once you have all your papers together, you should mail send the original petition and exhibits to the court of appeal.⁸⁹ There is no rule requiring you to serve the petition on the respondent. If you do want to serve the petition, you can mail a copy to the Attorney General's office and send a proof of service to the court. (See Section 15, above for information about service and proof of service.)

After you file your petition in the court of appeal, the procedure is similar to that in the superior court, as described above. However, there are no set timelines for the court to take action on your petition. In the court issues an order to show cause it must appoint a lawyer for you if you want an attorney and cannot afford to pay for one.⁹⁰ Also, in the court of appeal, there is likely to be an opportunity to ask for oral argument if the court issues an order to show cause and appoints you an attorney.⁹¹

Courts of appeal generally don't hold evidentiary hearings or order discovery. If you didn't file your original petition in the superior court, or if the superior court failed to hold an evidentiary hearing or order discovery necessary to resolve material disputes about the facts, the court of appeal may issue an order to show cause directed to the superior court, which will hold further proceedings on your issues.⁹²

If no evidentiary hearing was held in the superior court, the court of appeal will independently review your issues, which means that the court of appeal will makes its own decision without regard to the lower court's decision.⁹³ If an evidentiary hearing was held, the court of appeal will review the superior court's factual findings to see whether they were supported by substantial evidence, and will independently review any issues of law.⁹⁴

⁸⁸ *Gardner v. California* (1969) 393 U.S. 367 [89 S.Ct. 580; 21 L.Ed.2d 601].

⁸⁹ California Rules of Court, rule 8.380(c).

⁹⁰ California Rules of Court, rule 8.385(f).

⁹¹ California Rules of Court, rule 8.386(g).

⁹² *Rose v. Superior Court of Los Angeles County* (2000) 81 Cal.App.4th 564 [96 Cal.Rptr.2d 843].

⁹³ *In re Rosenkrantz* (2002) 29 Cal.4th 616, 677 [128 Cal.Rptr.2d 104]; *In re Smith* (2003) 114 Cal.App.4th 343, 360-361 [7 Cal.Rptr.3d 655].

⁹⁴ *In re Collins* (2001) 86 Cal.App.4th 1176, 1181 [104 Cal.Rptr.2d 108].

24. If the Court of Appeal Denies My Petition, Can I Take My Case to the California Supreme Court?

If the court of appeal denies your petition, there are two ways for you to ask the California Supreme Court to consider your issues: (1) filing a petition for review or (2) filing a new habeas corpus petition. You can use one or the other but not both. The main advantage of a petition for review is that you do not have to attach all your exhibits and supporting documents. The main advantage of a new habeas corpus petition is that you do not have to meet the strict deadline for filing a petition for review.

Petition for Review

A petition for review asks the California Supreme Court to review the decision of the court of appeal.⁹⁵ The deadline for filing a petition for review is:

- ◆ 10 days after the court of appeal summarily denied your petition (without ordering formal briefing)

or

- ◆ 40 days after the court of appeal denied your petition (when the court issued an order to show cause and asked for formal briefing [a return and denial]).⁹⁶

If you were appointed a lawyer for the court of appeal proceedings, that attorney might be able to file a petition for review for you. Otherwise, you will have to file any petition for review by yourself.

When you file a petition for review, the court of appeal will send its entire case record to the Supreme Court, including the petition, supporting documents, and any other documents you filed in the court of appeal. This means that when you file a petition for review you do not have to send the Supreme Court copies of all of your supporting documents.

Your petition for review should focus on why the Supreme Court should decide an unsettled or widely important legal issue presented by your case or should send your case back to the court of appeal for reconsideration.⁹⁷ There is no form for filing a petition for review. You will have to write out the petition yourself, and it should have the following parts:

- ◆ The first page should have information about you and your case (similar to the information on the first page of a habeas corpus petition form). Put the name of the court you are filing in: “California Supreme Court.” Next write the name of the case (“In re [your

⁹⁵ Penal Code §§ 1506-1507; California Rules of Court, rule 8.500(a)(1).

⁹⁶ California Rules of Court, rule 8.499; California Rules of Court, rule 8.500(e). This time cannot be extended, though the court may relieve a party from failure to timely file the petition if the time for the court to order review on its own motion has not expired. California Rules of Court, rule 8.500(e)(3). However, if a person misses the deadline for filing a petition for review, the easiest thing to do is to use the option of filing a new habeas petition in the California Supreme Court.

⁹⁷ See California Rules of Court, rule 8.500(b).

name]”), and the court of appeal and superior court case numbers. Then write the title of the document: “Petition for Review.” Put your name, CDCR #, and contact information in the bottom right corner. When the court clerk files your petition, the clerk will assign you a California Supreme Court case number and stamp it on this page.

- ◆ Begin your petition with a brief statement saying that you are petitioning for review from a decision of the court of appeal. Say when the court of appeal decision was issued, the action taken by the court of appeal (for example, the petition for writ of habeas corpus was denied summarily or after issuance of an order to show cause), and whether the court of appeal published the decision in the official court reports.
- ◆ The next section should be titled “Issues Presented for Review.” In this section, give a one or two sentence statement each of the issues you want the California Supreme Court for review. Often, these can be phrased as questions. For example: “When person in prison charged with a serious rule violation, does a CDCR disciplinary hearing officer violate due process, Penal Code section 2932, and 15 CCR 3315(e) by refusing to allow the person to question eyewitnesses about matters relevant to the charge?”
- ◆ The next section should be titled “Reasons Why Review Should Be Granted.” This is where you summarize the basic facts of your case, the law, and why the Court should hear your issue. It is best to keep this to just a few pages. Your chances of getting review are better if you can show that courts are in dispute about the law and that similar legal issues are likely to affect a lot of people. You can also argue that the court of appeal wrongly decided your case, but this is a weaker ground for review.
- ◆ If you want, you can then put in an “Argument” section with more details about the issues, the law, and why the Court should hear the case. However, it is not necessary to include this level of detail.
- ◆ At the end of your petition, put the date and your signature.
- ◆ Attach a copy of the court of appeal decision.⁹⁸
- ◆ Attach a proof of service showing you served the superior court, the court of appeal, and the Attorney General’s office.

The petition cannot be more than 30 pages long if typewritten or more than 8,400 words if written on a computer.⁹⁹ If possible, you should file an original petition, plus 13 copies of the petition.¹⁰⁰ The court can make an exception to the rule about the number of copies, so if you are having problems getting copies, you may try sending the original (and any copies you can get) along with a letter explaining why you are unable to obtain more copies.

The address for the California Supreme Court is on the list of courts attached to this manual.

⁹⁸ California Rules of Court, rule 8.504(b).

⁹⁹ California Rules of Court, rule 8.504(d).

¹⁰⁰ California Rules of Court, rule 8.44(a)(1).

You must also serve a copy of the petition on the superior court and the court of appeal that decided your habeas corpus petitions, and on the state Attorney General's office.¹⁰¹ The addresses of the Attorney General's offices are at the end of the list of courts attached to this manual.

The respondent can file an answer to a petition for review within 20 days after the petition is filed and you can file a reply within 10 days after the answer is filed.¹⁰² In practice the Attorney General's office rarely files an answer to a petition for review.

The California Supreme Court will usually take up to 60 days to decide whether to grant or deny the petition. The Court can extend this timeline to up to 90 days after the petition is filed.¹⁰³ If the Court grants review, it will almost certainly appoint a lawyer to represent you.

New Habeas Corpus Petition in the California Supreme Court

Instead of filing a petition for review, you can file a new petition for writ of habeas corpus in the California Supreme Court, using the HC-001 form. There is no set deadline for filing a habeas corpus petition in the California Supreme Court. However, you should file without delay for two reasons: (1) you don't want to risk the California Supreme Court denying your petition as being unreasonably delayed and (2) to meet time limits if you later want to file a federal habeas petition on the issues. A good practice is to do your best to file the petition no later than 60 days after the date of the court of appeal decision.

The new HC-001 petition form should state on page 1 that you are filing in the California Supreme Court, and should include all the information that was in the HC-001 form you filed in the court of appeal. You will need to add information on page 6 of the HC-001 about the petition you filed in the court of appeal. You should attach all of the same supporting documents as you filed in the court of appeal, plus a copy of the court of appeal decision denying your petition. If you have received new documents helpful to your case since you filed your last petition, you can also attach those.

You must file an original and 10 copies of the petition, but you only need to file an original and two copies of the supporting documents.¹⁰⁴ The court can make an exception to these rules, so if you are having problems getting copies, you may try sending just the original (and any copies you can get) along with a letter explaining why you are unable to obtain the required number of copies. The address for the California Supreme Court is included in the list of California state courts attached here.

It is a good practice to serve the petition on the respondent by mailing a copy of the petition to the state Attorney General's office. The addresses for the Attorney General's offices are included at the end of the list of courts attached to this manual. If you serve the petition on the Attorney General's office, you should send a proof of service to the court.

The process for the Supreme Court to consider the petition is somewhat similar to the process

¹⁰¹ California Rules of Court, rule 8.500(f).

¹⁰² California Rules of Court, rule 8.500(a).

¹⁰³ California Rules of Court, rule 8.512(b).

¹⁰⁴ California Rules of Court, rule 8.44(a)(2)-(3).

in the court of appeal (see Section 23.) However, there is no set timeline for the California Supreme Court to take action on the petition. If the Court thinks you have good claims and are entitled to some type of relief, it will issue an order to show cause, direct the Attorney General's office to file a Return and appoint a lawyer to represent you for the rest of the proceedings at no charge (if you want a lawyer but cannot afford to pay for one).

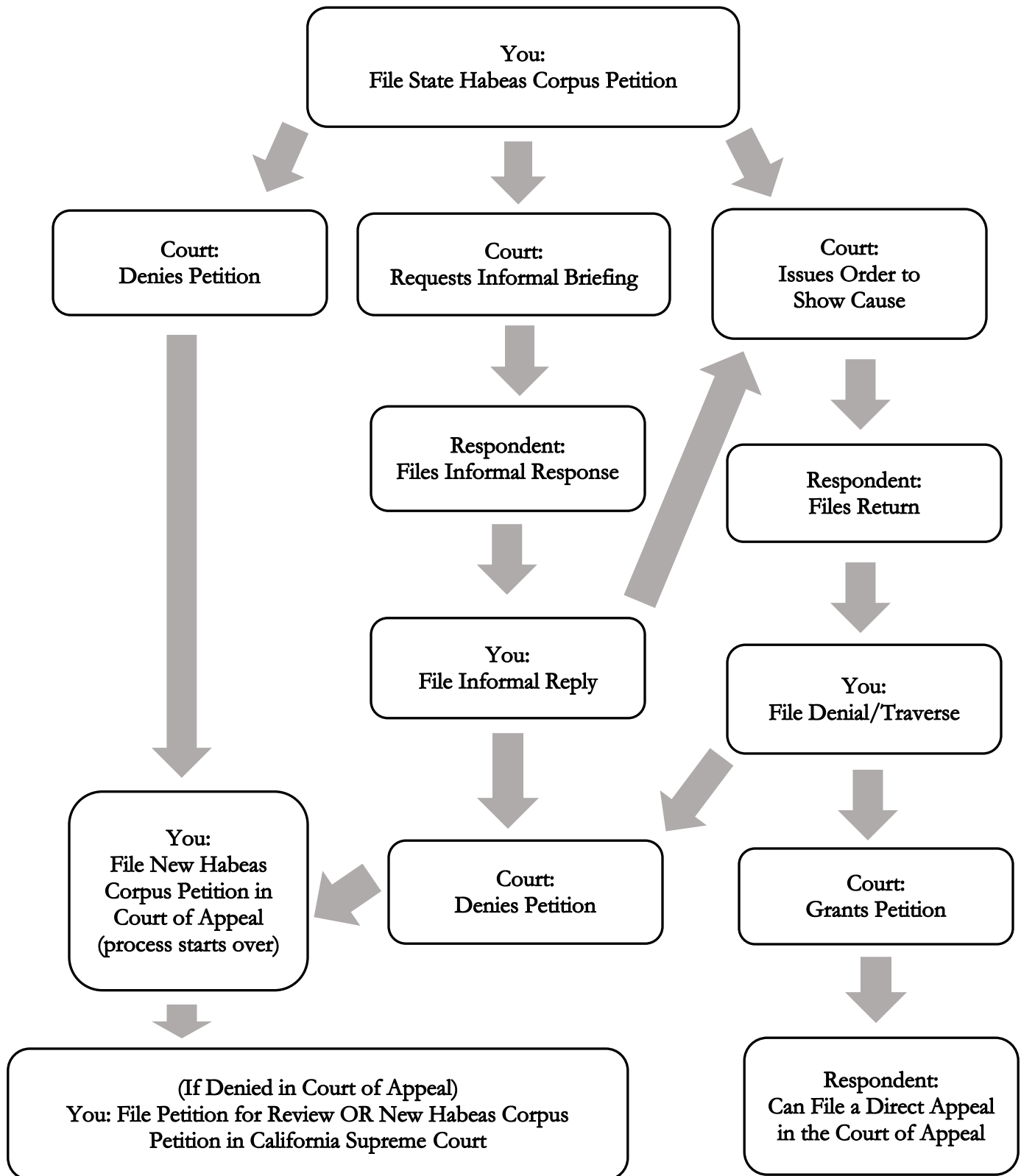
25. If My Petition is Denied at All Levels of the California Courts, Can I Bring My Issue in Federal Court?

Probably yes – if your petition challenged your criminal conviction or parole/PRCS revocation, or a CDCR/BPH action directly affecting the amount of time you are incarcerated, and you made claims based on federal laws. If the California Supreme Court denies a petition for review or a habeas corpus petition concerning your challenge to the validity or length of your incarceration, you may be able to file a federal habeas corpus petition seeking review of the state courts' decisions.

Probably no – if your petition challenged a CDCR/BPH condition, action, or policy that does not have a direct effect on the amount of time you are incarcerated. As a general rule, if you challenge prison or parole conditions, actions, or policies in a state habeas corpus action, you are barred from bringing a federal civil rights (§ 1983) lawsuit concerning the same actions or decisions; there is an exception if your case challenges the constitutionality of the underlying state statute or rule that governed the state courts' decisions.

If you want information about federal habeas corpus or federal civil rights cases, send a request to Prison Law Office, General Delivery, San Quentin, CA 94964. Information is also in *The California Prison and Parole Law Handbook* (Prison Law Office, 2019), which should be in the prison law libraries. The *Handbook* and other information are also on the Prison Law Office website at www.prisonlaw.com, under the Resources tab.

STATE HABEAS CORPUS PROCESS



CALIFORNIA STATE COURTS
(and state prisons in those court districts)

California State Superior Courts

<i>Superior Courts</i>	<i>CDCR Facilities</i>
Alameda County Superior Court 1225 Fallon Street Oakland, CA 94612	
Alpine County Superior Court 14777 State Route 89, P.O. Box 518 Markleeville, CA 96120	
Amador County Superior Court 500 Argonaut Lane Jackson, CA 95642	Mule Creek State Prison (MCSP)
Butte County Superior Court One Court Street Oroville, CA 95965	
Calaveras County Superior Court 400 Government Center Drive San Andreas, CA 95249	
Colusa County Superior Court 532 Oak St. Colusa, CA 95932	
Contra Costa County Superior Court 725 Court Street Martinez, CA 94553-1233	
Del Norte County Superior Court 450 H Street, Room 209 Crescent City, CA 95531	Pelican Bay State Prison (PBSP)
El Dorado County Superior Court 495 Main Street Placerville, CA 95667	
Fresno County Superior Court 1100 Van Ness Fresno, CA 93724-0002	Pleasant Valley State Prison (PVSP)
Glenn County Superior Court 526 West Sycamore Street Willows, CA 95988	
Humboldt County Superior Court 825 Fifth Street Eureka, CA 95501	
Imperial County Superior Court 939 West Main Street El Centro, CA 92243	Calipatria State Prison (CAL) CSP – Centinela (CEN)
Inyo County Superior Court 168 North Edwards Street Independence, CA 93526	

<i>Superior Courts</i>	<i>CDCR Facilities</i>
Kings County Superior Court 1640 Kings County Drive Hanford, CA 93230	Avenal State Prison (ASP) CSP – Corcoran (COR) Subst. Abuse Treatment Facility (SATF)
Lake County Superior Court 255 North Forbes Street Lakeport, CA 95453	
Lassen County Superior Court 2610 Riverside Drive Susanville, CA 96130	California Correctional Center (CCC) High Desert State Prison (HDSP)
Los Angeles County Superior Court <i>(main criminal)</i> 210 W. Temple Street Lancaster, CA 90012	CSP – Los Angeles County (LAC)
Madera County Superior Court 200 South G Street Madera, CA 93637	Central Cal. Women’s Facility (CCWF) Valley State Prison (VSP)
Marin County Superior Court 3501 Civic Center Dr., P.O. Box 4988 San Rafael, CA 94913	San Quentin State Prison (SQSP)
Mariposa County Superior Court 5088 Bullion Street, P.O. Box 28 Mariposa, CA 95338-0028	
Mendocino County Superior Court 100 North State Street, Rm 108 Ukiah, CA 95482	
Merced County Superior Court 2260 N Street Merced, CA 95340-3744	
Modoc County Superior Court 205 South East Street Alturas, CA 96101	
Mono County Superior Court P.O. Box 1037 Mammoth Lakes, CA 93546	
Monterey County Superior Court <i>(criminal)</i> 240 Church St. Salinas, CA 93901	Correctional Training Facility (CTF) Salinas Valley State Prison (SVSP)
Napa County Superior Court 825 Brown Street Napa, CA 94559	
Nevada County Superior Court 201 Church Street, Suite 7 Nevada City, CA 95959	
Orange County Superior Court <i>(criminal)</i> P.O. Box 1138 Santa Ana, CA 92702	

<i>Superior Courts</i>	<i>CDCR Facilities</i>
Placer County Superior Court 10820 Justice Center Dr. P.O. Box 619072 Roseville, CA 95661	
Plumas County Superior Court 520 Main Street, Room 104 Quincy, CA 95971	
Riverside County Superior Court (<i>criminal</i>) 4100 Main Street Riverside, CA 92501	California Rehabilitation Ctr. (CRC) Chuckawalla Valley State Prison (CVSP) Ironwood State Prison (ISP)
Sacramento County Superior Court 720 9th Street Sacramento, CA 95814	CSP – Sacramento (SAC) Folsom State Prison (FSP)
San Benito County Superior Court 440 5th Street Hollister, CA 95023	
San Bernardino County Superior Court 247 West Third Street San Bernardino, CA 92415	California Institution for Men (CIM) California Institution for Women (CIW)
San Diego County Superior Court 220 W. Broadway San Diego, CA 92101	Richard J. Donovan Corr. Fac. (RJD)
San Francisco County Superior Court (<i>criminal</i>) 850 Bryant Street Francisco, CA 94103	
San Joaquin County Superior Court 222 East Weber Avenue #303 Stockton, CA 95202	Deuel Vocational Institution (DVI) California Health Care Facility (CHCF)
San Luis Obispo County Superior Court 1035 Palm Street, Room 385 San Luis Obispo, CA 93408	California Men’s Colony (CMC)
San Mateo County Superior Court 400 County Center Redwood City, CA 94063	
Santa Barbara County Superior Court P.O. Box 21107 Santa Barbara, CA 93121	
Santa Clara County Superior Court 191 North First Street San Jose, CA 95113	
Santa Cruz County Superior Court 701 Ocean Street Santa Cruz, CA 95060	
Shasta County Superior Court 1500 Court Street Redding, CA 96001	

<i>Superior Courts</i>	<i>CDCR Facilities</i>
Sierra County Superior Court 100 Courthouse Square P.O. Box 476 Downieville, CA 95936	
Siskiyou County Superior Court 311 4th St. P.O. Box 1026 Yreka, CA 96097	
Solano County Superior Court 600 Union Avenue Fairfield, CA 94533	California Medical Facility (CMF) CSP - Solano (SOL)
Sonoma County Superior Court 600 Administration Drive, #107J Santa Rosa, CA 95403	
Stanislaus County Superior Court P.O. Box 3488 Modesto, CA 95353	
Sutter County Superior Court 1175 Civic Center Blvd. Yuba City, CA 95993	
Tehama County Superior Court 445 Pine Street, P.O. Box 170 Red Bluff, CA 96080	
Trinity County Superior Court 11 Court Street, P.O. Box 1258 Weaverville, CA 96093	
Tulare County Superior Court 221 S. Mooney, Room 303 Visalia, CA 93291	
Toulumne County Superior Court 41 West Yancy Avenue Sonora, CA 95370	Sierra Conservation Center (SCC)
Ventura County Superior Court P.O. Box 6489 Ventura, CA 93006	
Yolo County Superior Court 1000 Main Street Woodland, CA 95695	
Yuba County Superior Court 215 Fifth Street, Suite 200 Marysville, CA 95901	

<i>Courts of Appeal</i>	<i>CDCR Facilities</i>	<i>Counties</i>
	Subst. Abuse Treatment Fac. (SATF) Valley State Prison (VSP) Wasco State Prison (WSP)	Tuolumne
Sixth District Court of Appeal 333 West Santa Clara St., Suite 1060 San Jose, CA 95113	Correctional Training Facility (CTF) Salinas Valley State Prison (SVSP)	Monterey San Benito Santa Clara Santa Cruz

California State Supreme Court

	<i>CDCR Facilities</i>	<i>Counties</i>
California Supreme Court 350 McAllister Street San Francisco, CA 94102	(All CDCR facilities)	(All California counties)

Offices of the California Attorney General

	<i>Court of Appeal where habeas corpus petition decided</i>
Office of the Attorney General P.O. Box 944255 Sacramento, CA 94244	Third and Fifth District Courts of Appeal
Office of the Attorney General 455 Golden Gate Avenue, Suite 11000 San Francisco, CA 94102-	First and Sixth District Courts of Appeal
Office of the Attorney General 2550 Mariposa Mall, Room 5090 Fresno, CA 93721-2271	Fifth District Court of Appeal (some cases)
Office of the Attorney General 300 South Spring Street Los Angeles, CA 90013-1230	Second District Court of Appeal
Office of the Attorney General P.O. Box 85266-5299 San Diego, CA 92186-5266	Fourth District Court of Appeal

Proof of Service

[Case Name and Court Number]

I declare that:

I am a resident of _____ in the county of _____,
California. I am over the age of 18 years. My residence address is:

_____.

On _____, I served the attached _____ on the
_____ in said case by placing a true copy thereof enclosed in a sealed
envelope with postage thereon fully paid, in the United States mail at _____
addressed as follows:

_____.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true
and correct, and that this declaration was executed on the date of _____, at
_____, California.

[Type or Print Name]

[Signature]

Name: _____

Address: _____

CDC or ID Number: _____

(Court)

PETITION FOR WRIT OF HABEAS CORPUS

Petitioner
vs.

Respondent

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, file the original of the petition 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, 2018). 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*).

b. Supporting documents:

Attach declarations, relevant records, transcripts, or other documents supporting your claim. (See *People v. Duvall* (1995) 9 Cal. 4th 464, 474.)

c. 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 documents:

c. 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 (see *In re Dixon* (1953) 41 Cal.2d 756, 759):

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 Dexter* (1979) 25 Cal.3d 921, 925.) 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. (See *People v. Duvall* (1995) 9 Cal.4th 464, 474.)*
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, including this court? (See *In re Clark* (1993) 5 Cal.4th 750, 767–769 and *In re Miller* (1941) 17 Cal.2d 734, 735.)
 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 Robbins* (1998) 18 Cal.4th 770, 780.)

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)