

CPLR ARTICLE 70:  
WRITS OF HABEAS CORPUS.

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Writs of Habeas Corpus are SPECIAL PROCEEDINGS (CPLR Article 4 governs).

The PETITION shall be by a person "illegally restrained" WITHIN the STATE; or by a person on behalf thereof pursuant to a child abuse filing in Family Court.

Writs are filed with: Supreme Court of Judicial District where petitioner detained; Appellate Division of such Department; any Supreme Court Justice (out of Court); a County Judge in such county (or adjoining county if no judges, or all refuse to sign).

In a city of one million or more, it may be commenced in the court where the criminal charge for which petitioner was incarcerated is pending, OR in the Supreme Court/Appellate Division of such county; BUT shall be **returnable** before a Supreme Court Justice in the county where petitioner *detained*.

Petitions shall be VERIFIED; and state or affirm that the petitioner is detained; the name and place of detention, if known (else a description thereof); a copy of the MANDATE for detention (if there be one, or a reason why not); the cause of detention (petitioner's best knowledge or belief); that no court has EXCLUSIVE jurisdiction; if basis is that petitioner illegally held, the nature thereof; whether any appeal was taken, and the result; any prior applications, specifying date/court/judge/dispo, and any new facts; and if made before a Judge of another county, what legal authority therefor.

A Court SHALL issue a writ which appears justified, WITHOUT DELAY, on any day; OR may make Order to Show Cause why detention valid. If detention is on papers clearly NOT illegal, or another court has exclusive jurisdiction, the petition shall be denied.

A Court is NOT required to issue a writ if a prior application for such was denied, and no new facts are alleged.

A penalty of \$1,000.00 can be assessed against a Judge or Court which refuses to sign a lawfully required writ.

A writ is on behalf of the State; and against the RESPONDENT (who has custody), or upon the relation of a private person.

A writ on a State Institution is returnable before the Supreme/County court in the county of detention (else the nearest county, if no such judge). If NOT on a state institution, then it shall be returnable before the issuing court; EXCEPT that if it was made in another county, it may be returnable in county where it would have properly

been brought.

A writ may direct production FORTHWITH; OR at a day/time certain.

A writ NOT issued upon a public officer MAY require petitioner to bear transport costs. In such a case, service of the writ is not considered made until charges paid or undertaking given.

The writ, together with the petition, may be served any day by personal delivery to the party directed (or any other person having custody). If such person CONCEALS themselves, it may be left with the detention facility; OR affixed to detention/dwelling AND also mailed thereto.

A party served with a writ shall produce the petitioner if so directed, unless petitioner be too sick to travel. If too sick, the hearing may be postponed, held in the petitioner's absence; or may be moved to where Petitioner detained.

Failure to comply may result in the issuance of a Warrant of "Attachment", and commitment to county jail, or issuance of a Precept" (order). If a sheriff is to be committed, the Court shall so designate another person, and detention shall not be in county where sheriff serves.

A Warrant can also be for immediate production if the petitioner will otherwise be removed from the State or harmed in the interim. If the detention constitutes a criminal offense, the Court may order Apprehension of the Respondent.

A party served with a writ shall make a "RETURN" by Affidavit within 24 hours, including a copy of the mandate (else a reason why not so attached). The ORIGINAL mandate shall be produced at the hearing.

A hearing pursuant to detention on mandate shall be on at least 8 days notice to the civil party or attorney at whose behest detention was ordered; upon the Family Court judge if such proceeding ongoing (Judge represented by Corporation Counsel in NYC or County Atty elsewhere); or in any other matter, upon the District Atty of county where party committed from, AND of county where then detained.

A Petitioner MAY reply to a "return", shall be under oath, either in orally or by writing.

A Court may hold a petitioner during the pendency of the hearing, may parole, or may set bail. Possible dispositions are: Discharge; lowering excessive bail; or dismissing proceeding and remanding petitioner back to detention.

A party refused a writ may appeal. The Attorney General may appeal for the State on behalf of a District Attorney. If bail allowed, an appeal by the state does NOT stay such order.

If petitioner discharged, shall not be re-detained except pursuant to NEW, lawful mandate.