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References

GC – Government Code

PC – Penal Code

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• 6-16/100.00 Writ of Habeas Corpus

The writ of habeas corpus is known as the "great and efficacious writ in all manner of illegal confinement". It is a summons with the force of a court order; it is addressed to the custodian (a prison official, for example) and demands that a prisoner be brought before the court, and that the custodian present proof of authority, allowing the court to determine whether the custodian has lawful authority to detain the prisoner. If the custodian is acting beyond their authority, then the prisoner must be released. Any prisoner, or another person acting on their behalf, may petition the court, or a judge, for a writ of habeas corpus. (PC 1473) One reason

for the writ to be sought by a person other than the prisoner is that the detainee might be held incommunicado. Most civil law jurisdictions provide a similar remedy for those unlawfully detained, but this is not always called habeas corpus.

Habeas Corpus is a remedy for unlawful imprisonment in civil and criminal proceedings. (ex parte McCullough, 35 CA 97) The essence of the proceeding is to inquire into the right or legality under which a person is restrained.

• 6-16/200.00 Fee

No fee shall be charged in proceedings upon habeas corpus. (GC 6101)

• 6-16/300.00 Issuance of Writ of Habeas Corpus

All writs, warrants, process, and subpoenas authorized by the provisions of this Chapter must be issued by the Clerk of the Court, and, except subpoenas, must be sealed with the seal of such Court, and served and returned forthwith, unless the Court or Judge shall specify a particular time for any such return. (PC 1503) (PC 1508)

A Writ of Habeas Corpus is made by petition signed by the restrainee or someone on his behalf. The petition must have the name and address of the entity who is imprisoning, whether the imprisonment is legal, and the alleged illegality. The petition must be made by oath or affirmation. (PC 1474)

A copy of the application for such writ must be served upon the district attorney at least 24 hours before the return is to be made. If the imprisonment is for a city ordinance, service is on the city attorney instead of the district attorney. If a petition is for denial of parole, service is on the attorney general and the district attorney at least three days before the return is due. (PC 1475)

• 6-16/400.00 Contents of Writ

The writ must state in whose custody or under whose restraint the party imprisoned or restrained is, the officer or person detaining him, and the Court or Judge before whom he is to be brought. (PC 1495)

• 6-16/500.00 Service of Writ of Habeas Corpus

• • 6-16/500.10 Service Requested

If the Sheriff's Department is requested to serve a Writ of Habeas Corpus, it is done through Court Services Division/CMB. The original writ and a copy along with signed service instructions by the attorney of record or the party without an attorney must be received. The original writ is served on the party pursuant to the signed instructions. A copy of the petition should also be served. This is not a legal requirement, but is desirable because the petition contains information useful in making the return. Service may be made on any day at any time. (PC 1502)

• • 6-16/500.20 Service On Sheriffâ€™s Department

If a Writ of Habeas Corpus is served on the Sheriff's Department, CMB personnel shall follow Patrol Station procedures as outlined in MPP 5-07/040.10 – Procedure When Served At Stations. CMB personnel shall accept Writs of Habeas Corpus and forward them to the appropriate Watch Commander (IRC, CRDF or in the case of juveniles, to the Safe Streets Bureau).

If a Writ of Habeas Corpus is received for a prisoner previously released, accept the Writ and forward it to the IRC Watch Commander.

The Station Deputy accepting a Writ of Habeas Corpus shall:

- Initial the process and stamp it with the date and time received; and
- Forward the Writ of Habeas Corpus to IRC immediately.

The Inmate Reception Center is responsible for answering Habeas Corpus Writs. (MPP 2-09/030.20 – Inmate Reception Center) IRC will make the return on all Writs of Habeas Corpus for criminal cases including sentenced and unsentenced prisoners. Returns on Writs of Habeas Corpus involving civil cases will be made by the County Counsel. (5-07/040.20 – Inmate Reception Center (IRC) Procedure)

• 6-16/600.00 Disobedience to Writ

If the person to whom the writ is directed refuses, after service, to obey the same, the Court or Judge, upon affidavit, must issue an attachment against such person, directed to the Sheriff or Coroner, commanding him forthwith to apprehend such person and bring him immediately before such Court or Judge; and upon being so brought, he must be committed to the jail of the county until he makes due return to such writ, or is otherwise legally discharged. (PC 1479) The "attachment" is a warrant; follow procedures set forth in 6-04/030.00 Intake of Civil Warrant.

• 6-16/700.00 Warrant in Lieu of Writ of Habeas Corpus

The court or judge may issue a warrant in lieu of a Writ of Habeas Corpus, reciting the facts, and directed to any peace officer, commanding the peace officer to take the person immediately before the court or judge, to

be dealt with according to law. (PC 1497, 1498, 1499) If a warrant is received by CMB personnel, follow the procedures as set forth in 6-04/030.00 Intake of Civil Warrant.