

Habeas Corpus

(To get your child back)

Use these instructions & forms if:

- you have a custody order giving you the legal right to a child, and another person is keeping the child from you in violation of that order; or
- You are a parent, and you have not been able to get your child back from someone who is not the child's parent.

This packet includes:

1. Instructions for Filing a Petition for Writ of Habeas Corpus
2. Petition for Writ of Habeas Corpus
3. Civil Case Information Sheet
4. Order for Issuance of Writ of Habeas Corpus
5. Order Granting or Denying Return of Child

Note: You may not need all of the forms listed here, or you may need additional forms. Get more information at www.TexasLawHelp.org. Talk to a lawyer if you have questions.

Instructions for Filing a Petition for Writ of Habeas Corpus

These instructions explain the steps to request a Writ of Habeas Corpus and an Order Returning a Child. These instructions are for the Petitioner—the person who opens the case and files the petition.

WARNING! These instructions provide general information, not legal advice. It's a good idea to talk with a lawyer about your particular situation.

Checklist Steps

☐ **Step 1: Complete your court forms and attach the exhibits.**

- [Petition for Writ of Habeas Corpus](#): This form is filed by the Petitioner (the person filing the case) and tells the judge why you have a superior right of possession to the child. It also asks the judge to issue a Writ of Habeas Corpus, ordering the Respondent to bring the child to court for a hearing.

To fill out section “3. Court Order for Conservatorship of the Child(ren),” you must first determine whether a court has ever issued an order for possession regarding the child that you want returned to you.

- If there is a court order for possession, and you are claiming a superior right of possession because of that order, select option (1) and attach a certified copy of the order to your petition.
- If there is no court order, only a legal parent can file the petition against a nonparent. If you are a legal parent, select option (2) and attach proof that you are the legal parent of the child.

Tip: Because court orders can be long and complicated, it is a good idea to highlight or mark the sections that explain who has the superior right of possession to the child so that the judge can review it more easily.

Who is the Respondent? The Respondent is the person who is holding the child illegally, either because:

- A court order says you have a superior right of possession, or
- You are a parent of the child, the Respondent is not a parent, and there is no court order.

Tip: It is very important that the Respondent's legal name and address you list on the Petition is correct! If the Respondent cannot be served, he or she will not know to bring the children to court for the next hearing.

- [Order for Issuance of Writ of Habeas Corpus](#): You do not know if the judge will issue the Writ of Habeas Corpus; however, it is good practice to fill out the Order for Issuance of

Writ of Habeas Corpus and present it to the judge with your Petition. If the order is granted, the judge will sign it and the judge or the clerk will fill out the portion that says the date, time, and place of the next hearing.

☐ **Step 2: File forms and present to judge for ex parte review.**

Contact your clerk's office for information on how to do this. Your county may require a certain judge to review your paperwork, or you may be able to take your paperwork to the "duty judge" who is available anytime. The judge will review your petition and any exhibits ex parte (meaning, you will not be present).

If the judge grants your request to issue the writ of habeas corpus, the clerk should prepare the paperwork for you and make arrangements for the writ to be served on the Respondent.

Make sure to review the Order Granting Writ of Habeas Corpus after it is completed by the judge so that you know when the next hearing is set for. Mark the hearing in your calendar and make sure you have reliable transportation to the courthouse.

☐ **Step 3: Prepare for your hearing.**

The focus of the habeas corpus hearing is very narrow: it is limited to who has a superior right of possession of the child.

Only in limited circumstances—such as where the Respondent has alleged that there is a serious immediate question concerning the child's welfare or where the Petitioner has relinquished care of the child for at least six months—should additional evidence regarding the wellbeing of the child be presented.

The Respondent has the right to file a written response to your Petition. They must file the response before the hearing, and you should receive a copy of it. The response explains why the Respondent thinks the judge should not give you the child back. If the Respondent files a Response, review it carefully to know what the Respondent will try to argue in court. (See the "common questions" section for more information on what a Respondent may claim.)

Prepare any evidence that you think you need to present. If you plan to testify, practice what you want to say.

Prepare your Order Granting Return of Child(ren).

Prepare your proposed [Order Granting or Denying Return of Child](#). You can fill in the information you know, such as the case number, court, names of parties, and names and birthdays of the children. When you attend court, be ready to write down what the judge says because you may be expected to fill out the rest of the order. It is a good idea to bring an extra copy of the order if the judge wants to look at it.

□ **Step 4: Attend the hearing.**

At the hearing, both you and the Respondent will have an opportunity to explain what you want and present any evidence that supports your position.

Attend this hearing! If you do not, the judge may not be able or willing to return the child to you.

If the court finds that the petitioner has the superior right of possession, the court **MUST** grant the return of the child to the petitioner in the following circumstances:

- 1) The Petitioner has the superior right of possession under a court order and
 - The petitioner had not relinquished possession of the child for at least six months before the case was filed, and
 - There is no serious, immediate question concerning the child's welfare
- 2) The Petitioner has the superior right of possession by law as a parent and
 - The Respondent is not a parent of the child, and
 - No SAPCR is pending, and
 - The petitioner had not relinquished possession of the child for at least six months before the case was filed, and
 - There is no serious, immediate question concerning the child's welfare

The court has discretion (meaning the judge can decide to return the child to the petitioner or not return the child) in the following circumstances, even if the petitioner has the superior right of possession:

1. The petitioner relinquished possession of the child for at least six months before the case was filed, or
2. There is a serious immediate question concerning the child's welfare, or
3. A [SAPCR](#) is pending, and the parties have already been given notice that a hearing on temporary orders is set for the same time as the hearing on the writ of habeas corpus.

Note: If a SAPCR is already pending, talk to a lawyer before using this kit.

Cause No. _____

In the Interest of the following Minor Child(ren):

(Print the full name of each child.)

1. _____
2. _____
3. _____
4. _____
5. _____

In the _____
Court Number

- ☐ District Court
☐ County Court at Law of

_____ County, Texas

Petition for Writ of Habeas Corpus

My name is: _____
First Middle Last

I am the **Petitioner**, the person filing this Petition for Writ of Habeas Corpus, and the person asking that the Respondent be required to return the child(ren) to my possession.

My relationship to the child(ren) is:

- ☐ Mother
☐ Father
☐ Non-parent with court ordered possession rights to the child(ren)

My address is:

The last three numbers of my Social Security number are _____.

- ☐ (Check here if you do not have a SSN) I have not been issued a Social Security number.

The **Respondent's** name is: _____
First Middle Last

The **Respondent** is the person illegally restraining the child(ren).

The Respondent's relationship to the child(ren) is:

- ☐ Mother
☐ Father
☐ Non-parent with court ordered possession rights to the child(ren)
☐ The Respondent is not a parent of the child and has no court ordered possession rights to the child

The child(ren) are being illegally restrained by the Respondent at the following address:

Street and Street Number: _____

City: _____

Zip Code: _____

County: _____

State: _____

Process should be served on the Respondent at this address.

1. Child(ren)

I ask the Court to make orders about the following child(ren):

	Child's name	Date of Birth
1.	_____	_____
2.	_____	_____
3.	_____	_____
4.	_____	_____
5.	_____	_____

2. Jurisdiction

This Court has jurisdiction to hear the case because it is either the court of continuing, exclusive jurisdiction or a court with jurisdiction to issue a writ of habeas corpus in the county in which the child is found. Texas Family Code 157.371.

3. Court Order for Conservatorship of the Child(ren)

Choose one:

Check (1) if you are claiming superior rights under a court order.

Check (2) if you are claiming superior rights because no court order exists, you are a parent of the child, and the Respondent is not a parent of the child.)

- (1) ☐ I am entitled to possession of the child(ren) under an existing court order for possession. The order was entered by the _____ (number) District or County Court of _____ County, Texas, in Case Number _____.

This order is in full force and effect and has not been modified. A certified copy of the order is attached to this petition.

Subject to Texas Family Code Chapter 152 and the Parental Kidnapping Prevention Act (28 U.S.C. Section 1738A), if the right to possession of a child is governed by a court order, the court in a habeas corpus proceeding shall compel the return of the child to the Petitioner if the court finds that the Petitioner is entitled to possession under the order. Texas Family Code 157.372.

- (2) ☐ I have a superior right to possession of the child(ren) as a parent under Texas Family Code Chapter 151.001. I am entitled to possession of the child(ren) because I am the biological or legal parent of the child(ren), the Respondent is **not** a biological or legal parent of the child(ren), no Court has ever issued orders regarding possession of the child(ren), and no suit affecting parent child relationship is currently pending.

If the right to possession of a child is not governed by an order, the Court shall compel the return of the child to the parent if the right of possession is between a parent and a nonparent and a suit affecting the parent-child relationship has not been filed. Texas Family Code 157.376.

4. Relief Requested

I ask the Court to immediately issue its writ of habeas corpus commanding that the Respondent bring the child(ren) before this Court for a hearing; after the hearing, I ask the Court to order that the child(ren) be returned to me.

I also ask that the Respondent be ordered to pay all court costs.

I ask for recovery of all relief requested and for all entitled general relief.

Respectfully,

Petitioner's Signature

Phone number

→

Petitioner's Printed Name

Date

Petitioner's

Mailing Address: _____

city

state

zip

Petitioner's Email
Address: _____

Petitioner's Fax

(if available): _____

Verification (Party must sign in front of a notary, below.)

I am the Petitioner in this Petition for Writ of Habeas Corpus. I have personal knowledge of the allegations and facts stated in this Petition, and I swear under oath that they are true and correct.

Signature of Petitioner

ONLY sign in front of a notary!

Notary fills out below.

State of _____
(Print name of state where this petition is notarized)

County of _____
(Print the name of the county where this Petition is notarized)

Sworn to and subscribed before me, the undersigned notary, on this date: ____ / ____ / ____

by _____
(Print name of person who is signing this Petition. NOT the notary's name.)

[Notary Stamps Here]

Notary's Signature

CIVIL CASE INFORMATION SHEET

CAUSE NUMBER (FOR CLERK USE ONLY): _____ COURT (FOR CLERK USE ONLY): _____

STYLED

(e.g., John Smith v. All American Insurance Co; In re Mary Ann Jones; In the Matter of the Estate of George Jackson)

A civil case information sheet must be completed and submitted when an original petition or application is filed to initiate a new civil, family law, probate, or mental health case or when a post-judgment petition for modification or motion for enforcement is filed in a family law case. The information should be the best available at the time of filing.

1. Contact information for person completing case information sheet:		Names of parties in case:		Person or entity completing sheet is:
Name:	Email:	Plaintiff(s)/Petitioner(s):	<input type="checkbox"/> Attorney for Plaintiff/Petitioner <input type="checkbox"/> <i>Pro Se</i> Plaintiff/Petitioner <input type="checkbox"/> Title IV-D Agency <input type="checkbox"/> Other: _____	
Address:	Telephone:		Additional Parties in Child Support Case:	
City/State/Zip:	Fax:	Defendant(s)/Respondent(s):	Custodial Parent: _____	
Signature:	State Bar No:		Non-Custodial Parent: _____	
			Presumed Father: _____	
[Attach additional page as necessary to list all parties]				
2. Indicate case type, or identify the most important issue in the case (select only 1):				
Civil			Family Law	
Contract	Injury or Damage	Real Property	Marriage Relationship	Post-judgment Actions (non-Title IV-D)
<i>Debt/Contract</i> <input type="checkbox"/> Consumer/DTPA <input type="checkbox"/> Debt/Contract <input type="checkbox"/> Fraud/Misrepresentation <input type="checkbox"/> Other Debt/Contract: _____ <i>Foreclosure</i> <input type="checkbox"/> Home Equity—Expedited <input type="checkbox"/> Other Foreclosure <input type="checkbox"/> Franchise <input type="checkbox"/> Insurance <input type="checkbox"/> Landlord/Tenant <input type="checkbox"/> Non-Competition <input type="checkbox"/> Partnership <input type="checkbox"/> Other Contract: _____	<input type="checkbox"/> Assault/Battery <input type="checkbox"/> Construction <input type="checkbox"/> Defamation <i>Malpractice</i> <input type="checkbox"/> Accounting <input type="checkbox"/> Legal <input type="checkbox"/> Medical <input type="checkbox"/> Other Professional Liability: _____ <input type="checkbox"/> Motor Vehicle Accident <input type="checkbox"/> Premises <i>Product Liability</i> <input type="checkbox"/> Asbestos/Silica <input type="checkbox"/> Other Product Liability List Product: _____ <input type="checkbox"/> Other Injury or Damage: _____	<input type="checkbox"/> Eminent Domain/Condemnation <input type="checkbox"/> Partition <input type="checkbox"/> Quiet Title <input type="checkbox"/> Trespass to Try Title <input type="checkbox"/> Other Property: _____ Related to Criminal Matters <input type="checkbox"/> Expunction <input type="checkbox"/> Judgment Nisi <input type="checkbox"/> Non-Disclosure <input type="checkbox"/> Seizure/Forfeiture <input type="checkbox"/> Writ of Habeas Corpus—Pre-indictment <input type="checkbox"/> Other: _____	<input type="checkbox"/> Annulment <input type="checkbox"/> Declare Marriage Void <i>Divorce</i> <input type="checkbox"/> With Children <input type="checkbox"/> No Children Other Family Law <input type="checkbox"/> Enforce Foreign Judgment <input type="checkbox"/> Habeas Corpus <input type="checkbox"/> Name Change <input type="checkbox"/> Protective Order <input type="checkbox"/> Removal of Disabilities of Minority <input type="checkbox"/> Other: _____	<input type="checkbox"/> Enforcement <input type="checkbox"/> Modification—Custody <input type="checkbox"/> Modification—Other Title IV-D <input type="checkbox"/> Enforcement/Modification <input type="checkbox"/> Paternity <input type="checkbox"/> Reciprocals (UIFSA) <input type="checkbox"/> Support Order Parent-Child Relationship <input type="checkbox"/> Adoption/Adoption with Termination <input type="checkbox"/> Child Protection <input type="checkbox"/> Child Support <input type="checkbox"/> Custody or Visitation <input type="checkbox"/> Gestational Parenting <input type="checkbox"/> Grandparent Access <input type="checkbox"/> Parentage/Paternity <input type="checkbox"/> Termination of Parental Rights <input type="checkbox"/> Other Parent-Child: _____
Employment	Other Civil			
<input type="checkbox"/> Discrimination <input type="checkbox"/> Retaliation <input type="checkbox"/> Termination <input type="checkbox"/> Workers' Compensation <input type="checkbox"/> Other Employment: _____	<input type="checkbox"/> Administrative Appeal <input type="checkbox"/> Antitrust/Unfair Competition <input type="checkbox"/> Code Violations <input type="checkbox"/> Foreign Judgment <input type="checkbox"/> Intellectual Property <input type="checkbox"/> Lawyer Discipline <input type="checkbox"/> Perpetuate Testimony <input type="checkbox"/> Securities/Stock <input type="checkbox"/> Tortious Interference <input type="checkbox"/> Other: _____			
Tax	Probate & Mental Health			
<input type="checkbox"/> Tax Appraisal <input type="checkbox"/> Tax Delinquency <input type="checkbox"/> Other Tax	<i>Probate/Wills/Intestate Administration</i> <input type="checkbox"/> Dependent Administration <input type="checkbox"/> Independent Administration <input type="checkbox"/> Other Estate Proceedings <input type="checkbox"/> Guardianship—Adult <input type="checkbox"/> Guardianship—Minor <input type="checkbox"/> Mental Health <input type="checkbox"/> Other: _____			
3. Indicate procedure or remedy, if applicable (may select more than 1):				
<input type="checkbox"/> Appeal from Municipal or Justice Court <input type="checkbox"/> Arbitration-related <input type="checkbox"/> Attachment <input type="checkbox"/> Bill of Review <input type="checkbox"/> Certiorari <input type="checkbox"/> Class Action		<input type="checkbox"/> Declaratory Judgment <input type="checkbox"/> Garnishment <input type="checkbox"/> Interpleader <input type="checkbox"/> License <input type="checkbox"/> Mandamus <input type="checkbox"/> Post-judgment		<input type="checkbox"/> Prejudgment Remedy <input type="checkbox"/> Protective Order <input type="checkbox"/> Receiver <input type="checkbox"/> Sequestration <input type="checkbox"/> Temporary Restraining Order/Injunction <input type="checkbox"/> Turnover
4. Indicate damages sought (do not select if it is a family law case):				
<input type="checkbox"/> Less than \$100,000, including damages of any kind, penalties, costs, expenses, pre-judgment interest, and attorney fees <input type="checkbox"/> Less than \$100,000 and non-monetary relief <input type="checkbox"/> Over \$100,000 but not more than \$200,000 <input type="checkbox"/> Over \$200,000 but not more than \$1,000,000 <input type="checkbox"/> Over \$1,000,000				

Cause No. _____

In the Interest of the following Minor Child(ren):

(Print the full name of each child.)

1. _____
2. _____
3. _____
4. _____
5. _____

In the _____
Court Number

- ☐ District Court
☐ County Court at Law of

_____ County, Texas

Order for Issuance of Writ of Habeas Corpus

The Petition for Writ of Habeas Corpus was presented to this Court on _____.
(Date)

The Court finds that it has jurisdiction in this matter, that all prerequisites under the law have been met, and that it is necessary and proper to immediately issue a writ of habeas corpus.

The Petitioner is _____.

My relationship to the child(ren) is:

- ☐ Mother
☐ Father
☐ Non-parent with court ordered possession rights to the child(ren)

The following child(ren) are the subject of this writ:

	Child's name	Date of Birth
1.	_____	_____
2.	_____	_____
3.	_____	_____
4.	_____	_____
5.	_____	_____

The writ is directed to the **Respondent**, _____.
(Respondent's full name)

The Respondent is ordered to bring the child(ren) to this court for a hearing set for the following date and time:

Date: _____

Time: _____ a.m. / p.m.

Place/Court: _____

Address: _____

The purpose of the hearing is to determine whether the **Petitioner** has a superior right to possession of the child(ren) and whether the child(ren) should be returned to the Petitioner.

IT IS THEREFORE ORDERED by the Court that the clerk immediately issue a writ of habeas corpus.

SIGNED on _____ (date).

JUDGE PRESIDING

Cause No. _____

In the Interest of the following Minor Child(ren):

(Print the full name of each child.)

1. _____
2. _____
3. _____
4. _____
5. _____

In the _____
Court Number

- ☐ District Court
☐ County Court at Law of

_____ County, Texas

Order Granting or Denying the Return of the Child(ren)

On this date, _____, a hearing was held to determine whether the child(ren) who are the subject of this suit should be returned to the possession of the Petitioner.

1. Appearances

Petitioner, _____, appeared in person and announced ready.
(Petitioner's full name)

Respondent, _____:
(Respondent's full name)

(Check one.)

- ☐ Appeared in person and announced ready, or
☐ Although properly cited did not appear and defaulted.

2. Findings

The Court examined the pleadings and heard the evidence and arguments of each party. All necessary prerequisites of law have been met and the court has proper jurisdiction. All parties required to have notice received proper notice or made an appearance.

(Check (1) if the Petitioner's request was granted; check (2) if it was denied; if it was denied, check the reason why it was denied.)

(1) ☐ Relief Granted

The court finds that the following child(ren) have been illegally restrained by the Respondent:

	Child's name	Date of Birth
1.	_____	_____
2.	_____	_____
3.	_____	_____
4.	_____	_____
5.	_____	_____

IT IS ORDERED that Respondent deliver the child(ren) to the possession of the Petitioner as follows:

Date of return: _____

Time of return: _____

Place of return: _____

IT IS ORDERED that the Respondent is responsible for paying all court fees or costs.

OR

(2) ☐ Relief Denied

(Check (A) if the court denied Petitioner's request because he/she does not have the superior right of possession; check (B) if the court denied Petitioner's request for some other reason.)

☐ (A) The court finds that the Petitioner does not have the superior right of possession, and that the child(ren) have not been illegally restrained by the Respondent. **IT IS ORDERED** that all relief requested by the Petitioner is denied.

(Check this finding, if applicable.)

☐ The court finds that the previous order relied upon by Petitioner was granted by a court that did not give the contestants reasonable notice of the proceeding and an opportunity to be heard. Texas Family Code 157.372.

OR

☐ (B) Although the Petitioner does have the superior right of possession, the court exercises its lawful discretion and denies the return of the child to the Petitioner on the following basis:

(Check one.)

☐ (i) The court finds that there is a serious and immediate question concerning the welfare of the child(ren), should the child(ren) be returned to the Petitioner. Texas Family Code 157.374.

☐ (ii) The court finds that Petitioner has, by consent or acquiescence, relinquished actual possession and control for not less than six months immediately preceding the filing of the petition for writ of habeas corpus. Texas Family Code 157.373.

IT IS ORDERED that all relief requested by the Petitioner is denied.

All relief not expressly granted is denied.

SIGNED on _____.

JUDGE PRESIDING