



HABEAS PETITION PRO SE PACKET

Summary

What is a writ?

A writ is an order from a court, directing someone to either do something or abstain from doing something. A writ is an extraordinary remedy, only applicable when there are no other avenues for relief.

Which pro se writ packet do I need?

OPD has three pro se writ packets: (1) habeas, (2) procedendo and mandamus, and (3) prohibition. Below is a quick summary of each packet’s use. Read each packet for more information.

Table with 2 columns: 'If you...' and 'then you should use the...'. It maps specific legal needs to the appropriate writ packet.



Habeas Petition

*General Habeas Petitions for Common Pleas, Court of Appeals, and Ohio Supreme Court,
and Habeas Petitions for Excessive Bail for Court of Appeals and Ohio Supreme Court*

What is a petition for a state writ of habeas corpus, and why would I file one?

In the most basic terms, a writ of habeas corpus is an order from an Ohio state court ordering that a person be released from custody, including prison or supervision. A writ of habeas corpus is an attack on the power of the person detaining someone else. It is not a direct attack on any underlying conviction.

There are two times you can obtain a writ. The first is when the order the warden or supervision officer is using to keep you under their control does not give that person power to control you. This can be because that court didn't have the power to issue the order, that the order doesn't give the warden or supervising authority over you, that you have completed the sentence in the order, or the like. The second is when you believe the bail the trial court has set while you are waiting for trial is too high. You cannot win a writ by arguing that the trial court considered evidence it should not have, failed to consider evidence it should have considered, or the like.

Where can I file a state writ of habeas corpus?

You can file in a common pleas court, a court of appeals, or the Ohio Supreme Court. Because a writ challenges the power of the person detaining you, you must file your petition in a court that has power over that person. The Ohio Supreme Court has authority over anyone detaining people in Ohio, so you can always directly file in that court. If you file in the common pleas court or appeals court, you have to file in the court whose district covers the place at which the person detaining you works. If you are in jail, that means the sheriff. If you are in prison, that means the warden. If you are under supervision, that means your parole officer.

How do I choose which court to file in?

There is rarely one right answer to this question. One major difference is that common pleas court judges only have the power to issue a writ under statute—R.C. 2725. That means a common pleas court judge can only grant relief if you are in someone's physical custody (like jail or prison), if you are entitled to immediate release if you win, and if you have completed the term of incarceration in your sentencing entry or if the court that sentenced you has no power to do so. As a result, you cannot use a habeas corpus writ in a common pleas court to ask that the Parole Board consider you again for parole or sooner for parole. You also cannot ask for release from supervision, like parole or postrelease control. You cannot argue mistakes in the way the court used its power—you have to show that the court had no power to send you to prison for as long as it did or that you have completed the prison term as written in your sentencing entry.

You can ask a court of appeals or the Ohio Supreme Court to do anything a common pleas court can do, but those courts also have some discretion to release you from supervision. Nonetheless, you still cannot file in those courts until you are entitled for release.

The Ohio Supreme Court has jurisdiction over the entire state, so if you aren't sure where the person who detains you works, you should consider filing there.

If you file in the common pleas court, you can appeal a decision to the court of appeals. If you aren't satisfied with that decision, you have to ask the Ohio Supreme Court to exercise its discretion to hear your case. If you file in the court of appeals, you can appeal to the Ohio Supreme Court as of right. If you file in the Ohio Supreme Court, there is no further appeal of any issue of Ohio law.

If you lose, both the common pleas court and court of appeals will almost certainly explain why they rejected your claim. But the Ohio Supreme Court sometimes dismisses petitions for writs "sua sponte" (on their own) without any explanation.

What must I include?

You must include certified copies of any document that is being used as a reason to detain you. That means the indictment and the entry denying you affordable bail if you are waiting for trial. If you are in prison, you must include a certified copy of your judgment entry of sentence. If you are in prison because of an alleged community control, postrelease control, or parole violation, you should include a certified copy of any court document and an uncertified copy of any other document used to justify your detention. Your petition should refer to any attached document.

You also must verify your complaint, which is done by swearing the information in it is true. That means you must have the last page notarized. If you are NOT able to pay the filing fee, you must also include an affidavit of civil filings, an affidavit of indigency and financial certificate. Each of the affidavits must also be notarized.

Which form should I use?

This packet has one form for a petition to challenge other detention. You must decide which court is the best for you to file in and fill in the packet based on that court's information.

This packet has one form to argue that your bail is too high. You can file in either the court of appeals or the Ohio Supreme Court. In theory, you can file in common pleas court, but because that's the court that set the bail you are challenging, most people do not file there.

The additional affidavits are at the end of the packet.

INSTRUCTIONS

1. To prepare the cover page of your application, you need certain information. This includes the name and address of the entity you are seeking to compel into action. Leave the case number blank if you are filing in the Ohio Supreme Court.
2. Your complete petition includes **all of the following**:
 - (1) PETITION FOR A WRIT OF HABEAS CORPUS; and if you are not able to pay the filing fee, the following:
 - (2) AFFIDAVIT OF INDIGENCY; and
 - (3) AFFIDAVIT OF CIVIL FILINGS (with accompanying exhibit(s) for each civil filing); and
 - (4) FINANCIAL CERTIFICATE.

If you fail to complete any of these documents, your petition may be dismissed. This packet includes forms for each of the above documents that you can use to complete your petition.

3. When you are finished preparing the petition, **you will need to sign the petition and all affidavits in the presence of a notary.** See your unit staff for notary service. Do not sign any affidavits until you see the notary; they must be signed in the notary's presence.
4. You need to get the Financial Certificate completed by your institution's cashier, NOT YOU!
5. Make three (3) copies of the petition/affidavits/certificate. Some courts require more copies, so make sure to check the court's local rules to see how many copies you need to send.

Mail the forms as follows (if the local rules are different than these instructions, follow the local rules):

TO THE CLERK OF COURTS:

- Mail the original application, plus two (2) copies to the clerk of courts for the court where you are filing your writ.
- Mark one copy of each document "time-stamp and return." **Do not** mark the original form.
- If the judge is the person you are filing against, send them a copy of your application and any other documents you may file. Otherwise, **do not** mail anything directly to the judge.
- If you do not know the mailing address of the clerk of courts, you can find it in your prison orientation packet or by visiting your prison's law library.

TO THE OPPOSING PARTY AND COUNSEL:

Mail one (1) copy of the application to whomever you are filing the petition against and their attorney if they have one.

PETITION FOR A WRIT OF HABEAS CORPUS

1. Relator is _____ (name), who is being detained at _____ (name of institution), based on a conviction journalized in the _____ County Court of Common Pleas on _____ (date). A certified copy of the journal entry of sentence is attached as Exhibit 1 to this petition.
2. Respondent is the warden of _____ (name of institution), who has custody and control of Relator under color of the journal entry of sentence and who is restraining his liberty.
3. Relator is entitled to immediate release.
4. Statutory Jurisdiction: A person who is “unlawfully restrained of his liberty” is entitled to “prosecute a writ of habeas corpus, to inquire into the cause of such imprisonment, restraint, or deprivation.” R.C. 2725.01. This Court is authorized to grant a writ of habeas corpus, because _____ (name of institution) is located within this Court’s jurisdiction. R.C. 2725.02; R.C. 2725.03.
5. Constitutional jurisdiction: If this petition is being filed in the Ohio Supreme Court a person alleging unlawful detention may seek a writ of habeas corpus from this Court pursuant to Article IV, Section 2(B)(1)(c) of the Ohio Constitution. If this petition is being filed in an appellate court, a person alleging unlawful detention may seek a writ of habeas corpus from this Court pursuant to Article IV, Section 3(B)(1)(c) of the Ohio Constitution. This Court is authorized to grant a writ of habeas corpus, because _____
_____ (name of institution – leave blank if filing in a court of common pleas) is located within this Court’s jurisdiction.

**PETITION FOR A WRIT OF HABEAS CORPUS
(EXCESSIVE BAIL)**

1. Relator is _____ . (name)
2. Relator is being detained at _____ (name of institution) based on charges filed in the _____ County Court of Common Pleas. A certified copy of the indictment is attached as Exhibit 1.
3. Respondent is Judge _____, who is presiding over the case against Relator.
4. Relator has been charged with _____

5. Relator is incarcerated because Respondent imposed an excessive bond as a condition of release. Respondent issued its decision setting bail on _____ (date), and a certified copy of the judgment entry is attached as Exhibit 2.
6. This Court reviews the trial court’s decision de novo. *Mohamed v. Eckelberry*, 162 Ohio St.3d 583, 2020-Ohio-4585, 166 N.E.3d 1132, ¶ 4-5.
7. When a defendant is eligible for bail, a court must release that defendant “on the least restrictive conditions” that “will reasonably assure” appearance in court, public safety, and the integrity of the criminal-justice process. R.C. 2937.011(A). Pretrial release may involve several conditions, both financial and nonfinancial. Financial conditions of release must be

“related to the defendant’s risk of non-appearance, the seriousness of the offense, and the previous criminal record of the defendant. Any financial conditions shall be in an amount and type which are least costly to the defendant while also sufficient to reasonably assure the defendant's future appearance in court.” *Id.* The Eighth Amendment to the United States Constitution and Article 1, Section 9 of the Ohio Constitution prohibit “[e]xcessive bail.” A bail bond that is “higher than an amount reasonably calculated to” assure the accused's presence in court is “excessive.” *Stack v. Boyle*, 342 U.S. 1, 5, 72 S.Ct. 1, 96 L.Ed. 3 (1951).

8. Because Relator is not charged with a capital offense, Relator is entitled to bail in an amount that is attainable yet high enough to compel appearance in court when required. *Id.*; R.C. 2937.

9. The bail Respondent required is excessive because _____

10. Relator requests an evidentiary hearing before this Court or a magistrate of this Court. *See Mohamed* at ¶ 1.

WHEREFORE, Relator requests the following relief pursuant to the Eighth Amendment to the United States Constitution, Article I, Section 9 of the Ohio Constitution, and Article IV, Section 3(B)(1)(c) of the Ohio Constitution:

- 1) That a writ of habeas corpus issue to the Respondent directing Respondent to impose a bail of no greater than \$_____;
- 2) Only if this Court declines to initially grant the first request for relief, that an alternative writ issue or that this Court order an evidentiary hearing before this Court or a magistrate of this Court; and;
- 3) Any other relief to which Relator may be entitled.

Respectfully submitted,

RELATOR, PRO SE

Institution

Address

City, State, and Zip Code

STATE OF OHIO)
) ss:
COUNTY OF _____)

I swear that the allegations in the foregoing complaint are true.

RELATOR, PRO SE

Signed and sworn before me this ____ day of _____, 20__.

NOTARY PUBLIC

_____, Relator, being duly sworn states:
(Name and Inmate Number)

1. My name is _____, and I am inmate #_____.

I am incarcerated at the _____ Correctional Institution located in _____, Ohio.

2. In the previous five years, I have filed the following civil actions in a court of law (if you have not filed any civil lawsuits, write "NONE"):

If necessary, details of civil filings follow and are incorporated into this Affidavit.

3. I have not filed any other civil actions.

I hereby declare that all the information contained in this affidavit is true and correct.

RELATOR, PRO SE

Sworn to and subscribed before me this ____ day of _____, 20____.

NOTARY PUBLIC

Civil Filing Information

Case Caption: _____
(Name v. Name)

Case Number: _____

Court Where this Case was Filed: _____

Names of all Parties to the Case: _____

Brief Description of the Civil Action or Appeal: _____

Brief Description of Case Outcome/Result: _____

- | | | |
|-----|-----|---|
| Yes | No | |
| ___ | ___ | Was the case you listed above dismissed as frivolous or malicious? |
| ___ | ___ | Did the Court fine or otherwise reprimand you for frivolous conduct? |
| ___ | ___ | Did the Court fine or otherwise reprimand your attorney (if you had one) for frivolous conduct? |
| ___ | ___ | Have you ever been labeled a vexatious litigator? |

(Copy this form and complete a separate copy for each civil filing in the last five years.)

_____, Relator, being duly sworn says:
(Your Name)

1. I am inmate # _____ incarcerated in the _____
(Name of institution where you are incarcerated)
Correctional Institution, _____, Ohio.
(City)

2. I earn \$ _____ per month, and currently have \$ _____ in my prison commissary account. A statement setting forth the balance of my inmate account for each of the preceding six months, as certified by the institutional cashier, is attached.

3. Here is a list of all other cash and things of value that I currently own (write “nothing” if you have no other case or things of value):

4. I am indigent, unable to pay the Court’s full filing fees and security deposit, and seek a waiver of the prepayment of the fees and deposit.

Affiant further sayeth naught.

RELATOR, PRO SE

Sworn to and subscribed before me this ____ day of _____, 20____.

NOTARY PUBLIC

FINANCIAL CERTIFICATE

(To be completed by the institution of incarceration)

State of Ohio)
)
County of _____)

SS:

_____, Cashier for _____,
(Name of Institutional Cashier) (Name of Institution)

being duly sworn states as follows:

I certify that _____ has the sum of
(Inmate Name and Number)

\$ _____ on account to their credit at _____.
(Account Balance) (Name of Institution)

I further certify that _____ has the following
(Inmate Name)

securities to their credit: _____

(List of Inmate Securities)

Further, I certify the balance in _____'s account for each
(Inmate Name)
of the previous six months was as follows:

_____	\$ _____	_____	\$ _____
(Month, Year)	(Account Balance)	(Month, Year)	(Account Balance)
_____	\$ _____	_____	\$ _____
_____	\$ _____	_____	\$ _____

Date

Signature of Authorized Officer

Printed Name of Authorized Officer

Sworn to and subscribed before me this ____ day of _____, 20__.

NOTARY PUBLIC