

CHAPTER 5: HABEAS CORPUS

A. INTRODUCTION

This section discusses the writ of habeas corpus in Louisiana. The writ of habeas corpus is a legal action that requires a person under arrest to be brought before a judge or into court to determine whether they are being lawfully held in custody. If they are being unlawfully held, they must be immediately released. The *JLM* has other chapters that provide a more thorough introduction to habeas corpus, including federal habeas corpus¹ and state habeas corpus generally.² This chapter will explain how, when, and where to file your petition for a writ of habeas corpus, as well as the circumstances in which Louisiana law allows you to be released on habeas grounds.

B. PROCEDURE FOR FILING

1. Eligibility—who may file?

Habeas corpus in Louisiana is available to anyone in custody as part of an ongoing or expected criminal proceeding.³ However, in Louisiana, habeas corpus is not available for post-conviction relief, which is governed by a separate set of rules and procedures.⁴ In other words, you can only file a writ of habeas corpus if you have not yet been convicted, and you cannot use habeas corpus to challenge either a conviction or a sentence.⁵

There are some limited circumstances in which you may use a habeas petition post-conviction, as long as you are not challenging your conviction or your sentence. For instance, a habeas petition has been used to argue that the time the petitioner had already spent in custody had been miscalculated.⁶ Of crucial importance, though, was the fact that the petitioner was arguing that he was entitled to immediate release: had he not argued that he was entitled to immediate release, the “proceeding would not be a post-conviction habeas corpus because the prisoner would not be unlawfully detained at that point in time.”⁷ Even if you can fit within one of these exceptions, you cannot petition for habeas as long as you can appeal or as long as your appeal is pending.⁸

a. Venue—Where to File Your Application

Your application for a writ of habeas corpus should be filed in the district court in the parish where you are in custody.⁹ This is different from the procedure for filing post-conviction challenges, which are filed in the parish in which you were convicted.¹⁰ If your habeas petition involves challenging any

¹ See the main *JLM*, Chapter 13, “Federal Habeas Corpus.”

² See the main *JLM*, Chapter 21, “State Habeas Corpus: Florida, New York, and Texas.”

³ LA. CODE CRIM. PROC. ANN. art. 351 (2017) (defining “custody” as “detention or confinement as a result of or incidental to an instituted or anticipated criminal proceeding”).

⁴ The Code of Criminal Procedure explicitly provides that habeas corpus is “not available to persons entitled to file an application for post[-]conviction relief[.]” LA. CODE CRIM. PROC. ANN. art. 351 (2017); see also *Madison v. Ward*, 2000-2842, pp. 5–6 (La. App. 1 Cir. 7/3/02); 825 So. 2d 1245, 1250–1251 (noting that habeas corpus “is not the proper procedural device for petitioners who may file applications for post-conviction relief”). For information about post-conviction relief, see Chapter 2 of the *Louisiana State Supplement*; LA. CODE CRIM. PROC. ANN. art. 924 (2017).

⁵ *Madison v. Ward*, 2000-2842, p. 6 (La. App. 1 Cir. 7/3/02); 825 So. 2d 1245, 1251.

⁶ See *State ex rel. Bartie v. State*, 501 So. 2d 260, 263–264 (La. Ct. App. 1986) (petitioner argued that he was not given credit for time spent in a halfway house or on parole).

⁷ *State ex rel. Bartie v. State*, 501 So. 2d 260, 264 n.3 (La. Ct. App. 1986); see also *Sinclair v. Kennedy*, 96-1510, p. 7 (La. App. 1 Cir. 9/19/97); 701 So. 2d 457, 461 (holding that petitioner’s argument that the parole board did not afford him due process in considering his application was a proper subject for habeas petition).

⁸ LA. CODE CRIM. PROC. ANN. art. 363 (2017); *State v. Linkletter*, 345 So. 2d 452, 460 (La. 1977).

⁹ LA. CODE CRIM. PROC. ANN. art. 352 (2017) (“Habeas corpus proceedings by or on behalf of a person in custody shall be instituted in the parish in which the person is in custody.”); *State ex rel. Lay v. Cain*, 96-1247, p. 4 (La. App. 1 Cir. 2/14/97); 691 So. 2d 135, 137.

¹⁰ LA. CODE CRIM. PROC. ANN. art. 352, cmt. (b) (2017).

action of the parole board, it should be filed in East Baton Rouge Parish, regardless of where you are incarcerated.¹¹

b. The Application—What to Include

Your application for a writ of habeas corpus should include the following items:¹²

- 1) Your name and the place where you are being held.
- 2) The name of the person holding you, or some description of him.
- 3) A statement of the facts on which your petition is based. In other words, the facts that you think entitle you to a writ of habeas corpus. This statement can be supported by affidavits filed with the petition.

Your application should be addressed to the court you think has jurisdiction to hear it (that is, the district court in the district where you are being held in custody) and should bear your signature. If you are being held in custody under a court order, you should attach a copy of the court order, if possible.¹³

Once the court receives your application, it will consider whether to grant the writ of habeas corpus (whether to instruct the person holding you in custody to bring you before the court and respond to your allegations). Unless the court can tell from your petition itself that you are not entitled to be released, it will grant the writ.¹⁴ Once the writ is granted, the custodian will have a maximum of 72 hours to file an answer.¹⁵ The custodian will then provide an answer explaining why he is entitled to keep you in custody and will bring you to court for a hearing.¹⁶

C. HEARING PROCESS

At the hearing, the court will hear why you think you are entitled to immediate release, as well as why your custodian thinks you are not entitled to release. The exact character of the hearing will vary depending on what the court thinks is necessary to decide your issue. Generally, there is no constitutional right to be represented by counsel in habeas hearings,¹⁷ but in Louisiana you *are* entitled to be represented by counsel if your hearing is evidentiary.¹⁸ An evidentiary hearing is an adversary proceeding in which you present your claims and introduce testimony and other evidence to support them.¹⁹

D. WHEN RELIEF MAY BE GRANTED

If you are being held in custody under a court order, you can get relief by showing any one of the following things.²⁰

¹¹ State *ex rel.* Lay v. Cain, 96-1247, p. 4 (La. App. 1 Cir. 2/14/97); 691 So. 2d 135, 137 (noting that all actions contesting computation of sentences, discharge, and good time dates should be filed in the East Baton Rouge Parish).

¹² LA. CODE CRIM. PROC. ANN. art. 353 (2017).

¹³ If you have asked for a copy of the court order and have not been given one you should make note of this in your application. LA. CODE CRIM. PROC. ANN. art. 353 (2017).

¹⁴ LA. CODE CRIM. PROC. ANN. art. 354 (2017).

¹⁵ LA. CODE CRIM. PROC. ANN. art. 354 (2017).

¹⁶ LA. CODE CRIM. PROC. ANN. art. 357 (2017). If the custodian cannot bring you before the court, he is required to tell the court why, and if the court is not satisfied with his explanation the court can require the custodian to immediately produce you. LA. CODE CRIM. PROC. ANN. art. 359 (2017).

¹⁷ Pennsylvania v. Finley, 481 U.S. 551, 555, 107 S. Ct. 1990, 1993 (1987).

¹⁸ See State *ex rel.* Cherry v. Cormier, 281 So. 2d 99, 103 (La. 1973) (“[E]xcept under special circumstances where counsel will not be of assistance, appointment of counsel to represent a habeas petitioner at his evidentiary hearing is necessary to insure a full, fair, and impartial proceeding.”).

¹⁹ State *ex rel.* Cherry v. Cormier, 281 So. 2d 99, 103 (La. 1973); LA. CODE CRIM. PROC. ANN. art. 930 (2017) (“An evidentiary hearing for the taking of testimony or other evidence shall be ordered whenever there are questions of fact which cannot properly be resolved pursuant to Articles 928 [‘Dismissal upon the pleadings’] and 929 [‘Summary disposition’].”).

²⁰ LA. CODE CRIM. PROC. ANN. art. 362 (2017).

- 1) The court has exceeded its jurisdiction.
- 2) The custody was lawful, but has become unlawful.
- 3) The order for custody is legally deficient.²¹
- 4) The order for custody imposes an illegal custody.
- 5) The custodian is not the person allowed by law to keep you in custody.
- 6) You have been denied your right to a hearing in an extradition case (involves the transfer of prisoners across international borders).
- 7) You are being held in custody prior to trial in violation of due process of law.

Most habeas petitions are based on subsection 2), arguing that custody may have been lawful at one time (for instance, when the initial arrest was made) but has since become unlawful. If you are arrested without a warrant, Louisiana law requires that a judge determine that there is probable cause to keep you in custody within 48 hours of your arrest.²² State law also requires that you be brought before a judge so counsel can be appointed to you within 72 hours of your arrest; however, Saturdays, Sundays and legal holidays do not count toward those 72 hours.²³ If the person holding you in custody fails to do either of these things, your initially lawful custody becomes unlawful and you are entitled to be released on a habeas petition.²⁴ Being released on habeas grounds does not, however, give you absolute immunity; you can be rearrested for the same conduct.²⁵

This provision is also sometimes used to challenge post-conviction parole issues. While you cannot use a habeas petition to challenge the validity of your conviction or your sentence, you can sometimes use it to challenge certain parole issues if you think you are entitled to immediate release. Courts have allowed the use of habeas petitions to challenge a transfer from jail to prison²⁶ and the computation of a release date,²⁷ but in recent years it has become harder to use habeas to challenge actions of the parole board.²⁸ If you are going to use habeas to challenge parole board actions, you must argue that you are entitled to immediate release, and you cannot challenge the validity of your sentence or a time computation.²⁹

E. BURDEN OF PROOF

If you are being held without a court order, the burden is on the person holding you (the custodian) to prove that the detention is legal and that you should not be released.³⁰ But if you are being

²¹ While you can use this provision to challenge the warrant used for your arrest, Louisiana law allows the court to simply fix whatever defect the warrant had and keep you in custody as long as there is probable cause. LA. CODE CRIM. PROC. ANN. art. 364 (2017).

²² LA. CODE CRIM. PROC. ANN. art. 230.2 (2017).

²³ LA. CODE CRIM. PROC. ANN. art. 230.1 (2017).

²⁴ See *State v. Wallace*, 09-1621, pp. 9–10 (La. 11/6/09); 25 So. 3d 720, 726–727 (holding that violation of the 48-hour rule cannot be cured by a later probable cause determination); *State v. Chaney*, 384 So. 2d 442, 445–447 (La. 1980) (ordering defendant’s release on habeas petition for failure to comply with the 72-hour rule).

²⁵ LA. CODE CRIM. PROC. ANN. art. 367 (2017); *State v. Watkins*, 399 So. 2d 153, 156 (La. 1981) (indicating that warrantless rearrest after release on habeas grounds is not justifiable without probable cause or without any exigent circumstances that made it impossible to obtain a warrant); *State v. Wallace*, 392 So. 2d 410, 413–414 (La. 1980) (holding that an arrested person released on habeas grounds for violation of the 72-hour rule does not enjoy immunity from rearrest).

²⁶ *State ex rel. Lay v. Cain*, 96-1247, p. 3 (La. App. 1 Cir. 2/14/97); 691 So. 2d 135, 137.

²⁷ *Mole v. Louisiana Board of Parole*, 93-1524 (La. App. 1 Cir. 5/20/94); 637 So. 2d 785, 786.

²⁸ Interpreting the Corrections Administrative Remedy Procedure, *Madison v. Ward* concluded that habeas petitions were not the proper procedure for challenging decisions of the parole board unless the board denied the inmate’s right to a hearing. *Madison v. Ward*, 2000-2842, p. 5 n.7 (La. App. 1 Cir. 7/3/02); 825 So. 2d 1245, 1250 n.7 (“[P]leadings challenging actions of the parole board other than failure to act in accordance with [LA. REV. STAT.] 15:574.9, whether styled as writs of habeas corpus or captioned in some other fashion, should be dismissed . . .”).

²⁹ *Madison v. Ward*, 2000-2842, p. 11 (La. App. 1 Cir. 7/3/02); 825 So. 2d 1245, 1254 (“A prisoner claiming he is entitled to *immediate release* under [art. 362] (on grounds other than those relative to time computations) would raise his challenge by writ of habeas corpus . . .”); *Ferrington v. Louisiana Board of Parole*, 2003-2093, p. 4 (La. App. 1 Cir. 6/25/04); 886 So. 2d 455, 457.

³⁰ LA. CODE CRIM. PROC. ANN. art. 365 (2017); *State v. Antell*, 344 So. 2d 1058, 1058 (La. 1977) (“[I]f [defendant] is not incarcerated by virtue of an indictment . . . the burden of proof will be on the state to show probable cause.”).

held under a court order, the burden is on you to prove that the detention is illegal and that you should be released.³¹

F. NO APPEAL

Generally, you cannot appeal a district court's ruling on your habeas petition. The Louisiana Code of Criminal Procedure says that higher courts simply do not have jurisdiction to hear appeals of habeas petitions.³² For the most part, courts stick to this rule. Courts will often refuse to hear appeals of habeas cases.³³

G. CONCLUSION

If you believe that you are being unlawfully held in custody, you may file an application for a writ of habeas corpus in the district court of the parish where you are being held. While a writ of habeas corpus may be used to challenge the right of your custodian to keep you in custody, it cannot be used to challenge the validity of your underlying conviction or sentence. The most common type of habeas petition asserts that a prisoner's once lawful custody has become unlawful. Lawful custody may become unlawful if a prisoner is not brought before a judge or appointed counsel within the time required by state law. Before filing an application for a writ of habeas corpus, be sure to familiarize yourself with the habeas corpus chapters of the main *JLM*, Chapters 13 and 21.

³¹ LA. CODE CRIM. PROC. ANN. art. 365 (2017).

³² LA. CODE CRIM. PROC. ANN. art 369 (2017); *State v. Sheppard*, 350 So. 2d 615, 626 (La. 1977) (“It is well settled that this court does not have appellate jurisdiction of habeas corpus proceedings in criminal cases.”).

³³ *See, e.g.*, *State v. Sheppard*, 350 So. 2d 615, 626 (La. 1977); *State v. Howard*, 281 So. 2d 701, 702 (La. 1973) (“Article 369 [of the Louisiana Code of Criminal Procedure] plainly provides that there shall be no appeal from a judgment refusing to grant release upon a petition for a writ of habeas corpus. This bill, therefore, presents nothing for our review.”); *State v. Ames*, 190 So. 2d 223, 225; 249 La. 685, 691 (La. 1966). On rare occasions, however, appellate courts will entertain appeals of habeas petitions by exercising their power of supervisory jurisdiction. *See State v. Roberts*, 90-1308 (La. 10/12/90); 568 So. 2d 1017, 1018 (reversing district court's denial of petition for habeas corpus and ordering petitioners' release when they were arrested more than six years after their convictions were affirmed); *State ex rel. Armistead v. Phelps*, 365 So. 2d 468, 468 (La. 1978) (granting supervisory writ on appeal of district court denial of habeas petition because district court did not afford petitioner a hearing or consider the merits of petition); *State ex rel. Smith v. Henderson*, 315 So. 2d 275, 275 (La. 1975) (reaching merits of habeas petition as an exercise of supervisory jurisdiction and then rejecting petition); *State ex rel. Lay v. Cain*, 96-1247, p. 4 (La. App. 1 Cir. 2/14/97); 691 So. 2d 135, 138 (concluding that action was a petition for habeas corpus rather than an action for post-conviction relief, vacating trial court's dismissal of action, and remanding to trial court for further proceedings). The Louisiana constitution gives higher courts “supervisory jurisdiction” over all criminal cases occurring within their circuits (in the case of the courts of appeals) or in the state (in the case of the supreme court). LA. CONST. art. V, § 10 (“[A court of appeal] has supervisory jurisdiction over cases which arise within its circuit.”); LA. CONST. art. V, § 5(A) (“The supreme court has general supervisory jurisdiction over all other courts.”). Yet, whether this supervisory jurisdiction permits appellate review of habeas petitions is a tricky question. *Compare* *United States ex rel. Jones v. Henderson*, 293 So. 2d 909, 909 (La. App. 3 Cir. 1974) (“A Louisiana court of appeal has neither appellate nor supervisory jurisdiction over matters arising out of commitment because of criminal proceedings.”), *with* *State ex rel. Lay v. Cain*, 96-1247, p. 4 (La. App. 1 Cir. 2/14/97); 691 So. 2d 135, 138 (“This court has no appellate jurisdiction over a judgment refusing to grant a release upon a petition for a writ of habeas corpus Since we have the record before us, however, we shall treat this matter as a timely application for the exercise of our supervisory jurisdiction”).