

Clark County Sheriff's Office
707 W. 13th Street
Vancouver, WA 98660-2711
(360) 397-2211

Child Recovery Unit
900 W. 13th Street
Vancouver, WA 98666
(360) 397-2108

**Clark County Sheriff's Office
Writ of Habeas Corpus Policy
& Procedures**

These policies and procedures have been carefully developed by the Clark County Sheriff's Office with the assistance of Clark County Bar Association family law lawyers, the Clark County Prosecuting Attorney's Office, the Clark County Superior Court Bench and the Clark County Sheriff's Child Recovery Unit. The primary focus of these procedures is to protect the child and to provide professional service to the community.

TABLE OF CONTENTS

Checklist for obtaining a Writ of Habeas Corpus.....2

Lawful Use & Justification of this Emergency Order.....3

Coordinating with the Clark County Sheriff's Office Child Recovery Unit.....4

Filing & Service of the Petition.....5

Jurisdictional Issues.....7

Resource List.....8

This writ packet contains information and/or documents the applicant may need in order to file for a Writ of Habeas Corpus in Clark County, Washington. This packet is provided for general educational purposes only. It is not intended to be, nor should it be considered, legal advice. Persons should consult their own attorney for legal advice specific to their situation. No special relationship or promises are created or implied through this educational packet.

SECTION ONE: Checklist for Obtaining a Writ of Habeas Corpus.

Use this **Checklist** as an **overview** of what information the applicant will need to file a Petition for a Writ of Habeas Corpus. It is **IMPORTANT** that you read and follow the **comprehensive directions** included with this packet. Failure to do so may lead to the rejection of your Petition, delays in obtaining a writ, and unnecessary added costs.

The **writ statute does not authorize a direct transfer of custody**. A recovered child will stay in custody of the Child Recovery Unit Detective or Children’s Protective Services until the Return Hearing is held. A Writ of Habeas Corpus directs the Clark County Sheriff to bring the child before the court. The other party/respondent is notified of the hearing and given the opportunity to appear and contest the transfer of the child. The Sheriff will release the child as directed by the court at the conclusion of the Return Hearing.

- Applicant and/or attorney have **reviewed the case** and or circumstances with a Clark County Sheriff’s Office (CCSO) **Child Recovery Unit Detective**.
- Applicant must be able to document a **pre-existing legal right to custody** of the child, paramount to the right of the other parent/party.
- The **Petition for Writ and supporting documentation** must demonstrate that the circumstances **constitute an EMERGENCY** that justifies the issuance of an extraordinary order in lieu of other methods consistent with **RCW Chapter 7.36** and the Uniform Child Custody Jurisdiction Act (**UCCJA**). An applicant may want to consider sending a warning letter, using an alternative dispute resolution process, obtaining a Restraining Order or an Order to Show Cause regarding contempt, obtaining an Order to Shorten Time, and/or filing a Shelter Care Petition;
- Applicant and/or attorney has completed the approved forms available at the Clerk’s Office including the Sealed Source Missing Child Information Questionnaire.
- Pay the filing fee and present the completed forms to either the Clark County Superior Court Presiding or Family Law Judge.
- After the Order to Issue Writ has been signed by the Judge, obtain certified copies of the orders.
- Deliver certified copies to the Sheriff’s Office Civil Unit located in the basement of the Clark County Sheriff’s Office Justice Center adjacent to the courthouse.
- Pay the Sheriff’s Office Civil Unit the fee for service of the writ and mileage.
- The Sheriff’s Office serves only writs issued by a Clark County Superior Court Judge. In the event a writ has been issued by another State or county, the applicant will be required to obtain a Writ issued by the Clark County Superior Court.

SECTION TWO: Lawful Use & Justification of this Emergency Order

- A. Pre-existing Legal Right.** A person bringing an action in habeas corpus must affirmatively show a **pre-existing legal right to custody** and, where one parent seeks custody of minor child from the other parent by Writ of Habeas Corpus, the writ-seeking parent must make a prima facie showing of a **legal right to custody of the child, paramount to the right of the other parent.** The Order (i.e., parenting plan, custody order, shelter care order, etc.) giving rise to the pre-existing legal right must have been issued by a court of competent jurisdiction and may not be based upon an ex parte order. The pre-existing legal custody must have been obtained through a court action where the other party had notice of the action and the opportunity to be heard.

- B. Removal of Child Discouraged ~ Writ is a Last Resort.** The Writ and Warrant in Aid are extraordinary measures designed to be used only after other normal remedies have failed. There are many established legal procedures that address issues related to a parent's legal rights regarding custody of a child. The Writ may not be used as pretext for expediting a custody modification, bypass a hearing process or to facilitate visitation.

If a parent is **willfully defying** an established order, **an Order to Show Cause** may be a more appropriate remedy and would avoid requiring the Sheriff to take the child into custody, an act which is intrusive and potentially traumatic for a child.

- C. Writ Statute Requires Factual Basis to Support Removal.** Pursuant to the writ statute, a petition must be filed to support the issuance of a Writ and Warrant in Aid of Writ. The petition should address *who* has taken the child (*specify names & relationships, facts demonstrating* that there is good reason to believe that the child will be **removed** from the **jurisdiction** of the court, and that the child will suffer some **irreparable injury** before a hearing can occur with notice to the other party.

- D. No Direct Transfer of Custody.** While the Writ is issued Ex Parte (without notice to the other party), the statute **does not authorize** the police or any other entity to **directly transfer custody of a child from one party to another.** It commands the police to take the child and bring him or her before the court to be dealt with according to the law.

If the other party is not present when the child is taken into custody, the Sheriff will make every reasonable effort to notify the other party of the Review Hearing. The Court, whenever possible, will require both the applicant and the other party to be present at the Review Hearing. The issuance of a Writ does not guarantee that the child will be released to the applicant.

Although there is language in the Writ of Habeas Corpus that provides for placement of a child when court is not in session, this language is precautionary and rarely used. Law Enforcement will coordinate with the applicant and/or other party in or out of state to avoid the child being placed with Children's Protective Service.

SECTION THREE: Coordinating with the Child Recovery Unit.

- A. Clark County Sheriff's Child Recovery Unit.** The Child Recovery Unit specializes in local and international child abductions. The Unit has a recovery rate of 90% or better. *The primary goal of each investigation is the protection of the child.* Prior to the issuance of the Writ, the Child Recovery Unit can confirm that the required legal elements needed to support a Petition for Writ of Habeas Corpus are present. The recovery of the child is conducted so that the physical safety of all involved, including law enforcement, is protected and that the trauma to the child is minimized.

The Child Recovery Unit
900 West 13th Street
Vancouver, Washington 98660-2711
Telephone (360) 397-2108
Facsimile (360) 759-6478
E-mail: Beth.Luvera@clark.wa.gov

- B. Law Enforcement Screening.** When you contact the Sheriff's Office, an initial screening is conducted by a civilian employee or a deputy sheriff. If your circumstances meet the Child Recovery Unit's criteria, a report will be forwarded to a Child Recovery Detective. If your circumstances do not meet the Child Recovery Unit's criteria, a report of the incident will be taken.
- C. Investigation Recommended Before Petition Filed.** An applicant may decide to file a Petition for a Writ without contacting the Child Recovery Unit. However, an applicant can save **considerable** time and expense by making **preliminary contact** with the Unit. The Unit understands the legal elements that must be met for a Writ to issue. A consult with a Child Recovery Detective may reveal significant issues that must be considered before a Petition for Writ is filed. If the detective advises that it is not appropriate to continue in the process, the applicant is not precluded from filing a Petition for Writ. In appropriate circumstances, the Child Recovery Unit Detective may determine that it is appropriate to conduct a **criminal** custodial interference investigation. A criminal investigation may result in the arrest of the other party, where arrest could preclude the need for a Writ.
- D. Investigative Report.** After the issue of the Writ, the Child Recovery Unit must investigate the circumstances of each case before serving the Writ. An investigative report will be available to the **court** after the writ is issued or prior to issuance of the writ, if the court so orders. If in the course of the investigation, facts and circumstances are revealed that were not previously brought before the court, the detective, through the prosecutor's office may seek a review hearing.
- E. Communication with the Child Recovery Unit.** After the Child Recovery Unit begins its **investigation**, the Detective will keep the applicant informed. If the applicant prefers that all communication go through his or her attorney, the applicant must provide the attorney's name, address and contact information on the Missing Child Information Questionnaire.

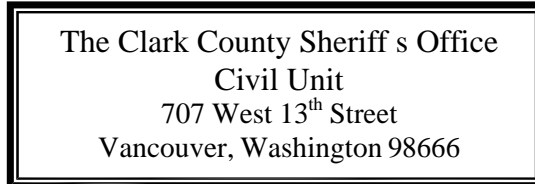
SECTION FOUR: Filing & Service of the Petition

- A. Confirm an Emergency Exists.** The Petition for Writ of Habeas Corpus must set forth circumstances that constitute an **EMERGENCY** that justifies the issuance of an extraordinary order in lieu of other remedies. It is an **Ex Parte** action presented to the either the **Presiding or the Family Law Judge** of the Superior Court of Clark County. The applicant should **NOT** alert the other party that the applicant is considering filing a petition. The element of surprise has proven to be crucial to a safe, efficient resolution of these cases. If you have an existing case in Clark County, it may be advisable to apply for the Writ under a separate cause number so anyone who is monitoring an ongoing action is not alerted.
- B. Complete Approved Forms.** To obtain a Writ, the applicant must complete a Petition for Writ of Habeas Corpus, the Missing Child Information Declaration and be able to document a *pre-existing legal right to custody* of the child *paramount* to the right of the *other parent/party*. All applicants must use the approved forms adopted April 2005. Copies of the forms are available for purchase at the Clark County Clerk's Office located on the first floor of the Clark County Courthouse. Prior to service of the Writ, the Sheriff's Office may request that a deviation from the format be reviewed by the Clark County Prosecutor's Office. **Such review may delay your case.**
- C. File Petition and Present Writ to the Court.**
1. File the original Petition, Missing Child Information Declaration with the Superior Court Clerk on the first floor of the Courthouse and pay the filing fee.
 2. Take a conformed copy of the documents you have filed and the original Order to Issue Writ to either the presiding or family law judge to determine the time and place to present the petition to the Court.
 3. If the court determines it is appropriate to issue the Writ, the judge will sign the original Order and set a date for the Return Hearing. The judge will also determine if it is appropriate to issue a Warrant in Aid of Writ. If the judge declines to issue the Warrant in Aid, the Sheriff's Office has no legal right to make forcible entry or arrest. However, the Sheriff is able to serve the Writ.
 4. If a Child Recovery investigation has been conducted prior to the Writ being issued, the Return Hearing is typically scheduled for 1:00 p.m. the next judicial day. However, if the Child Recovery Unit has not involved prior to issuance of the Writ, the Return Hearing is typically scheduled three days later. If the child is taken into custody prior to the Return Hearing, the Child Recovery detective will coordinate the scheduling of an earlier hearing.

D. Issuance of Writ. After the writ is issued, the Judicial Assistant will take the original Order to the Superior Court Clerk's Office and the Clerk will issue the Writ. After the Writ is issued, obtain and pay for certified copies of the following documents:

- | | | |
|--------------------------|--|---------------------------|
| <input type="checkbox"/> | Petition for Writ | 1 certified copy |
| <input type="checkbox"/> | Order/Warrant and Writ of Habeas Corpus | 3 certified copies |
| <input type="checkbox"/> | Missing Child Information Declaration | 1 certified copy |

E. **Service of Process.** Take the certified copies to the Clark County Sheriff's Office Civil Unit in the basement of the Sheriff's Office adjacent to the courthouse in the Justice Center. The Civil Unit receives civil process for service, prepares a registry, collects fees, and prepares a return of service. On receipt of a Writ of Habeas Corpus, the Civil Unit will forward the certified copies of the Petition, Order and Writ and Missing Child Information Declaration to the **Child Recovery Unit** for service. The Clark County Sheriff charges a fee for service of process. For all actions within Clark County, there is a \$50.00 minimum deposit.



F. **Child Recovery Unit (CRU).** To investigate the case, the detective will rely on the information provided in the completed Missing Child Information Declaration. This information is crucial to the courts and the investigation. It will be completed primarily by the applicant. The **application and, if represented, his/or her attorney** must sign the "**Affidavit & Agreement to Conditions**" contained in the Missing Child Information Declaration. The Declaration seeks acknowledgment of the following:

- Information provided is true & correct to the best of applicant/attorney's knowledge.
- Applicant and/or attorney are willing to appear for interviews/hearings as needed.
- CRU must immediately be notified if child is located. Return Hearing still required.
- Writ must not be served/presented by anyone other than Child Recovery detective.
- Intervention not authorized by CRU detective may lead to civil or criminal charges.

G. **Photographs.** It is important that the applicant provide the Sheriff's Office with a variety of photographs, *i.e., different profiles, smiling, serious, different hair styles*, of the **child** and the **absconding parent or other party**. It is useful to provide photographs of **other relatives** or friends who may directly or indirectly assist the parent/other party and photographs of **siblings** that may be with the child. A photograph of the **applicant** is also helpful.

- H. **Return Hearing.** At the conclusion of the Return Hearing, an Order on Return must be signed by the judge. It is essential that an order be issued directing the release of the child to a specific party.
- I. **Release from Protective Custody.** If the child was placed into **protective custody** and the parent will be asking **the Department of Social & Health Services (DSHS~DCFS)** to release the child to them, the Order on Return should direct **the Department of Social and Health Services for the State of Washington** to release the child to a specified party. **The State of Washington Department of Social and Health Services** must be supplied with a **certified copy** of the Order on Return Hearing.

SECTION FIVE: Jurisdictional Issues

- A. **Writs Issued by Counties Other than Clark.** Only Clark County Writs will be served in Clark County. Writs from other counties, states, or tribal authority may be used as supporting documents to obtain the issuance of a Clark County Writ.
- B. **Child Located Outside Washington State.** In the event the child is located **outside** Washington State, it should be understood that our state's writ **may not be directly enforceable** in another state. However, that state will use our writ to support the issuance of their writ. Also, the petitioning parent should be (*financially*) **prepared to travel** to the other state/country **and transport** the child back to Clark County for a Return Hearing.
- C. **Child Located Outside Clark County.** In the event the child is **located in another Washington State county**, the Clark County writ is enforceable. However, the applicant may need to comply with the local rules of the county where the child is located.

SECTION SIX: Resource List

CLARK COUNTY RESOURCES	TELEPHONE
Clark County Sheriff's Office ~ Child Recovery Unit Detective Beth Luvera 900 W. 13 th Street Vancouver, WA 98660-2711	(360) 397-2108 Facsimile: (360) 759-6478 Email: Beth.Luvera@clark.wa.gov
Clark County Sheriff's Office ~ Civil Unit 707 W. 13 th Street (Lower level) Vancouver, WA 98666	(360) 397-2225 Facsimile: (360)397-6074
Clark County Prosecutor's Office Prosecuting Attorney Art Curtis Contacts: Senior Deputy P.A. D. Hunter / J. Bryant	(360) 397-2261
Clark County Courthouse 1200 Franklin	(360)397-2000
Clark County Superior Court Clerk's Office	(360) 397-2292
Clark County Volunteer Lawyers Program Vancouver, WA 98660	(360)695-5313
Clark County Bar Association	(360)695-5975
Southwest Washington Lawyer Referral Service	(360)695-0599
YWCA (Protection Order Assistance)	(360)696-0167
Washington State of Social and Health Services Department Child Support Enforcement 5411 East Mill Plain Boulevard Vancouver, WA 98661	(360)696-6100

WASHINGTON STATE RESOURCES**TELEPHONE**

King County Sheriff's Office ~ Child Find Unit
Detective David Barnard

(206)296-4308

Washington State Patrol
Missing Children's Clearinghouse
Contact: Sue Miller

(800)543-5678

Northwest Justice Project ~ CLEAR

(888)201-1014

NATIONAL RESOURCES**TELEPHONE**

National Center for Missing & Exploited Children
Arlington, VA

(800) THE-LOST
www.missingkids.com

Operation Lookout ~ National Center for Missing Youth
Mike Gibson
Everett, WA

(800) LOOKOUT
(800) 782-SEEK
www.operationlookout.org

Team Hope
Cinnaminson, NJ 08077

(866)-305-HOPE
www.teamhope.org/