

DATE:	MAY 23, 2022
NUMBER:	Q.39
SUBJECT:	WRIT OF HABEAS CORPUS
RELATED SECTIONS:	

PURPOSE

To establish a procedure for properly receiving and returning a writ of habeas corpus.

POLICY

Any writ of habeas corpus received shall be promptly answered with a Return of Writ of Habeas Corpus (J-126) form.

PROCEDURE

- I. A writ of habeas corpus is a formal legal document ordering a detained person to be brought before a court at a specific date and time to decide the legality of the detention.
- II. Processing a writ of habeas corpus:
 - A. Make two additional copies of the writ.
 1. The first copy is given to the watch commander, who notes the appearance date and will keep the copy on file.
 2. The second copy is to be filed in the incarcerated person's custody record.
 - B. The original of the writ is to be handled the same as a remand in that the required court appearance date is entered into the computer.
 - C. The watch commander shall complete a Return of Writ of Habeas Corpus (J-126) form.
- III. Return of Writ of Habeas Corpus
 - A. The J-126 form is to be completed in duplicate with both copies signed. If the party is detained by virtue of any writ, warrant or other written authority, a copy or copies thereof must be annexed to the J-126 form. The original will be produced and exhibited to the court at the hearing (the courts have not been requiring us to surrender the original). The copy or copies must each be certified with the certification stamp.
 - B. The two signed copies of the J-126 form and a copy or copies of the written "detaining authority" shall be delivered to the dayshift watch commander, who shall complete the following:

1. Make arrangements for the court deputy, transportation deputy or other designated personnel to deliver these to the court with instructions for the court clerk to sign the original copy of the J-126 form (denoting receipt).
 2. Enter the required information in the Return on Writ of Habeas Corpus file.
 3. Have the original copy of the J-126 form filed in the incarcerated person's custody record.
- C. The original writ of habeas corpus and the incarcerated person is sent to court on the required court appearance date. The writ is then returned to the facility and filed in the incarcerated person's custody record.

IV. Non-Custodial Returns

If a writ of habeas corpus is received for a person not in custody, the watch commander shall contact the Records Division to determine to whom, at what time and place, for what cause, and by what authority such transfer took place. A J-126 form shall be prepared documenting this information. The J-126 form will be forwarded to the requesting court.

V. Petitions for Writs of Habeas Corpus

A writ of habeas corpus (i.e., an order issued by a U.S. District or Superior Court Judge) is different from a *Petition* for a Writ of Habeas Corpus, which an incarcerated person may file in court and serve on the Sheriff's Department. This policy section and the J-126 form is intended to provide guidance for responding to court-ordered writs of habeas corpus, not incarcerated person-filed petitions. Incarcerated person-filed petitions generally require no response from the Sheriff's Department unless a response is requested by a judge. In those cases where a judge requests a response, such a response shall be prepared by Sheriff's Legal Affairs.