

How to Ask for the Quick Return of a Child

When you have the Legal Right to Possession

Instructions and Forms for Writ of Habeas Corpus / Writ of Attachment

Important Note: Asking for a Writ of Habeas Corpus or Writ of Attachment can be complicated. **It is best to have a lawyer.** The lawyer Referral Service (817-336-4101) can refer you to a private lawyer. If you are low income, you may qualify for help from Legal Aid (1-800-394-9734). Regardless of income, you may obtain free legal advice at Legal Aid's Free Evening Legal Clinic (817-336-3943) or the Texas Advocacy Project (1-800-777-3247). If you choose to represent yourself, you will be responsible for understanding the law and protecting your rights.

How do I ask for the quick return of a child?

If you have the legal right to possession of a child, you can ask for the quick return of that child by filing a Petition for Writ of Habeas Corpus to Return Child with the Court.

Can I file a Petition for Writ of Habeas Corpus to Return Child in Tarrant County?

You may file a Petition if:

1. A valid court order gives you the right to have the child; and
2. You have a certified copy of the order; and
3. The child is in Tarrant County or the order was signed by a Tarrant County Court.

You may also file a Petition if:

1. There are no court orders and no court case has been filed about the child; and
2. **You are a parent** of the child; and
3. The child is being kept by someone who is **not the child's parent**; and
4. The child is in Tarrant County.

What happens after I file my Petition?

You will present your Petition to a Judge. If you meet the above legal requirements, the Judge may sign a Writ of Habeas Corpus or Order to Appear.

What is a Writ of Habeas Corpus?

A Writ of Habeas Corpus is a court order to the person in possession of a child to appear in court with the child for a contested hearing.

An Order to Appear is a court order to the person in possession of the child to appear in court without the child for a contested hearing.

The person in possession of the child is called the Respondent. The Respondent must be served with the court order by a constable or sheriff.

When is the contested hearing?

The contested hearing is usually held within 1-5 days after the Respondent is served with a Writ of Habeas Corpus or Order to Appear.

What happens at the contested hearing?

The Judge decides whether or not the child should be returned to you.

What if I believe the child will be hurt or removed from Texas before the contested hearing?

If you believe the child is in immediate danger or will be removed from Texas by the Respondent before a hearing can be held, you may ask the Court to sign a **Writ of Attachment**.

What is a Writ of Attachment?

A Writ of Attachment is an emergency court order to law enforcement to immediately pick up a child and deliver the child to you or other appropriate person or agency (such as Child Protective Services) until a hearing can be held by the Court.


How do I ask for a Writ of Attachment?

If you meet the requirements listed above to file a Petition for a Writ of Habeas Corpus, you may ask for a Writ of Attachment by checking the appropriate box on page 2 of your Petition for Writ of Habeas Corpus. You must also complete and file an Affidavit in Support of Request for Writ of Attachment.

When can a Court order a Writ of Attachment?

Only when the Court believes that the child is in immediate danger or will be removed from Texas before the contested hearing can be held. i.e.

Petition for Writ of Habeas Corpus to Return Child and Request for Writ of Attachment



Forms attached for you to use:

- Petition for Writ of Habeas Corpus to Return Child
- Affidavit in Support of Request for Writ of Attachment (use only if asking for a Writ of Attachment)
- Out-of-State Parent Affidavit (use only if you or the Respondent live outside of Texas)

Please carefully read through all the steps listed below before you begin.

Step 1 Fill out the Petition for Writ of Habeas Corpus to Return Child.

You are the Petitioner. The person in possession of the child is the Respondent. Wait until Step 3 to sign this form.

Step 2 Are you also asking for a Writ of Attachment?

Skip Step 2 if you **are not** also asking for a Writ of Attachment.

If you **are** asking for a Writ of Attachment check the appropriate box on page 2 of your **Petition for Writ of Habeas Corpus to Return Child**. If you are asking for a Writ of Attachment, you must also complete the **Affidavit in Support of Request for a Writ of Attachment**.

How do I write my Affidavit in Support of Request for Writ of Attachment?

When writing your Affidavit, include specific facts rather than conclusions. For example it would be a conclusion to write, "Respondent is physically abusive to the child." It would be a specific fact to write, "On Tuesday of this week I saw a bruise on the child's face about 3 inches long. When I asked the child about the bruise she told me the Respondent hit her in the face. When I asked the Respondent about the bruise he said....."

How do I write my Affidavit continued ...?

Be sure to include all facts that cause you to believe that the child is “imminently likely to suffer serious physical harm” or be “removed from Texas” before a hearing can be held.

NOTE: You may be required to obtain a criminal background check on yourself and the Respondent.

Step 3 Sign Petition (and Affidavit if applicable) in front of a notary.

Banks often have a notary available in their branches.

Step 4 Make 2 copies of Petition (and Affidavit if applicable).

A copy machine is located in the Tarrant County Law Library on the 4th Floor of the Old Tarrant County Courthouse. Copies are 20 cents per page.

Step 5 File Petition (and Affidavit if applicable) in the Family Law Center

Take your paperwork to the District Clerk’s Office, located on the 3rd floor of the Tarrant County Family Law Center. The clerk will keep your original documents and stamp and return your copies to you.

Be prepared to pay a filing fee. If you are low-income you may ask the Court to waive the filing fee by file a **Statement of Inability to Afford Court Costs** with your Petition. Visit the Law Library Reference Desk if you need the form.

Step 6 Go see the Court Coordinator.

Go to the Court Coordinator’s Office for the District Court in which your case is filed. Ask to make an appointment with the District Judge to hear your Petition for Writ of Habeas Corpus to Return Child (and Request for Writ of Attachment, if applicable).

What if the Respondent has a lawyer? You must tell the Court/Judge if the Respondent has a lawyer. You will be required to give the lawyer a chance to be present when you give your paperwork to the Judge. One way to do this is to fax a letter to the lawyer the day before you go to see the Court Coordinator. The letter should tell the lawyer the time and place of your appointment with the Judge and include a copy of your Petition (and Affidavit if you filed one).

Step 7 Give your paperwork to the Judge.

The Court Coordinator will either present your paperwork to the District Judge or will instruct you how to do so. The Judge will review your paperwork and listen to your testimony, if he/she wishes. The Judge may or may not sign the orders you want. The Judge will make orders based on the law and what the Judge believes is necessary to protect the child. You must be respectful of the Judge at all times, whether or not the Judge grants the orders you want.

Step 8 Take any orders signed by the Judge to the Court Coordinator.

If the judge ordered that a hearing be set, the coordinator will give you a date and time to come back for a contested hearing. If the Judge ordered that the hearing occur on the next court day after the Respondent is served, the coordinator will simply make a note regarding your case.

Step 9 Take any orders signed by the Judge back to District clerk's office, 3rd Floor

File the orders with the clerk and ask for a certified copy. Tell the clerk that you need a citation issued. There is an issuance fee of \$8 per order.

Step 10 Arrange for the Respondent to be personally served by a constable or sheriff.

There are 8 constable offices in Tarrant County. You can locate the one near you or your Respondent at:

<http://www.tarrantcounty.com/en/constables.html?linklocation=supermenu&linkname=Constables>

Be prepared to pay an additional fee for this service unless you filed a **Statement of Inability to Afford Court Costs**. Ask the constable or sheriff to notify you when the Respondent is served. If the Judge ordered the children delivered to you before the hearing, discuss this with the constable or sheriff.

Step 11 Go to Court.

Come to the courthouse on the day your case is set for hearing. Come early to find parking. When the courtroom opens, go in and tell the Bailiff you are present. The Bailiff is in uniform and usually sits at a desk near the audience.

What to bring:

- Any documents and/or witnesses you need to prove you have the right to possession of the child.
- **Certified copies of all prior orders.**
- A list of what you would like to tell the Judge. (It's easy to forget if it's not written down.)
- A list of questions you want to ask the Respondent in front of the Judge.
- Copy of your Petition (and Affidavit if applicable).

When you are in court:

- Dress neatly. Do not wear shorts, tank tops, or hats. Do not chew gum or bring food or drink into the courtroom.
- Turn off your cell phone.
- Stand up when the Judge enters or exits the courtroom.
- Be calm and polite to everyone.
- Wait until it is your turn to talk.
- The Judge may not call your case right away. Wait patiently. If you have to leave the courtroom, tell the clerk where you are going.

What will happen at the hearing:

The Judge will listen to you, your witness, the Respondent and the respondent's witnesses. If you and/or the Respondent has a lawyer the Judge will also listen to the lawyers. The Judge will review any documents that are properly offered and admitted into evidence. The Judge will then decide whether or not the child should be returned to you and may make additional orders necessary to protect the child.

Step 12 File any new order signed by the Judge in the District Clerk's Office, 3rd Floor.

Ask the clerk for a certified copy of the order. If you have any questions regarding the Court's order, talk to a lawyer.

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Writ of Habeas Corpus / Writ of Attachment Contents:

1. Instructions (5 pages)
2. Petition (3 pages)
3. Affidavit in Support of Request for Writ of Attachment (3 pages)
4. Out-of-State Parent Affidavit (4 pages)
5. Order to Appear – Habeas (1 page)
6. Order for Issuance of Writ of Habeas Corpus (1 page)
7. Order for Issuance of Writ of Attachment and Order to Appear (2 pages)

****IT IS BEST TO SPEAK WITH AN ATTORNEY****

**NOTICE: THIS DOCUMENT
CONTAINS SENSITIVE DATA**

Cause No. _____

Ex Parte Minor Children

_____ § In the *(check one)*:
_____ § _____ District Court
_____ § County Court at Law No. ____
_____ § _____ County, Texas
Print Full Name of Each Child

Petition for Writ of Habeas Corpus to Return Child

1. The discovery level in this case, if needed, is Level 2.
2. I am the Petitioner. My name is: _____
My address is: _____
The last 3 digits of my social security number are: _____.
The last 3 digits of my driver's license number are: _____.

3. I ask the Court to return the children listed below to me.

<u>Child's name</u>	<u>Date of Birth</u>	<u>Current Location</u>
a. _____	_____	_____
b. _____	_____	_____
c. _____	_____	_____
d. _____	_____	_____

4. The children should be returned to me because:
(Check the box that applies in your case)

- There **is a court order** in effect that says I have the right to possession of the children. The court order has not been dismissed or changed by another court order. A certified copy of this court order is attached.
- There **is not a court order** in effect about the children, but I am a parent of the children and the children are in the possession of someone who is not their parent.

5. The children are in the possession of the Respondent.

Respondent's name is: _____
Print the full name of the person who has the children

Respondent's relationship to the children is:
Check one of the boxes below.

Parent

Grandparent

Other relative, specify relationship to children: _____

Respondent is not related to the children.

Respondent has had possession of the children since: _____
month / day / year

Respondent's address is: _____

Process should be served on Respondent at that address or the following address: _____

6. *Check the box below only if you are asking for a Writ of Attachment.*

I also ask the Court to sign an emergency Writ of Attachment. I have attached my affidavit in Support of Request for Writ of Attachment. I believe that:

Check the box or boxes below that apply in your case.

Respondent's continued possession of the children will create and is creating a serious, immediate threat to the children's physical and emotional well-being.

Respondent will remove the children from Texas unless the children are removed from Respondent's possession.

7. *Check one of the boxes below.*

I do not have a protective order against the Respondent.

I do have a protective order against the Respondent. A copy of this order is attached.

8. Check one of the boxes below.

Both Respondent and I live in Texas.

Either Respondent or I live outside of Texas. Therefore, I have completed and attached the Out-of-State Parent Affidavit.

9. I pray that the Court issue a Writ of Habeas Corpus commanding that the children be brought immediately before this Court for a hearing or issue an Order to Appear commanding the Respondent to appear before this Court for a hearing.

If I have checked box 6 above, I pray that the Court issue a Writ of Attachment commanding that the children be immediately removed from Respondent's Possession and placed with me until a hearing can be held.

I pray that, after notice and hearing, the children be returned to me.

I pray that Respondent be ordered to pay all costs of court.

I pray for recovery of all relief requested and for all general relief.

Respectfully submitted,



Your Signature

Date

Your Printed Name

Phone

Mailing Address

City

State

Zip

Email Address

Fax # (if any)

Verification

State of Texas

County of _____

The undersigned states under oath. "I am the Petitioner in this Petition for Writ of Habeas Corpus to Return Child. I have personal knowledge of the allegations and facts stated in it, and they are true and correct.

Your signature: _____

SIGNED under oath before me on _____ by
date

Printed first and last name of person signing

Notary Public, State of Texas

[Notary Seal]

Attachments to this Petition include:

Check all that apply

- Affidavit in Support of Request for Writ of Attachment *(attach only if Asking for Writ of Attachment)*
- Criminal Background checks on you and the Respondent *(attach only if asking for Writ of Attachment)*
- Out-of-State Parent Affidavit *(attach only if you or the Respondent live outside of Texas)*
- Certified copy of most recent court order about possession of the children
- Copy of protective order

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Cause No. _____

Ex Parte Minor Children

_____	§	In the <i>(check one)</i> :
_____	§	<input type="checkbox"/> _____ District Court
_____	§	<input type="checkbox"/> County Court at Law No. _____
_____	§	_____ County, Texas

Print Full Name of Each Child

Affidavit in Support of Request for Writ of Attachment

THE STATE OF TEXAS
COUNTY OF _____

BEFORE ME, the undersigned authority, on this day personally appeared _____, who swore or affirmed to tell the truth, and stated as follows:

“My name is _____. I am of sound mind and capable of making this sworn statement. I have personal knowledge of the facts written in this statement. I understand that if I lie in this statement I may be held criminally responsible. This statement is true and correct.

“The child or children listed in my Petition for Writ of Habeas Corpus to Return Child are currently in the possession of Respondent.

“Respondent’s name is _____

“Based upon the facts set out below, I believe that:

Check the box or boxes that apply in your case.

- “Respondent’s continued possession of the children will create and is creating a serious, immediate threat to the children’s physical and emotional well-being.
- “Respondent will remove the children from Texas unless the children are immediately removed from Respondent’s possession.

Do not sign until you are in front of a notary.

▲ _____
Signature Date

Notary fills out below.

State of Texas, County of _____
(Print the name of the county where this statement is notarized)

Sworn to and subscribed before me, the undersigned authority, on: _____
date

By: _____, Notary Public, State of Texas
printed name of person signing this affidavit

[Notary Seal]

▲ _____
Notary's Signature

****THIS IS NOT A SUBSTITUTE FOR THE ADVICE OF AN ATTORNEY****

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Out-of-State Parent Affidavit
Required by Texas Family Code, § 152.209

****Important! Use this form ONLY if you or the Respondent lives outside of Texas****

Print your answers.

I. Personal Information

My name is: _____
First Middle Last

Home Address: _____
Street address

City State Zip

II. Children

A. First Child

Name: _____
First Middle Last

Home Address: _____
Street address

City State Zip

Child now lives with: Mother Father Other: _____

When did this child start living at this address? _____
Month Day Year

Where did this child live before? *(Give address and dates for the last 5 years)*

Previous Addresses	Dates	
	From	To

B. Other Child

Name: _____
First Middle Last

Check here if this child has always lived with the 1st child and skip to next question.

Home Address: _____
Street address

City State Zip

Child now lives with: Mother Father Other: _____

When did this child start living at this address? _____
Month Day Year

Where did this child live before? *(Give address and dates for the last 5 years)*

Previous Addresses	Dates	
	From	To

C. Other Child

Name: _____
First Middle Last

Check here if this child has always lived with the 1st child and skip to next question.

Home Address: _____
Street address

City State Zip

Child now lives with: Mother Father Other: _____

When did this child start living at this address? _____
Month Day Year

Where did this child live before? *(Give address and dates for the last 5 years)*

Previous Addresses	Dates	
	From	To

D. Other Child

Name: _____
First Middle Last

Check here if this child has always lived with the 1st child and skip to next question.

Home Address: _____
Street address

City State Zip

Child now lives with: Mother Father Other: _____

When did this child start living at this address? _____
Month Day Year

Where did this child live before? *(Give address and dates for the last 5 years)*

Previous Addresses	Dates	
	From	To

If more than 4 children, attach a separate page with additional information to this form.

III. Other Custody or Visitation Cases

(List any other custody or visitation cases for any of the children listed on this form)

If none, check "None" → None

Court that made the order	Case #	Type of case	County
<input type="checkbox"/> District <input type="checkbox"/> County <input type="checkbox"/> Other: _____			
<input type="checkbox"/> District <input type="checkbox"/> County <input type="checkbox"/> Other: _____			

IV. Other Court Cases

(List any other court case like child support, protective orders, or adoption, that might affect this case)

If none, check "None" → None

Court that made the order	Case #	Type of case	County
<input type="checkbox"/> District <input type="checkbox"/> County <input type="checkbox"/> Other: _____			
<input type="checkbox"/> District <input type="checkbox"/> County <input type="checkbox"/> Other: _____			

V. Other People Who Claim Custody

(List any other person who claims custody or visitation rights with any of the children listed on this form)

If none, check "None" → None

Name: _____
First Middle Last

Home Address: _____
Street address

City State Zip

Relationship to child: _____

VI. Your Child/ren's Health Insurance Information

If you do **not** have health insurance, check "None" → None

If you **have** a health insurance policy, fill out below:

Health Insurance Company _____

Policy Number _____

Who pays insurance premiums? _____

Do not sign until you are in front of a notary.

▶ _____
Signature Date

Notary fills out below.

State of Texas, County of _____
(Print the name of the county where this statement is notarized)

Sworn to and subscribed before me, the undersigned authority, on: _____
date

By: _____, Notary Public, State of Texas
printed name of person signing this affidavit

[Notary Seal]

▶ _____
Notary's Signature

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NOTICE: THIS DOCUMENT CONTAINS SENSITIVE DATA

Cause No. _____

Ex Parte Minor Children

_____	§	In the <i>(check one)</i> :
_____	§	<input type="checkbox"/> _____ District Court
_____	§	<input type="checkbox"/> County Court at Law No. _____
_____	§	_____ County, Texas

Print Full Name of Each Child

Order to Appear

Respondent, _____, is **ORDERED** to appear at the Tarrant County Family Law Center, 200 East Weatherford Street, Fort Worth, Texas at the time and date listed below for a hearing:

At _____ o'clock ____ .m. on _____, 20_____.

The purpose of this hearing is to determine if Petitioner, _____ should be awarded immediate physical custody of the children listed below and whether further relief is appropriate.

Child's name	Date of Birth	Current Location
a. _____	_____	_____
b. _____	_____	_____
c. _____	_____	_____
d. _____	_____	_____

IT IS FURTHER ORDERED that the clerk of this Court issue a show cause notice to Respondent to appear at this hearing and attach to the notice a copy of this order and a copy of Petitioner's Petition for Writ of Habeas Corpus to Return Child.

SIGNED ON _____

JUDGE PRESIDING

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Cause No. _____

Ex Parte Minor Children

_____	§	In the <i>(check one)</i> :
_____	§	<input type="checkbox"/> _____ District Court
_____	§	<input type="checkbox"/> County Court at Law No. _____
_____	§	_____ County, Texas

Print Full Name of Each Child

Order for Issuance of Writ of Habeas Corpus for Child/Children

On this date a verified Petition for Writ of Habeas Corpus to Return Child with respect to the child or children listed below, was presented to this Court.

Child's name	Date of Birth	Current Location
a. _____	_____	_____
b. _____	_____	_____
c. _____	_____	_____
d. _____	_____	_____

The Court FINDS it necessary and proper to immediately issue a writ of habeas corpus.

IT IS THEREFORE ORDERED by the Court that the clerk immediately issue a Writ of Habeas Corpus directed to Respondent, _____, commanding Respondent to appear with the children at the Tarrant County Family Law Center, 200 East Weatherford Street, Fort Worth, Texas at the time and date listed below for a hearing:

At _____ o'clock ____m. on _____, 20_____.

The purpose of this hearing is to determine if Petitioner should be awarded immediate physical custody of the children listed above and whether further relief is appropriate.

SIGNED ON _____

JUDGE PRESIDING

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Ex Parte Minor Children

_____	§	In the <i>(check one)</i> :
_____	§	<input type="checkbox"/> _____ District Court
_____	§	<input type="checkbox"/> County Court at Law No. _____
_____	§	_____ County, Texas

Print Full Name of Each Child

Order for Issuance of Writ of Attachment and Order to Appear

On this date there was presented to this Court a verified Petition of Writ of Habeas Corpus to Return Child that included a request for a Writ of Attachment with respect to the following children:

Child's name	Date of Birth	Current Location
a. _____	_____	_____
b. _____	_____	_____
c. _____	_____	_____
d. _____	_____	_____

On the basis of the supporting affidavit and the testimony of Petitioner, the Court FINDS it necessary and proper to issue a Writ of Attachment immediately.

IT IS THEREFORE ORDERED that the clerk of this Court immediately issue a Writ of Attachment commanding any sheriff or constable within the state of Texas to immediately take the person(s) of the children listed above, and to deliver the children safely into the possession of _____.

IT IS FURTHER ORDERED that Respondent, _____, is **ORDERED** to appear at the Tarrant County Family Law Center, 200 East Weatherford Street, Fort Worth, Texas at the time and date listed below for a hearing:

at _____ o'clock ____m. on _____, 20_____.

The clerk of this Court shall issue a show cause notice to Respondent to appear at this hearing and attach to the notice a copy of this order and a copy of Petitioner's Petition for Writ of Habeas Corpus to Return Child.

IT IS FURTHER ORDERED that the Petitioner is **ORDERED** to appear at the Tarrant County Family Law Center, 200 East Weatherford Street, Fort Worth, Texas at the same time and date listed above for a hearing.

The purpose of this hearing is to determine if Petitioner should be awarded immediate physical custody of the children listed above and whether further relief is appropriate.

SIGNED ON _____

JUDGE PRESIDING