

Chapter:	Facility Case Management	Classification:	Public Document
Subject:	Habeas Corpus Applications		
For:	Correctional Services	 Authorized by Executive Director	

1. Policy

1.1 A person detained in custody may petition the court to review the legality of their detention by filing a notice for habeas corpus.

2. Authority

2.1 Habeas corpus is a longstanding common law process whereby a person on arrest or detention can have the validity of their detention determined by a judge.

2.2 Section 10(c) of the *Charter of Rights and Freedoms*; reads, “10. Everyone has the right on arrest or detention ... (c) to have the validity of the detention determined by way of habeas corpus and to be released if the detention is not lawful.”

2.3 In 2005, the Supreme Court of Canada ruled that persons detained in custody can choose to challenge the legality of their detention in a provincial superior court by way of a petition for habeas corpus.

3. Overview of Habeas Corpus

3.1 Habeas corpus is a court petition which orders that a person being detained be brought before a judge for a hearing to decide whether their detention is lawful. An individual in custody, or person acting on their behalf, may petition the court for an Order of the writ of habeas corpus to challenge what they believe to be any unlawful detention.

3.2 An individual has the right not to be unlawfully deprived of any liberty permitted to the general population of a correctional facility.

3.3 When the habeas corpus hearing is centered on the legality of a particular form of confinement, a judge may find it unlawful and grant a release from that form of confinement and order the return of residual liberties that are available to other individuals in custody.

Page 1 of 5	Dated Issued: March 3, 2017 Date of Last Revision: October 2, 2020 Current Revision Date: October 21, 2021	Subject No. 34.06.00
-------------	--	----------------------

Chapter:	Facility Case Management	Classification:	Public Document
Subject:	Habeas Corpus Applications		
For:	Correctional Services	 Authorized by Executive Director	

4. Overview of the Court Process

- 4.1 If the court determines a hearing is required, the individual in custody is required to prove that they have been deprived of their liberty or the petition for habeas corpus will be dismissed
- 4.2 The correctional facility, as represented by Legal Services, is required to establish that the decision to restrict the individual's liberty within the correctional facility was based on lawful authority, such as a statute or regulation allowing for the imposition of penalties.
- 4.3 After reviewing and considering the record, evidence, and submissions on the law, the judge determines whether the correctional facilities decision was reasonable and lawful in the circumstances. If so, the petition is dismissed. If not, the judge has the authority to
 - 4.3.1 order the release of the applicant from detention
 - 4.3.2 make an order to come into effect when certain conditions are met
 - 4.3.3 quash any decision made by an administrative decision-maker within the institution
 - 4.3.4 order full, partial or other relief as required
- 4.4 The timing upon which the order comes into effect is at the discretion of the judge.

5. Application Process

- 5.1 An individual seeking to challenge the validity of their detention is required to present a petition to the Supreme Court of Nova Scotia. Upon request, the offender will be provided with form 7.12 Notice of Habeas Corpus. Located on the Courts of Nova Scotia website (See Section 7.12 http://courts.ns.ca/Civil_Procedure_Rules/CPRs_in_html/Rule_07.htm)
- 5.2 Should the correctional facility receive a form 7.12 Notice of Habeas Corpus from an incarcerated individual, the notice will be directed to a designated correctional facility staff. They will

Page 2 of 5	Dated Issued: March 3, 2017 Date of Last Revision: October 2, 2020 Current Revision Date: October 21, 2021	Subject No. 34.06.00
-------------	--	----------------------

Chapter:	Facility Case Management	Classification:	Public Document
Subject:	Habeas Corpus Applications		
For:	Correctional Services	 Authorized by Executive Director	

- 5.2.1 forward the notice to the Supreme Court of Nova Scotia location nearest to the correctional facility the individual is incarcerated
- 5.2.2 forward the notice to Legal Services via fax and email
- 5.2.3 inform the superintendent or designate of the notice

- 5.3 The superintendent is responsible for notifying the Director, Correctional Services of the petition.

- 5.4 Once the designated staff forwards a Notice of Habeas Corpus to the Supreme Court of Nova Scotia, the superintendent will procure the contents of the applicant's facility file and forward it to the court via Legal Services, showing the lawful reasons why the individual is detained, or why their liberty is further restricted in a facility including
 - 5.4.1 individual's facility file during their current custody term or remand
 - 5.4.2 a current JEIN printout showing current charges, completed or pending
 - 5.4.3 admission card
 - 5.4.4 disciplinary reports
 - 5.4.5 signed copies of applicable warrants, committal orders or other legal documentation detaining an individual such as a Canada-wide arrest warrant
 - 5.4.6 JEIN alerts
 - 5.4.7 all reports, notices, close confinement reviews, regarding segregation or close confinement
 - 5.4.8 any other document made relevant by the terms of the application filed or requested by Legal Services
 - 5.4.9 a summary of the reasons and conditions of confinement outlining an explanation/justification for their current confinement alleged to be unlawful
 - 5.4.10 any Correctional Services policy being applied to cause the current confinement e.g., breach of disciplinary rules established by the superintendent under Section 86, *Correctional Services Regulations* or under Section 74, *Close Confinement, Correctional Services Act*
 - 5.4.11 any protected information that adversely impacts the safety and security of an individual(s) or the correctional facility will be

Page 3 of 5	Dated Issued: March 3, 2017 Date of Last Revision: October 2, 2020 Current Revision Date: October 21, 2021	Subject No. 34.06.00
-------------	--	----------------------

Chapter:	Facility Case Management	Classification:	Public Document
Subject:	Habeas Corpus Applications		
For:	Correctional Services	 Authorized by Executive Director	

- 5.4.11.1 produced by the Security Risk Captain or corresponding staff member
- 5.4.11.2 reviewed and approved by the Criminal Intelligence Officer (CIO)
- 5.4.11.3 shared using a sealed envelope containing the confidential information included in Form [34.06.00-A](#)
- 5.4.11.4 shared via Legal Services to the Judge.

5.5 Should an individual in custody, or person acting on behalf of that individual, petition the court directly, the correctional facility may only be aware of the habeas corpus petition when issued a form 7.13 Order for Habeas Corpus, from the Supreme Court of Nova Scotia. Upon receipt of said form all documents relating to the detention will be brought before the court in accordance with Section 5.4 above.

- 5.6 When a form 7.13 is issued by the Justice of the Supreme Court ordering the individual be brought before the court
- 5.6.1 sentence administrators are responsible to contact Sheriff Services to make transportation arrangements
 - 5.6.2 the individual's name will be added to the facility court docket
 - 5.6.3 JEIN activity notes and admission card shall be updated
 - 5.6.4 in the event of a video conference hearing, arrangements shall be made between the receiving court and the facility

6. Affidavit

- 6.1 The superintendent or designate will contact Legal Services as soon as possible to swear an affidavit proving the procured record(s).

7. Attendance at the Hearing

- 7.1 The superintendent or designate will attend court to be called as a witness during the hearing to authenticate the affidavit and to give evidence regarding the contents of the affidavit. This witness may also be questioned in court by the judge and applicant.

Page 4 of 5	Dated Issued: March 3, 2017 Date of Last Revision: October 2, 2020 Current Revision Date: October 21, 2021	Subject No. 34.06.00
-------------	--	----------------------

Chapter:	Facility Case Management	Classification:	Public Document
Subject:	Habeas Corpus Applications		
For:	Correctional Services	 Authorized by Executive Director	

8. Facility Duties Following Court Decision

- 8.1 Upon receiving the rendered decision from the presiding judge, the facility will obey the decision. If the decision orders a change in the conditions of confinement the superintendent or delegate will
- 8.1.1 review the reasons of the confinement with the appropriate officers responsible for the file
 - 8.1.2 review the reasons why the individual was placed in close confinement to learn of any changes
 - 8.1.3 establish a plan to reintegrate the individual into a living unit (e.g., a behaviour management plan)
 - 8.1.4 communicate the plan to reintegrate the individual to the appropriate officers
 - 8.1.5 evaluate the effectiveness of the plan and modify the plan as necessary

9. Standard Operating Procedures (SOP)

- 9.1 The superintendent is responsible to establish Standard Operating Procedures (SOPs) with respect to this policy as follows
- 9.1.1 determining notification process by designated staff when they receive a form 7.12, Notice of Habeas Corpus, from an individual in custody
 - 9.1.2 establishing a process and assigning staff to procure the contents of the applicant's facility file
 - 9.1.3 ensuring applicable documents as per Section 5.4 of this policy are forwarded to Legal Services in a timely way
 - 9.1.4 identifying staff (deputy superintendent or assistant deputy superintendent) responsible for swearing an affidavit proving the procured record(s)
 - 9.1.5 assigning staff (deputy superintendent or assistant deputy superintendent) to attend Court as a witness
 - 9.1.6 establishing a process following the Court decision to impose the Courts decision

Page 5 of 5	Dated Issued: March 3, 2017 Date of Last Revision: October 2, 2020 Current Revision Date: October 21, 2021	Subject No. 34.06.00
-------------	--	----------------------