

MAINE STATE LEGISLATURE

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THE
REVISED STATUTES

OF THE

STATE OF MAINE,

PASSED APRIL 17, 1857;

TO WHICH ARE PREFIXED

THE CONSTITUTIONS

OF THE

UNITED STATES AND OF THE STATE OF MAINE:

WITH AN

APPENDIX.

PUBLISHED BY AUTHORITY OF THE LEGISLATURE.

BANGOR:
WHEELER & LYNDE.

1857.

CHAPTER 99.

HABEAS CORPUS.

- SEC. 1. Who may prosecute the writ, as matter of right.
2. Minors enlisting in the army or navy, entitled to benefits of this chapter.
 3. Parent, master or guardian of minor restrained, entitled to such writ.
 4. Supreme judicial court may grant such writ, on application of any person, in behalf of one incapable of making his own application.
 5. Who are not so entitled as of right.
 6. Application; how made by persons not of right entitled.
 7. To be returnable before the court, or any justice thereof.
 8. Application to be in writing, signed and sworn to, and shall state the case clearly. When the writ shall not issue.
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 11. Form of writ, in cases mentioned in the fifth section.
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 13. Officer, when he makes return, to bring the body of the person restrained. Proceedings, if the person is sick, and cannot be brought.
 14. Examination of the causes of restraint.
 15. Persons interested to be notified before discharged.
 16. Proceedings and decision upon the application. If no legal cause is shown for imprisonment, prisoner shall be discharged.
 17. Party detained and imprisoned for any offence which is bailable, shall be admitted to bail.
 18. Form of writ, if the restraint is not by an officer.
 19. By whom issued and where served.
 20. If the person restraining is unknown, how designated.
 21. If the person restrained is unknown, how designated.
 22. Form of return in the cases mentioned in the eleventh and eighteenth sections.
 23. How such return shall be authenticated.
 24. Manner of keeping the party before judgment.
 25. Penalty for neglect of an officer to give a copy of his precept for detaining a prisoner.
 26. Punishment if an officer neglects to serve a writ of habeas corpus.
 27. If attachment is issued against a sheriff.
 28. Proceedings in such case for release of the person for whose benefit the writ issued.
 29. Persons discharged on habeas corpus, not to be arrested again, except in certain cases.
 30. Conveyance to prison of persons ordered to be committed. Penalty for eluding the service of a writ of habeas corpus.
 31. Penalties no bar to actions for damages.
 32. A third person may appear for the party detained in certain cases.
 33. Supreme court may allow bail, at discretion, or any justice thereof. Exception.
 34. Admission of a person to bail, when committed for not finding sureties.
 35. Habeas corpus may issue to bring in a prisoner as a witness.
 36. Habeas corpus may issue, on application, in behalf of an insane person, committed on mesne process, or execution.

SEC. 1. Every person unlawfully deprived of his personal liberty by the act of another, except in the cases hereinafter mentioned, shall of right have a writ of habeas corpus according to the provisions herein contained.

Who may have writ, as matter of right.
R. S., c. 140,
§ 1.

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Minors enlisting into army or navy, &c.
R. S., c. 140, § 37.

Parent, &c., of minor restrained, &c.
1845, c. 138, § 1.

Supreme court may grant such writ, &c.
1845, c. 138, § 2.

Who are not entitled of right.

R. S., c. 140, § 2.

Application; by persons not of right entitled.

R. S., c. 140, § 3.

To be returnable before court, &c.

R. S., c. 140, § 4.

To be in writing, &c.

When the writ shall not issue.

R. S., c. 140, § 5, 6.

1845, c. 138, § 2, 3.

Proceedings if excessive bail is demanded.

R. S., c. 140, § 7.

If officer refuses a copy of precept, &c.

R. S., c. 140, § 8.

SEC. 2. Any minor enlisted within this state into the army or navy of the United States, without the written consent of his parent, guardian, or master, shall have all the benefits of this chapter on the application of himself, parent, guardian or master.

SEC. 3. The parent, master, or guardian of any minor, imprisoned or restrained of his liberty, shall be entitled to the writ of habeas corpus for him, if he would be entitled to it on his own application.

SEC. 4. The supreme judicial court or any justice thereof, on application of any person, may issue the writ of habeas corpus to bring before them any party alleged to be imprisoned, or restrained of his liberty, who would be entitled to it on his own application, when from any cause he is incapable of making it.

SEC. 5. The following persons shall not of right have such writ:

First.—Persons committed to and confined in prison for treason, felony, or suspicion thereof, or as accessories before the fact to a felony, when the same is plainly and specially expressed in the warrant of commitment.

Second.—Persons convicted or in execution upon legal process, criminal or civil.

Third.—Persons committed on mesne process in any civil action, on which they are liable to be arrested and imprisoned.

SEC. 6. An application for such writ by any person shall be made to the supreme judicial court in the county where the restraint exists, if in session; if not, to a justice thereof; and when issued by the court, it shall be returnable thereto; but if the court is adjourned without day or for more than seven days, it may be returned before a justice thereof, and heard and determined by him.

SEC. 7. When issued by a justice of the court, it may be made returnable before the court, himself, or any other justice thereof.

SEC. 8. The application shall be in writing, signed, and sworn to by the person making it, stating the place where, and the person by whom, the restraint is made; the applicant shall produce to the court or justice a copy of the precept by which the person is so restrained, attested by the officer holding it; and if, on inspection thereof, it appears to the court or justice that such person is thereby lawfully imprisoned or restrained of his liberty, a writ shall not be granted.

SEC. 9. If it appears that he is imprisoned on mesne process for want of bail, and the court or justice thinks excessive bail is demanded, reasonable bail shall be fixed, and on giving it to the plaintiff, he shall be discharged.

SEC. 10. If the prison keeper or other officer having the custody of such person refuses or unreasonably delays to deliver to the applicant an attested copy of the precept by which he restrains him, on demand therefor, the court or justice, on proof of such demand and refusal, shall forthwith issue the writ of habeas corpus as prayed for.

SEC. 11. When such writ is issued on application in behalf of any person described in the fifth section, it shall be substantially as follows:

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Form of writ
in cases men-
tioned in the
fifth section.
R. S., c. 140,
§ 9.

STATE OF MAINE.

C _____, ss. To A. B. of _____;

[L. s.]

Greeting.

We command you, that you have the body of C. D., in our prison, at _____, under your custody, (or by you imprisoned and restrained of his liberty, as the case may be) as it is said, together with the day and cause of his taking and detaining, by whatever name he is called or charged, before our supreme judicial court, held at _____, in and for the county of _____, immediately after the receipt of this writ, to do and receive what our said court shall then and there consider concerning him in this behalf, and have you there this writ.

Witness _____, at _____, this _____ day of _____, in the year _____.

_____, Clerk.

The like form shall be used by any justice of said court, changing what should be changed, when such writ is awarded by him.

SEC. 12. When such writ is offered to the officer to whom it is directed, he shall receive it; and on payment or tender of such sum as the court or justice thereof directs, shall make due return thereof within three days, if the place of return is within twenty miles of the place of imprisonment; if over twenty, and less than one hundred miles, within seven days; and if more than one hundred miles, within fourteen days; but if such writ was issued against such officer, on his refusal or neglect to deliver, on demand, to the applicant a copy of the precept by which he restrained the person of his liberty, in whose behalf application was made, then the officer shall be bound to obey the writ without payment or tender of expenses.

Time of ser-
vice, return,
&c.
R. S., c. 140,
§ 10.

SEC. 13. The person making the return, shall, at the same time, bring the body of the party, as commanded in the writ, if in his custody or power or under his restraint, unless prevented by sickness or infirmity of such party; and in that case that fact shall be stated in the return; and if proved to the satisfaction of the court or justice, a justice of the court may proceed to the place where the party is confined and there make his examination, or may adjourn it to another time, or make such other order in the case as law and justice requires.

Officer, when
he makes re-
turn, to bring
the body of
the person
restrained.
Proceedings if
the person is
sick, and can-
not be brought.
R. S., c. 140,
§ 11, 12.

SEC. 14. On the return of the writ, the court or justice, without delay, shall proceed to examine the causes of imprisonment or restraint; and may adjourn such examination from time to time.

Examination
of the causes
of restraint.
R. S., c. 140,
§ 13.

SEC. 15. When it appears that the party is detained on any process, under which any other person has an interest in continuing such imprisonment or restraint, the party shall not be discharged until notice has been given to such other person or his attorney, if within the state, or within thirty miles of the place of examination, to appear and object, if he see cause; and

Persons inter-
ested to be
notified before
discharge.
R. S., c. 140,
§ 14.

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if imprisoned on any criminal accusation, he shall not be discharged until sufficient notice has been given to the attorney general, or other attorney for the state, that he may appear and object, if he thinks fit.

Proceedings.
If no legal
cause for im-
prisonment,
court shall
discharge;
exception.
6 Greenl. 462.
32 Maine, 440.
36 Maine, 425.
R. S., c. 140,
§ 15, 16.

SEC. 16. The party imprisoned or restrained may deny facts stated in the return or statement, and may allege other material facts; and the court or justice may, in a summary way, examine the cause of imprisonment or restraint; hear evidence produced on either side, and if no legal cause is shown for such imprisonment or restraint, the court or justice shall discharge him; except as provided in section nine.

Party detained
for any offence
which is bail-
able, shall be
admitted to
bail.

Bail, &c.

R. S., c. 140,
§ 17.

Form of writ,
if the restraint
is not by an
officer.

R. S., c. 140,
§ 18.

SEC. 17. If the party is imprisoned and detained for a bailable offence, he shall be admitted to bail, if sufficient bail is offered; and if not, he shall be remanded, with an order of the court or justice, expressing the sum in which he shall be held to bail, and the court at which he shall be bound to appear; and a justice of the peace may, at any time before the sitting of the court, bail the party pursuant to such order.

SEC. 18. In cases of imprisonment or restraint of personal liberty by any person not a sheriff, deputy sheriff, coroner, constable, jailer, or marshal, deputy marshal, or other officer of the courts of the United States, the writ shall be in the following form, viz :

STATE OF MAINE.

[Seal.] To the sheriffs of our several counties and their respective deputies,

Greeting.

We command you, that you take the body of C. D. of —, imprisoned and restrained of his liberty, as it is said, by A. B. of —, and have him before our supreme judicial court, holden at —, immediately after receipt of this writ, to do and receive what our court shall then and there consider concerning him in this behalf; and summon the said A. B. then and there to appear before our said court, to show cause for taking and detaining said C. D., and have you there this writ with your doings thereon.

Witness, our —, at —, this — day of —, in the year —. — —, Clerk.

By whom is-
sued and where
served.

R. S., c. 140,
§ 19, 20.

SEC. 19. Such writ may be issued by the supreme judicial court, sitting in any county in which the person, in whose behalf application is made, is restrained, or by any justice thereof, the form to be varied so far as necessary, when issued by a justice of the court; and served in any county in the state.

If the person
restraining is
unknown, &c.

R. S., c. 140,
§ 21.

SEC. 20. The person having custody of the prisoner may be designated by the name of his office, if he has any, or by his own name; or if both are unknown or uncertain, he may be described by an assumed name; and any one served with the writ, shall be deemed the person thereby intended.

If the person
restrained is
unknown, &c.

R. S., c. 140,
§ 22.

SEC. 21. The person restrained shall be designated by his name, if known; if unknown or uncertain, in any other way, so as to make known who is intended.

Return in the
cases men-

SEC. 22. In cases under section eleven, the person who makes the return, and in cases under section eighteen, the person in

whose custody the prisoner is found, shall state in writing to the court or justice before whom the process is returned, plainly and unequivocally,—

First.—Whether he has or has not the party in his custody or power, or under restraint;

Second.—If he has, he shall state, at large, the authority and true and whole cause of such imprisonment or restraint, upon which the party is detained; and,

Third.—If he has had the party in his custody or power or under his restraint, and has transferred him to another, he shall state particularly to whom, at what time, for what cause, and by what authority, such transfer was made.

SEC. 23. Such return or statement shall be signed and sworn to by the person making it, unless he is a sworn public officer, and makes and signs his return in his official capacity.

SEC. 24. The party may be bailed to appear from day to day, until judgment is rendered; or remanded, or committed to the sheriff, or placed in custody, as the case requires.

SEC. 25. If any officer refuses or neglects, for four hours, to deliver a true and attested copy of the warrant or process, by which he detains any prisoner, to any person who demands it and tenders the fees therefor, he shall forfeit to such prisoner two hundred dollars.

SEC. 26. If any person or officer, to whom such writ is directed, refuses to receive it, or neglects to obey and execute it, as hereby required, and no sufficient cause is shown therefor, he shall forfeit to the aggrieved party four hundred dollars; and the court or judge, before whom the writ was returnable, shall proceed forthwith by attachment, as for a contempt, to compel obedience to the writ, and to punish for the contempt.

SEC. 27. If such attachment is issued against a sheriff or his deputy, it may be directed to a coroner, or any other person therein designated, who shall thereby have power to execute it; and the sheriff or his deputy may be committed to jail on such process in any county but his own.

SEC. 28. If the person to whom the writ is directed refuses to obey and execute it, the court or judge may issue a precept to any officer or other person therein named, commanding him to bring the person for whose benefit the writ was issued before the court or judge; and the prisoner shall thereupon be discharged, bailed, or remanded, as if brought in on habeas corpus.

SEC. 29. No person, enlarged by habeas corpus, shall be again imprisoned or restrained for the same cause, unless indicted therefor, convicted thereof, or committed for want of bail, or after a discharge for defect of proof, or some material defect in the commitment in a criminal case, he is arrested on sufficient proof, and committed by legal process for the same offence.

SEC. 30. A person, ordered to be committed to prison on any criminal charge, shall be carried to such prison, as soon as may be, and shall not be delivered from one officer to another except for easy and speedy conveyance; nor removed without his consent from one county to another, unless by habeas corpus; and

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tioned in the 11th and 18th sections.

R. S., c. 140, § 23.

How authenticated.

R. S., c. 140, § 24.

Manner of keeping the party.

R. S., c. 140, § 25.

Penalty for neglect of officer to give copy of precept, &c.

R. S., c. 140, § 26.

Punishment, if officer neglects to serve writ.

R. S., c. 140, § 27.

If attachment is issued against a sheriff, &c.

R. S., c. 140, § 28.

Proceedings for release of person for whose benefit the writ issued.

R. S., c. 140, § 29.

Persons discharged on habeas corpus, &c.

R. S., c. 140, § 30.

Conveyance to prison of persons ordered to be committed, &c.

R. S., c. 140, § 31.

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if any one, who has in his custody or under his power any person entitled to a writ of habeas corpus, whether issued or not, transfers him to the custody of another, or changes his place of confinement, with intent to elude the service of such writ, he shall forfeit four hundred dollars to the party aggrieved.

Penalties no bar to action. R. S., c. 140, § 32.

A third person may appear for the party. R. S., c. 140, § 33.

Supreme court may allow bail, &c. R. S., c. 140, § 34.

Admission to bail, &c. R. S., c. 140, § 35.

Habeas corpus may issue to bring a prisoner as a witness. R. S., c. 140, § 36.

Habeas corpus may issue, on application, &c. 1841, c. 1, § 24.

SEC. 31. No penalty, established by this chapter, shall bar any action at common law for damages for false imprisonment.

SEC. 32. When a person is unlawfully carried out of the state or imprisoned in a secret place, any other person may appear for him in an action therefor in his name, who shall stipulate for the payment of costs as the court orders.

SEC. 33. Nothing in this chapter shall be construed to restrain the supreme judicial court in term time, or any justice thereof in vacation, from bailing a person for any offence, when the circumstances of the case require it; except persons committed by the governor and council, senate, or house of representatives, for the causes mentioned in the constitution.

SEC. 34. When a person is confined in a jail for a bailable offence, or for not finding sureties on a recognizance, two justices of the peace and of the quorum, on application, may inquire into the case and admit any such person to bail, and exercise the same power as any justice of the supreme judicial court can; and may issue a writ of habeas corpus, and cause such person to be brought before them for this purpose, and may take such recognizance.

SEC. 35. A court may issue a writ of habeas corpus, when necessary, to bring before them a prisoner for trial in a cause pending in such court, or to testify as a witness, when his personal attendance may be deemed necessary for the attainment of justice.

SEC. 36. When an insane person is arrested or imprisoned on mesne process or execution in a civil suit, a judge of the supreme judicial court, or judge of probate within his county, on application, may inquire into the case; issue a writ of habeas corpus; cause such person to be brought before him for examination; and after notice to the creditor or his attorney, if either is living in the state, and a hearing, if proved to the satisfaction of said judge that the person is insane, he may discharge him from arrest or imprisonment; and the creditor shall have the right to make a new arrest, on the same demand, when the debtor becomes of sound mind. But if he is arrested on the same demand a second time, before he becomes of sound mind, and again discharged for that reason, his body forever after shall be exempted from arrest therefor.