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Maine
REVISED STATUTES
1964

*Prepared Under the Supervision
of the
Committee on Revision of Statutes*

Being the Tenth Revision of the
Revised Statutes of the State
of Maine, 1964

Volume 3
Titles 14 to 20



Boston, Mass.
Boston Law Book Co.

Orford, N. H.
Equity Publishing Corporation

St. Paul, Minn.
West Publishing Co.

Text of Revised Statutes
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CHAPTER 609

HABEAS CORPUS

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§ 5501. Right to writ

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

R.S.1954, c. 126, § 1.

§ 5502. Post-conviction habeas corpus

Any person convicted of a crime and incarcerated thereunder including any person committed as a juvenile offender, or released on probation, or paroled from a sentence thereof, or fined, who claims that he is illegally imprisoned, or that there were errors of law of record, or that his sentence was imposed in violation of the Constitution of the United States or of this State, or that there were errors of fact not of record which were not known to the accused or the court and which by the use of reasonable diligence could not have been known to the accused at the time of trial and which, if known, would have prevented conviction, may institute a petition for a writ of habeas corpus seeking release from an illegal imprisonment, correction of an error of law of record, or to set aside the plea, conviction and sentence, provided that the alleged error has not been previously or finally adjudicated or waived in the proceeding resulting in the conviction or in any other proceeding that the petitioner has taken to secure relief from his conviction.

The remedy of habeas corpus provided in sections 5502 to 5508 is not a substitute for nor does it affect any remedies which are incidental to the proceedings in the trial court, or any remedy of direct review of the sentence or conviction but, except as otherwise provided in sections 5502 to 5508, it comprehends and takes the place of all other common law remedies which have heretofore been available for challenging the validity of a conviction and sentence and shall be used exclusively in lieu thereof. A petition may be filed at any time after the criminal conviction is final.

1963, c. 310, § 1.

§ 5503. Jurisdiction; commencement of proceedings; petition; amendments

The proceeding shall be commenced by filing with the clerk of the Superior Court in the county where the conviction took place an original petition and 2 copies thereof, addressed to the Superior Court which shall have jurisdiction thereof. Facts within the personal knowledge of the petitioner and the authenticity of all documents and exhibits included in or attached to the petition must be sworn to affirmatively as true and correct. The clerk shall enter the petition on the docket upon its receipt and bring it forthwith to the attention of the Chief Justice of the Supreme Judicial Court and to the Attorney General by sending to each of them a copy of the petition. The Chief Justice shall promptly assign the matter to a Justice of the Superior or Supreme Judicial Courts. Such petition, while pending, and for cause shown may be amended. Amendments when allowed shall be filed in the same manner as an original petition. The Supreme Judicial Court may by rule provide for the form of the petition, verification and writ.

1963, c. 310, § 1.

§ 5504. Contents of petition

The petition shall identify the proceedings in which the petitioner was convicted, give the date of the entry of judgment and sentence complained of, specifically alleging valid facts that set forth grounds upon which the petition is based without employment of characterization or language which is scurrilous. The petition shall identify any previous proceedings that the petitioner has taken to secure relief from his conviction, setting forth the type of action, date, forum and the result. Argument, citations and discussion of authorities shall be omitted from the petition, but may be filed as separate documents.

1963, c. 310, § 1.

§ 5505. Further pleadings and procedure

Within 20 days after a copy of the petition has been received by the Attorney General from the clerk of courts, or within such lesser or further time as the justice to whom the matter has been assigned may fix, the State shall respond by answer, motion or notice that the State does not contest the petition. Thereafter such justice may order a hearing on the motion or issue a writ notifying the petitioner and the Attorney General of the

time and place of hearing. The hearing on the motion or writ may be ordered held in any county in the State. Such justice may grant leave at any time prior to entry of judgment to withdraw the petition. Such justice shall make such order after consideration of the petition or after hearing as he deems appropriate to his findings in the case, including, but not limited to, the release of the petitioner, corrections in error of law appearing on the face of the record, resentencing, or remanding for resentencing if an erroneous or illegal sentence be found to have been entered, setting aside the plea, conviction and sentence. The order or judgment making final disposition of the petition or writ shall constitute a final judgment for the purpose of review. Such justice may make such order as the case requires for the custody of the petitioner pending hearing and judgment or for admitting him to bail.

1963, c. 310, § 1.

§ 5506. Counsel for indigent petitioners

Such justice may appoint an attorney for an indigent petitioner when a petitioner so requests upon a determination that the petition is filed in good faith, has merit or is not frivolous. If the justice finds that the petitioner has financial means with which to employ counsel, or if he finds that the petition is frivolous or without merit or filed in bad faith, the request for appointment of counsel shall be denied and the justice shall file a decree setting forth his findings and his decision thereon shall be final.

1963, c. 310, § 1.

§ 5507. Waiver of grounds not claimed; effect of prior petition of coram nobis or error

All grounds for relief claimed by a petitioner under this remedy must be raised by a petitioner in his original or amended petition, and any grounds not so raised are waived unless the State or Federal Constitution otherwise requires or any justice on considering a subsequent petition finds grounds for relief asserted therein which could not reasonably have been raised in the original or amended petition. A petitioner who has previously entered a petition under the Revised Statutes of 1954, chapter 126-A or under chapter 129, sections 11 and 12 shall not be granted the writ under this remedy unless the court on considering the petition finds grounds for relief asserted therein which could not reasonably have been raised in said previous petition.

1963, c. 310, § 1.

§ 5508. Review of final judgment; release pending appeal

A final judgment entered under section 5505 may be reviewed by the Supreme Judicial Court sitting as a law court in an appeal brought by the petitioner or the State in the same mode and scope of review as any civil action.

If the justice upon hearing determines that the petitioner should be immediately discharged, pending review of a decision discharging a petitioner, said petitioner shall be enlarged upon recognizance, with surety, for his appearance to answer and abide by the judgment in the appellate proceedings; and if in the opinion of the justice rendering the decision surety ought not to be required the personal recognizance of the prisoner shall suffice.

1963, c. 310, § 1.

§ 5509. Minors in armed forces entitled to writ

A minor enlisted within the State into the Army or Navy of the United States without the written consent of his parent or guardian shall have all the benefits of this chapter on the application of himself, parent or guardian.

R.S.1954, c. 126, § 2.

§ 5510. Parent or guardian of minor may have writ

The parent 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.

R.S.1954, c. 126, § 3.

§ 5511. Application for writ on behalf of another

The Supreme Judicial Court or the Superior Court or any justice of either of said courts, 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 but not convicted and sentenced, who would be entitled to it on his own application, when from any cause he is incapable of making it.

R.S.1954, c. 126, § 4; 1963, c. 310, § 2.

§ 5512. Writ not available

The following persons shall not of right have such writ:

1. Persons committed to jail for certain offenses. Persons committed to or confined in prison or jail on suspicion of treason,

felony or accessories before the fact to a felony, when the same is plainly and specifically expressed in the warrant of commitment.

2. Persons committed on civil process. Persons committed in execution of civil legal process or on mesne process on any civil action on which they are liable to be arrested or imprisoned.

R.S.1954, c. 126, § 5; 1963, c. 310, § 3.

§ 5513. Application

Application for such writ by any person shall be made to any Justice of the Supreme Judicial Court or Superior Court, regardless whether or not the Supreme Judicial Court or Superior Court is in session. It shall be made returnable before such justice to whom application is made. If the writ is denied and an appeal taken to the law court, the person restrained may be admitted to bail within the discretion of the justice rendering judgment thereon, pending such appeal.

R.S.1954, c. 126, § 6.

§ 5514. Where writ returnable; entry of judgment

When awarded by a Justice of the Supreme Judicial Court or of the Superior Court, such writ may issue, under his hand and seal or upon his order from any clerk's office in vacation as if issued by the court, and run throughout the State, and may be returnable before the court or before himself or any other justice thereof, and shall be entered upon the docket of the court in the county where returnable, and the judgment shall there be recorded by the clerk.

R.S.1954, c. 126, § 7.

§ 5515. Application; denial of writ

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. If, on inspection, 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, unless from examination of the whole case, the court or justice is of opinion that it ought to issue.

R.S.1954, c. 126, § 8.

§ 5516. Excessive bail

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

R.S.1954, c. 126, § 9.

§ 5517. Refusal of copy of precept; writ granted

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 as prayed for.

R.S.1954, c. 126, § 10.

§ 5518. Form of writ

When such writ is issued on an application in behalf of any person described in section 5512, it shall be substantially as follows:

“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” (or Superior) “Court, held at, within 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, Esquire, our, at, this day of, in the year 19. . . .

., 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.

R.S.1954, c. 126, § 11.

§ 5519. Time of service, return and tender of fees

When such writ is offered to the officer to whom it is directed, he shall receive it. On payment or tender of such sum as the court or justice thereof directs, he shall make due return thereof within 3 days if the place of return is within 20 miles of the place of imprisonment; if over 20 and less than 100 miles, within 7 days; and if more than 100 miles, within 14 days. 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 obey the writ without payment or tender of expenses.

R.S.1954, c. 126, § 12.

§ 5520. Production of body of restrained person; sickness

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. In such case that fact shall be stated in the return. 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 require.

R.S.1954, c. 126, § 13.

§ 5521. Examination of causes of restraint

On 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.

R.S.1954, c. 126, § 14.

§ 5522. Notice to interested persons before discharge

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 30 miles of the place of examination, to appear and object, if he sees cause. If imprisoned on any criminal accusation, he shall not be discharged until sufficient no-

tice has been given to the Attorney General or other attorney for the State that he may appear and object, if he thinks fit.

R.S.1954, c. 126, § 15.

§ 5523. Proceedings in court

The party imprisoned or restrained may deny allegations of fact in the return or statement and may allege other material facts. 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 5516.

R.S.1954, c. 126, § 16.

§ 5524. Detention for bailable offense; admission to bail

If the party is imprisoned and detained for a bailable offense, he shall be admitted to bail if sufficient bail is offered. 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. A justice of the peace may, at any time before the sitting of the court, bail the party pursuant to such order.

R.S.1954, c. 126, § 17.

§ 5525. Form of writ if restraint not by officer

In cases of imprisonment or restraint of personal liberty by any person not a sheriff, deputy sheriff, 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.

[L. S.] “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” (or Superior) “Court, held at, within and for our County of, 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,, Esquire, our, at, this day of, in the year 19., Clerk.”

R.S.1954, c. 126, § 18.

§ 5526. Issuance and service of writ

The writ described in section 5525 may be issued by the Supreme Judicial Court or Superior 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 may be served in any county in the State.

R.S.1954, c. 126, § 19.

§ 5527. Designation of unknown person; restraining person

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. Anyone served with the writ shall be deemed the person thereby intended.

R.S.1954, c. 126, § 20.

§ 5528. —Restrained person

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.

R.S.1954, c. 126, § 21.

§ 5529. Form of return

In cases under section 5518, the person who makes the return, and in cases under section 5525, 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:

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

2. If so, authority and cause. 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,

3. If transferred to another. 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.

R.S.1954, c. 126, § 22.

§ 5530. Verification of returns

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.

R.S.1954, c. 126, § 23.

§ 5531. Custody of party

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.

R.S.1954, c. 126, § 24.

§ 5532. Neglect of officer to deliver copy of precept

If an officer refuses or neglects for 4 hours to deliver a true and attested copy of the warrant or process by which he detains a prisoner to any person who demands it and tenders the fees therefor, he forfeits to such prisoner \$200.

R.S.1954, c. 126, § 25.

§ 5533. Failure to serve writ; contempt

If any person or officer to whom such writ is directed refuses to receive it or neglects to obey and execute it as required, and no sufficient cause is shown therefor, he forfeits to the aggrieved party \$400. The court or justice 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.

R.S.1954, c. 126, § 26.

§ 5534. Attachment against sheriff; service

If such attachment is issued against a sheriff or his deputy, it may be directed to any 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.

R.S.1954, c. 126, § 27.

§ 5535. Refusal to obey writ

If the person to whom the writ is directed refuses to obey and execute it, the court or justice 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 such court or justice. The prisoner shall thereupon be discharged, bailed or remanded as if brought in on habeas corpus.

R.S.1954, c. 126, § 28.

§ 5536. No rearrest after discharge

No person discharged by habeas corpus, except as provided in sections 5502 to 5508, shall be again imprisoned or restrained for the same cause, unless indicted therefor, convicted thereof or committed for want of bail; or unless, 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 offense.

R.S.1954, c. 126, § 29; 1963, c. 310, § 4.

§ 5537. Transfer of prisoner with intent to elude service; penalty

A person ordered to be committed to prison on a 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. If anyone having in his custody or under his power a 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 forfeits \$400 to the party aggrieved.

R.S.1954, c. 126, § 30.

§ 5538. Penalty no bar to action

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

R.S.1954, c. 126, § 31.

§ 5539. Third person may appear by stipulating for costs

When a person is unlawfully carried out of the State or is 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.

R.S.1954, c. 126, § 32.

§ 5540. Bail; exceptions

Nothing in this chapter shall restrain the Supreme Judicial Court or the Superior Court in term time, or any justice thereof in vacation, from bailing a person for any offense when the circumstances of the case require it; except persons committed by the Governor and Council, Senate or House of Representatives for causes mentioned in the Constitution.

R.S.1954, c. 126, § 33.

§ 5541. Bail commissioners appointed by court

The Superior Court sitting in each county shall appoint from the number of justices of the peace resident in the county, one or more bail commissioners, who shall hold office during the pleasure of the court. All bail commissioners acting under an appointment by a Justice of the Supreme Judicial Court shall continue in office during the pleasure of the Superior Court.

R.S.1954, c. 126, § 34; 1963, c. 402, § 204.

§ 5542. Bail for persons committed for not finding sureties

When a person is confined in a jail for a bailable offense or for not finding sureties on a recognizance, except when a verdict of guilty has been rendered against him for an offense punishable in the State Prison and except when such person is committed pending decision on report or exceptions as provided in Title 15, section 1701, any such commissioner, on application, may inquire into the case and admit him to bail and exercise the same power as any Justice of the Supreme Judicial Court or Superior Court can; and may issue a writ of habeas corpus and cause such person to be brought before him for this purpose, and may take such recognizance. During a term of the Superior Court, a bail commissioner is not authorized to admit to bail any person confined in jail or held under arrest by virtue of a precept returnable to said term. When a person is confined in jail for a bailable offense or for not finding sureties on a recognizance and the amount of his bail has been fixed by a Justice of the Supreme Judicial Court or of the Superior Court or by a Judge of the District Court, a bail commissioner is not authorized to change the amount of such bail.

Such bail commissioner shall receive not exceeding the sum of \$5 in each case in which bail is so taken, the same to be paid by the person so admitted to bail; but the person admitted to bail shall not be required to pay any other fees or charges to any officer for services connected with the giving of such bail. If a bail commissioner takes bail after 8 p. m. and prior to 8 a. m. of the following day he shall be permitted to receive a charge of up to \$10 for the occasion of taking such bail, but said charge shall not be in addition to the charge in each case otherwise authorized in this section but shall be inclusive of such charge or charges.

No attorney at law who has acted as bail commissioner in any proceeding shall act as attorney for or in behalf of any respondent for whom he has taken bail in such proceeding; nor shall any attorney at law who has acted as such attorney for a respondent in any offense act as bail commissioner in any proceeding growing out of the offense with which the respondent is charged or for not finding sureties on a recognizance growing out of such proceeding.

R.S.1954, c. 126, § 35; 1955, c. 356; 1963, c. 402, § 205.

§ 5543. Surety bonds authorized in criminal cases

In any criminal proceeding or mesne process or other process where a bail bond recognizance or personal sureties or other obligation is required, or whenever any person is arrested and is required or permitted to recognize with sureties for his appearance in court, the court official or other authority authorized by law to accept and approve the same shall accept and approve in lieu thereof, when offered, a good and sufficient surety bond duly executed by a surety company authorized to do business in this State.

1959, c. 143, § 2.

§ 5544. Admission to bail before commitment; on Lord's Day

Any person under arrest for aailable criminal offense may, before commitment to jail if he so requests, be taken by the officer having him in charge before a bail commissioner, who may inquire into the case and admit him to bail. Any person arrested on the Lord's Day, or on the afternoon or evening preceding, for aailable offense, may be admitted to bail on that day by such commissioner.

R.S.1954, c. 126, § 36.

§ 5545. Habeas corpus for prisoner as witness

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

R.S.1954, c. 126, § 37.

§ 5546. Habeas corpus for mentally ill person

When a mentally ill person is arrested or imprisoned on mesne process or execution in a civil action, a Justice of the Supreme Judicial Court or of the Superior Court or the 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 it is proved to the satisfaction of said justice or judge that the person is mentally ill, he may discharge him from arrest or imprisonment; and the creditor may make a new arrest on the same demand when the debtor becomes of sound mind. If he is arrested on the same demand a 2nd time before he becomes of sound mind and is again discharged for that reason, he is forever after exempt from arrest for the same cause.

R.S.1954, c. 126, § 38; 1959, c. 242, § 8; 1961, c. 317, § 448.