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AS PASSED BY THE

One Hundred and First Legislature

OF THE

STATE OF MAINE

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PUBLIC LAWS

OF THE

STATE OF MAINE

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Chapter 310

AN ACT Relating to Habeas Corpus and Post Conviction Procedure in Criminal Cases.

Be it enacted by the People of the State of Maine, as follows:

Sec. 1. R. S., c. 126, §§ 1-A – 1-G, additional. Chapter 126 of the Revised Statutes is amended by adding 7 new sections, to be numbered 1-A to 1-G, to read as follows:

'Sec. 1-A. 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 1-A to 1-G 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 1-A to 1-G, 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.

Sec. 1-B. Jurisdiction; commencement of proceedings; verification; filing; service; amendments. The proceedings 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.

Sec. 1-C. 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.

Sec. 1-D. 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.

Sec. 1-E. Appointment of 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.

Sec. 1-F. Waiver of grounds not claimed. 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.

Sec. 1-G. Review of final judgment. A final judgment entered under section 1-D 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.'

Sec. 2. R. S., c. 126, § 4, amended. Section 4 of chapter 126 of the Revised Statutes is amended to read as follows:

'Sec. 4. Courts may grant writ, on application, in behalf of one incapable of applying. 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.'

Sec. 3. R. S., c. 126, § 5, repealed and replaced. Section 5 of chapter 126 of the Revised Statutes is repealed and the following enacted in place thereof:

'Sec. 5. Persons not entitled of right. The following persons shall not of right have such writ:

I. 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.

II. 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.'

Sec. 4. R. S., c. 126, § 29, amended. Section 29 of chapter 126 of the Revised Statutes is amended to read as follows:

'Sec. 29. Persons discharged on habeas corpus, not rearrested. No person discharged by habeas corpus, except as provided in sections 1-A to 1-G, 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.'

Sec. 5. R. S., c. 126-A, repealed. Chapter 126-A of the Revised Statutes, as enacted by chapter 131 of the public laws of 1961, is repealed.

Sec. 6. R. S., c. 129, §§ 11, 12, repealed. Sections 11 and 12 of chapter 129 of the Revised Statutes are repealed.