

REVISED JUDICATURE ACT OF 1961 (EXCERPT)

Act 236 of 1961

CHAPTER 43

HABEAS CORPUS

600.4301 Habeas corpus; provisions of chapter; applicability.

Sec. 4301. The provisions of sections 4301 to 4379 shall be construed to apply to every writ of habeas corpus authorized to be issued under any statute of this state, insofar as they are consistent with the statute granting the right to habeas corpus.

History: 1961, Act 236, Eff. Jan. 1, 1963.

600.4304 Habeas corpus; power to issue writ.

Sec. 4304. The writ of habeas corpus to inquire into the cause of detention, or an order to show cause why the writ should not issue, may be issued by the following:

- (1) The supreme court, or a justice thereof.
- (2) The court of appeals, or a judge thereof.
- (3) The circuit courts, or a judge thereof.
- (4) The municipal courts of record, including but not limited to the recorder's court of the city of Detroit, common pleas court, or a judge thereof.
- (5) The district courts, or a judge thereof.

History: 1961, Act 236, Eff. Jan. 1, 1963;—Am. 1967, Act 65, Imd. Eff. June 20, 1967;—Am. 1974, Act 297, Eff. Apr. 1, 1975.

600.4307 Habeas corpus; right to bring action.

Sec. 4307. An action for habeas corpus to inquire into the cause of detention may be brought by or on the behalf of any person restrained of his liberty within this state under any pretense whatsoever, except as specified in section 4310.

History: 1961, Act 236, Eff. Jan. 1, 1963.

600.4310 Habeas corpus; persons not entitled to writ.

Sec. 4310. An action for habeas corpus to inquire into the cause of detention may not be brought by or on behalf of the following persons:

- (1) Persons detained by virtue of any process issued by any court of the United States, or any judge thereof, in cases where such courts or judges have exclusive jurisdiction under the laws of the United States, or have acquired exclusive jurisdiction by the commencement of suits in such courts;
- (2) Persons committed for treason or felony, or for suspicion thereof, or as accessories before the fact to a felony, where the cause is plainly and specially expressed in the warrant of commitment;
- (3) Persons convicted, or in execution, upon legal process, civil or criminal;
- (4) Persons committed on original process in any civil action on which they were liable to be arrested and imprisoned, unless excessive and unreasonable bail is required.

History: 1961, Act 236, Eff. Jan. 1, 1963.

600.4313 Habeas corpus; refusal to consider; malfeasance of judge.

Sec. 4313. Any judge who wilfully or corruptly refuses or neglects to consider an application, action, or motion for habeas corpus, is guilty of malfeasance in office.

History: 1961, Act 236, Eff. Jan. 1, 1963.

600.4316 Habeas corpus; granting of writ.

Sec. 4316. Any court or judge empowered to grant the writ of habeas corpus shall, upon proper application, grant the preliminary writ (or an order to show cause) without delay, unless the party applying therefor is not entitled to the writ.

History: 1961, Act 236, Eff. Jan. 1, 1963.

600.4319 Habeas corpus; custody of child.

Sec. 4319. If the action for habeas corpus is brought by a parent, foster-parent, or other relative of the child, to obtain custody of a child under the age of 16 years from a parent, foster-parent, or other relative of the child, issuance of the writ of habeas corpus is not mandatory.

History: 1961, Act 236, Eff. Jan. 1, 1963.

600.4322 Habeas corpus; “prisoner” defined.

Sec. 4322. The term "prisoner", as used in connection with habeas corpus, means the person on whose behalf the writ is issued, such as an inmate of a penal or mental institution, the child whose custody is sought, and other persons alleged to be restrained of their liberty.

History: 1961, Act 236, Eff. Jan. 1, 1963.

600.4325 Habeas corpus; person served; duty to bring body of prisoner.

Sec. 4325. If a writ of habeas corpus is issued, the person on whom it is served shall bring the body of the person in his custody according to the command of the writ, except as provided in section 4328.

History: 1961, Act 236, Eff. Jan. 1, 1963.

600.4328 Habeas corpus; sickness or infirmity of prisoner.

Sec. 4328. If, from the sickness or infirmity of the prisoner directed to be produced by any writ of habeas corpus, the prisoner cannot, without danger, be brought before the court or judge, the party having custody of the prisoner may state that fact in his answer. The court or judge, if satisfied of the truth of the allegation, and if the answer is otherwise sufficient, shall proceed to dispose of the matter on the record.

History: 1961, Act 236, Eff. Jan. 1, 1963.

600.4331 Habeas corpus; refusal or neglect to obey; arrest; close custody; proceeding against sheriff; prisoner to be brought before court; power of county.

Sec. 4331. (1) If the person upon whom the writ of habeas corpus was duly served refuses or neglects to obey the writ without sufficient excuse, the court or judge before whom the writ was to be answered, upon due proof of the service thereof, shall direct the arrest of such person.

(2) The sheriff of any county within this state, or other officer, who is directed to make the arrest, shall apprehend such person, and bring him before the court or judge. The person shall be committed to close custody in the jail of the county in which the court or judge is, without being allowed the liberties thereof, until the person complies with the writ.

(3) If the person ordered arrested is the sheriff of any county, the order may be directed to any coroner or other person, to be designated therein, who has thereby full power to arrest the sheriff. Such sheriff upon being brought up may be committed to the jail of any county other than his own.

(4) The person directed to make the arrest shall also bring the prisoner named in the writ of habeas corpus before the court or judge which issued the writ.

(5) In making the arrest the sheriff or other person so directed may call to his aid the power of the county as in other cases.

History: 1961, Act 236, Eff. Jan. 1, 1963.

600.4334 Arrest in support of writ.

Sec. 4334. If any person attempts wrongfully to carry the prisoner out of the county or state after service of a writ of habeas corpus or order to show cause, the person serving the writ or order to show cause, or other officer, shall arrest the person so resisting, and bring him together with the prisoner before the court or judge issuing the writ or order to show cause.

History: 1961, Act 236, Eff. Jan. 1, 1963.

600.4337 Warrant for prisoner in lieu of habeas corpus; issuance.

Sec. 4337. Whenever it appears by satisfactory proof, that anyone is held in illegal confinement or custody, and that there is good reason to believe that he will be carried out of the state, or suffer some irreparable injury, before he can be relieved by the issuing of a writ of habeas corpus, any court or judge authorized to issue such writs may issue a warrant, reciting the facts, and directed to any sheriff, constable or other person, and commanding the officer or person to take the prisoner, and forthwith to bring him before the court or judge, to be dealt with according to law.

History: 1961, Act 236, Eff. Jan. 1, 1963.

600.4340 Arrest of person having custody of prisoner; warrant.

Sec. 4340. When the proof mentioned in section 4337 is sufficient to justify an arrest of the person having the prisoner in his custody, as for a criminal offense committed in the taking or detaining of the prisoner, the warrant shall also contain an order for the arrest of such person for that offense.

History: 1961, Act 236, Eff. Jan. 1, 1963.

600.4343 Arrest of person having custody of prisoner; execution of warrant.

Sec. 4343. Any officer or person to whom the warrant is directed shall execute the warrant by bringing the prisoner therein named, and the person who detains him, if so commanded by the warrant, before the court or judge issuing the warrant. The person detaining the prisoner shall make answer as if a writ of habeas corpus had been issued in the first instance.

History: 1961, Act 236, Eff. Jan. 1, 1963.

600.4346 Arrest of person having custody of prisoner; procedure.

Sec. 4346. If the person having the prisoner in his custody is brought before the court or judge, as for a criminal offense, he shall be examined, committed, bailed or discharged by the court or judge in the like manner as in other criminal cases of like nature.

History: 1961, Act 236, Eff. Jan. 1, 1963.

600.4349 Custody of prisoner.

Sec. 4349. The court or judge issuing the writ of habeas corpus may commit the prisoner to the custody of such individual or individuals as the court or judge considers proper.

History: 1961, Act 236, Eff. Jan. 1, 1963.

600.4352 Discharge of prisoner; enforcement of order; obedience by sheriff or other custodian.

Sec. 4352. (1) If no legal cause is shown for the restraint, or for the continuation thereof, the court or judge shall discharge the person restrained from the restraint under which he is held.

(2) Obedience to any order for the discharge of any prisoner may be enforced by the court or judge granting such order, by arrest in the same manner as is herein provided for disobedience to a writ of habeas corpus, and with like effect in all respects. The person guilty of disobedience to an order for the discharge of any prisoner is liable to the party aggrieved in the sum of \$1,000.00 damages, in addition to any special damages the party may have sustained.

(3) No sheriff or other officer is liable to any civil action for obeying any such order of discharge.

History: 1961, Act 236, Eff. Jan. 1, 1963.

600.4355 Remanding of prisoner.

Sec. 4355. The court or judge shall forthwith remand the person restrained if the person restrained is detained in custody, either:

(1) By virtue of process issued by any court or judge of the United States, in a case where such court or judge has exclusive jurisdiction; or

(2) By virtue of the final judgment or decree of any competent court of civil or criminal jurisdiction, or of any execution issued upon such judgment or decree; or

(3) For any contempt specially and plainly charged in the commitment by some court, officer or body having authority to commit for the contempt so charged; and

(4) The time during which such party may be legally detained has not expired.

History: 1961, Act 236, Eff. Jan. 1, 1963.

600.4358 Discharge of prisoner in civil cases.

Sec. 4358. If the prisoner is in custody by virtue of civil process from any court legally constituted, or issued by any officer in the course of judicial proceedings before him, authorized by law, the prisoner shall be discharged only if 1 of the following situations exists:

(1) Where the jurisdiction of the court or officer has been exceeded, either as to matter, place, sum or person;

(2) Where, though the original imprisonment was lawful, the party is entitled to be discharged;

(3) Where the process is void;

(4) Where the process, though in proper form, has been issued in a case not allowed by law;

(5) Where the person having the custody of the prisoner is not the person empowered by law to detain him; or

(6) Where the process is not authorized by any judgment, order or decree of any court, nor by any provision of law.

History: 1961, Act 236, Eff. Jan. 1, 1963.

600.4361 Remanding or commitment of prisoner.

Sec. 4361. If the prisoner is not entitled to his discharge, and is not bailed, the court or judge shall place him under the restraint from which he was taken, if the person under whose restraint he was is legally entitled

thereto. If not so entitled, the court or judge shall commit the prisoner to the custody of such officer or person as by law is entitled thereto.

History: 1961, Act 236, Eff. Jan. 1, 1963.

600.4364 Recommitment of prisoner; causes.

Sec. 4364. No person who has been discharged by the order of any court or judge upon habeas corpus shall be again restrained for the same cause. It is not the same cause if:

(1) He was discharged from a commitment on a criminal charge, and is afterwards committed for the same offense, by the legal order or process of the court wherein he is bound by recognizance to appear, or in which he is indicted or convicted for the same offense; or

(2) After a discharge for defect of proof, or for any material defect in the commitment, in a criminal case, the prisoner is again arrested on sufficient proof, and committed by legal process for the same offense; or

(3) In a civil suit the party was discharged for any illegality in the judgment or process and is afterwards imprisoned by legal process for the same cause of action; or

(4) In any civil suit in which process may lawfully issue against the body, he was discharged from commitment on original process, and is afterwards committed on execution in the same cause, or on original process in any other suit, after such first suit was discontinued.

History: 1961, Act 236, Eff. Jan. 1, 1963.

600.4367 Recommitment of prisoner; violation of section; penalty.

Sec. 4367. If any person knowingly:

(1) violates section 4364, or

(2) causes section 4364 to be violated, or

(3) aids or assists in the violation of section 4364; he is guilty of a misdemeanor, and is liable to the party aggrieved in the sum of \$1,000.00 damages.

History: 1961, Act 236, Eff. Jan. 1, 1963.

600.4370 Concealment of prisoner; misdemeanor.

Sec. 4370. Any one having under his power any person who would be entitled to a writ of habeas corpus to inquire into the cause of his detention, or for whose relief any such writ, warrant, or order to show cause was issued, who shall, with intent to elude the service of the writ, or to avoid the effect thereof, place any such prisoner under the power of another, or conceal him, or change the place of his confinement, is guilty of a misdemeanor.

History: 1961, Act 236, Eff. Jan. 1, 1963.

600.4373 Concealment of prisoner; aiding; misdemeanor.

Sec. 4373. Every person who knowingly aids or assists in the violation of section 4370 is guilty of a misdemeanor.

History: 1961, Act 236, Eff. Jan. 1, 1963.

600.4376 Concealment of prisoner; misdemeanor; penalty.

Sec. 4376. Every person convicted of any of the misdemeanors specified in sections 4367, 4370 and 4373 shall be punished by a fine not exceeding \$1,000.00, or by imprisonment in the county jail not exceeding 6 months, or by both such fine and imprisonment, in the discretion of the court.

History: 1961, Act 236, Eff. Jan. 1, 1963.

600.4379 Refusal to deliver copy of authority for detention of prisoner; time; civil liability.

Sec. 4379. Any officer or other person who refuses or neglects for 6 hours to deliver a copy of any order, warrant, process or other authority by which he detains any person, to any one who demands such copy and tenders the lawful fees therefor, is liable to the person so detained in the sum of \$200.00 damages.

History: 1961, Act 236, Eff. Jan. 1, 1963.

600.4385 Habeas corpus for witness; issuance; transfer of prisoner.

Sec. 4385. (1) The judges of every court of record have the power to issue a writ of habeas corpus for the purpose of bringing before that court, or another court or body authorized to examine witnesses, any prisoner who may be detained in any jail or prison within this state, to be examined as a witness.

(2) The judge may order in the writ that the prisoner be placed in the custody of a designated officer for transportation to the place of examination and return, instead of requiring the person having custody of the prisoner to produce the prisoner at the place of examination.

History: 1961, Act 236, Eff. Jan. 1, 1963.

600.4387 Habeas corpus; liability of officer for disobedience to writ.

Sec. 4387. Whenever any writ of habeas corpus is issued pursuant to section 4385, the officer on whom the writ is served shall obey the writ in the manner and within the time prescribed by statute or court rule. Every officer who neglects or refuses so to do, is liable in the sum of \$500.00 to:

- (1) the people of this state, if the writ was issued upon the application of the attorney general, or a prosecuting attorney; or
- (2) the party upon whose application the writ was issued.

History: 1961, Act 236, Eff. Jan. 1, 1963.