

## CHAPTER 609

### HABEAS CORPUS

#### **§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.

#### **§5502. Post-conviction habeas corpus**

**(REPEALED)**

SECTION HISTORY

PL 1979, c. 701, §2 (RP).

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

**(REPEALED)**

SECTION HISTORY

PL 1979, c. 701, §2 (RP).

#### **§5504. Contents of petition**

**(REPEALED)**

SECTION HISTORY

PL 1979, c. 701, §2 (RP).

#### **§5505. Further pleadings and procedure**

**(REPEALED)**

SECTION HISTORY

PL 1969, c. 545 (AMD). PL 1971, c. 342, §1 (AMD). PL 1979, c. 701, §2 (RP).

#### **§5506. Counsel for indigent petitioners**

**(REPEALED)**

SECTION HISTORY

PL 1979, c. 701, §2 (RP).

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

**(REPEALED)**

SECTION HISTORY

PL 1979, c. 701, §2 (RP).

#### **§5508. Review of final judgment; release pending appeal**

**(REPEALED)**

SECTION HISTORY

PL 1969, c. 261 (AMD). PL 1971, c. 342, §2 (AMD). PL 1979, c. 701, §2 (RP).

#### **§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.

**§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.

**§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.

**§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.

**§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.

**§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.

**§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.

**§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.

**§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.

**§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.  
(L.S.)

To A. B., of ....;

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.

**§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.

**§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.

**§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.

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

**§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.

**§5524. Detention for bailable offense; admission to bail**

**(REPEALED)**

**SECTION HISTORY**

PL 1981, c. 456, §A54 (AMD). PL 1987, c. 736, §15 (AMD). PL 1987, c. 758, §5 (RP). PL 1989, c. 502, §A39 (RP).

**§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."

**§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.

**§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.

**§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.

**§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.

**§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.

**§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.

**§5532. Neglect of officer to deliver copy of precept**

An officer forfeits \$200 to a prisoner if the officer refuses or neglects, within the time period provided in subsection 1 or 2, to deliver a true and attested copy of the warrant or process by which the officer detains a prisoner to any person who demands it and tenders the fee for the copy. [PL 1987, c. 639 (RPR).]

**1. Sentenced prisoners.** In the case of sentenced prisoners, the copy of the warrant or process must be delivered within 3 business days of the demand. As used in this subsection, "business day" has the same meaning as found in Title 21-A, section 1, subsection 4. [PL 1987, c. 639 (NEW).]

**2. Other prisoners.** In the case of any prisoner other than a sentenced prisoner, the copy of the warrant or process, which need not be a true and attested copy, must be delivered within 4 hours of the demand. [PL 1991, c. 402, §1 (AMD).]

SECTION HISTORY

PL 1987, c. 639 (RPR). PL 1991, c. 402, §1 (AMD).

**§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.

**§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.

**§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.

**§5536. No rearrest after discharge**

No person discharged by post-conviction review, except as provided in Title 15, chapter 305-A, 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. [PL 1981, c. 470, Pt. A, §32 (AMD).]

#### SECTION HISTORY

PL 1981, c. 470, §A32 (AMD).

#### **§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.

#### **§5538. Penalty no bar to action**

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

#### **§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.

#### **§5540. Bail; exceptions**

**(REPEALED)**

#### SECTION HISTORY

PL 1987, c. 758, §6 (RP).

#### **§5541. Bail commissioners appointed by the court**

**(REPEALED)**

#### SECTION HISTORY

PL 1979, c. 257, §1 (RPR). PL 1981, c. 456, §A55 (AMD). PL 1983, c. 688, §8 (AMD). PL 1987, c. 162 (RPR). PL 1987, c. 758, §7 (RP).

#### **§5542. Bail for persons committed for not finding sureties**

**(REPEALED)**

#### SECTION HISTORY

PL 1965, c. 356, §§15,16 (AMD). PL 1973, c. 228 (AMD). PL 1975, c. 205 (AMD). PL 1985, c. 35 (AMD). PL 1987, c. 758, §8 (RP).

#### **§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.

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

**(REPEALED)**

## SECTION HISTORY

PL 1971, c. 291 (AMD). PL 1973, c. 788, §60 (AMD). PL 1977, c. 510, §2 (AMD). PL 1979, c. 663, §81 (AMD). PL 1987, c. 758, §9 (RP).

**§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.

Whenever, under this section or under any other section in this chapter, a court issues a writ of habeas corpus ordering before it a prisoner confined in any penal or correctional institution under the control of the Department of Corrections, or confined in any county jail, its order as to the transportation of the prisoner to and from the court must be directed to the sheriff of the county in which the court is located. It is the responsibility of the sheriff or any one or more of the sheriff's authorized deputies pursuant to any such order to safely transport a prisoner to and from the court and to provide safe and secure custody of the prisoner during the proceedings, as directed by the court. At the time of removal of a prisoner from an institution, the transporting officer shall leave with the head of the institution an attested copy of the order of the court, and upon return of the prisoner shall note that return on the copy. [PL 2015, c. 335, §5 (AMD).]

Any prisoner who escapes from custody of the sheriff or any of his deputies or any other law enforcement officer following removal for appearance in court, from a penal or correctional institution or from a county jail, and prior to return thereto, shall be chargeable with escape from the penal or correctional institution or county jail from which he was removed, and shall be punished in accordance with Title 17-A, section 755. [PL 1975, c. 740, §1-A (RPR).]

## SECTION HISTORY

PL 1969, c. 71 (AMD). PL 1971, c. 224 (AMD). PL 1975, c. 740, §1-A (AMD). PL 1989, c. 722, §4 (AMD). PL 1995, c. 560, §K82 (AMD). PL 1995, c. 560, §K83 (AFF). PL 1999, c. 583, §1 (AMD). PL 2001, c. 354, §3 (AMD). PL 2003, c. 689, §B6 (REV). PL 2007, c. 653, Pt. A, §4 (AMD). PL 2015, c. 335, §5 (AMD).

**§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.

**§5547. Orders to ensure the integrity of the judicial process****(REPEALED)**

## SECTION HISTORY

PL 1987, c. 300 (NEW). PL 1987, c. 758, §10 (RP). MRSA T. 14 §5547 (RP).

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