

CHAPTER 79

HABEAS CORPUS

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79.01 Application and writ.—When any person detained in custody, whether charged with a criminal offense or not, applies to the Supreme Court or any justice thereof, or to any district court of appeal or any judge thereof or to any circuit judge for a writ of habeas corpus and shows by affidavit or evidence probable cause to believe that he or she is detained without lawful authority, the court, justice, or judge to whom such application is made shall grant the writ forthwith, against the person in whose custody the applicant is detained and returnable immediately before any of the courts, justices, or judges as the writ directs.

History.—s. 1, Sept. 16, 1822; s. 1, ch. 3129, 1879; RS 1771; GS 2248; RGS 3571; CGL 5435; s. 29, ch. 67-254; s. 413, ch. 95-147.

79.02 Bond may be required.—When it appears necessary, the court, justice, or judge granting the writ shall require bond with surety to be approved by the judge or clerk payable to the Governor executed in such manner and reasonable penalty as the court, justice, or judge prescribes; conditioned for the payment of the charges and costs awarded against the prisoner and that he or she will not escape by the way. The bond shall be filed and may be sued on in the name of the Governor for the benefit of any person interested therein. In the event of inability to give bond for the payment of charges and costs, he or she may be permitted, in the place thereof, to make deposit in such amount as the court, justice, or judge requires.

History.—s. 2, ch. 3129, 1879; RS 1771; GS 2248; RGS 3571; CGL 5435; s. 29, ch. 67-254; s. 414, ch. 95-147.

79.03 Service of writ.—When issued, the writ shall be served by the sheriff of the county in which the petitioner is alleged to be detained on the officer or other person against whom it is issued, or in his or her absence from the place where the prisoner is confined, on the person having the immediate custody of the prisoner. When the sheriff of the county is the person holding the party detained, a delivery to or receipt of the writ by the sheriff is sufficient service.

History.—s. 2, ch. 3129, 1879; RS 1772; GS 2249; RGS 3572; CGL 5436; s. 29, ch. 67-254; s. 415, ch. 95-147.

79.04 Return to writ.—

(1) The person on whom the writ is served shall bring the body of the prisoner, or cause it to be brought, before the court, justice or judge before whom the writ is made returnable without delay and at the same time certify to the cause of the detention.

(2) When the writ is issued, the court shall set an early return date, at which time the formal return of the defendant shall be made. In the absence of a motion to quash or a motion for discharge notwithstanding the return, issue is joined when the return is filed and the action shall be ready for final disposition.

History.—s. 2, Sept. 16, 1822; s. 2, ch. 3129, 1879; RS 1773; GS 2250; RGS 3573; CGL 5437; s. 29, ch. 67-254.

79.05 Compelling return and production of body.—

(1) **CIVIL LIABILITY.**—Any person failing to return to the writ served on him or her with the cause of the prisoner's detention, or to bring the body of the prisoner before the court, justice, or judge, according to the command of the writ for 3 days after the service shall forfeit and pay to the prisoner the sum of \$300.

(2) **BY PROCEEDINGS BY THE COURT.**—A justice or judge in vacation may enforce obedience to any writ of habeas corpus and in cases pending before the Supreme Court, or any of the justices thereof, writs for the enforcement of obedience may be directed to the sheriff or other officer.

History.—ss. 3, 4, Sept. 16, 1822; ss. 3, 4, ch. 3129, 1879; RS 1774; GS 2251; RGS 3574; CGL 5438; s. 29, ch. 67-254; s. 416, ch. 95-147.

79.06 Effect of the return.—

(1) **GENERALLY.**—The return made to the writ may be amended, and is not conclusive as to the facts stated therein, but the court, justice or judge before whom the return is made may examine into the cause of the imprisonment or detention, receive evidence in contradiction of the return, and determine it as the truth of the case requires.

(2) **IN CASES OF CONTEMPT.**—On the return of the writ when the cause of detention appears to be a contempt, plainly and specifically charged in the commitment by some court officer or body having authority to commit for the contempt so charged and for the time stated, the court, justice or judge before whom the writ is returnable shall remand the prisoner forthwith if the time for detention for contempt has not expired.

History.—s. 6, Sept. 16, 1822; s. 6, ch. 3129, 1879; RS 1775; GS 2252; RGS 3575; CGL 5439; s. 29, ch. 67-254.

79.07 Procurement of evidence.—When it is inconvenient to procure the personal attendance of a witness, the witness's affidavit, taken upon reasonable notice to the adverse party, may be received in evidence.

History.—s. 7, Sept. 16, 1822; s. 7, ch. 3129, 1879; RS 1776; GS 2253; RGS 3576; CGL 5440; s. 29, ch. 67-254; s. 417, ch. 95-147.

79.071 Notice to prosecutor.—If the validity of any statute, criminal law proceeding or conviction is attacked by habeas corpus in the circuit court, notice of the application for the writ shall be given to the prosecuting attorney of the court in which the statute under attack is being applied, the criminal law proceeding is being maintained or the conviction has occurred.

History.—s. 29, ch. 67-254.

79.08 Hearing and judgment.—The court, justice, or judge before whom the prisoner is brought shall inquire

without delay into the cause of the prisoner's imprisonment, and shall either discharge the prisoner, admit him or her to bail or remand him or her to custody, as the law and the evidence require; and shall either award against the prisoner the charges of his or her transportation, not exceeding 15 cents per mile and the costs of the proceedings, or shall award the costs in the prisoner's favor, or shall award no costs or charges against either party, as is right. The clerk of the court in which such action is pending shall issue execution for the costs and charges awarded.

History.—s. 5, Sept. 16, 1822; s. 8, ch. 3129, 1879; RS 1777; GS 2254; RGS 3577; CGL 5441; s. 29, ch. 67-254; s. 418, ch. 95-147.

79.09 Filing of papers.—Before a circuit judge the petition and the papers shall be filed with the clerk of the circuit court of the county in which the prisoner is detained. Before the other courts, justices or judges, the papers shall be filed with the clerk of the court on which the justice or judge sits.

History.—s. 8, Sept. 16, 1822; s. 8, ch. 3129, 1879; RS 1778; GS 2255; RGS 3578; CGL 5442; s. 29, ch. 67-254.

79.10 Effect of judgment.—The judgment is conclusive until reversed and no person remanded by the judgment while it continues in force shall be at liberty to

obtain another habeas corpus for the same cause or by any other proceeding bring the same matter again in question except by an appeal or by action of false imprisonment; nor shall any person who is discharged from confinement by the judgment be afterward confined or imprisoned for the same cause except by order of a court of competent jurisdiction.

History.—s. 9, Sept. 16, 1822; s. 9, ch. 3129, 1879; RS 1779; GS 2256; RGS 3579; CGL 5443; s. 29, ch. 67-254.

79.12 Trial of accused pending appeal.—When in any criminal prosecution a writ of habeas corpus is applied for by any person charged with any criminal offense and the accused has been remanded to custody by the court to which such application is made, a supersedeas of the order made on appeal being taken to an appellate court shall not prevent the state from proceeding with the prosecution of the accused pending the decision by the appellate court in the habeas corpus, but the state may prosecute the accused as if appeal had not been taken in habeas corpus. If the accused is convicted of the charge, the court shall withhold imposition of sentence and final judgment until the appellate court has determined the issues presented in the habeas corpus.

History.—s. 1, ch. 10098, 1925; CGL 5445; s. 29, ch. 67-254.