

CHAPTER 589

HABEAS CORPUS

Sec.	Sec.
589.01 Writ of habeas corpus; who may prosecute	589.16 Bail or remand or discharge
589.02 Petition; to whom and how made	589.17 Custody until judgment
589.03 Proof in certain cases	589.18 Notice to county attorney or attorney general
589.04 Statements in petition	589.19 Traverse of return; new matter
589.05 Form of writ; seal essential	589.20 Proceedings in case of sickness of prisoner
589.06 When sufficient	589.21 Order of discharge, how enforced
589.07 Refusal to grant; penalty	589.22 Re-arrest of person discharged
589.08 Return to writ	589.23 Transfer or concealment of person; forfeiture
589.09 Body produced; exception	589.24 Refusal to furnish copy
589.10 Compelling obedience	589.25 Service of writ; bond
589.11 Prisoner held in custody by sheriff	589.26 Manner of service
589.12 Proceedings on return of writ	589.27 Return to be made, when
589.13 Prisoner discharged, when	589.28 Power of court not restrained
589.14 Prisoner remanded, when	589.29 Appeal to supreme court
589.15 Held under process, when discharged	589.30 Hearing on appeal; costs; papers

589.01 WRIT OF HABEAS CORPUS; WHO MAY PROSECUTE. Every person imprisoned or otherwise restrained of his liberty, except persons committed or detained by virtue of the final judgment of any competent tribunal of civil or criminal jurisdiction, or by virtue of an execution issued upon such judgment, may prosecute a writ of habeas corpus to obtain relief from such imprisonment or restraint, if it proves to be unlawful; but no order of commitment for any alleged contempt, or upon proceedings as for contempt to enforce the rights or remedies of any party, shall be deemed a judgment, nor shall any attachment or other process issued upon any such order be deemed an execution, within the meaning of this section.

[R. L. s. 4573] (9739)

589.02 PETITION; TO WHOM AND HOW MADE. Application for such writ shall be by petition, signed and verified by the petitioner, or by some person in his behalf, to the supreme court, or to the district court of the county within which the petitioner is detained. Any judge of the court to which the petition is addressed, being within the county, or, if addressed to the district court, the court commissioner of the county, may grant the writ. If there be no such officer within the county capable of acting and willing to grant such writ, it may be granted by some officer having such authority in any adjoining county.

[R. L. s. 4574] (9740)

589.03 PROOF IN CERTAIN CASES. When application for such writ is made to an officer not within the county where the prisoner is detained, he shall require proof, by the oath of the applicant or other evidence, that there is no officer in such county authorized to grant the writ, or that all so authorized are absent, or for reasons specified are incapable of acting, or have refused to grant such writ; and, if such proof is not produced, the application shall be denied.

[R. L. s. 4575] (9741)

589.04 STATEMENTS IN PETITION. The petition shall state, in substance:

(1) That the person in whose behalf the writ is applied for is imprisoned or restrained of his liberty, the officer or person by whom he is so imprisoned or restrained, and the place where; naming both parties if their names are known, or describing them if they are not;

(2) That such person is not committed or detained by virtue of any process, judgment, decree, or execution, as hereinbefore specified;

(3) The cause or pretense of such confinement or restraint, according to the knowledge or belief of the party verifying the petition;

(4) If the confinement or restraint be by virtue of any warrant, order, or process, a copy thereof shall be annexed to such petition and there shall also be attached to such petition copies of all papers which are attached to or accompany such warrant, order, or process, including in those cases where such confinement results from conviction of a crime and sentence therefor a transcript of the proceedings taken and had at the time of arraignment and sentence in the court which imposed the sentence, or it shall be averred that, by reason of such prisoner being

MINNESOTA STATUTES 1967

589.05 HABEAS CORPUS

5160

removed or concealed before application, a demand of such copy could not be made, or that such demand was made and that such copy was refused;

(5) If the imprisonment is alleged to be illegal, the petition shall state in what the illegality consists;

(6) If the imprisonment which is claimed to be illegal is pursuant to a district court judgment or sentence, the judge before whom such petition is pending may in his discretion examine the official files and records of the court issuing the warrant of commitment, including any official transcript of the proceedings taken and had at the time of the arraignment and sentence, and any such official records or transcript shall be deemed properly before the court when determining the sufficiency of the petition or the propriety of issuing such writ of habeas corpus.

[R. L. s. 4576; 1961 c. 613 s. 1] (9742)

589.05 FORM OF WRIT; SEAL ESSENTIAL. Every writ of habeas corpus shall be under the seal of the court, and substantially in the following form:

"The State of Minnesota, to the Sheriff of, etc. (or to A.B.):

You are hereby commanded to have the body of C.D., by you imprisoned and detained, as it is said, together with the time and cause of such imprisonment and detention, by whatsoever name the said C.D. shall be called or charged, before E.F., judge of the court, at, on (or immediately after the receipt of this writ), to do and receive what shall then and there be considered concerning the said C.D. And have you then and there this writ.

Witness, etc."

[R. L. s. 4577] (9743)

589.06 WHEN SUFFICIENT. Such writ shall not be disobeyed for any defect of form. It shall be sufficient if the petitioner, and the person having him in custody, be designated therein with reasonable certainty, by name, description, or otherwise. Either may be designated by an assumed name if his true name be unknown or uncertain, and any person served with the writ shall be deemed the person to whom it is directed, although the name or description be wrong, or be that of another person.

[R. L. s. 4578] (9744)

589.07 REFUSAL TO GRANT; PENALTY. If any officer authorized to grant writs of habeas corpus wilfully refuses to grant such writ when legally applied for, he shall forfeit to the party aggrieved \$1,000 for every such offense.

[R. L. s. 4579] (9745)

589.08 RETURN TO WRIT. The person upon whom any such writ is duly served shall state in his return, plainly and unequivocally:

(1) Whether he has or has not the party in his custody or under his control or restraint and, if he has not, whether he has had him in his custody or under his control or restraint at any and what time prior or subsequent to the date of the writ;

(2) If he has the party in his custody or under his control or restraint, the authority and true cause of such imprisonment or restraint, setting forth the same at large;

(3) If the party is detained by virtue of any writ, warrant, or other written authority, a copy thereof shall be annexed to the return, and the original shall be produced and exhibited, on the return of the writ, to the officer before whom the same is returnable;

(4) If the person upon whom such writ is served has had the party in his custody or under his control or restraint at any time prior or subsequent to the date of the writ, but has transferred such custody or restraint to another, the return shall state particularly to whom, at what time, for what cause, and by what authority, such transfer took place.

The return shall be signed by the person making the same and, except where such person is a sworn public officer, and makes his return in his official capacity, it shall be verified by oath.

[R. L. s. 4580] (9746)

589.09 BODY PRODUCED; EXCEPTION. The person or officer on whom the writ is served shall bring the body of the person in his custody, according to the command of such writ, except in the case of the sickness of such person, as hereinafter provided.

[R. L. s. 4581] (9747)

589.10 COMPELLING OBEDIENCE. If the person upon whom such writ is served refuses or neglects to produce the person named therein and make a full return thereto at the time and place required, and no sufficient excuse is shown, the officer before whom such writ is returnable, upon proof of service thereof, shall forthwith issue an attachment against such person, directed to the sheriff or coroner of any county, and commanding him forthwith to apprehend such person and bring him before such officer; and, on such person being so brought, he shall be committed to the county jail until he shall make return to such writ and comply with all orders made by such officer in the premises.

[R. L. s. 4582] (9748)

589.11 PRISONER HELD IN CUSTODY BY SHERIFF. The officer by whom any such attachment is issued may also, at the same time or afterward, issue a precept to the sheriff or other person to whom the attachment was directed, commanding him to bring forthwith before such officer the party for whose benefit such writ was allowed, who shall thereafter remain in the custody of such sheriff or person until he is discharged, bailed, or remanded, as such officer shall direct.

[R. L. s. 4583] (9749)

589.12 PROCEEDINGS ON RETURN OF WRIT. The officer before whom the person is brought on such writ, immediately after the return thereof, shall examine into the facts set forth in such return, and into the cause of the imprisonment or restraint, whether the same was upon commitment for a criminal charge or not.

[R. L. s. 4584] (9750)

589.13 PRISONER DISCHARGED, WHEN. If no legal cause is shown for such imprisonment or restraint, or for the continuation thereof, such officer shall discharge the petitioner therefrom.

[R. L. s. 4585] (9751)

589.14 PRISONER REMANDED, WHEN. The officer shall forthwith remand such person, if it appears that he is detained in custody:

- (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;
- (2) By virtue of the final judgment of a competent court of civil or criminal jurisdiction, or of an execution issued upon such judgment;
- (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; or
- (4) That the time during which such person may be legally detained has not expired.

[R. L. s. 4586] (9752)

589.15 HELD UNDER PROCESS, WHEN DISCHARGED. If it appears on the return that the prisoner is in custody by virtue of civil process of any court legally constituted, or issued by an officer in the course of judicial proceedings before him, authorized by law, such prisoner can be discharged only in the following cases:

- (1) When the jurisdiction of such court or officer has been exceeded, either as to matter, place, sum, or person;
- (2) Where, though the original imprisonment was lawful, yet, by some act, omission, or event which has taken place afterward, the person is entitled to be discharged;
- (3) Where the process is defective in some matter of substance required by law, rendering it 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 under such process is not the person empowered by law to detain him; or
- (6) Where the process is not authorized by any judgment or order of any court, or by any provision of law.

[R. L. s. 4587] (9753)

589.16 BAIL OR REMAND OR DISCHARGE. If it appear that the petitioner has been legally committed for a criminal offense, or if upon hearing it appears by the testimony offered with the return that he is guilty of such offense, although the commitment is irregular, the officer before whom he is brought shall admit him to bail, if the case is bailable and good bail be offered, or, if not, he shall

forthwith remand him. In other cases he shall be placed in the custody of the person legally entitled thereto, or, if no one is so entitled, he shall be discharged.

[R. L. s. 4588] (9754)

589.17 CUSTODY UNTIL JUDGMENT. Until judgment is given upon the return, the officer before whom such person is brought may either commit him to the custody of the sheriff of the county, or place him in such other custody as his age and other circumstances require.

[R. L. s. 4589] (9755)

589.18 NOTICE TO COUNTY ATTORNEY OR ATTORNEY GENERAL. In criminal cases, if the prisoner is confined in a town, village, city, or county jail, notice of the time and place at which the writ is returnable shall be given to the county attorney of the county from which the prisoner was committed, if such county attorney is within his county; if the prisoner is confined in a state institution, the notice shall be given to the attorney general, whose duty it shall be to appear for the person named as respondent in the writ; in other cases, like notice shall be given to any person interested in continuing the custody or restraint of the party seeking the aid of such writ.

[R. L. s. 4590; 1915 c. 227 s. 1] (9756)

589.19 TRAVERSE OF RETURN; NEW MATTER. The petitioner, on the return of any writ, may, on oath, deny any of the material facts set forth in the return, or allege any fact to show either that his imprisonment or detention is unlawful, or that he is entitled to his discharge; and thereupon such officer shall proceed, in a summary way, to hear such allegations and proofs as are legally produced in support of such imprisonment or detention, or against the same, and so dispose of such person as justice requires.

[R. L. s. 4591] (9757)

589.20 PROCEEDINGS IN CASE OF SICKNESS OF PRISONER. When, by reason of sickness or infirmity, the petitioner cannot, without danger, be brought before the officer before whom the writ is returnable, the person in whose custody he is may state that fact in his return; and, if the officer is satisfied of the truth of such statement, and the return is otherwise sufficient, he shall decide upon such return and dispose of the matter. The petitioner in such case may appear by attorney and plead to the return as if he were present and, if it appear that the petitioner is illegally imprisoned or restrained of his liberty, the officer shall order those having him in custody to discharge him forthwith; but if it appear that he is legally imprisoned or restrained, and is not entitled to be admitted to bail, the officer shall dismiss the proceedings.

[R. L. s. 4592] (9758)

589.21 ORDER OF DISCHARGE, HOW ENFORCED. Obedience to any order for the discharge of a prisoner may be enforced by the officer issuing the writ or granting the order, by attachment, in the same manner as provided for neglect to make return to a writ of habeas corpus; and the person guilty of such disobedience shall forfeit to the person aggrieved \$1,000 in addition to any special damages sustained by him.

[R. L. s. 4593] (9759)

589.22 RE-ARREST OF PERSON DISCHARGED. No person who has been discharged upon a habeas corpus shall be again imprisoned or restrained for the same cause, unless indicted therefor, convicted thereof, or committed, for want of bail, by some court of record having jurisdiction of the cause, or unless, after a discharge for defect of proof, or for some material defect in the commitment in a criminal case, he shall be again arrested on sufficient proof, and committed by legal process.

[R. L. s. 4594] (9760)

589.23 TRANSFER OR CONCEALMENT OF PERSON; FORFEITURE. If any one who has in his custody or under his control a person entitled to a writ of habeas corpus, whether a writ has been issued or not, transfers such prisoner to the custody, or places him under the power or control of another person, conceals him, or changes his place of confinement, with intent to elude the service of such writ or to avoid the effect thereof, he shall forfeit \$400 to the party aggrieved thereby, to be recovered in a civil action.

[R. L. s. 4595] (9761)

589.24 REFUSAL TO FURNISH COPY. Any officer or other person refusing to deliver a copy of any order, warrant, process, or other authority by which he detains any person, to any one who shall demand the same and tender the fees therefor, shall forfeit \$200 to the person so detained.

[R. L. s. 4596] (9762)

589.25 SERVICE OF WRIT; BOND. The writ can be served only by a legal voter of the state. The officer granting it may require a bond to the state in a sum not exceeding \$1,000, conditioned for the payment of all costs and expenses of the proceeding, and the reasonable charges of restoring the prisoner to the person from whose custody he was taken, if he shall be remanded. The bond shall be approved by the officer issuing the writ, and be filed with the clerk.

[R. L. s. 4597] (9763)

589.26 MANNER OF SERVICE. The writ of habeas corpus may be served by delivering the same to the person to whom it is directed, or, if he cannot be found, by leaving it at the jail or other place in which the prisoner is confined, with any underofficer or other person of proper age having charge for the time of such prisoner. If the person upon whom the writ ought to be served conceals himself, or refuses admittance to the party attempting to serve the writ, it may be served by affixing the same in some conspicuous place on the outside either of his dwelling house, or of the place where the party is confined.

[R. L. s. 4598] (9764)

589.27 RETURN TO BE MADE, WHEN. If the writ is returnable on a certain day, return shall be made and the prisoner produced at the time and place specified therein. If it is returnable forthwith, and the place is within 20 miles of the place of service, the return shall be made and the prisoner produced within 24 hours, and the like time shall be allowed for every additional 20 miles.

[R. L. s. 4599] (9765)

589.28 POWER OF COURT NOT RESTRAINED. Nothing herein shall prevent any court from issuing a writ of habeas corpus necessary or proper to bring before it any prisoner for trial, or to be examined as a witness in any action or proceeding, civil or criminal, pending in such court.

[R. L. s. 4600] (9766)

589.29 APPEAL TO SUPREME COURT. Any party aggrieved by the final order in proceedings upon a writ of habeas corpus may appeal therefrom to the supreme court in the same manner as other appeals are taken from the district court, except that no bond shall be required of the appellant. Upon filing notice of appeal with the clerk of the district court, and payment or tender of his fees therefor, such clerk shall forthwith make, certify, and return to the clerk of the supreme court copies of the petition, writ, return of respondent, answer, if any, of the relator thereto, and the order appealed from.

[R. L. s. 4601] (9767)

589.30 HEARING ON APPEAL; COSTS; PAPERS. The appeal may be heard before the supreme court when it is in session upon application of either party to such court or a justice thereof. The order fixing the time of hearing, which shall not be less than six nor more than 15 days from the date of application, shall be served on the adverse party at least five days before the date so fixed. No costs or disbursements shall be allowed any party to such appeal, nor shall any of the papers used on such hearing be required to be printed.

[R. L. s. 4602; 1961 c 660 s 1] (9768)