
CHAPTER 63**HABEAS CORPUS****ARRANGEMENT OF SECTIONS**

SECTION

Short title

1. Sheriff, etc., within three days after service of *habeas corpus* with the exception of treason and felony, as and under the regulations herein mentioned to bring up the body before the court to which the writ is returnable.
2. How writs to be marked.
3. *Habeas corpus* not granted in vacation to prisoners who have neglected to pray the same.
4. Officer neglecting, &c. to make the said returns, &c.
5. Proviso as to imprisonment of party after having been set at large upon *habeas corpus*.
6. If persons committed for high treason or felony plainly expressed in warrant shall not on petition be indicated as herein mentioned, judges, &c., may discharge upon bail.
7. Proviso respecting persons charged in debt, &c.
8. Persons committed for criminal matter not to be removed but by *habeas corpus* or other legal writ.
9. Proviso for application for and granting *habeas corpus* in vacation time.
10. *Habeas corpus* may be directed into counties palatine, &c.
11. No subject to be sent prisoner into Scotland, &c. or any parts beyond the seas.
12. Proviso for contracts for transportation.
13. And for transportation of persons convicted of felony and praying to be transported.
14.
15. Proviso for sending persons to be tried in places where any capital offence committed.
16. Limitation of prosecution for offences against this Act.
17. After assizes proclaimed, no person to be removed from common gaol upon *habeas corpus*, but brought before judge of assize.
18. After assizes persons detained may have *habeas corpus*.
19. In informatin, &c. brought for offence against this law.
20. Proviso as to removal or bail of persons charged as accessories before the fact to petty treason or felony.

CHAPTER 63

*HABEAS CORPUS***An Act for the better secureing the Liberty of the Subject and for Prevention of Imprisonments beyond the Seas.**

31 Ch. 2
c. 2 extended by 2
of 1799

A.D. 1679

[This Act may be cited as the *Habeas Corpus Act*.]

Short title.

Recital that delays had been used by sheriffs in making returns of writs of *habeas corpus*, etc.

WHEREAS great delays have been used by sheriffs gaolers and other officers to whose custody any of the Kings subjects have been committed for criminal or supposed criminal matters in making returns of writs of *habeas corpus* to them directed by standing out an alias and pluries *habeas corpus* and sometimes more and by other shifts to avoid their yielding obedience to such writs contrary to their duty and the known laws of the land whereby many of the Kings subjects have been and hereafter may be long detained in prison in such cases where by law they are baylable to their great charge and vexation. For the prevention whereof and the more speedy releife of all persons imprisoned for any such criminal or supposed criminal matters bee it enacted by the Kings most excellent Majestie by and with the advice and consent of the lords spirituall and temporall and commons in this present Parlyament assembled and by the authoritie thereof that:

1. WHENSOEVER any person or persons shall bring any *habeas corpus* directed unto any sheriffe or sheriffes gaoler minister or other person whatsoever for any person in his or their custody and the said writt shall be served upon the said officer or left at the gaol or prison with any of the under officers underkeepers or deputy of the said officers or keepers that the said officer or officers his or their under officers underkeepers or deputyes shall within three dayes after the service thereof as aforesaid (unlesse the committment aforesaid were for treason or felony

Sheriff, etc., within three days after service of *habeas corpus* with the exception of treason and felony, as and under the regulations herein mentioned to bring up the body before the court to which the writ is returnable.

plainely and specially expressed in the warrant of commitment) [upon payment or tender of the charges of bringing the said prissoner to be ascertained by the judge or court that awarded the same and endorsed upon the said writt not exceeding twelve pence per mile¹] and upon security given by his owne bond to pay the charges of carrying backe the prisoner if he shall bee remanded by the court or judge to which he shall be brought according to the true intent of this present Act and that he will not make any escape by the way make returne of such writt [or ²] bring or cause to be brought the body of the partie soe committed or restrained unto or before the lord chauncellor or lord keeper of the great seale of England for the time being or the judges or barons of the said court from whence the said writt shall issue or unto and before such other person [and ³] persons before whome the said writt is made returnable according to the command thereof, and shall [likewise then ⁴] certifie the true causes of his detainer or imprisonment unlesse the committment of the said partie be in any place beyond the distance of twenty miles from the place or places where such court or person is or shall be resideing and if beyond the distance of twenty miles and not above one hundred miles then within the space of ten dayes and if beyond the distance of one hundred miles then within the space of twenty dayes after such⁵delivery aforesaid and not longer.

and certify the true causes of imprisonment.

Exceptions in respect of distance.

How writs to be marked.

Person committed, except for treason and felony, etc., may appeal to the lord chancellor, etc.

Proceedings thereon.

2. [AND to the intent that noe sheriffe gaoler or other officer may pretend ignorance of the import of any such writt bee it enacted by the authoritie aforesaid that all such writts shall be marked in this manner *Per statutum tricesimo primo Caroli Secundi Regis* and shall be signed by the person that awards the same⁶ And if any person or persons shall be or stand committed or detained as aforesaid for any crime unlesse for treason or fellony plainely expressed in the warrant of committment in the vacation time and out of terme it shall and may be lawfull to and for the person or persons soe committed or detained (other then persons convict or in execution) by legall

¹ Annexed to the original Act in a separate schedule.

² And O.

³ Or O.

⁴ The likewise O

⁵ The O.

⁶ Annexed to the original Act in a separate schedule.

process or any one [in ⁷] his or their behalfe to appeale or complaine to the lord chauncellour or lord keeper or any one of his Majestyes justices-(either⁸) of the one bench or of the other or the barons of the Exchequer of the degree of the coife and the said lord chauncellour, lord keeper, justices or barons or any of them upon view of the copy or copies of the warrant or warrants of committment and detainer or otherwise upon oath made that such copy or copyes were denyed to be given by such person or persons in whose custody the prisoner or prisoners is or are detained are hereby authorised and required [upon request made in writeing by such person or persons or any on his her or their behalfe attested and subscribed by two witnesses[that⁹ were present at the delivery of the same¹⁰] to award and grant an *habeas corpus* under the seale of such court whereof he shall then be one of the judges to be directed to the officer or officers in whose custodie the party soe committed or detained shall be returnable immediate before the said [lord chancellor or¹¹] lord keeper or such justice baron or any other justice or baron of the degree of the coife of any of the said courts and upon service thereof as aforesaid the officer or officers his or their under officer or under officers under keeper or under keepers or [their¹²] deputy in whose custodie the partie is soe committed or detained shall within the times respectively before limited [bring such prisoner or prisoners¹³] before the sd lord chauncellour or lord keeper or such justices barons or one of them [before whome the said writt is made returnable and in case of his absence before any other of them¹⁴] with the returne of such writt and the true causes of the committment and detainer and there-upon within two dayes after the partie shall be brought before them the said lord chauncellour or lord keeper or such justice or baron before whome the prisoner shall be brought as aforesaid shall discharge the said prisoner from his imprisonment takeing his or their recognizance with one or more suretie or sureties in any summe according to

Habeas corpus
may be awarded;

and upon service
thereof the offi-
cer to bring up
the prisoners as
before men-
tioned;

and thereupon
within two days
lord chancellor,
&c. may dis-
charge upon re-
cognizance;

⁷ On.

⁸ Interlined on the roll.

⁹ Who O.

¹⁰ Annexed to the original Act in a separate schedule.

¹¹ Interlined on the role.

¹² O. Omits.

¹³ Interlined on the role.

¹⁴ Annexed to the original Act in a separate schedule.

and certify the writ with the return and recognizance.

Proviso for process not bailable.

their discretions haveing regard to the quality of the prisoner and nature of the offence for his or their appearance in the Court of Kings Bench the terme following or at the next assizes sessions or generall gaole-delivery of and for such county city or place where the committment was or where the offence was committed or in such other court where the said offence is properly cognizable as the case shall require and then shall certifie the said writt with the returne thereof and the said recognizance or recognizances into the said court where such appearance is to be made unlesse it shall appeare unto the said lord chauncellour or lord keeper or justice or justices [or¹⁵] baron or barons that the party soe committedis detained upon a legall processe order or warrant out of some court that hath jurisdiction of criminall matters or by some warrant signed and sealed with the hand and seale of any of the said justices or barons or some justice or justices of the peace for such matters or offences for the which by the law the prisoner is not baileable.

Habeas corpus not granted in vacation to prisoners who have neglected to pray the same.

3. [PROVIDED alwayes and bee it enacted that if any person shall have wilfully neglected by the space of two whole termes after his imprisonment to pray a *habeas corpus* for his enlargement such person soe wilfully neglecting shall not have any *habeas corpus* to be granted in vacation time in pursuance of this Act.¹⁶]

Officer neglecting, &c. to make the said returns, &c.

or upon demand to deliver a copy of warrant of commitment;

4. AND bee it further enacted by the authoritie aforesaid that if any officer or officers his or their underofficer or underofficers underkeeper or underkeepers or deputy shall neglect or refuse to make the returns aforesaid or to bring the body or bodies of the prisoner or prisoners according to the command of the said writt within the respective times aforesaid or upon demand made by the prisoner or person in his behalfe shall refuse to deliver or within the space of six houres after demand shall not deliver to the person soe demanding a true copy of the warrant or warrants of committment and detayner of such prisoner, which he nd they are hereby required to deliver accordingly all and every the head gaolers and

¹⁵ O. Omits.

¹⁶ Annexed to the original Act in a separate schedule.

keepers of such prisons and such other person in whose custodie the prisoner shall be detained shall for the first offence forfeite to the prisoner or partie grieved the summe of four hundred dollars and for the second offence the summe of eight hundred dollars and shall and is hereby made incapable to hold or execute his said office, the said penalties to be recovered by the prisoner or partie grieved his executors or administrators against such offender his executors or administrators by any action of debt suite bill plaint or information in any of the Kings courts at Westminster wherein noe essoigne protection privilege injunction wager of law or stay of prosecution by non vult ulterius prosequi or otherwise shall bee admitted or allowed or any more then one imparlance, and any recovery or judgement at the suite of any partie grieved shall be a sufficient conviction for the first offence and any after recovery or judgement at the suite of a partie grieved for any offence after the first judgement shall bee a sufficient conviction to bring the officers or person within the said penaltie for the second offence.

first offence,
penalty \$400;

second offence,
\$800 and incapacity,
5 of 1987, s. 2.

Judgment at suit
of party sufficient
conviction.

5. AND for the prevention of unjust vexation by reiterated committments for the same offence bee it enacted by the authoritie aforesaid that noe person or persons which shall be delivered or sett at large upon any *habeas corpus* shall at any time hereafter bee againe imprisoned or committed for the same offence by any person or persons whatsoever other then by the legall order and processe of such court wherein he or they shall be bound by recognizance to appeare or other court haveing jurisdiction of the cause and if any other person or persons shall knowingly contrary to this Act recommit or imprison or knowingly procure or cause to be recommit or imprisoned for the same offence or pretended offence any person or persons delivered or sett at large as aforesaid or be knowingly aiding or assisting therein then he or they shall forfeite to the prisoner or party grieved the summe of two thousand dollars any colourable pretence or variation in the warrant or warrants of committment notwithstanding to be recovered as aforesaid.

Proviso as to imprisonment
of party after having
been set at large upon
habeas corpus.

Unduly recommitting
such discharged persons
or assisting therein;

penalty to the
party \$2,000, *5
of 1987, s. 2.*

If persons committed for high treason or felony plainly expressed in warrant shall not on petition be indicted as herein mentioned, judges, &c., may discharge upon bail.

proviso;

and if not indicted and tried as herein mentioned then to be discharged.

Proviso respecting persons charged in debt, &c.

Persons committed for criminal matter not to be removed but by *habeas corpus* or other legal writ.

6. PROVIDED alwayes and bee it further enacted that if any person or persons shall be committed for high treason or fellony plainly and specially expressed in the warrant of committment upon his prayer or petition in open court the first weeke of the terme or first day of the sessions of oyer and terminer or generall gaole delivery to be brought to his tryall shall not be indicted sometime in the next terme sessions of oyer and terminer or generall gaole delivery after such committment it shall and may be lawfull to and for the judges of the Court of Kings Bench and justices of oyer and terminer or generall gaole delivery and they are hereby required upon motion to them made in open court the last day of the terme sessions or gaole delivery either by the prisoner or any one in his behalfe to sett at liberty the prisoner upon baile unlesse it appeare to the judges and justices upon oath made that the witnesses for the King could not be produced the same terme sessions or generall gaole-delivery. And if any person or persons committed as aforesaid upon his prayer or petition in open court the first weeke of the terme or first day of the sessions of oyer and terminer or generall gaole delivery to be brought to his tryall shall not be indicted and tryed the second terme sessions of oyer and terminer or generall gaole delivery after his committment or upon his tryall shall be acquitted he shall be discharged from his imprisonment.

7. [PROVIDED alwayes that nothing in this Act shall extend to discharge out of prison any person charged in debt or other action or with processe in any civill cause but that after he shall be discharged of his imprisonment for such his criminall offence he shall be kept in custodie according to law for such other suite.^{17]}

8. PROVIDED alwayes and bee it enacted by the authoritie aforesaid that if any person or persons subjects of this realme shall be committed to [any^{18]} prison or in custodie of any officer or officers whatsoever for any criminall or supposed criminall matter that the said person shall not be removed from the said prison and custody into the custody of any other officer or officers unlesse it be by

¹⁷ Annexed to the original Act in a separate schedule.

¹⁸ Interlined on the roll.

habeas corpus or some other legall writt or where the prisoner is delivered to the constable or other inferiour officer to carry such prisoner to some common gaole [or where any person is sent by order of any judge of assize or justice of the peace to any common worke-house or house of correction or where the prisoner is removed from one prison or place to another within the same county in order to his or her tryall or discharge in due course of law or in case of suddaine fire or infection or other necessity¹⁹] and if any person or persons shall after such committment aforesaid make out and signe or countersigne any warrant or warrants for such removeall aforesaid contrary to this Act as well he that makes or signes or countersignes such warrant or warrants as the officer or officers that obey or execute the same shall suffer and incurr the paines and forfeitures in this Act before-mentioned both for the first and second offence respectively to be recovered in manner aforesaid by the partie grieved.

and if not indicted and tried as herein mentioned then to be discharged.

penalty.

9. PROVIDED alsoe and bee it further enacted by the authoritie aforesaid that it shall and may be lawfull to and for any prisoner and prisoners as aforesaid to move and obtaine his or their *habeas corpus* as well out of the High Court of Chauncery or Court of Exchequer as out of the courts of Kings Bench or Common Pleas or either of them and if the said lord chauncellor or lord keeper or any judge or judges baron or barons for the time being of the degree of the coife of any of the courts aforesaid in the vacation time upon view of the copy or copies of the warrant or warrants of committment or detainer or upon oath made that such copy or [3²⁰]copyes were denied as aforesaid shall deny any writt of *habeas corpus* by this Act required to be granted being moved for as aforesaid they shall severally forfeite to the prisoner or partie grieved the summe of two thousand dollars to be recovered in manner aforesaid.

Proviso for application for and granting *habeas corpus* in vacation time.

Lord Chancellor, &c. unduly denying writ;

penalty to party \$2,000; *5 of 1987*, s. 2.

¹⁹ Annexed to the original Act in a separate schedule.

²⁰ Or O.

Habeas corpus may be directed into counties palatine, &c.

No subject to be sent prisoner into Scotland, &c. or any parts beyond the seas.

Persons so imprisoned may maintain action against the person committing or otherwise acting in respect thereof, as herein mentioned;

treble costs and damages; 5 of 1987, s. 2.

10. AND bee it enacted and declared by the authority aforesaid that an *habeas corpus* according to the true intent and meaning of this Act may be directed and runn into any county palatine the cinque ports or other privileged places within the kingdome of England dominion of Wales or towne of Berwicke upon Tweede and the islands of Jersey or Guernsey any law or usage to the contrary notwithstanding.

11. AND for preventing illegall imprisonments in prisons beyond the seas bee it further enacted by the authoritie aforesaid that noe subject of this realme that now is or hereafter shall be an inhabitant or resiant of this kingdome of England dominion of Wales or towne of Berwicke upon Tweede shall or may be sent prisoner into Scotland Ireland Jersey Gaurney Tangeir or into any parts garrisons islands or places beyond the seas which are or at any time hereafter [shall be²¹] within or without the dominions of his Majestie his heires or successors and that every such imprisonment is hereby enacted and adjudged to be illegall and that if any of the said subjects now is or hereafter shall bee soe imprisoned [every such person and persons soe imprisoned²²] shall and may for every such imprisonment maintaine by vertue of this Act an action or actions of false imprisonment in any of his Majestyes courts of record against the person or persons by whome he or she shall be soe committed detained imprisoned sent prisoner or transported contrary to the true meaning of this Act and against all or any person or persons that shall frame contrive write seale or countersigne any warrant or writeing for such committment detainer imprisonment or transportation or shall be advising aiding or assisting in the same or any of them and the plaintiffe in every such action shall have judgement to recover his treble costs besides damages which damages soe to be given shall not be lesse then two thousand dollars in which action noe delay stay or stopp of proceeding by rule order or command nor noe injunction protection or privileged whatsoever nor any more then one imparlance shall be allowed [excepting such rule of the court wherein the action shall depend made in open court as shall bee

²¹ Interlined on the roll.

²² Interlined on the roll.

thought in justice necessary for speciall cause to be expressed in the said rule²³] and the person or persons who shall knowingly frame contrive write seale or countersigne any warrant for such committment detainer of transportation or shall soe committ detaine imprison or transport any person or persons contrary to this Act or by any wayes adviseing, aiding or assisting therein being lawfully convicted thereof shall be disabled from thenceforth to beare any office of trust or proffit within the said [realme of England dominion of Wales or towne of Berwicke upon Tweede] or any of the islands territories or dominions thereunto belonging and shall incurre and sustaine the paines penalties and forfeitures limitedt ordained and provided in [2²⁴] the Statute of provision and premunire made in the sixteenth yeare of King Richard the Second and be incapaable of any pardon from the King his heires or successors of the said forfeitures losses or disabilities or any of them.

and the person so committing or acting disabled from office, and incur premunire; 16 R. II. c. 5

and be incapaable of pardon;

12. [PROVIDED alwayes that nothing in this Act shall extend to give benefitt to any person who shall by contract in writeing agree with any merchant or owner of any plantation or other person whatsoever to be transported to any parts beyond seas and receive earnest upon such agreement although that afterwards such person shall renounce such contract.²⁵]

Proviso for contracts for transportation.

13. PROVIDED alwayes and bee it enacted that if any person or persons lawfully convicted of any felony shall in open court pray to be transported beyond the seas and the court shall thinke fitt to leave him or them in prison for that purpose such person or persons may be transported into any parts beyond the seas this Act or any thing therein contained to the contrary notwithstanding.

And for transportation of persons convicted of felony and praying to be transported.

14.

²³ Annexed to the original Act in a separate schedule.

²⁴ And by O.

²⁵ Annexed to the original Act in a separate schedule.

Proviso for sending persons to be tried in places where any capital offence committed.

15. PROVIDED alsoe that if any person or persons at any time resident in this realme shall have committed any capitall offence in [*England*], Scotland or Ireland or any of the islands or forreigne plantations of the King his heires or successors where he or she ought to be tryed for such offence such person or persons may be sent to such place there to receive such tryall in such manner as the same might have beene used before the making of this Act any thing herein contained to the contrary notwithstanding.

Limitation of prosecution for offences against this Act.

16. PROVIDED alsoe and bee it enacted that noe person or persons shall be sued impleaded molested or troubled for any offence against this Act unlesse the partie offending be sued or impleaded for the same within two yeares at the most after such time wherein the offence shall be committed [in case the partie grieved shall not be then in prison and if he shall be in prison then within the space of two yeares²⁶] after the decease of the person imprisoned or his or her delivery out of prison which shall first happen.

After assizes proclaimed, no person to be removed from common gaol upon *habeas corpus*, but brought before judge of assize.

17. AND to the intent noe person may avoid his tryall at the assizes or generall gaole-delivery by procureing his removeall before the assizes at such time as he cannot be brought backe to receive his tryall there bee it enacted that after the assizes proclaimed for that county where the prisoner is detained noe person shall be removed from the common gaole upon any *habeas corpus* granted in pursuance of this Act but upon any such *habeas corpus* shall be brought before the judge of assize in open court who is thereupon to doe what to justice shall appertaine.

After assizes persons detained may have *habeas corpus*.

18. PROVIDED neverthesse that after the assizes are ended any person or persons detained may have his or her *habeas corpus* according to the direction and intention of this Act.

In informations, &c. brought for offence against this law.

19. AND bee it also enacted by the authoritie aforesaid that if any information suite or action shall be brought or exhibited against any person or persons for any offence committed or to be committed against the forme of this law it shall be lawfull for such defendants to pleade the

²⁶ Annexed to the original Act in a separate schedule.

generall issue that they are not guilty or that they owe nothing and to give such speciall matter in evidence to the jury that shall try the same which matter being pleaded had beene good and sufficient matter in law to have discharged the said defendant or defendants against the said information suite or action and the said matter shall be then as availeable to him or them to all intents and purposes as if he or they had sufficiently pleaded sett forth or alledged the same matter in barr or discharge of such information suite or action.

general issue.

20. AND because many times persons charged with petty treason or felony or as accessaries thereunto are committed upon suspicion onely whereupon they are baileable or not according as the circumstances makeing out that suspicion are more or lesse weighty which are best knowne to the justices of peace that committed the persons and have the examinations before them or to other justices of the peace in the county Bee it therefore enacted that where any person shall appeare to be committed by any judge or justice of the peace and charged as accessory before the fact to any petty treason or felony or upon suspicion thereof or with suspicion of petty treason or felony which petty treason or felony shall be plainely and specially expressed in the warrant of committment that such person shall not be removed or bailed by vertue of this Act or in any other manner then they might have beene before the makeing of this Act.

Proviso as to removal or bail of persons charged as accessories before the fact to petty treason or felony.