

CIVIL PROCEDURE

CHAPTER THIRTEEN

HABEAS CORPUS

Section 1301. Persons Who May Prosecute Writ

Every person restrained of his liberty, under any pretense whatever, may prosecute, a writ of habeas corpus to inquire into the cause of the restraint, and shall be delivered therefrom when the restraint is illegal.

[History: PUBLIC LAW #SF-85-58, June 21, 1985.]

Section 1302. Application for Writ

Application for the writ shall be made by petition, signed and verified either by the plaintiff or by some person in his behalf, and shall specify:

(a) By whom the person, in whose behalf the writ is requested, is restrained of his liberty, and the place where restrained, naming all the parties, if they are known, or describing them, if they are not known.

(b) The cause or pretense of the restraint, according to the best of the knowledge and belief of the applicant.

(c) If the restraint be alleged to be illegal, in what the illegality consists.

[History: PUBLIC LAW #SF-85-58, June 21, 1985.]

Section 1303. Writ Granted

Writs of habeas corpus may be granted by any judge or magistrate of the Tribal District Court, either in open Court, or in vacation; and upon application the writ shall be granted without delay.

[History: PUBLIC LAW #SF-85-58, June 21, 1985.]

Section 1304. Direction and Command of Writ

The writ shall be directed to the officer or party having the person under restraint, commanding him to have such person before the Court, or judge, at such time and place as the Court or judge shall direct, to show cause if any he has for the restraint imposed upon the person on whose behalf the writ is issued, to do and receive what shall be ordered concerning him and

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have then and there the writ in his possession.

[History: PUBLIC LAW #SF-85-58, June 21, 1985.]

Section 1305. Delivery to Tribal Police Chief

If the writ be directed to the Chief of the Tribal Police, it shall be delivered by the Clerk to him without delay.

[History: PUBLIC LAW #SF-85-58, June 21, 1985.]

Section 1306. Service on Party Other Than Tribal Police Chief

_____ If the writ be directed to any other person, it shall be delivered to the Chief of the Tribal Police and shall be by him served by delivering the writ to such person without delay.

[History: PUBLIC LAW #SF-85-85, June 21, 1985.]

Section 1307. Service When Person Not Found

If the person to whom such writ is directed cannot be found, or shall refuse admittance to the Chief of the Tribal Police, the same may be served by leaving it at the residence of the person to whom it is directed, or by affixing the same on some conspicuous place, either of his dwelling house or where the party is confined under restraint.

[History: PUBLIC LAW #SF-85-58, June 21, 1985.]

Section 1308. Return and Enforcement of Writ

The Chief of the Tribal Police or other person to whom the writ is directed shall make immediate return thereof, and if he neglect or refuse, after due service, to make return, or shall refuse or neglect to obey the writ by producing the party named therein, and no sufficient excuse be shown for such neglect or refusal, the Court shall enforce obedience by attachment.

[History: PUBLIC LAW #SF-85-58, June 21, 1985.]

Section 1309. Manner of Return

The return must be signed and verified by the person making it, who shall state:

- (a) The authority or cause of restraint of the party in his custody.

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(b) If the authority be in writing, he shall return a copy and produce the original on the hearing.

(c) If he has had the party in his custody or under his restraint, and has transferred him to another, he shall state to whom, the time, place and cause of the transfer.

He shall produce the party on the hearing, unless prevented by sickness or infirmity or other good cause, which must be shown in the return.

[History: PUBLIC LAW #SF-85-58, June 21, 1985.]

Section 1310. Proceedings in Case of Sickness or Infirmity

The Court or judge, if satisfied with the truth of the allegation of sickness or infirmity or other good cause for not producing the body of the person, may proceed to decide on the return, or the hearing may be adjourned until the party can be produced. The plaintiff may except to the sufficiency of, or controvert the return or any part thereof, or allege any new matter in avoidance; the new matter shall be verified, except in cases of commitment on a criminal charge; the return and pleadings may be amended without causing any delay.

[History: PUBLIC LAW #SF-85-58, June 21, 1985.]

Section 1311. Hearings and Discharge

The Court or Judge shall thereupon proceed in a summary way to hear and determine the cause, and if no legal cause be shown for the restraint or for the continuance thereof, shall discharge the party.

[History: PUBLIC LAW #SF-85-58, June 21, 1985.]

Section 1312. Limits on Inquiry

No judge shall inquire into the legality of any judgment or process, whereby the party is in custody, or discharge him when the term of commitment has not expired in either of the cases following:

(a) Upon process issued by any court or judge of the United States, or of any State or where such court or judge has exclusive jurisdiction; or,

(b) Upon any lawful process issued on any final judgment of a court of competent jurisdiction; or,

(c) For any contempt of any court, officer or body having authority to commit; but an

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order of commitment as for a contempt, upon proceedings to enforce the remedy of a party, is not included in any of the foregoing specifications;

(d) Upon a warrant or commitment issued from the Tribal District Court, or any other court of competent jurisdiction, upon indictment or information.

[History: PUBLIC LAW #SF-85-58, June 21, 1985.]

Section 1313. Writ Upon Temporary Commitment

No person shall be discharged from an order of temporary commitment issued by any judicial or peace officer for want of bail, or in cases not bailable, on account of any defect in the charge or process, or for alleged want of probable cause; but in all such cases, the court or judge shall summon the prosecuting witnesses, investigate the criminal charge, and discharge, let to bail or recommit the prisoner, as may be just and legal, and recognize witnesses when proper.

[History: PUBLIC LAW #SF-85-58, June 21, 1985.]

Section 1314. Writ May Issue to Admit to Bail

The writ may be had for the purpose of letting a prisoner to bail in civil and criminal actions.

[History: PUBLIC LAW #SF-85-58, June 21, 1985.]

Section 1315. Notice to Interested Persons

When any person has an interest in the detention, the prisoner shall not be discharged until the person having such interest is notified.

[History: PUBLIC LAW #SF-85-58, June 21, 1985.]

Section 1316. Powers of Court

The Court or judge shall have power to require and compel attendance of witnesses and to do all other acts necessary to determine the case.

[History: PUBLIC LAW #SF-85-58, June 21, 1985.]

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Section 1317. Officers Not Liable for Obeying Orders

No Tribal policeman or other officer shall be liable to a civil action for obeying any writ of habeas corpus or order of discharge or enforcement made thereon.

[History: PUBLIC LAW #SF-85-58, June 21, 1985.]

Section 1318. Issuance of Warrant of Attachment

Whenever it shall appear by affidavit that anyone is illegally held in custody or restraint, and that there is good reason to believe that such person will be carried out of the jurisdiction of the Court or judge, or will suffer some irreparable injury before compliance with the writ can be enforced, the Court or judge may cause a Warrant of Attachment to be issued, reciting the facts, and directed to the Chief of the Tribal Police, commanding him to take the person thus held in custody or restraint, and forthwith bring him before the Court or judge, to be dealt with according to law.

[History: PUBLIC LAW #SF-85-58, June 21, 1985.]

Section 1319. Arrest of Party Causing Restraint

The Court or judge may also, if the same be deemed necessary, insert in the warrant a command for the apprehension of the person charged with causing the illegal restraint.

[History: PUBLIC LAW #SF-85-58, June 21, 1985.]

Section 1320. Execution of Warrant of Attachment

The officer shall execute the Warrant of Attachment by bringing the person therein named before the Court or Judge; and the like return and proceedings shall be required and had as in case of writs of habeas corpus.

[History: PUBLIC LAW #SF-85-58, June 21, 1985.]

Section 1321. Temporary Orders

The Court or Judge may make any temporary orders in the cause or disposition of the party during the progress of the proceedings, that justice may require. The custody of any party restrained may be changed from one person to another, by order of the Court or Judge.

[History: PUBLIC LAW #SF-85-58, June 21, 1985.]

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Section 1322. Issuance and Service on Sunday

Any writ, warrant, or process authorized by this Chapter may be issued and served, in case of emergency on any day including Saturday, Sundays, and holidays.

[History: PUBLIC LAW #SF-85-58, June 21, 1985.]

Section 1323. Issue of Process

All writs and other process, authorized by the provisions of this Chapter may be issued by the Clerk of the Court upon direction of a Judge, and except summons, sealed with the seal of such Court and shall be served and returned forthwith, unless the Court or Judge shall specify a particular time for any such return. And no writ or other process shall be disregarded for any defect therein, if enough is shown to notify the officer or person of the purport of the process. Amendments may be allowed, and temporary commitments, when necessary.

[History: PUBLIC LAW #SF-85-58, June 21, 1985.]

Section 1324. Protection of Infants and Insane Persons

Writ of habeas corpus shall be granted in favor of parents, guardians, masters, husbands, and wives; and to enforce the rights and for the protection of infants and insane persons; and the proceedings shall, in all such cases, conform to the provisions of this Chapter.

[History: PUBLIC LAW #SF-85-58, June 21, 1985.]

Section 1325. Security for Costs Not Required

No deposit or security for costs shall be required of an applicant for a writ of habeas corpus.

[History: PUBLIC LAW #SF-85-58, June 21, 1985.]