

## HABEAS CORPUS

### Footnotes

Postconviction procedure, see chapter 822

#### **663.1 Petition.**

The petition for the writ of habeas corpus must state:

1. That the person in whose behalf it is sought is restrained of the person's liberty, and the person by whom and the place where the person is so restrained, mentioning the names of the parties, if known, and if unknown describing them with as much particularity as practicable.
2. The cause or pretense of such restraint, according to the best information of the applicant; and if by virtue of any legal process, a copy thereof must be annexed, or a satisfactory reason given for its absence.
3. That the restraint is illegal, and wherein.
4. That the legality of the restraint has not already been adjudged upon a prior proceeding of the same character, to the best knowledge and belief of the applicant.
5. Whether application for the writ has been before made to and refused by any court or judge, and if so, a copy of the petition in that case must be attached, with the reasons for the refusal, or satisfactory reasons given for the failure to do so.

[C51, § 2213; R60, § 3801; C73, § 3449; C97, § 4417; C24, 27, 31, 35, 39, § **12468**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 663.1]

#### **663.2 Verification presentation to court.**

The petition must be sworn to by the person confined, or by someone in the confined person's behalf, and presented to some court or officer authorized to allow the writ.

[C51, § 2214; R60, § 3802; C73, § 3450; C97, § 4418; C24, 27, 31, 35, 39, § **12469**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 663.2]

#### **663.3 Writ allowed service.**

The writ may be allowed by the supreme or district court, or by a supreme court judge or district judge, and may be served in any part of the state.

[C51, § 2215; R60, § 3803; C73, § 3451; C97, § 4419; C24, 27, 31, 35, 39, § **12470**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 663.3]

#### **663.4 Application to whom made.**

Application for the writ must be made to the court or judge most convenient in point of distance to the applicant, and the more remote court or judge, if applied to therefor, may refuse the same unless a sufficient reason be stated in the petition for not making the application to the more convenient court or a judge thereof.

[C51, § 2217; R60, § 3805; C73, § 3452; C97, § 4420; S13, § 4420; C24, 27, 31, 35, 39, § **12471**; C46, 50,

54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 663.4]

### **663.5 Inmates of state or federal institutions.**

When the applicant is confined in a state or federal institution, other than a penal institution, the provisions of section 663.4 relating to the court to which or the judge to whom applications must be made are mandatory, and the convenience or preference of an attorney or witness or other person interested in the release of the applicant shall not be a sufficient reason to authorize a more remote court or judge to assume jurisdiction.

[S13, § 4420; C24, 27, 31, 35, 39, § **12472**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 663.5]

### **663.6 Writ refused.**

If, from the showing of the petitioner, the plaintiff would not be entitled to any relief, the court or judge must refuse to allow the writ.

[C51, § 2218; R60, § 3806; C73, § 3453; C97, § 4421; C24, 27, 31, 35, 39, § **12473**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 663.6]

### **663.7 Reasons endorsed.**

If the writ is disallowed, the court or judge shall cause the reasons thereof to be appended to the petition and returned to the person applying for the writ.

[C51, § 2221; R60, § 3809; C73, § 3454; C97, § 4422; C24, 27, 31, 35, 39, § **12474**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 663.7]

### **663.8 Form of writ.**

If the petition is in accordance with the foregoing requirements, and states sufficient grounds for the allowance of the writ, it shall issue, and may be substantially as follows:

The State of Iowa,

To.....

You are hereby commanded to have the body of ..... by you unlawfully detained, as is alleged, before the court (or before me, or before ..... judge, etc., as the case may be), at ..... on ..... (or immediately after being served with this writ), to be dealt with according to law, and have you then and there this writ, with a return thereon of your doings in the premises.

[C51, § 2219; R60, § 3807; C73, § 3455; C97, § 4423; C24, 27, 31, 35, 39, § **12475**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 663.8]

2000 Acts, ch 1058, §53

### **663.9 How issued.**

When the writ is allowed by a court, it must be issued by the clerk, but when by a judge, the judge must issue it personally, subscribing the judge's name thereto.

[C51, § 2220; R60, § 3808; C73, § 3456; C97, § 4424; C24, 27, 31, 35, 39, § **12476**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 663.9]

### **663.10 Penalty for refusing.**

Any judge, whether acting individually or as a member of the court, who wrongfully and willfully refuses the allowance of the writ when properly applied for, shall forfeit to the party aggrieved the sum of one thousand dollars.

[C51, § 2222; R60, § 3810; C73, § 3457; C97, § 4425; C24, 27, 31, 35, 39, § **12477**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 663.10]

### **663.11 Issuance on judge's own motion.**

When any court or judge authorized to grant the writ has evidence, from a judicial proceeding before the court or judge, that any person within the jurisdiction of such court or officer is illegally restrained of the person's liberty, such court or judge shall issue the writ or cause it to be issued, on the court's or judge's own motion.

[C51, § 2223; R60, § 3811; C73, § 3458; C97, § 4426; C24, 27, 31, 35, 39, § **12478**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 663.11]

### **663.12 County attorney notified.**

The court or officer allowing the writ must cause the county attorney of the proper county to be informed thereof, and of the time and place where and when it is made returnable.

[C51, § 2240; R60, § 3828; C73, § 3459; C97, § 4427; C24, 27, 31, 35, 39, § **12479**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 663.12]

### **663.13 Service of writ.**

The writ may be served by the sheriff, or by any other person appointed in writing for that purpose by the court or judge by whom it is issued or allowed. If served by any other than the sheriff, the person appointed possesses the same power, and is liable to the same penalty for a nonperformance of the duty, as though the person were the sheriff.

[C51, § 2224; R60, § 3812; C73, § 3460; C97, § 4428; C24, 27, 31, 35, 39, § **12480**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 663.13]

### **663.14 Mode.**

The service shall be made by leaving the original writ with the defendant, and preserving a copy thereof on which to make the return of service, but a failure in this respect shall not be held material.

[C51, § 2225; R60, § 3813; C73, § 3461; C97, § 4429; C24, 27, 31, 35, 39, § **12481**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 663.14]

### **663.15 Defendant not found.**

If the defendant cannot be found, or if the defendant has not the plaintiff in custody, the service may be made upon any person who has, in the same manner and with the same effect as though the person had been made defendant therein.

[C51, § 2226; R60, § 3814; C73, § 3462; C97, § 4430; C24, 27, 31, 35, 39, § **12482**; C46, 50, 54, 58, 62, 66,

71, 73, 75, 77, 79, 81, § 663.15]

#### **663.16 Power of officer.**

If the defendant hides, or refuses admittance to the person attempting to serve the writ, or if the defendant attempts wrongfully to carry the plaintiff out of the county or the state after the service of the writ, the sheriff, or the person who is attempting to serve or who has served it, is authorized to arrest the defendant and bring the defendant, together with the plaintiff, forthwith before the officer or court before whom the writ is made returnable.

[C51, § 2227; R60, § 3815; C73, § 3463; C97, § 4431; C24, 27, 31, 35, 39, § **12483**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 663.16]

#### **663.17 Arrest.**

In order to make the arrest, the sheriff or other person having the writ possesses the same power as is given to a sheriff for the arrest of a person charged with a felony.

[C51, § 2228; R60, § 3816; C73, § 3464; C97, § 4432; C24, 27, 31, 35, 39, § **12484**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 663.17]

**663.18** Repealed by 70 Acts, ch 1276, § 16.

#### **663.19 Defects in writ.**

The writ must not be disobeyed for any defects of form or misdescription of the plaintiff or defendant, provided enough is stated to show the meaning and intent thereof.

[C51, § 2234; R60, § 3822; C73, § 3466; C97, § 4434; C24, 27, 31, 35, 39, § **12486**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 663.19]

#### **663.20 Penalty for eluding writ.**

If the defendant attempts to elude the service of the writ, or to avoid the effect thereof by transferring the plaintiff to another, or by concealing the plaintiff, the defendant shall be guilty of a serious misdemeanor, and any person knowingly aiding or abetting in any such act shall be subject to like punishment.

[C51, § 2253; R60, § 3841; C73, § 3467; C97, § 4435; C24, 27, 31, 35, 39, § **12487**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 663.20]

#### **663.21 Refusal to give copy of process.**

An officer refusing to deliver a copy of any legal process by which the officer detains the plaintiff in custody to any person who demands it and tenders the fees therefor, shall forfeit two hundred dollars to the person who demands it.

[C51, § 2254; R60, § 3842; C73, § 3468; C97, § 4436; C24, 27, 31, 35, 39, § **12488**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 663.21]

#### **663.22 Preliminary writ.**

The court or judge to whom the application for the writ is made, if satisfied that the plaintiff would suffer any irreparable injury before the plaintiff could be relieved by the proceedings above authorized, may issue an

order to the sheriff, or any other person selected instead, commanding the sheriff or other person to bring the plaintiff forthwith before such court or judge.

[C51, § 2230; R60, § 3818; C73, § 3469; C97, § 4437; C24, 27, 31, 35, 39, § **12489**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 663.22]

### **663.23 Arrest of defendant.**

If the evidence is sufficient to justify the arrest of the defendant for a criminal offense committed in connection with the illegal detention of the plaintiff, the order must also direct the arrest of the defendant.

[C51, § 2231; R60, § 3819; C73, § 3470; C97, § 4438; C24, 27, 31, 35, 39, § **12490**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 663.23]

### **663.24 Execution of writ return.**

The officer or person to whom the order is directed must execute the same by bringing the defendant, and also the plaintiff if required, before the court or judge issuing it, and the defendant must make return to the writ in the same manner as if the ordinary course had been pursued.

[C51, § 2232; R60, § 3820; C73, § 3471; C97, § 4439; C24, 27, 31, 35, 39, § **12491**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 663.24]

### **663.25 Examination.**

The defendant may also be examined and committed, or bailed, or discharged, according to the nature of the case.

[C51, § 2233; R60, § 3821; C73, § 3472; C97, § 4440; C24, 27, 31, 35, 39, § **12492**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 663.25]

### **663.26 Informalities.**

Any person served with the writ is to be presumed to be the person to whom it is directed, although it may be directed to the person served by a wrong name or description, or to another person.

[C51, § 2235; R60, § 3823; C73, § 3473; C97, § 4441; C24, 27, 31, 35, 39, § **12493**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 663.26]

### **663.27 Appearance answer.**

Service being made in any of the modes herein provided, the defendant must appear at the proper time and answer the petition, but no verification shall be required to the answer.

[C51, § 2236; R60, § 3824, 4182; C73, § 3474; C97, § 4442; C24, 27, 31, 35, 39, § **12494**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 663.27]

### **663.28 Body to be produced.**

The defendant must also produce the body of the plaintiff, or show good cause for not doing so.

[C51, § 2237; R60, § 3825; C73, § 3475; C97, § 4443; C24, 27, 31, 35, 39, § **12495**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 663.28]

### **663.29 Penalty contempt.**

A willful failure to comply with the above requirements will render the defendant liable to be attached for contempt, and to be imprisoned till the defendant complies, and shall subject the defendant to the forfeiture of one thousand dollars to the party thereby aggrieved.

[C51, § 2238; R60, § 3826; C73, § 3476; C97, § 4444; C24, 27, 31, 35, 39, § **12496**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 663.29]

### **663.30 Attachment.**

Such attachment may be served by the sheriff or any other person authorized by the court or judge, who shall also be empowered to produce the body of the plaintiff forthwith, and has, for this purpose, the same powers as are above conferred in similar cases.

[C51, § 2239; R60, § 3827; C73, § 3477; C97, § 4445; C24, 27, 31, 35, 39, § **12497**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 663.30]

### **663.31 Answer.**

The defendant in the answer must state whether the defendant then has, or at any time has had, the plaintiff under the defendant's control and restraint, and if so the cause thereof.

[C51, § 2241; R60, § 3829; C73, § 3478; C97, § 4446; C24, 27, 31, 35, 39, § **12498**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 663.31]

### **663.32 Transfer of plaintiff.**

If the defendant has transferred the plaintiff to another person, the defendant must state that fact, and to whom, and the time thereof, as well as the reason or authority therefor.

[C51, § 2242; R60, § 3830; C73, § 3479; C97, § 4447; C24, 27, 31, 35, 39, § **12499**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 663.32]

### **663.33 Copy of process.**

If the defendant holds the plaintiff by virtue of a legal process or written authority, a copy thereof must be annexed.

[C51, § 2243; R60, § 3831; C73, § 3480; C97, § 4448; C24, 27, 31, 35, 39, § **12500**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 663.33]

### **663.34 Demurrer or reply trial.**

The plaintiff may demur or reply to the defendant's answer, but no verification shall be required to the reply, and all issues joined therein shall be tried by the judge or court.

[C51, § 2244; R60, § 3832; C73, § 3481; C97, § 4449; C24, 27, 31, 35, 39, § **12501**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 663.34]

### **663.35 Commitment questioned.**

The reply may deny the sufficiency of the testimony to justify the action of the committing magistrate, on the trial of which issue all written testimony before such magistrate may be given in evidence before the court or judge, in connection with any other testimony which may then be produced.

[C51, § 2245; R60, § 3833; C73, § 3482; C97, § 4450; C24, 27, 31, 35, 39, § **12502**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 663.35]

#### **663.36 Nonpermissible issues.**

It is not permissible to question the correctness of the action of a court or judge when lawfully acting within the scope of their authority.

[C51, § 2246; R60, § 3834; C73, § 3483; C97, § 4451; C24, 27, 31, 35, 39, § **12503**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 663.36]

#### **663.37 Discharge.**

If no sufficient legal cause of confinement is shown, the plaintiff must be discharged.

[C51, § 2247; R60, § 3835; C73, § 3484; C97, § 4452; C24, 27, 31, 35, 39, § **12504**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 663.37]

#### **663.38 Plaintiff held.**

Although the commitment of the plaintiff may have been irregular, if the court or judge is satisfied from the evidence that the plaintiff ought to be held or committed, the order may be made accordingly.

[C51, § 2248; R60, § 3836; C73, § 3485; C97, § 4453; C24, 27, 31, 35, 39, § **12505**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 663.38]

#### **663.39 Repealed by 70 Acts, ch 1276, § 20.**

#### **663.40 Plaintiff retained in custody.**

Until the sufficiency of the cause of restraint is determined, the defendant may retain the plaintiff in the defendant's custody, and may use all necessary and proper means for that purpose.

[C51, § 2250; R60, § 3838; C73, § 3487; C97, § 4455; C24, 27, 31, 35, 39, § **12507**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 663.40]

#### **663.41 Right to be present waived.**

The plaintiff may, in writing, or by attorney, waive the right to be present at the trial, in which case the proceedings may be had in the plaintiff's absence. The writ will in such cases be modified accordingly.

[C51, § 2251; R60, § 3839; C73, § 3488; C97, § 4456; C24, 27, 31, 35, 39, § **12508**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 663.41]

#### **663.42 Disobedience of order.**

Disobedience to any order of discharge will subject the defendant to attachment for contempt, and also to the forfeiture of one thousand dollars to the party aggrieved, besides all damages sustained by the plaintiff in consequence thereof.

[C51, § 2252; R60, § 3840; C73, § 3489; C97, § 4457; C24, 27, 31, 35, 39, § **12509**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 663.42]

### **663.43 Papers filed with clerk.**

When the proceedings are before a judge, except when the writ is refused, all the papers in the case, including the judge's final order, shall be filed with the clerk of the district court of the county wherein the final proceedings were had, and a memorandum thereof shall be entered by the clerk upon the judgment docket.

[C51, § 2255; R60, § 3843; C73, § 3490; C97, § 4458; C24, 27, 31, 35, 39, § **12510**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 663.43]

### **663.44 Costs.**

If the plaintiff is discharged, the costs shall be assessed to the defendant, unless the defendant is an officer holding the plaintiff in custody under a commitment, or under other legal process, in which case the costs shall be assessed to the county. If the plaintiff's application is refused, the costs shall be assessed against the plaintiff, and, in the discretion of the court, against the person who filed the petition in the plaintiff's behalf.

However, where the plaintiff is confined in any state institution, and is discharged in habeas corpus proceedings, or where the habeas corpus proceedings fail and costs and fees cannot be collected from the person liable to pay the same, such costs and fees shall be paid by the county in which such state institution is located. The facts of such payment and the proceedings on which it is based, with a statement of the amount of fees or costs incurred, with approval in writing by the presiding judge appended to such statement or endorsed thereon, shall then be certified by the clerk of the district court under the seal of office to the state executive council. The executive council shall then review the proceedings and authorize reimbursement for all such fees and costs or such part thereof as the executive council shall find justified, and shall notify the director of the department of administrative services to draw a warrant to such county treasurer on the state general fund for the amount authorized. The costs and fees referred to above shall include any award of fees made to a court appointed attorney representing an indigent party bringing the habeas corpus action.

[C97, § 4459; C24, 27, 31, 35, 39, § **12511**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 663.44]

86 Acts, ch 1237, § 40; 2003 Acts, ch 145, §286

### **Footnotes**

Appropriation limited for fiscal years beginning July 1, 1993;  
see § 8.59