



# LAWS OF ALASKA

1970

Source

Chapter No.

HB 401

49

## AN ACT

Relating to the writ of habeas corpus and amending Civil Rule 86(1).

### BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

\* Section 1. AS 12.75.010 is amended to read:

Sec. 12.75.010. PERSONS ENTITLED TO PROSECUTE WRIT. A person imprisoned or otherwise restrained of his liberty under any pretense whatsoever, except in the cases specified in sec. 20 of this chapter, may prosecute a writ of habeas corpus to inquire into the cause of the imprisonment or restraint, and, if illegal, to be released from custody or to be granted another remedy as law and justice require. Procedure may be as prescribed in the Rules of Civil Procedure.

\* Sec. 2. AS 12.75.070 is amended to read:

Sec. 12.75.070. PRECEPT TO PEACE OFFICER. The court which issues a writ without requiring the production of the person or which issues a warrant may also, at any time before final decision, issue a precept to the peace officer to whom the writ or warrant is directed commanding him to immediately bring the person for whose benefit the writ was allowed before the court. That person shall remain in the custody of the peace officer until discharged, remanded or the matter is otherwise disposed of as law and justice require.

\* Sec. 3. AS 12.75.080 is amended to read:

Sec. 12.75.080. DISCHARGE OF PARTY. If no legal cause is shown for the imprisonment or restraint, or for its continuation, the court shall discharge the party from the custody or restraint under which he is held or grant any other appropriate remedy.

\* Sec. 4. AS 12.75.100 is amended to read:

Sec. 12.75.100. REMEDY OF PERSON IN CUSTODY BY VIRTUE OF CIVIL PROCESS. If it appears on the return of the writ that the prisoner is in custody by virtue of an order or civil process of a court legally constituted, or issued by an officer in the course of judicial proceedings before him, authorized by law, the prisoner shall be discharged or granted any other appropriate remedy in any of the following cases:

(1) when the jurisdiction of the court or officer has been exceeded, either as to matter, place, sum, or person;

(2) when, though the original imprisonment was lawful, yet by some act, omission, or event which has taken place afterwards, the party has become entitled to a discharge or other remedy;

(3) when the order or process is defective in some matter or substance required by law, rendering the process void;

(4) when the order or process, though in proper form, has been issued in a case not allowed by law;

(5) when the person having the custody of the prisoner under the order or process is not the person empowered by law to detain him; or

(6) when the order or process is not authorized by a judgment of a court or by a provision of law.

\* Sec. 5. Civil Rule 86(1) is amended to read:

(1) CONTROVERTING ANSWER. The plaintiff or the prisoner may, in a reply or at the hearing, controvert the answer under oath, to show either that the restraint of the prisoner was unlawful, or that he is entitled to his discharge or other appropriate remedy.