

Introduced: 4/22/69
Referred: Rules

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 HOUSE BILL NO. 401

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the writ of habeas corpus and amend-
7 ing Civil Rule 86(1)."

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

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

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

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

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

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

28 Sec. 12.75.080. DISCHARGE OF PARTY. If no legal cause is shown
29 for the imprisonment or restraint, or for its continuation, the court

1 shall discharge the party from the custody or restraint under which he
2 is held or grant any other appropriate remedy.

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

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

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

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

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

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

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

23 (6) when the order or process is not authorized by a judg-
24 ment of a court or by a provision of law.

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

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