

**Chapter 7.36 RCW
HABEAS CORPUS**

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Rules of court: *RAP 16.3 through 16.15.*

RCW 7.36.010 Who may prosecute writ. Every person restrained of his or her 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 illegal. [2011 c 336 § 185; Code 1881 § 666; 1877 p 138 § 669; 1869 p 156 § 606; 1854 p 212 § 434; RRS § 1063.]

RCW 7.36.020 Parents, guardians, etc., may act for minors, persons under guardianship or conservatorship. Writs of habeas corpus shall be granted in favor of parents, guardians, limited guardians where appropriate, spouses or domestic partners, and next of kin, and to enforce the rights, and for the protection of minors and persons who have been placed under a guardianship under RCW 11.130.265 or under a conservatorship under RCW 11.130.360; and the proceedings shall in all cases conform to the provisions of this chapter. [2020 c 312 § 704; 2008 c 6 § 801; 1977 ex.s. c 80 § 8; 1973 1st ex.s. c 154 § 17; Code 1881 § 688; 1877 p 141 § 692; 1869 p 159 § 628; 1854 p 214 § 456; RRS § 1064.]

Effective dates—2020 c 312: See note following RCW 11.130.915.

Part headings not law—Severability—2008 c 6: See RCW 26.60.900 and 26.60.901.

Purpose—Intent—Severability—1977 ex.s. c 80: See notes following RCW 4.16.190.

Severability—1973 1st ex.s. c 154: See note following RCW 2.12.030.

RCW 7.36.030 Petition—Contents. Application for the writ shall be made by petition, signed and verified either by the plaintiff or by some person in his or her behalf, and shall specify:

(1) By whom the petitioner is restrained of his or her liberty, and the place where, (naming the parties if they are known, or describing them if they are not known).

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

(3) If the restraint be alleged to be illegal, in what the illegality consists. [2011 c 336 § 186; Code 1881 § 667; 1877 p 138 § 670; 1869 p 156 § 607; 1854 p 212 § 435; RRS § 1065.]

RCW 7.36.040 Who may grant writ. Writs of habeas corpus may be granted by the supreme court, the court of appeals, or superior court, or by any judge of such courts, and upon application the writ shall be granted without delay. [1971 c 81 § 31; 1957 c 9 § 10; Code 1881 § 668; 1877 p 138 § 671; 1869 p 156 § 608; 1854 p 212 § 436; RRS § 1066.]

Rules of court: *Cf. RAP 16.3, 18.22.*

RCW 7.36.050 To whom directed—Contents. The writ shall be directed to the officer or party having the person under restraint, commanding him or her to have such person before the court or judge at such time and place as the court or judge shall direct to do and receive what shall be ordered concerning him or her, and have then and there the writ. [2011 c 336 § 187; Code 1881 § 669; 1877 p 138 § 672; 1869 p 156 § 609; 1854 p 212 § 437; RRS § 1067.]

RCW 7.36.060 Delivery to sheriff if to him or her directed. If the writ be directed to the sheriff, it shall be delivered by the clerk to him or her without delay. [2011 c 336 § 188; Code 1881 § 670; 1877 p 138 § 673; 1869 p 156 § 610; 1854 p 212 § 438; RRS § 1068.]

RCW 7.36.070 Service by sheriff if directed to another. If the writ be directed to any other person, it shall be delivered to the sheriff and shall be by him or her served by delivering the same to such person without delay. [2011 c 336 § 189; Code 1881 § 671; 1877 p 139 § 674; 1869 p 156 § 611; 1854 p 212 § 430; RRS § 1069.]

RCW 7.36.080 Service when person not found. If the person to whom such writ is directed cannot be found or shall refuse admittance to the sheriff, the same may be served by leaving it at the residence of the person to whom it is directed, or by posting the same in some conspicuous place, either on his or her dwelling house or where the party is confined or under restraint. [2011 c 336 § 190; Code 1881 § 672; 1877 p 139 § 675; 1869 p 157 § 612; 1854 p 212 § 440; RRS § 1070.]

RCW 7.36.090 Return—Attachment for refusal. The sheriff or other person to whom the writ is directed shall make immediate return thereof, and if he or she refuse after due service to make return, the court shall enforce obedience by attachment. [2011 c 336 § 191; Code 1881 § 673; 1877 p 139 § 676; 1869 p 157 § 613; 1854 p 213 § 441; RRS § 1071.]

RCW 7.36.100 Form of return—Production of person. The return must be signed and verified by the person making it, who shall state:

- (1) The authority or cause of the restraint of the party in his or her custody.
- (2) If the authority shall be in writing, he or she shall return a copy and produce the original on the hearing.
- (3) If he or she has had the party in his or her custody or under his or her restraint, and has transferred him or her to another, he or she shall state to whom, the time, place, and cause of the transfer. He or she shall produce the party at the hearing unless prevented by sickness or infirmity, which must be shown in the return. [2011 c 336 § 192; Code 1881 § 674; 1877 p 139 § 677; 1869 p 157 § 614; 1854 p 213 § 442; RRS § 1072.]

RCW 7.36.110 Procedure—Pleadings—Amendment. The court or judge, if satisfied of the truth of the allegation of sickness or infirmity, may proceed to decide on the return, or the hearing may be adjourned until the party can be produced, or for other good cause. The plaintiff may except to the sufficiency of, or controvert the return or any part thereof, or allege any new matter in evidence. The new matter shall be verified, except in cases of commitment on a criminal charge. The return and pleadings may be amended without causing a delay. [Code 1881 § 675; 1877 p 139 § 678; 1869 p 157 § 615; 1854 p 213 § 443; RRS § 1073.]

RCW 7.36.120 Hearing—Determination. 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 continuation thereof, shall discharge the party. [Code 1881 § 676; 1877 p 139 § 679; 1869 p 157 § 616; 1854 p 213 § 444; RRS § 1074.]

Rules of court: ER 1101.

RCW 7.36.130 Limitation upon inquiry. No court or judge shall inquire into the legality of any judgment or process whereby the party

is in custody, or discharge the party when the term of commitment has not expired, in either of the cases following:

(1) Upon any process issued on any final judgment of a court of competent jurisdiction except where it is alleged in the petition that rights guaranteed the petitioner by the Constitution of the state of Washington or of the United States have been violated and the petition is filed within the time allowed by RCW 10.73.090 and 10.73.100.

(2) For any contempt of any court, officer or body having authority in the premises to commit; but an 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.

(3) Upon a warrant issued from the superior court upon an indictment or information. [1989 c 395 § 3; 1947 c 256 § 3; 1891 c 43 § 1; Code 1881 § 677; 1869 p 157 § 617; 1854 p 213 § 445; Rem. Supp. 1947 § 1075.]

RCW 7.36.140 Duty of courts when federal question is raised. In the consideration of any petition for a writ of habeas corpus by the supreme court or the court of appeals, whether in an original proceeding or upon an appeal, if any federal question shall be presented by the pleadings, it shall be the duty of the supreme court to determine in its opinion whether or not the petitioner has been denied a right guaranteed by the Constitution of the United States. [1971 c 81 § 32; 1947 c 256 § 2; Rem. Supp. 1947 § 1085-2.]

RCW 7.36.150 Admission to bail or discharge—Duty of court. No person shall be discharged from an order of 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 cases the court or judge shall summon the prosecuting witnesses, investigate the criminal charge, and discharge, admit to bail or recommit the prisoner, as may be just and legal, and recognize witnesses when proper. [Code 1881 § 678; 1877 p 140 § 681; 1869 p 157 § 618; 1854 p 213 § 446; RRS § 1076.]

RCW 7.36.160 Writ to admit prisoner to bail. The writ may be had for the purpose of admitting a prisoner to bail in civil and criminal actions. When any person has an interest in the detention, and the prisoner shall not be discharged until the person having such interest is notified. [Code 1881 § 679; 1877 p 140 § 682; 1869 p 158 § 619; 1854 p 214 § 447; RRS § 1077.]

RCW 7.36.170 Compelling attendance of witnesses. The court or judge shall have power to require and compel the attendance of witnesses, and to do all other acts necessary to determine the case. [Code 1881 § 680; 1877 p 140 § 683; 1869 p 158 § 620; 1854 p 214 § 448; RRS § 1078.]

Witnesses, compelling attendance: Chapter 5.56 RCW.

RCW 7.36.180 Officers protected from civil liability. No sheriff or other officer shall be liable to a civil action for obeying any writ of habeas corpus or order of discharge made thereon. [Code 1881 § 681; 1877 p 140 § 684; 1869 p 158 § 621; 1854 p 214 § 449; RRS § 1079.]

RCW 7.36.190 Warrant to prevent removal. Whenever it shall appear by affidavit that any one 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 before whom the application is made, or will suffer some irreparable injury before compliance with the writ can be enforced, such court or judge may cause a warrant to be issued reciting the facts, and directed to the sheriff or any constable of the county, commanding him or her to take the person thus held in custody or restraint, and forthwith bring him or her before the court or judge to be dealt with according to the law. [2011 c 336 § 193; Code 1881 § 682; 1877 p 140 § 685; 1869 p 158 § 622; 1854 p 214 § 450; RRS § 1080.]

RCW 7.36.200 Warrant may call for apprehension of offending party. 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. [Code 1881 § 683; 1877 p 141 § 687; 1869 p 159 § 623; 1854 p 214 § 451; RRS § 1081.]

RCW 7.36.210 Execution of warrant. The officer shall execute the writ [warrant] by bringing the person therein named before the court or judge, and the like return of proceedings shall be required and had as in case of writs of habeas corpus. [Code 1881 § 684; 1877 p 141 § 688; 1869 p 159 § 624; 1854 p 214 § 452; RRS § 1082.]

RCW 7.36.220 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. [Code 1881 § 685; 1877 p 141 § 689; 1869 p 159 § 625; 1854 p 214 § 453; RRS § 1083.]

RCW 7.36.230 Emergency acts on Sunday authorized. Any writ or process authorized by this chapter may be issued and served, in cases of emergency, on Sunday. [Code 1881 § 686; 1877 p 141 § 690; 1869 p 159 § 626; 1854 p 214 § 454; RRS § 1084.]

Superior court, issuance of habeas corpus on nonjudicial days: State Constitution Art. 4 § 6 (Amendment 28).

RCW 7.36.240 Writs and process—Issuance—Service—Defects—Amendments. All writs and other process authorized by this chapter shall be issued by the clerk of the court, and 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 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. [Code 1881 § 687; 1877 p 141 § 691; 1869 p 159 § 627; 1854 p 214 § 455; RRS § 1085.]

RCW 7.36.250 Proceeding in forma pauperis. Any person entitled to prosecute a writ of habeas corpus who, by reason of poverty is unable to pay the costs of such proceeding or give security therefor, may file in the court having original jurisdiction of the proceeding an affidavit setting forth such facts and that he or she believes himself or herself to be entitled to the redress sought. Upon the filing of such an affidavit the court may, if satisfied that the proceeding or appeal is instituted or taken in good faith, order that such proceeding, including appeal, may be prosecuted without prepayment of fees or costs or the giving of security therefor. This section also applies to filing fees assessed under RCW 36.18.016. [2002 c 338 § 3; 1947 c 256 § 1; Rem. Supp. 1947 § 1085-1.]

Rules of court: *RAP 16.15(f), 16.15(g).*

RCW 7.36.260 Waiver of fees—Service of writ of habeas corpus issued for return of a child. Notwithstanding RCW 36.18.040, the sheriff may waive fees associated with service of a writ of habeas corpus that was issued for the return of a child when the person who was granted the writ is, by reason of poverty, unable to pay the cost of service. [2017 c 272 § 6.]