

**CHAPTER 660**  
**HABEAS CORPUS**

Section

- 660-1, 2 Repealed
- 660-3 Issuable by whom
- 660-4 For prisoners, for trial or testimony
- 660-5 Complaint
- 660-6 Form of writ
- 660-7 Order to show cause in lieu of writ
- 660-8 Repealed
- 660-9 Sunday
- 660-10, 11 Repealed
- 660-12 By supreme court; to whom returnable
- 660-13 Issuance to person of unknown name
- 660-14 For person of unknown name
- 660-15 Costs
- 660-16 Person held until writ issues, when
- 660-17 Return to be prompt
- 660-18 Contents
- 660-19 Signature, oath, evidence
- 660-20 Body to be produced, except when
- 660-21 Procedure in case of sickness, etc.
- 660-22 Disobeying writ or order to show cause, penalties
- 660-23 Evading service, penalties
- 660-24 Hearing without delay
- 660-25 Notice to other parties, when
- 660-26 Notice to attorney general, when
- 660-27 Return, hearing
- 660-28 Bail, etc., before judgment
- 660-29 Discharge, when
- 660-30 Admitted to bail, when
- 660-31 Bail reduced, when
- 660-32 Remanded, when
- 660-33 Discharge, effect of

## Rules of Court

Applicability of Hawaii Rules of Civil Procedure, see HRCPC rule 81(a)(6), (f), (g), (h).

### Case Notes

Where father failed to comply with the procedural requirements of this chapter, the family court was not validly called upon to exercise its discretion in determining whether to serve a writ of habeas corpus ad testificandum upon the department of human services. 102 H. 335 (App.), 76 P.3d 578 (2003).

" **§§660-1 and 660-2 REPEALED.** L 1972, c 90, §5(u).

" **§660-3 Issuable by whom.** The supreme court, the justices thereof, and the circuit courts may issue writs of habeas corpus in cases in which persons are unlawfully restrained of their liberty; provided that persons committed or detained by order of the family court or under chapter 334 may, and if the jurisdiction of the family court is exclusive, shall, prosecute their applications in the family court. [L 1870, c 32, §32; am L 1893-4, c 75, §1; am L 1903, c 79, §3; RL 1925, §2727; RL 1935, §4312; RL 1945, §10353; RL 1955, §239-3; HRS §660-3; am L 1972, c 90, §5(a)]

### Cross References

See §602-5.

Exclusive jurisdiction of family court, in what cases, see §§571-11 and 571-14.

### Case Notes

Constitutional right to counsel does not apply to habeas corpus proceedings. 51 H. 318, 459 P.2d 376 (1969).

Defendant who alleges that defendant pleaded guilty because of prior coerced confession is not, without more, entitled to hearing on petition for habeas corpus. 53 H. 274, 492 P.2d 953 (1972).

Without a special reason appellate court will not exercise its original jurisdiction in habeas corpus proceedings when relief is available in a lower court. 57 H. 411, 557 P.2d 787 (1976).

Writ sought on behalf of certain persons. Attache of foreign legation. 1 H. 353 (1856).

Deserting seamen. 2 H. 112 (1858); 6 H. 704 (1888).

Fugitives held for extradition. 5 H. 573 (1886); 20 H. 319 (1910); 21 H. 526 (1913); 48 H. 508, 405 P.2d 309 (1965).

Insane persons. 3 U.S.D.C. Haw. 404 (1909); 19 H. 346 (1909); 19 H. 576 (1909).

Lepers. 2 U.S.D.C. Haw. 227 (1905); 19 H. 218 (1908).

Minors. 29 H. 830 (1927); 31 H. 328 (1930); 32 H. 731 (1933); 33 H. 106 (1934).

Persons detained on shipboard. 3 H. 503 (1873).

For relief against cruel and unusual punishment. 31 H. 982 (1931).

As means of enforcing foreign decree awarding custody of children. 49 H. 20, 407 P.2d 885 (1965).

Relief from commitment may be had on habeas corpus. Under statute authorizing arrest of debtors about to abscond. 1 H. 340 (1856); 6 H. 633 (1886).

Relief from commitment for alleged contempt. 13 H. 575 (1901); 18 H. 670 (1907); 44 H. 271, 353 P.2d 631 (1960).

No release of persons convicted and restrained by virtue of judgment unless judgment is void. 211 U.S. 146 (1908); 3 U.S.D.C. Haw. 502 (1910); 7 H. 95 (1887); 13 H. 102 (1900); 15 H. 276 (1903); 17 H. 338 (1906); 20 H. 120 (1910); 25 H. 414, 417 (1920).

Form of mittimus. Failure to completely describe the offense in the mittimus not ground for issuance of writ where record shows valid sentence. 6 H. 343 (1882); 7 H. 95 (1887).

A mittimus correct in form and substance is a good defense to a claim of illegal imprisonment. 18 H. 500 (1907).

Where mittimus of magistrate exceeded jurisdiction in imposition of fine in addition to imprisonment held separable and valid as to imprisonment. 23 H. 766 (1917).

Sentence must be void on its face in order to entitle convicted person to release on habeas corpus. 2 H. 444 (1861); 9 H. 131 (1893); 10 H. 610 (1897); 17 H. 487 (1906). See 6 H. 664 (1887); 7 H. 42 (1887). Habeas corpus raises question only of jurisdiction. 34 H. 484 (1938).

Cases of illegal sentence. 3 H. 17 (1866); 6 H. 732 (1869); 7 H. 162 (1887); 38 H. 479 (1950). Magistrate having no criminal jurisdiction over subject matter, prisoner discharged on writ. 6 H. 25 (1870). Release from commitment under void order. 44 H. 271, 353 P.2d 631 (1960).

In contempt cases the only question to be inquired into is that of jurisdiction. 1 H. 95 (1852); 11 H. 594 (1898); 14 H. 245 (1902); 19 H. 88 (1908); 29 H. 323 (1926).

Habeas corpus cannot be used as a substitute for appeal. 10 H. 610 (1897); 27 H. 237 (1923). Nor to correct errors. 25 H. 414, 417 (1920). Nor to relitigate issues litigated to final appellate determination. 39 H. 167 (1951), aff'd 209 F.2d 75 (1953).

Where court has jurisdiction of the subject matter of a criminal complaint and the person of the defendant, habeas corpus does not lie to review the sufficiency of the complaint. 27 H. 237 (1923).

Appeal lies. 13 H. 534 (1901); 13 H. 575 (1901).  
Supersedeas. 19 H. 346 (1909); 26 H. 701 (1923).

Writ suspended when martial law declared in the 1895 rebellion. 10 H. 29 (1895). Under proclamation of December 7, 1941, see note to §67 of Organic Act.

" **§660-4 For prisoners, for trial or testimony.** Nothing in this chapter shall be construed to restrain the power of any court of record to issue a writ of habeas corpus ad respondendum, when necessary, to bring before it any prisoner for trial in any criminal cause, lawfully pending in the court, or a writ of habeas corpus ad testificandum, to bring in any prisoner to be examined as a witness in any action or proceeding, civil or criminal, pending in the court, when it thinks the personal attendance and examination of the witness is necessary for the attainment of justice. The writ may be issued for such purposes by any court of record in the exercise of a sound discretion, and with due regard to conflicting interests and liabilities, anything in this chapter to the contrary notwithstanding. [L 1870, c 32, §31; RL 1925, §2728; RL 1935, §4313; RL 1945, §10354; RL 1955, §239-4; HRS §660-4; am L 1972, c 90, §5(b)]

" **§660-5 Complaint.** Application for the writ or an order to show cause shall be made to the court or judge authorized to issue the same, by complaint in writing, signed by the party for whose relief it is intended, or by some person in the party's behalf, setting forth:

- (1) The person by whom, and the place where, the party is imprisoned or restrained, naming the party and the person detaining the party, if their names are known, and describing them if they are not known;
- (2) The cause or pretense of imprisonment or restraint, according to the knowledge and belief of the applicant;
- (3) If the imprisonment or restraint is by virtue of any warrant or other process, an annexed copy thereof, unless it is made to appear that a sufficient reason exists for not annexing the same;
- (4) That there has been no determination of the legality of the detention on a prior application for a petition for a writ of habeas corpus, or, if there has been a previous determination, the new grounds, if any, not

presented and determined upon the previous application.

The facts alleged shall be verified by the oath of some credible person, to be administered by any person authorized to administer oaths. [L 1870, c 32, §3; RL 1925, §2729; RL 1935, §4314; RL 1945, §10355; am L 1953, c 101, §2; RL 1955, §239-5; HRS §660-5; am L 1972, c 90, §5(c); gen ch 1993]

**Case Notes**

When application is made by person other than one for whom relief is sought it should show either authority for making application or sufficient reason for absence of such authority. But writ if issued will not be quashed if such authority does not appear. 10 H. 701 (1897).

Jurisdiction is in circuit judge at chambers. 31 H. 630 (1930).

" **§660-6 Form of writ.** The court or judge to whom the complaint is made shall, without delay, award and issue the writ unless it appears from the application that the person detained is not entitled thereto or an order to show cause is issued under section 660-7. The writ of habeas corpus may be in the following form:

State of Hawaii.

To.....greeting.

We command you that immediately upon the receipt of this writ, you have and produce before.....at.....the body of.....who is unjustly imprisoned and restrained of his liberty, as it is said, to do and receive what shall then and there be considered concerning him in this behalf. And have you there this writ, with your doings thereon.

Witness the Honorable.....at.....this.....day of.....20.....

[Seal]

.....  
[L 1870, c 32, §4; RL 1925, §2730; RL 1935, §4315; RL 1945, §10356; am L 1953, c 101, §3; RL 1955, §239-6; HRS §660-6; am L 1972, c 90, §5(d)]

**Revision Note**

The date "19...." in the form was changed to "20...." pursuant to §23G-15.

" **§660-7 Order to show cause in lieu of writ.** The court or judge to whom the complaint is made may issue an order directing

the person by whom the party is imprisoned or restrained, to appear and show cause for the imprisonment or restraint at such time as the court shall direct, but not later than five days from the date of the order to show cause; provided that whenever the record shows that there is a material issue of fact to be resolved by the taking of evidence the court shall order that the person detained be produced for the hearing. [L 1953, c 101, §4; RL 1955, §239-7; HRS §660-7; am L 1972, c 90, §5(e)]

" **§660-8 REPEALED.** L 1972, c 90, §5(u).

" **§660-9 Sunday.** Any writ or process authorized by this chapter may be issued or served on Sunday. [L 1870, c 32, §29; RL 1925, §2732; RL 1935, §4317; RL 1945, §10358; RL 1955, §239-9; HRS §660-9]

" **§§660-10 and 660-11 REPEALED.** L 1972, c 90, §5(u).

" **§660-12 By supreme court; to whom returnable.** Whenever the writ or order to show cause is issued by the supreme court or a justice thereof, it may be made returnable before the supreme court or a circuit court. [L 1870, c 32, §8; am L 1903, c 79, §2; RL 1925, §2735; RL 1935, §4320; RL 1945, §10361; am L 1953, c 101, §8; RL 1955, §239-12; HRS §660-12; am L 1972, c 90, §5(f)]

" **§660-13 Issuance to person of unknown name.** If the name of the person by whom the party is alleged to be restrained of the party's liberty is unknown or uncertain, the person may be described by an assumed appellation. Whoever is served with the writ or order to show cause, shall be deemed to be the person intended thereby. [L 1870, c 32, §9; RL 1925, §2736; RL 1935, §4321; RL 1945, §10362; am L 1953, c 101, §9; RL 1955, §239-13; HRS §660-13; am L 1972, c 90, §5(g); gen ch 1985]

" **§660-14 For person of unknown name.** The person to be produced shall be designated by the person's name, if known, and if that is not known or is uncertain, the person may be designated in any other manner, so that it can be known who is the person intended. [L 1870, c 32, §10; RL 1925, §2737; RL 1935, §4322; RL 1945, §10363; RL 1955, §239-14; HRS §660-14; gen ch 1985]

" **§660-15 Costs.** If the party is confined in any prison or is in the custody of any civil officer, the court or judge granting the writ shall certify thereon the sum to be paid for the expense of bringing the party from the place where the party

is imprisoned or restrained. The officer to whom the same is directed shall not be bound to obey it, unless that sum is paid or tendered to the officer. This section is subject to section 607-3, pursuant to which prepayment of the expense may be waived, or the sum required may be reduced or remitted. [L 1870, c 32, §11; RL 1925, §2738; RL 1935, §4323; RL 1945, §10364; RL 1955, §239-15; HRS §660-15; am L 1972, c 90, §5(h), (i); gen ch 1985]

" **§660-16 Person held until writ issues, when.** Whenever it appears by satisfactory proof, by affidavit or otherwise, to any court or judge authorized by law to issue writs of habeas corpus, that anyone is illegally held in custody, confinement, or restraint and that there is good reason to believe that the person will be carried out of the jurisdiction of the court or judge or will suffer some irreparable injury before compliance with a writ of habeas corpus can be enforced, the court or judge may cause a warrant to be issued, reciting the facts and directed to the sheriff or the sheriff's deputy, or the chief of police of the city and county of Honolulu or the chief's deputies, or to any police officer in any other county, commanding such officer to take such person thus held in custody, confinement, or restraint and forthwith bring the person before the court or judge, and hold the person there until a writ of habeas corpus can be duly issued and served, after which the party alleged to be illegally restrained, shall be deemed to be before the court designated to hear the return in obedience to the writ. [L 1870, c 32, §28; RL 1925, §2739; RL 1935, §4324; RL 1945, §10365; RL 1955, §239-16; am L 1963, c 85, §3; HRS §660-16; am L 1972, c 90, §5(j); gen ch 1985; am L 1989, c 211, §10; am L 1990, c 281, §11]

" **§660-17 Return to be prompt.** Any person to whom a writ of habeas corpus is directed, upon payment or tender of reasonable charges or expenses for its execution if ordered by the court, and any person to whom an order to show cause is directed, shall make return thereto with as much promptness as the nature of the case will permit. [L 1870, c 32, §12; RL 1925, §2740; RL 1935, §4325; RL 1945, §10366; am L 1953, c 101, §10; RL 1955, §239-17; HRS §660-17; am L 1972, c 90, §5(k)]

#### Case Notes

Amendment of return. 15 H. 276 (1903).

" **§660-18 Contents.** The person making the return shall state therein, in writing, plainly and unequivocally:

- (1) Whether he has or has not the person designated in his custody or power, or in any manner under his restraint or control;
- (2) If he has the person in his custody or power, or under his restraint or control, the authority, and the time, and whole cause of such imprisonment or restraint, with a copy of any process or warrant under which the person is detained;
- (3) If he has had the person in his custody or power, or under his restraint or control, and has transferred such custody, restraint, or control to another, or if he has any knowledge or suspicion that any other person exercises or claims to exercise such custody, power, restraint, or control, all that he knows or suspects.

No return shall be adjudged sufficient when the respondent has once held the person in his custody or power, or under his restraint or control, unless it states fully all that the respondent knows or suspects, or alleges unequivocally that he neither knows nor suspects, nor has any cause to suspect anything as to the custody or restraint of the person alleged to be detained, up to the time of making the return. [L 1870, c 32, §13; RL 1925, §2741; RL 1935, §4326; RL 1945, §10367; RL 1955, §239-18; HRS §660-18; am L 1972, c 90, §5(1)]

#### **Case Notes**

Sufficiency of return. 31 H. 212 (1929).

" **§660-19 Signature, oath, evidence.** The return shall be signed by the person making it, and sworn to by the person, unless the person is a sworn public officer making the return in the person's official capacity. The return shall be evidence in the case, but not conclusive. [L 1870, c 32, §14; RL 1925, §2742; RL 1935, §4327; RL 1945, §10368; RL 1955, §239-19; HRS §660-19; gen ch 1985]

" **§660-20 Body to be produced, except when.** The person making the return to a writ of habeas corpus shall bring the body of the person, if in the custody or power of the person making the return, or under the restraint or control of the person making the return, according to the command in the writ, unless prevented by the sickness or infirmity of the person. This shall not prevent the person making the return, if a private person, from demanding in advance actual necessary expenses of travel and transportation. [L 1870, c 32, §15; RL



1925, §2743; RL 1935, §4328; RL 1945, §10369; RL 1955, §239-20; HRS §660-20; am L 1972, c 90, §5(m); am L 2016, c 55, §38]

" **§660-21 Procedure in case of sickness, etc.** When from sickness or infirmity of the person, the person cannot properly be brought to the place appointed for the return, that fact shall be set forth, and if verified by affidavit and established to the satisfaction of the court, the hearing may be adjourned to such other time or place or such order may be made as justice may require. [L 1870, c 32, §16; RL 1925, §2744; RL 1935, §4329; RL 1945, §10370; RL 1955, §239-21; HRS §660-21; am L 1972, c 90, §5(n); gen ch 1985]

" **§660-22 Disobeying writ or order to show cause, penalties.** Any person who neglects or refuses promptly to perform any duty imposed upon such person by virtue of any writ of habeas corpus or order to show cause, conformably to this chapter, shall be responsible in a civil action to any person aggrieved for damages occasioned thereby, and may be fined not more than \$5,000, or imprisoned at hard labor not more than ten years, or both. [L 1870, c 32, §26; RL 1925, §2745; RL 1935, §4330; RL 1945, §10371; am L 1953, c 101, §11; RL 1955, §239-22; HRS §660-22; gen ch 1993]

#### **Cross References**

Classification of offense and authorized punishment, see §§701-107, 706-610(2), 706-640, and 706-660.

" **§660-23 Evading service, penalties.** The liabilities and penalties of section 660-22 shall also be imposed upon any person who, having in that person's custody or under that person's power any person entitled to a writ of habeas corpus, with intent to elude the service of the writ or to avoid the effect thereof, transfers the person to the custody or places the person under the control or power of any other person, or conceals the person or changes the person's place of confinement. [L 1870, c 32, §27; RL 1925, §2746; RL 1935, §4331; RL 1945, §10372; RL 1955, §239-23; HRS §660-23; am L 2016, c 55, §39]

" **§660-24 Hearing without delay.** Upon the return of the writ or order to show cause, the court shall proceed without delay to examine the causes of imprisonment or restraint. The examination may be adjourned from time to time as circumstances may reasonably require. [L 1870, c 32, §17; RL 1925, §2747; RL

1935, §4332; RL 1945, §10373; am L 1953, c 101, §12; RL 1955, §239-24; HRS §660-24; am L 1972, c 90, §5(o)]

" **§660-25 Notice to other parties, when.** If the person is detained on any process under which any other person has an interest in the person's detention, and the other person or the other person's attorney is within the State and can be notified without unreasonable delay, the person detained shall not be discharged until the other person or the other person's attorney has had an opportunity to be heard. [L 1870, c 32, §18; RL 1925, §2748; RL 1935, §4333; RL 1945, §10374; RL 1955, §239-25; HRS §660-25; am L 1972, c 90, §5(p); am L 2016, c 55, §40]

### **Cross References**

Notice of parole or release, see §706-670.5.

Victim or witness rights, see chapter 801D.

" **§660-26 Notice to attorney general, when.** If the person is imprisoned on any criminal accusation, reasonable notice shall be given to the attorney general, or the attorney general's deputy, lawfully appointed, to appear and object if the attorney general or the attorney general's deputy thinks fit. [L 1870, c 32, §19; RL 1925, §2749; RL 1935, §4334; RL 1945, §10375; RL 1955, §239-26; HRS §660-26; gen ch 1985]

" **§660-27 Return, hearing.** The person imprisoned or restrained may deny any of the facts set forth in the return and may allege other material facts, and the court shall proceed in a summary way to examine the causes of imprisonment or restraint and to hear evidence which may be offered by any person interested or authorized to appear either in support of the imprisonment or restraint or against it, and thereupon to dispose of the party as law and justice may require. [L 1870, c 32, §20; RL 1925, §2750; RL 1935, §4335; RL 1945, §10376; RL 1955, §239-27; HRS §660-27]

### **Case Notes**

Section does not afford all habeas corpus petitioners absolute right to hearing; court in exercise of discretion may deny request for evidentiary hearing. 53 H. 274, 492 P.2d 953 (1972).

" **§660-28 Bail, etc., before judgment.** Except as otherwise provided:

- (1) Until judgment is given, the court may remand the party or accept bail for the party's appearance from day to day or may place the party under special care and custody, as circumstances may require; and
- (2) After judgment is given, an order made by the court under paragraph (1) shall be continued in effect during a stay of enforcement of judgment, unless the trial court, the intermediate appellate court, or the supreme court after taking of the appeal, terminates the order or makes other provision in the circumstances. [L 1870, c 32, §25; am L 1923, c 217, §1; RL 1925, §2751; RL 1935, §4336; RL 1945, §10377; RL 1955, §239-28; HRS §660-28; am L 1972, c 90, §5(q); gen ch 1985; am L 2004, c 202, §72; am L 2006, c 94, §1; am L 2010, c 109, §1]

### Case Notes

Granting of bail discretionary. 18 H. 473 (1907).

Pending return, custody of petitioner remains undisturbed. 26 H. 363, 367 (1922).

After judgment and pending perfection of appeal, authority over custody of child. 26 H. 701 (1923).

" **§660-29 Discharge, when.** If no legal cause for the imprisonment or restraint is shown the person shall be immediately discharged therefrom. [L 1870, c 32, §21; RL 1925, §2752; RL 1935, §4337; RL 1945, §10378; RL 1955, §239-29; HRS §660-29]

" **§660-30 Admitted to bail, when.** If the person is detained for any cause or offense and admittance to bail is a matter of right, the person shall be admitted to bail, or bail may be dispensed with as provided by the state constitution. If the person cannot furnish the bail ordered, then the person shall be remanded with an order of the court, expressing the sum in which the person is held to bail and the court at which the person is required to appear. [L 1870, c 32, §22; RL 1925, §2753; RL 1935, §4338; RL 1945, §10379; RL 1955, §239-30; HRS §660-30; am L 1972, c 90, §5(r); gen ch 1985]

" **§660-31 Bail reduced, when.** If the person is committed because the person cannot furnish the bail ordered, and the bail which is required appears to be excessive or unreasonable, the court shall decide what bail is reasonable, and shall order that upon furnishing such bail the person shall be discharged from custody. [L 1870, c 32, §23; RL 1925, §2754; RL 1935, §4339; RL

1945, §10380; RL 1955, §239-31; HRS §660-31; am L 1972, c 90, §5(s); gen ch 1985]

### Case Notes

Bail of \$300,000 held excessive for first degree murder. 56 H. 447, 539 P.2d 1197 (1975).

" **§660-32 Remanded, when.** If the person is lawfully imprisoned or restrained, and is not entitled to be admitted to bail, he shall be remanded to the person or officer having lawful authority to detain him. [L 1870, c 32, §24; RL 1925, §2755; RL 1935, §4340; RL 1945, §10381; RL 1955, §239-32; HRS §660-32; am L 1972, c 90, §5(t)]

" **§660-33 Discharge, effect of.** No person who has been discharged upon a writ of habeas corpus shall be again imprisoned or restrained for the same cause, unless the person is indicted therefor, or convicted thereof, or committed for want of bail, by some court of record, having jurisdiction of the cause, or unless after a discharge for default of proof, or for some material default in the commitment in a criminal case, the person is again arrested on sufficient proof, and committed by legal process, for the same offense. [L 1870, c 32, §30; RL 1925, §2756; RL 1935, §4341; RL 1945, §10382; RL 1955, §239-33; HRS §660-33; gen ch 1985]

### Case Notes

This section relates to a final discharge, not to judgment of discharge which has been arrested by an appeal. 13 H. 534 (1901).

Decision discharging prisoner conclusively determines that the prisoner was not liable to be held on the state of facts then existing. 15 H. 276 (1903).