

Habeas Corpus Act 1679

Parliament



OVERVIEW

Habeas corpus refers to a person's right not to be imprisoned unless charged with a crime and given a trial. A writ of habeas corpus is a court order that requires the government to either charge an imprisoned person with a crime or let the person go free. If a government ignores or refuses to grant a writ of habeas corpus served upon it, the person held could be imprisoned indefinitely without trial. In order to make writs of habeas corpus more effective, the Habeas Corpus Act was passed.

GUIDED READING As you read, consider the following questions:

- What does the Act suggest authorities had been doing to avoid complying with writs of habeas corpus?
- How were writs of habeas corpus made more effective by this Act?

I. WHEREAS great delays have been used by sheriffs, gaolers and other officers, to whose custody, any of the King's subjects have been committed for criminal or supposed criminal matters, in making returns of writs of habeas corpus to them directed, by standing out an alias and pluries habeas corpus, and sometimes more, and by other shifts to avoid their yielding obedience to such writs, contrary to their duty and the known laws of the land, whereby many of the King's subjects have been and hereafter may be long detained in prison, in such cases where by law they areailable, to their great charges and vexation.

II. For the prevention whereof, and the more speedy relief of all persons imprisoned for any such criminal or supposed criminal matters; (2) be it enacted by the King's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority thereof. That whensoever any person or persons shall bring any habeas corpus directed unto any sheriff or sheriffs, gaoler, minister or other person whatsoever, for any person in his or their custody, and the said writ shall be served upon the said officer, or left at the gaol or prison with any of the under-officers, under-keepers or deputy of the said officers or keepers, that the said officer or officers, his or their under-officers, under-keepers or deputies, shall within three days after the service thereof as aforesaid (unless the commitment aforesaid were for treason or felony, plainly and specially expressed in the warrant of commitment) upon

payment or tender of the charges of bringing the said prisoner, to be ascertained by the judge or court that awarded the same, and endorsed upon the said writ, not exceeding twelve pence per mile, and upon security given by his own bond to pay the charges of carrying back the prisoner, if he shall be remanded by the court or judge to which he shall be brought according to the true intent of this present act, and that he will not make any escape by the way, make return of such writ; (3) and bring or cause to be brought the body of the party so committed or restrained, unto or before the lord chancellor, or lord keeper of the great seal of England for the time being, or the judges or barons of the said court from which the said writ shall issue, or unto and before such other person or persons before whom the said writ is made returnable, according to the command thereof; (4) and shall then likewise certify the true causes of his detainer or imprisonment, unless the commitment of the said party be in any place beyond the distance of twenty miles from the place or places where such court or person is or shall be residing; and if beyond the distance of twenty miles, and not above one hundred miles, then within the space of ten days, and if beyond the distance of one hundred miles, then within the space of twenty days, after such delivery aforesaid, and not longer.

III. And to the intent that no sheriff, gaoler or other officer may pretend ignorance of the import of such writ. (2) be it enacted by the authority aforesaid, That all such writs shall be marked in this manner, *Per statutum tricesimo primo Caroli secundi Regis*, and shall be signed by the person that awards the same; (3) and if any person or persons shall be or stand committed or detained as aforesaid, for any crime, unless for felony or treason plainly expressed in the warrant of commitment, in the vacation-time, and out of term, it shall and may be lawful to and for the person or persons so committed or detained (other than persons convict or in execution of legal process) or any one on his or their behalf, to appeal or complain to the lord chancellor or lord keeper, or any one of his Majesty's justices, either of the one bench or of the other, or the barons of the exchequer of the degree of the coif; (4) and the said lord chancellor, lord keeper, justices or barons or any of them, upon view of the copy or copies of the warrant or warrants of commitment and detainer, or otherwise upon oath made that such copy or copies were denied to be given by such person or persons in whose custody the prisoner or prisoners is or are detained, are hereby authorized and required, upon request made in writing by such person or persons, or any on his, her, or their behalf, attested and subscribed by two witnesses who were present at the delivery of the same, to award and grant an habeas corpus under the seal of such court whereof he shall then be one of the judges, (5) to be directed to the officer or officers in whose custody the party so committed or detained shall be, returnable immediate before the said lord chancellor or lord keeper or such justice, baron or any other justice or baron of the degree of the coif of any of the said courts; (6) and upon service thereof as aforesaid, the officer or officers, his or their under-

officer or under-officers, under-keeper or under-keepers, or their deputy in whose custody the party is so committed or detained, shall within the times respectively before limited, bring such prisoner or prisoners before the said lord chancellor or lord keeper, or such justices, barons or one of them, before whom the said writ is made returnable, and in case of his absence before any other of them, with the return of such writ, and the true causes of the commitment and detainer; (7) and thereupon within two days after the party shall be brought before them, the said lord chancellor or lord keeper, or such justice or baron before whom the prisoner shall be brought as aforesaid, shall discharge the said prisoner from his imprisonment, taking his or their recognizance, with one or more surety or sureties, in any sum according to their discretions, having regard to the quality of the prisoner and nature of the offense, for his or their appearance in the court of the King's bench the term following, or at the next assizes, sessions or general gaol-delivery of and for such county, city or place where the commitment was, or where the offense was committed, or in such other court where the said offense is properly cognizable, as the case shall require, and then shall certify the said writ with the return thereof, and the said recognizance or recognizances unto the said court where such appearance is to be made; (8) unless it shall appear unto the said lord chancellor or lord keeper or justice or justices, or baron or barons, that the party so committed is detained upon a legal process, order or warrant, out of some court that hath jurisdiction of criminal matters, or by some warrant signed and sealed with the hand and seal of any of the said justices or barons, or some justice or justices of the peace, for such matters or offenses for the which by the law the prisoner is not bailable. [...]