CHAPTER 782

HABEAS CORPUS

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NOTE: See Ch. 781 for alternative remedy.

782.01 Habeas corpus, who to have; definitions. **(1)** Every person restrained of personal liberty may prosecute a writ of habeas corpus to obtain relief from such restraint subject to ss. 782.02 and 974.06.

(2) Any person confined in any hospital or institution as mentally ill or committed for treatment of alcoholism under s. 51.45 (13) may prosecute such writ, and the question of mental illness or need for treatment shall be determined by the court or judge issuing the same. If such court or judge decides that the person is mentally ill or in need of treatment such decision shall not bar the prosecution of such writ a 2nd time if it is claimed that such person has been restored to reason or is no longer in need of treatment.

(3) In this chapter, unless the context requires otherwise, judge includes the supreme court, the court of appeals and circuit courts and each justice and judge thereof and circuit and supplemental court commissioners; and prisoner includes every person restrained of personal liberty; and imprisoned includes every such restraint, and respondent means the person on whom the writ is to be served.

History: 1971 c. 57; 1973 c. 198; 1977 c. 187, 449; 1979 c. 32 ss. 59, 92 (11); 1979 c. 176; Stats. 1979 s. 782.01; 2001 a. 61.

Habeas corpus is a proper remedy with which to challenge the personal jurisdiction of a trial court over a criminal defendant and to challenge a ruling on a motion to suppress evidence when constitutional issues are involved. State ex rel. Warrender v. Kenosha County Ct. 67 Wis. 2d 333, 227 N.W.2d 450 (1975).

A prevailing plaintiff in a habeas corpus proceeding may not be awarded costs. State ex rel. Korne v. Wolke, 79 Wis. 2d 22, 255 N.W.2d 446 (1977).

A defendant released after making a deposit was not "restrained" under sub. (1). State ex rel. Kelley v. Posner, 91 Wis. 2d 301, 282 N.W.2d 633 (Ct. App. 1979).

Habeas corpus is available to persons released on personal recognizance bonds. State ex rel. Wohlfahrt v. Bodette, 95 Wis. 2d 130, 289 N.W.2d 366 (Ct. App. 1980).

A court had no jurisdiction under s. 974.06, relating to post−conviction procedure, to hear a challenge of the computation of a prisoner's good time. Habeas corpus is the proper avenue of relief. State v. Johnson, 101 Wis. 2d 698, 305 N.W.2d 188 (Ct. App. 1981).

The procedure for a writ of habeas corpus is discussed. State ex rel. LeFebre v. Abrahamson, 103 Wis. 2d 197, 307 N.W.2d 186 (1981).

Comity between circuit courts was not a sufficient reason to refuse to issue a writ but, under the facts of the case, the penalty for refusing to issue the writ under s. 782.09 was inappropriate. J.V. v. Barron, 112 Wis. 2d 256, 332 N.W.2d 796 (1983).

Habeas corpus is available to a petitioner to challenge a criminal complaint and to test the sufficiency of evidence for bindover. State ex rel. McCaffrey v. Shanks, 124 Wis. 2d 216, 369 N.W.2d 743 (Ct. App. 1985). See also State ex rel. Cornellier v. Black, 144 Wis. 2d 745, 425 N.W.2d 21 (Ct. App. 1988).

A defendant's prejudicial deprivation of appellate counsel, be it the fault of the attorney or the appellate court, is properly remedied by a petition for habeas corpus in the supreme court. State ex rel. Fuentes v. Court of Appeals, 225 Wis. 2d 446, 593 N.W.2d 48 (1999), 98−1534.

A question of statutory interpretation may be considered on a writ of habeas corpus only if noncompliance with the statute at issue resulted in the restraint of the petitioner's liberty in violation of the constitution or the court's jurisdiction. State ex rel. Hager v. Marten, 226 Wis. 2d 687, 594 N.W.2d 791 (1999), 97−3841.

Because it is an extraordinary writ, habeas corpus relief is available only when the petitioner demonstrates: 1) restraint of his or her liberty, 2) the restraint was imposed contrary to constitutional protections or by a body lacking jurisdiction, and 3) no other adequate remedy available at law. A petition for a writ of habeas corpus will not be granted if the petitioner asserts a claim that could have been raised during a prior appeal if the petitioner offers no valid reason to excuse the failure. State v. Pozo, 2002 WI App 279, 258 Wis. 2d 796, 654 N.W.2d 12, 02−0127.

A claim for ineffective assistance of postconviction counsel must be filed with the circuit court either as a s. 974.06 motion or as a petition for a writ of habeas corpus. A defendant arguing ineffective assistance of appellate counsel, conversely, may not seek relief under s. 974.06 and must instead petition the court of appeals for a writ of habeas corpus. State v. Starks, 2013 WI 69, 349 Wis. 2d 274, 833 N.W.2d 146, 10−0425.

782.02 Who not entitled to. No person shall be entitled to prosecute such writ who shall have been committed or detained by virtue of the final judgment or order of any competent tribunal of civil or criminal jurisdiction or by virtue of any execution issued upon such order or judgment; but no order of commitment for any alleged contempt or upon proceedings as for contempt to enforce the rights or remedies of any party shall be deemed a judgment or order within the meaning of this section; nor shall any attachment or other process issued upon any such order be deemed an execution within the meaning of this section.

History: 1979 c. 32 s. 59; Stats. 1979 s. 782.02.

782.03 Petition for writ. Application for the writ shall be by petition, signed either by the prisoner or by some person in his or her behalf, and may be made to the supreme court, the court of appeals or the circuit court of the county, or to any justice or judge of the supreme court, court of appeals or circuit court or to any circuit or supplemental court commissioner, within the county where the prisoner is detained; or if there is no judge within the county, or for any cause he or she is incapable of acting, or has refused to grant the writ, then to some judge residing in an adjoining county; but every application, made by or on behalf of a person sentenced to the state prisons, must contain a copy of any motion made under s. 974.06 and shall indicate the disposition of the motion and the court in which the disposition was made. If no motion was made, the petition shall so state.

History: 1977 c. 187, 449; 1979 c. 32 s. 59; Stats. 1979 s. 782.03; 2001 a. 61.

782.04 Petition; contents. Such petition must be verified and must state in substance:

(1) That the person in whose behalf the writ is applied for is restrained of personal liberty, the person by whom imprisoned and the place where, naming both parties, if their names are known, or describing them if they are not.

(2) That such person is not imprisoned by virtue of any judgment, order or execution specified in s. 782.02.

(3) The cause or pretense of such imprisonment according to the best of petitioner's knowledge and belief.

(4) If the imprisonment is by virtue of any order or process a copy thereof must be annexed, or it must be averred that, by reason of such prisoner being removed or concealed a demand of such copy could not be made or that such demand was made and a fee of $1 therefor tendered to the person having such prisoner in custody, and that such copy was refused.

(5) In what the illegality of the imprisonment consists.

History: 1979 c. 32 ss. 59, 92 (11); 1979 c. 176; Stats. 1979 s. 782.04.

782.05 Application to officer in another county. Whenever application for any such writ is made to any officer not residing within the county where the prisoner is detained the officer shall require proof, by oath of the party appearing or by other sufficient evidence, that there is no officer in such county authorized to grant the writ or if there is one that the officer is absent or has refused to grant such writ, or for some cause, to be specifically set forth, is incapable of acting; and if such proof is not produced the application shall be denied.

History: 1979 c. 32 s. 59; 1979 c. 176; Stats. 1979 s. 782.05.

782.06 Writ granted without delay. The court or judge to whom such petition shall be properly presented shall grant the same without delay unless it shall appear from the petition or from the documents annexed that the party applying therefor is prohibited from prosecuting the same.

History: 1979 c. 32 s. 59; Stats. 1979 s. 782.06.

782.07 Form of writ. (1) Such writ shall be substantially in the following form:

The state of Wisconsin: To the sheriff, etc. (or A. B.):

You are hereby commanded to have C. D., by you imprisoned and detained, as it is said, together with the time and cause of such imprisonment, (by whatever name the said C. D. shall be called or charged), before [here name the court or judge], at, etc., on, etc. (or immediately after the receipt of the writ), to do and receive what shall then and there be considered concerning the said C. D.

Witness, etc.

(2) Every such writ shall be made returnable forthwith or at a day certain, as the case may require; when not issued by the court shall be endorsed with a certificate that the same has been allowed, with the date of such allowance, signed by the judge allowing the same.

History: 1979 c. 32 s. 59; Stats. 1979 s. 782.07.

782.08 Writ, when sufficient. Such writ shall not be disobeyed for any defect in form. It shall be sufficient:

(1) If the person having the custody of the prisoner is designated, either by name of office, if any, or by the person's name, or if both names are unknown or uncertain the person may be described by an assumed name or title. Anyone who is served with the writ is considered the person to whom it is directed, although it is directed to the person by a wrong name or description or to any other person.

(2) If the person who is directed to be produced be designated by name, or if the person's name be uncertain or unknown, he or she may be described in any other way so as to designate the person intended.

History: 1979 c. 32 s. 59; 1979 c. 176; Stats. 1979 s. 782.08; 1993 a. 486; 1997 a. 254.

782.09 Refusal of writ. Any judge who refuses to grant a writ of habeas corpus, when legally applied for, is liable to the prisoner in the sum of $1,000.

History: 1979 c. 32 s. 59; 1979 c. 176, 355; Stats. 1979 s. 782.09.

Comity between circuit courts was not a sufficient reason to refuse to issue a writ but, under the facts of the case, the penalty under this section was inappropriate. J.V. v. Barron, 112 Wis. 2d 256, 332 N.W.2d 796 (1983).

The filing of a petition for a writ with the clerk of courts is a prerequisite to an action against a judge under this section. Maier v. Byrnes, 121 Wis. 2d 258, 358 N.W.2d 833 (Ct. App. 1984).

782.10 Writ, who may serve. Such writ can only be served by an elector of the state and shall be served as follows:

(1) By delivering a copy of the same to the person to whom it is directed.

(2) If such person cannot be found, by being left at the jail or other place in which the prisoner may be confined, with any underofficer or other person of proper age having charge of such prisoner.

(3) If the person on whom the writ ought to be served hides or refuses admittance to the party attempting to serve the writ, by affixing the copy, in some conspicuous place on the outside of the house or other place where the prisoner is confined.

(4) The person serving the writ shall make due and prompt return thereof with proof of service.

History: 1979 c. 32 s. 59; 1979 c. 176; Stats. 1979 s. 782.10.

782.11 Petitioner, when to pay charges. When such writ is directed to any person other than an officer, it may require as a duty to be performed, in order to render the service thereof effectual, that the charges of bringing up such prisoner shall be paid by the petitioner, and in such case the writ shall specify the amount of such charges so to be paid, which shall not exceed the fees allowed by law to sheriffs for similar services.

History: 1979 c. 32 s. 59; Stats. 1979 s. 782.11.

782.12 Service of writ, when complete. Except where service is made under s. 782.10 (3), the service of a writ of habeas corpus is not complete until the party serving the writ tenders to the custodian of the prisoner, if an officer, the fees allowed for bringing up the prisoner, nor unless, when required by the officer, the party shall also give the officer a bond in double the sum for which the prisoner is detained, if detained for a specific sum of money, and if not, then in the sum of $1,000, conditioned that the obligor will pay the charges of carrying back the prisoner if remanded and that the prisoner will not escape, either going to or returning from the place to which taken, and if the prisoner is not in the custody of an officer, and the writ requires that the charges of bringing up the prisoner shall be paid by the petitioner, then until the charges have been tendered to the respondent.

History: 1979 c. 32 ss. 59, 92 (11); 1979 c. 176; Stats. 1979 s. 782.12.

782.13 Return to writ. Whenever a complete service of such writ shall have been made, the person upon whom it was served, having the custody of the prisoner, whether such writ be directed to the person or not, shall obey and make return to such writ and such prisoner shall be produced at the time and place specified therein.

History: 1979 c. 32 s. 59; 1979 c. 176; Stats. 1979 s. 782.13.

782.14 Return, what to state. The respondent shall state in the return:

(1) Whether the prisoner is in the respondent's custody or power.

(2) If the prisoner is in the respondent's custody or power the authority and true cause of such imprisonment, setting forth the same at large.

(3) If the prisoner be detained by virtue of any written authority a copy thereof shall be annexed to the return and the original

shall be produced to the court or judge before whom the same is returnable.

(4) If the respondent shall have had the prisoner in the respondent's power or custody at any time, but has transferred such custody to another, the return shall state particularly to whom, at what time, for what cause and by what authority such transfer took place. The return must be signed by the person making it and shall be verified by oath.

History: 1979 c. 32 s. 59; 1979 c. 176; Stats. 1979 s. 782.14.

782.15 Prisoner produced, exception. The respondent shall bring the prisoner, according to the command of such writ, except in the case of sickness as provided in s. 782.29.

History: 1979 c. 32 ss. 59, 92 (11); Stats. 1979 s. 782.15.

782.16 Obedience to writ compelled. If any person upon whom such writ shall have been duly served shall refuse or neglect to obey the same, within the time required, and no sufficient excuse shall be shown for such refusal or neglect the court or judge before whom such writ is returnable shall, upon proof of such service, forthwith issue an attachment against such person, directed to the sheriff of any county, commanding the sheriff forthwith to apprehend such person and to bring the person before such court or judge. The person so brought shall be committed to the county jail until making return to such writ and comply with any order that may be made in relation to the prisoner.

History: 1979 c. 32 s. 59; 1979 c. 176; Stats. 1979 s. 782.16.

782.17 Attachment of sheriff. If a sheriff neglects to make return to such writ the attachment may be directed to any coroner or other person to be designated therein, who shall execute the same; and such sheriff may be committed to the jail of any county other than the sheriff's own.

History: 1979 c. 32 s. 59; 1979 c. 176; Stats. 1979 s. 782.17.

782.18 Attachment may issue. In case of attachment an order may be issued to the officer or other person to whom such attachment is directed, commanding the officer or person to bring, forthwith, before the court or judge, the party for whose benefit such writ was allowed, who shall thereafter remain in the custody of such officer or other person, until discharged, bailed or remanded. In the execution of such attachment or order, the person executing it may call to the person's aid the power of the county.

History: 1979 c. 32 s. 59; 1979 c. 176; Stats. 1979 s. 782.18.

782.19 Return may be traversed. The prisoner may move to strike the return or may deny any of the material facts set forth in the return to the writ or allege any fact to show either that the imprisonment is unlawful or that the prisoner is entitled to a discharge, which allegations and denials shall be verified by oath; and the court or judge shall proceed in a summary way to examine into the facts contained in the return and to hear the allegations and proofs of the parties in support of such imprisonment or against the same.

History: Sup. Ct. Order, 67 Wis. 2d 585, 762 (1975); 1975 c. 218; 1979 c. 32 s. 59; Stats. 1979 s. 782.19.

782.20 When party discharged. If no legal cause be shown for such imprisonment or restraint or for the continuance thereof the court or judge shall make a final order discharging such party from the custody or restraint.

History: 1979 c. 32 s. 59; 1979 c. 176; Stats. 1979 s. 782.20.

782.21 When remanded. The court or judge must make a final order to remand the prisoner if it shall appear that the prisoner is detained in custody either:

(1) By virtue of process issued by any court or judge of the United States, in a case where such court or judge has exclusive jurisdiction; or

(2) By virtue of the final judgment or order of any competent court of civil or criminal jurisdiction or of any execution issued upon such judgment or order; or

(3) For any contempt, specially and plainly charged in the commitment by some court, officer or body having authority to commit for the contempt so charged; and

(4) That the time during which such party may be legally detained has not expired.

History: 1979 c. 32 s. 59; 1979 c. 176; Stats. 1979 s. 782.21.

782.22 Discharge if in custody under process. (1) If it appear that the prisoner is in custody by virtue of civil process of any court or issued by any officer in the course of judicial proceedings before the officer such prisoner can be discharged in the following cases only:

(a) Where the jurisdiction of such court or officer has been exceeded, either as to matter, place, law or person.

(b) Where, although the original imprisonment was lawful, yet by some act, omission or event which has taken place afterward the prisoner is entitled to be discharged.

(c) Where the process is void.

(d) When the process was issued in a case not allowed by law.

(e) Where the person having the custody of the prisoner is not empowered by law to detain the prisoner; or

(f) Where the process is not authorized by any judgment or order of any court nor by any provision of law.

(2) But no court or judge, on the return of such writ, shall inquire into the legality or justice of any judgment, order or execution specified in s. 782.21.

History: 1979 c. 32 s. 59, 92 (11); 1979 c. 176; Stats. 1979 s. 782.22; 1993 a. 486.

782.23 Prisoner, when bailed. If it appear that the prisoner has been legally committed for crime or if the prisoner appears, by the testimony offered with the return upon the hearing thereof, to be guilty of crime, although the commitment is irregular, the court or judge before whom the prisoner is brought shall release the prisoner on bail, if bailable and good bail be offered, or shall remand the prisoner.

History: 1979 c. 32 s. 59; 1979 c. 176; Stats. 1979 s. 782.23.

782.24 Prisoner, when remanded. If the prisoner is not entitled to discharge and is not bailed the court or judge shall remand the prisoner to the custody from which taken, if the person who had custody is legally entitled to custody; if not so entitled, the prisoner shall be committed to his or her legal custodian.

History: 1979 c. 32 s. 59; 1979 c. 176; Stats. 1979 s. 782.24.

782.25 Custody of prisoner pending proceedings. Until judgment be given upon the return the court or judge before whom the prisoner is brought may either commit the prisoner to the custody of the sheriff or place the prisoner in such care or under such custody as age and other circumstances may require.

History: 1979 c. 32 s. 59; 1979 c. 176; Stats. 1979 s. 782.25.

782.26 Interested person notified. When it appears from the return to such writ that the prisoner is in custody on any process under which any other person has an interest in continuing imprisonment no order shall be made for discharge until it shall appear that the interested person or attorney, if the person has one, if to be found within the county, shall have sufficient notice of the time and place at which writ is returnable.

History: 1979 c. 32 s. 59; 1979 c. 176; Stats. 1979 s. 782.26.

782.27 Notice to district attorney. When the prisoner is detained upon any criminal accusation no order for discharge shall be made until sufficient notice of the time and place at which such writ shall have been returned or shall be made returnable shall be given to the district attorney of the county, if to be found within the county.

History: 1979 c. 32 s. 59; 1979 c. 176; Stats. 1979 s. 782.27.

782.28 Transfer from circuit court commissioner. If the writ is returnable before a circuit court commissioner, either party may make a request for transfer to the court in which the matter is filed. Upon receipt of such request the circuit court commis-

sioner shall forthwith transmit all papers and records in the proceedings to the court.

History: 1977 c. 135; 1979 c. 32 s. 59; Stats. 1979 s. 782.28; 2001 a. 61.

782.29 Proceedings in absence of prisoner; appearance by attorney. When from sickness or infirmity the prisoner cannot without danger be brought before the court or judge before whom the writ is made returnable the respondent may state that fact in the return, verifying the same by oath. If satisfied of the truth of such allegation and the return is otherwise sufficient, the court or judge shall proceed to dispose of the matter. The prisoner may appear by attorney and plead to the return. If it appears that the prisoner is illegally imprisoned the court or judge shall order discharge forthwith; but if it appears that the person is legally imprisoned and is not entitled to bail all further proceedings thereon shall cease.

History: 1979 c. 32 s. 59; 1979 c. 176; Stats. 1979 s. 782.29.

782.30 Order of discharge, how enforced, action for damages. Obedience to any final order discharging or directing the discharge of any prisoner may be enforced by the court making the order by attachment, in the manner provided for a neglect to make a return to a writ of habeas corpus and with the like effect in all respects. The person who is guilty of disobedience of the order shall be liable to the prisoner in the sum of $1,250 for damages, in addition to any special damages that the prisoner may have sustained.

History: 1979 c. 32 s. 59; Stats. 1979 s. 782.30; 1997 a. 254.

782.31 Nonliability of officers. No officer shall be liable for obeying any final order discharging or directing the discharge of any prisoner.

History: 1979 c. 32 s. 59; Stats. 1979 s. 782.31.

782.32 Reimprisonment for same cause; when cause not same. No person who has been discharged by the final order of any court or officer upon a writ of habeas corpus issued pursuant to the provisions of this chapter shall be again imprisoned, restrained or kept in custody for the same cause; but it shall not be deemed the same cause:

(1) If the person has been discharged from a commitment on a criminal charge and is afterwards committed for the same offense by the legal order or process of the court wherein the person is bound by recognizance to appear or in which the person is informed against, indicted or convicted for the same offense; or

(2) If after a discharge for defect of proof or for any material defect in the commitment in any criminal case the prisoner be again arrested on sufficient proof and committed by legal process for the same offense; or

(3) If in a civil action the party has been discharged for any illegality in the judgment or process hereinbefore specified and is afterward imprisoned by legal process for the same cause or action; or

(4) If in any civil action the person has been discharged from commitment on mesne process and shall be afterwards committed on execution in the same cause or on mesne process in any other cause after such first action shall have been discontinued.

History: 1979 c. 32 s. 59; 1979 c. 176; Stats. 1979 s. 782.32.

Cross−reference: Effect of release on habeas corpus upon term of imprisonment, see s. 973.16.

782.33 Warrant in lieu of writ. Whenever it shall appear by satisfactory proof that any person is held in illegal imprisonment and that there is good reason to believe that the person will be carried out of the state or suffer some irreparable injury before the person can be relieved by habeas corpus, the judge may issue a warrant, reciting the facts and directed to any sheriff, constable or other person, commanding him or her to take such prisoner and forthwith to bring the prisoner before the judge, to be dealt with according to law.

History: 1979 c. 32 s. 59; 1979 c. 176; Stats. 1979 s. 782.33.

782.34 Order of arrest. When the proof mentioned in s. 782.33 shall also be sufficient to justify an arrest of the person having such prisoner in custody, as for a criminal offense committed in the taking or detaining of such prisoner, the warrant shall also contain an order for the arrest of such person for such offense.

History: 1979 c. 32 ss. 59, 92 (11); 1979 c. 176; Stats. 1979 s. 782.34.

782.35 Warrant, how executed. Any officer or person to whom such warrant shall be directed shall execute the same by bringing the prisoner therein named and the person who detained the prisoner, if so commanded by the warrant, before the officer issuing the same; and thereupon the person detaining such prisoner shall make return in like manner and the like proceedings shall be had as if a writ of habeas corpus had been issued in the first instance.

History: 1979 c. 32 s. 59; Stats. 1979 s. 782.35; 1993 a. 486.

782.36 Proceedings for unlawful detention. If the person having such prisoner in custody shall be brought before such officer as for a criminal offense the person shall be examined, committed, bailed or discharged by such officer in like manner as in other criminal cases of the like nature.

History: 1979 c. 32 s. 59; 1979 c. 176; Stats. 1979 s. 782.36.

782.37 Penalty for refusing papers. If any officer or other person refuses to deliver a copy of any order, warrant, process or other authority, by which the officer or other person detains any person, to anyone who demands the copy and who tenders the fees for the copy, the officer or other person shall be liable to the person so detained in the sum of $200, to be recovered in an action.

History: 1979 c. 32 s. 59; Stats. 1979 s. 782.37; 1993 a. 486; 1997 a. 254.

782.38 Reimprisoning party discharged. Any person who shall recommit, imprison or restrain of liberty or cause to be recommitted, imprisoned or restrained of liberty for the same cause except as provided in s. 782.32, any person discharged by a final order upon a writ of habeas corpus or who shall knowingly assist or aid therein, shall be liable to the prisoner in the sum of $1,250 damages, and shall be guilty of a misdemeanor and be punished as provided by s. 782.39.

History: 1979 c. 32 ss. 59, 92 (11); 1979 c. 176; Stats. 1979 s. 782.38.

782.39 Concealment of person entitled to writ. Any person who has custody of or power over a person who is entitled to a writ of habeas corpus or for whose relief such a writ has been issued, who shall, with the intent to elude the service of such writ or to avoid the effect thereof, transfer such prisoner to the custody or control of another, or conceal the prisoner or change the place of confinement and every person who assists in so doing shall be fined not more than $1,000 or imprisoned not more than 6 months or both.

History: 1979 c. 32 s. 59; 1979 c. 176; Stats. 1979 s. 782.39.

782.44 Prisoner brought for trial or as witness. This chapter does not restrain the power of courts to issue a writ of habeas corpus, to bring before them any prisoner for trial or as a witness.

History: 1979 c. 32 s. 59; Stats. 1979 s. 782.44.

The trial court in determining whether to grant the writ should weigh the interest of the prisoner in presenting testimony in person against the state's interest in maintaining the prisoner's confinement. Eight listed factors are to be considered. State ex rel. Rilla v. Dodge County Circuit Court 76 Wis. 2d 429, 251 N.W.2d 476 (1977).

Whether to proceed with civil litigation or to hold it in abeyance while a party is incarcerated depends on the nature of the case, the practical concerns raised by the prisoner's appearance, and the alternative methods available to provide the prisoner with access to the hearing. Schmidt v. Schmidt, 212 Wis. 2d 405, 569 N.W.2d 74 (Ct. App. 1997), 96−3699.

A writ of habeas corpus prosequendum does not constitute a detainer subject to the requirements of the Interstate Agreement on Detainers, s. 976.05. State v. Eesley, 225 Wis. 2d 248, 591 N.W.2d 846 (1999), 97−1839.

782.45 Witness fees, inmates of state institutions. (1) If an inmate of any public institution is brought into court in response to a writ of habeas corpus or subpoena, the institution shall be reimbursed for the time of the officer conducting the inmate and the actual and necessary traveling expenses incurred

in taking the inmate into court on the process and returning the inmate to the institution. The superintendent of the institution shall file with the clerk of the court a statement of the expenses. The clerk shall certify the expenses to the county treasurer, who shall pay to the superintendent of the institution the amount so certified, but in a civil action, such expenses shall be paid by the party requesting the presence of the inmate.

(2) In lieu of the procedure under sub. (1) the department of health services and the department of corrections, upon 48 hours' advance notice, shall release to any sheriff having a suitable jail approved by the department of corrections for this purpose any prisoner upon presentation of a writ of habeas corpus to the warden or superintendent of the institution which is detaining the inmate. The sheriff shall be informed in advance where the sheriff may assume custody of the inmate and the sheriff then shall be in charge of the inmate and be responsible for the inmate's custody. During the time that an inmate is absent from the state institution and in the custody of the sheriff the inmate shall be entitled to credit for time served on the existing sentence and such credit under s. 302.11 that he or she was eligible to receive while an inmate of the state institution. The sheriff shall be responsible for segregating the inmate in the jail from other prisoners and the county shall be liable for all expenses attendant to his or her detention including medical care. The inmate while in the custody of the sheriff shall not be permitted to have visitors or to receive mail except as authorized and approved by the warden or superintendent of the state institution which formerly detained the inmate but shall be entitled to confer with counsel during reasonable hours without restriction. After the court has determined that the inmate is no longer needed or required, the sheriff shall promptly return the inmate to the institution to which detained prior to the release to the sheriff for appearance in court.

History: 1979 c. 32 s. 59; 1979 c. 110; Stats. 1979 s. 782.45; 1989 a. 31; 1995 a. 27 s. 9126 (19); 2007 a. 20 s. 9121 (6) (a).

The state must transport prisoners to federal courts on the same basis as to state courts. Matter of Warden of Wisconsin State Prison, 541 F.2d 177 (1976).

The state may not deny an indigent prisoner the right to appear in court to defend a divorce action brought against him unless he pays expenses. Brant v. Powers, 339 F. Supp. 65 (1972).

782.46 Habeas corpus not available to prisoners passing through this state. The officers of all other states, territories and countries are given the right to hold and convey all persons in their custody and charged with or convicted of crime into and through the state of Wisconsin. It shall be a sufficient answer to a writ of habeas corpus sued out in this state by any such person so in custody that the officer holds the person in custody by authority of a warrant or a commitment of such other state, territory or country, a copy of which warrant or commitment shall be attached to the answer of such officer.

History: 1979 c. 32 s. 59; 1979 c. 176; Stats. 1979 s. 782.46.