

TITLE XXXI. Relief of Prisoners.

CHAPTER 336.

PERSONS IN JAIL ON CIVIL PROCESS.

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336.01 Discharge of persons confined for tort. Every person confined in jail on an execution issued on a judgment recovered in an action founded on a tort shall be discharged therefrom at the end of ten days from his first confinement upon the conditions hereinafter specified.

336.02 Notice to plaintiff. Such person shall cause notice to be given to the plaintiff in the action, his agent or attorney, in writing, that at a time and place specified in such notice he will apply to the judge of the circuit court, county judge or court commissioner of the county in which he is so confined for the purpose of obtaining a discharge from his imprisonment.

336.03 Notice, how served. Such notice shall be served by delivering a copy thereof to the plaintiff, his agent or attorney twenty-four hours before the time for the hearing of such application, if he lives within twenty miles of the place designated for the hearing; and for every additional twenty miles or part thereof that he resides from such place twenty-four hours shall be added to the time of such service.

336.04 Prisoner to be examined. At the time and place specified in such notice such person shall be taken, under the custody of the jailer or the sheriff or his deputy, before such circuit judge, county judge or court commissioner, who shall examine the prisoner on his oath concerning his estate and effects and the disposal thereof and his ability to pay the judgment for which he is committed; and who shall also hear any other legal and pertinent evidence that may be produced by the debtor or the creditor.

336.05 Interrogatories. The plaintiff in the action may, upon such examination, propose to the prisoner any interrogatories pertinent to the inquiry and they shall, if required by the creditor, be proposed and answered in writing and the answers shall be signed and sworn to by the prisoner; and the plaintiff in the action may have a copy of the interrogatories and answers certified by the officer before whom such examination is had, upon paying therefor the legal fees.

336.06 Oath on discharge. If upon such examination such officer shall be satisfied that the prisoner is entitled to his discharge he shall administer to him the following oath:

I,, do solemnly swear that I have not any estate, real or personal, to the amount of twenty dollars, except such as is by law exempt from being taken on execution, and that I have not any other estate, nor conveyed or concealed or in any way disposed of any portion of my estate, real or personal, with design to secure the same to my use or to defraud my creditors. So help me God.

336.07 Certificate to sheriff. After administering the oath the officer before whom such examination shall be held shall make a certificate under his hand as follows:

To the sheriff or jailer of the county of I do hereby certify that, confined in your jail upon an execution at the suit of, is entitled to be discharged from imprisonment, if he be imprisoned for no other cause.

The sheriff, or jailer, upon receiving such certificate, shall forthwith discharge the prisoner, if he be imprisoned for no other cause.

336.08 Other applications for discharge. If upon such examination aforesaid the prisoner be not discharged he shall be entitled to apply for his discharge at the end of every succeeding ten days, in the same manner as above provided, and the same proceeding shall thereupon be had.

336.09 Effect of discharge. The prisoner, after being so discharged, shall be forever exempt from arrest or imprisonment for the same debt unless he shall be convicted for having wilfully sworn falsely upon his examination aforesaid or in taking the oath before prescribed.

336.10 Judgment to remain in force. The judgment against any prisoner who is discharged as aforesaid shall remain in full force against any estate which may then or at any time afterwards belong to him; and the plaintiff in the action may take out a new execution against the goods and estate of the prisoner in like manner as if he had never been committed on the execution.

336.11 Inability to pay fees. In case such prisoner shall be unable to pay in whole or in part the fees of such county judge or court commissioner in such proceedings they shall, nevertheless, proceed without charge to him therefor.

336.12 Payment and discharge. If the debtor shall satisfy the execution he shall not be entitled to his discharge until he has paid all the charges for his support in prison, in addition to the sum due on the execution, and the costs and charges thereon.

336.13 Discharge by plaintiff. The plaintiff in the action may, at any time, order the prisoner to be discharged, and he shall not thereafter be liable to imprisonment for the same cause.

336.14 Creditor to advance money for prisoner's support. (1) Except as hereinafter provided, whenever a person is committed to jail on execution issued on a judgment recovered in a civil action, the creditor, his agent, or attorney shall advance to the jailer within twenty-four hours after such commitment, sufficient money to pay for the support of said prisoner during the time for which he may be imprisoned; and in case the money shall not be so advanced, or, if during the time the prisoner may be in confinement the money shall be expended in the support of such prisoner, the jailer shall forthwith discharge such prisoner from custody, and such discharge shall have the same effect as a discharge by order of the court.

(2) Whenever a person is committed to jail because of refusal or failure to comply with any order of a court respecting the payment of alimony or suit money in a divorce action, it shall not be necessary to advance to the jailer money to pay for the support of such person, but the county in which such commitment shall be made shall be liable to the jailer for the support of the prisoner during the time for which he may be imprisoned.

336.15 Jail liberties. A space of ground in a square, the center of each of whose sides shall be one mile distant from the jail, is declared as the liberties of the jail of each county of the state. The sheriff of each county, where such liberties have not been heretofore so designated, shall, at the expense of the county, designate by visible and permanent marks the extent and limits of such liberties.

336.16 When prisoner to have. Every person who shall be in the custody of the sheriff of any county by virtue of an order of arrest, or writ of ne exeat or surrender by his bail upon an order of arrest, execution (except when issued in a civil action for the recovery of a forfeiture or penalty), or attachment in proceedings for contempts, not criminal, issued for nonpayment of costs or of any sum of money ordered to be paid in a civil action shall be entitled to be admitted to such jail liberties upon executing the bond prescribed in section 336.17.

336.17 Bond to be given. Such bond shall be executed by the prisoner and one or more sureties, to be approved by the sheriff, in a sum not less than double the amount of the sum in which the sheriff was required to hold the defendant to bail, or double the amount directed to be collected by the execution, or double the amount of the costs or sum of money ordered to be paid, as the case may be, and shall be conditioned that such defendant shall remain a true and faithful prisoner and shall not escape or go without the limits of such jail liberties until discharged by due course of law. Every such bond shall be held for the indemnity of the sheriff taking the same and of the party at whose suit or for whose benefit such prisoner is confined.

Note: A bond for the privilege of jail liberties, given pursuant to 336.17, by a person committed to jail on a body execution issued on a tort judgment, was not defective because the surety did not justify nor because the bond was not approved in writing by the sheriff, and hence the sheriff was not liable to the judgment creditor on the

alleged ground of having permitted the prisoner jail liberties without a proper bond; the statute not requiring the surety to justify, and not requiring that the sheriff's approval of the bond be in writing, although it would be better practice for the sheriff's approval to be in writing. *Rutzen v. Mitten*, 232 W 584, 288 NW 172.

336.18 Commitment if surety not good. If a sheriff who shall have taken any such bond shall discover that any surety to such bond is insufficient he may commit the pris-

oner, who executed the same, to close confinement in such jail until other good and sufficient sureties shall be substituted.

336.19 Surrender of principal. The sureties in any such bond may surrender their principal at any time before judgment shall be rendered against them thereon by taking such principal and delivering him to the keeper of the jail, when upon the written requirement of such sureties he shall indorse upon such bond an acknowledgment of the surrender of the principal and shall also, if required, give such sureties a certificate acknowledging such surrender; but such surrender shall not exonerate such sureties from any liability incurred by them previous to such surrender.

336.20 What is an escape. The going at large of any prisoner who shall have executed such bond or of any prisoner who would be entitled to the liberties of any jail, upon executing such bond, within the limits of the liberties of the jail of the county in which he shall be in custody, shall not be deemed an escape of such prisoner; but in case any such prisoner shall go at large without the jail liberties of such county, without the assent of the party at whose suit such prisoner shall be in custody, the same shall be deemed an escape and forfeiture of the bond so executed; and the sheriff in whose custody such prisoner shall have been shall have the same authority to pursue and retake such prisoner as if such escape had been made from the jail.

336.21 Escape of prisoners. In case of the escape of any prisoner by reason of the insufficiency of the jail, whereby the sheriff or any other person shall be made liable to any party at whose suit such prisoner was committed or to whose use any forfeiture was adjudged against him, the county shall reimburse and pay all sums of money recovered of the sheriff or such other person by such party by reason of such escape.

336.22 Voluntary return. In every suit brought by a sheriff on such bond the defendants may plead a voluntary return of the prisoner to the jail from which he escaped, or the liberties thereof, or the recapture of such prisoner by the sheriff from whose custody he escaped before the commencement of such suit, and may give evidence thereof in mitigation of the damages or judgment claimed, but upon such answer of a voluntary return judgment shall be rendered against the defendant in the action for twenty-five dollars for each day or part of day such defendant was outside of such liberties, together with the costs of the action; and such defendants shall be entitled to make such or any other defense to such suit which might be made by such sheriff to an action against him for such escape.

336.23 Effect of judgment against sheriff. But if an action shall have been brought against such sheriff for such escape and due notice thereof shall have been given to the prisoner and his sureties, who executed such bond, the judgment against such sheriff shall be conclusive evidence of his right to recover against such prisoner and his sureties as to all matters which were or might have been controverted in the action against the sheriff.

336.24 Suit on bond. In every suit brought by a sheriff on such bond if it shall appear to the court that judgment has been rendered against such sheriff for the escape of the prisoner and that due notice of the pendency of the action against the sheriff was given to the prisoner and his sureties, to enable them to defend the same, such court shall render judgment in the suit upon such bond at any term after the summons is served, upon the complaint being filed and twenty days' notice of the application for such judgment has been given to the defendants in such action.

336.25 Defense by sureties. If it shall appear, on the hearing of such motion, that the defendants have any meritorious cause of defense, which was not controverted in the action against the sheriff and which by law could not have been so controverted, the court shall enter judgment as provided in section 336.24 and suspend proceedings thereon until a trial in such action be had; but such judgment shall remain as a security for the sheriff. If such defense be established the court shall vacate such judgment and render judgment as in other cases.

336.26 Evidence; costs. In every action brought by a sheriff on such bond the recovery of a judgment against him for the escape of the prisoner shall be evidence of the damages sustained by him in the same manner as if such judgment had been collected; and such sheriff shall be entitled to recover the costs and his reasonable expenses in defending the suit against him as part of his damages.

336.27 Assignment of bond. If any such bond shall be forfeited the party at whose suit the person executing the same shall have been confined or, in case of his death, the executor or administrator of such party shall be entitled to an assignment thereof, which shall be made by the sheriff taking the same, or in case of a vacancy in his office by his undersheriff.

336.28 Suit on bond; damages. The party to whom such assignment shall have been made may maintain an action on such bond, as assignee of the sheriff taking the same, in the same cases in which such action might be maintained by such sheriff, and shall recover damages for breaches of the condition of such bond as follows:

(1) If the prisoner escaping was confined by virtue of an execution or by virtue of an attachment for nonpayment of costs or of any sum of money ordered to be paid by a court or judge the measure of the plaintiff's damages shall be the amount directed to be levied by such execution or attachment, with interest thereon to the time of such recovery;

(2) If the prisoner was confined by virtue of an order of arrest or writ of ne exeat, or upon a surrender by his bail upon an order of arrest, made before or after judgment rendered against him, the plaintiff shall recover only the actual damages sustained by him.

336.29 Effect of assignment. The acceptance of an assignment of any such bond shall be a bar to any action by or on behalf of the party receiving such assignment against the sheriff or other officer making the same for any escape of the prisoner executing such bond, amounting to a breach thereof.

336.30 Defense in actions by assignee. In every action brought by the assignee of such bond the defendants shall be entitled to plead a voluntary return of the prisoner to the liberties of the jail before the commencement of such action, in mitigation thereof, as provided in section 336.22; and to make any defense which they would be entitled to make if such action had been brought in the name and for the benefit of the sheriff to whom such bond was executed.

336.31 When suit against sheriff stayed. In case the party at whose suit any person shall have been confined to the liberties of a jail shall refuse or neglect to take an assignment of the bond executed by such person, as hereinbefore provided, and shall prosecute any sheriff for the escape of such person the court in which such action shall be pending shall, by order, stay all the proceedings upon the judgment against such sheriff until he shall have had a reasonable time to prosecute the bond taken by him and to collect the amount of any judgment he may recover thereon. But this section shall not authorize such stay of proceedings in any action where the judgment shall have been recovered against any sheriff for any escape committed with the assent, aid or assistance of such sheriff.