CHAPTER 292.

HABEAS CORPUS.

292.01 Habeas corpus, who to have; definitions. (1) Every person restrained of his liberty, except in the cases specified in section 292.02, may prosecute a writ of habeas corpus to obtain relief from such restraint.

(2) All persons confined in any hospital or asylum as insane, except persons confined in the central state hospital for the insane may prosecute such writ, and the question of insanity shall be determined by the court or judge issuing the same; and if such court or judge shall decide that the person is insane such decision shall be no bar to the prosecution of such writ a second time if it shall be claimed that such person has been restored to reason.

(3) As used in this chapter, unless the context requires otherwise, judge includes the supreme court, circuit courts, and county courts and each justice and judge thereof and court commissioners; and prisoner includes every person restrained of his liberty; and imprisoned includes every such restraint, and respondent means the person on whom the writ is to be served. [*1935 c. 483 s. 129*]

Note: Upon habeas corpus proceedings to test the legality of a detention under a commitment issued pursuant to the determination of an examining magistrate, the sole issue presented is whether the evidence introduced on the preliminary examination established the commission of the crime charged and a reasonable probability of the commission thereof by the defendants. State ex rel. Kropf v. Gilbert, 213 W 196, 251 NW 478.

Habeas corpus will lie to discharge from custody defendant who was bound over by county court under complaint charging defendant with obtaining money under false pretenses, where evidence was insufficient to sustain felony charge, and statute of limitations had run upon misdemeanor charges. Pepin v. State ex rel. Chambers, 217 W 568, 259 NW 410.

Discharge, under writ of habeas corpus, of accused who had been bound over for trial was error where there was sufficient evidence to constitute probable cause for believing that accused had committed an offense. Ordinarily, question of intent to commit criminal offense is not to be determined upon hearing on petition for writ of habeas corpus. Dreps v. State ex rel. Kaiser, 219 W 279, 262 NW 700.

The writ of habeas corpus is not intended to perform the office of an appeal or writ of error, and cannot be resorted to for the purpose of reviewing orders or judgments which are merely erroneous, and nothing will be investigated on habeas corpus except jurisdictional defects, or illegality, by which is meant the want of any legal authority for the detention or imprisonment. Erroneous judgments are not void and imprisonments pursuant thereto are not illegal in the sense which entitles one imprisoned thereunder to be discharged on a writ of habeas corpus, if the court in fact had jurisdiction of the person and the subject-matter of the action. [In re Ida Louisa Pierce, 44 W 411, overruled.] Larson v. State ex rel. Bennett, 221 W 188, 266 NW 170.

If an indictment fails to allege an offense, a habeas corpus proceeding is the proper remedy. Shinners v. State ex rel. Behling, 221 W 416, 266 NW 784.

The omission from the complaint of an explicit allegation as to the value of the checks fraudulently obtained did not require discharging the defendant in habeas corpus proceedings brought after he was bound over on evidence taken on a preliminary examination at which the sufficiency of the complaint was not questioned, and at which the value was admitted by a stipulation especially in view of section 357.19. State ex rel. Hull v. Larson, 226 W 585, 277 NW 101.

In a habeas corpus proceeding to test the legality of the petitioner being bound over for trial in the circuit court, the reviewing court can examine the evidence only suffi-

ciently to discover whether there was any substantial ground for the exercise of judgment by the committing magistrate. It cannot go beyond that and weigh the evidence. State ex. rel. Dinneen v. Larson, 231 W 207, 284 NW 21.

The admission of evidence offered in the habeas corpus proceedings to prove that the testimony on the preliminary examination was insufficient and incompetent to identify the defendant was properly denied, since the proposed evidence, even though it might have been admissible if offered on the preliminary examination, had no bearing and was inadmissible in the habeas corpus proceedings because under the record the issue was solely whether the evidence which was introduced on the preliminary examination afforded sufficient basis for the magistrate to find that there was probable cause to believe that the defendant participated in the burglary. Chambers v. State, 235 W 7, 291 NW 772.

Where a person is detained pursuant to an order made on a preliminary examination, the only question raised by a writ of habeas corpus is whether there was any evidence for the examining magistrate to act on and whether the complaint charged any offense known to the law, and when the complaint charges an offense and it is discovered that there is competent evidence on which the magistrate might act in determining the existence of essential facts, jurisdiction is established and in such case the defendant will not be discharged. State ex rel. Morgan v. Fischer, 238 W 88, 298 NW 353.

An order or judgment in a habeas corpus proceeding is res adjudicata as to the persons charged with restraining another of his liberty, until reversed in some proper proceeding. Application of Rattel, 244 W 261, 12 NW (2d) 135.

Nothing will be investigated on habeas corpus except jurisdictional defects amounting to want of any legal authority for the detention or imprisonment. State ex rel. Briggs v. Kellner, 247 W 425, 20 NW (2d) 106.

Where the defendant appeared in the trial court and entered a plea in abatement, and, on the overruling thereof, a plea of not guilty, he acknowledged and submitted to the jurisdiction of the trial court, so that there was no illegal detention when he subsequently filed a petition for a writ of habeas corpus, and hence the writ could not issue. State ex rel. Wojtycski v. Hanley, 248 W 108, 20 NW (2d) 719.

The fact that a petitioner has permitted the time to elapse within which an appeal may be taken does not give him the right to resort to habeas corpus, and, although in exceptional cases the writ may issue after the time for appeal has elapsed, the writ does not ordinarily issue under such circumstances as a matter of right, but is within the discretion of the court. State ex rel. Doxtater v. Murphy, 248 W 593, 22 NW (2d) 685.

In a habeas corpus proceeding to test the legality of a petitioner's detention pursuant to an examining magistrate's determination after a preliminary examination, the reviewing court can examine the evidence only sufficiently to discover whether it rendered the charge against the prisoner within reasonable probabilities and there was any substantial ground for the exercise of judgment by the committing magistrate. Stathopoulos v. Hanley, 250 W 109, 26 NW (2d) 259.

The function of a fugitive warrant, issued on a complaint charging a person with escape from an Alabama prison, is to provide for the arrest and detention of such person pending the institution and conduct of an extradition proceeding, and on habeas corpus to test the legality of the detention under such fugitive warrant the inquiry is as to the validity of the detention of such person here to answer for the crime of escape from the Alabama prison, and does not extend to inquiring into the validity of the conviction pursuant to which such person was sentenced to the Alabama prison. State ex rel. Wells v. Hanley, 250 W 374, 27 NW (2d) 373.

292.02 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.

Note: The question of whether errors were committed within or during the exercise of the trial court's jurisdiction in a criminal prosecution cannot be raised in a habeas corpus proceeding growing out of such prosecution, and where it appears on the face of the petition for the writ that the court pronouncing judgment and sentencing a defendant had jurisdiction of the person and of the subject matter the application will be denied. Kushman v. State ex rel. Panzer, 240 W 134, 2 NW (2d) 862.

292.03 Petition for writ. Application for such writ shall be by petition, signed either by the prisoner or by some person in his behalf, and may be made to the supreme court, or to the circuit court of the county or the county court, or to any justice or judge of the supreme, circuit or county court, or to any court commissioner, within the county where the prisoner is detained; or if there be no judge within such county, or for any cause he be incapable of acting, or shall have refused to grant such 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 prison, must be made to the supreme court or to one of the justices thereof and shall be made returnable only to that court. [*1935 c. 483 s. 131*]

Note: See note to art. VII, sec. 3, Const., citing State ex rel. Drankovich v. Murphy, 248 W 433, 22 NW (2d) 540.

Under 292.03, on application to the supreme court for a writ of habeas corpus on behalf of a person sentenced to the state prison, a justice of the court may issue the writ, but all further proceedings must be before the court. On filing a petition for a writ on behalf of a person sentenced to the state prison, an order to show cause is issued, a return is made, and the matter is then considered on the merits as if the writ had issued, and, when it appears that an issue of fact is presented, the matter is referred to a referee to try, and determine the issue of fact. State ex rel. Doxtater v. Murphy, 248 W 593, 22 NW (2d) 685.

292.04 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 his liberty, the person by whom he is 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 section 292.02.

(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 one dollar therefor tendered to the person having such prisoner in his custody, and that such copy was refused.

(5) In what the illegality of the imprisonment consists. [*1935 c. 483 s. 132*]

Note: A petition, which alleges no more than that the petitioner is restrained in violation of the constitution and laws and is illegally imprisoned without due process of law, does not meet the requirement of (5), that the petition shall state in what the illegality of the imprisonment consists. State ex rel. Doxtater v. Murphy, 248 W 593, 22 NW (2d) 685.

292.05 Application to officer in another county. Whenever application for any such writ shall be made to any officer not residing within the county where the prisoner shall be detained he 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 be one that he 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 be not produced the application shall be denied.

292.06 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. [*1935 c. 483 s. 133*]

292.07 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 indorsed with a certificate that the same has been allowed, with the date of such allowance, signed by the judge allowing the same. [*1935 c. 483 s. 134*]

292.08 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 be designated, either by his name of office, if he have any, or by his own name, or if both such names be unknown or uncertain he may be described by an assumed appellation; and any one who may be served with the writ shall be deemed the person to whom it is directed, although it may be directed to him 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 his name be uncertain or unknown, he may be described in any other way so as to designate the person intended.

292.09 Refusal of writ. If any judge shall wilfully refuse to grant such writ, when legally applied for, he shall be liable to the prisoner in the sum of one thousand dollars. [*1935 c. 483 s. 135*]

292.10 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 conceal himself or refuse 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. [*1935 c. 483 s. 136*]

292.11 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. [*1935 c. 483 s. 137*]

292.12 Service of writ, when complete. Except where service is made as provided in subsection (3) of section 292.10, the service of such writ shall not be complete until the party serving the same tenders to the custodian of the prisoner, if he be an officer, the fees allowed for bringing up such prisoner, nor unless, when required by such officer, he shall also give him a bond in double the sum for which such prisoner may be detained, if he be detained for a specific sum of money, and if not, then in the sum of one thousand dollars, conditioned that the obligor will pay the charges of carrying back such prisoner if he shall be remanded and that he will not escape, either going to or returning from the place to which he is to be taken, and if such prisoner be not in the custody of an officer, and the writ shall require that the charges of bringing up such prisoner shall be paid by the petitioner, then until such charges have been tendered to the respondent. [*1935 c. 483 s. 138*]

292.13 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 him or not, shall obey and make return to such writ and such prisoner shall be produced at the time and place specified therein. [*1935 c. 483 s. 139*]

292.14 Return, what to state. The respondent shall state in his return:

(1) Whether he has or has not the prisoner in his custody or under his power.

(2) If he has him in his 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 his 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 his oath. [*1935 c. 483 s. 140*]

292.15 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 section 292.29. [*1935 c. 483 s. 141*]

292.16 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 him forthwith to apprehend such person and to bring him before such court or judge; and on such person being so brought he shall be committed to the county jail until he shall make return to such writ and comply with any order that may be made in relation to the prisoner. [*1935 c. 483 s. 142*]

292.17 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 his own. [*1935 c. 483 s. 143*]

292.18 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 him 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 his aid the power of the county. [*1935 c. 483 s. 144*]

292.19 Return may be traversed. The prisoner may demur to 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 his imprisonment is unlawful or that he is entitled to his discharge, which allegations and denials shall be verified by his 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. [*1935 c. 483 s. 145*]

292.20 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 under which he is held.

Note: The writ of habeas corpus is not intended to perform the office of an appeal or writ of error, and cannot be resorted to for the purpose of reviewing orders or judgments which are merely erroneous, and on habeas corpus nothing will be investigated except jurisdictional defects or illegality because of the want of any legal authority for the detention or imprisonment. State ex rel. Currie v. McCready, 238 W 142, 297 NW 771.

It is only when no legal cause is shown for the imprisonment of a petitioner for a writ of habeas corpus that the court or judge is required to discharge the petitioner. State ex rel. Doxtater v. Murphy, 248 W 593, 22 NW (2d) 685.

292.21 When remanded. The court or judge must make a final order to remand the prisoner if it shall appear that he 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.

Note: The trial court, after imposing sentence on a defendant convicted of a criminal offense, had no power to stay the execution of the sentence from time to time merely for the extraneous purpose of having the defendant available to testify at some future session of the grand jury, even though such stays, granted on application of the prosecuting officers, were consented to by the defendant, and hence such stays were nullities, so that the sentence nevertheless continued to run, and, under the facts, expired before the expiration of the stays, and hence there was no warrant in law for the detention of the defendant thereafter and he was properly discharged from custody on a writ of habeas corpus. Drewniak v. State ex rel. Jacquest, 239 W 475, 1 NW (2d) 899.

On a writ of error sued out by a sheriff to review a judgment discharging a convicted defendant from custody on a writ of habeas corpus, the defendant could not object to the sufficiency of the complaint on which he had been convicted, where he had waived the sufficiency of the complaint by not objecting thereto on the trial, and where his petition for a writ of habeas corpus did not allege the insufficiency of the complaint as a ground of illegality of his imprisonment. Kushman v. State ex rel. Panzer, 240 W 134, 2 NW (2d) 862.

On an application for a writ of habeas corpus in behalf of a child held in a state institution under commitment by a judge of the juvenile court, the only unlawfulness with which the court is concerned is want of jurisdiction of the judge to issue the commitment. In re Ziegler, 245 W 453, 15 NW (2d) 34.

292.22 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 him 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 him; 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 section 292.21. [*1935 c. 483 s. 146*]

Note: For review of judgment discharging prisoner by habeas corpus, see note to 274.05, citing Drewniak v. State ex rel. Jacquest, 239 W 475, 1 NW (2d) 899.

292.23 Prisoner, when bailed. If it appear that the prisoner has been legally committed for crime or if he appear, by the testimony offered with the return upon the hearing thereof, to be guilty of crime, although the commitment be irregular, the court or judge before whom he is brought shall let him to bail, if the case be bailable and good bail be offered, or shall remand him. [*1935 c. 483 s. 147*]

292.24 Prisoner, when remanded. If the prisoner be not entitled to his discharge and be not bailed the court or judge shall remand him to the custody from which he was taken, if the person under whose custody he was, be legally entitled thereto; if not so entitled, he shall be committed to his legal custodian. [*1935 c. 483 s. 148*]

Note: Where the proceedings were regular so far as arrest and holding the defendant for trial, and the statute under which the defendant was prosecuted was not void, and the trial court did not fail to gain jurisdiction by reason of some defect in the proceedings, but committed jurisdictional error in failing to advise the defendant of his right to counsel, and he was before the supreme court, he would be remanded for further proceedings in the trial court, it being within the power of the appellate court to remand him, to discharge him, or to admit him to bail, as the circumstances of the case might require. State ex rel. Doxtater v. Murphy, 248 W 593, 22 NW (2d) 685.

292.25 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 him to the custody of the sheriff or place him in such care or under such custody as his age and other circumstances may require. [*1935 c. 483 s. 149*]

292.26 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 his imprisonment no order shall be made for his discharge until it shall appear that the interested person or his attorney, if he has one, if to be found within the county, shall have sufficient notice of the time and place at which writ is returnable. [*1935 c. 483 s. 150*]

292.27 Notice to district attorney. When the prisoner is detained upon any criminal accusation no order for his 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. [*1935 c. 483 s. 151*]

292.28 Change of venue from court commissioner. In case the writ is returnable before a court commissioner, either party may file his affidavit of prejudice setting forth that he has good reason to, and does believe, that such court commissioner, naming him, will not decide impartially in such proceedings. Upon receipt of such affidavit the court commissioner shall forthwith transmit all papers and records in the proceedings to the nearest judge found in the same county, qualified to determine such proceedings. In counties where two or more circuit judges preside such papers and records shall be transmitted to any such judge in such county. The judge to whom such papers and records are transmitted shall try and determine the proceedings as if such proceedings had been commenced before him. But one such change of venue shall be granted. [*1935 c. 483 s. 152*]

292.29 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 his return, verifying the same by his oath; and if such court or judge be satisfied of the truth of such allegation and the return be otherwise sufficient he shall proceed to dispose of the matter. The prisoner may appear by attorney and plead to the return; and if it appear that he is illegally imprisoned the court or judge shall order his discharge forthwith; but if it appear that such person is legally imprisoned and is not entitled to bail all further proceedings thereon shall cease. [*1935 c. 483 s. 153*]

292.30 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 or judge making the same 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; and the person guilty of such disobedience shall be liable to the prisoner in the sum of one thousand two hundred and fifty dollars damages, in addition to any special damages such party may have sustained. [*1935 c. 483 s. 154*]

292.31 Nonliability of officers. No officer shall be liable for obeying any final order discharging or directing the discharge of any prisoner. [*1935 c. 483 s. 155*]

292.32 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 he shall have been discharged from a commitment on a criminal charge and be afterwards committed for the same offense by the legal order or process of the court wherein he shall be bound by recognizance to appear or in which he shall be 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 he shall have 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.

Cross Reference: Effect of release on habeas corpus upon term of imprisonment, see 359.08.

292.33 Warrant in lieu of writ. Whenever it shall appear by satisfactory proof that any one is held in illegal imprisonment and that there is good reason to believe that he

will be carried out of the state or suffer some irreparable injury before he 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 to take such prisoner and forthwith to bring him before the judge, to be dealt with according to law. [*1935 c. 483 s. 156*]

292.34 Order of arrest. When the proof mentioned in section 292.33 shall also be sufficient to justify an arrest of the person having such prisoner in his 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.

292.35 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 him, 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.

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

292.37 Penalty for refusing papers. Any officer or other person refusing to deliver a copy of any order, warrant, process or other authority by which he shall detain any person to any one who shall demand such copy and tender the fees therefor shall be liable to the person so detained in the sum of two hundred dollars damages, to be recovered in an action.

292.38 Reimprisoning party discharged. Any person who shall recommit, imprison or restrain of his liberty or cause to be recommitted, imprisoned or restrained of his liberty for the same cause except as provided in section 292.32, 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 one thousand two hundred and fifty dollars damages, and shall be guilty of a misdemeanor and be punished as provided by section 292.39. [*1935 c. 483 s. 158*]

292.39 Concealment of person entitled to writ. Any one having in his custody or under his power any 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 him, or change the place of his confinement and every person who shall assist in so doing shall be guilty of a misdemeanor and be punished by a fine, not exceeding one thousand dollars or by imprisonment, not exceeding six months or by both such fine and imprisonment. [*1935 c. 483 s. 159*]

Revisor's Note, 1935: 292.39 is amended to include the substance of 292.40, 292.41 and 292.42 and those sections are repealed. (Bill No. 75 S, s. 159)

292.40 to 292.43 [*Repealed by 1935 c. 483*]

292.44 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. [*1935 c. 483 s. 164*]

Note: Only process authorized by which to bring person in legal confinement into court to testify is that of writ of habeas corpus ad testificandum. 22 Atty. Gen. 939.

292.45 Witness fees, inmates of state institutions. If an inmate of any public institution is brought into court in response to a writ of habeas corpus ad testificandum or subpœna, the institution shall be reimbursed for the time of the officer conducting such inmate and the actual and necessary traveling expenses incurred in taking him into court on said process and returning him to the institution. The superintendent of the institution shall file with the clerk of such court a statement of such expenses, and the same shall be certified by him to the county treasurer, who shall pay to the superintendent of the institution the amount so certified, provided, that in a civil action, such expenses shall be paid by the party requesting the presence of such inmate. [*1935 c. 483 s. 165*]

292.46 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 him 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. [*1933 c. 40 s. 3*]