



Oregon

Office of Public Defense Services

1175 Court Street NE
Salem, Oregon 97301-4030
Telephone (503) 378-3349
Fax (503) 378-4463
www.oregon.gov/opds

Re: Request for Information -- Habeas Corpus

Dear :

In response to a request, enclosed please find a form Petition for a Writ of Habeas Corpus, Motion for Appointment of Counsel and Order, and Affidavit of Eligibility. I have also enclosed excerpts from the statutes and the Oregon Constitutional provision that govern Habeas Corpus. Otherwise, this office cannot provide additional assistance with the preparation or filing of the petition.

In order to request that the court in the county where you are incarcerated appoint an attorney to represent you at state expense, you must complete all of the enclosed documents, including the Petition for a Writ of Habeas Corpus. If the court appoints counsel to represent you, that attorney may be allowed to make changes to be made to the petition.

You must file the completed documents with the circuit court in the county where you are incarcerated, along with a filing fee of \$252 or a request that the petition be filed without payment of the fee because you cannot afford the filing fee. If the court authorizes your petition to be filed without payment of the filing fee, the fee may be drawn from your inmate trust account.

Sincerely,

Paul Levy
General Counsel

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Case No. _____

) SS.
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I am employed as _____.

I have additional monthly income of \$_____ from the following source(s):

I own \$_____ equity in my house (state value after deducting amount owed).

I own the following additional property: _____

_____ with a total value of \$_____.

Income of other persons living in the household: \$_____.

SUBSCRIBED AND SWORN to before me this _____ day of _____, 20____.

PAGE 1 - AFFIDAVIT OF ELIGIBILITY

IN THE CIRCUIT COURT OF THE STATE OF OREGON

FOR THE COUNTY OF _____

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_____,)
Plaintiff,)
vs.)
_____,)
Defendant(s).)

Case No. _____

**MOTION FOR APPOINTMENT
OF COUNSEL AND ORDER**

_____, moves this Court for appointment of counsel
in the above-captioned matter, and makes the following representations of fact:

1. An affidavit of eligibility is attached.
2. I believe I am entitled to the relief of redress sought, and if able, would retain counsel to protect my interests.
3. The interest of justice would be best served if an attorney were appointed to assure my right to due process or other rights guaranteed by state and federal law or constitutions.

I certify the foregoing is true and correct.

Dated this _____ day of _____, 20____.

PLAINTIFF

ORDER

IT IS SO ORDERED this _____ day of _____, 20____.

CIRCUIT COURT JUDGE

1 by or through extraordinary writ and no cause of rebellion or invasion to suspend issuance of this
2 writ exists.

3
4 5.

5 The detention, imprisonment or restraint on Plaintiff was and is illegal and the illegality
6 thereof includes the following particulars:

7
8 Ground one: _____
9 _____

10 Facts: _____
11 _____
12 _____
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14 Ground two: _____
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17 Facts: _____
18 _____
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21 Ground three: _____
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25 Facts: _____
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6.

Plaintiff has no other plain, speedy or adequate remedy at law. Appeal is not an adequate or available remedy at law because _____
_____.

7.

The imprisonment, detention or restraint on Plaintiff is illegal and requires immediate court intervention to prevent further deprivation of constitutional and other legal rights.

WHEREFORE, Plaintiff asks this Court for a Writ of Habeas Corpus issued under seal of this Court directing Defendant to appear with Plaintiff at a time and place specified by the Court to be dealt with according to law.

(Signature)

(Print Name)

SID # _____

(address)

Subscribed and sworn to before me on this _____ day of _____, 20____
in _____ County of the State of Oregon.

Notary Public for Oregon
My Commission Expires: _____

Section 23. Habeas corpus. The privilege of the writ of habeas corpus shall not be suspended unless in case of rebellion, or invasion the public safety require it.——

2011 Oregon Statutes:

WRIT OF HABEAS CORPUS

34.310 Purpose of writ; who may prosecute. The writ of habeas corpus ad subjiciendum is the writ designated in ORS 34.310 to 34.730, and every other writ of habeas corpus is abolished. Every person imprisoned or otherwise restrained of liberty, within this state, except in the cases specified in ORS 34.330, may prosecute a writ of habeas corpus to inquire into the cause of such imprisonment or restraint, and if illegal, to be delivered therefrom.

34.320 Courts having jurisdiction; transfer of proceedings. The circuit court of the judicial district wherein the party is imprisoned or restrained, and, if vested with power to exercise judicial functions, the county court and county judge of the county wherein the party is imprisoned or restrained, shall have concurrent jurisdiction of proceedings by habeas corpus, and said courts and judges may issue, hear and decide all questions arising upon habeas corpus. If a plaintiff has filed a petition in a court with jurisdiction over the proceedings, and the plaintiff is thereafter transferred to a place that is outside of the jurisdiction of that court, the court shall transfer the proceedings to the circuit court for the judicial district in which the party is imprisoned or restrained. If the court in which the petition was filed determines that by reason of the plaintiff's transfer the claims of the plaintiff do not require immediate judicial scrutiny, or are otherwise subject to dismissal, the court shall dismiss the petition. [Amended by 1999 c.114 §§1]

34.330 Who may not prosecute writ. A person may not prosecute a writ of habeas corpus if:

(1) The person is imprisoned or restrained by virtue of process issued by a court of the United States, or a judge, commissioner or other officer thereof, in cases where such courts, or judges or officers thereof, have exclusive jurisdiction under the laws of the United States, or have acquired exclusive jurisdiction by the commencement of actions, suits or other proceedings in such court, or before such commissioner or other officer.

(2) The person is imprisoned or restrained by virtue of the judgment of a competent tribunal of civil or criminal jurisdiction, or by virtue of an execution issued upon such judgment.

(3) Except as provided in ORS 138.530, the person is eligible to obtain post-conviction relief pursuant to ORS 138.510 to 138.680.

(4) The person is eligible to seek judicial review of a final order of the State Board of Parole and Post-Prison Supervision under ORS 144.335 but the person fails to seek judicial review of the order in a timely manner.

(5) The person seeks judicial review of a final order of the board under ORS 144.335 but the Court of Appeals:

(a) Summarily affirms the order of the board on the grounds that the person failed to present a substantial question of law;

(b) Otherwise disposes of the judicial review on the merits of the petitioner's issues on judicial review; or

(c) Dismisses the judicial review because of a procedural defect. [Amended by 1959 c.636 §§22; 2001 c.661 §§2; 2003 c.576 §§311; 2007 c.411 §§2]

34.340 Petition; who may apply; fee. The writ shall be allowed by the court or judge thereof upon the petition of the party for whose relief it is intended, or of some other person in behalf of the party, signed and verified by the oath of the plaintiff, to the effect that the plaintiff believes it to be true. The petition must be accompanied by the filing fee established under ORS 21.135. [Amended by 1995 c.657 §§6; 1999 c.114 §§2; 2003 c.737 §§§32,33; 2005 c.702 §§§37,38,39; 2011 c.595 §§39]

34.350 Application by district attorney. Whenever a writ of habeas corpus is required in any action, suit or proceeding, civil or criminal, to which the state is a party, the application therefor may be made by the district attorney having charge thereof, and whenever so issued the court or judge shall state in the order of allowance that it was issued on such application.

34.355 Appointment of counsel; compensation and costs. If counsel is appointed by a court to represent, in an initial proceeding by habeas corpus or on appeal as provided in ORS 34.710, a person who is imprisoned or otherwise restrained of liberty by virtue of a charge or conviction of crime and who is determined to be financially eligible for appointed counsel at state expense, the public defense services executive director shall determine compensation for counsel and costs and expenses of the person in the proceeding or on appeal. Compensation for counsel and expenses of the person in an initial proceeding or in a circuit court on appeal shall be determined and paid as provided in ORS 135.055. Compensation for counsel and costs and expenses of the person on appeal to the Court of Appeals or on review by the Supreme Court shall be determined and paid as provided in ORS 138.500. The compensation and expenses so allowed in an initial proceeding in a county court shall be paid by the county in which the person was charged or convicted of crime. [1979 c.867 §§17; 1981 s.s. c.3 §§128; 1985 c.502 §§21; 2001 c.962 §§64]

34.360 Contents of petition when person challenges authority for confinement. If the challenge is to the authority for confinement, the petition shall state, in substance:

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

(2) That such person is not imprisoned or restrained by virtue of any order, judgment or process specified in ORS 34.330.

(3) The cause or pretense of the imprisonment or restraint, according to the best knowledge or belief of the plaintiff.

(4) If the original imprisonment or restraint is by virtue of any order, warrant or process, a copy thereof shall be annexed to the petition, or it must be alleged that, by reason of the removal or concealment of the party before the application, a demand of such copy could not be made, or that the demand was made, and the legal fees therefor tendered to the person having the party in custody, and that a copy was refused.

(5) That the claim has not already been adjudged upon a prior writ of habeas corpus, to the knowledge or belief of the plaintiff. [Amended by 1991 c.884 §§3; 1999 c.114 §§3; 2003 c.576 §§312]

34.362 Contents of petition when person challenges conditions of confinement or deprivation of rights while confined. If the person is imprisoned or restrained by virtue of any order, judgment or process specified in ORS 34.330 and the person challenges the conditions of confinement or complains of a deprivation of rights while confined, the petition shall:

(1) Comply with requirements of ORS 34.360 (1), (3), (4) and (5); and

(2) State facts in support of a claim that the person is deprived of a constitutional right that requires immediate judicial attention and for which no other timely remedy is practicably available to the plaintiff. [1991 c.884 §§5; 2003 c.576 §§313]

34.365 Filing petition of prisoner without payment of filing fees; fee as charge against trust account. (1) Any court of the State of Oregon may authorize the filing of a petition for a writ of habeas corpus by or on behalf of any person imprisoned or otherwise restrained of liberty by virtue of a charge or conviction of crime without payment of the filing fees therefor, if such person presents to the court or judge thereof satisfactory proof, by affidavit and as otherwise required by such judge, that the person is unable to pay such fees.

(2) Notwithstanding the fact that a court has authorized the filing of a petition without payment of the filing fee required by ORS 34.340, the fee may be drawn from, or charged against, the plaintiff's trust account if the plaintiff is an inmate in a correctional facility. [1955 c.493 §§1; 1995 c.657 §§7; 1999 c.114 §§4]

34.370 Order to show cause; time for ruling on show cause order; attorney fees; entry of judgment or issuance of writ; effect. (1) Except as provided in subsection (6) of this section, the judge to whom the petition for a writ of habeas corpus is presented shall, without delay, issue an order directing the defendant to show cause why the writ should not be allowed.

(2) Upon the issuance of a show cause order under subsection (1) of this section, the following shall apply:

(a) The judge shall order that the defendant appear in writing in opposition to the issuance of the writ as soon as is practicable and not more than 14 days from the date that the show cause order issues.

(b) The judge shall rule on the show cause order within seven days after either the defendant files a written appearance in opposition or the appearance period expires, whichever comes first. Upon making a ruling, the judge shall do one of the following, as appropriate:

(A) If the petition is a meritless petition, issue a judgment denying the petition and ordering the plaintiff to pay the cost of attorney fees incurred by the defendant. In no case shall the award of attorney fees exceed \$100. The fees may be drawn from, or charged against, the inmate's trust account.

(B) Issue a judgment granting appropriate habeas corpus relief.

(C) Issue a writ of habeas corpus requiring that a return be made.

(3) Entry of a judgment under subsection (2)(b)(A) or subsection (6) of this section shall be without prejudice. The judgment shall explain to the parties the reason for the denial.

(4) If the court has issued a writ of habeas corpus requiring a return under subsection (2)(b)(C) of this section, the parties may stipulate to a hearing as described in ORS 34.670 without the necessity of a return or a replication. If the court accepts the stipulation, it shall set the matter for hearing in an expedited manner.

(5) Issuance of the writ under subsection (2) of this section shall not bind the court with respect to any subsequent rulings related to the pleadings of the parties or the ultimate disposition of the proceeding.

(6) The court may, on its own motion, enter a judgment denying a meritless petition brought under ORS 34.310 to 34.730.

(7) As used in this section, "meritless petition" means one which, when liberally construed, fails to state a claim upon which habeas corpus relief may be granted. [Amended by 1963 c.322 §§1; 1991 c.884 §§6; 1995 c.294 §§1; 1995 c.657 §§8; 1999 c.114 §§5]

34.380 Warrant in lieu of writ; when issued. Whenever it appears by satisfactory evidence that any person is illegally imprisoned or restrained and there is good reason to believe that the person will be carried out of the state or suffer irreparable injury before the person can be relieved by the issuing of a habeas corpus, any court or judge authorized to issue such writ may issue a warrant reciting the facts, directed to any sheriff or other person therein designated, commanding the sheriff or other person to take such illegally imprisoned or restrained person and forthwith bring the person before such court or judge, to be dealt with according to law.

34.390 Order for arrest of person having custody. When the proof mentioned in ORS 34.380 is also sufficient to justify an arrest of the person having the party in custody, as for a criminal offense committed in the taking or detaining of such party, the warrant may also contain an order for the arrest of such person for such offense.

34.400 Execution of warrant; return and proceedings thereon. Any officer or person to whom a warrant issued under ORS 34.380 is directed shall execute the same by bringing the party therein named and the person who detains the party, if so commanded by the warrant, before the court or judge issuing the warrant; and thereupon the person detaining such party shall make a return in like manner, and the like proceedings shall be had thereon, as if a writ of habeas corpus had been issued in the first instance.

34.410 Criminal offense by person having custody. If the person having such party in custody is brought before the court or judge as for a criminal offense, the person shall be examined, committed, released or discharged by the court or judge in like manner as in other criminal cases of like nature. [Amended by 1973 c.836 §§324]

34.420 [Repealed by 1991 c.884 §§1 (34.421 enacted in lieu of 34.420)]

34.421 Contents of writ. The writ shall require the defendant to file a return, at a specified time and place, that states the time and cause of plaintiff's imprisonment or restraint. The writ shall not command the defendant to produce the plaintiff before the court or judge issuing the writ, unless the court, in its discretion, so orders. The court shall consider an allegation of lack of authority, brought only under ORS 34.360, as a factor weighing in favor of requiring the defendant to produce the plaintiff at the time of the return. [1991 c.884 §§2 (enacted in lieu of 34.420)]

34.430 Defect of form; designation of persons. The writ shall not be disobeyed for any defect of form. It is sufficient:

(1) If the officer or person having the custody of the person imprisoned or restrained is designated either by name of office, if the officer or person has any, or by the own name of the officer or person, or if both such names are unknown or uncertain, the officer or person may be described by an assumed appellation; and anyone who may be served with the writ is to be deemed the officer or person to whom it was directed, although it may be directed to the officer or person by a wrong name or description, or to another person.

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

34.440 Who may serve writ; tender of fees and undertaking when service is on sheriff or other officer. (1) A writ of habeas corpus may be served by

any sheriff within the county of the sheriff, or by any other person designated in the writ in any county within the state. The service of the writ shall be deemed complete, so as to require the prisoner to be brought up before the court or judge issuing the writ under the provisions of ORS 34.370, only if:

(a) The party serving the writ tenders to the person in whose custody the prisoner may be, if such person is a sheriff or other officer, the fees allowed by law for bringing up such prisoner; and

(b) The party also enters into an undertaking to such sheriff or other officer, in a penalty double the sum for which the prisoner is detained, if the prisoner is detained for any specific sum of money, and if not, then in such a sum as the judge granting the writ directs, not exceeding \$1,000, to the effect that such person shall pay the charges for carrying back the prisoner if the prisoner is remanded, and that the prisoner will not escape, either in going to or returning from the place to which the prisoner is to be taken.

(2) If such fees are not paid, or such security is not tendered, the officer to whom the writ is directed shall make a return, in the manner required by ORS 34.540, and shall state in the return the reason why the prisoner is not produced, and thereupon the court or judge granting the writ may proceed as if the prisoner was produced. This section, except for the first sentence, does not apply to a case wherein the writ is issued on the application of the district attorney. [Amended by 1991 c.884 §§7]

34.450 Payment of charges when service is on person other than sheriff or other officer. Every court or judge allowing a writ of habeas corpus, directed to a person other than a sheriff or other officer, may require, in order to render the service effectual, that the charges of producing the party be paid by the applicant; and in such case the court or judge shall, in the order allowing the writ, specify the amount of such charges, which shall not exceed the fees allowed by law to sheriffs for similar services.

34.460 Manner of service. The writ of habeas corpus may be served by delivery of the original to the officer or person to whom it is directed, or if the officer or person cannot be found, by leaving it at the jail or other place in which the party is imprisoned or restrained, with any under officer or other person having charge for the time of such party.

34.470 Service when officer or other person hides or refuses admittance. If the officer or person on whom the writ ought to be served hides from the person attempting to make service, or refuses admittance to the person attempting to make service, it may be served by affixing it in some conspicuous place on the outside, either of the dwelling house of the officer or person or the jail or other place where the party is confined. [Amended by 1987 c.158 §§5]

34.480 Proof of service. The proof of service of the writ shall be the same as in the service of a summons, except that the same shall be indorsed upon a copy of the writ made by the officer or person serving it, and returned to the clerk who issued the writ.

34.490 Duty to obey writ. It is the duty of every sheriff or other officer upon whom a writ of habeas corpus is served, whether such writ is directed to the sheriff or officer or not, upon payment or tender of the fees allowed by law, and the delivery or tender of the undertaking described in ORS 34.440, to obey and return the writ according to the exigency thereof; and it is the duty of every other person upon whom the writ is served, having the custody of the person for whose benefit it is issued, to obey and return it in like manner, without requiring the payment of any fees, unless the payment of such fees has been required by the court or judge allowing such writ.

34.500 When return must be made. If the writ is returnable at a certain time, the return shall be made at the time and place specified therein; if it is returnable forthwith, and the place of return is within 20 miles of the place of service, the return must be made within 24 hours, and the same time is allowed for every additional 20 miles.

34.510 [Repealed by 1991 c.884 §§10]

34.520 Sickness of person. Whenever, from the sickness or infirmity of the party, the party cannot, without danger, be produced, the officer or person in whose custody the party is may state that fact in the return to the writ, and if satisfied of the truth of the allegation, and the return is otherwise sufficient, the court or judge shall proceed to decide on the return, and to dispose of the matter, the same as if the party had been produced.

34.530 Requiring return and production of party by order. At any time after the allowance of a writ of habeas corpus, the plaintiff therein, or the person applying therefor on behalf of the plaintiff, may give notice to the judge issuing the writ, and thereupon, if necessary to avoid delay, the judge shall by order require that the return be made and the party produced before the judge at such time and place, within the county or district, as may be convenient.

34.540 Contents of return. (1) The officer or person upon whom the writ was duly served shall state in the return, plainly and unequivocally:

(a) Whether the officer or person has the party in custody or power or under restraint, and if the officer or person has not, whether the officer or person has had the party in custody or under power or restraint at any and what time prior or subsequent to the date of the writ.

(b) If the officer or person has the party in custody or power or under restraint, the authority and true cause of such imprisonment or restraint, setting forth the same at large.

(2) If the party is detained by virtue of any writ, warrant or other written authority, a copy thereof shall be annexed to the return, and the original shall be produced, and exhibited on the return of the writ, to the court or judge before whom the writ is returnable.

(3) If the person upon whom the writ was served has had the party in power or custody or under restraint at any time prior or subsequent to the date of the writ, but has transferred such custody or restraint to another, the return shall state particularly to whom, at what time, for what cause, and by what authority the transfer took place.

(4) The return shall be signed by the person making the same, and except where the person is a sworn public officer, and makes the return in official capacity, it shall be verified by oath.

34.550 Warrant in case of refusal or neglect to obey writ. If the person upon whom the writ was duly served refuses or neglects to obey the same by producing the party named in the writ and making a full and explicit return thereto within the time required, and no sufficient excuse is shown therefor, the court or judge before whom the writ was made returnable shall, upon due proof of the service thereof, forthwith issue a warrant against such person, directed to any sheriff in this state, commanding the sheriff forthwith to apprehend such person and bring the person immediately before such court or judge; and on the person being so brought, the person shall be committed to close custody in the jail of the county in which such judge shall be until the person makes return to the writ and complies with any order made in relation to the party for whose relief the writ was issued.

34.560 Failure of sheriff to return writ. If a sheriff neglects to return the writ, the warrant may be directed to any other person to be designated therein, who shall have full power to execute the same, and such sheriff, upon being brought up, may be committed to the jail of any county other than the county over which the sheriff has jurisdiction. [Amended by 1965 c.221 §§12; 1987 c.158 §§6]

34.570 Precept commanding bringing of prisoner. The court or judge issuing the warrant may also, at the same time or afterwards, issue a precept to the

person to whom the warrant is directed, commanding the person to bring forthwith before such court or judge the party for whose benefit the writ was allowed, who shall thereafter remain in the custody of such person until discharged or remanded.

34.580 Inquiry into cause of imprisonment. The court or judge before whom the party is brought on the writ shall, immediately after the return thereof, proceed to examine into the facts contained in the return, and into the cause of the imprisonment or restraint of such party.

34.590 Discharge when no legal cause for restraint is shown. If no legal cause is shown for the imprisonment or restraint, or for the continuation thereof, the court or judge shall discharge such party from the custody or restraint under which the person is held.

34.600 When party to be remanded. It shall be the duty of the court or judge forthwith to remand such party if it appears that the party is legally detained in custody, either:

- (1) By virtue of process issued by any court, or judge or commissioner or any other officer thereof, of the United States, in a case where such court, or judge or officer thereof, has exclusive jurisdiction; or,
- (2) By virtue of the judgment of any court, or of any execution issued upon such judgment; 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 legally be detained has not expired. [Amended by 2003 c.576 §§314]

34.610 Grounds for discharge of prisoner in custody under order or civil process. If it appears on the return that the prisoner is in custody by virtue of an order or civil process of any court legally constituted, or issued by an officer in the course of judicial proceedings before the officer, authorized by law, such prisoner shall be discharged only if one of the following cases exists:

- (1) The jurisdiction of the court or officer has been exceeded, either as to matter, place, sum or person.
- (2) The original imprisonment was lawful, yet by some act, omission or event which has taken place afterwards, the party has become entitled to be discharged.
- (3) The order or process is defective in some matter of substance required by law, rendering the same void.
- (4) The order or process, though in proper form, has been issued in a case not allowed by law.
- (5) The person having the custody of the prisoner under such order or process is not the person empowered by law to detain the prisoner.
- (6) The order or process is not authorized by any judgment of any court, nor by any provision of law. [Amended by 2003 c.576 §§315]

34.620 Inquiry into legality of certain judgments and process not permitted. No court or judge, on the return of a writ of habeas corpus, has power to inquire into the legality or justice of any order, judgment or process specified in ORS 34.330, nor into the justice, propriety or legality of any commitment for a contempt made by a court, officer or body, according to law, and charged in such commitment, as provided by law.

34.630 Proceedings where commitment for criminal offense is legal, or party probably is guilty. If it appears that the party has legally been committed for a criminal offense, or if the party appears by the testimony offered with the return, or upon the hearing thereof, probably to be guilty of such offense, although the commitment is irregular, the party shall forthwith be remanded to the custody or placed under the restraint from which the party was taken, if the officer or person under whose custody or restraint the party was, is legally entitled thereto; if not so entitled, the party shall be committed to the custody of the officer or person so entitled.

34.640 Custody of party pending proceedings. Until judgment is given upon the return, the party may either be committed to the custody of the sheriff of the county, or placed in such care or custody as age and other circumstances may require.

34.650 Notice to third persons. When it appears from the return that the party named therein is in custody on an order or process under which another person has an interest in continuing imprisonment or restraint of the party, no order shall be made for discharge of the party until it shall appear that the party so interested, or the attorney of the party so interested has had notice of the time and place at which the writ has been made returnable.

34.660 Notice to district attorney. When it appears from the return that the party is imprisoned or restrained on a criminal accusation, the court or judge shall make no order for the discharge of the party until notice of the return is given to the district attorney of the county where the party is imprisoned or restrained.

34.670 Replication following return; hearing. The plaintiff in the proceeding, on the return of the writ, may, by replication, signed as in an action, controvert any of the material facts set forth in the return, or the plaintiff may allege therein any fact to show, either that imprisonment or restraint of the plaintiff is unlawful, or that the plaintiff is entitled to discharge. Thereupon the court or judge shall proceed in a summary way to hear such evidence as may be produced in support of or against the imprisonment or restraint, and to dispose of the party as the law and justice of the case may require. [Amended by 1979 c.284 §§73; 2005 c.22 §§28]

34.680 Motion to deny petition; motion to strike; controverting replication; time to plead; construction and effect of pleadings. (1) The defendant may, before the writ issues, move to deny the petition on the grounds that the petition fails to state a claim for habeas corpus relief. The defendant may, at any time after the writ issues, move to dismiss the writ on the grounds that the pleadings, including the petition, the return, the replication, if any, and any supporting evidence, demonstrate that plaintiff has failed to state or establish a claim for habeas corpus relief.

(2) The plaintiff may move to strike the return or any allegation or defense in the return. The defendant may move to strike the replication or any new matter in the replication, or by proof controvert the same, as upon a direct denial or avoidance.

(3) The return and replication shall be made within such time as the court or judge shall direct, and the petition, return and replication shall be construed and have the same effect as in an action. [Amended by 1979 c.284 §§74; 1991 c.884 §§8]

34.690 Requiring production of person after writ issued. The court or judge before whom the writ is returnable may, before final decision, issue a precept to the officer or other person to whom the writ is directed, requiring the production of the person. [Amended by 1991 c.884 §§9]

34.695 Conduct of hearing. If the matter proceeds to an evidentiary hearing, as described in ORS 34.670, the court shall decide the issues raised in the pleadings and may receive proof by affidavits, depositions, oral testimony or other competent evidence. [1991 c.884 §§12]

34.700 Judgment; liability for obedience to judgment; payment of attorney fees. (1) If it appears that the party detained is imprisoned or restrained illegally, judgment shall be given that the party be discharged forthwith; otherwise, judgment shall be given that the proceeding be dismissed and the party

remanded. No officer or other person is liable to any action or proceeding for obeying such judgment of discharge.

(2) The court shall include in the judgment an order that the defendant pay the attorney fees incurred by the petition, not to exceed \$100, if:

(a) The court enters a judgment requiring that the plaintiff be discharged; and

(b) The court finds that the allegations or defenses in the return were frivolous. [Amended by 1995 c.657 §§9; 1999 c.114 §§6]

34.710 Appeal; conclusiveness of judgment. Any party to a proceeding by habeas corpus, including the state when the district attorney appears therein, may appeal from the judgment of the court refusing to allow such writ or any judgment therein, either in term time or vacation, in like manner and with like effect as in an action. No question once finally determined upon a proceeding by habeas corpus shall be reexamined upon another proceeding of the same kind. [Amended by 2003 c.576 §§235]

34.712 Summary affirmation of judgment on appeal. In reviewing the judgment of any court under ORS 34.310 to 34.730, the Court of Appeals, on its own motion or on the motion of the defendant, may summarily affirm, without oral argument, the judgment after submission of the appellant's brief and without submission of the defendant's brief if the court finds that no substantial question of law is presented by the appeal. Notwithstanding ORS 2.570, the Chief Judge of the Court of Appeals may deny or, if the plaintiff does not oppose the motion, grant a defendant's motion for summary affirmation. A dismissal of appeal under this section constitutes a decision upon the merits of the appeal. [1995 c.294 §§3; 1999 c.114 §§7]

34.720 Imprisonment after discharge. A person who has been finally discharged upon a proceeding by habeas corpus may not again be imprisoned, restrained or kept in custody for the same cause. A person is not deemed to be imprisoned, restrained or kept in custody for the same cause if:

(1) The person has been discharged from a commitment on a criminal charge, and afterwards is committed for the same offense by the legal order or process of the court wherein the person is bound by a release agreement or has deposited security, or in which the person is indicted or convicted for the same offense;

(2) After a judgment of discharge for a defect of evidence or for a material defect in the commitment, in a criminal case, the party again is arrested on sufficient evidence, and committed by legal process for the same offense;

(3) In a civil action or suit, the party has been discharged for illegality in the judgment or process, and afterwards is imprisoned for the same cause of action or suit; or

(4) In a civil action or suit, the person has been discharged from commitment on a writ of arrest, and afterwards is committed on execution, in the same action or suit, or on a writ of arrest in another action or suit, after the dismissal of the first one. [Amended by 1973 c.836 §§325; 2003 c.14 §§17; 2003 c.576 §§316]

34.730 Forfeiture for refusing copy of order or process. Any officer or other person refusing to deliver a copy of any order, warrant, process or other authority by which the officer or person detains any person, to anyone who demands a copy, and tenders the fees therefor, shall forfeit \$200 to the person so detained.

AMENDMENT OF PETITION OR ACTION TO SEEK PROPER REMEDY

34.740 Amendment of petition or action against public body when wrong remedy sought; effect of amendment on time limitations; attorney fees. (1) A circuit court shall allow a person to amend a petition or action in the manner provided by this section if:

(a) The person seeks relief against a public body, as defined in ORS 192.410;

(b) The person incorrectly filed a petition for a writ of review, a petition for a writ of mandamus or an action for declaratory judgment; and

(c) The correct remedy of the person is a petition for a writ of review, a petition for a writ of mandamus or an action for declaratory judgment.

(2) If a petition or action is amended under this section, the petition or action is not subject to dismissal by reason of not having been commenced within the time otherwise allowed by law if the reason that the person filed the wrong petition or action was either:

(a) The person relied on a reasonable interpretation of the law relating to the correct remedy; or

(b) The public body that is the respondent or defendant in the proceeding gave misleading information to the person about the proper remedy, the person relied in good faith on the information provided by the public body and by reason of that reliance the person sought the wrong remedy.

(3) A circuit court shall order a public body, as defined in ORS 192.410, to pay reasonable attorney fees incurred by any person in filing a petition for a writ of review, a petition for a writ of mandamus or an action for declaratory judgment seeking relief from the public body if:

(a) The court determines that the person has filed the wrong petition or action, and the person subsequently amends the pleading in the manner provided by subsection (1) of this section;

(b) The public body that is the respondent or defendant in the proceeding gave information to the person with the intent to mislead the person as to the proper remedy or gave information to the person, with a reckless disregard for the truth or falsity of the information, about the proper remedy; and

(c) The person relied in good faith on the information provided by the public body, and by reason of that reliance the person sought the wrong remedy. [2001 c.561 §§2]

Note: 34.740 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 34 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

CERTAIN WRITS ABOLISHED

34.810 Scire facias and quo warranto. The writ of scire facias, the writ of quo warranto, and proceedings by information in the nature of quo warranto are abolished, and the remedies heretofore obtainable under those forms may be obtained by action in the mode prescribed in ORS 30.510 to 30.640.

34.820 [Repealed 1981 c.898 §§53]