

**8 GCA CRIMINAL PROCEDURE
CH. 135 WRIT OF HABEAS CORPUS**

**CHAPTER 135
THE WRIT OF HABEAS CORPUS**

NOTE: References to *Director of Public Safety* and *Director* changed to *Chief of Police* pursuant to P.L. 17-78:1, which repealed § 5102 GC providing for the Department of Public Safety, and reenacted § 5102 establishing the Guam Police Department.

The approach in Chapter 135 has been to preserve the basic substance and form of the present Guam lawmaking only a very few changes, generally in conformance to changes made in the California counterparts. This approach makes available a wealth of California precedent and seems to provide procedures which are reasonably fair and workable.

- § 135.10. Writ of Habeas Corpus Allowed; Generally.
- § 135.12. Petition for Writ: To Whom Addressed; Form; Contents.
- § 135.14. Application for Writ: Verification; Prior Applications to be Stated; Service Upon Attorney General.
- § 135.16. Issuance of Writ: Release Pending Determination.
- § 135.18. Writ: To Whom Directed.
- § 135.20. Writ: Method of Service.
- § 135.22. Consequences of Failure to Honor Writ.
- § 135.24. Return of Writ: What Must be Stated.
- § 135.26. Person to Whom Writ Directed Must Produce the Body.
- § 135.28. Exceptions to § 135.26.
- § 135.30. Hearing to be Held Immediately After Return of Writ.
- § 135.32. Proceedings at Hearing: Evidence to be Produced.
- § 135.34. Discharge of Defendant: When; Upon Showing of Illegal Restraint.
- § 135.36. When Defendant to be Remanded to Custody.
- § 135.38. When Defendant May be Discharged if Held Under Process From Guam Courts.
- § 135.40. No Discharge Upon Mere Defect in Commitment Order.
- § 135.42. Defect in Form: Procedure where Person Appears Guilty of an Offense.
- § 135.44. Writ Available for Determination of Bail if Not Done Pursuant to Chapter 40.
- § 135.46. Release Under Chapter 40 Allowed.
- § 135.48. Defendant Not Entitled to Discharge; Remand.
- § 135.50. If Another Person Entitled to Custody of Person, Court May Transfer Custody From Improper to Proper Person.
- § 135.52. Person May be Detained Pending Judgment on Return.
- § 135.54. Defect in Writ No Excuse to Ignore.

8 GCA CRIMINAL PROCEDURE
CH. 135 WRIT OF HABEAS CORPUS

- § 135.56. No Recommitment for Same Offense: Exceptions.
- § 135.58. Procedure if Applicant May Leave Territory.
- § 135.60. Apprehension of Person Charged Allowed Under § 135.58.
- § 135.62. Executing Officer to Bring Persons Named to Court
(Applicable to § 135.58 only).
- § 135.64. Return in § 135.58 Cases Same as in Other Cases.
- § 135.66. Person Discharged if Custody Illegal; Remanded if Legal.
- § 135.68. Service to be Made Any Time of Day or Night.
- § 135.70. Writs, etc.: Form, Seal; Return to be “Forthwith”.
- § 135.74. Appeal by Attorney General: No Release Pending Appeal: Bail Permitted.

§ 135.10. Writ of Habeas Corpus Allowed; Generally.

Every person unlawfully imprisoned or restrained of his liberty, under any pretense whatever, may prosecute a writ of habeas corpus, to inquire into the cause of such imprisonment or restraint.

NOTE: Section 135.10 is identical to former § 1473. See also Cal. Pen. Code § 1473 (same). See generally B. Witkin, California Criminal Procedure Habeas Corpus and Other Extraordinary Writs §§ 788-832 (1963, Supp. 1973).

§ 135.12. Petition for Writ: To Whom Addressed; Form; Contents.

Application for the writ is made by petition to the Superior Court and signed either by the party for whose relief it is intended, or by some person on his behalf, and shall specify:

(a) That the person in whose behalf the writ is applied for is imprisoned or restrained of his liberty, the officer or person by whom he is so confined or restrained, and the place where, naming all the parties, if they are known, or describing them, if they are not known;

(b) If the imprisonment is alleged to be illegal, the petition shall also state in what the alleged illegality consists;

(c) The petition shall be verified by the oath or affirmation of the party making the application.

NOTE: Section 135.12 is substantively the same as former § 1474. See also Cal. Pen. Code § 1474 (same except for designation of court). It should be noted that the restraint referred to in Subsection (a) includes both actual and constructive custody. See B. Witkin, California Criminal Procedure Habeas Corpus and Other Extraordinary Writs § 794 (1963, Supp. 1973). As to other policy limitations, see id. §§ 795-798. As to grounds for relief, see id. §§ 799-810. See also § 135.38. As to form of the petition, see id. § 811. See also § 135.14.

**8 GCA CRIMINAL PROCEDURE
CH. 135 WRIT OF HABEAS CORPUS**

§ 135.14. Application for Writ: Verification; Prior Applications to be Stated; Service Upon Attorney General.

Every application for a writ of habeas corpus shall be verified, and shall state whether any prior application has been made for a writ in regard to the same detention or restraint complained of in the application, and if any such prior application has been made the latter application shall contain a brief statement of all proceedings had therein, to and including the final order made therein, on appeal or otherwise.

Whenever the person applying for a writ of habeas corpus is held in custody or restraint by any officer of this Territory or by any peace officer of this Territory, a copy of the application for such writ shall in all cases be served upon the Attorney General at least 24 hours before the time at which said writ is made returnable and no application for such writ can be heard without proof of such service in cases where such service is required.

NOTE: Section 135.14 is substantively the same as former § 1475. Compare Cal. Pen. Code § 1475. The California section has a lengthy provision which precludes a new application for a writ to the same court unless there has been a change in the facts or law. Although not so specifically stated, this rule is implicit in the requirement that the application contains a statement regarding prior applications. See generally B. Witkin, California Criminal Procedure Habeas Corpus and Other Extraordinary Writs §§ 798, 814-815 (1963, Supp. 1973).

§ 135.16. Issuance of Writ: Release Pending Determination.

Any judge authorized to grant the writ, to whom a petition therefor is presented, shall, if it appears that the writ ought to issue, grant the same without delay; and if the person by or upon whose behalf the application for the writ is made be detained upon a criminal charge, may release him pursuant to Chapter 40 (commencing with § 40.10) pending the determination of the proceeding.

§ 135.18. Writ: To Whom Directed.

The writ shall be directed to the person having custody of for restraining the person in whose behalf the application is made, and shall command him to have the body of such person before the court, at the time and place therein specified.

§ 135.20. Writ: Method of Service.

8 GCA CRIMINAL PROCEDURE
CH. 135 WRIT OF HABEAS CORPUS

If the writ is directed to the Chief of Police or other ministerial officer of the court out of which it issues, it shall be delivered by the clerk to such officer without delay, as other writ are delivered for service. If it is directed to any other person, it shall be delivered to the Chief of Police who shall serve it upon such person by delivering a copy to him without delay. The Chief of Police shall then make his return on the original to the court of issuance. If the person to whom the writ is directed cannot be found, or refuses admittance to the officer or person serving or delivering such writ, it may be served or delivered by leaving it at the residence of the person to whom it is directed or by affixing it to some conspicuous place on the outside either of his dwelling house or of the place where the party is confined or under restraint.

§ 135.22. Consequences of Failure to Honor Writ.

If the person to whom the writ is directed refuses, after service, to obey the same, the court or judge, upon affidavit, shall issue an attachment against such person, directed to the Chief of Police, commanding him forthwith to apprehend such person and bring him immediately before such court or judge; and upon being so brought, he must be committed to the jail until he makes due return to such writ, or is otherwise legally discharged.

§ 135.24. Return of Writ: What Must be Stated.

The person upon whom the writ is served shall state in his return, plainly and unequivocally:

(a) Whether he has or has not the party in his custody, or under his power or restraint;

(b) If he has the party in his custody or power, or under his restraint, he shall state the authority and the cause of such imprisonment or restraint;

(c) 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 produced and exhibited to the court on the hearing of such return;

(d) If the person upon whom the writ is served had the party in his power or custody, or under his restraint, at any time prior or subsequent to the date of the writ of habeas corpus, but has transferred such custody or restraint to another, the return shall state particularly to

8 GCA CRIMINAL PROCEDURE
CH. 135 WRIT OF HABEAS CORPUS

whom, at what time and place, for what cause, and by what authority such transfer took place;

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

§ 135.26. Person to Whom Writ Directed Must Produce the Body.

Except as provided in § 135.28, the person to whom the writ is directed, if it is served, shall bring the body of the party in his custody or under his restraint, according to the command of the writ.

§ 135.28. Exceptions to § 135.26.

When, from sickness or infirmity of the person directed to be produced, he cannot, without danger, be brought before the court, the person in whose custody or power he is may state that fact on his return to the writ, verifying the same by affidavit. If the court is satisfied of the truth of such return, and the return to the writ is otherwise sufficient, the court may proceed to decide on such return, and to dispose of the matter as if such party had been produced on the writ, or the hearing thereof may be adjourned until such party can be produced.

NOTE: Section 135.28 is substantively the same as former § 1482. See also Cal. Pen. Code § 1482 (same).

§ 135.30. Hearing to be Held Immediately After Return of Writ.

The court before whom the writ is returned shall, immediately after the return, proceed to hear and examine the return, and such other matters as may be properly submitted to his hearing and consideration.

NOTE: Section 135.30 is substantively the same as former § 14.83. See also Cal. Pen. Code § 1483 (same).

§ 135.32. Proceedings at Hearing: Evidence to be Produced.

The party brought before the court, on the return of the writ, may deny or controvert any of the material facts or matters set forth in the return, or except to the sufficiency thereof, or allege any fact to show either that his imprisonment or detention is unlawful, or that he is entitled to his discharge. The court shall thereupon proceed in a summary way to hear such proof as may be produced against such imprisonment or detention, or in favor of the same, and to dispose of such party as the justice of the case may require, and have full power and authority to require and compel the attendance of witnesses by

8 GCA CRIMINAL PROCEDURE
CH. 135 WRIT OF HABEAS CORPUS

process of subpoena and attachment, and to do and perform all other acts and things necessary to a full and fair hearing and determination of the case.

NOTE: Section 135.32 is substantively the same as former § 1484. See also Cal. Pen. Code § 1484 (same).

§ 135.34. Discharge of Defendant: When; Upon Showing of Illegal Restraint.

If no legal cause is shown for the imprisonment or restraint, or for the continuation thereof, the court shall discharge the party from the custody or restraint under which he is held.

NOTE: Section 135.34 is substantively the same as former § 1485. See also Cal. Pen. Code § 1485 (same). It has been revised to conform to § 1486 of the California Penal Code. See also § 135.48.

§ 135.36. When Defendant to be Remanded to Custody.

The court, if the time during which the party may be legally detained in custody has not expired, shall remand such party, if it appears that he is detained in custody:

(a) 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,

(b) By virtue of the final judgment or decree of any competent court of criminal jurisdiction, or of any process issued upon such judgment or decree.

§ 135.38. When Defendant May be Discharged if Held Under Process From Guam Courts.

If it appears on the return of the writ that the prisoner is in custody by virtue of process from any court of this Territory, or judge or officer thereof, such prisoner may be discharged in any of the following cases, subject to the restrictions of 135.36:

(a) When the jurisdiction of such courts or officer has been exceeded;

(b) When the imprisonment was at first lawful, yet by some act, omission, or event which has taken place afterwards, the party has become entitled to a discharge;

8 GCA CRIMINAL PROCEDURE
CH. 135 WRIT OF HABEAS CORPUS

(c) When the process is defective in some matter of substance required by law, rendering such process void;

(d) When the process, though proper in form, has been issued in a case not allowed by law;

(e) When the person having the custody of the prisoner is not the person allowed by law to detain him;

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

(g) Where a party has been committed on a criminal charge without reasonable or probable cause.

COURT DECISIONS: D.C. Guam App. Div., *People v. Santos*, D.C. Cr. 85-006A (1985). Defendant has no grounds to seek a writ of *habeas corpus* when he could have raised the same issues several times in past proceedings and when the sentence was within the bounds permitted by law.

NOTE: Section 135.38. is substantively the same as former § 1487. See also Cal. Pen. Code § 1487 (same). As to grounds for relief generally, see B. Witkin, *California Criminal Procedure Habeas Corpus and Other Extraordinary Writs* §§ 799-810 (1963, Supp. 1973).

§ 135.40. No Discharge Upon Mere Defect in Commitment Order.

If any person is committed to prison, or is in custody of any officer on any criminal charge, by virtue of any warrant of commitment of a judge, such person shall not be discharged on the ground of any mere defect of form in the warrant of commitment.

NOTE: Section 135.40 is substantively the same as former § 1488. See also Cal. Pen. Code § 1488 (same).

§ 135.42. Defect in Form: Procedure Where Person Appears Guilty of an Offense.

If it appears to the court, by affidavit or otherwise, or upon the inspection of the process or warrant of commitment and such other papers in the proceedings as may be shown to the court, that the party is guilty of a criminal offense, or ought not to be discharged, the court, although the charge is defective or unsubstantially set forth in such process or warrant of commitment, shall cause the complainant or other necessary witnesses to be subpoenaed to attend at such time as ordered, to testify before the court; and upon the examination he may discharge the party, release him pursuant to Chapter 40 (commencing with § 40.10) or recommit him to custody as may be just and legal.

8 GCA CRIMINAL PROCEDURE
CH. 135 WRIT OF HABEAS CORPUS

NOTE: Section 135.42 is substantively the same as former § 1489. See also Cal. Pen. Code § 1489 (same).

§ 135.44. Writ Available for Determination of Bail if Not Done Pursuant to Chapter 40.

When a person is imprisoned or detained in custody on any criminal charge, for want of a judicial determination regarding his release pursuant to Chapter 40 (commencing with § 40.10), such person is entitled to a writ of habeas corpus for the purpose of obtaining such determination, upon averring that fact in his petition, without alleging that he is otherwise illegally confined.

NOTE: Section 135.44 is substantively the same as former § 1490. See also Cal. Pen. Code § 1490 (same).

§ 135.46. Release Under Chapter 40 Allowed.

Any judge before whom a person is brought on a writ of habeas corpus pursuant to § 135.44 may order the release of such person in the manner and subject to the conditions provided by Chapter 40 (commencing with § 40.10).

NOTE: Section 135.46 is substantively the same as former § 1491. See also Cal. Pen. Code § 1491.

§ 135.48. Defendant Not Entitled to Discharge Remand.

If a party brought before the court on the return of the writ is not entitled to discharge or release, the court shall remand him to custody or place him under the restraint from which he was taken, if the person under whose custody or restraint he was legally entitled thereto.

NOTE: Section 135.48 is substantively the same as former § 1492. See also Cal. Pen. Code § 1492 (same).

§ 135.50. If Another Person Entitled to Custody of Person, Court May Transfer Custody From Improper to Proper Person.

In cases where any party is held under illegal restraint or custody, but any other person is entitled to the restraint or custody of such party, the court may order such party to be committed to the restraint or custody of such person as by law entitled thereto.

NOTE: Section 135.50 is substantively the same as former § 1493. See also Cal. Pen. Code § 1493 (same). These statutory provisions, as well as California's, on their face deal only with complete relief, *i.e.*, the person is either remanded to custody or discharged (except for release on bail or other conditions in criminal matters). In fact, the person may be remanded but any illegal restraints may be ordered removed. This

8 GCA CRIMINAL PROCEDURE
CH. 135 WRIT OF HABEAS CORPUS

“declaration of rights” procedure is a case law development which does not, however, find expression in the statute. See B. Witkin, *California Procedure Habeas Corpus and Other Extraordinary Writs* §§ 798-790 (1963, Supp. 1973).

§ 135.52. Person May be Detained Pending Judgment on Return.

Until judgment is given on the return, the court before whom any party may be brought on such writ, may commit him to the custody of the Chief of Police, or place him in such care or under such custody as his age or circumstances may require.

NOTE: Section 135.52 is substantively the same as former § 1494. See also Cal. Pen. Code § 1494 (same).

§ 135.54. Defect in Writ No Excuse to Ignore.

No writ of habeas corpus can be disobeyed for defect of form, if it sufficiently appear therefrom in whose custody or under whose restraint the party imprisoned or restrained is, the officer or person detaining him, and the court before whom he is to be brought.

NOTE: Section 135.54 is substantively the same as former § 1495. See also Cal. Pen. Code § 1495 (same).

§ 135.56. No Recommitment for Same Offense: Exceptions.

No person who has been discharged by the order of the court upon habeas corpus can be again imprisoned, restrained, or kept in custody for the same cause, except in the following cases:

(a) If he has been discharged from custody on a criminal charge, and is afterwards committed for the same offense, by legal order or process;

(b) If, after a discharge for defect of proof, or for any defect of the process, warrant, or commitment in a criminal case, the prisoner is again arrested on sufficient proof and committed by legal process for the same offense.

NOTE: Section 135.56 is substantively the same as former § 1496. See also Cal. Pen. Code § 1496 (same).

§ 135.58. Procedure if Applicant May Leave Territory.

When it appears to any court, authorized by law to issue the writ of habeas corpus, that anyone is illegally held in custody, confinement, or restraint, and that there is reason to believe that such person will be carried out of the jurisdiction of the court before whom the application is made, or

8 GCA CRIMINAL PROCEDURE
CH. 135 WRIT OF HABEAS CORPUS

will suffer some irreparable injury before compliance with the writ of habeas corpus can be enforced, such court may cause a warrant to be issued, reciting the facts, and directed to the Chief of Police, commanding such officer to take such person thus held in custody, confinement, or restraint, and forthwith bring him before such court, to be dealt with according to law.

NOTE: Section 135.58 is substantively the same as former § 1497. See also Cal. Pen. Code § 1497 (same). See generally B. Witkin, California Criminal Procedure Habeas Corpus and Other Extraordinary Writs § 819 (1963).

§ 135.60. Apprehension of Person Charged Allowed Under § 135.58.

The court may also insert in a warrant issued pursuant to § 135.58 a command for the apprehension of the person charged with such illegal detention and restraint.

NOTE: Section 135.60 is substantively the same as former § 1498. See also Cal. Pen. Code § 1498 (same).

§ 135.62. Executing Officer to Bring Persons Named to Court (Applicable to § 135.58 only).

The officer to whom a warrant issued pursuant to § 135.58 is delivered shall execute it by bringing the person therein named before the court who directed the issuing of such warrant.

NOTE: Section 135.62 is substantively the same as former § 1499. See also Cal. Pen. Code § 1499 (same).

§ 135.64. Return in § 135.58 Cases Same as in Other Cases.

The person alleged to have the party under illegal confinement or restraint make return to a warrant issued pursuant to § 135.58 as in case of a writ of habeas corpus, and the same may be denied, and like allegations, proofs, an trial may thereupon be had as upon a return to a writ of habeas corpus.

NOTE: Section 135.64 is substantively the same as former § 1500. See also Cal. Pen. Code § 1500 (same).

§ 135.66. Person Discharged if Custody Illegal; Remanded if Legal.

If the party is held under illegal restraint or custody, he shall be discharged; and if not, he shall be restored to the care of custody of the person entitled thereto.

NOTE: Section 135.68 is substantively the same as former § 1501. See also Cal. Pen. Code § 1500 (same).

**8 GCA CRIMINAL PROCEDURE
CH. 135 WRIT OF HABEAS CORPUS**

§ 135.68. Service to be Made Any Time of Day or Night.

Any writ or process authorized by this Chapter may be issued and served on any day or at any time.

NOTE: Section 135.68 is identical to former § 1502. See also Cal. Pen. Code § 1502 (same).

§ 135.70. Writs, etc.: Form, Seal; Return to be “Forthwith”.

All writs, warrants, process, and subpoenas authorized by the provisions of this Chapter shall be issued by the clerk of the court, and except subpoenas, shall be sealed with the seal of the court and served and returned forthwith, unless the court shall specify a particular time for any return.

NOTE: Section 135.70 is substantively the same as former § 1503. See also Cal. Pen. Code § 1503 (same).

§ 135.74. Appeal by Attorney General: No Release Pending Appeal: Bail Permitted.

An appeal may be taken to the Guam Supreme Court by the Attorney General from a final order of the Superior Court made upon the return of a writ of habeas corpus discharging a defendant after his conviction, in all criminal cases prosecuted in a court of record. If an appeal is taken, the defendant shall not be discharged from custody pending a final decision upon the appeal and he shall be retaken into custody if he has been discharged, provided, however, that the Guam Supreme Court may order his release pursuant to Chapter 40 (commencing with § 40.10).

NOTE: Section 135.74 supersedes former § 1506. Compare Cal. Penal Code § 1506. Because of the Supreme Court decision in *Territory of Guam v. Olsen*, 97 S. Ct. 1774, No. 76-439 (1977), the reference in this Section and all others to the Supreme Court of Guam must read the “Appellate Division of the District Court.” The Supreme Court of the U.S. held that the Guam Legislature had no power to create a Guam Supreme Court.

In 1992, the Legislature passed P.L. 21-147, creating a Supreme Court of Guam under the amended Organic Act. However, this court does not become operational until sometime in the future. That law provided that all references to the Appellate Division should, once again, refer to the Supreme Court of Guam, so that this section may be taken literally once the new Supreme Court of Guam comes into being.
