

IC 12-26-2

Chapter 2. Rights of Persons

IC 12-26-2-1

Habeas corpus

Sec. 1. This article does not limit or restrict the right of a person to apply to an appropriate court for a writ of habeas corpus.

As added by P.L.2-1992, SEC.20.

IC 12-26-2-2

Notice of hearings; receipt of copies of petitions or orders; presence at hearings; application of section

Sec. 2. (a) This section applies under the following statutes:

- (1) IC 12-26-6.
- (2) IC 12-26-7.
- (3) IC 12-26-12.
- (4) IC 12-26-15.

(b) The individual alleged to have a mental illness has the following rights:

- (1) To receive adequate notice of a hearing so that the individual or the individual's attorney can prepare for the hearing.
- (2) To receive a copy of a petition or an order relating to the individual.
- (3) To be present at a hearing relating to the individual. The individual's right under this subdivision is subject to the court's right to do the following:
 - (A) Remove the individual if the individual is disruptive to the proceedings.
 - (B) Waive the individual's presence at a hearing if the individual's presence would be injurious to the individual's mental health or well-being.
- (4) To be represented by counsel.

As added by P.L.2-1992, SEC.20. Amended by P.L.99-2007, SEC.123.

IC 12-26-2-3

Testimony and witnesses; application of section

Sec. 3. (a) This section applies under the following statutes:

- (1) IC 12-26-6.
- (2) IC 12-26-7.
- (3) IC 12-26-12.
- (4) IC 12-26-15.

(b) The individual alleged to have a mental illness, each petitioner, and all other interested individuals shall be given an opportunity to appear at hearings and to testify.

(c) The individual alleged to have a mental illness and each petitioner may present and cross-examine witnesses at hearings.

(d) The court may receive the testimony of any individual.

As added by P.L.2-1992, SEC.20. Amended by P.L.99-2007,

SEC.124.

IC 12-26-2-4

Change of judge; venue not to change; application of section

Sec. 4. (a) This section applies under the following statutes:

- (1) IC 12-26-6.
- (2) IC 12-26-7.
- (3) IC 12-26-12.
- (4) IC 12-26-15.

(b) The individual alleged to have a mental illness and a petitioner:

- (1) has a right to a change of judge; and
- (2) is not entitled to a change of venue from the county.

As added by P.L.2-1992, SEC.20. Amended by P.L.99-2007, SEC.125.

IC 12-26-2-5

Representation by counsel; appointment; proof required by petitioner

Sec. 5. (a) This section applies under the following statutes:

- (1) IC 12-26-6.
- (2) IC 12-26-7.
- (3) IC 12-26-12.
- (4) IC 12-26-15.

(b) A petitioner may be represented by counsel.

(c) The court may appoint counsel for a petitioner upon a showing of the petitioner's indigency and the court shall pay for such counsel if appointed.

(d) A petitioner, including a petitioner who is a health care provider under IC 16-18-2-295(b), in the petitioner's individual capacity or as a corporation is not required to be represented by counsel. If a petitioner who is a corporation elects not to be represented by counsel, the individual representing the corporation at the commitment hearing must present the court with written authorization from:

- (1) an officer;
- (2) a director;
- (3) a principal; or
- (4) a manager;

of the corporation that authorizes the individual to represent the interest of the corporation in the proceedings.

(e) The petitioner is required to prove by clear and convincing evidence that:

- (1) the individual is mentally ill and either dangerous or gravely disabled; and
- (2) detention or commitment of that individual is appropriate.

As added by P.L.2-1992, SEC.20. Amended by P.L.1-1993, SEC.152; P.L.2-1995, SEC.60; P.L.6-1995, SEC.21; P.L.256-1999, SEC.2; P.L.14-2000, SEC.33; P.L.1-2007, SEC.126.

IC 12-26-2-6

Participation in proceedings or assisting in detention or care of individual; immunity from liability

Sec. 6. (a) A person who without malice, bad faith, or negligence acts according to this article and:

- (1) participates in proceedings for the detention or commitment of an individual; or
- (2) assists in the detention, care, and treatment of an individual alleged or adjudged to have a mental illness;

is immune from any civil or criminal liability that might otherwise be imposed as a result of the person's actions.

(b) The immunity provided by this section does not permit a person to do either of the following:

- (1) Physically abuse an individual.
- (2) Deprive an individual of a personal or civil right except according to this article.

As added by P.L.2-1992, SEC.20. Amended by P.L.99-2007, SEC.126.

IC 12-26-2-7

Child's advocate; immunity from civil liability

Sec. 7. Except for gross misconduct, if a child's advocate performs the advocate's duties in good faith, the advocate is immune from any civil liability that may occur as a result of the advocate's performance of duties.

As added by P.L.2-1992, SEC.20.

IC 12-26-2-8

Detention or commitment; rights not affected

Sec. 8. (a) Detention or commitment of an individual under this article does not deprive the individual of any of the following:

- (1) The right to do the following:
 - (A) Dispose of property.
 - (B) Execute instruments.
 - (C) Make purchases.
 - (D) Enter into contracts.
 - (E) Give testimony in a court of law.
 - (F) Vote.
- (2) A right of a citizen not listed in subdivision (1).

(b) A procedure is not required for restoration of rights of citizenship of an individual detained or committed under this article.

As added by P.L.2-1992, SEC.20.

IC 12-26-2-9

Refusal to admit; transfer to division

Sec. 9. (a) The superintendent of a state institution may decline to admit an individual if the superintendent determines that there is not available adequate space, treatment staff, and treatment services appropriate to the needs of the individual.

(b) If an individual is refused admission under subsection (a), the

commitment shall be transferred to the appropriate division. The division shall make arrangements for the individual's admission to an appropriate facility.

As added by P.L.2-1992, SEC.20. Amended by P.L.6-1995, SEC.22.