

## **IC 12-26-5**

### **Chapter 5. Emergency Detention**

#### **IC 12-26-5-1**

##### **72 hour detention; written application; contents**

Sec. 1. (a) An individual may be detained in a facility for not more than seventy-two (72) hours under this chapter, excluding Saturdays, Sundays, and legal holidays, if a written application for detention is filed with the facility. The individual may not be detained in a state institution unless the detention is instituted by the state institution.

(b) An application under subsection (a) must contain both of the following:

- (1) A statement of the applicant's belief that the individual is:
  - (A) mentally ill and either dangerous or gravely disabled;
  - and
  - (B) in need of immediate restraint.
- (2) A statement by at least one (1) physician that, based on:
  - (A) an examination; or
  - (B) information given the physician;the individual may be mentally ill and either dangerous or gravely disabled.

*As added by P.L.2-1992, SEC.20. Amended by P.L.1-1993, SEC.153; P.L.40-1994, SEC.56.*

#### **IC 12-26-5-2**

##### **Judicial officer; endorsement of application; police officer authorized to take individual into custody; transportation to facility**

Sec. 2. (a) If a judicial officer authorized to issue a warrant for arrest in the county in which the individual is present endorses an application made under section 1 of this chapter, the application authorizes a police officer to take the individual into custody and transport the individual to a facility.

(b) The expense of transportation under this section shall be paid by the county in which the individual is present.

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

#### **IC 12-26-5-3**

##### **Examination and treatment of detained individual**

Sec. 3. An individual detained under this chapter may be examined and given emergency treatment necessary to do the following:

- (1) Preserve the health and safety of the individual.
- (2) Protect other persons and property.

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

#### **IC 12-26-5-4**

##### **Determination during detention that probable cause does not exist; report**

Sec. 4. If during a detention period under this chapter the superintendent or the attending physician determines that there is not probable cause to believe the individual is mentally ill and either dangerous or gravely disabled, a report shall be made under section 5 of this chapter.

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

#### **IC 12-26-5-5**

##### **Written report to court**

Sec. 5. Before the end of a detention period under this chapter, the superintendent of the facility or the individual's attending physician shall make a written report to the court. The report must contain both of the following:

- (1) A statement that the individual has been examined.
- (2) A statement whether there is probable cause to believe that the individual:
  - (A) is mentally ill and either dangerous or gravely disabled; and
  - (B) requires continuing care and treatment.

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

#### **IC 12-26-5-6**

##### **Written report; no probable cause; discharge; record**

Sec. 6. (a) If a report made under section 5 of this chapter states there is not probable cause, the individual shall be discharged from the facility.

(b) The report shall be made part of the individual's record.

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

#### **IC 12-26-5-7**

##### **Written report; probable cause; recommendations; hearing; detention pending hearing**

Sec. 7. If a report made under section 5 of this chapter states there is probable cause, the report shall recommend both of the following:

- (1) That the court hold a hearing to determine whether:
  - (A) the individual is mentally ill and either dangerous or gravely disabled; and
  - (B) there is a need for continuing involuntary detention.
- (2) That the individual be detained in the facility pending the hearing.

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

#### **IC 12-26-5-8**

##### **Written report; consideration and action by court; time**

Sec. 8. The court shall consider and act upon a report described in section 7 of this chapter within twenty-four (24) hours of receiving the report.

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

#### **IC 12-26-5-9**

**Written report; action by court; release of individual; preliminary or final hearing ordered**

Sec. 9. (a) After receiving a report described in section 7 of this chapter, the court may do any of the following:

- (1) Order the individual released.
- (2) Order the individual's continued detention pending a preliminary hearing. The purpose of a hearing under this subdivision is to determine if there is probable cause to believe that the individual is:
  - (A) mentally ill and either dangerous or gravely disabled; and
  - (B) in need of temporary or regular commitment.
- (3) Order a final hearing. The purpose of a hearing ordered under this subdivision is to determine if the individual is:
  - (A) mentally ill and either dangerous or gravely disabled; and
  - (B) in need of temporary or regular commitment.

(b) A hearing ordered under subsection (a) must be held not later than two (2) days after the order.

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

**IC 12-26-5-10**

**Preliminary hearing; introduction of physician's statement; probable cause finding; discharge; detention pending final hearing**

Sec. 10. (a) A physician's statement may be introduced into evidence at the preliminary hearing held under section 9(a)(2) of this chapter without the presence of the physician.

(b) A finding of probable cause may not be entered at a preliminary hearing unless there is oral testimony:

- (1) subject to cross-examination; and
- (2) of at least one (1) witness who:
  - (A) has personally observed the behavior of the individual; and
  - (B) will testify to facts supporting a finding that there is probable cause to believe that the individual is in need of temporary or regular commitment.

(c) At the conclusion of the preliminary hearing, if the court does not find probable cause, the individual shall be immediately discharged.

(d) If the court finds at the conclusion of the preliminary hearing probable cause to believe that the individual needs temporary or regular commitment, the court shall order the detention of the individual in an appropriate facility pending a final hearing.

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

**IC 12-26-5-11**

**Final hearing; time; testimony of examining physician; waiver; temporary or permanent commitment**

Sec. 11. (a) A final hearing required by section 10(d) of this chapter shall be held within ten (10) days of the date of the

preliminary hearing.

(b) At a final hearing, an individual may not be found in need of temporary or regular commitment unless at least one (1) physician who has personally examined the individual testifies at the hearing. This testimony may be waived by the individual if the waiver is voluntarily and knowingly given.

(c) If an individual has not previously been the subject of a commitment proceeding, the court may order only a temporary commitment.

(d) If an individual has previously been the subject of a commitment proceeding, the court may order a regular commitment if a longer period of treatment is warranted.

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

### **IC 12-26-5-12**

#### **Determination of absence of probable cause when individual taken into custody; transportation, care, and maintenance costs**

Sec. 12. If it is determined that there was not probable cause to believe that an individual had a mental illness and was dangerous when taken into custody and transported to the facility to be detained, the costs of transportation to and care and maintenance in the facility during the period of detention shall be paid by the county in which the individual was taken into custody.

*As added by P.L.2-1992, SEC.20. Amended by P.L.99-2007, SEC.130.*