



Disability
Rights
California

California's Protection & Advocacy System
Toll-Free (800) 776-5746

Access to the Courts for Persons Subjects to LPS Commitments

July 1996, Pub #5079.01

This handout outlines the methods of obtaining access to the courts for persons subject to mental health commitments under the Lanterman-Petris-Short (LPS) Act.

I. **72-Hour Hold** (Welf. & Inst. Code [WIC] §§5150 *et seq.*):

A. Habeas Corpus -- there is no specific **statutory** right to a writ of habeas corpus for persons detained on 72-hour holds. However, **all** persons retain their fundamental constitutional rights to petition the courts for a writ of habeas corpus. Calif. Const., art.1, §11; U.S. Const., art.1, §9, cl.2. And, **any** person committed to a state hospital has a statutory right to a writ of habeas corpus. WIC §7250. In addition, every person unlawfully imprisoned or restrained of his or her liberty **under any pretense whatsoever** may bring a writ of habeas corpus to challenge the legality of the detention. Penal Code §1473.

Note: The above writ provisions are applicable to all mental patients, regardless of the length of the particular detention, and will not be reiterated below.

II. **14-Day Certification** (WIC §§5250 *et seq.*):

A. Habeas Corpus -- WIC §§ 5275 *et seq.* These statutory writ provisions give every person detained by certification for intensive treatment a right to a hearing by writ of habeas corpus for his or her release after he or she **or any person acting on his or her behalf**

has made a request for release to either the person delivering the copy of the notice of certification at the time of the delivery or to any member of the treatment staff of the facility at any time during the period of intensive treatment. WIC §5275. The court must hold an evidentiary hearing on the writ within two judicial days after the petition is filed. WIC §5276.

III. 14-Day Additional Intensive Treatment for Suicidal Persons (WIC §§5260 *et seq.*)

A. Habeas Corpus -- WIC §§5275 *et seq.*

IV. 30-Day Additional Intensive Treatment Certification (WIC §§5270.10 *et seq.*)

A. Habeas Corpus -- WIC §§5270.15(b), 5270.55(c), 5275 *et seq.*

V. Postcertification for Imminently Dangerous Persons (WIC §§5300 *et seq.*)

A. Mandatory Court Hearing -- within 4 judicial days of the filing of the petition. If the person requests a jury trial, such trial shall be commenced within 10 days of the filing of the petition (unless the person's attorney requests a continuance, which may be for a maximum of 10 additional days). WIC §5303.

B. Revocation of Outpatient Status -- court hearing within 15 judicial days. WIC §§5306.5, 5307.

1. Habeas Corpus -- a person hospitalized pending a court determination of revocation of outpatient status can petition for a writ of habeas corpus. WIC §5308 (incorporates writ provisions in WIC §§5275 *et seq.*).

VI. Temporary Conservatorship (WIC §5352)

A. *Ex Parte* Court Hearing -- court may establish temporary conservatorship for a period not to exceed 30 days based on either conservatorship investigator's report or on the basis of an affidavit from the professional person in charge of the facility stating the reasons for his or her recommendation. WIC §5352.1.

B. Habeas Corpus -- WIC §5353 (incorporates writ provisions in WIC §§5275 *et seq.*).

VII. Permanent Conservatorship (WIC §§5350 *et seq.*)

A. Hearing on Petition to Establish Conservatorship -- within 30 days of the filing of the petition, a court hearing must be held to determine whether the person is gravely disabled and in need of conservatorship. WIC §5365. If the proposed conservatee demands a court or jury trial (which must be made within 5 days following the section 5365 hearing), the court or jury trial shall commence within 10 days of the demand (unless the court grants a continuance for a period not to exceed 15 days). If the court or jury trial demand is made before the section 5365 hearing, this initial hearing is waived. WIC §5350(d).

B. Post-Establishment Challenges:

- 1. Petition for Rehearing on Status as Conservatee** -- may be filed at any time, and then at six month intervals for successive petitions. Does not include right to trial by jury. WIC §5364.
- 2. Petition to Contest Rights Denied Conservatee or Powers Granted to Conservator** -- may be filed at any time, and then at six month intervals for successive petitions. Does not include right to trial by jury. WIC §5358.3.
- 3. Habeas Corpus** -- a conservatee may bring a petition for a writ of habeas corpus in order to challenge his or her placement or conditions of confinement. *Conservatorship of Munson* (1978) 87 Cal.App.3d 515; Penal Code §1473; WIC §7250. Such petitions may be brought in either the county in which the conservatorship was established or in the county of confinement. WIC §5358.7.

Disability Rights California is funded by a variety of sources, for a complete list of funders, go to <http://www.disabilityrightsca.org/Documents/ListofGrantsAndContracts.html>.