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WELFARE AND INSTITUTIONS CODE - WIC

DIVISION 5. COMMUNITY MENTAL HEALTH SERVICES [5000 - 5987] (*Division 5 repealed and added by Stats. 1967, Ch. 1667.*)

PART 1. THE LANTERMAN-PETRIS-SHORT ACT [5000 - 5550] (*Heading of Part 1 amended by Stats. 1968, Ch. 1374.*)

CHAPTER 2. Involuntary Treatment [5150 - 5349.1] (*Chapter 2 added by Stats. 1967, Ch. 1667.*)

ARTICLE 5. Judicial Review [5275 - 5278] (*Heading of Article 5 renumbered from Article 4 by Stats. 1968, Ch. 1374.*)

5275. Every person detained under this part shall have a right to a hearing by writ of habeas corpus for their release after they or any person acting on their behalf has made a request for release to either (a) the person delivering the copy of the notice of certification to the person certified at the time of the delivery, or (b) to any member of the treatment staff of the facility providing intensive treatment, at any time during treatment pursuant to this part.

Any person delivering a copy of the certification notice or any member of the treatment staff to whom a request for release is made shall promptly provide the person making the request for their signature or mark a copy of the form set forth below. The person delivering the copy of the certification notice or the member of the treatment staff, as the case may be, shall fill in their own name and the date, and, if the person signs by mark, shall fill in the person's name, and shall then deliver the completed copy to the professional person in charge of the intensive treatment facility, or their designee, notifying them of the request. As soon as possible, the person notified shall inform the superior court for the county in which the facility is located of the request for release.

Any person who intentionally violates this section is guilty of a misdemeanor.

The form for a request for release shall be substantially as follows:

(Name of the facility)___ day of ___ 20__

I, ___ (member of the treatment staff, or person delivering the copy of the certification notice), have today received a request for the release of ___ (name of patient) from the undersigned patient on the patient's own behalf or from the undersigned person on behalf of the patient.

___	Signature or mark of patient making request for release

___	Signature or mark of person making request on behalf of patient

(Amended by Stats. 2023, Ch. 131, Sec. 225. (AB 1754) Effective January 1, 2024.)

5276. Judicial review shall be in the superior court for the county in which the facility providing intensive treatment is located or in the county in which the 72-hour evaluation was conducted if the patient or a person acting in his or her behalf informs the professional staff of the evaluation facility (in writing) that judicial review will be sought. No patient shall be transferred from the county providing evaluation services to a different county for intensive treatment if the staff of the evaluation facility has been informed in writing that a judicial review will be sought, until the completion of the judicial review. The person requesting to be released shall be informed of his or her right to counsel by the member of the treatment staff and by the court; and, if he or she so elects, the court shall immediately appoint the public defender or other attorney to assist him or her in preparation of a petition for the writ of habeas corpus and, if he or she so elects, to represent him or her in the proceedings. The person shall pay the costs of the legal service if he or she is able.

Reasonable attempts shall be made by the mental health facility to notify family members or any other person designated by the patient, of the time and place of the judicial review, unless the patient requests that this information not be provided. The patient shall be advised by the facility that is treating the patient that he or she has the right to request that this information not be provided.

The court shall either release the person or order an evidentiary hearing to be held within two judicial days after the petition is filed. If the court finds, (a) that the person requesting release is not, as a result of mental disorder or impairment by chronic alcoholism, a danger to others, or to himself or herself, or gravely disabled, (b) that he or she had not been advised of, or had accepted, voluntary treatment, or (c) that the facility providing intensive treatment is not equipped and staffed to provide treatment, or is not designated by the county to provide intensive treatment he or she shall be released immediately.

(Amended by Stats. 1986, Ch. 872, Sec. 4.)

5276.1. The person requesting release may, upon advice of counsel, waive the presence at the evidentiary hearing of the physician, licensed psychologist who meets the requirements of the first paragraph of Section 5251, or other professional person who certified the petition under Section 5251 and of the physician, or licensed psychologist who meets the requirements of the second paragraph of Section 5251, providing intensive treatment. In the event of such a waiver, such physician, licensed psychologist, or other professional person shall not be required to be present at the hearing if it is stipulated that the certification and records of such physicians, licensed psychologists, or other professional persons concerning the mental condition and treatment of the person regarding release will be received in evidence.

(Amended by Stats. 1980, Ch. 1206, Sec. 2.)

5276.2. In the event that the person, or anyone acting on his or her behalf, withdraws the request for judicial review, a certification review hearing shall be held within four days of the withdrawal of the request, and the procedures in Sections 5255 to 5256.8, inclusive, shall be applicable.

(Added by Stats. 1982, Ch. 1598, Sec. 6.)

5277. A finding under Section 5276 shall not be admissible in evidence in any civil or criminal proceeding without the consent of the person who was the subject of the finding.

(Amended by Stats. 1969, Ch. 722.)

5278. Individuals authorized under this part to detain a person for 72-hour treatment and evaluation pursuant to Article 1 (commencing with Section 5150) or Article 2 (commencing with Section 5200), or to certify a person for intensive treatment pursuant to Article 4 (commencing with Section 5250) or Article 4.5 (commencing with Section 5260) or Article 4.7 (commencing with Section 5270.10) or to file a petition for post-certification treatment for a person pursuant to Article 6 (commencing with Section 5300) shall not be held either criminally or civilly liable for exercising this authority in accordance with the law.

(Amended by Stats. 1988, Ch. 1517, Sec. 12.)