



INDIANA

DISABILITY RIGHTS

The Protection and Advocacy System for Indiana

Rights of Adults Receiving Treatment in Indiana Mental Health Facilities

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The information and procedures provided in this book are subject to change and should serve only as a guide. While this book is intended to provide basic information, it is not legal advice, nor is it intended to substitute for consultation with an attorney. While every attempt has been made to ensure accuracy, readers should direct questions concerning their specific situations to the attorney of their choice.

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HOW TO USE THIS BOOK

This book provides information about the rights of individuals who are receiving mental health treatment services within the State of Indiana.

It contains information about commitment, including the different kinds of commitment and how each kind affects the rights of those receiving treatment. Information about the specific rights of those receiving treatment is also included. The Frequently Asked Questions section helps clarify answers to questions that many readers ask. The final sections of this book include a copy of Indiana laws about mental health treatment and resources, including contact information for community mental health centers.

Readers who still have questions are encouraged to contact their treatment team, social worker, an attorney, or Indiana Disability Rights (IDR). IDR can be reached at 1-800-622-4845.

DEFINITIONS AND TYPES OF COMMITMENT

Commitment describes the legal status of a person receiving mental health care. It also refers to the legal process in which a court issues an order for mental health care. This order is known as a **commitment order**.

Commitments can be for outpatient or inpatient services. Under an outpatient commitment, an individual can still live in the community, but must follow the restrictions and requirements placed on them by the court. In contrast, an inpatient commitment requires that an individual live at a facility while receiving mental health treatment. **This book explains the rights of those who are under inpatient commitment.**

Before taking a look at types of commitment, it's important to understand some vocabulary used in the descriptions. Below are definitions for some of the most commonly used terms to describe commitment.

Definitions of Terms Used in Indiana's Commitment Statutes

Mental illness or mentally ill (Ind. Code § 12-7-2-130(1))

A psychiatric disorder that substantially disturbs an individual's thinking, feeling, or behavior and impairs the individual's ability to function. For purposes of commitment, the term includes intellectual disability, alcoholism, and addiction to narcotics or dangerous drugs. For purposes of emergency detention (but not commitment), the term also includes temporary impairment resulting from alcohol or drug use.

Dangerous (Ind. Code § 12-7-2-53)

A condition in which an individual, as a result of mental illness, presents a substantial risk of harming themselves or others.

Gravely disabled (Ind. Code § 12-7-2-96)

A condition in which an individual, as a result of mental illness, is in danger of harm because they either:

1. Are unable to get food, clothing, shelter, or otherwise provide for their essential human needs; or
2. Have a substantial impairment or an obvious deterioration of judgment, reasoning, or behavior, resulting in the inability to function independently.

Types of Commitment

There are two primary ways that people get admitted to a mental health facility: **voluntary admission** and **involuntary commitment**. A commitment may also result from involvement in a criminal case. It is important to understand that the type of commitment can change during an individual's stay at a facility.

Voluntary Admission

When an adult freely chooses to become a patient in a psychiatric hospital, they voluntarily admit themselves for treatment. A consent for treatment is signed, indicating the individual's willingness to be in the hospital. In some circumstances, voluntary admission can later become involuntary.

Involuntary Admission

There are three types of involuntary admission:

1. Emergency detention
2. Temporary commitment
3. Regular commitment

Importantly, emergency detention can lead to temporary or regular commitment after the individual has seen a judge. Based on the information given during a hearing, the judge may decide to issue a temporary or regular commitment order.

More detailed explanations of each involuntary admission type of commitment are below.

Emergency Detention (Ind. Code §§ 12-26-5-1 and 12-15-5-13.5)

An individual may be detained in a facility for more than two weeks, depending upon individual circumstances and legal procedures followed by law enforcement officers and mental health treatment providers. There is an initial 48-hour detention period, which can be extended for an additional 24 hours (based upon the facility's actions), which can be extended to 14 days (excluding weekends and holidays) from the individual's admission to the facility (based upon a court order). However, due to the way the law requires days to be counted, individuals may find themselves detained for longer than two weeks.

Initially, an individual may be detained in a facility for up to 48 hours (excluding weekends and legal holidays). If the facility files an application for detention, the individual may be held an additional 24 hours, up to a total of 72 hours. An application for detention must be filed by the facility within the initial 48-hour period. It must also include a written statement, signed by a physician, that there is probable cause to believe the individual:

1. Is mentally ill and either dangerous or gravely disabled; and
2. Requires continuing involuntary detention to receive care and treatment;

Based on an examination by, or information given to, a physician, advanced practice registered nurse, or physician assistant. If the application for detention is timely filed by the facility, the individual may be detained for up to 72 hours from their admission (excluding weekends and legal holidays). Importantly, the facility may file an application for detention without first trying to get the individual transferred to a psychiatric hospital, and the facility can file an application for detention even if the individual was not taken to the facility by law enforcement officers. These provisions give facilities significant discretion in seeking an individual's detention, without requiring the provision of intensive mental health treatment during the detention period.

If a court approves the application for detention during the 72-hour period, the individual may be held for a total of up to 14 days (excluding weekends and legal holidays) from their admission, pending a final hearing. The purpose of the final hearing is to determine by clear and convincing evidence whether the individual is:

1. Mentally ill and either dangerous or gravely disabled; and
2. In need of temporary or regular commitment.

Typically, the petition will request a temporary commitment. However, the facility may ask the court to order a regular commitment instead of a temporary commitment if the person has been previously committed to a mental health facility for treatment. An individual subject to a commitment hearing has a right to legal counsel. If the individual is unable to get an attorney, they may request representation by a public defender. Importantly, an individual cannot choose which public defender is assigned to their case.

Remember that statute provides specific instructions about what counts as a detention day. As mentioned, weekends and legal holidays are not counted as days spent in emergency detention. Moreover, if an individual is admitted to a facility between midnight and 7:59 a.m., statute requires their time of admission to officially begin at 8.00 a.m. These counting instructions mean that individuals can, in practice, be detained for more than 48 or 72 hours or 14 calendar days.

During an emergency detention period, a court may order that an individual must receive treatment, including medication. Health insurance companies, including managed care organizations that cover Medicaid participants, must pay for medical services that an individual receives while under emergency detention. As long as the services are provided in accordance with typical clinical care standards, the services are considered medically necessary. This law helps ensure that individuals under emergency detention will not receive a large medical bill upon discharge, as long as individuals have health insurance.

During an emergency detention period, a facility may also determine that an individual no longer meets the criteria to be detained. If, for example, facility staff believe the individual is no longer dangerous or gravely disabled, or if facility staff believe

commitment is no longer necessary, the facility can discharge the individual. In these circumstances, an emergency detention could last less than 48 hours.

Temporary Commitment (Ind. Code § 12-26-6)

A person can be temporarily committed to an appropriate facility or outpatient treatment program for up to 90 days if they are found by a court to be:

1. Mentally ill; and
2. Either dangerous or gravely disabled.

Before a temporary commitment ends, a petition for an extension can be filed by the facility with the court. The extension, if granted, cannot exceed an additional 90 days.

Regular Commitment (Ind. Code § 12-26-7)

Regular commitment may apply to an individual:

1. Alleged to be mentally ill;
2. Deemed either dangerous or gravely disabled; and
3. Whose commitment is reasonably expected to require custody, care, or treatment in a facility for more than 90 days.

These criteria must be included in the written statement of a physician who examined the individual in the past 30 days. This statement must explain the reasons the physician believes the individual meets the above criteria.

If the individual is to be committed to a state institution, a community mental health center (CMHC) must provide a report as part of the hearing record. The report must confirm that the CMHC evaluated the individual and that commitment is appropriate. The court may order the individual's custody, care, or treatment in an appropriate mental health facility until they are discharged or the court terminates the commitment.

Criminal Commitment (Ind. Code §§ 35-36-3-1 and 35-36-3-3)

A commitment may also result from involvement in a criminal case.

If, at any time before the completion of a criminal trial, the court reasonably believes that the defendant is unable to understand the proceedings or assist in their defense, a hearing will be set to determine if the defendant is capable of standing trial. Whether a defendant is incompetent to stand trial is an issue that can be raised by the defendant and their attorney, the prosecutor, or the judge.

Before the hearing, the defendant will be evaluated by competent and unbiased mental health professionals. The defendant's charges affect evaluation procedures. If the defendant is charged with murder or a Level 1-5 felony, the court will appoint two or three mental health professionals to conduct the evaluation. Each appointed mental

health professional must be a psychiatrist or a psychologist endorsed by the Indiana State Board of Examiners as a health service provider in psychology.

If the defendant is charged with a misdemeanor or Level 6 felony, the court will appoint one of the following mental health professionals to conduct the evaluation: a psychiatrist or a psychologist endorsed by the State Board of Examiners with expertise determining competency. The court may also appoint one or two additional individuals to assist the evaluator. These assistants must either meet the same professional standards as the competency evaluator or be:

1. An advanced practice registered nurse with certification as a psychiatric mental health nurse practitioner;
2. A physician who specializes in psychiatry or mental health;

And be certified as a competency evaluator by the Division of Mental Health and Addiction (DMHA). No competency evaluator nor assistant may be employed by, or be a contractor of, a state institution.

At the hearing, the mental health professionals who evaluated the defendant will discuss their findings and whether they believe the defendant is competent.

If the defendant is found competent to stand trial, the trial proceeds. If the court finds that the defendant is incompetent to stand trial, the trial is delayed and the defendant is placed in the care of DMHA. DMHA will arrange for the defendant to develop or improve the skills needed to stand trial later. These services are called **competency restoration services**.

Restoration services may or may not be offered at a mental health facility. Services can be offered at the place where the defendant currently resides, such as a Department of Correction facility or a county jail. DMHA will decide which environment will be most beneficial to, and safest for, the defendant.

Additionally, either the defendant and their attorney or the prosecutor can file a motion to dismiss the defendant's charges without prejudice if:

1. The defendant has a diagnosis of:
 - a. Dementia;
 - b. Alzheimer's disease; or
 - c. A traumatic brain injury;
2. The defendant's diagnosis substantially affects their ability to understand court proceedings and assist in preparing their defense for the foreseeable future; and
3. The defendant's charges are misdemeanors or Level 6 felonies.

If the court grants the dismissal motion, the defendant's involvement in the criminal justice system ends, unless the defendant is subject to other charges or serving a sentence for a prior conviction.

If, on the other hand, a defendant meeting the criteria for dismissal of criminal charges does not get their charges dismissed, their fate depends on whether the court finds a substantial probability that the defendant's competency can be restored. If the court finds that a substantial probability the defendant can be restored to competency does not exist, DMHA will file for regular commitment. If the court, instead, finds a substantial probability the defendant can be restored to competency, DMHA will retain custody of the defendant until their competency is restored or six months passes, whichever occurs sooner. If competency is restored, criminal trial proceedings can begin again. However, if the defendant is not restored to competency after six months, DMHA will file for regular commitment.

INDIVIDUAL AND CONDITIONAL RIGHTS

Those subject to an inpatient commitment order keep certain rights. Individuals who receive mental health services are protected by the U.S. Constitution, federal Patient Bill of Rights (42 U.S.C. § 10841), and Indiana Code. Indiana's Constitution also protects individuals receiving treatment in a residential setting.

All facilities providing mental health services must respect the legal rights of their patients.

Individual Rights

All patients have certain rights, regardless of their commitment status. The following list of rights was compiled from state and federal statutes. Unless a different source is noted, the right can be found at 42 U.S.C. § 10841.

An individual receiving mental health treatment HAS THE RIGHT TO...

- Raise concerns, make complaints, and assert grievances and have them considered by the facility. Facilities must have grievance procedures that facilitate the timely resolution of grievances in a fair and impartial manner.
- Fair treatment, which includes:
 - Appropriate mental health services and/or developmental training according to professional practice standards. The services must be appropriate to the individual's needs and provide reasonable opportunity to improve their condition.
 - Participation in developing the individualized written treatment plan. Individuals must be informed about the treatment or habilitation program proposed, the known effects of receiving (and not receiving) such treatment, and any alternative treatment(s) or habilitation program(s).
 - The ability to refuse treatment, including medication or a habilitation program, if the individual is an adult voluntary patient. (Ind. Code § 12-27-5-1.) Individuals who are subject to commitment orders also have the right to refuse treatment. However, a court may order an individual subject to a commitment order to participate in specific treatment methods. (Ind. Code §12-27-5-2.)
 - The ability to decline participation in experimental research or treatment without informed, written consent. An individual can also withdraw their consent to participate in experimental research at any time.

- Humane treatment, which includes:
 - Humane care and protection from harm. (Ind. Code § 12-27-2-1(2).)
 - Freedom from seclusion and restraint, unless used as a mode of treatment or in an emergency. (42 U.S.C. § 482.13.)
 - **Restraint** means a manual method or physical or mechanical device, material, or equipment attached or adjacent to an individual's body that the individual cannot easily remove and that restricts the individual's freedom of movement or access to their body. It includes medication that causes similar restrictions, which is sometimes called **chemical restraint**.
 - **Seclusion** means confining an individual to an area and physically preventing them from leaving.
 - Restraint or seclusion cannot be used for non-therapeutic purposes unless the following criteria are met: (1) there is an emergency that threatens the safety of the individual or another person; (2) less restrictive interventions are ineffective; (3) the restraint or seclusion is safely applied in the least restrictive manner; and (4) the individual is freed from restraint or seclusion as soon possible.
 - A written order cannot subject an adult individual to restraint or seclusion for longer than four hours. Moreover, physicians are prohibited from writing standing orders for the use of restraint or seclusion on an "as needed" basis.
 - If restraint or seclusion is applied in response to violent or self-destructive behavior, a physician registered nurse, or other licensed practitioner must physically evaluate an individual within one hour after a restraint begins. If the physician or practitioner arrives after the individual has been freed from restraint or seclusion, the individual must still be physically evaluated.
 - All instances of restraint or seclusion, including the reason for use, must be described in the individual's treatment record. (Ind. Code § 12-27-4-2.)
 - Treatment with consideration, dignity, and respect—free from mental, verbal, and physical abuse, neglect, and mistreatment. (Ind. Code § 12-24-17-3.)
 - Freedom from discrimination in receiving services on the basis of age, gender, race, color, sex, religion, national origin, and/or disability. (29 U.S.C. § 794; 42 U.S.C. §§ 2000d, 6101, 12182, and 18116.)
 - Receive information about patient rights promptly at the time of admission to the facility and periodically afterward. A statement of rights must be provided in a manner that the individual can understand.

- Confidentiality, which requires treatment providers to:
 - Confidentially maintain records, as required by law.
 - Release records only after obtaining the individual's written consent and only to those entities specified by the individual's consent.
 - Grant individuals access to their own records, unless good cause is provided.
- Consult with professionals, including:
 - Private communication with an attorney chosen by the individual. (Ind. Code § 12-27-2-1(4).)
 - A doctor chosen by the individual.
 - Communication with the protection and advocacy system. In Indiana, IDR is the protection and advocacy system.
- Vote in national, state, and local elections. An individual's right to vote is not automatically affected by their involvement in a commitment or guardianship procedure. (Ind. Code § 12-26-2-8(a)(1)(F).)

Note that there may be costs involved in exercising some of these rights, and the individual is responsible for paying those costs. Individuals can ask their facility for more specific price information.

Conditional Rights

While **individual rights** are guaranteed for everyone, **conditional rights** can be taken away based on the individual's behavior and the safety of the individual, other residents, and staff. Ind. Code § 12-27-3 governs the conditional rights of individuals who are committed to treatment facilities. Conditional rights can only be restricted for certain reasons and under certain circumstances, and, at a minimum, must be:

- In accordance with facility procedures;
- In a manner consistent with the individual's treatment plan; and
- For good cause, as described in the individual's treatment record and approved by the professional with primary responsibility for the individual's care and treatment.

Should the facility restrict a conditional right, notice of the denial or limitation of rights must be given to the:

- Patient; and
- Guardian or appointed advocate of the patient, if applicable.

Unless restricted for good cause, an individual conditionally HAS THE RIGHT TO...

- Wear their own clothes.
- Keep and use personal possessions.
- Keep and spend reasonable amounts of their own money.
- Access individual storage space for private usage.

- Maintain reasonable means of communication with persons outside the facility.
- Be visited at reasonable times.
- Talk with others privately.
- Receive and send unopened mail.
- Access to a reasonable amount of stationary materials and postage.
- Make and receive telephone calls.
- Be free from having to work for the facility, except for commonly required personal housekeeping. Residents of state-operated facilities cannot be required to apply any of their earnings to their hospital bill.

Several legal actions and concepts can also affect conditional rights. Common factors that can affect an individual's rights are:

- The type and status of their commitment;
- Guardianship; and
- Age.

This section discusses how each factor may affect patient rights.

Commitment Type and Status

Involuntary patients have the same basic rights as voluntary patients, including confidentiality, humane care and treatment, and freedom from harm; they cannot, however, leave the facility whenever they want or refuse court-ordered treatment – including medications – without court authorization. An involuntarily committed individual keeps their rights to:

- Dispose of property;
- Sign documents and provide consent;
- Make purchases;
- Enter contracts;
- Testify in court; and
- Vote.

Individuals who are involuntarily committed also have the right to petition the committing court for review of their treatment program. (Ind. Code § 12-27-5-2.) Outside of the regularly scheduled annual review, the committing court can be petitioned once per calendar year for an additional review. (Ind. Code § 12-26-15-3.)

Guardianship

Guardianship can influence an individual's conditional rights. This subsection defines guardianship and describes the types of guardianship through which some individuals may receive mental health treatment.

For example, an individual under guardianship may not dispose of property, sign documents, provide consent, or enter contracts. Depending on their powers, the guardian stands in the legal shoes of the person under guardianship. This relationship means that the guardian can consent to treatment or discharge to another facility or the community.

Guardianship Definitions

A legal **guardian** is a person, appointed by a court, who is responsible for the care and well-being of an incapacitated person or minor and/or the incapacitated person or minor's property. (Ind. Code § 29-3-1-6.)

An **incapacitated person** (also called a "ward," "protected person," or "person subject to guardianship") is an individual determined by a court to be unable to manage their personal property and/or provide self-care for any of the following reasons:

- Confinement;
- Detention;
- Duress;
- Excessive use of drugs;
- Fraud;
- Habitual drunkenness;
- Developmental disability;
- Incarceration;
- Infirmity;
- Insanity;
- Mental deficiency;
- Mental illness;
- The undue influence of others;
- Incapacity caused by a different source; or
- The individual cannot be reasonably located.

(Ind. Code § 29-3-1-7.5.)

Types of Guardianship

There are several types of guardianships that a court may grant, including:

- **Guardianship of the person**, in which the guardian makes decisions about the protected person's living situation, their health, well-being, and medical care and treatment.
- **Guardianship of the estate**, in which the guardian makes decisions about the protected person's money, assets, and other property.
- **Guardianship of the person and estate** (also called "plenary guardianship" or "full guardianship"), in which the guardian makes all decisions about the person and their property. (Ind. Code § 29-3-5-3.) Guardianship of the person and estate

is the most common type of guardianship, and the most restrictive for the protected person.

- **Limited guardianship**, through which a court gives the guardian limited or specified powers to oversee the protected person's well-being and circumstances. (Ind. Code § 29-3-5-3(b).)
- **Temporary guardianship**, through which a court appoints a guardian for a protected person under emergency circumstances for no longer than 90 days. (Ind. Code § 29-3-3-4.) The powers of a temporary guardian are typically limited.

Age

Being a minor also affects an individual's conditional rights. In Indiana, individuals under 18 years of age are considered minors. A minor's rights are legally restricted due to their age, rather than because of a particular diagnosis.

Per federal law, a minor does not have the right to:

- Refuse, or consent to receive, treatment.
- Consent to, or prevent, the review of their treatment records.

Some rights extend to minors, however. Like adults, minors have the right to participate in treatment planning, submit grievances, be visited at reasonable hours, and communicate privately. The minor's parent(s) or guardian(s) has authority to make decisions regarding their life, just as if the minor was not in treatment. If a minor is admitted to a mental health treatment facility, their guardian or representative cannot be employed by, or receive compensation from, the facility.

FREQUENTLY ASKED QUESTIONS

This section answers some of the most frequent questions IDR gets from individuals receiving treatment in mental health facilities.

Can a person be (re-)committed without seeing a judge?

It is illegal for a court to recommit an individual under a regular commitment without conducting a hearing, which may occur inside a courtroom or virtually.

At least once a year, the facility must give the court a report about the individual's mental condition and whether they are still dangerous or gravely disabled. The report will recommend whether the individual should remain at the facility or whether the individual needs of a guardian.

Once the court receives the facility's report, it may take one of three actions:

1. Issue an order for the individual's continued treatment and care, or "re-commitment." This option is issued more commonly than the other two options.
2. Issue an order for termination of the commitment and release the individual.
3. Set a date for a hearing to obtain further evidence regarding the matter.

Should the court continue the commitment, the individual or their representative will receive a copy of the order and may request a hearing. This right to a review hearing is limited to one time per year, unless the court determines there is good cause for additional review. (Ind. Code § 12-26-15-3.)

Once a hearing request is filed, the court will set a hearing date. The court can schedule the hearing for any time it chooses. The individual and their legal counsel, if applicable, will be given at least five days' notice of the hearing date. Although the individual has a right to appear before the court, "in person" appearances have been interpreted to include virtual proceedings. Thus, the individual may appear in person for their (re-)commitment hearing without leaving a facility.

If a person seeks treatment voluntarily, can they leave the facility or hospital at any time?

Even when an individual seeks treatment from a facility or hospital through voluntary admission, problems may arise if they decide to leave.

Voluntary admission does not guarantee the individual's right to leave at any time. If an individual wants to leave, they must give the facility's superintendent, or their attending physician, 24 hours' notice. (Ind. Code § 12-26-3-4.) This notice gives the facility time to decide about whether it can safely allow the individual to leave or will take steps to

legally hold the individual. If the facility decides to hold the individual, it must inform them and file a petition with the court within five days. (Ind. Code § 12-26-3-5.) Once these tasks have been completed, the facility may continue to legally hold the individual until a hearing.

The individual should be given the opportunity to appear in court for their hearing. (Remember that the court may order the individual to appear virtually, while remaining in the facility.) However, the facility can petition the court to not allow the individual to appear if it may be harmful to their treatment. (Ind. Code § 12-26-2-2(b)(3).)

If an individual chooses to leave a facility, and if application for detention is approved by a judicial officer authorized to issue arrest warrants in the county, law enforcement may be asked to return the individual to the facility. (Ind. Code § 12-26-5-2(a).)

What can an individual do if they don't believe they belong in a facility?

If an individual believes that they are not mentally ill or otherwise should not be in a facility, they should take steps to find out why they are being held. If the individual is being held under an emergency detention application prior to a commitment hearing, the person can call IDR for help. If the individual is under a commitment order, a new court order will be needed for their release. Descriptions of the types of commitments can be found in the “Definitions and Types of Commitment” section of this book.

Individuals under an involuntary regular commitment have the right to ask the committing court for a review hearing. The law only allows one review per year, unless the court determines there is good cause for additional review. (Ind. Code § 12-26-15-3.) Facility social workers can help contact the committing court to request a commitment review. The court will then determine whether an individual's commitment will continue.

If an individual is being held without an application for detention or a commitment order, they can call IDR for help at 1-800-622-4845.

Can a patient refuse medication and/or other treatment?

Since medications are often an important part of treatment, individuals should make every effort to get their concerns resolved. An individual's right to refuse treatment, including medication, depends upon their commitment status. Descriptions of each type of commitment can be found in the “Definitions and Types of Commitment” section of this book.

Individuals who have concerns about treatment methods should first speak with their doctor or treatment team. Individuals receiving treatment have the right to be informed of:

- The treatment process, as well as the reasons a particular type of treatment is considered appropriate.
- Possible side effects associated with the treatment.
- Any alternative treatments.
- The various types of providers involved in delivering mental health services.

In preparation for meeting with one's treatment team or doctor, an individual should consider the reasons they want to change their current medication or treatment plan. That way, the individual can share concerns with their doctor or treatment team, as well as ask relevant questions, during the meeting.

Voluntarily admitted patients have the right to refuse treatment. (Ind. Code § 12-27-5-1.) Mental health providers can request and, in some cases, begin treating an individual upon the submission of an emergency detention notice. The court reviewing the notice for emergency detention may also authorize the facility to provide medically necessary treatment. A person subject to emergency detention can object to treatment but must do so to the court overseeing the emergency detention. Court-ordered treatments cannot be refused, although individuals may petition the court for a hearing to request changes to their treatment or medication plan. (Ind. Code § 12-27-5-2.) Once such a petition has been filed, the facility may stop the treatment at issue until the matter is addressed at a hearing.

Is it legal for a facility to place a person in restraints or seclusion?

Yes, under certain circumstances. A facility may use restraints or seclusion if necessary to prevent abuse or injury to the individual or others. (Ind. Code § 12-27-4-1(1).) Restraints or seclusion may also be used for therapeutic treatment. (Ind. Code § 12-27-4-1(2).)

Restraints or seclusion may be used only if less restrictive interventions have been tried but did not work. Except for emergency circumstances in which violence against someone (whether the individual, staff, or another patient) is threatened, only a physician can authorize seclusion or restraint. The physician's order must be documented in the individual's record and time-limited. (42 U.S.C. § 290ii(a)(2); Ind. Code § 12-27-4-2.)

While an individual is secluded or restrained, they must be frequently observed by staff. Written documentation of the restraint and/or seclusion must be placed in the individual's treatment record. (Ind. Code § 12-27-4-3.)

Individuals who believe they were restrained or secluded for unnecessary or inappropriate reasons have the right to file a complaint or grievance about it. Information about the grievance process can be found in the last two Frequently Asked Questions answers.

Do patients get to choose their doctor?

Individuals receiving voluntary treatment have the right to seek treatment from a doctor of their choice, provided they can pay for it. Individuals receiving involuntary treatment under a commitment order may request a change of doctor, but the facility does not have to provide a new one.

Does a person in a facility have to pay for their treatment?

Yes; if an individual in a state institution has insurance coverage for hospitalization or medical services in psychiatric hospitals, those benefits must be assigned. (Ind. Code § 12-24-13-7.) The individual and their spouse, if applicable, are personally liable for payment. The individual's guardian and trustee, if applicable, are liable for payment as representatives of the individual. Additionally, upon death, the estate of an individual who received care, treatment, maintenance, or any other service in a facility is liable for the payment of charges. (Ind. Code § 12-24-13-11.)

However, according to DMHA, "no one is denied admission because of lack of financial resources."¹ Because each individual's financial situation is unique, specific questions about billing should be addressed with the facility.

Can an individual's Social Security money go to someone else?

The Social Security Administration (SSA) has an established process through which it sometimes appoints a representative payee to receive a Social Security recipient's money. This appointment occurs if the SSA believes that a recipient cannot manage their own benefits due to their physical or mental condition. (42 U.S.C. §§ 405 and 1383).

Representative payees are required to spend the Social Security benefit on the recipient's needs. Shelter, treatment, food, clothing, and personal items are typical recipient needs and SSA benefits can be used to purchase them. While the representative payee has discretion to determine what needs are to be met with the recipient's Social Security benefit, SSA requires the representative payee to document how the money was spent.

Since the SSA, rather than a court, appoints representative payees, the appointments decision be challenged by contacting the SSA. The SSA's contact information can be found in the Resources section in this book.

Can a facility be a representative payee for a patient?

Yes, a hospital can be appointed as the representative payee for one of its patients. In such cases, the SSA empowers the facility to make decisions about the use of the

¹ Family and Social Services Administration, *Indiana State Psychiatric Hospital Network*, available at: <http://www.in.gov/fssa/dmha/4325.htm> (last accessed: June 7, 2024).

patient's Social Security money. The hospital can decide which of the recipient's bills to pay, including its own bills to the recipient.

If an individual believes that their representative payee is acting inappropriately, they can report their concerns to the SSA. Concerns can be reported to the recipient's local SSA office or by calling 1-800-772-1213. If the representative payee is a service provider, including a hospital or CMHC, a SSA benefit recipient can also report concerns regarding the misuse of their benefits, exploitation, and similar matters to IDR.

To learn more about the responsibilities of a representative payee, visit [the SSA's website](#).

Can an individual under a commitment order still vote?

People who are legally eligible to vote maintain the right to vote in local, state, and national elections—even if they are under a commitment.

An individual under a commitment order who wants to vote must be registered. Treatment facilities can help individuals get registered or confirm that they are already registered. Individuals registering while at a facility can provide the facility's address on the voter registration form or use their legal address, if it complies with Indiana law.

Once registered, there are several ways individuals can vote – even if the individual lacks community privileges or their facility cannot provide transportation to the individual's polling place. One option is to vote by mail. To do so, the individual must complete a form requesting to vote by mail and send it to the county's Election Board; facilities can help find the address. Individuals are encouraged to mail their request early because there is a deadline to request voting by mail. Once the Election Board receives a request, it will mail the ballot to the individual. The individual simply fills out their ballot and returns it to the Election Board for counting.

Another option is to vote through the Traveling Voter's Board. As with voting by mail, individuals must complete a form to request voting with this method. Facilities can help contact the county's Voter Registration Office to obtain the form, as well as help individuals complete and return it. Like voting by mail, it is important to make the request early so it is received before the deadline. The request should be mailed to the county's Election Board, which will then contact the individual to schedule a time to vote. On the scheduled date, two people, a Republican and a Democrat, will bring the individual's ballot to the facility so they can vote.

Should an individual experience difficulty registering or voting by mail or through the Traveling Board, they may ask their facility for assistance or call IDR at 1-800-622-4845.

How can an individual file a complaint or grievance at a facility?

Rights are meaningless unless they are respected by others. If a rights violation occurs, an individual can take steps to resolve the issue.

The right to file formal grievances is guaranteed by federal law. Many individuals do not know how to make their complaints or grievances known. Depending on the issue, certain individuals or agencies may (not) have authority to assist or investigate.

The first step is generally for the individual to contact either their treatment team or social worker. While this task is not usually a formal step in a grievance process, it provides an opportunity for resolution. The treatment team or social worker can also help the individual file a formal complaint with the facility.

Each program or facility is required to have a fair and timely internal grievance process. The facility must inform individuals about the grievance process and how to use it. Individuals can get a complaint resolution form from either their direct care staff or assigned social worker. Someone associated with the facility will investigate the situation and attempt to find a satisfactory resolution for both the individual and the facility.

Individuals can also contact the Mental Health Ombudsman Program if their complaint does not involve allegations of abuse, neglect, or financial exploitation. If the Ombudsman determines that the complaint has merit, they will make recommendations to the agency, facility, or program. (Ind. Code § 12-27-9-5). The Ombudsman's contact information can be found in the Resources section of this book.

Other county-based resources may also be available to help address complaints and grievances. Additionally, individuals can always contact IDR at 1-800-622-4845.

How can an individual file a complaint or grievance outside of a facility?

Individuals may wish to seek outside assistance to resolve concerns involving the denial of rights, abuse, neglect, or discrimination. Individuals have the right to privately contact advocacy organizations and can find the contact information for several in the Resources section of this book. IDR can also look into the matter and assist individuals to better understand and exercise their rights. IDR can be reached at 1-800-622-4845.

Be aware that some agencies or programs may, by law, only have authority to address certain issues. Also note there may be a limited timeframe to file a complaint after an issue occurs.

Before contacting an outside agency, it is important to gather as much information as possible regarding the issue. The following are some questions individuals can expect to be asked:

- What happened?
- When did it happen, and for how long?

- Is the complaint about a specific person or persons? If so, who?
- Were there any witnesses?
- Is there any documentation of the incident?

INDIANA'S PATIENT RIGHTS STATUTE

Indiana Code § 12-27 is entitled Rights of Individuals Being Treated for Mental Illness or Developmental Disabilities. The following version is current as of June 2024.

Chapter 1: Application

12-27-1-1. Patients covered by article.

This article applies to a patient receiving mental health services or developmental training in or from a service provider.

12-27-1-2. Individuals under Department of Correction not Covered by Article.

This article does not apply to an individual receiving mental health services or developmental training under the department of correction.

12-27-1-3. Election to be covered by Article.

A private practitioner or other person not covered by this article may elect to be subject to this article by notifying the director of the appropriate division in writing of the election.

12-27-1-4. Adoption of Rules.

Each division shall adopt rules under IC 4-22-2 to implement this article.

Chapter 2: Rights of Patients

12-27-2-1. Enumeration of Rights.

Subject to section 2 [IC 12-27-2-2] of this chapter, a patient is entitled to all of the following:

- (1) Mental health services or developmental training:
 - (A) In accordance with standards of professional practice;
 - (B) Appropriate to the patient's needs; and
 - (C) Designed to afford a reasonable opportunity to improve the patient's condition.
- (2) Humane care and protection from harm.
- (3) The right to practice the patient's religion.
- (4) Contact and consultation with legal counsel and private practitioners of the patient's choice at the patient's expense.

12-27-2-2. Limitations on Rights.

- (a) The rights set forth in section 1 [IC 12-27-2-1] of this chapter are subject to the limitation that there may be certain conditions for which there is no known effective treatment or developmental training.
- (b) A service provider is not required to afford mental health services or developmental training where treatment would not be likely to produce a significant improvement.

12-27-2-3. Constitutional, Statutory and Civil Rights.

(a) A patient is entitled to exercise the patient's constitutional, statutory, and civil rights except for those rights that have been denied or limited by an adjudication or finding of mental incompetency in a guardianship or other civil proceeding.

(b) This section does not validate the otherwise voidable act of an individual who was:

- (1) Mentally incompetent at the time of the act; and
- (2) Not judicially declared to be mentally incompetent.

Chapter 3: Conditional Rights of Patients in Residential Settings

12-27-3-1. "Reasonable Means of Communication" Defined.

As used in this chapter, "reasonable means of communication" includes the following rights:

- (1) To be visited at reasonable times.
- (2) To send and receive sealed mail.
- (3) To have access to a reasonable amount of letter writing materials and postage.
- (4) To place and receive telephone calls at the patient's own expense.

12-27-3-2. Additional Rights.

The rights described in this chapter are in addition to the rights recognized in IC 12-27-2.

12-27-3-3. Enumeration of Rights.

Subject to section 4 [IC 12-27-3-4] of this chapter, a patient receiving services or training in a residential setting is conditionally entitled to do all of the following:

- (1) Wear the individual's own clothes.
- (2) Keep and use personal possessions.
- (3) Keep and spend a reasonable amount of the individual's own money.
- (4) Have access to individual storage space for private use.
- (5) Maintain reasonable means of communication with persons outside the facility.

12-27-3-4. Denial or Limitation of Rights.

The conditional rights recognized in this chapter may be denied or limited as follows:

- (1) In the circumstances and according to the procedures established by rules of the appropriate division.
- (2) Because of inconsistency with the design of a treatment or habilitation program if the program design has been approved by the division.
- (3) On an individual basis, only for good cause as set forth in the individual treatment record and approved by the person primarily responsible for the patient's care and treatment.

12-27-3-5. Notice of Denial or Limitation of Rights.

The service provider shall give notice of denial or limitation of rights under section 4 of this chapter to the following:

- (1) The patient.
- (2) The guardian or appointed advocate of the patient.

Chapter 4: Seclusion and Restraint of Patients

12-27-4-1. Grounds for Seclusion or Restraint.

A service provider may use seclusion or restraint of a patient only in the following cases:

- (1) When necessary to prevent danger of abuse or injury to the patient or to others.
- (2) As a measure of therapeutic treatment.

12-27-4-2. Record of Instances of Seclusion or Restraint.

A service provider shall record all instances of restraint or seclusion and detailed reasons for the restraint or seclusion in the patient's habilitation or treatment record.

12-27-4-3. Observation of Restrained or Secluded Patient.

A service provider shall do the following:

- (1) Frequently observe a patient who is restrained or secluded.
- (2) Enter written notification of the observation in the patient's treatment or habilitation record.

Chapter 5: Refusal of Treatment

12-27-5-1. Voluntary patients.

An adult voluntary patient who is not adjudicated mentally incompetent may refuse to submit to treatment or a habilitation program.

12-27-5-2. Involuntary patients.

(a) An involuntary patient who wants to refuse to submit to treatment or a habilitation program may petition the committing court or hearing officer for consideration of the treatment or program.

(b) In the absence of a petition made under subsection (a), the service provider may proceed with the proposed treatment or habilitation program.

Chapter 6: Information Concerning Rights of Patients

12-27-6-1. Patient to have access to information on rights.

The administrative head of a facility subject to this article shall ensure that each patient in the service provider's care has access to the information contained in this article respecting the patient's rights.

12-27-6-2. Patient to be informed concerning nature and effects of treatment.

A service provider shall inform all patients of the following:

- (1) The nature of the treatment or habilitation program proposed.
- (2) The known effects of receiving and of not receiving the treatment or habilitation
- (3) Alternative treatments or habilitation programs, if any.

12-27-6-3. Eligible patient to be informed of right to refuse treatment.

- (a) A service provider shall inform all adult voluntary patients who are not adjudicated mentally incompetent of the right to refuse to submit to treatment or a habilitation program.
- (b) A service provider shall inform all involuntary patients, verbally and in writing, of the right to petition the committing court or hearing officer for consideration of the treatment or program.

Chapter 7: Waiver of Rights

12-27-7-1. Waiver to be given voluntarily and knowingly.

A patient may waive any of the rights enumerated in this article if the waiver is given voluntarily and knowingly.

12-27-7-2: Withdrawal of waiver.

A waiver made under section 1 of this chapter may be withdrawn at any time.

12-27-7-3. Admission to treatment conditioned on waiver prohibited.

Admission to a treatment or habilitation program may not be conditioned upon the giving of a waiver under section 1 of this chapter.

Chapter 8: Remedies

12-27-8-1. Violations remedied under this chapter.

A violation of rights recognized by this article may be remedied under this chapter.

12-27-8-2. Legal Actions — Money damages.

- (a) An individual whose rights were violated or a person authorized by statute to act on the individual's behalf may bring an action.
- (b) An action under this section shall be brought in a court that has jurisdiction.
- (c) In an action under this section, money damages may be awarded only for willful or wanton violation of the rights recognized by this article.

12-27-8-3. Administrative actions.

A violation of rights recognized by this article may be remedied by an appropriate administrative action, including the following:

- (1) Disciplinary action against an employee.
- (2) Withdrawal of certification, license or funding of a service provider.

Chapter 9: Mental Health Ombudsman Program

12-27-9-2. Information and records confidential.

Except as provided under section 6 [IC 12-27-9-6] of this chapter, all information and records of the ombudsman under this chapter are confidential and may not become public records or be subject to a subpoena or discovery proceedings.

12-27-9-3. Operation of program.

Within the limits of appropriated funds, the division of mental health shall contract in writing with a nonprofit corporation for the operation of the mental health ombudsman program. The nonprofit corporation must:

- (1) Be qualified to receive tax deductible contributions under Section 170 of the Internal Revenue Code [26 U.S.C. sec. 170];
- (2) Have offices statewide; and
- (3) Have experience in mental health advocacy.

12-27-9-4. Requirements of program — records.

(a) The mental health ombudsman program operated under this chapter must do the following:

- (1) Have at least one (1) full-time person to operate the program.
 - (2) Recruit and train volunteers to help carry out the duties of the program under this chapter.
 - (3) Mediate or advocate on behalf of mental health patients.
 - (4) At the request of a mental health patient, or upon receiving a complaint or other information affording reasonable grounds to believe that the rights of a mental health patient who is not capable of requesting assistance have been adversely affected, gather information about, analyze and review on behalf of the mental health patient, the actions of an agency, a facility or a program.
 - (5) At reasonable times in the course of conducting a review, enter and view premises within the control of an agency, a facility or a program.
- (b) The mental health ombudsman shall maintain records of all activities on behalf of consumer and report all findings to the division on a quarterly basis.

12-27-9-5. Receipt of complaints — determination of complaint — recommendations.

(a) The ombudsman may receive a complaint from the division of mental health's toll-free number (IC 12-21-5-1.5) or any source concerning an action by an agency, a facility or a program. After completing a review, the ombudsman shall inform the complainant and the agency, facility or program that the review has been completed.

(b) If, after:

- (1) Reviewing a complaint;
- (2) Considering the response of an agency, a facility or a program; and
- (3) Considering any other pertinent material;

The mental health ombudsman determines that the complaint has merit, the ombudsman may make recommendations to that agency, facility or program.

(b) At the ombudsman's request, the agency, facility or program shall, within a reasonable time, inform the ombudsman about the action taken on the ombudsman's recommendation under subsection (b) or the reasons for not complying with the ombudsman's recommendation.

12-27-9-6. Referral of matters — statistics.

(a) If the ombudsman believes that the agency, facility or program has failed to comply with the ombudsman's recommendations, the ombudsman shall refer the matter to the division of mental health and addiction [DMHA] or the Indiana Protection and Advocacy Services Commission [IDR] as appropriate.

(b) The ombudsman shall compile annual statistics on each agency, facility or program on which it reviews a complaint or conducts an investigation and determines that the complaint has merit or the investigation reveals a problem. The statistics must specify the types of complaints or problems and each agency, facility or program that has failed to comply with the ombudsman's recommendations. The statistics shall be reported to the director of the division of mental health and addiction.

RESOURCES

2-1-1 Partnership — A free and confidential 24-hour, 7 days per week, service connecting Hoosiers with human services throughout Indiana.

211

988 Suicide and Crisis Lifeline — Part of a national network of more than 200 local crisis centers that provides free and confidential support to individuals in crisis 24 hours per day, 7 days per week.

988

Adult Protective Services (APS) — A state program that handles allegations of abuse, neglect and financial exploitation of adults with disabilities and older adults.

1-800-992-6978

American Civil Liberties Union of Indiana (ACLU) — A nonprofit that advocates at no charge for Indiana residents or groups whose constitutional rights have been violated by governmental agencies.

1-317-635-4059

Division of Mental Health and Addiction (DMHA) Consumer Service Line — A hotline that gives information about public mental health facilities to DMHA and the involved facility. DMHA responds to all callers.

1-800-901-1133

Indiana Civil Rights Commission (ICRC) — A state agency that investigates allegations of discrimination due to disability, race, sex, religion, national origin, or national ancestry in the context of education, employment, credit, public accommodations, or housing.

1-800-628-2909

Indiana Disability Rights (IDR) — An independent state agency that promotes and protects the rights of people with disabilities. IDR is the Protection & Advocacy (P&A) system for Indiana. IDR is responsible for this publication.

1-800-622-4845

Indiana Public Defender Council — Part of the state’s judicial branch that helps coordinate the work of more than 1,400 public defenders. Specifically, the Council provides public defenders with training and related support.

1-317-232-2490

Indiana’s Mental Health Ombudsman — A state program operated by the Mental Health Association.

1-800-555-6424 ext. 239

Key Consumer Organization (Indianapolis) — A self-advocacy group for individuals receiving mental health services.

1-800-933-KEYS (5397)

National Alliance for the Mentally Ill (NAMI), Indiana Chapter — The state chapter of the national organization dedicated to providing support, education, and advocacy for individuals receiving mental health services and their families.

1-800-677-6442 Indiana Chapter

1-800-950-6264 National Office Family Helpline

Mental Health America of Indiana — The state chapter of the national organization Mental Health America.

1-800-555-MAHI (6424)

Social Security Administration (SSA) — A federal agency that administers the Social Security programs, including Social Security Disability Insurance and Supplemental Security Income.

1-800-772-1213

National Suicide Prevention Lifeline — A national network that provides free and confidential emotional support to people in suicidal crisis or emotional distress 24 hours a day, 7 days a week.

1-800-273-8255

CONTACT INFORMATION FOR COMMUNITY MENTAL HEALTH CENTERS

4C Health (formerly Four County Comprehensive Mental Health Center)

Serving Cass, Fulton, Miami, and Pulaski Counties.

Information: 1-574-722-5151

Crisis: 1-800-552-3106

Adult and Child Mental Health Centers, Inc.

Serving Johnson and Marion Counties.

1-877-882-5122

Aspire Indiana, Inc.

Serving Boone, Hamilton, Madison, and Marion Counties.

Information: 1-877-574-1254

Crisis: 1-800-560-4038

The Bowen Centers

Serving Huntington, Kosciusko, Marshall, Wabash, and Whitley Counties.

1-800-342-5653

Centerstone of Indiana, Inc.

Serving Bartholomew, Brown, Decatur, Fayette, Jackson, Jefferson, Jennings, Lawrence, Monroe, Morgan, Owen, Randolph, Rush, Union, and Wayne Counties.

Information: 1-877-467-3123

Crisis: 1-800-832-5442

Community Health Network Behavioral Health Clinics

Serving Clinton, Howard, and Tipton Counties.

Information: 1-317-621-5700

Crisis: 1-800-273-8255 (outside Howard County) or **1-765-776-8555** (Howard County only)

Substance Use Disorder: 1-800-225-4673

Cummins Behavioral Health Systems, Inc.

Serving Hendricks and Putnam Counties.

1-888-714-1927 (for information, use ext. 1500; for crises, use ext. 1501)

Edgewater Systems for Balanced Living, Inc.

Serving Lake County.

Addiction Services: 1-844-433-4392

Behavioral Health: 1-219-885-4264

Crisis: 1-219-240-8615

Family Health Center

Serving Daviess, Knox, Martin, and Pike Counties.

Information: 1-812-494-9501

Crisis: 1-812-882-5320

Hamilton Center, Inc.

Serving Clay, Greene, Parke, Vermillion, and Vigo Counties.

Information: 1-812-231-8350

Crisis: 1-800-742-0787

INcompass Healthcare (formerly Community Mental Health Center, Inc.)

Serving Dearborn, Franklin, Ohio, Ripley, and Switzerland Counties.

Information: 1-812-532-2595

Crisis: 1-877-849-1248

LifeSpring Health Systems, Inc.

Serving Clark, Crawford, Dubois, Floyd, Harrison, Jefferson, Orange, Perry, Scott, Spencer, and Washington Counties.

1-812-280-2080

Meridian Health Services Corp.

Serving Delaware, Henry, and Jay Counties.

Information: 1-765-288-1928

Crisis: 1-800-333-2647

Northeastern Center, Inc.

Serving DeKalb, LaGrange, Noble, and Steuben Counties.

Information: 1-260-347-2453

Crisis: 1-800-790-0118

Oaklawn Psychiatric Center, Inc.

Serving Elkhart and St. Joseph Counties.

1-574-533-1234

Parkview Health

Serving Adams, Allen, and Wells Counties.

Information: 1-260-481-2700

Crisis: 1-260-471-9440

Porter-Starke Services, Inc.
Serving Porter and Starke Counties.
1-219-531-3500

Radiant Health (formerly Grant Blackford Mental Health)
Serving Blackford and Grant Counties.
1-765-662-3971

Regional Health Systems
Serving Lake County.
Information: 1-219-769-4005 **Crisis: 1-219-736-7200**

Sandra Eskenazi Mental Health Center (formerly Midtown Mental Health)
Serving Marion County.
Information: 1-317-880-8491 **Crisis: 1-317-880-8485**

Southwestern Indiana Mental Health Center
Serving Gibson, Posey, Vanderburgh, and Warrick Counties.
Information: 1-812-423-7791 **Crisis: 1-812-422-1100**

Swanson Center
Serving La Porte County.
Information: 1-219-879-4612 **Crisis: 1-855-325-6934**

Valley Oaks Health (formerly the Wabash Valley Alliance, Inc.)
Serving Benton, Carroll, Fountain, Jasper, Montgomery, Newton, Tippecanoe, Warren,
and White Counties.
Information: 1-765-446-6578 **Crisis: 1-800-859-5553**

Additional copies of this publication may be obtained by contacting:

Indiana Disability Rights
4755 Kingsway Dr., Ste. 100
Indianapolis, IN 46205

Visit our website at www.IndianaDisabilityRights.org.

Voice 317-722-5555 or 800-622-4845
TTY 317-722-5563 or 800-838-1131
Fax 317-722-5564



I N D I A N A

DISABILITY RIGHTS

Equality Through Advocacy