

**CHAPTER 9  
WRIT OF HABEAS CORPUS  
FOR MINORS  
ADMITTED TO PRIVATE  
PSYCHIATRIC FACILITY  
BY PARENT**

**Rule 8.9.1**

**Writ of Habeas Corpus**

**A. Applicability**

Minors admitted to private psychiatric facilities by a parent are entitled to habeas corpus relief in a manner consistent with the provisions of the LPS Act.

This procedure applies to any minor who is voluntarily admitted to a private psychiatric facility by a parent who has legal and physical custody of the minor. As used in this section “minor” means any person 10 through 17 years of age whose liberty is being restrained in a private (non-public) psychiatric treatment facility and the minor protests the restraint. For purposes of this section, writs of habeas corpus will be subject to the general provisions of Penal Code section 1473 et seq.

**B. Right to Writ**

1. Every minor 10 through 17 years of age, whose liberty is being restrained in a private psychiatric treatment facility, may request a writ of habeas corpus to inquire into the cause of such restraint.

2. A writ of habeas corpus may be adjudicated to inquire into the basis for the restraint. The criteria are as follows:

- a. The minor is not being detained for evaluation and treatment of any disorder.
- b. Other causes which may be unlawful, as specifically stated in the petition.

Nothing in this section shall be construed as limiting the grounds for which a writ of habeas corpus may be prosecuted or as precluding the use of any other remedies.

(Adopted 7/1/2006; Rev. 1/1/2014)

**Rule 8.9.2**

**Procedures**

**A. Filing.** When a minor requests release from any private psychiatric facility to any member of the facility treatment staff or the Patient Rights Advocate, that minor must promptly be provided with a “Petition for a Writ of Habeas Corpus by a Minor.” Such form must be filed with the court clerk at the Mental Health Desk at 1100 Union Street, San Diego, California 92101, the next work day following completion of the petition.

**B. Granting Writ.** Upon a finding of probable cause, the following will occur:

1. The judge will endorse upon the petition the hour and date of the granting or denial of the writ, and a hearing will be held within two court days. When a writ is granted, it will be directed to the director of the facility restraining the minor, commanding the director to have the minor before the court at a time and place therein specified.

2. The court will appoint an attorney to represent the minor at the hearing.

**C. Sick and Infirm Petitioner.** The writ will be adjudicated in accordance with Penal Code section 1482.

**D. Delivery of Writ.** The writ will be delivered to the sheriff and will be served upon the facility director without delay.

**E. Discharge or Remand.** If the writ is discharged, the minor must be released to the custody of his or her parents or other authority within a reasonable time, who shall be allowed to make adequate arrangements for the care of the minor. If the writ is remanded, the minor may continue to be restrained in accordance with any other pertinent laws and regulations.

(Adopted 7/1/2006; Rev. 1/1/2016; Rev. 1/1/2019)