

60-1505. Hearing. (a) *Summary proceedings.* The judge shall proceed in a summary way to hear and determine the cause and may do so regardless of whether the person restrained is present. If the plaintiff is an inmate in the custody of the secretary of corrections and the motion and the files and records of the case conclusively show that the inmate is entitled to no relief, the writ shall be dissolved at the cost of the inmate.

(b) *Infectious diseases.* When any person is restrained because of an alleged infectious or communicable disease, the judge may appoint at least one competent physician to make an examination of such person and report findings to the judge.

(c) *Temporary orders.* The judge may make an order for the temporary custody of the party and any other temporary orders during the pendency of the proceeding that justice may require.

(d) *Judgment.* If the court determines that the restraint is not wrongful, the writ shall be dissolved at the cost of the plaintiff. If the restraint is found to be wrongful, the judgment shall be either that the person shall be released, or that custody shall be transferred to some other person rightfully entitled thereto, and the court may make such other orders as justice and equity or the welfare of a minor physically present in the state may require. In cases in which the person restrained is a minor, or other incompetent or incapacitated, at the time of rendering judgment at the request of any person adversely affected thereby, the judge shall stay the enforcement of the judgment for a period of not to exceed 48 hours to permit the filing of an appeal, and the judge may provide for the temporary custody of the person during such stay in such manner as the judge sees fit. Enforcement of the judgment after the taking of any appeal may be stayed on such terms and conditions, including such provisions for custody during pendency of the appeal, as the judge shall prescribe. If the state, in open court, announces its intention to appeal from an order discharging a prisoner, the judge shall stay the enforcement of the judgment for a period not more than 24 hours to permit the filing of an appeal.

(e) (1) *The record.* In habeas corpus proceedings involving extradition to another state, when written notice of appeal from a judgment or an order is filed, the transcript shall be prepared within 21 days after the notice of appeal is filed and sent to the appellate court for review. The appellate court may shorten or extend the time for filing the record if there is a reasonable explanation for the need for such action. When the record is received by the appellate court, the court shall set the time for filing of briefs, if briefs are desired, and shall set the appeal for submission.

(2) *Hearing.* Such cases, taken to the court of appeals by appeal, shall be heard at the earliest practicable time. The appellant need not be personally present, and such appeal shall be heard and determined upon the law and the facts arising upon record. No incidental question which may have arisen on the hearing of the application before the court shall be reviewed.

(3) *Orders on appeal.* In such cases, the appellate court shall render such judgment and make such orders as the law and the nature of the case may require, and may make such orders relative to the costs in the case as may seem right, allowing costs and fixing the amount, or allowing no cost at all.

History: L. 1963, ch. 303, 60-1505; L. 1990, ch. 205, § 1; L. 1994, ch. 227, § 6; L. 2009, ch. 103, § 13; L. 2010, ch. 135, § 175; July 1.