

提審法

Habeas Corpus Act

中華民國一百零三年一月八日總統華總一義字第 10300000651 號令修正公布全文 12 條；並自公布後六個月施行

Full text of 12 articles amended and promulgated per 8 January 2014 Presidential Order No. Hua-Zong-I-Yi-10300000651; for enforcement 6 months from the date of promulgation

第 1 條

Article 1

人民被法院以外之任何機關逮捕、拘禁時，其本人或他人得向逮捕、拘禁地之地方法院聲請提審。但其他法律規定得聲請即時由法院審查者，依其規定。

When a person is placed under arrest or detention by any authority other than a court (hereinafter, the "arrestee or detainee"), the arrestee or detainee or another person may file a habeas corpus petition with the district court of the place of arrest or detention. However, if another law or regulation provides that a petition for immediate review may be filed with a court, such other provision shall prevail.

前項聲請及第十條之抗告，免徵費用。

The habeas corpus petition under the preceding paragraph and the interlocutory appeal under Article 10 are exempted from any fees.

第 2 條

Article 2

人民被逮捕、拘禁時，逮捕、拘禁之機關應即將逮捕、拘禁之原因、時間、地點及得依本法聲請提審之意旨，以書面告知本人及其指定之親友，至遲不得逾二十四小時。

When a person is arrested or detained, the arresting or detaining authority shall, within not more than 24 hours, notify in writing the arrestee or detainee and the

relative or friend appointed by the arrestee or detainee of the reasons, time, and location of the arrest or detention and the purport that a habeas corpus petition may be filed under this Act.

本人或其親友亦得請求為前項之告知。

The arrestee or detainee or his or her relative or friend may also request to receive the notification under the preceding paragraph.

本人或其親友不通曉國語者，第一項之書面應附記其所理解之語文；有不能附記之情形者，應另以其所理解之語文告知之。

If the arrestee or detainee or his or her relative or friend is not proficient in Mandarin Chinese, the written notification under paragraph 1 shall be enclosed with a version made in the language comprehensible to the arrestee or detainee or his or her relative. If it is not possible to provide the enclosed version in the foregoing language, notification shall be made in another language comprehensible to the arrestee or detainee or his or her relative or friend.

第 3 條

Article 3

聲請提審應以狀書或言詞陳明下列事項：

The habeas corpus petition shall be made in writing or orally, and shall state the following particulars:

一、聲請人之姓名、性別、出生年月日、身分證明文件編號及住所或居所；他人為聲請時，並應記載被逮捕、拘禁人之姓名、性別或其他足資辨別之特徵。

1. The name, gender, date of birth, identification document number, and domicile or residence of the petitioner. If the petition is made by a third party, it shall also indicate the name, gender, or other characteristics sufficient to identify the arrestee or detainee.

二、已知逮捕、拘禁之原因、時間及地點。

2. The reasons, time, and location already known for the arrest or detention.

三、逮捕、拘禁之機關或其執行人員之姓名。

3. The arresting or detaining authority, or the name of its personnel who performed the arrest or detention.

四、受聲請之法院。

4. The court with which the petition is filed.

五、聲請之年、月、日。

5. The date on which the petition is filed.

前項情形，以言詞陳明者，應由書記官製作筆錄。

If the petition under the preceding paragraph is made orally, a clerk shall record it in writing.

第一項聲請程式有欠缺者，法院應依職權查明。

If the petition is deficient in the required particulars under paragraph 1, the court shall investigate and clarify the deficiency ex officio.

第 4 條

Article 4

地方法院受理提審之聲請後，依聲請提審意旨所述事實之性質，定其事務分配，其辦法由司法院定之。

Upon receipt of the habeas corpus petition, the district court shall determine the assignment of the case based on the nature of the facts described in the habeas corpus petition. The regulations governing the assignment of cases shall be prescribed by the Judicial Yuan.

第 5 條

Article 5

受聲請法院，於繫屬後二十四小時內，應向逮捕、拘禁之機關發提審票，並即通知該機關之直接上級機關。但有下列情形之一者，得以裁定駁回之：

Within 24 hours following receipt of the petition, the court with which the petition is filed shall issue a writ of habeas corpus to the arresting or detaining authority, and shall immediately notify that authority's immediate superior authority. However, in any of the following circumstances, the court may dismiss the petition by a ruling:

一、經法院逮捕、拘禁。

1. The arrest or detention was made by a court.

二、依其他法律規定得聲請即時由法院審查。

2. Another law or regulation provides that a petition for immediate review of the arrest or detention may be filed with a court.

三、被逮捕、拘禁人已回復自由。

3. The arrestee or detainee has regained his or her freedom.

四、被逮捕、拘禁人已死亡。

4. The arrestee or detainee is deceased.

五、經法院裁判而剝奪人身自由。

5. The arrestee or detainee is deprived of his or her liberty by a court decision.

六、無逮捕、拘禁之事實。

6. There has been no actual occurrence of arrest or detention.

受聲請法院，不得以無管轄權而裁定駁回之。

The court with which the petition is filed may not dismiss the petition by a ruling on the ground of lack of jurisdiction.

第 6 條

Article 6

提審票應記載下列事項：

The writ of habeas corpus shall set forth the following particulars:

一、逮捕、拘禁之機關及其所在地。

1. The arresting or detaining authority and its location.

二、被逮捕、拘禁人之姓名、性別或其他足資辨別之特徵。

2. The name, gender, or other characteristics sufficient to identify the arrestee or detainee.

三、發提審票之法院。

3. The court issuing the writ of habeas corpus.

四、應解交之法院。

4. The court before which the arrestee or detainee shall be brought.

五、發提審票之年、月、日。

5. The issuance date of the writ of habeas corpus.

提審票應以正本送達逮捕、拘禁之機關，並副知聲請人及被逮捕、拘禁人；發提審票之法院與應解交之法院非同一者，提審票正本應連同提審卷宗併送應解交之法院。

The original of the writ of habeas corpus shall be served on the arresting or detaining authority, with a copy to the petitioner and the arrestee or detainee. If the court issuing the writ of habeas corpus is not the court before which the arrestee or detainee shall be brought, the original of the writ of habeas corpus, together with the habeas corpus dossier, shall be delivered to the court before which the arrestee or detainee shall be brought.

提審票、提審卷宗於必要時，得以電傳文件、傳真或其他電子文件代之。

The writ of habeas corpus and the habeas corpus dossier may be transmitted by telex, facsimile, or other electronic means when necessary.

第 7 條

Article 7

逮捕、拘禁之機關，應於收受提審票後，二十四小時內將被逮捕、拘禁人解交；如在收受提審票前已將該人移送他機關者，應即回復發提審票之法院，並即將該提審票轉送受移送之機關，由該機關於二十四小時內逕行解交；如法院自行迎提者，應立即交出。

Upon receipt of the writ of habeas corpus, the arresting or detaining authority shall deliver the arrestee or detainee within 24 hours. If, before receipt of the writ of habeas corpus, the authority has turned the arrestee or detainee over to another authority, it shall immediately respond to the court issuing the writ of habeas corpus, and shall also promptly forward the writ of habeas corpus to the other authority to which the arrestee or detainee has been turned over, and that other authority shall proceed directly to deliver the arrestee or detainee within 24 hours. If the court goes to the authority to receive the arrestee or detainee, the authority shall deliver the arrestee or detainee immediately.

前項情形，因特殊情況致解交或迎提困難，被逮捕、拘禁人所在與法院間有聲音及影像相互傳送之設備而得直接訊問，經法院認為適當者，得以該設備訊問，逮捕、拘禁之機關免予解交。

In the circumstances under the preceding paragraph, if special conditions make it difficult to deliver or receive the arrestee or detainee, and the court deems it proper to conduct the examination using the voice and image transmission equipment available at the place where the arrestee or detainee is located, the court may do so, and the arresting or detaining authority will be exempt from the delivery.

逮捕、拘禁之機關，在收受提審票前，被逮捕、拘禁人已回復自由或死亡者，應將其事由速即回復發提審票之法院。

If the arrestee or detainee has regained his or her freedom or is deceased before the arresting or detaining authority receives the writ of habeas corpus, the authority shall promptly report the matter to the court issuing the writ of habeas corpus.

第二項之視訊過程，應全程錄音錄影。

The entire examination proceedings under paragraph 2 shall be recorded on audio and video media.

第 8 條

Article 8

法院審查逮捕、拘禁之合法性，應就逮捕、拘禁之法律依據、原因及程序為之。

When a court reviews the legality of an arrest or detention, it shall do so by considering the legal basis, reasons, and procedure of the arrest or detention.

前項審查，應予聲請人、被逮捕、拘禁人及逮捕、拘禁之機關到場陳述意見之機會。必要時，並得通知相關第三人到場陳述意見。

With respect to the review under the preceding paragraph, the petitioner, the arrestee or detainee, and the arresting or detaining authority shall be provided an opportunity to state their opinions before the court. If necessary, a related third party may also be summoned to state opinions before the court.

法院關於提審聲請之處理，除本法規定外，準用其他相關法律規定之程序。

The procedural rules set out in other applicable laws and regulations shall apply mutatis mutandis to the handling of the habeas corpus petition by the court, unless otherwise provided in this Act.

第 9 條

Article 9

法院審查後，認為不應逮捕、拘禁者，應即裁定釋放；認為應予逮捕、拘禁者，以裁定駁回之，並將被逮捕、拘禁人解返原解交之機關。

If the court after review considers that the arrest or detention is unlawful, it shall promptly issue a ruling for the release of the arrestee or detainee. If, however, the court considers that the arrest or detention is lawful, it shall dismiss the petition by a ruling and return the arrestee or detainee to the original authority that delivered the arrestee or detainee.

前項釋放之裁定，不得聲明不服。

Release by a ruling under the preceding paragraph is final and not reviewable.

第 10 條

Article 10

聲請人或受裁定人不服駁回聲請之裁定者，得於裁定送達後十日內，以書狀敘明理由，抗告於直接上級法院。

If the petitioner, or the party that the ruling is against, does not accept the dismissal of the petition by a ruling, it may, within 10 days after the service of the ruling, file an interlocutory appeal with the immediate superior court, explaining the reason therefor in writing.

抗告法院認為抗告不合法或無理由者，應以裁定駁回之；認為抗告有理由者，應以裁定將原裁定撤銷，並即釋放被逮捕、拘禁人。

If the court of first interlocutory appeal considers that the interlocutory appeal is unlawful or has no merit, it shall dismiss the appeal by a ruling. If, however, the court considers that the interlocutory appeal has merit, it shall vacate the original ruling by another ruling, and shall immediately have the arrestee or detainee released.

前項裁定，不得再抗告。

No second interlocutory appeal may be filed against the ruling under the preceding paragraph.

第 11 條

Article 11

逮捕、拘禁機關之人員，違反第二條第一項之規定者，科新臺幣十萬元以下罰金。

Violation of Article 2, paragraph 1 by the personnel of the arresting or detaining authority shall be punished by a criminal fine of NT\$100,000 or less.

逮捕、拘禁機關之人員，違反第七條第一項之規定者，處三年以下有期徒刑、拘役或科或併科新臺幣十萬元以下罰金。

Violation of Article 7, paragraph 1 by the personnel of the arresting or detaining authority shall be punished by up to 3 years of imprisonment, or detention, or in lieu thereof or in addition thereto a criminal fine of NT\$100,000 or less.

第 12 條

Article 12

本法自公布後六個月施行。

This Act shall enter into force 6 months from the date of promulgation.