

Proposed Replacement for Idaho Code §66-326

66-326. PROCEDURES FOR EMERGENCY INVOLUNTARY DETENTION AND APPLICATION FOR COMMITMENT.

(1) INVOLUNTARY DETENTION AND APPLICATION FOR COMMITMENT BY A PEACE OFFICER OR QUALIFIED HOSPITAL PERSONNEL: A proposed patient may be taken into custody by a peace officer and placed in a facility, or the proposed patient may be detained at a hospital at which the proposed patient presented or was brought to receive medical or mental health care, if the peace officer or a physician medical staff member of such hospital or a physician's assistant or advanced practice registered nurse practicing in such hospital has reason to believe the proposed patient is mentally ill and likely to injure himself or others as defined in Idaho code 66-317 (10) or is gravely disabled due to mental illness as defined in Idaho code 66-317 (12). Under no circumstances shall the proposed patient be detained in a nonmedical unit used for the detention of individuals charged with or convicted of penal offenses unless the proposed patient has been charged with a penal offense. For purposes of this section, the term "peace officer" shall include those persons defined in Idaho Code 19-5101(d), and state of Idaho probation and parole officers exercising their authority to supervise probationers and parolees, and tribal officers as authorized by their respective tribal governments.

- (a) Whenever a person is taken into custody or detained under this section without court order, the evidence supporting the reasonable belief that the proposed patient is mentally ill and likely to injure himself or others or is gravely disabled due to mental illness must be submitted in a written application to a duly authorized court in the county in which the proposed patient is physically present within twenty-four (24) hours from the time the individual was placed in custody or detained. If the application is not submitted to the court within twenty-four (24) hours, the detention shall expire and the proposed patient shall be released from the facility. Any such application shall state the name and address of the person requesting the commitment of the proposed patient, the relationship of the person requesting the commitment to the proposed patient; state the name and last known address of the proposed patient; the name and address of the spouse, guardian, next of kin, or friend of the proposed patient, if available; whether the proposed patient can be cared for privately in the event commitment is not ordered; and a simple and precise statement of the facts

supporting the reasonable belief that the proposed patient is mentally ill and likely to injure himself or others or is gravely disabled due to mental illness.

- (b) If the court finds the proposed patient to be mentally ill and likely to injure himself or others or is gravely disabled due to mental illness, within twenty-four (24) hours of the submission of the application the court shall issue a temporary custody order requiring the proposed patient to be held in a facility, and requiring an examination of the proposed patient by a designated examiner within twenty-four (24) hours of the entry of this order. If the designated examiner does not conduct his examination within twenty-four (24) hours of the entry of this order, the proceedings shall be terminated and the proposed patient shall be released from the facility.
- (c) Any proceedings commenced under this subsection will continue under subsection (3).

(2) APPLICATION FOR COMMITMENT BY OTHER PERSONS: Any friend, relative, spouse, guardian ad litem, prosecuting attorney, jail staff where the proposed patient is being held, county probation officer, mental health professional, mental health crisis worker, or designated examiner may apply for commitment of a proposed patient by submitting a written application to the Department of Health and Welfare Division of Behavioral Health. Any such application shall state the name and address of the person requesting the commitment of the proposed patient, the relationship of the person requesting the commitment to the proposed patient, the name and last known address of the proposed patient; the name and address of the spouse, guardian, next of kin, or friend of the proposed patient, if available; whether the proposed patient can be cared for privately in the event commitment is not ordered; whether the proposed patient will voluntarily seek treatment; and a simple and precise statement of the facts supporting the reasonable belief that the proposed patient is mentally ill and likely to injure himself or others or is gravely disabled due to mental illness.

(a) Within twenty-four (24) hours of receipt of the application, the Department of Health and Welfare shall proceed with one of the following options:

(i) A designated examiner may attempt to contact the proposed patient in the community and evaluate the need for detention and designated examination. The designated examiner may request assistance from local law enforcement. If, within seven (7) days including weekends and holidays of the submission of the application for commitment, the designated examiner is unable to evaluate the proposed patient for the need for detention and designated examination, or such evaluation finds no need for detention and designated examination in that the person is not

mentally ill and is not likely to injure himself or others, nor is gravely disabled due to mental illness, the application shall expire. If the designated examiner is able to contact the proposed patient in the community and finds that the person is mentally ill and is either likely to injure himself or others or is gravely disabled due to mental illness, he shall, within twenty-four (24) hours of the evaluation, file an affidavit for detention, along with the original application for commitment, with the court requesting law enforcement detain and transport the proposed patient to the nearest facility.

(ii) If, upon reviewing the petition or gathering additional information from the petitioner, it is deemed unsafe to evaluate the proposed patient in the community, a designated examiner may file an affidavit for detention, along with the original application for commitment, with the court requesting law enforcement detain and transport the proposed patient to the nearest facility.

(b) If the court finds the affidavit for detention shows good cause for the proposed patient to be detained in that the proposed patient is mentally ill and either likely to injure himself or others or is gravely disabled due to mental illness, within twenty-four (24) hours of the filing of the affidavit the court shall issue an order authorizing any peace officer to detain the proposed patient and take him to the nearest facility. This order shall also include a temporary custody order requiring the proposed patient, once detained, be held in a facility and requiring an examination of the proposed patient by a designated examiner within thirty-six (36) hours of the detention of the proposed patient. If the designated examiner does not conduct his examination within thirty-six (36) hours of the detention of the proposed patient, the proceedings shall be terminated and the proposed patient shall be released from the facility.

(c) If the proposed patient is not detained within seven (7) days, including weekends and holidays, of the filing of the order for detention, the proceedings shall be terminated. Under no circumstances shall the proposed patient be detained in a nonmedical unit used for the detention of individuals charged with or convicted of penal offenses unless the proposed patient has been charged with a penal offense.

(3) DESIGNATED EXAMINATION AND SETTING OF HEARING: The designated examiner shall report his findings to the court within twenty-four (24) hours of the examination as to the mental condition of the proposed patient and his need for custody, care, or treatment by a facility. The report shall be in the form of a written certificate that shall be filed with the court. If no report is filed within twenty-four (24) hours of

the designated examiner's examination of the proposed patient, the proceedings shall be terminated and the proposed patient shall be released from the facility.

(a) If the designated examiner finds, in his examination under this subsection, that the person: (i) is mentally ill; (ii) is likely to injure himself or others or is gravely disabled due to mental illness; and (iii) lacks capacity to make informed decisions about treatment as defined in Idaho code 66-317 (7), the prosecuting attorney shall file, within thirty-six (36) hours of the examination of the person, a petition with the court requesting the proposed patient's continued detention pending commitment proceedings. If no petition is filed by the prosecuting attorney within thirty-six (36) hours of the initial designated examiner's examination of the person, the proceedings shall be terminated and the proposed patient shall be released from the facility.

(b) Upon the receipt of such a petition, the court shall appoint a time and place for a hearing and order the person's detention to await such hearing which shall be within five (5) days (including Saturdays, Sundays and legal holidays) of this detention order, and shall order a second designated examination to be conducted within seventy-two (72) hours of the filing of this order (inclusive of Saturdays, Sundays, and holidays). If the designated examiner does not conduct his examination within seventy-two (72) hours of the filing of this order (inclusive of Saturdays, Sundays, and holidays) the proceedings shall be terminated and the proposed patient shall be released from the facility. The hearing will take place in accordance with Idaho Code 66-329.

(c) The second designated examiner shall report his findings to the court within twenty-four (24) hours of the examination as to the mental condition of the proposed patient and his need for custody, care, or treatment by a facility. The report shall be in the form of a written certificate that shall be filed with the court. If no report is filed within twenty-four (24) hours of the designated examiner's examination of the proposed patient, the proceedings shall be terminated and the proposed patient shall be released from the facility.

(d) At least one of the designated examiners shall be a senior designated examiner as defined in Idaho code 66-317 (17). If neither designated examiner is a physician, the court shall order a physical examination of the proposed patient.

(e) The court may terminate the proceedings and dismiss the application without taking any further action in the event the report of either designated examiner is to the effect that the proposed patient is not mentally ill or, although mentally ill, is not likely to injure himself or others and is not gravely disabled due to mental illness. If the proceedings are terminated, the proposed patient shall be released from the facility immediately.

(4) If the application expires or the proceedings are terminated, qualified hospital personnel, as defined in subsection 1, may submit a new application for commitment provided that said hospital personnel re-evaluates the proposed patient and finds the person is currently mentally ill and likely to injure himself or others or is gravely disabled due to mental illness.

(5) Nothing in this section shall be construed to authorize the detention or involuntary admission to a hospital or other facility of an individual who:

(a) Has a neurological disorder, a neurocognitive disorder as defined in Idaho code 66-317 (13), a developmental disability as defined in Idaho code 66-402 (5), a physical disability, or any medical disorder that includes psychiatric symptomology or is primarily impaired by substance use, unless in addition to such condition, such person is mentally ill;

(b) Is a patient under treatment by spiritual means alone, through prayer, in accordance with the tenets and practices of a recognized church or religious denomination by a duly accredited practitioner thereof in such a way as to no longer present substantial risk to himself or others, and who asserts to any authority attempting to detain him that he is under such treatment and gives the name of the practitioner so treating him to such authority; or

(c) Can be cared for privately with the help of willing and able family or friends in such a way as to no longer present substantial risk to himself or others, provided that such person may be detained or involuntarily admitted if such person is mentally ill and presents a substantial risk of injury to himself or others if such care is not adequate.

(6) Any person held in custody under the provisions of this section shall have the same protection and rights that are guaranteed to a person already committed to the department director as provided in 66-346. Upon taking a person into custody, notice shall be given to the person's immediate relatives or guardian, if known, of the person's physical whereabouts and the reasons for detaining or taking the person into custody.

(7) Nothing in this section shall preclude a hospital from transferring a person who has been detained under this section to another facility within the State of Idaho that is willing to accept the transferred individual for purposes of observation, diagnosis, evaluation, care or treatment.

(8) All further proceedings shall be governed by Idaho Code Section 66-329.