

Proposed Revision of Idaho Code §66-329

TITLE 66
STATE CHARITABLE INSTITUTIONS
CHAPTER 3
HOSPITALIZATION OF MENTALLY ILL

66-329. COMMITMENT TO DEPARTMENT DIRECTOR UPON COURT ORDER – JUDICIAL PROCEDURE. ~~(1) Proceedings for the involuntary care and treatment of mentally ill persons by the department of health and welfare may be commenced by the filing of a written application with a court of competent jurisdiction by a friend, relative, spouse or guardian of the proposed patient, by a licensed physician, by a physician assistant or advanced practice registered nurse practicing in a hospital, by a prosecuting attorney or other public official of a municipality, county or of the state of Idaho, or by the director of any facility in which such patient may be.~~

~~(2) The application shall 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; whether the proposed patient can be cared for privately in the event commitment is not ordered; whether the proposed patient is, at the time of the application, a voluntary patient; whether the proposed patient has applied for release pursuant to section 66-320, Idaho Code; and a simple and precise statement of the facts showing that the proposed patient is mentally ill and either likely to injure himself or others or is gravely disabled due to mental illness.~~

~~(3) Any such application shall be accompanied by a certificate of a designated examiner stating that he has personally examined the proposed patient within the last fourteen (14) days and is of the opinion that the proposed patient is: (i) mentally ill; (ii) likely to injure himself or others or is gravely disabled due to mental illness; and (iii) lacks capacity to make informed decisions about treatment;~~
~~or a written statement by the applicant that the proposed patient has refused to submit to examination by a designated examiner.~~

~~(4) Upon receipt of an application for commitment, the court shall, within forty-eight (48) hours, appoint another designated examiner to make a personal examination of the proposed patient, or if the proposed patient has not been examined, the court shall appoint two (2) designated examiners to make individual personal examinations of the proposed patient and may order the proposed patient to submit to an immediate examination. If neither designated examiner is a physician, the court shall order a physical examination of the proposed patient. At least one (1) designated examiner shall be a senior designated examiner. The designated examiners shall report to the court their findings within the following seventy-two (72) hours as to the mental condition of the proposed patient and his need for custody, care, or treatment by a facility. The reports shall be in the form of written certificates that shall be filed with the court. The court may terminate the proceedings and dismiss the application without~~

~~taking any further action in the event the reports of the designated examiners are to the effect that the proposed patient is not mentally ill or, although mentally ill, is not likely to injure himself or others or is not gravely disabled due to mental illness. If the proceedings are terminated, the proposed patient shall be released immediately.~~

~~(5) If the designated examiner's certificate states a belief that the proposed patient is mentally ill and either likely to injure himself or others or is gravely disabled due to mental illness, the judge of such court shall issue an order authorizing any health officer, peace officer, or director of a facility to take the proposed patient to a facility in the community in which the proposed patient is residing or to the nearest facility to await the hearing, and for good cause may authorize treatment during such period subject to the provisions of section 66-346(a)(4), Idaho Code. 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.~~

~~(6) Upon receipt of such application and designated examiners' reports, the court shall appoint a time and place for a hearing not more than seven (7) days from the receipt of such designated examiners' reports and thereupon~~

(1) The court shall give written notice of such the time and place of such the hearing, together with a copy of the application, designated examiner's certificates, and notice of the proposed patient's right to be represented by an attorney or, if indigent, to be represented by a court-appointed attorney, to the applicant, to the proposed patient, to the proposed patient's spouse, guardian, next of kin, or friend, if known. With the consent of the proposed patient and his attorney, the hearing may be held immediately. Upon motion of the petitioner, or upon motion of the proposed patient and attorney, or on the court's own motion, and for good cause shown, the court may continue the hearing up to an additional seven (7) days during which time, for good cause shown, the court may authorize treatment.

~~(7)(2)~~ An opportunity to be represented by counsel shall be afforded to every proposed patient, and, if neither the proposed patient nor others provide counsel, the court shall appoint counsel in accordance with chapter 8, title 19, Idaho Code, no later than the time the application is received by the court.

~~(8) If the involuntary detention was commenced under this section,~~ (3) Whenever appropriate, the hearing shall be held in a manner and at a suitable place not likely to have a harmful effect on the proposed patient's physical or mental health. Venue for the hearing shall be in the county of residence of the proposed patient or in the county where the proposed patient was physically present when the application for commitment was submitted to said county. found immediately prior to commencement of such proceedings.

~~(9)(4)~~ In all proceedings under this section and section 66-326, any existing provision of the law prohibiting the disclosure of confidential communications between the designated examiner and proposed patient shall not apply and any designated examiner who shall

have examined the proposed patient shall be a competent witness to testify as to the proposed patient's condition.

~~(10)~~ (5) The proposed patient, the applicant, and any other persons to whom notice is required to be given shall be afforded an opportunity to appear at the hearing, to testify, and to present and cross-examine witnesses. The proposed patient may, after consulting with his attorney, waive his presence at court. The court may waive the presence of a proposed patient if the mental or physical state of the proposed patient is such that his presence at the hearing would be detrimental to the proposed patient's physical or mental health or would unduly disrupt the proceedings. A record of the proceedings shall be made as for other civil hearings. The hearing shall be conducted in as informal a manner as may be consistent with orderly procedure. The court shall receive all relevant and material evidence consistent with the rules of evidence.

~~(11)~~ (6) If, upon completion of the hearing and consideration of the record, and after consideration of reasonable alternatives including, but not limited to, holding the proceedings in abeyance for a period of up to thirty (30) days, the court finds by clear and convincing evidence that the proposed patient:

- (a) Is mentally ill; and
- (b) Is, because of such condition, likely to injure himself or others, or is gravely disabled due to mental illness;

the court shall order the proposed patient committed to the custody of the department director of health and welfare for observation, care, and treatment for an indeterminate period of time not to exceed one (1) year. The department director, through his dispositioner, shall determine within twenty-four (24) hours the least restrictive available facility or outpatient treatment, consistent with the needs of each patient committed under this section for observation, care, and treatment. If the court does not order the proposed patient committed to the custody of the director of health and welfare, the proposed patient shall be released from the facility.

~~(12)~~ (7) The commitment order constitutes a continuing authorization for the department of health and welfare, law enforcement, or director of a facility, upon request of the director of the outpatient facility, the physician, or the department director through his dispositioner, to transport a committed patient to designated outpatient treatment for the purpose of making reasonable efforts to obtain the committed patient's compliance with the terms and conditions of outpatient treatment. If the director of the outpatient facility, the treating physician, or the department director through his dispositioner determines any of the following:

- (a) The patient is failing to adhere to the terms and conditions of outpatient treatment or the patient refuses outpatient treatment after reasonable efforts at compliance have been made; or
- (b) Outpatient treatment is not effective after reasonable efforts have been made;

the department director through his dispositioner shall cause the committed patient to be transported by the department of health and welfare, law enforcement, or director of a facility to the least restrictive available facility for observation, care, and treatment

on an inpatient basis. Within forty-eight (48) hours of a committed patient's transfer from outpatient treatment to a facility for inpatient treatment, the department director through his dispositioner shall notify the court that originally ordered the commitment, the committed patient's attorney, and the committed patient's spouse, guardian, adult next of kin, or friend of the change in disposition and provide a detailed affidavit reciting the facts and circumstances supporting the transfer from outpatient treatment to inpatient treatment at a facility. The court shall conduct an ex parte review of the notice and affidavit within forty-eight (48) hours of filing and determine whether the change in disposition from outpatient treatment to inpatient treatment at a facility is supported by probable cause. In no event shall the calculation of forty-eight (48) hours provided for in this subsection include holidays formally recognized and observed by the state of Idaho, nor shall the calculation include weekends. If the court determines that probable cause exists, the department director through his dispositioner shall continue with care and treatment on an inpatient basis at the least restrictive available facility. Within twenty-four (24) hours of a finding of probable cause, the court shall issue an order to show cause why the patient does not meet the conditions in paragraph (a) or (b) of this subsection. The order shall be served on the committed patient, the committed patient's attorney and the committed patient's spouse, guardian, adult next of kin, or friend. The patient shall have fifteen (15) days to present evidence that the conditions in paragraph (a) or (b) of this subsection have not been met. In no event shall the calculation of twenty-four (24) hours provided for in this subsection include holidays formally recognized and observed by the state of Idaho, nor shall the calculation include weekends. If the court determines that a change in disposition from outpatient treatment to inpatient treatment does not meet the conditions in paragraph (a) or (b) of this subsection, the department director through his dispositioner will continue with outpatient treatment on the same or modified terms and conditions. Nothing provided in this section shall limit the authority of any law enforcement officer to detain a patient pursuant to the emergency authority conferred by section 66-326, Idaho Code.

~~(13)~~ (8) Nothing in this chapter or in any rule adopted pursuant thereto 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 section 66-402, Idaho Code, 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 who gives the name of a 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.

~~(14)~~ (9) The order of commitment shall state whether the proposed patient lacks capacity to make informed decisions about treatment, the name and address of the patient's attorney and the patient's spouse, guardian, adult next of kin, or friend.

~~(15)~~ (10) If the patient has no spouse or guardian and if the patient has property that may not be cared for pursuant to chapter 5, title 66, Idaho Code, or by the patient while confined at a facility, the court shall appoint a guardian ad litem for the purpose of preserving the patient's estate, pending further guardianship or conservatorship proceedings.

~~(16)~~ (11) The commitment shall continue until terminated and shall be unaffected by the patient's conditional release or change in disposition.