

Complete Markup of Idaho Code §§ 66-326, 66-329

TITLE 66
STATE CHARITABLE INSTITUTIONS
CHAPTER 3
HOSPITALIZATION OF MENTALLY ILL

66-326. ~~DETENTION WITHOUT HEARING. PROCEDURES FOR EMERGENCY INVOLUNTARY DETENTION AND APPLICATION FOR COMMITMENT. BY A PEACE OFFICER OR QUALIFIED HOSPITAL PERSONNEL:~~ (1) INVOLUNTARY DETENTION AND APPLICATION FOR COMMITMENT BY A PEACE OFFICER OR QUALIFIED HOSPITAL PERSONNEL: ~~No person shall be taken into custody or detained as an alleged emergency patient for observation, diagnosis, evaluation, care or treatment of mental illness unless and until the court has ordered such apprehension and custody under the provisions outlined in section 66-329, Idaho Code; provided, however, that a person~~ A proposed patient may be taken into custody by a peace officer and placed in a facility, or the ~~person~~ proposed patient may be detained at a hospital at which the ~~person~~ 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 ~~that the person~~ 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). ~~or the person's continued liberty poses an imminent danger to that person or others, as evidenced by a threat of substantial physical harm; provided,~~ 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 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 ~~claim of grave disability due to mental illness or imminent danger~~ 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 presented 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. The highlighted section below referenced/ adapted from current § 66-329 (2) 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.

~~(2) (b) If the court finds the individual proposed patient to be gravely disabled due to mental illness or imminently dangerous under subsection (1) of this section 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 person proposed patient to be held in a facility, and requiring an examination of the person proposed patient by a designated examiner within twenty-four (24) hours of the entry of the this order of the court. 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. 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.~~

(c) Any proceedings commenced under this subsection will continue under subsection (3).

The highlighted section below is adapted from current § 66-329 (1) and (2)

(2) APPLICATION FOR COMMITMENT BY OTHER PERSONS: Any friend, relative, spouse, guardian ad litem, licensed physician, physician assistant or advanced practice registered nurse, prosecuting attorney, or other public official of a municipality, county, the state of Idaho, or tribal government, 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. Nothing in this section prohibits a prosecuting attorney from directly filing a petition with the court.

(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 a 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 a 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 a 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: ~~Where an examination is required under subsection (2) of this section, The~~ designated examiner shall make report his findings ~~and report~~ 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.

(4) (a) If the designated examiner finds, in his examination under this subsection, that the person is: (i) mentally ill; ~~and either~~ (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 ~~twenty-four (24)~~ 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 ~~pursuant to the provisions of section 66-329, Idaho Code. 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 ~~his~~ the person's detention to await such hearing which shall be within five (5) days (including Saturdays, Sundays and legal holidays) of ~~the~~ 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 no petition is filed within twenty-four (24) hours of the designated examiner's examination of the person, the person shall be released from the facility. 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.

Highlighted below references current § 66-329 (13), revised § 66-329 (8)

(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.

~~(5)~~ (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, a good faith effort shall be made to provide notice shall be given to the person's immediate relatives or guardian, if known, to the person's legal guardian, parent, spouse, or adult next of kin of the person's physical whereabouts and the reasons for taking the person into custody.

~~(6)~~ (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.

TITLE 66
STATE CHARITABLE INSTITUTIONS
CHAPTER 3
HOSPITALIZATION OF MENTALLY ILL
66-329. COMMITMENT TO DEPARTMENT DIRECTOR UPON COURT ORDER –
JUDICIAL PROCEDURE.

Application for commitment process below revised and moved to § 66-326

~~(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~~ the time and place of ~~such the~~ 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.