

IN THE SENATE

SENATE BILL NO. 1121

BY JUDICIARY AND RULES COMMITTEE

AN ACT

RELATING TO HOSPITALIZATION OF THE MENTALLY ILL; AMENDING SECTION 66-329, IDAHO CODE, TO PROVIDE THAT CERTAIN PATIENTS MAY BE COMMITTED WHEN DETERMINED TO BE DANGEROUS AND MENTALLY ILL.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 66-329, Idaho Code, be, and the same is hereby amended to read as follows:

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's 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. A person may also be committed for involuntary care and treatment when a court of competent jurisdiction or a designated examiner has determined that the person is dangerous and mentally ill as defined in section 66-1305, Idaho Code.

(2) The application shall state the name and last known address of the proposed patient; the name and address of either 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; if 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 nei-

1 ther designated examiner is a physician, the court shall order a physical
2 examination of the proposed patient. At least one (1) designated examiner
3 shall be a psychiatrist, licensed physician or licensed psychologist. The
4 designated examiners shall report to the court their findings within the
5 following seventy-two (72) hours as to the mental condition of the proposed
6 patient and his need for custody, care, or treatment by a facility. The
7 reports shall be in the form of written certificates which shall be filed
8 with the court. The court may terminate the proceedings and dismiss the
9 application without taking any further action in the event the reports of
10 the designated examiners are to the effect that the proposed patient is not
11 mentally ill or, although mentally ill, is not likely to injure himself or
12 others or is not gravely disabled due to mental illness. If the proceedings
13 are terminated, the proposed patient shall be released immediately.

14 (5) If the designated examiner's certificate states a belief that the
15 proposed patient is mentally ill and either likely to injure himself or oth-
16 ers or is gravely disabled due to mental illness, the judge of such court
17 shall issue an order authorizing any health officer, peace officer, or di-
18 rector of a facility to take the proposed patient to a facility in the commu-
19 nity in which the proposed patient is residing or to the nearest facility to
20 await the hearing and for good cause may authorize treatment during such pe-
21 riod subject to the provisions of section 66-346(a)(4), Idaho Code. Under
22 no circumstances shall the proposed patient be detained in a nonmedical unit
23 used for the detention of individuals charged with or convicted of penal of-
24 fenses.

25 (6) Upon receipt of such application and designated examiners' reports
26 the court shall appoint a time and place for hearing not more than seven (7)
27 days from the receipt of such designated examiners' reports and thereupon
28 give written notice of such time and place of such hearing together with a
29 copy of the application, designated examiner's certificates, and notice of
30 the proposed patient's right to be represented by an attorney, or if indi-
31 gent, to be represented by a court-appointed attorney, to the applicant, to
32 the proposed patient, to the proposed patient's spouse, guardian, next of
33 kin or friend. With the consent of the proposed patient and his attorney, the
34 hearing may be held immediately. Upon motion of the proposed patient and at-
35 torney and for good cause shown, the court may continue the hearing up to an
36 additional fourteen (14) days during which time, for good cause shown, the
37 court may authorize treatment.

38 (7) An opportunity to be represented by counsel shall be afforded to ev-
39 ery proposed patient, and if neither the proposed patient nor others provide
40 counsel, the court shall appoint counsel in accordance with chapter 8, ti-
41 tle 19, Idaho Code, no later than the time the application is received by the
42 court.

43 (8) If the involuntary detention was commenced under this section, the
44 hearing shall be held at a facility, at the home of the proposed patient, or
45 at any other suitable place not likely to have a harmful effect on the pro-
46 posed patient's physical or mental health. Venue for the hearing shall be
47 in the county of residence of the proposed patient or in the county where the
48 proposed patient was found immediately prior to commencement of such pro-
49 ceedings.

1 (9) In all proceedings under this section, any existing provision of
2 the law prohibiting the disclosure of confidential communications between
3 the designated examiner and proposed patient shall not apply and any desig-
4 nated examiner who shall have examined the proposed patient shall be a compe-
5 tent witness to testify as to the proposed patient's condition.

6 (10) The proposed patient, the applicant, and any other persons to whom
7 notice is required to be given shall be afforded an opportunity to appear at
8 the hearing, to testify, and to present and cross-examine witnesses. The
9 proposed patient shall be required to be present at the hearing unless the
10 court determines that the mental or physical state of the proposed patient
11 is such that his presence at the hearing would be detrimental to the proposed
12 patient's health or would unduly disrupt the proceedings. A record of the
13 proceedings shall be made as for other civil hearings. The hearing shall be
14 conducted in as informal a manner as may be consistent with orderly proce-
15 dure. The court shall receive all relevant and material evidence consistent
16 with the rules of evidence.

17 (11) If, upon completion of the hearing and consideration of the record,
18 and after consideration of reasonable alternatives including, but not lim-
19 ited to, holding the proceedings in abeyance for a period of up to thirty (30)
20 days, the court finds by clear and convincing evidence that the proposed pa-
21 tient:

22 (a) Is mentally ill; and

23 (b) Is, because of such condition, likely to injure himself or others,
24 or is gravely disabled due to mental illness;

25 the court shall order the proposed patient committed to the custody of the
26 department director for observation, care and treatment for an indetermi-
27 nate period of time not to exceed one (1) year. The department director,
28 through his dispositioner, shall determine within twenty-four (24) hours
29 the least restrictive available facility or outpatient treatment, con-
30 sistent with the needs of each patient committed under this section for
31 observation, care, and treatment.

32 (12) The commitment order constitutes a continuing authorization for
33 the department of health and welfare, law enforcement, or director of a fa-
34 cility, upon request of the director of the outpatient facility, the physi-
35 cian, or the department director through his dispositioner, to transport a
36 committed patient to designated outpatient treatment for the purpose of mak-
37 ing reasonable efforts to obtain the committed patient's compliance with the
38 terms and conditions of outpatient treatment. If the director of the outpa-
39 tient facility, the treating physician, or the department director through
40 his dispositioner determines any of the following:

41 (a) The patient is failing to adhere to the terms and conditions of
42 outpatient treatment or the patient refuses outpatient treatment after
43 reasonable efforts at compliance have been made; or

44 (b) Outpatient treatment is not effective after reasonable efforts
45 have been made;

46 the department director through his dispositioner shall cause the commit-
47 ted patient to be transported by the department of health and welfare, law
48 enforcement, or director of a facility to the least restrictive available
49 facility for observation, care and treatment on an inpatient basis. Within
50 forty-eight (48) hours of a committed patient's transfer from outpatient

1 treatment to a facility for inpatient treatment, the department director
2 through his dispositioner shall notify the court that originally ordered the
3 commitment, the committed patient's attorney, and either the committed pa-
4 tient's spouse, guardian, adult next of kin or friend of the change in dispo-
5 sition and provide a detailed affidavit reciting the facts and circumstances
6 supporting the transfer from outpatient treatment to inpatient treatment
7 at a facility. The court shall conduct an ex parte review of the notice and
8 affidavit within forty-eight (48) hours of filing and determine whether the
9 change in disposition from outpatient treatment to inpatient treatment at a
10 facility is supported by probable cause. In no event shall the calculation
11 of forty-eight (48) hours provided for in this subsection include holidays
12 formally recognized and observed by the state of Idaho, nor shall the cal-
13 culation include weekends. If the court determines that probable cause
14 exists, the department director through his dispositioner shall continue
15 with care and treatment on an inpatient basis at the least restrictive avail-
16 able facility. Within twenty-four (24) hours of a finding of probable cause,
17 the court shall issue an order to show cause why the patient does not meet
18 the conditions in subsection (12) (a) or (12) (b) of this section. The order
19 shall be served on the committed patient, the committed patient's attorney
20 and either the committed patient's spouse, guardian, adult next of kin or
21 friend. The patient shall have fifteen (15) days to present evidence that
22 the conditions in subsection (12) (a) or (12) (b) of this section have not been
23 met. In no event shall the calculation of twenty-four (24) hours provided
24 for in this subsection include holidays formally recognized and observed
25 by the state of Idaho, nor shall the calculation include weekends. If the
26 court determines that a change in disposition from outpatient treatment to
27 inpatient treatment does not meet the conditions in subsection (12) (a) or
28 (12) (b) of this section, the department director through his dispositioner
29 will continue with outpatient treatment on the same or modified terms and
30 conditions. Nothing provided in this section shall limit the authority of
31 any law enforcement officer to detain a patient pursuant to the emergency
32 authority conferred by section 66-326, Idaho Code.

33 (13) Nothing in this chapter or in any rule adopted pursuant thereto
34 shall be construed to authorize the detention or involuntary admission to a
35 hospital or other facility of an individual who:

36 (a) Has epilepsy, a developmental disability, a physical disability,
37 an intellectual disability, is impaired by chronic alcoholism or drug
38 abuse, or aged, unless in addition to such condition, such person is
39 mentally ill;

40 (b) Is a patient under treatment by spiritual means alone, through
41 prayer, in accordance with the tenets and practices of a recognized
42 church or religious denomination by a duly accredited practitioner
43 thereof and who asserts to any authority attempting to detain him that
44 he is under such treatment and who gives the name of a practitioner so
45 treating him to such authority; or

46 (c) Can be properly cared for privately with the help of willing and
47 able family or friends, and provided, that such person may be detained
48 or involuntarily admitted if such person is mentally ill and presents a
49 substantial risk of injury to himself or others if allowed to remain at
50 liberty.

1 (14) The order of commitment shall state whether the proposed patient
2 lacks capacity to make informed decisions about treatment, the name and ad-
3 dress of the patient's attorney and either the patient's spouse, guardian,
4 adult next of kin, or friend.

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

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