

IN THE SENATE

SENATE BILL NO. 1037

BY JUDICIARY AND RULES COMMITTEE

AN ACT

1 RELATING TO HOSPITALIZATION OF THE MENTALLY ILL; AMENDING SECTION 66-329,
2 IDAHO CODE, TO REVISE A PROVISION REGARDING WHEN A COURT MAY CONTINUE A
3 HEARING.
4

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

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

8 66-329. COMMITMENT TO DEPARTMENT DIRECTOR UPON COURT ORDER -- JUDI-
9 CIAL PROCEDURE. (1) Proceedings for the involuntary care and treatment of
10 mentally ill persons by the department of health and welfare may be commenced
11 by the filing of a written application with a court of competent jurisdiction
12 by a friend, relative, spouse or guardian of the proposed patient, by a li-
13 censed physician, by a physician assistant or advanced practice registered
14 nurse practicing in a hospital, by a prosecuting attorney or other public of-
15 ficial of a municipality, county or of the state of Idaho, or by the director
16 of any facility in which such patient may be.

17 (2) The application shall state the name and last known address of the
18 proposed patient; the name and address of the spouse, guardian, next of kin,
19 or friend of the proposed patient; whether the proposed patient can be cared
20 for privately in the event commitment is not ordered; whether the proposed
21 patient is, at the time of the application, a voluntary patient; whether the
22 proposed patient has applied for release pursuant to section 66-320, Idaho
23 Code; and a simple and precise statement of the facts showing that the pro-
24 posed patient is mentally ill and either likely to injure himself or others
25 or is gravely disabled due to mental illness.

26 (3) Any such application shall be accompanied by a certificate of a des-
27 ignated examiner stating that he has personally examined the proposed pa-
28 tient within the last fourteen (14) days and is of the opinion that the pro-
29 posed patient is: (i) mentally ill; (ii) likely to injure himself or oth-
30 ers or is gravely disabled due to mental illness; and (iii) lacks capacity to
31 make informed decisions about treatment;
32 or a written statement by the applicant that the proposed patient has refused
33 to submit to examination by a designated examiner.

34 (4) Upon receipt of an application for commitment, the court shall,
35 within forty-eight (48) hours, appoint another designated examiner to make
36 a personal examination of the proposed patient, or if the proposed patient
37 has not been examined, the court shall appoint two (2) designated examiners
38 to make individual personal examinations of the proposed patient and may
39 order the proposed patient to submit to an immediate examination. If nei-
40 ther designated examiner is a physician, the court shall order a physical
41 examination of the proposed patient. At least one (1) designated examiner
42 shall be a psychiatrist, licensed physician or licensed psychologist. The

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

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

22 (6) Upon receipt of such application and designated examiners' re-
23 ports, the court shall appoint a time and place for a hearing not more than
24 seven (7) days from the receipt of such designated examiners' reports and
25 thereupon give written notice of such time and place of such hearing, to-
26 gether with a copy of the application, designated examiner's certificates,
27 and notice of the proposed patient's right to be represented by an attor-
28 ney or, if indigent, to be represented by a court-appointed attorney, to
29 the applicant, to the proposed patient, to the proposed patient's spouse,
30 guardian, next of kin, or friend. With the consent of the proposed patient
31 and his attorney, the hearing may be held immediately. Upon motion of the
32 petitioner, or upon motion of the proposed patient and attorney, and for
33 good cause shown, the court may continue the hearing up to an additional five
34 seven (~~5~~7) days during which time, for good cause shown, the court may autho-
35 rize treatment.

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

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

48 (9) In all proceedings under this section, any existing provision of
49 the law prohibiting the disclosure of confidential communications between
50 the designated examiner and proposed patient shall not apply and any desig-

1 nated examiner who shall have examined the proposed patient shall be a compe-
2 tent witness to testify as to the proposed patient's condition.

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

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

19 (a) Is mentally ill; and

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

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

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

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

41 (b) Outpatient treatment is not effective after reasonable efforts
42 have been made;

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

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

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

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

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

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

48 (14) The order of commitment shall state whether the proposed patient
49 lacks capacity to make informed decisions about treatment, the name and ad-

1 dress of the patient's attorney and the patient's spouse, guardian, adult
2 next of kin, or friend.

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

8 (16) The commitment shall continue until terminated and shall be unaf-
9 fected by the patient's conditional release or change in disposition.