

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 518

BY HEALTH AND WELFARE COMMITTEE

AN ACT

1 RELATING TO MENTAL ILLNESS; AMENDING SECTION 66-317, IDAHO CODE, TO REVISE  
2 A DEFINITION AND TO MAKE TECHNICAL CORRECTIONS; AND AMENDING SECTION  
3 66-329, IDAHO CODE, TO REVISE PROVISIONS REGARDING INVOLUNTARY ADMIS-  
4 SION OR DETENTION IN CERTAIN FACILITIES.  
5

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

7 SECTION 1. That Section 66-317, Idaho Code, be, and the same is hereby  
8 amended to read as follows:

9 66-317. DEFINITIONS. As used in this chapter, terms shall have the  
10 following meanings:

11 (1) "Department director" means the director of the state department of  
12 health and welfare.

13 (2) "Voluntary patient" means an individual admitted to a facility for  
14 evaluation pursuant to section 18-211 or 20-520, Idaho Code, or admitted to a  
15 facility for observation, diagnosis, evaluation, care or treatment pursuant  
16 to section 66-318, Idaho Code.

17 (3) "Involuntary patient" means an individual committed pursuant to  
18 section 18-212, 66-329 or 66-1201, Idaho Code, or committed pursuant to  
19 section 16-1619 or 20-520, Idaho Code, and admitted to a facility for the  
20 treatment of minors.

21 (4) "Licensed physician" means an individual licensed under the laws of  
22 this state to practice medicine or a medical officer of the government of the  
23 United States while in this state in the performance of his official duties.

24 (5) "Designated examiner" means a psychiatrist, psychologist, psychi-  
25 atric nurse, or social worker and such other mental health professionals as  
26 may be designated in accordance with rules promulgated pursuant to the pro-  
27 visions of chapter 52, title 67, Idaho Code, by the department of health and  
28 welfare. Any person designated by the department director will be specially  
29 qualified by training and experience in the diagnosis and treatment of men-  
30 tal or mentally related illnesses or conditions.

31 (6) "Dispositioner" means a designated examiner employed by or under  
32 contract with the department of health and welfare and designated by the de-  
33 partment director to determine the appropriate location for care and treat-  
34 ment of involuntary patients.

35 (7) "Facility" means any public or private hospital, sanatorium, in-  
36 stitution, mental health center or other organization designated in accor-  
37 dance with rules adopted by the board of health and welfare as equipped to  
38 initially hold, evaluate, rehabilitate or to provide care or treatment, or  
39 both, for the mentally ill.

40 (8) "Lacks capacity to make informed decisions about treatment" means  
41 the inability, by reason of mental illness, to achieve a rudimentary under-

1 standing after conscientious efforts at explanation of the purpose, nature,  
2 and possible significant risks and benefits of treatment.

3 (9) "Inpatient treatment facility" means a facility in which an indi-  
4 vidual receives medical and mental treatment for not less than a continuous  
5 twenty-four (24) hour period.

6 (10) "Supervised residential facility" means a facility, other than the  
7 individual's home, in which the individual lives and in which there lives, or  
8 are otherwise on duty during the times that the individual's presence is ex-  
9 pected, persons who are employed to supervise, direct, treat or monitor the  
10 individual.

11 (11) "Likely to injure himself or others" means either:

12 (a) A substantial risk that physical harm will be inflicted by the pro-  
13 posed patient upon his own person, as evidenced by threats or attempts  
14 to commit suicide or inflict physical harm on himself; or

15 (b) A substantial risk that physical harm will be inflicted by the pro-  
16 posed patient upon another as evidenced by behavior which has caused  
17 such harm or which places another person or persons in reasonable fear  
18 of sustaining such harm; or

19 (c) The proposed patient lacks insight into his need for treatment and  
20 is unable or unwilling to comply with treatment and, based on his psy-  
21 chiatric history, clinical observation or other clinical evidence, if  
22 he does not receive and comply with treatment, there is a substantial  
23 risk he will continue to physically, emotionally or mentally deterio-  
24 rate to the point that the person will, in the reasonably near future,  
25 inflict physical harm on himself or another person.

26 (12) "Mentally ill" means a person, who, as a result of a substantial  
27 disorder of thought, mood, perception, orientation, or memory, including  
28 dementia, which grossly impairs judgment, behavior, capacity to recognize  
29 and adapt to reality, requires care and treatment at a facility or through  
30 outpatient treatment.

31 (13) "Gravely disabled" means a person who, as the result of mental ill-  
32 ness, is:

33 (a) In danger of serious physical harm due to the person's inability to  
34 provide for any of his own basic personal needs, such as nourishment, or  
35 essential clothing, medical care, shelter or safety; or

36 (b) Lacking insight into his need for treatment and is unable or un-  
37 willing to comply with treatment and, based on his psychiatric history,  
38 clinical observation or other clinical evidence, if he does not receive  
39 and comply with treatment, there is a substantial risk he will continue  
40 to physically, emotionally or mentally deteriorate to the point that  
41 the person will, in the reasonably near future, be in danger of serious  
42 physical harm due to the person's inability to provide for any of his own  
43 basic personal needs such as nourishment, essential clothing, medical  
44 care, shelter or safety.

45 (14) "Outpatient treatment" means mental health treatment, not involv-  
46 ing the continuous supervision of a person in an inpatient setting, that is  
47 reasonably designed to alleviate or to reduce a person's mental illness or to  
48 maintain or prevent deterioration of the person's physical, mental or emo-  
49 tional functioning. Mental health services or treatment may include, but  
50 need not be limited to, taking prescribed medication, reporting to a facil-

1 ity to permit monitoring of the person's condition, or participating in in-  
2 dividual or group therapy.

3 (15) "Protection and advocacy system" means the agency designated by  
4 the governor as the state protection and advocacy system pursuant to 42  
5 U.S.C. section 15043 and 42 U.S.C. sections 10801 et seq.

6 (16) "Holding proceedings in abeyance" means an alternative to judicial  
7 commitment based upon an agreement entered into by all parties, including  
8 the proposed patient, and agreed to by the court, providing for voluntary  
9 conditions of treatment, which holds in a state of suspension or inactivity  
10 the petition for involuntary commitment.

11 SECTION 2. That Section 66-329, Idaho Code, be, and the same is hereby  
12 amended to read as follows:

13 66-329. COMMITMENT TO DEPARTMENT DIRECTOR UPON COURT ORDER -- JUDI-  
14 CIAL PROCEDURE. (1) Proceedings for the involuntary care and treatment of  
15 mentally ill persons by the department of health and welfare may be commenced  
16 by the filing of a written application with a court of competent jurisdic-  
17 tion by a friend, relative, spouse or guardian of the proposed patient, by a  
18 licensed physician, by a physician's assistant or advanced practice regis-  
19 tered nurse practicing in a hospital, by a prosecuting attorney or other pub-  
20 lic official of a municipality, county or of the state of Idaho, or by the di-  
21 rector of any facility in which such patient may be.

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

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

39 (4) Upon receipt of an application for commitment, the court shall,  
40 within forty-eight (48) hours, appoint another designated examiner to make  
41 a personal examination of the proposed patient or if the proposed patient  
42 has not been examined, the court shall appoint two (2) designated examiners  
43 to make individual personal examinations of the proposed patient and may  
44 order the proposed patient to submit to an immediate examination. If nei-  
45 ther designated examiner is a physician, the court shall order a physical  
46 examination of the proposed patient. At least one (1) designated examiner  
47 shall be a psychiatrist, licensed physician or licensed psychologist. The  
48 designated examiners shall report to the court their findings within the  
49 following seventy-two (72) hours as to the mental condition of the proposed

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

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

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

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

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

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

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

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

17 (a) Is mentally ill; and

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

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

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

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

39 (b) Outpatient treatment is not effective after reasonable efforts  
40 have been made;

41 the department director through his dispositioner shall cause the commit-  
42 ted patient to be transported by the department of health and welfare, law  
43 enforcement, or director of a facility to the least restrictive available  
44 facility for observation, care and treatment on an inpatient basis. Within  
45 forty-eight (48) hours of a committed patient's transfer from outpatient  
46 treatment to a facility for inpatient treatment, the department director  
47 through his dispositioner shall notify the court that originally ordered the  
48 commitment, the committed patient's attorney, and either the committed pa-  
49 tient's spouse, guardian, adult next of kin or friend of the change in dispo-  
50 sition and provide a detailed affidavit reciting the facts and circumstances

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

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

31 (a) Has epilepsy, a developmental disability, a physical disability,  
32 an intellectual disability, or is impaired by chronic alcoholism or  
33 drug abuse, ~~or aged,~~ unless in addition to such condition, such person  
34 is mentally ill and is a danger to themselves or others;

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

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

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

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

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