

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 189

BY HEALTH AND WELFARE COMMITTEE

AN ACT

RELATING TO HOSPITALIZATION OF THE MENTALLY ILL; AMENDING SECTION 16-2411, IDAHO CODE, TO PROVIDE THAT A MINOR WHO IS SUFFERING FROM A SERIOUS EMOTIONAL DISTURBANCE AND POSES A DANGER TO HIMSELF OR OTHERS MAY BE TEMPORARILY DETAINED BY A HEALTH CARE PROFESSIONAL WITHOUT A HEARING AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 66-326, IDAHO CODE, TO PROVIDE THAT HEALTH CARE PROFESSIONALS MAY TEMPORARILY DETAIN A MENTALLY ILL PATIENT IN AN EMERGENCY WITHOUT A HEARING; AND AMENDING SECTION 66-329, IDAHO CODE, TO PROVIDE THAT CERTAIN HEALTH CARE PROFESSIONALS MAY COMMENCE PROCEEDINGS FOR THE INVOLUNTARY CARE AND TREATMENT OF MENTALLY ILL PERSONS BY THE DEPARTMENT OF HEALTH AND WELFARE AND TO MAKE A TECHNICAL CORRECTION.

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

SECTION 1. That Section 16-2411, Idaho Code, be, and the same is hereby amended to read as follows:

16-2411. EMERGENCY MENTAL HEALTH RESPONSE AND EVALUATION -- TEMPORARY DETENTION BY A PEACE OFFICER OR HEALTH CARE PROFESSIONAL. (1) A peace officer may take a child into protective custody and immediately transport the child to a treatment facility for emergency mental health evaluation in the absence of a court order if and only if the officer determines that an emergency situation exists as defined in this chapter, and the officer has probable cause to believe, based on personal observation and investigation, representation of the child's parents or the recommendation of a mental health professional, that the child is suffering from serious emotional disturbance as a result of which he is likely to cause harm to himself or others or is manifestly unable to preserve his health or safety with the supports and assistance available to him and that immediate detention and treatment is necessary to prevent harm to the child or others.

(2) A physician, physician's assistant or advanced practice registered nurse practicing in a hospital may detain a child if such person determines that an emergency situation exists as defined in this chapter, and such person believes that the child is suffering from a serious emotional disturbance as a result of which he is likely to cause harm to himself or others or is manifestly unable to preserve his health or safety with the supports and assistance available to him and that immediate detention and treatment is necessary to prevent harm to the child or others. If the hospital does not have an appropriate facility to provide emergency mental health care, it may cause the child to be transported to an appropriate treatment facility. The health care professional shall notify the parent or legal guardian, if known, as soon as possible and if the parent or legal guardian cannot be contacted, cause a report to be filed as soon as possible with the Idaho department of health and welfare or an appropriate law enforcement agency.

1 (3) If a child has been taken into protective custody by a peace of-
 2 ficer under the provisions of this section, tThe officer shall immediately
 3 transport any the child taken into protective custody under this section,
 4 to a treatment facility or mental health program, such as a regional mental
 5 health center, a mobile crisis intervention program, or a therapeutic foster
 6 care facility, provided such center's program or facility has been approved
 7 by the regional office of the department for that purpose. The department
 8 shall make a list of approved facilities available to law enforcement agen-
 9 cies.

10 (34) Upon taking the child into protective custody or detaining the
 11 child pursuant to this section, the officer or health care professional
 12 shall take reasonable precautions to safeguard and preserve the personal
 13 property of the person unless a parent or guardian or responsible relative is
 14 able to do so. Upon presenting a child to a treatment facility, the officer
 15 shall inform the staff in writing of the facts that caused ~~him~~ the child to
 16 be detained the person, and shall specifically state whether the person is
 17 otherwise subject to being held for juvenile or criminal offenses.

18 (45) If the child who is being detained is not released to the child's
 19 parent, guardian or custodian, the law enforcement agency shall contact the
 20 child's parent, guardian or custodian as soon as possible, and in no case
 21 later than twenty-four (24) hours, and shall notify the child's parent,
 22 guardian or custodian of his status, location and the reasons for the deten-
 23 tion of the child. If the parents cannot be located or contacted, efforts to
 24 comply with this section and the reasons for failure to make contact shall be
 25 documented in the child's record.

26 SECTION 2. That Section 66-326, Idaho Code, be, and the same is hereby
 27 amended to read as follows:

28 66-326. DETENTION WITHOUT HEARING. (1) No person shall be taken into
 29 custody or detained as an alleged emergency patient for observation, diag-
 30 nosis, evaluation, care or treatment of mental illness unless and until the
 31 court has ordered such apprehension and custody under the provisions out-
 32 lined in section 66-329, Idaho Code; provided, however, that a person may be
 33 taken into custody by a peace officer and placed in a facility, or the per-
 34 son may be detained at a hospital at which the person presented or was brought
 35 to receive medical or mental health care, if the peace officer ~~or a physician~~
 36 ~~medical staff member of such hospital,~~ a licensed physician, physician's as-
 37 istant or advanced practice registered nurse practicing in a hospital has
 38 reason to believe that the person is gravely disabled due to mental illness
 39 or the person's continued liberty poses an imminent danger to that person or
 40 others, as evidenced by a threat of substantial physical harm; provided, un-
 41 der no circumstances shall the proposed patient be detained in a nonmedical
 42 unit used for the detention of individuals charged with or convicted of penal
 43 offenses. For purposes of this section, the term "peace officer" shall in-
 44 clude state probation and parole officers exercising their authority to su-
 45 perwise probationers and parolees. Whenever a person is taken into custody
 46 or detained under this section without court order, the evidence supporting
 47 the claim of grave disability due to mental illness or imminent danger must
 48 be presented to a duly authorized court within twenty-four (24) hours from
 49 the time the individual was placed in custody or detained.

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

(3) Where an examination is required under subsection (2) of this section, the designated examiner shall make his findings and report to the court within twenty-four (24) hours of the examination.

(4) If the designated examiner finds, in his examination under this section, that the person is mentally ill, and either is likely to injure himself or others or is gravely disabled due to mental illness, the prosecuting attorney shall file, within twenty-four (24) hours of the examination of the person, a petition with the court requesting the patient's detention pending commitment proceedings pursuant to the provisions of section 66-329, Idaho Code. Upon the receipt of such a petition, the court shall order his detention to await hearing which shall be within five (5) days (including Saturdays, Sundays and legal holidays) of the detention order. 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.

(5) Any person held in custody under the provisions of this section shall have the same protection and rights which are guaranteed to a person already committed to the department director. Upon taking a person into custody, notice shall be given to the person's immediate relatives of the person's physical whereabouts and the reasons for detaining or taking the person into custody.

(6) Nothing in this section shall preclude a hospital from transferring a person who has been detained under this section to another facility that is willing to accept the transferred individual for purposes of observation, diagnosis, evaluation, care or treatment.

SECTION 3. 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, or by a licensed physician, physician's assistant or advanced practice registered nurse practicing in a hospital, prosecuting attorney, or other public official of a municipality, county or of the state of Idaho, or 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 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

1 Code; and a simple and precise statement of the facts showing that the pro-
2 posed patient is mentally ill and either likely to injure himself or others
3 or is gravely disabled due to mental illness.

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

12 (4) Upon receipt of an application for commitment, the court shall,
13 within forty-eight (48) hours, appoint another designated examiner to make
14 a personal examination of the proposed patient or if the proposed patient
15 has not been examined, the court shall appoint two (2) designated examiners
16 to make individual personal examinations of the proposed patient and may
17 order the proposed patient to submit to an immediate examination. If nei-
18 ther designated examiner is a physician, the court shall order a physical
19 examination of the proposed patient. At least one (1) designated examiner
20 shall be a psychiatrist, licensed physician or licensed psychologist. The
21 designated examiners shall report to the court their findings within the
22 following seventy-two (72) hours as to the mental condition of the proposed
23 patient and his need for custody, care, or treatment by a facility. The
24 reports shall be in the form of written certificates which shall be filed
25 with the court. The court may terminate the proceedings and dismiss the
26 application without taking any further action in the event the reports of
27 the designated examiners are to the effect that the proposed patient is not
28 mentally ill or, although mentally ill, is not likely to injure himself or
29 others or is not gravely disabled due to mental illness. If the proceedings
30 are terminated, the proposed patient shall be released immediately.

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

42 (6) Upon receipt of such application and designated examiners' reports
43 the court shall appoint a time and place for hearing not more than seven (7)
44 days from the receipt of such designated examiners' reports and thereupon
45 give written notice of such time and place of such hearing together with a
46 copy of the application, designated examiner's certificates, and notice of
47 the proposed patient's right to be represented by an attorney, or if indi-
48 gent, to be represented by a court-appointed attorney, to the applicant, to
49 the proposed patient, to the proposed patient's spouse, guardian, next of
50 kin or friend. With the consent of the proposed patient and his attorney, the

1 hearing may be held immediately. Upon motion of the proposed patient and at-
2 torney and for good cause shown, the court may continue the hearing up to an
3 additional fourteen (14) days during which time, for good cause shown, the
4 court may authorize treatment.

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

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

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

22 (10) The proposed patient, the applicant, and any other persons to whom
23 notice is required to be given shall be afforded an opportunity to appear at
24 the hearing, to testify, and to present and cross-examine witnesses. The
25 proposed patient shall be required to be present at the hearing unless the
26 court determines that the mental or physical state of the proposed patient
27 is such that his presence at the hearing would be detrimental to the proposed
28 patient's health or would unduly disrupt the proceedings. A record of the
29 proceedings shall be made as for other civil hearings. The hearing shall be
30 conducted in as informal a manner as may be consistent with orderly proce-
31 dure. The court shall receive all relevant and material evidence consistent
32 with the rules of evidence.

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

38 (a) Is mentally ill; and

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

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

48 (12) The commitment order constitutes a continuing authorization for
49 the department of health and welfare, law enforcement, or director of a fa-
50 cility, upon request of the director of the outpatient facility, the physi-

1 cian, or the department director through his dispositioner, to transport a
2 committed patient to designated outpatient treatment for the purpose of mak-
3 ing reasonable efforts to obtain the committed patient's compliance with the
4 terms and conditions of outpatient treatment. If the director of the outpa-
5 tient facility, the treating physician, or the department director through
6 his dispositioner determines any of the following:

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

10 (b) Outpatient treatment is not effective after reasonable efforts
11 have been made;

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

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

4 (a) Has epilepsy, a developmental disability, a physical disability,
5 an intellectual disability, is impaired by chronic alcoholism or drug
6 abuse, or aged, unless in addition to such condition, such person is
7 mentally ill;

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

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

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

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

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