

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 291

BY HEALTH AND WELFARE COMMITTEE

AN ACT

1 RELATING TO HOSPITALIZATION OF THE MENTALLY ILL; AMENDING SECTION 16-2411,  
2 IDAHO CODE, TO PROVIDE THAT A MINOR WHO IS SUFFERING FROM A SERIOUS  
3 EMOTIONAL DISTURBANCE AND POSES A DANGER TO HIMSELF OR OTHERS MAY BE  
4 TEMPORARILY DETAINED BY A HEALTH CARE PROFESSIONAL WITHOUT A HEARING,  
5 TO DEFINE A TERM AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION  
6 66-326, IDAHO CODE, TO PROVIDE THAT CERTAIN HEALTH CARE PROFESSIONALS  
7 MAY TEMPORARILY DETAIN A MENTALLY ILL PATIENT IN AN EMERGENCY WITHOUT  
8 A HEARING; AND AMENDING SECTION 66-329, IDAHO CODE, TO PROVIDE THAT  
9 CERTAIN HEALTH CARE PROFESSIONALS MAY COMMENCE PROCEEDINGS FOR THE IN-  
10 VOLUNTARY CARE AND TREATMENT OF MENTALLY ILL PERSONS BY THE DEPARTMENT  
11 OF HEALTH AND WELFARE AND TO MAKE A TECHNICAL CORRECTION.  
12

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

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

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

29 (2) For purposes of this section, "health care professional" means a  
30 physician, physician's assistant or advanced practice registered nurse, any  
31 one (1) of whom then is practicing in a hospital. A health care professional  
32 may detain a child if such person determines that an emergency situation ex-  
33 ists as defined in this chapter, and such person has probable cause to be-  
34 lieve that the child is suffering from a serious emotional disturbance as a  
35 result of which he is likely to cause harm to himself or others or is mani-  
36 festly unable to preserve his health or safety with the supports and assis-  
37 tance available to him and that immediate detention and treatment is neces-  
38 sary to prevent harm to the child or others. If the hospital does not have an  
39 appropriate facility to provide emergency mental health care, it may cause  
40 the child to be transported to an appropriate treatment facility. The health  
41 care professional shall notify the parent or legal guardian, if known, as  
42 soon as possible and shall document in the patient's chart the efforts to

1 contact the parent or legal guardian. If the parent or legal guardian cannot  
 2 be located or contacted, the health care professional shall cause a report  
 3 to be filed as soon as possible and in no case later than twenty-four (24)  
 4 hours with the Idaho department of health and welfare or an appropriate law  
 5 enforcement agency. The child may not be detained against the parent or le-  
 6 gal guardian's explicit direction unless the child is taken into protective  
 7 custody pursuant to subsection (1) of this section, except that the child may  
 8 be detained for a reasonable period of time necessary for a peace officer to  
 9 be summoned to the hospital to make a determination under subsection (1) of  
 10 this section.

11 (3) If a child has been taken into protective custody by a peace of-  
 12 ficer under the provisions of this section, tThe officer shall immediately  
 13 transport any the child taken into protective custody under this section,  
 14 to a treatment facility or mental health program, such as a regional mental  
 15 health center, a mobile crisis intervention program, or a therapeutic foster  
 16 care facility, provided such center's program or facility has been approved  
 17 by the regional office of the department for that purpose. The department  
 18 shall make a list of approved facilities available to law enforcement agen-  
 19 cies.

20 (34) Upon taking the child into protective custody or detaining the  
 21 child pursuant to this section, the officer or health care professional  
 22 shall take reasonable precautions to safeguard and preserve the personal  
 23 property of the ~~person~~ child unless a parent or guardian or responsible rel-  
 24 ative is able to do so. Upon presenting a child to a treatment facility, the  
 25 officer shall inform the staff in writing of the facts that caused him to de-  
 26 tain the ~~person,~~ child and shall specifically state whether the ~~person~~ child  
 27 is otherwise subject to being held for juvenile or criminal offenses.

28 (45) If the child who is being detained by a peace officer is not re-  
 29 leased to the child's parent, guardian or custodian, the law enforcement  
 30 agency shall contact the child's parent, guardian or custodian as soon as  
 31 possible, and in no case later than twenty-four (24) hours, and shall notify  
 32 the child's parent, guardian or custodian of his status, location and the  
 33 reasons for the detention of the child. If the parents cannot be located or  
 34 contacted, efforts to comply with this section and the reasons for failure to  
 35 make contact shall be documented in the child's record.

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

38 66-326. DETENTION WITHOUT HEARING. (1) No person shall be taken into  
 39 custody or detained as an alleged emergency patient for observation, diag-  
 40 nosis, evaluation, care or treatment of mental illness unless and until the  
 41 court has ordered such apprehension and custody under the provisions out-  
 42 lined in section 66-329, Idaho Code; provided, however, that a person may be  
 43 taken into custody by a peace officer and placed in a facility, or the per-  
 44 son may be detained at a hospital at which the person presented or was brought  
 45 to receive medical or mental health care, if the peace officer or a physician  
 46 medical staff member of such hospital or a physician's assistant or advanced  
 47 practice registered nurse practicing in such hospital has reason to believe  
 48 that the person is gravely disabled due to mental illness or the person's  
 49 continued liberty poses an imminent danger to that person or others, as ev-

1 idenced by a threat of substantial physical harm; provided, under no circum-  
2 stances shall the proposed patient be detained in a nonmedical unit used for  
3 the detention of individuals charged with or convicted of penal offenses.  
4 For purposes of this section, the term "peace officer" shall include state  
5 probation and parole officers exercising their authority to supervise pro-  
6 bationers and parolees. Whenever a person is taken into custody or detained  
7 under this section without court order, the evidence supporting the claim of  
8 grave disability due to mental illness or imminent danger must be presented  
9 to a duly authorized court within twenty-four (24) hours from the time the  
10 individual was placed in custody or detained.

11 (2) If the court finds the individual to be gravely disabled due to men-  
12 tal illness or imminently dangerous under subsection (1) of this section,  
13 the court shall issue a temporary custody order requiring the person to be  
14 held in a facility, and requiring an examination of the person by a desig-  
15 nated examiner within twenty-four (24) hours of the entry of the order of the  
16 court. Under no circumstances shall the proposed patient be detained in a  
17 nonmedical unit used for the detention of individuals charged with or con-  
18 victed of penal offenses.

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

22 (4) If the designated examiner finds, in his examination under this  
23 section, that the person is mentally ill, and either is likely to injure him-  
24 self or others or is gravely disabled due to mental illness, the prosecuting  
25 attorney shall file, within twenty-four (24) hours of the examination of the  
26 person, a petition with the court requesting the patient's detention pend-  
27 ing commitment proceedings pursuant to the provisions of section 66-329,  
28 Idaho Code. Upon the receipt of such a petition, the court shall order his  
29 detention to await hearing which shall be within five (5) days (including  
30 Saturdays, Sundays and legal holidays) of the detention order. If no pe-  
31 tition is filed within twenty-four (24) hours of the designated examiner's  
32 examination of the person, the person shall be released from the facility.

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

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

43 SECTION 3. That Section 66-329, Idaho Code, be, and the same is hereby  
44 amended to read as follows:

45 66-329. COMMITMENT TO DEPARTMENT DIRECTOR UPON COURT ORDER -- JUDI-  
46 CIAL PROCEDURE. (1) Proceedings for the involuntary care and treatment of  
47 mentally ill persons by the department of health and welfare may be commenced  
48 by the filing of a written application with a court of competent jurisdic-  
49 tion by a friend, relative, spouse or guardian of the proposed patient, ~~or~~ by

1 a licensed physician, by a physician's assistant or advanced practice reg-  
2 istered nurse practicing in a hospital, by a prosecuting attorney, or other  
3 public official of a municipality, county or of the state of Idaho, or by the  
4 director of any facility in which such patient may be.

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

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

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

41 (5) If the designated examiner's certificate states a belief that the  
42 proposed patient is mentally ill and either likely to injure himself or oth-  
43 ers or is gravely disabled due to mental illness, the judge of such court  
44 shall issue an order authorizing any health officer, peace officer, or di-  
45 rector of a facility to take the proposed patient to a facility in the commu-  
46 nity in which the proposed patient is residing or to the nearest facility to  
47 await the hearing and for good cause may authorize treatment during such pe-  
48 riod subject to the provisions of section 66-346(a)(4), Idaho Code. Under  
49 no circumstances shall the proposed patient be detained in a nonmedical unit

1 used for the detention of individuals charged with or convicted of penal of-  
2 fenses.

3 (6) Upon receipt of such application and designated examiners' reports  
4 the court shall appoint a time and place for hearing not more than seven (7)  
5 days from the receipt of such designated examiners' reports and thereupon  
6 give written notice of such time and place of such hearing together with a  
7 copy of the application, designated examiner's certificates, and notice of  
8 the proposed patient's right to be represented by an attorney, or if indi-  
9 gent, to be represented by a court-appointed attorney, to the applicant, to  
10 the proposed patient, to the proposed patient's spouse, guardian, next of  
11 kin or friend. With the consent of the proposed patient and his attorney, the  
12 hearing may be held immediately. Upon motion of the proposed patient and at-  
13 torney and for good cause shown, the court may continue the hearing up to an  
14 additional fourteen (14) days during which time, for good cause shown, the  
15 court may authorize treatment.

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

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

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

33 (10) The proposed patient, the applicant, and any other persons to whom  
34 notice is required to be given shall be afforded an opportunity to appear at  
35 the hearing, to testify, and to present and cross-examine witnesses. The  
36 proposed patient shall be required to be present at the hearing unless the  
37 court determines that the mental or physical state of the proposed patient  
38 is such that his presence at the hearing would be detrimental to the proposed  
39 patient's health or would unduly disrupt the proceedings. A record of the  
40 proceedings shall be made as for other civil hearings. The hearing shall be  
41 conducted in as informal a manner as may be consistent with orderly proce-  
42 dure. The court shall receive all relevant and material evidence consistent  
43 with the rules of evidence.

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

49 (a) Is mentally ill; and

1 (b) Is, because of such condition, likely to injure himself or others,  
2 or is gravely disabled due to mental illness;  
3 the court shall order the proposed patient committed to the custody of the  
4 department director for observation, care and treatment for an indetermi-  
5 nate period of time not to exceed one (1) year. The department director,  
6 through his dispositioner, shall determine within twenty-four (24) hours  
7 the least restrictive available facility or outpatient treatment, con-  
8 sistent with the needs of each patient committed under this section for  
9 observation, care, and treatment.

10 (12) The commitment order constitutes a continuing authorization for  
11 the department of health and welfare, law enforcement, or director of a fa-  
12 cility, upon request of the director of the outpatient facility, the physi-  
13 cian, or the department director through his dispositioner, to transport a  
14 committed patient to designated outpatient treatment for the purpose of mak-  
15 ing reasonable efforts to obtain the committed patient's compliance with the  
16 terms and conditions of outpatient treatment. If the director of the outpa-  
17 tient facility, the treating physician, or the department director through  
18 his dispositioner determines any of the following:

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

22 (b) Outpatient treatment is not effective after reasonable efforts  
23 have been made;

24 the department director through his dispositioner shall cause the commit-  
25 ted patient to be transported by the department of health and welfare, law  
26 enforcement, or director of a facility to the least restrictive available  
27 facility for observation, care and treatment on an inpatient basis. Within  
28 forty-eight (48) hours of a committed patient's transfer from outpatient  
29 treatment to a facility for inpatient treatment, the department director  
30 through his dispositioner shall notify the court that originally ordered the  
31 commitment, the committed patient's attorney, and either the committed pa-  
32 tient's spouse, guardian, adult next of kin or friend of the change in dispo-  
33 sition and provide a detailed affidavit reciting the facts and circumstances  
34 supporting the transfer from outpatient treatment to inpatient treatment  
35 at a facility. The court shall conduct an ex parte review of the notice and  
36 affidavit within forty-eight (48) hours of filing and determine whether the  
37 change in disposition from outpatient treatment to inpatient treatment at a  
38 facility is supported by probable cause. In no event shall the calculation  
39 of forty-eight (48) hours provided for in this subsection include holidays  
40 formally recognized and observed by the state of Idaho, nor shall the cal-  
41 culation include weekends. If the court determines that probable cause  
42 exists, the department director through his dispositioner shall continue  
43 with care and treatment on an inpatient basis at the least restrictive avail-  
44 able facility. Within twenty-four (24) hours of a finding of probable cause,  
45 the court shall issue an order to show cause why the patient does not meet  
46 the conditions in subsection (12) (a) or (12) (b) of this section. The order  
47 shall be served on the committed patient, the committed patient's attorney  
48 and either the committed patient's spouse, guardian, adult next of kin or  
49 friend. The patient shall have fifteen (15) days to present evidence that  
50 the conditions in subsection (12) (a) or (12) (b) of this section have not been

1 met. In no event shall the calculation of twenty-four (24) hours provided  
2 for in this subsection include holidays formally recognized and observed  
3 by the state of Idaho, nor shall the calculation include weekends. If the  
4 court determines that a change in disposition from outpatient treatment to  
5 inpatient treatment does not meet the conditions in subsection (12) (a) or  
6 (12) (b) of this section, the department director through his dispositioner  
7 will continue with outpatient treatment on the same or modified terms and  
8 conditions. Nothing provided in this section shall limit the authority of  
9 any law enforcement officer to detain a patient pursuant to the emergency  
10 authority conferred by section 66-326, Idaho Code.

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

14 (a) Has epilepsy, a developmental disability, a physical disability,  
15 an intellectual disability, is impaired by chronic alcoholism or drug  
16 abuse, or aged, unless in addition to such condition, such person is  
17 mentally ill;

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

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

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

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

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