

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 860, As Amended in the Senate

BY WAYS AND MEANS COMMITTEE

AN ACT

1 RELATING TO THE IDAHO PARENTAL RIGHTS ACT; AMENDING SECTION 32-1010, IDAHO
2 CODE, TO PROVIDE CORRECT CODE REFERENCES AND TO MAKE A TECHNICAL COR-
3 RECTION; AMENDING SECTION 32-1013, IDAHO CODE, TO ESTABLISH PROVISIONS
4 REGARDING CIVIL ACTIONS AND TO MAKE A TECHNICAL CORRECTION; AMENDING
5 SECTION 32-1015, IDAHO CODE, TO REVISE PROVISIONS REGARDING PARENTAL
6 RIGHTS IN MEDICAL DECISION-MAKING; AMENDING SECTION 16-2424, IDAHO
7 CODE, TO REVISE PROVISIONS REGARDING PROVISION OF TREATMENT; REPEALING
8 SECTION 16-2428, IDAHO CODE, RELATING TO CONFIDENTIALITY AND DISCLO-
9 SURE OF INFORMATION; REPEALING CHAPTER 38, TITLE 39, IDAHO CODE, RELAT-
10 ING TO MINOR CONSENT TO TREATMENT; AMENDING SECTION 66-318, IDAHO CODE,
11 TO REVISE PROVISIONS REGARDING AUTHORITY TO ADMIT VOLUNTARY PATIENTS
12 AND DENIAL OF ADMISSION; AMENDING SECTION 66-320, IDAHO CODE, TO REVISE
13 PROVISIONS REGARDING RIGHT TO RELEASE ON APPLICATION AND EXCEPTIONS;
14 AND DECLARING AN EMERGENCY.
15

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

17 SECTION 1. That Section 32-1010, Idaho Code, be, and the same is hereby
18 amended to read as follows:

19 32-1010. IDAHO PARENTAL RIGHTS ACT. (1) This section through section
20 ~~32-1014~~ 32-1015, Idaho Code, shall be known and may be cited as the "Idaho
21 Parental Rights Act."

22 (2) The interests and role of parents in the care, custody and control
23 of their children are both implicit in the concept of ordered liberty and
24 deeply rooted in our nation's history and tradition. They are also among the
25 unalienable rights retained by the people under the ninth amendment to the
26 constitution of the United States.

27 (3) The interests of the parents include the high duty and right to nur-
28 ture and direct their children's destiny, including their upbringing and ed-
29 ucation.

30 (4) The state of Idaho has independent authority to protect its par-
31 ents' fundamental right to nurture and direct their children's destiny, up-
32 bringing and education.

33 (5) The protections and rights recognized in sections 32-1011 through
34 ~~32-1014~~ 32-1015, Idaho Code, are rooted in the due process of law guaranteed
35 pursuant to section 13, article I, of the constitution of the state of Idaho.

36 (6) Governmental efforts that restrict or interfere with these funda-
37 mental rights are only permitted if that restriction or interference satis-
38 fies the strict scrutiny standard provided in section 32-1013, Idaho Code.

39 (7) Nothing in this act shall be construed as altering the established
40 presumption in favor of the constitutionality of statutes and regulations.

41 (8) The provisions of the Idaho parental rights act are hereby declared
42 to be severable, and if any provision of the act or the application of such

1 provision to any person or circumstance is declared invalid for any reason,
 2 such declaration shall not affect the validity of the remaining portions of
 3 the act.

4 SECTION 2. That Section 32-1013, Idaho Code, be, and the same is hereby
 5 amended to read as follows:

6 32-1013. INTERFERENCE WITH FUNDAMENTAL PARENTAL RIGHTS RE-
 7 STRICTED. (1) Neither the state of Idaho, nor any political subdivision
 8 thereof, may violate a parent's fundamental and established rights pro-
 9 tected by this act, and any restriction of or interference with such rights
 10 shall not be upheld unless it demonstrates by clear and convincing evidence
 11 that the restriction or interference is both:

12 (a) Essential to further a compelling governmental interest; and
 13 (b) The least restrictive means available for the furthering of that
 14 compelling governmental interest.

15 (2) The foregoing principles apply to any interference whether now ex-
 16 isting or hereafter enacted.

17 (3) Nothing in this act shall be construed as invalidating the provi-
 18 sions of the child protective act in chapter 16, title 16, Idaho Code, or
 19 ~~modify~~ modifying the burden of proof at any stage of proceedings under the
 20 child protective act.

21 (4) When a parent's fundamental rights protected by this act are vio-
 22 lated, a parent may assert that violation as a claim or defense in a judicial
 23 proceeding and may obtain appropriate relief against the governmental en-
 24 tity.

25 (5) If a parent prevails in a civil action against the state, or a polit-
 26 ical subdivision thereof, as provided in subsection (4) of this section, the
 27 parent is entitled to reasonable attorney's fees and costs.

28 (6) All civil actions brought pursuant to sections 32-1010 through
 29 32-1015, Idaho Code, shall be initiated within two (2) years after the harm
 30 occurred or two (2) years after the discovery, by the parent, of the facts
 31 constituting the claim, whichever is later.

32 SECTION 3. That Section 32-1015, Idaho Code, be, and the same is hereby
 33 amended to read as follows:

34 32-1015. PARENTAL RIGHTS IN MEDICAL DECISION-MAKING. (1) As used in
 35 this section:

36 (a) "Governmental entity" means the state and its political subdivi-
 37 sions.

38 (b) "Health care provider" means:

39 (i) A physician, health care practitioner, or other individ-
 40 ual licensed, accredited, or certified to perform health care
 41 services or provide counseling consistent with state law, or any
 42 agent or third-party representative thereof; or

43 (ii) A health care facility or its agent.

44 (c) "Health care service" means a service for the diagnosis, screening,
 45 examination, prevention, treatment, cure, care, or relief of any physi-
 46 cal or mental health condition, illness, injury, defect, or disease.

1 (d) "Health information" means information or data, collected or
 2 recorded in any form or medium, and personal facts of information about
 3 events or relationships that relates to:

4 (i) The past, present, or future physical, mental, or behavioral
 5 health or condition of an individual or member of the individual's
 6 family;

7 (ii) The provision of health care services to an individual; or

8 (iii) Payment for the provision of health care services to an indi-
 9 vidual.

10 (e) "Minor child" means an individual under eighteen (18) years of age
 11 but does not include an individual who is an emancipated minor.

12 (f) "Parent" means a biological parent of a child, an adoptive parent
 13 of a child, or an individual who has been granted exclusive right and au-
 14 thority over the welfare of a child under state law.

15 (2) Parents who have legal custody of any minor child have the fundamen-
 16 tal right and duty to make decisions concerning the furnishing of health care
 17 services to the minor child.

18 (3) Except as otherwise provided by this section or court order, an in-
 19 dividual, health care provider, or governmental entity shall not furnish a
 20 health care service or solicit to furnish a health care service to a minor
 21 child without obtaining the prior informed consent of the minor child's par-
 22 ent. When interpreting this subsection:

23 (a) No individual acting reasonably under the circumstances shall be
 24 found in violation of this subsection by furnishing nonemergency first
 25 aid services and care to a minor child appearing or represented to be
 26 sick or injured. Such services and care may include dressing minor
 27 wounds, applying topical agents, providing fluids or ice, and perform-
 28 ing checks to identify minor illnesses; and

29 (b) This subsection shall not be construed to invalidate any protec-
 30 tions or immunities granted to any individual administering first aid
 31 services and care pursuant to any provision of Idaho Code.

32 (4) Subsection (3) of this section shall not apply, and a health care
 33 provider may authorize or furnish a health care service without obtaining
 34 the informed consent of the minor child's parent, if:

35 (a) (i) A parent of the minor child has given blanket consent au-
 36 thorizing the health care provider to furnish the health care ser-
 37 vice; ~~or~~, provided that:

38 1. Such consent must be in writing on a form provided by the
 39 health care provider. The form shall be titled "Blanket Con-
 40 sent Form for Health Care Services for Minor." The title must
 41 be in bold, 30-point font. On the first page, the form shall
 42 state in bold, 24-point font: "Providing blanket consent is
 43 optional and may, instead, be given on a case-by-case basis.
 44 Blanket consent may be withdrawn by a parent at any time.";

45 2. No parent shall be required or pressured to sign a blanket
 46 consent form as a condition of the minor child enrolling in
 47 public school or participating in any school-sponsored ac-
 48 tivity; and

49 3. A parent may revoke consent to furnish any further health
 50 care service to a minor child at any time.

1 (ii) A blanket consent written by a parent or guardian for the
 2 child shall be valid if signed by the parent or guardian even
 3 though it does not meet the requirements of paragraph (a) (i) of
 4 this subsection.

5 (b) The health care provider reasonably determines that a medical emer-
 6 gency exists and:

7 (i) Furnishing the health care service is necessary in order to
 8 prevent death or ~~imminent, irreparable physical injury~~ address a
 9 serious bodily harm to the minor child; or

10 (ii) After a reasonably diligent effort, the health care provider
 11 cannot locate or contact a parent of the minor child and the ~~minor~~
 12 ~~child's life or health would be seriously endangered by further~~
 13 ~~delay in the furnishing of health care services.~~ health care ser-
 14 vice is furnished to prevent loss of life or serious physical ill-
 15 ness or injury to the minor child;

16 (c) A minor child is seeking health care or medical treatment that
 17 is directly related to an allegation of a crime of physical violence
 18 against the minor child or to collect evidence related to such crime
 19 when the collection of such evidence is time-sensitive;

20 (d) The service is limited to nonemergency first aid services and care
 21 to a minor appearing or represented to be sick or injured;

22 (e) A minor child utilizes the 988 Idaho crisis and suicide hotline
 23 and receives immediate crisis and suicide prevention services. If the
 24 Idaho crisis and suicide hotline determines that the minor child is ex-
 25 periencing suicidal ideation, it may offer and conduct a follow-up call
 26 within forty-eight (48) hours solely for the purposes of reassessing
 27 safety, reviewing the safety plan, and encouraging communication with
 28 the child's parent or guardian; or

29 (f) The health care provider is furnishing the health care service for
 30 the purpose of detecting or diagnosing pregnancy or providing prenatal
 31 or peripartum care, which shall not include abortion or performing or
 32 facilitating an abortion as that term is defined in section 18-8702,
 33 Idaho Code.

34 (5) Nothing in this section or any other provision of Idaho Code shall
 35 prevent a health care provider from screening and treating a newborn infant
 36 for illegal drugs or substances if a reasonable suspicion suggests their
 37 presence, provided that the results of the test or the fact of treatment may
 38 not be used against the parent in any criminal proceeding.

39 ~~(5)~~ (6) No health care provider or governmental entity shall deny a mi-
 40 nor child's parent access to health information that is:

41 (a) In such health care provider's or governmental entity's control;
 42 and

43 (b) Requested by the minor child's parent.

44 ~~(6)~~ (7) Subsection ~~(5)~~ (6) of this section shall not apply if:

45 (a) ~~Parent's~~ The parent's access to the requested health information is
 46 prohibited by a court order; ~~or~~

47 (b) The health information is a record that relates to physical
 48 abuse, abandonment, or neglect by the parent, as provided in section
 49 33-6001 (3), Idaho Code; or

1 ~~(b)~~ (c) The parent is a subject of an investigation related to a crime
2 committed against the child, and a law enforcement officer requests
3 that the information not be released to the parent.

4 ~~(7)~~ (8) This section shall be construed in favor of a broad protection
5 of parents' fundamental right to make decisions concerning the furnishing of
6 health care services to minor children.

7 ~~(8)~~ (9) This section does not make legal and in no way condones any
8 abuse, abandonment, or neglect, including any act or omission described in
9 section 16-1602, Idaho Code.

10 ~~(9)~~ (10) This section does not make legal and in no way condones eu-
11 thanasia, mercy killing, or assisted suicide, or permit an affirmative
12 or deliberate act or omission to end life, including any act or omission
13 described in section 18-4017, Idaho Code, other than to allow the natural
14 process of dying.

15 ~~(10)~~ (11) If a minor child does not have an affirmative right of access
16 to a specific treatment, service, or procedure, this section shall not be
17 construed to grant the parent a right to access such treatment, service, or
18 procedure.

19 ~~(11)~~ (12) This section shall not be construed to prohibit a court from
20 issuing an order that is otherwise permitted by law.

21 ~~(12)~~ (13) (a) Subject to the limitations of chapter 9, title 6, Idaho
22 Code, any parent who is deprived of a right as a result of a violation of
23 this section shall have a private right of action against the individ-
24 ual, health care provider, or governmental entity.

25 (b) A parent may raise this section as a defense in any judicial or
26 administrative proceeding without regard to whether the proceeding is
27 brought by or in the name of the state, any private person, or any other
28 party.

29 (c) A parent who successfully asserts a claim or defense under this sec-
30 tion may recover declaratory relief, injunctive relief, compensatory
31 damages, reasonable attorney's fees, and any other relief available un-
32 der law.

33 ~~(d) All civil actions shall be initiated within two (2) years after the~~
34 ~~harm occurred.~~

35 SECTION 4. That Section 16-2424, Idaho Code, be, and the same is hereby
36 amended to read as follows:

37 16-2424. PROVISION OF TREATMENT. (1) Every child subject to an invol-
38 untary treatment order under this chapter shall be provided with appropri-
39 ate treatment in accordance with the least restrictive alternative princi-
40 ple that offers him a realistic prospect of improvement. Children shall be
41 afforded treatment in facilities that conform to the applicable rules of the
42 department, and that are able to adequately care for and treat the persons
43 they serve.

44 (2) A written individual treatment plan shall be prepared, with the
45 participation of the parents, the child (to the extent he is able), his family
46 and any other persons of his such parents' choice, during voluntary admis-
47 sion or emergency psychiatric evaluation or, within seven (7) days of the
48 signing of an order for involuntary treatment. The individual treatment

1 plan shall be approved by the responsible physician, and the course of treat-
2 ment actually administered shall conform to the plan.

3 (3) The child's progress in attaining the objectives in the treatment
4 plan shall be noted in his records, and the revisions to the plan shall be
5 made as necessary. The child and the child's parent, custodian, or guardian
6 shall be afforded an opportunity to participate in any substantial revision
7 of the treatment plan.

8 (4) A copy of the individual treatment plan shall be given to the ~~child,~~
9 ~~his parents and to any other person designated by him~~ such parents, ~~provided~~
10 ~~that the responsible physician may preclude disclosure of the individual~~
11 ~~treatment plan to the child if he states in writing why disclosure would be~~
12 ~~harmful to the child.~~

13 SECTION 5. That Section 16-2428, Idaho Code, be, and the same is hereby
14 repealed.

15 SECTION 6. That Chapter 38, Title 39, Idaho Code, be, and the same is
16 hereby repealed.

17 SECTION 7. That Section 66-318, Idaho Code, be, and the same is hereby
18 amended to read as follows:

19 66-318. AUTHORITY TO ADMIT VOLUNTARY PATIENTS -- DENIAL OF ADMIS-
20 SION. (1) The director of any facility or a practitioner granted admitting
21 privileges pursuant to chapter 13, title 39, Idaho Code, may admit as a
22 voluntary patient the following persons for observation, diagnosis, evalua-
23 tion, care or treatment of mental illness:

24 (a) Any person who is eighteen (18) years of age or older;

25 ~~(b) Any individual fourteen (14) to eighteen (18) years of age who may~~
26 ~~apply to be admitted for observation, diagnosis, evaluation, care or~~
27 ~~treatment and the facility director will notify the parent, parents or~~
28 ~~guardian of the individual of the admission; a parent or guardian may~~
29 ~~apply for the individual's release and the facility director will re-~~
30 ~~lease the patient within three (3) days, excluding Saturdays, Sundays~~
31 ~~and legal holidays, of the application for discharge, unless the time~~
32 ~~period for diagnosis, evaluation, care or treatment is extended pur-~~
33 ~~suant to section 66-320, Idaho Code;~~

34 ~~(c) (b)~~ Any emancipated minor;

35 ~~(d) (c)~~ Any individual under ~~fourteen (14)~~ eighteen (18) years of age
36 upon application of the individual's parent or guardian;

37 ~~(e) (d)~~ Any individual who lacks capacity to make informed decisions
38 about treatment upon application of the individual's guardian; or

39 ~~(f) (e)~~ Any individual confined for examination pursuant to section
40 18-211, Idaho Code.

41 (2) The director of any facility or a practitioner granted admitting
42 privileges pursuant to chapter 13, title 39, Idaho Code, must refuse admis-
43 sion to any applicant under this section whenever:

44 (a) The applicant is determined not to be in need of observation, diag-
45 nosis, evaluation, care or treatment at the facility;

1 (b) The applicant is determined to lack capacity to make informed deci-
2 sions about treatment unless the application is made by a guardian with
3 authority to consent to treatment; or

4 (c) The applicant's welfare or the welfare of society, or both, are bet-
5 ter protected by the provisions of section 66-329, Idaho Code.

6 SECTION 8. That Section 66-320, Idaho Code, be, and the same is hereby
7 amended to read as follows:

8 66-320. RIGHT TO RELEASE ON APPLICATION -- EXCEPTIONS. (1) A volun-
9 tary patient admitted in accordance with the procedure outlined in section
10 66-318, Idaho Code, who requests his release or whose release is requested,
11 in writing, by his ~~legal guardian, parent,~~ spouse, or adult next of kin shall
12 be released except that:

13 (a) If the patient was admitted on his own application and the request
14 for release is made by a person other than the patient, release may be
15 conditioned upon the agreement of the patient thereto;

16 ~~(b) If the patient, by reason of his age, was admitted on the applica-~~
17 ~~tion of another person, his release prior to becoming sixteen (16) years~~
18 ~~of age may be conditioned upon the consent of his parent or guardian; or~~

19 (b) Any patient under eighteen (18) years of age must be released with
20 the consent of the patient's parent or guardian; or

21 (c) If the director of the facility determines that the patient should
22 be hospitalized under the provisions of this chapter, the patient may be
23 detained up to three (3) days, excluding Saturdays, Sundays and legal
24 holidays, for the purpose of examination by a designated examiner and
25 the filing of an application for continued care and treatment.

26 (2) Notwithstanding any other provision of this chapter, judicial pro-
27 ceedings authorized by this chapter shall not be commenced with respect to
28 a voluntary patient unless release of the patient has been requested by him-
29 self or the individual who applied for his admission.

30 (3) The date and time of any request for release under this section
31 shall be entered in the patient's clinical record. If the request for
32 release is denied, the reasons for denial also shall be entered in the pa-
33 tient's clinical record.

34 (4) A patient admitted for examination pursuant to section 18-211,
35 Idaho Code, may not be released except for purposes of transportation back to
36 the court ordering, or party authorizing, the examination.

37 SECTION 9. An emergency existing therefor, which emergency is hereby
38 declared to exist, this act shall be in full force and effect on and after its
39 passage and approval.