

TITLE 66
STATE CHARITABLE INSTITUTIONS

CHAPTER 3
HOSPITALIZATION OF MENTALLY ILL

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

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

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

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

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

(5) "Designated examiner" means a psychiatrist, psychologist, psychiatric nurse, or social worker and such other mental health professionals as may be designated in accordance with rules promulgated pursuant to the provisions of [chapter 52, title 67](#), Idaho Code, by the department of health and welfare. Any person designated by the department director will be specially qualified by training and experience in the diagnosis and treatment of mental or mentally related illnesses or conditions.

(6) "Dispositioner" means a designated examiner employed by or under contract with the department of health and welfare and designated by the department director to determine the appropriate location for care and treatment of involuntary patients.

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

(8) "Lacks capacity to make informed decisions about treatment" means the inability, by reason of mental illness, to achieve a rudimentary understanding after conscientious efforts at explanation of the purpose, nature, and possible significant risks and benefits of treatment.

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

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

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

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

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

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

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

(13) "Gravely disabled" means a person who, as the result of mental illness, is:

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

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

(14) "Outpatient treatment" means mental health treatment, not involving the continuous supervision of a person in an inpatient setting, that is reasonably designed to alleviate or to reduce a person's mental illness or to maintain or prevent deterioration of the person's physical, mental or emotional functioning. Mental health services or treatment may include, but need not be limited to, taking prescribed medication, reporting to a facility to permit monitoring of the person's condition, or participating in individual or group therapy.

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

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

[66-317, added 1951, ch. 290, sec. 1, p. 622; am. 1959, ch. 207, sec. 1, p. 439; am. 1969, ch. 187, sec. 1, p. 552; am. 1972, ch. 44, sec. 1, p. 67; am. 1973, ch. 173, sec. 1, p. 363; am. 1974, ch. 165, sec. 5, p. 1405; am. 1981, ch. 114, sec. 9, p. 174; am. 1982, ch. 59, sec. 6, p. 95; am. 1986, ch. 84, sec. 1, p. 243; am. 1998, ch. 90, sec. 1, p. 315; am. 2001, ch. 107, sec. 21, p. 370; am. 2002, ch. 128, sec. 1, p. 357; am. 2003, ch. 249, sec. 2, p. 643; am. 2004, ch. 315, sec. 1, p. 885; am. 2005, ch. 391,

sec. 59, p. 1315; am. 2006, ch. 214, sec. 2, p. 645; am. 2008, ch. 331, sec. 1, p. 910.]

66-318. AUTHORITY TO ADMIT VOLUNTARY PATIENTS -- DENIAL OF ADMISSION. (1) The director of any facility or a practitioner granted admitting privileges pursuant to [chapter 13, title 39](#), Idaho Code, may admit as a voluntary patient the following persons for observation, diagnosis, evaluation, care or treatment of mental illness:

- (a) Any person who is eighteen (18) years of age or older;
- (b) Any individual fourteen (14) to eighteen (18) years of age who may apply to be admitted for observation, diagnosis, evaluation, care or treatment and the facility director will notify the parent, parents or guardian of the individual of the admission; a parent or guardian may apply for the individual's release and the facility director will release the patient within three (3) days, excluding Saturdays, Sundays and legal holidays, of the application for discharge, unless the time period for diagnosis, evaluation, care or treatment is extended pursuant to section [66-320](#), Idaho Code;
- (c) Any emancipated minor;
- (d) Any individual under fourteen (14) years of age upon application of the individual's parent or guardian, provided that admission to an inpatient facility shall require a recommendation for admission by a designated examiner;
- (e) Any individual who lacks capacity to make informed decisions about treatment upon application of the individual's guardian; provided that admission to an inpatient facility shall require a recommendation for admission by a designated examiner; or
- (f) Any individual confined for examination pursuant to section [18-211](#) or [20-520](#), Idaho Code.

(2) The director of any facility or a practitioner granted admitting privileges pursuant to [chapter 13, title 39](#), Idaho Code, must refuse admission to any applicant under this section whenever:

- (a) The applicant is determined not to be in need of observation, diagnosis, evaluation, care or treatment at the facility;
- (b) The applicant is determined to lack capacity to make informed decisions about treatment unless the application is made by a guardian with authority to consent to treatment; or
- (c) The applicant's welfare or the welfare of society, or both, are better protected by the provisions of section [66-329](#), Idaho Code.

[66-318, added 1951, ch. 290, sec. 2, p. 622; am. 1959, ch. 207, sec. 2, p. 439; am. 1972, ch. 44, sec. 2, p. 67; am. 1973, ch. 173, sec. 2, p. 363; am. 1981, ch. 114, sec. 10, p. 175; am. 2004, ch. 23, sec. 9, p. 30; am. 2006, ch. 214, sec. 3, p. 647; am. 2017, ch. 278, sec. 2, p. 728.]

66-319. RELEASE OF VOLUNTARY INPATIENTS. The director of an inpatient facility shall release any person, admitted in accordance with the procedure outlined in section [66-318](#), Idaho Code, whose continued care or treatment is no longer appropriate. If upon evaluation at the facility, it is determined that the patient is mentally ill and is likely to injure himself or others or is gravely disabled, the director of the facility shall institute appropriate judicial proceedings for continued care and treatment. In the case of persons confined pursuant to section [20-520](#) or [18-211](#), Idaho Code, upon completion of the examination, the sheriff of the county from which the de-

defendant was committed shall be notified and the defendant shall continue to be confined at the facility for transportation back to the county. In those cases of persons admitted upon the application of a guardian, those persons shall be released upon the termination of the guardian's authority to consent to treatment.

[66-319, added 1951, ch. 290, sec. 3, p. 622; am. 1959, ch. 207, sec. 3, p. 439; am. 1973, ch. 173, sec. 3, p. 363; am. 1981, ch. 114, sec. 11, p. 176; am. 2004, ch. 23, sec. 10, p. 30.]

66-320. RIGHT TO RELEASE ON APPLICATION -- EXCEPTIONS. (a) A voluntary patient admitted in accordance with the procedure outlined in section [66-318](#), Idaho Code, who requests his release or whose release is requested, in writing, by his legal guardian, parent, spouse, or adult next of kin shall be released except that:

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

(2) if the patient, by reason of his age, was admitted on the application of another person, his release prior to becoming sixteen (16) years of age may be conditioned upon the consent of his parent or guardian, or

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

(b) Notwithstanding any other provision of this chapter, judicial proceedings authorized by this chapter shall not be commenced with respect to a voluntary patient unless release of the patient has been requested by himself or the individual who applied for his admission.

(c) The date and time of any request for release under this section shall be entered in the patient's clinical record. If the request for release is denied, the reasons for denial also shall be entered in the patient's clinical record.

(d) A patient admitted for examination pursuant to section [20-520](#) or [18-211](#), Idaho Code, may not be released except for purposes of transportation back to the court ordering, or party authorizing, the examination.

[66-320, added 1951, ch. 290, sec. 4, p. 622; am. 1973, ch. 173, sec. 4, p. 363; am. 1981, ch. 114, sec. 12, p. 177; am. 1986, ch. 84, sec. 2, p. 245; am. 2004, ch. 23, sec. 11, p. 31.]

66-322. APPOINTMENT OF GUARDIAN FOR INDIVIDUALS LACKING CAPACITY TO MAKE INFORMED DECISIONS ABOUT TREATMENT -- JUDICIAL PROCEDURE . (a) Proceedings for the appointment of a guardian of a mentally ill person may be commenced by the filing of a written petition with a court of competent jurisdiction by a friend, relative, spouse or guardian of the proposed patient, by a licensed physician, licensed clinical psychologist, prosecuting attorney, or other public official of a municipality, county or of the state of Idaho, or by the director of any facility in which such patient may be.

(b) The petition shall state the name and last known address of the proposed patient; the name and address of either the spouse, next of kin or friend of the proposed patient; whether a guardian of the proposed patient has been previously appointed under the laws of this or any other state and,

if so, the name and address of the guardian and the circumstances of such appointment; and a precise statement showing that the proposed patient is mentally ill, that treatment is available for such illness, and that the proposed patient lacks capacity to make informed decisions about treatment.

(c) Any such petition shall be accompanied by a certificate of a licensed physician or licensed clinical psychologist stating that the physician or psychologist has personally examined the proposed patient within the last fourteen (14) days and is of the opinion: (i) that the proposed patient is mentally ill, (ii) that in the absence of treatment the immediate prognosis is for major distress of the proposed patient which will result in serious mental or physical deterioration of the proposed patient, (iii) that treatment is available which is likely to avoid serious mental or physical deterioration of the proposed patient, and (iv) that the proposed patient lacks capacity to make informed decisions about treatment; or by a written statement by the physician or psychologist that the proposed patient has refused to submit to an examination.

(d) Upon receipt of a petition, the court shall within forty-eight (48) hours appoint another licensed physician or licensed clinical psychologist to make a personal examination of the proposed patient, or if the proposed patient has not been examined, the court shall appoint two (2) licensed physicians or licensed clinical psychologists to make individual personal examinations of the proposed patient and may order the proposed patient to submit to an immediate examination. Within seventy-two (72) hours, the physician or psychologist shall file with the court certificates described in subparagraph (c) above, if necessary.

(e) Upon receipt of such petition and certificates, the court shall appoint a time and place for hearing not more than seven (7) days from receipt of such certificates and thereupon give written notice to the proposed patient. The notice shall include a copy of the petition and certificates and notice of the proposed patient's right to be represented by an attorney, or if indigent, to be represented by a court-appointed attorney. Notice of the time and place of the hearing shall also be given to the petitioner.

(f) An opportunity to be represented by counsel shall be afforded to every proposed patient, and if neither the proposed patient nor others provide counsel, the court shall appoint counsel in accordance with [chapter 8, title 19](#), Idaho Code.

(g) The hearing shall be held at a facility, at the home of the proposed patient, or at any other suitable place not likely to have a harmful effect on the proposed patient's physical or mental health.

(h) The proposed patient and the petitioner shall be afforded an opportunity to appear at the hearing, to testify, and to present and cross-examine witnesses. At the hearing, any existing provision of law prohibiting the disclosure of confidential communications between the examining physician or psychologist and the proposed patient shall not apply and the physicians or psychologists who examined the proposed patient shall be competent witnesses to testify as to the proposed patient's condition. The proposed patient shall be required to be present at the hearing, and be free from drugs likely to impair the proposed patient's ability to communicate with counsel or understand the proceedings, unless the right to be present or free from drugs is knowingly and voluntarily waived by the patient or unless the presence of the patient at the hearing would unduly disrupt the judicial proceedings. A record of the proceedings shall be made as for other civil hearings.

The hearing shall be conducted in as informal a manner as may be consistent with orderly procedure and the rules of evidence.

(i) The court shall appoint a person other than the treating professional to act in the proposed patient's best interest with authority to consent to treatment, if, upon completion of the hearing and consideration of the record, the court finds by clear and convincing evidence that:

- (1) The proposed patient has a severe and reliably diagnosable mental illness;
- (2) Without treatment, the immediate prognosis is for major distress resulting in serious mental or physical deterioration of the proposed patient;
- (3) Treatment is available for such illness;
- (4) The proposed patient lacks capacity to make informed decisions about treatment; and
- (5) The relative risks and benefits of treatment or nontreatment are such that a reasonable person would consent to treatment.

The court shall consider appointing persons to give consent in the following priority: the proposed patient's spouse, next of kin, friend or if the proposed patient's spouse, next of kin or friend are unable or unwilling, another appropriate person not associated with the facility where the person is being, or shall be treated.

(j) The appointed person shall have authority to consent to treatment, including treatment at a facility. Upon approval of the court, the appointed person may pay the costs of treatment from the patient's money and tangible property deliverable to or received by the patient during the period of the appointed person's authority, and may apply for any benefits to which the patient is entitled. In the exercise of his powers, the appointed person is to act as a fiduciary and shall observe the standards of care applicable to trustees as described by section [15-7-302](#), Idaho Code. The appointment shall continue for a period of seven (7) weeks or until the court determines that the patient no longer lacks capacity to make informed decisions about treatment, whichever is shorter.

(k) Upon petition of the appointed person, authority to consent may be continued for an additional seven (7) week period, if the court again enters the findings required by subparagraph (i) above. The petition for continued authority shall be accompanied by the certificate of the treating professional meeting the requirements of subparagraph (c) above. The petition for continued authority and physician's certificate shall be served upon the patient and the patient's attorney. If the proposed patient objects to the continued authority, the court shall conduct a hearing, following notice of the time and place of such hearing to the petitioner, the proposed patient and the proposed patient's attorney.

(l) Proceedings for appointment of a person with authority to consent under this section may be consolidated with proceedings for the involuntary care of the proposed patient under section [66-329](#), Idaho Code, provided, however, that appointment of a person with authority to consent under this section shall terminate the proceedings for the involuntary care under section [66-329](#), Idaho Code.

(m) No more than two (2) petitions with authority to consent shall be granted under subsection (i) of this section within any twelve (12) month period, provided that other proceedings under this chapter or the Uniform Probate Code shall be permitted.

(n) The person with authority to consent appointed pursuant to this section shall not be personally responsible for the cost of care or treatment rendered the mentally ill individual, simply by reason of the authority granted by this section.

[66-322, added 1981, ch. 114, sec. 13, p. 178.]

66-324. AUTHORITY TO RECEIVE INVOLUNTARY PATIENTS. The director of any facility, or a practitioner granted admitting privileges pursuant to [chapter 13, title 39](#), Idaho Code, is authorized to receive in the facility for observation, diagnosis, evaluation, care or treatment any individual:

- (1) Committed to the department director pursuant to section [16-1619](#), [20-520](#), [18-212](#) or [66-329](#), Idaho Code;
- (2) Transferred pursuant to section [66-1201](#), Idaho Code; or
- (3) Detained or transferred pursuant to section [66-326](#), Idaho Code.

[(66-324) 66-325, added 1951, ch. 290, sec. 9, p. 622; am. 1959, ch. 207, sec. 6, p. 439; am. 1973, ch. 173, sec. 7, p. 363; am. and redesign. 1981, ch. 114, sec. 14, p. 180; am. 1986, ch. 84, sec. 3, p. 245; am. 2001, ch. 107, sec. 22, p. 371; am. 2005, ch. 391, sec. 60, p. 1317; am. 2006, ch. 214, sec. 4, p. 647; am. 2015, ch. 244, sec. 39, p. 1029; am. 2017, ch. 278, sec. 3, p. 729.]

66-325. RESIDENCE NOT AFFECTED BY PLACE OF TREATMENT. For purposes of this chapter, the terms "residence," "residing," or "resides" shall refer to the place where the mentally ill person lives. None of the time spent in any facility shall be regarded as contributing toward, or acquiring, residence for any purpose.

[66-325, added 1981, ch. 114, sec. 15, p. 180.]

66-326. DETENTION WITHOUT HEARING. (1) No person shall be taken into custody or detained as an alleged emergency patient for observation, diagnosis, evaluation, care or treatment of mental illness unless and until the court has ordered such apprehension and custody under the provisions outlined in section [66-329](#), Idaho Code; provided, however, that a person may be taken into custody by a peace officer and placed in a facility, or the person may be detained at a hospital at which the person presented or was brought to receive medical or mental health care, if the peace officer or a physician medical staff member of such hospital or a physician's assistant or advanced practice registered nurse practicing in such hospital has reason to believe that the person is gravely disabled due to mental illness or the person's continued liberty poses an imminent danger to that person or others, as evidenced by a threat of substantial physical harm; provided, 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. For purposes of this section, the term "peace officer" shall include state probation and parole officers exercising their authority to supervise probationers and parolees. Whenever a person is taken into custody or detained under this section without court order, the evidence supporting the claim of grave disability due to mental illness or imminent danger must be presented to a duly authorized court within twenty-four (24) hours from 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.

[(66-326) 1976, ch. 365, sec. 1, p. 1200; am. and redesign. 1981, ch. 114, sec. 19, p. 185; am. 1991, ch. 210, sec. 1, p. 494; am. 1998, ch. 341, sec. 1, p. 1089; am. 2006, ch. 91, sec. 1, p. 265; am. 2006, ch. 214, sec. 5, p. 648.; am. 2013, ch. 293, sec. 2, p. 771.]

66-327. RESPONSIBILITY FOR COSTS OF COMMITMENT AND CARE OF PATIENTS. (a) All costs associated with the commitment proceedings, including fees of designated examiners, transportation costs and all medical, psychiatric and hospital costs not included in subsection (c) of this section, shall be the responsibility of the person subject to judicial proceedings authorized by this chapter or such person's spouse, adult children, or, if indigent, the county of such person's residence after all personal, family and third party resources, including medical assistance provided under the state plan for medicaid as authorized by title XIX of the social security act, as amended, are considered. In proceedings authorized by this chapter, the court shall consider the indigency of persons subject to proceedings authorized by this chapter, in light of such person's income and resources, and if such person is able to pay all or part of such costs, the court shall order such person to pay all or any part of such costs. If the court determines such person is unable to pay all or any part of such costs, the court shall fix responsibility, in accordance with the provisions of [chapter 35](#),

[title 31](#), Idaho Code, for payment of such costs on the county of such person's residence to the extent not paid by such person or not covered by third party resources, including medical assistance as aforesaid. The amount of payment by a county shall be the medicaid rate, or pursuant to the provisions of any contract between a provider and an obligated county, or if the facility providing the services is a freestanding mental health facility, then the reimbursement rate will be the medicaid rate, for a hospital as defined by section [39-1301](#)(a), Idaho Code, that provides services within the nearest proximity of the mental health facility. Such costs fixed by the court shall be based upon the time services were provided.

(b) An order of commitment pursuant to the provisions of this section shall be sufficient to require the release of all pertinent information related to the committed person, to the court and obligated county, within the restrictions of all applicable federal and state laws.

(c) The department of health and welfare shall assume responsibility for costs after the involuntary patient is committed to the custody of the state of Idaho, beginning on the day after the director receives notice that a person has been committed into the custody of the department, until the involuntary patient is discharged and after all personal, family and third party resources are considered in accordance with section [66-354](#), Idaho Code. The counties shall be responsible for mental health costs as defined in subsection (a) of this section if the individual is not transported within twenty-four (24) hours of receiving written notice of admission availability to a state facility. For purposes of this section, "costs" shall include routine board, room and support services rendered at a facility of the department of health and welfare; routine physical, medical, psychological and psychiatric examination and testing; group and individual therapy, psychiatric treatment, medication and medical care which can be provided at a facility of the department of health and welfare. The term "costs" shall not include neurological evaluation, CAT scan, surgery, medical treatment, any other item or service not provided at a facility of the department of health and welfare, or witness fees and expenses for court appearances. For the purposes of this section, the notice to the department may be faxed or mailed.

[66-327, added 1981, ch. 114, sec. 16, p. 181; am. 2000, ch. 161, sec. 1, p. 409; am. 2012, ch. 203, sec. 1, p. 543.]

66-328. JURISDICTION OF PROCEEDINGS FOR COMMITMENT. Proceedings for the care of mentally ill persons shall be had in the district court of the county where the person to be treated resides or in the district court of any other county of this state where such person is found.

[66-328, as added by 1961, ch. 165, sec. 1, p. 255; am. 1973, ch. 173, sec. 8, p. 363; am. 1974, ch. 165, sec. 7, p. 1405; am. 1981, ch. 114, sec. 17, p. 181; am. 2008, ch. 331, sec. 2, p. 912.]

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, by a licensed physician, by a physician assistant or advanced practice registered nurse practicing in a hospital, by a prosecuting attorney or other public official

of a municipality, county or of the state of Idaho, or by 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 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; whether 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 Code; and a simple and precise statement of the facts showing that the proposed patient is mentally ill and either likely to injure himself or others or is gravely disabled due to mental illness.

(3) Any such application shall be accompanied by a certificate of a designated examiner stating that he has personally examined the proposed patient within the last fourteen (14) days and is of the opinion that the proposed patient is: (i) mentally ill; (ii) likely to injure himself or others or is gravely disabled due to mental illness; and (iii) lacks capacity to make informed decisions about treatment; or a written statement by the applicant that the proposed patient has refused to submit to examination by a designated examiner.

(4) Upon receipt of an application for commitment, the court shall, within forty-eight (48) hours, appoint another designated examiner to make a personal examination of the proposed patient, or if the proposed patient has not been examined, the court shall appoint two (2) designated examiners to make individual personal examinations of the proposed patient and may order the proposed patient to submit to an immediate examination. If neither designated examiner is a physician, the court shall order a physical examination of the proposed patient. At least one (1) designated examiner shall be a psychiatrist, licensed physician or licensed psychologist. The designated examiners shall report to the court their findings within the following seventy-two (72) hours as to the mental condition of the proposed patient and his need for custody, care, or treatment by a facility. The reports shall be in the form of written certificates that shall be filed with the court. The court may terminate the proceedings and dismiss the application without taking any further action in the event the reports of the designated examiners are to the effect that the proposed patient is not mentally ill or, although mentally ill, is not likely to injure himself or others or is not gravely disabled due to mental illness. If the proceedings are terminated, the proposed patient shall be released immediately.

(5) If the designated examiner's certificate states a belief that the proposed patient is mentally ill and either likely to injure himself or others or is gravely disabled due to mental illness, the judge of such court shall issue an order authorizing any health officer, peace officer, or director of a facility to take the proposed patient to a facility in the community in which the proposed patient is residing or to the nearest facility to await the hearing, and for good cause may authorize treatment during such period subject to the provisions of section [66-346](#)(a)(4), Idaho Code. 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.

(6) Upon receipt of such application and designated examiners' reports, the court shall appoint a time and place for a hearing not more than seven (7) days from the receipt of such designated examiners' reports and thereupon give written notice of such time and place of such hearing, to-

gether with a copy of the application, designated examiner's certificates, and notice of the proposed patient's right to be represented by an attorney or, if indigent, to be represented by a court-appointed attorney, to the applicant, to the proposed patient, to the proposed patient's spouse, guardian, next of kin, or friend. With the consent of the proposed patient and his attorney, the hearing may be held immediately. Upon motion of the petitioner, or upon motion of the proposed patient and attorney, and for good cause shown, the court may continue the hearing up to an additional five (5) days during which time, for good cause shown, the court may authorize treatment.

(7) An opportunity to be represented by counsel shall be afforded to every proposed patient, and, if neither the proposed patient nor others provide counsel, the court shall appoint counsel in accordance with [chapter 8, title 19](#), Idaho Code, no later than the time the application is received by the court.

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

(9) In all proceedings under this section, any existing provision of the law prohibiting the disclosure of confidential communications between the designated examiner and proposed patient shall not apply and any designated examiner who shall have examined the proposed patient shall be a competent witness to testify as to the proposed patient's condition.

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

(11) If, upon completion of the hearing and consideration of the record, and after consideration of reasonable alternatives including, but not limited to, holding the proceedings in abeyance for a period of up to thirty (30) days, the court finds by clear and convincing evidence that the proposed patient:

(a) Is mentally ill; and

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

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

(12) The commitment order constitutes a continuing authorization for the department of health and welfare, law enforcement, or director of a facility, upon request of the director of the outpatient facility, the physician, or the department director through his dispositioner, to transport a committed patient to designated outpatient treatment for the purpose of making reasonable efforts to obtain the committed patient's compliance with the terms and conditions of outpatient treatment. If the director of the outpatient facility, the treating physician, or the department director through his dispositioner determines any of the following:

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

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

the department director through his dispositioner shall cause the committed patient to be transported by the department of health and welfare, law enforcement, or director of a facility to the least restrictive available facility for observation, care, and treatment on an inpatient basis. Within forty-eight (48) hours of a committed patient's transfer from outpatient treatment to a facility for inpatient treatment, the department director through his dispositioner shall notify the court that originally ordered the commitment, the committed patient's attorney, and the committed patient's spouse, guardian, adult next of kin, or friend of the change in disposition and provide a detailed affidavit reciting the facts and circumstances supporting the transfer from outpatient treatment to inpatient treatment at a facility. The court shall conduct an ex parte review of the notice and affidavit within forty-eight (48) hours of filing and determine whether the change in disposition from outpatient treatment to inpatient treatment at a facility is supported by probable cause. In no event shall the calculation of forty-eight (48) hours provided for in this subsection include holidays formally recognized and observed by the state of Idaho, nor shall the calculation include weekends. If the court determines that probable cause exists, the department director through his dispositioner shall continue with care and treatment on an inpatient basis at the least restrictive available facility. Within twenty-four (24) hours of a finding of probable cause, the court shall issue an order to show cause why the patient does not meet the conditions in paragraph (a) or (b) of this subsection. The order shall be served on the committed patient, the committed patient's attorney and the committed patient's spouse, guardian, adult next of kin, or friend. The patient shall have fifteen (15) days to present evidence that the conditions in paragraph (a) or (b) of this subsection have not been met. In no event shall the calculation of twenty-four (24) hours provided for in this subsection include holidays formally recognized and observed by the state of Idaho, nor shall the calculation include weekends. If the court determines that a change in disposition from outpatient treatment to inpatient treatment does not meet the conditions in paragraph (a) or (b) of this subsection, the department director through his dispositioner will continue with outpatient treatment on the same or modified terms and conditions. Nothing provided in this section shall limit the authority of any law enforcement officer to detain a patient pursuant to the emergency authority conferred by section [66-326](#), Idaho Code.

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

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

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

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

(14) The order of commitment shall state whether the proposed patient lacks capacity to make informed decisions about treatment, the name and address of the patient's attorney and the patient's spouse, guardian, adult next of kin, or friend.

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

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

[66-329, added 1951, ch. 290, sec. 13, p. 622; am. 1953, ch. 264, sec. 1, p. 455; am. 1959, ch. 207, sec. 7, p. 439; am. 1969, ch. 143, sec. 1, p. 461; am. 1972, ch. 44, sec. 3, p. 67; am. 1973, ch. 173, sec. 9, p. 363; am. 1974, ch. 165, sec. 8, p. 1405; am. 1981, ch. 114, sec. 18, p. 182; am. 1991, ch. 210, sec. 2, p. 495; am. 1998, ch. 78, sec. 1, p. 279; am. 1998, ch. 341, sec. 2, p. 1090; am. 2003, ch. 249, sec. 3, p. 645; am. 2008, ch. 331, sec. 3, p. 912; am. 2010, ch. 235, sec. 56, p. 594; am. 2013, ch. 293, sec. 3, p. 772; am. 2019, ch. 244, sec. 1, p. 739.]

66-330. TRANSPORTATION -- TEMPORARY DETENTION -- NOTICE. (a) After the dispositioner has designated the place of treatment, he shall notify the facility director of the disposition and of any medical, security or behavioral needs of the committed patient. The county shall deliver the patient within forty-eight (48) hours to the designated facility. Whenever practicable, the individual may be accompanied by one or more of his friends or relatives.

(b) Pending his removal to the designated place of treatment, a patient taken into custody or ordered to be committed to the custody of the department director pursuant to this chapter may be detained in his home, a licensed foster home, or any other suitable facility under such reasonable conditions as the dispositioner may fix, but he shall not be detained in a nonmedical facility used for the detention of individuals charged with or convicted of penal offenses. The dispositioner shall take such reasonable

measures, to secure proper mental health care and treatment of an individual temporarily detained pursuant to this chapter.

(c) The dispositioner shall notify the court, the patient's attorney and either the patient's spouse, guardian, adult next of kin or friend, of the facility to which the patient has been dispositioned.

[(66-330) 1951, ch. 290, sec. 15, p. 622; am. 1959, ch. 207, sec. 9, p. 439; am. 1973, ch. 173, sec. 11, p. 363; am. 1974, ch. 165, sec. 10, p. 1405; am. and redesignated as sec. 66-330, 1981, ch. 114, sec. 20, p. 186; am. 1991, ch. 210, sec. 3, p. 498.]

66-331. CARE AND TREATMENT IN A FEDERAL FACILITY. (a) If an involuntary patient committed pursuant to the provisions of section [66-329](#), Idaho Code, is eligible for care or treatment by any agency of the United States, the department director or his designee, upon receipt of a certificate from such agency showing that facilities are available and that the involuntary patient is eligible for care and treatment therein, may authorize the involuntary patient to be placed in the custody of such agency for care and treatment.

(b) Upon effecting any such transfer, the department director or his designee shall notify the committing court, the involuntary patient's attorney and either the involuntary patient's spouse, guardian, adult next of kin or friend, as stated on the order of commitment, of such transfer. Records pertaining to the involuntary patient shall be sent by the sending facility to the receiving facility as soon as possible.

(c) When admitted to any facility pursuant to subsection (a) of this section, by any such agency within or without the state, the involuntary patient shall be subject to the rules and regulations of the agency. The chief officer of any facility operated by such agency shall, with respect to involuntary patients admitted to that facility pursuant to subsection (a) of this section, be vested with the same powers as the department director with respect to detention, custody, transfer, conditional release or discharge. Jurisdiction shall be retained in appropriate courts of this state at any time to inquire into the mental condition of an involuntary patient admitted to a facility pursuant to subsection (a) of this section and to determine the necessity for continuance of the person's commitment, and every order of commitment issued pursuant to section [66-329](#), Idaho Code, shall be so conditioned.

(d) The judgment or order of commitment by a court of competent jurisdiction of another state or of the District of Columbia, committing a person to any agency of the United States, and any transfer of any committed person to any agency of the United States for care and treatment, shall have the same force and effect as to the committed person while in this state as in the jurisdiction in which is situated the court entering the judgment or making the order, or the entity effecting the transfer; and the courts of the committing state, or of the District of Columbia, shall be deemed to have retained jurisdiction of the person so committed for the purpose of inquiring into the mental condition of such person, and of determining the necessity for continuance of the person's commitment, as is provided for persons committed by the courts of this state in subsection (c) of this section. Consent is hereby given to the application of the law of the committing state or the District of Columbia in respect to the authority of the chief officer of any facility of an agency of the United States with respect to detention, custody, transfer, conditional release or discharge under this section.

(e) The chief officer of any facility operated by any agency of the United States shall, with respect to persons admitted to that facility pursuant to subsection (a) of this section, report to the committing court, the department director or his designee, the person's spouse, guardian, next of kin or friend as stated on the order of commitment as follows: within the first ninety (90) days and every one hundred twenty (120) days thereafter as to whether or not conditions justifying involuntary care and treatment continue to exist and upon conditional release, upon transfer between facilities, or upon discharge.

[66-331, added 1981, ch. 114, sec. 21, p. 187.]

66-333. EXAMINATION OF NEWLY ADMITTED PATIENTS. Every patient committed to the custody of the department director pursuant to the provisions of section [66-329](#), Idaho Code, and admitted to an inpatient facility shall receive a physical and mental health examination as soon as practicable after admission.

[66-333, added 1951, ch. 290, sec. 17, p. 622; am. 1953, ch. 264, sec. 2, p. 455; am. 1959, ch. 207, sec. 11, p. 439; am. 1973, ch. 173, sec. 13, p. 363; am. 1974, ch. 165, sec. 12, p. 1405; am. 1981, ch. 114, sec. 22, p. 188.]

66-334. TRANSFER OF PATIENTS BETWEEN CERTAIN INPATIENT TREATMENT FACILITIES. (a) The department director or his designee may transfer, or authorize the transfer of, an involuntary patient from one inpatient treatment facility to another, if he determines that it would be consistent with the mental health needs of the patient to do so. Whenever a patient is transferred, written notice thereof shall be given to the patient's attorney, either the patient's spouse, guardian, adult next of kin or friend and the committing court.

(b) Upon receipt of a certificate of an agency of any other state or private facility in any state, that facilities are available for the care or treatment of any patient committed or otherwise being cared for and treated pursuant to this chapter and that the patient is eligible for care or treatment in a facility of such agency, or if the patient or his next of kin or his guardian wish to have him cared for in some other facility, the department director or his designee may transfer him to such facility for care or treatment. Upon effecting any such transfer, the patient's attorney, either the patient's spouse, guardian, adult next of kin or friend and the committing court shall be immediately notified of such transfer. Any patient transferred as herein provided shall be deemed to be in the custody of such facility to the same extent and subject to the same limitations as if he had been ordered to be placed in its custody under section [66-329](#), Idaho Code.

(c) Records pertaining to the patient and retained by the sending facility shall be forwarded to the receiving facility within a reasonable time prior to or after the patient's transfer.

(d) Jurisdiction is retained in appropriate courts of this state at any time to inquire into the mental condition of any patient so transferred and to determine the necessity for continuance of the commitment.

[66-334, added 1951, ch. 290, sec. 18, p. 622; am. 1959, ch. 207, sec. 12, p. 439; am. 1973, ch. 173, sec. 14, p. 363; am. 1974, ch. 165, sec. 13, p. 1405; am. 1981, ch. 114, sec. 23, p. 188.]

66-335. COMMITMENT OF MENTALLY ILL CONVICTS. Mentally ill convicts may be received into said facilities in accordance with rules and regulations adopted by the board of health and welfare acting in conjunction with the state board of correction.

[66-335, added 1951, ch. 290, sec. 19, p. 622; am. 1973, ch. 173, sec. 15, p. 363; am. 1981, ch. 114, sec. 24, p. 189.]

66-337. REVIEW, TERMINATION OF COMMITMENT AND DISCHARGE OF PATIENTS. (a) The department director or his designee shall as frequently as practicable but at least once at the end of the first ninety (90) days examine or cause to be examined every patient committed to his custody or admitted to an inpatient facility of the state of Idaho, and determine whether to conditionally release, discharge or terminate the commitment of the patient. If the patient has not been conditionally released, discharged, or had the commitment terminated a similar review shall be conducted every one hundred twenty (120) days thereafter. A report of each review and determination regarding an involuntary patient shall be sent to the committing court, prosecuting attorney of the county of commitment, if any, the patient's attorney, and either the patient's spouse, guardian, next of kin or friend.

(b) The commitment of an involuntary patient shall be terminated if the patient is no longer mentally ill or is no longer likely to injure himself or others or is no longer gravely disabled; provided, that patients admitted under section [18-214](#), Idaho Code, acquitted of criminal charges filed prior to July 1, 1982, on grounds of mental disease or defect, or committed pursuant to sections [18-212](#) (4) and [66-329](#), Idaho Code, as unfit to proceed, may not be released from an inpatient facility unless thirty (30) days before such release, the department director or his designee shall notify the committing court and prosecuting attorney of the contemplated release.

(c) Upon notification of intention to release from an inpatient facility either a patient admitted under section [18-214](#), Idaho Code, acquitted of criminal charges filed prior to July 1, 1982, on grounds of mental disease or defect, or committed pursuant to sections [18-212](#) (4) and [66-329](#), Idaho Code, as unfit to proceed, and upon motion of an interested party or the court on its own motion, the court shall determine whether the conditions justifying such release exist. In making such determination, the court may order an independent examination of the patient. The cost of such independent examination must be borne by the party making the motion or, if indigent, the county having jurisdiction of the case. If no motion is made, the patient may be released according to the notice.

(d) Section [18-214](#), Idaho Code, shall remain in full force and effect for every individual previously acquitted pursuant to section [18-213](#), Idaho Code. Section [18-214](#), Idaho Code, as last amended by section 2, chapter 13, laws of 1977, which is placed here for reference only and is not a reenactment of section [18-214](#), Idaho Code, and reads as follows:

18-214. Commitment of acquitted defendant -- Conditional release -- Revocation of release within five years. (1) When a defendant is acquitted on the ground of mental disease or defect excluding responsibility, the court shall order him to be committed to the custody of the director of the department of health and welfare to be placed in an appropriate institution for custody, care and treatment.

(2) If the director of the department of health and welfare is of the view that a person committed to his custody, pursuant to paragraph (1) of this section, may be discharged or released on condition without danger to

himself or to others, he shall make application for the discharge or release of such person in a report to the court by which such person was committed and shall transmit a copy of such application and report to the prosecuting attorney of the county from which the defendant was committed. The court shall thereupon appoint at least two (2) qualified psychiatrists to examine such person and to report within sixty (60) days, or such longer period as the court determines to be necessary for the purpose, their opinion as to his mental condition. To facilitate such examination and the proceedings thereon, the court may cause such person to be confined in any institution located near the place where the court sits, which may hereafter be designated by the director of the department of health and welfare as suitable for the temporary detention of irresponsible persons.

(3) If the court is satisfied by the report filed pursuant to paragraph (2) of this section and such testimony of the reporting psychiatrists as the court deems necessary that the committed person may be discharged or released on condition without danger to himself or others, the court shall order his discharge or his release on such conditions as the court determines to be necessary. If the court is not so satisfied, it shall promptly order a hearing to determine whether such person may safely be discharged or released. Any such hearing shall be deemed a civil proceeding and the burden shall be upon the committed person to prove that he may safely be discharged or released. According to the determination of the court upon the hearing, the committed person shall thereupon be discharged or released on such conditions as the court determines to be necessary, or shall be recommitted to the custody of the director of the department of health and welfare, subject to discharge or release only in accordance with the procedure prescribed above for a first hearing.

(4) If, within five (5) years after the conditional release of a committed person, the court shall determine, after hearing evidence, that the conditions of release have not been fulfilled and that for the safety of such person or for the safety of others his conditional release should be revoked, the court shall forthwith order him to be recommitted to the custody of the director of the department of health and welfare subject to discharge or release only in accordance with the procedure prescribed above for a first hearing.

(5) A committed person may make application for his discharge or release to the court by which he was committed, and the procedure to be followed upon such application shall be the same as that prescribed above in the case of an application by the director of the department of health and welfare. However, no such application by a committed person need be considered until he has been confined for a period of not less than six (6) months from the date of the order of commitment and if the determination of the court be adverse to the application, such person shall not be permitted to file a further application until one (1) year has elapsed from the date of any preceding hearing on an application for his release or discharge.

(6) If a defendant escapes from custody during his confinement, the director shall immediately notify the court from which committed, the prosecuting attorney and the sheriff of the county from which committed. The court shall forthwith issue an order authorizing any health officer, peace officer, or the director of the institution from which the defendant escaped, to take the defendant into custody and immediately return him to his place of confinement.

[66-337, added 1951, ch. 290, sec. 21, p. 622; am. 1959, ch. 207, sec. 13, p. 439; am. 1973, ch. 173, sec. 17, p. 363; am. 1974, ch. 165, sec. 14, p. 1405; am. 1981, ch. 114, sec. 25, p. 189; am. 1982, ch. 368, sec. 13, p. 926; am. 1987, ch. 59, sec. 2, p. 106; am. 2000, ch. 234, sec. 3, p. 659.]

66-341. EXEMPTIONS FROM LIABILITY. No agency, public or private facility, nor an employee of a public or private facility, nor the superintendent, professional person in charge, or attending staff of any such facility, nor any public official performing functions necessary to the administration of this chapter, nor a peace officer responsible for detaining or transporting a person pursuant to this chapter, shall be civilly or criminally liable for detaining, failing to detain, diagnosing, transporting, treating or releasing a person pursuant to this chapter; provided that such duties were performed according to the procedures of this chapter in good faith and without gross negligence.

[66-341, added 1981, ch. 114, sec. 29, p. 191; am. 2006, ch. 214, sec. 6, p. 649.]

66-343. PETITION FOR REEXAMINATION OF ORDER OF COMMITMENT. All patients committed pursuant to section [66-329](#), Idaho Code, shall be entitled to a reexamination of the order for or conditions of his commitment on his own petition, or that of his legal guardian, parent, spouse, relative, attorney or friend, to the district court of the county in which the patient was committed or is found. Within three (3) years of the effective date of this act, the department shall petition for the reexamination of all patients committed pursuant to section [66-329](#), Idaho Code, prior to the effective date of this act. Upon receipt of the petition the court shall determine whether the conditions justifying involuntary care and treatment continue to exist except that such proceedings shall not be required to be conducted if the petition is filed sooner than four (4) months after the issuance of the order of commitment or sooner than one (1) year after the filing of a previous petition under this section.

[66-343, added 1951, ch. 290, sec. 27, p. 622; am. 1959, ch. 207, sec. 17, p. 439; am. 1973, ch. 173, sec. 21, p. 363; am. 1981, ch. 114, sec. 31, p. 192.]

66-344. RIGHT TO HUMANE CARE AND TREATMENT. Every patient shall be entitled to humane care and treatment.

[66-344, added 1951, ch. 290, sec. 28, p. 622; am. 1973, ch. 173, sec. 22, p. 363.]

66-345. RESTRAINTS AND SECLUSION. Restraints shall not be applied to a patient nor shall a patient be secluded unless it is determined that such restraint or seclusion is necessary for the patient's safety or for the safety of others. Every instance of a restraint or seclusion of a patient shall be documented in the clinical record of the patient. In addition, every instance of a restraint or seclusion shall be evaluated and the evaluation and reasons for such restraint or seclusion shall be made a part of the clinical record of the patient under the signature of a licensed physician or, as delegated through the bylaws of the hospital's medical or professional staff, other practitioners licensed to practice independently. Whenever

a peace officer deems it necessary to apply restraints to a patient while transporting the patient from one (1) facility to another and that restraint is against the medical advice of a licensed physician, the officer shall document the use of restraints in a report to be included in the clinical record.

[66-345, added 1951, ch. 290, sec. 29, p. 622; am. 1973, ch. 173, sec. 23, p. 363; am. 1981, ch. 114, sec. 32, p. 192; am. 2001, ch. 339, sec. 1, p. 1201; am. 2014, ch. 111, sec. 1, p. 321.]

66-346. RIGHT TO COMMUNICATION AND VISITATION -- EXERCISE OF CIVIL RIGHTS. (a) Every patient shall have the following rights:

- (1) To communicate by sealed mail or otherwise, with persons, inside or outside the facility and to have access to reasonable amounts of letter writing material and postage;
- (2) To receive visitors at all reasonable times;
- (3) To wear his own clothes; to keep and use his own personal possessions including toilet articles; to keep and be allowed to spend a reasonable sum of his own money for canteen expenses and small purchases; to have access to individual storage space for his private use;
- (4) To refuse specific modes of treatment;
- (5) To be visited by his attorney or any employee of his attorney's firm, or a representative of the state protection and advocacy system at any time;
- (6) To exercise all civil rights, including the right to dispose of property except property described in subsection (3) above, execute instruments, make purchases, enter into contractual relationships, and vote unless limited by prior court order;
- (7) To have reasonable access to all records concerning himself.

(b) Notwithstanding any limitations authorized under this section on the right of communication, every patient shall be entitled to communicate by sealed mail with the court, if any, which ordered his commitment.

(c) The director of a facility may deny a patient's rights under this section, except that the rights enumerated in subsections (a) (5) and (a) (6) of this section, shall not be denied by the director of the facility under any circumstances. Only in cases of emergency or when a court has determined that a patient lacks capacity to make informed decisions about treatment, may the director of a facility deny a patient's rights under subsection (a) (4) of this section. A statement explaining the reasons for any denial of a patient's rights shall be immediately entered in his treatment record and if the patient has been committed pursuant to court order, copies of such statement shall be submitted to the committing court and sent to the patient's spouse, guardian, adult next of kin or friend and attorney, if any.

(d) A list of the foregoing rights shall be prominently posted in all facilities and brought to the attention of the patient by such means as the board of health and welfare shall designate.

[66-346, added 1951, ch. 290, sec. 30, p. 622; am. 1973, ch. 173, sec. 24, p. 363; am. 1981, ch. 114, sec. 33, p. 192; am. 2004, ch. 315, sec. 2, p. 886.]

66-347. WRIT OF HABEAS CORPUS. Any individual detained pursuant to this act shall be entitled to the writ of habeas corpus upon proper petition by

himself or a friend to any court generally empowered to issue the writ of habeas corpus in the county in which he is detained.

[66-347, added 1951, ch. 290, sec. 31, p. 622.]

66-348. DISCLOSURE OF INFORMATION. All certificates, applications, records, and reports made for the purpose of this act and directly or indirectly identifying a patient or former patient or an individual whose involuntary assessment, detention or commitment is being sought under this act shall be kept subject to disclosure according to [chapter 1, title 74](#), Idaho Code; provided that such records may also be disclosed to any person:

(1) If the individual identified, his attorney in fact for mental health care, or his legal guardian, if any, shall consent; or

(2) If disclosure may be necessary to carry out any of the provisions of this act; or

(3) If a court directs upon its determination that disclosure is necessary and that failure to make disclosure would be contrary to the public interest.

[66-348, added 1951, ch. 290, sec. 32, p. 622; am. 1953, ch. 264, sec. 4, p. 455; am. 1973, ch. 173, sec. 25, p. 363; am. 1990, ch. 213, sec. 91, p. 553; am. 1998, ch. 77, sec. 1, p. 279; am. 2015, ch. 141, sec. 164, p. 510.]

66-349. PENALTY FOR VIOLATION. Any person violating any provisions of sections [66-344](#), [66-345](#), [66-346](#), [66-347](#), or [66-348](#)[, Idaho Code,] shall be guilty of a misdemeanor and subject to a fine of not more than \$500 and imprisonment for not more than one (1) year.

[66-349, added 1951, ch. 290, sec. 33, p. 622.]

66-350. DETENTION PENDING JUDICIAL DETERMINATION. Notwithstanding any other provision of this act, no patient with respect to whom proceedings for judicial commitment have been commenced shall be released or discharged during the pendency of such proceedings unless ordered by the court or a judge thereof upon the application of the patient, or his legal guardian, parent, spouse, or next of kin, or upon the report of the director of the facility that the patient may be discharged with safety.

[66-350, added 1951, ch. 290, sec. 34, p. 622; am. 1973, ch. 173, sec. 26, p. 363.]

66-351. REPAYMENT OF MONEY ON DISCHARGE OF PATIENT. If, at the time of the discharge of a person from any facility, or after the death and burial of any person therein confined, there remain in the custody of the director of the facility any unexpended moneys paid for the support or maintenance of such person, they must, upon demand, be repaid to the person or his personal representative.

[66-351, added 1951, ch. 290, sec. 35, p. 622; am. 1973, ch. 173, sec. 27, p. 363; am. 1981, ch. 114, sec. 34, p. 193.]

66-352. MONEY FOUND ON MENTALLY ILL PERSONS -- DISPOSITION. Any moneys, or other things of value, found on the person of a mentally ill person

at the time of proceedings for involuntary commitment must be certified to by the judge and sent with such person to the facility, there to be delivered to the director of the facility who shall hold said money in trust as provided in chapter 5 of [title 66](#), Idaho Code. All money received by or for a patient, voluntarily or involuntarily committed, while at the facility shall be placed in trust as provided in said chapter 5.

[66-352, added 1951, ch. 290, sec. 36, p. 622, am. 1967, ch. 357, sec. 1, p. 1004; am. 1973, ch. 173, sec. 28, p. 363.]

66-354. MENTALLY ILL PERSON WITH ASSETS SUFFICIENT TO PAY EXPENSES -- LIABILITY OF RELATIVES. (a) When a mentally ill person has been admitted to a state facility voluntarily or involuntarily, the director of the facility may cause an inquiry to be made as to the financial circumstances of such person and of the relatives of such person legally liable for his or her support, and if it is found that such person or said relatives, legally liable for the support of the patient, are able to pay the expenses for commitment proceedings and the charges for the care and treatment of the patient in the facility, in whole or in part, it shall be the duty of the director of the facility to collect such expenses and such charges, and if necessary to institute in the name of the state, a civil suit against the person or persons liable therefor.

(b) The following relatives shall be bound by law to provide for the expenses and charges for the commitment, care and treatment of such mentally ill person referred to in this act: husband for the wife, and the wife for the husband; the parent for his or her minor child or minor children, and the children for their parents.

[66-354, added 1951, ch. 290, sec. 38, p. 622; am. 1973, ch. 173, sec. 30, p. 363; am. 1981, ch. 114, sec. 35, p. 193.]

66-355. APPOINTMENT OF GUARDIAN -- INCOMPETENCY OF MENTALLY ILL PERSON REQUIRES SEPARATE PROCEEDINGS -- LIABILITY FOR CARE AND TREATMENT COSTS. The incompetency of a mentally ill person shall be determined in the same manner that incompetency is determined in any other person and shall be a separate judicial proceeding. Any guardian appointed in the case of a mentally ill incompetent person, is subject to all the provisions of the general laws of the state of Idaho in relation to guardians and wards. Whenever a mentally ill person is receiving care and treatment in a facility in the event that incompetency is adjudicated and a guardian appointed, the court on determining the incompetency must inquire into the ability of the mentally ill person to pay for his or her expenses which arise in connection with his or her care and treatment, if any, transportation to the facility, court costs for incompetency proceedings, and for the care and treatment for such person for such time as he remains in such facility, and when there are sufficient assets in the hands of the guardian, the court may order a sale of property or such part thereof as may be necessary, and from the proceeds of such sale the guardian must pay for all expenses and reasonable charges for the patient's care and treatment, or such part as it is possible to pay, to the director of the facility in which said mentally ill person is a patient.

[66-355, added 1951, ch. 290, sec. 39, p. 622; am. 1973, ch. 173, sec. 31, p. 363.]

66-356. RELIEF FROM FIREARMS DISABILITIES. (1) A court that:

- (a) Orders commitment pursuant to section [66-329](#), Idaho Code;
- (b) Orders commitment or treatment pursuant to section [66-406](#), Idaho Code;
- (c) Appoints a guardian pursuant to section [66-322](#), Idaho Code, or section [15-5-304](#), Idaho Code;
- (d) Appoints a conservator pursuant to section [15-5-407](#)(b), Idaho Code;
- (e) Appoints a guardian or conservator pursuant to section [66-404](#), Idaho Code; or
- (f) Finds a defendant incompetent to stand trial pursuant to section [18-212](#), Idaho Code, shall make a finding as to whether the subject of the proceeding is a person to whom the provisions of 18 U.S.C. 922(d)(4) and (g)(4) apply. If the court so finds, the clerk of the court shall forward a copy of the order to the Idaho state police, which in turn shall forward a copy to the federal bureau of investigation, or its successor agency, for inclusion in the national instant criminal background check system database.

(2) A person who is subject to an order, including an appointment or finding described in subsection (1) of this section, may petition the magistrate division of the court that issued such order, or the magistrate division of the district court of the county where the individual resides, to remove the person's firearms-related disabilities as provided in section 105(a) of P.L. 110-180. A copy of the petition for relief shall also be served on the director of the department of health and welfare and the prosecuting attorney of the county in which the original order, appointment or finding occurred, and such department and office may, as it deems appropriate, appear, support, object to and present evidence relevant to the relief sought by the petitioner. The court shall receive and consider evidence, including evidence offered by the petitioner, concerning:

- (a) The circumstances of the original order, appointment or finding;
- (b) The petitioner's mental health and criminal history records, if any;
- (c) The petitioner's reputation; and
- (d) Changes in the petitioner's condition or circumstances relevant to the relief sought.

The court shall grant the petition for relief if it finds by a preponderance of the evidence that the petitioner will not be likely to act in a manner dangerous to public safety and that the granting of the relief would not be contrary to the public interest. The petitioner may appeal a denial of the requested relief, and review on appeal shall be de novo. A person may file a petition for relief under this section no more than once every two (2) years.

(3) When a court issues an order granting a petition for relief under subsection (2) of this section, the clerk of the court shall immediately forward a copy of the order to the Idaho state police, which in turn shall immediately forward a copy to the federal bureau of investigation, or its successor agency, for inclusion in the national instant criminal background check system database.