

CLERK OF THE DISTRICT COURT MANUAL

16.0 HOSPITALIZATION OF MENTALLY ILL

Revised July 2008

16.1 PURPOSE

Mental Commitment Proceedings are held to determine whether or not a person should be involuntarily committed to the custody of the Department of Health and Welfare due to mental illness and for the Department to determine the most appropriate treatment. These proceedings are governed by I.C. §§ 66-317 to 66-355.

16.2 CONFIDENTIALITY

Mental Commitment proceedings are confidential and exempt from public disclosure, unless made available by the court, pursuant to Idaho Court Administrative Rule 32(g)(10). Both the case file and the courtroom proceedings are closed to the general public. See: I.C. § 66-348.

16.3 FREQUENTLY USED TERMS

In processing these case types, the following terms are frequently used:

“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. I.C. § 66-317(12).

“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. I.C. § 66-317(13).

“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.
- 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. I.C. § 66-317(11).

“Designated Examiner” (“DE”) is a psychiatrist, psychologist, psychiatric nurse, or social worker and such other mental health professionals as may be designated 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. I.C. § 66-317(5).

16.4 TYPES OF COMMITMENT PROCEEDINGS

Clerks may deal with commitment proceedings initiated in the following ways:

1. Initial detention without Application/Petition or hearing.
2. Commitment with Application/Petition.
3. Re-hospitalization of Conditionally Released Patients.
4. Outpatient Commitment Proceedings.

These proceedings are processed in magistrate court. There is no filing fee for these cases. I.C. § 31-3201A(a).

16.5 INITIAL DETENTION WITHOUT APPLICATION/PETITION OR HEARING – I.C. § 66-326

These cases begin when a person is taken into custody and placed into a facility by law enforcement, without a court order. As an example, a person attempts or threatens suicide and law enforcement is called and then takes that individual into custody (usually transporting them to a hospital equipped to deal with mentally ill patients). Within 24 hours of having done so, evidence of the person’s alleged grave disability, illness or imminent danger must be brought to court. I.C. § 66-326(1). This evidence is often presented by way of a form containing the officer’s sworn statement. Regardless of how

presented, this evidence must be presented to a judge within 24 hours of when the person was taken into custody by law enforcement.

If the judge finds the person is “gravely disabled” due to mental illness or is imminently dangerous, 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 24 hours of the entry of the order of the Court. I.C. § 66-326(2).

Clerical Duties: *(These must be done immediately since this is a “time sensitive” proceeding.)*

1. Receive stamp the statement submitted by the officer.
2. Immediately bring to the attention of the appropriate judge.
3. Once the temporary custody order is signed by a judge, immediately time and date stamp it, and the officer’s statement, and fax them to the Prosecuting Attorney.

Where an examination is ordered, the designated examiner shall make his findings and report to the court within 24 hours of the examination. I.C. § 66-326(3). If the designated examiner finds that the person is mentally ill and either “likely to injure himself or others” or “gravely disabled”, the prosecuting attorney shall file within 24 hours of the examination, an Application or Petition with the court requesting the patient's detention, pending commitment proceedings. I.C. § 66-326(4). If no Application/Petition is filed within 24 hours of the designated examiner's examination of the person, the person shall be released and the case is closed. Upon the receipt of the Application/Petition, the court shall order his detention to await hearing within 5 five days including Saturdays, Sundays and legal holidays of the detention order. I.C. § 66-326(4). The case is then further processed as described below. This Order should be provided by the Prosecutor.

Clerical Duties: *(If no Application/Petition is filed by the Prosecutor.)*

1. Close out on ISTARs with no Application/Petition ever having been filed.

Note: Mental Health Commitments with no Application/Petition ever being filed can be opened and closed in one day. Although the Prosecutor is “required” to do this, it is not uncommon for them to fail to do so.

Clerical Duties: *(If Application/Petition is filed by Prosecutor (must be done immediately.)*

1. File stamp Application/Petition, open file and assign case number.

2. Immediately give to assigned judge, along with any Orders for second designated examiner or appointment of Public Defender to be signed.
3. Schedule hearing on the Application / Commitment. This hearing must be scheduled as soon as possible but within 5 days including Saturdays, Sundays and holidays of filing of the petition.
4. Send notice of hearing and copies of all orders entered to Prosecutor and the proposed patient, or his spouse, guardian, next of kin or friend (or Public Defender, if appointed).
5. Make appropriate entries in ISTARs.

**16.6 COMMITMENT PROCEEDINGS WITH PETITION/APPLICATION –
I.C. § 66-329**

Applications for the involuntary treatment of the mentally ill may be commenced by the filing of a written application. I.C. 66-329(2). The Application may be filed by the Prosecuting Attorney, a physician, or other public official, or any friend, relative, spouse or guardian of the proposed patient. The application shall be presented with a certificate from a designated examiner (“1st DE”), stating that he has personally examined the proposed patient within the last fourteen days. I.C. § 66-329(3). If the certificate states that the patient is mentally ill and that he is either “gravely disabled” or “likely to injure himself or others”, the Court shall issue an Order committing the patient to a facility to await hearing on the Application. I.C. § 66-329(5). Some Courts may appoint a public defender at this time to reduce potential delay and unnecessary costs of commitment pending hearing.

Upon receipt of the Application or Petition, within 48 hours, the Court is required to appoint another designated examiner (“2nd DE”). If the Application did not include the “1st DE”, as required, then the Court must appoint 2 designated examiners and may order the immediate examination of the patient. Both designated examiner’s certificates must be filed within 72 hours. I.C. § 66-329(4).

Clerical Duties: *(Must be done immediately.)*

1. File stamp Application and 1st DE Certificate, open file and assign case number.
2. Immediately give file to assigned judge, along with any Orders for second designated examiner and for temporary commitment (and Order for appointment of Public Defender, if done in your jurisdiction) to be signed.
3. Some Courts may schedule the hearing on the Application / Petition at this point, even though the 2nd DE Certificate has not yet been done. If so, send notice of hearing and copies of all orders entered to Prosecutor / Applicant

and the proposed patient and his spouse, relative, guardian, next of kin or friend (or Public Defender, if appointed). Make sure copies of the Application and 1st DE Certificate are also sent to the patient or his attorney and spouse, etc.

4. Make appropriate entries in ISTARs.

If the designated examiner's certificates indicate the patient is not mentally ill or is not "gravely disabled" or "likely to injure himself or others", the proceedings are terminated and the patient is released.

Clerical Duties: *(If Court terminates proceedings based on DE Certificates. Must be done immediately.)*

1. Send copies of Order of Dismissal to all parties, including spouse, relative, etc.
2. Enter dismissal in ISTARs.
3. Close out file.

If the patient is found by the designated examiners to be mentally ill and "gravely disabled" or "likely to injure himself or others", the court sets a time and place for hearing, within 7 days of 2nd DE Certificate. I.C. § 66-329(6). **Note: Some Courts will set this hearing as soon as the Application and 1st DE are filed in order to increase efficiency and decrease unnecessary costs. The Court must also provide to the proposed patient (or the public defender, if appointed), and his spouse, relative, guardian, next of kin or friend, copies of the notice of hearing, the Application, DE Certificates and notification of the right to be represented by counsel, or if the court finds the person to be indigent, to be represented by court appointed counsel. I.C. § 66-329(6).**

Clerical Duties: *(When 2nd DE is received. Must be done immediately.)*

1. File stamp the 2nd DE Certificate and file.
2. Immediately give file to assigned judge, along with any Order for Public Defender to be signed.
3. Schedule hearing on the Application/Petition. This hearing must be scheduled within 7 days of receipt of the 2nd DE Certificate.
4. Send notice of hearing and copies of all orders entered to Prosecutor or Applicant and the proposed patient (or his Public Defender), and his spouse, relative, guardian, next of kin or friend. Also, send copies of the

Application and both DE Certificates to the patient or his attorney and spouse, relative, guardian, next of kin or friend, if not done previously.

5. Make appropriate entries in ISTARs.

At the conclusion of the hearing, if the Court finds by clear and convincing evidence that the proposed person is mentally ill and, because of such condition is either, “likely to injure himself or others” or is “gravely disabled”, the Court shall order the proposed patient committed to the custody of the Department of Health and Welfare for an indeterminate period of time not to exceed one year. I.C. § 66-329(11). The director of the Department (usually through a “dispositioner”) shall determine which facility the patient will be sent to. The county sheriff is required to transport the patient to the facility within 48 hours. I.C. § 66-330. While awaiting disposition, the patient may be detained in his home, licensed foster care, or other facility (usually the hospital where he first was).

Clerical Duties: (*Must be done immediately.*)

1. File stamp Order of Commitment.
2. File stamp Transport Order.
3. Send copies to Prosecutor/Applicant, the patient (or his counsel), and the patient’s spouse, relative, guardian, next of kin or friend, and the Sheriff (certified).
4. Make appropriate entries in ISTARs.
5. Close out file.

16.7 RE-HOSPITALIZATION OF CONDITIONALLY RELEASED PATIENTS

An application may be made by a judge, prosecuting attorney, designated examiner or other interested party to return a previously hospitalized patient to in-patient custody status at a designated institution. In this situation, the case is re-opened and processed in much the same manner as an Involuntary Commitment.

16.8 OUTPATIENT COMMITMENT PROCEEDINGS

Applications may be made to commit patients to outpatient programs. The procedures previously described associated with Involuntary Commitments apply to this process.