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**Idaho Behavioral Health  
And  
Mental Health Statutes**

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# Regional Behavioral Health Services

## Idaho Code Statutes

39-3124. **IDAHO BEHAVIORAL HEALTH COOPERATIVE.** The behavioral health authority shall establish the Idaho behavioral health cooperative to advise it on issues related to the coordinated delivery of community-based behavioral health services. The membership shall include representatives from the Idaho state judiciary, the Idaho department of correction, the Idaho department of juvenile corrections, the office of drug policy, the Idaho association of counties, the state behavioral health planning council, an adult consumer of services, a family member of a youth consumer of services, the state department of education and the Idaho department of health and welfare, at a minimum, but may also include other members as deemed necessary by the behavioral health authority. The Idaho behavioral health cooperative shall meet quarterly, with additional meetings called at the request of the state behavioral health authority.

History:[39-3124, added 2014, ch. 43, sec. 6, p. 108.]

39-3125. **STATE BEHAVIORAL HEALTH PLANNING COUNCIL.** (1) A state behavioral health planning council, hereinafter referred to as the planning council, shall be established to serve as an advocate for children and adults with behavioral health disorders; to advise the state behavioral health authority on issues of concern, on policies and on programs and to provide guidance to the state behavioral health authority in the development and implementation of the state behavioral health systems plan; to monitor and evaluate the allocation and adequacy of behavioral health services within the state on an ongoing basis; to monitor and evaluate the effectiveness of state laws that address behavioral health services; to ensure that individuals with behavioral health disorders have access to prevention, treatment and rehabilitation services; to serve as a vehicle for policy and program development; and to present to the governor, the judiciary and the legislature by June 30 of each year a report on the council's activities and an evaluation of the current effectiveness of the behavioral health services provided directly or indirectly by the state to adults and children. The planning council shall establish readiness and performance criteria for the regional boards to accept and maintain responsibility for family support and recovery support services. The planning council shall evaluate regional board adherence to the readiness criteria and make a determination if the regional board has demonstrated readiness to accept responsibility over the family support and recovery support services for the region. The planning council shall report to the behavioral health authority if it determines a regional board is not fulfilling its responsibility to administer the family support and recovery support services for the region and recommend the regional behavioral health centers assume

1 responsibility over the services until the board demonstrates it is  
2 prepared to regain the responsibility.

3 (2) The planning council shall be appointed by the governor  
4 and be comprised of no more than fifty percent (50%) state employees  
5 or providers of behavioral health services. Membership shall also  
6 reflect to the extent possible the collective demographic  
7 characteristics of Idaho's citizens. The planning council membership  
8 shall include representation from consumers, families of adults with  
9 serious mental illness or substance use disorders; behavioral health  
10 advocates; principal state agencies and the judicial branch with  
11 respect to behavioral health, education, vocational rehabilitation,  
12 adult correction, juvenile justice and law enforcement, title XIX of  
13 the social security act and other entitlement programs; public and  
14 private entities concerned with the need, planning, operation,  
15 funding and use of mental health services or substance use  
16 disorders, and related support services; and the regional behavioral  
17 health board in each department of health and welfare region as  
18 provided for in section 39-3134, Idaho Code. The planning council  
19 may include members of the legislature.

20 (3) The planning council members will serve a term of two (2)  
21 years or at the pleasure of the governor, provided however, that of  
22 the members first appointed, one-half (1/2) of the appointments  
23 shall be for a term of one (1) year and one-half (1/2) of the  
24 appointments shall be for a term of two (2) years. The governor will  
25 appoint a chair and a vice-chair whose terms will be two (2) years.

26 (4) The council may establish subcommittees at its discretion.  
27 History: [39-3125, added 2006, ch. 277, sec. 3, p. 849; am.  
28 2014, ch. 43, sec. 7, p. 109.]

29  
30 **39-3126. DESIGNATION OF REGIONAL BEHAVIORAL HEALTH**  
31 **CENTERS.** Recognizing both the need of every citizen to receive the  
32 best behavioral health services that the state is able to provide  
33 within budgetary confines and the disproportionate ability of  
34 counties to finance behavioral health services, the state behavioral  
35 health authority shall designate regions and be responsible for  
36 establishing regional behavioral health centers for all areas of the  
37 state. In the establishment of regions, primary consideration will  
38 be given to natural population groupings and service areas, the  
39 regions previously designated for the establishment of other health  
40 services, the behavioral health needs of the people within the  
41 proposed regions, and the appropriate maximal use of available  
42 funding.

43 History: [(39-3126) 39-3125, added 1969, ch. 202, sec. 3, p.  
44 589; am. and redesig. 2006, ch. 277, sec. 2, p. 849; am. 2014, ch.  
45 43, sec. 8, p.110.]

46  
47 **39-3127. COORDINATION OF SERVICES BETWEEN REGIONS AND**  
48 **STATE.** The director of the department of health and welfare shall  
49 coordinate services between the regional behavioral health centers,  
50 regional behavioral health boards and the state psychiatric  
51 hospitals.

52 History: [39-3127, added 2014, ch. 43, sec. 9, p. 110.]

1           **39-3128. FACILITIES FOR BEHAVIORAL HEALTH CENTERS.** The state  
2 behavioral health authority may contract for the lease of facilities  
3 appropriate for the establishment of behavioral health centers. In  
4 order to encourage the development of comprehensive and integrated  
5 health care and whenever feasible and consistent with behavioral  
6 health treatment, these facilities shall be in or near facilities  
7 within the region housing other health services.

8           History: [39-3128, added 2014, ch. 43, sec. 10, p. 110.]  
9

10           **39-3129. DIVISION ADMINISTRATOR FOR REGIONAL BEHAVIORAL HEALTH**  
11 **CENTERS – DUTIES.** The director of the department of health and  
12 welfare shall appoint a division administrator to manage the  
13 regional behavioral health centers and shall supervise its program;  
14 shall prescribe uniform standards of treatment, services and care  
15 provided by the regional behavioral health centers and regional  
16 behavioral health boards; shall set the professional qualifications  
17 for staff positions; and make such other policy as are necessary and  
18 proper to carry out the purposes and intent of this chapter.

19           History: [39-3129, added 2014, ch. 43, sec. 12, p. 110.]  
20

21  
22           **39-3130. RECIPROCAL AGREEMENTS BETWEEN STATES TO SHARE**  
23 **SERVICES.** In such regions where natural population groupings overlap  
24 state boundaries, an interstate regional behavioral health service  
25 may be established jointly with a neighboring state or states. In  
26 such instances, the state behavioral health authority may enter into  
27 reciprocal agreements with these states to either share the expenses  
28 of the service in proportion to the population served; to allow  
29 neighboring states to buy services from Idaho; or to allow Idaho to  
30 purchase services that are otherwise not available to its citizens.

31           History: [(39-3130) (39-3127) 39-3126, added 1969, ch. 202,  
32 sec. 4, p. 589; am. and redesig. 2006, ch. 277, sec. 4, p. 850; am.  
33 and redesig. 2014, ch. 43, sec. 13, p. 111.]  
34

35           **39-3131. BEHAVIORAL HEALTH SERVICES TO BE OFFERED.** The  
36 regional behavioral health center shall provide or arrange for the  
37 delivery of services that, combined with community family support  
38 and recovery support services provided through the regional  
39 behavioral health boards, medicaid and services delivered through a  
40 private provider network, will lead to the establishment of a  
41 comprehensive regional behavioral health system of care that  
42 incorporates patient choice and family involvement to the extent  
43 reasonably practicable and medically and professionally appropriate.  
44 The regional behavioral health center shall provide or arrange for  
45 the delivery of the following services:

46           (1) Treatment services for individuals who do not have other  
47 benefits available to meet their behavioral health needs as  
48 resources allow including, but not limited to, psychiatric services,  
49 medication management, rehabilitative and community-based services,  
50 outpatient and intensive outpatient services, assertive community  
51 treatment, case management and residential care;



1 (2) Community family support and recovery support services as  
2 defined in section [39-3135](#)(7), Idaho Code, until the regional  
3 behavioral health board can meet the initial readiness criteria and  
4 voluntarily accepts responsibility for these services or if the  
5 regional behavioral health board fails to sustain criteria to  
6 maintain responsibility for these services;

7 (3) Evaluation and intervention for individuals experiencing a  
8 behavioral health emergency;

9 (4) Hospital precare and postcare services, in cooperation  
10 with state and community psychiatric hospitals, for individuals who  
11 have been committed to the custody of the director of health and  
12 welfare pursuant to sections [18-212](#) and [66-329](#), Idaho Code, or who  
13 are under an involuntary treatment order pursuant to [chapter 24,](#)  
14 [title 16](#), Idaho Code;

15 (5) Evaluation and securing mental health treatment services  
16 as ordered by a court for individuals pursuant to section [19-](#)  
17 [2524](#), [20-511A](#) or [20-519B](#), Idaho Code; and

18 (6) Evaluation and securing treatment services for individuals  
19 who are accepted into mental health courts.

20 History: [(39-3131) (39-3128) 39-3127, added 1969, ch. 202,  
21 sec. 5, p. 589; am. and redesig. 2006, ch. 277, sec. 5, p. 851; am.  
22 and redesig. 2014, ch. 43, sec. 15, p. 111.]

23  
24 **39-3132. REGIONAL BEHAVIORAL HEALTH BOARDS –**  
25 **ESTABLISHMENT.** There is hereby created and established in each  
26 region a regional behavioral health board. It is legislative intent  
27 that the regional behavioral health boards operate and be recognized  
28 not as a state agency or department, but as governmental entities  
29 whose creation has been authorized by the state, much in the manner  
30 as other single purpose districts. However, the regional behavioral  
31 health boards shall have no authority to levy taxes. For the  
32 purposes of section [59-1302](#)(15), Idaho Code, the seven (7) regional  
33 behavioral health boards created pursuant to this chapter shall be  
34 deemed governmental entities. The regional behavioral health boards  
35 are authorized to provide the community family support and recovery  
36 support services identified in section [39-3135](#)(7), Idaho Code. The  
37 services identified in section [39-3135](#)(7), Idaho Code, shall not be  
38 construed to restrict the services of the regional behavioral health  
39 board solely to these categories.

40 History: [39-3132, added 2014, ch. 43, sec. 16, p. 112.]

41  
42 **39-3133. EXECUTIVE COMMITTEE OF THE REGIONAL BEHAVIORAL HEALTH**  
43 **BOARDS.** Each regional behavioral health board shall annually elect  
44 from within its membership an executive committee of five (5)  
45 members empowered to make fiscal, legal and business decisions on  
46 behalf of the full board or join with another governmental entity  
47 that can fulfill the same management infrastructure function. If the  
48 regional behavioral health board elects to create its own internal  
49 executive committee, the membership shall be representative of the  
50 regional behavioral health board membership and must, at a minimum,  
51 include one (1) mental health consumer or advocate and one (1)  
52 substance use disorder consumer or advocate. The executive

1 committees or the partner public entity shall have the power and  
2 duty, on behalf of the regional behavioral health boards, to:

3 (1) Establish a fiscal control policy as required by the state  
4 controller;

5 (2) Enter into contracts and grants with other governmental  
6 and private agencies, and this chapter hereby authorizes such other  
7 agencies to enter into contracts with the regional behavioral health  
8 boards as deemed necessary to fulfill the duties imposed upon the  
9 board to promote and sustain the ability of individuals with  
10 behavioral health disorders to live in the community and avoid  
11 institutionalization;

12 (3) Develop and maintain bylaws as necessary to establish the  
13 process and structure of the board; and

14 (4) Employ and fix the compensation, subject to the provisions  
15 of [chapter 53, title 67](#), Idaho Code, of such personnel as may be  
16 necessary to carry out the duties of the regional behavioral health  
17 boards.

18 All meetings of the executive committee shall be held in  
19 accordance with the open meetings law as provided for in [chapter 2,](#)  
20 [title 74](#), Idaho Code.

21 History: [39-3133, added 2014, ch. 43, sec. 18, p. 112; am.  
22 2017, ch. 58, sec. 17, p. 112.]

23  
24 **39-3134. REGIONAL BEHAVIORAL HEALTH BOARD - MEMBERS - TERMS -**  
25 **APPOINTMENT.** A regional behavioral health board for each region  
26 shall consist of twenty-two (22) members and shall be appointed as  
27 provided herein. All meetings of the regional behavioral health  
28 board shall be held in accordance with the open meetings law as  
29 provided for in [chapter 2, title 74](#), Idaho Code. Members shall be  
30 comprised of the following: three (3) county commissioners or their  
31 designee; two (2) department of health and welfare employees who  
32 represent the behavioral health system within the region; one (1)  
33 parent of a child with a serious emotional disturbance; one (1)  
34 parent of a child with a substance use disorder; a law enforcement  
35 officer; one (1) adult mental health services consumer  
36 representative; one (1) mental health advocate; one (1) substance  
37 use disorder advocate; one (1) adult substance use disorder services  
38 consumer representative; one (1) family member of an adult mental  
39 health services consumer; one (1) family member of an adult  
40 substance use disorder services consumer; a private provider of  
41 mental health services within the region; a private provider of  
42 substance use disorder services within the region; a representative  
43 of the elementary or secondary public education system within the  
44 region; a representative of the juvenile justice system within the  
45 region; a representative of the adult correction system within the  
46 region; a representative of the judiciary appointed by the  
47 administrative district judge; a physician or other licensed health  
48 practitioner from within the region; and a representative of a  
49 hospital within the region. The consumer, parent and family  
50 representatives shall be selected from nominations submitted by  
51 behavioral health consumer and advocacy organizations. The board may  
52 have nonvoting members as necessary to fulfill its roles and

1 responsibilities. The board shall meet at least twice each year and  
2 shall annually elect a chairperson and other officers as it deems  
3 appropriate.

4 On the effective date of this chapter, the appointing authority  
5 in each region shall be a committee composed of the chairperson of  
6 the board of county commissioners of each of the counties within the  
7 region, the current chair of the regional mental health board and  
8 the current chair of the regional advisory committee and, after the  
9 initial appointment of members to the regional behavioral health  
10 board, the current chair of the regional behavioral health board and  
11 one (1) representative of the department of health and welfare. The  
12 committee shall meet annually or as needed to fill vacancies on the  
13 board.

14 The appointing authority in each region shall determine if  
15 members of the regional mental health board and the regional  
16 advisory committee who are serving on the effective date of this  
17 chapter may continue to serve until the end of the current term of  
18 their appointment or they may end all current appointments and  
19 create the board membership based upon the requirements of this  
20 section. If the appointing authority decides to allow current  
21 members of the board to serve out their current terms, appointments  
22 made after the effective date of this chapter shall be made in a  
23 manner to achieve the representation provided in this section as  
24 soon as reasonably practical.

25 The term of each member of the board shall be for four (4)  
26 years; provided however, that of the members first appointed, one-  
27 third (1/3) from each region shall be appointed for a term of two  
28 (2) years; one-third (1/3) for a term of three (3) years; and one-  
29 third (1/3) for a term of four (4) years. After the membership  
30 representation required in this section is achieved, vacancies shall  
31 be filled for the unexpired term in the same manner as original  
32 appointments. Board members shall be compensated as provided for in  
33 section 59-509(b), Idaho Code, and such compensation shall be paid  
34 from the operating budget of the regional behavioral health board as  
35 resources allow.

36 History: [(39-3134) 39-3130, added 1969, ch. 202, sec. 8, p.  
37 589; am. 2004, ch. 354, sec. 2, p. 1059; am. 2009, ch. 122, sec. 1,  
38 p. 386; am. and redsig. 2014, ch. 43, sec. 20, p. 113; am. 2017,  
39 ch. 58, sec. 18, p. 113.]

40  
41 **39-3135. POWERS AND DUTIES.** The regional behavioral health  
42 board:

43 (1) Shall advise the state behavioral health authority and the  
44 state planning council on local behavioral health needs of adults  
45 and children within the region;

46 (2) Shall advise the state behavioral health authority and  
47 the planning council of the progress, problems and proposed projects  
48 of the regional service;

49 (3) Shall promote improvements in the delivery of behavioral  
50 health services and coordinate and exchange information regarding  
51 behavioral health programs in the region;

1 (4) Shall identify gaps in available services including, but  
2 not limited to, services listed in sections 16-2402(3) and 39-3131,  
3 Idaho Code, and recommend service enhancements that address  
4 identified needs for consideration to the state behavioral health  
5 authority;

6 (5) Shall assist the planning council with planning for  
7 service system improvement. The planning council shall incorporate  
8 the recommendation to the regional behavioral health boards into the  
9 annual report provided to the governor by June 30 of each year. This  
10 report shall also be provided to the legislature;

11 (6) May develop, or obtain proposals for, a petition for  
12 regional services for consideration by the state behavioral health  
13 authority;

14 (7) May accept the responsibility to develop and provide  
15 community family support and recovery support services in their  
16 region. The board must demonstrate readiness to accept this  
17 responsibility and shall not be held liable for services in which  
18 there is no funding to provide. The readiness criteria for accepting  
19 this responsibility shall be established by the planning council.  
20 The planning council shall also determine when a regional behavioral  
21 health board has complied with the readiness criteria. Community  
22 family support and recovery support services include, but are not  
23 limited to:

24 (a) Community consultation and education;

25 (b) Housing to promote and sustain the ability of individuals  
26 with behavioral health disorders to live in the community and avoid  
27 institutionalization;

28 (c) Employment opportunities to promote and sustain the  
29 ability of individuals with behavioral health disorders to live in  
30 the community and avoid institutionalization;

31 (d) Evidence-based prevention activities that reduce the  
32 burden associated with mental illness and substance use disorders;  
33 and

34 (e) Supportive services to promote and sustain the ability of  
35 individuals with behavioral health disorders to live in the  
36 community and avoid institutionalization including, but not limited  
37 to, peer run drop-in centers, support groups, transportation and  
38 family support services;

39 (8) If a regional board, after accepting the responsibility  
40 for a recovery support service, fails to successfully implement and  
41 maintain access to the service, the behavioral health authority  
42 shall, after working with the board to resolve the issue, take over  
43 responsibility for the services until the board can demonstrate its  
44 ability to regain organization and provision of the services;

45 (9) Shall annually provide a report to the planning council,  
46 the regional behavioral health centers and the state behavioral  
47 health authority of its progress toward building a comprehensive  
48 community family support and recovery support system that shall  
49 include performance and outcome data as defined and in a format  
50 established by the planning council; and

1 (10) The regional board may establish subcommittees as it  
2 determines necessary and shall, at a minimum, establish and maintain  
3 a children's mental health subcommittee.

4 History: [(39-3135) 39-3132, added 1969, ch. 202, sec. 10, p.  
5 589; am. 2004, ch. 354, sec. 4, p. 1060; am. 2006, ch. 277, sec. 8,  
6 p. 851; am. 2009, ch. 122, sec. 2, p. 387; am. and redesisg. 2014,  
7 ch. 43, sec. 23, p. 114.]

8  
9 **39-3136. FUNDS.** The financial support for the regional  
10 behavioral health centers shall be furnished by state appropriations  
11 and by whatever federal funds are available in an identifiable  
12 section within the behavioral health program budgets. Behavioral  
13 health services that are financed or contracted by local or federal  
14 sources may be incorporated into the regional behavioral health  
15 centers subject to the approval of the state behavioral health  
16 authority.

17 History: [39-3136, added 1969, ch. 202, sec. 14, p. 589; am.  
18 2014, ch. 43, sec. 24, p. 115.]

19  
20 **39-3137. SERVICES TO BE NONDISCRIMINATORY - FEES.** No regional  
21 behavioral health center or regional behavioral health board shall  
22 refuse service to any person because of race, color or religion or  
23 because of ability or inability to pay. Persons receiving services  
24 will be charged fees in keeping with a fee schedule prepared by the  
25 state behavioral health authority. Fees collected by the regional  
26 behavioral health center shall become part of its budget and  
27 utilized at the direction of the behavioral health authority. Fees  
28 collected by the regional behavioral board shall become part of its  
29 budget and utilized at the direction of the executive board or  
30 governing entity.

31 History: [39-3137, added 1969, ch. 202, sec. 15, p. 589; am.  
32 2014, ch. 43, sec. 25, p. 116.]

33  
34 **39-3138. EXISTING STATE-COUNTY CONTRACTS FOR SERVICES.** No  
35 section of this chapter shall invalidate, or prohibit the  
36 continuance of, existing state-county contracts for the delivery of  
37 behavioral health services within the participating counties.

38 History: [39-3138, added 1969, ch. 202, sec. 16, p. 589; am.  
39 2014, ch. 43, sec. 26, p. 116.]

40  
41 **39-3139. TITLE OF CHAPTER.** This chapter may be cited as the  
42 "Regional Behavioral Health Services Act."

43 History: [39-3139, added 1969, ch. 202, sec. 17, p. 589; am.  
44 2014, ch. 43, sec. 27, p. 116.]

45  
46 **39-3140. DEPARTMENT RULES.** The director is authorized to  
47 promulgate rules necessary to implement the provisions of this  
48 chapter that are consistent with its provision.

49 History:[39-3140, added 2014, ch. 43, sec. 28, p. 116.]

50  
51

# Hospitalization of the Mentally Ill

## Idaho Code Statutes

**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.

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

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

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

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

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

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

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

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

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

46 (15) "Protection and advocacy system" means the agency  
47 designated by the governor as the state protection and advocacy  
48 system pursuant to 42 U.S.C. section 15043 and 42 U.S.C. sections  
49 10801 et seq.

50 (16) "Holding proceedings in abeyance" means an alternative to  
51 judicial commitment based upon an agreement entered into by all  
52 parties, including the proposed patient, and agreed to by the court,

1 providing for voluntary conditions of treatment, which holds in a  
2 state of suspension or inactivity the petition for involuntary  
3 commitment.

4 History:[66-317, added 1951, ch. 290, sec. 1, p. 622; am. 1959,  
5 ch. 207, sec. 1, p. 439; am. 1969, ch. 187, sec. 1, p. 552; am.  
6 1972, ch. 44, sec. 1, p. 67; am. 1973, ch. 173, sec. 1, p. 363; am.  
7 1974, ch. 165, sec. 5, p. 1405; am. 1981, ch. 114, sec. 9, p. 174;  
8 am. 1982, ch. 59, sec. 6, p. 95; am. 1986, ch. 84, sec. 1, p. 243;  
9 am. 1998, ch. 90, sec. 1, p. 315; am. 2001, ch. 107, sec. 21, p.  
10 370; am. 2002, ch. 128, sec. 1, p. 357; am. 2003, ch. 249, sec. 2,  
11 p. 643; am. 2004, ch. 315, sec. 1, p. 885; am. 2005, ch. 391, sec.  
12 59, p. 1315; am. 2006, ch. 214, sec. 2, p. 645; am. 2008, ch. 331,  
13 sec. 1, p. 910.]

14  
15 **66-318. AUTHORITY TO ADMIT VOLUNTARY PATIENTS — DENIAL OF**  
16 **ADMISSION.** (1) The director of any facility or a practitioner  
17 granted admitting privileges pursuant to [chapter 13, title 39](#), Idaho  
18 Code, may admit as a voluntary patient the following persons for  
19 observation, diagnosis, evaluation, care or treatment of mental  
20 illness:

- 21 (a) Any person who is eighteen (18) years of age or older;  
22 (b) Any individual fourteen (14) to eighteen (18) years of age who  
23 may apply to be admitted for observation, diagnosis, evaluation,  
24 care or treatment and the facility director will notify the parent,  
25 parents or guardian of the individual of the admission; a parent or  
26 guardian may apply for the individual's release and the facility  
27 director will release the patient within three (3) days, excluding  
28 Saturdays, Sundays and legal holidays, of the application for  
29 discharge, unless the time period for diagnosis, evaluation, care or  
30 treatment is extended pursuant to section [66-320](#), Idaho Code;  
31 (c) Any emancipated minor;  
32 (d) Any individual under fourteen (14) years of age upon  
33 application of the individual's parent or guardian, provided that  
34 admission to an inpatient facility shall require a recommendation  
35 for admission by a designated examiner;  
36 (e) Any individual who lacks capacity to make informed decisions  
37 about treatment upon application of the individual's guardian;  
38 provided that admission to an inpatient facility shall require a  
39 recommendation for admission by a designated examiner; or  
40 (f) Any individual confined for examination pursuant to section [18-](#)  
41 [211](#) or [20-520](#), Idaho Code.

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

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



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

6  
7 **66-319. RELEASE OF VOLUNTARY INPATIENTS.** The director of an  
8 inpatient facility shall release any person, admitted in accordance  
9 with the procedure outlined in section 66-318, Idaho Code, whose  
10 continued care or treatment is no longer appropriate. If upon  
11 evaluation at the facility, it is determined that the patient is  
12 mentally ill and is likely to injure himself or others or is gravely  
13 disabled, the director of the facility shall institute appropriate  
14 judicial proceedings for continued care and treatment. In the case  
15 of persons confined pursuant to section 20-520 or 18-211, Idaho  
16 Code, upon completion of the examination, the sheriff of the county  
17 from which the defendant was committed shall be notified and the  
18 defendant shall continue to be confined at the facility for  
19 transportation back to the county. In those cases of persons  
20 admitted upon the application of a guardian, those persons shall be  
21 released upon the termination of the guardian's authority to consent  
22 to treatment.

23 History: [66-319, added 1951, ch. 290, sec. 3, p. 622; am.  
24 1959, ch. 207, sec. 3, p. 439; am. 1973, ch. 173, sec. 3, p. 363;  
25 am. 1981, ch. 114, sec. 11, p. 176; am. 2004, ch. 23, sec. 10, p.  
26 30.]

27  
28 **66-320. RIGHT TO RELEASE ON APPLICATION - EXCEPTIONS.** (a) A  
29 voluntary patient admitted in accordance with the procedure outlined  
30 in section 66-318, Idaho Code, who requests his release or whose  
31 release is requested, in writing, by his legal guardian, parent,  
32 spouse, or adult next of kin shall be released except that:

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

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

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

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

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

5 (d) A patient admitted for examination pursuant to section 20-  
6 520 or 18-211, Idaho Code, may not be released except for purposes  
7 of transportation back to the court ordering, or party authorizing,  
8 the examination.

9 History: [66-320, added 1951, ch. 290, sec. 4, p. 622; am.  
10 1973, ch. 173, sec. 4, p. 363; am. 1981, ch. 114, sec. 12, p. 177;  
11 am. 1986, ch. 84, sec. 2, p. 245; am. 2004, ch. 23, sec. 11, p. 31.]  
12

13 **66-322. APPOINTMENT OF GUARDIAN FOR INDIVIDUALS LACKING**  
14 **CAPACITY TO MAKE INFORMED DECISIONS ABOUT TREATMENT — JUDICIAL**

15 **PROCEDURE.** (a) Proceedings for the appointment of a guardian of a  
16 mentally ill person may be commenced by the filing of a written  
17 petition with a court of competent jurisdiction by a friend,  
18 relative, spouse or guardian of the proposed patient, by a licensed  
19 physician, licensed clinical psychologist, prosecuting attorney, or  
20 other public official of a municipality, county or of the state of  
21 Idaho, or by the director of any facility in which such patient may  
22 be.

23 (b) The petition shall state the name and last known address  
24 of the proposed patient; the name and address of either the spouse,  
25 next of kin or friend of the proposed patient; whether a guardian of  
26 the proposed patient has been previously appointed under the laws of  
27 this or any other state and, if so, the name and address of the  
28 guardian and the circumstances of such appointment; and a precise  
29 statement showing that the proposed patient is mentally ill, that  
30 treatment is available for such illness, and that the proposed  
31 patient lacks capacity to make informed decisions about treatment.

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

45 (d) Upon receipt of a petition, the court shall within forty-  
46 eight (48) hours appoint another licensed physician or licensed  
47 clinical psychologist to make a personal examination of the proposed  
48 patient, or if the proposed patient has not been examined, the court  
49 shall appoint two (2) licensed physicians or licensed clinical  
50 psychologists to make individual personal examinations of the  
51 proposed patient and may order the proposed patient to submit to an  
52 immediate examination. Within seventy-two (72) hours, the physician

1 or psychologist shall file with the court certificates described in  
2 subparagraph (c) above, if necessary.

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

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

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

19 (h) The proposed patient and the petitioner shall be afforded  
20 an opportunity to appear at the hearing, to testify, and to present  
21 and cross-examine witnesses. At the hearing, any existing provision  
22 of law prohibiting the disclosure of confidential communications  
23 between the examining physician or psychologist and the proposed  
24 patient shall not apply and the physicians or psychologists who  
25 examined the proposed patient shall be competent witnesses to  
26 testify as to the proposed patient's condition. The proposed patient  
27 shall be required to be present at the hearing, and be free from  
28 drugs likely to impair the proposed patient's ability to communicate  
29 with counsel or understand the proceedings, unless the right to be  
30 present or free from drugs is knowingly and voluntarily waived by  
31 the patient or unless the presence of the patient at the hearing  
32 would unduly disrupt the judicial proceedings. A record of the  
33 proceedings shall be made as for other civil hearings. The hearing  
34 shall be conducted in as informal a manner as may be consistent with  
35 orderly procedure and the rules of evidence.

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

41 (1) The proposed patient has a severe and reliably diagnosable  
42 mental illness;

43 (2) Without treatment, the immediate prognosis is for major  
44 distress resulting in serious mental or physical deterioration of  
45 the proposed patient;

46 (3) Treatment is available for such illness;

47 (4) The proposed patient lacks capacity to make informed  
48 decisions about treatment; and

49 (5) The relative risks and benefits of treatment or  
50 nontreatment are such that a reasonable person would consent to  
51 treatment.

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

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

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

30 (l) Proceedings for appointment of a person with authority to  
31 consent under this section may be consolidated with proceedings for  
32 the involuntary care of the proposed patient under section 66-329,  
33 Idaho Code, provided, however, that appointment of a person with  
34 authority to consent under this section shall terminate the  
35 proceedings for the involuntary care under section 66-329, Idaho  
36 Code.

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

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

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

46  
47 **66-324. AUTHORITY TO RECEIVE INVOLUNTARY PATIENTS.** The  
48 director of any facility, or a practitioner granted admitting  
49 privileges pursuant to chapter 13, title 39, Idaho Code, is  
50 authorized to receive in the facility for observation, diagnosis,  
51 evaluation, care or treatment any individual:

1 (1) Committed to the department director pursuant to  
2 section 16-1619, 20-520, 18-212 or 66-329, Idaho Code;

3 (2) Transferred pursuant to section 66-1201, Idaho Code; or

4 (3) Detained or transferred pursuant to section 66-326, Idaho  
5 Code.

6 History: [(66-324) 66-325, added 1951, ch. 290, sec. 9, p. 622;  
7 am. 1959, ch. 207, sec. 6, p. 439; am. 1973, ch. 173, sec. 7, p.  
8 363; am. and redesign. 1981, ch. 114, sec. 14, p. 180; am. 1986, ch.  
9 84, sec. 3, p. 245; am. 2001, ch. 107, sec. 22, p. 371; am. 2005,  
10 ch. 391, sec. 60, p. 1317; am. 2006, ch. 214,  
11

12 **66-325. RESIDENCE NOT AFFECTED BY PLACE OF TREATMENT.** For  
13 purposes of this chapter, the terms "residence," "residing," or  
14 "resides" shall refer to the place where the mentally ill person  
15 lives. None of the time spent in any facility shall be regarded as  
16 contributing toward, or acquiring, residence for any purpose.

17 History: [66-325, added 1981, ch. 114, sec. 15, p. 180.]  
18

19 **66-326. DETENTION WITHOUT HEARING.** (1) No person shall be  
20 taken into custody or detained as an alleged emergency patient for  
21 observation, diagnosis, evaluation, care or treatment of mental  
22 illness unless and until the court has ordered such apprehension and  
23 custody under the provisions outlined in section 66-329, Idaho Code;  
24 provided, however, that a person may be taken into custody by a  
25 peace officer and placed in a facility, or the person may be  
26 detained at a hospital at which the person presented or was brought  
27 to receive medical or mental health care, if the peace officer or a  
28 physician medical staff member of such hospital or a physician's  
29 assistant or advanced practice registered nurse practicing in such  
30 hospital has reason to believe that the person is gravely disabled  
31 due to mental illness or the person's continued liberty poses an  
32 imminent danger to that person or others, as evidenced by a threat  
33 of substantial physical harm; provided, under no circumstances shall  
34 the proposed patient be detained in a nonmedical unit used for the  
35 detention of individuals charged with or convicted of penal  
36 offenses. For purposes of this section, the term "peace officer"  
37 shall include state probation and parole officers exercising their  
38 authority to supervise probationers and parolees. Whenever a person  
39 is taken into custody or detained under this section without court  
40 order, the evidence supporting the claim of grave disability due to  
41 mental illness or imminent danger must be presented to a duly  
42 authorized court within twenty-four (24) hours from the time the  
43 individual was placed in custody or detained.

44 (2) If the court finds the individual to be gravely disabled  
45 due to mental illness or imminently dangerous under subsection (1)  
46 of this section, the court shall issue a temporary custody order  
47 requiring the person to be held in a facility, and requiring an  
48 examination of the person by a designated examiner within twenty-  
49 four (24) hours of the entry of the order of the court. Under no  
50 circumstances shall the proposed patient be detained in a nonmedical  
51 unit used for the detention of individuals charged with or convicted  
52 of penal offenses.

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

5 (4) If the designated examiner finds, in his examination under  
6 this section, that the person is mentally ill, and either is likely  
7 to injure himself or others or is gravely disabled due to mental  
8 illness, the prosecuting attorney shall file, within twenty-four  
9 (24) hours of the examination of the person, a petition with the  
10 court requesting the patient's detention pending commitment  
11 proceedings pursuant to the provisions of section 66-329, Idaho  
12 Code. Upon the receipt of such a petition, the court shall order his  
13 detention to await hearing which shall be within five (5) days  
14 (including Saturdays, Sundays and legal holidays) of the detention  
15 order. If no petition is filed within twenty-four (24) hours of the  
16 designated examiner's examination of the person, the person shall be  
17 released from the facility.

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

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

29 History: [(66-326) 1976, ch. 365, sec. 1, p. 1200; am. and  
30 redesig. 1981, ch. 114, sec. 19, p. 185; am. 1991, ch. 210, sec. 1,  
31 p. 494; am. 1998, ch. 341, sec. 1, p. 1089; am. 2006, ch. 91, sec.  
32 1, p. 265; am. 2006, ch. 214, sec. 5, p. 648.; am. 2013, ch. 293,  
33 sec. 2, p. 771.]

34  
35 **66-327. RESPONSIBILITY FOR COSTS OF COMMITMENT AND CARE OF**  
36 **PATIENTS.** (a) All costs associated with the commitment proceedings,  
37 including fees of designated examiners, transportation costs and all  
38 medical, psychiatric and hospital costs not included in subsection  
39 (c) of this section, shall be the responsibility of the person  
40 subject to judicial proceedings authorized by this chapter or such  
41 person's spouse, adult children, or, if indigent, the county of such  
42 person's residence after all personal, family and third party  
43 resources, including medical assistance provided under the state  
44 plan for medicaid as authorized by title XIX of the social security  
45 act, as amended, are considered. In proceedings authorized by this  
46 chapter, the court shall consider the indigency of persons subject  
47 to proceedings authorized by this chapter, in light of such person's  
48 income and resources, and if such person is able to pay all or part  
49 of such costs, the court shall order such person to pay all or any  
50 part of such costs. If the court determines such person is unable to  
51 pay all or any part of such costs, the court shall fix  
52 responsibility, in accordance with the provisions of chapter 35,

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

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

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

40 History: [66-327, added 1981, ch. 114, sec. 16, p. 181; am.  
41 2000, ch. 161, sec. 1, p. 409; am. 2012, ch. 203, sec. 1, p. 543.]

42  
43 **66-328. JURISDICTION OF PROCEEDINGS FOR**  
44 **COMMITMENT.** Proceedings for the care of mentally ill persons shall  
45 be had in the district court of the county where the person to be  
46 treated resides or in the district court of any other county of this  
47 state where such person is found.

48 History: [66-328, as added by 1961, ch. 165, sec. 1, p. 255;  
49 am. 1973, ch. 173, sec. 8, p. 363; am. 1974, ch. 165, sec. 7, p.  
50 1405; am. 1981, ch. 114, sec. 17, p. 181; am. 2008, ch. 331, sec. 2,  
51 p. 912.]

52

1           **66-329. COMMITMENT TO DEPARTMENT DIRECTOR UPON COURT ORDER –**  
2 **JUDICIAL PROCEDURE.**

3 (1) Proceedings for the involuntary care and  
4 treatment of mentally ill persons by the department of health and  
5 welfare may be commenced by the filing of a written application with  
6 a court of competent jurisdiction by a friend, relative, spouse or  
7 guardian of the proposed patient, by a licensed physician, by a  
8 physician's assistant or advanced practice registered nurse  
9 practicing in a hospital, by a prosecuting attorney or other public  
10 official of a municipality, county or of the state of Idaho, or by  
11 the director of any facility in which such patient may be.

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

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

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



1 (5) If the designated examiner's certificate states a belief  
2 that the proposed patient is mentally ill and either likely to  
3 injure himself or others or is gravely disabled due to mental  
4 illness, the judge of such court shall issue an order authorizing  
5 any health officer, peace officer, or director of a facility to take  
6 the proposed patient to a facility in the community in which the  
7 proposed patient is residing or to the nearest facility to await the  
8 hearing and for good cause may authorize treatment during such  
9 period subject to the provisions of section 66-346(a)(4), Idaho  
10 Code. Under no circumstances shall the proposed patient be detained  
11 in a nonmedical unit used for the detention of individuals charged  
12 with or convicted of penal offenses.

13 (6) Upon receipt of such application and designated examiners'  
14 reports the court shall appoint a time and place for hearing not  
15 more than seven (7) days from the receipt of such designated  
16 examiners' reports and thereupon give written notice of such time  
17 and place of such hearing together with a copy of the application,  
18 designated examiner's certificates, and notice of the proposed  
19 patient's right to be represented by an attorney, or if indigent, to  
20 be represented by a court-appointed attorney, to the applicant, to  
21 the proposed patient, to the proposed patient's spouse, guardian,  
22 next of kin or friend. With the consent of the proposed patient and  
23 his attorney, the hearing may be held immediately. Upon motion of  
24 the proposed patient and attorney and for good cause shown, the  
25 court may continue the hearing up to an additional fourteen (14)  
26 days during which time, for good cause shown, the court may  
27 authorize treatment.

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

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

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

46 (10) The proposed patient, the applicant, and any other persons  
47 to whom notice is required to be given shall be afforded an  
48 opportunity to appear at the hearing, to testify, and to present and  
49 cross-examine witnesses. The proposed patient shall be required to  
50 be present at the hearing unless the court determines that the  
51 mental or physical state of the proposed patient is such that his  
52 presence at the hearing would be detrimental to the proposed

1 patient's health or would unduly disrupt the proceedings. A record  
2 of the proceedings shall be made as for other civil hearings. The  
3 hearing shall be conducted in as informal a manner as may be  
4 consistent with orderly procedure. The court shall receive all  
5 relevant and material evidence consistent with the rules of  
6 evidence.

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

12 (a) Is mentally ill; and

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

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

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

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

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

38 the department director through his dispositioner shall cause the  
39 committed patient to be transported by the department of health and  
40 welfare, law enforcement, or director of a facility to the least  
41 restrictive available facility for observation, care and treatment  
42 on an inpatient basis. Within forty-eight (48) hours of a committed  
43 patient's transfer from outpatient treatment to a facility for  
44 inpatient treatment, the department director through his  
45 dispositioner shall notify the court that originally ordered the  
46 commitment, the committed patient's attorney, and either the  
47 committed patient's spouse, guardian, adult next of kin or friend of  
48 the change in disposition and provide a detailed affidavit reciting  
49 the facts and circumstances supporting the transfer from outpatient  
50 treatment to inpatient treatment at a facility. The court shall  
51 conduct an ex parte review of the notice and affidavit within forty-  
52 eight (48) hours of filing and determine whether the change in

1 disposition from outpatient treatment to inpatient treatment at a  
2 facility is supported by probable cause. In no event shall the  
3 calculation of forty-eight (48) hours provided for in this  
4 subsection include holidays formally recognized and observed by the  
5 state of Idaho, nor shall the calculation include weekends. If the  
6 court determines that probable cause exists, the department director  
7 through his dispositioner shall continue with care and treatment on  
8 an inpatient basis at the least restrictive available facility.  
9 Within twenty-four (24) hours of a finding of probable cause, the  
10 court shall issue an order to show cause why the patient does not  
11 meet the conditions in subsection (12)(a) or (12)(b) of this  
12 section. The order shall be served on the committed patient, the  
13 committed patient's attorney and either the committed patient's  
14 spouse, guardian, adult next of kin or friend. The patient shall  
15 have fifteen (15) days to present evidence that the conditions in  
16 subsection (12)(a) or (12)(b) of this section have not been met. In  
17 no event shall the calculation of twenty-four (24) hours provided  
18 for in this subsection include holidays formally recognized and  
19 observed by the state of Idaho, nor shall the calculation include  
20 weekends. If the court determines that a change in disposition from  
21 outpatient treatment to inpatient treatment does not meet the  
22 conditions in subsection (12)(a) or (12)(b) of this section, the  
23 department director through his dispositioner will continue with  
24 outpatient treatment on the same or modified terms and conditions.  
25 Nothing provided in this section shall limit the authority of any  
26 law enforcement officer to detain a patient pursuant to the  
27 emergency authority conferred by section 66-326, Idaho Code.

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

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

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

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

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

50 (15) If the patient has no spouse or guardian and if the  
51 patient has property which may not be cared for pursuant to chapter  
52 5, title 66, Idaho Code, or by the patient while confined at a

1 facility, the court shall appoint a guardian ad litem for the  
2 purpose of preserving the patient's estate, pending further  
3 guardianship or conservatorship proceedings.

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

7 History: [66-329, added 1951, ch. 290, sec. 13, p. 622; am.  
8 1953, ch. 264, sec. 1, p. 455; am. 1959, ch. 207, sec. 7, p. 439;  
9 am. 1969, ch. 143, sec. 1, p. 461; am. 1972, ch. 44, sec. 3, p. 67;  
10 am. 1973, ch. 173, sec. 9, p. 363; am. 1974, ch. 165, sec. 8, p.  
11 1405; am. 1981, ch. 114, sec. 18, p. 182; am. 1991, ch. 210, sec. 2,  
12 p. 495; am. 1998, ch. 78, sec. 1, p. 279; am. 1998, ch. 341, sec. 2,  
13 p. 1090; am. 2003, ch. 249, sec. 3, p. 645; am. 2008, ch. 331, sec.  
14 3, p. 912; am. 2010, ch. 235, sec. 56, p. 594; am. 2013, ch. 293,  
15 sec. 3, p. 772.]

16  
17 **66-330. TRANSPORTATION — TEMPORARY DETENTION — NOTICE.** (a)

18 After the dispositioner has designated the place of treatment, he  
19 shall notify the facility director of the disposition and of any  
20 medical, security or behavioral needs of the committed patient. The  
21 county shall deliver the patient within forty-eight (48) hours to  
22 the designated facility. Whenever practicable, the individual may be  
23 accompanied by one or more of his friends or relatives.

24 (b) Pending his removal to the designated place of treatment,  
25 a patient taken into custody or ordered to be committed to the  
26 custody of the department director pursuant to this chapter may be  
27 detained in his home, a licensed foster home, or any other suitable  
28 facility under such reasonable conditions as the dispositioner may  
29 fix, but he shall not be detained in a nonmedical facility used for  
30 the detention of individuals charged with or convicted of penal  
31 offenses. The dispositioner shall take such reasonable measures, to  
32 secure proper mental health care and treatment of an individual  
33 temporarily detained pursuant to this chapter.

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

38 History: [(66-330) 1951, ch. 290, sec. 15, p. 622; am. 1959,  
39 ch. 207, sec. 9, p. 439; am. 1973, ch. 173, sec. 11, p. 363; am.  
40 1974, ch. 165, sec. 10, p. 1405; am. and redesignated as sec. 66-  
41 330, 1981, ch. 114, sec. 20, p. 186; am. 1991, ch. 210, sec. 3, p.  
42 498.]

43  
44 **66-331. CARE AND TREATMENT IN A FEDERAL FACILITY.** (a) If an

45 involuntary patient committed pursuant to the provisions of  
46 section 66-329, Idaho Code, is eligible for care or treatment by any  
47 agency of the United States, the department director or his  
48 designee, upon receipt of a certificate from such agency showing  
49 that facilities are available and that the involuntary patient is  
50 eligible for care and treatment therein, may authorize the  
51 involuntary patient to be placed in the custody of such agency for  
52 care and treatment.

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

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

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

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

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

52

1           **66-333. EXAMINATION OF NEWLY ADMITTED PATIENTS.** Every patient  
2 committed to the custody of the department director pursuant to the  
3 provisions of section 66-329, Idaho Code, and admitted to an  
4 inpatient facility shall receive a physical and mental health  
5 examination as soon as practicable after admission.

6           History: [66-333, added 1951, ch. 290, sec. 17, p. 622; am.  
7 1953, ch. 264, sec. 2, p. 455; am. 1959, ch. 207, sec. 11, p. 439;  
8 am. 1973, ch. 173, sec. 13, p. 363; am. 1974, ch. 165, sec. 12, p.  
9 1405; am. 1981, ch. 114, sec. 22, p. 188.]

10  
11           **66-334. TRANSFER OF PATIENTS BETWEEN CERTAIN INPATIENT**  
12 **TREATMENT FACILITIES.** (a) The department director or his designee  
13 may transfer, or authorize the transfer of, an involuntary patient  
14 from one inpatient treatment facility to another, if he determines  
15 that it would be consistent with the mental health needs of the  
16 patient to do so. Whenever a patient is transferred, written notice  
17 thereof shall be given to the patient's attorney, either the  
18 patient's spouse, guardian, adult next of kin or friend and the  
19 committing court.

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

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

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

42           History: [66-334, added 1951, ch. 290, sec. 18, p. 622; am.  
43 1959, ch. 207, sec. 12, p. 439; am. 1973, ch. 173, sec. 14, p. 363;  
44 am. 1974, ch. 165, sec. 13, p. 1405; am. 1981, ch. 114, sec. 23, p.  
45 188.]

46  
47           **66-335. COMMITMENT OF MENTALLY ILL CONVICTS.** Mentally ill  
48 convicts may be received into said facilities in accordance with  
49 rules and regulations adopted by the board of health and welfare  
50 acting in conjunction with the state board of correction.

51           History: [66-335, added 1951, ch. 290, sec. 19, p. 622; am.  
52 1973, ch. 173, sec. 15, p. 363; am. 1981, ch. 114, sec. 24, p. 189.]

1  
2           **66-337. REVIEW, TERMINATION OF COMMITMENT AND DISCHARGE OF**  
3 **PATIENTS.** (a) The department director or his designee shall as  
4 frequently as practicable but at least once at the end of the first  
5 ninety (90) days examine or cause to be examined every patient  
6 committed to his custody or admitted to an inpatient facility of the  
7 state of Idaho, and determine whether to conditionally release,  
8 discharge or terminate the commitment of the patient. If the patient  
9 has not been conditionally released, discharged, or had the  
10 commitment terminated a similar review shall be conducted every one  
11 hundred twenty (120) days thereafter. A report of each review and  
12 determination regarding an involuntary patient shall be sent to the  
13 committing court, prosecuting attorney of the county of commitment,  
14 if any, the patient's attorney, and either the patient's spouse,  
15 guardian, next of kin or friend.

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

27           (c) Upon notification of intention to release from an  
28 inpatient facility either a patient admitted under section 18-214,  
29 Idaho Code, acquitted of criminal charges filed prior to July 1,  
30 1982, on grounds of mental disease or defect, or committed pursuant  
31 to sections 18-212(4) and 66-329, Idaho Code, as unfit to proceed,  
32 and upon motion of an interested party or the court on its own  
33 motion, the court shall determine whether the conditions justifying  
34 such release exist. In making such determination, the court may  
35 order an independent examination of the patient. The cost of such  
36 independent examination must be borne by the party making the motion  
37 or, if indigent, the county having jurisdiction of the case. If no  
38 motion is made, the patient may be released according to the notice.

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

45           18-214. Commitment of acquitted defendant - Conditional  
46 release - Revocation of release within five years. (1) When a  
47 defendant is acquitted on the ground of mental disease or defect  
48 excluding responsibility, the court shall order him to be committed  
49 to the custody of the director of the department of health and  
50 welfare to be placed in an appropriate institution for custody, care  
51 and treatment.

1 (2) If the director of the department of health and welfare is  
2 of the view that a person committed to his custody, pursuant to  
3 paragraph (1) of this section, may be discharged or released on  
4 condition without danger to himself or to others, he shall make  
5 application for the discharge or release of such person in a report  
6 to the court by which such person was committed and shall transmit a  
7 copy of such application and report to the prosecuting attorney of  
8 the county from which the defendant was committed. The court shall  
9 thereupon appoint at least two (2) qualified psychiatrists to  
10 examine such person and to report within sixty (60) days, or such  
11 longer period as the court determines to be necessary for the  
12 purpose, their opinion as to his mental condition. To facilitate  
13 such examination and the proceedings thereon, the court may cause  
14 such person to be confined in any institution located near the place  
15 where the court sits, which may hereafter be designated by the  
16 director of the department of health and welfare as suitable for the  
17 temporary detention of irresponsible persons.

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

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

44 (5) A committed person may make application for his discharge  
45 or release to the court by which he was committed, and the procedure  
46 to be followed upon such application shall be the same as that  
47 prescribed above in the case of an application by the director of  
48 the department of health and welfare. However, no such application  
49 by a committed person need be considered until he has been confined  
50 for a period of not less than six (6) months from the date of the  
51 order of commitment and if the determination of the court be adverse  
52 to the application, such person shall not be permitted to file a



1 further application until one (1) year has elapsed from the date of  
2 any preceding hearing on an application for his release or  
3 discharge.

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

12 History: [66-337, added 1951, ch. 290, sec. 21, p. 622; am.  
13 1959, ch. 207, sec. 13, p. 439; am. 1973, ch. 173, sec. 17, p. 363;  
14 am. 1974, ch. 165, sec. 14, p. 1405; am. 1981, ch. 114, sec. 25, p.  
15 189; am. 1982, ch. 368, sec. 13, p. 926; am. 1987, ch. 59, sec. 2,  
16 p. 106; am. 2000, ch. 234, sec. 3, p. 659.]

17  
18 **66-341. EXEMPTIONS FROM LIABILITY.** No agency, public or  
19 private facility, nor an employee of a public or private facility,  
20 nor the superintendent, professional person in charge, or attending  
21 staff of any such facility, nor any public official performing  
22 functions necessary to the administration of this chapter, nor a  
23 peace officer responsible for detaining or transporting a person  
24 pursuant to this chapter, shall be civilly or criminally liable for  
25 detaining, failing to detain, diagnosing, transporting, treating or  
26 releasing a person pursuant to this chapter; provided that such  
27 duties were performed according to the procedures of this chapter in  
28 good faith and without gross negligence.

29 History: [66-341, added 1981, ch. 114, sec. 29, p. 191; am.  
30 2006, ch. 214, sec. 6, p. 649.]

31  
32 **66-343. PETITION FOR REEXAMINATION OF ORDER OF COMMITMENT.** All  
33 patients committed pursuant to section 66-329, Idaho Code, shall be  
34 entitled to a reexamination of the order for or conditions of his  
35 commitment on his own petition, or that of his legal guardian,  
36 parent, spouse, relative, attorney or friend, to the district court  
37 of the county in which the patient was committed or is found. Within  
38 three (3) years of the effective date of this act, the department  
39 shall petition for the reexamination of all patients committed  
40 pursuant to section 66-329, Idaho Code, prior to the effective date  
41 of this act. Upon receipt of the petition the court shall determine  
42 whether the conditions justifying involuntary care and treatment  
43 continue to exist except that such proceedings shall not be required  
44 to be conducted if the petition is filed sooner than four (4) months  
45 after the issuance of the order of commitment or sooner than one (1)  
46 year after the filing of a previous petition under this section.

47 History: [66-343, added 1951, ch. 290, sec. 27, p. 622; am.  
48 1959, ch. 207, sec. 17, p. 439; am. 1973, ch. 173, sec. 21, p. 363;  
49 am. 1981, ch. 114, sec. 31, p. 192.]

50  
51

1           **66-344. RIGHT TO HUMANE CARE AND TREATMENT.** Every patient  
2 shall be entitled to humane care and treatment.

3           History: [66-344, added 1951, ch. 290, sec. 28, p. 622; am.  
4 1973, ch. 173, sec. 22, p. 363.]

5  
6           **66-345. RESTRAINTS AND SECLUSION.** Restraints shall not be  
7 applied to a patient nor shall a patient be secluded unless it is  
8 determined that such restraint or seclusion is necessary for the  
9 patient's safety or for the safety of others. Every instance of a  
10 restraint or seclusion of a patient shall be documented in the  
11 clinical record of the patient. In addition, every instance of a  
12 restraint or seclusion shall be evaluated and the evaluation and  
13 reasons for such restraint or seclusion shall be made a part of the  
14 clinical record of the patient under the signature of a licensed  
15 physician or, as delegated through the bylaws of the hospital's  
16 medical or professional staff, other practitioners licensed to  
17 practice independently. Whenever a peace officer deems it necessary  
18 to apply restraints to a patient while transporting the patient from  
19 one (1) facility to another and that restraint is against the  
20 medical advice of a licensed physician, the officer shall document  
21 the use of restraints in a report to be included in the clinical  
22 record.

23           History: [66-345, added 1951, ch. 290, sec. 29, p. 622; am.  
24 1973, ch. 173, sec. 23, p. 363; am. 1981, ch. 114, sec. 32, p. 192;  
25 am. 2001, ch. 339, sec. 1, p. 1201; am. 2014, ch. 111, sec. 1, p.  
26 321.]

27  
28           **66-346. RIGHT TO COMMUNICATION AND VISITATION — EXERCISE OF  
29 CIVIL RIGHTS.** (a) Every patient shall have the following rights:

30           (1) To communicate by sealed mail or otherwise, with persons,  
31 inside or outside the facility and to have access to reasonable  
32 amounts of letter writing material and postage;

33           (2) To receive visitors at all reasonable times;

34           (3) To wear his own clothes; to keep and use his own personal  
35 possessions including toilet articles; to keep and be allowed to  
36 spend a reasonable sum of his own money for canteen expenses and  
37 small purchases; to have access to individual storage space for his  
38 private use;

39           (4) To refuse specific modes of treatment;

40           (5) To be visited by his attorney or any employee of his attorney's  
41 firm, or a representative of the state protection and advocacy  
42 system at any time;

43           (6) To exercise all civil rights, including the right to dispose of  
44 property except property described in subsection (3) above, execute  
45 instruments, make purchases, enter into contractual relationships,  
46 and vote unless limited by prior court order;

47           (7) To have reasonable access to all records concerning himself.

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

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

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

17 History: [66-346, added 1951, ch. 290, sec. 30, p. 622; am.  
18 1973, ch. 173, sec. 24, p. 363; am. 1981, ch. 114, sec. 33, p. 192;  
19 am. 2004, ch. 315, sec. 2, p. 886.]

20  
21 **66-347. WRIT OF HABEAS CORPUS.** Any individual detained  
22 pursuant to this act shall be entitled to the writ of habeas corpus  
23 upon proper petition by himself or a friend to any court generally  
24 empowered to issue the writ of habeas corpus in the county in which  
25 he is detained.

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

27  
28 **66-348. DISCLOSURE OF INFORMATION.** All certificates,  
29 applications, records, and reports made for the purpose of this act  
30 and directly or indirectly identifying a patient or former patient  
31 or an individual whose involuntary assessment, detention or  
32 commitment is being sought under this act shall be kept subject to  
33 disclosure according to chapter 1, title 74, Idaho Code; provided  
34 that such records may also be disclosed to any person:

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

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

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

42 History: [66-348, added 1951, ch. 290, sec. 32, p. 622; am.  
43 1953, ch. 264, sec. 4, p. 455; am. 1973, ch. 173, sec. 25, p. 363;  
44 am. 1990, ch. 213, sec. 91, p. 553; am. 1998, ch. 77, sec. 1, p.  
45 279; am. 2015, ch. 141, sec. 164, p. 510.]

46  
47 **66-349. PENALTY FOR VIOLATION.** Any person violating any  
48 provisions of sections 66-344, 66-345, 66-346, 66-347, or 66-348 [,  
49 Idaho Code,] shall be guilty of a misdemeanor and subject to a fine  
50 of not more than \$500 and imprisonment for not more than one (1)  
51 year.

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

1  
2           **66-350. DETENTION PENDING JUDICIAL DETERMINATION.**

3 Notwithstanding any other provision of this act, no patient with  
4 respect to whom proceedings for judicial commitment have been  
5 commenced shall be released or discharged during the pendency of  
6 such proceedings unless ordered by the court or a judge thereof upon  
7 the application of the patient, or his legal guardian, parent,  
8 spouse, or next of kin, or upon the report of the director of the  
9 facility that the patient may be discharged with safety.

10           History: [66-350, added 1951, ch. 290, sec. 34, p. 622; am.  
11 1973, ch. 173, sec. 26, p. 363.]  
12

13           **66-351. REPAYMENT OF MONEY ON DISCHARGE OF PATIENT.** If, at the  
14 time of the discharge of a person from any facility, or after the  
15 death and burial of any person therein confined, there remain in the  
16 custody of the director of the facility any unexpended moneys paid  
17 for the support or maintenance of such person, they must, upon  
18 demand, be repaid to the person or his personal representative.

19           History: [66-351, added 1951, ch. 290, sec. 35, p. 622; am.  
20 1973, ch. 173, sec. 27, p. 363; am. 1981, ch. 114, sec. 34, p. 193.]  
21

22           **66-352. MONEY FOUND ON MENTALLY ILL PERSONS - DISPOSITION.** Any  
23 moneys, or other things of value, found on the person of a mentally  
24 ill person at the time of proceedings for involuntary commitment  
25 must be certified to by the judge and sent with such person to the  
26 facility, there to be delivered to the director of the facility who  
27 shall hold said money in trust as provided in chapter 5 of title 66,  
28 Idaho Code. All money received by or for a patient, voluntarily or  
29 involuntarily committed, while at the facility shall be placed in  
30 trust as provided in said chapter 5.

31           History: [66-352, added 1951, ch. 290, sec. 36, p. 622, am.  
32 1967, ch. 357, sec. 1, p. 1004; am. 1973, ch. 173, sec. 28, p. 363.]  
33

34           **66-354. MENTALLY ILL PERSON WITH ASSETS SUFFICIENT TO PAY**  
35 **EXPENSES - LIABILITY OF RELATIVES.** (a) When a mentally ill person  
36 has been admitted to a state facility voluntarily or involuntarily,  
37 the director of the facility may cause an inquiry to be made as to  
38 the financial circumstances of such person and of the relatives of  
39 such person legally liable for his or her support, and if it is  
40 found that such person or said relatives, legally liable for the  
41 support of the patient, are able to pay the expenses for commitment  
42 proceedings and the charges for the care and treatment of the  
43 patient in the facility, in whole or in part, it shall be the duty  
44 of the director of the facility to collect such expenses and such  
45 charges, and if necessary to institute in the name of the state, a  
46 civil suit against the person or persons liable therefor.

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

1 History: [66-354, added 1951, ch. 290, sec. 38, p. 622; am.  
2 1973, ch. 173, sec. 30, p. 363; am. 1981, ch. 114, sec. 35, p. 193.]

3  
4 **66-355. APPOINTMENT OF GUARDIAN — INCOMPETENCY OF MENTALLY ILL**  
5 **PERSON REQUIRES SEPARATE PROCEEDINGS — LIABILITY FOR CARE AND**  
6 **TREATMENT COSTS.** The incompetency of a mentally ill person shall be  
7 determined in the same manner that incompetency is determined in any  
8 other person and shall be a separate judicial proceeding. Any  
9 guardian appointed in the case of a mentally ill incompetent person,  
10 is subject to all the provisions of the general laws of the state of  
11 Idaho in relation to guardians and wards. Whenever a mentally ill  
12 person is receiving care and treatment in a facility in the event  
13 that incompetency is adjudicated and a guardian appointed, the court  
14 on determining the incompetency must inquire into the ability of the  
15 mentally ill person to pay for his or her expenses which arise in  
16 connection with his or her care and treatment, if any,  
17 transportation to the facility, court costs for incompetency  
18 proceedings, and for the care and treatment for such person for such  
19 time as he remains in such facility, and when there are sufficient  
20 assets in the hands of the guardian, the court may order a sale of  
21 property or such part thereof as may be necessary, and from the  
22 proceeds of such sale the guardian must pay for all expenses and  
23 reasonable charges for the patient's care and treatment, or such  
24 part as it is possible to pay, to the director of the facility in  
25 which said mentally ill person is a patient.

26 History: [66-355, added 1951, ch. 290, sec. 39, p. 622; am.  
27 1973, ch. 173, sec. 31, p. 363.]

28  
29 **66-356. RELIEF FROM FIREARMS DISABILITIES.** (1) A court that:  
30 (a) Orders commitment pursuant to section [66-329](#), Idaho Code;  
31 (b) Orders commitment or treatment pursuant to section [66-406](#),  
32 Idaho Code;  
33 (c) Appoints a guardian pursuant to section [66-322](#), Idaho Code, or  
34 section [15-5-304](#), Idaho Code;  
35 (d) Appoints a conservator pursuant to section [15-5-407](#)(b), Idaho  
36 Code;  
37 (e) Appoints a guardian or conservator pursuant to section [66-404](#),  
38 Idaho Code; or  
39 (f) Finds a defendant incompetent to stand trial pursuant to  
40 section [18-212](#), Idaho Code, shall make a finding as to whether the  
41 subject of the proceeding is a person to whom the provisions of 18  
42 U.S.C. 922(d)(4) and (g)(4) apply. If the court so finds, the clerk  
43 of the court shall forward a copy of the order to the Idaho state  
44 police, which in turn shall forward a copy to the federal bureau of  
45 investigation, or its successor agency, for inclusion in the  
46 national instant criminal background check system database.

47 (2) A person who is subject to an order, including an  
48 appointment or finding described in subsection (1) of this section,  
49 may petition the magistrate division of the court that issued such  
50 order, or the magistrate division of the district court of the  
51 county where the individual resides, to remove the person's  
52 firearms-related disabilities as provided in section 105(a) of P.L.

1 110-180. A copy of the petition for relief shall also be served on  
2 the director of the department of health and welfare and the  
3 prosecuting attorney of the county in which the original order,  
4 appointment or finding occurred, and such department and office may,  
5 as it deems appropriate, appear, support, object to and present  
6 evidence relevant to the relief sought by the petitioner. The court  
7 shall receive and consider evidence, including evidence offered by  
8 the petitioner, concerning:

9 (a) The circumstances of the original order, appointment or  
10 finding;

11 (b) The petitioner's mental health and criminal history records, if  
12 any;

13 (c) The petitioner's reputation; and

14 (d) Changes in the petitioner's condition or circumstances relevant  
15 to the relief sought.

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

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

30 History: [66-356, added 2010, ch. 267, sec. 1, p. 674.]

## 31 Behavioral Health

## 32 Criminal Statutes

33  
34 **18-207. MENTAL CONDITION NOT A DEFENSE - PROVISION FOR**  
35 **TREATMENT DURING INCARCERATION - RECEPTION OF EVIDENCE - NOTICE AND**  
36 **APPOINTMENT OF EXPERT EXAMINERS.** (1) Mental condition shall not be a  
37 defense to any charge of criminal conduct.

38 (2) If by the provisions of section [19-2523](#), Idaho Code, the  
39 court finds that one convicted of crime suffers from any mental  
40 condition requiring treatment, such person shall be committed to the  
41 board of correction or such city or county official as provided by  
42 law for placement in an appropriate facility for treatment, having  
43 regard for such conditions of security as the case may require. In  
44 the event a sentence of incarceration has been imposed, the  
45 defendant shall receive treatment in a facility which provides for  
46 incarceration or less restrictive confinement. In the event that a  
47 course of treatment thus commenced shall be concluded prior to the  
48 expiration of the sentence imposed, the offender shall remain liable

1 for the remainder of such sentence, but shall have credit for time  
2 incarcerated for treatment.

3 (3) Nothing herein is intended to prevent the admission of  
4 expert evidence on the issue of any state of mind which is an  
5 element of the offense, subject to the rules of evidence.

6 (4) No court shall, over the objection of any party, receive  
7 the evidence of any expert witness on any issue of mental condition,  
8 or permit such evidence to be placed before a jury, unless such  
9 evidence is fully subject to the adversarial process in at least the  
10 following particulars:

11 (a) Notice must be given at least ninety (90) days in advance of  
12 trial, or such other period as justice may require, that a party  
13 intends to raise any issue of mental condition and to call expert  
14 witnesses concerning such issue, failing which such witness shall  
15 not be permitted to testify until such time as the opposing party  
16 has a complete opportunity to consider the substance of such  
17 testimony and prepare for rebuttal through such opposing expert(s)  
18 as the party may choose.

19 (b) A party who expects to call an expert witness to testify on an  
20 issue of mental condition must, on a schedule to be set by the  
21 court, furnish to the opposing party a written synopsis of the  
22 findings of such expert, or a copy of a written report. The court  
23 may authorize the taking of depositions to inquire further into the  
24 substance of such reports or synopses.

25 (c) Raising an issue of mental condition in a criminal proceeding  
26 shall constitute a waiver of any privilege that might otherwise be  
27 interposed to bar the production of evidence on the subject and,  
28 upon request, the court shall order that the state's experts shall  
29 have access to the defendant in such cases for the purpose of having  
30 its own experts conduct an examination in preparation for any legal  
31 proceeding at which the defendant's mental condition may be in  
32 issue.

33 (d) The court is authorized to appoint at least one (1) expert at  
34 public expense upon a showing by an indigent defendant that there is  
35 a need to inquire into questions of the defendant's mental  
36 condition. The costs of examination shall be paid by the defendant  
37 if he is financially able. The determination of ability to pay shall  
38 be made in accordance with chapter 8, title 19, Idaho Code.

39 (e) If an examination cannot be conducted by reason of the  
40 unwillingness of the defendant to cooperate, the examiner shall so  
41 advise the court in writing. In such cases the court may deny the  
42 party refusing to cooperate the right to present evidence in support  
43 of a mental status claim unless the interest of justice requires  
44 otherwise and shall instruct the jury that it may consider the  
45 party's lack of cooperation for its effect on the credibility of the  
46 party's mental status claim.

47 History: [18-207, added 1982, ch. 368, sec. 2, p. 919; am.  
48 1996, ch. 225, sec. 1, p. 737.]

49  
50  
51

1           **18-210. LACK OF CAPACITY TO UNDERSTAND PROCEEDINGS – DELAY OF**  
2 **TRIAL.** No person who as a result of mental disease or defect lacks  
3 capacity to understand the proceedings against him or to assist in  
4 his own defense shall be tried, convicted, sentenced or punished for  
5 the commission of an offense so long as such incapacity endures.

6           History: [I.C., sec. 18-210, as added by 1972, ch. 336, sec. 1,  
7 p. 851.]

8  
9           **18-211. EXAMINATION OF DEFENDANT – APPOINTMENT OF**  
10 **PSYCHIATRISTS AND LICENSED PSYCHOLOGISTS – HOSPITALIZATION –**  
11 **REPORT.** (1) Whenever there is reason to doubt the defendant's  
12 fitness to proceed as set forth in section 18-210, Idaho Code, the  
13 court shall appoint at least one (1) qualified psychiatrist or  
14 licensed psychologist or shall request the director of the  
15 department of health and welfare to designate at least one (1)  
16 qualified psychiatrist or licensed psychologist to examine and  
17 report upon the mental condition of the defendant to assist counsel  
18 with defense or understand the proceedings. The appointed examiner  
19 shall also evaluate whether the defendant lacks capacity to make  
20 informed decisions about treatment. The costs of examination shall  
21 be paid by the defendant if he is financially able. The  
22 determination of ability to pay shall be made in accordance  
23 with chapter 8, title 19, Idaho Code.

24           (2) Within three (3) days, excluding Saturdays, Sundays and  
25 legal holidays, of the appointment or designation, the examiner  
26 shall determine the best location for the examination. If practical,  
27 the examination shall be conducted locally on an outpatient basis.

28           (3) If the examiner determines that confinement is necessary  
29 for purposes of the examination, the court may order the defendant  
30 to be confined to a jail, a hospital, or other suitable facility for  
31 that purpose for a period not exceeding thirty (30) days. The order  
32 of confinement shall require the county sheriff to transport the  
33 defendant to and from the facility and shall notify the facility of  
34 any known medical, behavioral, or security requirements of the  
35 defendant. The court, upon request, may make available to the  
36 examiner any court records relating to the defendant.

37           (4) In such examination any method may be employed which is  
38 accepted by the examiner's profession for the examination of those  
39 alleged not to be competent to assist counsel in their defense.

40           (5) Upon completion of the examination a report shall be  
41 submitted to the court and shall include the following:

- 42           (a) a description of the nature of the examination;  
43           (b) a diagnosis or evaluation of the mental condition of the  
44 defendant;  
45           (c) an opinion as to the defendant's capacity to understand the  
46 proceedings against him and to assist in his own defense;  
47           (d) an opinion whether the defendant lacks the capacity to make  
48 informed decisions about treatment. "Lack of capacity to make  
49 informed decisions about treatment" means the defendant's inability,  
50 by reason of his mental condition, to achieve a rudimentary  
51 understanding of the purpose, nature, and possible significant risks



1 and benefits of treatment, after conscientious efforts at  
2 explanation.

3 (6) If the examination cannot be conducted by reason of the  
4 unwillingness of the defendant to participate therein, the report  
5 shall so state and shall include, if possible, an opinion as to  
6 whether such unwillingness of the defendant was the result of mental  
7 disease or defect.

8 (7) The report of the examination shall be filed in triplicate  
9 with the clerk of the court, who shall cause copies to be delivered  
10 to the prosecuting attorney and to counsel for the defendant.

11 (8) When the defendant wishes to be examined by an expert of  
12 his own choice, such examiner shall be permitted to have reasonable  
13 access to the defendant for the purpose of examination.

14 (9) In addition to the psychiatrist or licensed psychologist,  
15 the court may appoint additional experts to examine the defendant.  
16 In the event a defendant is suspected of being developmentally  
17 disabled, the examination shall proceed with those experts set out  
18 in subsection (7) of section 66-402, Idaho Code.

19 (10) If the defendant lacks capacity to make informed decisions  
20 about treatment, as defined in section 66-317, Idaho Code, the court  
21 may authorize consent to be given pursuant to section 66-322, Idaho  
22 Code. If the defendant lacks capacity to make informed decisions as  
23 defined in subsection (9) of section 66-402, Idaho Code, the court  
24 may authorize consent to be given pursuant to sections 66-  
25 404 and 66-405, Idaho Code.

26 (11) If the defendant was confined solely for the purpose of  
27 examination, he shall be released from the facility within three (3)  
28 days, excluding Saturdays, Sundays and legal holidays following  
29 notification of completion of the examination.

30 History: [18-211, as added by 1972, ch. 336, sec. 1, p. 851;  
31 am. 1974, ch. 165, sec. 1, p. 1405; am. 1980, ch. 312, sec. 1, p.  
32 797; am. 1982, ch. 368, sec. 3, p. 920; am. 1987, ch. 40, sec. 1, p.  
33 67; am. 1996, ch. 225, sec. 2, p. 738; am. 1998, ch. 90, sec. 7, p.  
34 323; am. 1999, ch. 293, sec. 4, p. 737; am. 2000, ch. 234, sec. 1,  
35 p. 656.]

36  
37 **18-212. DETERMINATION OF FITNESS OF DEFENDANT TO PROCEED -**  
38 **SUSPENSION OF PROCEEDING AND COMMITMENT OF DEFENDANT -**  
39 **POSTCOMMITMENT HEARING.** (1) When the defendant's fitness to proceed  
40 is drawn in question, the issue shall be determined by the court.  
41 The court shall also determine, based on the examiner's findings,  
42 whether the defendant lacks capacity to make informed decisions  
43 about treatment. If neither the prosecuting attorney nor counsel for  
44 the defendant contests the finding of the report filed pursuant to  
45 section 18-211, Idaho Code, the court may make the determination on  
46 the basis of such report. If the finding is contested, the court  
47 shall hold a hearing on the issue. If the report is received in  
48 evidence upon such hearing, the party who contests the finding  
49 thereof shall have the right to summon and to cross-examine the  
50 psychiatrist or licensed psychologist who submitted the report and  
51 to offer evidence upon the issue.

1 (2) If the court determines that the defendant lacks fitness  
2 to proceed, the proceeding against him shall be suspended, except as  
3 provided in subsections (5) and (6) of this section, and the court  
4 shall commit him to the custody of the director of the department of  
5 health and welfare, for a period not exceeding ninety (90) days, for  
6 care and treatment at an appropriate facility of the department of  
7 health and welfare or if the defendant is found to be dangerously  
8 mentally ill as defined in section 66-1305, Idaho Code, to the  
9 department of correction for a period not exceeding ninety (90)  
10 days. The order of commitment shall include the finding by the court  
11 whether the defendant lacks capacity to make informed decisions  
12 about treatment. For purposes of this section "facility" shall mean  
13 a state hospital, institution, mental health center, or those  
14 facilities enumerated in subsection (8) of section 66-402, Idaho  
15 Code, equipped to evaluate or rehabilitate such defendants. The  
16 order of commitment shall require the county sheriff to transport  
17 the defendant to and from the facility and require an evaluation of  
18 the defendant's mental condition at the time of admission to the  
19 facility, and a progress report on the defendant's mental condition.  
20 The progress report shall include an opinion whether the defendant  
21 is fit to proceed, or if not, whether there is a substantial  
22 probability the defendant will be fit to proceed within the  
23 foreseeable future. If the report concludes that there is a  
24 substantial probability that the defendant will be fit to proceed in  
25 the foreseeable future, the court may order the continued commitment  
26 of the defendant for an additional one hundred eighty (180) days. If  
27 at any time the director of the facility to which the defendant is  
28 committed determines that the defendant is fit to proceed, such  
29 determination shall be reported to the court.

30 (3) If during a commitment under this section a defendant who  
31 has the capacity to make informed decisions about treatment refuses  
32 any and all treatment, or the only treatment available to restore  
33 competency for trial, the court shall, within seven (7) days,  
34 excluding weekends and holidays, of receiving notice of the  
35 defendant's refusal from the facility, conduct a hearing on whether  
36 to order involuntary treatment or order such other terms and  
37 conditions as may be determined appropriate. The burden shall be on  
38 the state to demonstrate grounds for involuntary treatment  
39 including, but not limited to: the prescribed treatment is essential  
40 to restore the defendant's competency, the medical necessity and  
41 appropriateness of the prescribed treatment, no less intrusive  
42 treatment alternative exists to render the defendant competent for  
43 trial, and other relevant information. If each of these findings is  
44 made by the court, treatment shall be ordered consistent with the  
45 findings.

46 (4) Each report shall be filed in triplicate with the clerk of  
47 the court, who shall cause copies to be delivered to the prosecuting  
48 attorney and to counsel for the defendant. Upon receipt of a report,  
49 the court shall determine, after a hearing if a hearing is  
50 requested, the disposition of the defendant and the proceedings  
51 against him. If the court determines that the defendant is fit to  
52 proceed, the proceeding shall be resumed. If at the end of the

1 initial ninety (90) days the court determines that the defendant is  
2 unfit and there is not a substantial probability the defendant will  
3 be fit to proceed within the foreseeable future or if the defendant  
4 is not fit to proceed after the expiration of the additional one  
5 hundred eighty (180) days, involuntary commitment proceedings shall  
6 be instituted pursuant to either section 66-329 or 66-406, Idaho  
7 Code, in the court in which the criminal charge is pending.

8 (5) In its review of commitments pursuant to section 66-337,  
9 Idaho Code, the department of health and welfare shall determine  
10 whether the defendant is fit to proceed with trial. The department  
11 of health and welfare shall review its commitments pursuant  
12 to chapter 4, title 66, Idaho Code, and may recommend that the  
13 defendant is fit to proceed with trial. If the district court which  
14 committed the defendant pursuant to section 66-406, Idaho Code,  
15 agrees with the department's recommendation and finds the conditions  
16 which justified the order pursuant to section 66-406, Idaho Code, do  
17 not continue to exist, criminal proceedings may resume. If the  
18 defendant is fit to proceed, the court in which the criminal charge  
19 is pending shall be notified and the criminal proceedings may  
20 resume. If, however, the court is of the view that so much time has  
21 elapsed, excluding any time spent free from custody by reason of the  
22 escape of the defendant, since the commitment of the defendant that  
23 it would be unjust to resume the criminal proceeding, the court may  
24 dismiss the charge.

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

33 History: [18-212, added 1972, ch. 336, sec. 1, p. 852; am.  
34 1974, ch. 165, sec. 2, p. 1405; am. 1977, ch. 13, sec. 1, p. 25; am.  
35 1980, ch. 312, sec. 2, p. 798; am. 1982, ch. 368, sec. 4, p. 921;  
36 am. 1987, ch. 40, sec. 2, p. 69; am. 1999, ch. 293, sec. 5, p. 739;  
37 am. 2000, ch. 234, sec. 2, p. 657.]  
38

39 **18-215. ADMISSIBILITY OF STATEMENTS BY EXAMINED PERSON.** A  
40 statement made by a person subjected to psychiatric or psychological  
41 examination or treatment pursuant to sections 18-211, 18-212 or 19-  
42 2522, Idaho Code, for the purposes of such examination or treatment  
43 shall not be admissible in evidence in any criminal proceeding  
44 against him on any issue other than the defendant's ability to  
45 assist counsel at trial or to form any specific intent which is an  
46 element of the crime charged, except that such statements of a  
47 defendant to a psychiatrist or psychologist as are relevant for  
48 impeachment purposes may be received subject to the usual rules of  
49 evidence governing matters of impeachment.

1 History: [I.C., sec. 18-215, as added by 1972, ch. 336, sec. 1,  
2 p. 855; am. 1980, ch. 312, sec. 5, p. 802; am. 1982, ch. 368, sec.  
3 5, p. 923.]

4  
5 **18-217. MENTAL HEALTH RECORDS OF OFFENDERS.** (1) For purposes  
6 of care, treatment or normal health care operations, records of  
7 mental health evaluation, care and treatment shall be provided upon  
8 request to and from the mental health professionals of a  
9 governmental entity and another entity providing care or treatment  
10 for any person who is:

11 (a) Under court commitment to a state agency pursuant to  
12 section [18-212](#)(4), Idaho Code;

13 (b) A pretrial detainee;

14 (c) Awaiting sentencing;

15 (d) In the care, custody or supervision of any correctional  
16 facility as defined in section [18-101A](#), Idaho Code;

17 (e) On probation or parole;

18 (f) Being supervised as part of a drug court, mental health court,  
19 juvenile detention program, work release program, or similar court  
20 program; or

21 (g) Applying for mental health services after release from a  
22 correctional facility.

23 (2) No court order or authorization from the offender to  
24 transfer the records shall be required except for records of  
25 substance abuse treatment as provided by 42 CFR part 2, and  
26 sections [37-3102](#) and [39-308](#), Idaho Code.

27 History: [18-217, added 2006, ch. 92, sec. 1, p. 266.]

## 28 29 **Children's Mental Health Services**

### 30 **Idaho Code Statutes**

31  
32 **16-2401. SHORT TITLE.** This chapter governing the access to the  
33 continuum of services for children with serious emotional disturbance may  
34 be cited as the "Children's Mental Health Services Act."

35 History: [16-2401, added 1997, ch. 404, sec. 1, p. 1282.]

36  
37 **16-2402. LEGISLATIVE PURPOSES.** (1) It is the policy of the  
38 legislature and the state of Idaho that services for children with serious  
39 emotional disturbance should be planned and implemented to maximize the  
40 support of the family's ability to provide adequate safety and well-being  
41 for the child at home. If the child cannot receive adequate services  
42 within the family home to maintain individual safety and well-being,  
43 community resources shall be provided to minimize the need for  
44 institutional or other residential placement. The legislature finds that  
45 family involvement and participation in the child's treatment planning and  
46 implementation is vital to successful intervention for children with  
47 serious emotional disturbance.

48 (2) Services to address mental health needs are one part of a broad  
49 array of services which should be available to Idaho's children with  
50 special needs. Such services shall maximize the preservation of the  
51 family, by coordination and collaboration of services with schools and

1 community. The department of health and welfare, the department of  
2 education, the department of juvenile corrections, school districts,  
3 counties and any other appropriate entities, shall cooperate and  
4 collaborate in planning, developing and providing services, and shall  
5 consult with counties and private providers of mental health services.

6 (3) Services shall be individually planned to meet the unique needs  
7 of each child and family. Such planning shall include the parent, guardian  
8 or surrogate parent(s) of each child. The continuum of services shall  
9 include, but not be limited to, individual and family counseling, crisis  
10 intervention services, day treatment, respite care, therapeutic foster  
11 homes, family support services, residential treatment and inpatient  
12 services. These services shall be available to meet the needs of Idaho's  
13 children with serious emotional disturbance or mental illness and their  
14 families. Services shall be provided without requiring that parents  
15 relinquish custody of the child.

16 (4) This chapter is intended to achieve, and shall be construed to  
17 promote, these legislative purposes:

18 (a) To empower families of children with serious emotional disturbance to  
19 determine their own needs and to make decisions and choices, concerning  
20 them;

21 (b) To give families of children with serious emotional disturbance the  
22 support they need, to maintain a stable, nurturing home environment for  
23 the children, and to respond to the needs of the entire family, without  
24 requiring families to accept services that they do not desire or seek;

25 (c) To utilize out-of-home placement only after families are provided  
26 supportive services and those services are inadequate to provide a  
27 reasonable level of safety and well-being for the child and family, or  
28 when an emergency exists which requires immediate intervention. Any  
29 placement of a child out of home shall follow the principles of least  
30 restrictive alternative placement as defined in this chapter and shall be  
31 for the shortest period of time necessary to provide for the safety and  
32 well-being of the child and family;

33 (d) To plan, develop, deliver, and evaluate services for children with  
34 serious emotional disturbance in an efficient, coordinated and  
35 collaborative statewide system, of individualized services;

36 (e) To provide services in settings that are close to the patterns and  
37 norms of society and sensitive to the regional, cultural, and ethnic  
38 characteristics of Idaho's families and communities;

39 (f) To provide services for families as close to their home communities  
40 as possible and to promote integration of families into their communities;

41 (g) To make use of the capacities of local communities to complement  
42 existing public and private community resources, including natural and  
43 informal supports provided by family and friends;

44 (h) To give priority to planning, developing, implementing, and  
45 evaluating children's mental health services to prevent, ameliorate, or  
46 reduce the impact of serious emotional disturbance on families;

47 (i) To assist all state and local public and private agencies and service  
48 providers to provide appropriate, flexible, and cost-effective home and  
49 community-based services for families;

50 (j) All state agencies providing services to children with serious  
51 emotional disturbances prior to the passage of this chapter shall maintain  
52 their existing level of services to this population.

53 (5) All department and private providers acting under this chapter  
54 shall:

- 1 (a) Identify and coordinate all available resources, both formal and  
2 informal, public and private, so that the needs of families can be met and  
3 their strengths can be applied;
- 4 (b) Include participation of families with children with serious  
5 emotional disturbance in all phases of planning, developing, implementing,  
6 and evaluating the programs that affect them;
- 7 (c) Be flexible, so that families will have power to decide what services  
8 to use, how to use them, and how often to use them;
- 9 (d) Apply a family centered approach in working with families;
- 10 (e) Respect a family's method of problem solving and their preferred  
11 methods of communication;
- 12 (f) Be sensitive to families' social, economic, physical and other  
13 environments;
- 14 (g) Disseminate information so that eligible families will know of the  
15 availability of services;
- 16 (h) Provide services in a manner to ensure uninterrupted and consistent  
17 availability of services between children's and adult services when the  
18 child reaches the age of majority;
- 19 (i) Refrain from any discrimination on the basis of race, gender,  
20 religion, ethnicity, national origin, or disabling condition in the  
21 employment of individuals, and in providing services.

22 History: [16-2402, added 1997, ch. 404, sec. 1, p. 1282.]

23  
24

**16-2403. DEFINITIONS.** As used in this chapter:

25 (1) "Child" means an individual less than eighteen (18) years of age  
26 and not emancipated by either marriage or legal proceeding.

27 (2) "Consistent with the least restrictive alternative principle"  
28 means that services are delivered in the setting which places the fewest  
29 restrictions on the personal liberty of the child, and provides the  
30 greatest integration with individuals who do not have disabilities, in  
31 typical and age appropriate, school, community and family environments,  
32 which is consistent with safe, effective and cost-effective treatment for  
33 the child and family.

34 (3) "Department" means the department of health and welfare.

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

43 (5) "Director" means the director of the state department of health  
44 and welfare.

45 (6) "Emergency" means a situation in which the child's condition, as  
46 evidenced by recent behavior, poses a significant threat to the health or  
47 safety of the child, his family or others, or poses a serious risk of  
48 substantial deterioration in the child's condition which cannot be  
49 eliminated by the use of supportive services or intervention by the

1 child's parents, or mental health professionals, and treatment in the  
2 community while the child remains in his family home.

3 (7) "Informed consent to treatment" means a knowing and voluntary  
4 decision to undergo a specific course of treatment, evidenced in writing,  
5 and made by an emancipated child, or a child's parent, or guardian, who  
6 has the capacity to make an informed decision, after the staff of the  
7 facility or other provider of treatment have explained the nature and  
8 effects of the proposed treatment.

9 (8) "Involuntary treatment" means treatment, services and placement  
10 of children provided without consent of the parent of a child, under the  
11 authority of a court order obtained pursuant to this chapter, as directed  
12 by an order of disposition issued by a designated employee of the  
13 department of health and welfare under section [16-2415](#), Idaho Code.

14 (9) "Lacks capacity to make an informed decision concerning  
15 treatment" means that the parent is unable to understand the nature and  
16 effects of hospitalization or treatment, or is unable to engage in a  
17 rational decision-making process regarding such hospitalization or  
18 treatment, as evidenced by an inability to weigh the risks and benefits,  
19 despite conscientious efforts to explain them in terms that the parent can  
20 understand.

21 (10) "Likely to cause harm to himself or to suffer substantial mental  
22 or physical deterioration" means that, as evidenced by recent behavior,  
23 the child:

24 (a) Is likely in the near future to inflict substantial physical injury  
25 upon himself; or

26 (b) Is likely to suffer significant deprivation of basic needs such as  
27 food, clothing, shelter, health or safety; or

28 (c) Will suffer a substantial increase or persistence of symptoms of  
29 mental illness or serious emotional disturbance which is likely to result  
30 in an inability to function in the community without risk to his safety or  
31 well-being or the safety or well-being of others, and which cannot be  
32 treated adequately with available home and community-based outpatient  
33 services.

34 (11) "Likely to cause harm to others" means that, as evidenced by  
35 recent behavior causing, attempting, or threatening such harm with the  
36 apparent ability to complete the act, a child is likely to cause physical  
37 injury or physical abuse to another person.

38 (12) "Protection and advocacy system" means the agency designated by  
39 the governor as the state protection and advocacy system pursuant to 42  
40 U.S.C. 6042 and 42 U.S.C. 10801 et seq.

41 (13) "Serious emotional disturbance" means an emotional or behavioral  
42 disorder, or a neuropsychiatric condition which results in a serious  
43 disability, and which requires sustained treatment interventions, and  
44 causes the child's functioning to be impaired in thought, perception,  
45 affect or behavior. A disorder shall be considered to "result in a serious  
46 disability" if it causes substantial impairment of functioning in family,  
47 school or community. A substance abuse disorder does not, by itself,

1 constitute a serious emotional disturbance, although it may coexist with  
2 serious emotional disturbance.

3 (14) "Special therapy" means any treatment modality used to treat  
4 children with serious emotional disturbances which is subject to  
5 restrictions or special conditions imposed by the department of health and  
6 welfare rules.

7 (15) "Surrogate parent" means any person appointed to act in the  
8 place of the parent of a child for purposes of developing an individual  
9 education program under the authority of the individuals with disabilities  
10 education act, 20 U.S.C. 1400 et seq., as amended.

11 (16) "Teens at risk" means individuals attending Idaho secondary  
12 public schools who have been identified as expressing or exhibiting  
13 indications of depression, suicidal inclination, emotional trauma,  
14 substance abuse or other behaviors or symptoms that indicate the existence  
15 of, or that may lead to, the development of mental illness or substance  
16 abuse.

17 (17) "Treatment facility" means a facility or program meeting  
18 applicable licensing standards, that has been approved for the provisions  
19 of services under this chapter by the department of health and welfare.

20 History: [16-2403, added 1997, ch. 404, sec. 1, p. 1284; am. 2003,  
21 ch. 249, sec. 1, p. 642; am. 2007, ch. 309, sec. 1, p. 870; am. 2008, ch.  
22 219, sec. 1, p. 678.]

23 **16-2404. COMMUNITY SERVICES AND SUPPORTS AND INTERAGENCY**  
24 **COLLABORATION.** (1) Lead agency. The department of health and welfare shall  
25 be the lead agency in establishing and coordinating community supports,  
26 services and treatment for children with serious emotional disturbance and  
27 their families, utilizing public and private resources available in the  
28 child's community. Such resources shall be utilized to provide services  
29 consistent with the least restrictive alternative principle, to assist the  
30 child's family to care for the child in his home and community whenever  
31 possible. The state department of education shall be the lead agency for  
32 educational services.

33 (2) Planning. The department of health and welfare, the state  
34 department of education, the department of juvenile corrections, counties,  
35 and local school districts shall collaborate and cooperate in planning and  
36 developing comprehensive mental health services and individual treatment  
37 and service plans for children with serious emotional disturbance making  
38 the best use of public and private resources to provide or obtain needed  
39 services and treatment.

40 (3) Teens at risk. The department of health and welfare, the state  
41 department of education, the department of juvenile corrections, counties,  
42 courts and local school districts may collaborate and cooperate in  
43 planning and developing mental health counseling, substance abuse  
44 treatment and recovery support services and individual service plans for  
45 teens at risk.

46 (4) Contracting. The department of health and welfare shall also  
47 have the authority to enter into contracts with school districts to



1 provide teen early intervention specialists as provided for in section 16-  
2 2404A, Idaho Code.

3 History: [16-2404, added 1997, ch. 404, sec. 1, p. 1285; am. 2007,  
4 ch. 309, sec. 2, p. 872.]

5 **16-2404A. TEEN EARLY INTERVENTION MENTAL HEALTH AND SUBSTANCE ABUSE**  
6 **SPECIALIST PROGRAM.** (1) The department of health and welfare shall be  
7 authorized to contract for teen early intervention specialists to work  
8 with teens at risk and their families in school districts.

9 (2) The teen early intervention specialist shall be a certified  
10 counselor or a social worker with a clinical background in mental health  
11 or substance abuse as prescribed by the department of health and welfare  
12 by rule.

13 (3) The salary paid to the teen early intervention specialist shall  
14 be equivalent to the salary paid to comparably trained and experienced  
15 individuals employed by the school district in the region in which the  
16 community resource is employed.

17 (4) Teen early intervention specialists shall work with individual  
18 teens at risk to offer group counseling, recovery support, suicide  
19 prevention and other mental health and substance abuse counseling services  
20 to teens as needed, regardless of mental health diagnosis.

21 (5) By permission of school administrators, as prescribed in rule,  
22 teens at risk not currently enrolled in a public school may, if assigned  
23 by a judge, participate in group or individual teen early intervention  
24 specialist counseling sessions or services for teens at risk as  
25 appropriate.

26 (6) School districts seeking to have one (1) or more teen early  
27 intervention specialists placed within its district may apply to the  
28 department of health and welfare for such placement. The department of  
29 health and welfare shall establish by rule a simple application process  
30 and criteria for placement of teen early intervention specialists in  
31 districts. The number of teen early intervention specialists placed in  
32 school districts in any given year shall be limited by the funds  
33 appropriated to the teen early intervention specialist program in that  
34 fiscal year. In evaluating applications for the three (3) year pilot  
35 project, the department of health and welfare shall give special  
36 consideration to rural districts and shall consider:

37 (a) The demonstrated need for mental health and substance abuse  
38 counseling and treatment for teens at risk in the school district;

39 (b) The resources and cooperation which the school district has proposed  
40 to contribute to the support of the teen early intervention specialist  
41 program for teens at risk; and

42 (c) The funding appropriated to the teen early intervention specialist  
43 program for teens at risk.

44 (7) Through an initial three (3) year period beginning at the start  
45 of the 2008 school year, the department of health and welfare shall work  
46 with local school districts where teen early intervention specialists have  
47 been placed to gather data on the effectiveness of this program. This data  
48 may be gathered and tracked through cooperative projects with Idaho  
49 colleges and universities and may include, but not be limited to:

50 (a) Impacts on the number and nature of teen arrests;

51 (b) Reductions in the number of teen suicides and suicide attempts;

- 1 (c) Changes in patterns of teen incarceration or involvement with Idaho's
- 2 juvenile justice system;
- 3 (d) Impacts on local caseloads of practitioners in the department of
- 4 health and welfare;
- 5 (e) Where applicable, impacts to juvenile mental health or drug courts;
- 6 (f) Changes in academic achievement by teens at risk and by those
- 7 participating in the teen early intervention specialist program; and
- 8 (g) Changes in the number and nature of student disciplinary actions in
- 9 schools where teen early intervention specialists have been placed.

10 History: [16-2404A, added 2007, ch. 309, sec. 3, p. 872.]

11

12 **16-2405. CHARGES TO PARENTS.** Parents may be charged for services

13 provided to their children by the department according to the sliding fee

14 scale authorized by section [16-2433](#), Idaho Code, provided that all

15 services which are part of the child's free appropriate public education

16 as defined in the individuals with disabilities education act, 20 U.S.C.

17 1400 et seq., as amended, shall be provided to the child at no cost to the

18 parents.

19 History: [16-2405, added 1997, ch. 404, sec. 1, p. 1286.]

20 **16-2406. ACCESS TO SERVICES.** Access to services for children with

21 serious emotional disturbance and their families shall be voluntary

22 whenever informed consent can be obtained. Involuntary treatment or

23 commitment to the department's custody shall not be required as a

24 condition for obtaining, providing, or paying for treatment by the

25 department. The department's assistance with paying for a child's

26 treatment and other services under this chapter shall be based upon the

27 rules adopted by the department and by the sliding fee scale developed

28 under section [16-2433](#), Idaho Code. Department payments to service

29 providers are only made pursuant to a written agreement between the

30 department and the service provider. The agreement must reflect cost-

31 effective services for the child.

32 (1) The family and the department may enter into a services

33 agreement if:

34 (a) The child meets the department's eligibility criteria for treatment

35 or services; and

36 (b) The child and his parents request mental health services from the

37 department; or

38 (c) The family requests full or partial payment for services by the

39 department (other than payment through medical assistance, title XIX of

40 the social security act, as amended); or

41 (d) The youth is involuntarily placed by the department under this

42 chapter.

43 (2) For purposes of this chapter, a services agreement is a written

44 agreement, binding on the parties, which specifies at a minimum:

45 (a) The legal status of the child; and

46 (b) The rights and obligations of the parents or guardians, the child and

47 the department while the child is in the out-of-home placement.

1 (3) When a child is placed out of his home pursuant to a services  
2 agreement or a one hundred twenty (120) day involuntary treatment order by  
3 the court, the department shall have the responsibility for the child's  
4 placement and care. The financial obligation of the family will be  
5 determined after consideration of all available payment and funding  
6 sources including title XIX of the social security act, as amended, all  
7 available third party sources, and parent resources according to any order  
8 for child support under chapter 10, title 32, Idaho Code. Services shall  
9 not be conditioned on transfer of custody or parental rights.

10 History: [16-2406, added 1997, ch. 404, sec. 1, p. 1286; am. 2005,  
11 ch. 307, sec. 1, p. 956.]

12 **16-2407. VOLUNTARY ADMISSION TO HOSPITAL OR RESIDENTIAL TREATMENT**  
13 **FACILITY.** When the department provides services under this chapter, such  
14 services shall be provided on a voluntary basis whenever informed consent  
15 can be obtained, and the department shall ensure that services made  
16 available to children subject to involuntary treatment orders are also  
17 available on a comparable basis to children seeking services on a  
18 voluntary basis.

19 (1) Admission of children. A treatment facility may admit a child  
20 after examining the child and interviewing the family, if a clinician with  
21 authority to admit patients to the facility determines that the child is  
22 seriously emotionally disturbed and is in need of hospitalization or  
23 residential services and, the child's parent, custodian or guardian give  
24 such consent to treatment. Prior to such admission, the child and his  
25 parent, custodian or guardian shall be advised orally and given a written  
26 statement of his rights under this chapter as provided in section 16-2426,  
27 Idaho Code, provided that, if the condition of the child is such that  
28 notice and advice of his rights would be ineffective, and this  
29 determination is recorded in the child's record, such advice to the child  
30 may be deferred until the child's mental and emotional condition permits,  
31 but for no more than forty-eight (48) hours. Each child and parent shall  
32 be asked to sign an acknowledgment that they have been so advised, and  
33 this acknowledgment shall be kept in the child's record.

34 (2) A child shall not be voluntarily admitted to a facility operated  
35 by the department unless evaluated and referred by a person on the staff  
36 of the regional family and children's services program.

37 (3) When a child is in a voluntary, out-of-home placement which is  
38 funded in whole or in part by state or federal funds, the department may  
39 have the propriety of the placement reviewed by the district court of the  
40 county in which the child is placed or the county of the child's residence  
41 every one hundred eighty (180) days after placement or as required by  
42 statutes which govern federal funding for children who are placed out of  
43 their homes.

44 History: [16-2407, added 1997, ch. 404, sec. 1, p. 1286.]

45 **16-2408. DISCHARGE OR PETITION FOR ONE HUNDRED TWENTY DAY TREATMENT**  
46 **ORDER.** Any child who is voluntarily admitted to a treatment facility upon  
47 the consent of his parents or guardian shall be discharged within three  
48 (3) business days of a written request for discharge by the consenting

1 person unless such request is withdrawn in writing or there is other legal  
2 authority to hold the child at the facility.

3 History: [16-2408, added 1997, ch. 404, sec. 1, p. 1287.]  
4

5 **16-2409. CONVERSION FROM INVOLUNTARY TO VOLUNTARY STATUS.** Upon  
6 approval by the court, a child who is subject to involuntary treatment  
7 under this chapter may at any time convert to a voluntary status if  
8 informed consent to treatment can be obtained from his parent or guardian.  
9 The court shall approve conversion from involuntary to voluntary status if  
10 the court finds that:

11 (1) (a) The child is not likely to cause harm to himself or suffer  
12 substantial mental or physical deterioration; and

13 (b) The child is not likely to cause harm to others; or

14 (2) The conversion from involuntary to voluntary status is in the  
15 best interests of the child and consistent with the requirements of public  
16 safety.

17 History: [16-2409, added 1997, ch. 404, sec. 1, p. 1287; am. 2005,  
18 ch. 307, sec. 2, p. 957.]  
19

20 **16-2410. REVIEW OF VOLUNTARY ADMISSION.** A child admitted on the  
21 consent of his parents, shall have his admission reviewed at the end of a  
22 thirty (30) day period from the initial date of admission to the program.  
23 The review shall be accomplished by having the child's treating clinician  
24 review the child's treatment and determine whether continued out-of-home  
25 treatment at the facility is still necessary and consistent with the least  
26 restrictive alternative principle. If the clinician decides that it is, he  
27 or she shall record the findings on a form to be filed in the child's  
28 record. The facility shall notify the child and his parents at least seven  
29 (7) days prior to the thirty (30) day review and give them an opportunity  
30 to comment on the need, if any, for continued inpatient or residential  
31 treatment. The facility shall ensure that the child and his parents are  
32 aware of the right to request discharge as set forth above.

33 If the facility staff determines that the parent of the child  
34 understands these rights and the parent of the child desires to continue  
35 treatment, then the facility staff shall so certify on a form designated  
36 by the department. These forms shall be kept in the child's patient  
37 record, and sent to the child's parent, guardian or custodian. This  
38 procedure shall take place every thirty (30) days from the date of the  
39 last admission.

40 History: [16-2410, added 1997, ch. 404, sec. 1, p. 1287.]  
41

42 **16-2411. EMERGENCY MENTAL HEALTH RESPONSE AND EVALUATION – TEMPORARY**  
43 **DETENTION BY A PEACE OFFICER OR HEALTH CARE PROFESSIONAL.** (1) A peace  
44 officer may take a child into protective custody and immediately transport  
45 the child to a treatment facility for emergency mental health evaluation  
46 in the absence of a court order if and only if the officer determines that  
47 an emergency situation exists as defined in this chapter, and the officer  
48 has probable cause to believe, based on personal observation and  
49 investigation, representation of the child's parents or the recommendation  
50 of a mental health professional, that the child is suffering from serious  
51 emotional disturbance as a result of which he is likely to cause harm to  
52 himself or others or is manifestly unable to preserve his health or safety  
53 with the supports and assistance available to him and that immediate

1 detention and treatment is necessary to prevent harm to the child or  
2 others.

3 (2) For purposes of this section, "health care professional" means a  
4 physician, physician's assistant or advanced practice registered nurse,  
5 any one (1) of whom then is practicing in a hospital. A health care  
6 professional may detain a child if such person determines that an  
7 emergency situation exists as defined in this chapter, and such person has  
8 probable cause to believe that the child is suffering from a serious  
9 emotional disturbance as a result of which he is likely to cause harm to  
10 himself or others or is manifestly unable to preserve his health or safety  
11 with the supports and assistance available to him and that immediate  
12 detention and treatment is necessary to prevent harm to the child or  
13 others. If the hospital does not have an appropriate facility to provide  
14 emergency mental health care, it may cause the child to be transported to  
15 an appropriate treatment facility. The health care professional shall  
16 notify the parent or legal guardian, if known, as soon as possible and  
17 shall document in the patient's chart the efforts to contact the parent or  
18 legal guardian. If the parent or legal guardian cannot be located or  
19 contacted, the health care professional shall cause a report to be filed  
20 as soon as possible and in no case later than twenty-four (24) hours with  
21 the Idaho department of health and welfare or an appropriate law  
22 enforcement agency. The child may not be detained against the parent or  
23 legal guardian's explicit direction unless the child is taken into  
24 protective custody pursuant to subsection (1) of this section, except that  
25 the child may be detained for a reasonable period of time necessary for a  
26 peace officer to be summoned to the hospital to make a determination under  
27 subsection (1) of this section.

28 (3) If a child has been taken into protective custody by a peace  
29 officer under the provisions of this section, the officer shall  
30 immediately transport the child to a treatment facility or mental health  
31 program, such as a regional mental health center, a mobile crisis  
32 intervention program, or a therapeutic foster care facility, provided such  
33 center's program or facility has been approved by the regional office of  
34 the department for that purpose. The department shall make a list of  
35 approved facilities available to law enforcement agencies.

36 (4) Upon taking the child into protective custody or detaining the  
37 child pursuant to this section, the officer or health care professional  
38 shall take reasonable precautions to safeguard and preserve the personal  
39 property of the child unless a parent or guardian or responsible relative  
40 is able to do so. Upon presenting a child to a treatment facility, the  
41 officer shall inform the staff in writing of the facts that caused him to  
42 detain the child and shall specifically state whether the child is  
43 otherwise subject to being held for juvenile or criminal offenses.

44 (5) If the child who is being detained by a peace officer is not  
45 released to the child's parent, guardian or custodian, the law enforcement  
46 agency shall contact the child's parent, guardian or custodian as soon as  
47 possible, and in no case later than twenty-four (24) hours, and shall  
48 notify the child's parent, guardian or custodian of his status, location  
49 and the reasons for the detention of the child. If the parents cannot be  
50 located or contacted, efforts to comply with this section and the reasons  
51 for failure to make contact shall be documented in the child's record.

52 History: [16-2411, added 1997, ch. 404, sec. 1, p. 1288; am. 2013,  
53 ch. 293, sec. 1, p. 770.]

1  
2           **16-2412. EMERGENCY TREATMENT UPON CERTIFICATION BY DESIGNATED**  
3 **EXAMINER.** A child may be taken into protective custody by a peace officer,  
4 or accepted by an ambulance service, and transported and presented to a  
5 treatment facility for emergency evaluation and treatment when a  
6 designated examiner certifies in writing that he has examined the child  
7 within the last seventy-two (72) hours and that on such basis he has  
8 probable cause to believe that such child is suffering from serious  
9 emotional disturbance as a result of which he is likely to:

- 10           (1) Harm himself or others; or  
11           (2) Suffer substantial mental or physical deterioration; and  
12           (3) Require immediate treatment to prevent such harm; and  
13           (4) Less restrictive alternatives have been considered and the  
14 detention and treatment proposed is consistent with the least restrictive  
15 alternative principle.

16           History: [16-2412, added 1997, ch. 404, sec. 1, p. 1288.]

17  
18           **16-2413. EMERGENCY ADMISSION AND TREATMENT FACILITY**  
19 **DETERMINATION.** Upon the presentation of a child to a treatment facility  
20 pursuant to section [16-2411](#), Idaho Code, the facility shall accept the  
21 child and shall promptly examine him to determine whether he meets the  
22 criteria for emergency evaluation and treatment set forth below.

23           (1) The child shall be admitted for emergency evaluation and  
24 treatment only if a clinician with authority to admit the child determines  
25 that there is probable cause to believe that such child is suffering from  
26 serious emotional disturbance as a result of which he is likely to:

- 27           (a) Harm himself or others; or  
28           (b) Suffer substantial mental or physical deterioration; or  
29           (c) Cause harm to others and immediate treatment is necessary to prevent  
30 such harm; and  
31           (d) Less restrictive alternatives have been considered and the placement  
32 and treatment proposed is consistent with the least restrictive  
33 alternative principle.

34           (2) If the examining physician determines that there is not probable  
35 cause to believe that the child meets the criteria for emergency  
36 evaluation and treatment, the child shall be released to his parents who  
37 shall arrange transportation. If the child was presented to the treatment  
38 facility by a law enforcement officer and was otherwise subject to  
39 detention for a juvenile or criminal offense, he shall remain under the  
40 protective custody of the law enforcement officer. The treatment facility  
41 shall notify the law enforcement officer and detain the child until law  
42 enforcement responds to transport the child to detention.

43           (3) The treatment facility shall advise any child admitted for  
44 emergency evaluation and treatment of the purposes and possible duration  
45 of emergency evaluation and of his rights under this chapter as soon after  
46 admission as his medical condition permits in the manner prescribed in  
47 section [16-2426](#), Idaho Code.

48           History: [16-2413, added 1997, ch. 404, sec. 1, p. 1289.]

1           **16-2414. ORDER FOR EMERGENCY EVALUATION.** Each child who is admitted  
2 to a treatment facility under section 16-2413, Idaho Code, shall, within  
3 twenty-four (24) hours of being taken into protective custody, be released  
4 to his parent or guardian, unless a court order authorizing emergency  
5 evaluation has been obtained.

6           (1) The evidence supporting the claim that an emergency exists with  
7 respect to the child shall be submitted to a court of competent  
8 jurisdiction. If the court finds that an emergency situation exists, it  
9 shall issue an order for emergency evaluation, which shall authorize the  
10 treatment facility to hold the child for up to forty-eight (48) hours at  
11 which time he shall be released to his parent or guardian, unless valid  
12 consent to voluntary treatment has been obtained under section 16-2407,  
13 Idaho Code, or other legal authority is sought to hold the child.

14           (2) Each child and parent shall also be informed orally and in  
15 writing by the evaluation facility of the purposes and the possible  
16 consequences of the proceedings, the allegations in the petition, the  
17 child's right to communicate with an attorney, and the right to receive  
18 necessary and appropriate treatment.

19           (3) At all stages of the proceeding the court shall consider whether  
20 treatment may be voluntarily obtained by the child and his family. If the  
21 treatment can be voluntarily obtained, the petition shall be dismissed.

22           (4) The court may also order that the prosecuting attorney of the  
23 county review the appropriateness of the case for filing a petition under  
24 the child protective act or the juvenile corrections act.

25           (5) A child shall not be admitted under this section to a facility  
26 operated by the department unless evaluated and authorized by a staff of  
27 the regional family and children's services program.

28           History: [16-2414, added 1997, ch. 404, sec. 1, p. 1289.]

29           **16-2415. DISPOSITIONAL AUTHORITY.** (1) Whenever the involuntary  
30 treatment of the child requires payment from public funds, other than  
31 medicaid funds, the department, or other funding agency shall have the  
32 authority to determine the placement for the child and to make decisions  
33 concerning the purchase and provision of mental health services,  
34 consistent with the plan of treatment approved by the court.

35           (2) When the cost of the child's treatment can be paid from private  
36 sources or by medicaid, the parent shall have the authority to determine  
37 the child's placement and services, consistent with the plan of treatment  
38 approved by the court.

39           (3) All expenditures under the medicaid program shall be governed by  
40 the laws and rules applicable to that program.

41           (4) The department shall issue a disposition order within two (2)  
42 days of the order for involuntary treatment.

43           History: [16-2415, added 1997, ch. 404, sec. 1, p. 1290; am. 2005,  
44 ch. 307, sec. 3, p. 957.]

45  
46           **16-2416. ONE HUNDRED TWENTY DAY INVOLUNTARY TREATMENT ORDER.** (1)  
47 Children may be treated involuntarily for a period of up to one hundred  
48 twenty (120) days upon a petition filed by the treatment facility or by  
49 the parent, guardian, prosecuting attorney or other interested party. The

1 petition shall set forth the facts supporting the allegations and, in the  
2 case of petitions filed by a treatment facility, shall describe why the  
3 child requires treatment, a detailed description of the symptoms or  
4 behaviors of the child that support the allegations in the petition, a  
5 list of the names and addresses of any witnesses the petitioner intends to  
6 call at the involuntary treatment hearing. The petition shall also contain  
7 a statement of the alternatives to court-ordered involuntary treatment  
8 that have been considered and the reasons for rejecting the alternatives.  
9 The petition shall be filed with the court and copies shall be served upon  
10 the person and upon a parent, the next of kin, guardian or custodian and  
11 the person's attorney. The copies of the petition shall be accompanied by  
12 a notice advising of the child's rights concerning the proceeding.

13 (2) Upon filing of a petition for involuntary treatment of a child  
14 who is not currently under emergency evaluation or voluntary admission,  
15 the court shall issue a summons to the child to submit to an examination  
16 by two (2) designated examiners. At least one (1) designated examiner  
17 shall be a psychiatrist, licensed physician or licensed psychologist. Each  
18 designated examiner shall promptly prepare a report on his examination and  
19 file it with the court. Copies shall be promptly served upon the child,  
20 parent, custodian, guardian and the child's attorney.

21 History: [16-2416, added 1997, ch. 404, sec. 1, p. 1290; am. 2005,  
22 ch. 307, sec. 4, p. 957.]  
23

24 **16-2417. HEARING ON THE ONE HUNDRED TWENTY DAY INVOLUNTARY TREATMENT**  
25 **ORDER.** (1) Every child for whom a petition for involuntary treatment has  
26 been filed, shall be notified by the court sufficiently in advance to be  
27 able to prepare for the hearing and shall receive a prompt hearing. For  
28 children confined for emergency psychiatric evaluation or currently under  
29 voluntary admission, this hearing shall take place within three (3)  
30 business days of the filing of the petition.

31 (2) The child shall be present at the hearing unless the court  
32 finds:

33 (a) That he has knowingly and voluntarily waived such a right after  
34 consulting with counsel, and his counsel shall submit a verified written  
35 statement to the court explaining the attorney's understanding of the  
36 child's intent; or

37 (b) That because his behavior at the hearing is so disruptive, it cannot  
38 reasonably continue in his presence.

39 Hearings may be held in the treatment facility whenever the child is an  
40 inpatient at the time of the hearing.

41 (3) Any child who is unable to pay for counsel shall have the right  
42 to be provided with counsel at public expense to prepare for and represent  
43 him at the hearings.

44 (4) The prosecuting attorney shall represent the interests of the  
45 state at the hearing.

46 (5) The Idaho rules of evidence and the Idaho rules of civil  
47 procedure shall be applied so as to facilitate informal, efficient  
48 presentation of all relevant, probative evidence and resolution of issues  
49 with due regard to the interests of all parties.



- 1 (6) The child shall have the right:
- 2 (a) To be represented by counsel;
- 3 (b) To present evidence, including testimony of a mental health  
4 professional of his own choosing;
- 5 (c) To cross-examine witnesses;
- 6 (d) To a complete record of the proceedings;
- 7 (e) To an expeditious appeal of an adverse ruling.

8 (7) At the conclusion of the hearing, or within one (1) business day  
9 thereafter, the court shall make its findings.

10 (8) The court shall enter an order discharging the child unless it  
11 finds by clear and convincing evidence that the child satisfies all  
12 criteria for involuntary treatment in section [16-2418](#), Idaho Code, in  
13 which event it shall enter an involuntary treatment order as provided in  
14 section [16-2416](#), Idaho Code, for evaluation and treatment for a period of  
15 no longer than one hundred twenty (120) days.

16 (9) If at any time during a one hundred twenty (120) day (or any  
17 subsequent) period of involuntary treatment, a child is absent without  
18 permission, the involuntary treatment order constitutes a continuing  
19 authorization and responsibility to the treatment facility and to any law  
20 enforcement officer to procure his return.

21 History: [[16-2417](#), added 1997, ch. 404, sec. 1, p. 1291.]

22 **16-2418. CRITERIA FOR ONE HUNDRED TWENTY DAY INVOLUNTARY TREATMENT**  
23 **ORDER.** (1) A child may be treated involuntarily, and placed at a facility,  
24 according to the disposition of the department under section [16-2415](#),  
25 Idaho Code, for a period of up to one hundred twenty (120) days if, after  
26 the hearing provided in section [16-2417](#), Idaho Code, the court determines  
27 on the basis of clear and convincing evidence that:

- 28 (a) The child is suffering from severe emotional disturbance; and
- 29 (b) There is reasonable prospect that his illness is treatable by a  
30 facility or program operated by the department or other facility available  
31 to the department for treatment of children with serious emotional  
32 disturbance; and
- 33 (c) A child's parent or guardian refuses or is unable to adequately  
34 provide for the treatment of the child consistent with the requirements of  
35 public safety; and
- 36 (d) As the result of serious emotional disturbance, the child is:
- 37 (i) Likely to cause harm to himself or suffer substantial mental or  
38 physical deterioration; or
- 39 (ii) Likely to cause harm to others.

40 (2) Within seven (7) days after entry of the order for involuntary  
41 commitment, the department of health and welfare shall develop a plan of  
42 treatment to be approved by the court which includes:

- 1 (a) A proposed placement and projections for aftercare upon completion of  
2 treatment;
- 3 (b) Specific behavioral goals by which the success of the treatment can  
4 be measured; and
- 5 (c) Evidence of attempts to involve the patient and the patient's family  
6 in the development of the plan.

7 (3) The plan of treatment shall be consistent with the least  
8 restrictive alternative principle.

9 (4) The court may conduct a review hearing at any time to monitor  
10 compliance and to make any significant adjustment from the plan of  
11 treatment during the period of involuntary commitment.

12 History: [16-2418, added 1997, ch. 404, sec. 1, p. 1292; am. 2005,  
13 ch. 307, sec. 5, p. 958.]

14 **16-2419. EFFECT OF INVOLUNTARY TREATMENT ORDERS ON PARENTAL RIGHTS**  
15 **AND CUSTODY.** If an order for involuntary treatment is issued, the parents,  
16 guardian or custodian of the child will retain all parental rights,  
17 including legal custody of the child, or the orders for involuntary  
18 treatment and disposition. The department of health and welfare shall  
19 acquire physical custody of the child and the right to determine the  
20 disposition and placement of the child whenever the placement requires the  
21 expenditure of public funds as provided in section [16-2415](#), Idaho Code,  
22 consistent with the plan of treatment approved by the court.

23 History: [16-2419, added 1997, ch. 404, sec. 1, p. 1292; am. 2005,  
24 ch. 307, sec. 6, p. 959.]

25 **16-2420. SUCCESSIVE PERIODS OF INVOLUNTARY TREATMENT.** Any order for  
26 involuntary treatment pursuant to section [16-2416](#), Idaho Code, may be  
27 renewed. At the time of expiration of a one hundred twenty (120) day  
28 involuntary treatment order, authority for continued involuntary treatment  
29 may be extended for periods of up to one hundred eighty (180) days upon a  
30 petition filed with the court by the treatment facility or by the child's  
31 parent, or guardian, or other interested party.

32 (1) The petition shall include a statement why the child still meets  
33 the criteria for involuntary treatment, what treatment has been provided  
34 and what progress has been made, why a further period of involuntary  
35 treatment is warranted, and the identity of any person who has knowledge  
36 concerning the case. The petition shall be promptly served upon the child,  
37 the child's parent, custodian, or guardian, and the child's attorney.

38 (2) The child shall be entitled to a hearing before the court on the  
39 petition on or before the first business day following expiration of the  
40 operative period of involuntary treatment and shall have the same rights  
41 to which he was entitled at the initial hearing on involuntary treatment  
42 in section [16-2417](#), Idaho Code.

43 (3) The court shall order that the child be discharged unless it  
44 determines by clear and convincing evidence that:

45 (a) The child still satisfies the criteria for involuntary treatment; and

1 (b) That there is a reasonable prospect that a substantial therapeutic  
2 purpose would be served by a further period of involuntary treatment.

3 (4) Additional involuntary treatment orders for periods up to one  
4 hundred eighty (180) days each may be ordered in accordance with this  
5 section.

6 History: [16-2420, added 1997, ch. 404, sec. 1, p. 1292.]

7 **16-2421. WAIVER OF RIGHT TO BE PRESENT AT HEARINGS.** A child may  
8 waive the right to be present at any hearing to which he is entitled under  
9 this section by filing a written waiver that the court finds is knowingly  
10 and voluntarily executed by the child. The child's attorney shall consult  
11 with him and determine whether the child understands his rights and  
12 desires to waive his right to be present at the hearing. The attorney  
13 shall then submit a verified written statement to the court explaining the  
14 attorney's understanding of the child's intent. By waiving the right to be  
15 present at the hearing, the child waives no other rights.

16 History: [16-2421, added 1997, ch. 404, sec. 1, p. 1293.]

17  
18 **16-2422. INFORMED CONSENT TO MEDICATION OR OTHER TREATMENT – PERSONS**  
19 **UNDER VOLUNTARY TREATMENT.** (1) A facility may not administer any  
20 treatments or medications to a child admitted to the facility as a  
21 voluntary patient under section [16-2407](#), Idaho Code, unless the parent,  
22 guardian or custodian of the child has given informed consent to the  
23 treatment, except that emergency or medically necessary treatments may be  
24 given without informed consent, if delay in treatment may cause harm to  
25 the child, and the parent, guardian, or custodian of the child is not  
26 available.

27 (2) After informed consent has been given, the parent, guardian or  
28 custodian of a child may revoke such consent at any time, by clearly  
29 communicating such revocation to facility staff. When consent has been  
30 revoked, the facility shall promptly discontinue the treatment, provided  
31 that a course of treatment may be concluded or phased out where necessary  
32 to avoid the harmful effects of abrupt withdrawal. The facility may  
33 require the parent, guardian, or custodian to sign a written revocation of  
34 consent before discontinuing the treatment.

35 (3) Except in an emergency situation, the parents of a child being  
36 treated voluntarily shall have the right to refuse any and all medications  
37 or other treatments. If appropriate medications or treatments are refused,  
38 and the facility is unable to care for the child without such treatments,  
39 the facility may then discharge the child, with due care for his safety.  
40 Neither the facility nor providers shall be held liable. If the child  
41 appears to meet the criteria for involuntary treatment as specified in  
42 section [16-2418](#), Idaho Code, the facility may file a petition for  
43 involuntary treatment.

44 History: [16-2422, added 1997, ch. 404, sec. 1, p. 1293.]

45 **16-2423. INFORMED CONSENT TO MEDICATION OR OTHER TREATMENT – PERSONS**  
46 **SUBJECT TO INVOLUNTARY OR EMERGENCY TREATMENT.** (1) During an emergency  
47 evaluation under section [16-2413](#), Idaho Code, or during a period of  
48 involuntary treatment ordered under section [16-2418](#), Idaho Code, the  
49 treatment facility may administer necessary medications or other

1 treatments, except for electroconvulsive treatments, to a child,  
2 consistent with good medical practice without the informed consent of the  
3 parent of the child, if it is not possible to obtain such consent.

4 (2) Notwithstanding subsection (1) of this section, a treatment  
5 facility shall not administer experimental treatment or any other special  
6 therapy except as provided by law or in rules promulgated by the  
7 department.

8 (3) No psychosurgery or electroconvulsive treatment shall be  
9 performed on a child, except by order of a court upon a finding that the  
10 treatment is necessary to prevent serious harm to the child. Consent of  
11 the parent of a child to this treatment without a court order shall be  
12 invalid and shall not be a defense against any legal action that might be  
13 brought against the provider of the treatment.

14 (4) Consent for other medical/surgical treatments not intended  
15 primarily to treat a child's serious emotional disturbance shall be  
16 obtained in accordance with the applicable law.

17 History: [16-2423, added 1997, ch. 404, sec. 1, p. 1294; am. 2005,  
18 ch. 307, sec. 7, p. 959.]

19 **16-2424. PROVISION OF TREATMENT.** (1) Every child subject to an  
20 involuntary treatment order under this chapter shall be provided with  
21 appropriate treatment in accordance with the least restrictive alternative  
22 principle that offers him a realistic prospect of improvement. Children  
23 shall be afforded treatment in facilities that conform to the applicable  
24 rules of the department, and that are able to adequately care for and  
25 treat the persons they serve.

26 (2) A written individual treatment plan shall be prepared, with the  
27 participation of the child (to the extent he is able), his family and any  
28 other persons of his choice, during voluntary admission or emergency  
29 psychiatric evaluation or, within seven (7) days of the signing of an  
30 order for involuntary treatment. The individual treatment plan shall be  
31 approved by the responsible physician, and the course of treatment  
32 actually administered shall conform to the plan.

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

38 (4) A copy of the individual treatment plan shall be given to the  
39 child, his parents and to any other person designated by him, provided  
40 that the responsible physician may preclude disclosure of the individual  
41 treatment plan to the child if he states in writing why disclosure would  
42 be harmful to the child.

43 History: [16-2424, added 1997, ch. 404, sec. 1, p. 1294.]

44  
45 **16-2425. RIGHTS OF CHILDREN IN TREATMENT FACILITIES.** (1) Competence.  
46 No right of any child shall be denied or reduced solely by the reason of  
47 his having been evaluated, or treated under this chapter. A finding of  
48 lack of capacity to make an informed decision under this chapter shall not  
49 by itself establish lack of competence for any other purpose.

1 (2) Right to treatment. Children subject to an involuntary treatment  
2 order under this chapter shall have the right to treatment to the extent  
3 provided in section [16-2424](#), Idaho Code.

4 (3) Healthful and humane environment. Every child shall have the  
5 right to a healthful and humane environment. Every facility shall provide  
6 a clean, safe and comfortable environment in a structure that complies  
7 with applicable licensing requirements governing physical facilities,  
8 nutrition, health and safety, and medical services, and for aspects of  
9 care for which there are no mandatory requirements, consistent with the  
10 generally accepted professional standards in Idaho. In addition, every  
11 child shall have the right to a humane psychological environment that  
12 protects him from harm or abuse, provides reasonable privacy, promotes  
13 personal dignity, and provides opportunity for improved functioning.

14 (4) Leaves of absence. Leaves of absence may be granted in  
15 appropriate cases at the discretion of the treatment facility. Police  
16 officers are authorized to and shall, at the request of a treatment  
17 facility, take into protective custody and return to the treatment  
18 facility any child who is subject to an order for involuntary treatment  
19 and placed by the department and any child placed by the authority of his  
20 parents who leaves without proper authorization or does not return at the  
21 end of an authorized leave of absence. The child's parent or guardian  
22 shall be notified before any leave of absence occurs and in the event that  
23 a child is away without authorization, they shall be notified immediately.

24 (5) Restraints and seclusion. Every child shall have the right to be  
25 free from unnecessary or inappropriate restraints or seclusion consistent  
26 with the least restrictive alternative principle. Restraints and seclusion  
27 shall be administered only in conformity with rules adopted by the  
28 department.

29 (6) Corporal punishment. Every child shall have the right to be free  
30 from corporal punishment.

31 (7) Nutrition. Every child shall have the right to a nutritionally  
32 sound and medically appropriate diet.

33 (8) Exercise and recreation. Every child shall have reasonable  
34 opportunities for physical and outdoor exercise and access to recreational  
35 equipment. Reasonable limitations may be set by general rules or, for  
36 clinical reasons, in particular cases.

37 (9) Visitors. Every child shall have the right to receive visitors  
38 with reasonable privacy as is consistent with the treatment plan.

39 (a) Hours during which visitors may be received shall be limited only in  
40 the interest of effective treatment and efficiency of the facility and  
41 shall be sufficiently flexible to accommodate the individual needs of the  
42 child and his visitors.

43 (b) Notwithstanding the above, each resident has the right to receive  
44 visits from his physician, psychologist, clergyman or social worker in  
45 private, irrespective of visiting hours, provided that the visitor shows  
46 reasonable cause for visiting at times other than normal visiting hours.

1 (c) A facility may impose conditions on visits and privacy of visits if  
2 there is reason to believe that a visitor poses a substantial risk of harm  
3 to the child, or others.

4 (10) Communications. (a) Every child shall have the right to send and  
5 receive mail. Reasonable rules governing inspection (but not reading) of  
6 incoming mail may be established, provided that they are necessary for  
7 substantial health care purposes and that they preserve the child's rights  
8 of privacy to the extent compatible with his clinical status.

9 (b) Every child shall have the right to reasonably private access to  
10 telephones, including the right to make long-distance calls to the extent  
11 he can arrange for payment for such calls.

12 (c) A treatment facility shall provide reasonable assistance to children  
13 in exercising their communication rights. Reasonable limitations on the  
14 use of the mail and telephones may be set by general rules. In cases of  
15 personal emergencies when other means of communication are not  
16 satisfactory, the child shall be afforded reasonable use of long-distance  
17 calls. A child who is indigent shall be furnished writing, postage and  
18 telephone facilities without charge.

19 (11) Practice of religion. Every child shall have the right to  
20 practice or refrain from practice of a religion. No child shall be  
21 subjected to pressure, rewards or punishments based on his decision to  
22 practice or refrain from practice of religion or of any particular  
23 religion. The treatment facility is not required to provide special  
24 assistance to persons so that they may practice a religion.

25 (12) Personal possessions. Every child shall have the right to keep,  
26 use and store personal possessions and to maintain and use bank accounts  
27 and other sources of personal funds, unless precluded from doing so by  
28 order of the court. Reasonable limitations may be set by general rules or,  
29 for clinical reasons, in particular cases.

30 (13) Nonretaliation. No child shall be subjected to retaliation or to  
31 any adverse change of conditions or treatment because of having asserted  
32 his rights.

33 (14) Access to counsel. A child may at any time have a telephone  
34 conversation with or be visited by his lawyer or any employee of his  
35 attorney's firm, or a representative of the state protection and advocacy  
36 system.

37 (15) Medication. Each child has the right to be free from unnecessary  
38 or excessive medication.

39 (16) Right to education. A child who is in a treatment facility shall  
40 be provided education and training as necessary to encourage and stimulate  
41 developmental progress and achievement and as required by state and  
42 federal law. In no event shall a child be allowed to remain in a treatment  
43 facility for more than ten (10) days without receiving educational  
44 services.

45 History: [16-2425, added 1997, ch. 404, sec. 1, p. 1294.]

1           **16-2426. NOTIFICATION OF RIGHTS.** At the time of admission to a  
2 facility, whether the admission is voluntary or involuntary, the facility  
3 shall insure that the child is fully informed of his rights in terms that  
4 he can understand. This information shall be provided both orally and in  
5 writing. Copies of the written explanation of the child's rights and a  
6 written, signed acknowledgement by the child and his parent that he has  
7 read and understands the rights, shall be kept in the child's records and  
8 made available for inspection by representatives of the child and  
9 employees of the state protection and advocacy system. A statement of  
10 rights shall be posted in a common area of the facility available to  
11 residents and plainly visible.

12           History: [16-2426, added 1997, ch. 404, sec. 1, p. 1296.]

13  
14           **16-2427. DISCHARGE.** (1) The responsible physician shall review  
15 periodically whether a child meets the criteria for involuntary treatment,  
16 and if he concludes that the person does not meet such criteria, he shall  
17 undertake discharge procedures.

18           (2) Discharge of any child may be delayed for a reasonable period of  
19 time in order to arrange transportation or lodging for the child, or for  
20 other good cause to protect the safety or well-being of the child.

21           (3) Involuntary treatment after discharge. A child who has been  
22 discharged from emergency evaluation, one hundred twenty (120) day  
23 involuntary treatment or a subsequent period of involuntary treatment may  
24 be subjected to further involuntary treatment only pursuant to the  
25 procedures provided in this chapter and upon a showing of new  
26 circumstances warranting such involuntary treatment which were not known  
27 at the time of discharge.

28           (4) Release to outpatient treatment. The responsible physician may,  
29 as part of an individual treatment plan for a child who is subject to  
30 involuntary treatment, release such child to outpatient treatment upon the  
31 condition that, if the child fails to follow through with, or respond  
32 acceptably to, such outpatient treatment, he may be returned to inpatient  
33 treatment without a court hearing during the effective period of the  
34 order, or until he meets the criteria for voluntary treatment or  
35 discharge. Within seventy-two (72) hours of his return to the facility,  
36 there must be an administrative review to determine if inpatient treatment  
37 is necessary. The review hearing must be conducted by the facility  
38 director or his designee, a physician, a social worker, psychologist, or  
39 nurse. The child and his parent, or guardian shall be given an opportunity  
40 to be represented by counsel and to present evidence and testimony.

41           (5) Habeas corpus. Nothing in this chapter shall limit other legal  
42 rights or remedies concerning discharge which a person may have pursuant  
43 to law, rule, regulation or policy, including the right to petition for a  
44 writ of habeas corpus.

45           History: [16-2427, added 1997, ch. 404, sec. 1, p. 1297.]

46  
47           **16-2428. CONFIDENTIALITY AND DISCLOSURE OF INFORMATION.** All  
48 certificates, applications, records, and reports directly or indirectly  
49 identifying a patient or former patient or an individual whose involuntary  
50 treatment has been sought under this chapter shall be kept confidential  
51 and shall not be disclosed by any person except with the consent of the  
52 person identified or his legal guardian, if any, or as disclosure may be  
53 necessary to carry out any of the provisions of this chapter, or as a

1 court may direct upon its determination that disclosure is necessary and  
2 that failure to make such disclosure would be contrary to public interest.

3 (1) No person in possession of confidential statements made by a  
4 child over the age of fourteen (14) years in the course of treatment may  
5 disclose such information to the child's parent or others without the  
6 written permission of the child, unless such disclosure is necessary to  
7 obtain insurance coverage, to carry out the treatment plan or prevent harm  
8 to the child or others, or, unless authorized to disclose such information  
9 by order of a court.

10 (2) The child has the right of access to information regarding his  
11 treatment and has the right to have copies of information and to submit  
12 clarifying or correcting statements and other documentation of reasonable  
13 length for inclusion with his treatment record.

14 (3) Nothing in this section shall prohibit the denial of access to  
15 records, by a child when a physician or other mental health professional  
16 believes and notes in the child's medical records that the disclosure  
17 would be damaging to the child. In any case, the child has the right to  
18 petition the court for an order granting access.

19 (4) Access to records by the state protection and advocacy system  
20 shall be governed by 42 U.S.C. 10108 et seq., as amended.

21 History: [16-2428, added 1997, ch. 404, sec. 1, p. 1297.]  
22

23 **16-2429. RIGHT TO REPRESENTATION.** (1) Every child has the right to  
24 counsel to represent him at all proceedings under this chapter and to  
25 obtain the advice of an attorney at any time regarding his status under  
26 this chapter, at his or his parents' expense. When a child has not  
27 retained an attorney and is unable to do so, or the child and his parents  
28 are unable to afford one, and proceedings under this chapter have been  
29 initiated in court, the court shall appoint an attorney to represent him  
30 in court proceedings.

31 (2) Every treatment facility shall establish a fair procedure for  
32 the assertion, resolution, and redress of grievances, and attempt to  
33 resolve problems and protect the rights of people treated by the facility.  
34 The child shall have the right to have a representative present at these  
35 proceedings, but not at public expense.

36 History: [16-2429, added 1997, ch. 404, sec. 1, p. 1298.]  
37

38 **16-2430. TRANSPORTATION.** Following disposition by the department, it  
39 is the responsibility of the county sheriff to transport the person to the  
40 treatment facility. The department must notify the sheriff of the  
41 designated treatment facility within twenty-four (24) hours of the entry  
42 of the department's disposition order. The county and the department shall  
43 allow for transportation by a family member or a member of the family and  
44 children's services regional program staff whenever possible and  
45 determined to be in the best interests of the child.

46 History: [16-2430, added 1997, ch. 404, sec. 1, p. 1298.]  
47

48 **16-2431. COST OF INVOLUNTARY TREATMENT PROCEEDINGS.** All costs  
49 associated with the involuntary treatment proceedings, including usual and  
50 customary fees of designated examiners, transportation costs and all  
51 medical, psychiatric and hospital costs, shall be the responsibility of  
52 the parents of the child according to their ability to pay, based on the  
53 sliding fee scale established under section [16-2433](#), Idaho Code, or, if



1 indigent, the county of such child's residence after all personal, family  
2 and third party resources including medical assistance as authorized by  
3 title XIX of the social security act, as amended, are considered. The  
4 department shall assume responsibility for usual and customary treatment  
5 costs when the order for involuntary treatment is signed until the  
6 involuntary person is discharged and after all personal, family and third  
7 party resources are considered in accordance with section [66-354](#), Idaho  
8 Code. For the purposes of this section, "usual and customary treatment  
9 costs" includes room and board; support services rendered at a facility of  
10 the department; routine physical, medical, psychological and psychiatric  
11 examination and testing; and group and individual therapy, psychiatric  
12 treatment, medication and medical care which can be provided at a facility  
13 of the department or approved by the department. The term "usual and  
14 customary treatment costs" shall not include witness fees and expenses for  
15 court appearances. Counties shall have no responsibility for costs of  
16 voluntary treatment of children under this chapter. Counties shall have no  
17 responsibility to pay for the cost of involuntary treatment of children  
18 after the court order is signed. This section does not affect the right of  
19 any child to receive free mental health or developmental disability  
20 services under any publicly supported program or the right of any parent  
21 to reimbursement from, or payment on the child's behalf by, any publicly  
22 supported program or private insurer.

23 History: [16-2431, added 1997, ch. 404, sec. 1, p. 1298.]

24 **16-2432. FALSE STATEMENTS - PENALTIES.** (1) Any person who knowingly  
25 and willfully gives false information or takes other wrongful action for  
26 the purpose of distorting, corrupting or interfering with the process  
27 provided in this chapter shall be subject to a civil fine, and shall be  
28 liable for injunctive relief and money damages, in addition to any other  
29 liability under law.

30 (2) Nothing in this chapter shall be construed as diminishing or  
31 relieving any person from their duty to report instances of child neglect  
32 or abuse under [chapter 16, title 16](#), Idaho Code, or any liability  
33 associated with failure to make such reports.

34 History: [16-2432, added 1997, ch. 404, sec. 1, p. 1299.]

35 **16-2433. DEPARTMENT RULES.** The director is authorized to promulgate  
36 rules necessary to implement this chapter that are consistent with its  
37 provisions including the development of a schedule of fees to be charged  
38 to parents by the department for services, based on the cost of services  
39 and the ability of parents to pay.

40 History: [16-2433, added 1997, ch. 404, sec. 1, p. 1299.]

41  
42 **16-2434. CONSTRUCTION.** (1) As used in this chapter, pronouns refer  
43 to both male and female persons equally, and articles refer to singular  
44 and plural persons and things.

45 (2) If any provision of this chapter or its application to any  
46 person or circumstance is held invalid, it is the legislative intent that  
47 such invalidity not affect other provisions or applications which can be  
48 given effect apart from that which is invalidated, and to this end the  
49 provisions of this chapter shall be deemed severable.

1 (3) This chapter is intended as a unified, general chapter covering  
2 its subject matter, and accordingly none of its provisions shall be deemed  
3 to be repealed by implication by subsequent legislation if such a  
4 construction can reasonably be avoided.

5 History: [16-2434, added 1997, ch. 404, sec. 1, p. 1299.]  
6

7  
8 **Miscellaneous Mental Health Statutes**  
9 **(incorporated by reference in prior statutes)**

10 15-7-302. TRUSTEE'S STANDARD OF CARE AND PERFORMANCE. Except as  
11 otherwise provided by the terms of the trust, the trustee shall observe  
12 the standards in dealing with the trust assets that would be observed by a  
13 prudent man dealing with the property of another, and if the trustee has  
14 special skills or is named trustee on the basis of representations of  
15 special skills or expertise, he is under a duty to use those skills.

16 History: [I.C., sec. 15-7-302, as added by 1971, ch. 111, sec. 1, p.  
17 233.]  
18

19 **19-2522. EXAMINATION OF DEFENDANT FOR EVIDENCE OF MENTAL CONDITION —**  
20 **APPOINTMENT OF PSYCHIATRISTS OR LICENSED PSYCHOLOGISTS — HOSPITALIZATION —**  
21 **REPORTS.** (1) If there is reason to believe the mental condition of the  
22 defendant will be a significant factor at sentencing and for good cause  
23 shown, the court shall appoint at least one (1) psychiatrist or licensed  
24 psychologist to examine and report upon the mental condition of the  
25 defendant. The costs of examination shall be paid by the defendant if he  
26 is financially able. The determination of ability to pay shall be made in  
27 accordance with chapter 8, title 19, Idaho Code. The order appointing or  
28 requesting the designation of a psychiatrist or licensed psychologist  
29 shall specify the issues to be resolved for which the examiner is  
30 appointed or designated.

31 (2) In making such examination, any method may be employed which is  
32 accepted by the examiner's profession for the examination of those alleged  
33 to be suffering from a mental illness or defect.

34 (3) The report of the examination shall include the following:

35 (a) A description of the nature of the examination;

36 (b) A diagnosis, evaluation or prognosis of the mental condition of the  
37 defendant;

38 (c) An analysis of the degree of the defendant's illness or defect and  
39 level of functional impairment;

40 (d) A consideration of whether treatment is available for the defendant's  
41 mental condition;

42 (e) An analysis of the relative risks and benefits of treatment or  
43 nontreatment;

44 (f) A consideration of the risk of danger which the defendant may create  
45 for the public if at large.

46 (4) The report of the examination shall be filed in triplicate with  
47 the clerk of the court, who shall cause copies to be delivered to the  
48 prosecuting attorney and to counsel for the defendant.

49 (5) When the defendant wishes to be examined by an expert of his own  
50 choice, such examiner shall be permitted to have reasonable access to the  
51 defendant for the purpose of examination.

52 (6) If a mental health examination of the defendant has previously  
53 been conducted, whether pursuant to section 19-2524, Idaho Code, or for

1 any other purpose, and a report of such examination has been submitted to  
2 the court, and if the court determines that such examination and report  
3 provide the necessary information required in subsection (3) of this  
4 section, and the examination is sufficiently recent to reflect the  
5 defendant's present mental condition, then the court may consider such  
6 prior examination and report as the examination and report required by  
7 this section and need not order an additional examination of the  
8 defendant's mental condition. The provisions of this subsection shall not  
9 apply to examinations and reports performed or prepared pursuant to  
10 section 18-211 or 18-212, Idaho Code, for the purpose of determining the  
11 defendant's fitness to proceed, unless the defendant knowingly,  
12 voluntarily and intelligently consents to having such examination and  
13 report used at sentencing.

14 (7) Nothing in this section is intended to limit the consideration  
15 of other evidence relevant to the imposition of sentence.

16 History: [19-2522, added 1982, ch. 368, sec. 9, p. 925; am. 2009,  
17 ch. 124, sec. 1, p. 390; am. 2012, ch. 225, sec. 1, p. 611.]  
18

19 **19-2523. CONSIDERATION OF MENTAL ILLNESS IN SENTENCING.** (1) Evidence  
20 of mental condition shall be received, if offered, at the time of  
21 sentencing of any person convicted of a crime. In determining the sentence  
22 to be imposed in addition to other criteria provided by law, if the  
23 defendant's mental condition is a significant factor, the court shall  
24 consider such factors as:

- 25 (a) The extent to which the defendant is mentally ill;  
26 (b) The degree of illness or defect and level of functional impairment;  
27 (c) The prognosis for improvement or rehabilitation;  
28 (d) The availability of treatment and level of care required;  
29 (e) Any risk of danger which the defendant may create for the public, if  
30 at large, or the absence of such risk;  
31 (f) The capacity of the defendant to appreciate the wrongfulness of his  
32 conduct or to conform his conduct to the requirements of law at the time  
33 of the offense charged.

34 (2) The court shall authorize treatment during the period of  
35 confinement or probation specified in the sentence if, after the  
36 sentencing hearing, it concludes by clear and convincing evidence that:

- 37 (a) The defendant suffers from a severe and reliably diagnosable mental  
38 illness or defect resulting in the defendant's inability to appreciate the  
39 wrongfulness of his conduct or to conform his conduct to the requirements  
40 of law;  
41 (b) Without treatment, the immediate prognosis is for major distress  
42 resulting in serious mental or physical deterioration of the defendant;  
43 (c) Treatment is available for such illness or defect;  
44 (d) The relative risks and benefits of treatment or nontreatment are such  
45 that a reasonable person would consent to treatment. (of the offense  
46 charged.)

47 (3) In addition to the authorization of treatment, the court shall  
48 pronounce sentence as provided by law.

49 History: [19-2523, added 1982, ch. 368, sec. 10, p. 925.]  
50  
51  
52

1           **19-2524.       CONSIDERATION OF COMMUNITY-BASED TREATMENT TO MEET**  
2 **BEHAVIORAL HEALTH NEEDS IN SENTENCING AND POST-SENTENCING PROCEEDINGS. (1)**

3 After a defendant has pled guilty to or been found guilty of a felony, and  
4 at any time thereafter while the court exercises jurisdiction over the  
5 defendant, behavioral health needs determinations shall be conducted when,  
6 and as provided by, this section.

7 (a) As part of the presentence process, a screening to determine whether  
8 a defendant is in need of a substance use disorder assessment and/or a  
9 mental health examination shall be made in every felony case unless the  
10 court waives the requirement for a screening. The screening shall be  
11 performed within seven (7) days after the plea of guilty or finding of  
12 guilt.

13 (b) At any time after sentencing while the court exercises jurisdiction  
14 over the defendant, the court may order such a screening to be performed  
15 by individuals authorized or approved by the department of correction if  
16 the court determines that one is indicated. The screening shall be  
17 performed within seven (7) days after the order of the court requiring  
18 such screening.

19           (2) Substance use disorder provisions.

20 (a) Should a screening indicate the need for further assessment of a  
21 substance use disorder, the necessary assessment shall be timely performed  
22 so as to avoid any unnecessary delay in the criminal proceeding and not  
23 later than thirty-five (35) days after a plea of guilty or finding of  
24 guilt or other order of the court requiring such screening. The assessment  
25 may be performed by qualified employees of the department of correction or  
26 by private providers approved by the department of health and welfare. If  
27 the screening or assessment is not timely completed, the court may order  
28 that the screening be performed by another qualified provider.

29 (b) Following completion of the assessment, the results of the  
30 assessment, including a determination of whether the defendant meets  
31 diagnostic criteria for a substance use disorder and the recommended level  
32 of care, shall be submitted to the court as part of the presentence  
33 investigation report or other department of correction report to the  
34 court.

35 (c) Following the entry of a plea of guilty or a finding of guilt, the  
36 court may order, as a condition of the defendant's continued release on  
37 bail or on the defendant's own recognizance, that if the assessment  
38 reflects that the defendant meets diagnostic criteria for a substance use  
39 disorder, the defendant shall promptly, and prior to sentencing, begin  
40 treatment at the recommended level of care.

41 (d) If the court concludes at sentencing, or at any time after sentencing  
42 while the court exercises jurisdiction over the defendant, that the  
43 defendant meets diagnostic criteria for a substance use disorder, and if  
44 the court places the defendant on probation, the court may order the  
45 defendant, as a condition of probation, to undergo treatment at the  
46 recommended level of care, subject to modification of the level of care by  
47 the court. If substance use disorder treatment is ordered, all treatment  
48 shall be performed by a qualified private provider approved by the  
49 department of health and welfare. The court may order that if the level of  
50 care placement or the treatment plan is modified in any material term, the  
51 department of correction shall notify the court stating the reason for the  
52 modifications and informing the court as to the clinical alternatives  
53 available to the defendant. The level of care for substance use treatment

1 shall be based upon each probationer's risk assessment with priority given  
2 to probationers with high or moderate risk levels.

3 (e) In no event shall the persons or facility doing the substance use  
4 assessment be the person or facility that provides the substance use  
5 treatment unless this requirement is waived by the court or where the  
6 assessment and treatment are provided by or through a federally recognized  
7 Indian tribe or federal military installation, where diagnosis and  
8 treatment are appropriate and available.

9 (f) Defendants who have completed department of correction institutional  
10 programs may receive after care services from qualified employees of the  
11 department of correction.

12 (g) The expenses of all screenings and assessments for substance use  
13 disorder provided or ordered under this section shall be borne by the  
14 department of correction. The expenses for treatment provided or ordered  
15 under this section shall be borne by the department of correction unless  
16 the defendant is placed in a treatment program which is funded by an  
17 alternate source. The department of correction shall be entitled to any  
18 payment received by the defendant or to which he may be entitled from any  
19 public or private source available to the department of correction for the  
20 service provided to the defendant. The department of correction may  
21 promulgate rules for a schedule of fees to be charged to defendants for  
22 the substance use disorder assessments and treatments provided to the  
23 defendants based upon the actual costs of such services and the ability of  
24 a defendant to pay. The department of correction shall use the state  
25 approved financial eligibility form and reimbursement schedule as set  
26 forth in IDAPA 16.07.01.

27 (3) Mental health provisions.

28 (a) Should the mental health screening indicate that a serious mental  
29 illness may be present, then the department of correction shall refer the  
30 defendant to the department of health and welfare for further examination.  
31 The examination shall be timely performed so as to avoid any unnecessary  
32 delay in the criminal proceeding and not later than thirty-five (35) days  
33 after a plea of guilty or finding of guilt or other order of the court  
34 requiring such screening.

35 (b) The examination may be performed by qualified department of health  
36 and welfare employees or by private providers under contract with the  
37 department of health and welfare, provided that such examination shall at  
38 a minimum include an in-depth evaluation of the following:

- 39 (i) Mental health concerns;  
40 (ii) Psychosocial risk factors;  
41 (iii) Medical, psychiatric, developmental and other relevant history;  
42 (iv) Functional impairments;  
43 (v) Mental status examination;  
44 (vi) Multiaxial diagnoses; and  
45 (vii) Any other examinations necessary to provide the court with the  
46 information set forth in paragraph (c) of this subsection.

47 (c) Upon completion of the mental health examination, the court shall be  
48 provided, as part of the presentence report or other department of health  
49 and welfare report to the court, a copy of the mental health assessment  
50 along with a summary report. The summary report shall include the  
51 following:

- 52 (i) Description and nature of the examination;  
53 (ii) Multiaxial diagnoses;

1 (iii) Description of the defendant's diagnosis and if the defendant  
2 suffers from a serious mental illness (SMI) as that term is now defined,  
3 or is hereafter amended, in IDAPA 16.07.33.010, to also include post-  
4 traumatic stress disorder;

5 (iv) An analysis of the degree of impairment due to the defendant's  
6 diagnosis;

7 (v) Consideration of the risk of danger the defendant may create for the  
8 public; and

9 (vi) If the defendant suffers from a serious mental illness the report  
10 shall also include a plan of treatment that addresses the following:

11 1. An analysis of the relative risks and benefits of treatment versus  
12 nontreatment;

13 2. Types of treatment appropriate for the defendant; and

14 3. Beneficial services to be provided.

15 (d) If the court, after receiving a mental health examination and plan of  
16 treatment, determines that additional information is needed regarding the  
17 mental condition of the defendant or the risk of danger such condition may  
18 create for the public, the court may order additional evaluations and/or  
19 recommendations for treatment to be furnished by a psychiatrist, licensed  
20 physician or licensed psychologist.

21 (e) If the court concludes that the defendant suffers from a serious  
22 mental illness as defined in paragraph (c)(iii) of this subsection and  
23 that treatment is available for such serious mental illness, then the  
24 court may order, as a condition of the defendant's release on bail or on  
25 the defendant's own recognizance or as a condition of probation, that the  
26 defendant undergo treatment consistent with the plan of treatment, subject  
27 to modification of the plan of treatment by the court. If the plan of  
28 treatment is modified in any material term, the department of health and  
29 welfare shall notify the court in a timely manner stating the reasons for  
30 the modification and informing the court as to the clinical alternatives  
31 available to the defendant.

32 (f) If treatment is ordered, all treatment shall be performed by a  
33 provider approved by the department of health and welfare.

34 (g) Mental health examinations and/or treatment provided or ordered under  
35 this section shall be secured by the department of health and welfare. The  
36 department of health and welfare shall exhaust efforts to assist the  
37 defendant in gaining access to health care benefits that will cover the  
38 defendant's mental health treatment needs. To the extent that health care  
39 benefits are not available to the defendant for the treatment, the  
40 expenses for treatment shall be borne by the department of health and  
41 welfare. The expenses of all mental health examinations provided or  
42 ordered under this section shall be borne by the department of health and  
43 welfare. The department of health and welfare shall be entitled to any  
44 payment received by the defendant or to which he may be entitled from any  
45 public or private source available to the department of health and welfare  
46 for the service provided to the defendant. The department of health and  
47 welfare is authorized to promulgate rules for a schedule of fees to be  
48 charged to defendants for the mental health examinations and treatments  
49 provided to the defendants based upon the actual costs of such services  
50 and the ability of a defendant to pay. The department of health and  
51 welfare shall use the state approved financial eligibility form and  
52 reimbursement schedule as set forth in IDAPA 16.07.01. Defendants shall  
53 pay the fee for the mental health examinations and treatments consistent  
54 with the rules of the department of health and welfare.

1 (4) Unless otherwise ordered by the court, if the defendant is in  
2 treatment for a substance use disorder or mental illness, any substance  
3 use disorder assessment required under subsection (2) of this section or  
4 mental health examination required under subsection (3) of this section  
5 need not be performed while the defendant is in such treatment. In such  
6 circumstances, the court may make such order as it finds appropriate to  
7 facilitate the completion of the sentencing process or other proceeding  
8 before the court, including providing for the assessment and treatment  
9 records to be included in the presentence investigation report or other  
10 report to the court.

11 (5) Any substance use disorder assessment including any recommended  
12 level of care or mental health examination including any plan of treatment  
13 shall be delivered to the court, the defendant and the prosecuting  
14 attorney prior to any sentencing hearing or probation revocation hearing.

15 (6) A substance use disorder assessment prepared pursuant to the  
16 provisions of this section shall satisfy the requirement of an alcohol  
17 evaluation prior to sentencing set forth in section 18-8005(11), Idaho  
18 Code, and shall also satisfy the requirement of a substance abuse  
19 evaluation prior to sentencing set forth in section 37-2738, Idaho Code.

20 (7) If the defendant is sentenced to the custody of the board of  
21 correction, then any substance use disorder assessment, mental health  
22 examination or plan of treatment shall be sent to the department of  
23 correction along with the presentence report.

24 History: [19-2524, added 2007, ch. 310, sec. 1, p. 875; am. 2012,  
25 ch. 225, sec. 2, p. 612; am. 2012, ch. 225, sec. 3, p. 614; am. 2014, ch.  
26 150, sec. 3, p. 415.]

27  
28 **20-511A. MENTAL HEALTH ASSESSMENTS AND PLANS OF TREATMENT.** (1) A  
29 judge of any court shall order the department of health and welfare to  
30 submit appropriate mental health assessments and a plan of treatment for  
31 the court's approval if at any stage of a proceeding under this chapter or  
32 the child protective act, chapter 16, title 16, Idaho Code, a judge has  
33 reason to believe, based upon the record and proceedings of the court or  
34 upon an affidavit of a party, state or county agency or any person having  
35 physical custody of the juvenile or juvenile offender, that he or she:

36 (a) Is suffering a substantial increase or persistence of a serious  
37 emotional disturbance as defined in section 16-2403, Idaho Code, which  
38 impairs his or her ability to comply with the orders and directives of the  
39 court, or which presents a risk to his or her safety or well-being or the  
40 safety of others; and

41 (b) Such condition has not been adequately addressed with supportive  
42 services and/or corrective measures previously provided to the juvenile,  
43 or the juvenile's needs with respect to the serious emotional disturbance  
44 are not being met or have not been met.

45 (2) The court may convene a screening team consisting of  
46 representatives from the department of health and welfare, county  
47 probation, local school officials, teen early intervention specialists as  
48 provided for under section 16-2404A, Idaho Code, the department of  
49 juvenile corrections and/or other agencies or persons designated by the  
50 court to review the plan of treatment and provide written recommendations  
51 to the court. Parents and guardians of the juvenile or juvenile offender,  
52 if available, shall be included in the screening team and consulted with  
53 regard to the plan of treatment.

1 (3) If the court, after receiving the mental health assessment and  
2 plan of treatment submitted by the department of health and welfare and  
3 any recommendations from the screening team, determines that additional  
4 information is necessary to determine whether the conditions set forth in  
5 subsections (1)(a) and (1)(b) of this section are present, or to determine  
6 an appropriate plan of treatment for the juvenile or juvenile offender,  
7 the court may order an evaluation and/or recommendations for treatment to  
8 be furnished by a psychiatrist, licensed physician or licensed  
9 psychologist, with the expenses of such evaluation and/or recommendations  
10 to be borne by the department of health and welfare.

11 (4) If the court concludes that the conditions set forth in  
12 subsections (1)(a) and (1)(b) of this section are present, the plan of  
13 treatment, as approved by the court, shall be entered into the record as  
14 an order of the court. The department of health and welfare shall provide  
15 mental health treatment as designated by the approved plan of treatment.  
16 If in-patient or residential treatment is required as part of the plan of  
17 treatment, the court shall hold a hearing on whether to order such  
18 treatment unless the hearing is waived by the juvenile or juvenile  
19 offender and his or her parents or guardians. The court may order parents,  
20 legal guardians or custodians to adhere to the treatment designated in the  
21 plan of treatment. Representatives from the department of health and  
22 welfare, county probation, local school officials, teen early intervention  
23 specialists as provided for under section 16-2404A, Idaho Code, the  
24 department of juvenile corrections and/or other agencies or persons  
25 designated by the court shall attend case review hearings as scheduled by  
26 the court.

27 (5) All costs associated with assessment and treatment shall be the  
28 responsibility of the parents of the juvenile or juvenile offender  
29 according to their ability to pay based upon the sliding fee scale  
30 established pursuant to section 16-2433, Idaho Code. The financial  
31 obligation of the family shall be determined after consideration of all  
32 available payment and funding sources including title XIX of the social  
33 security act, as amended, all available third party sources, and parent  
34 resources according to any order for child support under chapter 10, title  
35 32, Idaho Code. Services shall not be conditioned upon transfer of custody  
36 or parental rights.

37 History: [20-511A, added 2005, ch. 223, sec. 1, p. 699; am. 2007,  
38 ch. 309, sec. 4, p. 873; am. 2012, ch. 19, sec. 11, p. 49.]

39  
40 **20-519B. DETERMINATION OF COMPETENCY OF JUVENILE TO PROCEED -**  
41 **SUSPENSION OF PROCEEDINGS - RESTORATION ORDER - COMMITMENT.** (1) The court  
42 shall hold a hearing no later than thirty (30) days after the report of  
43 the examiner or evaluation committee is filed pursuant to the provisions  
44 of section 20-519A, Idaho Code. At the hearing, the court may receive as  
45 evidence the report of the examiner or evaluation committee. In  
46 considering whether the juvenile is competent to proceed, the court shall  
47 consider the following:  
48 (a) A description of the nature, content, extent and results of the  
49 examination and any test that was conducted;  
50 (b) The juvenile's capacity to understand the charges or allegations  
51 against the juvenile;  
52 (c) The juvenile's capacity to understand the range and nature of  
53 possible penalties that may be imposed in the proceedings;



1 (d) The juvenile's capacity to understand the adversarial nature of the  
2 legal process;

3 (e) The juvenile's capacity to disclose to counsel facts pertinent to the  
4 proceedings at issue;

5 (f) Whether the juvenile is able to display appropriate courtroom  
6 behavior;

7 (g) Whether the juvenile is able to receive accurate impressions of the  
8 facts about which he or she is examined, is able to appreciate the meaning  
9 of an oath to tell the truth and has an understanding of the potential  
10 consequences of not telling the truth;

11 (h) The examiner's opinion as to the competency of the juvenile as  
12 defined in subsection (2) of section 20-519A, Idaho Code.

13 (2) The weight to be given to each of the factors listed in  
14 subsection (1) of this section is discretionary with the court and a  
15 determination that the juvenile is or is not competent to proceed may be  
16 based on any one (1) or a combination of such factors, which shall be  
17 recited in the court's order regarding competency.

18 (3) If neither the prosecuting attorney nor counsel for the juvenile  
19 contests the findings of the report of the examiner or evaluation  
20 committee, the court may make the determination on the basis of such  
21 report. If a party contests the findings of such report, they shall have  
22 the right to cross-examine the qualified psychiatrist or licensed  
23 psychologist who prepared and submitted the report and to offer evidence  
24 upon this issue. A finding of incompetency shall be based upon a  
25 preponderance of the evidence.

26 (4) If the court finds the juvenile is competent to proceed, the  
27 proceedings shall continue without delay.

28 (5) If the court initially finds that the juvenile is incompetent  
29 and there is not a substantial probability that the juvenile will be  
30 restored to competency within six (6) months, the court may stay or  
31 dismiss the matter. In determining whether to stay or dismiss the matter,  
32 the court shall consider all relevant factors including, but not limited  
33 to, the seriousness of the alleged offense, resources available to the  
34 juvenile and any issues of public safety. Prior to a stay or dismissal of  
35 the matter, the court may convene a screening team consisting of  
36 representatives from the department of health and welfare, county  
37 probation, local school officials, and/or other agencies or persons  
38 designated by the court to develop a treatment plan for the juvenile. In  
39 developing such treatment plan, the recommendations contained in the  
40 competency examination shall be considered to ensure necessary services  
41 for the juvenile are put into place. Parents and guardians of the  
42 juvenile, if available, shall be included in the screening team and  
43 consulted with regard to the plan of treatment. If appropriate, the court  
44 may hold a hearing to determine whether proceedings under chapter 24,  
45 title 16, or chapter 3 or 4, title 66, Idaho Code, should be instituted.  
46 If such proceedings are initiated, the juvenile court may retain  
47 jurisdiction over said proceedings.

48 (6) If the court determines that the juvenile is incompetent to  
49 proceed, but may be restored to competency within six (6) months, the  
50 court shall order a plan of treatment to be developed by the department of  
51 health and welfare for the juvenile to undergo efforts at restoration to  
52 competency. The court may:

53 (a) Convene a restoration treatment team to make recommendations on a  
54 plan of treatment;

1 (b) Order any agencies that have treated or had custody of the juvenile  
2 to release any pertinent information or records to the department of  
3 health and welfare to be used in the development and implementation of the  
4 juvenile's restoration plan;

5 (c) Order the department of health and welfare, county probation, school  
6 officials and the department of juvenile corrections to release all  
7 pertinent information regarding the juvenile to the court, the department  
8 of health and welfare and any restoration treatment team to be used in the  
9 development and implementation of the juvenile's restoration plan;

10 (d) Require the parents or guardians of the juvenile, and where  
11 appropriate require the juvenile, to allow information pertinent to the  
12 restoration treatment plan be released to the department of health and  
13 welfare, the court and any restoration treatment team.

14 (7) If the court determines that the juvenile is incompetent to  
15 proceed, but may be restored to competency, the court may order a juvenile  
16 to participate in the competency restoration program as developed by the  
17 department of health and welfare. The purpose of the treatment or training  
18 is the restoration of the juvenile's competency to proceed. In determining  
19 the type and location of the competency restoration program and in  
20 designating a restoration provider, the department of health and welfare  
21 shall identify the least restrictive alternative that is consistent with  
22 public safety and consider whether inpatient treatment, residential care  
23 or secure confinement is necessary for program participation.

24 (a) An inpatient or residential or secure detention facility is only  
25 appropriate if all available less restrictive alternatives in community  
26 settings which would offer an opportunity for improvement of the  
27 juvenile's condition are inappropriate. If the department of health and  
28 welfare's plan of restoration requires the juvenile be placed in an  
29 inpatient, residential or secure detention facility, the court shall hold  
30 a hearing on whether to order such placement unless the hearing is waived  
31 by the juvenile and the juvenile's parents or guardians. Juveniles charged  
32 with only a status offense or multiple status offenses shall not be held  
33 in a secure confinement or detention facility for restoration purposes.

34 (b) The department of health and welfare is responsible for determining  
35 the competency restoration program and services. All costs associated with  
36 restoration services shall be the responsibility of the parents of the  
37 juvenile according to their ability to pay based upon the sliding fee  
38 scale established pursuant to section 16-2433, Idaho Code. The financial  
39 obligation of the parents shall be determined after consideration of all  
40 available payment and funding sources including title XIX of the social  
41 security act, as amended, all available third party sources including  
42 funding available to the juvenile from other programs, grants or agencies  
43 and parent resources according to any order for child support under  
44 chapter 10, title 32, Idaho Code. Services shall not be conditioned upon  
45 transfer of custody of parental rights.

46 (8) If a juvenile is determined to be incompetent to proceed but may  
47 be restored to competency, the court shall retain jurisdiction of the  
48 juvenile for up to six (6) months. A restoration order issued pursuant to  
49 this section is valid for six (6) months from the date of the initial  
50 finding of incompetency or until one (1) of the following, whichever  
51 occurs first:

52 (a) The restoration program submits a report that the juvenile has become  
53 competent to proceed or that there is no substantial probability that the  
54 juvenile will regain competency within the period the order is valid;

1 (b) The charges are dismissed; or

2 (c) The juvenile reaches twenty-one (21) years of age.

3 (9) The court may extend the restoration order beyond six (6) months  
4 upon a showing of good cause. If the juvenile reaches twenty-one (21)  
5 years of age, the matter shall be dismissed. If the court concludes that  
6 there is no substantial probability that the juvenile will regain  
7 competency within the period the order is valid, then the provisions of  
8 subsection (5) of this section shall apply.

9 History: [20-519B, added 2011, ch. 178, sec. 2, p. 507.]

10  
11 **20-520. SENTENCING.** (1) Upon the entry of an order finding the  
12 juvenile offender is within the purview of the act, the court shall then  
13 hold a sentencing hearing in the manner prescribed by the Idaho juvenile  
14 rules to determine the sentence that will promote accountability,  
15 competency development and community protection. Prior to the entry of an  
16 order disposing of the case, other than an order of discharge or  
17 dismissal, the court may request and, if requested, shall receive a report  
18 containing the results of an inquiry into the home environment, past  
19 history, competency development, prevention or out of home placement  
20 services provided, and the social, physical and mental condition of the  
21 juvenile offender. The court shall not consider or review the report prior  
22 to the entry of an order of adjudication. Upon presentation and  
23 consideration of the report by the court, the court may proceed to  
24 sentence the juvenile offender as follows:

25 (a) Place the juvenile offender on formal probation for a period not to  
26 exceed three (3) years from the date of the order, except the court may  
27 place a juvenile offender on formal probation for a period not to exceed  
28 the juvenile offender's twenty-first birthday if the court finds that the  
29 juvenile offender has committed a crime of a sexual nature. If a juvenile  
30 offender is committed to the Idaho department of juvenile corrections  
31 pursuant to paragraph (r) of this subsection, the court may place the  
32 juvenile offender on probation from the date of sentencing up to three (3)  
33 years past the date of release from custody or the juvenile offender's  
34 twenty-first birthday, whichever occurs first; provided the court shall  
35 conduct a review hearing within thirty (30) days following release of the  
36 juvenile offender from the department of juvenile corrections in order to  
37 determine the conditions and term of such probation;

38 (b) Sentence the juvenile offender to detention pursuant to this act for  
39 a period not to exceed thirty (30) days for each act, omission or status  
40 which is prohibited by the federal, state, local or municipal law or  
41 ordinance by reason of minority only. The sentence shall not be executed  
42 unless the act, omission or status is in violation of 18 U.S.C. section  
43 922(x), or the court finds that the juvenile offender has violated the  
44 court's decree imposing the sentence as provided in this subsection.

45 If the court, after notice and hearing, finds that a juvenile  
46 offender has violated the court's decree imposing the sentence under  
47 circumstances that bring the violation under the valid court order  
48 exception of the federal juvenile justice and delinquency prevention act  
49 of 1974, as amended, the court may commit the juvenile offender to  
50 detention for the period of detention previously imposed at sentencing;

51 (c) Commit the juvenile offender to a period of detention, pursuant to  
52 this act, for a period of time not to exceed ninety (90) days for each  
53 unlawful or criminal act the juvenile offender is found to have committed,

1 if the unlawful or criminal act would be a misdemeanor if committed by an  
2 adult, or where the juvenile offender has been adjudicated as an habitual  
3 status offender;

4 (d) If the juvenile offender has committed an unlawful or criminal act  
5 which would be a felony if committed by an adult, the court may commit the  
6 juvenile offender to detention for a period not to exceed one hundred  
7 eighty (180) days for each unlawful or criminal act;

8 (e) Whenever a court commits a juvenile offender to a period of  
9 detention, the juvenile detention center shall notify the school district  
10 where the detention center is located. No juvenile offender who is found  
11 to come within the purview of the act for the commission of a status  
12 offense shall be sentenced to detention in a jail facility unless an  
13 adjudication has been made that the juvenile offender is an habitual  
14 status offender;

15 (f) Commit the juvenile offender to detention and suspend the sentence on  
16 specific probationary conditions;

17 (g) The court may suspend or restrict the juvenile offender's driving  
18 privileges for such periods of time as the court deems necessary, and the  
19 court may take possession of the juvenile offender's driver's license. The  
20 juvenile offender may request restricted driving privileges during a  
21 period of suspension, which the court may allow if the juvenile offender  
22 shows by a preponderance of evidence that driving privileges are necessary  
23 for his employment or for family health needs;

24 (h) The court may order that the juvenile offender be examined or treated  
25 by a physician, surgeon, psychiatrist or psychologist, or that he receive  
26 other special care, or that he submit to an alcohol or drug evaluation, if  
27 needed, and for such purposes may place the juvenile offender in a  
28 hospital or other suitable facility;

29 (i) The court may order that the county probation office authorize a  
30 comprehensive substance abuse assessment of the juvenile offender. After  
31 receiving the comprehensive substance abuse assessment, and upon a finding  
32 by the court that treatment will provide a cost-effective means of  
33 achieving the sentencing goals of accountability, competency development  
34 and community protection, the court may order that the juvenile offender  
35 receive immediate treatment for substance abuse in keeping with a plan of  
36 treatment approved by the court. The initial cost of the assessment and  
37 treatment shall be borne by the department of juvenile corrections with  
38 funds allocated to the county probation office. The director of the  
39 department of juvenile corrections may promulgate rules consistent with  
40 this paragraph to establish a schedule of fees to be charged to parents by  
41 the county probation office for such services based upon the cost of the  
42 services and the ability of parents to pay;

43 (j) In support of an order under the provisions of this section, the  
44 court may make an additional order setting forth reasonable conditions to  
45 be complied with by the parents, the juvenile offender, his legal guardian  
46 or custodian, or any other person who has been made a party to the  
47 proceedings, including, but not limited to, restrictions on visitation by  
48 the parents or one (1) parent, restrictions on the juvenile offender's  
49 associates, occupation and other activities, and requirements to be  
50 observed by the parents, guardian or custodian;

51 (k) The court may make any other reasonable order which is in the best  
52 interest of the juvenile offender or is required for the protection of the  
53 public, except that no person under the age of eighteen (18) years may be  
54 committed to jail, prison or a secure facility which does not meet the

1 standards set forth in section 20-518, Idaho Code, unless jurisdiction  
2 over the individual is in the process of being waived or has been waived  
3 pursuant to section 20-508 or 20-509, Idaho Code. The court may combine  
4 several of the above-listed modes of disposition where they are  
5 compatible;

6 (l) An order under the provisions of this section for probation or  
7 placement of a juvenile offender with an individual or an agency may  
8 provide a schedule for review of the case by the court;

9 (m) Order the proceeding expanded or altered to include consideration of  
10 the cause pursuant to chapter 16, title 16, Idaho Code;

11 (n) Order the case and all documents and records connected therewith  
12 transferred to the magistrate division of the district court for the  
13 county where the juvenile offender and/or parents reside if different than  
14 the county where the juvenile offender was charged and found to have  
15 committed the unlawful or criminal act, for the entry of a dispositional  
16 order;

17 (o) Order such other terms, conditions, care or treatment as appears to  
18 the court will best serve the interests of the juvenile offender and the  
19 community;

20 (p) The court shall assess a twenty dollar (\$20.00) detention/probation  
21 training academy fee against the juvenile offender for every petition  
22 filed where there has been an adjudication that the juvenile offender is  
23 within the purview of this chapter. All moneys raised pursuant to this  
24 paragraph shall be transmitted by the court for deposit in the juvenile  
25 corrections fund which is created in section 20-542, Idaho Code;

26 (q) Additionally, the court shall assess a fee of sixty cents (60¢) per  
27 hour of community service against the juvenile offender for every petition  
28 filed where there has been an adjudication that the juvenile offender is  
29 within the purview of this chapter and the court is ordering community  
30 service. Such fee is to be remitted by the court to the state insurance  
31 fund for purposes of providing worker's compensation insurance for persons  
32 performing community service pursuant to this chapter. However, if a  
33 county is self-insured and provides worker's compensation insurance for  
34 persons performing community service pursuant to the provisions of this  
35 chapter, then remittance to the state insurance fund is not required;

36 (r) Commit the juvenile offender to the legal custody of the department  
37 of juvenile corrections for an indeterminate period of time not to exceed  
38 the juvenile offender's nineteenth birthday, unless the custody review  
39 board determines that extended time in custody is necessary to address  
40 competency development, accountability, and community protection; provided  
41 however, that no juvenile offender shall remain in the custody of the  
42 department beyond the juvenile offender's twenty-first birthday. The  
43 department shall adopt rules implementing the custody review board and  
44 operations and procedures of such board. Juvenile offenders convicted as  
45 adults and placed in the dual custody of the department of juvenile  
46 corrections and the state board of correction under section 19-2601A,  
47 Idaho Code, are under the retained jurisdiction of the court and are not  
48 within the purview of the custody review board;

49 (s) Notwithstanding any other provision of this section, a court may not  
50 commit a juvenile offender under the age of ten (10) years to a period of  
51 detention or to the custody of the department of juvenile corrections for  
52 placement in secure confinement.

53 (2) When an order is entered pursuant to this section, the juvenile  
54 offender shall be transported to the facility or program so designated by

1 the court or the department, as applicable, by the sheriff of the county  
2 where the juvenile offender resides or is committed, or by an appointed  
3 agent. When committing a juvenile offender to the department, or another  
4 entity, the court shall at once forward to the department or entity a  
5 certified copy of the order of commitment.

6 (3) Unless the court determines that an order of restitution would  
7 be inappropriate or undesirable, it shall order the juvenile offender or  
8 his parents or both to pay restitution to or make whole any victim who  
9 suffers an economic loss as a result of the juvenile offender's conduct in  
10 accordance with the standards and requirements of sections 19-5304 and 19-  
11 5305, Idaho Code. The amount of restitution which may be ordered by the  
12 court shall not be subject to the limitations of section 6-210, Idaho  
13 Code. Court-ordered restitution shall be paid prior to any other court-  
14 ordered payments unless the court specifically orders otherwise. The clerk  
15 of the district court, with the approval of the administrative district  
16 judge, may use the procedures set forth in section 19-4708, Idaho Code,  
17 for the collection of the restitution.

18 (4) The court may order the juvenile offender's parents or custodian  
19 to pay the charges imposed by community programs ordered by the court for  
20 the juvenile offender, or the juvenile offender's parents or custodian.

21 (5) Any parent, legal guardian or custodian violating any order of  
22 the court entered against the person under the provisions of this chapter  
23 shall be subject to contempt proceedings under the provisions of chapter  
24 6, title 7, Idaho Code.

25 History: [20-520 added 1996, ch. 301, sec. 2, p. 989; am. 1996, ch.  
26 301, sec. 3, p. 992; am. 1996, ch. 359, sec. 2, p. 1209; am. 1997, ch. 76,  
27 sec. 1, p. 158; am. 1997, ch. 262, sec. 1, p. 747; am. 1999, ch. 155, sec.  
28 1, p. 431; am. 2000, ch. 329, sec. 1, p. 1106; am. 2000, ch. 466, sec. 1,  
29 p. 1444; am. 2001, ch. 15, sec. 1, p. 17; am. 2002, ch. 73, sec. 1, p.  
30 160; am. 2002, ch. 97, sec. 1, p. 265; am. 2002, ch. 309, sec. 1, p. 880;  
31 am. 2007, ch. 308, sec. 1, p. 862; am. 2008, ch. 41, sec. 1, p. 96; am.  
32 2009, ch. 102, sec. 3, p. 313; am. 2009, ch. 154, sec. 2, p. 449; am.  
33 2012, ch. 19, sec. 16, p. 54; am. 2012, ch. 257, sec. 6, p. 712; am. 2015,  
34 ch. 87, sec. 1, p. 213; am. 2015, ch. 113, sec. 8, p. 291.]

35  
36 **39-1301. DEFINITIONS.** For purposes of this chapter the following  
37 definitions will apply:

38 (a) "Hospital" means a facility which:

39 (1) Is primarily engaged in providing, by or under the supervision of  
40 physicians,

41 (a) concentrated medical and nursing care on a twenty-four (24) hour  
42 basis to inpatients experiencing acute illness; and

43 (b) diagnostic and therapeutic services for medical diagnosis and  
44 treatment, psychiatric diagnosis and treatment, and care of injured,  
45 disabled, or sick persons; and

46 (c) rehabilitation services for injured, disabled, or sick persons; and

47 (d) obstetrical care.

48 (2) Provides for care of two (2) or more individuals for twenty-four (24)  
49 or more consecutive hours.

50 (3) Is staffed to provide professional nursing care on a twenty-four (24)  
51 hour basis.

52 (b) "Nursing facility" (nursing home) means a facility whose design  
53 and function shall provide area, space and equipment to meet the health

1 needs of two (2) or more individuals who, at a minimum, require inpatient  
2 care and services for twenty-four (24) or more consecutive hours for  
3 unstable chronic health problems requiring daily professional nursing  
4 supervision and licensed nursing care on a twenty-four (24) hour basis,  
5 restorative, rehabilitative care, and assistance in meeting daily living  
6 needs. Medical supervision is necessary on a regular, but not daily,  
7 basis.

8 (c) "Intermediate care facility for people with intellectual  
9 disabilities (ICF/ID)" means a nonnursing home facility, designed and  
10 operated to meet the unique educational, training, habilitative and  
11 medical needs of the developmentally disabled through the provision of  
12 active treatment.

13 (d) "Person" means any individual, firm, partnership, corporation,  
14 company, association, or joint stock association, and the legal successor  
15 thereof.

16 (e) "Government unit" means the state, or any county, municipality,  
17 or other political subdivision, or any department, division, board or  
18 other agency thereof.

19 (f) "Licensing agency" means the department of health and welfare.

20 (g) "Board" means the board of health and welfare.

21 (h) "Physician" means an individual licensed to practice medicine  
22 and surgery by the Idaho state board of medicine or the Idaho state board  
23 of podiatry.

24 (i) "Authorized provider" means an individual who is a nurse  
25 practitioner or clinical nurse specialist, licensed to practice in Idaho  
26 in accordance with the Idaho nurse practice act; or a physician's  
27 assistant, licensed by the Idaho state board of medicine.

28 (j) "Hospice house" means a facility that is owned and operated by a  
29 medicare certified hospice agency for the purpose of providing inpatient  
30 hospice services consistent with 42 CFR 418.110.

31 History: [39-1301, added 1947, ch. 133, sec. 1, p. 324; am. 1974,  
32 ch. 23, sec. 119, p. 633; am. 1980, ch. 159, sec. 1, p. 334; am. 1981, ch.  
33 32, sec. 1, p. 51; am. 1992, ch. 56, sec. 1, p. 162; am. 1992, ch. 134,  
34 sec. 1, p. 421; am. 2000, ch. 274, sec. 5, p. 806; am. 2010, ch. 84, sec.  
35 1, p. 163; am. 2010, ch. 235, sec. 24, p. 563.]

36