

INVOLUNTARY COMMITMENT PROCEEDINGS

Jurisdiction

- Involuntary proceedings may be had:
 - In the district court of the county where the person to be treated resides
- OR
 - In the district court of any other county of this state where such person is found

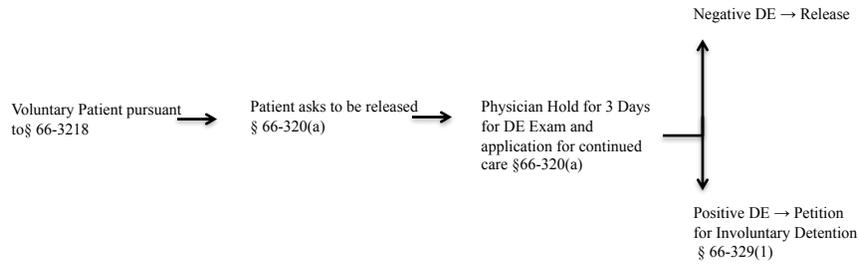
- Idaho Code §66-328

- Involuntary commitment statute may not be used to detain or involuntarily commit:
 - A voluntary patient, unless patient asks to be released (§66-320(b))
 - A person having the following conditions: epilepsy, developmental disability, physical disability, intellectual disability, chronic alcoholism or drug abuse, aged UNLESS, in addition thereto, a mental illness exists (§66-329(13)(a))
 - A person receiving spiritual treatment (§66-329(13)(c))
 - A person who “can be properly cared for privately with the help of willing and able family or friends” UNLESS the person is mentally ill or presents a substantial risk of injury if allowed to remain at liberty (§66-329(13)(b))
 - Juveniles –See Title 16, Chapter 24, Children’s Mental Health Act

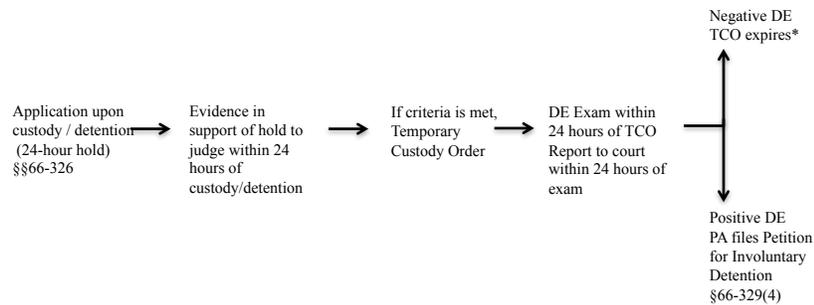
- “Idaho’s civil commitment statute, Idaho Code §66-329, may be invoked to obtain involuntary commitment of a mentally ill individual who is in county [not state]custody.”
- A magistrate assigned to handle commitment proceedings “holds exclusive authority to render decisions in the commitment proceedings... notwithstanding the patient is also a defendant in a criminal action.”

State v. Hargis, 126 Idaho 727, 732(Ct. App. 1995).

Administrative Hold Idaho Code §66-320



Police or Physician Hold Idaho Code §66-326

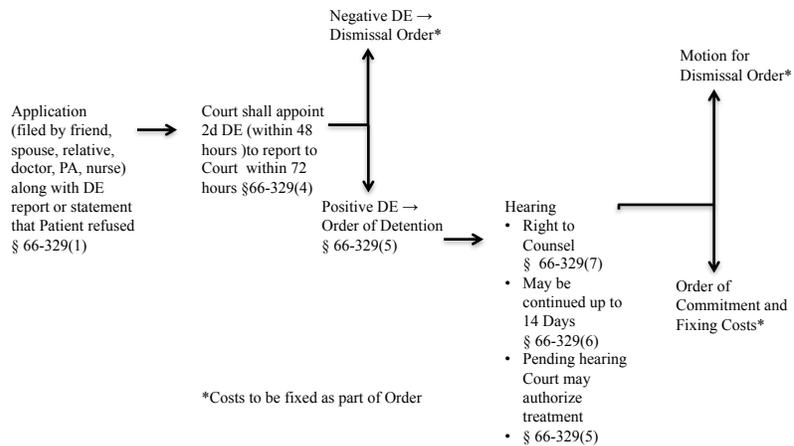


*An Order Fixing Costs will need to be requested from the Court

§66-326 Standard

- The person is gravely disabled due to mental illness
- The person’s continued liberty poses an imminent danger to that person or others as evidenced by a threat of substantial physical harm

Field Application Idaho Code §66-329



§66-329 Standard

- The proposed patient is:
 - Mentally ill;
 - Likely to injure self or others, or is gravely disabled due to mental illness;
 - And the proposed patient lacks capacity to make informed decisions about treatment

Opinion of Designated Examiner

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| <ul style="list-style-type: none"> • §66-326 • Evidence (DE certificate) supporting the 24-hour hold to be presented to a judge within 24 hours of the person's custody/detention • If the standard is met (positive DE), the court will issue a Temporary Custody Order to hold the person in a facility and to have another DE exam within 24 hours of the Order • With another positive DE, a petition for Detention Order is filed seeking to hold the person in a facility awaiting hearing under §66-329 | <ul style="list-style-type: none"> • §66-329 • Evidence (DE certificate) or statement of patient's refusal to submit to an exam shall accompany the application for commitment • Upon receipt of application, Court appoints another DE or two (2) DEs to report within 72 hours their findings as to the mental condition of proposed patient • One DE to be a psychiatrist, licensed physician or licensed psychologist • If the standard is met, court will issue an involuntary Detention Order to hold the person in a facility awaiting hearing |
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Resolution of involuntary proceedings

- Under §66-326, a Temporary Custody Order will expire
 - (a) with the filing of a negative DE certificate or
 - (b) if no petition for detention is timely filed in response to a positive DE certificate

- Under §66-329, the Court after the Order of Involuntary Detention must take one of the following actions:
 - issue an abeyance order where patient becomes “voluntary” and agrees to comply with physician’s directives
 - enter an Order of Dismissal prior to hearing, if patient no longer meets criteria
 - issue an order of commitment

- “Holding proceedings in abeyance” is defined at §66-317(16) as an alternative to judicial commitment based upon an agreement entered into by all parties, including the proposed patient, and agreed to by the court, providing suspension or inactivity the petition for involuntary commitment.
- 30-day abeyance
- If patient does not comply, a new DE report to allow state to allege criteria for commitment

Required findings/criteria for commitment

- The patient is mentally ill and likely to injure self or others, or is gravely disabled; or
- The patient lacks capacity to make informed decisions about treatment

Involuntary commitment hearing

- Requires notice
- Within 7 days of receipt of DE certificates (§66-329(6)) for hearings based on §§ 66-320 and 66-329
- Within 5 days (including weekends and holidays) of court's issuing of detention order (§66-326(4)) for hearing based on §66-326
- May be continued for up to 14 days for good cause (§66-329(7))
- May be held other than at court (§66-329(8))

Upon an order of commitment, the court pursuant to Idaho Code §66-356(1)(a) shall make a finding whether the patient is a person to whom 18 U.S.C. § 922(d)(4) and (g)(4) apply (firearms disability):

- Patient has been adjudicated as a mental defective or
- Patient has been committed to a mental institution

Disclosure

- Disclosure of all certificates, applications, records and reports made for the purpose of this act identifying a patient is pursuant to chapter 1, title 74, Idaho Code
 - Idaho Code §§ 74-104, 74-105(7), 74-106(6) make records on involuntary proceedings exempt from disclosure
- Such records may be disclosed if necessary to carry out any of the provisions of this act or upon the court's direction

Fixing of costs in involuntary proceedings

- “all costs associated with the commitment proceedings... and not included in subsection (c)” §66-327
- Limited to pre-commitment costs §66-327(a)
- To be ordered by the Court after making the required findings of indigency and residency

“If the court determines such person is unable to pay all or any part of such costs, the court shall fix responsibility, in accordance with the provisions of chapter 35,, title 31, Idaho Code, for payment of such costs on the county of such person’s residence to the extent not paid by such person or not covered by third party resources, including medical assistance as aforesaid.”

Idaho Code §66-327(a)

Indigency

- “The court should consider the substantive provisions of chapter 35, title 31 – what resources the person has, whether, considering the availability of resources, the person is “medically indigent” and so on- when it fixes responsibility for costs.”

In Re Daniel W., 145 Idaho 677, 669 (2008).

Residency

- “[T]hose substantive portions of chapter 35, which are applicable and appropriate with regard to section 66-327, should be incorporated as they evolve from time to time.”

In Re Daniel W., 145 Idaho 677, 669 (2008).

- Evidence regarding residency and indigency is to be found
 - On the application for commitment
 - In the DE certificates
 - From testimony at the hearing; inquire of Patient “How long have you lived at your current address”?
 - In an affidavit completed by the Patient at the facility

N.B. The billed charges are generally not before the Court

- Order fixing costs on Patient if patient has resources to pay, including private insurance or VA benefits, or Medicaid

N.B. Medicaid does not pay the DE

N.B. Medicaid from another state does not pay

- Order fixing costs on the county after an analysis of obligated county under Idaho Code §31-3506(2)

- Order fixing costs should recite the relevant dates of service
 - Beware of inclusion of any days the patient may have been in the facility voluntarily
 - Beware of inclusion of any voluntary days during an abeyance

Challenge to an Order Fixing Costs

- File a Motion to Reconsider I.R.C.P. 11.2(b)
 - File an I.R.C.P. 60b Motion (Ada County)
 - File a Stipulation and proposed Amended Order for Costs
- I.R.C.P. 2.3(b) requires the clerk of the court to serve a copy of the entered order to the attorney of record for each party.

- Idaho Code §66-327, unlike the Medical Indigency statutes, does not provide for:
 - billed amounts in excess of \$11K to be sent to CAT
 - reimbursement to a county payor.

JUDICIAL REVIEW OF MEDICAL INDIGENCY
BOARD DECISION

Authority for Judicial Review

- Applicant or third party applicant may seek judicial review of a final determination of the county commissioners denying an application
Idaho Code § 31-3505G
- Applicant may seek judicial review of the final determination as to reimbursement amount or rate
Idaho Code §31-3510A(8)

“In the manner provided in section 31-1506, Idaho Code”

“[J]udicial review of any order or proceeding by the board shall be initiated by any person aggrieved thereby within the same time and same manner as provided in chapter 52, title 67, Idaho Code [the Idaho Administrative Procedure Act].”

Venue is in the district court of the county governed by the board

Idaho Code §31-1506(2)

Time for filing petition for judicial review is 28 days from the final agency action

Idaho Code § 67-5273(3)

Idaho Rule of Civil Procedure 84(b)(A)

I.R.C.P. 84

- This Rule addresses judicial review of the actions of a local government, when judicial review is authorized by statute. *See* definitions:
 - “Action” means order or decision of an agency
 - “Agency” means any nonjudicial board
 - “Petitioner” seeks judicial review
 - “Respondent” is the County that will respond to Petitioner’s request

Precursor to judicial review

- Final order of the Board of Commissioners and
- If there is a contested resource availability issue, petitioner is directed to request a prelitigation review (which is only advisory)
 - Idaho Code §§ 31-3151 and 31-3152
 - REMINDER: “Resources” under § 31-3502(25) starting on the date necessary medical services were first provided

- With a request to the prelitigation panel, the applicable statute of limitations shall be tolled
 - During the time the claims is pending before the panel
- AND
- For thirty (30) days thereafter

Idaho Code §31-3554

Process

- Petition for judicial review is to be filed in the district court
 - With prelit, the petitioner may file the petition for judicial review and ask the court for a stay pending determination by the prelitigation panel
- I.R.C.P. 84(m)
- OR
- The petitioner may submit the request to prelit, wait for the determination, then file the petition for judicial review with the court §31-3551

Petitioner must serve copies of the notice of petition for judicial review upon the Board (not the County Indigent Office and not the Prosecutor)

I.R.C.P. 84(d)

- Record and transcript to be lodged with the court within 14 days of filing of petition
 - Indigent Services prepares the record of all documents in the application file (counsel should review)
 - Commissioners' Office prepares the transcript of the hearing(s); requires certification (I.R.C.P. 84(g)(D))
 - Petitioner pays estimated fee(s) at time of filing petition, with balance due at time of lodging of record and transcript
 - Fee set by county ordinance or resolution (I.R.C.P. 84(f)(2)(A))

- Board must mail or deliver notice of lodging of transcript and record to attorney(s) of record
 - Advising record and transcript available from Board
 - Requesting balance of fees
 - Advising time for filing any objections to the record or transcript

I.R.C.P. 84(j)

Board must settle record and transcript filed with court within 42 days of service of petition

I.R.C.P. 84(k)

- There is an opportunity to request augmentation of the record
- The parties may stipulate and request an order from the court remanding to the Board (this is sometimes done before any briefing, in an attempt to obtain additional evidence to resolve the appeal and save costs)

I.R.C.P. 84(l)

- Briefing is required:
 - Petitioner’s brief due within 35 days of filing record and transcript
 - Respondent’s (County’s) brief due within 28 days of service of Petitioner’s brief
 - Petitioner’s Reply brief due within 21 days of service of Respondent’s brief
- Notice of Oral Argument within 14 days after final brief filed

- Failure to timely file a petition for judicial review is jurisdictional and will cause automatic dismissal of the petition for judicial review
- Failure of a party to timely take any other step in the process will not be jurisdiction, but may be grounds for other action or sanction

I.R.C. P. 84(n)

Scope of Review

Judicial review shall be conducted by the court without a jury.

Judicial review of disputed issues of fact must be confined to the agency (board) record for judicial review as defined in this chapter.

Idaho Code §67-5277

Standard of Review

“In reviewing the board’s decision, the court may not substitute its judgment for that of the board on questions of fact, and it will uphold the board’s findings if supported by substantial and competent evidence.”

Shobe v. Ada County Bd. of County Comm’rs, 130 Idaho 580 (1997). See also Idaho Code §67-5279.

“To determine whether there is ‘substantial evidence’ supporting the Board’s findings, the Court must review the whole record, including evidence contrary to the Board’s decision.”

Local 1494 of Intn’l Assoc. of Firefighters v. City of Coeur d’Alene, 99 Idaho 630 (1978).

“A reviewing court may not vacate a board’s decision unless the ‘substantial rights of the appellant have been prejudiced.’”

Idaho Code § 67-5279(4); *University of Utah Hospital v. Ada County Bd. of Comm’rs*, 143 Idaho 808 (2007).

- Court may remand, for example, if it determines additional findings by the board are required (reviewing court is not the fact finder and cannot make findings)

I.R.C.P. 84(l)

- Decision by the district court becomes final 42 days after the date file stamped by the clerk of the district court, unless a notice of appeal is filed to the Supreme Court.

I.R.C.P. 84(t)(2)

THE END