

IN THE SENATE

SENATE BILL NO. 1222

BY BURGOYNE

AN ACT

1 RELATING TO DECRIMINALIZING POSSESSION AND USE OF CONTROLLED SUBSTANCES IN  
2 SPECIFIED CIRCUMSTANCES, REQUIRING INTENTION TO DELIVER FOR CRIMINAL  
3 DRUG TRAFFICKING, AND PERMITTING CIVIL COMMITMENTS FOR SUBSTANCE-RE-  
4 LATED DISORDERS IN SPECIFIED CIRCUMSTANCES; AMENDING SECTION 37-2732,  
5 IDAHO CODE, TO PROVIDE FOR POSSESSION WITH INTENT TO DELIVER, TO PROVIDE  
6 THAT CERTAIN ACTIONS SHALL CONSTITUTE INTENT TO DELIVER, AND TO MAKE  
7 TECHNICAL CORRECTIONS; AMENDING SECTION 37-2732B, IDAHO CODE, TO PRO-  
8 VIDE FOR POSSESSION WITH INTENT TO DELIVER; AMENDING SECTION 37-2732C,  
9 IDAHO CODE, TO REVISE A PROVISION REGARDING USING OR BEING UNDER THE IN-  
10 FLUENCE OF A CONTROLLED SUBSTANCE, TO DEFINE A TERM, AND TO PROVIDE THAT  
11 PERSONS WHO USE OR ARE UNDER THE INFLUENCE OF A CONTROLLED SUBSTANCE  
12 MAY BE SUBJECT TO CERTAIN TREATMENT; AMENDING SECTION 39-307A, IDAHO  
13 CODE, TO REVISE A PROVISION REGARDING PROTECTIVE CUSTODY; AMENDING THE  
14 HEADING FOR CHAPTER 3, TITLE 66, IDAHO CODE; AMENDING SECTION 66-317,  
15 IDAHO CODE, TO REVISE A DEFINITION, TO DEFINE TERMS, TO REVISE TERMINOL-  
16 OGY, AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 66-318, IDAHO  
17 CODE, TO REVISE TERMINOLOGY; AMENDING SECTION 66-319, IDAHO CODE, TO  
18 REVISE TERMINOLOGY; AMENDING SECTION 66-322, IDAHO CODE, TO PROVIDE FOR  
19 GUARDIAN APPOINTMENT FOR A SUBSTANCE-RELATED DISORDER AND TO MAKE TECH-  
20 NICAL CORRECTIONS; AMENDING SECTION 66-325, IDAHO CODE, TO REVISE TER-  
21 MINOLOGY; AMENDING SECTION 66-326, IDAHO CODE, TO PROVIDE THAT A PERSON  
22 SUSPECTED OF A SUBSTANCE-RELATED DISORDER MAY BE TAKEN INTO CUSTODY OR  
23 DETAINED UNDER CERTAIN CIRCUMSTANCES AND TO REVISE TERMINOLOGY; AMEND-  
24 ING SECTION 66-328, IDAHO CODE, TO REVISE TERMINOLOGY; AMENDING SECTION  
25 66-329, IDAHO CODE, TO PROVIDE THAT A PERSON WITH A SUBSTANCE-RELATED  
26 DISORDER MAY BE COMMITTED UNDER CERTAIN CIRCUMSTANCES AND TO REVISE  
27 TERMINOLOGY; AMENDING SECTION 66-330, IDAHO CODE, TO REVISE TERMINOL-  
28 OGY AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 66-335, IDAHO  
29 CODE, TO REVISE TERMINOLOGY; AMENDING SECTION 66-337, IDAHO CODE, TO  
30 REVISE TERMINOLOGY AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION  
31 66-348, IDAHO CODE, TO REVISE TERMINOLOGY; AMENDING SECTION 66-352,  
32 IDAHO CODE, TO REVISE TERMINOLOGY AND TO MAKE A TECHNICAL CORRECTION;  
33 AMENDING SECTION 66-354, IDAHO CODE, TO REVISE TERMINOLOGY; AND AMEND-  
34 ING SECTION 66-355, IDAHO CODE, TO REVISE TERMINOLOGY AND TO MAKE A  
35 TECHNICAL CORRECTION.  
36

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

38 SECTION 1. That Section 37-2732, Idaho Code, be, and the same is hereby  
39 amended to read as follows:

40 37-2732. PROHIBITED ACTS A -- PENALTIES. (a) Except as authorized by  
41 this chapter, it is unlawful for any person to manufacture or deliver, or  
42 possess with intent to manufacture or deliver, a controlled substance.

1 (1) Any person who violates this subsection with respect to:

2 (A) A controlled substance classified in schedule I which is a  
3 narcotic drug or a controlled substance classified in schedule II,  
4 except as provided for in section 37-2732B(a) (3), Idaho Code, is  
5 guilty of a felony and upon conviction may be imprisoned for a term  
6 of years not to exceed life imprisonment, or fined not more than  
7 twenty-five thousand dollars (\$25,000), or both;

8 (B) Any other controlled substance which is a nonnarcotic drug  
9 classified in schedule I, or a controlled substance classified in  
10 schedule III, is guilty of a felony and upon conviction may be im-  
11 prisoned for not more than five (5) years, fined not more than fif-  
12 teen thousand dollars (\$15,000), or both;

13 (C) A substance classified in schedule IV, is guilty of a felony  
14 and upon conviction may be imprisoned for not more than three (3)  
15 years, fined not more than ten thousand dollars (\$10,000), or  
16 both;

17 (D) A substance classified in schedules V and VI, is guilty of  
18 a misdemeanor and upon conviction may be imprisoned for not more  
19 than one (1) year, fined not more than five thousand dollars  
20 (\$5,000), or both.

21 (b) Except as authorized by this chapter, it is unlawful for any per-  
22 son to create, deliver, or possess with intent to deliver, a counterfeit sub-  
23 stance.

24 (1) Any person who violates this subsection with respect to:

25 (A) A counterfeit substance classified in schedule I which is a  
26 narcotic drug, or a counterfeit substance classified in schedule  
27 II, is guilty of a felony and upon conviction may be imprisoned for  
28 not more than fifteen (15) years, fined not more than twenty-five  
29 thousand dollars (\$25,000), or both;

30 (B) Any other counterfeit substance classified in schedule I  
31 which is a nonnarcotic drug contained in schedule I or a counter-  
32 feit substance contained in schedule III, is guilty of a felony and  
33 upon conviction may be imprisoned for not more than five (5) years,  
34 fined not more than fifteen thousand dollars (\$15,000), or both;

35 (C) A counterfeit substance classified in schedule IV, is guilty  
36 of a felony and upon conviction may be imprisoned for not more  
37 than three (3) years, fined not more than ten thousand dollars  
38 (\$10,000), or both;

39 (D) A counterfeit substance classified in schedules V and VI or a  
40 noncontrolled counterfeit substance, is guilty of a misdemeanor  
41 and upon conviction may be imprisoned for not more than one (1)  
42 year, fined not more than five thousand dollars (\$5,000), or both.

43 (c) It is unlawful for any person to possess with intent to deliver a  
44 controlled substance unless the substance was obtained directly from, or  
45 pursuant to, a valid prescription or order of a practitioner while acting in  
46 the course of his professional practice, or except as otherwise authorized  
47 by this chapter.

48 (1) Any person who violates this subsection and has in his possession  
49 with intent to deliver a controlled substance classified in schedule I  
50 which is a narcotic drug or a controlled substance classified in sched-

1       ule II, is guilty of a felony and upon conviction may be imprisoned for  
2 not more than seven (7) years, or fined not more than fifteen thousand  
3 dollars (\$15,000), or both.

4       (2) Any person who violates this subsection and has in his possession  
5 with intent to deliver lysergic acid diethylamide is guilty of a felony  
6 and upon conviction may be imprisoned for not more than three (3) years,  
7 or fined not more than five thousand dollars (\$5,000), or both.

8       (3) Any person who violates this subsection and has in his possession  
9 with intent to deliver a controlled substance which is a nonnarcotic  
10 drug classified in schedule I except lysergic acid diethylamide, or a  
11 controlled substance classified in schedules III, IV, V and VI is guilty  
12 of a misdemeanor and upon conviction thereof may be imprisoned for not  
13 more than one (1) year, or fined not more than one thousand dollars  
14 (\$1,000), or both.

15       (d) It shall be unlawful for any person to be present at or on premises  
16 of any place where he knows illegal controlled substances are being manufac-  
17 tured or cultivated, or are being held for distribution, transportation, de-  
18 livery, administration, use, or to be given away. A violation of this sec-  
19 tion shall deem those persons guilty of a misdemeanor and upon conviction  
20 shall be punished by a fine of not more than three hundred dollars (\$300) and  
21 not more than ninety (90) days in the county jail, or both.

22       (e) If any person is found to possess with intent to deliver marijuana,  
23 which for the purposes of this subsection shall be restricted to all parts of  
24 the plants of the genus Cannabis, including the extract or any preparation  
25 of cannabis which contains tetrahydrocannabinol, in an amount greater than  
26 three (3) ounces net weight, it shall be a felony and upon conviction may be  
27 imprisoned for not more than five (5) years, or fined not more than ten thou-  
28 sand dollars (\$10,000), or both.

29       (f) If two (2) or more persons conspire to commit any offense defined  
30 in this act, said persons shall be punishable by a fine or imprisonment, or  
31 both, which may not exceed the maximum punishment prescribed for the of-  
32 fense, the commission of which was the object of the conspiracy.

33       (g) (1) It is unlawful for any person to manufacture or distribute a  
34 "simulated controlled substance," or to possess with intent to distrib-  
35 ute, a "simulated controlled substance." Any person who violates this  
36 subsection shall, upon conviction, be guilty of a misdemeanor and upon  
37 conviction thereof shall be punished by a fine of not more than one thou-  
38 sand dollars (\$1,000) ~~and~~ or not more than one (1) year in the county  
39 jail, or both.

40       (2) It is unlawful for any person to possess with intent to deliver a  
41 "simulated controlled substance." Any person who violates this subsec-  
42 tion shall, upon conviction, be guilty of a misdemeanor and upon convic-  
43 tion thereof shall be punished by a fine of not more than three hundred  
44 dollars (\$300) ~~and~~ or not more than six (6) months in the county jail, or  
45 both.

46       (h) It is unlawful for any person to cause to be placed in any newspaper,  
47 magazine, handbill, or other publication, or to post or distribute in any  
48 public place, any advertisement or solicitation offering for sale simulated  
49 controlled substances. Any person who violates this subsection is guilty of

1 a misdemeanor and shall be punished in the same manner as prescribed in sub-  
2 section (g) of this section.

3 (i) No civil or criminal liability shall be imposed by virtue of this  
4 chapter on any person registered under the Uniform Controlled Substances  
5 Act who manufactures, distributes, or possesses an imitation controlled  
6 substance for use as a placebo or other use by a registered practitioner, as  
7 defined in section 37-2701(aa), Idaho Code, in the course of professional  
8 practice or research.

9 (j) No prosecution under this chapter shall be dismissed solely by rea-  
10 son of the fact that the dosage units were contained in a bottle or other con-  
11 tainer with a label accurately describing the ingredients of the imitation  
12 controlled substance dosage units. The good faith of the defendant shall be  
13 an issue of fact for the trier of fact.

14 (k) Upon conviction of a felony or misdemeanor violation under this  
15 chapter or upon conviction of a felony pursuant to the "racketeering act,"  
16 section 18-7804, Idaho Code, or the money laundering and illegal investment  
17 provisions of section 18-8201, Idaho Code, the court may order restitution  
18 for costs incurred by law enforcement agencies in investigating the viola-  
19 tion. Law enforcement agencies shall include, but not be limited to, the  
20 Idaho state police, county and city law enforcement agencies, the office  
21 of the attorney general and county and city prosecuting attorney offices.  
22 Costs shall include, but not be limited to, those incurred for the purchase  
23 of evidence, travel and per diem for law enforcement officers and witnesses  
24 throughout the course of the investigation, hearings and trials, and any  
25 other investigative or prosecution expenses actually incurred, including  
26 regular salaries of employees. In the case of reimbursement to the Idaho  
27 state police, those moneys shall be paid to the Idaho state police for  
28 deposit into the drug and driving while under the influence enforcement  
29 donation fund created in section 57-816, Idaho Code. In the case of reim-  
30 bursement to the office of the attorney general, those moneys shall be paid  
31 to the general fund. A conviction for the purposes of this section means that  
32 the person has pled guilty or has been found guilty, notwithstanding the form  
33 of the judgment (s) or withheld judgment (s).

34 (l) For purposes of this section, the act of a person sharing or provid-  
35 ing a controlled substance for use by another person shall constitute intent  
36 to deliver.

37 SECTION 2. That Section 37-2732B, Idaho Code, be, and the same is hereby  
38 amended to read as follows:

39 37-2732B. TRAFFICKING -- MANDATORY SENTENCES. (a) Except as au-  
40 thorized in this chapter, and notwithstanding the provisions of section  
41 37-2732, Idaho Code:

42 (1) Any person who knowingly manufactures, delivers, or brings into  
43 this state, or who is knowingly in actual or constructive posses-  
44 sion, with intent to deliver, of, one (1) pound of marijuana or more,  
45 or twenty-five (25) marijuana plants or more, as defined in section  
46 37-2701, Idaho Code, is guilty of a felony, which felony shall be known  
47 as "trafficking in marijuana." If the quantity of marijuana involved:

48 (A) Is one (1) pound or more, but less than five (5) pounds, or con-  
49 sists of twenty-five (25) marijuana plants or more but fewer than

1 fifty (50) marijuana plants, regardless of the size or weight of  
2 the plants, such person shall be sentenced to a mandatory minimum  
3 fixed term of imprisonment of one (1) year and fined not less than  
4 five thousand dollars (\$5,000);

5 (B) Is five (5) pounds or more, but less than twenty-five (25)  
6 pounds, or consists of fifty (50) marijuana plants or more but  
7 fewer than one hundred (100) marijuana plants, regardless of the  
8 size or weight of the plants, such person shall be sentenced to a  
9 mandatory minimum fixed term of imprisonment of three (3) years  
10 and fined not less than ten thousand dollars (\$10,000);

11 (C) Is twenty-five (25) pounds or more, or consists of one hundred  
12 (100) marijuana plants or more, regardless of the size or weight  
13 of the plants, such person shall be sentenced to a mandatory mini-  
14 mum fixed term of imprisonment of five (5) years and fined not less  
15 than fifteen thousand dollars (\$15,000).

16 (D) The maximum number of years of imprisonment for trafficking in  
17 marijuana shall be fifteen (15) years, and the maximum fine shall  
18 be fifty thousand dollars (\$50,000).

19 (E) For the purposes of this section, the weight of the marijuana  
20 is its weight when seized or as determined as soon as practica-  
21 ble after seizure, unless the provisions of subsection (c) of this  
22 section apply.

23 (2) Any person who knowingly manufactures, delivers, or brings into  
24 this state, or who is knowingly in actual or constructive possession,  
25 with intent to deliver, of, twenty-eight (28) grams or more of cocaine  
26 or of any mixture or substance containing a detectable amount of cocaine  
27 is guilty of a felony, which felony shall be known as "trafficking in co-  
28 caine." If the quantity involved:

29 (A) Is twenty-eight (28) grams or more, but less than two hundred  
30 (200) grams, such person shall be sentenced to a mandatory minimum  
31 fixed term of imprisonment of three (3) years and fined not less  
32 than ten thousand dollars (\$10,000);

33 (B) Is two hundred (200) grams or more, but less than four hundred  
34 (400) grams, such person shall be sentenced to a mandatory mini-  
35 mum fixed term of imprisonment of five (5) years and fined not less  
36 than fifteen thousand dollars (\$15,000);

37 (C) Is four hundred (400) grams or more, such person shall be sen-  
38 tenced to a mandatory minimum fixed term of imprisonment of ten  
39 (10) years and fined not less than twenty-five thousand dollars  
40 (\$25,000).

41 (D) The maximum number of years of imprisonment for trafficking  
42 in cocaine shall be life, and the maximum fine shall be one hundred  
43 thousand dollars (\$100,000).

44 (3) Any person who knowingly manufactures or attempts to manufacture  
45 methamphetamine and/or amphetamine is guilty of a felony which shall  
46 be known as "trafficking in methamphetamine and/or amphetamine by man-  
47 ufacturing." Any person convicted of trafficking in methamphetamine  
48 and/or amphetamine by attempted manufacturing shall be sentenced to  
49 a mandatory minimum fixed term of imprisonment of two (2) years and  
50 not to exceed fifteen (15) years imprisonment and fined not less than

1 ten thousand dollars (\$10,000). Any person convicted of traffick-  
2 ing in methamphetamine and/or amphetamine by manufacturing shall be  
3 sentenced to a mandatory minimum fixed term of imprisonment of five  
4 (5) years and not to exceed life imprisonment and fined not less than  
5 twenty-five thousand dollars (\$25,000). The maximum number of years of  
6 imprisonment for trafficking in methamphetamine and/or amphetamine by  
7 manufacturing shall be life, and the maximum fine shall be one hundred  
8 thousand dollars (\$100,000).

9 (4) Any person who knowingly delivers, or brings into this state, or  
10 who is knowingly in actual or constructive possession, with intent to  
11 deliver, of, twenty-eight (28) grams or more of methamphetamine or am-  
12 phetamine or of any mixture or substance containing a detectable amount  
13 of methamphetamine or amphetamine is guilty of a felony, which felony  
14 shall be known as "trafficking in methamphetamine or amphetamine." If  
15 the quantity involved:

16 (A) Is twenty-eight (28) grams or more, but less than two hundred  
17 (200) grams, such person shall be sentenced to a mandatory minimum  
18 fixed term of imprisonment of three (3) years and fined not less  
19 than ten thousand dollars (\$10,000);

20 (B) Is two hundred (200) grams or more, but less than four hundred  
21 (400) grams, such person shall be sentenced to a mandatory mini-  
22 mum fixed term of imprisonment of five (5) years and fined not less  
23 than fifteen thousand dollars (\$15,000);

24 (C) Is four hundred (400) grams or more, such person shall be sen-  
25 tenced to a mandatory minimum fixed term of imprisonment of ten  
26 (10) years and fined not less than twenty-five thousand dollars  
27 (\$25,000).

28 (D) The maximum number of years of imprisonment for trafficking in  
29 methamphetamine or amphetamine shall be life, and the maximum fine  
30 shall be one hundred thousand dollars (\$100,000).

31 (5) Any person who knowingly manufactures, delivers, brings into this  
32 state, or who is knowingly in actual or constructive possession, with  
33 intent to deliver, of the below-specified quantities of any of the fol-  
34 lowing immediate precursors to methamphetamine or amphetamine (namely  
35 ephedrine, methylamine, methyl formamide, phenylacetic acid, pheny-  
36 lacetone, or pseudoephedrine) as defined in section 37-2707(g) (1),  
37 Idaho Code, or any compound, mixture or preparation which contains a de-  
38 tectable quantity of these substances, is guilty of a felony which shall  
39 be known as "trafficking in immediate precursors of methamphetamine or  
40 amphetamine." If the quantity:

41 (A) Of ephedrine is five hundred (500) grams or more;

42 (B) Of methylamine is one-half (1/2) pint or more;

43 (C) Of methyl formamide is one-quarter (1/4) pint or more;

44 (D) Of phenylacetic acid is five hundred (500) grams or more;

45 (E) Of phenylacetone is four hundred (400) grams or more;

46 (F) Of pseudoephedrine is five hundred (500) grams or more;

47 such person shall be sentenced to a mandatory minimum fixed term of  
48 imprisonment of ten (10) years and fined not less than twenty-five thou-  
49 sand dollars (\$25,000). The maximum number of years of imprisonment  
50 for trafficking in immediate precursors of methamphetamine or am-

1 phetamine in the quantities specified in paragraphs (A) through (F) of  
2 this subsection (5) shall be life, and the maximum fine shall be one hun-  
3 dred thousand dollars (\$100,000). If the quantity of pseudoephedrine  
4 is twenty-five (25) grams or more, but less than five hundred (500)  
5 grams, such person shall be sentenced to a term of imprisonment of up  
6 to ten (10) years and fined not more than twenty-five thousand dollars  
7 (\$25,000).

8 (6) Any person who knowingly manufactures, delivers or brings into this  
9 state, or who is knowingly in actual or constructive possession, with  
10 intent to deliver, of, two (2) grams or more of heroin or any salt, iso-  
11 mer, or salt of an isomer thereof, or two (2) grams or more of any mix-  
12 ture or substance containing a detectable amount of any such substance  
13 is guilty of a felony, which felony shall be known as "trafficking in  
14 heroin." If the quantity involved:

15 (A) Is two (2) grams or more, but less than seven (7) grams, such  
16 person shall be sentenced to a mandatory minimum fixed term of im-  
17 prisonment of three (3) years and fined not less than ten thousand  
18 dollars (\$10,000);

19 (B) Is seven (7) grams or more, but less than twenty-eight (28)  
20 grams, such person shall be sentenced to a mandatory minimum fixed  
21 term of imprisonment of ten (10) years and fined not less than fif-  
22 teen thousand dollars (\$15,000);

23 (C) Is twenty-eight (28) grams or more, such person shall be sen-  
24 tenced to a mandatory minimum fixed term of imprisonment of fif-  
25 teen (15) years and fined not less than twenty-five thousand dol-  
26 lars (\$25,000).

27 (D) The maximum number of years of imprisonment for trafficking  
28 in heroin shall be life, and the maximum fine shall be one hundred  
29 thousand dollars (\$100,000).

30 (7) A second conviction for any trafficking offense as defined in sub-  
31 section (a) of this section shall result in a mandatory minimum fixed  
32 term that is twice that otherwise required under this section.

33 (8) Notwithstanding any other provision of law, with respect to any  
34 person who is found to have violated the provisions of this section, ad-  
35 judication of guilt or the imposition or execution of sentence shall not  
36 be suspended, deferred, or withheld, nor shall such person be eligible  
37 for parole prior to serving the mandatory minimum fixed term of impris-  
38 onment prescribed in this section. Further, the court shall not retain  
39 jurisdiction.

40 (b) Any person who agrees, conspires, combines or confederates with an-  
41 other person or solicits another person to commit any act prohibited in sub-  
42 section (a) of this section is guilty of a felony and is punishable as if he  
43 had actually committed such prohibited act.

44 (c) For the purposes of subsections (a) and (b) of this section the  
45 weight of the controlled substance as represented by the person selling or  
46 delivering it is determinative if the weight as represented is greater than  
47 the actual weight of the controlled substance.

48 SECTION 3. That Section 37-2732C, Idaho Code, be, and the same is hereby  
49 amended to read as follows:

1           37-2732C. USING OR BEING UNDER THE INFLUENCE -- PENALTIES. (a) Except  
2 as authorized in this chapter, it is unlawful for any person on a public road-  
3 way, on a public conveyance, on public property or on private property open  
4 to the public, to use, or to be under the influence of, any controlled sub-  
5 stance specified in subsection (b), (c), (d), (e) and (f) of section 37-2705,  
6 Idaho Code, or subsection (b), (c) and (d) of section 37-2707, Idaho Code, or  
7 subsection (c) (6) of section 37-2709, Idaho Code, or any narcotic drug clas-  
8 sified in schedule III, IV or V, except when administered by or under the di-  
9 rection of a person licensed by the state to dispense, prescribe, or adminis-  
10 ter controlled substances. It shall be the burden of the defense to show that  
11 it comes within this exception. For purposes of this subsection, "to be un-  
12 der the influence" means a level of influence (i) that presents a danger to  
13 oneself or others, or (ii) creates a disturbance of the peace, or (iii) that  
14 would cause a reasonable person to believe that the person is in an altered  
15 state.

16           (b) Any person convicted of violating the provisions of subsection (a)  
17 of this section is guilty of a misdemeanor and is punishable by imprisonment  
18 in a county jail for not more than six (6) months, or by a fine not exceeding  
19 one thousand dollars (\$1,000) or by both.

20           (c) Any person who is convicted of violating subsection (a) of this sec-  
21 tion, when the offense occurred within five (5) years of that person being  
22 convicted of two (2) or more separate violations of that subsection and who  
23 refuses to complete a licensed drug rehabilitation program offered by the  
24 court pursuant to subsection (d) shall be punished by imprisonment in the  
25 county jail for a mandatory minimum period of time of not less than one hun-  
26 dred twenty (120) days, nor more than one (1) year. The court may not reduce  
27 the mandatory minimum period of incarceration provided in this subsection.

28           (d) The court may, when it would be in the interest of justice, permit  
29 any person convicted of a violation of subsection (a) of this section, pun-  
30 ishable under subsection (b) or (c) of this section, to complete a licensed  
31 drug rehabilitation program in lieu of part or all of the imprisonment in  
32 the county jail. As a condition of sentencing, the court may require the of-  
33 fender to pay all or a portion of the drug rehabilitation program. In order  
34 to alleviate jail overcrowding and to provide recidivist offenders with a  
35 reasonable opportunity to seek rehabilitation pursuant to this subsection,  
36 counties are encouraged to include provisions to augment licensed drug re-  
37 habilitation programs in their substance abuse proposals and applications  
38 submitted to the state for federal and state drug abuse funds.

39           (e) Notwithstanding subsection (a), (b) or (c) of this section, or any  
40 other provision of law to the contrary, any person who is unlawfully under  
41 the influence of cocaine, cocaine base, methamphetamine, heroin, or phen-  
42 cyclidine while in the immediate personal possession of a loaded, operable  
43 firearm is guilty of a public offense and is punishable by imprisonment in  
44 the county jail or the state prison for not more than one (1) year. As used in  
45 this subsection, "immediate possession" includes, but is not limited to, the  
46 interior passenger compartment of a motor vehicle.

47           (f) Every person who violates subsection (e) of this section is punish-  
48 able upon the second and each subsequent conviction by imprisonment in the  
49 state prison for a period of time not in excess of four (4) years.

1 (g) In addition to any fine assessed under this section and notwith-  
 2 standing the provisions of section 19-4705, Idaho Code, the court may, upon  
 3 conviction, assess an additional cost to the defendant in the way of resti-  
 4 tution, an amount not to exceed two hundred dollars (\$200) to the arresting  
 5 and/or prosecuting agency or entity. These funds shall be remitted to the  
 6 appropriate fund to offset the expense of toxicology testing.

7 (h) Any person who uses or is under the influence of a controlled sub-  
 8 stance pursuant to subsection (a) of this section may also be placed in pro-  
 9 protective custody pursuant to section 39-307A, Idaho Code, or may be admitted  
 10 for community-assisted behavioral health treatment pursuant to chapter 3,  
 11 title 66, Idaho Code.

12 SECTION 4. That Section 39-307A, Idaho Code, be, and the same is hereby  
 13 amended to read as follows:

14 39-307A. PROTECTIVE CUSTODY. (a) An intoxicated or drug addicted per-  
 15 son may come voluntarily to an approved public treatment facility for emer-  
 16 gency treatment. A person who appears to be intoxicated in a public place and  
 17 to be in need of help, ~~if he consents to the proffered help,~~ may be assisted to  
 18 his home, an approved public treatment facility, an approved private treat-  
 19 ment facility, or other health facility by a law enforcement officer.

20 (b) A person who appears to be incapacitated by alcohol or drugs shall  
 21 be taken into protective custody by a law enforcement officer and forthwith  
 22 brought to an approved treatment facility for emergency treatment. If no ap-  
 23 proved treatment facility is readily available he may be taken to a city or  
 24 county jail where he may be held until he can be transported to an approved  
 25 treatment facility, but in no event shall such confinement extend more than  
 26 twenty-four (24) hours. A law enforcement officer, in detaining the person  
 27 and in taking him to an approved treatment facility, is taking him into pro-  
 28 tective custody and shall make every reasonable effort to protect his health  
 29 and safety. In taking the person into protective custody, the detaining of-  
 30 ficer may take reasonable steps to protect himself. A taking into protective  
 31 custody under this section is not an arrest. No entry or other record shall  
 32 be made to indicate that the person has been arrested or charged with a crime.

33 (c) A person who comes voluntarily or is brought to an approved treat-  
 34 ment facility shall be examined as soon as possible. He may then be admitted  
 35 as a patient or referred to another health facility. The referring approved  
 36 treatment facility shall arrange for his transportation.

37 (d) A person who by examination is found to be incapacitated by alco-  
 38 hol or drugs at the time of his admission or to have become incapacitated at  
 39 any time after his admission, may not be detained at the facility (1) once he  
 40 is no longer incapacitated by alcohol or drugs or (2) if he remains incapac-  
 41 itated by alcohol or drugs for more than seventy-two (72) hours after admis-  
 42 sion as a patient. A person may consent to remain in the facility as long as  
 43 the person in charge believes appropriate.

44 (e) If a patient is admitted to an approved treatment facility, his fam-  
 45 ily or next of kin shall be notified as promptly as possible. If an adult pa-  
 46 tient who is not incapacitated requests that there be no notification, his  
 47 request shall be respected.

48 (f) Law enforcement officers, personnel of the department, and person-  
 49 nel of an alcohol or drug treatment facility who act in compliance with this

1 section are acting in the course of their official duty and are not crimi-  
2 nally or civilly liable therefor.

3 (g) If the person in charge of the approved treatment facility deter-  
4 mines it is for the patient's benefit, the patient shall be encouraged to  
5 agree to further diagnosis and appropriate voluntary treatment.

6 (h) That any person taken to a seventy-two (72) hour evaluation and  
7 treatment facility shall be informed immediately that he has the right to  
8 request and take a chemical test in order to ascertain whether he is an in-  
9 toxicated or addicted person. If the person requests to take the test and  
10 the professional person in charge of the facility then determines that the  
11 person taken to the facility is not intoxicated or addicted, he shall im-  
12 mediately release him. A record shall be maintained by the facility of the  
13 results of the test.

14 SECTION 5. That the Heading for Chapter 3, Title 66, Idaho Code, be, and  
15 the same is hereby amended to read as follows:

16 CHAPTER 3  
17 HOSPITALIZATION OF MENTALLY ILL COMMUNITY-ASSISTED BEHAVIORAL HEALTH  
18 TREATMENT

19 SECTION 6. That Section 66-317, Idaho Code, be, and the same is hereby  
20 amended to read as follows:

21 66-317. DEFINITIONS. As used in this chapter, terms shall have the  
22 following meanings:

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

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

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

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

36 (5) "Designated examiner" means a psychiatrist, psychologist, psychi-  
37 atric nurse, or social worker and such other ~~mental~~ behavioral health pro-  
38 fessionals as may be designated in accordance with rules promulgated pur-  
39 suant to the provisions of chapter 52, title 67, Idaho Code, by the depart-  
40 ment of health and welfare. Any person designated by the department director  
41 will be specially qualified by training and experience in the diagnosis and  
42 treatment of mental ~~or mentally related illnesses or conditions~~ disorders  
43 and substance-related disorders.

44 (6) "Dispositioner" means a designated examiner employed by or under  
45 contract with the department of health and welfare and designated by the de-  
46 partment director to determine the appropriate location for care and treat-  
47 ment of involuntary patients.

1 (7) "Facility" means any public or private hospital, sanatorium,  
 2 institution, ~~mental behavioral~~ health center or other organization desig-  
 3 nated in accordance with rules adopted by the board of health and welfare  
 4 as equipped to initially hold, evaluate, rehabilitate or to provide care or  
 5 treatment, or both, for ~~the mentally ill~~ persons with a mental disorder or  
 6 substance-related disorder.

7 (8) "Lacks capacity to make informed decisions about treatment" means  
 8 the inability, by reason of ~~mental illness~~ mental disorder or substance-re-  
 9 lated disorder, to achieve a rudimentary understanding after conscientious  
 10 efforts at explanation of the purpose, nature, and possible significant  
 11 risks and benefits of treatment.

12 (9) "Inpatient treatment facility" means a facility in which an indi-  
 13 vidual receives medical and, mental, or substance use treatment for not less  
 14 than a continuous twenty-four (24) hour period.

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

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

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

24 (b) A substantial risk that physical harm will be inflicted by the  
 25 proposed patient upon another as evidenced by behavior ~~which~~ that has  
 26 caused such harm or ~~which~~ that places another person or persons in rea-  
 27 sonable fear of sustaining such harm; or

28 (c) The proposed patient lacks insight into his need for treatment and  
 29 is unable or unwilling to comply with treatment and, based on his psy-  
 30 chiatric history, clinical observation or other clinical evidence, if  
 31 he does not receive and comply with treatment, there is a substantial  
 32 risk he will continue to physically, emotionally or mentally deterio-  
 33 rate to the point that ~~the person he~~ he will, in the reasonably near future,  
 34 inflict physical harm on himself or another person.

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

40 (13) "Gravely disabled" means a person who, as the result of ~~mental ill-~~  
 41 ~~ness~~ mental disorder or substance-related disorder, is:

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

45 (b) Lacking insight into his need for treatment and is unable or un-  
 46 willing to comply with treatment and, based on his psychiatric history,  
 47 clinical observation or other clinical evidence, if he does not receive  
 48 and comply with treatment, there is a substantial risk he will continue  
 49 to physically, emotionally or mentally deteriorate to the point that  
 50 ~~the person he~~ he will, in the reasonably near future, be in danger of seri-

1       ous physical harm due to ~~the person's~~ his inability to provide for any of  
 2       his own basic personal needs such as nourishment, essential clothing,  
 3       medical care, shelter or safety.

4       (14) "Outpatient treatment" means ~~mental~~ behavioral health treatment,  
 5       not involving the continuous supervision of a person in an inpatient set-  
 6       ting, that is reasonably designed to alleviate or to reduce a person's men-  
 7       tal ~~illness disorder or substance-related disorder~~ or to maintain or pre-  
 8       vent deterioration of the person's physical, mental or emotional function-  
 9       ing. ~~Mental~~ Behavioral health services or treatment may include, but need  
 10      not be limited to, taking prescribed medication, reporting to a facility to  
 11      permit monitoring of the person's condition, or participating in individual  
 12      or group therapy.

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

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

21      (17) "Substance-related disorder" means any substance use disorder or  
 22      substance-induced disorder as defined by the diagnostic and statistical  
 23      manual of mental disorders (DSM V).

24      (18) "Qualifying circumstances" means:

25      (a) As it pertains to a person with a mental disorder:

26          (i) Is gravely disabled; or

27          (ii) Is likely to injure himself or others.

28      (b) As it pertains to a person with a substance-related disorder:

29          (i) Is gravely disabled;

30          (ii) Is likely to injure himself or others;

31          (iii) Is intoxicated due to substance use;

32          (iv) Is experiencing withdrawal due to substance use;

33          (v) Lacks capacity to make informed decisions about treatment;

34          (vi) Poses a substantial risk of inflicting significant property  
 35          damage, as evidenced by acts or threats;

36          (vii) Has lost self-control, demonstrated by a repeated pattern of  
 37          failure to meet social, financial, or occupational responsibili-  
 38          ties;

39          (viii) Is pregnant and is committing substance use;

40          (ix) Received treatment for substance use in the past and has  
 41          failed to maintain sobriety; or

42          (x) Is in need of substance use treatment, in that:

43              1. Treatment is necessary for the person to stop substance  
 44              use;

45              2. The person is expected to benefit from treatment; or

46              3. Treatment is expected to prevent negative outcomes.

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

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

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

8           (b) Any individual fourteen (14) to eighteen (18) years of age who may  
9 apply to be admitted for observation, diagnosis, evaluation, care or  
10 treatment and the facility director will notify the parent, parents or  
11 guardian of the individual of the admission; a parent or guardian may  
12 apply for the individual's release and the facility director will re-  
13 lease the patient within three (3) days, excluding Saturdays, Sundays  
14 and legal holidays, of the application for discharge, unless the time  
15 period for diagnosis, evaluation, care or treatment is extended pur-  
16 suant to section 66-320, Idaho Code;

17           (c) Any emancipated minor;

18           (d) Any individual under fourteen (14) years of age upon application of  
19 the individual's parent or guardian, provided that admission to an in-  
20 patient facility shall require a recommendation for admission by a des-  
21 ignated examiner;

22           (e) Any individual who lacks capacity to make informed decisions about  
23 treatment upon application of the individual's guardian; provided that  
24 admission to an inpatient facility shall require a recommendation for  
25 admission by a designated examiner; or

26           (f) Any individual confined for examination pursuant to section 18-211  
27 or 20-520, Idaho Code.

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

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

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

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

38           SECTION 8. That Section 66-319, Idaho Code, be, and the same is hereby  
39 amended to read as follows:

40           66-319. RELEASE OF VOLUNTARY INPATIENTS. The director of an inpa-  
41 tient facility shall release any person, admitted in accordance with the  
42 procedure outlined in section 66-318, Idaho Code, whose continued care or  
43 treatment is no longer appropriate. If upon evaluation at the facility, it  
44 is determined that the patient ~~is mentally ill~~ has a mental disorder or a  
45 substance-related disorder and ~~is likely to injure himself or others or is~~  
46 ~~gravely disabled~~ qualifying circumstances exist, the director of the fa-  
47 cility shall institute appropriate judicial proceedings for continued care  
48 and treatment. In the case of persons confined pursuant to section 20-520  
49 or 18-211, Idaho Code, upon completion of the examination, the sheriff of

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

6 SECTION 9. That Section 66-322, Idaho Code, be, and the same is hereby  
7 amended to read as follows:

8 66-322. APPOINTMENT OF GUARDIAN FOR INDIVIDUALS LACKING CAPACITY TO  
9 MAKE INFORMED DECISIONS ABOUT TREATMENT -- JUDICIAL PROCEDURE . (a) Proceed-  
10 ings for the appointment of a guardian of a ~~mentally ill~~ person who has a men-  
11 tal disorder or a substance-related disorder may be commenced by the filing  
12 of a written petition with a court of competent jurisdiction by a friend,  
13 relative, spouse or guardian of the proposed patient, by a licensed physi-  
14 cian, licensed clinical psychologist, prosecuting attorney, or other public  
15 official of a municipality, county or of the state of Idaho, or by the direc-  
16 tor of any facility in which such patient may be.

17 (b) The petition shall state the name and last known address of the  
18 proposed patient; the name and address of either the spouse, next of kin or  
19 friend of the proposed patient; whether a guardian of the proposed patient  
20 has been previously appointed under the laws of this or any other state and,  
21 if so, the name and address of the guardian and the circumstances of such  
22 appointment; and a precise statement showing that the proposed patient ~~is~~  
23 mentally ill has a mental disorder or a substance-related disorder, that  
24 treatment is available for such ~~illness disorder~~, and that the proposed pa-  
25 tient lacks capacity to make informed decisions about treatment.

26 (c) Any such petition shall be accompanied by a certificate of a li-  
27 censed physician or licensed clinical psychologist stating that the physi-  
28 cian or psychologist has personally examined the proposed patient within the  
29 last fourteen (14) days and is of the opinion: (i) that the proposed patient  
30 is mentally ill has a mental disorder or a substance-related disorder, (ii)  
31 that in the absence of treatment the immediate prognosis is for major dis-  
32 tress of the proposed patient which will result in serious mental or physi-  
33 cal deterioration of the proposed patient, (iii) that treatment is available  
34 which is likely to avoid serious mental or physical deterioration of the pro-  
35 posed patient, and (iv) that the proposed patient lacks capacity to make in-  
36 formed decisions about treatment; or by a written statement by the physician  
37 or psychologist that the proposed patient has refused to submit to an exami-  
38 nation.

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

48 (e) Upon receipt of such petition and certificates, the court shall ap-  
49 point a time and place for hearing not more than seven (7) days from receipt

1 of such certificates and thereupon give written notice to the proposed pa-  
 2 tient. The notice shall include a copy of the petition and certificates and  
 3 notice of the proposed patient's right to be represented by an attorney, or  
 4 if indigent, to be represented by a court-appointed attorney. Notice of the  
 5 time and place of the hearing shall also be given to the petitioner.

6 (f) An opportunity to be represented by counsel shall be afforded to ev-  
 7 ery proposed patient, and if neither the proposed patient nor others provide  
 8 counsel, the court shall appoint counsel in accordance with chapter 8, title  
 9 19, Idaho Code.

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

13 (h) The proposed patient and the petitioner shall be afforded an oppor-  
 14 tunity to appear at the hearing, to testify, and to present and cross-exam-  
 15 ine witnesses. At the hearing, any existing provision of law prohibiting the  
 16 disclosure of confidential communications between the examining physician  
 17 or psychologist and the proposed patient shall not apply and the physicians  
 18 or psychologists who examined the proposed patient shall be competent wit-  
 19 nesses to testify as to the proposed patient's condition. The proposed pa-  
 20 tient shall be required to be present at the hearing, and be free from drugs  
 21 likely to impair the proposed patient's ability to communicate with counsel  
 22 or understand the proceedings, unless the right to be present or free from  
 23 drugs is knowingly and voluntarily waived by the patient or unless the pres-  
 24 ence of the patient at the hearing would unduly disrupt the judicial proceed-  
 25 ings. A record of the proceedings shall be made as for other civil hearings.  
 26 The hearing shall be conducted in as informal a manner as may be consistent  
 27 with orderly procedure and the rules of evidence.

28 (i) The court shall appoint a person other than the treating profes-  
 29 sional to act in the proposed patient's best interest with authority to con-  
 30 sent to treatment, if, upon completion of the hearing and consideration of  
 31 the record, the court finds by clear and convincing evidence that:

32 (1) The proposed patient has a severe and reliably diagnosable ~~mental~~  
 33 ~~illness~~ mental disorder or a substance-related disorder;

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

37 (3) Treatment is available for such ~~illness~~ disorder;

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

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

42 The court shall consider appointing persons to give consent in the follow-  
 43 ing priority: the proposed patient's spouse, next of kin, friend or if the  
 44 proposed patient's spouse, next of kin or friend are unable or unwilling, an-  
 45 other appropriate person not associated with the facility where the person  
 46 is being, or shall be, treated.

47 (j) The appointed person shall have authority to consent to treatment,  
 48 including treatment at a facility. Upon approval of the court, the appointed  
 49 person may pay the costs of treatment from the patient's money and tangible  
 50 property deliverable to or received by the patient during the period of the

1 appointed person's authority, and may apply for any benefits to which the  
2 patient is entitled. In the exercise of his powers, the appointed person  
3 is to act as a fiduciary and shall observe the standards of care applicable  
4 to trustees as described by section 15-7-302, Idaho Code. The appointment  
5 shall continue for a period of seven (7) weeks or until the court determines  
6 that the patient no longer lacks capacity to make informed decisions about  
7 treatment, whichever is shorter.

8 (k) Upon petition of the appointed person, authority to consent may be  
9 continued for an additional seven (7) week period, if the court again enters  
10 the findings required by subparagraph subsection (i) above of this section.  
11 The petition for continued authority shall be accompanied by the certifi-  
12 cate of the treating professional meeting the requirements of subparagraph  
13 subsection (c) above of this section. The petition for continued author-  
14 ity and physician's certificate shall be served upon the patient and the  
15 patient's attorney. If the proposed patient objects to the continued au-  
16 thority, the court shall conduct a hearing, following notice of the time and  
17 place of such hearing to the petitioner, the proposed patient and the pro-  
18 posed patient's attorney.

19 (l) Proceedings for appointment of a person with authority to consent  
20 under this section may be consolidated with proceedings for the involuntary  
21 care of the proposed patient under section 66-329, Idaho Code, provided,  
22 however, that appointment of a person with authority to consent under this  
23 section shall terminate the proceedings for the involuntary care under sec-  
24 tion 66-329, Idaho Code.

25 (m) No more than two (2) petitions with authority to consent shall be  
26 granted under subsection (i) of this section within any twelve (12) month pe-  
27 riod, provided that other proceedings under this chapter or the Uniform Pro-  
28 bate Code shall be permitted.

29 (n) The person with authority to consent appointed pursuant to this  
30 section shall not be personally responsible for the cost of care or treat-  
31 ment rendered ~~the mentally ill individual~~, simply by reason of the authority  
32 granted by this section.

33 SECTION 10. That Section 66-325, Idaho Code, be, and the same is hereby  
34 amended to read as follows:

35 66-325. RESIDENCE NOT AFFECTED BY PLACE OF TREATMENT. For purposes of  
36 this chapter, the terms "residence," "residing," or "resides" shall refer  
37 to the place where the ~~mentally ill~~ person with a mental disorder or a sub-  
38 stance-related disorder lives. None of the time spent in any facility shall  
39 be regarded as contributing toward, or acquiring, residence for any purpose.

40 SECTION 11. That Section 66-326, Idaho Code, be, and the same is hereby  
41 amended to read as follows:

42 66-326. DETENTION WITHOUT HEARING. (1) No person shall be taken into  
43 custody or detained as an alleged emergency patient for observation, diag-  
44 nosis, evaluation, care or treatment of ~~mental illness~~ a mental disorder or  
45 a substance-related disorder unless and until the court has ordered such  
46 apprehension and custody under the provisions outlined in section 66-329,  
47 Idaho Code; provided, however, that a person may be taken into custody by a

1 peace officer and placed in a facility, or the person may be detained at a  
2 hospital at which the person presented or was brought to receive medical or  
3 ~~mental behavioral~~ health care, if the peace officer or a physician medical  
4 staff member of such hospital or a physician's assistant or advanced prac-  
5 tice registered nurse practicing in such hospital has reason to believe that  
6 the person is gravely disabled due to ~~mental illness~~ a mental disorder or a  
7 substance-related disorder or the person's continued liberty poses an immi-  
8 nent danger to that person or others, as evidenced by a threat of substantial  
9 physical harm; provided, under no circumstances shall the proposed patient  
10 be detained in a nonmedical unit used for the detention of individuals  
11 charged with or convicted of penal offenses. For purposes of this section,  
12 the term "peace officer" shall include state probation and parole officers  
13 exercising their authority to supervise probationers and parolees. When-  
14 ever a person is taken into custody or detained under this section without  
15 court order, the evidence supporting the claim of grave disability due to  
16 ~~mental illness~~ a mental disorder or a substance-related disorder or imminent  
17 danger must be presented to a duly authorized court within twenty-four (24)  
18 hours from the time the individual was placed in custody or detained.

19 (2) If the court finds the individual to be gravely disabled due to  
20 ~~mental illness~~ a mental disorder or a substance-related disorder or immi-  
21 nently dangerous under subsection (1) of this section, the court shall issue  
22 a temporary custody order requiring the person to be held in a facility,  
23 and requiring an examination of the person by a designated examiner within  
24 twenty-four (24) hours of the entry of the order of the court. Under no  
25 circumstances shall the proposed patient be detained in a nonmedical unit  
26 used for the detention of individuals charged with or convicted of penal  
27 offenses.

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

31 (4) If the designated examiner finds, in his examination under this  
32 section, that the person is ~~mentally ill~~ has a mental disorder or sub-  
33 stance-related disorder, and either is likely to injure himself or others  
34 or is gravely disabled due to mental illness qualifying circumstances ex-  
35 ist, the prosecuting attorney shall file, within twenty-four (24) hours of  
36 the examination of the person, a petition with the court requesting the pa-  
37 tient's detention pending commitment proceedings pursuant to the provisions  
38 of section 66-329, Idaho Code. Upon the receipt of such a petition, the court  
39 shall order his detention to await hearing which shall be within five (5)  
40 days (including Saturdays, Sundays and legal holidays) of the detention or-  
41 der. If no petition is filed within twenty-four (24) hours of the designated  
42 examiner's examination of the person, the person shall be released from the  
43 facility.

44 (5) Any person held in custody under the provisions of this section  
45 shall have the same protection and rights which are guaranteed to a person  
46 already committed to the department director. Upon taking a person into  
47 custody, notice shall be given to the person's immediate relatives of the  
48 person's physical whereabouts and the reasons for detaining or taking the  
49 person into custody.

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

5 SECTION 12. That Section 66-328, Idaho Code, be, and the same is hereby  
6 amended to read as follows:

7 66-328. JURISDICTION OF PROCEEDINGS FOR COMMITMENT. Proceedings for  
8 the care of ~~mentally ill~~ persons with a mental disorder or a substance-re-  
9 lated disorder shall be had in the district court of the county where the per-  
10 son to be treated resides or in the district court of any other county of this  
11 state where such person is found.

12 SECTION 13. That Section 66-329, Idaho Code, be, and the same is hereby  
13 amended to read as follows:

14 66-329. COMMITMENT TO DEPARTMENT DIRECTOR UPON COURT ORDER -- JUDI-  
15 CIAL PROCEDURE. (1) Proceedings for the involuntary care and treatment of  
16 ~~mentally ill~~ a persons with a mental disorder or a substance-related disor-  
17 der by the department of health and welfare may be commenced by the filing  
18 of a written application with a court of competent jurisdiction by a friend,  
19 relative, spouse or guardian of the proposed patient, by a licensed physi-  
20 cian, by a physician assistant or advanced practice registered nurse prac-  
21 ticing in a hospital, by a prosecuting attorney or other public official of a  
22 municipality, county or of the state of Idaho, or by the director of any fa-  
23 cility in which such patient may be.

24 (2) The application shall state the name and last known address of the  
25 proposed patient; the name and address of the spouse, guardian, next of kin,  
26 or friend of the proposed patient; whether the proposed patient can be cared  
27 for privately in the event commitment is not ordered; whether the proposed  
28 patient is, at the time of the application, a voluntary patient; whether the  
29 proposed patient has applied for release pursuant to section 66-320, Idaho  
30 Code; and a simple and precise statement of the facts showing that the pro-  
31 posed patient ~~is mentally ill~~ has a mental disorder or a substance-related  
32 disorder and either ~~likely to injure himself or others or is gravely disabled~~  
33 ~~due to mental illness~~ qualifying circumstances exist.

34 (3) Any such application shall be accompanied by a certificate of a des-  
35 ignated examiner stating that he has personally examined the proposed pa-  
36 tient within the last fourteen (14) days and is of the opinion that the pro-  
37 posed patient is: (i) ~~mentally ill~~ has a mental disorder or a substance-re-  
38 lated disorder; (ii) is likely to injure himself or others or is gravely dis-  
39 abled due to ~~mental illness~~ a mental disorder or a substance-related disor-  
40 der; and (iii) lacks capacity to make informed decisions about treatment;  
41 or a written statement by the applicant that the proposed patient has refused  
42 to submit to examination by a designated examiner.

43 (4) Upon receipt of an application for commitment, the court shall,  
44 within forty-eight (48) hours, ~~appoint another designated examiner to make~~  
45 ~~a personal examination of the proposed patient, or if the proposed patient~~  
46 ~~has not been examined, the court shall appoint two (2) designated examiners~~  
47 ~~to make individual personal examinations of the proposed patient and may~~

1 order the proposed patient to submit to an immediate examination. If neither  
2 designated examiner is a physician, the court shall order a physical exam-  
3 ination of the proposed patient. At least one (1) designated The examiner  
4 shall be a psychiatrist, licensed physician or licensed psychologist. The  
5 designated examiners shall report to the court ~~their~~ his findings within  
6 the following seventy-two (72) hours as to the mental condition of the pro-  
7 posed patient and his need for custody, care, or treatment by a facility.  
8 The reports shall be in the form of a written certificates that shall be  
9 filed with the court. The court may terminate the proceedings and dismiss  
10 the application without taking any further action in the event the reports  
11 of the designated examiners ~~are~~ is to the effect that the proposed patient  
12 is not mentally ill does not have a mental disorder or a substance-related  
13 disorder or, although mentally ill the patient has a mental disorder or a  
14 substance-related disorder, is not likely to injure himself or others or is  
15 not gravely disabled due to mental illness such mental disorder or a sub-  
16 stance-related disorder. If the proceedings are terminated, the proposed  
17 patient shall be released immediately.

18 (5) If the designated examiner's certificate states a belief that the  
19 proposed patient ~~is mentally ill has a mental disorder or a substance-re-~~  
20 ~~lated disorder and either likely to injure himself or others or is gravely~~  
21 ~~disabled due to mental illness qualifying circumstances exist,~~ the judge of  
22 such court shall issue an order authorizing any health officer, peace of-  
23 ficer, or director of a facility to take the proposed patient to a facility  
24 in the community in which the proposed patient is residing or to the near-  
25 est facility to await the hearing, and for good cause may authorize treat-  
26 ment during such period subject to the provisions of section 66-346(a) (4),  
27 Idaho Code. Under no circumstances shall the proposed patient be detained in  
28 a nonmedical unit used for the detention of individuals charged with or con-  
29 victed of penal offenses.

30 (6) Upon receipt of such application and designated examiners' re-  
31 ports, the court shall appoint a time and place for a hearing not more than  
32 seven (7) days from the receipt of such designated examiners' reports and  
33 thereupon give written notice of such time and place of such hearing, to-  
34 gether with a copy of the application, designated examiner's certificates,  
35 and notice of the proposed patient's right to be represented by an attor-  
36 ney or, if indigent, to be represented by a court-appointed attorney, to  
37 the applicant, to the proposed patient, to the proposed patient's spouse,  
38 guardian, next of kin, or friend. With the consent of the proposed patient  
39 and his attorney, the hearing may be held immediately. Upon motion of the  
40 petitioner, or upon motion of the proposed patient and attorney, and for good  
41 cause shown, the court may continue the hearing up to an additional five (5)  
42 days during which time, for good cause shown, the court may authorize treat-  
43 ment.

44 (7) An opportunity to be represented by counsel shall be afforded to ev-  
45 ery proposed patient, and, if neither the proposed patient nor others pro-  
46 vide counsel, the court shall appoint counsel in accordance with chapter 8,  
47 title 19, Idaho Code, no later than the time the application is received by  
48 the court.

49 (8) If the involuntary detention was commenced under this section, the  
50 hearing shall be held at a facility, at the home of the proposed patient, or

1 at any other suitable place not likely to have a harmful effect on the pro-  
2 posed patient's physical or mental health. Venue for the hearing shall be  
3 in the county of residence of the proposed patient or in the county where the  
4 proposed patient was found immediately prior to commencement of such pro-  
5 ceedings.

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

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

22 (11) If, upon completion of the hearing and consideration of the record,  
23 and after consideration of reasonable alternatives including, but not lim-  
24 ited to, holding the proceedings in abeyance for a period of up to thirty (30)  
25 days, the court finds by clear and convincing evidence that the proposed pa-  
26 tient:

27 (a) ~~Is mentally ill~~ Has a mental disorder or a substance-related disor-  
28 der; and

29 (b) ~~Is, b~~Because of such condition, likely to injure himself or others,  
30 or is gravely disabled due to mental illness qualifying circumstances  
31 exist;

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

39 (12) The commitment order constitutes a continuing authorization for  
40 the department of health and welfare, law enforcement, or director of a fa-  
41 cility, upon request of the director of the outpatient facility, the physi-  
42 cian, or the department director through his dispositioner, to transport a  
43 committed patient to designated outpatient treatment for the purpose of mak-  
44 ing reasonable efforts to obtain the committed patient's compliance with the  
45 terms and conditions of outpatient treatment. If the director of the outpa-  
46 tient facility, the treating physician, or the department director through  
47 his dispositioner determines any of the following:

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

1 (b) Outpatient treatment is not effective after reasonable efforts  
2 have been made;  
3 the department director through his dispositioner shall cause the commit-  
4 ted patient to be transported by the department of health and welfare, law  
5 enforcement, or director of a facility to the least restrictive available  
6 facility for observation, care, and treatment on an inpatient basis. Within  
7 forty-eight (48) hours of a committed patient's transfer from outpatient  
8 treatment to a facility for inpatient treatment, the department director  
9 through his dispositioner shall notify the court that originally ordered the  
10 commitment, the committed patient's attorney, and the committed patient's  
11 spouse, guardian, adult next of kin, or friend of the change in disposi-  
12 tion and provide a detailed affidavit reciting the facts and circumstances  
13 supporting the transfer from outpatient treatment to inpatient treatment  
14 at a facility. The court shall conduct an ex parte review of the notice and  
15 affidavit within forty-eight (48) hours of filing and determine whether the  
16 change in disposition from outpatient treatment to inpatient treatment at a  
17 facility is supported by probable cause. In no event shall the calculation  
18 of forty-eight (48) hours provided for in this subsection include holidays  
19 formally recognized and observed by the state of Idaho, nor shall the cal-  
20 culation include weekends. If the court determines that probable cause  
21 exists, the department director through his dispositioner shall continue  
22 with care and treatment on an inpatient basis at the least restrictive avail-  
23 able facility. Within twenty-four (24) hours of a finding of probable cause,  
24 the court shall issue an order to show cause why the patient does not meet  
25 the conditions in paragraph (a) or (b) of this subsection. The order shall  
26 be served on the committed patient, the committed patient's attorney and the  
27 committed patient's spouse, guardian, adult next of kin, or friend. The pa-  
28 tient shall have fifteen (15) days to present evidence that the conditions in  
29 paragraph (a) or (b) of this subsection have not been met. In no event shall  
30 the calculation of twenty-four (24) hours provided for in this subsection  
31 include holidays formally recognized and observed by the state of Idaho,  
32 nor shall the calculation include weekends. If the court determines that  
33 a change in disposition from outpatient treatment to inpatient treatment  
34 does not meet the conditions in paragraph (a) or (b) of this subsection, the  
35 department director through his dispositioner will continue with outpatient  
36 treatment on the same or modified terms and conditions. Nothing provided  
37 in this section shall limit the authority of any law enforcement officer to  
38 detain a patient pursuant to the emergency authority conferred by section  
39 66-326, Idaho Code.

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

43 (a) Has epilepsy, a developmental disability, a physical disabili-  
44 ty, or an intellectual disability, is impaired by chronic alcoholism  
45 or drug abuse, or is aged, unless in addition to such condition, such  
46 person is mentally ill has a mental disorder or a substance-related dis-  
47 order;

48 (b) Is a patient under treatment by spiritual means alone, through  
49 prayer, in accordance with the tenets and practices of a recognized  
50 church or religious denomination by a duly accredited practitioner

1           thereof and who asserts to any authority attempting to detain him that  
2           he is under such treatment and who gives the name of a practitioner so  
3           treating him to such authority; or

4           (c) Can be properly cared for privately with the help of willing and  
5           able family or friends, and provided that such person may be detained or  
6           involuntarily admitted if such person ~~is mentally ill~~ has a mental dis-  
7           order or a substance-related disorder and presents a substantial risk  
8           of injury to himself or others if allowed to remain at liberty.

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

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

18          (16) The commitment shall continue until terminated and shall be unaf-  
19          fected by the patient's conditional release or change in disposition.

20          SECTION 14. That Section 66-330, Idaho Code, be, and the same is hereby  
21          amended to read as follows:

22          66-330. TRANSPORTATION -- TEMPORARY DETENTION -- NOTICE. (a) After  
23          the dispositioner has designated the place of treatment, he shall notify the  
24          facility director of the disposition and of any medical, security or behav-  
25          ioral needs of the committed patient. The county shall deliver the patient  
26          within forty-eight (48) hours to the designated facility. Whenever practi-  
27          cable, the individual may be accompanied by one (1) or more of his friends or  
28          relatives.

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

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

41          SECTION 15. That Section 66-335, Idaho Code, be, and the same is hereby  
42          amended to read as follows:

43          66-335. COMMITMENT OF ~~MENTALLY ILL~~ CONVICTS WITH A MENTAL DISORDER OR  
44          A SUBSTANCE-RELATED DISORDER. ~~Mentally ill c~~onvicts with a mental disorder  
45          or a substance-related disorder may be received into said facilities in ac-  
46          cordance with rules and regulations adopted by the board of health and wel-  
47          fare acting in conjunction with the state board of correction.

1 SECTION 16. That Section 66-337, Idaho Code, be, and the same is hereby  
2 amended to read as follows:

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

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

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

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

42 18-214. Commitment of acquitted defendant -- Conditional release --  
43 Revocation of release within five years. (1) When a defendant is acquitted  
44 on the ground of mental disease or defect excluding responsibility, the  
45 court shall order him to be committed to the custody of the director of the  
46 department of health and welfare to be placed in an appropriate institution  
47 for custody, care and treatment.

48 (2) If the director of the department of health and welfare is of the  
49 view that a person committed to his custody, pursuant to paragraph (1) of

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

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

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

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

47 (6) If a defendant escapes from custody during his confinement, the  
48 director shall immediately notify the court from which committed, the pros-  
49 ecuting attorney and the sheriff of the county from which committed. The  
50 court shall forthwith issue an order authorizing any health officer, peace

1 officer, or the director of the institution from which the defendant es-  
2 caped, to take the defendant into custody and immediately return him to his  
3 place of confinement.

4 SECTION 17. That Section 66-348, Idaho Code, be, and the same is hereby  
5 amended to read as follows:

6 66-348. DISCLOSURE OF INFORMATION. All certificates, applications,  
7 records, and reports made for the purpose of this act and directly or in-  
8 directly identifying a patient or former patient or an individual whose  
9 involuntary assessment, detention or commitment is being sought under this  
10 act shall be kept subject to disclosure according to chapter 1, title 74,  
11 Idaho Code; provided that such records may also be disclosed to any person:

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

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

16 (3) If a court directs upon its determination that disclosure is neces-  
17 sary and that failure to make disclosure would be contrary to the public in-  
18 terest.

19 SECTION 18. That Section 66-352, Idaho Code, be, and the same is hereby  
20 amended to read as follows:

21 66-352. MONEY FOUND ON ~~MENTALLY-ILL PERSONS~~ WITH A MENTAL DISORDER OR  
22 A SUBSTANCE-RELATED DISORDER -- DISPOSITION. Any moneys, or other things of  
23 value, found on the person of a ~~mentally-ill person~~ with a mental disorder or  
24 a substance-related disorder at the time of proceedings for involuntary com-  
25 mitment must be certified to by the judge and sent with such person to the fa-  
26 cility, there to be delivered to the director of the facility who shall hold  
27 said money in trust as provided in chapter 5 ~~of~~, title 66, Idaho Code. All  
28 money received by or for a patient, voluntarily or involuntarily committed,  
29 while at the facility shall be placed in trust as provided in ~~said~~ chapter 5,  
30 title 66, Idaho Code.

31 SECTION 19. That Section 66-354, Idaho Code, be, and the same is hereby  
32 amended to read as follows:

33 66-354. ~~MENTALLY-ILL PERSON WITH A MENTAL DISORDER OR A SUBSTANCE-RE-~~  
34 LATED DISORDER WITH ASSETS SUFFICIENT TO PAY EXPENSES -- LIABILITY OF RELA-  
35 TIVES. (a) When a ~~mentally-ill person~~ with a mental disorder or a substance-  
36 related disorder has been admitted to a state facility voluntarily or invol-  
37 untarily, 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 such per-  
39 son legally liable for his or her support, and if it is found that such person  
40 or said relatives, legally liable for the support of the patient, are able  
41 to pay the expenses for commitment proceedings and the charges for the care  
42 and treatment of the patient in the facility, in whole or in part, it shall  
43 be the duty of the director of the facility to collect such expenses and such  
44 charges, and, if necessary, to institute in the name of the state, a civil  
45 suit against the person or persons liable therefor.

1 (b) The following relatives shall be bound by law to provide for the ex-  
2 penses and charges for the commitment, care and treatment of such ~~mentally~~  
3 ~~ill~~ person with a mental disorder or a substance-related disorder referred  
4 to in this act: husband for the wife, and the wife for the husband; the parent  
5 for his or her minor child or minor children, and the children for their par-  
6 ents.

7 SECTION 20. That Section 66-355, Idaho Code, be, and the same is hereby  
8 amended to read as follows:

9 66-355. APPOINTMENT OF GUARDIAN -- INCOMPETENCY OF ~~MENTALLY-ILL PER-~~  
10 ~~SON WITH A MENTAL DISORDER OR A SUBSTANCE-RELATED DISORDER~~ REQUIRES SEPARATE  
11 PROCEEDINGS -- LIABILITY FOR CARE AND TREATMENT COSTS. The incompetency of  
12 a ~~mentally-ill~~ person with a mental disorder or a substance-related disorder  
13 shall be determined in the same manner that incompetency is determined in any  
14 other person and shall be a separate judicial proceeding. Any guardian ap-  
15 pointed in the case of a ~~mentally-ill~~ incompetent person, with a mental dis-  
16 order or a substance-related disorder is subject to all the provisions of  
17 the general laws of the state of Idaho in relation to guardians and wards.  
18 Whenever a ~~mentally-ill~~ person with a mental disorder or a substance-related  
19 disorder is receiving care and treatment in a facility in the event that in-  
20 competency is adjudicated and a guardian appointed, the court on determin-  
21 ing the incompetency must inquire into the ability of the ~~mentally-ill~~ per-  
22 son with a mental disorder or a substance-related disorder to pay for his or  
23 her expenses which arise in connection with his or her care and treatment, if  
24 any, transportation to the facility, court costs for incompetency proceed-  
25 ings, and for the care and treatment for such person for such time as he re-  
26 mains in such facility, and when there are sufficient assets in the hands of  
27 the guardian, the court may order a sale of property or such part thereof as  
28 may be necessary, and from the proceeds of such sale the guardian must pay for  
29 all expenses and reasonable charges for the patient's care and treatment, or  
30 such part as it is possible to pay, to the director of the facility in which  
31 said ~~mentally-ill~~ person with a mental disorder or a substance-related dis-  
32 order is a patient.