



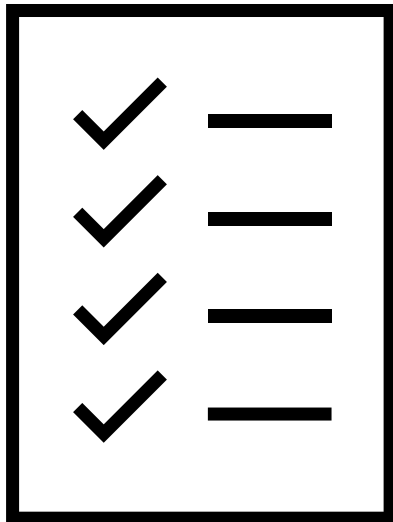
Civil Commitment 101

Jessica Waldron, LCPC

**East Hub Designated Examiner
Regional Program Specialist
Division of Behavioral Health**



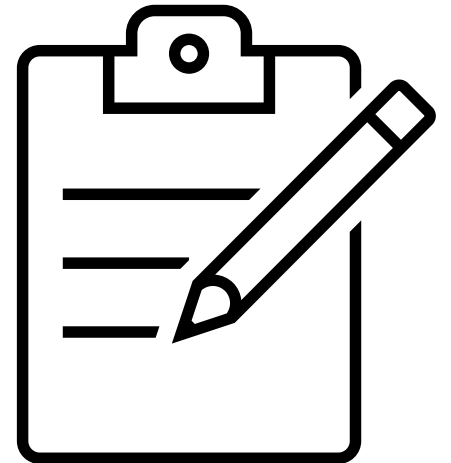
IDAHO DEPARTMENT OF
HEALTH & WELFARE



- Have a basic understanding of the mental health civil commitment law and process in Idaho.
- Understand how to access and navigate the Idaho Statute, Title 66, Chapter 3.
- Understand commitment criteria and the Designated Examination process.
- Understand the legal time frames for each part of the civil commitment process.



- Basic legal premises
- Where to find Idaho's civil commitment law and how to navigate it
- Civil commitment process and timelines
- Myths and misunderstandings of civil commitment
- Designated examination process and commitment criteria
- Exclusions from civil commitment
- Additional options





- It's not against the law to be psychotic or symptomatic with a mental health condition.
- It's not against the law to have behaviors out of the “norm”.
- People are free to make their own choices.
- You cannot detain an individual against their will for having a mental illness or exhibiting symptoms of a mental illness.
- Detaining an individual against their will demands due process and then only if they pose a danger to themselves or others or is gravely disabled.
- Only time aside from being arrested for a criminal charge that a person's rights can be suspended.



- Civil commitment is a court process overseen by a Judge based on evidence presented in court.
- Civil commitments are a civil matter, not a criminal matter.
- The civil commitment system addresses mental illness when it exceeds acceptable bounds.
- The criminal system addresses people's choices (to steal, drive under the influence, disturb the peace, etc.)



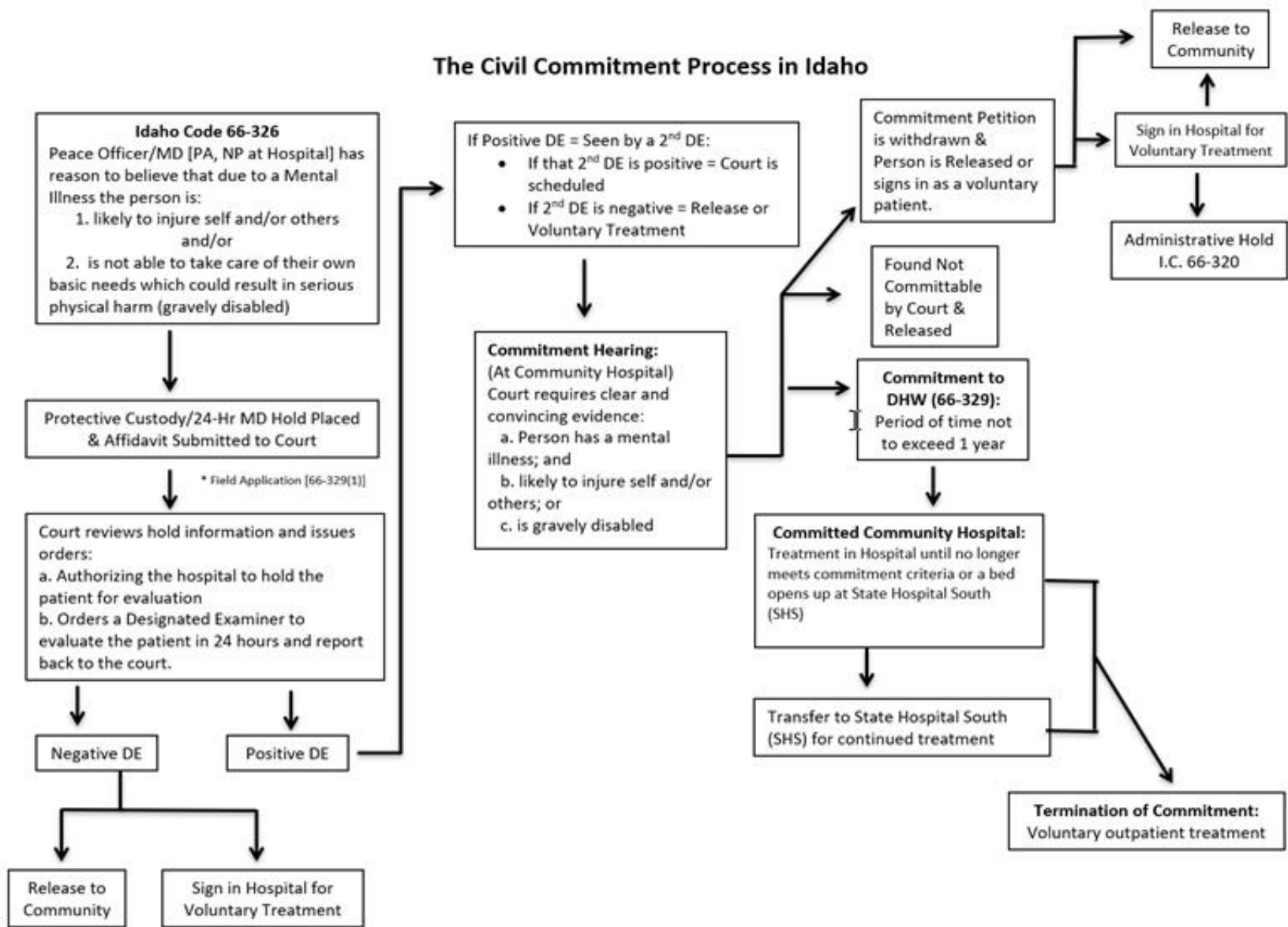
- <https://legislature.idaho.gov/statutesrules/idstat/Title66/T66CH3/>



Civil Commitment Process



The Civil Commitment Process in Idaho





- 66-326⁽¹⁾... provided, however, that a person may be taken into custody by a **peace officer** and placed in a facility, or the person may be detained at a hospital at which the person presented or was brought to receive medical or mental health care, if the peace officer or **a physician medical staff member of such hospital or a physician's assistant or advanced practice registered nurse practicing in such hospital** has reason to believe that the person is gravely disabled due to mental illness or the person's continued liberty poses an imminent danger to that person or others, as evidenced by a threat of substantial physical harm;



- Protective custody is solely a function of law enforcement and emergency department physicians, PAs, NPs.
- **Protective Custody Holds (PCH) I.C. 66-326**
 - Law enforcement (Peace officers) or Emergency Room physician, PA or NP (24 hours)
- **Administrative Holds (Admin) I.C. 66-320**
 - Patient must already be a voluntary patient and request discharge.
 - Doctors, PAs, NPs at hospital (Up to 3 days excluding weekends and holidays)



- 66-326⁽¹⁾ Whenever a person is taken into custody or detained under this section without court order, the **evidence supporting the claim** of grave disability due to mental illness or imminent danger **must be presented to a duly authorized court within twenty-four (24) hours from the time the individual was placed in custody** or detained.
- Hold paperwork, including supporting evidence, is submitted to the Prosecuting Attorney's office of the patient's county of residence within 24 hours of the time of the hold.



- 66-326(2) If the court finds the individual to be gravely disabled due to mental illness or imminently dangerous under subsection (1) of this section, the **court shall issue a temporary custody order** requiring the person to be held in a facility, and **requiring an examination of the person by a designed examiner within twenty-four (24) hours of the entry of the order of the court.**
- (3) Where an examination is required under subsection (2) of this section, **the designated examiner shall make his findings and report to the court within twenty-four (24) hours of the examination.**
- If the DE is positive, the prosecutor files an application for commitment with the court. If the DE is negative, the patient must be released or sign into the hospital as a voluntary patient.



- 66-329⁽⁴⁾ Upon receipt of an **application for commitment**, the court shall, within forty-eight (48) hours, appoint another designated examiner to make a personal examination of the proposed patient... At least one (1) designated examiner shall be a **senior designated examiner**. The designated examiners shall report to the court their findings within the following seventy-two (72) hours as to the mental condition of the proposed patient and his need for custody, care, or treatment by a facility...
- If the Senior DE is positive, 66-329⁽⁶⁾... the **court shall appoint a time and place for a hearing not more than seven (7) days** from the receipt of such designated examiners' reports...



- 66-317⁽¹⁷⁾ “**Senior designated examiner**” means a licensed psychiatrist, licensed psychologist, licensed physician, or any of the following who has three (3) years of experience as a designated examiner and five (5) years of post-master’s degree experience in a mental health field and who has been approved by the department director or the department director’s designee to act as a senior designated examiner:
 - (a) A licensed clinical social worker;
 - (b) A licensed clinical professional counselor; or
 - (c) A licensed marriage and family therapist.



- 66-329⁽⁶⁾ ...notice of the proposed patient's **right to be represented by an attorney** or, if indigent, **to be represented by a court-appointed attorney**... Upon motion of the petitioner, or upon motion of the proposed patient and attorney, and for good cause shown, the **court may continue the hearing up to an additional seven (7) days** during which time, for good cause shown, the court may authorize treatment.
- 66-329⁽⁸⁾ If the involuntary detention was commenced under this section, the hearing shall be held in a manner and at a suitable place not likely to have a harmful effect on the proposed patient's physical or mental health.



- 66-329(9) In all proceedings under this section, any existing provision of the law prohibiting the disclosure of confidential communications between the designated examiner and proposed patient shall not apply and any designated examiner who shall have examined the proposed patient shall be a competent witness to testify as to the proposed patient's condition.
- **66-348 All Certificates, applications, records, and reports made for the purpose of this act** and directly or indirectly identifying a patient or former patient or an individual whose involuntary assessment, detention or commitment is being sought under this act shall be kept subject to disclosure according to chapter 1, title 74, Idaho Code; provided that **such records may also be disclosed to any person:**
- (2) **If disclosure may be necessary to carry out any of the provisions of this act...** (Family/friends, care providers, living facility, medical records)



- 66-329⁽¹¹⁾ If, upon completion of the hearing and consideration of the record, and after consideration of reasonable alternatives... the **court finds by clear and convincing evidence** that the proposed patient:
 - (a) Is mentally ill; and
 - (b) Is, because of such condition, likely to injure himself or others, or is gravely disabled due to mental illness;
- the **court shall order the proposed patient committed to the custody of the department director** for observation, care, and treatment for an **indeterminate period of time not to exceed one (1) year.**



- 66-329⁽¹⁶⁾ The commitment shall **continue until terminated** and shall be unaffected by the patient's conditional release or change in disposition.
- 66-337⁽²⁾ The commitment of an involuntary patient **shall be terminated if the patient no longer meets criteria** under section 66-329, Idaho Code...
- Review to court completed after 90 days and then every 120 days
- Patient remains in the community hospital until a bed is available at a state hospital or until symptoms stabilize.



66-346(a) Every patient shall have the following rights:

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



- (b) Notwithstanding any limitations authorized under this section on the right of communication, every patient shall be entitled to communicate by sealed mail with the court, if any, which ordered his commitment.
- (c) **The director of a facility may deny a patient's rights under this section, except that the rights enumerated in subsections (a)(5) [*visits by attorney/advocacy system*] and (a)(6) [*exercise of civil rights – see list although not limited to the list*] of this section, shall not be denied by the director of the facility under any circumstances.** Only in cases of emergency or when a court has determined that a patient lacks capacity to make informed decisions about treatment, may the director of a facility deny a patient's rights under subsection (a)(4) [*refusing treatment*] of this section. **A statement explaining the reasons for any denial of a patient's rights shall be immediately entered in his treatment record and if the patient has been committed pursuant to court order, copies of such statement shall be submitted to the committing court and sent to the patient's spouse, guardian, adult next of kin or friend and attorney, if any.**
- (d) A list of the foregoing rights shall be prominently posted in all facilities and brought to the attention of the patient by such means as the board of health and welfare shall designate.



Absolute Time (days)	Event	Time Allowed	Idaho Code
0	Protective Custody Hold placed		66-326(a)
1	Evidence to court and court issues custody & DE order	Within 24 hrs of detention	66-326(a)
2	Exam by 1 st Designated Examiner (DE)	Within 24 hrs of DE order	66-326(b)
3	Report to court by 1 st DE	Within 24 hrs of DE exam	66-326(c)
	Petition by prosecutor requesting detention order	Within 24 hrs of DE's exam	66-326(d)
	Court orders detention to await hearing	Upon receipt of petition	66-326(d)
5	Appointment of 2 nd Designated Examiner	Within 48 hrs of detention order	66-329(d) 66-326(d)
8	Report to court 2 nd DE	Within 72 hrs of DE order	66-329(d)
13	Hearing	Within 5 days of detention order	66-329(d)
	Commitment Order	Not to exceed 1 year	66-329(d)



- Under 18 U.S.C. Section 922(g)(4), any person who has been “committed to a mental institution” is prohibited by federal law from shipping, transporting, receiving, or possessing any firearm or ammunition.
- In 2010, Idaho enacted a law that requires mental health records to be sent electronically to the National Instant Criminal Background Check System (NICS) database, which the FBI uses to perform background checks prior to firearm transfers. The court making the determination of commitment must also determine whether the individual should be prohibited from purchasing or possession firearms under federal law.
- Individuals subject to such an order, may submit a petition to the court asking to be removed from the NICS database. I.C. 66-356(2)



- In general, individuals who have a guardian are not committed because the guardian makes the treatment decisions.
- When an individual is committed, DHW is not their guardian.
- DHW does not have power of attorney over their affairs.
- The individual is not a “ward of the state”.
- When an individual is committed to DHW, it is for mental health treatment only. The individual still has the ability to make their own decisions regarding any medical treatment while under commitment.



- DE assigned to the case will review any prior records with DHW.
- Review medical records available from the facility where the individual is located.
- Collateral information gathered from facility staff.
- Meet with the individual face to face or virtually for a clinical interview.
- Collateral information gathered from individual's family, friends, supports, care providers, living facility, etc.
- Consultation with treating physician at the facility.



- 66-317⁽⁴⁾ “**Designated examiner**” means a psychiatrist, psychologist, psychiatric nurse, or social worker and such other mental health professionals as may be designated in accordance with rules promulgating pursuant to the provisions of chapter 52, title 67, Idaho Code, by the department of health and welfare. Any person designated by the department director or the department director’s designee will be specially qualified by licensure, training, and experience in the diagnosis and treatment of mental or mentally related illnesses or conditions.



- Is the individual mentally ill as defined by I.C. Section 66-317?
- Because of such mental illness, the individual is
 - Likely to injure himself/herself
 - Likely to injure others
 - Gravely disabled
- Does the individual lack the capacity to make informed decisions regarding treatment?



- 66-317⁽¹¹⁾ “**Mentally ill**” means a condition resulting in a substantial disorder of thought, mood, perception, or orientation that grossly impairs judgment, behavior, or capacity to recognize and adapt to reality and requires care and treatment at a facility or through outpatient treatment. However, the term “mentally ill” does not include conditions discussed in section 66-329(13)(a), Idaho Code.
- I.C.66-329(13): Nothing in this chapter or in any rule adopted pursuant thereto shall be construed to authorize the detention or involuntary admission to a hospital or other facility of an individual who:
 - (a) Has a neurological disorder, a neurocognitive disorder, a developmental disability as defined in section 66-402, Idaho Code, a physical disability, or any medical disorder that includes psychiatric symptomology or is primarily impaired by substance use, unless in addition to such condition, such person is mentally ill;



- 66-317⁽¹⁰⁾ “**Likely to injure himself or others**” means:
 - (a) A substantial risk that physical harm will be inflicted by the proposed patient upon his own person, as evidenced by threats or attempts to commit suicide or inflict physical harm on himself; or
 - (b) A substantial risk that physical harm will be inflicted by the proposed patient upon another as evidenced by behavior that has caused such harm or that places another person or persons in reasonable fear for sustaining such harm; or
 - (c) The proposed patient lacks insight into his need for treatment and is unable or unwilling to comply with treatment and, based on his psychiatric history, clinical observation or other clinical evidence, if he does not receive and comply with treatment, there is a substantial risk he will continue to physically, emotionally or mentally deteriorate to the point that he will, in the reasonably near future, inflict physical harm on himself or another person.



- 66-317⁽¹²⁾ “**Gravely disabled**” means the condition of a person who, as the result of mental illness, has demonstrated an inability to:
 - (a) Attend to basic physical needs, such as medical care, food, clothing, shelter, or safety;
 - (b) Protect himself from harm or victimization by others;
 - (c) Exercise sufficient behavioral control to avoid serious criminal justice involvement; or
 - (d) Recognize that he is experiencing symptoms of a serious mental illness and lacks the insight into his need for treatment, whereby the subsequent absence of treatment may result in deterioration of his condition such that any of the circumstances listed in this subsection may be satisfied in the near future.



- 66-317⁽⁷⁾ “**Lacks capacity to make informed decisions about treatment**” means the inability, by reason of mental illness, to achieve a rudimentary understanding after conscientious efforts at explanation of the purpose, nature, and possible significant risks and benefits of treatment.



- 66-329⁽¹³⁾ Nothing in this chapter or in any rule adopted pursuant thereto shall be construed to authorize the detention or involuntary admission to a hospital or other facility of an individual who:
- (a) Has a **neurological disorder**, a **neurocognitive disorder**, a **developmental disability** as defined in section 66-402 I.C., a **physical disability**, or any **medical disorder that includes psychiatric symptomology** or is **primarily impaired by substance use**, unless in addition to such condition, such person is mentally ill;
- (b) Patient is under treatment by spiritual means alone.
- (c) Can be cared for privately with the help of willing and able family or friends.



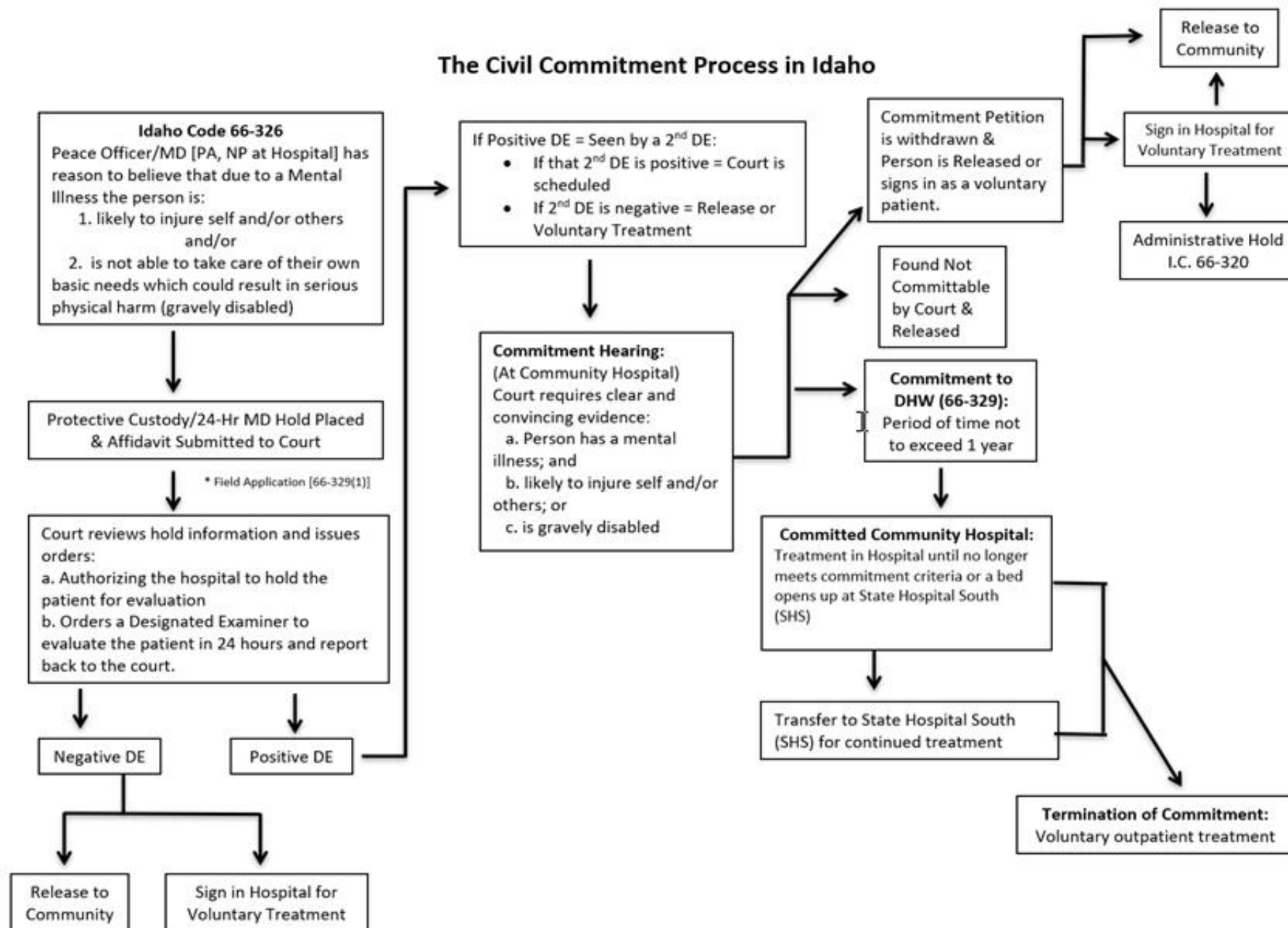
- 66-317⁽¹³⁾ “**Neurocognitive disorder**” means decreased mental function due to a medical disease other than psychiatric illness, including:
 - (a) Alzheimer’s disease;
 - (b) Frontotemporal lobar degeneration;
 - (c) Lewy body dementia;
 - (d) Vascular dementia;
 - (e) Traumatic Brain Injury;
 - (f) Inappropriate use or abuse of substances or medications;
 - (g) Infection with human immunodeficiency virus;
 - (h) Prion diseases;
 - (i) Parkinson’s disease; or
 - (j) Huntington’s disease.



- **66-322 Appointment of Guardian.**
 - Family may pursue Temporary Emergency Guardianship. Good for 90 days.
 - A guardian is someone whom the court has given legal authority to make treatment decisions on behalf of an individual who is an adult in Idaho.
 - A guardian is able to make treatment decisions on behalf of the person even if the person doesn't want to participate.
 - An individual's legal guardian can sign the individual into the hospital for care and treatment and it is considered a voluntary placement in the legal sense as the guardian is legally authorized to provide consent for care.
- If the individual's symptoms are associated with a medical condition, then some hospitals have used the Medical Consent and Natural Death Act, Title 39, Chapter 45, Idaho Code.



The Civil Commitment Process in Idaho





- <https://legislature.idaho.gov/statutesrules/idstat/Title66/T66CH3/>
- <https://legislature.idaho.gov/statutesrules/idstat/Title39/T39CH45/>
- <https://www.atf.gov/resource-center/docs/guide/atf-i-33104-%E2%80%94-federal-firearms-prohibitions-under-18-usc-%C2%A7-922g4-%E2%80%93>