

INFORMAL GUIDELINES OF THE ATTORNEY GENERAL

August 19, 1987

Senator Larrey Anderson
2639 Eastgate Drive
Twin Falls, Idaho 83301

THIS CORRESPONDENCE IS A LEGAL GUIDELINE OF THE
ATTORNEY GENERAL SUBMITTED FOR YOUR GUIDANCE

Re: Involuntary Mental Commitments

Dear Senator Anderson:

The questions contained in Mr. Deibert's letter to you all focus, in one way or another, on two central issues: Who is responsible for initiating involuntary mental commitment proceedings? and: Who pays the attendant costs of such proceedings?

Question 1: Who Is Responsible for Initiating Involuntary Mental Commitments?

The best way to answer the first question is to trace the various scenarios under which involuntary mental commitments occur. Perhaps as many as half of all mental commitments are initiated by peace officers who detain a person on an emergency basis because they have "reason to believe that the person's continued liberty poses an imminent danger to that person or others, as evidenced by a threat of substantial physical harm." Idaho Code § 66-326(a). In the jargon of law enforcement officials, this is a "mental hold."

Once a mental hold takes place, the statutory clock starts ticking. Even the best-staffed prosecutor offices find it burdensome to meet the deadlines set out in the Code; in offices where a sole prosecutor may be in trial all day when the mental hold takes place, it becomes almost physically impossible to get the job done.

The 72-Hour Hold Proceeding, Idaho Code § 66-326.

The prosecutor who is informed of the mental hold may elect to proceed under Idaho Code § 66-326(b) and, within 24 hours of detention, obtain a temporary custody order (TCO) upon a showing to the court that the individual detained is "imminently dangerous."¹ Under this procedure, the patient must be examined by a designated examiner within 24 hours of the court order. The designated examiner, in turn, must "make his findings and report to the court" within 24 hours of the examination. Idaho Code § 66-326(c). If the designated examiner finds "that the person is mentally ill, and either is likely to injure himself or others or is gravely disabled, the prosecuting attorney shall file . . . a petition with the court requesting the patient's detention pending commitment proceedings. . ." Idaho Code § 66-326(d). This additional detention period may extend no more than five days, by which time a hearing must be held.

Two points should be made about the role of the prosecutor in pursuing involuntary mental commitments under the "72-hour hold" procedure of Idaho Code § 66-326. First, the time constraints are severe. If any of the deadlines is missed, the person in

detention must be released. The first 24 hours after detention occurs are particularly hectic: the police report must be filed in order to determine imminent danger; the prosecutor must find a designated examiner, contract with that person and make sure that an examination can be conducted within the next 24 hours; paperwork must be prepared and presented to the court for entry of the temporary custody order. Obviously, within these time constraints, the prosecutor can conduct only the most minimal investigation into the patient's financial condition and that of family members. This cursory investigation will form the basis of the court's order, under Idaho Code § 66-327(a), fixing responsibility for payment of the costs associated with commitment proceedings.¹

The second point to be made is that the discretion of the prosecutor under the 72-hour hold statute is tightly constrained. If the designated examiner finds that the detained person is mentally ill and either is likely to injure himself or others or is gravely disabled, then the prosecuting attorney shall file a five-day detention petition. Furthermore, it would not be consistent with the finding of mental illness and imminent harm to release the patient after the five-day detention order expires. It is our opinion that, under these circumstances, the prosecutor must also file the commitment application unless the prosecutor determines that family members or other responsible parties are available and willing to perform that service.

Involuntary Commitment Applications, Idaho Code § 66-329.

If the patient is not confined under a mental hold, the prosecutor's first notice of a problem will likely come from a concerned neighbor or relative of the patient. The prosecutor's first inquiry will be to determine if the patient or his or her relatives have adequate resources to pay for commitment and care of the patient. If so, the prosecutor will direct such parties to private counsel.

If, on the other hand, adequate financial resources cannot immediately be identified, the prosecutor will send the complaining party to the county clerk for a determination of indigency under chapter 34 or 35 of title 31 of the Idaho Code. It is our understanding that such determinations are expedited if the patient is in imminent peril.

The procedure outlined here is apparently the one used by your local prosecutor. According to Mr. Deibert's letter,

the practice that is being followed in Twin Falls County (and perhaps other counties) is that the Clerk of the District Court refers all individuals wishing to file a petition for commitment to the Prosecutor's Office. The Prosecutor's Office, at this time, does not accept petitions but instead refers the petitioner to seek private counsel or to seek determinations from the County Commissioners regarding indigency status of the proposed patient.

¹The prosecutor may also elect to proceed directly, within the first 24 hours, to file an application for involuntary mental commitment, pursuant to Idaho Code § 66-329. There are certain advantages to this procedure, and it is our understanding that some prosecutors use it almost exclusively.

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This procedure, in our opinion, is appropriate. It is not the prosecutor's job to compete with the private bar if any of the parties listed in Idaho Code § 66-329(a) wish to retain private counsel and file an application for involuntary mental commitment. However, if the county determines that the patient is indigent and that no other financially responsible party is available, then the prosecutor should file the application for involuntary commitment (assuming that the prosecutor has made the discretionary determination that the patient requires such care).

If the prosecutor, or any other party, files an application for involuntary mental commitment, then the provisions of Idaho Code § 66-329 are triggered. Subsections (b) through (f) spell out the requirements of the application, the need for two personal examinations by designated examiners and for a physical exam, and the procedure for a hearing on the merits of the application. The timetable for proceeding under this statute, while still greatly expedited, is somewhat more relaxed than that specified by Idaho Code § 66-326 (the 72-hour mental hold and five-day detention statute).

In sum, the prosecutor has certain clear-cut responsibilities in the area of involuntary mental commitments. If the patient is in emergency detention, and appears to be in imminent danger, then the prosecutor must proceed under the 72-hour mental hold provisions of Idaho Code § 66-326, culminating in the filing of an application for involuntary mental commitment. Alternatively, if the statutory conditions are met, the prosecutor may proceed immediately to file the application for involuntary mental commitment under Idaho Code § 66-329.

If the proposed patient is not in emergency detention, then the prosecutor will cause a determination of indigency to be made. The prosecutor is responsible for filing an application for involuntary mental commitment if the patient is in need of such commitment and is indigent and has no statutorily responsible relatives able to pay for the commitment proceeding. The prosecutor, of course, has the ultimate responsibility to enforce these laws even if the patient's relatives refuse to carry out their statutory responsibilities. Idaho Code §§ 31-2604(1) and (6). Under these circumstances, as outlined below, the prosecutor would undertake the civil commitment and later bring a separate action to reimburse the county.

Our conclusion appears to mirror the practice of your local prosecutor who, according to Mr. Deibert's letter, presently undertakes involuntary mental commitments whenever "the County has determined the proposed patient meets the requirements of indigency or when the proposed patient is in police custody."

Question 2: Who Pays the Costs of Commitment?

Your second question, in a variety of contexts, inquires as to who is responsible for the costs associated with commitment proceedings. The question is answered in detail by the specific provisions of Idaho Code § 66-327. That section fixes financial responsibility for the costs associated with commitment proceedings on:

1. the patient;
2. the patient's spouse;
3. the patient's adult children.

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As Mr. Deibert's letter suggests, a guardian ad litem appointed on behalf of the patient is empowered to pay the costs of a patient's commitment and treatment. See Idaho Code §§ 15-5-303 and -312, 66-322 and -355. Finally, if indigency is established, the costs are paid by the patient's county of residence, after taking into account all personal, family and third party resources, including state medicaid assistance under title XIX of the social security act. The court must consider the income and resources of the patient and must enter an order fixing responsibility for all or part of the commitment costs on the patient or on the county if the costs cannot be covered by the patient or by third party resources. Idaho Code § 66-327(a).

"Costs," for this purpose, include the fees of designated examiners, transportation costs, and all medical, psychiatric and hospital costs incurred prior to the time when the patient is dispositioned, transported to and admitted by the state facility. Thereafter, all usual and customary treatment costs become the responsibility of the Department of Health and Welfare.

Thus, the simple answer to Mr. Deibert's question is that the designated examiner sends his or her bill to whomever the court has designated as responsible for paying the costs of commitment. As Mr. Diebert further notes in his letter, these specific provisions for payment of medical exam and commitment costs dovetail neatly with the parallel statutes providing legal representation for the needy, Idaho Code § 19-851, et seq.

In practice, this neat statutory scheme is not so neatly administered. The prosecutor or the county commissioners may have only a few hours or minutes to determine whether or not the patient is indigent before the court order is signed fixing responsibility for commitment costs. Even assuming that indigency is established, responsibility may be difficult to determine within different county budgets (the medical indigency fund, the jail, the prosecutor's office). And the discovery of new evidence of assets does not always lead to a new court order, since the prosecutor challenging the old order probably drafted that order for the court's signature. Nonetheless, as Mr. Deibert points out, there is ample statutory authority for counties and the state to recoup moneys advanced on behalf of indigent patients if resources later become available. Idaho Code §§ 19-858, 31-3510A, 66-354.

In sum, the law is straightforward in listing the parties responsible for paying the cost of involuntary mental commitment proceedings, in requiring the counties to pay these costs if the patient is indigent, and in providing a mechanism for counties to recoup costs if resources become available. Problems and misunderstandings in administering the program arise mainly from the speed with which orders are entered and proceedings occur. The process cannot be slowed down because of the imminent peril facing the mentally ill and the liberty interests implicated by their enforced confinement. The solution lies not with the law but with the good will of the participants.

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I apologize for the delay in answering your opinion request. If I can be of further assistance, please contact me.

Sincerely,

JOHN J. McMAHON
Chief Deputy