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FOR YOUR INFORMATION
The Idaho Statesman
Boise, Idaho
Sunday January 21, 2018
Audrey Dutton
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Felony charges put health care battery law under microscope

Amy Johnson was in the Ada County Jail and didn't know what she'd done.

Two days earlier, Johnson had called a friend to pick her up from work. She has bipolar disorder and felt a manic episode coming on. Colors were getting brighter. Her thoughts ricocheted from one thing to another. She couldn't sleep.

Her friend and boyfriend were ready to help her through it — with written instructions Amy had given them in case this ever happened. But instead of getting well at a psychiatric hospital, the 41-year-old university employee was arrested. She could face up to six years in prison.

"I'm feeling terrible right now. I break down in tears every time I have to talk about it," Johnson said. "... Every time I go to court or every time I think about this charge, [it's a reminder that] someone thinks that I'm a bad person because they're charging me with this and that I need to pay a penalty for this."

Johnson is one of hundreds of Idahoans charged under a law passed in 2014 making battery against health care workers a felony.

Nurses, paramedics, security guards, emergency room doctors and others who work on the front lines of health care have among the most dangerous jobs in the U.S. They're four times more likely than other private-sector employees to be attacked and severely injured on the job, according to the Occupational Safety and Health Administration.

The 2014 law was intended to protect those workers. It also had cultural importance — making it clear that health care workers are specifically worth defending.

But as it made its way through the Idaho Legislature, an exemption for mental illness was removed.

Idaho Prosecuting Attorney Association lobbyist Holly Koole told lawmakers at the time that "the criminal justice system provides numerous safeguards for the mentally ill or vulnerable who cannot form the intent to commit a crime," according to minutes from the House Judiciary, Rules and Administration Committee.

Johnson's attorney, Sean Beck, calls that "a complete misrepresentation of the facts."

Idaho has no insanity defense. A case involving this type of battery ends up hinging on "intent," Beck said — a word that prosecutors and defense attorneys gave different interpretations of to the Statesman. And Beck and others say the felony charge gives prosecutors leverage to get a plea deal, sidestepping the intent question.

Since 2014, prosecutors statewide have filed the felony charge more than 290 times, including 100 adults charged in Ada County and about 10 charged in Canyon County.

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The Statesman reviewed dozens of cases. Many aligned with how the law was pitched — a patient was drunk and angry about being in the hospital, so she bit a security guard and kicked a nurse, for example.

But some fell into a gray area. The defendants included:

A patients diagnosed with multiple mental illnesses.

A patients who were on a mental hold or inpatient psychiatric treatment at the time of their arrest.

A patient who punched a hospital security guard in the face; his therapist told the court it was “a classic response to his PTSD.”

A a man whose case was delayed while he spent time at the state psychiatric hospital.

A a man whose application for a public defender included nonsense, and the assertion that Jesus had posted his bond.

‘I WAS JUST SUPER CAREFUL WITH MY LIFE’

Amy Johnson was 20 when she had her first bipolar episode. She spent about a week in the behavioral health unit at Saint Alphonsus.

She was stable for 13 years after that. She graduated from Boise State University and traveled the world for a time, teaching English as a second language.

It wasn’t until 2010 that Johnson had to be hospitalized again, while living in Massachusetts.

She moved back to Idaho, but didn’t qualify for Medicaid here and couldn’t afford her medications. So she embarked on a plan to live “super, super carefully ... eating right, exercising, sleeping, stress management, yoga, meditation,” she said. “I was just super careful with my life.”

And, she started counseling.

But last August, the fabric of her plan started to fray. Work stress was following her home.

“It got to the point that it was interfering with my sleep, and when my sleep goes ...” she said.

The week leading up to her arrest, she knew she needed to take it easy, but she was under deadlines. A friend helped her that Friday, picking her up early from work and trying to reach her doctors.

“By Saturday morning, I was beyond reason, and at that point I was refusing to take my medication,” she said. “And I was not making sense with what I was saying. ... I remember feeling a lot of fear, like fear of strangers, fear of being inside buildings.”

She was afraid to be indoors at home, so her friend drove her to a gas station on State Street, where her boyfriend of five years met them. He convinced her to get into his car and go to the Saint Alphonsus ER.

Johnson’s mania and fear intensified in the ER. She began speaking only in Spanish. Her medical records confirm no drugs or alcohol were in her system.

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The staff at Saint Alphonsus found a bed at Safe Haven, an inpatient facility in Northwest Boise, and took her there. But Jason Moore, her boyfriend, couldn't come along.

"If I'd known I couldn't stay with her, I wouldn't have let her go in there," Moore said. "I knew that putting her in a place with strangers, when she didn't know what was going on, would just escalate things."

The next day, Moore returned to Safe Haven with two of Johnson's friends. She was gone.

An officer from the Boise Police Department had arrived at Safe Haven around 9 p.m. Saturday. Employees told the officer that Johnson was sent there "due to possibly being in a manic state" and had "been very combative with staff and other patients." She had grabbed at one employee's chest and broke the woman's bra strap, a police report stated. She put her hands around a second employee's throat, "then began to lean in towards her as if she was going to try to kiss her."

The workers said she was a danger to staff and other patients, and they wanted to press charges, the report said.

"I was advised that Johnson had already been given a large variety of medications and may or may not be able to speak to us," the officer wrote. "As I made contact with Johnson, who was beginning to step out of her room, I placed her in handcuffs. Johnson was muttering under her breath incoherently and also appeared unable to stand without heavily swaying."

In jail, the medical staff gave Johnson medication that started to stabilize her. Her lawyer secured her release about 10 days later. She was admitted to the Saint Alphonsus behavioral health unit, where doctors tried different medications until she was back to her old self.

But now, a woman with no criminal record is charged with two violent felonies.

A PUSH FOR MORE SEVERE LAWS

Health care worker advocates nationwide want to make hospitals, nursing homes and other facilities safer. That includes an ongoing push for harsh penalties for hurting a health care worker.

More than 30 states have such laws on their books. At least one, Arizona, exempts those who are "seriously mentally ill" or "afflicted with Alzheimer's disease or related dementia."

The Idaho Medical Association was the main proponent of the Idaho law.

"It was never the IMA's intention that our legislation would adversely impact patients and individuals that are incapacitated due to disability or mental health," said Susie Pouliot, CEO of the association. "However, our overriding intent, and we think this is a serious problem, [is that] nobody should have their nose broken or be punched in their face for trying to do their job."

C.P. Abbondandolo, senior director for security for St. Luke's Health System, said, "Health care employees are not looking to seek some sort of retribution, and that's why I'm really disappointed to hear the premise of the discussion that these people [charged were] in crisis."

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The law has worked well at St. Luke's when a patient is "disruptive, is combative, is threatening, and crosses the threshold by striking a health care worker," usually when they're intoxicated, he said. "Most of the assaults that occur, charges are not filed because the victim in the crime — which is going to be the health care worker — elects not to do so. ... This is a subculture of extremely nurturing people, and it just goes against their nature to seek criminal charges."

Amber Craig, a registered nurse in the West Valley Medical Center emergency room, said she's pressed charges against patients only twice in her three years working there.

"It's not something we take lightly by any means," she said. "I realize the long-term impact it can have on the patient."

Local hospitals are training staff members in de-escalation techniques. St. Luke's has added dogs to its de-escalation repertoire: Rocky the boxer and Heidi the lab are now called in when a patient is getting angry or upset.

"It's amazing to watch what [it does to] some of the folks that are in crisis, just the arrival of that friendly four-legged creature," Abbondandolo said. "Most of the time, they just want to pet the dog and talk to the dog and have that interaction. ... The nursing staff has the opportunity then to reset the situation."

DO THE SAFEGUARDS WORK?

One of the state's chief prosecutors couldn't speak to specific cases. But he said prosecutors are supposed to look at all the factors in a case, and everyone from police officers to the judge does the same. He believes a "large number" of incidents never end up with charges because of that early vetting.

"It's not simply, 'Were you a patient and did you kick a doctor when he was trying to take blood from you?' " said Grant Loeb, Twin Falls County prosecutor and outgoing president of the state prosecutors association. "... A person who truly doesn't have any idea where they are and what they're doing, nobody is going to put a felony on [them]."

But Beck, Johnson's lawyer, said her case and others show the law is indeed allowing that to happen.

"They are going and seeking appropriate treatment," Beck said, "and I don't know what else the prosecution or the law enforcement want them to do. Do they want them to just roam the streets and put the public in danger? Or are we supposed to rely on our health care system?"

Rep. Christy Perry, R-Nampa, served on the Judiciary committee and voted for the bill. She said her committee was assured the law wouldn't be used against people experiencing a mental health crisis.

People contacted by the Statesman for this story have since reached out to Perry with concerns about the law. After hearing from them, she said, she will seek to amend it to protect the mentally ill.

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Rep. Luke Malek, R-Coeur d'Alene and a former deputy county prosecutor, co-sponsored the battery law. He said a mental illness exemption would be redundant.

“I would assume that prosecutors would do their jobs, and investigators as well, in terms of whether intent could be proven to a jury,” he said. “Mental illness in and of itself is not a defense.”

(Perry and Malek are also among several GOP contenders this spring for one of Idaho's U.S. House seats.)

None of the cases reviewed by the Statesman ended up going to trial. In almost all, the defendant pleaded guilty to misdemeanor battery and was sentenced to six months in jail — most of it waived. They usually received two years' probation, often with a stipulation that acknowledged their mental illness: required medication and therapy.

Johnson has a trial set for March, when she'll have to prove her intent was to get help, not to hurt someone.

“Something happens, and you try to get help, and this is how it ends up,” said Moore, her boyfriend. “We were doing things right.”

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