

# CRISIS HOLDS



## New Idaho Law

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# Written Resources

- Idaho Code 56-2101 et seq. [56-1901 et seq.]
- Stanger, *Idaho's New Crisis Hold Law*,  
<https://www.hollandhart.com/idahos-new-crisis-hold-law>
- Stanger, *The Idaho Medical Consent Act: Recent Amendments*,  
<https://www.hollandhart.com/the-idaho-medical-consent-act-recent-amendments>
- DHW, *Protective Placement Custody*

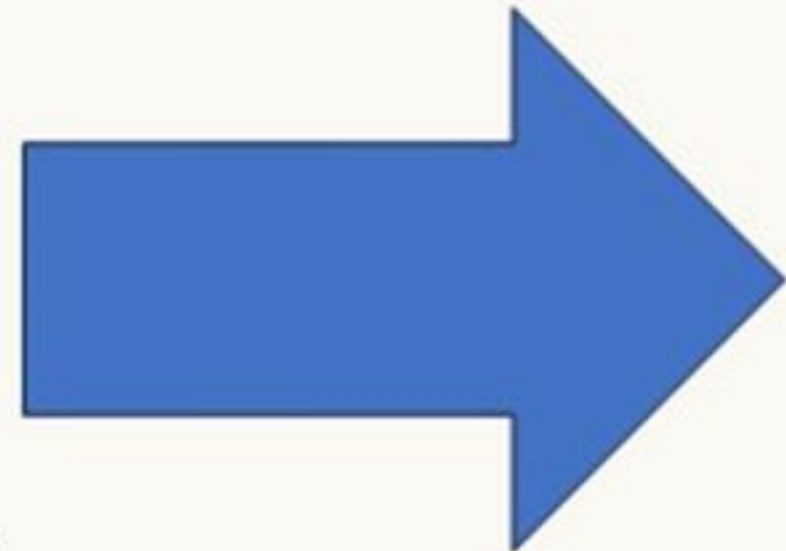
# Background

## THE PROBLEM

- Idaho's 24-hour mental hold statute does not apply to neurocognitive disorders.

(IC 66-326 and -329)

- What to do about persons who need care for neurocognitive disorders?
  - How can police detain them?
  - How can hospitals provide stabilizing treatment?



## THE RESPONSE

- New crisis hold statute allows police or hospital to initiate hold so hospital may provide temporary, stabilizing care.

(IC 56-2101 et seq.)

- *But is it really necessary?*

# Existing Idaho Consent Law

## PATIENT IS COMPETENT

- Render care consistent with patient's consent or refusal.

(IC 39-4503)

- If competent patient refuses care, may initiate mental or crisis hold if:
  - Patient is gravely disabled or
  - Patient likely to injure self or others.

(IC 66-326 or IC 56-1204)

## PATIENT IS INCOMPETENT

- If emergent, render necessary care (subject to patient's advance directive, if any) while you seek surrogate consent.

(EMTALA; IC 39-4504(1)(i))

- Surrogate may consent to or refuse care, in which case:
  - Comply with surrogate direction;
  - Report potential abuse; or
  - Initiate mental or crisis hold.

(IC 39-4504(1))

# Mental Holds v. Crisis Holds

## MENTAL HOLD

- **Mentally ill**, i.e., “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.”
- Not neurological disorder, neurocognitive disorder, developmental disability, physical disability, or any medical disorder.

(IC 66-317(11))

## CRISIS HOLDS (Effective 10/1/24)

- **Neurocognitive disorder**, i.e., “decreased mental function due to a medical disease other than a psychiatric illness, including Alzheimer’s disease; frontotemporal lobar degeneration; Lewy body dementia; vascular dementia; traumatic brain injury; ... infection with human immunodeficiency virus; Prion diseases; Parkinson’s disease; or Huntington’s disease.”
- Not decreased mental function due to substance abuse or medications.

(IC 56-2103(6) and 66-317(13))

# Mental Holds v. Crisis Holds

## MENTAL HOLD

- Purpose: transfer and/or hold resident at hospital for evaluation by DHW designated examiner and, if necessary, initiate commitment proceedings to commit to DHW custody.

(IC 66-326)

- Long-term solution for commitment of patient to proper setting.

## CRISIS HOLD

- Purpose: transfer and/or hold resident at hospital for short term to evaluate and address “acute crises due to an underlying medical condition.”

(IC 56-2105)

- Temporary response intended to allow hospital to provide stabilizing treatment so person may return to other care setting.

# Crisis Holds (Effective 10/1/24)

- Police may detain and take person to hospital or hospital healthcare provider may detain person to receive medical care if:
  - Have reason to believe the person has a **neurocognitive disorder** and
  - The person is **“likely to injure themselves or others,”** i.e.,
    - Substantial risk that serious physical harm will be inflicted by person upon self;
    - Person lacks insight and is unable or unwilling to comply with treatment such that person will, in reasonably near future, inflict serious physical harm on self or others.

(IC 56-2103 and -2104)

- If hold beyond 24 hours, generally must either:
  - File petition for court order to hold; or
  - Obtain consent from competent patient or surrogate decision-maker.

(IC 56-2104 and 39-4504)



# Crisis Holds: Notice to Family or Surrogate

- Upon taking a person into custody, a good faith effort shall be made to provide notice to the person's legal guardian, parent, spouse, or adult next of kin of the person's physical whereabouts and reasons for taking the person into custody. (IC 56-2104(7))
- If surrogate consents to continued care, there is likely no need for continuing crisis hold unless need payer source.
  - Surrogate may consent to care. (IC 39-4504)
  - Crisis hold statute provides for payer source. (IC 56-2107)
- If surrogate refuses needed care:
  - Comply with surrogate direction and document. (IC 39-4504)
  - Consider reporting abuse or neglect. (IC 16-1605 or 39-5303)

# Crisis Holds: Termination and Transfer

- Hospital may terminate a crisis hold at anytime, in which case the patient becomes a voluntary patient. (IC 56-2104(4))
  - Hospital should notify prosecutor and/or court if court actions initiated.
- Hospital may transfer a person in a crisis hold to another hospital that is willing to accept the transferred person for purposes of observation, diagnosis, evaluation, care, or treatment. (IC 56-2104(8))
  - Hospital must still comply with consent principles. (See IC 39-4503 and -4504)
  - Hospital must still comply with EMTALA transfer requirements. (42 CFR 489.24)

# Minors and Crisis Hold

- Not entirely clear whether or to what extent crisis hold would apply to minors.
  - Crisis hold v. shelter care under IC 16-2411.
  - Crisis hold v. Parental Rights in Medical Decision-Making
    - IC 32-1015 generally requires parental consent unless:
      - Blanket consent, or
      - Medical emergency and:
        - Necessary to prevent death or imminent, irreparable injury to minor child, or
        - Cannot locate parent and minor child's life or health would be seriously endangered.
- In case of minors, seek parental consent or court order.

# Crisis Holds: Judicial Procedure

- Someone must seek court order for temporary hold w/in 24 hours.
- Court may order temporary hold and evaluation by hospital provider, e.g., physician or APP.
  - May want to include order for necessary care.
- Provider reports findings to court w/in 24 hours.
- If exam concludes person no longer meets criteria for crisis hold, person is treated as voluntary patient and may be released (if appropriate and consistent with hospital regs).
- If person meets criteria for crisis hold, prosecutor files petition to continue hold pending protective placement per IC 56-2105.
- W/in 5 days, have hearing to determine stay.
- Court may order protective custody at hospital for observation, care and treatment **for up to 7 days.**

(IC 56-2104 and -2105)

- *Hopefully, patient is stabilized and transferred before hospital ever gets to the hearing...*
- *Crisis hold procedure may allow hospital to obtain payment from*
  - ✓ *Patient*
  - ✓ *Private payer*
  - ✓ *Medicaid or DHW*

(IC 56-2107)

# Crisis Holds: Alternative [?] Judicial Procedure

- Separate section allows friend, relative, spouse, guardian, prosecutor, hospital provider, or facility administrator to initiate judicial procedure if:
  - Person has a neurocognitive disorder, and
  - Person is in acute crisis due to underlying medical condition.
- Application with court + hospital practitioner certifies that either:
  - He/she has examined person within last 14 days and—
    - Person has neurocognitive disorder, and
    - Person likely to injure self or others; or
  - Patient refused to such exam.
- W/in 48 hours, court orders another exam.
- W/in 72 hours, report to court.
- Court orders hearing w/in 7 days + detention + necessary care.
- Hearing.
- If court concludes care needed, court may order care for **up to 7 days**.

(IC 56-2105)

Not clear how this process coordinates with crisis hold initiated by hospital per IC 56-2104.

# Crisis Holds: Judicial Procedure

- *But what happens at end of 7 days if patient is still not ready for discharge...?*
  - Obtain consent from patient or personal rep for continued hospital care?
  - Return to facility or prior care setting?
  - Transfer to another appropriate care setting?
  - Other?
- *But what happens if patient has nowhere else to go?*
  - Court order only authorizes hospital to hold for up to 7 days.
  - Continue holding patient?
  - Discharge patient without proper care setting?
  - Trespass patient?
  - Other?
  - See generally <https://www.hollandhart.com/difficult-patient-discharges-the-problem-the-law-and-some-options> .

# Crisis Hold: Payor Source

Statute sets forth structure for payment for crisis hold care.

- Cost of hold (other than routine medical care): patient is generally responsible subject to DHW's determination of patient's ability to pay.
  - DHW reports findings to court.
- Cost of routine medical care:
  - Patient's insurer (including Medicaid) is primarily responsible.
    - Third party applicant may apply for Medicaid on behalf of the patient.
  - Remaining costs for routine medical care apportioned between DHW and the patient.

(IC 56-2107)

- Court may order person to pay costs per the section.

(IC 56-1907)

- *But what happens if there is no court order?*

# Crisis Holds: Reporting

- Must make quarterly reports re crisis holds beginning in 2025.  
(IC 56-1906)
- Watch for additional guidance from DHW.

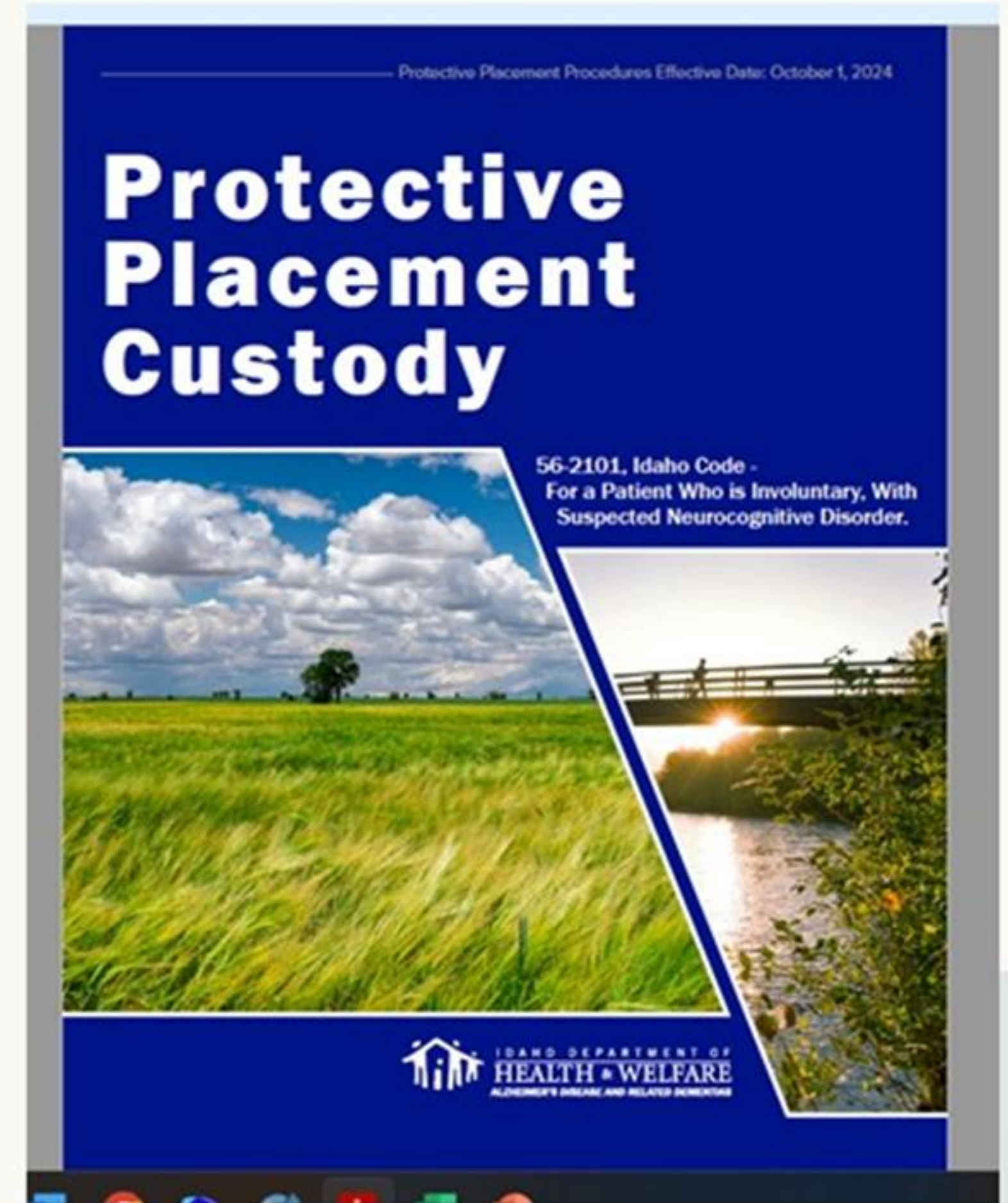


# Summary: Consent v. Mental or Crisis Hold

- If patient competent, rely on and document resident's consent/refusal unless patient fits criteria for mental or crisis hold.
- If patient is incompetent:
  - Provide needed emergent care consistent with patient's prior expressed wishes;
  - Seek consent from surrogate; and/or
  - Initiate:
    - Mental hold, if patient is mentally ill and either gravely disabled or likely to injure self or others.
    - Crisis hold if patient has neurocognitive disorder and is likely to injure self or others.

# Crisis Hold: DHW Resources

- Contact [Tiffany.Robb@dhw.Idaho.gov](mailto:Tiffany.Robb@dhw.Idaho.gov)
  - Summary
  - Flow chart
  - Forms from Ada County Prosecutors
  - Training programs
  - Other?



# Additional Resources



# HTTPS://WWW.HOLLAND HART.COM/HEALTHCARE

## Free content:

- Recorded webinars
- Client alerts
- White papers
- Other

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# Questions?



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