

Protective Placement Custody

56-2101, Idaho Code -
For a Patient Who is Involuntary, With
Suspected Neurocognitive Disorder.



IDAHO DEPARTMENT OF
HEALTH & WELFARE
ALZHEIMER'S DISEASE AND RELATED DEMENTIAS

What’s the problem this law is trying to solve?

Unfortunately, there has been a significant gap in Idaho’s laws where individuals with neurocognitive disorders in a serious crisis could have been inappropriately placed on an involuntary mental health hold or taken to jail.

There is now a legal pathway to an emergency room for people with Alzheimer’s, dementia, and other neurocognitive disorders when they are likely to injure themselves or others.

Who is this new law for?

An individual who is suspected to have a neurocognitive disorder¹ **AND** they are likely to injure themselves or others.² This is not for someone with a mental illness.

What is Protective Custody

Protective custody is when a peace officer detains a person, taking them to a hospital where a healthcare provider will look for underlying medical conditions that may be escalating the person into a crisis where they may receive care. This is **not** a psychiatric evaluation.

Difference between a Protective Placement Custody and an Involuntary Mental Health Hold

	Protective Placement	Involuntary Mental Health Hold
<i>For people who have</i>	Neurocognitive disorders.	Mental illnesses.
<i>When a person is</i>	Likely to injure themselves or others.	A danger to themselves, others, or gravely disabled due to a mental illness.
<i>Who initiates the hold</i>	Peace officer, healthcare provider in hospital, or through court application process.	Peace officer, healthcare provider in a hospital, or community member through court application process.
<i>Purpose is to determine if there is a(n)</i>	Underlying medical condition causing crisis.	Need for immediate, involuntary psychiatric treatment.
<i>Who initiates release</i>	Healthcare provider, courts, and/or family/guardian.	Designated examiner or courts.

1. Neurocognitive disorders, as defined by 61-317 (13) Idaho Code. “...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, or Huntington’s disease.”
2. Likely to injure themselves or others, as defined by 56-2103 (5), Idaho Code. Includes imminent harm, perceived harm, and the lack of insight into the need for treatment and is unable or unwilling to comply with treatment based on the person’s medical history, clinical observation, or other clinical evidence, and if the person does not receive and comply with treatment, there is a substantial risk that the person will continue to physically, emotionally, or cognitively deteriorate to the point that the person will, in the reasonably near future, inflict serious physical harm on themselves or others.

How Long Does Protective Custody Last?

The goal is to diagnose and treat the underlying medical condition contributing to the crisis in less than 24 hours. Thus, a healthcare provider can release the patient anytime before that 24-hour time period or if the patient becomes voluntary.

Court procedures follow if custody extends beyond 24 hours and the patient is not voluntary, allowing for judicial oversight and additional assessments from appropriate healthcare providers. While this is highly unlikely, it is important for legal protections to exist.

Family, friends, or others³ can also petition for protective placement, with strict guidelines and requirements for medical evidence, specifically including that the healthcare provider has reason to believe the person may have a neurocognitive disorder, and is likely to harm themselves or others, and that the person lacks the capacity to make informed decisions about treatment.

Reporting

Hospitals are required to report all cases of protective custody quarterly to the State's Department of Health and Welfare. These reports can be filed by accessing this link ([ADRD Hospital Form](#)). For any questions, please reach out to Tiffany Robb at adrd@dhw.idaho.gov.

Issues to Address In the Future

- Not all acute crises will result from an underlying medical condition.
- Evaluate the benefit of single or combined holds, reducing the burden on EMS to assume diagnosis and optimize appropriate response.
- There are not enough facilities to accommodate people with neurocognitive disorders who behave in a way that is unsafe for themselves or others, which creates stress for hospitals.
 - Facilities that are available tend to be financially out of reach for the average Idahoan without Medicaid.
- Assisted living facilities are regulated under the Landlord/Tenant Law (6-303, Idaho Code) and Idaho Administrative Code where if a person is a risk to themselves or others, they may be evicted through an emergency process without a 30-day notice.
- Direct care is experiencing a huge workforce shortage which would allow a person to remain at home longer, placing additional physical and emotional stress upon family members.
- Idaho has higher than the national average of family members who provide care, also working a full or a part-time job. Taking these caregivers out of the workforce has long-lasting negative consequences on our economy and their ability to take care of their own families.
- Future policy should consider involuntary observation for intoxicated patients who lack decision-making capacity or pose a risk, until sobriety, for a more accurate assessment of mental health conditions, neurocognitive disorders, or other potential risks.

3. "friend, relative, spouse or guardian of the person, by a healthcare provider practicing in a hospital, a prosecuting attorney or other public official of a municipality, county, or the state of Idaho, or by the director of any facility in which such person may be." per 56-2105, Idaho Code.

PROTECTIVE PLACEMENT CUSTODY

56-2104 Idaho Code - For a Patient Who is Involuntary, Without a Hearing. Effective October 1, 2024.

- NOTE:**
- This statute does not override current hospital laws.
 - If at any time the patient becomes voluntary, the physician can release the hold.
 - If at any time the hospital determines the patient does not meet the criteria for the hold, the patient becomes voluntary.

Peace Officer

Peace officer is called to the scene due to a person that is:
Suspected of having a neurocognitive disorder per 61-317(13), Idaho Code.

AND

Likely to injure themselves or others.

OR

Lacks insight into their need for treatment, putting them at substantial risk of inflicting physical harm to themselves or others per 56-2103(5), Idaho Code.

Emergency Department (ED)

Person is in the ED receiving care and is:
Suspected of having a neurocognitive disorder 61-317(13), Idaho Code.

AND

Likely to injure themselves or others.

OR

Lacks insight into their need for treatment, putting them at substantial risk of inflicting physical harm to themselves or others per 56-2103(5), Idaho Code.

1. Peace officer takes person into custody and transports person to the hospital emergency department (ED).
2. Connects family caregiver/provider to caregiver supports and 988 Crisis Line.

Peace officer completes custody report and provides it to the ED staff, maintaining a copy for internal systems.

ED staff examines patient.

ED determines no underlying medical condition contributing to the crisis. The patient becomes voluntary.

ED determines an underlying medical condition contributing to the crisis.

The patient needs custody, care, or treatment by a hospital, still meets criteria for hold (56-2103(5), Idaho Code), **AND** it will exceed 24 hours from the time the person was placed in custody.

The Patient's condition improves in less than 24 hours, the patient becomes voluntary.

A report is required to be filed with the prosecutor by the hospital.

Within 24 hours of entry of the order of the court, the courts will review custody request. If approved, a second exam is ordered within 48 hours of custody, and temporary protective placement begins.

Patient becomes a voluntary patient or no longer meets the criteria for the hold (56-2103(5), Idaho Code).

- Hospital notifies prosecutor
- Prosecutor drops custody request

A second examination by a different medical professional is required. Examination determines:

1. The need of custody, care, or treatment by a hospital, and the patient still meets the criteria for the hold (56-2103(5), Idaho Code). **Findings must be filed with the courts within 72 hours.**
2. Court grants protective placement; the patient remains at the hospital receiving authorized care until hearing. Hearing should take place by the 7th day.

No need of custody, care, or treatment by a hospital, and the patient no longer meets the criteria for the hold (56-2103(5), Idaho Code). **Findings must be filed with the courts within 72 hours.**

- Courts dismiss application
- Patient becomes voluntary

PROTECTIVE PLACEMENT CUSTODY

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 - If at any time the hospital determines the patient does not meet the criteria for the hold, the patient becomes voluntary.

An application requesting a protective placement, for a person with a neurocognitive disorder (per by 61-317(13) Idaho Code) who is likely to injure themselves or others (56-2103(5) Idaho Code) or lacks insight into their need for treatment, putting them at substantial risk of inflicting physical harm to themselves or others, can be filed with the courts by a concerned *“friend, relative, spouse or guardian of the person, by a healthcare provider practicing in a hospital, a prosecuting attorney or other public official of a municipality, county, or the state of Idaho, or by the director of any facility in which such person may be.”*

If the application includes:

A certificate from a healthcare provider who has examined their patient within the last 14 days AND determines the person meets the criteria for protective placement custody (56-2103(5) Idaho Code).

OR

A written statement stating that the person has refused to submit to an examination by a healthcare provider

Within 48 hours, the courts review the application and protective placement custody request. If in agreement, a temporary protective placement is issued, the patient must be transported to the hospital to submit to an examination.

If application included certificate from healthcare provider, one examination must be completed.

OR

If application included written statement stating the person refused to submit to an examination, two separate physical exams (by separate healthcare providers) must be completed.

Examination(s) determines:

1. A justification for the need of custody, care, or treatment by a hospital, and the patient still meets criteria for the hold. **Findings must be filed with the courts within 72 hours.**
2. Court grants protective placement; the patient remains at the hospital receiving authorized treatment until hearing. Hearing should take place by the 7th day.

- No justification for the need of custody, care, or treatment by a hospital, and the patient no longer meets criteria for the hold. **Findings must be filed with the courts within 72 hours.**
- Courts dismiss application
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