



Idaho Court Administrative Rule 101. Persons with Neurocognitive Disorders, Protective Custody Without a Hearing

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(a) **Notice to Court of Protective Custody Without a Hearing.** Whenever a person is taken into custody or detained by a peace officer or medical staff member without a court order pursuant to Idaho Code section 56-2104, the evidence supporting the claim that a person with a neurocognitive disorder is likely to injure themselves or others as provided in Idaho Code section 56-2104(1), must be electronically filed with the court by the prosecuting attorney within twenty four (24) hours of the time the person was placed in custody or detained.

(b) Order; Transmission; After Hours, Weekends, and Holidays.

(1) Order. If the court finds there is reason to believe the person is likely to have a neurocognitive disorder and is likely to injure themselves or others, as defined in I.C. § 56-2103(5), as:

(A) posing a substantial risk that serious physical harm will be inflicted by the person upon their own person, as evidenced by threats of suicide or threats to inflict serious physical harm on themselves,

(B) posing a substantial risk that serious harm will be inflicted by the person upon another person as evidenced by behavior that has caused such harm or that places another person or persons in reasonable fear of sustaining such harm, or

(C) the person lacks 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 another person,

the court will issue a temporary protective placement custody order requiring the person to be held in a hospital and requiring an examination of the person by a health care provider in such hospital within twenty-four (24) hours of the entry of the order of the court.



(2) Transmission.

(A) A temporary protective placement custody order may be issued electronically to the prosecuting attorney, the peace officer or medical staff member who initiated the detention, or the hospital charged with facilitating or conducting the examination.

(B) If the prosecuting attorney seeks a temporary protective placement custody order after office hours, during the weekend, or on a holiday pursuant to paragraph (b)(3) of this rule, the court may issue the order based on information communicated by telephone or other reliable electronic means. When the court's findings are based on a sworn oral statement, the statement must be recorded and is considered part of the record. All sworn oral statements given in support of an application for a temporary protective placement custody order must be given on oath or affirmation and must identify the speaker. The judge may then verbally authorize the prosecuting attorney to sign the judge's name, which verbal authorization must be recorded.

(3) **After Hours, Weekends, and Holidays.** If the prosecuting attorney seeks a temporary protective placement custody order after office hours, during the weekend, or on a holiday, the prosecuting attorney will contact the on-call judge and present the evidence supporting the claim. If the judge issues a temporary protective placement custody order, the prosecuting attorney will serve it on the peace officer or medical staff member who initiated the detention and on the hospital charged with facilitating or conducting the examination. On the next judicial day, the prosecuting attorney will file the evidence supporting the claim and temporary protective placement custody order. The clerk will accept the evidence supporting the claim and previously signed temporary protective placement custody order and will affix a date stamp that reflects the original issuance of the order. If the previously signed temporary protective placement custody order was signed by the prosecuting attorney on behalf of the judge upon verbal authorization pursuant to paragraph (b)(2)(B) of this rule, the sworn oral statement as recorded must also be filed with the court and the order must be returned to the judge who authorized the signing of his or her name on it. The judge must then endorse his or her name on the previously signed order. Any failure of the judge to make such an endorsement does not in itself invalidate the order.

(c) **Examination and Report.** If the court issues a temporary protective placement custody order requiring the person to be held in a hospital and requiring an examination of the person by a health care provider in such hospital, the health care provider shall make findings and report those findings to the prosecuting attorney within twenty-four (24) hours of the examination. Upon receipt of the findings and report, the prosecuting attorney shall file such findings with the court, as soon as reasonably practicable but in no event no later than 24 hours following receipt.

(d) **Electronic Signatures.** An electronic signature may be used on any document that is required or permitted under this rule and that is transmitted electronically, including a temporary protective placement custody order requiring the person to be held in a hospital and requiring an examination of the person by a health care provider, a written certification or declaration under penalty of perjury, an affidavit, or a notary's seal, in accordance with Rule 9 of the Idaho Rules for Electronic Filing and Service.



(Adopted September 30, 2024, effective October 1, 2024.)

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