I. Civil Statute Protecting Dependent Adults or Elders from Neglect or Abuse:  *Idaho Code Annotated 18-1505*

A. Conduct

   (1) **Neglect:** Failure of a caretaker to provide food, clothing, shelter or medical care to a vulnerable adult, in such a manner as to jeopardize the life, health and safety of the vulnerable adult.²

   (2) **Abuse:**

      (a) **Definition:** The intentional or negligent infliction of physical pain, injury or mental injury.³

      (b) **Single Act and/or Pattern:** Unknown.

   (3) **Abandoning a Vulnerable Adult:** The desertion or willful forsaking of a vulnerable adult by any individual, caretaker, or entity which has assumed responsibility for the care of the vulnerable adult by contract, receipt of payment of care, any relationship arising from blood or marriage wherein the vulnerable adult has become the dependent of another or by order of a court of competent jurisdiction; provided that abandon shall not mean the termination of services to a vulnerable adult by a physician, or anyone under his direct supervision, where the physician determines, in the exercise of his professional judgment, that termination of such services is in the best interests of the patient.⁴

   (4) **Sexual Abuse of a Vulnerable Adult:** It is a felony for any person, with the intent of arousing, appealing to or gratifying the lust, passion or sexual desires of such person, a vulnerable adult or a third party, to:

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¹ Please note that authors are not licensed to practice in the State of Idaho.
(a) Commit any lewd or lascivious act or acts upon or with the body or any part or member thereof of a vulnerable adult including, but not limited to: genital-genital contact, oral-genital contact, anal-genital contact, oral-anal contact, manual-anal contact or manual-genital contact, whether between persons of the same or opposite sex;

(b) Involve a vulnerable adult in any act of bestiality or sadomasochism; or

(c) Cause or have sexual contact with a vulnerable adult, not amounting to lewd conduct as defined in paragraph (a) of this subsection.  

(5) **Sexual Exploitation of a Vulnerable Adult:** It shall be a felony for any person to commit sexual exploitation of a vulnerable adult if, for any commercial purpose, he knowingly:

(a) Causes, induces or permits a vulnerable adult to engage in or be used in any explicit sexual conduct; or

(b) Prepares, arranges for, publishes, produces, promotes, makes, sells, finances, offers, exhibits, advertises, deals in, possesses or distributes sexually exploitative material.

(6) **Exploitation:** An action which may include, but is not limited to, the unjust or improper use of a vulnerable adult's financial power of attorney, funds, property or resources by another person for profit or advantage.

B. **Vulnerable Adults**

(1) **Vulnerable Adult:** A person eighteen (18) years of age or older who is unable to protect himself from abuse, neglect or exploitation due to physical or mental impairment which affects the person's judgment or behavior to the extent that he lacks sufficient understanding or capacity to

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7 Exploitation will not be addressed in this compendium – instead, only the abuse and/or neglect portions of the statutes.
make or communicate or implement decisions regarding his person, funds, property or resources.\(^9\)

C. Persons/Entities Excluded From Statute

(1) Nothing in this section shall be construed to mean a person is abused, neglected or exploited for the sole reason he is relying upon treatment by spiritual means through prayer alone in accordance with the tenets and practices of a recognized church or religious denomination; nor shall the provisions of this section be construed to require any medical care or treatment in contravention of the stated or implied objection of such a person.\(^{10}\)

(2) Nothing in this section shall be construed to mean that an employer or supervisor of a person who abuses, exploits or neglects a vulnerable adult may be prosecuted unless there is direct evidence of a violation of this statute by the employer or supervisor.\(^{11}\)

(3) Any action taken by a physician or health facility pursuant to an agreement with a vulnerable adult shall not be construed to constitute abuse, exploitation, or neglect, so long as it is consistent with the withholding or withdrawal of artificial life-sustaining procedures from a qualified patient.\(^{12}\)

D. Reporting Requirement for Litigation to State

If, as the result of any investigation initiated under the provisions of this chapter, it appears that the abuse, neglect, or exploitation has caused injury or a serious imposition on the rights of the vulnerable adult, the commission shall immediately notify the appropriate law enforcement agency which shall initiate an investigation and shall determine whether criminal proceedings should be initiated against the caretaker or other persons in accordance with applicable state law. Notwithstanding the prohibition against disclosure of names of persons associated with the written report of an investigation, the commission shall

disclose names associated with the written report when notification is made as required in this section.\textsuperscript{13}

E. **Preclusion of Arbitration:** Unknown.

F. **Relationship to Medical Malpractice Actions:** Unknown.

G. **Criminal Provisions**

1. Any person who abandons a vulnerable adult in deliberate disregard of the vulnerable adult's safety or welfare, regardless of whether the vulnerable adult suffered physical harm from the act of abandonment, shall be guilty of a felony and shall be imprisoned in the state prison for a period not in excess of five (5) years, or by a fine not exceeding five thousand dollars ($5,000), or by both such fine and imprisonment. It shall not be a defense to prosecution under the provisions of this section that the perpetrator lacked the financial ability or means to provide food, clothing, shelter or medical care reasonably necessary to sustain the life and health of a vulnerable adult.\textsuperscript{14}

2. Sexual abuse of a vulnerable adult is a felony and shall be punishable by imprisonment in the state prison for a period not to exceed twenty-five (25) years or by a fine not to exceed twenty-five thousand dollars ($25,000), or by both such fine and imprisonment.\textsuperscript{15}

3. Sexual exploitation of a vulnerable adult shall be punishable by imprisonment in the state prison for a period not to exceed fifteen (15) years or by a fine not to exceed twenty-five thousand dollars ($25,000), or by both such fine and imprisonment.\textsuperscript{16}

4. Any person who abuses or neglects a vulnerable adult under circumstances likely to produce great bodily harm or death is guilty of a felony punishable by imprisonment for not more than ten (10) years and not more than a twenty-five thousand dollar ($25,000) fine.\textsuperscript{17}

\textsuperscript{15} Idaho Code Ann. § 18-1505B(3) (2012).
\textsuperscript{17} Idaho Code Ann. § 18-1505(1) (2009) – only available for someone who intentionally abused a vulnerable adult, see § 18-1505(4)(a).
Any person who abuses or neglects a vulnerable adult under circumstances other than those likely to produce great bodily harm or death is guilty of a misdemeanor. ¹⁸

H. Statute of Limitations:

A prosecution for any felony must be commenced by the filing of the complaint or the finding of an indictment within five (5) years after its commission. ¹⁹
A prosecution for any misdemeanor must be commenced by the filing of the complaint or the finding of an indictment within one (1) year after its commission. ²⁰

I. Burden of Proof: Unknown.

J. Can Regulations Establish Standard of Care: Unknown.

K. Commission on Aging

The director of the commission shall have the authority to adopt, promulgate and enforce such rules as he deems necessary in carrying out the provisions of this chapter. ²¹

II. DAMAGES


B. Does Pain and Suffering of Decedent/Resident Survive Death

No. ²²

C. Attorney’s Fees Available

Yes and No. Attorney fees are not available by “merely proving the existence of elder abuse or neglect” but attorney fees are available if the plaintiff “is able to prove by an elevated standard (‘clear and convincing evidence’) that the defendant (i) committed abuse or neglect under the Elder Abuse Act and (ii) was guilty of recklessness, oppression, fraud, or malice in the commission of such abuse.”

III. LEGISLATION AFFECTING STATUTE

A. Pending: None known.

B. Anticipated: None known.

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23 Bickel v. Sunrise Assisted Living, 141 Cal. Rptr. 3d 586 (9th Cir. 2012).