I. Civil Statute Protecting Disabled Adults or Elders from Neglect, Abuse or Exploitation

South Dakota does not presently have a civil statute regarding the neglect, abuse or exploitation of disabled adults or elders.

II. Criminal Statute Protecting Disabled Adults or Elders from Neglect, Abuse or Exploitation

A. Conduct

Any person who abuses or neglects an elder or a disabled adult in a manner which does not constitute aggravated assault is guilty of a Class 6 felony. SDCL §22-46-2

1. Abuse: Physical harm, bodily injury, or attempt to cause physical harm or injury, or the infliction of fear of imminent physical harm or bodily injury on an elder or a disabled adult. SDCL §22-46-1

2. Adult With A Disability: A person eighteen years of age or older who suffers from a condition of intellectual disability, infirmities of aging as manifested by organic brain damage, advanced age, or other physical dysfunctioning to the extent that the person is unable to protect himself or herself or provide for his or her own care. SDCL §22-46-1

3. Elder: A person sixty-five years of age or older. SDCL §22-46-1

4. Exploitation: The wrongful taking or exercising of control over property of an elder or a disabled adult with intent to defraud the elder or disabled adult. SDCL §22-46-1

5. Neglect: Harm to an elder’s or a disabled adult’s health or welfare, without reasonable medical justification, caused by the conduct of a person responsible for the elder’s or disabled adult’s health or welfare, within the means available for the elder or disabled adult, including the failure to provide adequate food, clothing, shelter, or medical care. SDCL §22-46-1
B. Exclusions

The term, “neglect,” does not include a decision that is made to not seek medical care for an elder or disabled adult based upon the expressed desire of the elder or disabled adult; a decision to not seek medical care for an elder or disabled adult based upon a previously executed declaration, do-not-resuscitate order, or a power of attorney for health care; a decision to not seek medical care for an elder or disabled adult if otherwise authorized by law; or the failure to provide goods and services outside the means available for the elder or disabled adult. *SDCL §22-46-1.1*

C. Exploitation

Any person who, having assumed the duty by written contract, by receipt of payment for care, or by order of a court to provide for the support of an elder or a disabled adult, and having been entrusted with the property of that elder or disabled adult, with intent to defraud, appropriates such property to a use or purpose not in the due and lawful execution of that person’s trust, is guilty of theft by exploitation. Theft by exploitation is punishable as theft pursuant to chapter 22-30A. *SDCL §22-46-3*