

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 18

BY HEALTH AND WELFARE COMMITTEE

AN ACT

1 RELATING TO ADULT PROTECTIVE SERVICES; AMENDING SECTION 39-5301A, IDAHO  
2 CODE, TO REVISE TERMINOLOGY; AMENDING SECTION 39-5302, IDAHO CODE,  
3 TO REVISE DEFINITIONS; AMENDING SECTION 39-5303, IDAHO CODE, TO RE-  
4 VISE TERMINOLOGY AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION  
5 39-5304, IDAHO CODE, TO REVISE TERMINOLOGY AND TO MAKE TECHNICAL COR-  
6 RECTIONS; AMENDING SECTION 39-5305, IDAHO CODE, TO REVISE TERMINOLOGY  
7 AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 39-5306, IDAHO  
8 CODE, TO REVISE TERMINOLOGY; AMENDING SECTION 39-5308, IDAHO CODE, TO  
9 REVISE TERMINOLOGY AND TO MAKE A TECHNICAL CORRECTION; AMENDING SEC-  
10 TION 39-5309, IDAHO CODE, TO REVISE TERMINOLOGY; AND AMENDING SECTION  
11 67-5011, IDAHO CODE, TO REVISE PROVISIONS REGARDING SERVICES FOR VUL-  
12 NERABLE ADULTS.  
13

14 Be It Enacted by the Legislature of the State of Idaho:

15 SECTION 1. That Section 39-5301A, Idaho Code, be, and the same is hereby  
16 amended to read as follows:

17 39-5301A. DECLARATION OF POLICY. (1) It is the intent of the adult  
18 abuse, neglect and exploitation act to authorize the fewest possible re-  
19 strictions on the exercise of personal freedom and religious beliefs consis-  
20 tent with a vulnerable adult's need for services and to empower vulnerable  
21 adults to protect themselves.

22 (2) The legislature recognizes that vulnerable adults sometimes ex-  
23 perience difficulties managing their own affairs or are unable to protect  
24 themselves from abuse, neglect or exploitation. Often, vulnerable adults  
25 cannot find others who are able or willing to provide assistance.

26 (3) The commission is directed to investigate allegations of abuse,  
27 neglect, self-neglect or exploitation involving a vulnerable adult, to make  
28 appropriate referrals to law enforcement, and to arrange for the provision  
29 of necessary services. Further, the commission shall honor a vulnerable  
30 adult's freedom of choice and right to self-determination. When it becomes  
31 necessary for the commission to assist a vulnerable adult, actions shall be  
32 tempered by the requirements of due process and must place the fewest pos-  
33 sible restrictions on personal freedom. Services provided under this act  
34 are also intended to provide assistance to caregiving families experiencing  
35 difficulties in maintaining functionally impaired relatives in the house-  
36 hold.

37 (4) In the process of carrying out its adult ~~protection~~ protective ser-  
38 VICES responsibilities, the commission is directed to make effective use of  
39 multidisciplinary services available through any and all public agencies,  
40 community-based organizations, and informal resources.

1 SECTION 2. That Section 39-5302, Idaho Code, be, and the same is hereby  
2 amended to read as follows:

3 39-5302. DEFINITIONS. For the purposes of this chapter:

4 (1) "Abuse" means the intentional or negligent infliction of physical  
5 pain, injury or mental injury.

6 (2) "Caretaker" means any individual or institution that is responsi-  
7 ble by relationship, contract, or court order to provide food, shelter or  
8 clothing, or medical or other life-sustaining necessities to a vulnerable  
9 adult.

10 (3) "Commission" means the Idaho commission on aging, established pur-  
11 suant to chapter 50, title 67, Idaho Code.

12 (4) ~~"Contractor" means an area agency on aging and its duly authorized~~  
13 ~~agents and employees providing adult protection services pursuant to a con-~~  
14 ~~tract with the commission in accordance with section 67-5011, Idaho Code.~~  
15 ~~The commission designates area agencies on aging pursuant to 42 U.S.C.A.~~  
16 ~~3025(a)(2)(A) and may establish by rule when duties or obligations under~~  
17 ~~this chapter may be fulfilled by an area agency on aging.~~

18 ~~(5) "Department" means the Idaho department of health and welfare.~~

19 ~~(6) "Emergency" means an exigent circumstance in which a vulnerable~~  
20 ~~adult's health and safety is placed in imminent danger. Imminent danger is~~  
21 ~~when death or severe bodily injury could reasonably be expected to occur~~  
22 ~~without intervention.~~

23 ~~(7) "Exploitation" means an action which that may include, but is~~  
24 ~~not limited to, the unjust or improper use of a vulnerable adult's finan-~~  
25 ~~cial power of attorney, funds, property, or resources by another person for~~  
26 ~~profit or advantage.~~

27 ~~(8) "Neglect" means failure of a caretaker to provide food, clothing,~~  
28 ~~shelter or medical care reasonably necessary to sustain the life and health~~  
29 ~~of a vulnerable adult, or the failure of a vulnerable adult to provide those~~  
30 ~~services for himself.~~

31 ~~(9) "Provider" means an area agency on aging or a person or an entity~~  
32 ~~capable of providing adult protective services, including duly authorized~~  
33 ~~agents and employees.~~

34 (9) "Supportive services" means noninvestigatory remedial, social,  
35 legal, health, educational, mental health and referral services provided to  
36 a vulnerable adult.

37 (10) "Vulnerable adult" means a person eighteen (18) years of age or  
38 older who is unable to protect himself from abuse, neglect or exploitation  
39 due to physical or mental impairment which that affects the person's judg-  
40 ment or behavior to the extent that he lacks sufficient understanding or  
41 capacity to make or communicate or implement decisions regarding his person.

42 Nothing in this chapter shall be construed to mean a person is abused,  
43 neglected, or exploited for the sole reason he is relying upon treatment by  
44 spiritual means through prayer alone in accordance with the tenets and prac-  
45 tices of a recognized church or religious denomination; nor shall the provi-  
46 sions of this chapter be construed to require any medical care or treatment  
47 in contravention of the stated or implied objection of such a person.

48 SECTION 3. That Section 39-5303, Idaho Code, be, and the same is hereby  
49 amended to read as follows:

1           39-5303. DUTY TO REPORT CASES OF ABUSE, NEGLECT OR EXPLOITATION  
2 OF VULNERABLE ADULTS. (1) Any physician, nurse, employee of a public or  
3 private health facility, or a state\_licensed or certified residential fa-  
4 cility serving vulnerable adults, medical examiner, dentist, osteopath,  
5 optometrist, chiropractor, podiatrist, social worker, police officer,  
6 pharmacist, physical therapist, or home care worker who has reasonable cause  
7 to believe that a vulnerable adult is being or has been abused, neglected or  
8 exploited shall immediately report such information to the commission. Pro-  
9 vided however, that nursing facilities defined in section 39-1301(b), Idaho  
10 Code, and employees of such facilities shall make reports required under  
11 this chapter to the department. When there is reasonable cause to believe  
12 that abuse or sexual assault has resulted in death or serious physical injury  
13 jeopardizing the life, health or safety of a vulnerable adult, any person  
14 required to report under this section shall also report such information  
15 within four (4) hours to the appropriate law enforcement agency.

16           (2) Failure to report as provided under this section is a misdemeanor  
17 subject to punishment as provided in section 18-113, Idaho Code. If an em-  
18 ployee at a state licensed or certified residential facility fails to report  
19 abuse or sexual assault that has resulted in death or serious physical injury  
20 jeopardizing the life, health or safety of a vulnerable adult as provided un-  
21 der this section, the department shall also have the authority to:

- 22           (a) Revoke the facility's license and/or contract with the state to  
23 provide services;  
24           (b) Deny payment;  
25           (c) Assess and collect a civil monetary penalty with interest from the  
26 facility owner and/or facility administrator;  
27           (d) Appoint temporary management;  
28           (e) Close the facility and/or transfer residents to another certified  
29 facility;  
30           (f) Direct a plan of correction;  
31           (g) Ban admission of persons with certain diagnoses or requiring spe-  
32 cialized care;  
33           (h) Ban all admissions to the facility;  
34           (i) Assign monitors to the facility; or  
35           (j) Reduce the licensed bed capacity.

36 Any action taken by the department pursuant to this subsection shall be ap-  
37 pealable as provided in chapter 52, title 67, Idaho Code.

38           (3) Any person, including any officer or employee of a financial insti-  
39 tution, who has reasonable cause to believe that a vulnerable adult is being  
40 abused, neglected or exploited may report such information to the commission  
41 or its ~~contractors~~ providers.

42           (4) The commission and its ~~contractors~~ providers shall make training  
43 available to officers and employees of financial institutions in identify-  
44 ing and reporting instances of abuse, neglect or exploitation involving vul-  
45 nerable adults.

46           (5) Any person who makes any report pursuant to this chapter, or who  
47 testifies in any administrative or judicial proceeding arising from such re-  
48 port, or who is authorized to provide supportive or emergency services pur-  
49 suant to the provisions of this chapter, shall be immune from any civil or  
50 criminal liability on account of such report, testimony or services provided

1 in good faith, except that such immunity shall not extend to perjury, reports  
2 made in bad faith or with malicious purpose nor, in the case of provision  
3 of services, in the presence of gross negligence under the existing circum-  
4 stances.

5 (6) Any person who makes a report or allegation in bad faith, with mal-  
6 ice or knowing it to be false, shall be liable to the party against whom the  
7 report was made for the amount of actual damages sustained or statutory dam-  
8 ages in the amount of five hundred dollars (\$500), whichever is greater, plus  
9 attorney's fees and costs of suit. If the court finds that the defendant  
10 acted with malice or oppression, the court may award treble actual damages or  
11 treble statutory damages, whichever is greater.

12 SECTION 4. That Section 39-5304, Idaho Code, be, and the same is hereby  
13 amended to read as follows:

14 39-5304. REPORTING REQUIREMENTS, INVESTIGATION, EMERGENCY AC-  
15 CESS. (1) When a report is required pursuant to this chapter, such report  
16 shall be made immediately to the commission or appropriate ~~contractor~~  
17 provider. Provided however, that nursing facilities defined in section  
18 39-1301(b), Idaho Code, and employees of such facilities shall make reports  
19 required under this chapter to the department. If known, the report shall  
20 contain the name and address of the vulnerable adult; the caretaker; the  
21 alleged perpetrator; the nature and extent of suspected abuse, neglect or  
22 exploitation; and any other information that will be of assistance in the  
23 investigation.

24 (2) If the allegations in the report indicate that an emergency ex-  
25 ists, the commission or ~~contractor~~ provider must initiate an investigation  
26 immediately, and initiate contact with the alleged vulnerable adult within  
27 twenty-four (24) hours from the time the report is received. All other in-  
28 vestigations must be initiated within seventy-two (72) hours from the time  
29 the report is received.

30 (3) The investigation shall include a determination of the nature, ex-  
31 tent and cause of the abuse, neglect, or exploitation, examination of evi-  
32 dence and consultation with persons thought to have knowledge of the circum-  
33 stances, and identification, if possible, of the person alleged to be re-  
34 sponsible for the abuse, neglect or exploitation of the vulnerable adult.

35 (4) Where no emergency exists, the commission or ~~contractor~~ provider  
36 may determine, based on the review of the report and any initial inquiries,  
37 that an interview with the vulnerable adult is not necessary to the in-  
38 vestigation. If the commission or ~~contractor~~ provider determines that an  
39 interview is necessary, the preferred method of interviewing is by means  
40 of a personal visit with the vulnerable adult in the adult's dwelling. Al-  
41 ternatively, the interview may occur in the local office of the commission  
42 or ~~contractor~~ provider, or by telephone conversation, or by any other means  
43 available to the commission or ~~contractor~~ provider. Decisions regarding  
44 the method of conducting any interview will be within the discretion of the  
45 commission or ~~contractor~~ provider.

46 (5) Upon completion of an investigation, the commission or ~~contractor~~  
47 provider shall prepare a written report of the investigation. The name of  
48 the person making the original report or any person mentioned in the report  
49 shall not be disclosed unless those persons specifically request such dis-

1 closure or unless the disclosure is made pursuant to the commission's duty to  
 2 notify law enforcement as required in section 39-5310, Idaho Code, to a re-  
 3 quest to law enforcement for emergency access, a court order or hearing.

4 If the abuse, neglect, or exploitation is substantiated to have oc-  
 5 curred in a state-certified or licensed facility, a copy of the findings  
 6 shall be sent to the licensing and certification office of the department.

7 If the commission or ~~contractor~~ provider determines that a report is un-  
 8 substantiated and that no other law has been violated, all records related to  
 9 the report shall be expunged no later than three (3) years following the com-  
 10 pletion of the investigation.

11 SECTION 5. That Section 39-5305, Idaho Code, be, and the same is hereby  
 12 amended to read as follows:

13 39-5305. INSPECTIONS -- RIGHT OF ENTRY. (1) Upon receiving infor-  
 14 mation that a vulnerable adult is alleged to be abused, neglected, or  
 15 exploited, the commission or ~~contractor~~ provider shall cause such inves-  
 16 tigation to be made in accordance with the provisions of this chapter as is  
 17 appropriate. In making the investigation, the commission or ~~contractor~~  
 18 provider shall use its own resources and may enlist the cooperation of peace  
 19 officers. In an emergency, any authorized commission employee or ~~contractor~~  
 20 provider shall enlist the cooperation of a peace officer to ensure the safety  
 21 of the vulnerable adult, and ~~they~~ shall receive the peace officer's assis-  
 22 tance. Assistance in an emergency may include entry on private or public  
 23 property where a vulnerable adult is allegedly subject to abuse, neglect or  
 24 exploitation, and the removal and transportation of the vulnerable adult to  
 25 a medical facility, care-providing facility, or other appropriate and safe  
 26 environment.

27 (2) In a nonemergency, any peace officer may cooperate with an autho-  
 28 rized commission employee or ~~contractor~~ provider in ensuring the safety of  
 29 a vulnerable adult who has been abused, neglected or exploited, including  
 30 a vulnerable adult living in a condition of self-neglect. Assistance shall  
 31 ~~only~~ be provided only with the consent of the vulnerable adult or his legal  
 32 representative.

33 (3) For the purposes of implementing or enforcing any provision of this  
 34 chapter or any rule authorized under the provisions of this chapter, any duly  
 35 authorized commission employee or ~~contractor~~ provider may, upon presenta-  
 36 tion of appropriate credentials at any reasonable time, with consent or in  
 37 an emergency, enter upon any private or public property where a vulnerable  
 38 adult allegedly is subject to abuse, neglect, or exploitation.

39 (4) All inspections and searches conducted under the provisions of  
 40 this chapter shall be performed in conformity with the prohibitions against  
 41 unreasonable searches and seizures contained in the fourth amendment to the  
 42 constitution of the United States and article I, section 17, of the constitu-  
 43 tion of the state of Idaho. The state shall not, under the authority granted  
 44 in this chapter, conduct warrantless administrative searches of private  
 45 property except with consent, or in an emergency.

46 (5) If consent to entry is not given, a commission employee or  
 47 ~~contractor~~ provider with the assistance of the county prosecutor may obtain,  
 48 and any magistrate or district judge is authorized to issue, a search war-  
 49 rant upon showing that probable cause exists to believe a vulnerable adult

1 is subject to abuse, neglect or exploitation. Upon request of a commission  
2 employee or ~~contractor~~ provider, a peace officer shall serve the search war-  
3 rant.

4 SECTION 6. That Section 39-5306, Idaho Code, be, and the same is hereby  
5 amended to read as follows:

6 39-5306. SUPPORTIVE SERVICES AND DISCLOSURE. (1) If there is substan-  
7 tiated abuse, neglect, or exploitation of a vulnerable adult, the commission  
8 or ~~contractor~~ provider has the responsibility to assist the adult in obtain-  
9 ing available services.

10 (2) If the commission or ~~contractor~~ provider develops a plan of sup-  
11 portive services for the vulnerable adult, the plan shall provide for appro-  
12 priate supportive services available to the vulnerable adult that are least  
13 restrictive to personal freedom and shall provide encouragement for client  
14 self-determination and continuity of care.

15 (3) If the vulnerable adult does not consent to the receipt of reason-  
16 able and necessary supportive services, or if the vulnerable adult withdraws  
17 consent, services shall not be provided or continued.

18 (4) If the commission or ~~contractor~~ provider determines that a vulner-  
19 able adult is an incapacitated person, as defined in section 15-5-101(a),  
20 Idaho Code, mentally ill as defined in section 66-317, Idaho Code, or devel-  
21 opmentally disabled as defined in section 66-402, Idaho Code, the commis-  
22 sion or ~~contractor~~ provider may petition the court for protective proceed-  
23 ings, appointment of a guardian or conservator and such other relief as may  
24 be provided by chapter 5, title 15, Idaho Code, and chapters 3 and 4, title  
25 66, Idaho Code.

26 (5) An employee or ~~contractor~~ provider of the commission shall not be  
27 appointed the guardian or conservator of a vulnerable adult unless the com-  
28 mission employee or ~~contractor~~ provider has a spousal or familial relation-  
29 ship with the vulnerable adult.

30 SECTION 7. That Section 39-5308, Idaho Code, be, and the same is hereby  
31 amended to read as follows:

32 39-5308. INTERAGENCY COOPERATION. (1) In performing the duties set  
33 forth in this chapter, the commission or ~~contractor~~ provider may request the  
34 assistance of the staffs and resources of all appropriate state departments,  
35 agencies and commissions, and local health directors, and may utilize any  
36 other public or private agencies, groups or individuals who are appropri-  
37 ate and who may be available. Interagency cooperation shall include the  
38 involvement, when appropriate, of law enforcement personnel, department  
39 personnel, medical personnel, and any other person or entity deemed neces-  
40 sary due to their specialized training in providing services to vulnerable  
41 adults. Interagency cooperation may also include access to client informa-  
42 tion necessary for the provision of services to vulnerable adults.

43 (2) The commission shall provide to the department on at least a quar-  
44 terly basis a listing of all alleged perpetrators against whom an allegation  
45 of adult abuse, neglect or exploitation has been substantiated. Upon re-  
46 quest, all available supportive information shall be provided to enable the

1 department to conduct criminal background checks and other required inves-  
2 tigations.

3 (3) The department shall provide to the commission or ~~contractor~~  
4 provider any report received under this chapter from a nursing facility de-  
5 fined in section 39-1301(b), Idaho Code, or an employee of such facility.

6 (4) The commission or ~~contractor~~ provider shall provide the department  
7 with any report received under this chapter involving allegations of abuse,  
8 neglect or exploitation occurring in a nursing facility as defined in sec-  
9 tion 39-1301(b), Idaho Code.

10 (5) The commission, ~~contractors~~ providers, and the department shall  
11 use interagency staffing when necessary and share client and facility infor-  
12 mation necessary to provide services to vulnerable adults.

13 SECTION 8. That Section 39-5309, Idaho Code, be, and the same is hereby  
14 amended to read as follows:

15 39-5309. COORDINATION OF SERVICES. Subsequent to the authorization  
16 for the provision of reasonable and necessary emergency and support ser-  
17 vices, the commission or ~~contractor~~ provider shall initiate a review of each  
18 case at reasonable intervals over a reasonable period of time as the commis-  
19 sion or ~~contractor~~ provider deems necessary based upon the circumstances in  
20 each individual case to determine whether continuation or modification of  
21 the services provided is warranted. A decision to continue the provision  
22 of such services should be made in concert with appropriate personnel from  
23 state agencies, departments, service providers and others, and shall comply  
24 with the consent provisions of this chapter.

25 SECTION 9. That Section 67-5011, Idaho Code, be, and the same is hereby  
26 amended to read as follows:

27 67-5011. ADULT PROTECTION PROTECTIVE SERVICES. Adult ~~protection~~  
28 protective services for vulnerable adults shall be administered through  
29 the commission. Adult ~~protection~~ protective services are specialized so-  
30 cial services directed toward assisting vulnerable adults who are unable  
31 to manage their own affairs, carry out the activities of daily living or  
32 protect themselves from abuse, neglect or exploitation. ~~Provision of ser-~~  
33 ~~vices may be accomplished by contracting with each of the commission's local~~  
34 ~~area agencies on aging.~~ For the purposes of implementing the provisions  
35 of this section, the commission shall assume all responsibilities cited  
36 in chapter 53, title 39, Idaho Code, entitled "Aadult Aabuse, Nneglect and  
37 Exploitation Aact."