

Date: March 15, 2019  
To: Tami Cirerol, Adult Protective Services Revitalization Project  
From: Mary Holden, Representing the Justice Alliance for Vulnerable Adults (JAVA)



Thank you for including the Justice Alliance for Vulnerable Adults (JAVA) in the Adult Protective Services (APS) Revitalization Project. JAVA commends the APS Revitalization Project and the Commission on Aging (ICOA) for moving forward the protections for individuals who are at risk of abuse and exploitation in our state.

The specific charge given to the workgroup JAVA was involved in was *to examine the advantages and disadvantages of including an age-related provision in the definition of a “vulnerable adult”*. Stakeholders participating in this workgroup included prosecutors, physicians, disability advocates and law enforcement.

The JAVA network was established in 2010 with support from the National Committee on Elder Abuse. The mission of the alliance is to strengthen community partnerships and resource networks to ensure dignity, safety and quality of life for vulnerable adults through advocacy, education, intervention, prevention and policy development. JAVA hosts monthly meetings and an annual Summit designed for social service providers, organizations and agencies providing support and services to vulnerable adults, law enforcement, attorneys, members of the judiciary and others.

JAVA participated in the APS Revitalization Project by examining the Idaho Vulnerable Adult Statute from the perspective of professionals who deliver services to vulnerable adults, law enforcement, attorneys, and individuals and their families who have experienced abuse and exploitation. The entities involved in JAVA respectfully submit the following findings.

The current definition for a vulnerable adult in Idaho is:

*“Vulnerable adult” means 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 judgement or behavior to the extent that he lacks sufficient understanding or capacity to make or communicate or implement decisions regarding his person, funds, property or resources.”*

One of the first steps taken was to identify statute language in neighboring states and compare it to Idaho’s vulnerable adult statute, see Table. Idaho is the only state in our geographic area that does **not** include an age-related criterion when defining potential vulnerability for older adults. All of the states reviewed also identified enhanced penalties for crimes targeting older adults.

State	Statute Number	Age Related Criteria	Terminology
Washington	74-34-020	60 and older	Vulnerable Adult
Utah	76-5-111	65 and older	Elder Adult
Colorado	18-6.5-102	70 and older	At Risk Elder
Wyoming	6-2-507	60 and older	Vulnerable Adult

State	Statute Number	Age Related Criteria	Terminology
Montana	52-3-804	60 and older	Vulnerable Adult
Nevada	3-41-4.1395	60 and older	Older Persons
Oregon	13-124.005	65 and older	Older Adult
California	368-15610.27	65 and older	18-64 Dependent Adults 65 and over Elder Adults

The addition of an age criteria in a statute provides the legal system with a baseline for prosecution and avoids the need to “prove” vulnerability which can be difficult and costly. Members of the work group (and JAVA) frequently speak about the lack of clarity of the definition of a vulnerable adult. The term most often used was describe the existing statute was “vague”.

- This vagueness makes it difficult to prosecute cases and apply enhanced penalties.
  - Prosecutors talk about the challenge of establishing vulnerability particularly when the victim does not perceive themselves to be vulnerable although the situation indicates manipulation, abuse or exploitation.
  - The challenge of establishing vulnerability often results in crimes against older adults being prosecuted as theft or grand theft rather than cases of elder abuse and exploitation. This leaves the prosecution without the ability to apply enhanced penalties to the criminal act.
- The lack of clarity in the existing statute also presents a challenge to professionals who are mandatory reporters. A lack of a clear definition makes reporting suspected cases of abuse of exploitation more challenging.

While the current definition of a vulnerable adult addresses those who are unable to protect themselves due to a physical or mental impairment it does not include older adults who are at increased risk due to normal processes of aging, i.e., changes in cognition and executive (frontal lobe) function. It is essential that the rights and freedoms of older adults be balanced with the need to assure safety and security. Recognition of the potential vulnerability of older adults has been addressed at the federal level with the passage of the Elder Justice Act in 2010. This Act recognizes the need to “prevent, detect, treat, understand, intervene in and, where appropriate, prosecute **elder abuse, neglect and exploitation.**” This law and most state statutes identify individuals who are older as vulnerable. Including an age-related criteria in the Idaho Statute would add clarity and assure prosecution of those who target older adults.

Undue influence is also not mentioned in the statute. Many stakeholders recognized this as a major cause of exploitation of vulnerable adults. (Undue influence occurs when a person uses their relationship or power to exploit, or knowingly assist or cause another to exploit, the trust, dependency, or fear of a vulnerable adult.) It is recommended that language related to undue influence be added to the Idaho Statute.

In closing, we applaud the work APS and the ICOA to update the statute and revitalize the system of supports and protections available to vulnerable adults. We hope our recommendations to add an age criteria and to define undue influence in the statute will be considered as you move forward with your efforts.