

SENATE BILL NO. 324

INTRODUCED BY T. JACOBSON

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A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE DEFINITION OF "ABUSE" IN THE MONTANA ELDER AND PERSONS WITH DEVELOPMENTAL DISABILITIES ABUSE PREVENTION ACT TO INCLUDE CAUSING PERSONAL DEGRADATION BY PUBLISHING OR DISTRIBUTING CERTAIN PHOTOGRAPHS OR VIDEOS; DEFINING "PERSONAL DEGRADATION"; CREATING A PENALTY FOR CAUSING PERSONAL DEGRADATION; AMENDING SECTIONS 52-3-803 AND 52-3-825, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**Section 1.** Section 52-3-803, MCA, is amended to read:

**"52-3-803. Definitions.** As used in this part, the following definitions apply:

(1) "Abuse" means:

(a) the infliction of physical or mental injury; ~~or~~

(b) the deprivation of food, shelter, clothing, or services necessary to maintain the physical or mental health of an older person or a person with a developmental disability without lawful authority. A declaration made pursuant to 50-9-103 constitutes lawful authority.

(c) the causing of personal degradation of an older person or a person with a developmental disability residing in a long-term care facility.

(2) "Department" means the department of public health and human services provided for in 2-15-2201.

(3) "Exploitation" means:

(a) the unreasonable use of an older person or a person with a developmental disability or of a power of attorney, conservatorship, or guardianship with regard to an older person or a person with a developmental disability in order to obtain control of or to divert to the advantage of another the ownership, use, benefit, or possession of or interest in the person's money, assets, or property by means of deception, duress, menace, fraud, undue influence, or intimidation with the intent or result of permanently depriving the older person or person with a developmental disability of the ownership, use, benefit, or possession of or interest in the person's money, assets, or property;

1 (b) an act taken by a person who has the trust and confidence of an older person or a person with a  
2 developmental disability to obtain control of or to divert to the advantage of another the ownership, use, benefit,  
3 or possession of or interest in the person's money, assets, or property by means of deception, duress, menace,  
4 fraud, undue influence, or intimidation with the intent or result of permanently depriving the older person or person  
5 with a developmental disability of the ownership, use, benefit, or possession of or interest in the person's money,  
6 assets, or property;

7 (c) the unreasonable use of an older person or a person with a developmental disability or of a power  
8 of attorney, conservatorship, or guardianship with regard to an older person or a person with a developmental  
9 disability done in the course of an offer or sale of insurance or securities in order to obtain control of or to divert  
10 to the advantage of another the ownership, use, benefit, or possession of the person's money, assets, or property  
11 by means of deception, duress, menace, fraud, undue influence, or intimidation with the intent or result of  
12 permanently depriving the older person or person with a developmental disability of the ownership, use, benefit,  
13 or possession of the person's money, assets, or property.

14 (4) "Incapacitated person" has the meaning given in 72-5-101.

15 (5) "Long-term care facility" means a facility defined in 50-5-101.

16 (6) "Mental injury" means an identifiable and substantial impairment of a person's intellectual or  
17 psychological functioning or well-being.

18 (7) "Neglect" means the failure of a person who has assumed legal responsibility or a contractual  
19 obligation for caring for an older person or a person with a developmental disability or who has voluntarily  
20 assumed responsibility for the person's care, including an employee of a public or private residential institution,  
21 facility, home, or agency, to provide food, shelter, clothing, or services necessary to maintain the physical or  
22 mental health of the older person or the person with a developmental disability.

23 (8) "Older person" means a person who is at least 60 years of age.

24 (9) "Person with a developmental disability" means a person 18 years of age or older who has a  
25 developmental disability, as defined in 53-20-102.

26 (10) "Personal degradation" means publication or distribution of a printed or electronic photograph or  
27 video of an older person or a person with a developmental disability when the person publishing or distributing  
28 intends to demean or humiliate the older person or person with a developmental disability or knows or reasonably  
29 should know that the publication or distribution would demean or humiliate a reasonable person. Personal  
30 degradation does not include the recording and dissemination of images or video for treatment, diagnosis,

1 regulatory compliance, or law enforcement purposes, as part of an investigation into a long-term care facility, or  
 2 in accordance with a long-term care facility or program's confidentiality policy and release of information or  
 3 consent policy.

4 ~~(10)(11)~~ "Physical injury" means death, permanent or temporary disfigurement, or impairment of any  
 5 bodily organ or function.

6 ~~(11)(12)~~ "Sexual abuse" means the commission of sexual assault, sexual intercourse without consent,  
 7 indecent exposure, deviate sexual conduct, incest, or sexual abuse of children as described in Title 45, chapter  
 8 5, part 5, and Title 45, chapter 8, part 2."

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10 **Section 2.** Section 52-3-825, MCA, is amended to read:

11 **"52-3-825. Penalties.** (1) A person who purposely or knowingly fails to make a report required by  
 12 52-3-811 or discloses or fails to disclose the contents of a case record or report in violation of 52-3-813 is guilty  
 13 of an offense and upon conviction is punishable as provided in 46-18-212.

14 (2) (a) ~~A~~ Except as provided in subsection (2)(c), a person who purposely or knowingly abuses, sexually  
 15 abuses, or neglects an older person or a person with a developmental disability is guilty of a felony and shall be  
 16 imprisoned for a term not to exceed 10 years and be fined an amount not to exceed \$10,000, or both.

17 (b) (i) ~~A~~ Except as provided in subsection (2)(c), a person who negligently abuses an older person or a  
 18 person with a developmental disability is guilty of a misdemeanor and upon a first conviction shall be fined an  
 19 amount not to exceed \$1,000 or be imprisoned in the county jail for a term not to exceed 1 year, or both.

20 (ii) Upon a second or subsequent conviction of the conduct described in subsection (2)(b)(i), the person  
 21 is guilty of a felony and shall be imprisoned for a term not to exceed 10 years and be fined an amount not to  
 22 exceed \$10,000, or both.

23 (c) (i) A person who causes personal degradation to an older person or a person with a developmental  
 24 disability residing in a long-term care facility is, for a first offense, guilty of a misdemeanor and shall be imprisoned  
 25 in the county jail for a term not to exceed 6 months or be fined an amount not to exceed \$500, or both;

26 (ii) Upon a second or subsequent conviction of the conduct described in subsection (2)(c)(i), the person  
 27 is guilty of a felony and shall be imprisoned for a term not to exceed 10 years or be fined an amount not to exceed  
 28 \$10,000, or both.

29 ~~(e)(d)~~ A person with a developmental disability may not be charged under subsection (2)(a) ~~or (2)(b)~~  
 30 through (2)(c)."

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2           NEW SECTION. **Section 3. Effective date.** [This act] is effective on passage and approval.

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