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SENATE BILL NO. 34

INTRODUCED BY R. LYNCH

BY REQUEST OF THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATING TO THE PROTECTION OF VULNERABLE ADULTS; REVISING TERMINOLOGY RELATED TO PROTECTIVE SERVICES; DEFINING "VULNERABLE ADULT"; REQUIRING ADDITIONAL PROFESSIONALS TO REPORT ABUSE, SEXUAL ABUSE, NEGLECT, OR EXPLOITATION OF A VULNERABLE ADULT; PROVIDING A PENALTY FOR FALSE REPORTING; AND AMENDING SECTIONS 30-14-144, 42-3-204, 45-6-333, 46-16-222, 50-5-1104, 52-1-103, 52-3-201, 52-3-202, 52-3-203, 52-3-204, 52-3-206, 52-3-207, 52-3-801, 52-3-802, 52-3-803, 52-3-804, 52-3-805, 52-3-811, 52-3-812, 52-3-813, 52-3-814, 52-3-815, 52-3-821, AND 52-3-825, MCA."

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

**Section 1.** Section 30-14-144, MCA, is amended to read:

**"30-14-144. Additional penalty for unfair or deceptive act committed against ~~elder person or developmentally disabled person~~ vulnerable adult.** (1) In addition to any civil penalty imposed pursuant to 30-14-142, a person who engages in a practice unlawful under 30-14-103 and whose conduct is perpetrated against ~~an elder person or against a developmentally disabled person~~ a vulnerable adult is liable for an additional civil penalty not to exceed \$10,000 for each violation if the court finds that:

(a) the person knew or should have known that the person's conduct was directed toward one or more ~~elder or developmentally disabled persons~~ vulnerable adults; or

(b) the person's conduct caused ~~an elder or developmentally disabled person~~ a vulnerable adult to suffer one of the following:

- (i) loss or encumbrance of a primary residence;
- (ii) loss of principal employment or other source of income;
- (iii) substantial loss of property set aside for retirement or for personal or family care and

1 maintenance;

2 (iv) substantial loss of payments received under a pension or retirement plan or a government  
3 benefits program; or

4 (v) loss of assets essential to the health or welfare of the ~~elder or disabled person~~ vulnerable adult.

5 (2) Damages awarded in an action under 30-14-133 must be given priority over imposition of civil  
6 penalties ordered by the court under this section.

7 ~~(3) As used in this section:~~

8 ~~(a) "developmentally disabled person" means a person with a developmental disability as defined in  
9 53-20-102 ; and~~

10 ~~(b) "older person" has the meaning provided in 52-3-803.~~

11 (3) As used in this section, "vulnerable adult" has the meaning provided in 52-3-803."

12

13 **Section 2.** Section 42-3-204, MCA, is amended to read:

14 **"42-3-204. Contents of preplacement evaluation.** (1) The preplacement evaluation report must  
15 contain the following information if available:

16 (a) age and date of birth, nationality, racial or ethnic background, and any religious affiliation;

17 (b) marital status and family history, including the age and location of any child of the individual  
18 and the identity of and relationship to anyone else living in the individual's household;

19 (c) physical and mental health and any history of abuse of alcohol or drugs;

20 (d) educational and employment history and any special skills;

21 (e) property and income, including outstanding financial obligations as indicated in a current credit  
22 report or financial statement furnished by the individual;

23 (f) any previous request for an evaluation or involvement in an adoptive placement and the  
24 outcome of the evaluation or placement;

25 (g) whether the individual has been charged with or convicted of domestic violence or has been  
26 involved in a substantiated charge of child abuse or neglect or ~~elder~~ abuse or neglect of a vulnerable adult as  
27 defined in 52-3-803 and the disposition of the charges;

28 (h) whether the individual is subject to a court order restricting the individual's right to custody or

1 visitation with a child;

2 (i) whether the individual has been convicted of a crime other than a minor traffic violation;

3 (j) whether the individual has located a parent interested in placing a child with the individual for  
4 adoption and, if so, a brief description of the parent and the child; and

5 (k) any other fact or circumstance that may be relevant in determining whether the individual is  
6 suited to be an adoptive parent, including the quality of the environment in the individual's home and the  
7 functioning of other children in the individual's household.

8 (2) The report must contain recommendations regarding the suitability of the subject of the study to  
9 be an adoptive parent.

10 (3) A preplacement evaluation is valid for 1 year following its date of completion and must be  
11 updated if there is a significant change in circumstances.

12 (4) Prior to accepting physical custody of a child for purposes of adoption, a prospective adoptive  
13 parent must have the preplacement evaluation completed by the evaluator, and the evaluation must specifically  
14 address the appropriateness of placing the specifically identified child or children who will be the subject of the  
15 adoption proceedings with the prospective adoptive parent."

16

17 **Section 3.** Section 45-6-333, MCA, is amended to read:

18 **"45-6-333. Exploitation of ~~elder person, incapacitated person, or person with developmental~~**  
19 **~~disability~~ incapacitated person or vulnerable adult.** (1) A person commits the offense of exploitation of an  
20 ~~elder person, an incapacitated person, or a person with a developmental disability~~ an incapacitated person or  
21 vulnerable adult if the person:

22 (a) purposely or knowingly obtains or uses or attempts to obtain or use ~~an elder person's,~~  
23 ~~incapacitated person's, or developmentally disabled person's~~ an incapacitated person's or vulnerable adult's  
24 funds, assets, or property with the intent to temporarily or permanently deprive the ~~elder person, incapacitated~~  
25 ~~person, or developmentally disabled person~~ incapacitated person or vulnerable adult of the use, benefit, or  
26 possession of funds, assets, or property or to benefit someone other than the ~~elder person, incapacitated~~  
27 ~~person, or developmentally disabled person~~ incapacitated person or vulnerable adult by means of deception,  
28 duress, menace, fraud, undue influence, or intimidation; and

1 (b) (i) stands in a position of trust or confidence with the ~~elder person, incapacitated person, or~~  
2 ~~developmentally disabled person~~ incapacitated person or vulnerable adult; or

3 (ii) has a business relationship with the ~~elder person, incapacitated person, or developmentally~~  
4 ~~disabled person~~ incapacitated person or vulnerable adult.

5 (2) A person commits the offense of exploitation of ~~an elder person, an incapacitated person, or a~~  
6 ~~person with a developmental disability~~ an incapacitated person or vulnerable adult if the person:

7 (a) purposely or knowingly obtains personal identifying information of ~~another person~~ the  
8 incapacitated person or vulnerable adult and uses that information for any unlawful purpose, including to obtain  
9 or attempt to obtain credit, goods, services, financial information, or medical information in the name of the  
10 ~~other person~~ incapacitated person or vulnerable adult without the consent of the ~~other person~~ incapacitated  
11 person or vulnerable adult; and

12 (b) (i) stands in a position of trust or confidence with the ~~elder person, incapacitated person, or~~  
13 ~~developmentally disabled person~~ incapacitated person or vulnerable adult; or

14 (ii) has a business relationship with the ~~elder person, incapacitated person, or developmentally~~  
15 ~~disabled person~~ incapacitated person or vulnerable adult.

16 (3) A person convicted of the offense of exploitation of ~~an elder person, an incapacitated person,~~  
17 ~~or a person with a developmental disability~~ an incapacitated person or vulnerable adult shall be fined an  
18 amount not to exceed \$10,000 or be imprisoned in a state prison for a term not to exceed 10 years, or both.

19 (4) As used in this section, the following definitions apply:

20 ~~(a) "Developmental disability" has the meaning provided in 53-20-102.~~

21 ~~(b)~~(a) "Incapacitated person" has the meaning provided in 72-5-101.

22 (b) "Vulnerable adult" has the meaning provided in 52-3-803.

23 ~~(c) "Older person" means a person who is 65 years of age or older."~~

24

25 **Section 4.** Section 46-16-222, MCA, is amended to read:

26 **"46-16-222. Testimony of third person in cases of exploitation of ~~elder person, incapacitated~~**  
27 **~~person, or developmentally disabled person~~ incapacitated person or vulnerable adult.** (1) Otherwise  
28 inadmissible hearsay may be admitted into evidence in a criminal proceeding, as provided in subsections (2)

1 and (3), if:

2 (a) the declarant of the out-of-court statement is ~~an older person, an incapacitated person, or an~~  
3 ~~individual with a developmental disability~~ an incapacitated person or vulnerable adult who is:

4 (i) an alleged victim of exploitation of ~~an older person, incapacitated person, or developmentally~~  
5 ~~disabled person~~ an incapacitated person or vulnerable adult pursuant to 45-6-333 that is the subject of the  
6 criminal proceeding; or

7 (ii) a witness to an alleged exploitation of ~~an older person, incapacitated person, or~~  
8 ~~developmentally disabled person~~ an incapacitated person or vulnerable adult pursuant to 45-6-333 that is the  
9 subject of the criminal proceeding;

10 (b) the court finds that the time, content, and circumstances of the statement provide circumstantial  
11 guarantees of trustworthiness;

12 (c) the ~~older person, the incapacitated person, or the individual with a developmental disability~~  
13 incapacitated person or vulnerable adult is unavailable as a witness;

14 (d) the hearsay testimony is offered as evidence of a material fact and is more probative on the  
15 point for which it is offered than any other evidence available through reasonable efforts; and

16 (e) the party intending to offer the hearsay testimony gives sufficient notice to provide the adverse  
17 party with a fair opportunity to prepare. The notice must include the content of the statement, the approximate  
18 time, date, and location of the statement, the person to whom the statement was made, and the circumstances  
19 surrounding the statement that the offering party believes support the statement's reliability.

20 (2) The court shall issue findings of fact and conclusions of law setting forth the court's reasoning  
21 on the admissibility of the testimony.

22 (3) When deciding the admissibility of offered hearsay testimony under subsections (1) and (2), a  
23 court shall consider the following:

24 (a) the attributes of the hearsay declarant, including:

25 (i) the individual's age;

26 (ii) the individual's ability to communicate verbally;

27 (iii) the individual's ability to comprehend the statements or questions of others;

28 (iv) the individual's ability to tell the difference between truth and falsehood;

1 (v) the individual's motivation to tell the truth, including whether the individual understands the  
2 general obligation to speak truthfully and not fabricate stories;

3 (vi) whether the individual possessed sufficient mental capacity at the time of the alleged incident  
4 to create an accurate memory of the incident; and

5 (vii) whether the individual possesses sufficient memory to retain an independent recollection of the  
6 events at issue;

7 (b) information regarding the witness who is relating the individual's hearsay statement, including:

8 (i) the witness's relationship to the individual;

9 (ii) whether the relationship between the witness and the individual has an impact on the  
10 trustworthiness of the individual's hearsay statement;

11 (iii) whether the witness has a motive to fabricate or distort the individual's statement; and

12 (iv) the circumstances under which the witness heard the individual's statement, including the  
13 timing of the statement in relation to the incident at issue and the availability of another person in whom the  
14 individual could confide;

15 (c) information regarding the individual's statement, including:

16 (i) whether the statement contains knowledge not normally attributed to an individual of the  
17 declarant's age;

18 (ii) whether the statement was spontaneous;

19 (iii) the suggestiveness of statements by other persons to the individual at the time that the  
20 individual made the statement;

21 (iv) if statements were made by the individual to more than one person, whether those statements  
22 were consistent;

23 (v) the nearness in time of the statement to the incident at issue; and

24 (vi) whether the statement is testimonial or nontestimonial in character; and

25 (d) other considerations that in the judge's opinion may bear on the admissibility of the individual's  
26 hearsay testimony.

27 (4) As used in this section, the following definitions apply:

28 (a) ~~"Developmental disability" has the meaning provided in 53-20-102.~~

1           ~~(b)~~(a) "Incapacitated person" has the meaning provided in 72-5-101.

2           (b) "Vulnerable adult" has the meaning provided in 52-3-803.

3           ~~(c) "Older person" means a person who is 65 years of age or older."~~

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5           **Section 5.** Section 50-5-1104, MCA, is amended to read:

6           **"50-5-1104. Rights of long-term care facility residents.** (1) The state adopts by reference for all  
7 long-term care facilities the rights for long-term care facility residents applied by the federal government to  
8 facilities that provide skilled nursing care or intermediate nursing care and participate in a medicaid or medicare  
9 program (42 U.S.C. 1395i-3(a) and 1396r(a), as implemented by regulation).

10           (2) In addition to the rights adopted under subsection (1), the state adopts for all residents of long-  
11 term care facilities the following rights:

12           (a) A resident or the resident's authorized representative must be informed by the facility at least  
13 30 days in advance of any changes in the cost or availability of services, unless to do so is beyond the facility's  
14 control.

15           (b) Regardless of the source of payment, each resident or the resident's authorized representative  
16 is entitled, upon request, to receive and examine an explanation of the resident's monthly bill.

17           (c) Residents have the right to organize, maintain, and participate in resident advisory councils.  
18 The facility shall afford reasonable privacy and facility space for the meetings of the councils.

19           (d) A resident has the right to present a grievance on the resident's own behalf or that of others to  
20 the facility or the resident advisory council. The facility shall establish written procedures for receiving, handling,  
21 and informing residents or the resident advisory council of the outcome of any grievance presented.

22           (e) A resident has the right to ask a state agency or a resident advocate for assistance in resolving  
23 grievances, free from restraint, interference, or reprisal.

24           (f) During a resident's stay in a long-term care facility, the resident retains the prerogative to  
25 exercise decisionmaking rights in all aspects of the resident's health care, including placement and treatment  
26 issues such as medication, special diets, or other medical regimens.

27           (g) The resident's authorized representative must be notified in a prompt manner of any significant  
28 accident, unexplained absence, or significant change in the resident's health status.

1 (h) A resident has the right to be free from verbal, mental, and physical abuse, neglect, or financial  
 2 exploitation. Facility staff shall report to the department and the long-term care ombudsman any suspected  
 3 incidents of abuse under the Montana ~~Elder and Persons With Developmental Disabilities Abuse Prevention~~  
 4 ~~Act~~ Vulnerable Adult Prevention of Abuse Act, Title 52, chapter 3, part 8.

5 (i) Each resident has the right to privacy in the resident's room or portion of the room. If a resident  
 6 is seeking privacy in the resident's room, staff members should make reasonable efforts to make their presence  
 7 known when entering the room.

8 (j) In case of involuntary transfer or discharge, a resident has the right to reasonable advance  
 9 notice to ensure an orderly transfer or discharge. Reasonable advance notice requires at least 21 days' written  
 10 notification of any interfacility transfer or discharge except in cases of emergency or for medical reasons  
 11 documented in the resident's medical record by the attending physician.

12 (k) If clothing is provided to the resident by the facility, it must be of reasonable fit.

13 (l) A resident has the right to reasonable safeguards for personal possessions brought to the  
 14 facility. The facility shall provide a means for safeguarding the resident's small items of value in the resident's  
 15 room or in another part of the facility where the resident must have reasonable access to the items.

16 (m) The resident has the right to have all losses or thefts of personal possessions promptly  
 17 investigated by the facility. The results of the investigation must be reported to the affected resident.

18 (3) The administrator of the facility shall adopt whatever additional measures are necessary to  
 19 implement the residents' rights listed in subsections (1) and (2) and meet any other requirements relating to  
 20 residents' health and safety that are conditions of participation in a state or federal program of medical  
 21 assistance."

22

23 **Section 6.** Section 52-1-103, MCA, is amended to read:

24 **"52-1-103. Powers and duties of department.** The department shall:

25 (1) administer and supervise all forms of child and adult protective services;

26 (2) act as the lead agency in coordinating and planning services to children with multiagency  
 27 service needs;

28 (3) establish a system of councils at the state and local levels to make recommendations and to



- 1 advise the department on issues, including children's issues;
- 2 (4) provide the following functions, as necessary, for youth in need of care:
- 3 (a) intake, investigation, case management, and client supervision;
- 4 (b) placement in youth care facilities;
- 5 (c) contracting for necessary services;
- 6 (d) protective services day care; and
- 7 (e) adoption;
- 8 (5) register or license youth care facilities, child-placing agencies, day-care facilities, community
- 9 homes for persons with developmental disabilities, community homes for severely disabled persons, and adult
- 10 foster care facilities;
- 11 (6) act as lead agency in implementing and coordinating child-care programs and services under
- 12 the Montana Child Care Act;
- 13 (7) administer the Interstate Compact for the Placement of Children;
- 14 (8) (a) administer child abuse prevention services funded through child abuse grants and the
- 15 Montana children's trust fund provided for in Title 52, chapter 7, part 1; and
- 16 (b) administer ~~elder~~ vulnerable adult abuse prevention services;
- 17 (9) develop a statewide youth services and resources plan that takes into consideration local
- 18 needs;
- 19 (10) administer services to the aged;
- 20 (11) provide consultant services to:
- 21 (a) facilities providing care for adults who are needy, indigent, or dependent or who have
- 22 disabilities; and
- 23 (b) youth care facilities;
- 24 (12) use the staff and services of other state agencies and units of the Montana university system,
- 25 within their respective statutory functions, to carry out its functions under this title;
- 26 (13) contract, as necessary, for administration of child and adult protection services for each county;
- 27 and
- 28 (14) adopt rules necessary to carry out the purposes of 52-2-612 and this chapter."

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**Section 7.** Section 52-3-201, MCA, is amended to read:

**"52-3-201. Short title.** This part may be cited as the "Protective Services Act for ~~Aged Persons or Disabled Vulnerable~~ Adults"."

**Section 8.** Section 52-3-202, MCA, is amended to read:

**"52-3-202. Definitions.** As used in this part, the following definitions apply:

~~(1) "Aged person" means an aged person as defined by the department.~~

~~(2)(1) "Department" means the department of public health and human services provided for in 2-15-2201.~~

~~(3) "Disabled adult" means a person 18 years of age or older who is defined by the department as disabled or who is a person with developmental disabilities, as defined in 53-20-102.~~

~~(4)(2) "Protective services" means assistance to an aged person or disabled adult in obtaining the services offered by the department emergency services that are provided in a coordinated effort by the department to a vulnerable adult in order to prevent or terminate the abuse, neglect, exploitation, intimidation, or abandonment of the vulnerable adult.~~

~~(3) "Vulnerable adult" has the meaning provided for in 52-3-803."~~

**Section 9.** Section 52-3-203, MCA, is amended to read:

**"52-3-203. Purpose.** To ensure that ~~aged persons or disabled~~ vulnerable adults in the state ~~be~~ are afforded the opportunity to receive protective services and to implement certain provisions of the federal government's Title XX, Social Services Amendments of 1972, ~~this~~ the legislature declares that the department ~~to be recognized as~~ is the public agency responsible for providing ~~these~~ protective services."

**Section 10.** Section 52-3-204, MCA, is amended to read:

**"52-3-204. Duties of department.** The department ~~shall be~~ is responsible for acting on requests for protective services from ~~aged persons or disabled~~ vulnerable adults or from relatives, friends, or other reputable persons requesting ~~these~~ the services on behalf of ~~an aged person or disabled~~ a vulnerable adult."

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**Section 11.** Section 52-3-206, MCA, is amended to read:

**"52-3-206. Annual reports.** The department shall make annual reports on the number of people served by this part and the type of protective services made available to the ~~aged persons and disabled~~ vulnerable adults of Montana."

**Section 12.** Section 52-3-207, MCA, is amended to read:

**"52-3-207. Protective services not creating guardianship or conservatorship.** (1) The provision of protective services does not create a guardianship or conservatorship relationship between the department and the ~~aged person or disabled~~ vulnerable adult ~~unless a guardianship or conservatorship is created in accordance with the requirements of Title 72, chapter 5, part 3 or 4.~~

(2) The department may not provide protective services that impose a legal limitation or restriction on an ~~aged person or a disabled~~ a vulnerable adult:

(a) except emergency protective services provided under 52-3-804; or

(b) unless the department has been appointed legal guardian ~~or conservator for that person~~ for the vulnerable adult under the provisions of Title 72, chapter 5, part 3 ~~or 4.~~

**Section 13.** Section 52-3-801, MCA, is amended to read:

**"52-3-801. Short title.** This part may be cited as the "Montana ~~Elder and Persons With Developmental Disabilities Abuse Prevention Act~~ Vulnerable Adult Prevention of Abuse Act."

**Section 14.** Section 52-3-802, MCA, is amended to read:

**"52-3-802. Legislative findings and purpose.** The legislature finds that a need exists to provide for cooperation among law enforcement officials and agencies, courts, and state and county agencies providing human services in preventing the abuse, sexual abuse, neglect, and exploitation of Montana's ~~elderly persons and persons with developmental disabilities~~ vulnerable adults through the identification, reporting, and prosecution of acts of abuse, sexual abuse, neglect, and exploitation."

1           **Section 15.** Section 52-3-803, MCA, is amended to read:

2           **"52-3-803. Definitions.** As used in this part, the following definitions apply:

3           (1)     "Abuse" means:

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

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

8           (c)     the causing of personal degradation of ~~an older person or a person with a developmental~~  
9           ~~disability~~ a vulnerable adult in a place where the ~~older person or person with a development disability~~  
10          vulnerable adult has a reasonable expectation of privacy.

11          (2)     "Department" means the department of public health and human services provided for in 2-15-  
12          2201.

13          (3)     "Exploitation" means:

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

22          (b)     an act taken by a person who has the trust and confidence of ~~an older person or a person with~~  
23          ~~a developmental disability~~ a vulnerable adult to obtain control of or to divert to the advantage of another the  
24          ownership, use, benefit, or possession of or interest in the ~~person's~~ vulnerable adult's money, assets, or  
25          property by means of deception, duress, menace, fraud, undue influence, or intimidation with the intent or result  
26          of permanently depriving the ~~older person or person with a developmental disability~~ vulnerable adult of the  
27          ownership, use, benefit, or possession of or interest in the ~~person's~~ vulnerable adult's money, assets, or  
28          property;

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

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

10 (5) "Long-term care facility" ~~means a facility defined~~ has the meaning provided in 50-5-101.

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

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

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

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

22 ~~(4)(8)~~ "Personal degradation" means publication or distribution of a printed or electronic photograph  
 23 or video of ~~an older person or a person with a developmental disability~~ a vulnerable adult when the person  
 24 publishing or distributing intends to demean or humiliate the ~~older person or person with a developmental~~  
 25 ~~disability~~ vulnerable adult or knows or reasonably should know that the publication or distribution would demean  
 26 or humiliate a reasonable person. Personal degradation does not include the recording and dissemination of  
 27 images or video for treatment, diagnosis, regulatory compliance, or law enforcement purposes, as part of an  
 28 investigation, or in accordance with a facility or program's confidentiality policy and release of information or

1 consent policy.

2 ~~(44)(9)~~ "Physical injury" means death, permanent or temporary disfigurement, or impairment of any  
3 bodily organ or function.

4 ~~(42)(10)~~ "Sexual abuse" means the commission of sexual assault, sexual intercourse without consent,  
5 indecent exposure, deviate sexual conduct, incest, or sexual abuse of children as described in Title 45, chapter  
6 5, part 5, and Title 45, chapter 8, part 2.

7 (11) "Vulnerable adult" means a person who:

8 (a) is 60 years of age or older; or

9 (b) is 18 years of age or older; and

10 (i) is a person with a disability as defined in 39-30-103; or

11 (ii) has a developmental disability as defined in 53-20-102."

12

13 **Section 16.** Section 52-3-804, MCA, is amended to read:

14 **"52-3-804. Duties of department.** (1) The department shall investigate reports of abuse, sexual  
15 abuse, neglect, or exploitation received pursuant to 52-3-811(1)(a).

16 (2) The department shall prepare an annual report of the information obtained pursuant to the  
17 reporting requirement of this part.

18 (3) The department shall, when appropriate, provide protective services under Title 52, chapter 3,  
19 part 2, for ~~an older person or a person with a developmental disability~~ a vulnerable adult alleged to have been  
20 abused, sexually abused, neglected, or exploited.

21 (4) If a ~~person~~ vulnerable adult alleged to be abused, sexually abused, neglected, or exploited  
22 pursuant to this part or the ~~person's~~ vulnerable adult's caretaker refuses to allow a representative of the  
23 department entrance to the premises for the purpose of investigating a report made pursuant to 52-3-811(1)(a),  
24 the district court in the county where the ~~person~~ vulnerable adult is found may order a law enforcement officer  
25 or a department ~~social worker~~ representative to enter the premises to conduct an investigation ~~upon~~ on finding  
26 that there is probable cause to believe that the ~~person~~ vulnerable adult is abused, sexually abused, neglected,  
27 or exploited.

28 (5) If a representative of the department has reasonable grounds to believe that ~~an older person or~~

1 ~~a person with a developmental disability~~ a vulnerable adult alleged to be abused, sexually abused, neglected,  
 2 or exploited is suffering from abuse, sexual abuse, neglect, or exploitation that presents a substantial risk of  
 3 death or serious physical injury, the department may:

4 (a) provide voluntary protective services as provided in subsection (3); or

5 (b) if the department representative has reasonable grounds to believe that the ~~person~~ vulnerable  
 6 adult is an incapacitated person, provide emergency protective services as follows:

7 (i) arrange or facilitate an appropriate emergency protective service placement;

8 (ii) transport or arrange for the transport of the ~~person~~ vulnerable adult to the appropriate  
 9 placement;

10 (iii) not later than 2 judicial days following placement of the ~~person~~ vulnerable adult, either:

11 (A) provide voluntary protective services as provided under subsection (3); or

12 (B) petition the district court to act as temporary guardian or appoint a temporary guardian as  
 13 provided in 72-5-317."

14

15 **Section 17.** Section 52-3-805, MCA, is amended to read:

16 **"52-3-805. Adult protective service teams.** (1) The county attorney or the department of ~~public~~  
 17 ~~health and human services~~ shall convene one or more temporary or permanent interdisciplinary adult protective  
 18 service teams. ~~These~~ The teams shall assist in assessing the needs of, formulating and monitoring a treatment  
 19 plan for, and coordinating services to ~~elder persons and persons with developmental disabilities~~ vulnerable  
 20 adults who are victims of abuse, sexual abuse, neglect, or exploitation. The supervisor of the adult protective  
 21 services unit of the department of ~~public health and human services~~ or the department's designee shall serve  
 22 as the team's coordinator. Members must include ~~a social worker~~ an adult protection specialist, a member of a  
 23 local law enforcement agency, a representative of the medical profession, and a county attorney or the county  
 24 attorney's designee, who is an attorney. Members may include other appropriate persons designated by the  
 25 county attorney or the supervisor of the adult protective services unit of the department.

26 (2) When the team considers a matter involving an adult with developmental disabilities in the care  
 27 of a person providing developmental disabilities services, the team must also include a provider of  
 28 developmental disability services other than the provider involved in the matter under review. The team shall

1 make a report to the county attorney that contains a recommendation concerning any criminal prosecution to be  
2 brought pursuant to this part."

3

4 **Section 18.** Section 52-3-811, MCA, is amended to read:

5 **"52-3-811. Reports.** (1) When the professionals and other persons listed in subsection (3) know or  
6 have reasonable cause to suspect that ~~an older person or a person with a developmental disability~~ a vulnerable  
7 adult known to them in their professional or official capacities has been subjected to abuse, sexual abuse,  
8 neglect, or exploitation, they shall:

9 (a) if the ~~person~~ vulnerable adult is not a resident of a long-term care facility, report the matter to:

10 (i) the department or its local affiliate; or

11 (ii) the county attorney of the county in which the ~~person~~ vulnerable adult resides or in which the  
12 acts that are the subject of the report occurred;

13 (b) if the ~~person~~ vulnerable adult is a resident of a long-term care facility, report the matter to the  
14 long-term care ombudsman appointed under the provisions of 42 U.S.C. 3027(a)(12) and to the department.  
15 The department shall investigate the matter pursuant to its authority in 50-5-204 and 52-3-804 and, if it finds  
16 any allegations of abuse, sexual abuse, neglect, or exploitation contained in the report to be substantially true,  
17 forward a copy of the report to the county attorney as provided in subsection (1)(a)(ii).

18 (2) If the report required in subsection (1) involves an act or omission of the department that may  
19 be construed as abuse, sexual abuse, neglect, or exploitation, a copy of the report may not be sent to the  
20 department but must be sent instead to the county attorney of the county in which the ~~elder person or the~~  
21 ~~person with a developmental disability~~ vulnerable adult resides or in which the acts that are the subject of the  
22 report occurred.

23 (3) Professionals and other persons required to report are:

24 (a) a physician, resident, intern, professional or practical nurse, physician assistant, or member of  
25 a hospital staff engaged in the admission, examination, care, or treatment of persons;

26 (b) an osteopath, dentist, denturist, chiropractor, optometrist, podiatrist, medical examiner,  
27 coroner, or any other health or mental health professional;

28 (c) an ambulance attendant;



1 (d) ~~a social worker or other~~an employee of the state, a county, or a municipality assisting ~~an older~~  
2 ~~person or a person with a developmental disability~~ a vulnerable adult in the application for or receipt of public  
3 assistance payments or services;

4 (e) a person who maintains or is employed by a roominghouse, retirement home or complex,  
5 nursing home, group home, adult foster care home, adult day-care center, or assisted living facility or an  
6 agency or individual that provides home health services or personal care in the home;

7 (f) an attorney, unless the attorney acquired knowledge of the facts required to be reported from a  
8 client and the attorney-client privilege applies;

9 (g) a peace officer or other law enforcement official;

10 (h) a person providing services to ~~an older person or a person with a developmental disability~~ a  
11 vulnerable adult pursuant to a contract with a state or federal agency; ~~and~~

12 (i) an employee of the department while in the conduct of the employee's duties; and

13 (j) a conservator, legal guardian, or representative payee.

14 (4) Except as provided under 45 CFR 1324.19, a long-term care ombudsman who is a professional  
15 or other person listed in subsection (3) shall be exempt from mandatory reporting of abuse, neglect, and  
16 exploitation when knowledge of the facts required to be reported are acquired while the long-term care  
17 ombudsman is acting in the ombudsman's official capacity as an ombudsman.

18 ~~(4)(5)~~ Any other persons or entities may, but are not required to, submit a report in accordance with  
19 subsection (1)."

20

21 **Section 19.** Section 52-3-812, MCA, is amended to read:

22 **"52-3-812. Content of report.** (1) The report required by 52-3-811 may be made in writing or orally,  
23 by telephone ~~or~~, in person, or electronically through the department. A person who receives an oral report shall  
24 prepare it in writing as soon as possible.

25 (2) The report referred to under this section must contain:

26 (a) the names and addresses of the ~~elder person or the person with a developmental disability~~  
27 vulnerable adult and the person, if any, responsible for ~~that person's~~ the vulnerable adult's care;

28 (b) the name and address, if available, of the person who is alleged to have abused, sexually

- 1 abused, neglected, or exploited the ~~elder person or the person with a developmental disability~~ vulnerable adult;
- 2 (c) to the extent known, the ~~person's~~ vulnerable adult's age and the nature and extent of the
- 3 abuse, sexual abuse, neglect, or exploitation, including any evidence of previous injuries, abuse, sexual abuse,
- 4 neglect, or exploitation sustained by the ~~elder person or the person with a developmental disability~~ vulnerable
- 5 adult and any evidence of prior instances of abuse, sexual abuse, neglect, or exploitation of other ~~elder persons~~
- 6 ~~or persons with developmental disabilities~~ vulnerable adults committed by the person alleged to have
- 7 committed abuse, sexual abuse, neglect, or exploitation; and
- 8 (d) the name and address of the person making the report."

9

10 **Section 20.** Section 52-3-813, MCA, is amended to read:

11 **"52-3-813. Confidentiality.** (1) The case records of the department, its local affiliate, the county

12 attorney, and the court concerning actions taken under this part and all reports made pursuant to 52-3-811

13 must be kept confidential except as provided by this section. For the purposes of this section, the term "case

14 records" includes records of an investigation of a report of abuse, sexual abuse, neglect, or exploitation.

15 (2) The records and reports required to be kept confidential by subsection (1) may be disclosed,

16 ~~upon~~ on written request, to the following persons or entities in this or any other state:

17 (a) a physician who is caring for ~~an elder person or a person with a developmental disability~~ a

18 vulnerable adult who the physician reasonably believes was abused, sexually abused, neglected, or exploited;

19 (b) a legal guardian or conservator of the ~~elder person or the person with a developmental~~

20 ~~disability~~ vulnerable adult if the identity of the person who made the report is protected and the legal guardian

21 or conservator is not the person suspected of the abuse, sexual abuse, neglect, or exploitation;

22 (c) the ~~person~~ vulnerable adult named in the report as allegedly being abused, sexually abused,

23 neglected, or exploited if that person is not ~~legally incompetent~~ an incapacitated person;

24 (d) any person engaged in bona fide research if the person alleged in the report to have committed

25 the abuse, sexual abuse, neglect, or exploitation is later convicted of an offense constituting abuse, sexual

26 abuse, neglect, or exploitation and if the identity of the ~~elder person or the person with a developmental~~

27 ~~disability~~ vulnerable adult who is the subject of the report is not disclosed to the researcher;

28 (e) an adult protective service team. Members of the team are required to keep information about

1 the subject individuals confidential.

2 (f) an authorized representative of a provider of services to a ~~person~~ vulnerable adult alleged to  
3 be ~~an~~ abused, sexually abused, neglected, or exploited ~~elder person or person with a developmental disability~~  
4 if:

5 (i) the department and the provider are parties to a contested case proceeding under Title 2,  
6 chapter 4, part 6, resulting from action by the department adverse to the license of the provider and if  
7 information contained in the records or reports of the department is relevant to the case;

8 (ii) disclosure to the provider is determined by the department to be necessary to protect an  
9 interest of a ~~person~~ vulnerable adult alleged to be ~~an~~ abused, sexually abused, neglected, or exploited ~~elder~~  
10 ~~person or person with a developmental disability~~; or

11 (iii) the person is carrying out background screening or employment-related or volunteer-related  
12 screening of current or prospective employees or volunteers who have or may have unsupervised contact with  
13 ~~an elder person or a person with a developmental disability~~ a vulnerable adult through employment or volunteer  
14 activities if the disclosure is limited to information that indicates a risk to ~~an elder person or a person with a~~  
15 ~~developmental disability~~ a vulnerable adult posed by the employee or volunteer, as determined by the  
16 department. A request for information under this subsection must be made in writing.

17 (g) an employee of the department if disclosure of the record or report is necessary for  
18 administration of a program designed to benefit a ~~person~~ vulnerable adult alleged to be ~~an~~ abused, sexually  
19 abused, neglected, or exploited ~~elder person or person with a developmental disability~~;

20 (h) an authorized representative of a guardianship program approved by the department if the  
21 department determines that disclosure to the program or to a person designated by the program is necessary  
22 for the proper provision of guardianship services to a ~~person~~ vulnerable adult alleged to be ~~an~~ abused, sexually  
23 abused, neglected, or exploited ~~elder person or person with a developmental disability~~;

24 (i) protection and advocacy systems authorized under the provisions of 29 U.S.C. 794e, 42 U.S.C.  
25 10805, ~~and or~~ 42 U.S.C. 15043;

26 (j) the news media if disclosure is limited to confirmation of factual information regarding how the  
27 case was handled and does not violate the privacy rights of the ~~elder person, person with a developmental~~  
28 ~~disability, vulnerable adult~~ or alleged perpetrator of abuse, sexual abuse, neglect, or exploitation, as determined

1 by the department;

2 (k) a coroner or medical examiner who is determining the cause of death of ~~an older person or a~~  
3 ~~person with a developmental disability~~ a vulnerable adult;

4 (l) a person about whom a report has been made and that person's attorney with respect to  
5 relevant records pertaining to that person only without disclosing the identity of the person who made the report  
6 or any other person whose safety might be endangered through disclosure;

7 (m) an agency, including a probation or parole agency, that is legally responsible for the  
8 supervision of an alleged perpetrator of abuse, sexual abuse, neglect, or exploitation of ~~an older person or a~~  
9 ~~person with a developmental disability~~ a vulnerable adult; and

10 (n) a department, agency, or organization, including a federal agency, military reservation, or tribal  
11 organization, that is legally authorized to receive, inspect, or investigate reports of abuse, sexual abuse,  
12 neglect, or exploitation of ~~an older person or a person with a developmental disability~~ a vulnerable adult and  
13 that meets the disclosure criteria contained in this section.

14 (3) The records and reports required to be kept confidential by subsection (1) must be disclosed,  
15 upon request, to the following persons or entities in this or any other state:

16 (a) a county attorney or other law enforcement official who requires the information in connection  
17 with an investigation of a violation of this part;

18 (b) a court that has determined, in camera, that public disclosure of the report, data, information, or  
19 record is necessary for the determination of an issue before it;

20 (c) a grand jury upon its determination that the report, data, information, or record is necessary in  
21 the conduct of its official business.

22 (4) If the person who is reported to have abused, sexually abused, neglected, or exploited ~~an older~~  
23 ~~person or a person with a developmental disability~~ a vulnerable adult is the holder of a license, permit, or  
24 certificate issued by the department of labor and industry under the provisions of Title 37 or issued by any other  
25 entity of state government, the report may be submitted to the entity that issued the license, permit, or  
26 certificate."

27

28 **Section 21.** Section 52-3-814, MCA, is amended to read:

1           **"52-3-814. Immunity from civil and criminal liability.** (1) A person who makes a report required or  
2 authorized to be made under 52-3-811 is immune from civil or criminal liability that might otherwise be incurred  
3 or imposed as a result of the report unless the report is false in any material respect and the person acted in  
4 bad faith or with malicious purpose.

5           (2) A person who provides information or who uses information obtained pursuant to 52-3-813(2)  
6 to refuse to hire or to discharge an employee, volunteer, or other person who through their employment or  
7 volunteer activities may have unsupervised contact with ~~an older person or a person with a developmental~~  
8 ~~disability~~ a vulnerable adult is immune from civil liability unless the person providing or using the information  
9 acts in bad faith or with malicious purpose."  
10

10

11           **Section 22.** Section 52-3-815, MCA, is amended to read:

12           **"52-3-815. Evidence of abuse, sexual abuse, neglect, or exploitation to be gathered and**  
13 **submitted.** (1) A person or agency receiving a report of suspected abuse, sexual abuse, neglect, or  
14 exploitation under 52-3-811 shall prepare a written description of the conditions regarded as evidence of abuse,  
15 sexual abuse, neglect, or exploitation and may, with the consent of an allegedly abused, sexually abused,  
16 neglected, or exploited ~~older person or person with a developmental disability~~ vulnerable adult or without  
17 consent of the ~~person~~ vulnerable adult if it appears that the ~~person~~ vulnerable adult is an incapacitated person,  
18 take or cause to be taken photographs of an area of trauma visible on the body of the allegedly abused,  
19 sexually abused, neglected, or exploited ~~person~~ vulnerable adult and regarded as evidence of abuse, sexual  
20 abuse, neglect, or exploitation.

21           (2) A physician required to report under 52-3-811 may, with the consent of an allegedly abused,  
22 sexually abused, neglected, or exploited ~~older person or person with a developmental disability~~ vulnerable adult  
23 or without consent of the ~~person~~ vulnerable adult if it appears that the person is an incapacitated person,  
24 require x-rays or other appropriate medical tests or procedures that would, in the professional opinion of the  
25 physician, assist in establishing evidence related to the allegation of abuse, sexual abuse, neglect, or  
26 exploitation.

27           (3) Evidence authorized to be gathered under this section must be submitted with the report  
28 required under 52-3-811 to the authorities designated in 52-3-811 as soon as possible after submission of the

1 report."

2

3 **Section 23.** Section 52-3-821, MCA, is amended to read:

4 **"52-3-821. Admissibility of evidence.** In any proceeding resulting from a report made pursuant to  
5 the provisions of this part or in any proceeding where the report or its content is sought to be introduced into  
6 evidence, the report or its content or any other fact related to the report or to the condition of the ~~person~~  
7 vulnerable adult who is the subject of the report may not be excluded on the ground that the matter is or may be  
8 the subject of a privilege granted in Title 26, chapter 1, part 8, except the attorney-client privilege granted by 26-  
9 1-803."

10

11 **Section 24.** Section 52-3-825, MCA, is amended to read:

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

- 15 (a) fails to make a report required by 52-3-811;
- 16 (b) fails to disclose the contents of a case record or report in violation of 52-3-813;
- 17 (c) gives false information to any adult protective services representative, county attorney, or law  
18 enforcement officer with the purpose to implicate another person;
- 19 (d) reports to adult protective services, the county attorney, or law enforcement authorities an  
20 offense or other incident within the person's concern knowing that it did not occur; or
- 21 (e) pretends to furnish adult protective services, the county attorney, or law enforcement  
22 authorities with information relating to an offense or incident when the person knows that the person has no  
23 information relating to the offense.

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

28 (b) (i) Except as provided in subsection (2)(c), a person who negligently abuses ~~an older person or~~

1 ~~a person with a developmental disability~~ a vulnerable adult is guilty of a misdemeanor and upon a first  
 2 conviction shall be fined an amount not to exceed \$1,000 or be imprisoned in the county jail for a term not to  
 3 exceed 1 year, or both.

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

7 (c) (i) A person who causes personal degradation to ~~an older person or a person with a~~  
 8 ~~developmental disability~~ a vulnerable adult in a place where the ~~older person or person with a developmental~~  
 9 ~~disability~~ vulnerable adult has a reasonable expectation of privacy is, for a first offense, guilty of a misdemeanor  
 10 and shall be imprisoned in the county jail for a term not to exceed 6 months or be fined an amount not to  
 11 exceed \$500, or both;

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

15 (d) A person ~~with~~ 18 years of age or older who has a developmental disability, as defined in 53-20-  
 16 102, may not be charged under subsections (2)(a) through (2)(c)."

17 - END -