

HOUSE BILL NO. 15

INTRODUCED BY B. NEWMAN

BY REQUEST OF THE DEPARTMENT OF JUSTICE

A BILL FOR AN ACT ENTITLED: "AN ACT SUBSTITUTING THE TERM "BODILY INJURY", AS USED IN THE CRIMINAL CODE, FOR THE TERMS "PHYSICAL INJURY" AND "MENTAL INJURY" IN THE MONTANA ELDER AND PERSONS WITH DEVELOPMENTAL DISABILITIES ABUSE PREVENTION ACT; AMENDING SECTIONS 52-3-803 AND 52-3-804, 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~~ bodily 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.

(2) "Bodily injury" has the meaning provided in 45-2-101.

~~(2)(3)~~ "Department" means the department of public health and human services provided for in 2-15-2201.

~~(3)~~(4) "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 to obtain control of or to divert to the advantage of another the ownership, use, benefit, or possession of 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 the person's money, assets, or property;

(b) an act taken by a person who has the trust and confidence of an older person or a person with a developmental disability to obtain control of or to divert to the advantage of another the ownership, use, benefit,



1 or possession of the person's money, assets, or property by means of deception, duress, menace, fraud, undue  
 2 influence, or intimidation with the intent or result of permanently depriving the older person or person with a  
 3 developmental disability of the ownership, use, or benefit of the person's money, assets, or property.

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

5 ~~(5)~~(6) "Long-term care facility" means a facility defined in 50-5-101.

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

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

13 (8) "Older person" means a person who is at least 60 years of age. For purposes of prosecution under  
 14 52-3-825(2), the person 60 years of age or older must be unable to provide personal protection from abuse,  
 15 sexual abuse, neglect, or exploitation because of a mental or physical impairment or because of frailties or  
 16 dependencies brought about by advanced age.

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

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

21 ~~(11)~~(10) "Sexual abuse" means the commission of sexual assault, sexual intercourse without consent,  
 22 indecent exposure, deviate sexual conduct, or incest, as described in Title 45, chapter 5, part 5."

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24 **Section 2.** Section 52-3-804, MCA, is amended to read:

25 **"52-3-804. Duties of department.** (1) The department shall investigate reports of abuse, sexual abuse,  
 26 neglect, or exploitation received pursuant to 52-3-811(1)(a).

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

29 (3) The department shall, when appropriate, provide protective services under Title 52, chapter 3, part  
 30 2, for an older person or a person with a developmental disability alleged to have been abused, sexually abused,

1 neglected, or exploited.

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

8 (5) If a representative of the department has reasonable grounds to believe that an older person or a  
9 person with a developmental disability alleged to be abused, sexually abused, neglected, or exploited is suffering  
10 from abuse, sexual abuse, neglect, or exploitation that presents a substantial risk of death or serious ~~physical~~  
11 bodily injury, the department may:

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

13 (b) if the department representative has reasonable grounds to believe that the person is incapacitated,  
14 provide emergency protective services as follows:

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

16 (ii) transport or arrange for the transport of the person to the appropriate placement;

17 (iii) not later than 2 judicial days following placement of the person, either:

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

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

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

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