

HOUSE BILL NO. 17

INTRODUCED BY NEWMAN

BY REQUEST OF THE ATTORNEY GENERAL

A BILL FOR AN ACT ENTITLED: "AN ACT MAKING ~~ABUSE, SEXUAL ABUSE, AND NEGLECT OF AN OLDER PERSON OR A PERSON WITH A DEVELOPMENTAL DISABILITY A FELONY; MAKING~~ EXPLOITATION OF AN OLDER PERSON OR A PERSON WITH A DEVELOPMENTAL DISABILITY A FELONY IF THE AMOUNT INVOLVED IS OVER \$1,000; 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.

(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 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;

(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 OR INTEREST IN the person's money, assets, or property by means of deception, duress,
2 menace, fraud, undue influence, or intimidation with the intent or result of permanently depriving the older person
3 or person with a developmental disability of the ownership, use, or benefit of, OR POSSESSION OF OR INTEREST IN
4 the person's money, assets, or property.

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

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

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

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

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

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

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

22 (11) "Sexual abuse" means the commission of sexual assault, sexual intercourse without consent,
23 indecent exposure, deviate sexual conduct, or incest, as described in Title 45, chapter 5, part 5."
24

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

26 **"52-3-825. Penalties.** (1) Any person who purposely or knowingly fails to make a report required by
27 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
28 of an offense and upon conviction is punishable as provided in 46-18-212.

29 (2) ~~Any individual Upon a first conviction, a person~~ AN INDIVIDUAL who purposely or knowingly abuses,
30 sexually abuses, or neglects, or exploits an older person or a person with a developmental disability ~~is guilty of~~

~~a misdemeanor and upon a first conviction may be fined an amount not to exceed \$1,000 or be imprisoned in the county jail for a term not to exceed 1 year, or both. Upon a second or succeeding conviction, an individual~~
~~IS GUILTY OF A CRIME AND MISDEMEANOR AND UPON A FIRST CONVICTION MAY BE FINED AN AMOUNT NOT TO EXCEED~~
~~\$1,000 OR BE IMPRISONED IN THE COUNTY JAIL FOR A TERM NOT TO EXCEED 1 YEAR, OR BOTH. UPON A SECOND OR~~
~~SUBSEQUENT CONVICTION, THE INDIVIDUAL~~ may be imprisoned for a term not to exceed 10 years and may be fined
an amount not to exceed \$10,000, or both.

(3) (a) A person convicted of purposely or knowingly exploiting an older person or a person with a developmental disability in a case involving money, assets, or property in an amount of \$1,000 or less in value shall be fined not more than \$1,000 or be imprisoned in the county jail for a term not to exceed 1 year, or both. A person convicted of purposely or knowingly exploiting an older person or a person with a developmental disability in a case involving money, assets, or property in an amount of more than \$1,000 in value shall be fined not more than \$50,000 or be imprisoned in a state prison for a term not to exceed 10 years, or both.

(b) For purposes of prosecution under subsection (3)(a) in a case involving the same transaction or in a case prosecuted pursuant to a common scheme, the amounts may be aggregated in determining the value involved."

NEW SECTION. **SECTION 3. COORDINATION INSTRUCTION.** IF SENATE BILL NO. 444 AND [THIS ACT] ARE BOTH PASSED AND APPROVED, THEN [SECTION 10 OF SENATE BILL NO. 444], AMENDING 52-3-825, IS VOID.

NEW SECTION. **Section 4. Effective date.** [This act] is effective on passage and approval.

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