

Exhibit Number: 2

The following exhibit is several assorted documents that exceeds the 10-page limit therefore it cannot be scanned. A small portion has been scanned to aid in your research for information. The exhibit is on file at the Montana Historical Society and can be viewed there.



Part 8

Montana Elder and Persons With Developmental Disabilities Abuse Prevention Act

Part Compiler's Comments:

Source: The Montana Elder and Developmentally Disabled Abuse Prevention Act is partially based upon Nevada law (Chapter 200 N.R.S.).

Administrative Rules:

Title 37, chapter 34, ARM Developmental disabilities program.

Title 37, chapter 47, subchapter 1, ARM Adult protective services.

Law Review Articles:

Elder Abuse Originating in the Institutional Setting, Ingalls, Layton, & Weitzel, 74 N.D.L. Rev. 313 (1998).

New Remedies for Elder Abuse and Neglect, Moskowitz, 12 Prob. & Prop. 52 (1998).

Saving Granny From the Wolf: Elder Abuse and Neglect—The Legal Framework, Moskowitz, 31 Conn. L. Rev. 77 (1998).

A Call for a Functional Multidisciplinary Approach to Intervention in Cases of Elder Abuse, Neglect, and Exploitation: One Legal Clinic's Experience, Levitt & O'Neill, 5 Elder L.J. 195 (1997).

Elder Abuse: Washington's Response to a Growing Epidemic, Skabronski, 31 Gonz. L. Rev. 627 (1996).

Criminalizing Physical and Emotional Elder Abuse, Polisky, 3 Elder L.J. 377 (1995).

Elder Abuse Policy: Considerations in Research and Legislation, Macolini, 13 Behavioral Sci. & L. 349 (1995).

Fear of Crime and Victimization Among the Elderly in Different Types of Communities, Akers, Sellers, & Cochran, 25 Criminology 487 (1987).

A Response to the Problem of Elder Abuse: Florida's Revised Adult Protective Services Act, Metcalf, 14 Fla. St. U.L. Rev. 745 (1986).

Collateral References:

Excessiveness or adequacy of damages awarded for personal injuries resulting in death of retired persons: 48 ALR 4th 229.

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

History: En. Sec. 1, Ch. 623, L. 1983; amd. Sec. 1, Ch. 198, L. 1989; Sec. 53-5-501, MCA 1989; redes. 52-3-801 by Code Commissioner, 1991; amd. Sec. 21, Ch. 255, L. 1995.

Compiler's Comments:

1995 Amendment – Phrase Change: Section 21, Ch. 255, L. 1995, directed the Code Commissioner to change references in the MCA to a person who is developmentally disabled or to a developmentally disabled person to a person with developmental disabilities. The change was not to be made to the phrase "seriously developmentally disabled". In this section, the Code Commissioner has made the change.

1989 Amendment: Inserted "and Developmentally Disabled". Amendment effective March 21, 1989.

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 through the identification, reporting, and prosecution of acts of abuse, sexual abuse, neglect, and exploitation.

History: En. Sec. 2, Ch. 623, L. 1983; amd. Sec. 2, Ch. 198, L. 1989; Sec. 53-5-502, MCA 1989; redes. 52-3-802 by Code Commissioner, 1991; amd. Sec. 1, Ch. 167, L. 1993; amd. Sec. 21, Ch. 255, L. 1995; amd. Sec. 1, Ch. 196, L. 1999.

Compiler's Comments:

1999 Amendment: Chapter 196 near end after "reporting" inserted "and prosecution"; and made minor changes in style. Amendment effective October 1, 1999.

1995 Amendment – Phrase Change: Section 21, Ch. 255, L. 1995, directed the Code Commissioner to change references in the MCA to a person who is developmentally disabled or to a developmentally disabled person to a person with developmental disabilities. The change was not to be made to the phrase "seriously developmentally disabled". In this section, the Code Commissioner has made the change and made minor changes in style.

1993 Amendment: Chapter 167 in two places, after "abuse", inserted "sexual abuse"; and made minor changes in style. Amendment effective March 24, 1993.

1989 Amendment: Near end, after "elderly", inserted "and developmentally disabled persons". Amendment effective March 21, 1989.

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 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;

(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, 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;

(c) 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 done in the course of an offer or sale of insurance or securities in order 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.

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

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

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

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

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

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

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

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

History: En. Sec. 3, Ch. 623, L. 1983; amd. Sec. 1, Ch. 668, L. 1985; amd. Sec. 111, Ch. 370, L. 1987; amd. Sec. 2, Ch. 450, L. 1987; amd. Sec. 3, Ch. 198, L. 1989; Sec. 53-5-503, MCA 1989; redes. 52-3-803 by Code Commissioner, 1991; amd. Sec. 1, Ch. 716, L. 1991; amd. Sec. 2, Ch. 167, L. 1993; amd. Sec. 1, Ch. 426, L. 1993; amd. Sec. 3, Ch. 465, L. 1995; amd. Sec. 2, Ch. 196, L. 1999; amd. Sec. 1, Ch. 350, L. 2003; amd. Sec. 9, Ch. 493, L. 2003.

Compiler's Comments:

2003 Amendments -- Composite Section: Chapter 350 in definition of exploitation in (a) in two places

after "possession of" inserted "or interest in" and in (b) near middle after "possession of" inserted "or interest in" and near end after "benefit" inserted "or possession of or interest in"; in definition of older person near middle after "52-3-825(2)" inserted "or (3)"; and made minor changes in style. Amendment effective April 16, 2003.

Chapter 493 in definition of exploitation inserted (c) concerning an offer or sale of insurance or securities to obtain control of the person's money, assets, or property by deception, duress, menace, fraud, undue influence, or intimidation; and made minor changes in style. Amendment effective April 24, 2003.

Applicability: Section 14, Ch. 493, L. 2003, provided: "[This act] applies to viatical settlement contracts entered into on or after [the effective date of this act]." Effective April 24, 2003.

1999 Amendment: Chapter 196 inserted definition of department; in definition of exploitation in (a) near beginning after "use of" inserted "an older person or a person with a developmental disability or of a power of attorney, conservatorship, or guardianship with regard to", after second "developmental disability" inserted language regarding obtaining control of or diverting ownership, use, benefit, or possession, after "person's money" inserted "assets", after "by means of" inserted "deception", and after "undue influence" inserted language concerning use of intimidation with intent or result to deprive older person or person with developmental disability of ownership, use, benefit, or possession of person's money, assets, or property and inserted (b) regarding acts taken by person who has trust and confidence of older person; in definition of neglect substituted "a person who has assumed legal responsibility or contractual obligation for caring for" for "a guardian; an employee of a public or private residential institution, facility, home, or agency; or any person legally responsible in a residential setting for the welfare of", after "developmental disability" inserted language concerning person who has voluntarily assumed responsibility for care, including employee of public or private institution, facility, home, or agency, and after "to provide" deleted "to the extent of legal responsibility"; and made minor changes in style. Amendment effective October 1, 1999.

1995 Amendment: Chapter 465 throughout section substituted "person with a developmental disability" for "developmentally disabled person"; deleted definition of developmentally disabled person that read: "'Developmentally disabled person' means a person 18 years of age or older who is developmentally disabled as defined in 53-20-102"; inserted definition of person with a developmental disability; and made minor changes in style. Amendment effective April 14, 1995.

1993 Amendments – Composite Section: Chapter 167 in definition of older person, after "abuse", inserted "sexual abuse"; inserted definition of sexual abuse; and made minor changes in style. Amendment effective March 24, 1993.

Chapter 426 in definition of neglect, near middle after "to provide", inserted "to the extent of legal responsibility"; and made minor changes in style.

A style change in the definition of older person was slightly different in the two chapters. The codifier chose the more appropriate of the two.

1991 Amendment: Inserted definition of incapacitated person.

1989 Amendment: In first sentence of definition of abuse inserted "or a developmentally disabled person"; inserted definition of developmentally disabled person; in definition of exploitation inserted "or a developmentally disabled person"; in definition of neglect, after "older person's", inserted "or a developmentally disabled person's", after "welfare" deleted "to care for an older person by failing", and at end inserted "or the developmentally disabled person"; and made minor changes in form. Amendment effective March 21, 1989.

1987 Amendments: Chapters 370 and 450 at end of (3) deleted reference to subsection (20) of 50-5-101.

1985 Amendment: In (1) inserted "without lawful authority. A declaration made pursuant to 50-9-103 constitutes lawful authority"; in (2) substituted "unreasonable" for "unethical" and inserted "by means of duress, menace, fraud, or undue influence"; and in (6) inserted second sentence outlining advanced age requirements necessary for purposes of prosecution.

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

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

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

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

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

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

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

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

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

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

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

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

History: En. Sec. 9, Ch. 623, L. 1983; amd. Sec. 11, Ch. 609, L. 1987; amd. Sec. 4, Ch. 198, L. 1989; Sec. 53-5-504, MCA 1989; redes. 52-3-804 by Code Commissioner, 1991; amd. Sec. 2, Ch. 716, L. 1991; amd. Sec. 3, Ch. 167, L. 1993; amd. Sec. 4, Ch. 465, L. 1995; amd. Sec. 363, Ch. 546, L. 1995; amd. Sec. 3, Ch. 196, L. 1999.

Compiler's Comments:

1999 Amendment: Chapter 196 in (5) in introduction in two places after reference to sexual abuse or neglect inserted reference to exploitation; and made minor changes in style. Amendment effective October 1, 1999.

1995 Amendments: Chapter 465 in (3), after citation to Title 52, chapter 3, part 2, deleted "or under Title 52, chapter 4, part 1", before "person" inserted "an older", and inserted "or a person with a developmental disability"; in (5) substituted "older person or person with a developmental disability" for "older or developmentally disabled person"; and made minor changes in style. Amendment effective April 14, 1995.

Chapter 546 at beginning of (2) substituted "department of public health and human services" for "department of family services". Amendment effective July 1, 1995.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

1993 Amendment: Chapter 167 throughout section inserted reference to sexual abuse; and made minor changes in style. Amendment effective March 24, 1993.

1991 Amendment: Inserted (5) concerning actions Department may take.

1989 Amendment: Inserted (1) requiring Department investigation of certain reports; in (3) inserted reference to Title 53, chapter 20, part 4 (renumbered in part to Title 52, chapter 4, part 1), and before "person alleged" substituted "a" for "an older"; and inserted (4) allowing a District Court to order law enforcement or Department personnel to enter premises to investigate possible abuse, neglect, or exploitation. Amendment effective March 21, 1989.

1987 Amendment: Substituted "department of family services" for "department of social and rehabilitation services".

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

(2) When the team considers a matter involving an adult with developmental disabilities in the care of a person providing developmental disabilities services, the team must also include a provider of developmental disability services other than the provider involved in the matter under review. The team shall make a report to the county attorney that contains a recommendation concerning any criminal prosecution to be brought pursuant to this part.

History: En. Sec. 1, Ch. 662, L. 1985; amd. Sec. 12, Ch. 609, L. 1987; Sec. 53-5-505, MCA 1989; redes. 52-3-805 by Code Commissioner, 1991; amd. Sec. 4, Ch. 167, L. 1993; amd. Sec. 2, Ch. 421, L. 1993; amd. Sec. 2, Ch. 426, L. 1993; amd. Sec. 21, Ch. 255, L. 1995; amd. Sec. 364, Ch. 546, L. 1995.

Compiler's Comments:

1995 Amendments -- Phrase Change: Section 21, Ch. 255, L. 1995, directed the Code Commissioner to change references in the MCA to a person who is developmentally disabled or to a developmentally disabled person to a person with developmental disabilities. The change was not to be made to the phrase "seriously developmentally disabled". In this section, the Code Commissioner has made the change in (1) and (2) and made minor changes in style to conform to the change.

Chapter 546 in (1), in two places, substituted "department of public health and human services" for "department of family services"; and in (2), at end of first sentence after "review", deleted "and a representative of the developmental disabilities division of the department of social and rehabilitation services". Amendment effective July 1, 1995.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

1993 Amendments -- Composite Section: Chapter 167 in second sentence of (1), after "abuse", inserted "sexual abuse"; and made minor changes in style. Amendment effective March 24, 1993.

Chapter 421 in second sentence of (1), after "older persons", inserted "and developmentally disabled persons" and inserted last sentence concerning other members of an adult protective service team.

Chapter 426 in first and second sentences of (1) substituted "shall" for "may"; inserted (2) specifying the composition of the adult protective service team in certain instances and requiring a report; and made minor changes in style.

A style change in (1) was slightly different in the three chapters. The codifier chose the most appropriate change.

1987 Amendment: Substituted "department of family services" for "county welfare department".

Cross References:

Office of County Attorney, Title 7, ch. 4, part 27.

Local government law enforcement, Title 7, ch. 32.

Licensing of medical doctors, Title 37, ch. 3.

Licensing of social workers, Title 37, ch. 22.

Local offices of public assistance, Title 53, ch. 2, part 3.