

SENATE BILL NO. 134

INTRODUCED BY J. BRENDEN

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4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE MONTANA ELDER AND PERSONS WITH
5 DEVELOPMENTAL DISABILITIES ABUSE PREVENTION ACT; CLARIFYING THE DEFINITION OF "OLDER
6 PERSON"; ELIMINATING THE REQUIREMENT IN PROSECUTIONS THAT AN OLDER PERSON BE UNABLE
7 TO PROVIDE PERSONAL PROTECTION DUE TO MENTAL OR PHYSICAL IMPAIRMENT OR FRAILTIES OR
8 DEPENDENCIES BROUGHT ABOUT BY ADVANCED AGE; PROVIDING FOR A MINIMUM PRISON
9 SENTENCE IN CERTAIN CIRCUMSTANCES; AMENDING SECTIONS 52-3-803 AND 52-3-825, MCA; AND
10 PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

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

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14 **Section 1.** Section 52-3-803, MCA, is amended to read:
15 **"52-3-803. Definitions.** As used in this part, the following definitions apply:
16 (1) "Abuse" means:
17 (a) the infliction of physical or mental injury; or
18 (b) the deprivation of food, shelter, clothing, or services necessary to maintain the physical or mental
19 health of an older person or a person with a developmental disability without lawful authority. A declaration made
20 pursuant to 50-9-103 constitutes lawful authority.
21 (2) "Department" means the department of public health and human services provided for in 2-15-2201.
22 (3) "Exploitation" means:
23 (a) the unreasonable use of an older person or a person with a developmental disability or of a power
24 of attorney, conservatorship, or guardianship with regard to an older person or a person with a developmental
25 disability in order to obtain control of or to divert to the advantage of another the ownership, use, benefit, or
26 possession of or interest in the person's money, assets, or property by means of deception, duress, menace,
27 fraud, undue influence, or intimidation with the intent or result of permanently depriving the older person or person
28 with a developmental disability of the ownership, use, benefit, or possession of or interest in the person's money,
29 assets, or property;
30 (b) an act taken by a person who has the trust and confidence of an older person or a person with a

1 developmental disability to obtain control of or to divert to the advantage of another the ownership, use, benefit,
2 or possession of or interest in the person's money, assets, or property by means of deception, duress, menace,
3 fraud, undue influence, or intimidation with the intent or result of permanently depriving the older person or person
4 with a developmental disability of the ownership, use, benefit, or possession of or interest in the person's money,
5 assets, or property;

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

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

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

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

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

22 (8) "Older person" means a person who is at least 60 years of age. ~~For purposes of prosecution under~~
23 ~~52-3-825(2) or (3), the person 60 years of age or older must be unable to provide personal protection from abuse,~~
24 ~~sexual abuse, neglect, or exploitation because of a mental or physical impairment or because of frailties or~~
25 ~~dependencies brought about by advanced age.~~

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

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

30 (11) "Sexual abuse" means the commission of sexual assault, sexual intercourse without consent,

1 indecent exposure, deviate sexual conduct, or incest, as described in Title 45, chapter 5, part 5."

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

4 **"52-3-825. Penalties.** (1) A person who purposely or knowingly fails to make a report required by
5 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
6 of an offense and upon conviction is punishable as provided in 46-18-212.

7 (2) (a) A person who purposely or knowingly abuses, sexually abuses, or neglects an older person or
8 a person with a developmental disability is guilty of a felony and shall be imprisoned for a term not to exceed 10
9 years and be fined an amount not to exceed \$10,000, or both.

10 (b) (i) A person who negligently abuses an older person or a person with a developmental disability is
11 guilty of a misdemeanor and upon a first conviction shall be fined an amount not to exceed \$1,000 or be
12 imprisoned in the county jail for a term not to exceed 1 year, or both.

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

16 (c) A person with a developmental disability may not be charged under subsection (2)(a) or (2)(b).

17 (3) (a) A person convicted of purposely or knowingly exploiting an older person or a person with a
18 developmental disability in a case involving money, assets, or property in an amount of \$1,000 or less in value
19 shall be fined an amount not more than \$1,000 or be imprisoned in the county jail for a term not to exceed 1 year,
20 or both. A person convicted of purposely or knowingly exploiting an older person or a person with a
21 developmental disability in a case involving money, assets, or property in an amount of more than \$1,000 but less
22 than \$25,000 in value shall be fined an amount not more than \$50,000 or be imprisoned in a state prison for a
23 term not to exceed 10 years, or both. A person convicted of purposely or knowingly exploiting an older person
24 or a person with a developmental disability in a case involving money, assets, or property in an amount of
25 \$25,000 or more in value shall be fined an amount not more than \$50,000 or be imprisoned in a state prison for
26 a term of not less than 1 year and not more than 10 years, or both.

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

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

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3 NEW SECTION. **Section 4. Applicability.** [This act] applies to offenses committed on or after [the
4 effective date of this act].

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