

1 \_\_\_\_\_ BILL NO. \_\_\_\_\_

2 INTRODUCED BY \_\_\_\_\_  
3 (Primary Sponsor)

4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING PENALTIES UNDER THE MONTANA ELDER AND  
5 PERSONS WITH DEVELOPMENTAL DISABILITIES ABUSE PREVENTION ACT; PROVIDING DEFINITIONS;  
6 AMENDING SECTIONS 52-3-803 AND 52-3-825, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

9  
10 **Section 1.** Section 52-3-803, MCA, is amended to read:

11 **"52-3-803. Definitions.** As used in this part, the following definitions apply:

12 (1) "Abuse" means:

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

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

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

18 (3) "Exploitation" means:

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

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



1 assets, or property;

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

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

10 (5) "Knowingly" has the meaning provided in 45-2-101.

11 ~~(5)~~(6) "Long-term care facility" means a facility defined in 50-5-101.

12 ~~(6)~~(7) "Mental injury" means an identifiable and substantial impairment of a person's intellectual or  
13 psychological functioning or well-being.

14 ~~(7)~~(8) "Neglect" means the failure of a person who has assumed legal responsibility or a contractual  
15 obligation for caring for an older person or a person with a developmental disability or who has voluntarily  
16 assumed responsibility for the person's care, including an employee of a public or private residential institution,  
17 facility, home, or agency, to provide food, shelter, clothing, or services necessary to maintain the physical or  
18 mental health of the older person or the person with a developmental disability.

19 ~~(8)~~(9) "Older person" means a person who is at least 60 years of age.

20 ~~(9)~~(10) "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 ~~(10)~~(11) "Physical injury" means death, permanent or temporary disfigurement, or impairment of any  
23 bodily organ or function.

24 (12) "Purposely" has the meaning provided in 45-2-101.

25 ~~(11)~~(13) "Sexual abuse" means the commission of sexual assault, sexual intercourse without consent,  
26 indecent exposure, deviate sexual conduct, incest, or sexual abuse of children as described in Title 45, chapter  
27 5, part 5, and Title 45, chapter 8, part 2."

28

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

30 **"52-3-825. Penalties Failure to report -- disclosure -- abuse or exploitation of elder or person with**

1 **developmental disability -- penalties.** (1) A person who purposely or knowingly fails to make a report required  
 2 by 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  
 3 of an offense and upon conviction is punishable as provided in 46-18-212.

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

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

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

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

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

25 (b) For purposes of prosecution under subsection (3)(a) in a case involving the same transaction or in  
 26 a case prosecuted pursuant to a common scheme, the amounts may be aggregated in determining the value  
 27 involved."  
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29 **NEW SECTION. Section 3. Effective date.** [This act] is effective on passage and approval.

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