

HOUSE BILL NO. 139

INTRODUCED BY M. FUNK

BY REQUEST OF THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS REGARDING THE PROTECTION OF VULNERABLE ADULTS; REVISING TERMINOLOGY RELATED TO PROTECTIVE SERVICES; DEFINING "VULNERABLE ADULT"; REQUIRING ADDITIONAL PROFESSIONALS TO REPORT ABUSE, SEXUAL ABUSE, NEGLECT, OR EXPLOITATION OF A VULNERABLE ADULT; PROVIDING A PENALTY FOR INDIVIDUALS WHO FALSELY REPORT ABUSE, SEXUAL ABUSE, NEGLECT, OR EXPLOITATION OF A VULNERABLE ADULT; AND AMENDING SECTIONS 30-14-144, 41-3-205, 42-3-204, 50-5-1104, 52-3-201, 52-3-202, 52-3-203, 52-3-204, 52-3-206, 52-3-207, 52-3-801, 52-3-802, 52-3-803, 52-3-804, 52-3-805, 52-3-811, 52-3-812, 52-3-813, 52-3-814, 52-3-815, 52-3-821, AND 52-3-825, MCA."

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

Section 1. Section 30-14-144, MCA, is amended to read:

"30-14-144. Additional penalty for unfair or deceptive act committed against ~~older person or developmentally disabled person~~ vulnerable adult. (1) In addition to any civil penalty imposed pursuant to 30-14-142, a person who engages in a practice unlawful under 30-14-103 and whose conduct is perpetrated against ~~an older person or against a developmentally disabled person~~ a vulnerable adult is liable for an additional civil penalty not to exceed \$10,000 for each violation if the court finds that:

(a) the person knew or should have known that the person's conduct was directed toward one or more ~~older or developmentally disabled persons~~ vulnerable adults; or

(b) the person's conduct caused ~~an older or developmentally disabled person~~ a vulnerable adult to suffer one of the following:

- (i) loss or encumbrance of a primary residence;
- (ii) loss of principal employment or other source of income;
- (iii) substantial loss of property set aside for retirement or for personal or family care and maintenance;
- (iv) substantial loss of payments received under a pension or retirement plan or a government benefits program; or

- 1 (v) loss of assets essential to the health or welfare of the ~~older or disabled person~~ vulnerable adult.
- 2 (2) Damages awarded in an action under 30-14-133 must be given priority over imposition of civil  
3 penalties ordered by the court under this section.
- 4 (3) As used in this section:
- 5 ~~— (a) "developmentally disabled person" means a person with a developmental disability as defined in~~  
6 ~~53-20-102; and~~
- 7 ~~— (b) "older person" has the meaning provided in 52-3-803, "vulnerable adult" means a person who:~~
- 8 (a) is 60 years of age or older; or
- 9 (b) is 18 years of age or older and is a person with a disability as defined in 39-30-103 or has a  
10 developmental disability as defined in 53-20-102."

- 11
- 12 **Section 2.** Section 41-3-205, MCA, is amended to read:
- 13 **"41-3-205. Confidentiality -- disclosure exceptions.** (1) The case records of the department and its  
14 local affiliate, the local office of public assistance, the county attorney, and the court concerning actions taken  
15 under this chapter and all records concerning reports of child abuse and neglect must be kept confidential except  
16 as provided by this section. Except as provided in subsections (8) and (9), a person who purposely or knowingly  
17 permits or encourages the unauthorized dissemination of the contents of case records is guilty of a misdemeanor.
- 18 (2) Records may be disclosed to a court for in camera inspection if relevant to an issue before it. The  
19 court may permit public disclosure if it finds disclosure to be necessary for the fair resolution of an issue before  
20 it.
- 21 (3) Records, including case notes, correspondence, evaluations, videotapes, and interviews, unless  
22 otherwise protected by this section or unless disclosure of the records is determined to be detrimental to the child  
23 or harmful to another person who is a subject of information contained in the records, may be disclosed to the  
24 following persons or entities in this state and any other state or country:
- 25 (a) a department, agency, or organization, including a federal agency, military enclave, or Indian tribal  
26 organization, that is legally authorized to receive, inspect, or investigate reports of child abuse or neglect and that  
27 otherwise meets the disclosure criteria contained in this section;
- 28 (b) a licensed youth care facility or a licensed child-placing agency that is providing services to the family  
29 or child who is the subject of a report in the records or to a person authorized by the department to receive  
30 relevant information for the purpose of determining the best interests of a child with respect to an adoptive

1 placement;

2 (c) a health or mental health professional who is treating the family or child who is the subject of a report  
3 in the records;

4 (d) a parent, grandparent, aunt, uncle, brother, sister, guardian, mandatory reporter provided for in  
5 41-3-201(2) and (5), or person designated by a parent or guardian of the child who is the subject of a report in  
6 the records or other person responsible for the child's welfare, without disclosure of the identity of any person who  
7 reported or provided information on the alleged child abuse or neglect incident contained in the records;

8 (e) a child named in the records who was allegedly abused or neglected or the child's legal guardian or  
9 legal representative, including the child's guardian ad litem or attorney or a special advocate appointed by the  
10 court to represent a child in a pending case;

11 (f) the state protection and advocacy program as authorized by 42 U.S.C. 15043(a)(2);

12 (g) approved foster and adoptive parents who are or may be providing care for a child;

13 (h) a person about whom a report has been made and that person's attorney, with respect to the relevant  
14 records pertaining to that person only and without disclosing the identity of the reporter or any other person whose  
15 safety may be endangered;

16 (i) an agency, including a probation or parole agency, that is legally responsible for the supervision of  
17 an alleged perpetrator of child abuse or neglect;

18 (j) a person, agency, or organization that is engaged in a bona fide research or evaluation project and  
19 that is authorized by the department to conduct the research or evaluation;

20 (k) the members of an interdisciplinary child protective team authorized under 41-3-108 or of a family  
21 group decisionmaking meeting for the purposes of assessing the needs of the child and family, formulating a  
22 treatment plan, and monitoring the plan;

23 (l) the coroner or medical examiner when determining the cause of death of a child;

24 (m) a child fatality review team recognized by the department;

25 (n) a department or agency investigating an applicant for a license or registration that is required to  
26 operate a youth care facility, day-care facility, or child-placing agency;

27 (o) a person or entity who is carrying out background, employment-related, or volunteer-related  
28 screening of current or prospective employees or volunteers who have or may have unsupervised contact with  
29 children through employment or volunteer activities. A request for information under this subsection (3)(o) must  
30 be made in writing. Disclosure under this subsection (3)(o) is limited to information that indicates a risk to children;

1 ~~persons with developmental disabilities, or older persons~~ posed by the person about whom the information is  
2 sought, as determined by the department.

3 (p) the news media, a member of the United States congress, or a state legislator, if disclosure is limited  
4 to confirmation of factual information regarding how the case was handled and if disclosure does not violate the  
5 privacy rights of the child or the child's parent or guardian, as determined by the department;

6 (q) an employee of the department or other state agency if disclosure of the records is necessary for  
7 administration of programs designed to benefit the child;

8 (r) an agency of an Indian tribe, a qualified expert witness, or the relatives of an Indian child if disclosure  
9 of the records is necessary to meet requirements of the federal Indian Child Welfare Act;

10 (s) a juvenile probation officer who is working in an official capacity with the child who is the subject of  
11 a report in the records;

12 (t) an attorney who is hired by or represents the department if disclosure is necessary for the  
13 investigation, defense, or prosecution of a case involving child abuse or neglect;

14 (u) a foster care review committee established under 41-3-115 or, when applicable, a citizen review  
15 board established under Title 41, chapter 3, part 10;

16 (v) a school employee participating in an interview of a child by a social worker, county attorney, or peace  
17 officer, as provided in 41-3-202;

18 (w) a member of a county interdisciplinary child information and school safety team formed under the  
19 provisions of 52-2-211;

20 (x) members of a local interagency staffing group provided for in 52-2-203;

21 (y) a member of a youth placement committee formed under the provisions of 41-5-121; or

22 (z) a principal of a school or other employee of the school district authorized by the trustees of the district  
23 to receive the information with respect to a student of the district who is a client of the department.

24 (4) (a) The records described in subsection (3) must be promptly released to any of the following  
25 individuals upon a written request by the individual to the department or the department's designee:

26 (i) the attorney general;

27 (ii) a county attorney or deputy county attorney of the county in which the alleged abuse or neglect  
28 occurred;

29 (iii) a peace officer, as defined in 45-2-101, in the jurisdiction in which the alleged abuse or neglect  
30 occurred; or

1 (iv) the office of the child and family ombudsman.

2 (b) The records described in subsection (3) must be promptly disclosed by the department to an  
3 appropriate individual described in subsection (4)(a) or to a county interdisciplinary child information and school  
4 safety team established pursuant to 52-2-211 upon the department's receipt of a report indicating that any of the  
5 following has occurred:

6 (i) the death of the child as a result of child abuse or neglect;

7 (ii) a sexual offense, as defined in 46-23-502, against the child;

8 (iii) exposure of the child to an actual and not a simulated violent offense as defined in 46-23-502; or

9 (iv) child abuse or neglect, as defined in 41-3-102, due to exposure of the child to circumstances  
10 constituting the criminal manufacture or distribution of dangerous drugs.

11 (5) A school or school district may disclose, without consent, personally identifiable information from the  
12 education records of a pupil to the department, the court, a review board, and the child's assigned attorney,  
13 guardian ad litem, or special advocate.

14 (6) Information that identifies a person as a participant in or recipient of substance abuse treatment  
15 services may be disclosed only as allowed by federal substance abuse confidentiality laws, including the consent  
16 provisions of the law.

17 (7) The confidentiality provisions of this section must be construed to allow a court of this state to share  
18 information with other courts of this state or of another state when necessary to expedite the interstate placement  
19 of children.

20 (8) A person who is authorized to receive records under this section shall maintain the confidentiality of  
21 the records and may not disclose information in the records to anyone other than the persons described in  
22 subsections (3)(a) and (4). However, this subsection may not be construed to compel a family member to keep  
23 the proceedings confidential.

24 (9) A news organization or its employee, including a freelance writer or reporter, is not liable for reporting  
25 facts or statements made by an immediate family member under subsection (8) if the news organization,  
26 employee, writer, or reporter maintains the confidentiality of the child who is the subject of the proceeding.

27 (10) This section is not intended to affect the confidentiality of criminal court records, records of law  
28 enforcement agencies, or medical records covered by state or federal disclosure limitations.

29 (11) Copies of records, evaluations, reports, or other evidence obtained or generated pursuant to this  
30 section that are provided to the parent, grandparent, aunt, uncle, brother, sister, guardian, or parent's or

1 guardian's attorney must be provided without cost."

2

3 **Section 3.** Section 42-3-204, MCA, is amended to read:

4 **"42-3-204. Contents of preplacement evaluation.** (1) The preplacement evaluation report must contain  
5 the following information if available:

6 (a) age and date of birth, nationality, racial or ethnic background, and any religious affiliation;

7 (b) marital status and family history, including the age and location of any child of the individual and the  
8 identity of and relationship to anyone else living in the individual's household;

9 (c) physical and mental health and any history of abuse of alcohol or drugs;

10 (d) educational and employment history and any special skills;

11 (e) property and income, including outstanding financial obligations as indicated in a current credit report  
12 or financial statement furnished by the individual;

13 (f) any previous request for an evaluation or involvement in an adoptive placement and the outcome of  
14 the evaluation or placement;

15 (g) whether the individual has been charged with or convicted of domestic violence or has been involved  
16 in a substantiated charge of child abuse or neglect ~~or elder abuse or neglect~~ and the disposition of the ~~charges~~  
17 charge;

18 (h) whether the individual is subject to a court order restricting the individual's right to custody or visitation  
19 with a child;

20 (i) whether the individual has been convicted of a crime other than a minor traffic violation;

21 (j) whether the individual has located a parent interested in placing a child with the individual for adoption  
22 and, if so, a brief description of the parent and the child; and

23 (k) any other fact or circumstance that may be relevant in determining whether the individual is suited  
24 to be an adoptive parent, including the quality of the environment in the individual's home and the functioning of  
25 other children in the individual's household.

26 (2) The report must contain recommendations regarding the suitability of the subject of the study to be  
27 an adoptive parent.

28 (3) A preplacement evaluation is valid for 1 year following its date of completion and must be updated  
29 if there is a significant change in circumstances.

30 (4) Prior to accepting physical custody of a child for purposes of adoption, a prospective adoptive parent

1 must have the preplacement evaluation completed by the evaluator, and the evaluation must specifically address  
 2 the appropriateness of placing the specifically identified child or children who will be the subject of the adoption  
 3 proceedings with the prospective adoptive parent."

4

5 **Section 4.** Section 50-5-1104, MCA, is amended to read:

6 **"50-5-1104. Rights of long-term care facility residents.** (1) The state adopts by reference for all  
 7 long-term care facilities the rights for long-term care facility residents applied by the federal government to  
 8 facilities that provide skilled nursing care or intermediate nursing care and participate in a medicaid or medicare  
 9 program (42 U.S.C. 1395i-3(a) and 1396r(a), as implemented by regulation).

10 (2) In addition to the rights adopted under subsection (1), the state adopts for all residents of long-term  
 11 care facilities the following rights:

12 (a) A resident or the resident's authorized representative must be informed by the facility at least 30 days  
 13 in advance of any changes in the cost or availability of services, unless to do so is beyond the facility's control.

14 (b) Regardless of the source of payment, each resident or the resident's authorized representative is  
 15 entitled, upon request, to receive and examine an explanation of the resident's monthly bill.

16 (c) Residents have the right to organize, maintain, and participate in resident advisory councils. The  
 17 facility shall afford reasonable privacy and facility space for the meetings of the councils.

18 (d) A resident has the right to present a grievance on the resident's own behalf or that of others to the  
 19 facility or the resident advisory council. The facility shall establish written procedures for receiving, handling, and  
 20 informing residents or the resident advisory council of the outcome of any grievance presented.

21 (e) A resident has the right to ask a state agency or a resident advocate for assistance in resolving  
 22 grievances, free from restraint, interference, or reprisal.

23 (f) During a resident's stay in a long-term care facility, the resident retains the prerogative to exercise  
 24 decisionmaking rights in all aspects of the resident's health care, including placement and treatment issues such  
 25 as medication, special diets, or other medical regimens.

26 (g) The resident's authorized representative must be notified in a prompt manner of any significant  
 27 accident, unexplained absence, or significant change in the resident's health status.

28 (h) A resident has the right to be free from verbal, mental, and physical abuse, neglect, or financial  
 29 exploitation. Facility staff shall report to the department and the long-term care ombudsman any suspected  
 30 incidents of abuse under the Montana ~~Elder and Persons With Developmental Disabilities Abuse Prevention Act~~

1 Vulnerable Adult Prevention of Abuse Act, Title 52, chapter 3, part 8.

2 (i) Each resident has the right to privacy in the resident's room or portion of the room. If a resident is  
3 seeking privacy in the resident's room, staff members should make reasonable efforts to make their presence  
4 known when entering the room.

5 (j) In case of involuntary transfer or discharge, a resident has the right to reasonable advance notice to  
6 ensure an orderly transfer or discharge. Reasonable advance notice requires at least 21 days' written notification  
7 of any interfacility transfer or discharge except in cases of emergency or for medical reasons documented in the  
8 resident's medical record by the attending physician.

9 (k) If clothing is provided to the resident by the facility, it must be of reasonable fit.

10 (l) A resident has the right to reasonable safeguards for personal possessions brought to the facility. The  
11 facility shall provide a means for safeguarding the resident's small items of value in the resident's room or in  
12 another part of the facility where the resident must have reasonable access to the items.

13 (m) The resident has the right to have all losses or thefts of personal possessions promptly investigated  
14 by the facility. The results of the investigation must be reported to the affected resident.

15 (3) The administrator of the facility shall adopt whatever additional measures are necessary to implement  
16 the residents' rights listed in subsections (1) and (2) and meet any other requirements relating to residents' health  
17 and safety that are conditions of participation in a state or federal program of medical assistance."  
18

19 **Section 5.** Section 52-3-201, MCA, is amended to read:  
20 "**52-3-201. Short title.** This part may be cited as the "Protective Services Act for ~~Aged Persons or~~  
21 ~~Disabled~~ Vulnerable Adults."  
22

23 **Section 6.** Section 52-3-202, MCA, is amended to read:  
24 "**52-3-202. Definitions.** As used in this part, the following definitions apply:  
25 (1) ~~"Aged person" means an aged person as defined by the department.~~  
26 (2)(1) "Department" means the department of public health and human services provided for in  
27 2-15-2201.

28 (3) ~~"Disabled adult" means a person 18 years of age or older who is defined by the department as~~  
29 ~~disabled or who is a person with developmental disabilities, as defined in 53-20-102.~~

30 (4)(2) "Protective services" means ~~assistance to an aged person or disabled adult in obtaining the~~



1 ~~services offered by the department~~ emergency services that are provided in a coordinated effort by the  
 2 department to a vulnerable adult in order to prevent or terminate the abuse, neglect, exploitation, intimidation,  
 3 or abandonment of the vulnerable adult.

4 (3) "Vulnerable adult" means a person who:

5 (a) is 60 years of age or older; or

6 (b) is 18 years of age or older and is a person with a disability as defined in 39-30-103 or has a  
 7 developmental disability as defined in 53-20-102."

8

9 **Section 7.** Section 52-3-203, MCA, is amended to read:

10 **"52-3-203. Purpose.** To ensure that ~~aged persons or disabled~~ vulnerable adults in the state ~~be~~ are  
 11 afforded the opportunity to receive protective services and to implement certain provisions of the federal  
 12 government's Title XX, Social Services Amendments of 1972, this legislature declares ~~that~~ the department to be  
 13 ~~recognized as~~ is the public agency responsible for providing ~~those~~ protective services."

14

15 **Section 8.** Section 52-3-204, MCA, is amended to read:

16 **"52-3-204. Duties of department.** The department ~~shall be~~ is responsible for acting on ~~requests~~  
 17 ~~referrals~~ for protective services from ~~aged persons or disabled~~ vulnerable adults or from relatives, friends, or other  
 18 reputable persons requesting ~~those~~ the services on behalf of ~~an aged person or disabled~~ a vulnerable adult."

19

20 **Section 9.** Section 52-3-206, MCA, is amended to read:

21 **"52-3-206. Annual reports.** The department shall make annual reports on the number of people served  
 22 by this part and the type of protective services made available to the ~~aged persons and disabled~~ vulnerable adults  
 23 of Montana."

24

25 **Section 10.** Section 52-3-207, MCA, is amended to read:

26 **"52-3-207. Protective services not creating guardianship or conservatorship.** (1) The provision of  
 27 protective services does not create a guardianship or conservatorship relationship between the department and  
 28 the ~~aged person or disabled~~ vulnerable adult ~~unless a guardianship or conservatorship is created in accordance~~  
 29 ~~with the requirements of Title 72, chapter 5, part 3 or 4.~~

30 (2) The department may not provide protective services that impose a legal limitation or restriction on

1 ~~an aged person or a disabled~~ a vulnerable adult:

2 (a) except emergency protective services provided under 52-3-804; or

3 (b) unless the department has been appointed legal guardian ~~or conservator~~ for ~~that person~~ the  
4 vulnerable adult under the provisions of Title 72, chapter 5, part 3 ~~or 4~~."

5

6 **Section 11.** Section 52-3-801, MCA, is amended to read:

7 "**52-3-801. Short title.** This part may be cited as the "~~Montana Elder and Persons With Developmental~~  
8 ~~Disabilities Abuse Prevention Act~~ Vulnerable Adult Prevention of Abuse Act."

9

10 **Section 12.** Section 52-3-802, MCA, is amended to read:

11 "**52-3-802. Legislative findings and purpose.** The legislature finds that a need exists to provide for  
12 cooperation among law enforcement officials and agencies, courts, and state and county agencies providing  
13 human services in preventing the abuse, sexual abuse, neglect, and exploitation of Montana's ~~elderly persons~~  
14 ~~and persons with developmental disabilities~~ vulnerable adults through the identification, reporting, and  
15 prosecution of acts of abuse, sexual abuse, neglect, and exploitation."

16

17 **Section 13.** Section 52-3-803, MCA, is amended to read:

18 "**52-3-803. Definitions.** As used in this part, the following definitions apply:

19 (1) "Abuse" means:

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

21 (b) the deprivation of food, shelter, clothing, or services necessary to maintain the physical or mental  
22 health of ~~an older person or a person with a developmental disability~~ a vulnerable adult without lawful authority.

23 A declaration made pursuant to 50-9-103 constitutes lawful authority.

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

25 (3) "Exploitation" means:

26 (a) the unreasonable use of ~~an older person or a person with a developmental disability~~ a vulnerable  
27 adult or of a power of attorney, conservatorship, or guardianship with regard to ~~an older person or a person with~~  
28 ~~a developmental disability~~ a vulnerable adult in order to obtain control of or to divert to the advantage of another  
29 the ownership, use, benefit, or possession of or interest in the ~~person's~~ vulnerable adult's money, assets, or  
30 property by means of deception, duress, menace, fraud, undue influence, or intimidation with the intent or result

1 of permanently depriving the ~~older person or person with a developmental disability~~ vulnerable adult of the  
 2 ownership, use, benefit, or possession of or interest in the ~~person's~~ vulnerable adult's money, assets, or property;

3 (b) an act taken by a person who has the trust and confidence of ~~an older person or a person with a~~  
 4 ~~developmental disability~~ a vulnerable adult to obtain control of or to divert to the advantage of another the  
 5 ownership, use, benefit, or possession of or interest in the ~~person's~~ vulnerable adult'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~~ vulnerable adult of the  
 8 ownership, use, benefit, or possession of or interest in the ~~person's~~ vulnerable adult's money, assets, or property;

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

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

18 (5) "Long-term care facility" ~~means a facility defined~~ has the meaning provided in 50-5-101.

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

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

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

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

30 ~~(10)~~(8) "Physical injury" means death, permanent or temporary disfigurement, or impairment of any bodily

1 organ or function.

2 ~~(11)(9)~~ "Sexual abuse" means the commission of sexual assault, sexual intercourse without consent,  
3 indecent exposure, deviate sexual conduct, incest, or sexual abuse of children as described in Title 45, chapter  
4 5, part 5, and Title 45, chapter 8, part 2.

5 (10) "Vulnerable adult" means a person who:

6 (a) is 60 years of age or older; or

7 (b) is 18 years of age or older and is a person with a disability as defined in 39-30-103 or has a  
8 developmental disability as defined in 53-20-102."

9

10 **Section 14.** Section 52-3-804, MCA, is amended to read:

11 **"52-3-804. Duties of department.** (1) The department shall investigate reports of abuse, sexual abuse,  
12 neglect, or exploitation received pursuant to 52-3-811~~(1)(a)~~.

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

15 (3) The department shall, when appropriate, provide protective services under Title 52, chapter 3, part  
16 2, for ~~an older person or a person with a developmental disability~~ a vulnerable adult alleged to have been abused,  
17 sexually abused, neglected, or exploited.

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

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

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

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

- 1 (i) arrange or facilitate an appropriate emergency protective service placement;
- 2 (ii) ~~transport or~~ arrange for the transport of the ~~person~~ vulnerable adult to the appropriate placement;
- 3 (iii) not later than 2 judicial days following placement of the ~~person~~ vulnerable adult, either:
- 4 (A) provide voluntary protective services as provided under subsection (3); or
- 5 (B) petition the district court to act as temporary guardian or appoint a temporary guardian as provided
- 6 in 72-5-317."

7

8 **Section 15.** Section 52-3-805, MCA, is amended to read:

9 **"52-3-805. Adult protective service teams.** (1) The county attorney or the department of ~~public health~~

10 ~~and human services~~ shall convene one or more temporary or permanent interdisciplinary adult protective service

11 teams. These teams shall assist in assessing the needs of, formulating and monitoring a treatment service plan

12 for, and coordinating services to ~~older persons and persons with developmental disabilities~~ vulnerable adults who

13 are victims of abuse, sexual abuse, neglect, or exploitation. The supervisor of adult protective services of the

14 department of ~~public health and human services~~ or the department's designee shall serve as the team's

15 coordinator. Members must include ~~a social worker~~ an adult protection specialist, a member of a local law

16 enforcement agency, a representative of the medical profession, and a county attorney or the county attorney's

17 designee, who is an attorney. Members may include other appropriate persons designated by the county attorney

18 or the supervisor of adult protective services of the department.

19 (2) When the team considers a matter involving an adult with developmental disabilities in the care of

20 a person providing developmental disabilities services, the team must also include a provider of developmental

21 disability services other than the provider involved in the matter under review. The team shall make a report to

22 the county attorney that contains a recommendation concerning any criminal prosecution to be brought pursuant

23 to this part."

24

25 **Section 16.** Section 52-3-811, MCA, is amended to read:

26 **"52-3-811. Reports.** (1) When the professionals and other persons listed in subsection (3) know or have

27 reasonable cause to suspect that ~~an older person or a person with a developmental disability~~ a vulnerable adult

28 known to them in their professional or official capacities has been subjected to abuse, sexual abuse, neglect, or

29 exploitation, they shall:

30 (a) if the ~~person~~ vulnerable adult is not a resident of a long-term care facility, report the matter to:

- 1 (i) the department or its local affiliate; or
- 2 (ii) the county attorney of the county in which the ~~person~~ vulnerable adult resides or in which the acts that
- 3 are the subject of the report occurred;
- 4 (b) if the ~~person~~ vulnerable adult is a resident of a long-term care facility, report the matter to the
- 5 long-term care ombudsman appointed under the provisions of 42 U.S.C. 3027(a)(12) and to the department. The
- 6 department shall investigate the matter pursuant to its authority in ~~50-5-204~~ 52-3-804 and, if it finds any
- 7 allegations of abuse, sexual abuse, neglect, or exploitation contained in the report to be substantially true, forward
- 8 a copy of the report to the county attorney as provided in subsection (1)(a)(ii).
- 9 (2) If the report required in subsection (1) involves an act or omission of the department that may be
- 10 construed as abuse, sexual abuse, neglect, or exploitation, a copy of the report may not be sent to the department
- 11 but must be sent instead to the county attorney of the county in which the ~~older person or the person with a~~
- 12 ~~developmental disability~~ vulnerable adult resides or in which the acts that are the subject of the report occurred.
- 13 (3) Professionals and other persons required to report are:
- 14 (a) a physician, resident, intern, professional or practical nurse, physician assistant, or member of a
- 15 hospital staff engaged in the admission, examination, care, or treatment of persons;
- 16 (b) an osteopath, dentist, denturist, chiropractor, optometrist, podiatrist, medical examiner, coroner, or
- 17 any other health or mental health professional;
- 18 (c) an ambulance attendant;
- 19 (d) ~~a social worker or other~~ an employee of the state, a county, or a municipality assisting ~~an older~~
- 20 ~~person or a person with a developmental disability~~ a vulnerable adult in the application for or receipt of public
- 21 assistance payments or services;
- 22 (e) a person who maintains or is employed by a roominghouse, retirement home or complex, nursing
- 23 home, group home, adult foster care home, adult day-care center, or assisted living facility or an agency or
- 24 individual that provides home health services or personal care in the home;
- 25 (f) an attorney, unless the attorney acquired knowledge of the facts required to be reported from a client
- 26 and the attorney-client privilege applies;
- 27 (g) a peace officer or other law enforcement official;
- 28 (h) a person providing services to ~~an older person or a person with a developmental disability~~ a
- 29 vulnerable adult pursuant to a contract with a state or federal agency; ~~and~~
- 30 (i) an employee of the department while in the conduct of the employee's duties; and

1           (j) a bank employee, investment advisor, financial planner, financial broker, conservator, or  
2 representative payee.

3           (4) Any other persons or entities may, but are not required to, submit a report in accordance with  
4 subsection (1)."

5  
6           **Section 17.** Section 52-3-812, MCA, is amended to read:

7           **"52-3-812. Content of report.** (1) The report required by 52-3-811 may be made in writing or orally, by  
8 telephone, ~~or in person,~~ or electronically through the department. A person who receives an oral report shall  
9 prepare it in writing as soon as possible.

10           (2) The report referred to under this section must contain:

11           (a) the names and addresses of the ~~older person or the person with a developmental disability~~ vulnerable  
12 adult and the person, if any, responsible for ~~that person's~~ the vulnerable adult's care;

13           (b) the name and address, if available, of the person who is alleged to have abused, sexually abused,  
14 neglected, or exploited the ~~older person or the person with a developmental disability~~ vulnerable adult;

15           (c) to the extent known, the ~~person's~~ vulnerable adult's age and the nature and extent of the abuse,  
16 sexual abuse, neglect, or exploitation, including any evidence of previous injuries, abuse, sexual abuse, neglect,  
17 or exploitation sustained by the ~~older person or the person with a developmental disability~~ vulnerable adult and  
18 any evidence of prior instances of abuse, sexual abuse, neglect, or exploitation of other ~~older persons or persons~~  
19 ~~with developmental disabilities~~ vulnerable adults committed by the person alleged to have committed abuse,  
20 sexual abuse, neglect, or exploitation; and

21           (d) the name and address of the person making the report."

22  
23           **Section 18.** Section 52-3-813, MCA, is amended to read:

24           **"52-3-813. Confidentiality.** (1) The case records of the department, its local affiliate, the county attorney,  
25 and the court concerning actions taken under this part and all reports made pursuant to 52-3-811 must be kept  
26 confidential except as provided by this section. For the purposes of this section, the term "case records" includes  
27 records of an investigation of a report of abuse, sexual abuse, neglect, or exploitation.

28           (2) The records and reports required to be kept confidential by subsection (1) may be disclosed, upon  
29 written request to the department, to the following persons or entities in this or any other state:

30           (a) a physician who is caring for ~~an older person or a person with a developmental disability~~ a vulnerable

- 1 adult who the physician reasonably believes was abused, sexually abused, neglected, or exploited;
- 2 (b) a legal guardian or conservator of the ~~older person or the person with a developmental disability~~
- 3 vulnerable adult if the identity of the person who made the report is protected and the legal guardian or
- 4 conservator is not the person suspected of the abuse, sexual abuse, neglect, or exploitation;
- 5 (c) the ~~person~~ vulnerable adult named in the report as allegedly being abused, sexually abused,
- 6 neglected, or exploited if ~~that person~~ the vulnerable adult is not ~~legally incompetent~~ an incapacitated person;
- 7 (d) any person engaged in bona fide research if the person alleged in the report to have committed the
- 8 abuse, sexual abuse, neglect, or exploitation is later convicted of an offense constituting abuse, sexual abuse,
- 9 neglect, or exploitation and if the identity of the ~~older person or the person with a developmental disability~~
- 10 vulnerable adult who is the subject of the report is not disclosed to the researcher;
- 11 (e) an adult protective service team. Members of the team are required to keep information about the
- 12 subject individuals confidential.
- 13 (f) an authorized representative of a provider of services to a ~~person~~ vulnerable adult alleged to be an
- 14 abused, sexually abused, neglected, or exploited ~~older person or person with a developmental disability~~ if:
- 15 (i) the department and the provider are parties to a contested case proceeding under Title 2, chapter 4,
- 16 part 6, resulting from action by the department adverse to the license of the provider and if information contained
- 17 in the records or reports of the department is relevant to the case; or
- 18 (ii) disclosure to the provider is determined by the department to be necessary to protect an interest of
- 19 a ~~person~~ vulnerable adult alleged to be an abused, sexually abused, neglected, or exploited; ~~older person or~~
- 20 ~~person with a developmental disability; or~~
- 21 ~~—— (iii) the person is carrying out background screening or employment-related or volunteer-related~~
- 22 ~~screening of current or prospective employees or volunteers who have or may have unsupervised contact with~~
- 23 ~~an older person or a person with a developmental disability through employment or volunteer activities if the~~
- 24 ~~disclosure is limited to information that indicates a risk to an older person or a person with a developmental~~
- 25 ~~disability posed by the employee or volunteer, as determined by the department. A request for information under~~
- 26 ~~this subsection must be made in writing.~~
- 27 (g) an employee of the department if disclosure of the record or report is necessary for administration
- 28 of a program designed to benefit a ~~person~~ vulnerable adult alleged to be an abused, sexually abused, neglected,
- 29 or exploited ~~older person or person with a developmental disability~~;
- 30 (h) an authorized representative of a guardianship program approved by the department if the



1 department determines that disclosure to the program or to a person designated by the program is necessary  
2 for the proper provision of guardianship services to a ~~person~~ vulnerable adult alleged to be ~~an~~ abused, sexually  
3 abused, neglected, or exploited ~~elder person or person with a developmental disability~~;

4 (i) protection and advocacy systems authorized under the provisions of 29 U.S.C. 794e, 42 U.S.C.  
5 10805, and 42 U.S.C. 15043;

6 (j) the news media if disclosure is limited to confirmation of factual information regarding how the case  
7 was handled and does not violate the privacy rights of the ~~elder person, person with a developmental disability,~~  
8 vulnerable adult or alleged perpetrator of abuse, sexual abuse, neglect, or exploitation, as determined by the  
9 department;

10 (k) a coroner or medical examiner who is determining the cause of death of ~~an elder person or a person~~  
11 ~~with a developmental disability~~ a vulnerable adult;

12 (l) a person about whom a report has been made and that person's attorney with respect to relevant  
13 records pertaining to that person only without disclosing the identity of the person who made the report or any  
14 other person whose safety might be endangered through disclosure;

15 (m) an agency, including a probation or parole agency, that is legally responsible for the supervision of  
16 an alleged perpetrator of abuse, sexual abuse, neglect, or exploitation of ~~an elder person or a person with a~~  
17 ~~developmental disability~~ a vulnerable adult; and

18 (n) a department, agency, or organization, including a federal agency, military reservation, or tribal  
19 organization, that is legally authorized to receive, inspect, or investigate reports of abuse, sexual abuse, neglect,  
20 or exploitation of ~~an elder person or a person with a developmental disability~~ a vulnerable adult and that meets  
21 the disclosure criteria contained in this section.

22 (3) The records and reports required to be kept confidential by subsection (1) must be disclosed, upon  
23 request, to the following persons or entities in this or any other state:

24 (a) a county attorney or other law enforcement official who requires the information in connection with  
25 an investigation of a violation of this part;

26 (b) a court that has determined, in camera, that public disclosure of the report, data, information, or  
27 record is necessary for the determination of an issue before it;

28 (c) a grand jury upon its determination that the report, data, information, or record is necessary in the  
29 conduct of its official business.

30 (4) If the person who is reported to have abused, sexually abused, neglected, or exploited ~~an elder~~

1 ~~person or a person with a developmental disability~~ a vulnerable adult is the holder of a license, permit, or  
 2 certificate issued by the department of labor and industry under the provisions of Title 37 or issued by any other  
 3 entity of state government, the report may be submitted to the entity that issued the license, permit, or certificate."  
 4

5 **Section 19.** Section 52-3-814, MCA, is amended to read:

6 **"52-3-814. Immunity from civil and criminal liability.** (1) A person who makes a report required or  
 7 authorized to be made under 52-3-811 is immune from civil or criminal liability that might otherwise be incurred  
 8 or imposed as a result of the report unless the report is false in any material respect and the person acted in bad  
 9 faith or with malicious purpose.

10 (2) A person who provides information or who uses information obtained pursuant to 52-3-813(2) to  
 11 refuse to hire or to discharge an employee, volunteer, or other person who through their employment or volunteer  
 12 activities may have unsupervised contact with ~~an older person or a person with a developmental disability~~ a  
 13 vulnerable adult is immune from civil liability unless the person providing or using the information acts in bad faith  
 14 or with malicious purpose."  
 15

16 **Section 20.** Section 52-3-815, MCA, is amended to read:

17 **"52-3-815. Evidence of abuse, sexual abuse, neglect, or exploitation to be gathered and**  
 18 **submitted.** (1) A person or agency receiving a report of suspected abuse, sexual abuse, neglect, or exploitation  
 19 under 52-3-811 shall prepare a written description of the conditions regarded as evidence of abuse, sexual abuse,  
 20 neglect, or exploitation and may, with the consent of an allegedly abused, sexually abused, neglected, or  
 21 exploited ~~older person or person with a developmental disability~~ vulnerable adult or without consent of the ~~person~~  
 22 vulnerable adult if it appears that the ~~person~~ vulnerable adult is an incapacitated person, take or cause to be  
 23 taken photographs of an area of trauma visible on the body of the allegedly abused, sexually abused, neglected,  
 24 or exploited ~~person~~ vulnerable adult and regarded as evidence of abuse, sexual abuse, neglect, or exploitation.

25 (2) A physician required to report under 52-3-811 may, with the consent of an allegedly abused, sexually  
 26 abused, neglected, or exploited ~~older person or person with a developmental disability~~ vulnerable adult or without  
 27 consent of the ~~person~~ vulnerable adult if it appears that the ~~person~~ vulnerable adult is an incapacitated person,  
 28 require x-rays or other appropriate medical tests or procedures that would, in the professional opinion of the  
 29 physician, assist in establishing evidence related to the allegation of abuse, sexual abuse, neglect, or exploitation.

30 (3) Evidence authorized to be gathered under this section must be submitted with the report required

1 under 52-3-811 to the authorities designated in 52-3-811 as soon as possible after submission of the report."  
2

3

**Section 21.** Section 52-3-821, MCA, is amended to read:

4 **"52-3-821. Admissibility of evidence.** In any proceeding resulting from a report made pursuant to the  
5 provisions of this part or in any proceeding where the report or its content is sought to be introduced into  
6 evidence, the report or its content or any other fact related to the report or to the condition of the ~~person~~  
7 vulnerable adult who is the subject of the report may not be excluded on the ground that the matter is or may be  
8 the subject of a privilege granted in Title 26, chapter 1, part 8, except the attorney-client privilege granted by  
9 26-1-803."  
10

11

**Section 22.** Section 52-3-825, MCA, is amended to read:

12 **"52-3-825. Penalties.** (1) A person who purposely or knowingly fails to make a report required by  
13 52-3-811 or makes a false report or discloses or fails to disclose the contents of a case record or report in  
14 violation of 52-3-813 is guilty of an offense and upon conviction is punishable as provided in 46-18-212.

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

18 (b) (i) A person who negligently abuses ~~an older person or a person with a developmental disability~~ a  
19 vulnerable adult is guilty of a misdemeanor and upon a first conviction shall be fined an amount not to exceed  
20 \$1,000 or be imprisoned in the county jail for a term not to exceed 1 year, or both.

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

24 (c) A person with a developmental disability may not be charged under subsection (2)(a) or (2)(b)."  
25

- END -