

HOUSE BILL NO. 244

INTRODUCED BY T. JACOBSON, K. DUDIK, J. ESSMANN, K. MCCARTHY, L. SHELDON-GALLOWAY,
B. USHER

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE DEFINITION OF "ABUSE" IN THE MONTANA
ELDER AND PERSONS WITH DEVELOPMENTAL DISABILITIES ABUSE PREVENTION ACT TO INCLUDE
THE MAKING OF CERTAIN RECORDATIONS; AND AMENDING SECTION 52-3-803, MCA."

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 making of a recordation of an older person or a person with a developmental disability, with or without that person's knowledge, that tends to cast ridicule or shame upon that person, with or without that person being aware of being the subject of ridicule or shame; or

~~(b)~~(c) 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

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.

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

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

27 (11) "Sexual abuse" means the commission of sexual assault, sexual intercourse without consent,
28 indecent exposure, deviate sexual conduct, incest, or sexual abuse of children as described in Title 45, chapter
29 5, part 5, and Title 45, chapter 8, part 2."

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