

HOUSE BILL NO. 95

INTRODUCED BY J. KEANE

BY REQUEST OF THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATING TO 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 FALSE REPORTING; AND AMENDING SECTIONS 30-14-144, 42-3-204, 45-6-333, 46-16-222, 50-5-1104, 52-1-103, 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. (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 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; or

(b) the person's conduct caused an older or developmentally disabled person 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

(v) loss of assets essential to the health or welfare of the older or disabled person.



1 (2) Damages awarded in an action under 30-14-133 must be given priority over imposition of civil
2 penalties ordered by the court under this section.

3 (3) As used in this section:

4 (a) "developmentally disabled person" means a person with a developmental disability as defined in
5 53-20-102; and

6 (b) "older person" ~~has the meaning provided in 52-3-803~~ means a person who is 60 years of age or
7 older.

8

9 **Section 2.** Section 42-3-204, MCA, is amended to read:

10 **"42-3-204. Contents of preplacement evaluation.** (1) The preplacement evaluation report must contain
11 the following information if available:

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

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

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

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

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

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

21 (g) whether the individual has been charged with or convicted of domestic violence or has been involved
22 in a substantiated charge of child abuse or neglect or ~~elder~~ abuse or neglect of a vulnerable adult as defined in
23 52-3-803 and the disposition of the charges;

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

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

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

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

1 other children in the individual's household.

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

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

6 (4) Prior to accepting physical custody of a child for purposes of adoption, a prospective adoptive parent
7 must have the preplacement evaluation completed by the evaluator, and the evaluation must specifically address
8 the appropriateness of placing the specifically identified child or children who will be the subject of the adoption
9 proceedings with the prospective adoptive parent."
10

11 **Section 3.** Section 45-6-333, MCA, is amended to read:

12 **"45-6-333. Exploitation of older person, incapacitated person, or person with developmental**
13 **disability.** (1) A person commits the offense of exploitation of an older person, an incapacitated person, or a
14 person with a developmental disability if the person:

15 (a) purposely or knowingly obtains or uses or attempts to obtain or use an older person's, incapacitated
16 person's, or developmentally disabled person's funds, assets, or property with the intent to temporarily or
17 permanently deprive the older person, incapacitated person, or developmentally disabled person of the use,
18 benefit, or possession of funds, assets, or property or to benefit someone other than the older person,
19 incapacitated person, or developmentally disabled person; and

20 (b) (i) stands in a position of trust or confidence with the older person, incapacitated person, or
21 developmentally disabled person; or

22 (ii) has a business relationship with the older person, incapacitated person, or developmentally disabled
23 person.

24 (2) A person commits the offense of exploitation of an older person, an incapacitated person, or a person
25 with a developmental disability if the person:

26 (a) purposely or knowingly obtains personal identifying information of another person and uses that
27 information for any unlawful purpose, including to obtain or attempt to obtain credit, goods, services, financial
28 information, or medical information in the name of the other person without the consent of the other person; and

29 (b) (i) stands in a position of trust or confidence with the older person, incapacitated person, or
30 developmentally disabled person; or

1 (ii) has a business relationship with the older person, incapacitated person, or developmentally disabled
2 person.

3 (3) A person convicted of the offense of exploitation of an older person, an incapacitated person, or a
4 person with a developmental disability shall be fined an amount not to exceed \$10,000 or be imprisoned in a state
5 prison for a term not to exceed 10 years, or both.

6 (4) As used in this section, the following definitions apply:

7 (a) "Developmental disability" has the meaning provided in 53-20-102.

8 (b) "Incapacitated person" has the meaning provided in 72-5-101.

9 (c) "Older person" means a person who is ~~65~~ 60 years of age or older."
10

11 **Section 4.** Section 46-16-222, MCA, is amended to read:

12 **"46-16-222. Testimony of third person in cases of exploitation of older person, incapacitated**
13 **person, or developmentally disabled person.** (1) Otherwise inadmissible hearsay may be admitted into
14 evidence in a criminal proceeding, as provided in subsections (2) and (3), if:

15 (a) the declarant of the out-of-court statement is an older person, an incapacitated person, or an
16 individual with a developmental disability who is:

17 (i) an alleged victim of exploitation of an older person, incapacitated person, or developmentally disabled
18 person pursuant to 45-6-333 that is the subject of the criminal proceeding; or

19 (ii) a witness to an alleged exploitation of an older person, incapacitated person, or developmentally
20 disabled person pursuant to 45-6-333 that is the subject of the criminal proceeding;

21 (b) the court finds that the time, content, and circumstances of the statement provide circumstantial
22 guarantees of trustworthiness;

23 (c) the older person, the incapacitated person, or the individual with a developmental disability is
24 unavailable as a witness;

25 (d) the hearsay testimony is offered as evidence of a material fact and is more probative on the point for
26 which it is offered than any other evidence available through reasonable efforts; and

27 (e) the party intending to offer the hearsay testimony gives sufficient notice to provide the adverse party
28 with a fair opportunity to prepare. The notice must include the content of the statement, the approximate time,
29 date, and location of the statement, the person to whom the statement was made, and the circumstances
30 surrounding the statement that the offering party believes support the statement's reliability.

- 1 (2) The court shall issue findings of fact and conclusions of law setting forth the court's reasoning on the
2 admissibility of the testimony.
- 3 (3) When deciding the admissibility of offered hearsay testimony under subsections (1) and (2), a court
4 shall consider the following:
- 5 (a) the attributes of the hearsay declarant, including:
- 6 (i) the individual's age;
- 7 (ii) the individual's ability to communicate verbally;
- 8 (iii) the individual's ability to comprehend the statements or questions of others;
- 9 (iv) the individual's ability to tell the difference between truth and falsehood;
- 10 (v) the individual's motivation to tell the truth, including whether the individual understands the general
11 obligation to speak truthfully and not fabricate stories;
- 12 (vi) whether the individual possessed sufficient mental capacity at the time of the alleged incident to
13 create an accurate memory of the incident; and
- 14 (vii) whether the individual possesses sufficient memory to retain an independent recollection of the
15 events at issue;
- 16 (b) information regarding the witness who is relating the individual's hearsay statement, including:
- 17 (i) the witness's relationship to the individual;
- 18 (ii) whether the relationship between the witness and the individual has an impact on the trustworthiness
19 of the individual's hearsay statement;
- 20 (iii) whether the witness has a motive to fabricate or distort the individual's statement; and
- 21 (iv) the circumstances under which the witness heard the individual's statement, including the timing of
22 the statement in relation to the incident at issue and the availability of another person in whom the individual could
23 confide;
- 24 (c) information regarding the individual's statement, including:
- 25 (i) whether the statement contains knowledge not normally attributed to an individual of the declarant's
26 age;
- 27 (ii) whether the statement was spontaneous;
- 28 (iii) the suggestiveness of statements by other persons to the individual at the time that the individual
29 made the statement;
- 30 (iv) if statements were made by the individual to more than one person, whether those statements were

1 consistent;

2 (v) the nearness in time of the statement to the incident at issue; and

3 (vi) whether the statement is testimonial or nontestimonial in character; and

4 (d) other considerations that in the judge's opinion may bear on the admissibility of the individual's
5 hearsay testimony.

6 (4) As used in this section, the following definitions apply:

7 (a) "Developmental disability" has the meaning provided in 53-20-102.

8 (b) "Incapacitated person" has the meaning provided in 72-5-101.

9 (c) "Older person" means a person who is ~~65~~ 60 years of age or older."

10

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

12 **"50-5-1104. Rights of long-term care facility residents.** (1) The state adopts by reference for all
13 long-term care facilities the rights for long-term care facility residents applied by the federal government to
14 facilities that provide skilled nursing care or intermediate nursing care and participate in a medicaid or medicare
15 program (42 U.S.C. 1395i-3(a) and 1396r(a), as implemented by regulation).

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

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

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

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

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

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

29 (f) During a resident's stay in a long-term care facility, the resident retains the prerogative to exercise
30 decisionmaking rights in all aspects of the resident's health care, including placement and treatment issues such

1 as medication, special diets, or other medical regimens.

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

4 (h) A resident has the right to be free from verbal, mental, and physical abuse, neglect, or financial
5 exploitation. Facility staff shall report ~~to the department and the long-term care ombudsman~~ any suspected
6 incidents of abuse under the ~~Montana Elder and Persons With Developmental Disabilities Abuse Prevention~~
7 Vulnerable Adult Prevention of Abuse Act, Title 52, chapter 3, part 8, to:

8 (i) department programs that provide adult protective services and that certify long-term care facilities;
9 and

10 (ii) the long-term care ombudsman.

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

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

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

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

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

24 (3) The administrator of the facility shall adopt whatever additional measures are necessary to implement
25 the residents' rights listed in subsections (1) and (2) and meet any other requirements relating to residents' health
26 and safety that are conditions of participation in a state or federal program of medical assistance."
27

28 **Section 6.** Section 52-1-103, MCA, is amended to read:

29 **"52-1-103. Powers and duties of department.** The department shall:

30 (1) administer and supervise all forms of child and adult protective services;

- 1 (2) act as the lead agency in coordinating and planning services to children with multiagency service
2 needs;
- 3 (3) establish a system of councils at the state and local levels to make recommendations and to advise
4 the department on issues, including children's issues;
- 5 (4) provide the following functions, as necessary, for youth in need of care:
- 6 (a) intake, investigation, case management, and client supervision;
- 7 (b) placement in youth care facilities;
- 8 (c) contracting for necessary services;
- 9 (d) protective services day care; and
- 10 (e) adoption;
- 11 (5) register or license youth care facilities, child-placing agencies, day-care facilities, community homes
12 for persons with developmental disabilities, community homes for severely disabled persons, and adult foster care
13 facilities;
- 14 (6) act as lead agency in implementing and coordinating child-care programs and services under the
15 Montana Child Care Act;
- 16 (7) administer the Interstate Compact for the Placement of Children;
- 17 (8) (a) administer child abuse prevention services funded through child abuse grants and the Montana
18 children's trust fund provided for in Title 52, chapter 7, part 1; and
- 19 (b) administer ~~elder~~ abuse prevention services for vulnerable adults;
- 20 (9) develop a statewide youth services and resources plan that takes into consideration local needs;
- 21 (10) administer services to the aged;
- 22 (11) provide consultant services to:
- 23 (a) facilities providing care for adults who are needy, indigent, or dependent or who have disabilities; and
- 24 (b) youth care facilities;
- 25 (12) use the staff and services of other state agencies and units of the Montana university system, within
26 their respective statutory functions, to carry out its functions under this title;
- 27 (13) contract, as necessary, for administration of child and adult protection services for each county; and
- 28 (14) adopt rules necessary to carry out the purposes of 52-2-612 and this chapter."

29

30 **Section 7.** Section 52-3-201, MCA, is amended to read:

1 **"52-3-201. Short title.** This part may be cited as the "Protective Services Act for ~~Aged Persons or~~
2 ~~Disabled Vulnerable~~ Adults"."

3

4 **Section 8.** Section 52-3-202, MCA, is amended to read:

5 **"52-3-202. Definitions.** As used in this part, the following definitions apply:

6 ~~(1) "Aged person" means an aged person as defined by the department.~~

7 (2)(1) "Department" means the department of public health and human services provided for in
8 2-15-2201.

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

11 (4)(2) "Protective services" means ~~assistance to an aged person or disabled adult in obtaining the~~
12 ~~services offered by the department~~ emergency services that are provided in a coordinated effort by the
13 department to a vulnerable adult in order to prevent or terminate the abuse, neglect, exploitation, intimidation,
14 or abandonment of the vulnerable adult.

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

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

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

19

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

21 **"52-3-203. Purpose.** To ensure that ~~aged persons or disabled~~ vulnerable adults in the state ~~be~~ are
22 afforded the opportunity to receive protective services and to implement certain provisions of the federal
23 government's Title XX, Social Services Amendments of 1972, ~~this~~ the legislature declares that the department
24 ~~to be recognized as~~ is the public agency responsible for providing ~~these~~ protective services."

25

26 **Section 10.** Section 52-3-204, MCA, is amended to read:

27 **"52-3-204. Duties of department.** The department ~~shall be~~ is responsible for acting on requests for
28 protective services from ~~aged persons or disabled~~ vulnerable adults or from relatives, friends, or other reputable
29 persons requesting ~~these~~ the services on behalf of ~~an aged person or disabled~~ a vulnerable adult."

30

1 **Section 11.** Section 52-3-206, MCA, is amended to read:

2 **"52-3-206. Annual reports.** The department shall make annual reports on the number of people served
3 by this part and the type of protective services made available to the ~~aged persons and disabled~~ vulnerable adults
4 of Montana."

5
6 **Section 12.** Section 52-3-207, MCA, is amended to read:

7 **"52-3-207. Protective services not creating guardianship or conservatorship.** (1) The provision of
8 protective services does not in itself create a guardianship or conservatorship relationship between the
9 department and the ~~aged person or disabled~~ vulnerable adult ~~unless a guardianship or conservatorship is created~~
10 ~~in accordance with the requirements of Title 72, chapter 5, part 3 or 4.~~

11 (2) The department may not provide protective services that impose a legal limitation or restriction on
12 ~~an aged person or a disabled~~ a vulnerable adult:

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

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

16

17 **Section 13.** Section 52-3-801, MCA, is amended to read:

18 **"52-3-801. Short title.** This part may be cited as the "~~Montana Elder and Persons With Developmental~~
19 ~~Disabilities Abuse Prevention~~ Vulnerable Adult Prevention of Abuse Act"."

20

21 **Section 14.** Section 52-3-802, MCA, is amended to read:

22 **"52-3-802. Legislative findings and purpose.** The legislature finds that a need exists to provide for
23 cooperation among law enforcement officials and agencies, courts, and state and county agencies providing
24 human services in preventing the abuse, sexual abuse, neglect, and exploitation of Montana's ~~elderly persons~~
25 ~~and persons with developmental disabilities~~ vulnerable adults through the identification, reporting, and
26 prosecution of acts of abuse, sexual abuse, neglect, and exploitation."

27

28 **Section 15.** Section 52-3-803, MCA, is amended to read:

29 **"52-3-803. Definitions.** As used in this part, the following definitions apply:

30 (1) "Abuse" means:

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

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

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

6 (3) "Exploitation" means:

7 (a) the unreasonable use of ~~an older person or a person with a developmental disability~~ a vulnerable
 8 adult or of a power of attorney, conservatorship, or guardianship with regard to ~~an older person or a person with~~
 9 ~~a developmental disability~~ a vulnerable adult in order to obtain control of or to divert to the advantage of another
 10 the ownership, use, benefit, or possession of or interest in the ~~person's~~ vulnerable adult's money, assets, or
 11 property by means of deception, duress, menace, fraud, undue influence, or intimidation with the intent or result
 12 of permanently depriving the ~~older person or person with a developmental disability~~ vulnerable adult of the
 13 ownership, use, benefit, or possession of or interest in the ~~person's~~ vulnerable adult's money, assets, or property;

14 (b) an act taken by a person who has the trust and confidence of ~~an older person or a person with a~~
 15 ~~developmental disability~~ a vulnerable adult to obtain control of or to divert to the advantage of another the
 16 ownership, use, benefit, or possession of or interest in the ~~person's~~ vulnerable adult's money, assets, or property
 17 by means of deception, duress, menace, fraud, undue influence, or intimidation with the intent or result of
 18 permanently depriving the ~~older person or person with a developmental disability~~ vulnerable adult of the
 19 ownership, use, benefit, or possession of or interest in the ~~person's~~ vulnerable adult's money, assets, or property;

20 (c) the unreasonable use of ~~an older person or a person with a developmental disability~~ a vulnerable
 21 adult or of a power of attorney, conservatorship, or guardianship with regard to ~~an older person or a person with~~
 22 ~~a developmental disability~~ a vulnerable adult done in the course of an offer or sale of insurance or securities in
 23 order to obtain control of or to divert to the advantage of another the ownership, use, benefit, or possession of
 24 the ~~person's~~ vulnerable adult's money, assets, or property by means of deception, duress, menace, fraud, undue
 25 influence, or intimidation with the intent or result of permanently depriving the ~~older person or person with a~~
 26 ~~developmental disability~~ vulnerable adult of the ownership, use, benefit, or possession of the ~~person's~~ vulnerable
 27 adult's money, assets, or property.

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

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

30 (6) "Mental injury" means an identifiable and substantial impairment of a person's intellectual or

1 psychological functioning or well-being.

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

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

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

11 ~~(10)(8) "Physical injury" means death, permanent or temporary disfigurement, or impairment of any bodily
12 organ or function.~~

13 ~~(11)(9) "Sexual abuse" means the commission of sexual assault, sexual intercourse without consent,
14 indecent exposure, deviate sexual conduct, incest, or sexual abuse of children as described in Title 45, chapter
15 5, part 5, and Title 45, chapter 8, part 2.~~

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

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

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

20

21 **Section 16.** Section 52-3-804, MCA, is amended to read:

22 **"52-3-804. Duties of department.** (1) The department shall investigate reports of abuse, sexual abuse,
23 neglect, or exploitation received pursuant to 52-3-811~~(1)(a)~~.

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

26 (3) The department shall, when appropriate, provide protective services under Title 52, chapter 3, part
27 2, for ~~an older person or a person with a developmental disability~~ a vulnerable adult alleged to have been abused,
28 sexually abused, neglected, or exploited.

29 (4) If a ~~person~~ vulnerable adult alleged to be abused, sexually abused, neglected, or exploited pursuant
30 to this part or the ~~person's~~ vulnerable adult's caretaker refuses to allow a representative of the department

1 entrance to the premises for the purpose of investigating a report made pursuant to 52-3-811(1)(a), the district
 2 court in the county where the ~~person~~ vulnerable adult is found may order a law enforcement officer or a
 3 department ~~social worker~~ representative to enter the premises to conduct an investigation upon finding that there
 4 is probable cause to believe that the ~~person~~ vulnerable adult is abused, sexually abused, neglected, or exploited.

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

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

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

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

13 (ii) transport or arrange for the transport of the ~~person~~ vulnerable adult to the appropriate placement;

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

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

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

18

19 **Section 17.** Section 52-3-805, MCA, is amended to read:

20 **"52-3-805. Adult protective service teams.** (1) The county attorney or the department of ~~public health~~
 21 ~~and human services~~ shall convene one or more temporary or permanent interdisciplinary adult protective service
 22 teams. ~~These~~ The teams shall assist in assessing the needs of, formulating and monitoring a treatment service
 23 plan for, and coordinating services to ~~older persons and persons with developmental disabilities~~ vulnerable adults
 24 who are victims of abuse, sexual abuse, neglect, or exploitation. The supervisor of adult protective services of
 25 the department of ~~public health and human services~~ or the department's designee shall serve as the team's
 26 coordinator. Members must include ~~a social worker~~ an adult protection investigator, a member of a local law
 27 enforcement agency, a representative of the medical profession, and a county attorney or the county attorney's
 28 designee, who is an attorney. Members may include other appropriate persons designated by the county attorney
 29 or the supervisor of adult protective services of the department.

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

1 a person providing developmental disabilities services, the team must also include a provider of developmental
 2 disability services other than the provider involved in the matter under review. The team shall make a report to
 3 the county attorney that contains a recommendation concerning any criminal prosecution to be brought pursuant
 4 to this part."

5

6 **Section 18.** Section 52-3-811, MCA, is amended to read:

7 **"52-3-811. Reports.** (1) When the professionals and other persons listed in subsection (3) know or have
 8 reasonable cause to suspect that ~~an older person or a person with a developmental disability~~ a vulnerable adult
 9 known to them in their professional or official capacities has been subjected to abuse, sexual abuse, neglect, or
 10 exploitation, they shall:

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

12 (i) the department or its local affiliate; or

13 (ii) the county attorney of the county in which the ~~person~~ vulnerable adult resides or in which the acts
 14 that are the subject of the report occurred;

15 (b) if the ~~person~~ vulnerable adult is a resident of a long-term care facility, report the matter to the
 16 long-term care ombudsman appointed under the provisions of 42 U.S.C. 3027(a)(12) and to the department. The
 17 department shall investigate the matter pursuant to its authority in 50-5-204 and 52-3-804 and, if it finds any
 18 allegations of abuse, sexual abuse, neglect, or exploitation contained in the report to be substantially true, forward
 19 a copy of the report to the county attorney as provided in subsection (1)(a)(ii).

20 (2) If the report required in subsection (1) involves an act or omission of the department that may be
 21 construed as abuse, sexual abuse, neglect, or exploitation, a copy of the report may not be sent to the department
 22 but must be sent instead to the county attorney of the county in which the ~~older person or the person with a~~
 23 ~~developmental disability~~ vulnerable adult resides or in which the acts that are the subject of the report occurred.

24 (3) Professionals and other persons required to report are:

25 (a) a physician, resident, intern, professional or practical nurse, physician assistant, or member of a
 26 hospital staff engaged in the admission, examination, care, or treatment of persons;

27 (b) an osteopath, dentist, denturist, chiropractor, optometrist, podiatrist, medical examiner, coroner, or
 28 any other health or mental health professional;

29 (c) an ambulance attendant;

30 (d) ~~a social worker or other~~ an employee of the state, a county, or a municipality assisting ~~an older~~

1 ~~person or a person with a developmental disability~~ a vulnerable adult in the application for or receipt of public
2 assistance payments or services;

3 (e) a person who maintains or is employed by a roominghouse, retirement home or complex, nursing
4 home, group home, adult foster care home, adult day-care center, or assisted living facility or an agency or
5 individual that provides home health services or personal care in the home;

6 (f) an attorney, unless the attorney acquired knowledge of the facts required to be reported from a client
7 and the attorney-client privilege applies;

8 (g) a peace officer or other law enforcement official;

9 (h) a person providing services to ~~an older person or a person with a developmental disability~~ a
10 vulnerable adult pursuant to a contract with a state or federal agency; ~~and~~

11 (i) an employee of the department while in the conduct of the employee's duties; and

12 (j) a bank employee, investment adviser, financial planner, financial broker, conservator, or
13 representative payee.

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

16

17 **Section 19.** Section 52-3-812, MCA, is amended to read:

18 **"52-3-812. Content of report.** (1) The report required by 52-3-811 may be made in writing or orally, by
19 telephone, ~~or in person, or electronically through the department.~~ A person who receives an oral report shall
20 prepare it in writing as soon as possible.

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

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

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

26 (c) to the extent known, the ~~person's~~ vulnerable adult's age and the nature and extent of the abuse,
27 sexual abuse, neglect, or exploitation, including any evidence of previous injuries, abuse, sexual abuse, neglect,
28 or exploitation sustained by the ~~older person or the person with a developmental disability~~ vulnerable adult and
29 any evidence of prior instances of abuse, sexual abuse, neglect, or exploitation of other ~~older persons or persons~~
30 ~~with developmental disabilities~~ vulnerable adults committed by the person alleged to have committed abuse,

1 sexual abuse, neglect, or exploitation; and
 2 (d) the name and address of the person making the report."

3

4 **Section 20.** Section 52-3-813, MCA, is amended to read:

5 **"52-3-813. Confidentiality.** (1) The case records of the department, its local affiliate, the county attorney,
 6 and the court concerning actions taken under this part and all reports made pursuant to 52-3-811 must be kept
 7 confidential except as provided by this section. For the purposes of this section, the term "case records" includes
 8 records of an investigation of a report of abuse, sexual abuse, neglect, or exploitation.

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

11 (a) a physician who is caring for ~~an older person or a person with a developmental disability~~ a vulnerable
 12 adult who the physician reasonably believes was abused, sexually abused, neglected, or exploited;

13 (b) a legal guardian or conservator of the ~~older person or the person with a developmental disability~~
 14 vulnerable adult if the identity of the person who made the report is protected and the legal guardian or
 15 conservator is not the person suspected of the abuse, sexual abuse, neglect, or exploitation;

16 (c) the ~~person~~ vulnerable adult named in the report as allegedly being abused, sexually abused,
 17 neglected, or exploited if that person is not ~~legally incompetent~~ an incapacitated person;

18 (d) any person engaged in bona fide research if the person alleged in the report to have committed the
 19 abuse, sexual abuse, neglect, or exploitation is later convicted of an offense constituting abuse, sexual abuse,
 20 neglect, or exploitation and if the identity of the ~~older person or the person with a developmental disability~~
 21 vulnerable adult who is the subject of the report is not disclosed to the researcher;

22 (e) an adult protective service team. Members of the team are required to keep information about the
 23 subject individuals confidential.

24 (f) an authorized representative of a provider of services to a ~~person~~ vulnerable adult alleged to be ~~an~~
 25 abused, sexually abused, neglected, or exploited ~~older person or person with a developmental disability~~ if:

26 (i) the department and the provider are parties to a contested case proceeding under Title 2, chapter 4,
 27 part 6, resulting from action by the department adverse to the license of the provider and if information contained
 28 in the records or reports of the department is relevant to the case;

29 (ii) disclosure to the provider is determined by the department to be necessary to protect an interest of
 30 a ~~person~~ vulnerable adult alleged to be ~~an~~ abused, sexually abused, neglected, or exploited ~~older person or~~

1 ~~person with a developmental disability~~; or

2 (iii) the person is carrying out background screening or employment-related or volunteer-related
3 screening of current or prospective employees or volunteers who have or may have unsupervised contact with
4 ~~an older person or a person with a developmental disability~~ a vulnerable adult through employment or volunteer
5 activities if the disclosure is limited to information that indicates a risk to ~~an older person or a person with a~~
6 ~~developmental disability~~ a vulnerable adult posed by the employee or volunteer, as determined by the
7 department. A request for information under this subsection must be made in writing.

8 (g) an employee of the department if disclosure of the record or report is necessary for administration
9 of a program designed to benefit a ~~person~~ vulnerable adult alleged to be ~~an~~ abused, sexually abused, neglected,
10 or exploited ~~older person or person with a developmental disability~~;

11 (h) an authorized representative of a guardianship program approved by the department if the
12 department determines that disclosure to the program or to a person designated by the program is necessary
13 for the proper provision of guardianship services to a ~~person~~ vulnerable adult alleged to be ~~an~~ abused, sexually
14 abused, neglected, or exploited ~~older person or person with a developmental disability~~;

15 (i) protection and advocacy systems authorized under the provisions of 29 U.S.C. 794e, 42 U.S.C.
16 10805, and 42 U.S.C. 15043;

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

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

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

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

29 (n) a department, agency, or organization, including a federal agency, military reservation, or tribal
30 organization, that is legally authorized to receive, inspect, or investigate reports of abuse, sexual abuse, neglect,

1 or exploitation of ~~an older person or a person with a developmental disability~~ a vulnerable adult and that meets
 2 the disclosure criteria contained in this section.

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

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

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

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

11 (4) If the person who is reported to have abused, sexually abused, neglected, or exploited ~~an older~~
 12 ~~person or a person with a developmental disability~~ a vulnerable adult is the holder of a license, permit, or
 13 certificate issued by the department of labor and industry under the provisions of Title 37 or issued by any other
 14 entity of state government, the report may be submitted to the entity that issued the license, permit, or certificate."
 15

16 **Section 21.** Section 52-3-814, MCA, is amended to read:

17 **"52-3-814. Immunity from civil and criminal liability.** (1) A person who makes a report required or
 18 authorized to be made under 52-3-811 is immune from civil or criminal liability that might otherwise be incurred
 19 or imposed as a result of the report unless the report is false in any material respect and the person acted in bad
 20 faith or with malicious purpose.

21 (2) A person who provides information or who uses information obtained pursuant to 52-3-813(2) to
 22 refuse to hire or to discharge an employee, volunteer, or other person who through their employment or volunteer
 23 activities may have unsupervised contact with ~~an older person or a person with a developmental disability~~ a
 24 vulnerable adult is immune from civil liability unless the person providing or using the information acts in bad faith
 25 or with malicious purpose."
 26

27 **Section 22.** Section 52-3-815, MCA, is amended to read:

28 **"52-3-815. Evidence of abuse, sexual abuse, neglect, or exploitation to be gathered and**
 29 **submitted.** (1) A person or agency receiving a report of suspected abuse, sexual abuse, neglect, or exploitation
 30 under 52-3-811 shall prepare a written description of the conditions regarded as evidence of abuse, sexual abuse,

1 neglect, or exploitation and may, with the consent of an allegedly abused, sexually abused, neglected, or
 2 exploited ~~older person or person with a developmental disability~~ vulnerable adult or without consent of the ~~person~~
 3 vulnerable adult if it appears that the ~~person~~ vulnerable adult is an incapacitated person, take or cause to be
 4 taken photographs of an area of trauma visible on the body of the allegedly abused, sexually abused, neglected,
 5 or exploited ~~person~~ vulnerable adult and regarded as evidence of abuse, sexual abuse, neglect, or exploitation.

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

11 (3) Evidence authorized to be gathered under this section must be submitted with the report required
 12 under 52-3-811 to the authorities designated in 52-3-811 as soon as possible after submission of the report."
 13

14 **Section 23.** Section 52-3-821, MCA, is amended to read:

15 **"52-3-821. Admissibility of evidence.** In any proceeding resulting from a report made pursuant to the
 16 provisions of this part or in any proceeding where the report or its content is sought to be introduced into
 17 evidence, the report or its content or any other fact related to the report or to the condition of the ~~person~~
 18 vulnerable adult who is the subject of the report may not be excluded on the ground that the matter is or may be
 19 the subject of a privilege granted in Title 26, chapter 1, part 8, except the attorney-client privilege granted by
 20 26-1-803."
 21

22 **NEW SECTION. Section 24. False reports.** A person commits an offense under this section if the
 23 person knowingly:

24 (1) gives false information to any adult protective services representative, county attorney, or law
 25 enforcement officer with the purpose to implicate another person;

26 (2) reports to adult protective services, the county attorney, or law enforcement authorities an offense
 27 or other incident within the person's concern knowing that it did not occur; or

28 (3) pretends to furnish adult protective services, the county attorney, or law enforcement authorities with
 29 information relating to an offense or incident when the person knows that the person has no information relating
 30 to the offense.

1

2 **Section 25.** Section 52-3-825, MCA, is amended to read:

3 "**52-3-825. Penalties.** (1) A person who purposely or knowingly fails to make a report required by
4 52-3-811, ~~or~~ discloses or fails to disclose the contents of a case record or report in violation of 52-3-813, or makes
5 a false report in violation of [section 23] is guilty of an offense and upon conviction is punishable as provided in
6 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~~ a vulnerable adult is guilty of a felony and shall be imprisoned for a term
9 not to exceed 10 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~~ a
11 vulnerable adult is guilty of a misdemeanor and upon a first conviction shall be fined an amount not to exceed
12 \$1,000 or be 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

18 NEW SECTION. **Section 26. Codification instruction.** [Section 23] is intended to be codified as an
19 integral part of Title 52, chapter 3, part 8, and the provisions of Title 52, chapter 3, part 8, apply to [section 23].

20

- END -