

SENATE BILL NO. 324

INTRODUCED BY T. JACOBSON

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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 CAUSING PERSONAL DEGRADATION BY PUBLISHING OR DISTRIBUTING CERTAIN PHOTOGRAPHS OR VIDEOS; DEFINING "PERSONAL DEGRADATION"; CREATING A PENALTY FOR CAUSING PERSONAL DEGRADATION; AMENDING SECTIONS 52-3-803 AND 52-3-825, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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 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.

~~(c) the causing of personal degradation of an older person or a person with a developmental disability residing in a long-term care facility.~~ IN A PLACE WHERE THE OLDER PERSON OR PERSON WITH A DEVELOPMENTAL DISABILITY HAS A REASONABLE EXPECTATION OF PRIVACY.

(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,

1 assets, or property;

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

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

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

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

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

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

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

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

27 (10) "Personal degradation" means publication or distribution of a printed or electronic photograph or
28 video of an older person or a person with a developmental disability when the person publishing or distributing
29 intends to demean or humiliate the older person or person with a developmental disability or knows or reasonably
30 should know that the publication or distribution would demean or humiliate a reasonable person. Personal

1 degradation does not include the recording and dissemination of images or video for treatment, diagnosis,
 2 regulatory compliance, or law enforcement purposes, as part of an investigation into a long-term care facility, or
 3 in accordance with a long-term care facility or program's confidentiality policy and release of information or
 4 consent policy.

5 ~~(10)~~(11) "Physical injury" means death, permanent or temporary disfigurement, or impairment of any
 6 bodily organ or function.

7 ~~(11)~~(12) "Sexual abuse" means the commission of sexual assault, sexual intercourse without consent,
 8 indecent exposure, deviate sexual conduct, incest, or sexual abuse of children as described in Title 45, chapter
 9 5, part 5, and Title 45, chapter 8, part 2."

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11 **Section 2.** 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 discloses or fails to disclose the contents of a case record or report in violation of 52-3-813 is guilty
 14 of an offense and upon conviction is punishable as provided in 46-18-212.

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

18 (b) (i) ~~A Except as provided in subsection (2)(c),~~ a person who negligently abuses an older person or a
 19 person with a developmental disability is guilty of a misdemeanor and upon a first conviction shall be fined an
 20 amount not to exceed \$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) (i) A person who causes personal degradation to an older person or a person with a developmental~~
 25 ~~disability residing in a long-term care facility~~ IN A PLACE WHERE THE OLDER PERSON OR PERSON WITH A
 26 DEVELOPMENTAL DISABILITY HAS A REASONABLE EXPECTATION OF PRIVACY is, for a first offense, guilty of a
 27 misdemeanor and shall be imprisoned in the county jail for a term not to exceed 6 months or be fined an amount
 28 not to exceed \$500, or both;

29 (ii) Upon a second or subsequent conviction of the conduct described in subsection (2)(c)(i), the person
 30 is guilty of a felony and shall be imprisoned for a term not to exceed 10 years or be fined an amount not to exceed

1 \$10,000, or both.

2 ~~(e)(d)~~ A person with a developmental disability may not be charged under subsection (2)(a) ~~or (2)(b)~~
3 through (2)(c)."

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

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