

1 SENATE BILL NO. 34
2 INTRODUCED BY R. LYNCH
3 BY REQUEST OF THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES
4
5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATING TO THE
6 PROTECTION OF VULNERABLE ADULTS; REVISING TERMINOLOGY RELATED TO PROTECTIVE
7 SERVICES; DEFINING "VULNERABLE ADULT"; REQUIRING ADDITIONAL PROFESSIONALS TO REPORT
8 ABUSE, SEXUAL ABUSE, NEGLECT, OR EXPLOITATION OF A VULNERABLE ADULT; PROVIDING A
9 PENALTY FOR FALSE REPORTING; AND AMENDING SECTIONS 30-14-144, 32-1-1501, 32-1-1502, 32-1-
10 1503, 32-1-1504, 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-
11 204, 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-
12 3-814, 52-3-815, 52-3-821, AND 52-3-825, MCA."

13
14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

15
16 **Section 1.** Section 30-14-144, MCA, is amended to read:

17 **"30-14-144. Additional penalty for unfair or deceptive act committed against ~~elder person or~~**
18 **~~developmentally disabled person~~ vulnerable adult.** (1) In addition to any civil penalty imposed pursuant to
19 30-14-142, a person who engages in a practice unlawful under 30-14-103 and whose conduct is perpetrated
20 against an ~~elder person or against a developmentally disabled person~~ a vulnerable adult is liable for an
21 additional civil penalty not to exceed \$10,000 for each violation if the court finds that:

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

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

26 (i) loss or encumbrance of a primary residence;

27 (ii) loss of principal employment or other source of income;

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1 and the aged person or disabled vulnerable adult unless a guardianship or conservatorship is created in
2 accordance with the requirements of Title 72, chapter 5, part 3 or 4.

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

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

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

8

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

10 "**52-3-801. Short title.** This part may be cited as the "Montana ~~Elder and Persons With~~
11 ~~Developmental Disabilities Abuse Prevention Act~~ Vulnerable Adult Prevention of Abuse Act."

12

13 **Section 18.** Section 52-3-802, MCA, is amended to read:

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

19

20 **Section 19.** Section 52-3-803, MCA, is amended to read:

21 "**52-3-803. Definitions.** As used in this part, the following definitions apply:

22 (1) "Abuse" means:

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

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

27 (c) the causing of personal degradation of an ~~older person or a person with a developmental~~

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1 ~~disability a vulnerable adult~~ in a place where the ~~older person or person with a developmental disability~~
2 vulnerable adult has a reasonable expectation of privacy.

3 (2) "Department" means the department of public health and human services provided for in 2-15-
4 2201.

5 (3) "Exploitation" means:

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

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

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1 of the person's vulnerable adult's money, assets, or property.

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

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

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

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

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

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

15 ~~(10)(8)~~ "Personal degradation" means publication or distribution of a printed or electronic photograph
16 or video of ~~an older person or a person with a developmental disability~~ a vulnerable adult when the person
17 publishing or distributing intends to demean or humiliate the ~~older person or person with a developmental~~
18 ~~disability~~ vulnerable adult or knows or reasonably should know that the publication or distribution would demean
19 or humiliate a reasonable person. Personal degradation does not include the recording and dissemination of
20 images or video for treatment, diagnosis, regulatory compliance, or law enforcement purposes, as part of an
21 investigation, or in accordance with a facility or program's confidentiality policy and release of information or
22 consent policy.

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

25 ~~(12)(10)~~ "Sexual abuse" means the commission of sexual assault, sexual intercourse without consent,
26 indecent exposure, deviate sexual conduct, incest, or sexual abuse of children as described in Title 45, chapter
27 5, part 5, and Title 45, chapter 8, part 2.

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- 1 (11) "Vulnerable adult" means a person who:
2 (a) is 60 years of age or older; or
3 (b) is 18 years of age or older; and:
4 (i) is a person with a ~~disability as defined in 39-30-103~~ physical or mental impairment that
5 substantially limits or restricts the person's ability to provide for their own care or protection; or
6 (ii) has a developmental disability as defined in 53-20-102."

7
8 **Section 20.** Section 52-3-804, MCA, is amended to read:

9 **"52-3-804. Duties of department.** (1) The department shall investigate reports of abuse, sexual
10 abuse, neglect, or exploitation received pursuant to 52-3-811(1)(a).

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

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

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

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

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