

SENATE BILL NO. 348

INTRODUCED BY ECK
BY REQUEST OF THE DEPARTMENT
OF FAMILY SERVICES

IN THE SENATE

FEBRUARY 11, 1991 INTRODUCED AND REFERRED TO COMMITTEE
ON PUBLIC HEALTH, WELFARE, & SAFETY.

FIRST READING.

FEBRUARY 19, 1991 COMMITTEE RECOMMEND BILL
DO PASS AS AMENDED. REPORT ADOPTED.

FEBRUARY 20, 1991 PRINTING REPORT.

FEBRUARY 21, 1991 SECOND READING, DO PASS.

FEBRUARY 22, 1991 ENGROSSING REPORT.

THIRD READING, PASSED.
AYES, 49; NOES, 0.

TRANSMITTED TO HOUSE.

IN THE HOUSE

MARCH 4, 1991 INTRODUCED AND REFERRED TO COMMITTEE
ON HUMAN SERVICES & AGING.

FIRST READING.

MARCH 15, 1991 COMMITTEE RECOMMEND BILL BE
CONCURRED IN AS AMENDED. REPORT
ADOPTED.

MARCH 19, 1991 SECOND READING, CONCURRED IN.

MARCH 20, 1991 THIRD READING, CONCURRED IN.
AYES, 99; NOES, 0.

RETURNED TO SENATE WITH AMENDMENTS.

IN THE SENATE

MARCH 23, 1991 RECEIVED FROM HOUSE.

SECOND READING, AMENDMENTS NOT
CONCURRED IN.

ON MOTION, CONFERENCE COMMITTEE
REQUESTED.

MARCH 28, 1991

ON MOTION, CONFERENCE COMMITTEE
APPOINTED.

IN THE HOUSE

APRIL 3, 1991

ON MOTION, CONFERENCE COMMITTEE
REQUESTED AND APPOINTED.

IN THE SENATE

APRIL 11, 1991

CONFERENCE COMMITTEE REPORTED.

IN THE HOUSE

APRIL 15, 1991

CONFERENCE COMMITTEE REPORT ADOPTED.

IN THE SENATE

APRIL 17, 1991

SECOND READING, CONFERENCE COMMITTEE
REPORT ADOPTED.

APRIL 18, 1991

THIRD READING, CONFERENCE COMMITTEE
REPORT ADOPTED.

APRIL 19, 1991

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

Senate BILL NO. *348*

INTRODUCED BY *Ech*
BY REQUEST OF THE DEPARTMENT
OF FAMILY SERVICES

A BILL FOR AN ACT ENTITLED: "AN ACT AUTHORIZING THE DEPARTMENT OF FAMILY SERVICES TO PROVIDE EMERGENCY PROTECTIVE SERVICES TO CERTAIN OLDER AND DEVELOPMENTALLY DISABLED PERSONS; ESTABLISHING AUTHORITY FOR GATHERING AND SUBMITTING EVIDENCE OF ABUSE OR NEGLECT OF OLDER AND DEVELOPMENTALLY DISABLED PERSONS; AND AMENDING SECTIONS 53-5-503 AND 53-5-504, MCA."

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

Section 1. Section 53-5-503, MCA, is amended to read:

"53-5-503. Definitions. As used in this part, the following definitions apply:

(1) "Abuse" means the infliction of physical or mental injury or the deprivation of food, shelter, clothing, or services necessary to maintain the physical or mental health of an older person or a developmentally disabled person without lawful authority. A declaration made pursuant to 50-9-103 constitutes lawful authority.

(2) "Developmentally disabled person" means a person 18 years of age or older who is developmentally disabled as

defined in 53-20-102.

(3) "Exploitation" means the unreasonable use of an older person or a developmentally disabled person, his money, or his property to the advantage of another by means of duress, menace, fraud, or undue influence.

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

~~(4)~~(5) "Long-term care facility" means a facility defined in 50-5-101.

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

~~(6)~~(7) "Neglect" means the failure of a guardian, employee of a public or private residential institution, facility, home, or agency, or any other person legally responsible in a residential setting for an older person's or a developmentally disabled person's welfare to provide food, shelter, clothing, or services necessary to maintain the physical or mental health of the older person or the developmentally disabled person.

~~(7)~~(8) "Older person" means a person who is at least 60 years of age. For purposes of prosecution under 53-5-525(2), the person 60 years of age or older must be unable to protect himself from abuse, neglect, or exploitation because of a mental or physical impairment or because of frailties

1 or dependencies brought about by advanced age.

2 ~~(8)~~(9) "Physical injury" means death, permanent or
3 temporary disfigurement, or impairment of any bodily organ
4 or function."

5 **Section 2.** Section 53-5-504, MCA, is amended to read:

6 "53-5-504. Duties of department of family services. (1)
7 The department shall investigate reports of abuse, neglect,
8 or exploitation received pursuant to 53-5-511(1)(a).

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

12 (3) The department shall, when appropriate, provide
13 protective services under Title 53, chapter 5, part 2, or
14 under Title 53, chapter 20, part 4, for a person alleged to
15 have been abused, neglected, or exploited.

16 (4) If a person alleged to be abused, neglected, or
17 exploited pursuant to this part or his caretaker refuses to
18 allow a representative of the department entrance to the
19 premises for the purpose of investigating a report made
20 pursuant to 53-5-511(1)(a), the district court in the county
21 where the person is found may order a law enforcement
22 officer or a department social worker to enter the premises
23 to conduct an investigation upon finding there is probable
24 cause to believe the person is abused, neglected, or
25 exploited.

1 (5) If, based upon the personal observations of the
2 department's representative, an older or developmentally
3 disabled person alleged to be abused or neglected appears to
4 be suffering from abuse or neglect that presents a
5 substantial risk of death or serious physical injury, the
6 department may provide emergency protective services. The
7 department shall:

8 (a) prior to providing emergency protective services,
9 obtain the consent of the abused or neglected older or
10 developmentally disabled person unless it appears that the
11 person is an incapacitated person;

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

14 (c) transport or arrange for the transport of the
15 person to the appropriate placement;

16 (d) not later than 2 working days following placement
17 of the person, either:

18 (i) provide voluntary protective services as provided
19 under subsection (3); or

20 (ii) petition the district court to act as temporary
21 guardian or appoint a temporary guardian as provided in
22 72-5-317."

23 **NEW SECTION. Section 3.** Evidence of abuse or neglect
24 to be gathered and submitted. (1) A person required to
25 report suspected abuse or neglect under 53-5-511 shall

1 prepare a written description of the conditions regarded as
2 evidence of abuse or neglect and may, with the consent of an
3 allegedly abused or neglected older person or
4 developmentally disabled person or without consent of the
5 person if it appears that the person is an incapacitated
6 person, take or cause to be taken photographs of an area of
7 trauma visible on the body of the allegedly abused or
8 neglected person and regarded as evidence of abuse or
9 neglect.

10 (2) A physician required to report under 53-5-511 may,
11 with the consent of an allegedly abused or neglected older
12 person or developmentally disabled person or without consent
13 of the person if it appears that the person is an
14 incapacitated person, require x-rays or other appropriate
15 medical tests or procedures that would, in the professional
16 opinion of the physician, assist in establishing evidence
17 related to the allegation of abuse or neglect.

18 (3) A person gathering evidence under this section must
19 submit it with the report required under 53-5-511 to the
20 authorities designated in 53-5-511 as soon as possible after
21 submission of the report.

22 NEW SECTION. **Section 4.** Codification instruction.
23 [Section 3] is intended to be codified as an integral part
24 of Title 53, chapter 5, part 5, and the provisions of Title
25 53, chapter 5, part 5, apply to [section 3].

STATE OF MONTANA - FISCAL NOTE
Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for SB0348, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:


An act authorizing the Department of Family Services to provide emergency protective services to certain older and developmentally disabled persons; establishing authority for gathering and submitting evidence of abuse or neglect of older and developmentally disabled persons; and amending Sections 53-5-503 and 53-5-504, MCA.

ASSUMPTIONS:

1. The bill clarifies DFS responsibilities in providing protective services to an older or developmentally disabled person.
2. There will be no fiscal impact on DFS.

FISCAL IMPACT:

none



ROD SUNDSTED, BUDGET DIRECTOR DATE
Office of Budget and Program Planning 2-15-91



DOROTHY ECK, PRIMARY SPONSOR DATE
Fiscal Note for SB0348, as introduced 2/16/91
SB 348

APPROVED BY COMMITTEE
ON PUBLIC HEALTH, WELFARE
& SAFETY

1 SENATE BILL NO. 348
2 INTRODUCED BY ECK
3 BY REQUEST OF THE DEPARTMENT
4 OF FAMILY SERVICES
5

6 A BILL FOR AN ACT ENTITLED: "AN ACT AUTHORIZING THE
7 DEPARTMENT OF FAMILY SERVICES TO PROVIDE EMERGENCY
8 PROTECTIVE SERVICES TO CERTAIN OLDER AND DEVELOPMENTALLY
9 DISABLED PERSONS; ESTABLISHING AUTHORITY FOR GATHERING AND
10 SUBMITTING EVIDENCE OF ABUSE OR NEGLECT OF OLDER AND
11 DEVELOPMENTALLY DISABLED PERSONS; AND AMENDING SECTIONS
12 53-5-503 AND 53-5-504, MCA."
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14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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19 injury or the deprivation of food, shelter, clothing, or
20 services necessary to maintain the physical or mental health
21 of an older person or a developmentally disabled person
22 without lawful authority. A declaration made pursuant to
23 50-9-103 constitutes lawful authority.

24 (2) "Developmentally disabled person" means a person 18
25 years of age or older who is developmentally disabled as

1 defined in 53-20-102.

2 (3) "Exploitation" means the unreasonable use of an
3 older person or a developmentally disabled person, his
4 money, or his property to the advantage of another by means
5 of duress, menace, fraud, or undue influence.

6 (4) "Incapacitated person" has the meaning given in
7 72-5-101.

8 ~~+~~(5) "Long-term care facility" means a facility
9 defined in 50-5-101.

10 ~~+~~(6) "Mental injury" means an identifiable and
11 substantial impairment of an older person's intellectual or
12 psychological functioning or well-being.

13 ~~+~~(7) "Neglect" means the failure of a guardian,
14 employee of a public or private residential institution,
15 facility, home, or agency, or any other person legally
16 responsible in a residential setting for an older person's
17 or a developmentally disabled person's welfare to provide
18 food, shelter, clothing, or services necessary to maintain
19 the physical or mental health of the older person or the
20 developmentally disabled person.

21 ~~+~~(8) "Older person" means a person who is at least 60
22 years of age. For purposes of prosecution under 53-5-525(2),
23 the person 60 years of age or older must be unable to
24 protect himself from abuse, neglect, or exploitation because
25 of a mental or physical impairment or because of frailties

SECOND READING



1 or dependencies brought about by advanced age.

2 ~~(8)~~(9) "Physical injury" means death, permanent or
3 temporary disfigurement, or impairment of any bodily organ
4 or function."

5 **Section 2.** Section 53-5-504, MCA, is amended to read:

6 "53-5-504. Duties of department of family services. (1)
7 The department shall investigate reports of abuse, neglect,
8 or exploitation received pursuant to 53-5-511(1)(a).

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

12 (3) The department shall, when appropriate, provide
13 protective services under Title 53, chapter 5, part 2, or
14 under Title 53, chapter 20, part 4, for a person alleged to
15 have been abused, neglected, or exploited.

16 (4) If a person alleged to be abused, neglected, or
17 exploited pursuant to this part or his caretaker refuses to
18 allow a representative of the department entrance to the
19 premises for the purpose of investigating a report made
20 pursuant to 53-5-511(1)(a), the district court in the county
21 where the person is found may order a law enforcement
22 officer or a department social worker to enter the premises
23 to conduct an investigation upon finding there is probable
24 cause to believe the person is abused, neglected, or
25 exploited.

1 ~~(5) If based upon the personal observations of the~~
2 ~~department's representative, A REPRESENTATIVE OF THE~~
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7 ~~physical injury, the department may provide emergency~~
8 ~~protective services. The department shall:~~

9 ~~(A) PROVIDE VOLUNTARY PROTECTIVE SERVICES AS PROVIDED~~
10 ~~IN SUBSECTION (3); OR~~

11 ~~(B) IF THE DEPARTMENT REPRESENTATIVE HAS REASONABLE~~
12 ~~GROUNDS TO BELIEVE THAT THE PERSON IS INCAPACITATED, PROVIDE~~
13 ~~EMERGENCY PROTECTIVE SERVICES AS FOLLOWS:~~

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17 ~~person is an incapacitated person;~~

18 ~~(b)(I) arrange or facilitate an appropriate emergency~~
19 ~~protective service placement;~~

20 ~~(c)(II) transport or arrange for the transport of the~~
21 ~~person to the appropriate placement;~~

22 ~~, (d)(III) not later than 2 working JUDICIAL days~~
23 ~~following placement of the person, either:~~

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25 ~~provided under subsection (3); or~~

1 ~~(B)~~ petition the district court to act as temporary
 2 guardian or appoint a temporary guardian as provided in
 3 72-5-317."

4 NEW SECTION. Section 3. Evidence of abuse or neglect
 5 to be gathered and submitted. (1) A person required--to
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 13 photographs of an area of trauma visible on the body of the
 14 allegedly abused or neglected person and regarded as
 15 evidence of abuse or neglect.

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 21 medical tests or procedures that would, in the professional
 22 opinion of the physician, assist in establishing evidence
 23 related to the allegation of abuse or neglect.

24 (3) A person gathering evidence under this section must
 25 submit it with the report required under 53-5-511 to the

1 authorities designated in 53-5-511 as soon as possible after
 2 submission of the report.

3 NEW SECTION. Section 4. Codification instruction.
 4 [Section 3] is intended to be codified as an integral part
 5 of Title 53, chapter 5, part 5, and the provisions of Title
 6 53, chapter 5, part 5, apply to [section 3].

-End-

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THIRD READING

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-End-

HOUSE STANDING COMMITTEE REPORT

March 15, 1991

Page 1 of 1

Mr. Speaker: We, the committee on Human Services and Aging report that Senate Bill 348 (third reading copy -- blue) be concurred in as amended .

Signed: _____


Angela Russell, Chairman

Carried by: Rep. Cromley

And, that such amendments read:

1. Page 5, line 24.

Strike: "A person gathering evidence"

Insert: "Evidence gathered by a physician"

Following: "must"

Insert: "be"

2. Page 5, line 25.

Strike: "submit it"

Insert: "submitted"

HOUSE

SB 348

560839SC.Hpd

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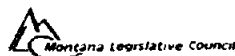
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21 ~~person to the appropriate placement;~~

22 ~~(d)(III) not later than 2 working JUDICIAL days~~
23 ~~following placement of the person, either:~~

24 ~~(i)(A) provide voluntary protective services as~~
25 ~~provided under subsection (3); or~~

1 ~~iii~~(B) petition the district court to act as temporary
2 guardian or appoint a temporary guardian as provided in
3 72-5-317."

4 NEW SECTION. Section 3. Evidence of abuse or neglect
5 to be gathered and submitted. (1) A person required--to
6 report OR AGENCY RECEIVING A REPORT OF suspected abuse or
7 neglect under 53-5-511 shall prepare a written description
8 of the conditions regarded as evidence of abuse or neglect
9 and may, with the consent of an allegedly abused or
10 neglected older person or developmentally disabled person or
11 without consent of the person if it appears that the person
12 is an incapacitated person, take or cause to be taken
13 photographs of an area of trauma visible on the body of the
14 allegedly abused or neglected person and regarded as
15 evidence of abuse or neglect.

16 (2) A physician required to report under 53-5-511 may,
17 with the consent of an allegedly abused or neglected older
18 person or developmentally disabled person or without consent
19 of the person if it appears that the person is an
20 incapacitated person, require x-rays or other appropriate
21 medical tests or procedures that would, in the professional
22 opinion of the physician, assist in establishing evidence
23 related to the allegation of abuse or neglect.

24 (3) ~~A person-gathering-evidence~~ EVIDENCE GATHERED BY A
25 PHYSICIAN under this section must ~~BE submit-it~~ SUBMITTED

1 with the report required under 53-5-511 to the authorities
2 designated in 53-5-511 as soon as possible after submission
3 of the report.

4 NEW SECTION. Section 4. Codification instruction.
5 [Section 3] is intended to be codified as an integral part
6 of Title 53, chapter 5, part 5, and the provisions of Title
7 53, chapter 5, part 5, apply to [section 3].

-End-

Conference Committee
on Senate Bill No. 348
Report No. 1, April 11, 1991

Page 1 of 1

Mr. President and Mr. Speaker:

We, your Conference Committee on Senate Bill No. 348, met and considered:

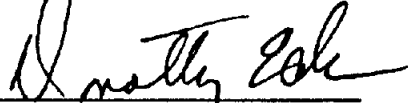
House Committee on Human Services and Aging Amendments to the third reading copy dated March 15, 1991.

We recommend that Senate Bill No. 348 (reference copy - salmon) be amended as follows:


1. Page 5, line 24.
Following: "EVIDENCE"
Insert: "authorized to be"
2. Page 5, lines 24 and 25.
Strike: "BY A PHYSICIAN"

And that this Conference Committee report be adopted.

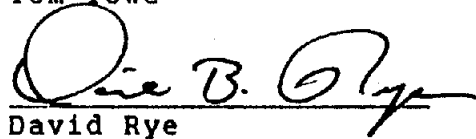
For the Senate:



Dorothy Eck, Chair




Tom Towe

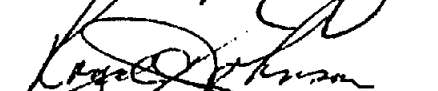


David Rye

For the House:



Carolyn Squires, Chair



Royal Johnson



Jessica Stickney

15 4/11/91
Amd. Coord.

SP 4-11-91 3:35
Sec. of Senate

ADOPT

REJECT

CCR# 1
SB 348

1 SENATE BILL NO. 348

2 INTRODUCED BY ECK

3 BY REQUEST OF THE DEPARTMENT

4 OF FAMILY SERVICES

5
6 A BILL FOR AN ACT ENTITLED: "AN ACT AUTHORIZING THE
7 DEPARTMENT OF FAMILY SERVICES TO PROVIDE EMERGENCY
8 PROTECTIVE SERVICES TO CERTAIN OLDER AND DEVELOPMENTALLY
9 DISABLED PERSONS; ESTABLISHING AUTHORITY FOR GATHERING AND
10 SUBMITTING EVIDENCE OF ABUSE OR NEGLECT OF OLDER AND
11 DEVELOPMENTALLY DISABLED PERSONS; AND AMENDING SECTIONS
12 53-5-503 AND 53-5-504, MCA."

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

15 Section 1. Section 53-5-503, MCA, is amended to read:

16 "53-5-503. Definitions. As used in this part, the
17 following definitions apply:

18 (1) "Abuse" means the infliction of physical or mental
19 injury or the deprivation of food, shelter, clothing, or
20 services necessary to maintain the physical or mental health
21 of an older person or a developmentally disabled person
22 without lawful authority. A declaration made pursuant to
23 50-9-103 constitutes lawful authority.

24 (2) "Developmentally disabled person" means a person 18
25 years of age or older who is developmentally disabled as

1 defined in 53-20-102.

2 (3) "Exploitation" means the unreasonable use of an
3 older person or a developmentally disabled person, his
4 money, or his property to the advantage of another by means
5 of duress, menace, fraud, or undue influence.

6 (4) "Incapacitated person" has the meaning given in
7 72-5-101.

8 (4)(5) "Long-term care facility" means a facility
9 defined in 50-5-101.

10 (5)(6) "Mental injury" means an identifiable and
11 substantial impairment of an older person's intellectual or
12 psychological functioning or well-being.

13 (6)(7) "Neglect" means the failure of a guardian,
14 employee of a public or private residential institution,
15 facility, home, or agency, or any other person legally
16 responsible in a residential setting for an older person's
17 or a developmentally disabled person's welfare to provide
18 food, shelter, clothing, or services necessary to maintain
19 the physical or mental health of the older person or the
20 developmentally disabled person.

21 (7)(8) "Older person" means a person who is at least 60
22 years of age. For purposes of prosecution under 53-5-525(2),
23 the person 60 years of age or older must be unable to
24 protect himself from abuse, neglect, or exploitation because
25 of a mental or physical impairment or because of frailties



1 or dependencies brought about by advanced age.

2 ~~(8)~~(9) "Physical injury" means death, permanent or
3 temporary disfigurement, or impairment of any bodily organ
4 or function."

5 **Section 2.** Section 53-5-504, MCA, is amended to read:

6 "53-5-504. Duties of department of family services. (1)
7 The department shall investigate reports of abuse, neglect,
8 or exploitation received pursuant to 53-5-511(1)(a).

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

12 (3) The department shall, when appropriate, provide
13 protective services under Title 53, chapter 5, part 2, or
14 under Title 53, chapter 20, part 4, for a person alleged to
15 have been abused, neglected, or exploited.

16 (4) If a person alleged to be abused, neglected, or
17 exploited pursuant to this part or his caretaker refuses to
18 allow a representative of the department entrance to the
19 premises for the purpose of investigating a report made
20 pursuant to 53-5-511(1)(a), the district court in the county
21 where the person is found may order a law enforcement
22 officer or a department social worker to enter the premises
23 to conduct an investigation upon finding there is probable
24 cause to believe the person is abused, neglected, or
25 exploited.

1 ~~(5) If, based upon the personal observations of the~~
2 ~~department's representative~~ A REPRESENTATIVE OF THE
3 DEPARTMENT HAS REASONABLE GROUNDS TO BELIEVE THAT an older
4 or developmentally disabled person alleged to be abused or
5 neglected ~~appears to be~~ IS suffering from abuse or neglect
6 that presents a substantial risk of death or serious
7 physical injury, the department may ~~provide emergency~~
8 ~~protective services. The department shall:~~

9 (A) PROVIDE VOLUNTARY PROTECTIVE SERVICES AS PROVIDED
10 IN SUBSECTION (3); OR

11 (B) IF THE DEPARTMENT REPRESENTATIVE HAS REASONABLE
12 GROUNDS TO BELIEVE THAT THE PERSON IS INCAPACITATED, PROVIDE
13 EMERGENCY PROTECTIVE SERVICES AS FOLLOWS:

14 ~~(a) prior to providing emergency protective services,~~
15 ~~obtain the consent of the abused or neglected older or~~
16 ~~developmentally disabled person unless it appears that the~~
17 ~~person is an incapacitated person;~~

18 (b)(I) arrange or facilitate an appropriate emergency
19 protective service placement;

20 (c)(II) transport or arrange for the transport of the
21 person to the appropriate placement;

22 (d)(III) not later than 2 working JUDICIAL days
23 following placement of the person, either:

24 (i)(A) provide voluntary protective services as
25 provided under subsection (3); or

1 ~~(B)~~ petition the district court to act as temporary
 2 guardian or appoint a temporary guardian as provided in
 3 72-5-317."

4 NEW SECTION. Section 3. Evidence of abuse or neglect
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 20 incapacitated person, require x-rays or other appropriate
 21 medical tests or procedures that would, in the professional
 22 opinion of the physician, assist in establishing evidence
 23 related to the allegation of abuse or neglect.

24 (3) ~~A person gathering evidence~~ EVIDENCE AUTHORIZED TO
 25 BE GATHERED BY A PHYSICIAN under this section must BE submit

1 it SUBMITTED with the report required under 53-5-511 to the
 2 authorities designated in 53-5-511 as soon as possible after
 3 submission of the report.

4 NEW SECTION. Section 4. Codification instruction.
 5 [Section 3] is intended to be codified as an integral part
 6 of Title 53, chapter 5, part 5, and the provisions of Title
 7 53, chapter 5, part 5, apply to [section 3].

-End-