

HOUSE BILL NO. 880

INTRODUCED BY BERGENE, J. JENSEN, JONES, VINCENT, DARGO, MCCORMICK,  
SCHULTZ, HEMSTAD, KEYSER, IVERSON, SWITZER, COMPTON, DEVLIN,  
SPAETH, C. SMITH, CURTISS, MILLER, THOFT, HOWE, DOZIER,  
KEENAN, SCHYE, BERTELSEN, METCALF, KENNEDY, ZABROCKI,  
HARPER, ROUSH, HARRINGTON, DAILY, ABRAMS, HOLLIDAY, NISBET,  
MCBRIDE, SAUNDERS, ADDY

IN THE HOUSE

February 15, 1983	Introduced and referred to Committee on Human Services.
February 21, 1983	Committee recommend bill do pass. Report adopted.
February 22, 1983	Bill printed and placed on members' desks.
February 23, 1983	Second reading, do pass as amended.
	Correctly engrossed.
	Third reading, passed. Transmitted to Senate.

IN THE SENATE

March 1, 1983	Introduced and referred to Committee on Judiciary.
March 25, 1983	Committee recommend bill be concurrent in as amended. Report adopted.
March 26, 1983	Second reading, concurrent in as amended.
March 28, 1983	Third reading, concurrent in. Ayes, 47; Nays, 0.

IN THE HOUSE

March 28, 1983	Returned to House with amendments.
April 4, 1983	Second reading, amendments not concurred in.  On motion, Conference Committee requested.  Conference Committee appointed.
April 8, 1983	Conference Committee dissolved.  On motion Free Conference Committee requested.  Free Conference Committee appointed.
April 14, 1983	Free Conference Committee reported.
April 15, 1983	Second reading, Free Conference Committee report adopted.  Third reading, Free Conference Committee report adopted.
April 18, 1983	Free Conference Committee report adopted by Senate.  Sent to enrolling.  Reported correctly enrolled.

1 *House* BILL NO. *880*  
 2 INTRODUCED BY *Bergene* *Tom Iversen* *Alarke* *Vincent*  
 3 *Scully* *Boyer* *Therese* *Emmerton* *Smith* *Miller*  
 4 *Hamstad* *Switzer* *Barth* *Spach* *Curtis* *Shoff*  
 5 A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING REPORTING BY *DO3*  
 6 HEALTH CARE PROFESSIONALS AND OTHER PERSONS OF INCIDENTS OF  
 7 ABUSE, NEGLECT, AND EXPLOITATION OF OLDER PERSONS;  
 8 SPECIFYING THE USE OF THE REPORTS; PROVIDING FOR IMMUNITY  
 9 FROM CIVIL AND CRIMINAL LIABILITY; SPECIFYING THE DUTIES OF  
 10 THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES  
 11 RELATING TO ABUSE, NEGLECT, OR EXPLOITATION OF OLDER  
 12 PERSONS; AND PROVIDING PENALTIES."  
 13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:  
 14 Section 1. Short title. [Sections 1 through 10] may be  
 15 cited as the "Montana Elder Abuse Prevention Act".  
 16 Section 2. Legislative findings and purpose. The  
 17 legislature finds that a need exists to provide for  
 18 cooperation among law enforcement officials and agencies,  
 19 courts, and state and county agencies providing human  
 20 services in preventing the abuse, neglect, and exploitation  
 21 of Montana's elderly through the identification and  
 22 reporting of acts of such abuse, neglect, and exploitation.  
 23 Section 3. Definitions. As used in [sections 1 through  
 24 10], the following definitions apply:  
 25 (1) "Abuse" means the infliction of physical or mental

1 injury or the deprivation of food, shelter, clothing, or  
 2 services necessary to maintain the physical or mental health  
 3 of an older person.

4 (2) "Exploitation" means the unethical use of an older  
 5 person, his money, or his property to the advantage of  
 6 another.

7 (3) "Mental injury" means an identifiable and  
 8 substantial impairment of an older person's intellectual or  
 9 psychological functioning or well-being.

10 (4) "Neglect" means the failure of a guardian,  
 11 employee of a public or private residential institution,  
 12 facility, home, or agency, or any other person legally  
 13 responsible in a residential setting for an older person's  
 14 welfare to care for an older person by failing to provide  
 15 food, shelter, clothing, or services necessary to maintain  
 16 the physical or mental health of the older person.

17 (5) "Older person" means a person who is at least 60  
 18 years of age.

19 (6) "Physical injury" means death, permanent or  
 20 temporary disfigurement, or impairment of any bodily organ  
 21 or function.

22 Section 4. Reports required. (1) The first  
 23 professional or official listed in subsection (3) who knows  
 24 or has reasonable cause to suspect that an older person  
 25 known to him in his official capacity has been subjected to

1 abuse, exploitation, or neglect shall promptly make a report  
 2 containing the matters set forth in [section 5] and shall  
 3 promptly send the report to the department of social and  
 4 rehabilitation services and to the sheriff of the county or  
 5 the police department of the municipality in which the older  
 6 person resides and in which the acts that are the subject of  
 7 the report occurred.

8 (2) If the report required in subsection (1) involves  
 9 an act or omission of the department of social and  
 10 rehabilitation services, a copy of the report may not be  
 11 sent to the department but must be sent instead to the  
 12 welfare department of the county in which the acts that are  
 13 the subject of the report occurred.

14 (3) A report as required by subsection (1) must be  
 15 made by:

16 (a) a physician, resident, intern, professional or  
 17 practical nurse, physician's assistant, or member of a  
 18 hospital staff engaged in the admission, examination, care,  
 19 or treatment of persons;

20 (b) an osteopath, dentist, chiropractor, optometrist,  
 21 podiatrist, medical examiner, coroner, or any other health  
 22 or mental health professional;

23 (c) an ambulance attendant;

24 (d) a social worker or other employee of the state, a  
 25 county, or a municipality assisting an older person in the

1 application for or receipt of public assistance payments or  
 2 services;

3 (e) a person who maintains or is employed by a  
 4 roominghouse, retirement home, nursing home, group home, or  
 5 adult foster care home; or

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

9 (4) Any other person may submit a report as provided  
 10 in subsection (1).

11 Section 5. Content of report. (1) The report required  
 12 by [section 4] may be made in writing or orally, by  
 13 telephone or in person. A person who receives an oral report  
 14 must prepare it in writing as soon as possible.

15 (2) If possible, the report must contain the following  
 16 information:

17 (a) the name and address of the older person;

18 (b) the name and address of the person, if any,  
 19 responsible for his care;

20 (c) the name and address, if available, of the person  
 21 who is alleged to have abused, neglected, or exploited the  
 22 older person;

23 (d) the nature and extent of the abuse, neglect, or  
 24 exploitation;

25 (e) any evidence of previous injuries sustained by the

1 older person; and  
 2 (f) the name and address of the person making the  
 3 report.

4 Section 6. Reports and records confidential --  
 5 permitted disclosures. (1) Except as provided in subsection  
 6 (2), a report made pursuant to [section 4] and the records  
 7 of any investigation made pursuant to such a report must be  
 8 kept confidential and are not available for public  
 9 inspection.

10 (2) A report made pursuant to [section 4], data or  
 11 information contained in such a report, and a record of any  
 12 investigation made pursuant to such a report must, upon  
 13 request, be provided to the following persons or entities in  
 14 this or any other state:

15 (a) a physician who has in his care an older person  
 16 who he reasonably believes was abused, neglected, or  
 17 exploited;

18 (b) an agency responsible for the care, treatment, or  
 19 supervision of the older person;

20 (c) a county attorney or other law enforcement  
 21 official who requires the information in connection with an  
 22 investigation of a violation of [sections 1 through 11];

23 (d) a court which has determined, in camera, that  
 24 public disclosure of the report, data, information, or  
 25 record is necessary for the determination of an issue before

1 it;

2 (e) a grand jury upon its determination that the  
 3 report, data, information, or record is necessary in the  
 4 conduct of its official business;

5 (f) a legal guardian or conservator of the older  
 6 person if the identity of the person who made the report is  
 7 protected and the legal guardian or conservator is not the  
 8 person suspected of the abuse, neglect, or exploitation; and

9 (g) the person named in the report as allegedly being  
 10 abused, neglected, or exploited if that person is not  
 11 legally incompetent.

12 (3) A report made pursuant to [section 4], data or  
 13 information contained in such a report, and a record of any  
 14 investigation made pursuant to such a report must also, upon  
 15 request, be made available to a person engaged in bona fide  
 16 research if the person alleged in the report to have  
 17 committed the abuse, exploitation, or neglect is later  
 18 convicted of violating [section 11] and if the identity of  
 19 the older person who is the subject of the report is not  
 20 disclosed to the researcher.

21 (4) If the person who is reported to have abused,  
 22 neglected, or exploited an older person is the holder of a  
 23 license, permit, or certificate issued by the department of  
 24 commerce or any other entity of state government under the  
 25 provisions of Title 37, the report must be submitted to the

1 entity that issued the license, permit, or certificate.

2 Section 7. Immunity from civil and criminal liability.  
3 Any person who in good faith makes a report required or  
4 authorized to be made under [section 4] is immune from civil  
5 or criminal liability which might otherwise be incurred or  
6 imposed as a result of such a report.

7 Section 8. Admissibility of evidence. In any  
8 proceeding resulting from a report made pursuant to the  
9 provisions of [sections 1 through 10] or in any proceeding  
10 where the report or its content is sought to be introduced  
11 into evidence, the report or its content or any other fact  
12 related to the report or to the condition of the older  
13 person who is the subject of the report may not be excluded  
14 on the ground that the matter is or may be the subject of a  
15 privilege granted in Title 26, chapter 1, part 8, except the  
16 attorney-client privilege granted by 26-1-803.

17 Section 9. Duties of department of social and  
18 rehabilitation services. (1) The department of social and  
19 rehabilitation services shall develop and record demographic  
20 information on older persons who are the subject of reports  
21 under [section 4] and those alleged to be responsible for  
22 the abuse, neglect, or exploitation.

23 (2) The department shall, when appropriate, provide  
24 protective services under Title 53, chapter 5, part 2, for  
25 an older person alleged to have been abused, neglected, or

1 exploited.

2 Section 10. Penalty. Any person who purposely or  
3 knowingly violates [sections 1 through 9] is guilty of a  
4 misdemeanor and upon conviction is punishable as provided in  
5 46-18-212.

6 Section 11. Infliction of suffering on older person --  
7 penalty. Any person 18 years of age or older who purposely  
8 or knowingly causes or permits an older person to suffer  
9 unjustifiable physical or mental injury as a result of  
10 abuse, neglect, or exploitation, as defined in [section 3],  
11 is guilty of a felony and upon conviction must be punished  
12 by a fine not to exceed \$10,000 or imprisoned in the state  
13 prison for a term not to exceed 5 years, or both.

14 Section 12. Codification instruction. Section 11 is  
15 intended to be codified as an integral part of Title 45.

-End-

## STATE OF MONTANA

REQUEST NO. 489-83

## FISCAL NOTE

Form BD-15

In compliance with a written request received February 18, , 19 83 , there is hereby submitted a Fiscal Note for House Bill 880 pursuant to Chapter 53, Laws of Montana, 1965 - Thirty-Ninth Legislative Assembly.

Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

DESCRIPTION OF PROPOSED LEGISLATION:

House Bill 880 would require reporting of incidents of abuse, neglect and exploitation of older persons and specifies the duties of the Department of Social and Rehabilitation Services relating to abuse, neglect or exploitation of older persons.

ASSUMPTIONS:

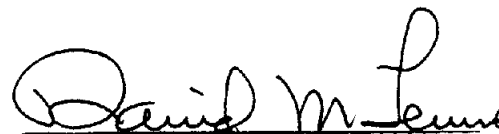
- 1) Assumes counties would continue 25% match of social worker salaries and travel.
- 2) Assumes the Social Services Block Grant has been fully allocated.

FISCAL IMPACT:

It is estimated this proposal would increase state expenditures as follows:

	<u>FY84</u>	<u>FY85</u>
Services	\$144,900	\$144,900
Operating Costs	<u>5,100</u>	<u>5,100</u>
Total	<u>\$150,000</u>	<u>\$150,000</u>
General Fund	\$113,025	\$113,025
County Funds	<u>36,975</u>	<u>36,975</u>
Total	<u>\$150,000</u>	<u>\$150,000</u>

FISCAL NOTE 16:BB/1



BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 2-21-83

STATE OF MONTANA

REQUEST NO. 528-83

FISCAL NOTE

Form BD-15

In compliance with a written request received March 25, 19 83, there is hereby submitted a Fiscal Note for House Bill 880, Amended pursuant to Chapter 53, Laws of Montana, 1965 - Thirty-Ninth Legislative Assembly. Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

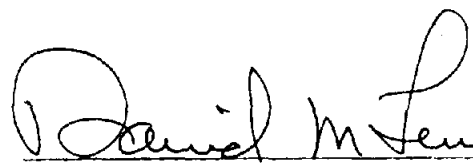
DESCRIPTION OF PROPOSED LEGISLATION:

House Bill 880, amended, would require reporting of incidents of abuse, neglect and exploitation of older persons and specifies the duties of the Department of Social and Rehabilitation Services relating to abuse, neglect or exploitation of older persons.

COMMENT:

The amendments to this bill do not change the original fiscal note. Refer to that for the assumptions and fiscal impact.

FISCAL NOTE 16:BB/2



BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 3-26-83



STATE OF MONTANA

FISCAL NOTE

REQUEST NO. 489-83

Revised

Form BD-15

In compliance with a written request received March 28,, 19 83, there is hereby submitted a Fiscal Note for House Bill 880 pursuant to Chapter 53, Laws of Montana, 1965 - Thirty-Ninth Legislative Assembly. Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

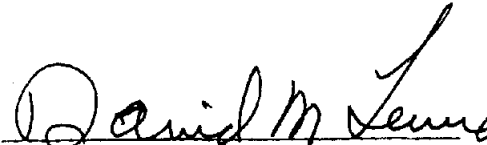
DESCRIPTION OF PROPOSED LEGISLATION:

House Bill 880 would require reporting of incidents of abuse, neglect and exploitation of older persons and specifies the duties of the Department of Social and Rehabilitation Services relating to abuse, neglect or exploitation of older persons.

FISCAL IMPACT:

The department currently provides for protective services to the elderly. If additional abuse cases are reported because of House Bill 880, the added workload will be assumed with existing staff. Therefore House Bill 880 has no fiscal impact.

FISCAL NOTE 16:BB/1



BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 3-29-83

STATE OF MONTANA

FISCAL NOTE

REQUEST NO. 528-83

Revised

Form BD-15

In compliance with a written request received March 25, 19 83, there is hereby submitted a Fiscal Note for House Bill 880, Amended pursuant to Chapter 53, Laws of Montana, 1965 - Thirty-Ninth Legislative Assembly. Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

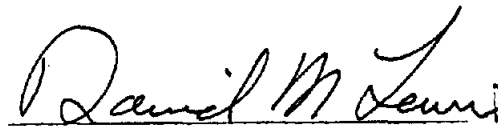
DESCRIPTION OF PROPOSED LEGISLATION:

House Bill 880, amended, would require reporting of incidents of abuse, neglect and exploitation of older persons and specifies the duties of the Department of Social and Rehabilitation Services relating to abuse, neglect or exploitation of older persons.

COMMENT:

The amendments to this bill do not change the revised original fiscal note. Refer to that for the assumptions and fiscal impact.

FISCAL NOTE 16:BB/2



BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 3-29-83

Approved by Comm. on Human Services

1 *House* BILL NO. *880*  
 2 INTRODUCED BY *Bergene* *Jim Tavel* *Colarney* *Vincent*  
 3 *Smith* *Miller*  
 4 A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING REPORTING BY *Howe*  
 5 HEALTH CARE PROFESSIONALS AND OTHER PERSONS OF INCIDENTS OF *DOB*  
 6 ABUSE, NEGLECT, AND EXPLOITATION OF OLDER PERSONS; *Keenan*  
 7 SPECIFYING THE USE OF THE REPORTS; PROVIDING FOR IMMUNITY *Seize*

8 FROM CIVIL AND CRIMINAL LIABILITY; SPECIFYING THE DUTIES OF  
 9 THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES  
 10 RELATING TO ABUSE, NEGLECT, OR EXPLOITATION OF OLDER  
 11 PERSONS; AND PROVIDING PENALTIES."

12  
 13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

14 Section 1. Short title. [Sections 1 through 10] may be  
 15 cited as the "Montana Elder Abuse Prevention Act".

16 Section 2. Legislative findings and purpose. The  
 17 legislature finds that a need exists to provide for  
 18 cooperation among law enforcement officials and agencies,  
 19 courts, and state and county agencies providing human  
 20 services in preventing the abuse, neglect, and exploitation  
 21 of Montana's elderly through the identification and  
 22 reporting of acts of such abuse, neglect, and exploitation.

23 Section 3. Definitions. As used in [sections 1 through  
 24 10], the following definitions apply:

25 (1) "Abuse" means the infliction of physical or mental

1 injury or the deprivation of food, shelter, clothing, or  
 2 services necessary to maintain the physical or mental health  
 3 of an older person.

4 (2) "Exploitation" means the unethical use of an older  
 5 person, his money, or his property to the advantage of  
 6 another.

7 (3) "Mental injury" means an identifiable and  
 8 substantial impairment of an older person's intellectual or  
 9 psychological functioning or well-being.

10 (4) "Neglect" means the failure of a guardian,  
 11 employee of a public or private residential institution,  
 12 facility, home, or agency, or any other person legally  
 13 responsible in a residential setting for an older person's  
 14 welfare to care for an older person by failing to provide  
 15 food, shelter, clothing, or services necessary to maintain  
 16 the physical or mental health of the older person.

17 (5) "Older person" means a person who is at least 60  
 18 years of age.

19 (6) "Physical injury" means death, permanent or  
 20 temporary disfigurement, or impairment of any bodily organ  
 21 or function.

22 Section 4. Reports required. (1) The first  
 23 professional or official listed in subsection (3) who knows  
 24 or has reasonable cause to suspect that an older person  
 25 known to him in his official capacity has been subjected to

1 abuse, exploitation, or neglect shall promptly make a report  
 2 containing the matters set forth in [section 5] and shall  
 3 promptly send the report to the department of social and  
 4 rehabilitation services and to the sheriff of the county or  
 5 the police department of the municipality in which the older  
 6 person resides and in which the acts that are the subject of  
 7 the report occurred.

8 (2) If the report required in subsection (1) involves  
 9 an act or omission of the department of social and  
 10 rehabilitation services, a copy of the report may not be  
 11 sent to the department but must be sent instead to the  
 12 welfare department of the county in which the acts that are  
 13 the subject of the report occurred.

14 (3) A report as required by subsection (1) must be  
 15 made by:

16 (a) a physician, resident, intern, professional or  
 17 practical nurse, physician's assistant, or member of a  
 18 hospital staff engaged in the admission, examination, care,  
 19 or treatment of persons;

20 (b) an osteopath, dentist, chiropractor, optometrist,  
 21 podiatrist, medical examiner, coroner, or any other health  
 22 or mental health professional;

23 (c) an ambulance attendant;

24 (d) a social worker or other employee of the state, a  
 25 county, or a municipality assisting an older person in the

1 application for or receipt of public assistance payments or  
 2 services;

3 (e) a person who maintains or is employed by a  
 4 roominghouse, retirement home, nursing home, group home, or  
 5 adult foster care home; or

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

9 (4) Any other person may submit a report as provided  
 10 in subsection (1).

11 Section 5. Content of report. (1) The report required  
 12 by [section 4] may be made in writing or orally, by  
 13 telephone or in person. A person who receives an oral report  
 14 must prepare it in writing as soon as possible.

15 (2) If possible, the report must contain the following  
 16 information:

17 (a) the name and address of the older person;

18 (b) the name and address of the person, if any,  
 19 responsible for his care;

20 (c) the name and address, if available, of the person  
 21 who is alleged to have abused, neglected, or exploited the  
 22 older person;

23 (d) the nature and extent of the abuse, neglect, or  
 24 exploitation;

25 (e) any evidence of previous injuries sustained by the

1 older person; and

2 (f) the name and address of the person making the

3 report.

4 Section 6. Reports and records confidential --

5 permitted disclosures. (1) Except as provided in subsection

6 (2), a report made pursuant to [section 4] and the records

7 of any investigation made pursuant to such a report must be

8 kept confidential and are not available for public

9 inspection.

10 (2) A report made pursuant to [section 4], data or

11 information contained in such a report, and a record of any

12 investigation made pursuant to such a report must, upon

13 request, be provided to the following persons or entities in

14 this or any other state:

15 (a) a physician who has in his care an older person

16 who he reasonably believes was abused, neglected, or

17 exploited;

18 (b) an agency responsible for the care, treatment, or

19 supervision of the older person;

20 (c) a county attorney or other law enforcement

21 official who requires the information in connection with an

22 investigation of a violation of [sections 1 through 11];

23 (d) a court which has determined, in camera, that

24 public disclosure of the report, data, information, or

25 record is necessary for the determination of an issue before

1 it;

2 (e) a grand jury upon its determination that the

3 report, data, information, or record is necessary in the

4 conduct of its official business;

5 (f) a legal guardian or conservator of the older

6 person if the identity of the person who made the report is

7 protected and the legal guardian or conservator is not the

8 person suspected of the abuse, neglect, or exploitation; and

9 (g) the person named in the report as allegedly being

10 abused, neglected, or exploited if that person is not

11 legally incompetent.

12 (3) A report made pursuant to [section 4], data or

13 information contained in such a report, and a record of any

14 investigation made pursuant to such a report must also, upon

15 request, be made available to a person engaged in bona fide

16 research if the person alleged in the report to have

17 committed the abuse, exploitation, or neglect is later

18 convicted of violating [section 11] and if the identity of

19 the older person who is the subject of the report is not

20 disclosed to the researcher.

21 (4) If the person who is reported to have abused,

22 neglected, or exploited an older person is the holder of a

23 license, permit, or certificate issued by the department of

24 commerce or any other entity of state government under the

25 provisions of Title 37, the report must be submitted to the

1 entity that issued the license, permit, or certificate.

2 Section 7. Immunity from civil and criminal liability.  
3 Any person who in good faith makes a report required or  
4 authorized to be made under [section 4] is immune from civil  
5 or criminal liability which might otherwise be incurred or  
6 imposed as a result of such a report.

7 Section 8. Admissibility of evidence. In any  
8 proceeding resulting from a report made pursuant to the  
9 provisions of [sections 1 through 10] or in any proceeding  
10 where the report or its content is sought to be introduced  
11 into evidence, the report or its content or any other fact  
12 related to the report or to the condition of the older  
13 person who is the subject of the report may not be excluded  
14 on the ground that the matter is or may be the subject of a  
15 privilege granted in Title 26, chapter 1, part 8, except the  
16 attorney-client privilege granted by 26-1-803.

17 Section 9. Duties of department of social and  
18 rehabilitation services. (1) The department of social and  
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20 information on older persons who are the subject of reports  
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22 the abuse, neglect, or exploitation.

23 (2) The department shall, when appropriate, provide  
24 protective services under Title 53, chapter 5, part 2, for  
25 an older person alleged to have been abused, neglected, or

1 exploited.

2 Section 10. Penalty. Any person who purposely or  
3 knowingly violates [sections 1 through 9] is guilty of a  
4 misdemeanor and upon conviction is punishable as provided in  
5 46-18-212.

6 Section 11. Infliction of suffering on older person --  
7 penalty. Any person 18 years of age or older who purposely  
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9 unjustifiable physical or mental injury as a result of  
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11 is guilty of a felony and upon conviction must be punished  
12 by a fine not to exceed \$10,000 or imprisoned in the state  
13 prison for a term not to exceed 5 years, or both.

14 Section 12. Codification instruction. Section 11 is  
15 intended to be codified as an integral part of Title 45.

-End-

## 1 HOUSE BILL NO. 880

2 INTRODUCED BY BERGENE, J. JENSEN, JONES, VINCENT, DARKO,  
3 MCCORMICK, SCHULTZ, HEMSTAD, KEYSER, IVERSON, SWITZER,  
4 COMPTON, DEVLIN, SPAETH, C. SMITH, CURTISS, MILLER, THOFT,  
5 HOME, DOZIER, KEENAN, SCHYE, BERTELSEN, METCALF, KENNERLY,  
6 ZABROCKI, HARPER, ROUSH, HARRINGTON, DAILY, ABRAMS,  
7 HOLLIDAY, NISBET, MCBRIDE, SAUNDERS, AODY

8  
9 A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING REPORTING BY  
10 HEALTH CARE PROFESSIONALS AND OTHER PERSONS OF INCIDENTS OF  
11 ABUSE, NEGLECT, AND EXPLOITATION OF OLDER PERSONS;  
12 SPECIFYING THE USE OF THE REPORTS; PROVIDING FOR IMMUNITY  
13 FROM CIVIL AND CRIMINAL LIABILITY; SPECIFYING THE DUTIES OF  
14 THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES  
15 RELATING TO ABUSE, NEGLECT, OR EXPLOITATION OF OLDER  
16 PERSONS; AND PROVIDING--PENALTIES DIRECTING THE COUNTY  
17 ATTORNEY TO FILE CHARGES."

18  
19 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

20 Section 1. Short title. [Sections 1 through 10] may be  
21 cited as the "Montana Elder Abuse Prevention Act".

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9 of an older person.

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11 person, his money, or his property to the advantage of  
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14 substantial impairment of an older person's intellectual or  
15 psychological functioning or well-being.

16 (4) "Neglect" means the failure of a guardian,  
17 employee of a public or private residential institution,  
18 facility, home, or agency, or any other person legally  
19 responsible in a residential setting for an older person's  
20 welfare to care for an older person by failing to provide  
21 food, shelter, clothing, or services necessary to maintain  
22 the physical or mental health of the older person.

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

25 (6) "Physical injury" means death, permanent or

1 temporary disfigurement, or impairment of any bodily organ  
2 or function.

3 Section 4. Reports required. ~~(1) The first~~  
4 ~~professional or official~~ (1) WHEN THE PROFESSIONALS AND  
5 OFFICIALS listed in subsection (3) ~~who knows or has known or~~  
6 HAVE reasonable cause to suspect that an older person known  
7 ~~to him or her~~ WHEN IN THEIR PROFESSIONAL OR official  
8 capacity has been subjected to abuse, exploitation, or  
9 neglect, ~~they shall~~ REPORT THE MATTER promptly ~~make a~~  
10 ~~report containing the matters set forth in [section 5] and~~  
11 ~~shall promptly send the report to the department of social~~  
12 ~~and rehabilitation services and to the sheriff of the county~~  
13 ~~or the police department of the municipality or its local~~  
14 AFFILIATE AND THE COUNTY ATTORNEY OF THE COUNTY in which the  
15 older person resides and OR in which the acts that are the  
16 subject of the report occurred.

17 (2) If the report required in subsection (1) involves  
18 an act or omission of the department of social and  
19 rehabilitation services WHICH MAY BE CONSIDERED AS ABUSE,  
20 EXPLOITATION, OR NEGLECT, a copy of the report may not be  
21 sent to the department but must be sent instead to the  
22 welfare department of the county in which THE OLDER PERSON  
23 RESIDES OR IN WHICH the acts that are the subject of the  
24 report occurred.

25 (3) ~~A report as required by subsection (1) must be~~

1 ~~made by~~ PROFESSIONALS AND OFFICIALS REQUIRED TO REPORT ARE:

2 (a) a physician, resident, intern, professional or  
3 practical nurse, physician's assistant, or member of a  
4 hospital staff engaged in the admission, examination, care,  
5 or treatment of persons;

6 (b) an osteopath, dentist, chiropractor, optometrist,  
7 podiatrist, medical examiner, coroner, or any other health  
8 or mental health professional;

9 (c) an ambulance attendant;

10 (d) a social worker or other employee of the state, a  
11 county, or a municipality assisting an older person in the  
12 application for or receipt of public assistance payments or  
13 services;

14 (e) a person who maintains or is employed by a  
15 roominghouse, retirement home, nursing home, group home, or  
16 adult foster care home; or

17 (f) an attorney, unless he acquired knowledge of the  
18 facts required to be reported from a client and the  
19 attorney-client privilege applies; OR

20 (G) A PEACE OFFICER OR OTHER LAW ENFORCEMENT OFFICIAL.

21 (4) Any other person may submit a report as provided  
22 in subsection (1).

23 Section 5. Content of report. (1) The report required  
24 by [section 4] may be made in writing or orally, by  
25 telephone or in person. A person who receives an oral report



(f) a legal guardian or conservator of the older person if the identity of the person who made the report is protected and the legal guardian or conservator is not the person suspected of the abuse, neglect, or exploitation; and

(g) the person named in the report as allegedly being abused, neglected, or exploited if that person is not legally incompetent.

~~(3) A report made pursuant to [section 4], data or information contained in such a report, and a record of any investigation made pursuant to such a report must also, upon request, be made available to a~~

~~(d) ANY~~ person engaged in bona fide research if the person alleged in the report to have committed the abuse, exploitation, or neglect is later convicted of violating [section ~~11~~ 10] and if the identity of the older person who is the subject of the report is not disclosed to the researcher.

(4) If the person who is reported to have abused, neglected, or exploited an older person is the holder of a license, permit, or certificate issued by the department of commerce or any other entity of state government under the provisions of Title 37, the report must be submitted to the entity that issued the license, permit, or certificate.

Section 7. Immunity from civil and criminal liability.  
Any person who ~~in good faith~~ makes a report required or

authorized to be made under [section 4] is immune from civil or criminal liability which might otherwise be incurred or imposed as a result of such a report UNLESS THE PERSON ACTED IN BAD FAITH OR WITH MALICIOUS PURPOSE.

Section 8. Admissibility of evidence. In any proceeding resulting from a report made pursuant to the provisions of [sections 1 through 10] or in any proceeding where the report or its content is sought to be introduced into evidence, the report or its content or any other fact related to the report or to the condition of the older person who is the subject of the report may not be excluded on the ground that the matter is or may be the subject of a privilege granted in Title 26, chapter 1, part 8, except the attorney-client privilege granted by 26-1-803.

Section 9. Duties of department of social and rehabilitation services. (1) The department of social and rehabilitation services shall ~~develop and record demographic information on older persons who are the subject of reports under [section 4] and those alleged to be responsible for the abuse, neglect, or exploitation~~ PREPARE AN ANNUAL REPORT OF THE INFORMATION OBTAINED PURSUANT TO THE REPORTING REQUIREMENT OF [THIS ACT].

(2) The department shall, when appropriate, provide protective services under Title 53, chapter 5, part 2, for an older person alleged to have been abused, neglected, or

must prepare it in writing as soon as possible.

(2) ~~if possible, the~~ THE report must REFERRED TO UNDER THIS SECTION SHALL contain the following information:

(a) the name NAMES and address ADDRESSES of the older person; AND

~~(b) the name and address of~~ the person, if any, responsible for his care;

~~(c) the name and address, if available, of the person who is alleged to have abused, neglected, or exploited the older person;~~

~~(d) to the extent known, the person's age and the nature and extent of the abuse, neglect, or exploitation, including~~

~~(e) any evidence of previous injuries sustained by the older person; and~~

~~(f) the name and address of the person making the report.~~

Section 6. Reports ~~and records~~ confidential ~~permitted disclosures~~ CONFIDENTIALITY. (1) ~~Except as provided in subsection (2), a report made pursuant to section 4 and the records of any investigation made pursuant to such a report must be kept confidential and are not available for public inspection~~

~~(2) A report made pursuant to section 4, data or information contained in such a report, and a record of any~~

~~investigation made pursuant to such a report must, THE CASE RECORDS OF THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES AND ITS LOCAL AFFILIATE, THE COUNTY WELFARE DEPARTMENT, THE COUNTY ATTORNEY, AND THE COURT CONCERNING ACTIONS TAKEN UNDER THIS AND ALL REPORTS MADE PURSUANT TO [SECTION 4] SHALL BE KEPT CONFIDENTIAL EXCEPT AS PROVIDED BY THIS SECTION.~~

~~(2) THE RECORDS AND REPORTS IN [SECTION 6(1)] MAY BE DISCLOSED upon request, be provided to the following persons or entities in this or any other state:~~

(a) a physician who has in his care an older person who he reasonably believes was abused, neglected, or exploited;

(b) an agency responsible for the care, treatment, or supervision of the older person;

(c) a county attorney or other law enforcement official who requires the information in connection with an investigation of a violation of [sections 1 through 11];

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

(e) a grand jury upon its determination that the report, data, information, or record is necessary in the conduct of its official business;

exploited.

Section 10. Penalty. Any person who purposely or knowingly violates [sections 1 through 9] is guilty of a misdemeanor and upon conviction is punishable as provided in 46-18-212.

Section 11. ~~infliction-of-suffering-on-older-person---  
penaltyv---Any-person-18-years-of-age-or-older-who-purposely  
or-knowingly-causes-or-permits-an-older-person--to--suffer  
unjustifiable--physical--or--mental--injury--as--a-result-of  
abusev-neglectv-or-exploitationv-as-defined-in-[section--3]v  
is--guilty--of-a-felony-and-upon-conviction-must-be-punished  
by-a-fine-not-to-exceed-\$10,000-or-imprisoned-in--the--state  
prison---for--a-term-not-to-exceed--5--yearsv--or--bothv~~  
RESPONSIBILITIES OF COUNTY ATTORNEY. IF THE EVIDENCE  
INDICATES VIOLATION OF THE CRIMINAL CODE, IT SHALL BE THE  
RESPONSIBILITY OF THE COUNTY ATTORNEY TO FILE APPROPRIATE  
CHARGES AGAINST THE ALLEGED OFFENDER.

Section 12. Codification instruction. Section 11 is intended to be codified as an integral part of Title 45.

-End-

March 25, 1983

SENATE STANDING COMMITTEE REPORT  
(Judiciary)

That House Bill No. 890 be amended as follows:

1. Page 9.

Following: line 17.

Insert: Section 12. Severability. If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Renumber: Subsequent section.

March 28, 1983

SENATE COMMITTEE OF THE WHOLE AMENDMENT

That House Bill No. 880 be amended as follows:

1. Page 3, line 5.

Strike: "OFFICIALS"

Insert: "other persons"

Strike: "(3)"

Insert: "(4)"

2. Page 3, line 11.

Following: "to"

Insert: ": (a)"

3. Page 3, line 14.

Following: "AFFILIATE"

Strike: "AND"

Insert: "; (b)"

4. Page 3, line 16.

Following: "occurred"

Strike: "."

Insert: "; and

(c) except as provided in subsection 3, to the chief administrative officer of the facility, but without the identity of the employee or employees who caused the report to be filed to be revealed to that officer. "

5. Page 3, line 22.

Strike: "welfare department"

Insert: "county attorney"

6. Page 3, line 24.

Following: line 24

Insert: "(3) If the report required in subsection (1) involves an act or omission of the chief administrative officer at the facility which may be construed as abuse, exploitation, or neglect, a copy of that report may not be sent to that officer but must be sent instead to the department or its local affiliate and the county attorney of the county in which the facility is located."

Renumber: subsequent subsections

7. Page 4, line 1.

Strike: "OFFICIALS"

Insert: "other persons"

8. Page 7, line 22.

Strike: "must"

Insert: "may"

## HOUSE BILL NO. 880

INTRODUCED BY BERGENE, J. JENSEN, JONES, VINCENT, DARKO,  
MCCORMICK, SCHULTZ, HEMSTAD, KEYSER, IVERSON, SWITZER,  
COMPTON, DEVLIN, SPAETH, C. SMITH, CURTISS, MILLER, THOFT,  
HOWE, DOZIER, KEENAN, SCHYE, BERTELSEN, METCALF, KENNERLY,  
ZABROCKI, HARPER, ROUSH, HARRINGTON, DAILY, ABRAMS,  
HOLLIDAY, MISBET, MCBRIDE, SAUNDERS, ADDY

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING REPORTING BY  
HEALTH CARE PROFESSIONALS AND OTHER PERSONS OF INCIDENTS OF  
ABUSE, NEGLECT, AND EXPLOITATION OF OLDER PERSONS;  
SPECIFYING THE USE OF THE REPORTS; PROVIDING FOR IMMUNITY  
FROM CIVIL AND CRIMINAL LIABILITY; SPECIFYING THE DUTIES OF  
THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES  
RELATING TO ABUSE, NEGLECT, OR EXPLOITATION OF OLDER  
PERSONS; AND PROVIDING--PENALTIES DIRECTING THE COUNTY  
ATTORNEY TO FILE CHARGES."

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

Section 1. Short title. [Sections 1 through 10] may be  
cited as the "Montana Elder Abuse Prevention Act".

Section 2. Legislative findings and purpose. The  
legislature finds that a need exists to provide for  
cooperation among law enforcement officials and agencies,  
courts, and state and county agencies providing human

services in preventing the abuse, neglect, and exploitation  
of Montana's elderly through the identification and  
reporting of acts of such abuse, neglect, and exploitation.

Section 3. Definitions. As used in [sections 1 through  
10], 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.

(2) "Exploitation" means the unethical use of an older  
person, his money, or his property to the advantage of  
another.

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

(4) "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  
welfare to care for an older person by failing to provide  
food, shelter, clothing, or services necessary to maintain  
the physical or mental health of the older person.

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

(6) "Physical injury" means death, permanent or

1 temporary disfigurement, or impairment of any bodily organ  
2 or function.

3 Section 4. Reports required. ~~(1)---The---first~~  
4 ~~professional--or--official~~ (1) WHEN THE PROFESSIONALS AND  
5 OFFICIALS OTHER PERSONS listed in subsection (3) (4) who  
6 knows--or--has KNOW OR HAVE reasonable cause to suspect that  
7 an older person known to him--in--his THEM IN THEIR  
8 PROFESSIONAL OR official capacity has been subjected to  
9 abuse, exploitation, or neglect, THEY shall, REPORT THE  
10 MATTER promptly--make--a--report--containing--the--matters--set  
11 forth--in--[section--5]--and--shall--promptly--send--the--report--to:

12 (a) the department of social and rehabilitation  
13 services and to the sheriff of the--county--or--the--police  
14 department--of--the--municipality OR ITS LOCAL AFFILIATE AND:

15 (b) THE COUNTY ATTORNEY OF THE COUNTY in which the  
16 older person resides and OR in which the acts that are the  
17 subject of the report occurred, AND

18 (c) EXCEPT AS PROVIDED IN SUBSECTION (1), TO THE CHIEF  
19 ADMINISTRATIVE OFFICER OF THE FACILITY, BUT WITHOUT THE  
20 IDENTITY OF THE EMPLOYEE OR EMPLOYEES WHO CAUSED THE REPORT  
21 TO BE FILED TO BE REVEALED TO THAT OFFICER.

22 (2) If the report required in subsection (1) involves  
23 an act or omission of the department of social and  
24 rehabilitation services WHICH MAY BE CONSTRUED AS ABUSE,  
25 EXPLOITATION, OR NEGLIGENCE, a copy of the report may not be

1 sent to the department but must be sent instead to the  
2 welfare--department COUNTY ATTORNEY of the county in which  
3 THE OLDER PERSON RESIDES OR IN WHICH the acts that are the  
4 subject of the report occurred.

5 (3) IF THE REPORT REQUIRED IN SUBSECTION (1) INVOLVES  
6 AN ACT OR OMISSION OF THE CHIEF ADMINISTRATIVE OFFICER AT  
7 THE FACILITY WHICH MAY BE CONSTRUED AS ABUSE, EXPLOITATION,  
8 OR NEGLIGENCE, A COPY OF THAT REPORT MAY NOT BE SENT TO THAT  
9 OFFICER, BUT MUST BE SENT INSTEAD TO THE DEPARTMENT OR ITS  
10 LOCAL AFFILIATE AND THE COUNTY ATTORNEY OF THE COUNTY IN  
11 WHICH THE FACILITY IS LOCATED.

12 (3)(4) A--report--as--required--by--subsection--(1)--must--be  
13 made by PROFESSIONALS AND OFFICIALS OTHER PERSONS REQUIRED  
14 TO REPORT ARE:

15 (a) a physician, resident, intern, professional or  
16 practical nurse, physician's assistant, or member of a  
17 hospital staff engaged in the admission, examination, care,  
18 or treatment of persons;

19 (b) an osteopath, dentist, chiropractor, optometrist,  
20 podiatrist, medical examiner, coroner, or any other health  
21 or mental health professional;

22 (c) an ambulance attendant;

23 (d) a social worker or other employee of the state, a  
24 county, or a municipality assisting an older person in the  
25 application for or receipt of public assistance payments or

1 services;

2 (e) a person who maintains or is employed by a  
3 roominghouse, retirement home, nursing home, group home, or  
4 adult foster care home; or

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

8 ~~(g) A PEACE OFFICER OR OTHER LAW ENFORCEMENT OFFICIAL.~~  
9 ~~(4)(5)~~ Any other person may submit a report as  
10 provided in subsection (1).

11 Section 5. Content of report. (1) The report required  
12 by [section 4] may be made in writing or orally, by  
13 telephone or in person. A person who receives an oral report  
14 must prepare it in writing as soon as possible.

15 (2) ~~If possible, the~~ THE report must REFERRED TO UNDER  
16 THIS SECTION SHALL contain the following information:

17 (a) the name NAMES and address ADDRESSES of the older  
18 person; ~~AND~~

19 ~~(b) the name and address of~~ the person, if any,  
20 responsible for his care;

21 ~~(c) the name and address, if available, of the~~  
22 person who is alleged to have abused, neglected, or  
23 exploited the older person;

24 ~~(4)(C) TO THE EXTENT KNOWN, THE PERSON'S AGE AND the~~  
25 nature and extent of the abuse, neglect, or exploitation;

1 INCLUDING

2 ~~(e)~~ any evidence of previous injuries sustained by the  
3 older person; and

4 ~~(f)(D)~~ the name and address of the person making the  
5 report.

6 Section 6. Reports ~~and records~~ ~~confidential~~ ~~and~~  
7 permitted disclosures CONFIDENTIALITY. (1) Except ~~as~~  
8 provided in subsection ~~(2)~~ ~~a report made pursuant to~~  
9 ~~[section 4] and the records of any investigation made~~  
10 ~~pursuant to such a report must be kept confidential and are~~  
11 ~~not available for public inspection~~

12 ~~(2) A report made pursuant to [section 4] data or~~  
13 ~~information contained in such a report and a record of any~~  
14 ~~investigation made pursuant to such a report must~~ THE CASE  
15 RECORDS OF THE DEPARTMENT OF SOCIAL AND REHABILITATION  
16 SERVICES AND ITS LOCAL AFFILIATES, THE COUNTY WELFARE  
17 DEPARTMENT, THE COUNTY ATTORNEY, AND THE COURT CONCERNING  
18 ACTIONS TAKEN UNDER THIS AND ALL REPORTS MADE PURSUANT TO  
19 [SECTION 4] SHALL BE KEPT CONFIDENTIAL EXCEPT AS PROVIDED BY  
20 THIS SECTION.

21 (2) THE RECORDS AND REPORTS IN [SECTION 6(1)] MAY BE  
22 DISCLOSED upon request, be provided to the following persons  
23 or entities in this or any other state:

24 (a) a physician who has in his care an older person  
25 who he reasonably believes was abused, neglected, or



1 exploited;

2 (b) an agency responsible for the care, treatment, or

3 supervision of the older person;

4 (c) a county attorney or other law enforcement

5 official who requires the information in connection with an

6 investigation of a violation of [sections 1 through 11];

7 (d) a court which has determined, in camera, that

8 public disclosure of the report, data, information, or

9 record is necessary for the determination of an issue before

10 it;

11 (e) a grand jury upon its determination that the

12 report, data, information, or record is necessary in the

13 conduct of its official business;

14 (f) a legal guardian or conservator of the older

15 person if the identity of the person who made the report is

16 protected and the legal guardian or conservator is not the

17 person suspected of the abuse, neglect, or exploitation; and

18 (g) the person named in the report as allegedly being

19 abused, neglected, or exploited if that person is not

20 legally incompetent.

21 ~~{3}--A report made pursuant to [section 4]--data--or~~

22 ~~information--contained in such a report--and a record of any~~

23 ~~investigation made pursuant to such a report must also--upon~~

24 ~~request--be made available to a~~

25 ~~[H1] ANY~~ person engaged in bona fide research if the

1 person alleged in the report to have committed the abuse,

2 exploitation, or neglect is later convicted of violating

3 [section 11 10] and if the identity of the older person who

4 is the subject of the report is not disclosed to the

5 researcher.

6 ~~{4}41~~ If the person who is reported to have abused,

7 neglected, or exploited an older person is the holder of a

8 license, permit, or certificate issued by the department of

9 commerce or any other entity of state government under the

10 provisions of Title 37, the report ~~must~~ MAY be submitted to

11 the entity that issued the license, permit, or certificate.

12 Section 7. Immunity from civil and criminal liability.

13 Any person who ~~in--good--faith~~ makes a report required or

14 authorized to be made under [section 4] is immune from civil

15 or criminal liability which might otherwise be incurred or

16 imposed as a result of such a report ~~UNLESS THE PERSON ACTED~~

17 ~~IN BAD FAITH OR WITH MALICIOUS PURPOSE.~~

18 Section 8. Admissibility of evidence. In any

19 proceeding resulting from a report made pursuant to the

20 provisions of [sections 1 through 10] or in any proceeding

21 where the report or its content is sought to be introduced

22 into evidence, the report or its content or any other fact

23 related to the report or to the condition of the older

24 person who is the subject of the report may not be excluded

25 on the ground that the matter is or may be the subject of a

1 privilege granted in Title 26, chapter 1, part 8, except the  
2 attorney-client privilege granted by 26-1-803.

3 Section 9. Duties of department of social and  
4 rehabilitation services. (1) The department of social and  
5 rehabilitation services shall develop and record demographic  
6 information on older persons who are the subject of reports  
7 under [section 4] and those alleged to be responsible for  
8 the abuse, neglect, or exploitation. PREPARE AN ANNUAL REPORT  
9 OF THE INFORMATION OBTAINED PURSUANT TO THE REPORTING  
10 REQUIREMENT OF [THIS ACT].

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

15 Section 10. Penalty. Any person who purposely or  
16 knowingly violates [sections 1 through 9] is guilty of a  
17 misdemeanor and upon conviction is punishable as provided in  
18 46-18-212.

19 Section 11. ~~Infliction of suffering on older person --~~  
20 ~~penalty -- Any person 18 years of age or older who purposely~~  
21 ~~or knowingly causes or permits an older person to suffer~~  
22 ~~unjustifiable physical or mental injury as a result of~~  
23 ~~abuse, neglect, or exploitation, as defined in [section 3],~~  
24 ~~is guilty of a felony and upon conviction must be punished~~  
25 ~~by a fine not to exceed \$10,000 or imprisoned in the state~~

1 ~~prison for a term not to exceed 5 years or both~~  
2 ~~responsibilities of county attorney. If the evidence~~  
3 ~~indicates violation of the criminal code, it shall be the~~  
4 ~~responsibility of the county attorney to file appropriate~~  
5 ~~charges against the alleged offender.~~

6 SECTION 12. SEVERABILITY. IF A PART OF THIS ACT IS  
7 INVALID, ALL VALID PARTS THAT ARE SEVERABLE FROM THE INVALID  
8 PART REMAIN IN EFFECT. IF A PART OF THIS ACT IS INVALID IN  
9 ONE OR MORE OF ITS APPLICATIONS, THE PART REMAINS IN EFFECT  
10 IN ALL VALID APPLICATIONS THAT ARE SEVERABLE FROM THE  
11 INVALID APPLICATIONS.

12 Section 13. Codification instruction. Section 11 is  
13 intended to be codified as an integral part of Title 45.

-End-

April 12, 1983

FREE CONFERENCE COMMITTEE REPORT  
HOUSE BILL 880  
(Report No. 1, 1:30 P.M.)

We, your Free Conference Committee on House Bill 880, met and considered:  
Senate Judiciary Committee amendment of March 25, 1983; and  
Senate Committee of the Whole Amendments of March 28, 1983.

We recommend as follows:

That the House accede to Senate Judiciary Committee amendment of March 25; and accede to Senate Committee of the Whole amendments 1 through 3, 5, 7, and 8 of March 28, 1983

That the Senate recede from Senate Committee of the Whole amendments 4 and 6 of March 28, 1983;

That House Bill 880 be further amended as specified in Clerical Instructions 1 through 21; and

That this Free Conference Committee Report be adopted.

CLERICAL INSTRUCTIONS FOR REFERENCE COPY (SALMON)

1) Title, line 14

Strike: "DEPARTMENT"

Insert: "DEPARTMENTS"

Following: "OR"

Insert: "HEALTH AND ENVIRONMENTAL SCIENCES AND"

2) Title, lines 16 and 17

Strike: "DIRECTING THE COUNTY ATTORNEY TO FILE CHARGES"

Insert: "PROVIDING PENALTIES"

3) Page 2, following line 12

Insert: "(3) 'Long-term care facility' means a facility defined in 50-5-101 (20)."

Renumber: subsequent subsections

4) Page 3, line 5

Strike: "(4)"

Insert: "(3)"

5) Page 3, line 9

Following: "shall"

Strike: "1"

Insert: "1 (a) if the older person is not a resident of a long-term care facility,"

6) Page 3, line 12

Strike: "(A)"

Insert: "(i)"

7. Page 3, line 15.

Strike: "(B)"

Insert: "(ii)"

8. Page 3, line 17.

Strike: "; AND"

Insert: "."

9. Page 3, lines 18 through 21.

Strike: subsection (c) in its entirety

Insert: "(d) if the older person is a resident of a long-term care facility, report the matter to the long-term care ombudsman appointed under the provisions of 42 USC 3027 (a)(12), and to the department of health and environmental sciences. The department shall investigate the matter pursuant to its authority in 50-5-204 and, if it finds any allegations of abuse, exploitation, or neglect contained in the report to be substantially true, forward a copy of the report to the department of social and rehabilitation services and to the county attorney provided in subsection (a)(ii)."

10. Page 4, lines 5 through 11.

Strike: subsection (3) in its entirety

Renumber: subsequent subsections accordingly

11. Page 5, line 7.

Strike: "OR"

Insert: "AND"

12. Page 6, line 18.

Following: "UNDER"

Insert: "[ "

Following: "THIS"

Insert: "ACT]"

13. Page 6, line 21.

Strike: "IN"

Insert: "REQUIRED TO BE KEPT CONFIDENTIAL BY"

14. Page 7, lines 2 through 13.

Strike: subsections (b), (c), (d), and (e) in their entirety

Renumber: subsequent subsections accordingly

15. Page 8, lines 2 and 3.

Strike: "violating [section 10]"

Insert: "an offense constituting abuse, exploitation, or neglect"

16. Page 8.

Following: line 5

Insert: "(3) The records and reports required to be kept confidential by [section 6(1)] shall be disclosed upon request to the following persons or entities in this or any other state:

DA

Jm

DA

Jm

Page 3 of 3

19

(a) a county attorney or other law enforcement official who requires the information in connection with an investigation of a violation of [sections 1 through 11];

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

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

Renumber: subsequent subsections accordingly

17. Page 8, line 16.

Following: "THE"

Insert: "REPORT IS FALSE IN ANY MATERIAL RESPECT AND THE"

18. Page 9, line 16.

Strike: "violates [sections 1 through 9]"

Insert: "fails to make a report required by [section 4] or discloses or fails to disclose the contents of a case record or report in violation of [section 6]"

19. Page 9, line 19.

Strike: "Section 11."

20. Page 10, lines 2 through 5.

Strike: Lines 2 through 5 in their entirety

Renumber: subsequent sections accordingly

21. Page 10, lines 12 and 13.

Strike: section 13 in its entirety

FOR THE HOUSE

Metcalf  
METCALF, CHAIR  
Rep. Berghme  
BERGME  
Veleber  
VELEBER

FOR THE SENATE

Hazelbarer  
HAZELBARER, CHAIR  
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## HOUSE BILL NO. 880

INTRODUCED BY BERGENE, J. JENSEN, JONES, VINCENT, JARKO,  
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ZABROCKI, HARPER, ROUSH, HARRINGTON, DAILY, ABRAMS,  
HOLLIDAY, NISBET, MORRIDE, SAUNDERS, ADDY

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING REPORTING BY  
HEALTH CARE PROFESSIONALS AND OTHER PERSONS OF INCIDENTS OF  
ABUSE, NEGLECT, AND EXPLOITATION OF OLDER PERSONS;  
SPECIFYING THE USE OF THE REPORTS; PROVIDING FOR IMMUNITY  
FROM CIVIL AND CRIMINAL LIABILITY; SPECIFYING THE DUTIES OF  
THE DEPARTMENT DEPARTMENTS OF HEALTH AND ENVIRONMENTAL  
SCIENCES AND SOCIAL AND REHABILITATION SERVICES RELATING TO  
ABUSE, NEGLECT, OR EXPLOITATION OF OLDER PERSONS; AND  
~~PROVIDING PENALTIES DIRECTING THE COUNTY ATTORNEY TO FILE~~  
~~CHARGES PROVIDING PENALTIES."~~

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

Section 1. Short title. [Sections 1 through 10] may be  
cited as the "Montana Elder Abuse Prevention Act".

Section 2. Legislative findings and purpose. The  
legislature finds that a need exists to provide for  
cooperation among law enforcement officials and agencies,

courts, and state and county agencies providing human  
services in preventing the abuse, neglect, and exploitation  
of Montana's elderly through the identification and  
reporting of acts of such abuse, neglect, and exploitation.

Section 3. Definitions. As used in [sections 1 through  
10], 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.

(2) "Exploitation" means the unethical use of an older  
person, his money, or his property to the advantage of  
another.

~~(3) "LONG-TERM CARE FACILITY" MEANS A FACILITY DEFINED~~  
~~IN 50-5-101(20).~~

~~(3)(4)~~ "Mental injury" means an identifiable and  
substantial impairment of an older person's intellectual or  
psychological functioning or well-being.

~~(4)(5)~~ "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  
welfare to care for an older person by failing to provide  
food, shelter, clothing, or services necessary to maintain  
the physical or mental health of the older person.

1 ~~(5)(6)~~ "Older person" means a person who is at least  
2 60 years of age.

3 ~~(6)(7)~~ "Physical injury" means death, permanent or  
4 temporary disfigurement, or impairment of any bodily organ  
5 or function.

6 Section 4. Reports required. ~~(1)---The---first~~  
7 ~~professional-or-official~~ ~~(1) WHEN THE PROFESSIONALS AND~~  
8 ~~OFFICIALS OTHER PERSONS~~ listed in subsection ~~(3) (4) (5)~~ who  
9 knows--or--has KNOW OR HAVE reasonable cause to suspect that  
10 an older person known to him--in--his ITEM IN THIS  
11 PROFESSIONAL OR official capacity CAPACITIES has been  
12 subjected to abuse, exploitation, or neglect, THEY shall:

13 (A) IF THE OLDER PERSON IS NOT A RESIDENT OF A  
14 LONG-TERM CARE FACILITY, REPORT THE MATTER promptly--make-a  
15 report--containing-the-matters-set-forth-in-[section--5]--and  
16 shall--promptly--send-the-report to:

17 ~~(1)(I)~~ the department of social and rehabilitation  
18 services and--to--the--sheriff--of--the--county--or--the--police  
19 department--of--the--municipality OR ITS LOCAL AFFILIATE AND;

20 ~~(1)(II)~~ THE COUNTY ATTORNEY OF THE COUNTY in which the  
21 older person resides and OR in which the acts that are the  
22 subject of the report occurred--AND;

23 ~~(1)---EXCEPT AS PROVIDED IN SUBSECTION (3), TO THE CHIEF~~  
24 ~~ADMINISTRATIVE OFFICER OF THE FACILITY, BUT WITHOUT THE~~  
25 ~~IDENTITY OF THE EMPLOYEE OR EMPLOYEES WHO CAUSED THE REPORT~~

1 ~~TO BE FILED TO BE REVEALED TO THAT OFFICER.~~

2 (B) IF THE OLDER PERSON IS A RESIDENT OF A LONG-TERM  
3 CARE FACILITY, REPORT THE MATTER TO THE LONG-TERM CARE  
4 GUARDIAN APPOINTED UNDER THE PROVISIONS OF 42 U.S.C.  
5 3027(a)(12), AND TO THE DEPARTMENT OF HEALTH AND  
6 ENVIRONMENTAL SCIENCES. THE DEPARTMENT SHALL INVESTIGATE THE  
7 MATTER PURSUANT TO ITS AUTHORITY IN 50-5-204 AND, IF IT  
8 FINDS ANY ALLEGATIONS OF ABUSE, EXPLOITATION, OR NEGLECT  
9 CONTAINED IN THE REPORT TO BE SUBSTANTIALLY TRUE, FORWARD A  
10 COPY OF THE REPORT TO THE DEPARTMENT OF SOCIAL AND  
11 REHABILITATION SERVICES AND TO THE COUNTY ATTORNEY AS  
12 PROVIDED IN SUBSECTION (1)(A)(II).

13 (2) If the report required in subsection (1) involves  
14 an act or omission of the department of social and  
15 rehabilitation services WHICH MAY BE CONSTRUED AS ABUSE,  
16 EXPLOITATION, OR NEGLECT, a copy of the report may not be  
17 sent to the department but must be sent instead to the  
18 welfare department COUNTY ATTORNEY of the county in which  
19 THE OLDER PERSON RESIDES OR IN WHICH the acts that are the  
20 subject of the report occurred.

21 ~~(1)---IF THE REPORT REQUIRED IN SUBSECTION (1) INVOLVES~~  
22 ~~AN ACT OR OMISSION OF THE CHIEF ADMINISTRATIVE OFFICER AT~~  
23 ~~THE FACILITY WHICH MAY BE CONSTRUED AS ABUSE, EXPLOITATION,~~  
24 ~~OR NEGLECT, A COPY OF THAT REPORT MAY NOT BE SENT TO THAT~~  
25 ~~OFFICER BUT MUST BE SENT INSTEAD TO THE DEPARTMENT OR ITS~~

1 ~~LOCATED--AFFILIATE--AND--THE--COUNTY--ATTORNEY--OF--THE--COUNTY--IN~~  
 2 ~~WHICH--THE--FACILITY--IS--LOCATED.~~

3 ~~{3}{1}{1}~~ (3) A report as required by subsection (1) must  
 4 be made by PROFESSIONALS AND OFFICIALS OTHER PERSONS  
 5 REQUIRED TO REPORT ARE:

6 (a) a physician, resident, intern, professional or  
 7 practical nurse, physician's assistant, or member of a  
 8 hospital staff engaged in the admission, examination, care,  
 9 or treatment of persons;

10 (b) an osteopath, dentist, chiropractor, optometrist,  
 11 podiatrist, medical examiner, coroner, or any other health  
 12 or mental health professional;

13 (c) an ambulance attendant;

14 (d) a social worker or other employee of the state, a  
 15 county, or a municipality assisting an older person in the  
 16 application for or receipt of public assistance payments or  
 17 services;

18 (e) a person who maintains or is employed by a  
 19 roominghouse, retirement home, nursing home, group home, or  
 20 adult foster care home; or

21 (f) an attorney, unless he acquired knowledge of the  
 22 facts required to be reported from a client and the  
 23 attorney-client privilege applies; OR AND

24 (5) A PEACE OFFICER OR OTHER LAW ENFORCEMENT OFFICIAL.

25 ~~{4}{1}{1}~~ (4) Any other person may submit a report as

1 provided in subsection (1).

2 Section 5. Content of report. (1) The report required  
 3 by [section 4] may be made in writing or orally, by  
 4 telephone or in person. A person who receives an oral report  
 5 must prepare it in writing as soon as possible.

6 ~~(2) If possible, the~~ THE report must RECEIVED TO UNDER  
 7 THIS SECTION SHALL contain the following information:

8 (a) the name NAMES and address ADDRESSES of the older  
 9 person AND

10 ~~(b) the name and address of~~ the person, if any,  
 11 responsible for his care;

12 ~~(c) the name and address, if available, of the~~  
 13 person who is alleged to have abused, neglected, or  
 14 exploited the older person;

15 ~~(d) the extent known, the person's age and the~~  
 16 nature and extent of the abuse, neglect, or exploitation;  
 17 INCLUDING

18 ~~(e) any evidence of previous injuries sustained by the~~  
 19 older person; and

20 ~~(f) the name and address of the person making the~~  
 21 report.

22 Section 6. ~~Reports and records confidential~~  
 23 ~~permitted disclosures~~ CONFIDENTIALITY. (1) Except as  
 24 provided in subsection (2), a report made pursuant to  
 25 [section 4] and the records of any investigation made

1 pursuant-to-such-a-report-must-be-kept-confidential-and-are  
2 not-available-for-public-inspection;

3 (2)--A--report--made--pursuant--to--[section-4j]-data-or  
4 information-contained-in-such-a-report-and-a-record-of-any  
5 investigation--made-pursuant-to-such-a-report-must: THE CASE  
6 RECORDS OF THE DEPARTMENT OF SOCIAL AND REHABILITATION  
7 SERVICES AND ITS LOCAL AFFILIATE, THE COUNTY WELFARE  
8 DEPARTMENT, THE COUNTY ATTORNEY, AND THE COURT, CONCERNING  
9 ACTIONS TAKEN UNDER [THIS ACT], AND ALL REPORTS MADE  
10 PURSUANT TO [SECTION 4] SHALL BE KEPT CONFIDENTIAL EXCEPT AS  
11 PROVIDED BY THIS SECTION.

12 (2) THE RECORDS AND REPORTS IN REQUIRED TO BE KEPT  
13 CONFIDENTIAL BY [SECTION 6(1)] MAY BE DISCLOSED upon  
14 request, be provided to the following persons or entities in  
15 this or any other state:

16 (a) a physician who has in his care an older person  
17 who he reasonably believes was abused, neglected, or  
18 exploited;

19 (b)--an-agency-responsible-for-the-care-treatment--or  
20 supervision-of-the-older-person;

21 (c)--a--county--attorney--or--other--law--enforcement  
22 official-who-requires-the-information-in-connection-with-an  
23 investigation-of-a-violation-of-[sections-1-through-11];

24 (d)--a--court--which--has--determined--in-camera--that  
25 public-disclosure-of--the--report--data--information--or

1 record-is-necessary-for-the-determination-of-an-issue-before  
2 it;

3 (e)--a--grand--jury--upon--its--determination--that-the  
4 report--data--information--or--record--is--necessary--in--the  
5 conduct-of-its-official-business;

6 (f)(1) a legal guardian or conservator of the older  
7 person if the identity of the person who made the report is  
8 protected and the legal guardian or conservator is not the  
9 person suspected of the abuse, neglect, or exploitation; and

10 (g)(1) the person named in the report as allegedly  
11 being abused, neglected, or exploited if that person is not  
12 legally incompetent; AND

13 (3)--A--report--made--pursuant--to--[section-4j]-data--or  
14 information--contained-in-such-a-report-and-a-record-of-any  
15 investigation--made-pursuant-to-such-a-report-must-also--upon  
16 request--be-made-available-to-a

17 (d)(1) ANY person engaged in bona fide research if the  
18 person alleged in the report to have committed the abuse,  
19 exploitation, or neglect is later convicted of violating  
20 [section-11 10] AN OFFENSE CONSTITUTING ABUSE, EXPLOITATION,  
21 OR NEGLECT and if the identity of the older person who is  
22 the subject of the report is not disclosed to the  
23 researcher.

24 (3) THE RECORDS AND REPORTS REQUIRED TO BE KEPT  
25 CONFIDENTIAL BY [SECTION 6(1)] SHALL BE DISCLOSED UPON



1 REQUEST TO THE FOLLOWING PERSONS OR ENTITIES IN THIS OR ANY  
 2 OTHER STATE:

3 (A) A COUNTY ATTORNEY OR OTHER LAW ENFORCEMENT  
 4 OFFICIAL WHO REQUIRES THE INFORMATION IN CONNECTION WITH AN  
 5 INVESTIGATION OF A VIOLATION OF [SECTIONS 1 THROUGH 10];

6 (B) A COURT WHICH HAS DETERMINED, IN CAMERA, THAT  
 7 PUBLIC DISCLOSURE OF THE REPORT, DATA, INFORMATION, OR  
 8 RECORD IS NECESSARY FOR THE DETERMINATION OF AN ISSUE BEFORE  
 9 IT;

10 (C) A GRAND JURY UPON ITS DETERMINATION THAT THE  
 11 REPORT, DATA, INFORMATION, OR RECORD IS NECESSARY IN THE  
 12 CONDUCT OF ITS OFFICIAL BUSINESS.

13 ~~{4}{3}~~ (4) If the person who is reported to have  
 14 abused, neglected, or exploited an older person is the  
 15 holder of a license, permit, or certificate issued by the  
 16 department of commerce or any other entity of state  
 17 government under the provisions of Title 37, the report must  
 18 MAY be submitted to the entity that issued the license,  
 19 permit, or certificate.

20 Section 7. Immunity from civil and criminal liability.  
 21 Any person who ~~in good faith~~ makes a report required or  
 22 authorized to be made under [section 4] is immune from civil  
 23 or criminal liability which might otherwise be incurred or  
 24 imposed as a result of such a report UNLESS THE REPORT IS  
 25 FALSE IN ANY MATERIAL RESPECT AND THE PERSON ACTED IN BAD

1 FAITH OR WITH MALICIOUS PURPOSE.

2 Section 8. Admissibility of evidence. In any  
 3 proceeding resulting from a report made pursuant to the  
 4 provisions of [sections 1 through 10] or in any proceeding  
 5 where the report or its content is sought to be introduced  
 6 into evidence, the report or its content or any other fact  
 7 related to the report or to the condition of the older  
 8 person who is the subject of the report may not be excluded  
 9 on the ground that the matter is or may be the subject of a  
 10 privilege granted in Title 26, chapter 1, part 8, except the  
 11 attorney-client privilege granted by 26-1-803.

12 Section 9. Duties of department of social and  
 13 rehabilitation services. (1) The department of social and  
 14 rehabilitation services shall ~~develop and record demographic~~  
 15 ~~information--on older persons who are the subject of reports~~  
 16 ~~under [section 4] and those alleged to be responsible for~~  
 17 ~~the abuse, neglect, or exploitation~~ PREPARE AN ANNUAL REPORT  
 18 OF THE INFORMATION OBTAINED PURSUANT TO THE REPORTING  
 19 REQUIREMENT OF [THIS ACT].

20 (2) The department shall, when appropriate, provide  
 21 protective services under Title 53, chapter 5, part 2, for  
 22 an older person alleged to have been abused, neglected, or  
 23 exploited.

24 Section 10. Penalty. Any person who purposely or  
 25 knowingly violates ~~[sections 1 through 9]~~ FAILS TO MAKE A

REPORT REQUIRED BY [SECTION 4] OR DISCLOSES OR FAILS TO  
DISCLOSE THE CONTENTS OF A CASE RECORD OR REPORT IN  
VIOLATION OF [SECTION 6] is guilty of a misdemeanor and upon  
conviction is punishable as provided in 46-18-212.

~~Section 11--Infliction of suffering on other person--  
penalty--Any person 18 years of age or older who purposely  
or knowingly causes or permits an other person to suffer  
unjustifiable physical or mental injury as a result of  
abuse, neglect or exploitation as defined in [section 3]r  
is guilty of a felony and upon conviction must be punished  
by a fine not to exceed \$10,000 or imprisoned in the state  
prison for a term not to exceed 5 years or both~~

~~RESPONSIBILITIES OF COUNTY ATTORNEY--IF THE EVIDENCE  
INDICATES VIOLATION OF THE CRIMINAL CODE IT SHALL BE THE  
RESPONSIBILITY OF THE COUNTY ATTORNEY TO FILE APPROPRIATE  
CHARGES AGAINST THE ALLEGED OFFENDER.~~

SECTION 11. SEVERABILITY. IF A PART OF THIS ACT IS  
INVALID, ALL VALID PARTS THAT ARE SEVERABLE FROM THE INVALID  
PART REMAIN IN EFFECT. IF A PART OF THIS ACT IS INVALID IN  
ONE OR MORE OF ITS APPLICATIONS, THE PART REMAINS IN EFFECT  
IN ALL VALID APPLICATIONS THAT ARE SEVERABLE FROM THE  
INVALID APPLICATIONS.

~~Section 13--Codification--Instructions Section 11 is  
intended to be codified as an integral part of Title 45.~~

-END-