

HOUSE BILL NO. 116

INTRODUCED BY MCDONOUGH, WHALEN, STRIZICH, RUSSELL
BY REQUEST OF THE DEPARTMENT OF FAMILY SERVICES

IN THE HOUSE

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| JANUARY 11, 1989 | INTRODUCED AND REFERRED TO COMMITTEE ON HUMAN SERVICES & AGING. |
| | FIRST READING. |
| JANUARY 19, 1989 | COMMITTEE RECOMMEND BILL DO PASS. REPORT ADOPTED. |
| JANUARY 20, 1989 | PRINTING REPORT. |
| JANUARY 21, 1989 | SECOND READING, DO PASS. |
| JANUARY 23, 1989 | ENGROSSING REPORT. |
| JANUARY 24, 1989 | THIRD READING, PASSED. AYES, 97; NOES, 1. |
| | TRANSMITTED TO SENATE. |

IN THE SENATE

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| JANUARY 25, 1989 | INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY. |
| | FIRST READING. |
| MARCH 6, 1989 | COMMITTEE RECOMMEND BILL BE CONCURRED IN. REPORT ADOPTED. |
| MARCH 7, 1989 | SECOND READING, CONCURRED IN. |
| MARCH 9, 1989 | THIRD READING, CONCURRED IN. AYES, 50; NOES, 0. |

RETURNED TO HOUSE.

IN THE HOUSE

MARCH 10, 1989

RECEIVED FROM SENATE.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 HOUSE BILL NO. 116
2 INTRODUCED BY Mr. Duff Whalen
3 BY REQUEST OF THE DEPARTMENT OF FAMILY SERVICES Russell
4
5 A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND THE ELDER
6 ABUSE PREVENTION ACT TO INCLUDE DEVELOPMENTALLY DISABLED
7 PERSONS; AMENDING SECTIONS 53-5-501 THROUGH 53-5-504,
8 53-5-511 THROUGH 53-5-513, 53-5-521, AND 53-5-525, MCA; AND
9 PROVIDING AN IMMEDIATE EFFECTIVE DATE."

10
11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

12 **Section 1.** Section 53-5-501, MCA, is amended to read:

13 "53-5-501. **Short title.** This part may be cited as the
14 "Montana Elder and Developmentally Disabled Abuse Prevention
15 Act"."

16 **Section 2.** Section 53-5-502, MCA, is amended to read:

17 "53-5-502. **Legislative findings and purpose.** The
18 legislature finds that a need exists to provide for
19 cooperation among law enforcement officials and agencies,
20 courts, and state and county agencies providing human
21 services in preventing the abuse, neglect, and exploitation
22 of Montana's elderly and developmentally disabled persons
23 through the identification and reporting of acts of such
24 abuse, neglect, and exploitation."

25 **Section 3.** Section 53-5-503, MCA, is amended to read:

1 "53-5-503. **Definitions.** As used in this part, the
2 following definitions apply:

3 (1) "Abuse" means the infliction of physical or mental
4 injury or the deprivation of food, shelter, clothing, or
5 services necessary to maintain the physical or mental health
6 of an older person or a developmentally disabled person
7 without lawful authority. A declaration made pursuant to
8 50-9-103 constitutes lawful authority.

9 (2) "Developmentally disabled person" means a person
10 18 years of age or older who is developmentally disabled as
11 defined in 53-20-102.

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

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

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

21 (6) "Neglect" means the failure of a guardian,
22 employee of a public or private residential institution,
23 facility, home, or agency, or any other person legally
24 responsible in a residential setting for an older person's
25 or a developmentally disabled person's welfare to--care--for

1 ~~an--older--person--by--failing~~ to provide food, shelter,
2 clothing, or services necessary to maintain the physical or
3 mental health of the older person or the developmentally
4 disabled person.

5 ~~(6)~~(7) "Older person" means a person who is at least
6 60 years of age. For purposes of prosecution under
7 53-5-525(2), the person 60 years of age or older must be
8 unable to protect himself from abuse, neglect, or
9 exploitation because of a mental or physical impairment or
10 because of frailties or dependencies brought about by
11 advanced age.

12 ~~(7)~~(8) "Physical injury" means death, permanent or
13 temporary disfigurement, or impairment of any bodily organ
14 or function."

15 **Section 4.** Section 53-5-504, MCA, is amended to read:

16 **"53-5-504. Duties of department of family services.**

17 (1) The department shall investigate reports of abuse,
18 neglect, or exploitation received pursuant to
19 53-5-511(1)(a).

20 ~~(1)~~(2) The department of family services shall prepare
21 an annual report of the information obtained pursuant to the
22 reporting requirement of this part.

23 ~~(2)~~(3) The department shall, when appropriate, provide
24 protective services under Title 53, chapter 5, part 2, or
25 under Title 53, chapter 20, part 4, for an-older a person

1 alleged to have been abused, neglected, or exploited.

2 (4) If a person alleged to be abused, neglected, or
3 exploited pursuant to this part or his caretaker refuses to
4 allow a representative of the department entrance to the
5 premises for the purpose of investigating a report made
6 pursuant to 53-5-511(1)(a), the district court in the county
7 where the person is found may order a law enforcement
8 officer or a department social worker to enter the premises
9 to conduct an investigation upon finding there is probable
10 cause to believe the person is abused, neglected, or
11 exploited."

12 **Section 5.** Section 53-5-511, MCA, is amended to read:

13 **"53-5-511. Reports.** (1) When the professionals and
14 other persons listed in subsection (3) know or have
15 reasonable cause to suspect that an older person or a
16 developmentally disabled person known to them in their
17 professional or official capacities has been subjected to
18 abuse, exploitation, or neglect, they shall:

19 (a) if the older person is not a resident of a
20 long-term care facility, report the matter to:

21 (i) the department of family services or its local
22 affiliate;

23 (ii) the county attorney of the county in which the
24 older person resides or in which the acts that are the
25 subject of the report occurred;

1 (b) if the ~~older~~ person is a resident of a long-term
 2 care facility, report the matter to the long-term care
 3 ombudsman appointed under the provisions of 42 U.S.C.
 4 3027(a)(12) and to the department of health and
 5 environmental sciences. The department shall investigate the
 6 matter pursuant to its authority in 50-5-204 and, if it
 7 finds any allegations of abuse, exploitation, or neglect
 8 contained in the report to be substantially true, forward a
 9 copy of the report to the department of family services and
 10 to the county attorney as provided in subsection (1)(a)(ii).

11 (2) If the report required in subsection (1) involves
 12 an act or omission of the department of family services
 13 which may be construed as abuse, exploitation, or neglect, a
 14 copy of the report may not be sent to the department but
 15 must be sent instead to the county attorney of the county in
 16 which the older person or the developmentally disabled
 17 person resides or in which the acts that are the subject of
 18 the report occurred.

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

21 (a) a physician, resident, intern, professional or
 22 practical nurse, physician's assistant, or member of a
 23 hospital staff engaged in the admission, examination, care,
 24 or treatment of persons;

25 (b) an osteopath, dentist, denturist, chiropractor,

1 optometrist, podiatrist, medical examiner, coroner, or any
 2 other health or mental health professional;

3 (c) an ambulance attendant;

4 (d) a social worker or other employee of the state, a
 5 county, or a municipality assisting an older person or a
 6 developmentally disabled person in the application for or
 7 receipt of public assistance payments or services;

8 (e) a person who maintains or is employed by a
 9 roominghouse, retirement home, nursing home, group home, or
 10 adult foster care home;

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

14 (g) a peace officer or other law enforcement official.

15 (4) Any other person may submit a report as provided
 16 in subsection (1)."

17 **Section 6.** Section 53-5-512, MCA, is amended to read:

18 **"53-5-512. Content of report.** (1) The report required
 19 by 53-5-511 may be made in writing or orally, by telephone
 20 or in person. A person who receives an oral report must
 21 prepare it in writing as soon as possible.

22 (2) The report referred to under this section shall
 23 contain:

24 (a) the names and addresses of the older person or the
 25 developmentally disabled person and the person, if any,

1 responsible for his care;

2 (b) the name and address, if available, of the person
3 who is alleged to have abused, neglected, or exploited the
4 older person or the developmentally disabled person;

5 (c) to the extent known, the person's age and the
6 nature and extent of the abuse, neglect, or exploitation,
7 including any evidence of previous injuries sustained by the
8 older person or the developmentally disabled person; and

9 (d) the name and address of the person making the
10 report."

11 **Section 7.** Section 53-5-513, MCA, is amended to read:

12 "53-5-513. Confidentiality. (1) The case records of
13 the department departments of social and rehabilitation
14 services and its family services, their local affiliate, the
15 county-welfare-department, the county attorney, and the
16 court, concerning actions taken under this part, and all
17 reports made pursuant to 53-5-511 shall be kept confidential
18 except as provided by this section.

19 (2) The records and reports required to be kept
20 confidential by subsection (1) may be disclosed, upon
21 request, to the following persons or entities in this or any
22 other state:

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

1 (b) a legal guardian or conservator of the older
2 person or the developmentally disabled person if the
3 identity of the person who made the report is protected and
4 the legal guardian or conservator is not the person
5 suspected of the abuse, neglect, or exploitation;

6 (c) the person named in the report as allegedly being
7 abused, neglected, or exploited if that person is not
8 legally incompetent;

9 (d) any person engaged in bona fide research if the
10 person alleged in the report to have committed the abuse,
11 exploitation, or neglect is later convicted of an offense
12 constituting abuse, exploitation, or neglect and if the
13 identity of the older person or the developmentally disabled
14 person who is the subject of the report is not disclosed to
15 the researcher; and

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

19 (3) The records and reports required to be kept
20 confidential by subsection (1) shall be disclosed upon
21 request to the following persons or entities in this or any
22 other state:

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

(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.

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

Section 8. Section 53-5-521, MCA, is amended to read:

"53-5-521. Admissibility of evidence. In any proceeding resulting from a report made pursuant to the provisions of this part 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. Section 53-5-525, MCA, is amended to read:

"53-5-525. Penalties. (1) Any person who purposely or knowingly fails to make a report required by 53-5-511 or discloses or fails to disclose the contents of a case record or report in violation of 53-5-513 is guilty of an offense and upon conviction is punishable as provided in 46-18-212.

(2) Any individual who purposely or knowingly abuses, neglects, or exploits an older person or a developmentally disabled person is guilty of an offense and upon a first conviction may be fined an amount not to exceed \$500 or be imprisoned in the county jail for a term not to exceed 6 months, or both, and upon a second or succeeding conviction may be imprisoned for a term not to exceed 10 years and may be fined an amount not to exceed \$10,000, or both."

Section 10. Effective date. [This act] is effective on passage and approval.

-End-

APPROVED BY COMM. ON
HUMAN SERVICES AND AGING

1 HOUSE BILL NO. 116
2 INTRODUCED BY Mr. Jeff Whalen
3 BY REQUEST OF THE DEPARTMENT OF FAMILY SERVICES Travis
4
5 A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND THE ELDER
6 ABUSE PREVENTION ACT TO INCLUDE DEVELOPMENTALLY DISABLED
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22 of Montana's elderly and developmentally disabled persons
23 through the identification and reporting of acts of such
24 abuse, neglect, and exploitation."
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4 injury or the deprivation of food, shelter, clothing, or
5 services necessary to maintain the physical or mental health
6 of an older person or a developmentally disabled person
7 without lawful authority. A declaration made pursuant to
8 50-9-103 constitutes lawful authority.
9 (2) "Developmentally disabled person" means a person
10 18 years of age or older who is developmentally disabled as
11 defined in 53-20-102.
12 (3) "Exploitation" means the unreasonable use of an
13 older person or a developmentally disabled person, his
14 money, or his property to the advantage of another by means
15 of duress, menace, fraud, or undue influence.
16 (4) "Long-term care facility" means a facility
17 defined in 50-5-101.
18 (5) "Mental injury" means an identifiable and
19 substantial impairment of an older person's intellectual or
20 psychological functioning or well-being.
21 (6) "Neglect" means the failure of a guardian,
22 employee of a public or private residential institution,
23 facility, home, or agency, or any other person legally
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25 or a developmentally disabled person's welfare to--care--for

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2 clothing, or services necessary to maintain the physical or
3 mental health of the older person or the developmentally
4 disabled person.

5 ~~†6†~~(7) "Older person" means a person who is at least
6 60 years of age. For purposes of prosecution under
7 53-5-525(2), the person 60 years of age or older must be
8 unable to protect himself from abuse, neglect, or
9 exploitation because of a mental or physical impairment or
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13 temporary disfigurement, or impairment of any bodily organ
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20 ~~†1†~~(2) The department of family services shall prepare
21 an annual report of the information obtained pursuant to the
22 reporting requirement of this part.

23 ~~†2†~~(3) The department shall, when appropriate, provide
24 protective services under Title 53, chapter 5, part 2, or
25 under Title 53, chapter 20, part 4, for an-older a person

1 alleged to have been abused, neglected, or exploited.

2 (4) If a person alleged to be abused, neglected, or
3 exploited pursuant to this part or his caretaker refuses to
4 allow a representative of the department entrance to the
5 premises for the purpose of investigating a report made
6 pursuant to 53-5-511(1)(a), the district court in the county
7 where the person is found may order a law enforcement
8 officer or a department social worker to enter the premises
9 to conduct an investigation upon finding there is probable
10 cause to believe the person is abused, neglected, or
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14 other persons listed in subsection (3) know or have
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17 professional or official capacities has been subjected to
18 abuse, exploitation, or neglect, they shall:

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20 long-term care facility, report the matter to:

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22 affiliate;

23 (ii) the county attorney of the county in which the
24 ~~older~~ person resides or in which the acts that are the
25 subject of the report occurred;

1 (b) if the ~~older~~ person is a resident of a long-term
 2 care facility, report the matter to the long-term care
 3 ombudsman appointed under the provisions of 42 U.S.C.
 4 3027(a)(12) and to the department of health and
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 6 matter pursuant to its authority in 50-5-204 and, if it
 7 finds any allegations of abuse, exploitation, or neglect
 8 contained in the report to be substantially true, forward a
 9 copy of the report to the department of family services and
 10 to the county attorney as provided in subsection (1)(a)(ii).

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 22 practical nurse, physician's assistant, or member of a
 23 hospital staff engaged in the admission, examination, care,
 24 or treatment of persons;

25 (b) an osteopath, dentist, denturist, chiropractor,

1 optometrist, podiatrist, medical examiner, coroner, or any
 2 other health or mental health professional;

3 (c) an ambulance attendant;

4 (d) a social worker or other employee of the state, a
 5 county, or a municipality assisting an older person or a
 6 developmentally disabled person in the application for or
 7 receipt of public assistance payments or services;

8 (e) a person who maintains or is employed by a
 9 roominghouse, retirement home, nursing home, group home, or
 10 adult foster care home;

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

14 (g) a peace officer or other law enforcement official.

15 (4) Any other person may submit a report as provided
 16 in subsection (1)."

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 19 by 53-5-511 may be made in writing or orally, by telephone
 20 or in person. A person who receives an oral report must
 21 prepare it in writing as soon as possible.

22 (2) The report referred to under this section shall
 23 contain:

24 (a) the names and addresses of the older person or the
 25 developmentally disabled person and the person, if any,

1 responsible for his care;

2 (b) the name and address, if available, of the person
3 who is alleged to have abused, neglected, or exploited the
4 older person or the developmentally disabled person;

5 (c) to the extent known, the person's age and the
6 nature and extent of the abuse, neglect, or exploitation,
7 including any evidence of previous injuries sustained by the
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11 **Section 7.** Section 53-5-513, MCA, is amended to read:

12 "53-5-513. Confidentiality. (1) The case records of
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19 (2) The records and reports required to be kept
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21 request, to the following persons or entities in this or any
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23 (a) a physician who has in his care an older person or
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25 was abused, neglected, or exploited;

1 (b) a legal guardian or conservator of the older
2 person or the developmentally disabled person if the
3 identity of the person who made the report is protected and
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5 suspected of the abuse, neglect, or exploitation;

6 (c) the person named in the report as allegedly being
7 abused, neglected, or exploited if that person is not
8 legally incompetent;

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10 person alleged in the report to have committed the abuse,
11 exploitation, or neglect is later convicted of an offense
12 constituting abuse, exploitation, or neglect and if the
13 identity of the older person or the developmentally disabled
14 person who is the subject of the report is not disclosed to
15 the researcher; and

16 (e) an adult protective service team. Members of the
17 team are required to keep information about the subject
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19 (3) The records and reports required to be kept
20 confidential by subsection (1) shall be disclosed upon
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23 (a) a county attorney or other law enforcement
24 official who requires the information in connection with an
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(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;

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

Section 8. Section 53-5-521, MCA, is amended to read:

"53-5-521. **Admissibility of evidence.** In any proceeding resulting from a report made pursuant to the provisions of this part 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

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Section 10. **Effective date.** [This act] is effective on passage and approval.

-End-

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 2 INTRODUCED BY Mr. DuPont Whalen
 3 BY REQUEST OF THE DEPARTMENT OF FAMILY SERVICES Russell
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 25 or a developmentally disabled 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 or the developmentally disabled person.

~~{6}{7}~~ "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 or dependencies brought about by advanced age.

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"53-5-504. Duties of department of family services.

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~~{1}{2}~~ The department of family services shall prepare an annual report of the information obtained pursuant to the reporting requirement of this part.

~~{2}{3}~~ The department shall, when appropriate, provide protective services under Title 53, chapter 5, part 2, or under Title 53, chapter 20, part 4, for an-older a person

alleged to have been abused, neglected, or exploited.

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

Section 5. Section 53-5-511, MCA, is amended to read:

"53-5-511. Reports. (1) When the professionals and other persons listed in subsection (3) know or have reasonable cause to suspect that an older person or a developmentally disabled person known to them in their professional or official capacities has been subjected to abuse, exploitation, or neglect, they shall:

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

(i) the department of family services or its local affiliate;

(ii) the county attorney of the county in which the older person resides or in which the acts that are the subject of the report occurred;

(b) 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 U.S.C. 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 family services and to the county attorney as provided in subsection (1)(a)(ii).

(2) If the report required in subsection (1) involves an act or omission of the department of family services which may be construed as abuse, exploitation, or neglect, a copy of the report may not be sent to the department but must be sent instead to the county attorney of the county in which the older person or the developmentally disabled person resides or in which the acts that are the subject of the report occurred.

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

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

(b) an osteopath, dentist, denturist, chiropractor,

optometrist, podiatrist, medical examiner, coroner, or any other health or mental health professional;

(c) an ambulance attendant;

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

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

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

(g) a peace officer or other law enforcement official.

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

Section 6. Section 53-5-512, MCA, is amended to read:

"53-5-512. Content of report. (1) The report required by 53-5-511 may be made in writing or orally, by telephone or in person. A person who receives an oral report must prepare it in writing as soon as possible.

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

(a) the names and addresses of the older person or the developmentally disabled person and the person, if any,

1 responsible for his care;

2 (b) the name and address, if available, of the person
3 who is alleged to have abused, neglected, or exploited the
4 older person or the developmentally disabled person;

5 (c) to the extent known, the person's age and the
6 nature and extent of the abuse, neglect, or exploitation,
7 including any evidence of previous injuries sustained by the
8 older person or the developmentally disabled person; and

9 (d) the name and address of the person making the
10 report."

11 **Section 7.** Section 53-5-513, MCA, is amended to read:

12 *53-5-513. Confidentiality. (1) The case records of
13 the department departments of social and rehabilitation
14 services and its family services, their local affiliate, the
15 county-welfare-department, the county attorney, and the
16 court, concerning actions taken under this part, and all
17 reports made pursuant to 53-5-511 shall be kept confidential
18 except as provided by this section.

19 (2) The records and reports required to be kept
20 confidential by subsection (1) may be disclosed, upon
21 request, to the following persons or entities in this or any
22 other state:

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

1 (b) a legal guardian or conservator of the older
2 person or the developmentally disabled person if the
3 identity of the person who made the report is protected and
4 the legal guardian or conservator is not the person
5 suspected of the abuse, neglect, or exploitation;

6 (c) the person named in the report as allegedly being
7 abused, neglected, or exploited if that person is not
8 legally incompetent;

9 (d) any person engaged in bona fide research if the
10 person alleged in the report to have committed the abuse,
11 exploitation, or neglect is later convicted of an offense
12 constituting abuse, exploitation, or neglect and if the
13 identity of the older person or the developmentally disabled
14 person who is the subject of the report is not disclosed to
15 the researcher; and

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

19 (3) The records and reports required to be kept
20 confidential by subsection (1) shall be disclosed upon
21 request to the following persons or entities in this or any
22 other state:

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

(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.

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

Section 8. Section 53-5-521, MCA, is amended to read:

"53-5-521. **Admissibility of evidence.** In any proceeding resulting from a report made pursuant to the provisions of this part 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. Section 53-5-525, MCA, is amended to read:

"53-5-525. **Penalties.** (1) Any person who purposely or knowingly fails to make a report required by 53-5-511 or discloses or fails to disclose the contents of a case record or report in violation of 53-5-513 is guilty of an offense and upon conviction is punishable as provided in 46-18-212.

(2) Any individual who purposely or knowingly abuses, neglects, or exploits an older person or a developmentally disabled person is guilty of an offense and upon a first conviction may be fined an amount not to exceed \$500 or be imprisoned in the county jail for a term not to exceed 6 months, or both, and upon a second or succeeding conviction may be imprisoned for a term not to exceed 10 years and may be fined an amount not to exceed \$10,000, or both."

Section 10. Effective date. [This act] is effective on passage and approval.

-End-

HOUSE BILL NO. 116

INTRODUCED BY MCDONOUGH, WHALEN, STRIZICH, RUSSELL

BY REQUEST OF THE DEPARTMENT OF FAMILY SERVICES

A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND THE ELDER ABUSE PREVENTION ACT TO INCLUDE DEVELOPMENTALLY DISABLED PERSONS; AMENDING SECTIONS 53-5-501 THROUGH 53-5-504, 53-5-511 THROUGH 53-5-513, 53-5-521, AND 53-5-525, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

Section 1. Section 53-5-501, MCA, is amended to read:

"53-5-501. Short title. This part may be cited as the "Montana Elder and Developmentally Disabled Abuse Prevention Act".

Section 2. Section 53-5-502, MCA, is amended to read:

"53-5-502. 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 and developmentally disabled persons through the identification and reporting of acts of such abuse, neglect, and exploitation."

Section 3. 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) "Long-term care facility" means a facility defined in 50-5-101.

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

(6) "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--care--for

1 an--older--person--by--failing to provide food, shelter,
2 clothing, or services necessary to maintain the physical or
3 mental health of the older person or the developmentally
4 disabled person.

5 {6}(7) "Older person" means a person who is at least
6 60 years of age. For purposes of prosecution under
7 53-5-525(2), the person 60 years of age or older must be
8 unable to protect himself from abuse, neglect, or
9 exploitation because of a mental or physical impairment or
10 because of frailties or dependencies brought about by
11 advanced age.

12 {7}(8) "Physical injury" means death, permanent or
13 temporary disfigurement, or impairment of any bodily organ
14 or function."

15 **Section 4.** Section 53-5-504, MCA, is amended to read:

16 "53-5-504. Duties of department of family services.
17 (1) The department shall investigate reports of abuse,
18 neglect, or exploitation received pursuant to
19 53-5-511(1)(a).

20 {1}(2) The department of family services shall prepare
21 an annual report of the information obtained pursuant to the
22 reporting requirement of this part.

23 {2}(3) The department shall, when appropriate, provide
24 protective services under Title 53, chapter 5, part 2, or
25 under Title 53, chapter 20, part 4, for an-older a person

1 alleged to have been abused, neglected, or exploited.

2 (4) If a person alleged to be abused, neglected, or
3 exploited pursuant to this part or his caretaker refuses to
4 allow a representative of the department entrance to the
5 premises for the purpose of investigating a report made
6 pursuant to 53-5-511(1)(a), the district court in the county
7 where the person is found may order a law enforcement
8 officer or a department social worker to enter the premises
9 to conduct an investigation upon finding there is probable
10 cause to believe the person is abused, neglected, or
11 exploited."

12 **Section 5.** Section 53-5-511, MCA, is amended to read:

13 "53-5-511. Reports. (1) When the professionals and
14 other persons listed in subsection (3) know or have
15 reasonable cause to suspect that an older person or a
16 developmentally disabled person known to them in their
17 professional or official capacities has been subjected to
18 abuse, exploitation, or neglect, they shall:

19 (a) if the older person is not a resident of a
20 long-term care facility, report the matter to:

21 (i) the department of family services or its local
22 affiliate;

23 (ii) the county attorney of the county in which the
24 older person resides or in which the acts that are the
25 subject of the report occurred;

1 (b) if the older person is a resident of a long-term
 2 care facility, report the matter to the long-term care
 3 ombudsman appointed under the provisions of 42 U.S.C.
 4 3027(a)(12) and to the department of health and
 5 environmental sciences. The department shall investigate the
 6 matter pursuant to its authority in 50-5-204 and, if it
 7 finds any allegations of abuse, exploitation, or neglect
 8 contained in the report to be substantially true, forward a
 9 copy of the report to the department of family services and
 10 to the county attorney as provided in subsection (1)(a)(ii).

11 (2) If the report required in subsection (1) involves
 12 an act or omission of the department of family services
 13 which may be construed as abuse, exploitation, or neglect, a
 14 copy of the report may not be sent to the department but
 15 must be sent instead to the county attorney of the county in
 16 which the older person or the developmentally disabled
 17 person resides or in which the acts that are the subject of
 18 the report occurred.

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

21 (a) a physician, resident, intern, professional or
 22 practical nurse, physician's assistant, or member of a
 23 hospital staff engaged in the admission, examination, care,
 24 or treatment of persons;

25 (b) an osteopath, dentist, denturist, chiropractor,

1 optometrist, podiatrist, medical examiner, coroner, or any
 2 other health or mental health professional;

3 (c) an ambulance attendant;

4 (d) a social worker or other employee of the state, a
 5 county, or a municipality assisting an older person or a
 6 developmentally disabled person in the application for or
 7 receipt of public assistance payments or services;

8 (e) a person who maintains or is employed by a
 9 roominghouse, retirement home, nursing home, group home, or
 10 adult foster care home;

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

14 (g) a peace officer or other law enforcement official.

15 (4) Any other person may submit a report as provided
 16 in subsection (1)."

17 **Section 6.** Section 53-5-512, MCA, is amended to read:

18 "53-5-512. Content of report. (1) The report required
 19 by 53-5-511 may be made in writing or orally, by telephone
 20 or in person. A person who receives an oral report must
 21 prepare it in writing as soon as possible.

22 (2) The report referred to under this section shall
 23 contain:

24 (a) the names and addresses of the older person or the
 25 developmentally disabled person and the person, if any,

1 responsible for his care;

2 (b) the name and address, if available, of the person
3 who is alleged to have abused, neglected, or exploited the
4 older person or the developmentally disabled person;

5 (c) to the extent known, the person's age and the
6 nature and extent of the abuse, neglect, or exploitation,
7 including any evidence of previous injuries sustained by the
8 older person or the developmentally disabled person; and

9 (d) the name and address of the person making the
10 report."

11 **Section 7.** Section 53-5-513, MCA, is amended to read:

12 "53-5-513. Confidentiality. (1) The case records of
13 the department departments of social and rehabilitation
14 services and its family services, their local affiliate, the
15 county-welfare-department, the county attorney, and the
16 court, concerning actions taken under this part, and all
17 reports made pursuant to 53-5-511 shall be kept confidential
18 except as provided by this section.

19 (2) The records and reports required to be kept
20 confidential by subsection (1) may be disclosed, upon
21 request, to the following persons or entities in this or any
22 other state:

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

1 (b) a legal guardian or conservator of the older
2 person or the developmentally disabled person if the
3 identity of the person who made the report is protected and
4 the legal guardian or conservator is not the person
5 suspected of the abuse, neglect, or exploitation;

6 (c) the person named in the report as allegedly being
7 abused, neglected, or exploited if that person is not
8 legally incompetent;

9 (d) any person engaged in bona fide research if the
10 person alleged in the report to have committed the abuse,
11 exploitation, or neglect is later convicted of an offense
12 constituting abuse, exploitation, or neglect and if the
13 identity of the older person or the developmentally disabled
14 person who is the subject of the report is not disclosed to
15 the researcher; and

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

19 (3) The records and reports required to be kept
20 confidential by subsection (1) shall be disclosed upon
21 request to the following persons or entities in this or any
22 other state:

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

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

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

8 (4) If the person who is reported to have abused,
9 neglected, or exploited an older person or a developmentally
10 disabled person is the holder of a license, permit, or
11 certificate issued by the department of commerce under the
12 provisions of Title 37 or issued by any other entity of
13 state government ~~under the provisions of Title 37~~, the
14 report may be submitted to the entity that issued the
15 license, permit, or certificate."

16 **Section 8.** Section 53-5-521, MCA, is amended to read:

17 "53-5-521. Admissibility of evidence. In any
18 proceeding resulting from a report made pursuant to the
19 provisions of this part or in any proceeding where the
20 report or its content is sought to be introduced into
21 evidence, the report or its content or any other fact
22 related to the report or to the condition of the older
23 person who is the subject of the report may not be excluded
24 on the ground that the matter is or may be the subject of a
25 privilege granted in Title 26, chapter 1, part 8, except the

1 attorney-client privilege granted by 26-1-803."

2 **Section 9.** Section 53-5-525, MCA, is amended to read:

3 "53-5-525. Penalties. (1) Any person who purposely or
4 knowingly fails to make a report required by 53-5-511 or
5 discloses or fails to disclose the contents of a case record
6 or report in violation of 53-5-513 is guilty of an offense
7 and upon conviction is punishable as provided in 46-18-212.

8 (2) Any individual who purposely or knowingly abuses,
9 neglects, or exploits an older person or a developmentally
10 disabled person is guilty of an offense and upon a first
11 conviction may be fined an amount not to exceed \$500 or be
12 imprisoned in the county jail for a term not to exceed 6
13 months, or both, and upon a second or succeeding conviction
14 may be imprisoned for a term not to exceed 10 years and may
15 be fined an amount not to exceed \$10,000, or both."

16 **NEW SECTION. Section 10.** Effective date. [This act]
17 is effective on passage and approval.

-End-