

HOUSE BILL NO. 521  
INTRODUCED BY DAVIS

IN THE HOUSE

FEBRUARY 8, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON HUMAN SERVICES & AGING.
	FIRST READING.
FEBRUARY 16, 1993	COMMITTEE RECOMMEND BILL DO PASS. REPORT ADOPTED.
FEBRUARY 17, 1993	PRINTING REPORT.
	SECOND READING, DO PASS.
FEBRUARY 18, 1993	ENGROSSING REPORT.
FEBRUARY 19, 1993	THIRD READING, PASSED. AYES, 94; NOES, 0.
	TRANSMITTED TO SENATE.

IN THE SENATE

FEBRUARY 22, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
	FIRST READING.
MARCH 11, 1993	COMMITTEE RECOMMEND BILL BE CONCURRED IN. REPORT ADOPTED.
MARCH 12, 1993	SECOND READING, CONCURRED IN.
MARCH 13, 1993	THIRD READING, CONCURRED IN. AYES, 47; NOES, 0.
	RETURNED TO HOUSE.

IN THE HOUSE

MARCH 15, 1993	RECEIVED FROM SENATE.
	SENT TO ENROLLING.
	REPORTED CORRECTLY ENROLLED.

1 House BILL NO. 521  
2 INTRODUCED BY Dr. [Signature]  
3  
4 A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING THE MONTANA  
5 ELDER AND DEVELOPMENTALLY DISABLED ABUSE PREVENTION ACT TO  
6 INCLUDE REFERENCES TO SEXUAL ABUSE; AMENDING SECTIONS  
7 52-3-802, 52-3-803, 52-3-804, 52-3-805, 52-3-811, 52-3-812,  
8 52-3-813, 52-3-815, AND 52-3-825, MCA; AND PROVIDING AN  
9 IMMEDIATE EFFECTIVE DATE."

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

12 **Section 1.** Section 52-3-802, MCA, is amended to read:

13 "52-3-802. Legislative findings and purpose. The  
14 legislature finds that a need exists to provide for  
15 cooperation among law enforcement officials and agencies,  
16 courts, and state and county agencies providing human  
17 services in preventing the abuse, sexual abuse, neglect, and  
18 exploitation of Montana's elderly and developmentally  
19 disabled persons through the identification and reporting of  
20 acts of such abuse, sexual abuse, neglect, and  
21 exploitation."

22 **Section 2.** Section 52-3-803, MCA, is amended to read:

23 "52-3-803. Definitions. As used in this part, the  
24 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 or a developmentally disabled person  
4 without lawful authority. A declaration made pursuant to  
5 50-9-103 constitutes lawful authority.

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

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

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

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

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

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

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

(8) "Older person" means a person who is at least 60 years of age. For purposes of prosecution under 52-3-825(2), the person 60 years of age or older must be unable to protect--himself provide personal protection from abuse, sexual abuse, neglect, or exploitation because of a mental or physical impairment or because of frailties or dependencies brought about by advanced age.

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

(10) "Sexual abuse" means the commission of sexual assault, sexual intercourse without consent, indecent exposure, deviate sexual conduct, or incest, as described in Title 45, chapter 5, part 5."

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

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

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

(3) The department shall, when appropriate, provide protective services under Title 52, chapter 3, part 2, or under Title 52, chapter 4, part 1, for a person alleged to have been abused, sexually abused, neglected, or exploited.

(4) If a person alleged to be abused, sexually abused, neglected, or exploited pursuant to this part or his the person's caretaker refuses to allow a representative of the department entrance to the premises for the purpose of investigating a report made pursuant to 52-3-811(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, sexually abused, neglected, or exploited.

(5) If a representative of the department has reasonable grounds to believe that an older or developmentally disabled person alleged to be abused, sexually abused, or neglected is suffering from abuse, sexual abuse, or neglect that presents a substantial risk of death or serious physical injury, the department may:

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

(b) if the department representative has reasonable grounds to believe that the person is incapacitated, provide emergency protective services as follows:

(i) arrange or facilitate an appropriate emergency protective service placement;

(ii) transport or arrange for the transport of the person to the appropriate placement;

(iii) not later than 2 judicial days following placement of the person, either:

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

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

**Section 4.** Section 52-3-805, MCA, is amended to read:

"52-3-805. **Adult protective service teams.** The county attorney or the department of family services may convene one or more temporary or permanent interdisciplinary adult protective service teams. These teams may assist in assessing the needs of, formulating and monitoring a treatment plan for, and coordinating services to older persons who are victims of abuse, sexual abuse, neglect, or exploitation. The supervisor of adult protective services of the department of family services or his the department's designee shall serve as the team's coordinator. Members must include a social worker, a member of a local law enforcement agency, a representative of the medical profession, and a county attorney or his the county attorney's designee, who

is an attorney."

**Section 5.** Section 52-3-811, MCA, is amended to read:

"52-3-811. **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, sexual abuse, exploitation,---or neglect, or exploitation, they shall:

(a) if the 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 person resides or in which the acts that are the subject of the report occurred;

(b) if the 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, sexual abuse, exploitation,---or neglect, or exploitation contained in the report to be substantially true, forward a copy of the report to the department of

1 family services and to the county attorney as provided in  
2 subsection (1)(a)(ii).

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

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

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

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

20 (c) an ambulance attendant;

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

25 (e) a person who maintains or is employed by a

1 roominghouse, retirement home, nursing home, group home, or  
2 adult foster care home;

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

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

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

9 **Section 6.** Section 52-3-812, MCA, is amended to read:

10 "52-3-812. Content of report. (1) The report required  
11 by 52-3-811 may be made in writing or orally, by telephone  
12 or in person. A person who receives an oral report must  
13 prepare it in writing as soon as possible.

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

16 (a) the names and addresses of the older person or the  
17 developmentally disabled person and the person, if any,  
18 responsible for his the person's care;

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

23 (c) to the extent known, the person's age and the  
24 nature and extent of the abuse, sexual abuse, neglect, or  
25 exploitation, including any evidence of previous injuries

sustained by the older person or the developmentally disabled person; and

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

**Section 7.** Section 52-3-813, MCA, is amended to read:

"52-3-813. Confidentiality. (1) The case records of the departments of social and rehabilitation services and family services, their local affiliate, the county attorney, and the court, concerning actions taken under this part, and all reports made pursuant to 52-3-811 ~~shall~~ must be kept confidential except as provided by this section.

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

(a) a physician who ~~has-in-his-care~~ is caring for an older person or a developmentally disabled person who ~~he~~ the physician reasonably believes was abused, sexually abused, neglected, or exploited;

(b) a legal guardian or conservator of the older person or the developmentally disabled 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, sexual abuse, neglect, or exploitation;

(c) the person named in the report as allegedly being

abused, sexually abused, neglected, or exploited if that person is not legally incompetent;

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

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

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

(a) a county attorney or other law enforcement official who requires the information in connection with an 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, sexually 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, the report may be submitted to the entity that issued the license, permit, or certificate."

**Section 8.** Section 52-3-815, MCA, is amended to read:

"52-3-815. Evidence of abuse, sexual abuse, or neglect to be gathered and submitted. (1) A person or agency receiving a report of suspected abuse, sexual abuse, or neglect under 52-3-811 shall prepare a written description of the conditions regarded as evidence of abuse, sexual abuse, or neglect and may, with the consent of an allegedly abused, sexually abused, or neglected older person or developmentally disabled person or without consent of the person if it appears that the person is an incapacitated person, take or cause to be taken photographs of an area of trauma visible on the body of the allegedly abused, sexually abused, or neglected person and regarded as evidence of abuse, sexual abuse, or neglect.

(2) A physician required to report under 52-3-811 may,

with the consent of an allegedly abused, sexually abused, or neglected older person or developmentally disabled person or without consent of the person if it appears that the person is an incapacitated person, require x-rays or other appropriate medical tests or procedures that would, in the professional opinion of the physician, assist in establishing evidence related to the allegation of abuse, sexual abuse, or neglect.

(3) Evidence authorized to be gathered under this section must be submitted with the report required under 52-3-811 to the authorities designated in 52-3-811 as soon as possible after submission of the report."

**Section 9.** Section 52-3-825, MCA, is amended to read:

"52-3-825. Penalties. (1) Any person who purposely or knowingly fails to make a report required by 52-3-811 or discloses or fails to disclose the contents of a case record or report in violation of 52-3-813 is guilty of an offense and upon conviction is punishable as provided in 46-18-212.

(2) Any individual who purposely or knowingly abuses, sexually 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

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1 years and may be fined an amount not to exceed \$10,000, or  
2 both."

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

-End-



APPROVED BY COMM. ON  
HUMAN SERVICES AND AGING

1 House BILL NO. 521  
2 INTRODUCED BY Dr. [Signature]  
3  
4 A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING THE MONTANA  
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7 52-3-802, 52-3-803, 52-3-804, 52-3-805, 52-3-811, 52-3-812,  
8 52-3-813, 52-3-815, AND 52-3-825, MCA; AND PROVIDING AN  
9 IMMEDIATE EFFECTIVE DATE."  
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11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:  
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16 courts, and state and county agencies providing human  
17 services in preventing the abuse, sexual abuse, neglect, and  
18 exploitation of Montana's elderly and developmentally  
19 disabled persons through the identification and reporting of  
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22     **Section 2.** Section 52-3-803, MCA, is amended to read:  
23     "52-3-803. Definitions. As used in this part, the  
24 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 or a developmentally disabled person  
4 without lawful authority. A declaration made pursuant to  
5 50-9-103 constitutes lawful authority.  
6     (2) "Developmentally disabled person" means a person 18  
7 years of age or older who is developmentally disabled as  
8 defined in 53-20-102.  
9     (3) "Exploitation" means the unreasonable use of an  
10 older person or a developmentally disabled person, his the  
11 person's money, or his the person's property to the  
12 advantage of another by means of duress, menace, fraud, or  
13 undue influence.  
14     (4) "Incapacitated person" has the meaning given in  
15 72-5-101.  
16     (5) "Long-term care facility" means a facility defined  
17 in 50-5-101.  
18     (6) "Mental injury" means an identifiable and  
19 substantial impairment of an older person's intellectual or  
20 psychological functioning or well-being.  
21     (7) "Neglect" means the failure of a guardian, employee  
22 of a public or private residential institution, facility,  
23 home, or agency, or any other person legally responsible in  
24 a residential setting for an older person's or a  
25 developmentally disabled person's welfare to provide food,

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

(8) "Older person" means a person who is at least 60 years of age. For purposes of prosecution under 52-3-825(2), the person 60 years of age or older must be unable to protect--himself provide personal protection from abuse, sexual abuse, neglect, or exploitation because of a mental or physical impairment or because of frailties or dependencies brought about by advanced age.

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

(10) "Sexual abuse" means the commission of sexual assault, sexual intercourse without consent, indecent exposure, deviate sexual conduct, or incest, as described in Title 45, chapter 5, part 5."

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

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

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

(3) The department shall, when appropriate, provide protective services under Title 52, chapter 3, part 2, or under Title 52, chapter 4, part 1, for a person alleged to have been abused, sexually abused, neglected, or exploited.

(4) If a person alleged to be abused, sexually abused, neglected, or exploited pursuant to this part or his the person's caretaker refuses to allow a representative of the department entrance to the premises for the purpose of investigating a report made pursuant to 52-3-811(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, sexually abused, neglected, or exploited.

(5) If a representative of the department has reasonable grounds to believe that an older or developmentally disabled person alleged to be abused, sexually abused, or neglected is suffering from abuse, sexual abuse, or neglect that presents a substantial risk of death or serious physical injury, the department may:

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

(b) if the department representative has reasonable grounds to believe that the person is incapacitated, provide emergency protective services as follows:

- 1 (i) arrange or facilitate an appropriate emergency
- 2 protective service placement;
- 3 (ii) transport or arrange for the transport of the
- 4 person to the appropriate placement;
- 5 (iii) not later than 2 judicial days following placement
- 6 of the person, either:
- 7 (A) provide voluntary protective services as provided
- 8 under subsection (3); or
- 9 (B) petition the district court to act as temporary
- 10 guardian or appoint a temporary guardian as provided in
- 11 72-5-317."

12 **Section 4.** Section 52-3-805, MCA, is amended to read:

13 "52-3-805. Adult protective service teams. The county  
 14 attorney or the department of family services may convene  
 15 one or more temporary or permanent interdisciplinary adult  
 16 protective service teams. These teams may assist in  
 17 assessing the needs of, formulating and monitoring a  
 18 treatment plan for, and coordinating services to older  
 19 persons who are victims of abuse, sexual abuse, neglect, or  
 20 exploitation. The supervisor of adult protective services of  
 21 the department of family services or his the department's  
 22 designee shall serve as the team's coordinator. Members must  
 23 include a social worker, a member of a local law enforcement  
 24 agency, a representative of the medical profession, and a  
 25 county attorney or his the county attorney's designee, who

1 is an attorney."

2 **Section 5.** Section 52-3-811, MCA, is amended to read:

3 "52-3-811. Reports. (1) When the professionals and  
 4 other persons listed in subsection (3) know or have  
 5 reasonable cause to suspect that an older person or a  
 6 developmentally disabled person known to them in their  
 7 professional or official capacities has been subjected to  
 8 abuse, sexual abuse, exploitation,---or neglect, or  
 9 exploitation, they shall:

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

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

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

17 (b) if the person is a resident of a long-term care  
 18 facility, report the matter to the long-term care ombudsman  
 19 appointed under the provisions of 42 U.S.C. 3027(a)(12) and  
 20 to the department of health and environmental sciences. The  
 21 department shall investigate the matter pursuant to its  
 22 authority in 50-5-204 and, if it finds any allegations of  
 23 abuse, sexual abuse, exploitation,---or neglect, or  
 24 exploitation contained in the report to be substantially  
 25 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, sexual abuse, exploitation, or neglect, or exploitation, 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 the attorney 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 52-3-812, MCA, is amended to read:

"52-3-812. Content of report. (1) The report required by 52-3-811 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, responsible for his the person's care;

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

(c) to the extent known, the person's age and the nature and extent of the abuse, sexual abuse, neglect, or exploitation, including any evidence of previous injuries

sustained by the older person or the developmentally disabled person; and

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

**Section 7.** Section 52-3-813, MCA, is amended to read:

"52-3-813. Confidentiality. (1) The case records of the departments of social and rehabilitation services and family services, their local affiliate, the county attorney, and the court, concerning actions taken under this part, and all reports made pursuant to 52-3-811 shall must be kept confidential except as provided by this section.

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

(a) a physician who ~~has-in-his-care~~ is caring for an older person or a developmentally disabled person who ~~he~~ the physician reasonably believes was abused, sexually abused, neglected, or exploited;

(b) a legal guardian or conservator of the older person or the developmentally disabled 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, sexual abuse, neglect, or exploitation;

(c) the person named in the report as allegedly being

abused, sexually abused, neglected, or exploited if that person is not legally incompetent;

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

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

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

(a) a county attorney or other law enforcement official who requires the information in connection with an 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

1 report, data, information, or record is necessary in the  
2 conduct of its official business.

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

11 **Section 8.** Section 52-3-815, MCA, is amended to read:

12 "52-3-815. Evidence of abuse, sexual abuse, or neglect  
13 to be gathered and submitted. (1) A person or agency  
14 receiving a report of suspected abuse, sexual abuse, or  
15 neglect under 52-3-811 shall prepare a written description  
16 of the conditions regarded as evidence of abuse, sexual  
17 abuse, or neglect and may, with the consent of an allegedly  
18 abused, sexually abused, or neglected older person or  
19 developmentally disabled person or without consent of the  
20 person if it appears that the person is an incapacitated  
21 person, take or cause to be taken photographs of an area of  
22 trauma visible on the body of the allegedly abused, sexually  
23 abused, or neglected person and regarded as evidence of  
24 abuse, sexual abuse, or neglect.

25 (2) A physician required to report under 52-3-811 may,

1 with the consent of an allegedly abused, sexually abused, or  
2 neglected older person or developmentally disabled person or  
3 without consent of the person if it appears that the person  
4 is an incapacitated person, require x-rays or other  
5 appropriate medical tests or procedures that would, in the  
6 professional opinion of the physician, assist in  
7 establishing evidence related to the allegation of abuse,  
8 sexual abuse, or neglect.

9 (3) Evidence authorized to be gathered under this  
10 section must be submitted with the report required under  
11 52-3-811 to the authorities designated in 52-3-811 as soon  
12 as possible after submission of the report."

13 **Section 9.** Section 52-3-825, MCA, is amended to read:

14 "52-3-825. Penalties. (1) Any person who purposely or  
15 knowingly fails to make a report required by 52-3-811 or  
16 discloses or fails to disclose the contents of a case record  
17 or report in violation of 52-3-813 is guilty of an offense  
18 and upon conviction is punishable as provided in 46-18-212.

19 (2) Any individual who purposely or knowingly abuses,  
20 sexually abuses, neglects, or exploits an older person or a  
21 developmentally disabled person is guilty of an offense and  
22 upon a first conviction may be fined an amount not to exceed  
23 \$500 or be imprisoned in the county jail for a term not to  
24 exceed 6 months, or both, and upon a second or succeeding  
25 conviction may be imprisoned for a term not to exceed 10

LC 1076/01

1 years and may be fined an amount not to exceed \$10,000, or  
2 both."

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

-End-

1 House BILL NO. 521  
2 INTRODUCED BY Drum  
3  
4 A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING THE MONTANA  
5 ELDER AND DEVELOPMENTALLY DISABLED ABUSE PREVENTION ACT TO  
6 INCLUDE REFERENCES TO SEXUAL ABUSE; AMENDING SECTIONS  
7 52-3-802, 52-3-803, 52-3-804, 52-3-805, 52-3-811, 52-3-812,  
8 52-3-813, 52-3-815, AND 52-3-825, MCA; AND PROVIDING AN  
9 IMMEDIATE EFFECTIVE DATE."

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

12 **Section 1.** Section 52-3-802, MCA, is amended to read:

13 "52-3-802. Legislative findings and purpose. The  
14 legislature finds that a need exists to provide for  
15 cooperation among law enforcement officials and agencies,  
16 courts, and state and county agencies providing human  
17 services in preventing the abuse, sexual abuse, neglect, and  
18 exploitation of Montana's elderly and developmentally  
19 disabled persons through the identification and reporting of  
20 acts of such abuse, sexual abuse, neglect, and  
21 exploitation."

22 **Section 2.** Section 52-3-803, MCA, is amended to read:

23 "52-3-803. Definitions. As used in this part, the  
24 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 or a developmentally disabled person  
4 without lawful authority. A declaration made pursuant to  
5 50-9-103 constitutes lawful authority.

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

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

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

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

18 (6) "Mental injury" means an identifiable and

THERE ARE NO CHANGES IN THIS BILL  
AND WILL NOT BE REPRINTED. PLEASE  
REFER TO YELLOW COPY FOR COMPLETE TEXT.



## 1 HOUSE BILL NO. 521

2 INTRODUCED BY DAVIS

3  
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7 52-3-802, 52-3-803, 52-3-804, 52-3-805, 52-3-811, 52-3-812,  
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16 (5) "Long-term care facility" means a facility defined  
17 in 50-5-101.

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

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

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

(8) "Older person" means a person who is at least 60 years of age. For purposes of prosecution under 52-3-825(2), the person 60 years of age or older must be unable to protect--himself provide personal protection from abuse, sexual abuse, neglect, or exploitation because of a mental or physical impairment or because of frailties or dependencies brought about by advanced age.

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

(10) "Sexual abuse" means the commission of sexual assault, sexual intercourse without consent, indecent exposure, deviate sexual conduct, or incest, as described in Title 45, chapter 5, part 5."

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

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

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

(3) The department shall, when appropriate, provide protective services under Title 52, chapter 3, part 2, or under Title 52, chapter 4, part 1, for a person alleged to have been abused, sexually abused, neglected, or exploited.

(4) If a person alleged to be abused, sexually abused, neglected, or exploited pursuant to this part or ~~his~~ the person's caretaker refuses to allow a representative of the department entrance to the premises for the purpose of investigating a report made pursuant to 52-3-811(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, sexually abused, neglected, or exploited.

(5) If a representative of the department has reasonable grounds to believe that an older or developmentally disabled person alleged to be abused, sexually abused, or neglected is suffering from abuse, sexual abuse, or neglect that presents a substantial risk of death or serious physical injury, the department may:

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

(b) if the department representative has reasonable grounds to believe that the person is incapacitated, provide emergency protective services as follows:

1 (i) arrange or facilitate an appropriate emergency  
 2 protective service placement;  
 3 (ii) transport or arrange for the transport of the  
 4 person to the appropriate placement;  
 5 (iii) not later than 2 judicial days following placement  
 6 of the person, either:  
 7 (A) provide voluntary protective services as provided  
 8 under subsection (3); or  
 9 (B) petition the district court to act as temporary  
 10 guardian or appoint a temporary guardian as provided in  
 11 72-5-317."

12 **Section 4.** Section 52-3-805, MCA, is amended to read:

13 **"52-3-805. Adult protective service teams.** The county  
 14 attorney or the department of family services may convene  
 15 one or more temporary or permanent interdisciplinary adult  
 16 protective service teams. These teams may assist in  
 17 assessing the needs of, formulating and monitoring a  
 18 treatment plan for, and coordinating services to older  
 19 persons who are victims of abuse, sexual abuse, neglect, or  
 20 exploitation. The supervisor of adult protective services of  
 21 the department of family services or his the department's  
 22 designee shall serve as the team's coordinator. Members must  
 23 include a social worker, a member of a local law enforcement  
 24 agency, a representative of the medical profession, and a  
 25 county attorney or his the county attorney's designee, who

1 is an attorney."

2 **Section 5.** Section 52-3-811, MCA, is amended to read:

3 **"52-3-811. Reports.** (1) When the professionals and  
 4 other persons listed in subsection (3) know or have  
 5 reasonable cause to suspect that an older person or a  
 6 developmentally disabled person known to them in their  
 7 professional or official capacities has been subjected to  
 8 abuse, sexual abuse, ~~exploitation~~,---or neglect, or  
 9 exploitation, they shall:

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

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

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

17 (b) if the person is a resident of a long-term care  
 18 facility, report the matter to the long-term care ombudsman  
 19 appointed under the provisions of 42 U.S.C. 3027(a)(12) and  
 20 to the department of health and environmental sciences. The  
 21 department shall investigate the matter pursuant to its  
 22 authority in 50-5-204 and, if it finds any allegations of  
 23 abuse, sexual abuse, ~~exploitation~~,---or neglect, or  
 24 exploitation contained in the report to be substantially  
 25 true, forward a copy of the report to the department of

1 family services and to the county attorney as provided in  
2 subsection (1)(a)(ii).

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

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

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

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

20 (c) an ambulance attendant;

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

25 (e) a person who maintains or is employed by a

1 roominghouse, retirement home, nursing home, group home, or  
2 adult foster care home;

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

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

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

9 **Section 6.** Section 52-3-812, MCA, is amended to read:

10 **"52-3-812. Content of report.** (1) The report required  
11 by 52-3-811 may be made in writing or orally, by telephone  
12 or in person. A person who receives an oral report must  
13 prepare it in writing as soon as possible.

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

16 (a) the names and addresses of the older person or the  
17 developmentally disabled person and the person, if any,  
18 responsible for his the person's care;

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

23 (c) to the extent known, the person's age and the  
24 nature and extent of the abuse, sexual abuse, neglect, or  
25 exploitation, including any evidence of previous injuries

sustained by the older person or the developmentally disabled person; and

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

**Section 7.** Section 52-3-813, MCA, is amended to read:

"52-3-813. Confidentiality. (1) The case records of the departments of social and rehabilitation services and family services, their local affiliate, the county attorney, and the court, concerning actions taken under this part, and all reports made pursuant to 52-3-811 shall must be kept confidential except as provided by this section.

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

(a) a physician who ~~has-in-his-care~~ is caring for an older person or a developmentally disabled person who ~~he~~ the physician reasonably believes was abused, sexually abused, neglected, or exploited;

(b) a legal guardian or conservator of the older person or the developmentally disabled 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, sexual abuse, neglect, or exploitation;

(c) the person named in the report as allegedly being

abused, sexually abused, neglected, or exploited if that person is not legally incompetent;

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

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

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

(a) a county attorney or other law enforcement official who requires the information in connection with an 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, sexually 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, the report may be submitted to the entity that issued the license, permit, or certificate."

**Section 8.** Section 52-3-815, MCA, is amended to read:

"52-3-815. Evidence of abuse, sexual abuse, or neglect to be gathered and submitted. (1) A person or agency receiving a report of suspected abuse, sexual abuse, or neglect under 52-3-811 shall prepare a written description of the conditions regarded as evidence of abuse, sexual abuse, or neglect and may, with the consent of an allegedly abused, sexually abused, or neglected older person or developmentally disabled person or without consent of the person if it appears that the person is an incapacitated person, take or cause to be taken photographs of an area of trauma visible on the body of the allegedly abused, sexually abused, or neglected person and regarded as evidence of abuse, sexual abuse, or neglect.

(2) A physician required to report under 52-3-811 may,

with the consent of an allegedly abused, sexually abused, or neglected older person or developmentally disabled person or without consent of the person if it appears that the person is an incapacitated person, require x-rays or other appropriate medical tests or procedures that would, in the professional opinion of the physician, assist in establishing evidence related to the allegation of abuse, sexual abuse, or neglect.

(3) Evidence authorized to be gathered under this section must be submitted with the report required under 52-3-811 to the authorities designated in 52-3-811 as soon as possible after submission of the report."

**Section 9.** Section 52-3-825, MCA, is amended to read:

"52-3-825. Penalties. (1) Any person who purposely or knowingly fails to make a report required by 52-3-811 or discloses or fails to disclose the contents of a case record or report in violation of 52-3-813 is guilty of an offense and upon conviction is punishable as provided in 46-18-212.

(2) Any individual who purposely or knowingly abuses, sexually 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

1 years and may be fined an amount not to exceed \$10,000, or  
2 both."

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

-End-