

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30

INTRODUCED BY House BILL No. 366  
Justin Christensen

BY REQUEST OF THE DEPARTMENT OF FAMILY SERVICES

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS RELATED TO ADULT PROTECTIVE SERVICES; INCORPORATING PROTECTIVE SERVICES FOR PERSONS WITH DEVELOPMENTAL DISABILITIES INTO THE MONTANA ELDER AND DEVELOPMENTALLY DISABLED ABUSE PREVENTION ACT; REQUIRING CERTAIN ADVOCATES OF PERSONS WITH DEVELOPMENTAL DISABILITIES TO REPORT SUSPECTED ABUSE, SEXUAL ABUSE, NEGLECT, OR EXPLOITATION; EXPANDING THE LIST OF PERSONS TO WHOM CERTAIN CONFIDENTIAL INFORMATION MAY BE RELEASED; GRANTING LIMITED IMMUNITY TO PERSONS WHO PROVIDE OR USE BACKGROUND OR EMPLOYMENT SCREENING INFORMATION REGARDING AN EMPLOYEE'S OR VOLUNTEER'S HISTORY OF ABUSE, SEXUAL ABUSE, NEGLECT, OR EXPLOITATION IN MAKING AN EMPLOYMENT DECISION; REVISING DEFINITIONS; INCORPORATING FEDERAL PROVISIONS REGARDING PROTECTION AND ADVOCACY FOR PERSONS WITH DEVELOPMENTAL DISABILITIES AND ACCESS BY THE DESIGNATED PROTECTION ADVOCACY SYSTEM; AMENDING SECTIONS 50-16-603, 52-3-202, 52-3-207, 52-3-803, 52-3-804, 52-3-811, 52-3-813, 52-3-814, 53-20-161, AND 53-21-166, MCA; REPEALING SECTIONS 52-4-101, 52-4-102, 52-4-103, 52-4-104, 52-4-105, 52-4-106, 52-4-107, 52-4-108, AND 52-4-110, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

**Section 1.** Section 50-16-603, MCA, is amended to read:

**"50-16-603. Confidentiality of health care information.** Health care information in the possession of the department, a local board, a local health officer, or their authorized representatives may not be released except:

(1) for statistical purposes, if no identification of individuals can be made from the information released;

(2) when the health care information pertains to a person who has given written consent to the release and has specified the type of information to be released and the person or entity to whom it may

1 be released;

2 (3) to medical personnel in a medical emergency as necessary to protect the health, life, or  
3 well-being of the named person;

4 (4) as allowed by Title 50, chapters 17 and 18, [section 11], [section 12], and 53-21-169;

5 (5) to another state or local public health agency, including those in other states, whenever  
6 necessary to continue health services to the named person or to undertake public health efforts to prevent  
7 or interrupt the transmission of a communicable disease;

8 (6) in the case of a minor, as required by 41-3-201 or pursuant to an investigation under 41-3-202.

9 If the health care information is required in a subsequent court proceeding involving child abuse, the  
10 information may be disclosed only in camera and documents containing the information must be sealed by  
11 the court upon conclusion of the proceedings.

12 (7) to medical personnel, the department, a local health officer or board, or a district court when  
13 necessary to implement or enforce state statutes or state or local health rules concerning the prevention  
14 or control of diseases designated as reportable pursuant to 50-1-202, if the release does not conflict with  
15 any other provision contained in this part."

16

17 **Section 2.** Section 52-3-202, MCA, is amended to read:

18 "**52-3-202. Definitions.** As used in this part, the following definitions apply:

19 (1) "Aged person" means an aged person as defined by the department.

20 (2) "Department" means the department of family services.

21 (3) "Disabled adult" means a person 18 years of age or ~~over~~ older who is defined by the  
22 department as disabled ~~but not~~ or who is developmentally disabled, as defined in 53-20-102.

23 (4) "Protective services" means assistance to an aged person or disabled adult in obtaining the  
24 services offered by the department."

25

26 **Section 3.** Section 52-3-207, MCA, is amended to read:

27 "**52-3-207. Protective services not creating guardianship or conservatorship.** (1) The provision  
28 of protective services does not create a guardianship or conservatorship relationship between the  
29 department and the aged person or disabled adult unless a guardianship or conservatorship is created in  
30 accordance with the requirements of Title 72, chapter 5, part 3 or 4.

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

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

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

6  
7           **Section 4.** Section 52-3-803, MCA, is amended to read:

8           **"52-3-803. Definitions.** As used in this part, the following definitions apply:

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

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

15           ~~(3) "Exploitation" means the unreasonable use of an older person or a developmentally disabled~~  
16 ~~person~~ with a developmental disability, the person's money, or the person's property to the advantage of  
17 another by means of duress, menace, fraud, or undue influence.

18           ~~(4)~~(3) "Incapacitated person" has the meaning given in 72-5-101.

19           ~~(5)~~(4) "Long-term care facility" means a facility defined in 50-5-101.

20           ~~(6)~~(5) "Mental injury" means an identifiable and substantial impairment of an older person's  
21 intellectual or psychological functioning or well-being.

22           ~~(7)~~(6) "Neglect" means the failure of a guardian; an employee of a public or private residential  
23 institution, facility, home, or agency; or any person legally responsible in a residential setting for the  
24 welfare of an older person's person or a ~~developmentally disabled person's welfare~~ person with a  
25 developmental disability to provide, to the extent of legal responsibility, food, shelter, clothing, or services  
26 necessary to maintain the physical or mental health of the older person or the ~~developmentally disabled~~  
27 person with a developmental disability.

28           ~~(8)~~(7) "Older person" means a person who is at least 60 years of age. For purposes of prosecution  
29 under 52-3-825(2), the person 60 years of age or older must be unable to provide personal protection from  
30 abuse, sexual abuse, neglect, or exploitation because of a mental or physical impairment or because of

1 frailties or dependencies brought about by advanced age.

2 (8) "Person with a developmental disability" means a person 18 years of age or older who is  
 3 developmentally disabled, as defined in 53-20-102.

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

6 (10) "Sexual abuse" means the commission of sexual assault, sexual intercourse without consent,  
 7 indecent exposure, deviate sexual conduct, or incest, as described in Title 45, chapter 5, part 5."  
 8

9 **Section 5.** Section 52-3-804, MCA, is amended to read:

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

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

14 (3) The department shall, when appropriate, provide protective services under Title 52, chapter 3,  
 15 part 2, ~~or under Title 52, chapter 4, part 1,~~ for a an older person or a person with a developmental disability  
 16 alleged to have been abused, sexually abused, neglected, or exploited.

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

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

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

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

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

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

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

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

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

6  
7 **Section 6.** Section 52-3-811, MCA, is amended to read:

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

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

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

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

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

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

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

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

30 (b) an osteopath, dentist, denturist, chiropractor, optometrist, podiatrist, medical examiner,

1 coroner, or any other health or mental health professional;

2 (c) an ambulance attendant;

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

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

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

10 (g) a peace officer or other law enforcement official; ~~and~~

11 (h) a person providing services to an older person or a ~~developmentally disabled~~ person with a  
12 developmental disability pursuant to a contract with a state or federal agency; and

13 (i) protection and advocacy systems authorized under the provisions of 29 U.S.C. 794(e), 42  
14 U.S.C. 6042, and 42 U.S.C. 10805, unless disclosure would violate provisions of state or federal law.

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

16  
17 **Section 7.** Section 52-3-813, MCA, is amended to read:

18 "**52-3-813. Confidentiality.** (1) The case records of the departments of social and rehabilitation  
19 services and family services, their local affiliate, the county attorney, and the court, concerning actions  
20 taken under this part, and all reports made pursuant to 52-3-811 must be kept confidential except as  
21 provided by this section.

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

24 (a) a physician who is caring for an older person or a ~~developmentally disabled~~ person with a  
25 developmental disability who the physician reasonably believes was abused, sexually abused, neglected,  
26 or exploited;

27 (b) a legal guardian or conservator of the older person or the ~~developmentally disabled~~ person with  
28 a developmental disability if the identity of the person who made the report is protected and the legal  
29 guardian or conservator is not the person suspected of the abuse, sexual abuse, neglect, or exploitation;

30 (c) the person named in the report as allegedly being abused, sexually abused, neglected, or

1 exploited if that person is not legally incompetent;

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

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

8 (f) an authorized representative of a provider of services to a person alleged to be an abused,  
9 sexually abused, neglected, or exploited older person or ~~developmentally disabled~~ person with a  
10 developmental disability; if:

11 (i) the department and the provider are parties to a contested case proceeding under Title 2,  
12 chapter 4, part 6, resulting from action by the department adverse to the license of the provider and if  
13 information contained in the records or reports of the department is relevant to the case; ~~or~~

14 (ii) disclosure to the provider is determined by the department to be necessary to protect an interest  
15 of a person alleged to be an abused, sexually abused, neglected, or exploited older person or  
16 ~~developmentally disabled~~ person with a developmental disability; or

17 (iii) the person is carrying out background screening or employment- or volunteer-related screening  
18 of current or prospective employees or volunteers who have or may have unsupervised contact with an  
19 older person or a person with a developmental disability through employment or volunteer activities if the  
20 disclosure is limited to information that indicates a risk to an older person or a person with a developmental  
21 disability posed by the employee or volunteer, as determined by the department;

22 (g) an employee of the department or the department of social and rehabilitation services if  
23 disclosure of the record or report is necessary for administration of a program designed to benefit a person  
24 alleged to be an abused, sexually abused, neglected, or exploited older person or ~~developmentally disabled~~  
25 person with a developmental disability; ~~and~~

26 (h) an authorized representative of a guardianship program approved by the department if the  
27 department determines that disclosure to the program or to a person designated by the program is  
28 necessary for the proper provision of guardianship services to a person alleged to be an abused, sexually  
29 abused, neglected, or exploited older person or ~~developmentally disabled~~ person with a developmental  
30 disability;

1 (i) protection and advocacy systems authorized under the provisions of 29 U.S.C. 794(e), 42  
2 U.S.C. 6042 and 42 U.S.C. 10805;

3 (j) the news media if disclosure is limited to confirmation of factual information regarding how the  
4 case was handled and does not violate the privacy rights of the older person, person with a developmental  
5 disability, or alleged perpetrator of abuse, sexual abuse, neglect, or exploitation, as determined by the  
6 department;

7 (k) a coroner or medical examiner who is determining the cause of death of an older person or a  
8 person with a developmental disability;

9 (l) a person about whom a report has been made and that person's attorney with respect to  
10 relevant records pertaining to that person only without disclosing the identity of the person who made the  
11 report or any other person whose safety might be endangered through disclosure;

12 (m) an agency, including a probation or parole agency, that is legally responsible for the supervision  
13 of an alleged perpetrator of abuse, sexual abuse, neglect, or exploitation of an older person or a person with  
14 a developmental disability; and

15 (n) a department, agency, or organization, including a federal agency, military reservation, or tribal  
16 organization, that is legally authorized to receive, inspect, or investigate reports of abuse, sexual abuse,  
17 neglect, or exploitation of an older person or a person with a developmental disability and that meets the  
18 disclosure criteria contained in this section.

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

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

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

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

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



1 permit, or certificate."

2

3 **Section 8.** Section 52-3-814, MCA, is amended to read:

4 **"52-3-814. Immunity from civil and criminal liability.** ~~(1) Any~~ A person who makes a report  
5 required or authorized to be made under 52-3-811 is immune from civil or criminal liability ~~which~~ that might  
6 otherwise be incurred or imposed as a result of ~~such a~~ the report unless the report is false in any material  
7 respect and the person acted in bad faith or with malicious purpose.

8 (2) A person who provides information or who uses information obtained pursuant to 52-3-813(2)  
9 to refuse to hire or to discharge an employee, volunteer, or other person who through their employment  
10 or volunteer activities may have unsupervised contact with an older person or a person with a  
11 developmental disability is immune from civil liability unless the person providing or using the information  
12 acts in bad faith or with malicious purpose."

13

14 **Section 9.** Section 53-20-161, MCA, is amended to read:

15 **"53-20-161. Maintenance of records.** (1) Complete records for each resident must be maintained  
16 and must be readily available to persons who are directly involved with the particular resident, to the  
17 protection and advocacy systems authorized under the provisions of 29 U.S.C. 794(e), 42 U.S.C. 6042,  
18 and 42 U.S.C. 10805, and to the mental disabilities board of visitors. All information contained in a  
19 resident's records must be considered privileged and confidential. The parents or guardian, the responsible  
20 person appointed by the court, the resident's attorney, and any person properly authorized in writing by  
21 the resident, if the resident is capable of giving informed consent, or by ~~his~~ the resident's parents or  
22 guardian or the responsible person must be permitted access to the resident's records. ~~Information~~ Except  
23 as authorized in this subsection, information may not be released from the records of a resident or former  
24 resident of the residential facility unless the release of the information has been properly authorized in  
25 writing by:

26 (a) the court;

27 (b) the resident or former resident if ~~he is~~ over the age of majority and ~~is~~ capable of giving informed  
28 consent;

29 (c) the parents or guardian in charge of a resident under ~~the age of~~ 12 years of age;

30 (d) the parents or guardian in charge of a resident ~~over the age of~~ 12 years of age or older but

1 under the age of majority and the resident if the resident is capable of giving informed consent;

2 (e) the guardian of a resident over the age of majority who is incapable of giving informed consent;

3 (f) the superintendent of the residential facility or ~~his~~ a designee as custodian of a resident over  
4 the age of majority who is incapable of giving informed consent and for whom no legal guardian has been  
5 appointed;

6 (g) the superintendent of the residential facility or ~~his~~ a designee as custodian of a resident under  
7 the age of majority for whom there is no parent or legal guardian; or

8 (h) the superintendent of the residential facility or ~~his~~ a designee as custodian of a resident of that  
9 facility whenever release is required by federal or state law or department of social and rehabilitation  
10 services rules.

11 (2) Information may not be released by a superintendent or ~~his~~ a designee as set forth in subsection  
12 (1)(f), (1)(g), or (1)(h) less than 15 days after sending notice of the proposed release of information to the  
13 resident, ~~his~~ the resident's parents or guardian, the attorney who most recently represented the resident,  
14 if any, the responsible person appointed by the court, if any, and the court that ordered the admission. If  
15 any of the parties so notified objects to the release of information, they may petition the court for a hearing  
16 to determine whether the release of information should be allowed. Information may not be released  
17 pursuant to subsection (1)(f), (1)(g), or (1)(h) unless it is released to further some legitimate need of the  
18 resident or to accomplish a legitimate purpose of the facility that is not inconsistent with the needs and  
19 rights of the resident. Information may not be released pursuant to ~~these subsections~~ subsection (1)(f),  
20 (1)(g), or (1)(h) except in accordance with written policies consistent with the requirements of this part  
21 adopted by the facility. Persons receiving notice of a proposed release of information ~~shall~~ must also receive  
22 a copy of the written policy of the facility governing release of information.

23 (3) These records must include:

24 (a) identification data, including the resident's legal status;

25 (b) the resident's history, including but not limited to:

26 (i) family data, educational background, and employment record;

27 (ii) prior medical history, both physical and mental, including prior institutionalization;

28 (c) the resident's grievances, if any;

29 (d) an inventory of the resident's life skills, including mode of communication;

30 (e) a record of each physical examination that describes the results of the examination;

1 (f) a copy of the individual habilitation plan and any modifications ~~thereto~~ to the plan and an  
 2 appropriate summary that will guide and assist the resident care workers in implementing the resident's  
 3 ~~program~~ habilitation plan;

4 (g) the findings made in monthly reviews of the habilitation plan, which findings must include an  
 5 analysis of the successes and failures of the habilitation program and direct whatever modifications are  
 6 necessary;

7 (h) a copy of the postinstitutionalization plan that includes a statement of services needed in the  
 8 community and any modifications ~~thereto~~ to the plan and a summary of the steps that have been taken to  
 9 implement that plan;

10 (i) a medication history and status;

11 (j) a summary of each significant contact by a professional person with a resident;

12 (k) a summary of the resident's response to ~~his~~ the habilitation plan, prepared by a qualified mental  
 13 retardation professional involved in the resident's habilitation and recorded at least monthly. Wherever  
 14 possible, ~~such~~ the response must be scientifically documented.

15 (l) a monthly summary of the extent and nature of the resident's work activities and the effect of  
 16 the activity upon the resident's progress in the habilitation plan;

17 (m) a signed order by a qualified mental retardation professional, professional person, or physician  
 18 for any physical restraints;

19 (n) a description of any extraordinary incident or accident in the facility involving the resident, to  
 20 be entered by a staff member noting personal knowledge of the incident or accident or other source of  
 21 information, including any reports of investigations of resident's mistreatment;

22 (o) a summary of family visits and contacts;

23 (p) a summary of attendance and leaves from the facility;

24 (q) a record of any seizures, illnesses, injuries, and treatments ~~thereof~~ and immunizations."  
 25

26 **Section 10.** Section 53-21-166, MCA, is amended to read:

27 **"53-21-166. Records to be confidential -- exceptions.** All information obtained and records  
 28 prepared in the course of providing any services under this part to individuals under any provision of this  
 29 part ~~shall be~~ confidential and privileged matter and ~~shall~~ must remain confidential and privileged after the  
 30 individual is discharged from the facility. Except as provided in Title 50, chapter 16, part 5, information and

1 records may be disclosed only:

2 (1) in communications between qualified professionals in the provision of services or appropriate  
3 referrals;

4 (2) when the recipient of services designates persons to whom information or records may be  
5 released, provided that if a recipient of services is a ward and ~~his~~ the guardian or conservator designates  
6 in writing persons to whom records or information may be disclosed, ~~such the designation shall be~~ is valid  
7 in lieu of the designation by the recipient; ~~except that nothing in this~~ This section shall ~~may not~~ be  
8 construed to compel a physician, psychologist, social worker, nurse, attorney, or other professional person  
9 to reveal information ~~which~~ that has been ~~given to him~~ provided in confidence by members of a patient's  
10 family;

11 (3) to the extent necessary to make claims on behalf of a recipient of aid, insurance, or medical  
12 assistance to which ~~he~~ the recipient may be entitled;

13 (4) for research if the department has promulgated rules for the conduct of research; ~~such~~ The  
14 rules ~~shall~~ must include but ~~not be~~ are not limited to the requirement that all researchers ~~must~~  
15 of confidentiality;

16 (5) to the courts as necessary to the administration of justice;

17 (6) to persons authorized by an order of court, after notice and opportunity for hearing to the  
18 person to whom the record or information pertains and the custodian of the record or information pursuant  
19 to the rules of civil procedure;

20 (7) to members of the mental disabilities board of visitors or their agents when necessary to  
21 perform their functions as set out in 53-21-104; and

22 (8) to the protection and advocacy systems authorized under the provisions of 29 U.S.C. 794(e),  
23 42 U.S.C. 6042, and 42 U.S.C. 10805."

24

25 **NEW SECTION. Section 11. Protection and advocacy system for persons with developmental**  
26 **disabilities -- designation and authority.** (1) A protection and advocacy system for persons with  
27 developmental disabilities, as designated by the governor, may be administered in this state under the  
28 provisions of 42 U.S.C. 6041 through 6043 for the purpose of protecting the legal and human rights of  
29 persons with developmental disabilities.

30 (2) Pursuant to 42 U.S.C. 6042, the protection and advocacy system has the authority to:

1 (a) pursue legal, administrative, and other appropriate remedies or approaches to ensure the  
2 protection of and advocacy for the rights of persons in the state who are or may be eligible for treatment,  
3 services, or habilitation or who are being considered for a change in living arrangements, with particular  
4 attention to members of ethnic and racial minority groups;

5 (b) provide information on and referral to programs and services addressing the needs of persons  
6 with developmental disabilities;

7 (c) investigate incidents of abuse and neglect of persons with developmental disabilities if the  
8 incidents are reported to the system or if there is probable cause to believe that the incidents occurred; and

9 (d) educate policymakers.

10 (3) Pursuant to 42 U.S.C. 6042, the protection and advocacy system has access:

11 (a) at all reasonable times and locations to any person with a developmental disability who is a  
12 resident in a facility that is providing services, supports, and other assistance to the resident;

13 (b) to all records of:

14 (i) any person with a developmental disability who is a client of the system if the person or the  
15 person's legal guardian, conservator, or other legal representative has authorized the system to have access  
16 to the records;

17 (ii) any person with a developmental disability who:

18 (A) by reason of the person's mental or physical condition is unable to authorize the system to  
19 have access to the records;

20 (B) does not have a legal guardian, conservator, or other legal representative or for whom the legal  
21 guardian is the state; and

22 (C) with respect to whom a complaint has been received by the system or with respect to whom  
23 as a result of monitoring or other activities there is probable cause to believe that the person has been  
24 subject to abuse or neglect; and

25 (iii) any person with a developmental disability who has a legal guardian, conservator, or other legal  
26 representative with respect to whom a complaint has been received by the system or with respect to whom  
27 there is probable cause to believe that the health or safety of the person with a developmental disability  
28 is in serious and immediate jeopardy when:

29 (A) the representative has been contacted by the system upon receipt of the name and address  
30 of the representative;

- 1 (B) the system has offered assistance to the representative to resolve the situation; and
- 2 (C) the representative has failed or refused to act on behalf of the person with a developmental
- 3 disability.
- 4 (4) Pursuant to 42 U.S.C. 6042, the term "records" includes but is not limited to:
- 5 (a) reports prepared or received by any staff person of a facility rendering care or treatment;
- 6 (b) reports prepared by an agency or staff person charged with investigating reports of incidents
- 7 of abuse, neglect, injury, or death occurring at the facility that describes incidents of abuse, neglect, injury,
- 8 or death occurring at the facility and the steps taken to investigate the incidents; and
- 9 (c) ischarge planning records.
- 10 (5) All information received under this section must be kept confidential as required by 45 CFR
- 11 1386.21(b).
- 12 (6) The state shall provide to the protection and advocacy system a copy of each annual survey
- 13 report and plan of corrections for cited deficiencies made pursuant to section 1902(a)(31) of the federal
- 14 Social Security Act with respect to any intermediate care facility for the developmentally disabled in the
- 15 state within 30 days after completion of each report or plan, as required by 42 U.S.C. 6042.
- 16 (7) Pursuant to 42 U.S.C. 6042, the protection and advocacy system authorized in this section is
- 17 independent of any agency that provides treatment, services, or habilitation to persons with developmental
- 18 disabilities.

19

20 **NEW SECTION. Section 12. Protection and advocacy system for persons with disabilities --**

21 **designation and authority.** (1) A protection and advocacy system for persons with disabilities may be

22 administered in the state under the provisions of 29 U.S.C. 794(e) for the purpose of protecting the legal

23 and human rights of persons with disabilities who are ineligible for:

- 24 (a) client assistance under section 112 of the federal Rehabilitation Act of 1973; and
- 25 (b) protection and advocacy programs under part C of the federal Developmental Disabilities
- 26 Assistance and Bill of Rights Act, 42 U.S.C 6041, et seq., and the federal Protection and Advocacy for
- 27 Mentally Ill Individuals Act of 1986, 42 U.S.C. 10801, et seq.

- 28 (2) Pursuant to 29 U.S.C. 794(e), the protection and advocacy system:
- 29 (a) has the same general authority, including access to records and program income, as set forth
- 30 in part C of the federal Developmental Disabilities Assistance and Bill of Rights Act, 42 U.S.C 6041, et seq.;

1 (b) has the authority to pursue legal, administrative, and other appropriate remedies or approaches  
2 to ensure the protection of and advocacy for the rights of persons in the state who are or may be ineligible  
3 for protection and advocacy programs under part C of the federal Developmental Disabilities Assistance and  
4 Bill of Rights Act, 42 U.S.C 6041, et seq., and the federal Protection and Advocacy for Mentally Ill  
5 Individuals Act of 1986, 42 U.S.C. 10801, et seq., or for client assistance programs under section 112 of  
6 the federal Rehabilitation Act of 1973; and

7 (c) shall provide information on and referral to programs and services addressing the needs of  
8 persons with disabilities in the state.

9  
10 **NEW SECTION. Section 13. Name change -- instructions to code commissioner.** Wherever the  
11 phrase "developmentally disabled person" or a similar phrase appears in Title 52, chapter 3, part 8, the  
12 code commissioner is directed to change the phrase to "person with a developmental disability" or a similar  
13 phrase, as that term is defined in 52-3-803.

14  
15 **NEW SECTION. Section 14. Notification of tribal governments.** The secretary of state shall send  
16 a copy of [this act] to the tribal chairperson of each of the seven Montana reservations and to the tribal  
17 chairperson of the Little Shell tribe.

18  
19 **NEW SECTION. Section 15. Repealer.** Sections 52-4-101, 52-4-102, 52-4-103, 52-4-104,  
20 52-4-105, 52-4-106, 52-4-107, 52-4-108, and 52-4-110, MCA, are repealed.

21  
22 **NEW SECTION. Section 16. Codification instruction.** [Sections 11 and 12] are intended to be  
23 codified as an integral part of Title 53, chapter 20, and the provisions of Title 53, chapter 20, apply to  
24 [sections 11 and 12].

25  
26 **NEW SECTION. Section 17. Two-thirds vote required.** Because section 52-3-814(2) limits  
27 governmental liability, Article II, section 18, of the Montana constitution requires a vote of two-thirds of  
28 the members of each house of the legislature for passage. If \_\_ Bill No. \_\_ [LC 143] does not receive the  
29 required two-thirds vote, then 52-3-814(2) is void.

30





STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0366, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

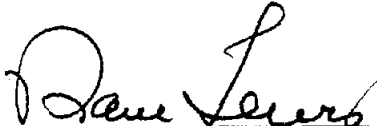
An act generally revising the laws related to adult protective services; incorporating protective services for persons with developmental disabilities into the Montana elder and developmentally disabled abuse prevention act; requiring certain advocates of persons with developmental disabilities to report suspected abuse, sexual abuse, neglect, or exploitation; expanding the list of persons to whom certain confidential information may be released; granting limited immunity to persons who provide or use background or employment screening information regarding an employee's or volunteer's history of abuse, sexual abuse, neglect, or exploitation in making an employment decision; revising definitions; incorporating federal provisions regarding protection and advocacy for persons with developmental disabilities and access by the designated protection advocacy system.

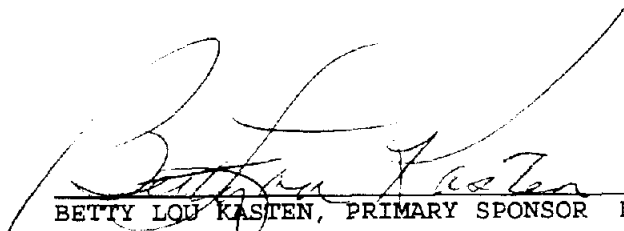
ASSUMPTIONS:

1. This bill is at the request of DFS and clarifies the statutes regarding adult protective services issues.
2. There will be no fiscal impact to DFS.

FISCAL IMPACT:

None

 2.2.95  
DAVE LEWIS, BUDGET DIRECTOR      DATE  
Office of Budget and Program Planning

  
BETTY LOU KASTEN, PRIMARY SPONSOR      DATE  
Fiscal Note for HB0366, as introduced

HB 366

## 1 HOUSE BILL NO. 366

2 INTRODUCED BY KASTEN, CHRISTIAENS

3 BY REQUEST OF THE DEPARTMENT OF FAMILY SERVICES  
4

5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS RELATED TO ADULT  
6 PROTECTIVE SERVICES; INCORPORATING PROTECTIVE SERVICES FOR PERSONS WITH  
7 DEVELOPMENTAL DISABILITIES INTO THE MONTANA ELDER AND DEVELOPMENTALLY DISABLED ABUSE  
8 PREVENTION ACT; ~~REQUIRING CERTAIN ADVOCATES OF PERSONS WITH DEVELOPMENTAL~~  
9 ~~DISABILITIES TO REPORT SUSPECTED ABUSE, SEXUAL ABUSE, NEGLECT, OR EXPLOITATION;~~  
10 EXPANDING THE LIST OF PERSONS TO WHOM CERTAIN CONFIDENTIAL INFORMATION MAY BE  
11 RELEASED; GRANTING LIMITED IMMUNITY TO PERSONS WHO PROVIDE OR USE BACKGROUND OR  
12 EMPLOYMENT SCREENING INFORMATION REGARDING AN EMPLOYEE'S OR VOLUNTEER'S HISTORY OF  
13 ABUSE, SEXUAL ABUSE, NEGLECT, OR EXPLOITATION IN MAKING AN EMPLOYMENT DECISION;  
14 REVISING DEFINITIONS; ~~INCORPORATING FEDERAL PROVISIONS REGARDING PROTECTION AND~~  
15 ~~ADVOCACY FOR PERSONS WITH DEVELOPMENTAL DISABILITIES AND ACCESS BY THE DESIGNATED~~  
16 ~~PROTECTION ADVOCACY SYSTEM;~~ AMENDING SECTIONS ~~50-16-603~~, 52-3-202, 52-3-207, 52-3-803,  
17 52-3-804, ~~52-3-811~~, 52-3-813, AND 52-3-814, ~~53-20-161~~, AND ~~53-21-166~~, MCA; REPEALING SECTIONS  
18 52-4-101, 52-4-102, 52-4-103, 52-4-104, 52-4-105, 52-4-106, 52-4-107, 52-4-108, AND 52-4-110,  
19 MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

20  
21 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:  
2223 ~~Section 1. Section 50-16-603, MCA, is amended to read:~~24 ~~"50-16-603. Confidentiality of health care information. Health care information in the possession~~  
25 ~~of the department, a local board, a local health officer, or their authorized representatives may not be~~  
26 ~~released except:~~27 ~~(1) for statistical purposes, if no identification of individuals can be made from the information~~  
28 ~~released;~~29 ~~(2) when the health care information pertains to a person who has given written consent to the~~  
30 ~~release and has specified the type of information to be released and the person or entity to whom it may~~

1 be released;

2 ~~(3) to medical personnel in a medical emergency as necessary to protect the health, life, or~~  
3 ~~well being of the named person;~~

4 ~~(4) as allowed by Title 50, chapters 17 and 18, section 11, section 12, and 53-21-169;~~

5 ~~(5) to another state or local public health agency, including those in other states, whenever~~  
6 ~~necessary to continue health services to the named person or to undertake public health efforts to prevent~~  
7 ~~or interrupt the transmission of a communicable disease;~~

8 ~~(6) in the case of a minor, as required by 41-3-201 or pursuant to an investigation under 41-3-202.~~

9 ~~If the health care information is required in a subsequent court proceeding involving child abuse, the~~  
10 ~~information may be disclosed only in camera and documents containing the information must be sealed by~~  
11 ~~the court upon conclusion of the proceedings.~~

12 ~~(7) to medical personnel, the department, a local health officer or board, or a district court when~~  
13 ~~necessary to implement or enforce state statutes or state or local health rules concerning the prevention~~  
14 ~~or control of diseases designated as reportable pursuant to 50-1-202, if the release does not conflict with~~  
15 ~~any other provision contained in this part."~~

16

17 **Section 1.** Section 52-3-202, MCA, is amended to read:

18 **"52-3-202. Definitions.** As used in this part, the following definitions apply:

19 (1) "Aged person" means an aged person as defined by the department.

20 (2) "Department" means the department of family services.

21 (3) "Disabled adult" means a person 18 years of age or ~~ever~~ older who is defined by the  
22 department as disabled ~~but not~~ or who is developmentally disabled, as defined in 53-20-102.

23 (4) "Protective services" means assistance to an aged person or disabled adult in obtaining the  
24 services offered by the department."

25

26 **Section 2.** Section 52-3-207, MCA, is amended to read:

27 **"52-3-207. Protective services not creating guardianship or conservatorship.** (1) The provision  
28 of protective services does not create a guardianship or conservatorship relationship between the  
29 department and the aged person or disabled adult unless a guardianship or conservatorship is created in  
30 accordance with the requirements of Title 72, chapter 5, part 3 or 4.

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

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

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

6  
 7           **Section 3.** Section 52-3-803, MCA, is amended to read:

8           **"52-3-803. Definitions.** As used in this part, the following definitions apply:

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

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

15           ~~(3)~~ "Exploitation" means the unreasonable use of an older person or a ~~developmentally disabled~~  
 16 person with a developmental disability, the person's money, or the person's property to the advantage of  
 17 another by means of duress, menace, fraud, or undue influence.

18           ~~(4)~~(3) "Incapacitated person" has the meaning given in 72-5-101.

19           ~~(5)~~(4) "Long-term care facility" means a facility defined in 50-5-101.

20           ~~(6)~~(5) "Mental injury" means an identifiable and substantial impairment of an older person's  
 21 intellectual or psychological functioning or well-being.

22           ~~(7)~~(6) "Neglect" means the failure of a guardian; an employee of a public or private residential  
 23 institution, facility, home, or agency; or any person legally responsible in a residential setting for the  
 24 welfare of an older person's person or a ~~developmentally disabled person's welfare~~ person with a  
 25 developmental disability to provide, to the extent of legal responsibility, food, shelter, clothing, or services  
 26 necessary to maintain the physical or mental health of the older person or the ~~developmentally disabled~~  
 27 person with a developmental disability.

28           ~~(8)~~(7) "Older person" means a person who is at least 60 years of age. For purposes of prosecution  
 29 under 52-3-825(2), the person 60 years of age or older must be unable to provide personal protection from  
 30 abuse, sexual abuse, neglect, or exploitation because of a mental or physical impairment or because of

1 frailties or dependencies brought about by advanced age.

2 (8) "Person with a developmental disability" means a person 18 years of age or older who is  
 3 developmentally disabled, as defined in 53-20-102.

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

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

8

9 **Section 4.** Section 52-3-804, MCA, is amended to read:

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

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

14 (3) The department shall, when appropriate, provide protective services under Title 52, chapter 3,  
 15 part 2, ~~or under Title 52, chapter 4, part 1,~~ for a an older person or a person with a developmental disability  
 16 alleged to have been abused, sexually abused, neglected, or exploited.

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

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

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

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

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

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

6

7 ~~Section 6. Section 52-3-811, MCA, is amended to read:~~

8 ~~"52-3-811. Reports. (1) When the professionals and other persons listed in subsection (3) know~~

9 ~~or have reasonable cause to suspect that an older person or a developmentally disabled person with a~~

10 ~~developmental disability known to them in their professional or official capacities has been subjected to~~

11 ~~abuse, sexual abuse, neglect, or exploitation, they shall:~~

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

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

14 ~~(ii) the county attorney of the county in which where the person resides or in which where the acts~~

15 ~~that are the subject of the report occurred;~~

16 ~~(b) if the person is a resident of a long term care facility, report the matter to the long term care~~

17 ~~ombudsman appointed under the provisions of 42 U.S.C. 3027(a)(12) and to the department of health and~~

18 ~~environmental sciences. The department of health and environmental sciences shall investigate the matter~~

19 ~~pursuant to its authority in 50-5-204 and, if it finds any allegations of abuse, sexual abuse, neglect, or~~

20 ~~exploitation contained in the report to be substantially true, forward a copy of the report to the department~~

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

22 ~~(2) If the report required in subsection (1) involves an act or omission of the department of family~~

23 ~~services which that may be construed as abuse, sexual abuse, neglect, or exploitation, a copy of the report~~

24 ~~may not be sent to the department but must be sent instead to the county attorney of the county in which~~

25 ~~where the older person or the developmentally disabled person with a developmental disability resides or~~

26 ~~in which where the acts that are the subject of the report occurred.~~

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

28 ~~(a) a physician, resident, intern, professional or practical nurse, physician's assistant, or member~~

29 ~~of a hospital staff engaged in the admission, examination, care, or treatment of persons;~~

30 ~~(b) an osteopath, dentist, denturist, chiropractor, optometrist, podiatrist, medical examiner,~~

- 1 coroner, or any other health or mental health professional;
- 2 ~~(c) an ambulance attendant;~~
- 3 ~~(d) a social worker or other employee of the state, a county, or a municipality assisting an older~~  
 4 ~~person or a developmentally disabled person with a developmental disability in the application for or receipt~~  
 5 ~~of public assistance payments or services;~~
- 6 ~~(e) a person who maintains or is employed by a roominghouse, retirement home, nursing home,~~  
 7 ~~group home, or adult foster care home;~~
- 8 ~~(f) an attorney, unless the attorney acquired knowledge of the facts required to be reported from~~  
 9 ~~a client and the attorney-client privilege applies;~~
- 10 ~~(g) a peace officer or other law enforcement official; and~~
- 11 ~~(h) a person providing services to an older person or a developmentally disabled person with a~~  
 12 ~~developmental disability pursuant to a contract with a state or federal agency; and~~
- 13 ~~(i) protection and advocacy systems authorized under the provisions of 29 U.S.C. 794(e), 42~~  
 14 ~~U.S.C. 6042, and 42 U.S.C. 10806, unless disclosure would violate provisions of state or federal law.~~
- 15 ~~(4) Any other person may submit a report as provided in subsection (1)."~~

16

17 **Section 5.** Section 52-3-813, MCA, is amended to read:

18 **"52-3-813. Confidentiality.** (1) The case records of the departments of social and rehabilitation  
 19 services and family services, their local affiliate, the county attorney, and the court, concerning actions  
 20 taken under this part, and all reports made pursuant to 52-3-811 must be kept confidential except as  
 21 provided by this section.

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

24 (a) a physician who is caring for an older person or a ~~developmentally disabled~~ person with a  
 25 developmental disability who the physician reasonably believes was abused, sexually abused, neglected,  
 26 or exploited;

27 (b) a legal guardian or conservator of the older person or the ~~developmentally disabled~~ person with  
 28 a developmental disability if the identity of the person who made the report is protected and the legal  
 29 guardian or conservator is not the person suspected of the abuse, sexual abuse, neglect, or exploitation;

30 (c) the person named in the report as allegedly being abused, sexually abused, neglected, or

1 exploited if that person is not legally incompetent;

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

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

8 (f) an authorized representative of a provider of services to a person alleged to be an abused,  
9 ~~sexually abused,~~ neglected, or exploited older person or ~~developmentally disabled~~ person with a  
10 developmental disability; if:

11 (i) the department and the provider are parties to a contested case proceeding under Title 2,  
12 chapter 4, part 6, resulting from action by the department adverse to the license of the provider and if  
13 information contained in the records or reports of the department is relevant to the case; ~~or~~

14 (ii) disclosure to the provider is determined by the department to be necessary to protect an interest  
15 of a person alleged to be an abused, sexually abused, neglected, or exploited older person or  
16 ~~developmentally disabled~~ person with a developmental disability; or

17 (iii) the person is carrying out background screening or employment- or volunteer-related screening  
18 of current or prospective employees or volunteers who have or may have unsupervised contact with an  
19 older person or a person with a developmental disability through employment or volunteer activities if the  
20 disclosure is limited to information that indicates a risk to an older person or a person with a developmental  
21 disability posed by the employee or volunteer, as determined by the department;

22 (g) an employee of the department or the department of social and rehabilitation services if  
23 disclosure of the record or report is necessary for administration of a program designed to benefit a person  
24 alleged to be an abused, sexually abused, neglected, or exploited older person or ~~developmentally disabled~~  
25 person with a developmental disability; ~~and~~

26 (h) an authorized representative of a guardianship program approved by the department if the  
27 department determines that disclosure to the program or to a person designated by the program is  
28 necessary for the proper provision of guardianship services to a person alleged to be an abused, sexually  
29 abused, neglected, or exploited older person or ~~developmentally disabled~~ person with a developmental  
30 disability;



1           (i) protection and advocacy systems authorized under the provisions of 29 U.S.C. 794(e), 42  
 2 U.S.C. 6042 and 42 U.S.C. 10805;

3           (j) the news media if disclosure is limited to confirmation of factual information regarding how the  
 4 case was handled and does not violate the privacy rights of the older person, person with a developmental  
 5 disability, or alleged perpetrator of abuse, sexual abuse, neglect, or exploitation, as determined by the  
 6 department;

7           (k) a coroner or medical examiner who is determining the cause of death of an older person or a  
 8 person with a developmental disability;

9           (l) a person about whom a report has been made and that person's attorney with respect to  
 10 relevant records pertaining to that person only without disclosing the identity of the person who made the  
 11 report or any other person whose safety might be endangered through disclosure;

12           (m) an agency, including a probation or parole agency, that is legally responsible for the supervision  
 13 of an alleged perpetrator of abuse, sexual abuse, neglect, or exploitation of an older person or a person with  
 14 a developmental disability; and

15           (n) a department, agency, or organization, including a federal agency, military reservation, or tribal  
 16 organization, that is legally authorized to receive, inspect, or investigate reports of abuse, sexual abuse,  
 17 neglect, or exploitation of an older person or a person with a developmental disability and that meets the  
 18 disclosure criteria contained in this section.

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

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

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

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

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

1 permit, or certificate."

2

3 **Section 6.** Section 52-3-814, MCA, is amended to read:

4 **"52-3-814. Immunity from civil and criminal liability.** (1) ~~Any~~ A person who makes a report  
5 required or authorized to be made under 52-3-811 is immune from civil or criminal liability ~~which~~ that might  
6 otherwise be incurred or imposed as a result of ~~such a~~ the report unless the report is false in any material  
7 respect and the person acted in bad faith or with malicious purpose.

8 (2) A person who provides information or who uses information obtained pursuant to 52-3-813(2)  
9 to refuse to hire or to discharge an employee, volunteer, or other person who through their employment  
10 or volunteer activities may have unsupervised contact with an older person or a person with a  
11 developmental disability is immune from civil liability unless the person providing or using the information  
12 acts in bad faith or with malicious purpose."

13

14 ~~**Section 9.** Section 53-20-161, MCA, is amended to read:~~

15 ~~**"53-20-161. Maintenance of records.** (1) Complete records for each resident must be maintained~~  
16 ~~and must be readily available to persons who are directly involved with the particular resident, to the~~  
17 ~~protection and advocacy systems authorized under the provisions of 20 U.S.C. 794(e), 42 U.S.C. 6042,~~  
18 ~~and 42 U.S.C. 10805, and to the mental disabilities board of visitors. All information contained in a~~  
19 ~~resident's records must be considered privileged and confidential. The parents or guardian, the responsible~~  
20 ~~person appointed by the court, the resident's attorney, and any person properly authorized in writing by~~  
21 ~~the resident, if the resident is capable of giving informed consent, or by his the resident's parents or~~  
22 ~~guardian or the responsible person must be permitted access to the resident's records. Information Except~~  
23 ~~as authorized in this subsection, information may not be released from the records of a resident or former~~  
24 ~~resident of the residential facility unless the release of the information has been properly authorized in~~  
25 ~~writing by:~~

26 ~~(a) the court;~~

27 ~~(b) the resident or former resident if he is over the age of majority and is capable of giving informed~~  
28 ~~consent;~~

29 ~~(c) the parents or guardian in charge of a resident under the age of 12 years of age;~~

30 ~~(d) the parents or guardian in charge of a resident over the age of 12 years of age or older but~~

1 ~~under the age of majority and the resident if the resident is capable of giving informed consent;~~

2 ~~(e) the guardian of a resident over the age of majority who is incapable of giving informed consent;~~

3 ~~(f) the superintendent of the residential facility or his a designee as custodian of a resident over~~  
4 ~~the age of majority who is incapable of giving informed consent and for whom no legal guardian has been~~  
5 ~~appointed;~~

6 ~~(g) the superintendent of the residential facility or his a designee as custodian of a resident under~~  
7 ~~the age of majority for whom there is no parent or legal guardian; or~~

8 ~~(h) the superintendent of the residential facility or his a designee as custodian of a resident of that~~  
9 ~~facility whenever release is required by federal or state law or department of social and rehabilitation~~  
10 ~~services rules.~~

11 ~~(2) Information may not be released by a superintendent or his a designee as set forth in subsection~~  
12 ~~(1)(f), (1)(g), or (1)(h) less than 15 days after sending notice of the proposed release of information to the~~  
13 ~~resident, his the resident's parents or guardian, the attorney who most recently represented the resident,~~  
14 ~~if any, the responsible person appointed by the court, if any, and the court that ordered the admission. If~~  
15 ~~any of the parties so notified objects to the release of information, they may petition the court for a hearing~~  
16 ~~to determine whether the release of information should be allowed. Information may not be released~~  
17 ~~pursuant to subsection (1)(f), (1)(g), or (1)(h) unless it is released to further some legitimate need of the~~  
18 ~~resident or to accomplish a legitimate purpose of the facility that is not inconsistent with the needs and~~  
19 ~~rights of the resident. Information may not be released pursuant to these subsections subsection (1)(f),~~  
20 ~~(1)(g), or (1)(h) except in accordance with written policies consistent with the requirements of this part~~  
21 ~~adopted by the facility. Persons receiving notice of a proposed release of information shall must also receive~~  
22 ~~a copy of the written policy of the facility governing release of information.~~

23 ~~(3) These records must include:~~

24 ~~(a) identification data, including the resident's legal status;~~

25 ~~(b) the resident's history, including but not limited to:~~

26 ~~(i) family data, educational background, and employment record;~~

27 ~~(ii) prior medical history, both physical and mental, including prior institutionalization;~~

28 ~~(c) the resident's grievances, if any;~~

29 ~~(d) an inventory of the resident's life skills, including mode of communication;~~

30 ~~(e) a record of each physical examination that describes the results of the examination;~~

1           ~~(f) a copy of the individual habilitation plan and any modifications thereto to the plan and an~~  
 2 ~~appropriate summary that will guide and assist the resident care workers in implementing the resident's~~  
 3 ~~program habilitation plan;~~

4           ~~(g) the findings made in monthly reviews of the habilitation plan, which findings must include an~~  
 5 ~~analysis of the successes and failures of the habilitation program and direct whatever modifications are~~  
 6 ~~necessary;~~

7           ~~(h) a copy of the postinstitutionalization plan that includes a statement of services needed in the~~  
 8 ~~community and any modifications thereto to the plan and a summary of the steps that have been taken to~~  
 9 ~~implement that plan;~~

10           ~~(i) a medication history and status;~~

11           ~~(j) a summary of each significant contact by a professional person with a resident;~~

12           ~~(k) a summary of the resident's response to his the habilitation plan, prepared by a qualified mental~~  
 13 ~~retardation professional involved in the resident's habilitation and recorded at least monthly. Wherever~~  
 14 ~~possible, such the response must be scientifically documented.~~

15           ~~(l) a monthly summary of the extent and nature of the resident's work activities and the effect of~~  
 16 ~~the activity upon the resident's progress in the habilitation plan;~~

17           ~~(m) a signed order by a qualified mental retardation professional, professional person, or physician~~  
 18 ~~for any physical restraints;~~

19           ~~(n) a description of any extraordinary incident or accident in the facility involving the resident, to~~  
 20 ~~be entered by a staff member noting personal knowledge of the incident or accident or other source of~~  
 21 ~~information, including any reports of investigations of resident's mistreatment;~~

22           ~~(o) a summary of family visits and contacts;~~

23           ~~(p) a summary of attendance and leaves from the facility;~~

24           ~~(q) a record of any seizures, illnesses, injuries, and treatments thereof and immunizations."~~

25  
 26           ~~**Section 10.** Section 53-21-166, MCA, is amended to read:~~

27           ~~**"53-21-166. Records to be confidential — exceptions.** All information obtained and records~~  
 28 ~~prepared in the course of providing any services under this part to individuals under any provision of this~~  
 29 ~~part shall be confidential and privileged matter and shall must remain confidential and privileged after the~~  
 30 ~~individual is discharged from the facility. Except as provided in Title 50, chapter 16, part 5, information and~~

1 records may be disclosed only:

2 (1) ~~in communications between qualified professionals in the provision of services or appropriate~~  
3 ~~referrals;~~

4 (2) ~~when the recipient of services designates persons to whom information or records may be~~  
5 ~~released, provided that if a recipient of services is a ward and his the guardian or conservator designates~~  
6 ~~in writing persons to whom records or information may be disclosed, such the designation shall be is valid~~  
7 ~~in lieu of the designation by the recipient; except that nothing in this This section shall may not be~~  
8 ~~construed to compel a physician, psychologist, social worker, nurse, attorney, or other professional person~~  
9 ~~to reveal information which that has been given to him provided in confidence by members of a patient's~~  
10 ~~family; ;~~

11 (3) ~~to the extent necessary to make claims on behalf of a recipient of aid, insurance, or medical~~  
12 ~~assistance to which he the recipient may be entitled;~~

13 (4) ~~for research if the department has promulgated rules for the conduct of research; ; such The~~  
14 ~~rules shall must include but not be are not limited to the requirement that all researchers must sign an oath~~  
15 ~~of confidentiality; ;~~

16 (5) ~~to the courts as necessary to the administration of justice;~~

17 (6) ~~to persons authorized by an order of court, after notice and opportunity for hearing to the~~  
18 ~~person to whom the record or information pertains and the custodian of the record or information pursuant~~  
19 ~~to the rules of civil procedure;~~

20 (7) ~~to members of the mental disabilities board of visitors or their agents when necessary to~~  
21 ~~perform their functions as set out in 53-21-104; and~~

22 (8) ~~to the protection and advocacy systems authorized under the provisions of 29 U.S.C. 794(e),~~  
23 ~~42 U.S.C. 6042, and 42 U.S.C. 10805."~~

24  
25 ~~NEW SECTION. Section 11. Protection and advocacy system for persons with developmental~~  
26 ~~disabilities designation and authority. (1) A protection and advocacy system for persons with~~  
27 ~~developmental disabilities, as designated by the governor, may be administered in this state under the~~  
28 ~~provisions of 42 U.S.C. 6041 through 6043 for the purpose of protecting the legal and human rights of~~  
29 ~~persons with developmental disabilities.~~

30 (2) ~~Pursuant to 42 U.S.C. 6042, the protection and advocacy system has the authority to:~~

1 ~~(a) pursue legal, administrative, and other appropriate remedies or approaches to ensure the~~  
2 ~~protection of and advocacy for the rights of persons in the state who are or may be eligible for treatment,~~  
3 ~~services, or habilitation or who are being considered for a change in living arrangements, with particular~~  
4 ~~attention to members of ethnic and racial minority groups;~~

5 ~~(b) provide information on and referral to programs and services addressing the needs of persons~~  
6 ~~with developmental disabilities;~~

7 ~~(c) investigate incidents of abuse and neglect of persons with developmental disabilities if the~~  
8 ~~incidents are reported to the system or if there is probable cause to believe that the incidents occurred; and~~

9 ~~(d) educate policymakers.~~

10 ~~(3) Pursuant to 42 U.S.C. 6042, the protection and advocacy system has access:~~

11 ~~(a) at all reasonable times and locations to any person with a developmental disability who is a~~  
12 ~~resident in a facility that is providing services, supports, and other assistance to the resident;~~

13 ~~(b) to all records of:~~

14 ~~(i) any person with a developmental disability who is a client of the system if the person or the~~  
15 ~~person's legal guardian, conservator, or other legal representative has authorized the system to have access~~  
16 ~~to the records;~~

17 ~~(ii) any person with a developmental disability who:~~

18 ~~(A) by reason of the person's mental or physical condition is unable to authorize the system to~~  
19 ~~have access to the records;~~

20 ~~(B) does not have a legal guardian, conservator, or other legal representative or for whom the legal~~  
21 ~~guardian is the state; and~~

22 ~~(C) with respect to whom a complaint has been received by the system or with respect to whom~~  
23 ~~as a result of monitoring or other activities there is probable cause to believe that the person has been~~  
24 ~~subject to abuse or neglect; and~~

25 ~~(iii) any person with a developmental disability who has a legal guardian, conservator, or other legal~~  
26 ~~representative with respect to whom a complaint has been received by the system or with respect to whom~~  
27 ~~there is probable cause to believe that the health or safety of the person with a developmental disability~~  
28 ~~is in serious and immediate jeopardy when:~~

29 ~~(A) the representative has been contacted by the system upon receipt of the name and address~~  
30 ~~of the representative;~~

1 ~~{B} the system has offered assistance to the representative to resolve the situation; and~~  
 2 ~~{C} the representative has failed or refused to act on behalf of the person with a developmental~~  
 3 ~~disability.~~

4 ~~{4} Pursuant to 42 U.S.C. 6042, the term "records" includes but is not limited to:~~

5 ~~{a} reports prepared or received by any staff person of a facility rendering care or treatment;~~

6 ~~{b} reports prepared by an agency or staff person charged with investigating reports of incidents~~  
 7 ~~of abuse, neglect, injury, or death occurring at the facility that describes incidents of abuse, neglect, injury,~~  
 8 ~~or death occurring at the facility and the steps taken to investigate the incidents; and~~

9 ~~{c} discharge planning records.~~

10 ~~{5} All information received under this section must be kept confidential as required by 45 CFR~~  
 11 ~~1386.21(b).~~

12 ~~{6} The state shall provide to the protection and advocacy system a copy of each annual survey~~  
 13 ~~report and plan of corrections for cited deficiencies made pursuant to section 1902(a)(31) of the federal~~  
 14 ~~Social Security Act with respect to any intermediate care facility for the developmentally disabled in the~~  
 15 ~~state within 30 days after completion of each report or plan, as required by 42 U.S.C. 6042.~~

16 ~~{7} Pursuant to 42 U.S.C. 6042, the protection and advocacy system authorized in this section is~~  
 17 ~~independent of any agency that provides treatment, services, or habilitation to persons with developmental~~  
 18 ~~disabilities.~~

19  
 20 ~~**NEW SECTION. Section 12. Protection and advocacy system for persons with disabilities —**~~  
 21 ~~**designation and authority.** (1) A protection and advocacy system for persons with disabilities may be~~  
 22 ~~administered in the state under the provisions of 29 U.S.C. 794(e) for the purpose of protecting the legal~~  
 23 ~~and human rights of persons with disabilities who are ineligible for:~~

24 ~~{a} client assistance under section 112 of the federal Rehabilitation Act of 1973; and~~

25 ~~{b} protection and advocacy programs under part C of the federal Developmental Disabilities~~  
 26 ~~Assistance and Bill of Rights Act, 42 U.S.C 6041, et seq., and the federal Protection and Advocacy for~~  
 27 ~~Mentally Ill Individuals Act of 1986, 42 U.S.C. 10801, et seq.~~

28 ~~{2} Pursuant to 29 U.S.C. 794(e), the protection and advocacy system:~~

29 ~~{a} has the same general authority, including access to records and program income, as set forth~~  
 30 ~~in part C of the federal Developmental Disabilities Assistance and Bill of Rights Act, 42 U.S.C 6041, et seq.;~~

1           ~~(b) has the authority to pursue legal, administrative, and other appropriate remedies or approaches~~  
 2 ~~to ensure the protection of and advocacy for the rights of persons in the state who are or may be ineligible~~  
 3 ~~for protection and advocacy programs under part C of the federal Developmental Disabilities Assistance and~~  
 4 ~~Bill of Rights Act, 42 U.S.C. 6041, et seq., and the federal Protection and Advocacy for Mentally Ill~~  
 5 ~~Individuals Act of 1986, 42 U.S.C. 10801, et seq., or for client assistance programs under section 112 of~~  
 6 ~~the federal Rehabilitation Act of 1973; and~~

7           ~~(e) shall provide information on and referral to programs and services addressing the needs of~~  
 8 ~~persons with disabilities in the state.~~

9  
 10           **NEW SECTION. Section 7. Name change -- instructions to code commissioner.** Wherever the  
 11 phrase "developmentally disabled person" or a similar phrase appears in Title 52, chapter 3, part 8, the  
 12 code commissioner is directed to change the phrase to "person with a developmental disability" or a similar  
 13 phrase, as that term is defined in 52-3-803.

14  
 15           **NEW SECTION. Section 8. Notification of tribal governments.** The secretary of state shall send  
 16 a copy of [this act] to the tribal chairperson of each of the seven Montana reservations and to the tribal  
 17 chairperson of the Little Shell tribe.

18  
 19           **NEW SECTION. Section 9. Repealer.** Sections 52-4-101, 52-4-102, 52-4-103, 52-4-104,  
 20 52-4-105, 52-4-106, 52-4-107, 52-4-108, and 52-4-110, MCA, are repealed.

21  
 22           ~~**NEW SECTION. Section 16. Codification instruction.** [Sections 11 and 12] are intended to be~~  
 23 ~~codified as an integral part of Title 53, chapter 20, and the provisions of Title 53, chapter 20, apply to~~  
 24 ~~[sections 11 and 12].~~

25  
 26           **NEW SECTION. Section 10. Two-thirds vote required.** Because section 52-3-814(2) limits  
 27 governmental liability, Article II, section 18, of the Montana constitution requires a vote of two-thirds of  
 28 the members of each house of the legislature for passage. If \_\_\_ Bill No. \_\_\_ [LC 143] does not receive the  
 29 required two-thirds vote, then 52-3-814(2) is void.





## 1 HOUSE BILL NO. 366

2 INTRODUCED BY KASTEN, CHRISTIAENS

3 BY REQUEST OF THE DEPARTMENT OF FAMILY SERVICES  
4

5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS RELATED TO ADULT  
6 PROTECTIVE SERVICES; INCORPORATING PROTECTIVE SERVICES FOR PERSONS WITH  
7 DEVELOPMENTAL DISABILITIES INTO THE MONTANA ELDER AND DEVELOPMENTALLY DISABLED ABUSE  
8 PREVENTION ACT; ~~REQUIRING CERTAIN ADVOCATES OF PERSONS WITH DEVELOPMENTAL~~  
9 ~~DISABILITIES TO REPORT SUSPECTED ABUSE, SEXUAL ABUSE, NEGLECT, OR EXPLOITATION;~~  
10 EXPANDING THE LIST OF PERSONS TO WHOM CERTAIN CONFIDENTIAL INFORMATION MAY BE  
11 RELEASED; GRANTING LIMITED IMMUNITY TO PERSONS WHO PROVIDE OR USE BACKGROUND OR  
12 EMPLOYMENT SCREENING INFORMATION REGARDING AN EMPLOYEE'S OR VOLUNTEER'S HISTORY OF  
13 ABUSE, SEXUAL ABUSE, NEGLECT, OR EXPLOITATION IN MAKING AN EMPLOYMENT DECISION;  
14 REVISING DEFINITIONS; ~~INCORPORATING FEDERAL PROVISIONS REGARDING PROTECTION AND~~  
15 ~~ADVOCACY FOR PERSONS WITH DEVELOPMENTAL DISABILITIES AND ACCESS BY THE DESIGNATED~~  
16 ~~PROTECTION ADVOCACY SYSTEM;~~ AMENDING SECTIONS ~~50-16-603~~, 52-3-202, 52-3-207, 52-3-803,  
17 52-3-804, ~~52-3-811~~, 52-3-813, AND 52-3-814, ~~53-20-161~~, ~~AND~~ ~~53-21-166~~, MCA; REPEALING SECTIONS  
18 52-4-101, 52-4-102, 52-4-103, 52-4-104, 52-4-105, 52-4-106, 52-4-107, 52-4-108, AND 52-4-110,  
19 MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

SENATE STANDING COMMITTEE REPORT

Page 1 of 1  
March 22, 1995

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration HB 366 (third reading copy -- blue), respectfully report that HB 366 be amended as follows and as so amended be concurred in

Signed:   
Senator Bruce Crippen, Chair

That such amendments read:

1. Page 7, line 21.


Following: "department"

Strike: "i"

Insert: ". A request for information under this subsection must be made in writing."

-END-

HB 366

  
Amd. Coord.  
Sec. of Senate

  
Senator Carrying Bill

SENATE

## 1 HOUSE BILL NO. 366

2 INTRODUCED BY KASTEN, CHRISTIAENS

3 BY REQUEST OF THE DEPARTMENT OF FAMILY SERVICES  
4

5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS RELATED TO ADULT  
6 PROTECTIVE SERVICES; INCORPORATING PROTECTIVE SERVICES FOR PERSONS WITH  
7 DEVELOPMENTAL DISABILITIES INTO THE MONTANA ELDER AND DEVELOPMENTALLY DISABLED ABUSE  
8 PREVENTION ACT; ~~REQUIRING CERTAIN ADVOCATES OF PERSONS WITH DEVELOPMENTAL~~  
9 ~~DISABILITIES TO REPORT SUSPECTED ABUSE, SEXUAL ABUSE, NEGLECT, OR EXPLOITATION;~~  
10 EXPANDING THE LIST OF PERSONS TO WHOM CERTAIN CONFIDENTIAL INFORMATION MAY BE  
11 RELEASED; GRANTING LIMITED IMMUNITY TO PERSONS WHO PROVIDE OR USE BACKGROUND OR  
12 EMPLOYMENT SCREENING INFORMATION REGARDING AN EMPLOYEE'S OR VOLUNTEER'S HISTORY OF  
13 ABUSE, SEXUAL ABUSE, NEGLECT, OR EXPLOITATION IN MAKING AN EMPLOYMENT DECISION;  
14 REVISING DEFINITIONS; ~~INCORPORATING FEDERAL PROVISIONS REGARDING PROTECTION AND~~  
15 ~~ADVOCACY FOR PERSONS WITH DEVELOPMENTAL DISABILITIES AND ACCESS BY THE DESIGNATED~~  
16 ~~PROTECTION ADVOCACY SYSTEM;~~ AMENDING SECTIONS ~~50-16-603~~, 52-3-202, 52-3-207, 52-3-803,  
17 52-3-804, ~~52-3-811~~, 52-3-813, AND 52-3-814, ~~52-20-161~~, AND ~~52-21-166~~, MCA; REPEALING SECTIONS  
18 52-4-101, 52-4-102, 52-4-103, 52-4-104, 52-4-105, 52-4-106, 52-4-107, 52-4-108, AND 52-4-110,  
19 MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

20  
21 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:  
2223 ~~Section 1. Section 50-16-603, MCA, is amended to read:~~24 ~~"50-16-603. Confidentiality of health care information. Health care information in the possession~~  
25 ~~of the department, a local board, a local health officer, or their authorized representatives may not be~~  
26 ~~released except:~~27 ~~(1) for statistical purposes, if no identification of individuals can be made from the information~~  
28 ~~released;~~29 ~~(2) when the health care information pertains to a person who has given written consent to the~~  
30 ~~release and has specified the type of information to be released and the person or entity to whom it may~~

1 be released;

2 ~~(3) to medical personnel in a medical emergency as necessary to protect the health, life, or~~  
 3 ~~well-being of the named person;~~

4 ~~(4) as allowed by Title 50, chapters 17 and 18, section 11, section 12, and 53-21-169;~~

5 ~~(5) to another state or local public health agency, including those in other states, whenever~~  
 6 ~~necessary to continue health services to the named person or to undertake public health efforts to prevent~~  
 7 ~~or interrupt the transmission of a communicable disease;~~

8 ~~(6) in the case of a minor, as required by 41-3-201 or pursuant to an investigation under 41-3-202.~~  
 9 ~~If the health care information is required in a subsequent court proceeding involving child abuse, the~~  
 10 ~~information may be disclosed only in camera and documents containing the information must be sealed by~~  
 11 ~~the court upon conclusion of the proceedings.~~

12 ~~(7) to medical personnel, the department, a local health officer or board, or a district court when~~  
 13 ~~necessary to implement or enforce state statutes or state or local health rules concerning the prevention~~  
 14 ~~or control of diseases designated as reportable pursuant to 50-1-202, if the release does not conflict with~~  
 15 ~~any other provision contained in this part."~~

16

17 **Section 1.** Section 52-3-202, MCA, is amended to read:

18 **"52-3-202. Definitions.** As used in this part, the following definitions apply:

19 (1) "Aged person" means an aged person as defined by the department.

20 (2) "Department" means the department of family services.

21 (3) "Disabled adult" means a person 18 years of age or ~~over~~ older who is defined by the  
 22 department as disabled ~~but not or who is~~ developmentally disabled, as defined in 53-20-102.

23 (4) "Protective services" means assistance to an aged person or disabled adult in obtaining the  
 24 services offered by the department."

25

26 **Section 2.** Section 52-3-207, MCA, is amended to read:

27 **"52-3-207. Protective services not creating guardianship or conservatorship.** (1) The provision  
 28 of protective services does not create a guardianship or conservatorship relationship between the  
 29 department and the aged person or disabled adult unless a guardianship or conservatorship is created in  
 30 accordance with the requirements of Title 72, chapter 5, part 3 or 4.

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

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

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

6  
 7           **Section 3.** Section 52-3-803, MCA, is amended to read:

8           **"52-3-803. Definitions.** As used in this part, the following definitions apply:

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

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

15           (3) "Exploitation" means the unreasonable use of an older person or a ~~developmentally disabled~~  
 16 person with a developmental disability, the person's money, or the person's property to the advantage of  
 17 another by means of duress, menace, fraud, or undue influence.

18           (4)(3) "Incapacitated person" has the meaning given in 72-5-101.

19           (5)(4) "Long-term care facility" means a facility defined in 50-5-101.

20           (6)(5) "Mental injury" means an identifiable and substantial impairment of an older person's  
 21 intellectual or psychological functioning or well-being.

22           (7)(6) "Neglect" means the failure of a guardian; ~~an~~ employee of a public or private residential  
 23 institution, facility, home, or agency; ~~or~~ any person legally responsible in a residential setting for the  
 24 welfare of an older person's person or a ~~developmentally disabled person's welfare~~ person with a  
 25 developmental disability to provide, to the extent of legal responsibility, food, shelter, clothing, or services  
 26 necessary to maintain the physical or mental health of the older person or the ~~developmentally disabled~~  
 27 person with a developmental disability.

28           (8)(7) "Older person" means a person who is at least 60 years of age. For purposes of prosecution  
 29 under 52-3-825(2), the person 60 years of age or older must be unable to provide personal protection from  
 30 abuse, sexual abuse, neglect, or exploitation because of a mental or physical impairment or because of

1 frailties or dependencies brought about by advanced age.

2 (8) "Person with a developmental disability" means a person 18 years of age or older who is  
3 developmentally disabled, as defined in 53-20-102.

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

6 (10) "Sexual abuse" means the commission of sexual assault, sexual intercourse without consent,  
7 indecent exposure, deviate sexual conduct, or incest, as described in Title 45, chapter 5, part 5."  
8

9 **Section 4.** Section 52-3-804, MCA, is amended to read:

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

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

14 (3) The department shall, when appropriate, provide protective services under Title 52, chapter 3,  
15 part 2, ~~or under Title 52, chapter 4, part 1,~~ for a an older person or a person with a developmental disability  
16 alleged to have been abused, sexually abused, neglected, or exploited.

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

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

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

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

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

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

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

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

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

6  
7 ~~Section 6. Section 52-3-811, MCA, is amended to read:~~

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

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

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

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

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

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

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

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

30 (b) an osteopath, dentist, denturist, chiropractor, optometrist, podiatrist, medical examiner,



1 ~~coroner, or any other health or mental health professional;~~

2 ~~(e) an ambulance attendant;~~

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

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

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

10 ~~(g) a peace officer or other law enforcement official; and~~

11 ~~(h) a person providing services to an older person or a developmentally disabled person with a~~  
12 ~~developmental disability pursuant to a contract with a state or federal agency; and~~

13 ~~(i) protection and advocacy systems authorized under the provisions of 20 U.S.C. 794(c), 42~~  
14 ~~U.S.C. 6042, and 42 U.S.C. 10805, unless disclosure would violate provisions of state or federal law.~~

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

16  
17 **Section 5.** Section 52-3-813, MCA, is amended to read:

18 **"52-3-813. Confidentiality.** (1) The case records of the departments of social and rehabilitation  
19 services and family services, their local affiliate, the county attorney, and the court, concerning actions  
20 taken under this part, and all reports made pursuant to 52-3-811 must be kept confidential except as  
21 provided by this section.

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

24 (a) a physician who is caring for an older person or a ~~developmentally disabled person~~ with a  
25 developmental disability who the physician reasonably believes was abused, sexually abused, neglected,  
26 or exploited;

27 (b) a legal guardian or conservator of the older person or the ~~developmentally disabled person~~ with  
28 a developmental disability if the identity of the person who made the report is protected and the legal  
29 guardian or conservator is not the person suspected of the abuse, sexual abuse, neglect, or exploitation;

30 (c) the person named in the report as allegedly being abused, sexually abused, neglected, or

1 exploited if that person is not legally incompetent;

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

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

8 (f) an authorized representative of a provider of services to a person alleged to be an abused,  
9 sexually abused, neglected, or exploited older person or ~~developmentally disabled~~ person with a  
10 developmental disability; if:

11 (i) the department and the provider are parties to a contested case proceeding under Title 2,  
12 chapter 4, part 6, resulting from action by the department adverse to the license of the provider and if  
13 information contained in the records or reports of the department is relevant to the case; ~~or~~

14 (ii) disclosure to the provider is determined by the department to be necessary to protect an interest  
15 of a person alleged to be an abused, sexually abused, neglected, or exploited older person or  
16 ~~developmentally disabled~~ person with a developmental disability; or

17 (iii) the person is carrying out background screening or employment- or volunteer-related screening  
18 of current or prospective employees or volunteers who have or may have unsupervised contact with an  
19 older person or a person with a developmental disability through employment or volunteer activities if the  
20 disclosure is limited to information that indicates a risk to an older person or a person with a developmental  
21 disability posed by the employee or volunteer, as determined by the department; A REQUEST FOR  
22 INFORMATION UNDER THIS SUBSECTION MUST BE MADE IN WRITING.

23 (g) an employee of the department or the department of social and rehabilitation services if  
24 disclosure of the record or report is necessary for administration of a program designed to benefit a person  
25 alleged to be an abused, sexually abused, neglected, or exploited older person or ~~developmentally disabled~~  
26 person with a developmental disability; ~~and~~

27 (h) an authorized representative of a guardianship program approved by the department if the  
28 department determines that disclosure to the program or to a person designated by the program is  
29 necessary for the proper provision of guardianship services to a person alleged to be an abused, sexually  
30 abused, neglected, or exploited older person or ~~developmentally disabled~~ person with a developmental

1 disability;

2 (i) protection and advocacy systems authorized under the provisions of 29 U.S.C. 794(e), 42  
3 U.S.C. 6042 and 42 U.S.C. 10805;

4 (j) the news media if disclosure is limited to confirmation of factual information regarding how the  
5 case was handled and does not violate the privacy rights of the older person, person with a developmental  
6 disability, or alleged perpetrator of abuse, sexual abuse, neglect, or exploitation, as determined by the  
7 department;

8 (k) a coroner or medical examiner who is determining the cause of death of an older person or a  
9 person with a developmental disability;

10 (l) a person about whom a report has been made and that person's attorney with respect to  
11 relevant records pertaining to that person only without disclosing the identity of the person who made the  
12 report or any other person whose safety might be endangered through disclosure;

13 (m) an agency, including a probation or parole agency, that is legally responsible for the supervision  
14 of an alleged perpetrator of abuse, sexual abuse, neglect, or exploitation of an older person or a person with  
15 a developmental disability; and

16 (n) a department, agency, or organization, including a federal agency, military reservation, or tribal  
17 organization, that is legally authorized to receive, inspect, or investigate reports of abuse, sexual abuse,  
18 neglect, or exploitation of an older person or a person with a developmental disability and that meets the  
19 disclosure criteria contained in this section.

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

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

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

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

28 (4) If the person who is reported to have abused, sexually abused, neglected, or exploited an older  
29 person or a ~~developmentally disabled~~ person with a developmental disability is the holder of a license,  
30 permit, or certificate issued by the department of commerce under the provisions of Title 37 or issued by

1 any other entity of state government, the report may be submitted to the entity that issued the license,  
2 permit, or certificate."

3

4 **Section 6.** Section 52-3-814, MCA, is amended to read:

5 **"52-3-814. Immunity from civil and criminal liability.** (1) ~~Any~~ A person who makes a report  
6 required or authorized to be made under 52-3-811 is immune from civil or criminal liability ~~which~~ that might  
7 otherwise be incurred or imposed as a result of ~~such a~~ the report unless the report is false in any material  
8 respect and the person acted in bad faith or with malicious purpose.

9 (2) A person who provides information or who uses information obtained pursuant to 52-3-813(2)  
10 to refuse to hire or to discharge an employee, volunteer, or other person who through their employment  
11 or volunteer activities may have unsupervised contact with an older person or a person with a  
12 developmental disability is immune from civil liability unless the person providing or using the information  
13 acts in bad faith or with malicious purpose."

14

15 ~~**Section 9.** Section 53-20-161, MCA, is amended to read:~~

16 ~~**"53-20-161. Maintenance of records.** (1) Complete records for each resident must be maintained~~  
17 ~~and must be readily available to persons who are directly involved with the particular resident, to the~~  
18 ~~protection and advocacy systems authorized under the provisions of 20 U.S.C. 794(e), 42 U.S.C. 6042,~~  
19 ~~and 42 U.S.C. 10805, and to the mental disabilities board of visitors. All information contained in a~~  
20 ~~resident's records must be considered privileged and confidential. The parents or guardian, the responsible~~  
21 ~~person appointed by the court, the resident's attorney, and any person properly authorized in writing by~~  
22 ~~the resident, if the resident is capable of giving informed consent, or by his the resident's parents or~~  
23 ~~guardian or the responsible person must be permitted access to the resident's records. Information Except~~  
24 ~~as authorized in this subsection, information may not be released from the records of a resident or former~~  
25 ~~resident of the residential facility unless the release of the information has been properly authorized in~~  
26 ~~writing by:~~

27 ~~(a) the court;~~

28 ~~(b) the resident or former resident if he is over the age of majority and is capable of giving informed~~  
29 ~~consent;~~

30 ~~(c) the parents or guardian in charge of a resident under the age of 12 years of age;~~

1 ~~(d) the parents or guardian in charge of a resident over the age of 12 years of age or older but~~  
 2 ~~under the age of majority and the resident if the resident is capable of giving informed consent;~~

3 ~~(e) the guardian of a resident over the age of majority who is incapable of giving informed consent;~~

4 ~~(f) the superintendent of the residential facility or his a designee as custodian of a resident over~~  
 5 ~~the age of majority who is incapable of giving informed consent and for whom no legal guardian has been~~  
 6 ~~appointed;~~

7 ~~(g) the superintendent of the residential facility or his a designee as custodian of a resident under~~  
 8 ~~the age of majority for whom there is no parent or legal guardian; or~~

9 ~~(h) the superintendent of the residential facility or his a designee as custodian of a resident of that~~  
 10 ~~facility whenever release is required by federal or state law or department of social and rehabilitation~~  
 11 ~~services rules.~~

12 ~~(2) Information may not be released by a superintendent or his a designee as set forth in subsection~~  
 13 ~~(1)(f), (1)(g), or (1)(h) less than 15 days after sending notice of the proposed release of information to the~~  
 14 ~~resident, his the resident's parents or guardian, the attorney who most recently represented the resident,~~  
 15 ~~if any, the responsible person appointed by the court, if any, and the court that ordered the admission. If~~  
 16 ~~any of the parties so notified objects to the release of information, they may petition the court for a hearing~~  
 17 ~~to determine whether the release of information should be allowed. Information may not be released~~  
 18 ~~puruant to subsection (1)(f), (1)(g), or (1)(h) unless it is released to further some legitimate need of the~~  
 19 ~~resident or to accomplish a legitimate purpose of the facility that is not inconsistent with the needs and~~  
 20 ~~rights of the resident. Information may not be released puruant to these subsections subsection (1)(f),~~  
 21 ~~(1)(g), or (1)(h) except in accordance with written policies consistent with the requirements of this part~~  
 22 ~~adopted by the facility. Persons receiving notice of a proposed release of information shall must also receive~~  
 23 ~~a copy of the written policy of the facility governing release of information.~~

24 ~~(3) These records must include:~~

25 ~~(a) identification data, including the resident's legal status;~~

26 ~~(b) the resident's history, including but not limited to:~~

27 ~~(i) family data, educational background, and employment record;~~

28 ~~(ii) prior medical history, both physical and mental, including prior institutionalization;~~

29 ~~(c) the resident's grievances, if any;~~

30 ~~(d) an inventory of the resident's life skills, including mode of communication;~~

1 ~~(e) a record of each physical examination that describes the results of the examination;~~

2 ~~(f) a copy of the individual habilitation plan and any modifications thereto to the plan and an~~  
 3 ~~appropriate summary that will guide and assist the resident care workers in implementing the resident's~~  
 4 ~~program habilitation plan;~~

5 ~~(g) the findings made in monthly reviews of the habilitation plan, which findings must include an~~  
 6 ~~analysis of the successes and failures of the habilitation program and direct whatever modifications are~~  
 7 ~~necessary;~~

8 ~~(h) a copy of the postinstitutionalization plan that includes a statement of services needed in the~~  
 9 ~~community and any modifications thereto to the plan and a summary of the steps that have been taken to~~  
 10 ~~implement that plan;~~

11 ~~(i) a medication history and status;~~

12 ~~(j) a summary of each significant contact by a professional person with a resident;~~

13 ~~(k) a summary of the resident's response to his the habilitation plan, prepared by a qualified mental~~  
 14 ~~retardation professional involved in the resident's habilitation and recorded at least monthly. Wherever~~  
 15 ~~possible, such the response must be scientifically documented.~~

16 ~~(l) a monthly summary of the extent and nature of the resident's work activities and the effect of~~  
 17 ~~the activity upon the resident's progress in the habilitation plan;~~

18 ~~(m) a signed order by a qualified mental retardation professional, professional person, or physician~~  
 19 ~~for any physical restraints;~~

20 ~~(n) a description of any extraordinary incident or accident in the facility involving the resident, to~~  
 21 ~~be entered by a staff member noting personal knowledge of the incident or accident or other source of~~  
 22 ~~information, including any reports of investigations of resident's mistreatment;~~

23 ~~(o) a summary of family visits and contacts;~~

24 ~~(p) a summary of attendance and leaves from the facility;~~

25 ~~(q) a record of any seizures, illnesses, injuries, and treatments thereof and immunizations."~~

26  
 27 **Section 10.** ~~Section 53-21-166, MCA, is amended to read:~~

28 ~~"53-21-166. Records to be confidential — exceptions. All information obtained and records~~  
 29 ~~prepared in the course of providing any services under this part to individuals under any provision of this~~  
 30 ~~part shall be confidential and privileged matter and shall must remain confidential and privileged after the~~

1 individual is discharged from the facility. Except as provided in Title 50, chapter 16, part 5, information and  
 2 records may be disclosed only:

3 ~~(1) in communications between qualified professionals in the provision of services or appropriate~~  
 4 ~~referrals;~~

5 ~~(2) when the recipient of services designates persons to whom information or records may be~~  
 6 ~~released, provided that if a recipient of services is a ward and his the guardian or conservator designates~~  
 7 ~~in writing persons to whom records or information may be disclosed, such the designation shall be is valid~~  
 8 ~~in lieu of the designation by the recipient; except that nothing in this This section shall may not be~~  
 9 ~~construed to compel a physician, psychologist, social worker, nurse, attorney, or other professional person~~  
 10 ~~to reveal information which that has been given to him provided in confidence by members of a patient's~~  
 11 ~~family; ;~~

12 ~~(3) to the extent necessary to make claims on behalf of a recipient of aid, insurance, or medical~~  
 13 ~~assistance to which he the recipient may be entitled;~~

14 ~~(4) for research if the department has promulgated rules for the conduct of research; ; such The~~  
 15 ~~rules shall must include but not be are not limited to the requirement that all researchers must sign an oath~~  
 16 ~~of confidentiality; ;~~

17 ~~(5) to the courts as necessary to the administration of justice;~~

18 ~~(6) to persons authorized by an order of court, after notice and opportunity for hearing to the~~  
 19 ~~person to whom the record or information pertains and the custodian of the record or information pursuant~~  
 20 ~~to the rules of civil procedure;~~

21 ~~(7) to members of the mental disabilities board of visitors or their agents when necessary to~~  
 22 ~~perform their functions as set out in 53-21-104; and~~

23 ~~(8) to the protection and advocacy systems authorized under the provisions of 20 U.S.C. 794(e),~~  
 24 ~~42 U.S.C. 6042, and 42 U.S.C. 10805."~~

25  
 26 ~~NEW SECTION. Section 11. Protection and advocacy system for persons with developmental~~  
 27 ~~disabilities designation and authority. (1) A protection and advocacy system for persons with~~  
 28 ~~developmental disabilities, as designated by the governor, may be administered in this state under the~~  
 29 ~~provisions of 42 U.S.C. 6041 through 6043 for the purpose of protecting the legal and human rights of~~  
 30 ~~persons with developmental disabilities.~~

- 1           ~~(2) Pursuant to 42 U.S.C. 6042, the protection and advocacy system has the authority to:~~
- 2           ~~(a) pursue legal, administrative, and other appropriate remedies or approaches to ensure the~~
- 3 ~~protection of and advocacy for the rights of persons in the state who are or may be eligible for treatment,~~
- 4 ~~services, or habilitation or who are being considered for a change in living arrangements, with particular~~
- 5 ~~attention to members of ethnic and racial minority groups;~~
- 6           ~~(b) provide information on and referral to programs and services addressing the needs of persons~~
- 7 ~~with developmental disabilities;~~
- 8           ~~(c) investigate incidents of abuse and neglect of persons with developmental disabilities if the~~
- 9 ~~incidents are reported to the system or if there is probable cause to believe that the incidents occurred; and~~
- 10           ~~(d) educate policymakers.~~
- 11           ~~(3) Pursuant to 42 U.S.C. 6042, the protection and advocacy system has access:~~
- 12           ~~(a) at all reasonable times and locations to any person with a developmental disability who is a~~
- 13 ~~resident in a facility that is providing services, supports, and other assistance to the resident;~~
- 14           ~~(b) to all records of:~~
- 15           ~~(i) any person with a developmental disability who is a client of the system if the person or the~~
- 16 ~~person's legal guardian, conservator, or other legal representative has authorized the system to have access~~
- 17 ~~to the records;~~
- 18           ~~(ii) any person with a developmental disability who:~~
- 19           ~~(A) by reason of the person's mental or physical condition is unable to authorize the system to~~
- 20 ~~have access to the records;~~
- 21           ~~(B) does not have a legal guardian, conservator, or other legal representative or for whom the legal~~
- 22 ~~guardian is the state; and~~
- 23           ~~(C) with respect to whom a complaint has been received by the system or with respect to whom~~
- 24 ~~as a result of monitoring or other activities there is probable cause to believe that the person has been~~
- 25 ~~subject to abuse or neglect; and~~
- 26           ~~(iii) any person with a developmental disability who has a legal guardian, conservator, or other legal~~
- 27 ~~representative with respect to whom a complaint has been received by the system or with respect to whom~~
- 28 ~~there is probable cause to believe that the health or safety of the person with a developmental disability~~
- 29 ~~is in serious and immediate jeopardy when:~~
- 30           ~~(A) the representative has been contacted by the system upon receipt of the name and address~~



1 of the representative;

2 ~~(B) the system has offered assistance to the representative to resolve the situation; and~~

3 ~~(C) the representative has failed or refused to act on behalf of the person with a developmental~~  
4 ~~disability.~~

5 ~~(4) Pursuant to 42 U.S.C. 6042, the term "records" includes but is not limited to:~~

6 ~~(a) reports prepared or received by any staff person of a facility rendering care or treatment;~~

7 ~~(b) reports prepared by an agency or staff person charged with investigating reports of incidents~~  
8 ~~of abuse, neglect, injury, or death occurring at the facility that describes incidents of abuse, neglect, injury,~~  
9 ~~or death occurring at the facility and the steps taken to investigate the incidents; and~~

10 ~~(c) discharge planning records.~~

11 ~~(5) All information received under this section must be kept confidential as required by 45 CFR~~  
12 ~~1386.21(b).~~

13 ~~(6) The state shall provide to the protection and advocacy system a copy of each annual survey~~  
14 ~~report and plan of corrections for cited deficiencies made pursuant to section 1902(a)(31) of the federal~~  
15 ~~Social Security Act with respect to any intermediate care facility for the developmentally disabled in the~~  
16 ~~state within 30 days after completion of each report or plan, as required by 42 U.S.C. 6042.~~

17 ~~(7) Pursuant to 42 U.S.C. 6042, the protection and advocacy system authorized in this section is~~  
18 ~~independent of any agency that provides treatment, services, or habilitation to persons with developmental~~  
19 ~~disabilities.~~

20  
21 ~~**NEW SECTION. Section 12. Protection and advocacy system for persons with disabilities—**~~  
22 ~~**designation and authority.** (1) A protection and advocacy system for persons with disabilities may be~~  
23 ~~administered in the state under the provisions of 29 U.S.C. 794(e) for the purpose of protecting the legal~~  
24 ~~and human rights of persons with disabilities who are ineligible for:~~

25 ~~(a) client assistance under section 112 of the federal Rehabilitation Act of 1973; and~~

26 ~~(b) protection and advocacy programs under part C of the federal Developmental Disabilities~~  
27 ~~Assistance and Bill of Rights Act, 42 U.S.C 6041, et seq., and the federal Protection and Advocacy for~~  
28 ~~Mentally Ill Individuals Act of 1986, 42 U.S.C. 10801, et seq.~~

29 ~~(2) Pursuant to 29 U.S.C. 794(e), the protection and advocacy system:~~

30 ~~(a) has the same general authority, including access to records and program income, as set forth~~

1 ~~in part C of the federal Developmental Disabilities Assistance and Bill of Rights Act, 42 U.S.C. 6041, et seq.;~~

2 ~~(b) has the authority to pursue legal, administrative, and other appropriate remedies or approaches~~  
 3 ~~to ensure the protection of and advocacy for the rights of persons in the state who are or may be ineligible~~  
 4 ~~for protection and advocacy programs under part C of the federal Developmental Disabilities Assistance and~~  
 5 ~~Bill of Rights Act, 42 U.S.C. 6041, et seq., and the federal Protection and Advocacy for Mentally Ill~~  
 6 ~~Individuals Act of 1986, 42 U.S.C. 10801, et seq., or for client assistance programs under section 112 of~~  
 7 ~~the federal Rehabilitation Act of 1973; and~~

8 ~~(c) shall provide information on and referral to programs and services addressing the needs of~~  
 9 ~~persons with disabilities in the state.~~

10

11 **NEW SECTION. Section 7. Name change -- instructions to code commissioner.** Wherever the  
 12 phrase "developmentally disabled person" or a similar phrase appears in Title 52, chapter 3, part 8, the  
 13 code commissioner is directed to change the phrase to "person with a developmental disability" or a similar  
 14 phrase, as that term is defined in 52-3-803.

15

16 **NEW SECTION. Section 8. Notification of tribal governments.** The secretary of state shall send  
 17 a copy of [this act] to the tribal chairperson of each of the seven Montana reservations and to the tribal  
 18 chairperson of the Little Shell tribe.

19

20 **NEW SECTION. Section 9. Repealer.** Sections 52-4-101, 52-4-102, 52-4-103, 52-4-104,  
 21 52-4-105, 52-4-106, 52-4-107, 52-4-108, and 52-4-110, MCA, are repealed.

22

23 ~~**NEW SECTION. Section 16. Codification instruction.** [Sections 11 and 12] are intended to be~~  
 24 ~~codified as an integral part of Title 53, chapter 20, and the provisions of Title 53, chapter 20, apply to~~  
 25 ~~[sections 11 and 12].~~

26

27 **NEW SECTION. Section 10. Two-thirds vote required.** Because section 52-3-814(2) limits  
 28 governmental liability, Article II, section 18, of the Montana constitution requires a vote of two-thirds of  
 29 the members of each house of the legislature for passage. If \_\_\_ Bill No. \_\_\_ [LC 143] does not receive the  
 30 required two-thirds vote, then 52-3-814(2) is void.

