

HOUSE BILL NO. 532

INTRODUCED BY B. MERCER

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATED TO THE ABUSE, NEGLECT, OR EXPLOITATION OF INCAPACITATED PERSONS AND VULNERABLE ADULTS; PROVIDING FOR A CRIME OF ABUSE, SEXUAL ABUSE, OR NEGLECT; PROVIDING FOR A CRIME OF FAILURE TO REPORT OR FALSE REPORTING; PROVIDING FOR A CRIME OF EXPLOITATION; REVISING CRIMES RELATED TO THEFT OF IDENTITY; PROVIDING DEFINITIONS; AMENDING SECTIONS 44-15-103, 45-6-332, 46-16-222, 46-18-104, 46-18-111, 46-23-502, 46-23-509, AND 52-3-803, MCA; AND REPEALING SECTIONS 45-6-333 AND 52-3-825, MCA."

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

NEW SECTION. **Section 1. Definitions.** As used in [sections 1 through 4], unless the context clearly indicates otherwise, the following definitions apply:

- (1) (a) "Abuse" means:
 - (i) the commission of assault as described in 45-5-201;
 - (ii) the deprivation of food, shelter, clothing, or services necessary to maintain the physical or mental health of a vulnerable adult without lawful authority; or
 - (iii) the causing of personal degradation of a vulnerable adult in a place where the vulnerable adult has a reasonable expectation of privacy.
- (b) For the purposes of subsection (1)(a)(ii), a declaration made pursuant to 50-9-103 constitutes lawful authority.
- (2) "Incapacitated person" has the same meaning as provided in 72-5-101.
- (3) "Neglect" means the failure of a person who has assumed legal responsibility or a contractual obligation for caring for a vulnerable adult or who has voluntarily assumed responsibility for the vulnerable adult's care, including an employee of a public or private residential institution, facility, home, or agency, to provide food, shelter, clothing, or services necessary to maintain the physical or mental health of the vulnerable

1 adult.

2 (4) (a) "Personal degradation" means publication or distribution of a printed or electronic
3 photograph or video of a vulnerable adult when the person publishing or distributing intends to demean or
4 humiliate the vulnerable adult or knows or reasonably should know that the publication or distribution would
5 demean or humiliate a reasonable person.

6 (b) The term does not include the recording and dissemination of images or video for treatment,
7 diagnosis, regulatory compliance, or law enforcement purposes as part of an investigation or in accordance
8 with a facility or program's confidentiality policy and release of information or consent policy.

9 (5) "Sexual abuse" means the commission of a sexual offense as described in Title 45, chapter 5,
10 part 5, and Title 45, chapter 8, part 2.

11 (6) "Vulnerable adult" means a person who:

12 (a) is 60 years of age or older; or

13 (b) is 18 years of age or older; and

14 (i) is a person with a physical or mental impairment that substantially limits or restricts the
15 person's ability to provide for their own care or protection; or

16 (ii) has a developmental disability as defined in 53-20-102.

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18 **NEW SECTION. Section 2. Abuse, sexual abuse, or neglect of vulnerable adult -- penalties. (1)**

19 Except as provided in subsection (3), a person who purposely or knowingly abuses, sexually abuses, or
20 neglects a vulnerable adult is guilty of a felony and shall be imprisoned for a term not to exceed 10 years and
21 be fined an amount not to exceed \$10,000, or both.

22 (2) (a) Except as provided in subsection (3)(a), a person who negligently abuses a vulnerable adult
23 is, on a first conviction, guilty of a misdemeanor and shall be fined an amount not to exceed \$1,000 or be
24 imprisoned in the county jail for a term not to exceed 1 year, or both.

25 (b) On a second or subsequent conviction of the conduct described in subsection (2)(a), the
26 person is guilty of a felony and shall be fined an amount not to exceed \$10,000 or be imprisoned for a term not
27 to exceed 10 years, or both.

28 (3) (a) A person who causes personal degradation to a vulnerable adult in a place where the

vulnerable adult has a reasonable expectation of privacy is, on a first conviction, guilty of a misdemeanor and shall be fined an amount not to exceed \$500 or be imprisoned in the county jail for a term not to exceed 6 months, or both;

(b) On a second or subsequent conviction of the conduct described in subsection (3)(a), the person is guilty of a felony and shall be fined an amount not to exceed \$10,000 or be imprisoned for a term not to exceed 10 years, or both.

~~(d)(c)~~ A person 18 years of age or older who has a developmental disability as defined in 53-20-102 may not be charged under subsections (2) and (3) of this section.

NEW SECTION. Section 3. Failure to report abuse or neglect of vulnerable adult -- false reporting -- penalties. A person is guilty of an offense and on conviction is punishable as provided in 46-18-212 if the person purposely or knowingly:

- (1) fails to make a report required by 52-3-811;
- (2) fails to disclose the contents of a case record or report in violation of 52-3-813;
- (3) gives false information to an adult protective services representative, or the county attorney, ~~or law enforcement officer~~ with the purpose to implicate another person;
- (4) reports to adult protective services, or the county attorney, ~~or law enforcement authorities~~ an offense or other incident within the person's concern knowing that it did not occur; or
- (5) pretends to furnish adult protective services, or the county attorney, ~~or law enforcement authorities~~ with information relating to an offense or incident when the person knows that the person has no information relating to the offense.

NEW SECTION. Section 4. Exploitation of incapacitated person or vulnerable adult -- penalties.

(1) A person commits the offense of exploitation of an incapacitated person or vulnerable adult if the person:

- (a) purposely or knowingly obtains or uses or attempts to obtain or use an incapacitated person's or vulnerable adult's funds, assets, or property with the intent to temporarily or permanently deprive the incapacitated person or vulnerable adult of the use, benefit, or possession of funds, assets, or property or to benefit someone other than the incapacitated person or vulnerable adult by means of deception, duress,