

HOUSE BILL NO. 410

INTRODUCED BY J. ESSMANN

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4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS REGARDING ~~ELDER~~
5 INCAPACITATED PERSONS AND DEVELOPMENTALLY DISABLED PERSONS; PROVIDING FOR THE
6 ADMISSIBILITY OF HEARSAY STATEMENTS UNDER CERTAIN CIRCUMSTANCES WHERE REASONABLE
7 GUARANTEES OF TRUSTWORTHINESS ARE PRESENT IN CASES OF EXPLOITATION OF ~~ELDER~~
8 INCAPACITATED PEOPLE AND PEOPLE WITH DEVELOPMENTAL DISABILITIES; CREATING THE OFFENSE
9 OF EXPLOITATION OF AN INCAPACITATED PERSON OR DEVELOPMENTALLY DISABLED PERSON;
10 PROVIDING PENALTIES; AND AMENDING SECTION 52-3-825, MCA."

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

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14 NEW SECTION. **Section 1. Testimony of third person in cases of exploitation of ~~elder~~**
15 **INCAPACITATED person or developmentally disabled person.** (1) Otherwise inadmissible hearsay may be
16 admitted into evidence in a criminal proceeding, as provided in subsections (2) and (3), if:

17 (a) the declarant of the out-of-court statement is an ~~elder~~ INCAPACITATED person or an individual with a
18 developmental disability who is:

19 (i) an alleged victim of exploitation of an ~~elder~~ INCAPACITATED person or developmentally disabled person
20 pursuant to ~~52-3-825~~ [SECTION 2] that is the subject of the criminal proceeding; or

21 (ii) a witness to an alleged exploitation of an ~~elder~~ INCAPACITATED person or developmentally disabled
22 person pursuant to ~~52-3-825~~ [SECTION 2] that is the subject of the criminal proceeding;

23 (b) the court finds that the time, content, and circumstances of the statement provide circumstantial
24 guarantees of trustworthiness;

25 (c) the ~~elder~~ INCAPACITATED person or the individual with a developmental disability is unavailable as a
26 witness;

27 (d) the hearsay testimony is offered as evidence of a material fact and is more probative on the point for
28 which it is offered than any other evidence available through reasonable efforts; and

29 (e) the party intending to offer the hearsay testimony gives sufficient notice to provide the adverse party
30 with a fair opportunity to prepare. The notice must include the content of the statement, the approximate time,

1 date, and location of the statement, the person to whom the statement was made, and the circumstances
2 surrounding the statement that the offering party believes support the statement's reliability.

3 (2) The court shall issue findings of fact and conclusions of law setting forth the court's reasoning on the
4 admissibility of the testimony.

5 (3) When deciding the admissibility of offered hearsay testimony under subsections (1) and (2), a court
6 shall consider the following:

7 (a) the attributes of the hearsay declarant, including:

8 (i) the individual's age;

9 (ii) the individual's ability to communicate verbally;

10 (iii) the individual's ability to comprehend the statements or questions of others;

11 (iv) the individual's ability to tell the difference between truth and falsehood;

12 (v) the individual's motivation to tell the truth, including whether the individual understands the general
13 obligation to speak truthfully and not fabricate stories;

14 (vi) whether the individual possessed sufficient mental capacity at the time of the alleged incident to
15 create an accurate memory of the incident; and

16 (vii) whether the individual possesses sufficient memory to retain an independent recollection of the
17 events at issue;

18 (b) information regarding the witness who is relating the individual's hearsay statement, including:

19 (i) the witness's relationship to the individual;

20 (ii) whether the relationship between the witness and the individual has an impact on the trustworthiness
21 of the individual's hearsay statement;

22 (iii) whether the witness has a motive to fabricate or distort the individual's statement; and

23 (iv) the circumstances under which the witness heard the individual's statement, including the timing of
24 the statement in relation to the incident at issue and the availability of another person in whom the individual could
25 confide;

26 (c) information regarding the individual's statement, including:

27 (i) whether the statement contains knowledge not normally attributed to an individual of the declarant's
28 age;

29 (ii) whether the statement was spontaneous;

30 (iii) the suggestiveness of statements by other persons to the individual at the time that the individual

1 made the statement;

2 (iv) if statements were made by the individual to more than one person, whether those statements were
3 consistent;

4 (v) the nearness in time of the statement to the incident at issue; and

5 (vi) whether the statement is testimonial or nontestimonial in character; and

6 (d) other considerations that in the judge's opinion may bear on the admissibility of the individual's
7 hearsay testimony.

8 (4) As used in this section, "~~older person~~" "INCAPACITATED PERSON" has the meaning provided in ~~52-3-803~~
9 72-5-101 and "developmental disability" has the meaning provided in 53-20-102.

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11 NEW SECTION. SECTION 2. EXPLOITATION OF INCAPACITATED PERSON OR PERSON WITH DEVELOPMENTAL
12 DISABILITY. (1) A PERSON COMMITS THE OFFENSE OF EXPLOITATION OF AN INCAPACITATED PERSON OR A PERSON WITH
13 A DEVELOPMENTAL DISABILITY IF THE PERSON:

14 (A) PURPOSELY OR KNOWINGLY OBTAINS OR USES OR ATTEMPTS TO OBTAIN OR USE AN INCAPACITATED PERSON'S
15 OR DEVELOPMENTALLY DISABLED PERSON'S FUNDS, ASSETS, OR PROPERTY WITH THE INTENT TO TEMPORARILY OR
16 PERMANENTLY DEPRIVE THE INCAPACITATED PERSON OR DEVELOPMENTALLY DISABLED PERSON OF THE USE, BENEFIT,
17 OR POSSESSION OF FUNDS, ASSETS, OR PROPERTY OR TO BENEFIT SOMEONE OTHER THAN THE INCAPACITATED PERSON
18 OR DEVELOPMENTALLY DISABLED PERSON; AND

19 (B) (I) STANDS IN A POSITION OF TRUST OR CONFIDENCE WITH THE INCAPACITATED PERSON OR
20 DEVELOPMENTALLY DISABLED PERSON; OR

21 (II) HAS A BUSINESS RELATIONSHIP WITH THE INCAPACITATED PERSON OR DEVELOPMENTALLY DISABLED PERSON.

22 (2) A PERSON COMMITS THE OFFENSE OF EXPLOITATION OF AN INCAPACITATED PERSON OR A PERSON WITH A
23 DEVELOPMENTAL DISABILITY IF THE PERSON:

24 (A) PURPOSELY OR KNOWINGLY OBTAINS PERSONAL IDENTIFYING INFORMATION OF ANOTHER PERSON AND USES
25 THAT INFORMATION FOR ANY UNLAWFUL PURPOSE, INCLUDING TO OBTAIN OR ATTEMPT TO OBTAIN CREDIT, GOODS,
26 SERVICES, FINANCIAL INFORMATION, OR MEDICAL INFORMATION IN THE NAME OF THE OTHER PERSON WITHOUT THE
27 CONSENT OF THE OTHER PERSON; AND

28 (B) (I) STANDS IN A POSITION OF TRUST OR CONFIDENCE WITH THE INCAPACITATED PERSON OR
29 DEVELOPMENTALLY DISABLED PERSON; OR

30 (II) HAS A BUSINESS RELATIONSHIP WITH THE INCAPACITATED PERSON OR DEVELOPMENTALLY DISABLED PERSON.

1 (3) A PERSON CONVICTED OF THE OFFENSE OF EXPLOITATION OF AN INCAPACITATED PERSON OR A PERSON WITH
2 A DEVELOPMENTAL DISABILITY SHALL BE FINED AN AMOUNT NOT TO EXCEED \$10,000 OR BE IMPRISONED IN A STATE
3 PRISON FOR A TERM NOT TO EXCEED 10 YEARS, OR BOTH.

4 (4) AS USED IN THIS SECTION:

5 (A) "DEVELOPMENTAL DISABILITY" HAS THE MEANING PROVIDED IN 53-20-102; AND

6 (B) "INCAPACITATED PERSON" HAS THE MEANING PROVIDED IN 72-5-101.

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8 **SECTION 3. SECTION 52-3-825, MCA, IS AMENDED TO READ:**

9 **"52-3-825. Penalties.** (1) A person who purposely or knowingly fails to make a report required by
10 52-3-811 or discloses or fails to disclose the contents of a case record or report in violation of 52-3-813 is guilty
11 of an offense and upon conviction is punishable as provided in 46-18-212.

12 (2) (a) A person who purposely or knowingly abuses, sexually abuses, or neglects an older person or
13 a person with a developmental disability is guilty of a felony and shall be imprisoned for a term not to exceed 10
14 years and be fined an amount not to exceed \$10,000, or both.

15 (b) (i) A person who negligently abuses an older person or a person with a developmental disability is
16 guilty of a misdemeanor and upon a first conviction shall be fined an amount not to exceed \$1,000 or be
17 imprisoned in the county jail for a term not to exceed 1 year, or both.

18 (ii) Upon a second or subsequent conviction of the conduct described in subsection (2)(b)(i), the person
19 is guilty of a felony and shall be imprisoned for a term not to exceed 10 years and be fined an amount not to
20 exceed \$10,000, or both.

21 (c) A person with a developmental disability may not be charged under subsection (2)(a) or (2)(b).

22 (3) (a) A person convicted of purposely or knowingly exploiting an older person ~~or a person with a~~
23 ~~developmental disability~~ in a case involving money, assets, or property in an amount of \$1,000 or less in value
24 shall be fined an amount not more than \$1,000 or be imprisoned in the county jail for a term not to exceed 1 year,
25 or both. A person convicted of purposely or knowingly exploiting an older person ~~or a person with a~~
26 ~~developmental disability~~ in a case involving money, assets, or property in an amount of more than \$1,000 but less
27 than \$25,000 in value shall be fined an amount not more than \$50,000 or be imprisoned in a state prison for a
28 term not to exceed 10 years, or both. A person convicted of purposely or knowingly exploiting an older person
29 ~~or a person with a developmental disability~~ in a case involving money, assets, or property in an amount of
30 \$25,000 or more in value shall be fined an amount not more than \$50,000 or be imprisoned in a state prison for

1 a term of not less than 1 year and not more than 10 years, or both.

2 (b) For purposes of prosecution under subsection (3)(a) in a case involving the same transaction or in
3 a case prosecuted pursuant to a common scheme, the amounts may be aggregated in determining the value
4 involved."

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6 **NEW SECTION. Section 4. Codification instruction.** (1) [Section 1] is intended to be codified as an
7 integral part of Title 46, chapter 16, part 2, and the provisions of Title 46, chapter 16, part 2, apply to [section 1].

8 **(2) [SECTION 2] IS INTENDED TO BE CODIFIED AS AN INTEGRAL PART OF TITLE 45, CHAPTER 6, PART 3, AND THE**
9 **PROVISIONS OF TITLE 45, CHAPTER 6, PART 3, APPLY TO [SECTION 2].**

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