

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

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

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

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

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

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

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

26 (c) the ~~elder~~ OLDER PERSON, THE INCAPACITATED person, or the individual with a developmental disability  
27 is unavailable as a witness;

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

30 (e) the party intending to offer the hearsay testimony gives sufficient notice to provide the adverse party



1 with a fair opportunity to prepare. The notice must include the content of the statement, the approximate time,  
2 date, and location of the statement, the person to whom the statement was made, and the circumstances  
3 surrounding the statement that the offering party believes support the statement's reliability.

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

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

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

9 (i) the individual's age;

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

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

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

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

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

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

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

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

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

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

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

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

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

30 (ii) whether the statement was spontaneous;

1 (iii) the suggestiveness of statements by other persons to the individual at the time that the individual  
2 made the statement;

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

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

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

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

9 (4) As used in this section, "~~older person~~" "INCAPACITATED PERSON" ~~has the meaning provided in 52-3-803~~  
10 ~~72-5-101~~ and "~~developmental disability~~" ~~has the meaning provided in 53-20-102~~ THE FOLLOWING DEFINITIONS

11 APPLY:

12 (A) "DEVELOPMENTAL DISABILITY" HAS THE MEANING PROVIDED IN 53-20-102.

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

14 (C) "OLDER PERSON" MEANS A PERSON WHO IS 65 YEARS OF AGE OR OLDER.

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16 NEW SECTION. SECTION 2. EXPLOITATION OF OLDER PERSON, INCAPACITATED PERSON, OR PERSON WITH  
17 DEVELOPMENTAL DISABILITY. (1) A PERSON COMMITS THE OFFENSE OF EXPLOITATION OF AN OLDER PERSON, AN  
18 INCAPACITATED PERSON, OR A PERSON WITH A DEVELOPMENTAL DISABILITY IF THE PERSON:

19 (A) PURPOSELY OR KNOWINGLY OBTAINS OR USES OR ATTEMPTS TO OBTAIN OR USE AN OLDER PERSON'S,  
20 INCAPACITATED PERSON'S, OR DEVELOPMENTALLY DISABLED PERSON'S FUNDS, ASSETS, OR PROPERTY WITH THE INTENT  
21 TO TEMPORARILY OR PERMANENTLY DEPRIVE THE OLDER PERSON, INCAPACITATED PERSON, OR DEVELOPMENTALLY  
22 DISABLED PERSON OF THE USE, BENEFIT, OR POSSESSION OF FUNDS, ASSETS, OR PROPERTY OR TO BENEFIT SOMEONE  
23 OTHER THAN THE OLDER PERSON, INCAPACITATED PERSON, OR DEVELOPMENTALLY DISABLED PERSON; AND

24 (B) (I) STANDS IN A POSITION OF TRUST OR CONFIDENCE WITH THE OLDER PERSON, INCAPACITATED PERSON, OR  
25 DEVELOPMENTALLY DISABLED PERSON; OR

26 (II) HAS A BUSINESS RELATIONSHIP WITH THE OLDER PERSON, INCAPACITATED PERSON, OR DEVELOPMENTALLY  
27 DISABLED PERSON.

28 (2) A PERSON COMMITS THE OFFENSE OF EXPLOITATION OF AN OLDER PERSON, AN INCAPACITATED PERSON, OR  
29 A PERSON WITH A DEVELOPMENTAL DISABILITY IF THE PERSON:

30 (A) PURPOSELY OR KNOWINGLY OBTAINS PERSONAL IDENTIFYING INFORMATION OF ANOTHER PERSON AND USES

1 THAT INFORMATION FOR ANY UNLAWFUL PURPOSE, INCLUDING TO OBTAIN OR ATTEMPT TO OBTAIN CREDIT, GOODS,  
 2 SERVICES, FINANCIAL INFORMATION, OR MEDICAL INFORMATION IN THE NAME OF THE OTHER PERSON WITHOUT THE  
 3 CONSENT OF THE OTHER PERSON; AND

4 (B) (I) STANDS IN A POSITION OF TRUST OR CONFIDENCE WITH THE OLDER PERSON, INCAPACITATED PERSON, OR  
 5 DEVELOPMENTALLY DISABLED PERSON; OR

6 (II) HAS A BUSINESS RELATIONSHIP WITH THE OLDER PERSON, INCAPACITATED PERSON, OR DEVELOPMENTALLY  
 7 DISABLED PERSON.

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

11 (4) AS USED IN THIS SECTION, THE FOLLOWING DEFINITIONS APPLY:

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

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

14 (C) "OLDER PERSON" MEANS A PERSON WHO IS 65 YEARS OF AGE OR OLDER.

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

17 **"52-3-825. Penalties.** (1) A person who purposely or knowingly fails to make a report required by  
 18 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  
 19 of an offense and upon conviction is punishable as provided in 46-18-212.

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

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

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

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

30 ~~(3) (a) A person convicted of purposely or knowingly exploiting an older person or a person with a~~

1 developmental disability in a case involving money, assets, or property in an amount of \$1,000 or less in value  
2 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,  
3 or both. A person convicted of purposely or knowingly exploiting an older person or a person with a  
4 developmental disability in a case involving money, assets, or property in an amount of more than \$1,000 but less  
5 than \$25,000 in value shall be fined an amount not more than \$50,000 or be imprisoned in a state prison for a  
6 term not to exceed 10 years, or both. A person convicted of purposely or knowingly exploiting an older person  
7 or a person with a developmental disability in a case involving money, assets, or property in an amount of  
8 \$25,000 or more in value shall be fined an amount not more than \$50,000 or be imprisoned in a state prison for  
9 a term of not less than 1 year and not more than 10 years, or both.

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

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

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

18 - END -