

HOUSE BILL NO. 410

INTRODUCED BY J. ESSMANN

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A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS REGARDING OLDER PERSONS AND DEVELOPMENTALLY DISABLED PERSONS; PROVIDING FOR THE ADMISSIBILITY OF HEARSAY STATEMENTS UNDER CERTAIN CIRCUMSTANCES WHERE REASONABLE GUARANTEES OF TRUSTWORTHINESS ARE PRESENT IN CASES OF EXPLOITATION OF OLDER PEOPLE AND PEOPLE WITH DEVELOPMENTAL DISABILITIES."

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

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

(a) the declarant of the out-of-court statement is an older person or an individual with a developmental disability who is:

(i) an alleged victim of exploitation of an older person or developmentally disabled person pursuant to 52-3-825 that is the subject of the criminal proceeding; or

(ii) a witness to an alleged exploitation of an older person or developmentally disabled person pursuant to 52-3-825 that is the subject of the criminal proceeding;

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

(c) the older person or the individual with a developmental disability is unavailable as a witness;

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

(e) the party intending to offer the hearsay testimony gives sufficient notice to provide the adverse party with a fair opportunity to prepare. The notice must include the content of the statement, the approximate time, date, and location of the statement, the person to whom the statement was made, and the circumstances surrounding the statement that the offering party believes support the statement's reliability.

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

1 admissibility of the testimony.

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

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

5 (i) the individual's age;

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

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

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

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

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

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

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

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

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

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

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

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

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

26 (ii) whether the statement was spontaneous;

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

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

- 1 (v) the nearness in time of the statement to the incident at issue; and
- 2 (vi) whether the statement is testimonial or nontestimonial in character; and
- 3 (d) other considerations that in the judge's opinion may bear on the admissibility of the individual's
- 4 hearsay testimony.
- 5 (4) As used in this section, "older person" has the meaning provided in 52-3-803 and "developmental
- 6 disability" has the meaning provided in 53-20-102.

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8 **NEW SECTION. Section 2. Codification instruction.** [Section 1] is intended to be codified as an

9 integral part of Title 46, chapter 16, part 2, and the provisions of Title 46, chapter 16, part 2, apply to [section 1].

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