

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.

17
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,

1 menace, fraud, undue influence, or intimidation; and

2 (b) (i) stands in a position of trust or confidence with the incapacitated person or vulnerable adult;

3 (ii) has a business relationship with the incapacitated person or vulnerable adult; or

4 (iii) is an attorney in fact under a power of attorney, conservator, or guardian of an incapacitated
5 person or vulnerable adult.

6 (2) A person convicted of the offense of exploitation of an incapacitated person or vulnerable adult
7 shall be fined an amount not to exceed \$10,000 or be imprisoned in a state prison for a term not to exceed 10
8 years, or both.

9

10 **Section 5.** Section 44-15-103, MCA, is amended to read:

11 **"44-15-103. Definitions.** As used in this part, unless the context clearly indicates otherwise, the
12 following definitions apply:

13 (1) "Affirmative authorization" means an action that demonstrates the intentional decision by an
14 individual to opt into the retention of the individual's facial biometric data by a third-party vendor.

15 (2) "Another jurisdiction" means the federal government, the United States military, the District of
16 Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the United
17 States Virgin Islands, Guam, American Samoa, a federally recognized Indian tribe, or a state other than
18 Montana.

19 (3) "Continuous facial surveillance" means the monitoring of public places or third-party image sets
20 using facial recognition technology for facial identification to match faces with a prepopulated list of face
21 images. The term includes but is not limited to scanning stored video footage to identify faces in the stored
22 data, real-time scanning of video surveillance to identify faces passing by the cameras, and passively
23 monitoring video footage using facial recognition technology for general surveillance purposes without a
24 particularized suspicion of a specific target.

25 (4) "Department" means the department of justice.

26 (5) "Digital driver's license" means a secure version of an individual's physical driver's license or
27 identification card that is stored on the individual's mobile device.

28 (6) "Facial biometric data" means data derived from a measurement, pattern, contour, or other

characteristic of an individual's face, either directly or from an image.

(7) (a) "Facial identification" means a computer system that, for the purpose of attempting to determine the identity of an unknown individual, uses an algorithm to compare the facial biometric data of an unknown individual derived from a photograph, video, or image to a database of photographs or images and associated facial biometric data in order to identify potential matches.

(b) The term does not include:

(i) a system used specifically to protect against unauthorized access to a particular location or an electronic device; or

(ii) a system a consumer uses for the consumer's private purposes.

(8) "Facial recognition service" or "facial recognition technology" means the use of facial identification or facial verification.

(9) "Facial verification" means the automated process of comparing an image or facial biometric data of a known individual to an image database, or to government documentation containing an image of the known individual, to identify a potential match in pursuit of the individual's identity.

(10) "Law enforcement agency" means:

(a) an agency or officer of the state of Montana or of a political subdivision that is empowered by the laws of this state to conduct investigations or to make arrests; and

(b) an attorney, including the attorney general, who is authorized by the laws of this state to prosecute or to participate in the prosecution of a person who is arrested or who may be subject to a civil action related to or concerning an arrest.

(11) "Motor vehicle division" means the division within the department of justice authorized to issue driver's licenses.

(12) "Personal information" has the same meaning as in 30-14-1704.

(13) "Public building" means any building that the state or any political subdivision of the state maintains for the use of the public.

(14) "Public employee" means a person employed by a state or local government agency, including but not limited to a peace officer.

(15) "Public official" means a person elected or appointed to a public office that is part of a state or

1 local government agency.

2 (16) "Public roads and highways of this state" has the same meaning as in 15-70-401.

3 (17) "Serious crime" means:

4 (a) a crime under the laws of this state that is a violation of 45-5-102, 45-5-103, 45-5-104, 45-5-
5 106, 45-5-202, 45-5-207, 45-5-210, 45-5-212, 45-5-213, 45-5-220, 45-5-302, 45-5-303, 45-5-401, 45-5-503, 45-
6 5-504(3), 45-5-508, 45-5-602, 45-5-603, 45-5-622, 45-5-625, 45-5-627, 45-5-628, 45-5-702, 45-5-703, 45-5-
7 704, ~~or 45-5-705, or [section 2(1)]~~; or

8 (b) a crime under the laws of another jurisdiction that is substantially similar to a crime under
9 subsection (17)(a).

10 (18) "State or local government agency" means a state, county, or municipal government, a
11 department, agency, or subdivision of a state, county, or municipal government, or any other entity identified in
12 law as a public instrumentality. The term does not include a school district or law enforcement agency.

13 (19) "Vendor" has the same meaning as in 18-4-123."
14

15 **Section 6.** Section 45-6-332, MCA, is amended to read:

16 **"45-6-332. Theft of identity.** (1) A person commits the offense of theft of identity if the person
17 purposely or knowingly obtains personal identifying information of another person and uses that information for
18 any unlawful purpose, including to obtain or attempt to obtain credit, goods, services, financial information, or
19 medical information in the name of the other person without the consent of the other person.

20 (2) (a) (i) A person convicted of the offense of theft of identity if no economic benefit was gained or
21 was attempted to be gained or if an economic benefit of less than \$1,500 was gained or was attempted to be
22 gained shall be fined an amount not to exceed \$500. ~~If the victim is a minor, the offender shall be fined an~~
23 ~~amount not to exceed \$3,000 or be imprisoned in the county jail for a term not to exceed 1 year, or both.~~

24 (ii) A person convicted of a second offense shall be fined an amount not to exceed \$500 or be
25 imprisoned in the county jail for a term not to exceed 6 months, or both.

26 (iii) A person convicted of a third or subsequent offense shall be fined an amount not to exceed
27 \$500 and be imprisoned in the county jail for a term of not less than 5 days or more than 1 year.

28 (iv) If the victim is a minor, incapacitated person, or vulnerable adult, the offender shall be fined an

1 amount not to exceed \$3,000 or be imprisoned in the county jail for a term not to exceed 1 year, or both, for a
2 conviction under subsections (2)(a)(i) through (2)(a)(iii).

3 (b) (i) A person convicted of the offense of theft of identity if an economic benefit that exceeds
4 \$1,500 and does not exceed \$5,000 was gained or was attempted to be gained shall be fined an amount not to
5 exceed ~~\$5,000~~ \$1,500 or be imprisoned in the state prison for a term not to exceed ~~40~~ 3 years, or both. ~~If the~~
6 ~~victim is a minor, the offender shall be fined an amount not to exceed \$20,000 or be imprisoned in the state~~
7 ~~prison for a term not to exceed 20 years, or both.~~

8 (ii) A person convicted of a second offense shall be fined an amount not to exceed \$1,500 or be
9 imprisoned in the state prison for a term not to exceed 5 years, or both.

10 (iii) A person convicted of a third or subsequent offense shall be imprisoned in the state prison for
11 a term of not less than 2 years or more than 5 years and may be fined an amount not to exceed \$5,000.

12 (iv) If the victim is a minor, incapacitated person, or vulnerable adult, the offender shall be fined an
13 amount not to exceed \$20,000 or be imprisoned in the state prison for a term not to exceed 20 years, or both,
14 for a conviction under subsections (2)(b)(i) through (2)(b)(iii).

15 (c) (i) A person convicted of theft of identity if an economic benefit exceeding \$5,000 in value was
16 gained or attempted to be gained shall be fined an amount not to exceed \$10,000 or be imprisoned in the state
17 prison for a term not to exceed 10 years, or both.

18 (ii) If the victim is a minor, incapacitated person, or vulnerable adult, the offender shall be fined an
19 amount not to exceed \$20,000 or be imprisoned in the state prison for a term not to exceed 20 years, or both,
20 for a conviction under subsection (2)(c)(i).

21 (3) As used in this section, "personal identifying information" includes but is not limited to the
22 name, date of birth, address, telephone number, driver's license number, social security number or other
23 federal government identification number, tribal identification card number, place of employment, employee
24 identification number, mother's maiden name, financial institution account number, credit card number, or
25 similar identifying information relating to a person.

26 (4) If restitution is ordered, the court may include, as part of its determination of an amount owed,
27 payment for any costs incurred by the victim, including attorney fees and any costs incurred in clearing the
28 credit history or credit rating of the victim or in connection with any civil or administrative proceeding to satisfy

any debt, lien, or other obligation of the victim arising as a result of the actions of the defendant."

Section 7. Section 46-16-222, MCA, is amended to read:

"46-16-222. Testimony of third person in cases of abuse, neglect, or exploitation of incapacitated person or vulnerable adult. (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 incapacitated person or vulnerable adult who is:

(i) an alleged victim of:

(A) abuse, sexual abuse, or neglect of a vulnerable adult pursuant to [section 2] that is the subject of the criminal proceeding;

(B) failure to report abuse or neglect of a vulnerable adult or falsely reporting abuse or neglect of a vulnerable adult pursuant to [section 3] that is the subject of the criminal proceeding;

(C) exploitation of an incapacitated person or vulnerable adult pursuant to 45-6-333 [section 4] or theft of identity of an incapacitated person or vulnerable adult pursuant to 45-6-332 that is the subject of the criminal proceeding; or

(D) a sexual offense or other crime of violence, including partner or family member assault, that is the subject of the criminal proceeding; or

(ii) a witness to:

(A) an alleged abuse, sexual abuse, or neglect of a vulnerable adult pursuant to [section 2] that is the subject of the criminal proceeding;

(B) an alleged failure to report abuse or neglect of a vulnerable adult or falsely reporting abuse or neglect of a vulnerable adult pursuant to [section 3] that is the subject of the criminal proceeding;

(C) an alleged exploitation of an incapacitated person or vulnerable adult pursuant to 45-6-333 [section 4] or theft of identity of an incapacitated person or vulnerable adult pursuant to 45-6-332 that is the subject of the criminal proceeding; or

(D) a sexual offense or other crime of violence, including partner or family member assault, 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 incapacitated person or vulnerable adult 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 admissibility of the testimony.

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

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

(i) the individual's age;

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

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

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

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

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

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

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

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

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

- 1 (iii) whether the witness has a motive to fabricate or distort the individual's statement; and
- 2 (iv) the circumstances under which the witness heard the individual's statement, including the
- 3 timing of the statement in relation to the incident at issue and the availability of another person in whom the
- 4 individual could confide;
- 5 (c) information regarding the individual's statement, including:
- 6 (i) whether the statement contains knowledge not normally attributed to an individual of the
- 7 declarant's age;
- 8 (ii) whether the statement was spontaneous;
- 9 (iii) the suggestiveness of statements by other persons to the individual at the time that the
- 10 individual made the statement;
- 11 (iv) if statements were made by the individual to more than one person, whether those statements
- 12 were consistent;
- 13 (v) the nearness in time of the statement to the incident at issue; and
- 14 (vi) whether the statement is testimonial or nontestimonial in character; and
- 15 (d) other considerations that in the judge's opinion may bear on the admissibility of the individual's
- 16 hearsay testimony.
- 17 (4) As used in this section, the following definitions apply:
- 18 (a) "Incapacitated person" has the meaning provided in 72-5-101.
- 19 (b) "Vulnerable adult" has the meaning provided in 52-3-803."
- 20

21 **Section 8.** Section 46-18-104, MCA, is amended to read:

22 **"46-18-104. Definitions.** As used in 46-18-101, 46-18-105, 46-18-201, 46-18-225, and this section,

23 unless the context requires otherwise, the following definitions apply:

24 (1) "Community corrections" or "community corrections facility or program" means a community

25 corrections facility or program as defined in 53-30-303.

26 (2) (a) "Crime of violence" means:

27 (i) a crime in which an offender uses or possesses and threatens to use a deadly weapon during

28 the commission or attempted commission of a crime;

(ii) a crime in which the offender causes serious bodily injury or death to a person other than the offender; or

(iii) an offense under:

(A) 45-5-215;

(B) 45-5-502 for which the maximum potential sentence is life imprisonment or imprisonment in a state prison for a term exceeding 1 year;

(C) 45-5-503, except as provided in subsection (2)(b) of this section;

(D) 45-5-507 if the victim is under 16 years of age and the offender is 3 or more years older than the victim or if the offender inflicts bodily injury upon anyone in the course of committing the offense;

(E) 45-5-508;

(F) 45-5-702;

(G) 45-5-703;

(H) 45-5-705;

(I) 45-5-706; ~~or~~

(J) 45-5-711; or

(K) [section 2(1)].

(b) In a prosecution under 45-5-503, if the sexual intercourse was without consent based solely on the victim's age, the victim willingly participated, and the offender is not more than 3 years older than the victim, the offense is not a crime of violence for purposes of this section.

(3) "Nonviolent felony offender" means a person who has entered a plea of guilty or nolo contendere to a felony offense other than a crime of violence or who has been convicted of a felony offense other than a crime of violence.

(4) "Restorative justice" has the meaning provided in 44-7-302."

Section 9. Section 46-18-111, MCA, is amended to read:

"46-18-111. Presentence investigation -- when required -- definition. (1) (a) (i) Upon the acceptance of a plea or upon a verdict or finding of guilty to one or more felony offenses, except as provided in subsection (1)(d), the district court may request and direct the probation and parole officer to make a

1 presentence investigation and report unless an investigation and report has been provided to the court prior to
2 the plea or the verdict or finding of guilty.

3 (ii) Unless additional information is required under subsection (1)(b), (1)(c), (1)(d), or (1)(e) or
4 unless more time is required to allow for victim input, a preliminary or final presentence investigation and report,
5 if requested, must be available to the court within 30 business days of the plea or the verdict or finding of guilty.

6 (iii) If a presentence investigation report has been requested, the district court shall consider the
7 presentence investigation report prior to sentencing.

8 (b) (i) If the defendant was convicted of an offense under 45-5-502, 45-5-503, 45-5-504, 45-5-507,
9 45-5-508, 45-5-601(3), 45-5-625, 45-5-627, 45-5-705, 45-5-706, 45-5-711, [section 2(1)], or 45-8-218 or if the
10 defendant was convicted under 46-23-507 and the offender was convicted of failure to register as a sexual
11 offender pursuant to Title 46, chapter 23, part 5, the court shall order a psychosexual evaluation of the
12 defendant unless the defendant is sentenced under 46-18-219. The evaluation must include:

13 (A) a recommendation as to treatment of the defendant in the least restrictive environment,
14 considering the risk the defendant presents to the community and the defendant's needs;

15 (B) an identification of the level of risk the defendant presents to the community using the
16 standards established in 37-1-139; and

17 (C) the defendant's needs.

18 (ii) Unless a psychosexual evaluation has been provided to the court prior to the plea or the verdict
19 or finding of guilty, the evaluation must be completed by a sexual offender evaluator selected by the court and
20 who has a license endorsement as provided for in 37-1-139. The psychosexual evaluation must be made
21 available to the county attorney's office, the defense attorney, the probation and parole officer, and the
22 sentencing judge.

23 (iii) All costs related to the evaluation, including an evaluation ordered by the court as allowed in
24 subsection (1)(b)(ii), must be paid by the defendant. If the defendant is determined by the district court to be
25 indigent, all costs related to the evaluation, including an evaluation ordered by the court as allowed in
26 subsection (1)(b)(ii), are the responsibility of the district court and must be paid by the county or the state, or
27 both, under Title 3, chapter 5, part 9. The district court may order subsequent psychosexual evaluations at the
28 request of the county attorney. The requestor of any subsequent psychosexual evaluations is responsible for

1 the cost of the evaluation.

2 (c) (i) If the defendant was convicted of an offense under 45-5-212(2)(b) or (2)(c), the investigation
3 may include a mental health evaluation of the defendant and a recommendation as to treatment of the
4 defendant in the least restrictive environment, considering the risk the defendant presents to the community
5 and the defendant's needs.

6 (ii) The evaluation must be completed by a qualified psychiatrist, licensed clinical psychologist,
7 advanced practice registered nurse, licensed clinical social worker, licensed clinical professional counselor,
8 licensed marriage and family therapist, or other professional with comparable credentials acceptable to the
9 department of labor and industry. The mental health evaluation must be made available to the county attorney's
10 office, the defense attorney, the probation and parole officer, and the sentencing judge.

11 (iii) All costs related to the evaluation must be paid by the defendant. If the defendant is
12 determined by the district court to be indigent, all costs related to the evaluation are the responsibility of the
13 district court and must be paid by the county or the state, or both, under Title 3, chapter 5, part 9.

14 (d) If the defendant is convicted of a violent offense, as defined in 46-23-502, or if the defendant is
15 convicted of a crime for which a victim or entity may be entitled to restitution, and the amount of restitution is not
16 contained in a plea agreement, the court shall order a presentence investigation.

17 (e) When, pursuant to 46-14-311, the court has ordered a presentence investigation and a report
18 pursuant to this section, the mental evaluation must be attached to the presentence investigation report and
19 becomes part of the report. The report must be made available to persons and entities as provided in 46-18-
20 113.

21 (2) The district court may order a presentence investigation for a defendant convicted of a
22 misdemeanor only if the defendant was convicted of a misdemeanor that the state originally charged as a
23 sexual or violent offense as defined in 46-23-502.

24 (3) The defendant shall pay to the department of corrections a \$50 fee at the time that the report is
25 completed, unless the court determines that the defendant is not able to pay the fee within a reasonable time.
26 The fee may be retained by the department and used to finance contracts entered into under 53-1-203(5).

27 (4) For the purposes of 46-18-112 and this section, "probation and parole officer" means:

28 (a) a probation and parole officer who is employed by the department of corrections pursuant to

1 46-23-1002; or

2 (b) an employee of the department of corrections who has received specific training or who
3 possesses specific expertise to make a presentence investigation and report but who is not required to be
4 licensed as a probation and parole officer by the public safety officer standards and training council created in
5 2-15-2029."

6

7 **Section 10.** Section 46-23-502, MCA, is amended to read:

8 **"46-23-502. Definitions.** As used in Title 45, chapter 5, part 3 and parts 5 through 7, 46-18-255, and
9 this part, the following definitions apply:

10 (1) "Department" means the department of corrections provided for in 2-15-2301.

11 (2) "Foreign offenses" means a conviction for a sexual offense involving any of the conduct listed
12 in this section that was obtained under the laws of Canada, the United Kingdom, Australia, or New Zealand, or
13 under the laws of any foreign country when the United States department of state, in its country reports on
14 human rights practices, has concluded that an independent judiciary generally or vigorously enforced the right
15 to a fair trial in that country during the year in which the conviction was obtained.

16 (3) "Mental abnormality" means a congenital or acquired condition that affects the mental,
17 emotional, or volitional capacity of a person in a manner that predisposes the person to the commission of one
18 or more sexual offenses to a degree that makes the person a menace to the health and safety of other persons.

19 (4) "Municipality" means an entity that has incorporated as a city or town.

20 (5) "Personality disorder" means a personality disorder as defined in the fourth edition of the
21 Diagnostic and Statistical Manual of Mental Disorders adopted by the American psychiatric association.

22 (6) "Predatory sexual offense" means a sexual offense committed against a stranger or against a
23 person with whom a relationship has been established or furthered for the primary purpose of victimization.

24 (7) "Registration agency" means:

25 (a) if the offender resides in a municipality, the police department of that municipality; or

26 (b) if the offender resides in a place other than a municipality, the sheriff's office of the county in
27 which the offender resides.

28 (8) (a) "Residence" means the location at which a person regularly resides, regardless of the

number of days or nights spent at that location, that can be located by a street address, including a house, apartment building, motel, hotel, or recreational or other vehicle.

(b) The term does not mean a homeless shelter.

(9) "Sexual offender evaluator" means a person qualified under rules established by the department to conduct psychosexual evaluations of sexual offenders and sexually violent predators.

(10) (a) "Sexual offense" means any violation, attempt, solicitation, or conspiracy to commit a violation, or flight after the attempt or commission of the following:

(i) 45-5-301, unlawful restraint, if the victim is less than 18 years of age and the offender is not a parent of the victim;

(ii) 45-5-302, kidnapping, if the victim is less than 18 years of age and the offender is not a parent of the victim;

(iii) 45-5-303, aggravated kidnapping, if the victim is less than 18 years of age and the offender is not a parent of the victim;

(iv) 45-5-502(2)(c), (3), and (4), sexual assault;

(v) 45-5-503, sexual intercourse without consent;

(vi) 45-5-504(2)(c) and (3), indecent exposure;

(vii) 45-5-507, incest, if the victim is less than 18 years of age and the offender is 3 or more years older than the victim, or if the victim is 12 years of age or younger and the offender is 18 years of age or older at the time of the offense;

(viii) 45-5-508, aggravated sexual intercourse without consent;

(ix) 45-5-601(2)(b) and (3), prostitution;

(x) 45-5-622(2)(b)(ii), endangering the welfare of children;

(xi) 45-5-625, sexual abuse of children;

(xii) 45-5-627(1)(a), ritual abuse of a minor;

(xiii) 45-5-705, patronizing a victim of sex trafficking;

(xiv) 45-5-706, aggravated sex trafficking;

(xv) 45-5-711, child sex trafficking;

(xvi) [section 2(1)], sexual abuse of a vulnerable adult;

(~~xvi~~)(xvii) 45-8-218, deviate sexual conduct; or

(~~xvii~~)(xviii) any violation of a law of another state, a tribal government, the federal government, or the military or a foreign entity that is reasonably equivalent to a violation listed in subsections (10)(a)(i) through (10)(a)(~~xvi~~)-(10)(a)(xvii) or for which the offender was required to register as a sexual offender after an adjudication or conviction.

(b) The term does not include the exceptions provided for in 45-5-501, 45-5-502, and 45-5-503.

(11) "Sexual or violent offender" means a person who has been convicted of or, in youth court, found to have committed or been adjudicated for a sexual or violent offense.

(12) "Sexually violent predator" means a person who:

(a) has been convicted of or, in youth court, found to have committed or been adjudicated for a sexual offense and who suffers from a mental abnormality or a personality disorder that makes the person likely to engage in predatory sexual offenses; or

(b) has been convicted of a sexual offense against a victim 12 years of age or younger and the offender is 18 years of age or older.

(13) "Transient" means an offender who has no residence.

(14) "Violent offense" means:

(a) any violation of or attempt, solicitation, or conspiracy to commit a violation of:

(i) 45-5-102, deliberate homicide;

(ii) 45-5-103, mitigated deliberate homicide;

(iii) 45-5-202, aggravated assault;

(iv) 45-5-206 (third or subsequent offense), partner or family member assault;

(v) 45-5-210(1)(b), (1)(c), or (1)(d), assault on a peace officer or judicial officer;

(vi) 45-5-212, assault on a minor;

(vii) 45-5-213, assault with a weapon;

(viii) 45-5-215, strangulation of a partner or family member;

(ix) 45-5-302 (if the victim is not a minor), kidnapping;

(x) 45-5-303 (if the victim is not a minor), aggravated kidnapping;

(xi) [section 2(1)], abuse or sexual abuse of a vulnerable adult;

(~~xi~~)(xii) 45-5-401, robbery;

(~~xii~~)(xiii) 45-6-103, arson; or

(~~xiii~~)(xiv) 45-9-132, operation of unlawful clandestine laboratory; or

(b) any violation of a law of another state, a tribal government, the federal government, or the military or a foreign entity reasonably equivalent to a violation listed in subsection (14)(a)."

Section 11. Section 46-23-509, MCA, is amended to read:

"46-23-509. Psychosexual evaluations and sexual offender designations. (1) Prior to sentencing of a person convicted of a sexual offense, a sexual offender evaluator who has a license endorsement as provided for in 37-1-139 shall provide the court with a psychosexual evaluation report recommending one of the following levels of designation for the offender:

(a) level 1, the risk of a repeat sexual offense is low;

(b) level 2, the risk of a repeat sexual offense is moderate;

(c) level 3, the risk of a repeat sexual offense is high, there is a threat to public safety, and the sexual offender evaluator believes that the offender is a sexually violent predator.

(2) Upon sentencing the offender, the court shall:

(a) review the psychosexual evaluation report, any statement by a victim, and any statement by the offender;

(b) designate the offender as level 1, 2, or 3; and

(c) designate a level 3 offender as a sexually violent predator.

(3) An offender designated as a level 2 offender or given a level designation by another state, the federal government, or the department under subsection (5) that is determined by the court to be similar to level 2 may petition the sentencing court or the district court for the judicial district in which the offender resides to change the offender's designation if the offender has enrolled in and successfully completed the treatment phase of either the prison's sexual offender treatment program or of an equivalent program approved by the department. After considering the petition, the court may change the offender's risk level designation if the court finds by clear and convincing evidence that the offender's risk of committing a repeat sexual offense has changed since the time sentence was imposed. The court shall impose one of the three risk levels specified in

1 this section.

2 (4) If, at the time of sentencing, the sentencing judge did not apply a level designation to a sexual
3 offender who is required to register under this part and who was sentenced prior to October 1, 1997, the
4 department shall designate the offender as level 1, 2, or 3 when the offender is released from confinement.

5 (5) If an offense is covered by ~~46-23-502(10)(a)(xvii)~~ 46-23-502(10)(a)(xviii), the offender registers
6 under 46-23-504(1)(c), and the offender was given a risk level designation after conviction by another state or
7 the federal government, the department of justice may give the offender the risk level designation assigned by
8 the other state or the federal government. All offenders convicted in another state or by the federal government
9 who are not currently under the supervision of the department or the youth court and were not given a risk level
10 designation after conviction shall provide to the department of justice all prior risk assessments and
11 psychosexual evaluations done to evaluate the offender's risk to reoffend. Any offender without a risk
12 assessment or psychosexual evaluation shall, at the offender's expense, undergo a psychosexual evaluation
13 with a sexual offender evaluator who has a license endorsement as provided for in 37-1-139. The results of the
14 psychosexual evaluation may be requested by the attorney general or a county attorney for purposes of
15 petitioning a district court to assign a risk level designation.

16 (6) The lack of a fixed residence is a factor that may be considered by the sentencing court or by
17 the department in determining the risk level to be assigned to an offender pursuant to this section.

18 (7) Upon obtaining information that indicates that a sexual offender who is required to register
19 under this part does not have a level 1, 2, or 3 designation, the offender, the attorney general, the county
20 attorney that prosecuted the offender and obtained a conviction for a sexual offense, or the county attorney for
21 the county in which the offender resides may, at any time, petition the district court that sentenced the offender
22 for a sexual offense or the district court for the judicial district in which the offender resides to designate the
23 offender as level 1, 2, or 3. Upon the filing of the petition, the court may order a psychosexual evaluation report
24 at the petitioner's expense, or order that the results of all prior psychosexual evaluations be provided to all
25 parties. The court shall provide the offender with an opportunity for a hearing prior to designating the offender.
26 The petitioner shall provide the offender, the attorney general, and the county attorney that prosecuted the
27 offender with notice of the petition and notice of the hearing. As provided in 46-23-506(2)(d), petitions for relief
28 from registration under this part must be filed in the appropriate Montana district court. Orders or other

documents granting relief from registration requirements that originated in other jurisdictions are not valid in Montana."

Section 12. Section 52-3-803, MCA, is amended to read:

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

(1) "Abuse" means:

(a) ~~the infliction of physical or mental injury~~ the commission of assault as described in 45-5-201;

(b) the deprivation of food, shelter, clothing, or services necessary to maintain the physical or mental health of a vulnerable adult without lawful authority. A declaration made pursuant to 50-9-103 constitutes lawful authority.

(c) the causing of personal degradation of a vulnerable adult in a place where the vulnerable adult has a reasonable expectation of privacy.

(2) "Department" means the department of public health and human services provided for in 2-15-2201.

(3) "Exploitation" means:

(a) the unreasonable use of a vulnerable adult or of a power of attorney, conservatorship, or guardianship with regard to a vulnerable adult in order to obtain control of or to divert to the advantage of another the ownership, use, benefit, or possession of or interest in the vulnerable adult's money, assets, or property by means of deception, duress, menace, fraud, undue influence, or intimidation with the intent or result of permanently depriving the vulnerable adult of the ownership, use, benefit, or possession of or interest in the vulnerable adult's money, assets, or property;

(b) an act taken by a person who has the trust and confidence of a vulnerable adult to obtain control of or to divert to the advantage of another the ownership, use, benefit, or possession of or interest in the vulnerable adult's money, assets, or property by means of deception, duress, menace, fraud, undue influence, or intimidation with the intent or result of permanently depriving the vulnerable adult of the ownership, use, benefit, or possession of or interest in the vulnerable adult's money, assets, or property;

(c) the unreasonable use of a vulnerable adult or of a power of attorney, conservatorship, or guardianship with regard to a vulnerable adult done in the course of an offer or sale of insurance or securities in

1 order to obtain control of or to divert to the advantage of another the ownership, use, benefit, or possession of
2 the vulnerable adult's money, assets, or property by means of deception, duress, menace, fraud, undue
3 influence, or intimidation with the intent or result of permanently depriving the vulnerable adult of the ownership,
4 use, benefit, or possession of the vulnerable adult's money, assets, or property.

5 (4) "Incapacitated person" has the meaning provided in 72-5-101.

6 (5) "Long-term care facility" has the meaning provided in 50-5-101.

7 (6) ~~"Mental injury" means an identifiable and substantial impairment of a person's intellectual or~~
8 ~~psychological functioning or well-being.~~

9 (7)(6) "Neglect" means the failure of a person who has assumed legal responsibility or a contractual
10 obligation for caring for a vulnerable adult or who has voluntarily assumed responsibility for the a vulnerable
11 adult's care, including an employee of a public or private residential institution, facility, home, or agency, to
12 provide food, shelter, clothing, or services necessary to maintain the physical or mental health of the vulnerable
13 adult.

14 (8)(7) "Personal degradation" means publication or distribution of a printed or electronic photograph
15 or video of a vulnerable adult when the person publishing or distributing intends to demean or humiliate the
16 vulnerable adult or knows or reasonably should know that the publication or distribution would demean or
17 humiliate a reasonable person. Personal degradation does not include the recording and dissemination of
18 images or video for treatment, diagnosis, regulatory compliance, or law enforcement purposes, as part of an
19 investigation, or in accordance with a facility or program's confidentiality policy and release of information or
20 consent policy.

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

23 (10)(8) "Sexual abuse" means the commission of ~~sexual assault, sexual intercourse without consent,~~
24 ~~indecent exposure, deviate sexual conduct, incest, or sexual abuse of children~~ a sexual offense as described in
25 Title 45, chapter 5, part 5, and Title 45, chapter 8, part 2.

26 (11)(9) "Vulnerable adult" means a person who:

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

28 (b) is 18 years of age or older and:

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

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

NEW SECTION. Section 13. Repealer. The following sections of the Montana Code Annotated are repealed:

45-6-333. Exploitation of incapacitated person or vulnerable adult.

52-3-825. Penalties.

NEW SECTION. Section 14. Codification instruction. [Sections 1 through 4] are intended to be codified as a new part of Title 45, chapter 5, and the provisions of Title 45, chapter 5, apply to [sections 1 through 4].

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