

Montana Code Annotated (MCA) 2005

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Part 1. Problems of Aging

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**52-3-101. Functions of department of public health and human services.** The department of public health and human services shall:

(1) consult with and advise organized efforts by communities, organizations, associations, and groups that are working toward any forms of assistance to problems of aging;

(2) study and identify problems of aging;

(3) review existing programs for the aging and make recommendations to the governor and the legislature for improvements in the programs;

(4) encourage the sponsorship of community projects which will seek to make optimum use of the time and talents of retired persons;

(5) coordinate, through area councils on aging, the delivery of community-based care, including but not limited to home health care, homemaker services, foster home care, nutrition, transportation, winterization, information and referral, and recreation.

**History:** En. Sec. 4, Ch. 73, L. 1965; amd. Sec. 4, Ch. 12, L. 1967; Sec. 82-3504, R.C.M. 1947; amd. and redes. 71-2001 by Sec. 43, Ch. 121, L. 1974; R.C.M. 1947, 71-2301; amd. Sec. 1, Ch. 665, L. 1979; amd. Sec. 11, Ch. 609, L. 1987; Sec. , MCA 1989; redes. by Code Commissioner, 1991; amd. Sec. 353, Ch. 546, L. 1995; amd. Sec. 1, Ch. 435, L. 1999.

**52-3-102. Grants and gifts to department.** The department of public health and human services may receive on behalf of the state any grant from the federal government or any grant or gift from any source and accept the grant or gift so that the title will pass to the state. All grants, grants-in-aid, or gifts must be deposited with the state treasurer and must be continuously available to the department.

**History:** En. Sec. 5, Ch. 73, L. 1965; amd. Sec. 5, Ch. 12, L. 1967; Sec. 82-3505, R.C.M. 1947; amd. and redes. 71-2002 by Sec. 44, Ch. 121, L. 1974; R.C.M. 1947, 71-2302; amd. Sec. 11, Ch. 609, L. 1987; Sec. , MCA 1989; redes. by Code Commissioner, 1991; amd. Sec. 354, Ch. 546, L. 1995.

### **52-3-103. Designation of area agencies.**

(1) The department of public health and human services may designate as an area agency in a geographical area an entity that demonstrates its ability to:

(a) develop and administer an area plan for a comprehensive and coordinated system of services; and

(b) serve as the advocate and focal point for older persons in the planning and service area.

(2) An entity may be but is not limited to:

(a) an established office on aging that operates within the geographical area;

(b) an office or agency of a unit of general purpose local government, except a local office of public assistance;

(c) any combination of offices or units of general purpose local governments; or

(d) any other public or private, nonprofit agency, except a regional or local agency of the state.

**History:** En. Sec. 1, Ch. 337, L. 1983; amd. Sec. 11, Ch. 609, L. 1987; Sec. , MCA 1989; redes. by Code Commissioner, 1991; amd. Sec. 355, Ch. 546, L. 1995; amd. Sec. 2, Ch. 435, L. 1999; amd. Sec. 45, Ch. 571, L. 2001.

### **52-3-104 through 52-3-110 reserved.**

### **52-3-111. Senior citizens' legislature.**

(1) The department of public health and human services may contract with a senior citizens' organization for the purpose of establishing a mock legislature to be held in the year preceding the legislative session.

(2) The contract entered into with the senior citizens' organization must provide that the organization match on a one-to-two, organization to department, ratio any amount contracted for.

(3) The department of public health and human services shall cooperate with the department of administration in assisting the senior citizens' organization designated to establish the mock legislature.

**History:** En. Secs. 1, 2, Ch. 638, L. 1983; amd. Sec. 11, Ch. 609, L. 1987; Sec. , MCA 1989; redes. by Code Commissioner, 1991; amd. Sec. 356, Ch. 546, L. 1995.

## **Part 2. Protective Services**

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**52-3-201. Short title.** This part may be cited as the "Protective Services Act for Aged Persons or Disabled Adults".

**History:** En. 71-1914 by Sec. 1, Ch. 232, L. 1975; R.C.M. 1947, 71-1914; Sec. , MCA 1989; redes. by Code Commissioner, 1991.

**52-3-202. Definitions.** As used in this part, the following definitions apply:

(1) "Aged person" means an aged person as defined by the department.

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

(3) "Disabled adult" means a person 18 years of age or older who is defined by the department as disabled or who is a person with developmental disabilities, as defined in [53-20-102](#).

(4) "Protective services" means assistance to an aged person or disabled adult in obtaining the services offered by the department.

**History:** En. 71-1915 by Sec. 2, Ch. 232, L. 1975; R.C.M. 1947, 71-1915; amd. Sec. 11, Ch. 609, L. 1987; Sec. , MCA 1989; redes. by Code Commissioner, 1991; amd. Sec. 21, Ch. 255, L. 1995; amd. Sec. 1, Ch. 465, L. 1995; amd. Sec. 357, Ch. 546, L. 1995.

**52-3-203. Purpose.** To ensure that aged persons or disabled adults in the state be afforded the opportunity to receive protective services and to implement certain provisions of the federal government's Title XX, Social Services Amendments of 1972, this legislature declares the department to be recognized as the public agency responsible for providing those services.

**History:** En. 71-1916 by Sec. 3, Ch. 232, L. 1975; R.C.M. 1947, 71-1916; Sec. , MCA 1989; redes. by Code Commissioner, 1991.

**52-3-204. Duties of department.** The department shall be responsible for acting on requests for protective services from aged persons or disabled adults or from relatives, friends, or other reputable persons requesting those services on behalf of an aged person or disabled adult.

**History:** En. 71-1917 by Sec. 4, Ch. 232, L. 1975; R.C.M. 1947, 71-1917; Sec. , MCA 1989; redes. by Code Commissioner, 1991.

**52-3-205. Departmental authority.** The department may implement a program for protective services by establishing appropriate rules which are not inconsistent with the department's activities.

**History:** En. 71-1918 by Sec. 5, Ch. 232, L. 1975; R.C.M. 1947, 71-1918; Sec. , MCA 1989; redes. by Code Commissioner, 1991.

**52-3-206. Annual reports.** The department shall make annual reports on the number of people served by this part and the type of protective services made available to the aged persons and disabled adults of Montana.

**History:** En. 71-1919 by Sec. 6, Ch. 232, L. 1975; R.C.M. 1947, 71-1919; Sec. , MCA 1989; redes. by Code Commissioner, 1991.

**52-3-207. Protective services not creating guardianship or conservatorship.**

(1) The provision of protective services does not create a guardianship or conservatorship relationship between the department and the aged person or disabled adult unless a guardianship or conservatorship is created in accordance with the requirements of Title 72, chapter 5, part 3 or 4.

(2) The department may not provide protective services that impose a legal limitation or restriction on an aged person or a disabled adult:

(a) except emergency protective services provided under [52-3-804](#); or

(b) unless the department has been appointed legal guardian or conservator for that person under the provisions of Title 72, chapter 5, part 3 or 4.

**History:** En. Sec. 7, Ch. 343, L. 1981; Sec. , MCA 1989; redes. by Code Commissioner, 1991; amd. Sec. 2, Ch. 465, L. 1995.

Part 3. Adult Foster Family Care (Repealed)

[52-3-301. Repealed.](#)

[52-3-302. Repealed.](#)

[52-3-303. Repealed.](#)

[52-3-304. Repealed.](#)

[52-3-305. Repealed.](#)

[52-3-306 through 52-3-310 reserved.](#)

[52-3-311. Repealed.](#)

[52-3-312. Repealed.](#)

[52-3-313. Repealed.](#)

[52-3-314. Repealed.](#)

**52-3-301. Repealed.** Sec. 15, Ch. 366, L. 1995.

**History:** En. 71-2303 by Sec. 1, Ch. 364, L. 1975; R.C.M. 1947, 71-2303; Sec. , MCA 1989; redes. by Code Commissioner, 1991.

**52-3-302. Repealed.** Sec. 15, Ch. 366, L. 1995.

**History:** En. 71-2304 by Sec. 2, Ch. 364, L. 1975; amd. Sec. 40, Ch. 37, L. 1977; R.C.M. 1947, 71-2304; amd. Sec. 2, Ch. 665, L. 1979; amd. Sec. 11, Ch. 609, L. 1987; Sec. , MCA 1989; redes. by Code Commissioner, 1991.

**52-3-303. Repealed.** Sec. 15, Ch. 366, L. 1995.

**History:** En. 71-2305 by Sec. 3, Ch. 364, L. 1975; R.C.M. 1947, 71-2305; amd. Sec. 10, Ch. 38, L. 1979; amd. Sec. 3, Ch. 665, L. 1979; amd. Sec. 5, Ch. 102, L. 1989; Sec. , MCA 1989; redes. by Code Commissioner, 1991.

**52-3-304. Repealed.** Sec. 15, Ch. 366, L. 1995.

**History:** En. 71-2306 by Sec. 4, Ch. 364, L. 1975; R.C.M. 1947, 71-2306; amd. Sec. 11, Ch. 38, L. 1979; amd. Sec. 3, Ch. 199, L. 1979; Sec. , MCA 1989; redes. by Code Commissioner, 1991; amd. Sec. 1, Ch. 706, L. 1991.

**52-3-305. Repealed.** Sec. 15, Ch. 366, L. 1995.

**History:** En. 71-2307 by Sec. 5, Ch. 364, L. 1975; R.C.M. 1947, 71-2307; Sec. , MCA 1989; redes. by Code Commissioner, 1991; amd. Sec. 1, Ch. 421, L. 1993.

**52-3-306 through 52-3-310 reserved.**

**52-3-311. Repealed.** Sec. 15, Ch. 366, L. 1995.

**History:** En. Sec. 1, Ch. 102, L. 1989; Sec. , MCA 1989; redes. by Code Commissioner, 1991.

**52-3-312. Repealed.** Sec. 15, Ch. 366, L. 1995.

**History:** En. Sec. 2, Ch. 102, L. 1989; Sec. , MCA 1989; redes. by Code Commissioner, 1991.

**52-3-313. Repealed.** Sec. 15, Ch. 366, L. 1995.

**History:** En. Sec. 3, Ch. 102, L. 1989; Sec. , MCA 1989; redes. by Code Commissioner, 1991.

**52-3-314. Repealed.** Sec. 15, Ch. 366, L. 1995.

**History:** En. Sec. 4, Ch. 102, L. 1989; Sec. , MCA 1989; redes. by Code Commissioner, 1991.

#### **Part 4. State Plan on Aging**

[52-3-401. Definitions.](#)

[52-3-402. Purpose.](#)

[52-3-403. Existing planning and service areas grandfathered -- exception.](#)

[52-3-404. State plan on aging.](#)

[52-3-405. Designation of planning and service areas.](#)

[52-3-406. Departmental rules.](#)

**52-3-401. Definitions.** As used in this part, unless the context clearly indicates otherwise, the following definitions apply:

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

(2) "Older Americans Act" means the Older Americans Act of 1965, as amended, 42 U.S.C. 3001, et seq.

(3) "Planning and service area" means a geographic area of the state that is designated for purposes of planning, development, delivery, and overall administration of services under the Older Americans Act.

(4) "Services to the aged" means those services the department administers pursuant to the Older Americans Act.

(5) "State plan" means a plan developed by the department to coordinate and administer delivery of services under the Older Americans Act.

**History:** En. Sec. 1, Ch. 645, L. 1983; amd. Sec. 11, Ch. 609, L. 1987; Sec. , MCA 1989; redes. by Code Commissioner, 1991; amd. Sec. 359, Ch. 546, L. 1995.

**52-3-402. Purpose.** The purpose of this part is to grant the department authority to develop and administer the state plan on aging, to coordinate services to the aged pursuant to the Older Americans Act, and to establish or redesignate planning and service areas pursuant to section 305 of that act. It is the intent of the legislature that the number of planning and service areas be limited so that unnecessary administrative costs are eliminated.

**History:** En. Sec. 2, Ch. 645, L. 1983; Sec. , MCA 1989; redes. by Code Commissioner, 1991.

**52-3-403. Existing planning and service areas grandfathered -- exception.** The 11 planning and service areas existing on April 27, 1983, are grandfathered in for a period of not less than 4 years. However, the department may accept and consider requests from such existing planning and service areas that the requesting area be divided into two new areas and may grant one request and divide the area into two new areas. If the department grants a request and divides the requesting area into two new areas, this section's grandfather clause applies to the two new areas.

**History:** En. Sec. 3, Ch. 645, L. 1983; Sec. , MCA 1989; redes. by Code Commissioner, 1991.

**52-3-404. State plan on aging.** The department may administer and develop the state plan on aging.

**History:** En. Sec. 4, Ch. 645, L. 1983; Sec. , MCA 1989; redes. by Code Commissioner, 1991.

**52-3-405. Designation of planning and service areas.**

(1) On or before October 1, 1983, and every 4 years following, the department shall redesignate the planning and service areas it utilizes for services to the aged.

(2) The department shall fix the number of planning and service areas at no less than 7 and no more than 12.

(3) Planning and service areas shall follow either recognized county boundaries or Indian reservation boundaries, or both.

(4) The department may designate a combination of Indian reservations as a planning and service area for any reservations that have applied to be designated under a consortium supported by their respective tribal governments.

**History:** En. Sec. 5, Ch. 645, L. 1983; Sec. , MCA 1989; redes. by Code Commissioner, 1991.

**52-3-406. Departmental rules.** The department shall adopt rules to administer and implement this part.

**History:** En. Sec. 6, Ch. 645, L. 1983; Sec. , MCA 1989; redes. by Code Commissioner, 1991.

## **Part 5. Montana Older Americans Act**

[52-3-501. Short title.](#)

[52-3-502. Definitions.](#)

[52-3-503. Purpose and policy.](#)

[52-3-504. Services to be provided.](#)

[52-3-505. Role of department.](#)

[52-3-506. Coordination with federal legislation.](#)

**52-3-501. Short title.** This part may be cited as the "Montana Older Americans Act".

**History:** En. Sec. 1, Ch. 67, L. 1987; Sec. , MCA 1989; redes. by Code Commissioner, 1991.

**52-3-502. Definitions.** In this part, the following definitions apply:

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

(2) "Older Montanan" means a resident of this state who is at least 60 years of age.

**History:** En. Sec. 2, Ch. 67, L. 1987; amd. Sec. 64, Ch. 83, L. 1989; Sec. , MCA 1989; redes. by Code Commissioner, 1991; amd. Sec. 360, Ch. 546, L. 1995.

### **52-3-503. Purpose and policy.**

(1) The legislature finds that older Montanans constitute a valuable resource of this state and that their competence, experience, and wisdom must be used more effectively for the benefit of all Montanans.

(2) The legislature further finds that a complete range of services is not available in all areas of the state and that many Montanans lack access to the services that are available.

(3) The legislature declares that it is the policy of this state, subject to available funding, to provide a wide range of coordinated services to enable older Montanans to maintain an independent lifestyle, avoid unnecessary institutional care, and live in dignity.

(4) It is the intent of the legislature that available federal, state, regional, and local resources be used to strengthen the economic, social, and general well-being of older Montanans and that the state:

(a) develop appropriate programs for older Montanans;

(b) coordinate and integrate all levels of service, with emphasis on the whole person; and

(c) promote alternative forms of service that will create options for older Montanans.

**History:** En. Sec. 3, Ch. 67, L. 1987; Sec. , MCA 1989; redes. by Code Commissioner, 1991; amd. Sec. 3, Ch. 435, L. 1999.

**52-3-504. Services to be provided.** Subject to available funding, the department, in conjunction with other state, local, and private agencies and organizations, shall identify and may provide for older Montanans, in addition to existing services:

(1) a directory of available services;

(2) transportation that provides access to services;

(3) housing, nutrition, education, homemaker, escort, respite, hospice, and other programs that facilitate self-care;

- (4) physical and mental health care, including inpatient and outpatient services, screening, appliances and supplies, and home health care;
- (5) placement in adult day care, foster care, personal care, supervisory care, and nursing homes;
- (6) protective advocacy and legal programs;
- (7) job training, job development, and income maintenance;
- (8) adult education; and
- (9) training and research in aging.

**History:** En. Sec. 4, Ch. 67, L. 1987; Sec. , MCA 1989; redes. by Code Commissioner, 1991; amd. Sec. 4, Ch. 435, L. 1999.

**52-3-505. Role of department.** The department shall develop a plan to coordinate the services identified in [52-3-504](#), facilitate cooperation among agencies, avoid duplication, and increase efficiency.

**History:** En. Sec. 5, Ch. 67, L. 1987; Sec. , MCA 1989; redes. by Code Commissioner, 1991.

**52-3-506. Coordination with federal legislation.** Nothing in this part shall be construed to prevent the department from complying with the rules and regulations promulgated by the U.S. department of health and human services pursuant to the "Older Americans Act of 1965", as amended.

**History:** En. Sec. 6, Ch. 67, L. 1987; Sec. , MCA 1989; redes. by Code Commissioner, 1991.

#### Part 6. Ombudsman Services

[52-3-601. Purpose.](#)

[52-3-602. Definitions.](#)

[52-3-603. Office of legal and long-term care ombudsman services.](#)

[52-3-604. Access to long-term care facilities.](#)

[52-3-605. Enforcement of access.](#)

**52-3-601. Purpose.** The legislature finds that many disabled and elderly Montana citizens reside in long-term care facilities in Montana and because of their isolated and vulnerable condition are dependent on others for care and protection. It is the intent of the legislature that, contingent on receipt of federal funds for the purpose, the office of legal and long-term care ombudsman services:

- (1) monitor the quality of care and life for residents of long-term care facilities;
- (2) develop and coordinate legal services for elderly citizens; and
- (3) through necessary investigations, reports, and corrective action, ensure that a good quality of care and life be maintained for residents of long-term care facilities.

**History:** En. Sec. 1, Ch. 223, L. 1987; Sec. , MCA 1989; redes. by Code Commissioner, 1991.

**52-3-602. Definitions.** In this part, the following definitions apply:

- (1) "Local ombudsman" means a person officially designated by the long-term care ombudsman to act as his local representative.
- (2) "Long-term care facility" means a facility or part thereof that provides skilled nursing care, intermediate nursing care, or personal care, as these terms are defined in [50-5-101](#).
- (3) "Long-term care ombudsman" means the individual appointed under 42 U.S.C. 3027(a)(12) to fulfill the federal requirement that the state provide an advocate for residents of long-term care facilities.

**History:** En. Sec. 2, Ch. 223, L. 1987; Sec. , MCA 1989; redes. by Code Commissioner, 1991.

**52-3-603. Office of legal and long-term care ombudsman services.** Contingent on receipt of federal funds for the purpose, there is an office of legal and long-term care ombudsman services in the department of public health and human services. As required by the Older Americans Act of 1965, as amended (42 U.S.C. 3001, et seq.), and the regulations adopted pursuant thereto, the office:

- (1) serves as an advocate for Montana citizens residing in long-term care facilities, regardless of their age or source of payment for care, to ensure that their rights are protected, that they receive quality care, and that they reside in a safe environment; and
- (2) coordinates legal services for the elderly.

**History:** En. Sec. 3, Ch. 223, L. 1987; amd. Sec. 65, Ch. 83, L. 1989; Sec. , MCA 1989; redes. by Code Commissioner, 1991; amd. Sec. 361, Ch. 546, L. 1995

**52-3-604. Access to long-term care facilities.**

(1) The long-term care ombudsman or local ombudsman shall have access without advance notice to any long-term care facility, including private access to any resident, for the purpose of meeting with residents, investigating and resolving complaints, and advising residents on their rights.

(2) Access must be granted to the long-term care ombudsman or local ombudsman during normal visiting hours (9 a.m. to 6 p.m.) and to the long-term care ombudsman at any time he considers necessary to perform the duties described in [52-3-603](#).

(3) The ombudsman shall carry out the duties described in [52-3-603](#) in a manner that is least disruptive to resident care and activities.

**History:** En. Sec. 4, Ch. 223, L. 1987; Sec. , MCA 1989; redes. by Code Commissioner, 1991.

**52-3-605. Enforcement of access.**

(1) A person who violates the provisions of [52-3-604](#) is subject to a civil penalty not to exceed \$1,000. Each day of violation constitutes a separate violation. The department of public health and human services or, upon request of that department, the county attorney of the county in which the long-term care facility in question is located may petition the district court to impose, assess, and recover the civil penalty. Money collected as a civil penalty must be deposited in the state general fund.

(2) The department of public health and human services or, upon request of that department, the county attorney of the county in which the long-term care facility in question is located may bring an action to enjoin a violation of any provision of [52-3-604](#) in addition to or exclusive of the remedy in subsection (1).

**History:** En. Sec. 5, Ch. 223, L. 1987; Sec. , MCA 1989; redes. by Code Commissioner, 1991; amd. Sec. 153, Ch. 418, L. 1995; amd. Sec. 362, Ch. 546, L. 1995.

Part 7 reserved .

Part 8. Montana Elder and Persons With Developmental Disabilities Abuse Prevention Act

[52-3-801. Short title.](#)

[52-3-802. Legislative findings and purpose.](#)

[52-3-803. Definitions.](#)

[52-3-804. Duties of department.](#)

[52-3-805. Adult protective service teams.](#)

[52-3-806 through 52-3-810 reserved.](#)

[52-3-811. Reports.](#)

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[52-3-821. Admissibility of evidence.](#)

[52-3-822 through 52-3-824 reserved.](#)

[52-3-825. Penalties.](#)

**52-3-801. Short title.** This part may be cited as the "Montana Elder and Persons With Developmental Disabilities Abuse Prevention Act".

**History:** En. Sec. 1, Ch. 623, L. 1983; amd. Sec. 1, Ch. 198, L. 1989; Sec. , MCA 1989; redes. by Code Commissioner, 1991; amd. Sec. 21, Ch. 255, L. 1995.

**52-3-802. Legislative findings and purpose.** The legislature finds that a need exists to provide for cooperation among law enforcement officials and agencies, courts, and state and county agencies providing human services in preventing the abuse, sexual abuse, neglect, and exploitation of Montana's elderly persons and persons with developmental disabilities through the identification, reporting, and prosecution of acts of abuse, sexual abuse, neglect, and exploitation.

**History:** En. Sec. 2, Ch. 623, L. 1983; amd. Sec. 2, Ch. 198, L. 1989; Sec. , MCA 1989; redes. by Code Commissioner, 1991; amd. Sec. 1, Ch. 167, L. 1993; amd. Sec. 21, Ch. 255, L. 1995; amd. Sec. 1, Ch. 196, L. 1999.

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

(1) "Abuse" means:

(a) the infliction of physical or mental injury; or

(b) the deprivation of food, shelter, clothing, or services necessary to maintain the physical or mental health of an older person or a person with a developmental disability without lawful authority. A declaration made pursuant to [50-9-103](#) constitutes lawful authority.

(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 an older person or a person with a developmental disability or of a power of attorney, conservatorship, or guardianship with regard to an older person or a person with a developmental disability 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 person'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 older person or person with a developmental disability of the ownership, use, benefit, or possession of or interest in the person's money, assets, or property;

(b) an act taken by a person who has the trust and confidence of an older person or a person with a developmental disability to obtain control of or to divert to the advantage of another the ownership, use, benefit, or possession of or interest in the person'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 older person or person with a developmental disability of the ownership, use, benefit, or possession of or interest in the person's money, assets, or property;

(c) the unreasonable use of an older person or a person with a developmental disability or of a power of attorney, conservatorship, or guardianship with regard to an older person or a person with a developmental disability done in the course of an offer or sale of insurance or securities in order to obtain control of or to divert to the advantage of another the ownership, use, benefit, or possession of the person'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 older person or person with a developmental disability of the ownership, use, benefit, or possession of the person's money, assets, or property.

(4) "Incapacitated person" has the meaning given in [72-5-101](#).

(5) "Long-term care facility" means a facility defined in [50-5-101](#).

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

(7) "Neglect" means the failure of a person who has assumed legal responsibility or a contractual obligation for caring for an older person or a person with a developmental disability or who has voluntarily assumed responsibility for the person'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 older person or the person with a developmental disability.

(8) "Older person" means a person who is at least 60 years of age. For purposes of prosecution under [52-3-825](#)(2) or (3), the person 60 years of age or older must be unable to provide personal protection from abuse, sexual abuse, neglect, or exploitation because of a mental or physical impairment or because of frailties or dependencies brought about by advanced age.

(9) "Person with a developmental disability" means a person 18 years of age or older who has a developmental disability, as defined in [53-20-102](#).

(10) "Physical injury" means death, permanent or temporary disfigurement, or impairment of any bodily organ or function.

(11) "Sexual abuse" means the commission of sexual assault, sexual intercourse without consent, indecent exposure, deviate sexual conduct, or incest, as described in Title 45, chapter 5, part 5.

**History:** En. Sec. 3, Ch. 623, L. 1983; amd. Sec. 1, Ch. 668, L. 1985; amd. Sec. 111, Ch. 370, L. 1987; amd. Sec. 2, Ch. 450, L. 1987; amd. Sec. 3, Ch. 198, L. 1989; Sec. , MCA 1989; redes. by Code Commissioner, 1991; amd. Sec. 1, Ch. 716, L. 1991; amd. Sec. 2, Ch. 167, L. 1993; amd. Sec. 1, Ch. 426, L. 1993; amd. Sec. 3, Ch. 465, L. 1995; amd. Sec. 2, Ch. 196, L. 1999; amd. Sec. 1, Ch. 350, L. 2003; amd. Sec. 9, Ch. 493, L. 2003.

**52-3-804. Duties of department.**

(1) The department shall investigate reports of abuse, sexual abuse, neglect, or exploitation received pursuant to [52-3-811](#)(1)(a).

(2) The department shall prepare an annual report of the information obtained pursuant to the reporting requirement of this part.

(3) The department shall, when appropriate, provide protective services under Title 52, chapter 3, part 2, for an older person or a person with a developmental disability alleged

to have been abused, sexually abused, neglected, or exploited.

(4) If a person alleged to be abused, sexually abused, neglected, or exploited pursuant to this part or the person's caretaker refuses to allow a representative of the department entrance to the premises for the purpose of investigating a report made pursuant to [52-3-811\(1\)\(a\)](#), the district court in the county where the person is found may order a law enforcement officer or a department social worker to enter the premises to conduct an investigation upon finding that there is probable cause to believe that the person is abused, sexually abused, neglected, or exploited.

(5) If a representative of the department has reasonable grounds to believe that an older person or a person with a developmental disability alleged to be abused, sexually abused, neglected, or exploited is suffering from abuse, sexual abuse, neglect, or exploitation that presents a substantial risk of death or serious physical injury, the department may:

(a) provide voluntary protective services as provided in subsection (3); or

(b) if the department representative has reasonable grounds to believe that the person is incapacitated, provide emergency protective services as follows:

(i) arrange or facilitate an appropriate emergency protective service placement;

(ii) transport or arrange for the transport of the person to the appropriate placement;

(iii) not later than 2 judicial days following placement of the person, either:

(A) provide voluntary protective services as provided under subsection (3); or

(B) petition the district court to act as temporary guardian or appoint a temporary guardian as provided in [72-5-317](#).

**History:** En. Sec. 9, Ch. 623, L. 1983; amd. Sec. 11, Ch. 609, L. 1987; amd. Sec. 4, Ch. 198, L. 1989; Sec. , MCA 1989; redes. by Code Commissioner, 1991; amd. Sec. 2, Ch. 716, L. 1991; amd. Sec. 3, Ch. 167, L. 1993; amd. Sec. 4, Ch. 465, L. 1995; amd. Sec. 363, Ch. 546, L. 1995; amd. Sec. 3, Ch. 196, L. 1999.

#### **52-3-805. Adult protective service teams.**

(1) The county attorney or the department of public health and human services shall convene one or more temporary or permanent interdisciplinary adult protective service teams. These teams shall assist in assessing the needs of, formulating and monitoring a treatment plan for, and coordinating services to older persons and persons with developmental disabilities who are victims of abuse, sexual abuse, neglect, or exploitation. The supervisor of adult protective services of the department of public health and human services or the department's designee shall serve as the team's coordinator. Members must include a social worker, a member of a local law enforcement agency, a representative of the medical profession, and a county attorney or the county attorney's designee, who is an attorney. Members may include other appropriate persons designated by the county attorney or the department.

(2) When the team considers a matter involving an adult with developmental disabilities in the care of a person providing developmental disabilities services, the team must also include a provider of developmental disability services other than the provider involved in the matter under review. The team shall make a report to the county attorney that contains a recommendation concerning any criminal prosecution to be brought pursuant to this part.

**History:** En. Sec. 1, Ch. 662, L. 1985; amd. Sec. 12, Ch. 609, L. 1987; Sec. , MCA 1989; redes. by Code Commissioner, 1991; amd. Sec. 4, Ch. 167, L. 1993; amd. Sec. 2, Ch.

421, L. 1993; amd. Sec. 2, Ch. 426, L. 1993; amd. Sec. 21, Ch. 255, L. 1995; amd. Sec. 364, Ch. 546, L. 1995.

**52-3-806 through 52-3-810 reserved.**

**52-3-811. Reports.**

(1) When the professionals and other persons listed in subsection (3) know or have reasonable cause to suspect that an older person or a person with a developmental disability known to them in their professional or official capacities has been subjected to abuse, sexual abuse, neglect, or exploitation, they shall:

(a) if the person is not a resident of a long-term care facility, report the matter to:

(i) the department or its local affiliate; or

(ii) the county attorney of the county in which the person resides or in which the acts that are the subject of the report occurred;

(b) if the person is a resident of a long-term care facility, report the matter to the long-term care ombudsman appointed under the provisions of 42 U.S.C. 3027(a)(12) and to the department. The department shall investigate the matter pursuant to its authority in [50-5-204](#) and, if it finds any allegations of abuse, sexual abuse, neglect, or exploitation contained in the report to be substantially true, forward a copy of the report to the county attorney as provided in subsection (1)(a)(ii).

(2) If the report required in subsection (1) involves an act or omission of the department that may be construed as abuse, sexual abuse, neglect, or exploitation, a copy of the report may not be sent to the department but must be sent instead to the county attorney of the county in which the older person or the person with a developmental disability resides or in which the acts that are the subject of the report occurred.

(3) Professionals and other persons required to report are:

(a) a physician, resident, intern, professional or practical nurse, physician assistant, or member of a hospital staff engaged in the admission, examination, care, or treatment of persons;

(b) an osteopath, dentist, denturist, chiropractor, optometrist, podiatrist, medical examiner, coroner, or any other health or mental health professional;

(c) an ambulance attendant;

(d) a social worker or other employee of the state, a county, or a municipality assisting an older person or a person with a developmental disability in the application for or receipt of public assistance payments or services;

(e) a person who maintains or is employed by a roominghouse, retirement home or complex, nursing home, group home, adult foster care home, adult day-care center, or assisted living facility or an agency or individual that provides home health services or personal care in the home;

(f) an attorney, unless the attorney acquired knowledge of the facts required to be reported from a client and the attorney-client privilege applies;

(g) a peace officer or other law enforcement official;

(h) a person providing services to an older person or a person with a developmental disability pursuant to a contract with a state or federal agency; and

(i) an employee of the department while in the conduct of the employee's duties.

(4) Any other persons or entities may, but are not required to, submit a report in accordance with subsection (1).

**History:** En. Sec. 4, Ch. 623, L. 1983; amd. Sec. 13, Ch. 548, L. 1985; amd. Sec. 11, Ch. 609, L. 1987; amd. Sec. 5, Ch. 198, L. 1989; Sec. , MCA 1989; redes. by Code Commissioner, 1991; amd. Sec. 5, Ch. 167, L. 1993; amd. Sec. 3, Ch. 421, L. 1993; amd. Sec. 154, Ch. 418, L. 1995; amd. Sec. 7, Ch. 465, L. 1995; amd. Sec. 365, Ch. 546, L. 1995; amd. Sec. 4, Ch. 196, L. 1999; amd. Sec. 9, Ch. 54, L. 2003.

**52-3-812. Content of report.**

(1) The report required by [52-3-811](#) may be made in writing or orally, by telephone or in person. A person who receives an oral report shall prepare it in writing as soon as possible.

(2) The report referred to under this section must contain:

(a) the names and addresses of the older person or the person with a developmental disability and the person, if any, responsible for that person's care;

(b) the name and address, if available, of the person who is alleged to have abused, sexually abused, neglected, or exploited the older person or the person with a developmental disability;

(c) to the extent known, the person's age and the nature and extent of the abuse, sexual abuse, neglect, or exploitation, including any evidence of previous injuries, abuse, sexual abuse, neglect, or exploitation sustained by the older person or the person with a developmental disability and any evidence of prior instances of abuse, sexual abuse, neglect, or exploitation of other older persons or persons with developmental disabilities committed by the person alleged to have committed abuse, sexual abuse, neglect, or exploitation; and

(d) the name and address of the person making the report.

**History:** En. Sec. 5, Ch. 623, L. 1983; amd. Sec. 6, Ch. 198, L. 1989; Sec. , MCA 1989; redes. by Code Commissioner, 1991; amd. Sec. 6, Ch. 167, L. 1993; amd. Sec. 7, Ch. 465, L. 1995; amd. Sec. 5, Ch. 196, L. 1999.

**52-3-813. Confidentiality.**

(1) The case records of the department, its local affiliate, the county attorney, and the court concerning actions taken under this part and all reports made pursuant to [52-3-811](#) must be kept confidential except as provided by this section. For the purposes of this section, the term "case records" includes records of an investigation of a report of abuse, sexual abuse, neglect, or exploitation.

(2) The records and reports required to be kept confidential by subsection (1) may be disclosed, upon request, to the following persons or entities in this or any other state:

(a) a physician who is caring for an older person or a person with a developmental disability who the physician reasonably believes was abused, sexually abused, neglected, or exploited;

(b) a legal guardian or conservator of the older person or the person with a developmental disability if the identity of the person who made the report is protected and the legal guardian or conservator is not the person suspected of the abuse, sexual abuse, neglect, or exploitation;

(c) the person named in the report as allegedly being abused, sexually abused, neglected, or exploited if that person is not legally incompetent;

(d) any person engaged in bona fide research if the person alleged in the report to have committed the abuse, sexual abuse, neglect, or exploitation is later convicted of an offense constituting abuse, sexual abuse, neglect, or exploitation and if the identity of the

older person or the person with a developmental disability who is the subject of the report is not disclosed to the researcher;

(e) an adult protective service team. Members of the team are required to keep information about the subject individuals confidential.

(f) an authorized representative of a provider of services to a person alleged to be an abused, sexually abused, neglected, or exploited older person or person with a developmental disability if:

(i) the department and the provider are parties to a contested case proceeding under Title 2, chapter 4, part 6, resulting from action by the department adverse to the license of the provider and if information contained in the records or reports of the department is relevant to the case;

(ii) disclosure to the provider is determined by the department to be necessary to protect an interest of a person alleged to be an abused, sexually abused, neglected, or exploited older person or person with a developmental disability; or

(iii) the person is carrying out background screening or employment- or volunteer-related screening of current or prospective employees or volunteers who have or may have unsupervised contact with an older person or a person with a developmental disability through employment or volunteer activities if the disclosure is limited to information that indicates a risk to an older person or a person with a developmental disability posed by the employee or volunteer, as determined by the department. A request for information under this subsection must be made in writing.

(g) an employee of the department if disclosure of the record or report is necessary for administration of a program designed to benefit a person alleged to be an abused, sexually abused, neglected, or exploited older person or person with a developmental disability;

(h) an authorized representative of a guardianship program approved by the department if the department determines that disclosure to the program or to a person designated by the program is necessary for the proper provision of guardianship services to a person alleged to be an abused, sexually abused, neglected, or exploited older person or person with a developmental disability;

(i) protection and advocacy systems authorized under the provisions of 29 U.S.C. 794e, 42 U.S.C. 6042, and 42 U.S.C. 10805;

(j) the news media if disclosure is limited to confirmation of factual information regarding how the case was handled and does not violate the privacy rights of the older person, person with a developmental disability, or alleged perpetrator of abuse, sexual abuse, neglect, or exploitation, as determined by the department;

(k) a coroner or medical examiner who is determining the cause of death of an older person or a person with a developmental disability;

(l) a person about whom a report has been made and that person's attorney with respect to relevant records pertaining to that person only without disclosing the identity of the person who made the report or any other person whose safety might be endangered through disclosure;

(m) an agency, including a probation or parole agency, that is legally responsible for the supervision of an alleged perpetrator of abuse, sexual abuse, neglect, or exploitation of an older person or a person with a developmental disability; and

(n) a department, agency, or organization, including a federal agency, military

reservation, or tribal organization, that is legally authorized to receive, inspect, or investigate reports of abuse, sexual abuse, neglect, or exploitation of an older person or a person with a developmental disability and that meets the disclosure criteria contained in this section.

(3) The records and reports required to be kept confidential by subsection (1) must be disclosed, upon request, to the following persons or entities in this or any other state:

(a) a county attorney or other law enforcement official who requires the information in connection with an investigation of a violation of this part;

(b) a court that has determined, in camera, that public disclosure of the report, data, information, or record is necessary for the determination of an issue before it;

(c) a grand jury upon its determination that the report, data, information, or record is necessary in the conduct of its official business.

(4) If the person who is reported to have abused, sexually abused, neglected, or exploited an older person or a person with a developmental disability is the holder of a license, permit, or certificate issued by the department of labor and industry under the provisions of Title 37 or issued by any other entity of state government, the report may be submitted to the entity that issued the license, permit, or certificate.

**History:** En. Sec. 6, Ch. 623, L. 1983; amd. Sec. 2, Ch. 662, L. 1985; amd. Sec. 63, Ch. 83, L. 1989; amd. Sec. 7, Ch. 198, L. 1989; Sec. , MCA 1989; reded. by Code Commissioner, 1991; amd. Sec. 7, Ch. 167, L. 1993; amd. Sec. 4, Ch. 421, L. 1993; amd. Sec. 58, Ch. 18, L. 1995; amd. Sec. 5, Ch. 465, L. 1995; amd. Sec. 366, Ch. 546, L. 1995; amd. Sec. 6, Ch. 196, L. 1999; amd. Sec. 193, Ch. 483, L. 2001.

**52-3-814. Immunity from civil and criminal liability.**

(1) A person who makes a report required or authorized to be made under [52-3-811](#) is immune from civil or criminal liability that might otherwise be incurred or imposed as a result of the report unless the report is false in any material respect and the person acted in bad faith or with malicious purpose.

(2) A person who provides information or who uses information obtained pursuant to [52-3-813](#)(2) to refuse to hire or to discharge an employee, volunteer, or other person who through their employment or volunteer activities may have unsupervised contact with an older person or a person with a developmental disability is immune from civil liability unless the person providing or using the information acts in bad faith or with malicious purpose.

**History:** En. Sec. 7, Ch. 623, L. 1983; Sec. , MCA 1989; reded. by Code Commissioner, 1991; amd. Sec. 6, Ch. 465, L. 1995.

**52-3-815. Evidence of abuse, sexual abuse, neglect, or exploitation to be gathered and submitted.**

(1) A person or agency receiving a report of suspected abuse, sexual abuse, neglect, or exploitation under [52-3-811](#) shall prepare a written description of the conditions regarded as evidence of abuse, sexual abuse, neglect, or exploitation and may, with the consent of an allegedly abused, sexually abused, neglected, or exploited older person or person with a developmental disability or without consent of the person if it appears that the person is an incapacitated person, take or cause to be taken photographs of an area of trauma visible on the body of the allegedly abused, sexually abused, neglected, or exploited person and regarded as evidence of abuse, sexual abuse, neglect, or exploitation.

(2) A physician required to report under [52-3-811](#) may, with the consent of an allegedly

abused, sexually abused, neglected, or exploited older person or person with a developmental disability or without consent of the person if it appears that the person is an incapacitated person, require x-rays or other appropriate medical tests or procedures that would, in the professional opinion of the physician, assist in establishing evidence related to the allegation of abuse, sexual abuse, neglect, or exploitation.

(3) Evidence authorized to be gathered under this section must be submitted with the report required under [52-3-811](#) to the authorities designated in [52-3-811](#) as soon as possible after submission of the report.

**History:** En. Sec. 3, Ch. 716, L. 1991; amd. Sec. 8, Ch. 167, L. 1993; amd. Sec. 7, Ch. 465, L. 1995; amd. Sec. 7, Ch. 196, L. 1999.

**52-3-816 through 52-3-820 reserved.**

**52-3-821. Admissibility of evidence.** In any proceeding resulting from a report made pursuant to the provisions of this part or in any proceeding where the report or its content is sought to be introduced into evidence, the report or its content or any other fact related to the report or to the condition of the person who is the subject of the report may not be excluded on the ground that the matter is or may be the subject of a privilege granted in Title 26, chapter 1, part 8, except the attorney-client privilege granted by [26-1-803](#).

**History:** En. Sec. 8, Ch. 623, L. 1983; amd. Sec. 8, Ch. 198, L. 1989; Sec. , MCA 1989; redes. by Code Commissioner, 1991.

**52-3-822 through 52-3-824 reserved.**

**52-3-825. Penalties.**

(1) A person who purposely or knowingly fails to make a report required by [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 of an offense and upon conviction is punishable as provided in [46-18-212](#).

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

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

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

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

(3) (a) A person convicted of purposely or knowingly exploiting an older person or a person with a developmental disability in a case involving money, assets, or property in an amount of \$1,000 or less in value 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, or both. A person convicted of purposely or knowingly exploiting an older person or a person with a developmental disability in a case involving money, assets, or property in an amount of more than \$1,000 in value shall be fined an amount not more than \$50,000 or be imprisoned in a state prison for a term not to exceed 10 years, or both.

(b) For purposes of prosecution under subsection (3)(a) in a case involving the same

transaction or in a case prosecuted pursuant to a common scheme, the amounts may be aggregated in determining the value involved.

**History:** En. Sec. 10, Ch. 623, L. 1983; amd. Sec. 2, Ch. 668, L. 1985; amd. Sec. 1, Ch. 411, L. 1987; amd. Sec. 9, Ch. 198, L. 1989; Sec. , MCA 1989; redes. by Code Commissioner, 1991; amd. Sec. 9, Ch. 167, L. 1993; amd. Sec. 7, Ch. 465, L. 1995; amd. Sec. 8, Ch. 196, L. 1999; amd. Sec. 2, Ch. 350, L. 2003; amd. Sec. 1, Ch. 429, L. 2005.