

HJ26 1.3 – Legislative Considerations

CHILDREN, FAMILIES, HEALTH, AND HUMAN SERVICES INTERIM COMMITTEE
MILLY ALLEN – APRIL 23, 2026

HJ26 1.3 is provisional draft legislation in response to the committee’s study of guardianship and conservatorship in Montana. It is the second draft, incorporating feedback from the committee’s meeting on March 9 and 10, 2026. Red text in the draft indicates a change made after the March meeting.

The following context and questions provide a framework for committee discussion. Blank space is left after each question for committee members to add notes.

NEW SECTIONS

SECTION 3: CRIME OF EXPLOITATION

45-5-804 provides for the crime of exploitation of an incapacitated person or vulnerable adult. The proposed changes in Section 3 of this provisional draft clarify that the statute applies to “any type of guardian,” including full, temporary, and limited guardians. **(Related sections of code on page 3 of this document.)**

1. Does the committee have any changes to this section?

SECTIONS 7 AND 8: STAKEHOLDER FEEDBACK

2. The committee decided to include language proposed by Disability Rights Montana at the March meeting. Sections 7 and 8 reflect these changes. Does the committee have any changes to these sections?

SECTION 9: TEMPORARY GUARDIANS

3. New subsection (5) prohibits temporary guardians from selling the real and personal property of a ward without the approval of the court. **(Definitions provided on page 3 of this document.)** New subsection (6) directs the court to set a monthly spending limit. New subsection (7) adds reporting requirements. Do these new subsections adequately address the committee's concerns?

CHANGES TO PREVIOUSLY DRAFTED SECTIONS

SECTIONS 5 AND 12: REQUIREMENTS OF GUARDIAN AND CONSERVATOR

4. New language requires the court to verify the certification of a professional guardian and conservator. Professional guardians and conservators are also considered to have completed the background check and training requirements. (Section 1 was revised to include the requirement of a fingerprint background check and credit check.) Are there any further changes to training or background check requirements? Changes to any other requirements?

SECTION 16: EFFECTIVE DATE

5. HJ 1.3 would implement a number of changes. What is a reasonable timeline for the courts to implement these changes?

RELATED CODE SECTIONS

CRIME OF EXPLOITATION

SENTENCING

46-18-201 (5) is not included in the bill, but provides for a sentencing requirement of interest to the committee.

"(5) In addition to any other penalties imposed, if a person has been found guilty of an offense upon a verdict of guilty or a plea of guilty or nolo contendere and the sentencing judge finds that a victim, as defined in 46-18-243, has sustained a pecuniary loss or the provisions of 46-18-240 apply, the **sentencing judge shall, as part of the sentence, require payment of full restitution and interest to the victim**, as provided in 46-18-241 through 46-18-249, whether or not any part of the sentence is deferred or suspended." [Emphasis added.]

DEFINITIONS

45-2-101 provides the following definitions related to crime:

(23) "Felony" means an offense in which the sentence imposed upon conviction is death or imprisonment in a state prison for a term exceeding 1 year.

(42) "Misdemeanor" means an offense for which the sentence imposed upon conviction is imprisonment in the county jail for a term or a fine, or both, or for which the sentence imposed is imprisonment in a state prison for a term of 1 year or less.

PROPERTY

This Montana Code Annotated uses the following definitions of real property and personal property.

70-1-106. Real property defined. Real or immovable property consists of:

- (1) land;
- (2) that which is affixed to land, including a manufactured home declared an improvement to real property under **15-1-116**;
- (3) that which is incidental or appurtenant to land;
- (4) that which is immovable by law.

70-1-108. Personal property defined. (1) Every kind of property that is not real is personal.

(2) Digital assets are considered personal property.

(3) For the purposes of this section, "digital assets" means cryptocurrencies, natively electronic assets, including stable coins and nonfungible tokens, and other digital-only assets that confer economic, proprietary, or access rights or powers.