



Elder Law Project

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To: House Human Services Committee
From: Michael Benvenuto, Director, Elder Law Project, Vermont Legal Aid, Inc.;
Ruby Baker, Community of Vermont Elders; and Lindsey Owen, Disability
Rights Vermont
Re: H.171 Definition of a Vulnerable Adult

Thank you for your important work on this Bill and for the opportunity to testify and provide comments. When we testified last week, that testimony was focused on H.171 as proposed. However, we learned this week that DAIL is proposing to change the definition of a “vulnerable adult” specifically to add a “the” before “abuse, neglect, or exploitation”. This seemingly minor change is of critical importance and Vermont Legal Aid, COVE and DRVT are opposed to making that change.

The current statute does not have a “the” before “abuse, neglect, or exploitation” so this would be change to the current law. By adding a “the” before that phrase, DAIL’s intent is to require a linkage between the alleged abuse and the person’s ability to protect themselves from abuse. Although DAIL argues that the Vermont Supreme Court has interpreted the statute to require a linkage, that is not true and the Vermont Supreme Court has not ruled on that legal question. Our position at Vermont Legal Aid is that if that issue was presented to the Vermont Supreme Court, the Court would interpret that statute as written, and not add this additional requirement.

Requiring a linkage between the person’s ability to protect and the alleged abuse puts the victim on trial and requires the victim to demonstrate that they could not have prevented or protected themselves from the abuse. We are not aware of any other state that requires a linkage between the abuse and the person’s vulnerability, and we would ask the Committee not to add that requirement to the law.

We have discussed this issue with DAIL on many occasions in the years long process to revise this statute, and met with DAIL staff again today to discuss this further. Although DAIL believes that this would be a change to their practice and would require additional resources, we are not convinced that is true, and a core purpose of adding the Assessment track to the statute is to give APS the flexibility to manage their case load.

If the Committee intends to revise the definition, we are open to expanding on the concept of the “ability to protect” in order to provide more clarity about the meaning of that phrase. Specifically, that the intention is to capture the individual’s general “ability to self-protect” and as a result of their impairment, they are “at-risk” for abuse, neglect or exploitation. We are also open to revising the rule making section of the bill to allow DAIL to develop rules governing the application of the vulnerable adult criteria. The proposed language that we submitted to DAIL today is enclosed below:

(33) “Vulnerable adult” means any person 18 years of age or older who:

(C) regardless of residence or whether any type of service is received, has a physical, mental, or developmental disability, infirmities as a result of brain damage or a mental condition, or infirmities of aging, ~~resulting that results~~ in an impairment of:

(i) ~~impairment of~~ the individual’s ability to independently engage in activities of daily living or instrumental activities of daily living or to provide for some aspect of the adult’s own personal care without assistance; or

(ii) the adult’s ability to provide for the adult’s self-protection ~~the adult from~~ and is therefore at risk of abuse, neglect, or exploitation.