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H.171

An act relating to adult protective services

It is hereby enacted by the General Assembly of the State of Vermont:

Sec. 1. 33 V.S.A. chapter 69, subchapter 1 is amended to read:

Subchapter 1. Reports of Abuse of Vulnerable Adults

§ 6901. PURPOSE

(a) The purpose of this chapter is to:

(1) protect vulnerable adults whose health and welfare may be adversely affected through abuse, neglect, or exploitation; provide a temporary or permanent nurturing and safe environment for vulnerable adults when necessary; and for these purposes to require the reporting of suspected abuse, neglect, and exploitation of vulnerable adults and the investigation of such reports and provision of services, when needed; and to intervene in the family or substitute care situation only when necessary to ensure proper care and protection of a vulnerable adult or to carry out other statutory responsibilities

(2) recognize and accommodate the barriers for vulnerable adults that may impair both their response to maltreatment and the ability to substantiate allegations of maltreatment; and

(3) require the reporting of suspected abuse, neglect, and exploitation of vulnerable adults, the investigation of such reports, and the establishment of protective services, when needed.

1 (b) The provision of protective services under this chapter shall not cause
2 undue harm or violate the individual’s autonomy and shall provide
3 opportunities for the vulnerable adult’s preferences to be considered.

4 § 6902. DEFINITIONS

5 As used in this chapter:

6 (1) “Abuse” means:

7 (A) Any medical treatment of a vulnerable adult that places life,
8 health, or welfare in jeopardy or is likely to result in impairment of health that
9 purposely, knowingly, recklessly, or negligently places the life, health, or
10 welfare of a vulnerable adult in jeopardy or is likely to result in impairment of
11 health to the vulnerable adult.

12 (B) Any conduct committed ~~with an intent or reckless disregard that~~
13 ~~such conduct~~ purposely, knowingly, or recklessly that is likely to cause
14 unnecessary harm, unnecessary pain, or unnecessary suffering to a vulnerable
15 adult or places the life, health, or welfare of a vulnerable adult in jeopardy or is
16 likely to result in impairment of health to the vulnerable adult.

17 (C) ~~Unnecessary or unlawful confinement or unnecessary or unlawful~~
18 ~~restraint of a vulnerable adult~~ Confinement, seclusion, restraint, or interference
19 with the freedom of movement of a vulnerable adult, unless necessary to
20 ensure the health and safety of the vulnerable adults or others.

1 (D)(i) Any sexual activity or acts of a sexual nature with a vulnerable
2 adult by a caregiver ~~who volunteers for or is paid by a caregiving facility or~~
3 ~~program~~. This definition shall not apply to a consensual relationship between a
4 vulnerable adult and a spouse or household member as defined in 15 V.S.A.
5 § 1101, ~~not~~ or to a consensual relationship between a vulnerable adult and a
6 caregiver hired, supervised, and directed by the vulnerable adult.

7 (ii) Any sexual activity or acts of a sexual nature with a vulnerable
8 adult when the vulnerable adult does not consent or when the individual knows
9 or should know that the vulnerable adult is incapable of resisting or consenting
10 to the sexual activity due to age, disability, or fear of retribution or hardship,
11 regardless of whether the individual has actual knowledge of the adult's status
12 as a vulnerable adult.

13 (E) ~~Intentionally subjecting a vulnerable adult to behavior that should~~
14 ~~reasonably be expected to result in intimidation, fear, humiliation, degradation,~~
15 ~~agitation, disorientation, or other forms of serious emotional distress~~ Purposely
16 or recklessly subjecting a vulnerable adult to behavior that a reasonable person
17 would expect to result in serious emotional or psychological distress, including
18 intimidation, fear, humiliation, degradation, agitation, or disorientation.

19 (F) Administration, or threatened administration, of a drug; or
20 substance, ~~or preparation~~ to a vulnerable adult for a purpose other than
21 legitimate and lawful medical or therapeutic treatment.

1 (G) Wrongful denial or withholding of necessary medication, care,
2 durable medical equipment, or treatment.

3 (H) Use of deception, force, threat, undue influence, harassment,
4 duress, or fraud to induce a vulnerable adult to request or consent to receive or
5 refuse treatment.

6 (2) “Activities of daily living” means dressing and undressing, bathing,
7 personal hygiene, bed mobility, toilet use, transferring, mobility in and around
8 the home, communication, and eating.

9 (3) “Acts of a sexual nature” means fondling, exposure of genitals, and
10 lewd and lascivious conduct.

11 (4) “Adult” means any individual who is 18 years of age or older.

12 (5) “Alleged perpetrator” means the individual alleged to have abused,
13 neglected, or exploited the alleged victim.

14 (6) “Alleged victim” means the individual who is alleged to have been
15 abused, neglected, or exploited by the alleged perpetrator.

16 (7) “Assessment” means a process by which Adult Protective Services
17 gathers additional information to determine if an investigation should be
18 opened.

19 (8) “Care” means subsistence, medical services, personal care services,
20 mental health services, or rehabilitative services and includes assistance with
21 activities of daily living or instrumental activities of daily living.

1 (9) “Caregiver” means:

2 (A) ~~a person, agency, facility, or other organization~~ with a designated
3 responsibility for providing ~~subsistence or medical or other care to an adult~~
4 ~~who is an elder or has a disability, who has assumed the responsibility~~
5 ~~voluntarily, by contract, or by an order of the court; or a person providing care,~~
6 ~~including medical care, custodial care, personal care, mental health services,~~
7 ~~rehabilitative services, or any other kind of care provided that is required~~
8 ~~because of another’s age or disability~~ care to another;

9 (B) a worker or employee in a facility or program that provides care
10 to an adult who is an elder or has a disability and who has assumed the
11 responsibility voluntarily, by contract, or by an order of the court; or

12 (C) a person providing care to a person that is required because of the
13 person’s age or disability.

14 ~~(3)~~(10) “Commissioner” means the Commissioner of Disabilities,
15 Aging, and Independent Living.

16 ~~(4)~~(11) “Department” means the Department of Disabilities, Aging, and
17 Independent Living.

18 ~~(5)~~(12) “Employer” means a person or organization who employs or
19 contracts with one or more individuals to care for vulnerable adults, on either a
20 paid or volunteer basis.

21 ~~(6)~~(13) “Exploitation” means:

1 (A) willfully or knowingly using, withholding, transferring, or
2 disposing of funds or property of a vulnerable adult without or in excess of
3 legal authority ~~for the wrongful profit or advantage of another~~ to the detriment
4 of a vulnerable adult;

5 (B) purposeful unauthorized access, sharing, or use of identifying
6 information, image or likeness, personal accounts, or documents of a
7 vulnerable adult without or in excess of legal authority to the detriment of the
8 vulnerable adult or for the wrongful profit or advantage of another;

9 (C) breach of duty by a guardian, agent, or other fiduciary to the
10 detriment of a vulnerable adult;

11 (D) acquiring or attempting to acquire possession or control of or an
12 interest in funds or property of a vulnerable adult through the use of deception,
13 force, threat, undue influence, harassment, duress, or fraud;

14 ~~(C)~~(E) ~~the act of forcing or compelling a vulnerable adult against his~~
15 ~~or her will to perform services for the profit or advantage of another~~ refusing to
16 return or surrender possession or control of an interest in funds or property of a
17 vulnerable adult upon the request of a vulnerable adult or the vulnerable
18 adult's representative;

19 ~~(D)~~(F) ~~any sexual activity with a vulnerable adult when the~~
20 ~~vulnerable adult does not consent or when the actor knows or should know that~~
21 ~~the vulnerable adult is incapable of resisting or declining consent to the sexual~~

1 ~~activity due to age or disability or due to fear of retribution or hardship,~~
2 ~~whether or not the actor has actual knowledge of vulnerable status~~ knowingly
3 failing to use a vulnerable adult's income and assets for the necessities
4 required for that vulnerable adult's support and maintenance;

5 (G) influencing or persuading a vulnerable adult to perform services
6 with substandard compensation for the profit or advantage of another.

7 (14) "Expungement" means the removal of an individual's name and
8 associated identifying information from the Adult Abuse Registry.

9 (15) "Instrumental activities of daily living" means meal preparation,
10 medication management, phone use, money management, household
11 maintenance, housekeeping, laundry, shopping, transportation, and care of
12 adaptive equipment.

13 (16) "Interested person" means a representative of the vulnerable adult;
14 Adult Protective Services staff; the Commissioner of Disabilities, Aging, and
15 Independent Living; or the Commissioner's designee.

16 (17) "Investigative summary report" means the document that
17 summarizes the investigation conducted by Adult Protective Services and
18 includes a recommendation to substantiate or unsubstantiate the investigated
19 allegations against the alleged perpetrator.

1 (18) “Lewd or lascivious conduct” has the same meaning as in
2 13 V.S.A. § 1375.

3 (19) “Maltreatment” means abuse, neglect, or exploitation as defined in
4 this section. “Maltreatment” does not include self-neglect.

5 (20) “Mandatory reporter” means an individual with an obligation to
6 report allegations of maltreatment of vulnerable adults pursuant to 6903 of this
7 title.

8 ~~(7)(21)~~(A) “Neglect” means purposeful ~~or~~, knowing, reckless, or
9 negligent failure or omission by a caregiver that has resulted in, or could be
10 expected to result in, physical or psychological harm, including a failure or
11 omission to:

12 (i) provide care or arrange for goods or services necessary to
13 maintain the health or safety of a vulnerable adult, including food, clothing,
14 medicine, shelter, supervision, and medical services, unless the caregiver is
15 acting pursuant to the wishes of the vulnerable adult or ~~his or her~~ the
16 vulnerable adult’s representative, or an advance directive, as defined in
17 18 V.S.A. § 9701;

18 (ii) make a reasonable effort, in accordance with the authority
19 granted the caregiver, to protect a vulnerable adult from abuse, neglect, or
20 exploitation by others;

1 (iii) carry out a plan of care for a vulnerable adult ~~when such~~
2 ~~failure results in or could reasonably be expected to result in physical or~~
3 ~~psychological harm or a substantial risk of death to the vulnerable adult~~, unless
4 the caregiver is acting pursuant to the wishes of the vulnerable adult or ~~his or~~
5 ~~her~~ the vulnerable adult's representative, or an advance directive, as defined in
6 18 V.S.A. § 9701; or

7 (iv) report significant changes in the health status of a vulnerable
8 adult to a physician, nurse, or immediate supervisor, when the caregiver is
9 employed by an organization that offers, provides, or arranges for personal
10 care.

11 (B) Neglect ~~may be repeated conduct or a single incident that has~~
12 ~~resulted in or could be expected to result in physical or psychological harm, as~~
13 ~~a result of subdivision (A)(i), (ii), or (iii) of this subdivision (7)~~ does not
14 include self-neglect.

15 ~~(8)(22)~~ (22) "Plan of care" ~~includes a duty~~ means a medically approved plan
16 of treatment, protocol, individual care plan, rehabilitative plan, plan to address
17 activities of daily living, or similar procedure describing the care, treatment, or
18 services ~~to be provided~~ to address a vulnerable adult's physical, psychological,
19 or rehabilitative needs.

20 ~~(9)(23)~~ (23) "Protective services" means services, actions, measures, or
21 ~~intervention~~ interventions that ~~will,~~ are intended, through voluntary agreement

1 or through appropriate court action, to prevent further neglect, abuse, or
2 exploitation of a vulnerable adult. Such services may include ~~supervision,~~
3 ~~guidance, counseling, referrals, petitioning for relief from abuse, or petitioning~~
4 ~~for the appointment of a guardian, and, when necessary, assistance in the~~
5 ~~securing of safe and sanitary living accommodations. However, nothing in this~~
6 ~~chapter gives the Commissioner authority to place the vulnerable adult in a~~
7 ~~State school or hospital, except pursuant to 18 V.S.A. chapter 181 or 206.~~

8 (24) “Provider” means an individual, organization, or entity that
9 provides care to adults known to be vulnerable.

10 (25) “Recommendation for substantiation” means that an investigation
11 has been conducted and the Adult Protective Services investigator has
12 concluded that the preponderance of the evidence discovered in the course of
13 the investigation would lead a reasonable person to believe that the alleged
14 perpetrator abused, neglected, or exploited the vulnerable adult.

15 (26) “Report” means the statements provided to Adult Protective
16 Services from a reporter alleging that a vulnerable adult has been abused,
17 neglected, or exploited.

18 (27) “Reporter” means the person who has submitted a report to Adult
19 Protective Services.

20 ~~(10)(28)~~ (28) “Representative” means a court-appointed guardian, or an
21 agent acting under an advance directive executed pursuant to 18 V.S.A.

1 chapter 231, or an agent under a power of attorney, unless otherwise specified
2 in the terms of the ~~advance directive~~ power of attorney.

3 (29)(A) “Self-neglect” means an adult’s inability, due to physical or
4 mental impairment or diminished capacity, to perform essential self-care tasks
5 including:

6 (i) obtaining essential food, clothing, shelter, and medical care;

7 (ii) obtaining goods and services necessary to maintain physical
8 health, mental health, or general safety; or

9 (iii) managing one’s own financial affairs.

10 (B) The term “self-neglect,” which is not maltreatment by another
11 and is distinct from the definition of “neglect,” excludes individuals who make
12 a conscious and voluntary choice not to provide for certain basic needs as a
13 matter of lifestyle, personal preference, or religious belief and who understand
14 the consequences of their decision.

15 ~~(11)(30)~~ (30) “Sexual activity” means a sexual act as defined in 13 V.S.A.
16 § 3251, other than appropriate medical care or personal hygiene, ~~or lewd and~~
17 ~~lascivious conduct.~~

18 ~~(12)(31)~~ (31) “Substantiated report” means that the Commissioner or the
19 Commissioner’s designee has determined, after the investigation, that a report
20 is based upon accurate and reliable information that would lead a reasonable
21 person to believe demonstrates, by a preponderance of the evidence, that the

1 vulnerable adult has been abused, neglected, or exploited by the alleged
2 perpetrator.

3 (32) “Unsubstantiated” means that an investigation has been conducted
4 without a recommendation of substantiation. “Unsubstantiated” does not
5 imply that maltreatment of a vulnerable adult by an alleged perpetrator did or
6 did not occur. Reasons for unsubstantiation include:

7 (A) the Adult Protective Services investigator’s conclusion that the
8 preponderance of the evidence would not lead a reasonable person to believe
9 that the alleged perpetrator had abused, neglected, or exploited the vulnerable
10 adult;

11 (B) evidence that the alleged victim is not vulnerable;

12 (C) evidence that maltreatment did not occur; or

13 (D) a lack of sufficient evidence to demonstrate that the alleged
14 victim meets the definition of a vulnerable adult or that maltreatment occurred.

15 ~~(13)~~(33) “Volunteer” means an individual who, without compensation,
16 provides services through a private or public organization.

17 ~~(14)~~(34) “Vulnerable adult” means any person 18 years of age or older
18 who:

19 (A)(i) is a resident of a facility required to be licensed under chapter
20 71 of this title;

1 ~~(B)~~(ii) is a resident of a psychiatric hospital or a psychiatric unit of a
2 hospital;

3 ~~(C)~~(B) ~~has been~~ was receiving assistance with personal care services
4 for more than one month from a designated home health agency ~~certified by~~
5 ~~the Vermont Department of Health~~ or from a person or organization that offers,
6 provides, or arranges for personal care; or

7 ~~(D)~~(C) regardless of residence or whether any type of service is
8 received, ~~is impaired due to~~ has a physical, mental, or developmental
9 disability; infirmities as a result of brain damage; or a mental condition;
10 infirmities of aging, mental condition, or physical, psychiatric, or
11 developmental disability; or is determined to be clinically eligible to receive
12 Long-Term Care Medicaid waiver services resulting in:

13 (i) ~~that results in some~~ impairment of the individual's ability to
14 ~~provide for his or her own care without assistance, including the provision of~~
15 ~~food, shelter, clothing, health care, supervision, or management of finances~~
16 independently engage in activities of daily living or instrumental activities of
17 daily living or to provide for some aspect of the adult's own personal care
18 without assistance; or

19 (ii) ~~because of the disability or infirmity, the individual has an~~
20 ~~impaired~~ some impairment of the adult's ability to protect himself or herself
21 the adult from abuse, neglect, or exploitation.

1 § 6903. REPORTING SUSPECTED ABUSE, NEGLECT, AND
2 EXPLOITATION OF VULNERABLE ADULTS

3 (a) ~~Any of the following, other than a crisis worker acting pursuant to 12~~
4 ~~V.S.A. § 1614 and the State Long Term Care Ombudsman or a representative~~
5 ~~of the Office, as defined in section 7501 of this title, who knows of or has~~
6 ~~received information of abuse, neglect, or exploitation of a vulnerable adult or~~
7 ~~who has reason to suspect that any vulnerable adult has been abused,~~
8 ~~neglected, or exploited shall report or cause a report to be made in accordance~~
9 ~~with the provisions of section 6904 of this title within 48 hours: All~~
10 ~~employees, contractors, volunteers, or grantees who directly provide health~~
11 ~~care, law enforcement, caregiving, counseling, education, or social services to~~
12 ~~adults who know of information of abuse, neglect, or exploitation of a~~
13 ~~vulnerable adult or who have reason to suspect that any vulnerable adult has~~
14 ~~been abused, neglected, or exploited shall report in accordance with the~~
15 ~~provisions of section 6904 of this title within two business days.~~

16 (1) ~~all employees, contractors, and grantees of the Agency of Human~~
17 ~~Services who are involved in caregiving; If an individual listed in this~~
18 ~~subsection is a direct witness to evidence of abuse, neglect, or exploitation, the~~
19 ~~individual shall report or be party to a report that is made on behalf of multiple~~
20 ~~mandatory reporters.~~

1 (2) ~~a physician, osteopath, chiropractor, physician assistant, nurse,~~
2 ~~medical examiner, licensed nursing assistant, emergency medical services~~
3 ~~personnel, dentist, or psychologist; If an individual listed in this subsection~~
4 ~~knows of abuse, neglect, or exploitation of a vulnerable adult or has actual~~
5 ~~knowledge that any vulnerable adult has been abused, neglected, or exploited,~~
6 ~~the individual shall report unless the individual has reason to believe that the~~
7 ~~evidence of abuse, neglect, or exploitation has already been reported.~~

8 (3) ~~a school teacher, school librarian, school administrator, school~~
9 ~~guidance counselor, school aide, school bus driver, or school employee or~~
10 ~~school contractor who works regularly with students; Except as provided in~~
11 ~~subdivision (4) of this subsection (a), an individual listed in this subsection (a)~~
12 ~~shall not refuse to make a report required by this section on the grounds that~~
13 ~~making the report would violate a privilege or disclose a confidential~~
14 ~~communication.~~

15 (4) A crisis worker acting pursuant to 12 V.S.A. § 1614 and the State
16 Long-Term Care Ombudsman or a designee of the Office, as defined in section
17 7501 of this title, shall not be required to make a report under this subsection
18 (a) if the report would be based upon information received in a communication
19 that is:

20 (i) made to a crisis worker or State Long-Term Care Ombudsman
21 or a designee of the Office acting in the individual's professional capacity; and

1 (ii) intended by the parties to be confidential at the time the
2 communication is made.

3 ~~(4) a mental health professional, social worker, person or organization~~
4 ~~that offers, provides, or arranges for personal care for vulnerable adults;~~
5 ~~caregiver employed by a vulnerable adult; employee of or contractor involved~~
6 ~~in caregiving for a community mental health center; law enforcement officer;~~
7 ~~or individual who works regularly with vulnerable adults and who is an~~
8 ~~employee of an adult day care center, area agency on aging, senior center, or~~
9 ~~meal program designed primarily to serve vulnerable adults;~~

10 ~~(5) a hospital, nursing home, residential care home, home health agency,~~
11 ~~or any entity providing nursing or nursing related services for remuneration;~~
12 ~~intermediate care facility for adults with developmental disabilities; therapeutic~~
13 ~~community residence, group home, developmental home, school or contractor~~
14 ~~involved in caregiving; or an operator or employee of any of these facilities or~~
15 ~~agencies.~~

16 (b) Any other concerned person not listed in subsection (a) of this section
17 who knows of or has received a complaint of abuse, neglect, or exploitation of
18 a vulnerable adult or who has reason to suspect that any vulnerable adult has
19 been abused, neglected, or exploited may report or cause a report to be made in
20 accordance with the provisions of section 6904 of this title.

1 (c) The identity of a person who makes a report under this section shall be
2 kept confidential unless:

3 (1) the person making the report consents to disclosure;

4 (2) a judicial proceeding results from the report; ~~or~~

5 (3) a court, after a hearing, finds probable cause to believe the report
6 was not made in good faith and orders the Department to disclose the person's
7 identity; or

8 (4) the reporter is listed in subdivision (a)(1) of this section, in which
9 case the reporter's information may be shared with other investigative bodies
10 as necessary to conduct the investigation.

11 § 6904. NATURE AND CONTENT OF REPORT; TO WHOM MADE

12 A report shall be made ~~orally or in writing~~ to the Commissioner or the
13 Commissioner's designee ~~as soon as possible, but in no event later than 48~~
14 ~~hours thereafter. The report may also be made to a law enforcement officer. If~~
15 ~~an oral report is made by telephone or otherwise, the Commissioner or~~
16 ~~designee shall request that it be followed within one week by a report in~~
17 ~~writing. Reports shall contain~~ To be considered a report to the Commissioner
18 or designee, it shall contain the name and address of the reporter as well as the
19 names and addresses of the vulnerable adult and persons responsible for ~~his or~~
20 ~~her~~ the vulnerable adult's care, if known; the age of the vulnerable adult; the
21 nature of ~~his or her~~ the vulnerable adult's disability; the nature and extent of

1 the vulnerable adult's abuse, neglect, or exploitation together with any
2 evidence of previous abuse, neglect, or exploitation of the vulnerable adult;
3 and any other information that the reporter believes might be helpful in
4 establishing the cause of any injuries or reasons for the abuse, neglect, or
5 exploitation as well as in protecting the vulnerable adult. If the reporter is in
6 possession of documentation that establishes the alleged victim's conditions,
7 needs, or services, that shall be included in the report. Any evidence of
8 maltreatment shall also be cited in the report. If a report of abuse, neglect, or
9 exploitation involves the acts or omissions of the Commissioner or employees
10 of ~~that~~ the Department, then such reports shall be directed to the Secretary of
11 ~~the~~ Human Services, who shall cause the report to be investigated by
12 appropriate staff other than staff of the Department.

13 * * *

14 § 6906. ASSESSMENT AND INVESTIGATION

15 (a) Report of maltreatment.

16 (1) ~~The Commissioner shall cause an investigation to commence within~~
17 ~~48 hours after receipt of a report made pursuant to section 6904 of this title~~
18 Upon receipt of a report of maltreatment, the Department shall determine
19 whether the report constitutes an allegation of abuse, neglect, or exploitation as
20 defined in section 6902 of this title. The Department shall respond to reports

1 of alleged abuse, neglect, or exploitation that occurred in Vermont and to out-
2 of-State conduct when the vulnerable adult is a resident of Vermont.

3 (2) ~~The Commissioner shall keep the reporter and the alleged victim~~
4 ~~informed during all stages of the investigation, and shall:~~

5 (A) ~~Notify the reporter, the victim, and the victim's legal~~
6 ~~representative, if any, in writing if Adult Protective Services or the Division of~~
7 ~~Licensing and Protection decides not to investigate the report. The notification~~
8 ~~shall be provided within five business days after the decision is made and shall~~
9 ~~inform the reporter that he or she may ask the Commissioner to review the~~
10 ~~decision.~~

11 (B) ~~Notify the reporter, the victim, and the victim's legal~~
12 ~~representative, if any, in writing if Adult Protective Services or the Division of~~
13 ~~Licensing and Protection refers the report to another agency. The notification~~
14 ~~shall be provided within five business days after the referral is made.~~

15 (C) ~~Notify the reporter, the victim, and the victim's legal~~
16 ~~representative, if any, in writing of the outcome of the investigation. The~~
17 ~~notification shall be provided within five business days after the decision is~~
18 ~~made and shall inform the reporter that he or she may ask the Commissioner to~~
19 ~~review the decision~~ The Department shall determine whether to conduct an
20 assessment or an investigation, as provided for in this section, or whether to
21 screen out the report. An assessment may be used to determine whether an

1 investigation is necessary. The Department shall begin either an assessment or
2 an investigation within one business day in all cases in which the alleged
3 victim has experienced a life-threatening or severe injury; requires
4 hospitalization as a result of maltreatment; was the alleged victim of sexual
5 abuse; or is experiencing ongoing harm. The Department shall initiate an
6 assessment or an investigation within two business days after the day of the
7 receipt of all other accepted reports made pursuant to section 6904 of this title.
8 The Department shall collect the following demographic information about the
9 alleged victim and alleged perpetrator, if available, if an assessment or
10 investigation is opened: gender, race, age, ethnicity, sexual orientation, gender
11 identity, and disability status.

12 (3) The decision to conduct an assessment shall include consideration of
13 the following factors:

14 (A) the severity of any alleged maltreatment and any injuries;

15 (B) the relationship between the alleged victim and alleged
16 perpetrator;

17 (C) the known history of the report; and

18 (D) the detail and specificity of information provided in the report
19 regarding the alleged victim's vulnerability and the alleged maltreatment.

20 (4) The Department shall investigate when an accepted report involves
21 allegations indicating serious maltreatment or ongoing risk of harm to the

1 alleged victim. The Department may investigate any report of maltreatment
2 Adult Protective Services receives.

3 (5) The Department shall begin an immediate investigation if, at any time
4 during an assessment, it appears that an investigation is appropriate.

5 (6) To the extent permitted by law, the Department may collaborate with
6 law enforcement, health care and service providers, and other departments and
7 agencies in Vermont and other jurisdictions to evaluate the risk to the
8 vulnerable adult and may enter into reciprocal agreements with law
9 enforcement, other departments and agencies, and other jurisdictions to further
10 the purposes of this section. In no event shall the Department disclose
11 information to other divisions, departments, or agencies unless such a
12 disclosure is necessary to further the express purpose of this section.

13 (b) Assessment. ~~The investigation shall include, except where inclusion~~
14 ~~would jeopardize the health, welfare, or safety of the vulnerable adult:~~

15 (1) ~~a visit to the reported victim's place of residence or place of custody~~
16 ~~and to the location of the reported abuse, neglect, or exploitation;~~

17 ~~(2) interviews with any available witnesses to the alleged abuse, neglect,~~
18 ~~or exploitation;~~ An assessment, to the extent that is reasonable under the facts
19 and circumstances provided in a report, shall include the following:

20 ~~(3)(A)~~ an interview with the reporter of the alleged abuse, neglect, or
21 exploitation and the alleged victim, which shall focus on ensuring the

1 immediate safety of the alleged victim and mitigating the future risk of harm to
2 the alleged victim in the current environment;

3 ~~(4) an interview with the reported victim, which interview may take~~
4 ~~place without the approval of the vulnerable adult's parents, guardian, or~~
5 ~~caregiver, but cannot take place over the objection of the reported victim; and~~

6 ~~(5) an opportunity for the person who allegedly abused, neglected, or~~
7 ~~exploited to be interviewed.~~

8 (B) a determination as to whether the alleged victim meets the
9 definition of a vulnerable adult and whether the allegations, if true, meet the
10 statutory definition of abuse, neglect, or exploitation, or any combination
11 thereof; and

12 (C) in collaboration with the alleged victim, the identification of
13 resources and protective service needs that reduce the risk of future abuse,
14 neglect, or exploitation and improve or restore the care and safety of the
15 alleged victim.

16 (2) Services offered during or at the conclusion of an assessment can
17 only be implemented through voluntary agreement or court action.

18 (3) If the assessment is closed without resulting in an investigation,
19 there shall be no finding of abuse, neglect, or exploitation. However, the
20 Department shall document the outcome of the assessment.

1 (4) The Department shall provide written notice to the victim, and the
2 victim's representative who is not the subject of the assessment, of the
3 outcome of the assessment.

4 (c) Investigation. ~~Upon completion of the investigation, a written report~~
5 ~~describing all evidence obtained and recommending a finding of substantiated~~
6 ~~or unsubstantiated shall be submitted to the Commissioner or designee for final~~
7 ~~resolution. If the recommendation is for a finding of substantiated the person~~
8 ~~shall be given notice of the recommendation, and the evidence that forms the~~
9 ~~basis of the recommendation, and shall be notified of how a substantiated~~
10 ~~report might be used. The person shall be offered an opportunity to dispute the~~
11 ~~recommendation and may, within 15 days of notification, request an~~
12 ~~administrative hearing in front of the Commissioner or designee. Following~~
13 ~~the hearing, or if no hearing is requested within 15 days of notification, the~~
14 ~~Commissioner or designee shall make a finding of substantiated or~~
15 ~~unsubstantiated, and notify the person of the decision and of the right to~~
16 ~~appeal.~~

17 ~~(d) Within 30 days of notification that a report has been substantiated, a~~
18 ~~person against whom a complaint has been lodged may apply to the Human~~
19 ~~Services Board for relief on the grounds that it is unsubstantiated. The Board~~
20 ~~shall hold a fair hearing under 3 V.S.A. § 3091. Unless the Commissioner~~
21 ~~agrees otherwise, the fair hearing shall be given priority by the Board and an~~

1 ~~expedited hearing shall be provided, with a decision issued promptly~~
2 ~~thereafter.~~

3 ~~(e) If a report is found to be unsubstantiated, the records shall be retained~~
4 ~~as part of the confidential records of the Department of Disabilities, Aging, and~~
5 ~~Independent Living. If no court proceeding is brought pursuant to subdivision~~
6 ~~6903(c)(3) of this title within six years of the date of the notice to the person~~
7 ~~against whom the complaint was lodged, the records relating to the~~
8 ~~unsubstantiated report shall be destroyed after notice to such person, unless he~~
9 ~~or she requests that the records not be destroyed.~~

10 ~~(f) If an appeal is filed pursuant to subsection (d) of this section or to a~~
11 ~~court, the name of the individual shall not be added to the Registry until a~~
12 ~~substantiated finding of abuse, neglect, or exploitation becomes final.~~

13 (1) The Department shall:

14 (A) Notify the reporter in writing if Adult Protective Services decides
15 not to investigate or to conduct an assessment of the report. The notification
16 shall be provided within five business days after the decision is made and shall
17 inform the reporter that the reporter may ask the Commissioner to review the
18 decision.

19 (B) Notify the alleged victim, and the alleged victim's representative,
20 if any, in writing of the outcome of the investigation. The notification shall be
21 provided within five business days after the decision has been made and shall

1 inform the alleged victim or the alleged victim's representative that the alleged
2 victim or the alleged victim's representative may ask the Commissioner to
3 review the decision.

4 (2) The investigation shall include, except where inclusion would
5 jeopardize the health, welfare, or safety of the vulnerable adult:

6 (A) An interview with the alleged victim, which may take place
7 without the approval of the alleged victim's parents, guardian, or caregiver, but
8 cannot take place over the objection of the alleged victim.

9 (B) An opportunity for the person who allegedly abused, neglected,
10 or exploited the alleged victim to be interviewed. If the person declines to be
11 interviewed, either through given notice or failure to respond, the alleged
12 perpetrator shall be notified that the alleged perpetrator's declination may be
13 noted in the investigation and may be taken into account in any potential
14 appeal process.

15 (3) Upon completion of the investigation, the investigative summary
16 describing pertinent evidence obtained during the course of the investigation
17 and recommending a substantiation or unsubstantiation shall be submitted to
18 the Commissioner or designee. Prior to substantiation, the Department shall
19 interview the alleged perpetrator unless the alleged perpetrator declines. The
20 investigative summary shall include a recommendation of whether placement
21 on the Registry is appropriate. If the recommendation is for substantiation, the

1 alleged perpetrator shall be given written notice by certified mail of the
2 recommendation and a summary of the evidence that forms the basis of the
3 recommendation and shall be notified of any remedial options that may exist
4 and how a substantiated report might be used. The alleged perpetrator may
5 seek an administrative review of the Department's intention to place the
6 alleged perpetrator's name on the Registry by notifying the Department within
7 14 calendar days after the date listed on the Department's notice of the right to
8 an administrative review. The Commissioner may grant an extension past the
9 14-day period for good cause, not to exceed 28 calendar days after the date
10 listed on the Department's notice.

11 (4) The administrative review of the Department's intention to
12 substantiate may be stayed if there is a related case pending in the Criminal or
13 Family Division of the Superior Court that arose out of the same incident of
14 abuse, neglect, or exploitation that resulted in the recommendation for
15 substantiation. During the period the administrative review is stayed, if the
16 Department's intent is to place the alleged perpetrator's name on the Registry,
17 it shall add the alleged perpetrator's name to the Registry with a notation that
18 the case is pending. Upon resolution of the Superior Court criminal or family
19 case, the alleged perpetrator may exercise the alleged perpetrator's right to
20 review under this section by notifying the Department in writing within 28
21 calendar days after the related court case, including any appeals, has been fully

1 adjudicated. If the alleged perpetrator fails to notify the Department within 28
2 calendar days, the Department's decision shall become final, and no further
3 review under this subsection is required.

4 (A) The Department shall hold an administrative review within 28
5 calendar days after receipt of the request for review. At least 14 calendar days
6 prior to the administrative review, the Department shall provide to the alleged
7 perpetrator requesting an administrative review the following: the redacted
8 investigation file, which means only the portion of the investigation file
9 relevant to an Adult Protective Services recommendation, redacted as
10 necessary to minimize disclosure of any confidential information; notice of
11 time and place of the administrative review; and administrative review
12 procedures, including information that may be submitted and mechanisms for
13 providing information.

14 (B) At the administrative review, the alleged perpetrator who
15 requested the review shall be provided with the opportunity to present
16 documentary evidence or other information that supports the alleged
17 perpetrator's position and provides information to the reviewer in making the
18 most accurate decision regarding the allegation. In determining the weight to
19 be given any such evidence or information, the administrative reviewer shall
20 consider whether the alleged perpetrator had an opportunity to present the
21 evidence or information to the investigator during the investigation and, if so,

1 the reasons for the failure to present the evidence or information at that time.

2 The Department shall have the burden of proving that, based upon a
3 preponderance of evidence, it concluded that a reasonable person would
4 believe that the vulnerable adult has been abused, neglected, or exploited by
5 that alleged perpetrator. The administrative review may be held remotely by
6 telephone or through electronic means by mutual agreement of the parties.

7 (C) The Department shall establish an administrative case review unit
8 within the Department and may contract for the services of administrative
9 reviewers. An administrative reviewer shall be a neutral and independent
10 arbiter who has no prior involvement in the original investigation of the
11 allegation.

12 (5) Within seven calendar days after the completed review, the
13 administrative reviewer shall:

14 (A) reject the Department's recommendation of substantiation;

15 (B) accept the Department's recommendation of substantiation; or

16 (C) defer any recommendation and direct the Department to further
17 investigate upon the recommendation of the administrative reviewer.

18 (6) If the administrative reviewer accepts the Department's
19 recommendation of substantiation, a Registry record shall be made within two
20 business days. If the administrative reviewer rejects the Department's
21 recommendation of substantiation, no Registry record shall be made.

1 (7) Within seven calendar days of the decision to reject or accept the
2 recommendation of substantiation or to defer the substantiation in accordance
3 with subdivision (5) of this subsection, the administrative reviewer shall
4 provide notice to the alleged perpetrator of the administrative reviewer's
5 decision. If the administrative reviewer accepts the Department's
6 recommendation of substantiation, the notice shall advise the alleged
7 perpetrator of the right to appeal the administrative reviewer's decision to the
8 Human Services Board.

9 (8)(A) If no administrative review is requested, the Department's
10 recommendation in the case shall be final, and the alleged perpetrator shall
11 have no further right of review under this section.

12 (B) The Commissioner may grant an exception and permit such an
13 administrative review upon good cause shown. Good cause may include an
14 acquittal or dismissal of a criminal charge arising from the incident of abuse,
15 neglect, or exploitation.

16 (9) In exceptional circumstances, the Commissioner, in the
17 Commissioner's sole and nondelegable discretion, may reconsider any decision
18 made by an administrative reviewer. A Commissioner's decision that imposes
19 a penalty or creates a Registry record may be appealed to the Human Services
20 Board.

1 (10) Within 30 calendar days after the date of the notice advising that a
2 report has been substantiated, an alleged perpetrator against whom a complaint
3 has been lodged may apply to the Human Services Board for relief on the
4 grounds that it is unsubstantiated. The Human Services Board shall hold a fair
5 hearing under 3 V.S.A. § 3091. Unless the Commissioner agrees otherwise,
6 the hearing shall be given priority by the Human Services Board, and an
7 expedited hearing shall be provided, not later than 30 calendar days after the
8 date of the notice advising that a report has been substantiated, and a decision
9 shall be issued within seven calendar days after the hearing.

10 (11) If a report is found to be unsubstantiated, the records shall be
11 retained as part of the confidential records of the Department. If no court
12 proceeding is brought pursuant to section 6903 of this title within six years
13 following the date of the notice to the alleged perpetrator against whom the
14 complaint was lodged, the records relating to the unsubstantiated report may be
15 destroyed.

16 ~~(g)~~(12) If the Human Services Board ~~or a court~~ reverses a substantiated
17 finding, the Commissioner shall remove all information ~~in accordance with~~
18 ~~subsection (e) of this section~~ from the Registry.

19 ~~(h)~~(13)(A) When a final determination has been made, the Commissioner
20 shall inform the vulnerable adult or ~~his or her~~ the vulnerable adult's
21 representative, ~~the reporter, and, if the report is substantiated, the current~~

1 ~~employer of the individual, of the outcome of the investigation and any~~
2 ~~subsequent proceedings in writing.~~

3 (B) When a final determination of substantiation has been made, the
4 Department shall also inform the perpetrator's current employer, if known, in
5 writing of the outcome of the investigation and any subsequent proceedings.

6 § 6907. REMEDIAL ACTION

7 (a) ~~Coordinated treatment plan~~ Protective services. If the investigation
8 produces evidence that the vulnerable adult has been abused, neglected, or
9 exploited, ~~the Commissioner shall arrange for the provision of protective~~
10 ~~services in accordance with a written coordinated treatment plan and protective~~
11 ~~services are not in place, the Department shall pursue available protective~~
12 ~~services.~~

13 (b) Consent to services.

14 (1) Protective services shall be provided only with the consent of the
15 vulnerable adult, ~~his or her;~~ the vulnerable adult's guardian, agent under power
16 of attorney, or agent under advance directive; or through appropriate court
17 action. If the vulnerable adult does not consent, protective services shall not be
18 provided, unless provision of protective services is ~~court-ordered~~ court
19 ordered.

20 (2)(A) In the event that the vulnerable adult's guardian is the person
21 responsible for the abuse, neglect, or exploitation, and the guardian ~~does not~~

1 ~~consent to the investigation or receipt of protective services, the Commissioner~~
2 ~~may petition for removal of the guardian~~ refuses consent to the investigation or
3 the alleged victim's protective services, the investigator may seek review of
4 the guardian's refusal by filing a motion with the Probate Division of the
5 Superior Court pursuant 14 V.S.A. § 3062(c).

6 (B) In the event that the vulnerable adult's agent under power of
7 attorney is the person responsible for the abuse, neglect, or exploitation, and
8 the agent refuses to consent to the investigation or the alleged victim's
9 protective services, the investigator may seek review of the agent's refusal by
10 filing a petition in Superior Court pursuant to 14 V.S.A. § 3510(b).

11 (C) In the event that the vulnerable adult's agent under advance
12 directive is the person responsible for the abuse, neglect, or exploitation, and
13 the agent does not consent to the investigation or the receipt of protective
14 services, the investigator may file a petition in Probate Court pursuant to 18
15 V.S.A. § 9718 to seek review under subdivision (b)(3) of that section as to
16 whether the refusal is consistent with the authority granted to the agent in the
17 advance directive.

18 (3) Failure to consent to protective services, either by the vulnerable
19 adult or the vulnerable adult's guardian, agent under power of attorney, or
20 agent under advance directive shall not automatically end an investigation of
21 an alleged perpetrator.

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§ 6909. RETALIATORY ACTION BY EMPLOYER PROHIBITED

No employer or supervisor may discharge; demote; transfer; reduce pay, benefits, or work privileges; prepare a negative work performance evaluation; or take any other action detrimental to any employee who files a good faith report in accordance with the provisions of this chapter, by reason of the report. Any person making a report under this chapter shall have a civil cause of action for appropriate compensatory and punitive damages against any person who causes detrimental changes in the employment status of the reporting party by reason of ~~his or her~~ making a report. Nothing in this section grants immunity to a person reporting the person's own perpetration of maltreatment.

§ 6910. INTERFERENCE BY CAREGIVER

If consent to receive protective services has been obtained in accordance with section 6907 of this title and the Commissioner has reasonable cause to believe that the caregiver is interfering with the provision of those protective services, the ~~Commissioner~~ Department may petition the Superior Court for an order enjoining the caregiver from interfering with the provision of protective services. The petition shall present facts to show that the vulnerable adult is in need of protective services, that ~~he or she or his or her guardian~~ the vulnerable adult or the vulnerable adult's representative consents to the receipt of

1 protective services, and that the caregiver has interfered with the provision of
2 protective services. If the court, after hearing, finds that the vulnerable adult
3 requires and consents to protective services, and has been prevented by ~~his or~~
4 ~~her~~ the vulnerable adult's caregiver from receiving protective services; the
5 court may issue an order enjoining the caregiver from further interference. ~~The~~
6 ~~court may modify the terms of the coordinated treatment plan.~~

7 § 6911. RECORDS OF ABUSE, NEGLECT, AND EXPLOITATION

8 (a) Access to records.

9 (1) ~~Information obtained through reports and investigations, including~~
10 ~~the identity of the reporter, shall remain confidential and shall not be released~~
11 ~~absent a court order, except as follows:~~ Subject to confidentiality or privilege
12 protections, the Department's Adult Protective Services shall have access to
13 any records or documents, including client-identifying information, financial
14 records, and medical and psychological records, necessary to the performance
15 of the Department's duties under this chapter. The duties include the
16 investigation of abuse, neglect, or exploitation or the provision of protective
17 services to a vulnerable adult. A person, agency, or institution that has a
18 record or document that the Department needs to perform its duties under this
19 chapter shall, without unnecessary delay, make the record or document
20 available to the Department. For the purposes of this subsection, "financial

1 records” does not include records developed or maintained by the Department
2 of Financial Regulation.

3 (2) The Department is exempt from the payment of a fee otherwise
4 required or authorized by law to obtain a financial record from a person,
5 agency, or institution or a medical record, including a mental health record,
6 from a hospital or health care provider if the request for a record is made in the
7 course of an investigation by the Department.

8 (3) If the Department cannot obtain access to a record or document that
9 is necessary to properly investigate or to perform another duty under this
10 chapter, the Department may petition the Superior Court for access to the
11 record or document.

12 (4) On good cause shown, the court shall order the person, agency, or
13 institution in possession or control of a record or document to allow the
14 Department to have access to that record or document under the terms and
15 conditions prescribed by the court.

16 (5) A person, agency, or institution in possession or control of a
17 requested record or document is entitled to notice and a hearing on a petition
18 filed under this section.

19 (6) Access to a confidential record under this section does not constitute
20 a waiver of confidentiality.

1 (7) A person who in good faith makes an alleged victim’s information or
2 a copy of the information available to an investigator in accordance with this
3 section shall be immune from civil or criminal liability for disclosure of the
4 information unless the person’s actions constitute negligence, recklessness, or
5 intentional misconduct. Nothing in this section shall be construed to provide
6 civil or criminal immunity to a person suspected of having abused, neglected,
7 or exploited a vulnerable adult.

8 (b) Confidentiality of reports and documents.

9 (1)(A)(i) ~~The investigative report~~ Information obtained through reports
10 to and assessments and investigations conducted by the Department, including
11 the identity of the reporter, shall be confidential and shall not be released
12 absent a court order, except the final investigative summary report shall be
13 disclosed only to:

14 (I)(i) the Commissioner or person designated to receive such
15 records;

16 (II)(ii) persons assigned by the Commissioner to investigate
17 reports;

18 (III)(iii) ~~the person reported to have abused, neglected, or~~
19 exploited a vulnerable adult alleged perpetrator;

20 (IV)(iv) the vulnerable adult or ~~his or her~~ the vulnerable adult’s
21 representative;

1 ~~(V)~~(v) the Office of Professional Regulation when deemed
2 appropriate by the Commissioner;

3 ~~(VI)~~(vi) the Secretary of Education when deemed appropriate
4 by the Commissioner;

5 ~~(VII)~~(vii) the Commissioner for Children and Families or
6 designee for purposes of review of expungement petitions filed pursuant to
7 section 4916c of this title;

8 ~~(VIII)~~(viii) the Commissioner of Financial Regulation when
9 deemed appropriate by the Commissioner for an investigation related to
10 financial exploitation;

11 ~~(IX)~~(ix) a law enforcement agency; and

12 ~~(X)~~(x) the State's Attorney, or the Office of the Attorney
13 General, when the Department believes there may be grounds for criminal
14 prosecution or civil enforcement action, or in the course of a criminal or a civil
15 investigation.

16 ~~(ii)~~(B) When disclosing information pursuant to this subdivision
17 (1), reasonable efforts shall be made to limit the information to the minimum
18 necessary to accomplish the intended purpose of the disclosure, and no other
19 information, including the identity of the reporter, shall be released absent a
20 court order.

1 ~~(B)~~(2) Relevant information may be disclosed to the Secretary of
2 Human Services, or the Secretary’s designee, for the purpose of remediating or
3 preventing abuse, neglect, or exploitation; to assist the Agency in its
4 monitoring and oversight responsibilities; and in the course of a relief from
5 abuse proceeding, guardianship proceeding, or any other court proceeding
6 when the Commissioner deems it necessary to protect the victim, and the
7 victim or ~~his or her~~ the victim’s representative consents to the disclosure.
8 When disclosing information pursuant to this subdivision, reasonable efforts
9 shall be made to limit the information to the minimum necessary to accomplish
10 the intended purpose of the disclosure, and no other information, including the
11 identity of the reporter, shall be released absent a court order. Disclosures
12 necessary to conduct Adult Protective Services investigations or to make
13 referrals to law enforcement agencies, or to divisions or grantees of the
14 Department, shall be permitted, but reasonable efforts shall be made to limit
15 the information to the minimum necessary to accomplish the intended purpose
16 of the disclosure.

17 (3) Notwithstanding subdivision (a)(1) of this section, financial
18 information made available to an adult protective services investigator
19 pursuant to this section may be used only in a judicial or administrative
20 proceeding or investigation directly related to a report required or authorized

1 under this chapter. Relevant information may be disclosed to the Secretary of
2 Human Services, pursuant to subdivision (2) of this subsection.

3 ~~(C) Relevant information may be disclosed to a Family Division of~~
4 ~~the Superior Court, upon the request of that court, in any proceeding in which:~~

5 ~~(i) a parent of a child challenges a presumption of parentage under~~
6 ~~15C V.S.A. § 402(b)(3); or~~

7 ~~(ii) a parent of a child contests an allegation that he or she fostered~~
8 ~~or supported a bonded and dependent relationship between the child and a~~
9 ~~person seeking to be adjudicated a de facto parent under 15C V.S.A. §~~
10 ~~501(a)(2).~~

11 ~~(2) Notwithstanding subdivision (1)(A) of this subsection, financial~~
12 ~~information made available to an adult protective services investigator~~
13 ~~pursuant to section 6915 of this title may be used only in a judicial or~~
14 ~~administrative proceeding or investigation directly related to a report required~~
15 ~~or authorized under this chapter. Relevant information may be disclosed to the~~
16 ~~Secretary of Human Services pursuant to subdivision (1)(B) of this subsection,~~
17 ~~and may also be disclosed to the Commissioner of Financial Regulation when~~
18 ~~the investigation relates to financial exploitation of a vulnerable adult~~

19 ~~(b)(c) The Commissioner~~ Department shall maintain a registry of
20 substantiated caregivers that shall contain the following information:

1 ~~(1) the names of all the individuals found on the basis of a substantiated~~
2 ~~report to have abused, neglected, or exploited a vulnerable adult; the date of~~
3 ~~the finding; and the nature of the finding. In addition, the Commissioner shall~~
4 ~~require that, aside from a person's name, at least one other personal identifier~~
5 ~~is listed in the Registry to prevent the possibility of misidentification the date~~
6 ~~and nature of the finding;~~

7 (2) the names of individuals convicted of a crime pursuant to 13 V.S.A.
8 § 1383; and

9 (3) in addition, aside from a caregiver's name, at least one other
10 personal identifier to prevent the possibility of misidentification.

11 ~~(e)~~(d) Disclosure of Registry information.

12 (1) The Commissioner or designee may disclose Registry information
13 only to:

14 ~~(1)~~(A) The State's Attorney or the Attorney General.

15 ~~(2)~~(B) The public as required by the Nursing Home Reform Act of
16 1986 and regulations promulgated under the Act.

17 ~~(3)~~(C) An employer if such information is used to determine whether
18 to hire or retain a specific individual providing care, custody, treatment,
19 transportation, or supervision of children or vulnerable adults. ~~“Employer,”~~
20 Notwithstanding section 6902 of this chapter, “employer,” as used in this
21 section, means a person or organization who employs or contracts with one or

1 more individuals to care for or provide transportation services to children or
2 vulnerable adults, on either a paid or volunteer basis. The employer may
3 submit a request concerning a current employee, volunteer, grantee, or
4 contractor or an individual to whom the employer has given a conditional offer
5 of a contract, volunteer position, or employment. ~~The request shall be~~
6 ~~accompanied by a release signed by the current or prospective employee,~~
7 ~~volunteer, grantee, or contractor.~~ If that individual has a record of a
8 substantiated report, the ~~Commissioner~~ Department shall provide the Registry
9 information to the employer.

10 ~~(4)~~(D) An individual seeking to determine if the individual's own
11 name is on the Registry.

12 (E) A person or organization serving vulnerable adults by assisting
13 with employer functions; offering, providing, or arranging for home sharing; or
14 providing personal care services, developmental services, or mental health
15 services for vulnerable adults. The person or organization may submit a
16 request concerning an individual who has applied to provide such services or
17 an individual who is already so engaged. ~~The request shall be in writing and~~
18 ~~shall be accompanied by a release from the person applying for or already~~
19 ~~providing such services.~~ If the person has a record of a substantiated report,
20 the Commissioner shall provide the Registry information.

1 ~~(5)~~(F) The Commissioner for Children and Families or designee for
2 purposes related to:

3 ~~(A)~~(i) the licensing or registration of facilities and individuals
4 regulated by the Department for Children and Families; and

5 ~~(B)~~(ii) the Department's child protection obligations under
6 chapters 49–59 of this title.

7 ~~(6)~~(G) The Commissioner of Health or the Commissioner's designee
8 for purposes related to oversight and monitoring of persons who are served by
9 or compensated with funds provided by the Department of Health, including
10 persons to whom a conditional offer of employment has been made.

11 ~~(7)~~(H) Upon request or when relevant to other states' adult protective
12 services offices.

13 ~~(8)~~(I) The Board of Medical Practice for the purpose of evaluating an
14 applicant, licensee, or holder of certification pursuant to 26 V.S.A. § 1353.

15 ~~(9)~~(J) The Secretary of Education or the Secretary's designee, for
16 purposes related to the licensing of professional educators pursuant to
17 16 V.S.A. chapter 5, subchapter 4 and chapter 51.

18 ~~(10)~~(K) The Office of Professional Regulation for the purpose of
19 evaluating an applicant, licensee, holder of a certification, or registrant for
20 possible unprofessional conduct, where appropriate.

1 ~~(11)~~(L) A Family Division of the Superior Court upon request of that
2 court if it is involved in any proceeding in which:

3 ~~(A)~~(i) a parent of a child challenges a presumption of parentage
4 under 15C V.S.A. § 402(b)(3); or

5 ~~(B)~~(ii) a parent of a child contests an allegation that ~~he or she~~ the
6 parent fostered or supported a bonded and dependent relationship between the
7 child and a person seeking to be adjudicated a de facto parent under 15C
8 V.S.A. § 501(a)(2).

9 (2) The request for disclosure of Registry information pursuant to
10 subdivisions (1)(C), (1)(E)–(G), and (1)(I)–(K) of this subsection shall be in
11 writing and accompanied by a release from the person applying for or already
12 providing services to children or vulnerable adults.

13 ~~(d)~~(e) An employer providing transportation services to children or
14 vulnerable adults may disclose Registry records obtained pursuant to
15 subdivision ~~(e)(3)~~(d)(1)(C) of this section to the Agency of Human Services or
16 its designee for the sole purpose of auditing the records to ensure compliance
17 with this chapter. An employer shall provide such records at the request of the
18 Agency or its designee. Only Registry records regarding individuals who
19 provide direct transportation services or otherwise have direct contact with
20 children or vulnerable adults may be disclosed.

1 injury to or the death of a vulnerable adult, the ~~Commissioner~~ Department may
2 impose an administrative penalty of not more than ~~\$10,000.00~~ \$25,000.00 for
3 each violation. The ~~Commissioner~~ Department shall notify the Office of
4 Professional Regulation, or any other professional licensing board applicable
5 to the violator, of any decision made pursuant to this subsection.

6 (b) The Department shall investigate allegations that a mandated reporter
7 has failed to make a required report when it appears that an investigation is
8 appropriate. Whenever the ~~Commissioner~~ Department finds, after notice and
9 hearing, that a mandatory reporter, as defined in ~~subdivisions 6903(a)(1), (2),~~
10 ~~(3), (4), and (5)~~ subsection 6903(a) of this title, has willfully violated the
11 provisions of ~~subsection~~ subdivision 6903(a)(1), the ~~Commissioner~~
12 Department may impose an administrative penalty not to exceed ~~\$500.00~~
13 \$1,000.00 per violation. For purposes of this subsection, every 24 hours that a
14 report is not made beyond the period for reporting required by ~~subsection~~
15 section 6903(a) shall constitute a new and separate violation, and a mandatory
16 reporter shall be liable for an administrative penalty of not more than ~~\$500.00~~
17 \$1,000.00 for each 24-hour period, not to exceed a maximum penalty of
18 ~~\$5,000.00~~ \$25,000.00 per reportable incident.

19 (c) Whenever the Department finds that a mandatory reporter willfully or
20 knowingly withheld information, or provided false or inaccurate information,

1 the Department may impose an administrative penalty not to exceed \$1,000.00
2 per violation.

3 (d) A person who is aggrieved by a decision under subsection (a) ~~or~~ (b),
4 or (c) of this section may appeal that decision to the Superior Court, where
5 either party may request trial by jury.

6 § 6914. ACCESS TO CRIMINAL RECORDS

7 (a) ~~The Commissioner may obtain from the Vermont Crime Information~~
8 ~~Center the record of convictions of any person to the extent that the~~
9 ~~Commissioner has determined by rule that such information is necessary to~~
10 ~~protect vulnerable adults.~~ The Commissioner may obtain from the Vermont
11 Crime Information Center the record of convictions of any person to the extent
12 that the Commissioner has determined that such information is necessary to
13 protect vulnerable adults.

14 (b) ~~An employer may ask the Commissioner to obtain from the Vermont~~
15 ~~Crime Information Center the record of convictions of a person who is a~~
16 ~~current employee, volunteer, or contractor, or a person to whom the employer~~
17 ~~has given a conditional offer of a contract, volunteer position, or employment.~~
18 ~~The request shall be in writing and shall be accompanied by a release by the~~
19 ~~current or prospective contractor or employee. If the person has a record of~~
20 ~~convictions, the Commissioner shall inform the employer of the date and type~~
21 ~~of conviction.~~

1 ~~(c) A person or organization serving vulnerable adults by assisting with~~
2 ~~employer functions, offering, providing, or arranging for home sharing,~~
3 ~~personal care services, developmental services, or mental health services for~~
4 ~~vulnerable adults, may submit a request to the Commissioner concerning an~~
5 ~~individual who has applied to provide such services or an individual who is~~
6 ~~already so engaged. The request shall be in writing, and shall be accompanied~~
7 ~~by a release from the individual applying for or already providing such~~
8 ~~services. If the individual has a record of convictions, the Commissioner shall~~
9 ~~inform the person or organization submitting the request of the date and type of~~
10 ~~conviction.~~

11 ~~(d) The Commissioners of Disabilities, Aging, and Independent Living, of~~
12 ~~Health, and of Mental Health or their designees may, for the protection of~~
13 ~~vulnerable adults or for purposes related to oversight and monitoring of~~
14 ~~persons who are served by or compensated with funds provided by the~~
15 ~~Departments of Disabilities, Aging, and Independent Living, of Health, and of~~
16 ~~Mental Health, ask the Vermont Crime Information Center for the record of~~
17 ~~convictions of a person who is a current employee, volunteer, or contractor, or~~
18 ~~a person to whom the employer has given a conditional offer of a contract,~~
19 ~~volunteer position, or employment. If the individual has a record of~~
20 ~~convictions, the Vermont Crime Information Center shall inform the~~

1 appropriate ~~Commissioner, or the Commissioner's designee,~~ department of the
2 date and type of conviction.

3 ~~(e)(c)~~ Information released to an employer under this section shall not be
4 released or disclosed by the employer to any person. Any person who violates
5 this subsection shall be fined not more than \$500.00.

6 ~~(f) Volunteers shall be considered employees for purposes of this section.~~

7 ~~(g) [Repealed.]~~

8 § 6915. ACCESS TO FINANCIAL INFORMATION

9 (a) As used in this chapter:

10 (1) "A person having custody or control of the financial information"

11 means:

12 (A) a bank as defined in 8 V.S.A. § 11101;

13 (B) a credit union as defined in 8 V.S.A. § 30101;

14 (C) a broker-dealer or investment advisor, as those terms are defined
15 in 9 V.S.A. § 5102; or

16 (D) a mutual fund as defined in 8 V.S.A. § 3461.

17 (2) "Capacity" means an individual's ability to make and communicate
18 a decision regarding the issue that needs to be decided.

19 (3) "Financial information" means an original or copy of, or information
20 derived from:

1 (A) a document that grants signature authority over an account held
2 at a financial institution;

3 (B) a statement, ledger card, or other record of an account held at a
4 financial institution that shows transactions in or with respect to that account;

5 (C) a check, clear draft, or money order that is drawn on a financial
6 institution or issued and payable by or through a financial institution;

7 (D) any item, other than an institutional or periodic charge, that is
8 made under an agreement between a financial institution and another person's
9 account held at a financial institution;

10 (E) any information that relates to a loan account or an application
11 for a loan;

12 (F) information pertaining to an insurance or endowment policy,
13 annuity contract, contributory or noncontributory pension fund, mutual fund,
14 or security, as defined in 9 V.S.A. § 5102; or

15 (G) evidence of a transaction conducted directly or by electronic or
16 telephonic means, including surveillance video, access logs, IP addresses, and
17 any other digital logs, documents, and metadata.

18 (4) "Financial institution" means any financial services provider
19 licensed, registered, or otherwise authorized to do business in Vermont,
20 including a bank, credit union, broker-dealer, investment advisor, mutual fund,
21 or investment company.

1 (b)(1) A person having custody or control of the financial information of a
2 vulnerable adult shall make the information or a copy of the information
3 available to an Adult Protective Services investigator upon receipt of a ~~court~~
4 ~~order or receipt~~ of the investigator's written request or, in the instances
5 described in subsections (d) and (e) of this section, upon receipt of a court
6 order.

7 ~~(1)~~(2) The request shall include a statement signed by the account
8 holder, if ~~he or she~~ the account holder has capacity, or the account holder's
9 guardian with financial powers or agent under a power of attorney consenting
10 to the release of the information to the investigator.

11 ~~(2)~~(c) If the vulnerable adult lacks capacity and does not have a guardian or
12 agent, or if the vulnerable adult lacks capacity and ~~his or her~~ the vulnerable
13 adult's guardian or agent is the alleged perpetrator, the request shall include a
14 statement signed by the investigator asserting that all of the following
15 conditions exist:

16 ~~(A)~~(1) The account holder is an alleged victim of abuse, neglect, or
17 financial exploitation.

18 ~~(B)~~(2) The alleged victim lacks the capacity to consent to the release
19 of the financial information.

20 ~~(C)~~(3) Law enforcement is not involved in the investigation or has
21 not requested a subpoena for the information.

1 ~~(D)~~(4) The alleged victim will suffer imminent harm if the
2 investigation is delayed while the investigator obtains a court order authorizing
3 the release of the information.

4 ~~(E)~~(5) Immediate enforcement activity that depends on the
5 information would be materially and adversely affected by waiting until the
6 alleged victim regains capacity.

7 ~~(F)~~(6) The Commissioner of ~~Disabilities, Aging, and Independent~~
8 ~~Living~~ has personally reviewed the request and confirmed that the conditions
9 set forth in ~~subdivisions (A) through (E) of this subdivision (2)~~ this subsection
10 have been met and that disclosure of the information is necessary to protect the
11 alleged victim from abuse, neglect, or financial exploitation.

12 ~~(e)~~(d) If a guardian refuses to consent to the release of the alleged victim's
13 financial information, the investigator may seek review of the guardian's
14 refusal by filing a motion with the Probate Division of the Superior Court
15 pursuant to 14 V.S.A. § 3062(c).

16 ~~(d)~~(e) If an agent under a power of attorney refuses to consent to the release
17 of the alleged victim's financial information, the investigator may file a
18 petition in Superior Court pursuant to 14 V.S.A. § 3510(b) to compel the agent
19 to consent to the release of the alleged victim's financial information.

20 ~~(e)~~(f) The investigator shall include a copy of the written request in the
21 alleged victim's case file.

1 ~~(f)~~(g) The person having custody or control of the financial information
2 shall not require the investigator to provide details of the investigation to
3 support the request for production of the information.

4 ~~(g)~~(h) The information requested and released shall be used only to
5 investigate the allegation of abuse, neglect, or financial exploitation or for the
6 purposes set forth in subdivision ~~6911(a)(1)(B)~~ 6911(b)(3) of this title and
7 shall not be used against the alleged victim.

8 ~~(h)~~(i) The person having custody or control of the financial information
9 shall provide the information to the investigator as soon as possible but, absent
10 extraordinary circumstances, ~~no~~ not later than 10 business days following
11 receipt of the investigator's written request or receipt of a court order or
12 subpoena requiring disclosure of the information.

13 ~~(i)~~(j) A person who in good faith makes an alleged victim's financial
14 information or a copy of the information available to an investigator in
15 accordance with this section shall be immune from civil or criminal liability
16 for disclosure of the information unless the person's actions constitute gross
17 negligence, recklessness, or intentional misconduct. Nothing in this section
18 shall be construed to provide civil or criminal immunity to a person suspected
19 of having abused, neglected, or exploited a vulnerable adult.

20 ~~(j) The person having custody or control of the financial information of an~~
21 ~~alleged victim may charge the Department of Disabilities, Aging, and~~

1 ~~Independent Living no more than the actual cost of providing the information~~
2 ~~to the investigator and shall not refuse to provide the information until~~
3 ~~payment is received. A financial institution shall not charge the Department~~
4 ~~for the information if the financial institution would not charge if the request~~
5 ~~for the information had been made directly by the account holder.~~

6 * * *

7 § 6917. WRITTEN COMMUNICATIONS

8 Any written communications from the Department, an administrative
9 reviewer, or the Human Services Board to the alleged victim or to the alleged
10 perpetrator shall use plain language.

11 § 6918. RULEMAKING

12 The Commissioner shall adopt rules pursuant to 3 V.S.A. chapter 25 to
13 implement this subchapter, including:

14 (1) conducting referrals on intakes, including:

15 (A) required referrals; and

16 (B) referrals on intake reports not accepted for assessment or
17 investigation;

18 (2) conducting assessments, including:

19 (A) the components of an assessment;

20 (B) the determinations of an assessment; and

21 (C) timelines required for the assessment; and

1 exploitation by filing a petition requesting one or ~~both~~ more of the following
2 orders:

3 (1) an order that the defendant refrain from abusing, neglecting, or
4 exploiting the vulnerable adult;

5 (2) an order that the defendant immediately vacate the household;

6 (3) an order that the defendant shall not contact or communicate with
7 the vulnerable adult either directly or through a third party;

8 (4) an order that the defendant shall not come within a fixed distance
9 from the vulnerable adult;

10 (5) an order that the defendant shall not stalk, as defined in 12 V.S.A.
11 § 5131, the vulnerable adult;

12 (6) an order to deliver care plans, medicines, physicians' orders, and
13 medical records to the vulnerable adult or the vulnerable adult's representative;

14 (7) an order to cooperate in the transfer of the vulnerable adult's care to
15 ensure the vulnerable adult's safety and well-being;

16 (8) an order to immediately return any cash, checks, money, or property
17 belonging to the vulnerable adult in the defendant's possession;

18 (9) an order to immediately return any personal documentation
19 regarding the vulnerable adult, including identification documents, insurance
20 information, financial records, and immigration documentation;

1 Sec. 3. 18 V.S.A. § 9718 is amended to read:

2 § 9718. PETITION FOR REVIEW BY THE PROBATE DIVISION OF THE
3 SUPERIOR COURT

4 (a) A petition may be filed in the Probate Division of the Superior Court
5 under this section by:

6 (1) a principal, guardian, agent, ombudsman, a mental health patient
7 representative, or interested individual other than one identified in an advance
8 directive, pursuant to subdivision 9702(a)(10) of this title, as not authorized to
9 bring an action under this section;

10 (2) a social worker or health care provider employed by or directly
11 associated with the health care provider, health care facility, or residential care
12 facility providing care to the principal;

13 (3) the Defender General if the principal is in the custody of the
14 Department of Corrections;

15 (4) a representative of the State-designated protection and advocacy
16 system if the principal is in the custody of the Department of Mental Health; ~~or~~

17 (5) an individual or entity identified in an advance directive, pursuant to
18 subdivision 9702(a)(10) of this title, as authorized to bring an action under this
19 section; or

