

1 S.23

2 Introduced by Senator Sears

3 Referred to Committee on Health and Welfare

4 Date: January 15, 2013

5 Subject: Human Services; adult protective services; law enforcement; access
6 to records

7 Statement of purpose: This bill proposes to provide law enforcement officers
8 and adult protective services investigators with access to the medical and
9 financial records of alleged victims of abuse, neglect, or exploitation.

10 An act relating to access to records in adult protective services
11 investigations

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

13 ~~Sec. 1. 33 V.S.A. § 6903 is amended to read:~~

14 § 6903. REPORTING SUSPECTED ABUSE, NEGLECT, AND
15 EXPLOITATION OF VULNERABLE ADULTS

16 (a) Any of the following, other than a crisis worker acting pursuant to
17 12 V.S.A. § 1614, who knows of or has received information of abuse, neglect,
18 or exploitation of a vulnerable adult or who has reason to suspect that any
19 ~~vulnerable adult has been abused, neglected, or exploited shall report or cause~~

1 ~~a report to be made in accordance with the provisions of section 6904 of this~~
2 title within 48 hours:

3 (1) All employees, contractors, and grantees of the ~~agency of human~~
4 ~~services~~ Agency of Human Services who are involved in caregiving.

5 (2) A physician, osteopath, chiropractor or physician's assistant, nurse,
6 medical examiner, licensed nursing assistant, emergency medical services
7 personnel, dentist, or psychologist.

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.

11 (4) A mental health professional, social worker, person or organization
12 that offers, provides, or arranges for personal care for vulnerable adults, a
13 caregiver employed by a vulnerable adult, employee of or contractor involved
14 in caregiving for a community mental health center, law enforcement officer,
15 and an individual who works regularly with vulnerable adults and who is an
16 employee of an adult day care center, area agency on aging, senior center, or
17 meal program designed primarily to serve vulnerable adults.

18 (5) A hospital, nursing home, residential care home, home health agency
19 or any entity providing nursing or nursing related services for remuneration,
20 intermediate care facility for adults with ~~mental retardation~~ intellectual
21 disabilities, therapeutic community residence, group home, developmental

1 ~~home, school or contractor involved in caregiving, operator or employee of any~~
2 of these facilities or agencies.

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

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

10 (1) the person making the report consents to disclosure; ~~or~~

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

12 (3) a court, after a hearing, finds probable cause to believe the report
13 was not made in good faith and orders the department to disclose the person's
14 identity.

15 (d) A person having custody or control of medical or financial records of a
16 vulnerable adult for whom a report is required or authorized under this section
17 shall make such records or a copy of such records available to a law
18 enforcement officer or an adult protective services worker investigating the
19 vulnerable adult's abuse, neglect, or exploitation upon receipt of a written
20 request for the records signed by the law enforcement officer or adult
21 protective services worker. Records disclosed pursuant to this subsection are

1 ~~confidential and exempt from public inspection and copying under the Public~~
2 ~~Records Act and may be used only in a judicial or administrative proceeding or~~
3 ~~investigation resulting from a report required or authorized under this section.~~

4 Sec. 2. EFFECTIVE DATE

5 ~~This act shall take effect on July 1, 2013.~~

Sec. 1. 33 V.S.A. § 6915 is added to read:

§ 6915. ACCESS TO MEDICAL RECORDS

(a) A person having custody or control of the medical records of a vulnerable adult for whom a report is required or authorized under section 6903 of this title may make such records or a copy of such records available to a law enforcement officer or an adult protective services worker investigating whether the vulnerable adult was the victim of abuse, neglect, or exploitation upon receipt of a written request for the records signed by the law enforcement officer or adult protective services worker, as follows:

(1) For an alleged victim with capacity, the law enforcement officer or adult protective services worker shall obtain the written consent of the alleged victim prior to requesting the records.

(2)(A) For an alleged victim without capacity who has a court-appointed guardian, the law enforcement officer or adult protective services worker shall obtain the written consent of the guardian prior to requesting the records, unless the guardian is the alleged perpetrator of the abuse, neglect, or exploitation, in which case the officer or worker shall proceed pursuant to subdivision (B) of this subdivision (2). A guardian who refuses to provide consent pursuant to this section shall do so only if the guardian believes in good faith that the refusal is in the best interest of the alleged victim.

(B)(i) For an alleged victim without capacity who does not have a guardian, the law enforcement officer or adult protective services worker shall demonstrate to the person with custody or control of the records, in writing, that:

(I) the records are needed to determine whether a violation of law by a person other than the alleged victim has occurred, and the information is not intended to be used against the alleged victim; and

(II) immediate enforcement activity that depends on the records would be materially and adversely affected by waiting until the alleged victim regains capacity.

(ii) The person having custody or control of the medical records shall release the records of an alleged victim without capacity only if he or she believes, in the exercise of professional judgment, that making the records or a copy of the records available to the law enforcement officer or adult protective services worker is in the best interests of the alleged victim.

(b) If a vulnerable adult with capacity refuses to provide consent pursuant to subdivision (a)(1) of this section, the person having custody or control of the vulnerable adult's medical records shall not provide the records to the law enforcement officer or adult protective services worker unless necessary to comply with an order or warrant issued by a court, a subpoena or summons issued by a judicial officer, or a grand jury subpoena, or as otherwise required by law.

(c)(1) A law enforcement officer or adult protective services worker who receives consent to obtain records from an alleged victim with capacity pursuant to subdivision (a)(1) of this section or from the guardian of an alleged victim without capacity pursuant to subdivision (a)(2)(A) of this section shall include a copy of the written consent in the case file.

(2) A law enforcement officer or adult protective services worker who obtains records pursuant to subdivision (a)(2)(B) of this section because the alleged victim lacks capacity shall document in the case file the need for the records obtained, including a copy of the written materials submitted to the person with custody or control of the records pursuant to that subdivision.

(d) A person who in good faith makes an alleged victim's medical records or a copy of such records available to a law enforcement officer or adult protective services worker in accordance with this section shall be immune from civil or criminal liability for disclosure of the records unless the person's actions constitute gross negligence, recklessness, or intentional misconduct. Nothing in this subsection shall be construed to provide civil or criminal immunity to a person suspected of having abused, neglected, or exploited a vulnerable adult.

(e) The person having custody or control of the alleged victim's medical records may charge and collect from the law enforcement officer or adult protective services worker requesting a copy of such records the actual cost of providing the copy.

(f) Records disclosed pursuant to this section are confidential and exempt from public inspection and copying under the Public Records Act and may be

used only in a judicial or administrative proceeding or investigation directly related to a report required or authorized under this section.

(g) As used in this section, "capacity" means an individual's ability to make and communicate a decision regarding the issue that needs to be decided.

Sec. 2. 33 V.S.A. § 6916 is amended to read:

§ 6916. ACCESS TO FINANCIAL RECORDS

(a) A person having custody or control of the financial records of a vulnerable adult for whom a report is required or authorized under section 6903 of this title shall make such records or a copy of such records available to a law enforcement officer or an adult protective services worker investigating whether the vulnerable adult was the victim of abuse, neglect, or exploitation upon receipt of a written request for the records signed by the law enforcement officer or adult protective services worker, as follows:

(1) For an alleged victim with capacity, the law enforcement officer or adult protective services worker shall obtain the written consent of the alleged victim prior to requesting the records.

(2)(A) For an alleged victim without capacity who has a court-appointed guardian, the law enforcement officer or adult protective services worker shall obtain the written consent of the guardian prior to requesting the records, unless the guardian is the alleged perpetrator of the abuse, neglect, or exploitation, in which case the officer or worker shall proceed pursuant to subdivision (B) of this subdivision (2). A guardian who refuses to provide consent pursuant to this section shall do so only if the guardian believes in good faith that the refusal is in the best interest of the alleged victim.

(B) For an alleged victim without capacity who does not have a guardian, the law enforcement officer or adult protective services worker shall submit to the person with custody or control of the records a written statement that declares:

(i) the records are needed to determine whether a violation of law by a person other than the alleged victim has occurred, and the information is not intended to be used against the alleged victim; and

(ii) immediate enforcement activity that depends on the records would be materially and adversely affected by waiting until the alleged victim regains capacity.

(b) If a vulnerable adult with capacity refuses to provide consent pursuant to subdivision (a)(1) of this section, the person having custody or control of the vulnerable adult's financial records shall not provide the records to the law

enforcement officer or adult protective services worker unless necessary to comply with an order or warrant issued by a court, a subpoena or summons issued by a judicial officer, or a grand jury subpoena, or as otherwise required by law.

(c)(1) A law enforcement officer or adult protective services worker who receives consent to obtain records from an alleged victim with capacity pursuant to subdivision (a)(1) of this section or from the guardian of an alleged victim without capacity pursuant to subdivision (a)(2)(A) of this section shall include a copy of the written consent in the case file.

(2) A law enforcement officer or adult protective services worker who obtains records pursuant to subdivision (a)(2)(B) of this section because the alleged victim lacks capacity shall document in the case file the need for the records obtained, including a copy of the written materials submitted to the person with custody or control of the records pursuant to that subdivision.

(d) A person who in good faith makes an alleged victim's financial records or a copy of such records available to a law enforcement officer or adult protective services worker in accordance with this section shall be immune from civil or criminal liability for disclosure of the records unless the person's actions constitute gross negligence, recklessness, or intentional misconduct. Nothing in this subsection shall be construed to provide civil or criminal immunity to a person suspected of having abused, neglected, or exploited a vulnerable adult.

(e) The person having custody or control of the alleged victim's financial records may charge and collect from the law enforcement officer or adult protective services worker requesting a copy of such records the actual cost of providing the copy.

(f) Records disclosed pursuant to this section are confidential and exempt from public inspection and copying under the Public Records Act and may be used only in a judicial or administrative proceeding or investigation directly related to a report required or authorized under this section.

(g) As used in this section, "capacity" means an individual's ability to make and communicate a decision regarding the issue that needs to be decided.

Sec. 3. EFFECTIVE DATE

This act shall take effect on July 1, 2014.