

1 TO THE HOUSE OF REPRESENTATIVES:

2 The Committee on Human Services to which was referred House Bill No.
3 112 entitled “An act relating to access to financial records in adult protective
4 services investigations” respectfully reports that it has considered the same and
5 recommends that the bill be amended by striking out all after the enacting
6 clause and inserting in lieu thereof the following:

7 **Sec. 1. 33 V.S.A. § 6911 is amended to read:**

8 § 6911. RECORDS OF ABUSE, NEGLECT, AND EXPLOITATION

9 (a)(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:

12 ~~(A)~~ The investigative report shall be disclosed only to: the
13 Commissioner or person designated to receive such records; persons assigned
14 by the Commissioner to investigate reports; the person reported to have
15 abused, neglected, or exploited a vulnerable adult; the vulnerable adult or his
16 or her representative; the Office of Professional Regulation when deemed
17 appropriate by the Commissioner; the Secretary of Education when deemed
18 appropriate by the Commissioner; the Commissioner for Children and Families
19 or designee, for purposes of review of expungement petitions filed pursuant to
20 section 4916c of this title; a law enforcement agency; the State's Attorney, or
21 the Office of the Attorney General, when the Department believes there may

1 be grounds for criminal prosecution or civil enforcement action, or in the
2 course of a criminal or a civil investigation. When disclosing information
3 pursuant to this subdivision, reasonable efforts shall be made to limit the
4 information to the minimum necessary to accomplish the intended purpose of
5 the disclosure, and no other information, including the identity of the reporter,
6 shall be released absent a court order.

7 ~~(2)~~(B) Relevant information may be disclosed to the Secretary of
8 Human Services, or the Secretary's designee, for the purpose of remediating or
9 preventing abuse, neglect, or exploitation; to assist the Agency in its
10 monitoring and oversight responsibilities; and in the course of a relief from
11 abuse proceeding, guardianship proceeding, or any other court proceeding
12 when the Commissioner deems it necessary to protect the victim, and the
13 victim or his or her representative consents to the disclosure. When disclosing
14 information pursuant to this subdivision, reasonable efforts shall be made to
15 limit the information to the minimum necessary to accomplish the intended
16 purpose of the disclosure, and no other information, including the identity of
17 the reporter, shall be released absent a court order.

18 **(2) Notwithstanding subdivisions (1)(A) and (B) of this subsection,**
19 **financial records made available to an adult protective services**
20 **investigator pursuant to section 6915 of this title may be used only in a**

1 **judicial or administrative proceeding or investigation directly related to a**
2 **report required or authorized under this chapter.**

3 * * *

4 Sec. 2. 33 V.S.A. § 6915 is added to read:

5 § 6915. ACCESS TO FINANCIAL RECORDS

6 (a) As used in this chapter:

7 (1) “A person having custody or control of the financial records” means
8 a financial institution as defined in 8 V.S.A. § 11101 or a credit union as
9 defined in 8 V.S.A. § 30101.

10 (2) “Capacity” means an individual’s ability to make and communicate
11 a decision regarding the issue that needs to be decided.

12 (b) A person having custody or control of the financial records of a
13 vulnerable adult shall make the records or a copy of the records available to an
14 adult protective services investigator upon receipt of a court order or receipt of
15 the investigator’s written request.

16 (1) The request shall include a statement signed by the account holder, if
17 he or she has capacity, or the account holder’s guardian with financial powers
18 or agent under a power of attorney consenting to the release of the records to
19 the investigator.

20 (2) If the vulnerable adult lacks capacity and does not have a guardian or
21 agent, or if the vulnerable adult lacks capacity and his or her guardian or agent

1 is the alleged perpetrator, the request shall include a statement signed by the
2 investigator asserting that all of the following conditions exist:

3 (A) The account holder is an alleged victim of abuse, neglect, or
4 financial exploitation.

5 (B) The alleged victim lacks the capacity to consent to the release of
6 the financial record.

7 (C) Law enforcement is not involved in the investigation or has not
8 requested a subpoena for the records.

9 (D) The alleged victim will suffer imminent harm if the investigation
10 is delayed while the investigator obtains a court order authorizing the release
11 of the records.

12 (E) Immediate enforcement activity that depends on the records
13 would be materially and adversely affected by waiting until the alleged victim
14 remains capacity.

15 (F) The Commissioner of Disabilities, Aging, and Independent
16 Living or designee has reviewed the request and confirmed that the conditions
17 set forth in subdivisions (A) through (E) of this subdivision (2) have been met
18 and that disclosure of the records is necessary to protect the alleged victim
19 from abuse, neglect, or financial exploitation.

20 (c) If a guardian refuses to consent to the release of the alleged victim's
21 financial records, the investigator may seek review of the guardian's refusal by

1 filing a motion with the Probate Division of the Superior Court pursuant to
2 14 V.S.A. § 3062(c).

3 (d) If an agent under a power of attorney refuses to consent to the release of
4 the alleged victim’s financial records, the investigator may file a petition in
5 Superior Court pursuant to 14 V.S.A. § 3510(b) to compel the agent to consent
6 to the release of the alleged victim’s financial records.

7 (e) The investigator shall include a copy of the written request in the
8 alleged victim’s case file.

9 (f) The person having custody or control of the financial records shall not
10 require the investigator to provide details of the investigation to support the
11 request for production of the records.

12 (g) The information requested and released shall be used only to investigate
13 the allegation of abuse, neglect, or financial exploitation or for the purposes set
14 forth in subdivision 6911(a)(2) of this title and shall not be used against the
15 alleged victim.

16 (h) The person having custody or control of the financial records shall
17 provide the records to the investigator as soon as possible but, absent
18 extraordinary circumstances, no later than 10 business days following receipt
19 of the investigator’s written request or receipt of a court order or subpoena
20 requiring disclosure of the records.

1 (i) A person who in good faith makes an alleged victim’s financial records
2 or a copy of the records available to an investigator in accordance with this
3 section shall be immune from civil or criminal liability for disclosure of the
4 records unless the person’s actions constitute gross 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 (j) The person having custody or control of the financial records of an
9 alleged victim may charge the Department of Disabilities, Aging, and
10 Independent Living no more than the actual cost of providing the records to the
11 investigator and shall not refuse to provide the records until payment is
12 received. A financial institution shall not charge the Department for the
13 records if the financial institution would not charge if the request for the
14 records had been made directly by the account holder.

15 ~~**(k) Records disclosed pursuant to this section are exempt from public**~~
16 ~~**inspection and copying under the Public Records Act and shall be kept**~~
17 ~~**confidential, and they may be used only in a judicial or administrative**~~
18 ~~**proceeding or investigation directly related to a report required or**~~
19 ~~**authorized under this chapter.**~~

20 Sec. 3. 8 V.S.A. § 10204 is amended to read:

21 § 10204. EXCEPTIONS

