

TO: House Human Services Committee

FROM: Stuart G. Schurr, Esq., General Counsel, DAIL *SGS*

DATE: February 21, 2023

SUBJECT: H.171; Definition of Vulnerable Adult

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The Department of Disabilities, Aging, and Independent Living (“Department”) wishes to respond to the written comments recently submitted to the Committee by Vermont Legal Aid, Inc., Community of Vermont Elders, and Disability Rights Vermont (collectively, “advocates”). Despite the agreement on much of the content of the proposed legislation, the Department and the advocates have been unable to agree on the definition of “vulnerable adult,” as proposed in 33 V.S.A. § 6902(33)(C)(ii).

The Department acknowledges that the current statute does not include the word “the” before “abuse, neglect, or exploitation.” And, while in *Smith v. Wright*, 2013 VT 68, ¶ 18, the Vermont Supreme Court did not rule on the legal question as to whether a linkage was required between the nature of the alleged victim’s impairment and her ability to protect herself, the reason the Court did not address the issue was that the defendant had failed to raise that argument below and, therefore, did not preserve the issue for appeal. In citing to the definition of “vulnerable adult,” however, one cannot ignore the Vermont Supreme Court’s recognition of a linkage between an individual’s ability to protect oneself and the alleged maltreatment. Specifically, the Court stated, “The relevant part of the definition of ‘vulnerable adult’ states that a person over eighteen years of age is a vulnerable adult if they suffer from a physical, mental, or developmental disability that impairs their ability...to protect themselves from **the** abuse, exploitation, or neglect.” *Id.* at ¶ 19 [emphasis added] In fact, the Supreme Court held that the lower court had “specifically concluded that plaintiff’s disability impaired her ability to protect herself [against not any and all generalized abuse, exploitation, or neglect, but rather] against **defendant’s sexual advances**. *Id.* [emphasis added]

Regardless of how, or whether, the Vermont Supreme Court has interpreted the definition of “vulnerable adult,” for the following reasons the Department asserts that the statute should require a linkage between the ability to protect oneself and **the** alleged abuse, neglect, or exploitation:

- Adding a “the” does not, as the advocates suggest, put the alleged victim “on trial.” Rather, it serves to respect the dignity of persons with disabilities by acknowledging that

not every disability or infirmity renders one vulnerable to every type of alleged maltreatment. For example, an individual with a physical disability or infirmity of aging, without more, may be unable to protect themselves from abuse or neglect, but there may be no evidence of an inability to protect themselves from financial exploitation. Omitting such a linkage requirement from the statute sends the wrong message not only to individuals with disabilities but also to the public at large.

- The inclusion of the word, “the” places the burden of proof on the Department, where it currently exists and belongs. The Department should be required to demonstrate a nexus between the ability to protect oneself and the alleged maltreatment before substantiating an alleged perpetrator for the abuse, neglect, or exploitation of a vulnerable adult and placing the individual’s name on the Adult Abuse Registry. And, when relying on this definition and such a linkage cannot be shown, a substantiation should not follow.

Finally, the advocates’ latest proposal does little to address the above concerns. In fact, its failure to define what it means for one to be “therefore at risk” of abuse, neglect, or exploitation further clouds the issue. For the above reasons, the Department requests that 33 V.S.A. § 6902(33)(C) be amended to read as follows:

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