

1 TO THE HONORABLE SENATE:

2 The Committee on Health and Welfare to which was referred Senate Bill
3 No. 23 entitled “An act relating to access to records in adult protective services
4 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. § 6915 is added to read:

8 § 6915. ACCESS TO MEDICAL RECORDS

9 (a) A person having custody or control of the medical records of a
10 vulnerable adult for whom a report is required or authorized under section
11 6903 of this title may make such records or a copy of such records available to
12 a law enforcement officer or an adult protective services worker investigating
13 whether the vulnerable adult was the victim of abuse, neglect, or exploitation
14 upon receipt of a written request for the records signed by the law enforcement
15 officer or adult protective services worker, as follows:

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

19 (2)(A) For an alleged victim without capacity who has a court-appointed
20 guardian, the law enforcement officer or adult protective services worker shall
21 obtain the written consent of the guardian prior to requesting the records,

1 unless the guardian is the alleged perpetrator of the abuse, neglect, or
2 exploitation, in which case the officer or worker shall proceed pursuant to
3 subdivision (B) of this subdivision (2). A guardian who refuses to provide
4 consent pursuant to this section shall do so only if the guardian believes in
5 good faith that the refusal is in the best interest of the alleged victim.

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

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

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

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

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

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

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

18 (d) A person who in good faith makes an alleged victim’s medical records
19 or a copy of such records available to a law enforcement officer or adult
20 protective services worker in accordance with this section shall be immune
21 from civil or criminal liability for disclosure of the records unless the person’s

1 actions constitute gross negligence, recklessness, or intentional misconduct.

2 Nothing in this subsection shall be construed to provide civil or criminal
3 immunity to a person suspected of having abused, neglected, or exploited a
4 vulnerable adult.

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

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

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

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

16 § 6916. ACCESS TO FINANCIAL RECORDS

17 (a) A person having custody or control of the financial records of a
18 vulnerable adult for whom a report is required or authorized under section
19 6903 of this title shall make such records or a copy of such records available to
20 a law enforcement officer or an adult protective services worker investigating
21 whether the vulnerable adult was the victim of abuse, neglect, or exploitation

1 upon receipt of a written request for the records signed by the law enforcement
2 officer or adult protective services worker, as follows:

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

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

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

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

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

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

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

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

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

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

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

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

19 Sec. 3. EFFECTIVE DATE

20 This act shall take effect on July 1, 2014.

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3 Committee vote: _____)

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Senator _____

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FOR THE COMMITTEE