

1 H.112

2 Introduced by Representative Pugh of South Burlington

3 Referred to Committee on

4 Date:

5 Subject: Human services; adult protective services; law enforcement; financial  
6 records

7 Statement of purpose of bill as introduced: This bill proposes to provide law  
8 enforcement officers and adult protective services investigators with access to  
9 the financial records of alleged victims of abuse, neglect, or exploitation. It  
10 would require the custodian of the financial records of a vulnerable adult to  
11 make those records available to a law enforcement officer or adult protective  
12 services investigator.

13 An act relating to access to financial records in adult protective services  
14 investigations

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

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

17 ~~§ 6915. ACCESS TO FINANCIAL RECORDS~~

18 ~~(a) A person having custody or control of the financial records of a~~  
19 ~~vulnerable adult for whom a report is required or authorized under section~~  
20 ~~6903 of this title shall make such records or a copy of such records available to~~

1 ~~a law enforcement officer or an adult protective services worker investigating~~  
2 whether the vulnerable adult was the victim of abuse, neglect, or exploitation  
3 upon receipt of a written request for the records signed by the law enforcement  
4 officer or adult protective services worker, as follows:

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

8 (2)(A) For an alleged victim without capacity who has a court-appointed  
9 guardian, the law enforcement officer or adult protective services worker shall  
10 obtain the written consent of the guardian prior to requesting the records,  
11 unless the guardian is the alleged perpetrator of the abuse, neglect, or  
12 exploitation, in which case the officer or worker shall proceed pursuant to  
13 subdivision (B) of this subdivision (2). A guardian who refuses to provide  
14 consent pursuant to this section shall do so only if the guardian believes in  
15 good faith that the refusal is in the best interests of the alleged victim. If a  
16 guardian withholds consent, the law enforcement officer or adult protective  
17 services worker may appeal to the Commissioner for a determination that  
18 disclosure of the records is necessary to protect the alleged victim. If the  
19 Commissioner determines that disclosure of the records is necessary to protect  
20 the alleged victim, the Commissioner may direct the person with custody or  
21 control of the records to disclose the records without the guardian's consent.

1 ~~(D)(i) For an alleged victim without capacity who does not have a~~  
2 guardian, the law enforcement officer or adult protective services worker shall  
3 submit to the person with custody or control of the records a written statement  
4 asserting that both of the following conditions exist:

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

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

11 (ii) The law enforcement officer or adult protective services  
12 worker shall not be required to provide any details regarding the investigation  
13 in support of the request for timely production of the records.

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

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

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

11 ~~(d)(1) For an alleged victim with capacity or an alleged victim without~~  
12 ~~capacity who has a court-appointed guardian, the custodian of the records shall~~  
13 ~~provide them to the requesting law enforcement officer or adult protective~~  
14 ~~services worker within 10 business days of the custodian's receipt of the~~  
15 ~~alleged victim's or guardian's written consent.~~

16 ~~(2) If an alleged victim's guardian withholds consent but the~~  
17 ~~Commissioner determines that disclosure is necessary to protect the victim~~  
18 ~~pursuant to subdivision (a)(2)(A) of this section, the custodian of the records~~  
19 ~~shall provide them to the requesting law enforcement officer or adult protective~~  
20 ~~services worker within 10 business days of the custodian's receipt of the~~  
21 ~~Commissioner's determination.~~

1 ~~(3) For an alleged victim without capacity who does not have a~~  
2 guardian, the custodian of the records shall provide them to the requesting law  
3 enforcement officer or adult protective services worker within 10 business  
4 days of the custodian's receipt of the written statement described in  
5 subdivision (a)(2)(B) of this section.

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

14 (f) The person having custody or control of the alleged victim's financial  
15 records may charge and collect from the law enforcement officer or adult  
16 protective services worker requesting a copy of such records the actual cost of  
17 providing the copy, provided that a custodian shall not refuse to provide the  
18 records until receipt of the payment.

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

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

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

5 Sec. 2. EFFECTIVE DATE

6 ~~This act shall take effect on July 1, 2015.~~

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

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

*(a)(1) Information obtained through reports and investigations, including the identity of the reporter, shall remain confidential and shall not be released absent a court order, except as follows:*

*(A) The investigative report shall be disclosed only to: the Commissioner or person designated to receive such records; persons assigned by the Commissioner to investigate reports; the person reported to have abused, neglected, or exploited a vulnerable adult; the vulnerable adult or his or her representative; the Office of Professional Regulation when deemed appropriate by the Commissioner; the Secretary of Education when deemed appropriate by the Commissioner; the Commissioner for Children and Families or designee; for purposes of review of expungement petitions filed pursuant to section 4916c of this title; the Commissioner of Financial Regulation when deemed appropriate by the Commissioner for an*

*investigation related to financial exploitation; a law enforcement agency; the State's Attorney, or the Office of the Attorney General, when the Department believes there may be grounds for criminal prosecution or civil enforcement action, or in the course of a criminal or a civil investigation. When disclosing information pursuant to this subdivision, reasonable efforts shall be made to limit the information to the minimum necessary to accomplish the intended purpose of the disclosure, and no other information, including the identity of the reporter, shall be released absent a court order.*

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

*(2) Notwithstanding subdivision (1)(A) of this subsection, financial records made available to an adult protective services investigator pursuant to section*

6915 of this title may be used only in a judicial or administrative proceeding or investigation directly related to a report required or authorized under this chapter. Relevant information may be disclosed to the Secretary of Human Services pursuant to subdivision (1)(B) of this subsection, and may also be disclosed to the Commissioner of Financial Regulation when the investigation relates to financial exploitation of a vulnerable adult.

\* \* \*

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

§ 6915. ACCESS TO FINANCIAL RECORDS

(a) As used in this chapter:

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

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

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

(1) The request shall include a statement signed by the account holder, if he or she has capacity, or the account holder’s guardian with financial



powers or agent under a power of attorney consenting to the release of the records to the investigator.

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

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

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

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

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

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

(F) The Commissioner of Disabilities, Aging, and Independent Living has personally reviewed the request and confirmed that the conditions set forth in subdivisions (A) through (E) of this subdivision (2) have been met and that

disclosure of the records is necessary to protect the alleged victim from abuse, neglect, or financial exploitation.

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

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

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

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

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

(h) The person having custody or control of the financial records shall provide the records to the investigator as soon as possible but, absent

extraordinary circumstances, no later than 10 business days following receipt of the investigator's written request or receipt of a court order or subpoena requiring disclosure of the records.

(i) A person who in good faith makes an alleged victim's financial records or a copy of the records available to an investigator 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 section shall be construed to provide civil or criminal immunity to a person suspected of having abused, neglected, or exploited a vulnerable adult.

(j) The person having custody or control of the financial records of an alleged victim may charge the Department of Disabilities, Aging, and Independent Living no more than the actual cost of providing the records to the investigator and shall not refuse to provide the records until payment is received. A financial institution shall not charge the Department for the records if the financial institution would not charge if the request for the records had been made directly by the account holder.

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

§ 10204. EXCEPTIONS

*This subchapter does not prohibit any of the activities listed in this section. This section shall not be construed to require any financial institution to make*

*any disclosure not otherwise required by law. This section shall not be construed to require or encourage any financial institution to alter any procedures or practices not inconsistent with this subchapter. This section shall not be construed to expand or create any authority in any person or entity other than a financial institution.*

\* \* \*

*(25) Reports or disclosure of financial records and other information to the Department of Disabilities, Aging, and Independent Living, pursuant to 33 V.S.A. §§ 6903(b) ~~and~~, 6904, and 6915.*

*Sec. 4. EFFECTIVE DATE*

*This act shall take effect on passage.*