



To: Rep. Maxine Grad, Chair
Rep. Willem Jewett, Vice Chair

From: Michael Blair, Staff Attorney

Date: February 4, 2016

Re: H. 749-Relief from Abuse Orders for Minors

Introduction Issue:

The reason this bill is of particular concern to us is that teenagers are more likely to experience sexual violence than any other age group.¹ One in three teenagers and young adults experience some form of dating abuse.² For young people that are LGBTQ, the problems are often even greater because their family may not know their sexual orientation, may have their prejudices against LGBTQ people and may even remove their own children from their home if they discover their sexual orientation.

Abuse prevention orders are often the first line of defense in keeping individuals safe from their abusers. As a result, teenagers desperately need the ability to access relief from abuse orders. H. 749 would give minors 16 or older the ability to pursue a Relief from Abuse order on their own and this will go a long way to helping minors create safety in their own lives without the aid of a parent or guardian

In addition, H 749 enhances the ability of minors under sixteen to pursue relief through defining the concept of “Next Friend.”

Vermont Law Today:

Currently in Vermont, a minor may pursue a RFA Order through a “next friend,” under VRCPC Rule 17b, however, there is no definition for “next friend,” something that at times negates a Judge’s ability to provide the relief sought.

¹ Jennifer L. Truman U.S. Dept. of Justice Bureau of Justice Statistics National Crime Victimization Survey 2010 (2011).

² Break the Cycle

Since “Next Friend” is not defined the application of VRCP 17b creates a situation where the application of the rule is inconsistent.

If the proposed language defining “Next Friend” were adopted it would give Judges the ability to better determine whether the person seeking relief on behalf of the minor can promote the litigation process.

While we hope that a minor’s parents or guardian are available and able to represent that minor’s best interest in seeking an RFA, the reality is that there are times and situations that make that representation impossible.

Again, sometimes a parent may not know about the relationship that warrants an RFA or maybe they are opposed to becoming involved in the litigation process.

Vermont Next Friend:

In Vermont the concept of Next Friend representation goes back many years. In researching this issue I found a case from 1844 (*Brown v. Hull* – 16 Vt. 673) where the court addressed the need to have Next Friend representation but provided little guidance on its application.

Since that time, there has been a consistent use of Next Friend representation in our courts for various matters but there has been no specific and defined way for courts to determine who can be a “Next Friend;” H 749 does that.

Before addressing H 749 Next Friend definition I would like to mention several cases outside Vermont that give some guidance to the issues.

The US Supreme Court addressed the issue in *Whitmore v. Arkansas* in 1990.

Next Friend sought to challenge a death sentence claiming the defendant was not competent to waive appeal rights.

Court found that the defendant made a knowing, intelligent, and voluntary waiver, thus, the Next Friend had no standing to bring the suit.

Court found that to permit Next Friend litigation the following must be present:

1. that the real party in interest is unable to litigate his own cause due to mental incapacity, lack of access to court, or other similar disability.

2. That the “Next Friend” must be truly dedicated to the best interests of the person on whose behalf he seeks to litigate.

The Court also discussed the possibility that the Next Friend might need to show a significant relationship to the real party of interest but that issue was not determined.

A Second Circuit case, the court followed a “general rule” that a Next Friend may proceed on behalf of a minor when the minor’s authorized representative is “unable, unwilling, or refuses to act, or has interests which conflict with the infant.” In Ad Hoc Comm. of Concerned Teachers, on Behalf of Minor and Under-Age Students Attending Greenburgh Eleven Union Free Sch. Dist. and on its Own Behalf v. Greeburgh #11 Union Free Sch. Dist., 873 F.2d 25, 33 (2d Cir., 1989). In addition, the court also held that courts should consider the good faith of the potential Next Friend as well as their ability -- financial or otherwise -- to complete the litigation. Id. at 33.

The case involved teachers pursuing a Next Friend case for students who were suffering from racially discriminatory hiring practices within the school system.

One state - Utah defines “next friend” as “any competent individual, over eighteen years of age, chosen by the minor and who is capable of pursuing the minor’s best interest in the action. RCWA 26.50.020 (2010).

Using the definition that a Next Friend is a person, dedicated to the plaintiff’s best interest, who pursues a cause of action on behalf of a plaintiff who is a minor or who lacks capacity to protect his or her interests due to psychiatric intellectual, or developmental disability will promote consistent access to courts to those who need a protective order but are unable to pursue such relief on their own due to seen or unforeseen circumstances.

While there may be concern that the definition will create situations where cases are brought that don’t warrant the relief sought, the reality is that the definition provides standing for the underlying matter to be heard.

To grant relief under 15 VSA 1103 or 12 VSA 5133 the elements of the statute must be established, therefore, those case that don’t meet the requirements will be dismissed anyway.

By establishing a definition for Next Friend that allows judges guidance in determining the initial standing issue, the legislature is promoting the well-being of minors and others who can’t represent themselves and don’t have parents or guardians who could bring the matter forward.

I also believe Judges that hear protection order cases must have the ability to hear the merits of a case to protect those individuals who need protection, thus, the establishment of an applicable definition of Next Friend and broadening of the ability to pursue a petition for minors of over 16 years of age serves the best interest of all Vermonters.

Overall, we wholeheartedly support the proposed language of H 749. The definition of Next Friend will help guide those individuals choosing a next friend and those judges charged with deciding who may be a next friend. Judges will need to make decisions about whether they feel the proposed Next Friend can promote the minors best interest with care and responsibility but those are decisions our Judges make on a daily basis.