



TO: House Human Services Committee  
FROM: Allen Gilbert, executive director, ACLU-VT  
DATE: Feb. 3, 2016  
SUBJECT: H. 112, financial records in adult protective service investigations

The ACLU is aware that considerable time has been invested in working on this bill since it was first introduced last year. We were involved in some of the early reviews but were not able to participate in the most recent work. We do not, therefore, have ongoing knowledge of how specific aspects of the bill have evolved.

Looking at the Jan. 29, 2016 version provided for this testimony, we remain concerned that there is no independent review of an investigator's request for the financial records of a vulnerable adult. We worry whenever an administrative agency is given the authority to take action that ordinarily would require court review. We appreciate that the commissioner of the Department of Disabilities, Aging, and Independent Living (or designee) must review the request and confirm that the conditions set forth in the bill have been met. But having the only review come from within the agency whose staff are requesting the extraordinary access invites questions about whether the commissioner's judgment can ever be seen as autonomous and independent – as the judgment of a court is seen. At the very least, if administrative review remains the only oversight applied to an investigator's request, we suggest the bill require that the DAIL commissioner *personally* review the request (page 2, line 20). This small change will, if nothing else, telegraph the seriousness with which the request will be reviewed.

We also suggest that the first independent clause of sub-section (k) on page 4, line 18 dealing with disclosure under the Public Records Act be struck. Personal financial records are already exempted from disclosure by 1 VSA 317 (c)(7). The final report of the Public Records Study Committee (2015) urged that any new exemptions to the 240-plus that already exist be scrutinized closely; this section of the bill, if not revised, would likely be subject to review by the House and Senate Government Operations committees. The first clause can be eliminated, and the second independent clause of sub-section (k) can easily be re-worded to specifically allow disclosure: "Records disclosed pursuant to this section may be used in a judicial or administrative proceeding or investigation directly related to a report required or authorized under this chapter."

Thank you for the opportunity to comment on H. 112.