

**Testimony before House Human Services
February 26, 2015**

H.112, An act relating to access to financial records in adult protective services investigations

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Thank you for the opportunity to testify on this bill. As you just heard from DAIL's Adult Protective Services (APS) staff, the ability to access an alleged victim's records is often essential to ensure that a comprehensive investigation is conducted and to facilitate the protection of vulnerable adults from abuse, neglect, or exploitation. DAIL believes that this bill strikes the appropriate balance between the investigator's need for the information contained in the records and the vulnerable adult's right to privacy. With the modifications included below, the Department would support this bill.

- When an APS worker or law enforcement officer seeks to obtain the financial records of an alleged victim with capacity, the worker or officer must obtain the written consent of the alleged victim before requesting the records from the custodian of those records. If consent is not given, the records will not be requested from the custodian.
- When an alleged victim lacks capacity but has a court-appointed guardian, the worker or officer must obtain the guardian's written consent before requesting the records from the custodian of those records, unless the guardian is the alleged perpetrator.
 - If the guardian is not the alleged perpetrator and withholds consent, DAIL believes the decision should be respected, and the records would not be requested, provided that in refusing to consent, the guardian has respected "the wishes, values, beliefs and preferences" of the alleged victim to the greatest possible extent. In support of this, DAIL proposes the following changes to subdivision (a)(2)(A):

~~A guardian who refuses to provide consent pursuant to this section shall do so only if the guardian believes in good faith that the refusal is in the best interests of the alleged victim. In deciding to refuse to provide consent, a guardian must respect the wishes, values, beliefs and preferences of the alleged victim to the greatest possible extent.~~
 - If, on the other hand, the guardian is the alleged perpetrator, it is likely that it would be beneficial to the guardian to withhold consent. As such, the bill proposes to allow the officer or APS worker to obtain the records after submitting a written statement to the records custodian setting forth the need for the records. DAIL supports this language and requests that the following language in subdivision (a)(2)(A) be stricken:

~~If a guardian withholds consent, the law enforcement officer or adult protective services worker may appeal to the Commissioner for a determination that disclosure of the records is necessary to protect the alleged victim. If the Commissioner determines that the disclosure of the records is necessary to protect the alleged victim, the Commissioner may direct the person with custody or control of the records to disclose the records without the guardian's consent.~~

- If an alleged victim lacks capacity and does not have a guardian, this bill would provide access to the alleged victim's financial records upon the submission of a written statement by the APS worker or law enforcement officer that (a) the records are needed to conclude whether a violation against the alleged victim has occurred; and (2) waiting for the alleged victim to regain capacity in order to request consent would materially and adversely affect the enforcement activity. Once the officer or worker produces this written statement to the custodian of the records, the records shall be produced.
- 33 V.S.A. § 6915(d) discusses the timeframes in which a custodian of records must produce those records. DAIL supports the inclusion of these timeframes to avoid delay and ensure that a prompt investigation can be conducted. DAIL, however, proposes the following changes:

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

- As noted earlier, if an alleged victim's guardian (who is not the alleged perpetrator) withholds consent, the decision will be respected and the records will not be requested from the custodian. If, however, the guardian is the alleged perpetrator, the investigator or officer may proceed with a request without the guardian's consent. Therefore, **DAIL proposes that subdivision (d)(2) be stricken.**

DAIL also requests that the following subsection be amended as follows:

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

- Finally, DAIL supports the provision in subsection (f), which provides that the records custodian may not withhold production of records pending receipt of payment for the cost of providing the copies. DAIL would, however, ask the Committee to consider striking

the remaining language which authorizes the custodian of records to collect a fee at all. The release of the alleged victim's records is triggered by either the consent of the alleged victim or his or her representative, or a determination that the records are needed to protect the alleged victim. While there may be cases that an institution or business will be required to spend time making copies, the circumstances in which the collection of a fee is permitted should be limited to those where the records are not readily available in the ordinary course of business. In all other circumstances, an investigator or officer should not be required to pay for the copying of an alleged victim's own records.

Although the bill as introduced is silent concerning access to the medical records of the alleged victim, you have now heard that such records can also be essential to a comprehensive investigation. DAIL would like to submit a proposed amendment to include access to medical records. I am prepared to discuss that with you now or at a later date. Thank you for your consideration.