

Vermont Adult Protective Services (APS) Statutory Overview

Vermont's APS Statute was written nearly half a century ago and has remained largely unchanged through the decades. Its language, standards, and scope all reflect a different era where vulnerable adults were expected to reside in institutional settings and protective services are not oriented to independent individuals in community settings. It is emblematic that the lack of dignity afforded to vulnerable adults at that time provides very limited victims' rights under the existing APS statute. Self-neglect is not even mentioned in Vermont's statute; Vermont is now the only state in the nation that does not clarify if self-neglect falls within the purview of APS investigations. National trends have established differentiated responses from most State APS components to provide a range of protective services and assistance to vulnerable adults, while Vermont remains tethered to investigations and the possible placement on the Adult Abuse Registry as its main byproduct of substantiated maltreatment. Similarly, definitions, evidentiary standards, appeal rights, and authorization for protective measures all lag behind national recognized standards.

A concerted statutory review began in September of 2019, consisting of a DAIL leadership study of other states' statutes, as well as workshops to learn from APS staff what elements of Vermont's APS statute present barriers to protecting vulnerable adults. In February of 2020, a DAIL Commissioner's subcommittee of fifteen stakeholder members from various providers, advocates and consumers began meeting monthly to review Vermont's existing APS statute and identify needed areas for change. This APS Committee, in partnership with DAIL leadership, have identified nine key areas where consensus supports statutory revision. Proposed revisions to the APS statutory language will be forthcoming from DAIL and the APS Committee in August of 2022.

The eight (8) identified areas for needed change in the Vermont APS statute are:

1. Victim Rights
2. Self-Neglect
3. Definitions
4. Adult Abuse Registry
5. Reporting requirements and Info Sharing
6. Discretionary Powers and Differentiated Response
7. Evidentiary Standards
8. Review and Appeal Rights

An APS Statute Working Group was established in May of 2022 comprised of APS Committee delegates and DAIL staff, and submitted final revisions for new statutory language with hopes of seeing an updated statute introduced to the Vermont Legislature at the start of the 2023/2024 biennium.

Significant changes to Sec. 1. 33 V.S.A. chapter 69, subchapter 1

6902 Legal mens rea (level of intent) changes to *Abuse* (1) (A), *Exploitation* (A), and *Neglect*

6902 “Abuse” (D) (ii): Expanding definition of sexual abuse to include other act (e.g. fondling) conducted without consent.

(G) Expanding abuse to include withholding or denying care, equipment or treatment.

6902 Changing “Caregiver” definition to including employees of facilities or programs rather than the facilities or programs themselves.

6902 “Exploitation” (A) Expanded definition to include

(A) misuse of Personally Identifiable Information (PII), etc.

(C) Including breach of duty by guardian, etc., in exploitation

(E) Including failing to surrender property in exploitation

6902 Defining “Self-Neglect” in alignment with the Older Americans Act, and clarifying that “Neglect” as maltreatment does not include “Self-Neglect”.

6902 Expanding definition of “Vulnerable Adult” (a) (ii) to include long-term care Medicaid as vulnerability criteria

6903 (1) (a) Changing mandatory reporters to those who directly work with vulnerable adults rather than being based upon job title.

6903 (3) (d) Allowing disclosure of mandatory reporter details to other investigative bodies

6904 Including evidence of maltreatment in a report to APS

6906 (2) Establishing “Assessment” as an additional action to respond to APS reports if investigatory criteria are not met

(c) (2) (B) Granting unsubstantiation review rights to the alleged victim to not rely upon the reporter to exercise these rights on behalf of the alleged victim.

(3) Update what the investigation shall include to account for digital exploitation, etc.

(4) Substantiation recommendation to include whether registry placement is appropriate or recommending other remedial options

(5) (C) Establish independent reviews of DAIL recommendations

(7) Placement on registry upon acceptance of recommendation

6911 (a) (1) Expanding access to records

(d) (4) Allowing self-check on Adult Abuse Registry (in alignment with the Child Abuse Registry)

6917 Allowing Rulemaking for limited operational protocols.