

1 TO THE HOUSE OF REPRESENTATIVES:

2 The Committee on Human Services to which was referred House Bill No.
3 171 entitled “An act relating to adult protective services” respectfully reports
4 that it has considered the same and recommends that the bill be amended by
5 striking out all after the enacting clause and inserting in lieu thereof the
6 following:

7 Sec. 1. 33 V.S.A. chapter 69, subchapter 1 is amended to read:

8 Subchapter 1. Reports of Abuse of Vulnerable Adults

9 § 6901. PURPOSE

10 (a) The purpose of this chapter is to:

11 (1) protect vulnerable adults whose health and welfare may be adversely
12 affected through abuse, neglect, or exploitation; ~~provide a temporary or~~
13 ~~permanent nurturing and safe environment for vulnerable adults when~~
14 ~~necessary; and for these purposes to require the reporting of suspected abuse,~~
15 ~~neglect, and exploitation of vulnerable adults and the investigation of such~~
16 ~~reports and provision of services, when needed; and to intervene in the family~~
17 ~~or substitute care situation only when necessary to ensure proper care and~~
18 ~~protection of a vulnerable adult or to carry out other statutory responsibilities~~

19 (2) recognize and accommodate the barriers for vulnerable adults that
20 may impair both their response to maltreatment and the ability to substantiate
21 allegations of maltreatment; and

1 (3) require the reporting of suspected abuse, neglect, and exploitation of
2 vulnerable adults, the investigation of such reports, and the establishment of
3 protective services, when needed.

4 (b) The provision of protective services under this chapter shall not cause
5 undue harm or violate the individual’s autonomy and shall provide
6 opportunities for the vulnerable adult’s preferences to be considered.

7 § 6902. DEFINITIONS

8 As used in this chapter:

9 (1) “Abuse” means:

10 (A) Any **medical** ~~treatment of a vulnerable adult that places life,~~
11 ~~health, or welfare in jeopardy or is likely to result in impairment of health~~ **that**
12 ~~purposely, knowingly, recklessly, or negligently places the life, health, or~~
13 ~~welfare of a vulnerable adult in jeopardy~~ **or is likely to result in impairment of**
14 ~~health to the vulnerable adult.~~

15 (B) Any conduct committed ~~with an intent or reckless disregard that~~
16 ~~such conduct~~ purposely, knowingly, or recklessly that is likely to cause
17 unnecessary harm, unnecessary pain, or unnecessary suffering to a vulnerable
18 adult **or places the life, health, or welfare of a vulnerable adult in jeopardy or is**
19 **likely to result in impairment of health to the vulnerable adult.**

20 (C) **Unnecessary or unlawful confinement** ~~or unnecessary or unlawful~~
21 ~~restraint of a vulnerable adult~~ **Confinement,** seclusion, restraint, or interference

1 with the freedom of movement of a vulnerable adult, unless necessary to
2 ensure the health and safety of the vulnerable adults or others.

3 (D)(i) Any sexual activity or acts of a sexual nature with a vulnerable
4 adult by a caregiver ~~who volunteers for or is paid by a caregiving facility or~~
5 ~~program.~~ This definition shall not apply to a consensual relationship between a
6 vulnerable adult and a spouse or household member as defined in 15 V.S.A.
7 § 1101, nor or to a consensual relationship between a vulnerable adult and a
8 caregiver hired, supervised, and directed by the vulnerable adult.

9 (ii) Any sexual activity or acts of a sexual nature such as fondling,
10 exposure of genitals, and lewd and lascivious conduct with a vulnerable adult
11 when the vulnerable adult does not consent or when the individual knows or
12 should know that the vulnerable adult is incapable of resisting or declining
13 consent to the sexual activity due to age, disability, or fear of retribution or
14 hardship, regardless of whether the individual has actual knowledge of the
15 adult's status as a vulnerable adult.

16 (E) ~~Intentionally subjecting a vulnerable adult to behavior that should~~
17 ~~reasonably be expected to result in intimidation, fear, humiliation, degradation,~~
18 ~~agitation, disorientation, or other forms of serious emotional distress~~ Purposely
19 or recklessly subjecting a vulnerable adult to behavior that a reasonable person
20 would expect to result in serious emotional or psychological distress, including
21 intimidation, fear, humiliation, degradation, agitation, or disorientation.

1 (F) Administration, or threatened administration, of a drug; or
2 substance, ~~or preparation~~ to a vulnerable adult for a purpose other than
3 legitimate and lawful medical or therapeutic treatment.

4 (G) Denial or withholding of necessary medication, care, durable
5 medical equipment, or treatment.

6 (H) Use of deception, force, threat, undue influence, harassment,
7 duress, or fraud to induce a vulnerable adult to request or consent to receive or
8 refuse treatment.

9 (2) “Activities of daily living” means dressing and undressing, bathing,
10 personal hygiene, bed mobility, toilet use, transferring, mobility in and around
11 the home, communication, and eating.

12 (3) “Adult” means any individual who is 18 years of age or older.

13 (4) “Alleged perpetrator” means the individual alleged to have abused,
14 neglected, or exploited the alleged victim.

15 (5) “Alleged victim” means the individual who is alleged to have been
16 abused, neglected, or exploited by the alleged perpetrator.

17 (6) “Assessment” means a process by which Adult Protective Services
18 gathers additional information to determine if an investigation should be
19 opened.

1 (7) “Care” means subsistence, medical services, personal care services,
2 mental health services, or rehabilitative services and includes assistance with
3 activities of daily living or instrumental activities of daily living.

4 (8) “Caregiver” means:

5 (A) a person, agency, facility, or other organization with a designated
6 responsibility for providing ~~subsistence or medical or other care to an adult~~
7 ~~who is an elder or has a disability, who has assumed the responsibility~~
8 ~~voluntarily, by contract, or by an order of the court; or a person providing care,~~
9 ~~including medical care, custodial care, personal care, mental health services,~~
10 ~~rehabilitative services, or any other kind of care provided that is required~~
11 ~~because of another’s age or disability~~ care to another;

12 (B) a worker or employee in a facility or program that provides care
13 to an adult who is an elder or has a disability and who has assumed the
14 responsibility voluntarily, by contract, or by an order of the court; or

15 (C) a person providing care to a person that is required because of the
16 person’s age or disability.

17 (3)(9) “Commissioner” means the Commissioner of Disabilities, Aging,
18 and Independent Living.

19 (4)(10) “Department” means the Department of Disabilities, Aging, and
20 Independent Living.

1 (5)(11) “Employer” means a person or organization who employs or
2 contracts with one or more individuals to care for vulnerable adults, on either a
3 paid or volunteer basis.

4 (6)(12) “Exploitation” means:

5 (A) willfully or knowingly using, withholding, transferring, or
6 disposing of funds or property of a vulnerable adult without or in excess of
7 legal authority ~~for the wrongful profit or advantage of another~~ to the detriment
8 of a vulnerable adult;

9 (B) purposeful unauthorized access, sharing, or use of identifying
10 information, image or likeness, personal accounts, or documents of a
11 vulnerable adult without or in excess of legal authority to the detriment of the
12 vulnerable adult or for the wrongful profit or advantage of another;

13 (C) breach of duty by a guardian, agent, or other fiduciary to the
14 detriment of a vulnerable adult;

15 (D) acquiring or attempting to acquire possession or control of or an
16 interest in funds or property of a vulnerable adult through the use of deception,
17 force, threat, undue influence, harassment, duress, or fraud;

18 (C)(E) ~~the act of forcing or compelling a vulnerable adult against his~~
19 ~~or her will to perform services for the profit or advantage of another~~ refusing to
20 return or surrender possession or control of an interest in funds or property of a

1 vulnerable adult upon the request of a vulnerable adult or the vulnerable
2 adult’s representative;

3 ~~(D)(F) any sexual activity with a vulnerable adult when the~~
4 ~~vulnerable adult does not consent or when the actor knows or should know that~~
5 ~~the vulnerable adult is incapable of resisting or declining consent to the sexual~~
6 ~~activity due to age or disability or due to fear of retribution or hardship,~~
7 ~~whether or not the actor has actual knowledge of vulnerable status knowingly~~
8 ~~failing to use a vulnerable adult’s income and assets for the necessities~~
9 ~~required for that vulnerable adult’s support and maintenance;~~

10 (G) influencing or persuading a vulnerable adult to perform services
11 with substandard compensation for the profit or advantage of another.

12 (13) “Expungement” means the removal of an individual’s name and
13 associated identifying information from the Adult Abuse Registry.

14 (14) “Instrumental activities of daily living” means meal preparation,
15 medication management, phone use, money management, household
16 maintenance, housekeeping, laundry, shopping, transportation, and care of
17 adaptive equipment.

18 (15) “Interested person” means a representative of the vulnerable adult;
19 Adult Protective Services staff; the Commissioner of Disabilities, Aging, and
20 Independent Living; or the Commissioner’s designee.

1 (16) “Investigative summary report” means the document that
2 summarizes the investigation conducted by Adult Protective Services and
3 includes a recommendation to substantiate or unsubstantiate the investigated
4 allegations against the alleged perpetrator.

5 (17) “Lewd or lascivious conduct” has the same meaning as in
6 13 V.S.A. § 1375.

7 (18) “Mandatory reporter” means an individual with an obligation to
8 report allegations of maltreatment of vulnerable adults pursuant to 6903 of this
9 title.

10 (19) “Maltreatment” means abuse, neglect, or exploitation as defined in
11 this section. “Maltreatment” does not include self-neglect.

12 (20)(A) “Neglect” means purposeful or, knowing, reckless, or
13 negligent failure or omission by a caregiver that has resulted in, or could be
14 expected to result in, physical or psychological harm, including a failure or
15 omission to:

16 (i) provide care or arrange for goods or services necessary to
17 maintain the health or safety of a vulnerable adult, including food, clothing,
18 medicine, shelter, supervision, and medical services, unless the caregiver is
19 acting pursuant to the wishes of the vulnerable adult or ~~his or her~~ the
20 vulnerable adult’s representative, or an advance directive, as defined in
21 18 V.S.A. § 9701;

1 (ii) make a reasonable effort, in accordance with the authority
2 granted the caregiver, to protect a vulnerable adult from abuse, neglect, or
3 exploitation by others;

4 (iii) carry out a plan of care for a vulnerable adult ~~when such~~
5 ~~failure results in or could reasonably be expected to result in physical or~~
6 ~~psychological harm or a substantial risk of death to the vulnerable adult, unless~~
7 the caregiver is acting pursuant to the wishes of the vulnerable adult or ~~his or~~
8 ~~her~~ the vulnerable adult's representative, or an advance directive, as defined in
9 18 V.S.A. § 9701; or

10 (iv) report significant changes in the health status of a vulnerable
11 adult to a physician, nurse, or immediate supervisor, when the caregiver is
12 employed by an organization that offers, provides, or arranges for personal
13 care.

14 (B) Neglect ~~may be repeated conduct or a single incident that has~~
15 ~~resulted in or could be expected to result in physical or psychological harm, as~~
16 ~~a result of subdivision (A)(i), (ii), or (iii) of this subdivision (7) does not~~
17 include self-neglect.

18 (8)(21) “Plan of care” ~~includes a duty~~ means a medically approved plan
19 of treatment, protocol, individual care plan, rehabilitative plan, plan to address
20 activities of daily living, or similar procedure describing the care, treatment, or

1 services ~~to be provided~~ to address a vulnerable adult’s physical, psychological,
2 or rehabilitative needs.

3 (9)(22) “Protective services” means services, actions, measures, or
4 intervention interventions that ~~will,~~ are intended, through voluntary agreement
5 or through appropriate court action, to prevent further neglect, abuse, or
6 exploitation of a vulnerable adult. Such services may include ~~supervision,~~
7 ~~guidance, counseling, referrals, petitioning for relief from abuse, or petitioning~~
8 ~~for the~~ appointment of a guardian, ~~and, when necessary, assistance in the~~
9 ~~securing of safe and sanitary living accommodations. However, nothing in this~~
10 ~~chapter gives the Commissioner authority to place the vulnerable adult in a~~
11 ~~State school or hospital, except pursuant to 18 V.S.A. chapter 181 or 206.~~

12 (23) “Provider” means an individual, organization, or entity that
13 provides care to adults known to be vulnerable.

14 (24) “Recommendation for substantiation” means that an investigation
15 has been conducted and the Adult Protective Services investigator has
16 concluded that the preponderance of the evidence discovered in the course of
17 the investigation would lead a reasonable person to believe that the alleged
18 perpetrator abused, neglected, or exploited the vulnerable adult.

19 (25) “Report” means the statements provided to Adult Protective
20 Services from a reporter alleging that a vulnerable adult has been abused,
21 neglected, or exploited.

1 (26) “Reporter” means the person who has submitted a report to Adult
2 Protective Services.

3 (40)(27) “Representative” means a court-appointed guardian, or an
4 agent acting under an advance directive executed pursuant to 18 V.S.A.
5 chapter 231, or an agent under a power of attorney, unless otherwise specified
6 in the terms of the advance directive power of attorney.

7 (28)(A) “Self-neglect” means an adult’s inability, due to physical or
8 mental impairment or diminished capacity, to perform essential self-care tasks
9 including:

10 (i) obtaining essential food, clothing, shelter, and medical care;

11 (ii) obtaining goods and services necessary to maintain physical
12 health, mental health, or general safety; or

13 (iii) managing one’s own financial affairs.

14 (B) The term “self-neglect,” which is not maltreatment by another
15 and is distinct from the definition of “neglect,” excludes individuals who make
16 a conscious and voluntary choice not to provide for certain basic needs as a
17 matter of lifestyle, personal preference, or religious belief and who understand
18 the consequences of their decision.

19 (44)(29) “Sexual activity” means a sexual act as defined in 13 V.S.A.
20 § 3251; other than appropriate medical care or personal hygiene, or lewd and
21 lascivious conduct.

1 ~~(12)~~(30) “Substantiated ~~report~~” means that the Commissioner or the
2 Commissioner’s designee has determined, after the investigation, that a report
3 ~~is based upon accurate and reliable information that would lead a reasonable~~
4 ~~person to believe~~ demonstrates, by a preponderance of the evidence, that the
5 vulnerable adult has been abused, neglected, or exploited by the alleged
6 perpetrator.

7 (31) “Unsubstantiated” means that an investigation has been conducted
8 without a recommendation of substantiation. “Unsubstantiated” does not
9 imply that maltreatment of a vulnerable adult by an alleged perpetrator did or
10 did not occur. Reasons for unsubstantiation include:

11 (A) the Adult Protective Services investigator’s conclusion that the
12 preponderance of the evidence would not lead a reasonable person to believe
13 that the alleged perpetrator had abused, neglected, or exploited the vulnerable
14 adult;

15 (B) evidence that the alleged victim is not vulnerable;

16 (C) evidence that maltreatment did not occur; or

17 (D) a lack of sufficient evidence to demonstrate that the alleged
18 victim meets the definition of a vulnerable adult or that maltreatment occurred.

19 ~~(13)~~(32) “Volunteer” means an individual who, without compensation,
20 provides services through a private or public organization.

1 (14)(33) “Vulnerable adult” means any person 18 years of age or older
2 who:

3 (A)(i) is a resident of a facility required to be licensed under chapter
4 71 of this title;

5 (B)(ii) is a resident of a psychiatric hospital or a psychiatric unit of a
6 hospital;

7 (C)(B) ~~has been~~ was receiving assistance with personal care services
8 for more than one month from a designated home health agency ~~certified by~~
9 ~~the Vermont Department of Health~~ or from a person or organization that offers,
10 provides, or arranges for personal care; or

11 (D)(C) regardless of residence or whether any type of service is
12 received, ~~is impaired due to~~ has a physical, mental, or developmental
13 disability, infirmities as a result of brain damage or a mental condition,
14 infirmities of aging, ~~mental condition, or physical, psychiatric, or~~
15 developmental disability or is determined to be clinically eligible to receive

16 Long-Term Care Medicaid waiver services resulting in:

17 (i) ~~that results in some~~ impairment of the individual’s ability to
18 ~~provide for his or her own care without assistance, including the provision of~~
19 ~~food, shelter, clothing, health care, supervision, or management of finances~~
20 independently engage in activities of daily living or instrumental activities of

1 daily living or to provide for some aspect of the adult’s own personal care
2 without assistance; or

3 (ii) ~~because of the disability or infirmity, the individual has an~~
4 ~~impaired~~ some impairment of the adult’s ability to protect himself or herself
5 the adult from abuse, neglect, or exploitation.

6 § 6903. REPORTING SUSPECTED ABUSE, NEGLECT, AND

7 EXPLOITATION OF VULNERABLE ADULTS

8 (a) ~~Any of the following, other than a crisis worker acting pursuant to 12~~
9 ~~V.S.A. § 1614 and the State Long-Term Care Ombudsman or a representative~~
10 ~~of the Office, as defined in section 7501 of this title, who knows of or has~~
11 ~~received information of abuse, neglect, or exploitation of a vulnerable adult or~~
12 ~~who has reason to suspect that any vulnerable adult has been abused,~~
13 ~~neglected, or exploited shall report or cause a report to be made in accordance~~
14 ~~with the provisions of section 6904 of this title within 48 hours: All~~
15 ~~employees, contractors, volunteers, or grantees, who directly provide health~~
16 ~~care, law enforcement, caregiving, counseling, education, or social services to~~
17 ~~adults, other than a crisis worker acting pursuant to 12 V.S.A. § 1614 and the~~
18 ~~State Long-Term Ombudsman or a designee of the Office, as defined in section~~
19 ~~7501 of this title, who knows of information of abuse, neglect, or exploitation~~
20 ~~of a vulnerable adult or who has reason to suspect that any vulnerable adult has~~

1 been abused, neglected, or exploited shall report in accordance with the
2 provisions of section 6904 of this title within two business days.

3 (1) all employees, contractors, and grantees of the Agency of Human
4 Services who are involved in caregiving; If an individual listed in this
5 subsection (a) is a direct witness to evidence of abuse, neglect, or exploitation,
6 the individual shall report or be party to a report, that is made on behalf of
7 multiple mandatory reporters.

8 (2) ~~a physician, osteopath, chiropractor, physician assistant, nurse,~~
9 ~~medical examiner, licensed nursing assistant, emergency medical services~~
10 ~~personnel, dentist, or psychologist; If an individual listed in this subsection (a)~~
11 ~~knows of abuse, neglect, or exploitation of a vulnerable adult or has actual~~
12 ~~knowledge that any vulnerable adult has been abused, neglected, or exploited,~~
13 ~~individual shall report, unless the person has reason to believe that the~~
14 ~~evidence of abuse, neglect, or exploitation has already been reported.~~

15 (3) ~~a school teacher, school librarian, school administrator, school~~
16 ~~guidance counselor, school aide, school bus driver, or school employee or~~
17 ~~school contractor who works regularly with students;~~

18 (4) ~~a mental health professional, social worker, person or organization~~
19 ~~that offers, provides, or arranges for personal care for vulnerable adults;~~
20 ~~caregiver employed by a vulnerable adult; employee of or contractor involved~~
21 ~~in caregiving for a community mental health center; law enforcement officer;~~

1 ~~or individual who works regularly with vulnerable adults and who is an~~
2 ~~employee of an adult day care center, area agency on aging, senior center, or~~
3 ~~meal program designed primarily to serve vulnerable adults;~~

4 ~~(5) a hospital, nursing home, residential care home, home health agency,~~
5 ~~or any entity providing nursing or nursing related services for remuneration;~~
6 ~~intermediate care facility for adults with developmental disabilities; therapeutic~~
7 ~~community residence, group home, developmental home, school or contractor~~
8 ~~involved in caregiving; or an operator or employee of any of these facilities or~~
9 ~~agencies.~~

10 (b) Any other concerned person not listed in subsection (a) of this section
11 who knows of or has received a complaint of abuse, neglect, or exploitation of
12 a vulnerable adult or who has reason to suspect that any vulnerable adult has
13 been abused, neglected, or exploited may report or cause a report to be made in
14 accordance with the provisions of section 6904 of this title.

15 (c) The identity of a person who makes a report under this section shall be
16 kept confidential unless:

- 17 (1) the person making the report consents to disclosure;
- 18 (2) a judicial proceeding results from the report; or
- 19 (3) a court, after a hearing, finds probable cause to believe the report
20 was not made in good faith and orders the Department to disclose the person's
21 identity; or

1 (4) the reporter is listed in subdivision (a)(1) of this section, in which
2 case the reporter’s information may be shared with other investigative bodies
3 as necessary to conduct the investigation.

4 § 6904. NATURE AND CONTENT OF REPORT; TO WHOM MADE

5 A report shall be made orally or in writing to the Commissioner or the
6 Commissioner’s designee as soon as possible, but in no event later than 48
7 hours thereafter. The report may also be made to a law enforcement officer. If
8 an oral report is made by telephone or otherwise, the Commissioner or
9 designee shall request that it be followed within one week by a report in
10 writing. Reports shall contain To be considered a report to the Commissioner
11 or designee, it shall contain the name and address of the reporter as well as the
12 names and addresses of the vulnerable adult and persons responsible for ~~his or~~
13 ~~her~~ the vulnerable adult’s care, if known; the age of the vulnerable adult; the
14 nature of ~~his or her~~ the vulnerable adult’s disability; the nature and extent of
15 the vulnerable adult’s abuse, neglect, or exploitation together with any
16 evidence of previous abuse, neglect, or exploitation of the vulnerable adult;
17 and any other information that the reporter believes might be helpful in
18 establishing the cause of any injuries or reasons for the abuse, neglect, or
19 exploitation as well as in protecting the vulnerable adult. If the reporter is in
20 possession of documentation that establishes the alleged victim’s conditions,
21 needs, or services, that shall be included in the report. Any evidence of

1 maltreatment shall also be cited in the report. If a report of abuse, neglect, or
2 exploitation involves the acts or omissions of the Commissioner or employees
3 of ~~that the~~ Department, then such reports shall be directed to the Secretary of
4 ~~the~~ Human Services, who shall cause the report to be investigated by
5 appropriate staff other than staff of the Department.

6 * * *

7 § 6906. ASSESSMENT AND INVESTIGATION

8 (a) Report of maltreatment.

9 ~~(1) The Commissioner shall cause an investigation to commence within~~
10 ~~48 hours after receipt of a report made pursuant to section 6904 of this title~~
11 Upon receipt of a report of maltreatment, the Department shall determine
12 whether the report constitutes an allegation of abuse, neglect, or exploitation as
13 defined in section 6902 of this title. The Department shall respond to reports
14 of alleged abuse, neglect, or exploitation that occurred in Vermont and to out-
15 of-State conduct when the vulnerable adult is a resident of Vermont.

16 ~~(2) The Commissioner shall keep the reporter and the alleged victim~~
17 ~~informed during all stages of the investigation, and shall:~~

18 ~~(A) Notify the reporter, the victim, and the victim's legal~~
19 ~~representative, if any, in writing if Adult Protective Services or the Division of~~
20 ~~Licensing and Protection decides not to investigate the report. The notification~~
21 ~~shall be provided within five business days after the decision is made and shall~~

1 inform the reporter that he or she may ask the Commissioner to review the
2 decision.

3 ~~(B) Notify the reporter, the victim, and the victim's legal~~
4 ~~representative, if any, in writing if Adult Protective Services or the Division of~~
5 ~~Licensing and Protection refers the report to another agency. The notification~~
6 ~~shall be provided within five business days after the referral is made.~~

7 ~~(C) Notify the reporter, the victim, and the victim's legal~~
8 ~~representative, if any, in writing of the outcome of the investigation. The~~
9 ~~notification shall be provided within five business days after the decision is~~
10 ~~made and shall inform the reporter that he or she may ask the Commissioner to~~
11 ~~review the decision~~ The Department shall determine whether to conduct an
12 assessment or an investigation, as provided for in this section, or whether to
13 screen out the report. An assessment may be used to determine whether an
14 investigation is necessary. The Department shall begin either an assessment or
15 an investigation within one business day in all cases in which the alleged
16 victim has experienced a life-threatening or severe injury; requires
17 hospitalization as a result of maltreatment; was the alleged victim of sexual
18 abuse; or is experiencing ongoing harm. The Department shall initiate an
19 assessment or an investigation within two business days after the day of the
20 receipt of all other accepted reports made pursuant to section 6904 of this title.
21 The Department shall collect the following demographic information about the

1 alleged victim and alleged perpetrator, if available, if an assessment or
2 investigation is opened: gender, race, age, ethnicity, sexual orientation, gender
3 identity, and disability status.

4 (3) The decision to conduct an assessment shall include consideration of
5 the following factors:

6 (A) the severity of any alleged maltreatment and any injuries;

7 (B) the relationship between the alleged victim and alleged
8 perpetrator;

9 (C) the known history of the report; and

10 (D) the detail and specificity of information provided in the report
11 regarding the alleged victim's vulnerability and the alleged maltreatment.

12 (4) The Department shall investigate when an accepted report involves
13 allegations indicating serious maltreatment or ongoing risk of harm to the
14 alleged victim. The Department may investigate any report of maltreatment
15 Adult Protective Services receives.

16 (5) The Department shall begin an immediate investigation if, at any time
17 during an assessment, it appears that an investigation is appropriate.

18 (6) To the extent permitted by law, the Department may collaborate with
19 law enforcement, health care and service providers, and other departments and
20 agencies in Vermont and other jurisdictions to evaluate the risk to the
21 vulnerable adult and may enter into reciprocal agreements with law

1 enforcement, other departments and agencies, and other jurisdictions to further
2 the purposes of this section. In no event shall the Department disclose
3 information to other divisions, departments, or agencies unless such a
4 disclosure is necessary to further the express purpose of this section.

5 (b) Assessment. The investigation shall include, except where inclusion
6 would jeopardize the health, welfare, or safety of the vulnerable adult:

7 (1) ~~a visit to the reported victim's place of residence or place of custody~~
8 ~~and to the location of the reported abuse, neglect, or exploitation;~~

9 ~~(2) interviews with any available witnesses to the alleged abuse, neglect,~~
10 ~~or exploitation; An assessment, to the extent that is reasonable under the facts~~
11 ~~and circumstances provided in a report, shall include the following:~~

12 ~~(3)(A) an interview with the reporter of the alleged abuse, neglect, or~~
13 ~~exploitation and the alleged victim, which shall focus on ensuring the~~
14 ~~immediate safety of the alleged victim and mitigating the future risk of harm to~~
15 ~~the alleged victim in the current environment;~~

16 ~~(4) an interview with the reported victim, which interview may take~~
17 ~~place without the approval of the vulnerable adult's parents, guardian, or~~
18 ~~caregiver, but cannot take place over the objection of the reported victim; and~~

19 ~~(5) an opportunity for the person who allegedly abused, neglected, or~~
20 ~~exploited to be interviewed.~~

1 (B) a determination as to whether the alleged victim meets the
2 definition of a vulnerable adult and whether the allegations, if true, meet the
3 statutory definition of abuse, neglect, or exploitation, or any combination
4 thereof; and

5 (C) in collaboration with the alleged victim, the identification of
6 resources and protective service needs that reduce the risk of future abuse,
7 neglect, or exploitation and improve or restore the care and safety of the
8 alleged victim.

9 (2) Services offered during or at the conclusion of an assessment can
10 only be implemented through voluntary agreement or court action.

11 (3) If the assessment is closed without resulting in an investigation,
12 there shall be no finding of abuse, neglect, or exploitation. However, the
13 Department shall document the outcome of the assessment.

14 (4) The Department shall provide written notice to the victim of the
15 outcome of the assessment.

16 (c) Investigation. ~~Upon completion of the investigation, a written report~~
17 ~~describing all evidence obtained and recommending a finding of substantiated~~
18 ~~or unsubstantiated shall be submitted to the Commissioner or designee for final~~
19 ~~resolution. If the recommendation is for a finding of substantiated the person~~
20 ~~shall be given notice of the recommendation, and the evidence that forms the~~
21 ~~basis of the recommendation, and shall be notified of how a substantiated~~

1 ~~report might be used. The person shall be offered an opportunity to dispute the~~
2 ~~recommendation and may, within 15 days of notification, request an~~
3 ~~administrative hearing in front of the Commissioner or designee. Following~~
4 ~~the hearing, or if no hearing is requested within 15 days of notification, the~~
5 ~~Commissioner or designee shall make a finding of substantiated or~~
6 ~~unsubstantiated, and notify the person of the decision and of the right to~~
7 ~~appeal.~~

8 ~~(d) Within 30 days of notification that a report has been substantiated, a~~
9 ~~person against whom a complaint has been lodged may apply to the Human~~
10 ~~Services Board for relief on the grounds that it is unsubstantiated. The Board~~
11 ~~shall hold a fair hearing under 3 V.S.A. § 3091. Unless the Commissioner~~
12 ~~agrees otherwise, the fair hearing shall be given priority by the Board and an~~
13 ~~expedited hearing shall be provided, with a decision issued promptly~~
14 ~~thereafter.~~

15 ~~(e) If a report is found to be unsubstantiated, the records shall be retained~~
16 ~~as part of the confidential records of the Department of Disabilities, Aging, and~~
17 ~~Independent Living. If no court proceeding is brought pursuant to subdivision~~
18 ~~6903(c)(3) of this title within six years of the date of the notice to the person~~
19 ~~against whom the complaint was lodged, the records relating to the~~
20 ~~unsubstantiated report shall be destroyed after notice to such person, unless he~~
21 ~~or she requests that the records not be destroyed.~~

1 ~~(f) If an appeal is filed pursuant to subsection (d) of this section or to a~~
2 ~~court, the name of the individual shall not be added to the Registry until a~~
3 ~~substantiated finding of abuse, neglect, or exploitation becomes final.~~

4 (1) The Department shall:

5 (A) Notify the reporter in writing if Adult Protective Services decides
6 not to investigate or to conduct an assessment of the report. The notification
7 shall be provided within five business days after the decision is made and shall
8 inform the reporter that the reporter may ask the Commissioner to review the
9 decision.

10 (B) Notify the alleged victim, and the alleged victim's representative,
11 if any, in writing of the outcome of the investigation. The notification shall be
12 provided within five business days after the decision has been made and shall
13 inform the alleged victim or the alleged victim's representative that the alleged
14 victim or the alleged victim's representative may ask the Commissioner to
15 review the decision.

16 (2) The investigation shall include, except where inclusion would
17 jeopardize the health, welfare, or safety of the vulnerable adult:

18 (A) An interview with the alleged victim, which may take place
19 without the approval of the alleged victim's parents, guardian, or caregiver, but
20 cannot take place over the objection of the alleged victim.

1 (B) An opportunity for the person who allegedly abused, neglected,
2 or exploited the alleged victim to be interviewed. If the person declines to be
3 interviewed, either through given notice or failure to respond, the alleged
4 perpetrator shall be notified that their declination may be noted in the
5 investigation and may be taken into account in any potential appeal process.

6 (3) Upon completion of the investigation, the investigative summary
7 describing pertinent evidence obtained during the course of the investigation
8 and recommending a substantiation or unsubstantiation shall be submitted to
9 the Commissioner or designee. Prior to substantiation, the Department shall
10 interview the alleged perpetrator unless the alleged perpetrator declines. The
11 investigative summary shall include a recommendation of whether placement
12 on the Registry is appropriate. If the recommendation is for substantiation, the
13 alleged perpetrator shall be given written notice by certified mail of the
14 recommendation and a summary of the evidence that forms the basis of the
15 recommendation and shall be notified of any remedial options that may exist
16 and how a substantiated report might be used. The alleged perpetrator may
17 seek an administrative review of the Department’s intention to place the
18 alleged perpetrator’s name on the Registry by notifying the Department within
19 14 calendar days after the date listed on the Department’s notice of the right to
20 an administrative review. The Commissioner may grant an extension past the

1 14-day period for good cause, not to exceed 28 calendar days after the date
2 listed on the Department’s notice.

3 (4) The administrative review of the Department’s intention to
4 substantiate may be stayed if there is a related case pending in the Criminal or
5 Family Division of the Superior Court that arose out of the same incident of
6 abuse, neglect, or exploitation that resulted in the recommendation for
7 substantiation. During the period the administrative review is stayed, if the
8 Department’s intent is to place the alleged perpetrator’s name on the Registry,
9 it shall add the alleged perpetrator’s name to the Registry with a notation that
10 the case is pending. Upon resolution of the Superior Court criminal or family
11 case, the alleged perpetrator may exercise the alleged perpetrator’s right to
12 review under this section by notifying the Department in writing within 28
13 calendar days after the related court case, including any appeals, has been fully
14 adjudicated. If the alleged perpetrator fails to notify the Department within 28
15 calendar days, the Department’s decision shall become final, and no further
16 review under this subsection is required.

17 (A) The Department shall hold an administrative review within 28
18 calendar days after receipt of the request for review. At least 14 calendar days
19 prior to the administrative review, the Department shall provide to the alleged
20 perpetrator requesting an administrative review the following: the redacted
21 investigation file, which means only the portion of the investigation file

1 relevant to an Adult Protective Services recommendation, redacted as
2 necessary to minimize disclosure of any confidential information; notice of
3 time and place of the administrative review; and administrative review
4 procedures, including information that may be submitted and mechanisms for
5 providing information.

6 (B) At the administrative review, the alleged perpetrator who
7 requested the review shall be provided with the opportunity to present
8 documentary evidence or other information that supports the alleged
9 perpetrator’s position and provides information to the reviewer in making the
10 most accurate decision regarding the allegation. In determining the weight to
11 be given any such evidence or information, the administrative reviewer shall
12 consider whether the alleged perpetrator had an opportunity to present the
13 evidence or information to the investigator during the investigation and, if so,
14 the reasons for the failure to present the evidence or information at that time.
15 The Department shall have the burden of proving that, based upon a
16 preponderance of evidence, it concluded that a reasonable person would
17 believe that the vulnerable adult has been abused, neglected, or exploited by
18 that alleged perpetrator. The administrative review may be held remotely by
19 telephone or through electronic means by mutual agreement of the parties.

20 (C) The Department shall establish an administrative case review unit
21 within the Department and may contract for the services of administrative

1 reviewers. An administrative reviewer shall be a neutral and independent
2 arbiter who has no prior involvement in the original investigation of the
3 allegation.

4 (5) Within seven calendar days after the completed review, the
5 administrative reviewer shall:

6 (A) reject the Department’s recommendation of substantiation;

7 (B) accept the Department’s recommendation of substantiation; or

8 (C) defer any recommendation and direct the Department to further
9 investigate upon the recommendation of the administrative reviewer.

10 (6) If the administrative reviewer accepts the Department’s
11 recommendation of substantiation, a Registry record shall be made within two
12 business days. If the administrative reviewer rejects the Department’s
13 recommendation of substantiation, no Registry record shall be made.

14 (7) Within seven calendar days of the decision to reject or accept the
15 recommendation of substantiation or to defer the substantiation in accordance
16 with subdivision (5) of this subsection, the administrative reviewer shall
17 provide notice to the alleged perpetrator of the administrative reviewer’s
18 decision. If the administrative reviewer accepts the Department’s
19 recommendation of substantiation, the notice shall advise the alleged
20 perpetrator of the right to appeal the administrative reviewer’s decision to the
21 Human Services Board.

1 (8)(A) If no administrative review is requested, the Department’s
2 recommendation in the case shall be final, and the alleged perpetrator shall
3 have no further right of review under this section.

4 (B) The Commissioner may grant an exception and permit such an
5 administrative review upon good cause shown. Good cause may include an
6 acquittal or dismissal of a criminal charge arising from the incident of abuse,
7 neglect, or exploitation.

8 (9) In exceptional circumstances, the Commissioner, in the
9 Commissioner’s sole and nondelegable discretion, may reconsider any decision
10 made by an administrative reviewer. A Commissioner’s decision that imposes
11 a penalty or creates a Registry record may be appealed to the Human Services
12 Board.

13 (10) Within 30 calendar days after the date of the notice advising that a
14 report has been substantiated, an alleged perpetrator against whom a complaint
15 has been lodged may apply to the Human Services Board for relief on the
16 grounds that it is unsubstantiated. The Human Services Board shall hold a fair
17 hearing under 3 V.S.A. § 3091. Unless the Commissioner agrees otherwise,
18 the hearing shall be given priority by the Human Services Board, and an
19 expedited hearing shall be provided, not later than 30 calendar days after the
20 date of the notice advising that a report has been substantiated, and a decision
21 shall be issued within seven calendar days after the hearing.

1 (11) If a report is found to be unsubstantiated, the records shall be
2 retained as part of the confidential records of the Department. If no court
3 proceeding is brought pursuant to section 6903 of this title within six years
4 following the date of the notice to the alleged perpetrator against whom the
5 complaint was lodged, the records relating to the unsubstantiated report may be
6 destroyed.

7 ~~(g)~~(12) If the Human Services Board ~~or a court~~ reverses a substantiated
8 finding, the Commissioner shall remove all information ~~in accordance with~~
9 ~~subsection (e) of this section~~ from the Registry.

10 ~~(h)~~(13)(A) When a final determination has been made, the Commissioner
11 shall inform the vulnerable adult or ~~his or her~~ the vulnerable adult's
12 representative, ~~the reporter, and, if the report is substantiated, the current~~
13 employer of the individual, ~~of the outcome of the investigation and any~~
14 subsequent proceedings in writing.

15 (B) When a final determination of substantiation has been made, the
16 Department shall also inform the perpetrator's current employer, if known, in
17 writing of the outcome of the investigation and any subsequent proceedings.

18 § 6907. REMEDIAL ACTION

19 (a) ~~Coordinated treatment plan~~ Protective services. If the investigation
20 produces evidence that the vulnerable adult has been abused, neglected, or
21 exploited, ~~the Commissioner shall arrange for the provision of protective~~

1 ~~services in accordance with a written coordinated treatment plan and protective~~
2 services are not in place, the Department shall pursue available protective
3 services.

4 (b) Consent to services.

5 (1) Protective services shall be provided only with the consent of the
6 vulnerable adult, ~~his or her;~~ the vulnerable adult's guardian, agent under power
7 of attorney, or agent under advance directive; or through appropriate court
8 action. If the vulnerable adult does not consent, protective services shall not be
9 provided, unless provision of protective services is ~~court-ordered~~ court
10 ordered.

11 (2)(A) In the event that the vulnerable adult's guardian is the person
12 responsible for the abuse, neglect, or exploitation, and the guardian does not
13 consent to the investigation or receipt of protective services, the Commissioner
14 may petition for removal of the guardian refuses consent to the investigation or
15 the alleged victim's protective services, the investigator may seek review of
16 the guardian's refusal by filing a motion with the Probate Division of the
17 Superior Court pursuant 14 V.S.A. § 3062(c).

18 (B) In the event that the vulnerable adult's agent under power of
19 attorney is the person responsible for the abuse, neglect, or exploitation, and
20 the agent refuses to consent to the investigation or the alleged victim's

1 protective services, the investigator may seek review of the agent’s refusal by
2 filing a petition in Superior Court pursuant to 14 V.S.A. § 3510(b).

3 (C) In the event that the vulnerable adult’s agent under advance
4 directive is the person responsible for the abuse, neglect, or exploitation, and
5 the agent does not consent to the investigation or the receipt of protective
6 services, the investigator may file a petition in Probate Court pursuant to 18
7 V.S.A. § 9718 to seek review under subdivision (b)(3) of that section as to
8 whether the refusal is consistent with the authority granted to the agent in the
9 advance directive.

10 (3) Failure to consent to protective services, either by the vulnerable
11 adult or the vulnerable adult’s guardian, agent under power of attorney, or
12 agent under advance directive shall not automatically end an investigation of
13 an alleged perpetrator.

14 * * *

15 § 6909. RETALIATORY ACTION BY EMPLOYER PROHIBITED

16 No employer or supervisor may discharge; demote; transfer; reduce pay,
17 benefits, or work privileges; prepare a negative work performance evaluation;
18 or take any other action detrimental to any employee who files a good faith
19 report in accordance with the provisions of this chapter, by reason of the
20 report. Any person making a report under this chapter shall have a civil cause
21 of action for appropriate compensatory and punitive damages against any

1 person who causes detrimental changes in the employment status of the
2 reporting party by reason of ~~his or her~~ making a report. Nothing in this section
3 grants immunity to a person reporting the person's own perpetration of
4 maltreatment.

5 § 6910. INTERFERENCE BY CAREGIVER

6 If consent to receive protective services has been obtained in accordance
7 with section 6907 of this title and the Commissioner has reasonable cause to
8 believe that the caregiver is interfering with the provision of those protective
9 services, the ~~Commissioner~~ Department may petition the Superior Court for an
10 order enjoining the caregiver from interfering with the provision of protective
11 services. The petition shall present facts to show that the vulnerable adult is in
12 need of protective services, that ~~he or she or his or her~~ guardian the vulnerable
13 adult or the vulnerable adult's representative consents to the receipt of
14 protective services, and that the caregiver has interfered with the provision of
15 protective services. If the court, after hearing, finds that the vulnerable adult
16 requires and consents to protective services, and has been prevented by ~~his or~~
17 ~~her~~ the vulnerable adult's caregiver from receiving protective services; the
18 court may issue an order enjoining the caregiver from further interference. ~~The~~
19 ~~court may modify the terms of the coordinated treatment plan.~~

20 § 6911. RECORDS OF ABUSE, NEGLECT, AND EXPLOITATION

21 (a) Access to records.

1 (1) ~~Information obtained through reports and investigations, including~~
2 ~~the identity of the reporter, shall remain confidential and shall not be released~~
3 ~~absent a court order, except as follows:~~ The Department’s Adult Protective
4 Services shall have access to any records or documents, including client-
5 identifying information, financial records, and medical and psychological
6 records, necessary to the performance of the Department’s duties under this
7 chapter. The duties include the investigation of abuse, neglect, or exploitation
8 or the provision of services to a vulnerable adult. A person, agency, or
9 institution that has a record or document that the Department needs to perform
10 its duties under this chapter shall, without unnecessary delay, make the record
11 or document available to the Department. Providing access to records relevant
12 to an investigation by the Department or law enforcement under this provision
13 shall not be deemed a violation of any confidential communication privilege.
14 Access to any records that would violate attorney-client privilege shall not be
15 provided without a court order. For the purposes of this subsection, “financial
16 records” does not include records developed or maintained by the Department
17 of Financial Regulation.

18 (2) The Department is exempt from the payment of a fee otherwise
19 required or authorized by law to obtain a financial record from a person,
20 agency, or institution or a medical record, including a mental health record,

1 from a hospital or health care provider if the request for a record is made in the
2 course of an investigation by the Department.

3 (3) If the Department cannot obtain access to a record or document that
4 is necessary to properly investigate or to perform another duty under this
5 chapter, the Department may petition the Superior Court for access to the
6 record or document.

7 (4) On good cause shown, the court shall order the person, agency, or
8 institution in possession or control of a record or document to allow the
9 Department to have access to that record or document under the terms and
10 conditions prescribed by the court.

11 (5) A person, agency, or institution in possession or control of a
12 requested record or document is entitled to notice and a hearing on a petition
13 filed under this section.

14 (6) Access to a confidential record under this section does not constitute
15 a waiver of confidentiality.

16 (7) A person shall not be held criminally or civilly liable for disclosing
17 or providing information or records to the Department pursuant to this
18 subsection.

19 (b) Confidentiality of reports and documents.

20 (1)(A)(i) ~~The investigative report~~ Information obtained through reports
21 to and assessments and investigations conducted by the Department, including

1 the identity of the reporter, shall be confidential and shall not be released
2 absent a court order, except the final investigative summary report shall be
3 disclosed only to:

4 ~~(I)~~(i) the Commissioner or person designated to receive such
5 records;

6 ~~(II)~~(ii) persons assigned by the Commissioner to investigate
7 reports;

8 ~~(III)~~(iii) the person reported to have abused, neglected, or
9 exploited a vulnerable adult alleged perpetrator;

10 ~~(IV)~~(iv) the vulnerable adult or ~~his or her~~ the vulnerable adult's
11 representative;

12 ~~(V)~~(v) the Office of Professional Regulation when deemed
13 appropriate by the Commissioner;

14 ~~(VI)~~(vi) the Secretary of Education when deemed appropriate
15 by the Commissioner;

16 ~~(VII)~~(vii) the Commissioner for Children and Families or
17 designee for purposes of review of expungement petitions filed pursuant to
18 section 4916c of this title;

19 ~~(VIII)~~(viii) the Commissioner of Financial Regulation when
20 deemed appropriate by the Commissioner for an investigation related to
21 financial exploitation;

1 ~~(IX)~~(ix) a law enforcement agency; and

2 ~~(X)~~(x) the State’s Attorney, or the Office of the Attorney

3 General, when the Department believes there may be grounds for criminal
4 prosecution or civil enforcement action, or in the course of a criminal or a civil
5 investigation.

6 ~~(ii)~~(B) When disclosing information pursuant to this subdivision
7 (1), reasonable efforts shall be made to limit the information to the minimum
8 necessary to accomplish the intended purpose of the disclosure, and no other
9 information, including the identity of the reporter, shall be released absent a
10 court order.

11 ~~(B)~~(2) Relevant information may be disclosed to the Secretary of
12 Human Services, or the Secretary’s designee, for the purpose of remediating or
13 preventing abuse, neglect, or exploitation; to assist the Agency in its
14 monitoring and oversight responsibilities; and in the course of a relief from
15 abuse proceeding, guardianship proceeding, or any other court proceeding
16 when the Commissioner deems it necessary to protect the victim, and the
17 victim or ~~his or her~~ the victim’s representative consents to the disclosure.

18 When disclosing information pursuant to this subdivision, reasonable efforts
19 shall be made to limit the information to the minimum necessary to accomplish
20 the intended purpose of the disclosure, and no other information, including the
21 identity of the reporter, shall be released absent a court order. Disclosures

1 necessary to conduct Adult Protective Services investigations or to make
2 referrals to law enforcement agencies, or to divisions or grantees of the
3 Department, shall be permitted, but reasonable efforts shall be made to limit
4 the information to the minimum necessary to accomplish the intended purpose
5 of the disclosure.

6 (3) Notwithstanding subdivision (a)(1) of this section, financial
7 information made available to an adult protective services investigator
8 pursuant to this section may be used only in a judicial or administrative
9 proceeding or investigation directly related to a report required or authorized
10 under this chapter. Relevant information may be disclosed to the Secretary of
11 Human Services, pursuant to subdivision (2) of this subsection.

12 ~~(C) Relevant information may be disclosed to a Family Division of~~
13 ~~the Superior Court, upon the request of that court, in any proceeding in which:~~

14 ~~(i) a parent of a child challenges a presumption of parentage under~~
15 ~~15C V.S.A. § 402(b)(3); or~~

16 ~~(ii) a parent of a child contests an allegation that he or she fostered~~
17 ~~or supported a bonded and dependent relationship between the child and a~~
18 ~~person seeking to be adjudicated a de facto parent under 15C V.S.A. §~~
19 ~~501(a)(2).~~

20 ~~(2) Notwithstanding subdivision (1)(A) of this subsection, financial~~
21 ~~information made available to an adult protective services investigator~~

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

7 ~~(b)(c)~~ The Commissioner Department shall maintain a registry of
8 substantiated caregivers that shall contain the following information:

9 ~~(1) the names of all the individuals found on the basis of a substantiated~~
10 ~~report to have abused, neglected, or exploited a vulnerable adult; the date of~~
11 ~~the finding; and the nature of the finding. In addition, the Commissioner shall~~
12 ~~require that, aside from a person's name, at least one other personal identifier~~
13 ~~is listed in the Registry to prevent the possibility of misidentification the date~~
14 ~~and nature of the finding;~~

15 ~~(2) the names of individuals convicted of a crime pursuant to 13 V.S.A.~~
16 ~~§ 1383; and~~

17 ~~(3) in addition, aside from a caregiver's name, at least one other~~
18 ~~personal identifier to prevent the possibility of misidentification.~~

19 ~~(e)(d) Disclosure of Registry information.~~

20 ~~(1)~~ The Commissioner or designee may disclose Registry information
21 only to:

1 ~~(1)~~(A) The State’s Attorney or the Attorney General.

2 ~~(2)~~(B) The public as required by the Nursing Home Reform Act of
3 1986 and regulations promulgated under the Act.

4 ~~(3)~~(C) An employer if such information is used to determine whether
5 to hire or retain a specific individual providing care, custody, treatment,
6 transportation, or supervision of children or vulnerable adults. ~~“Employer,”~~
7 ~~Notwithstanding section 6902 of this chapter, “employer,”~~ as used in this
8 section, means a person or organization who employs or contracts with one or
9 more individuals to care for or provide transportation services to children or
10 vulnerable adults, on either a paid or volunteer basis. The employer may
11 submit a request concerning a current employee, volunteer, grantee, or
12 contractor or an individual to whom the employer has given a conditional offer
13 of a contract, volunteer position, or employment. ~~The request shall be~~
14 ~~accompanied by a release signed by the current or prospective employee,~~
15 ~~volunteer, grantee, or contractor.~~ If that individual has a record of a
16 substantiated report, the ~~Commissioner~~ Department shall provide the Registry
17 information to the employer.

18 ~~(4)~~(D) An individual seeking to determine if the individual’s own
19 name is on the Registry.

20 (E) A person or organization serving vulnerable adults by assisting
21 with employer functions; offering, providing, or arranging for home sharing; or

1 providing personal care services, developmental services, or mental health
2 services for vulnerable adults. The person or organization may submit a
3 request concerning an individual who has applied to provide such services or
4 an individual who is already so engaged. ~~The request shall be in writing and~~
5 ~~shall be accompanied by a release from the person applying for or already~~
6 ~~providing such services.~~ If the person has a record of a substantiated report,
7 the Commissioner shall provide the Registry information.

8 ~~(5)~~(F) The Commissioner for Children and Families or designee for
9 purposes related to:

10 ~~(A)~~(i) the licensing or registration of facilities and individuals
11 regulated by the Department for Children and Families; and

12 ~~(B)~~(ii) the Department's child protection obligations under
13 chapters 49–59 of this title.

14 ~~(6)~~(G) The Commissioner of Health or the Commissioner's designee
15 for purposes related to oversight and monitoring of persons who are served by
16 or compensated with funds provided by the Department of Health, including
17 persons to whom a conditional offer of employment has been made.

18 ~~(7)~~(H) Upon request or when relevant to other states' adult protective
19 services offices.

20 ~~(8)~~(I) The Board of Medical Practice for the purpose of evaluating an
21 applicant, licensee, or holder of certification pursuant to 26 V.S.A. § 1353.

1 ~~(9)~~(J) The Secretary of Education or the Secretary’s designee, for
2 purposes related to the licensing of professional educators pursuant to
3 16 V.S.A. chapter 5, subchapter 4 and chapter 51.

4 ~~(10)~~(K) The Office of Professional Regulation for the purpose of
5 evaluating an applicant, licensee, holder of a certification, or registrant for
6 possible unprofessional conduct, where appropriate.

7 ~~(11)~~(L) A Family Division of the Superior Court upon request of that
8 court if it is involved in any proceeding in which:

9 ~~(A)~~(i) a parent of a child challenges a presumption of parentage
10 under 15C V.S.A. § 402(b)(3); or

11 ~~(B)~~(ii) a parent of a child contests an allegation that ~~he or she~~ the
12 parent fostered or supported a bonded and dependent relationship between the
13 child and a person seeking to be adjudicated a de facto parent under 15C
14 V.S.A. § 501(a)(2).

15 (2) The request for disclosure of Registry information pursuant to
16 subdivisions (1)(C), (1)(E)–(1)(G), and (1)(I)–(1)(K) shall be in writing and
17 accompanied by a release from the person applying for or already providing
18 services to children or vulnerable adults.

19 ~~(d)~~(e) An employer providing transportation services to children or
20 vulnerable adults may disclose Registry records obtained pursuant to
21 subdivision ~~(e)(3)~~(d)(3) of this section to the Agency of Human Services or its

1 designee for the sole purpose of auditing the records to ensure compliance with
2 this chapter. An employer shall provide such records at the request of the
3 Agency or its designee. Only Registry records regarding individuals who
4 provide direct transportation services or otherwise have direct contact with
5 children or vulnerable adults may be disclosed.

6 ~~(e)~~(f) A person may, at any time, apply to the Human Services Board for
7 relief if ~~he or she~~ the person has reasonable cause to believe that the contents
8 of the Registry or investigative records are being misused.

9 ~~(f)~~(g) A person may at any time apply to the Department for expungement
10 of ~~his or her~~ the person's name from the Registry. The ~~petitioner~~ person shall
11 have the burden of showing why ~~his or her~~ the person's name should be
12 expunged from the Registry. The Department shall consider the person's
13 completion of a restorative justice process in determining whether the person's
14 name should be expunged from the Registry.

15 ~~(g) Any person who violates this section shall be fined not more than~~
16 ~~\$500.00.~~

17 ~~(h) Volunteers shall be considered employees for purposes of this section.~~

18 * * *

19 § 6913. PENALTIES; ABUSE; NEGLECT; EXPLOITATION;

20 MANDATORY REPORTER'S FAILURE TO REPORT

1 (a) Whenever the ~~Commissioner~~ Department finds, after notice and
2 hearing, that a person has committed sexual abuse as defined in subdivision
3 6902(1)(D) of this title, ~~sexual exploitation as defined in subdivision~~
4 ~~6902(6)(D)~~, exploitation as defined in subdivision ~~6902(6)(A) or (B)~~ 6902(14)
5 in an amount in excess of \$500.00, abuse that causes grievous injury to or the
6 death of a vulnerable adult, or neglect that causes grievous injury to or the
7 death of a vulnerable adult, the Commissioner Department may impose an
8 administrative penalty of not more than ~~\$10,000.00~~ \$25,000.00 for each
9 violation. The Commissioner Department shall notify the Office of
10 Professional Regulation, or any other professional licensing board applicable
11 to the violator, of any decision made pursuant to this subsection.

12 (b) The Department shall investigate allegations that a mandated reporter
13 has failed to make a required report when it appears that an investigation is
14 appropriate. Whenever the ~~Commissioner~~ Department finds, after notice and
15 hearing, that a mandatory reporter, as defined in ~~subdivisions 6903(a)(1), (2),~~
16 ~~(3), (4), and (5)~~ subsection 6903(a) of this title, has willfully violated the
17 provisions of ~~subsection~~ subdivision 6903(a)(1), the Commissioner
18 Department may impose an administrative penalty not to exceed ~~\$500.00~~
19 \$1,000.00 per violation. For purposes of this subsection, every 24 hours that a
20 report is not made beyond the period for reporting required by ~~subsection~~
21 section 6903(a) shall constitute a new and separate violation, and a mandatory

1 reporter shall be liable for an administrative penalty of not more than \$500.00
2 \$1,000.00 for each 24-hour period, not to exceed a maximum penalty of
3 ~~\$5,000.00~~ \$25,000.00 per reportable incident.

4 (c) Whenever the Department finds that a mandatory reporter willfully or
5 knowingly withheld information, or provided false or inaccurate information,
6 the Department may impose an administrative penalty not to exceed \$1,000.00
7 per violation.

8 (d) A person who is aggrieved by a decision under subsection (a), ~~(b)~~,
9 or (c) of this section may appeal that decision to the Superior Court, where
10 either party may request trial by jury.

11 § 6914. ACCESS TO CRIMINAL RECORDS

12 (a) ~~The Commissioner may obtain from the Vermont Crime Information~~
13 ~~Center the record of convictions of any person to the extent that the~~
14 ~~Commissioner has determined by rule that such information is necessary to~~
15 ~~protect vulnerable adults~~ The Commissioner may obtain from the Vermont
16 Crime Information Center the record of convictions of any person to the extent
17 that the Commissioner has determined that such information is necessary to
18 protect vulnerable adults.

19 (b) ~~An employer may ask the Commissioner to obtain from the Vermont~~
20 ~~Crime Information Center the record of convictions of a person who is a~~
21 ~~current employee, volunteer, or contractor, or a person to whom the employer~~

1 ~~has given a conditional offer of a contract, volunteer position, or employment.~~

2 ~~The request shall be in writing and shall be accompanied by a release by the~~
3 ~~current or prospective contractor or employee. If the person has a record of~~
4 ~~convictions, the Commissioner shall inform the employer of the date and type~~
5 ~~of conviction.~~

6 (e) ~~A person or organization serving vulnerable adults by assisting with~~
7 ~~employer functions, offering, providing, or arranging for home sharing,~~
8 ~~personal care services, developmental services, or mental health services for~~
9 ~~vulnerable adults, may submit a request to the Commissioner concerning an~~
10 ~~individual who has applied to provide such services or an individual who is~~
11 ~~already so engaged. The request shall be in writing, and shall be accompanied~~
12 ~~by a release from the individual applying for or already providing such~~
13 ~~services. If the individual has a record of convictions, the Commissioner shall~~
14 ~~inform the person or organization submitting the request of the date and type of~~
15 ~~conviction.~~

16 (d) The Commissioners of Disabilities, Aging, and Independent Living, of
17 Health, and of Mental Health or their designees may, for the protection of
18 vulnerable adults or for purposes related to oversight and monitoring of
19 persons who are served by or compensated with funds provided by the
20 Departments of Disabilities, Aging, and Independent Living, of Health, and of
21 Mental Health, ask the Vermont Crime Information Center for the record of

1 convictions of a person who is a current employee, volunteer, or contractor, or
2 a person to whom the employer has given a conditional offer of a contract,
3 volunteer position, or employment. If the individual has a record of
4 convictions, the Vermont Crime Information Center shall inform the
5 appropriate ~~Commissioner, or the Commissioner's designee,~~ Department of the
6 date and type of conviction.

7 ~~(e)~~(c) Information released to an employer under this section shall not be
8 released or disclosed by the employer to any person. Any person who violates
9 this subsection shall be fined not more than \$500.00.

10 ~~(f) Volunteers shall be considered employees for purposes of this section.~~

11 ~~(g) [Repealed.]~~

12 § 6915. ACCESS TO FINANCIAL INFORMATION

13 (a) As used in this chapter:

14 (1) "A person having custody or control of the financial information"

15 means:

16 (A) a bank as defined in 8 V.S.A. § 11101;

17 (B) a credit union as defined in 8 V.S.A. § 30101;

18 (C) a broker-dealer or investment advisor, as those terms are defined

19 in 9 V.S.A. § 5102; or

20 (D) a mutual fund as defined in 8 V.S.A. § 3461.

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

3 (3) “Financial information” means an original or copy of, or information
4 derived from:

5 (A) a document that grants signature authority over an account held
6 at a financial institution;

7 (B) a statement, ledger card, or other record of an account held at a
8 financial institution that shows transactions in or with respect to that account;

9 (C) a check, clear draft, or money order that is drawn on a financial
10 institution or issued and payable by or through a financial institution;

11 (D) any item, other than an institutional or periodic charge, that is
12 made under an agreement between a financial institution and another person’s
13 account held at a financial institution;

14 (E) any information that relates to a loan account or an application
15 for a loan;

16 (F) information pertaining to an insurance or endowment policy,
17 annuity contract, contributory or noncontributory pension fund, mutual fund,
18 or security, as defined in 9 V.S.A. § 5102; or

19 (G) evidence of a transaction conducted directly or by electronic or
20 telephonic means, including surveillance video, access logs, IP addresses, and
21 any other digital logs, documents, and metadata.

1 (4) “Financial institution” means any financial services provider
2 licensed, registered, or otherwise authorized to do business in Vermont,
3 including a bank, credit union, broker-dealer, investment advisor, mutual fund,
4 or investment company.

5 (b)(1) A person having custody or control of the financial information of a
6 vulnerable adult shall make the information or a copy of the information
7 available to an Adult Protective Services investigator upon receipt of a court
8 order or receipt of the investigator’s written request or, in the instances
9 described in subsections (d) and (e) of this section, upon receipt of a court
10 order.

11 (1)(2) The request shall include a statement signed by the account
12 holder, if he or she the account holder has capacity, or the account holder’s
13 guardian with financial powers or agent under a power of attorney consenting
14 to the release of the information to the investigator.

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

20 (A)(1) The account holder is an alleged victim of abuse, neglect, or
21 financial exploitation.

1 ~~(B)~~(2) The alleged victim lacks the capacity to consent to the release
2 of the financial information.

3 ~~(C)~~(3) Law enforcement is not involved in the investigation or has
4 not requested a subpoena for the information.

5 ~~(D)~~(4) The alleged victim will suffer imminent harm if the
6 investigation is delayed while the investigator obtains a court order authorizing
7 the release of the information.

8 ~~(E)~~(5) Immediate enforcement activity that depends on the
9 information would be materially and adversely affected by waiting until the
10 alleged victim regains capacity.

11 ~~(F)~~(6) The Commissioner of Disabilities, Aging, and Independent
12 Living has personally reviewed the request and confirmed that the conditions
13 set forth in subdivisions (A) through (E) of this subdivision (2) subsection (c)
14 of this section have been met and that disclosure of the information is
15 necessary to protect the alleged victim from abuse, neglect, or financial
16 exploitation.

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

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

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

7 ~~(f)~~(g) The person having custody or control of the financial information
8 shall not require the investigator to provide details of the investigation to
9 support the request for production of the information.

10 ~~(g)~~(h) The information requested and released shall be used only to
11 investigate the allegation of abuse, neglect, or financial exploitation or for the
12 purposes set forth in subdivision ~~6911(a)(1)(B)~~ 6911(b)(3) of this title and
13 shall not be used against the alleged victim.

14 ~~(h)~~(i) The person having custody or control of the financial information
15 shall provide the information to the investigator as soon as possible but, absent
16 extraordinary circumstances, no later than 10 business days following receipt
17 of the investigator's written request or receipt of a court order or subpoena
18 requiring disclosure of the information.

19 ~~(i)~~(j) A person who in good faith makes an alleged victim's financial
20 information or a copy of the information available to an investigator in
21 accordance with this section shall be immune from civil or criminal liability

1 for disclosure of the information unless the person's actions constitute gross
2 negligence, recklessness, or intentional misconduct. Nothing in this section
3 shall be construed to provide civil or criminal immunity to a person suspected
4 of having abused, neglected, or exploited a vulnerable adult.

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

12 * * *

13 § 6917. WRITTEN COMMUNICATIONS

14 Any written communications from the Department, an administrative
15 reviewer, or the Human Services Board or to the alleged victim to the alleged
16 perpetrator shall use plain language.

17 § 6918. RULEMAKING

18 The Commissioner shall adopt rules pursuant to 3 V.S.A. chapter 25 to
19 implement this subchapter, including:

20 (1) conducting referrals on intakes, including:

21 (A) required referrals; and

1 (B) referrals on intake reports not accepted for assessment or
2 investigation;

3 (2) conducting assessments, including:

- 4 (A) the components of an assessment;
- 5 (B) the determinations of an assessment; and
- 6 (C) timelines required for the assessment; and

7 (3) conducting investigations, including:

- 8 (A) the components of an investigation;
- 9 (B) the determinations of an investigation; and
- 10 (C) timelines required for the investigation.

11 Sec. 2. 33 V.S.A. chapter 69, subchapter 2 is amended to read:

12 Subchapter 2. ~~Abuse~~ Maltreatment Prevention for Vulnerable Adults

13 * * *

14 § 6932. JURISDICTION AND VENUE

15 (a) The Family Division of the Superior Court shall have jurisdiction over
16 proceedings under this subchapter.

17 (b) Emergency orders under section 6936 of this title may be issued by a
18 judge of the Criminal, Civil, or Family Division of the Superior Court.

19 (c) Proceedings under this subchapter may be commenced in the county in
20 which the ~~plaintiff~~ **vulnerable adult** resides. If the vulnerable adult has left the
21 residence to avoid abuse, neglect, or exploitation, the ~~plaintiff~~ **vulnerable adult**

1 shall have the option to bring an action in the county of the previous residence
2 or the county of the new residence.

3 § 6933. REQUEST FOR RELIEF

4 (a) A vulnerable adult, Adult Protective Services staff, or an interested
5 person on behalf of a vulnerable adult may seek relief from abuse, neglect, or
6 exploitation by filing a petition requesting one or **both more** of the following
7 orders:

8 (1) **an order** that the defendant refrain from abusing, neglecting, or
9 exploiting the vulnerable adult;

10 (2) **an order** that the defendant immediately vacate the household;

11 **(3) an order that the defendant shall not contact or communicate with**
12 **the vulnerable adult either directly or through a third party;**

13 **(4) an order that the defendant shall not come within a fixed distance**
14 **from the vulnerable adult;**

15 **(5) an order that the defendant shall not follow or stalk the vulnerable**
16 **adult;**

17 **(6) an order to deliver care plans, medicines, physicians' orders, and**
18 **medical records to the vulnerable adult or their representative;**

19 **(7) an order to cooperate in the transfer of the vulnerable adult's care to**
20 **ensure their safety and well-being;**

1 (8) an order to immediately return any cash, checks, money, or property
2 belonging to the vulnerable adult in the defendant’s possession;

3 (9) an order to immediately return any personal documentation
4 regarding the vulnerable adult, including identification documents, insurance
5 information, financial records, and immigration documentation;

6 (10) an order that the defendant shall not access, dispose of, take or
7 transfer, funds, accounts, or property from the vulnerable adult or any account
8 in the name of the vulnerable adult;

9 (11) an order to cease any access, sharing, or use of identifying
10 information, image, or likeness of the vulnerable adult;

11 (12) an order regarding possession, care, and control of any animal
12 owned, possessed, leased, kept, or held as a pet by the vulnerable adult; and

13 (13) such other orders as deemed necessary to protect the vulnerable
14 adult.

15 (b) No filing fee shall be required.

16 § 6934. NOTICE

17 Except as provided in section 6936 of this title, the court shall grant relief
18 only after notice to the defendant and a hearing. If the petition is made by an
19 interested person, notice shall be provided to the vulnerable adult and the court
20 shall determine whether the vulnerable adult is capable of expressing ~~his or her~~
21 the vulnerable adult’s wishes with respect to the petition and, if so, whether the

1 vulnerable adult wishes to pursue the petition. If the court determines that the
2 vulnerable adult is capable of expressing ~~his or her~~ the vulnerable adult's
3 opinion and does not wish to pursue the petition, the court shall dismiss the
4 petition.

5 * * *

6 **Sec. 3. 18 V.S.A. § 9718 is amended to read:**

7 § 9718. PETITION FOR REVIEW BY THE PROBATE DIVISION OF THE
8 SUPERIOR COURT

9 (a) A petition may be filed in the Probate Division of the Superior Court
10 under this section by:

11 (1) a principal, guardian, agent, ombudsman, a mental health patient
12 representative, or interested individual other than one identified in an advance
13 directive, pursuant to subdivision 9702(a)(10) of this title, as not authorized to
14 bring an action under this section;

15 (2) a social worker or health care provider employed by or directly
16 associated with the health care provider, health care facility, or residential care
17 facility providing care to the principal;

18 (3) the Defender General if the principal is in the custody of the
19 Department of Corrections;

20 (4) a representative of the State-designated protection and advocacy
21 system if the principal is in the custody of the Department of Mental Health; ~~or~~

1 (5) an individual or entity identified in an advance directive, pursuant to
2 subdivision 9702(a)(10) of this title, as authorized to bring an action under this
3 section; or

4 (6) Adult Protective Services, for the purposes of reviewing the
5 authority of the agent under 33 V.S.A. § 6907(b)(3) to refuse protective
6 services under 33 V.S.A. § 6907(b)(2)(C).

7 * * *

8 **Sec. 4. ADULT PROTECTIVE SERVICES; FINANCIAL PROTECTIONS**

9 On or before November 1, 2023, the Department of Disabilities, Aging, and
10 Independent Living, in collaboration with the Department of Financial
11 Regulation and representatives of financial institutions as defined in 33 V.S.A.
12 § 6915, shall submit a report to House Committee on Human Services and to
13 the Senate Committee on Health and Welfare providing proposed legislative
14 changes to protect vulnerable adults from financial abuse, neglect, and
15 exploitation.

16 **Sec. 5. EFFECTIVE DATE**

17 This act shall take effect on July 1, 2023.

18
19
20
21

1

2

3

4 (Committee vote: _____)

5

6

Representative _____

7

FOR THE COMMITTEE