
**Report to
The Vermont Legislature**

**Adult Protective Services Annual Report
SFY 2023**

**In Accordance with:
33 V.S.A. § 6916
(Act 156 of 2020, The Older Vermonters Act)**

**Submitted to: The House Committee on Human Services
 The Senate Committee on Health & Welfare**

**Submitted by: Monica White, Commissioner
 Department of Disabilities, Aging, and Independent Living
 (DAIL)**

**Prepared by: Joe Nusbaum
 Director, Division of Licensing and Protection, DAIL**

Report Date: January 15, 2024



Adult Protective Services Annual Report for State Fiscal Year 2023

Executive Summary

Adult Protective Services (APS) assesses and investigates allegations of abuse, neglect, and exploitation of vulnerable adults and implements protective services, as necessary, to limit future maltreatment. It is one of two branches in DAIL's Division of Licensing and Protection (the other being the Survey and Certification survey and regulatory component). APS currently has 29 employees, including grant-funded limited-service positions, as well as the permanent 10 home-based investigators who travel throughout the state to investigate allegations of maltreatment.

A new APS statute ([H. 171, Act 81 of 2023](#)) went into effect on July 1, 2023. The new statute updated the nearly half-century-old statute to center victims' rights and better serve Vermont's vulnerable adults. Though DAIL drafted the statutory language in the bill as introduced to be budget-neutral, Legislative Committee representation articulated budget-neutrality was not their concern and expanded the scope of statutory language to broaden the population within the APS scope for investigations, added additional incidents of maltreatment to be addressed, and increased investigation components. These expanded statutory criteria and requirements are increasing APS cases by an estimated 50% in SFY24.

In the decade prior to this statutory change (SFY13-SFY23), reports to APS had increased 115%, while APS remained level-funded with ten permanent APS investigator positions. The substantiation rate has fallen from 15% in SFY18 (which is within national averages of substantiation rates of 10-20%¹) to 3% in SFY23.

APS prioritizes the safety and protection of the alleged victim. With the increase of APS reports, investigators are often redirected from an open case they are working on to new cases to address immediate safety concerns. This has resulted in extended median timeframes from screening in a report to APS (day 1) through case closure, from 61 days in SFY21 to 112 days in SFY23. Broad concern over extended timeframes for open APS cases was the source of a lawsuit brought against the State by advocates in 2011. Part of the resulting settlement was an acknowledgement of inadequate resourcing in APS, which was rectified in a settlement bringing APS resources into alignment with the then-caseloads.

APS has been able to maintain baseline essential operational levels through the use of Federal one-time emergency funding. This has resulted in five (5) limited-service field staff to conduct assessments, assist with investigations, and re-establish services for alleged victims for investigators. Funding for these limited-service positions will end September 30, 2024; continued Federal funding could partially cover one employee.

¹ https://acl.gov/sites/default/files/programs/2021-10/2020_NAMRS_Report_ADA-Final%20%281%29.pdf

The new APS statute has brought about many positive changes in the service and protection of vulnerable adults in Vermont. Although “caregiver negligence” was not included in the definitions of maltreatment that define the scope of APS operations and protections, proposed Federal rules² could require Vermont to revisit maltreatment definitions in a future session to include caregiver negligence. While these proposed Federal rules will not supersede Vermont statute, they would be a requirement to remain eligible for Federal resources. DAIL anticipated these forthcoming rules in the proposed language of H.171, and the new statute incorporates much of these proposed rules with the exception of including “caregiver negligence,” now omitted from the state definitions of maltreatment in statute. DAIL continues to have concerns that the omission of “caregiver negligence” leaves a significant gap in the protection of vulnerable adults in Vermont.

Reporting Elements

Beginning in 2021, as stated in § 6916, on or before January 15 of each year, and notwithstanding the provisions of 2 V.S.A. § 20(d), the Department [DAIL] shall report to the House Committee on Human Services and the Senate Committee on Health and Welfare regarding the Department’s adult protective services activities during the previous fiscal year. The following provides detail on the eighteen (18) required reporting elements as specified in the Older Vermonters Act.

(1) the number of reports of abuse, neglect, or exploitation of a vulnerable adult that the Department’s Adult Protective Services program received during the previous fiscal year and comparisons with the two prior fiscal years.

APS received 3,985 reports of maltreatment (abuse, neglect, and/or exploitation) in State Fiscal Year 2023 (SFY23). In SFY22 APS received 3,590; and in SFY21, APS received 3,461.

(2) the Adult Protective Services program’s timeliness in responding to reports of abuse, neglect, or exploitation of a vulnerable adult during the previous fiscal year, including the median number of days it took the program to make a screening decision.

APS responded to reports within a median 2.92 calendar days in SFY23. This median number is calculated by the time elapsed between the report date/time and resolution date/time of that report.

(3) the number of reports received during the previous fiscal year that required a field screen to determine vulnerability and the percentage of field screens that were completed within 10 calendar days.

² <https://www.federalregister.gov/documents/2023/09/12/2023-19516/adult-protective-services-functions-and-grant-programs>

In SFY23, 162 reports received by APS required a Field Screen, an extension of the screening process where an APS Investigator gathers additional information in order to determine if an investigation should be opened. Forty-three percent (43%) of the resulting Field Screens were completed within 10 calendar days of receipt of report. This is an improvement from the previous fiscal year, where 39% of Field Screens were completed within 10 calendar days. This is due to the addition of new limited-term Service Navigator staff, who can provide continuing case services while a Field Screen is active, often extending the timeframe past 10 days for vulnerable adults who may require additional services from APS.

(4) the number of reports of abuse, neglect, or exploitation of a vulnerable adult that were received from a facility licensed by the Department's Division of Licensing and Protection during the previous fiscal year.

APS received 878 reports in SFY23 where the alleged maltreatment occurred in a nursing home, residential care home, therapeutic community residence, or assisted living residence. These reports are shared with the State's Survey & Certification component in the event that facility practices may need to be investigated.

(5) the numbers and percentages of reports received during the previous fiscal year by each reporting method, including by telephone, e-mail, Internet, facsimile, and other means.

In SFY23, APS received 3,985 reports:

- 406 telephone reports, representing 10%
- 611 e-mail reports, representing 15%
- 2,896 internet reports, representing 73%
- 39 facsimile reports, representing 1%
- 33 reports from other methods, representing less than 1%

(6) the number of investigations opened during the previous fiscal year and comparisons with the two prior fiscal years.

APS opened 894 investigations or assessments in SFY23. In comparison, APS opened 876 investigations or assessments in SFY22 and 616 investigations in SFY21.

(7) the number and percentage of investigations during the previous fiscal year in which the alleged victim was a resident of a facility licensed by the Department's Division of Licensing and Protection.

In SFY23, 72 investigations— representing 8% of all investigations that year— involved an alleged victim in a nursing home, residential care home, therapeutic community residence, or assisted living residence.

(8) data regarding the types of maltreatment experienced by alleged victims during the previous fiscal year, including: (A) the percentage of investigations that involved multiple types of allegations of abuse, neglect, or exploitation, or a combination; (B) the numbers and percentages of unsubstantiated investigations by type of maltreatment; and (C) the numbers and percentages of recommended substantiations by type of maltreatment.

In SFY23, of the total 503 completed (versus opened) investigations there were 95 investigations with combined multiple allegations of abuse, neglect, or exploitation, representing 19% of the total investigations that year.

Investigations that resulted in a recommendation of unsubstantiation by APS for each type of maltreatment (including instances where one investigation involved multiple allegations) were:

- Abuse = 198, representing 39% of 503
- Exploitation = 207, representing 41% of 503
- Neglect = 113, representing 23% of 503

Investigations that resulted in a recommendation of substantiation by APS for each type of maltreatment, including instances of multiple allegations in a single investigation and cases that were overturned in appeal and/or the recommendation was rejected, were:

- Abuse = 13, representing 3% of 503
- Neglect = 12, representing 2% of 503
- Exploitation = 22, representing 4% of 503

(9) the Department's timeliness in completing investigations during the previous fiscal year, including both unsubstantiated and recommended substantiated investigations.

In SFY23, 399 investigations were completed in a timely manner in accordance with the APS Policy Manual, representing 79% of all APS investigations in that year. Seventy-three unsubstantiated investigations were overdue, and 31 substantiated recommendations were overdue.

(10) data on Adult Protective Services program investigator caseloads, including: (A) average daily caseloads during the previous fiscal year and comparisons with the two prior fiscal years; (B) average daily open investigations statewide during the previous fiscal year and comparisons with the two prior fiscal years; (C) average numbers of completed

investigations per investigator during the previous fiscal year; and (D) average numbers of completed investigations per week during the previous fiscal year.

In SFY23, the average daily caseload of each APS investigator was 36, continuing an increasing trend due to increased investigation numbers without additional investigator capacity. By comparison, the average daily caseloads per investigator was 26 in SFY22 and 16 in SFY21, representing an average increase of over 100% in the past two years.

The average daily open caseloads across all of APS in SFY23 was 286. By comparison, the average daily open caseloads was 205 in SFY22 and was 125 in SFY21. The average number of completed investigations per investigator in SFY23 was 63. By comparison, the average number of completed investigations in SFY22 was 70, and SFY21 was 79. This increase reflects escalating investigation numbers without additional capacity to address those increased numbers.

The burden of higher, protracted caseloads over time has resulted in fewer cases being completed in a week. The average number of completed investigations per week in SFY23 was ten (10). By comparison, the average number of investigations completed weekly in SFY22 was eleven (11), and SFY21 was twelve (12).

(11) the number of reviews of screening decisions not to investigate, including the number and percentage of these decisions that were upheld during the previous fiscal year and comparisons with the two prior fiscal years.

In SFY23, the Department reviewed 14 decisions not to investigate, of which 10 (71%) decisions by APS were upheld, and four (4) (29%) decisions were reversed. By comparison, in SFY22, the Department reviewed 26 decisions not to investigate, of which 19 (73%) decisions by APS were upheld, and in SFY 21, the Department reviewed 11 decisions not to investigate, of which six (6) (55%) decisions by APS were upheld.

(12) the number of reviews of investigations that resulted in an unsubstantiation, including the number and percentage of these unsubstantiations that were upheld during the previous fiscal year and comparisons with the two prior fiscal years.

In SFY23, the Department reviewed two (2) investigation that resulted in a recommendation by APS for unsubstantiation, and upheld both recommendations (100%). By comparison, in SFY22, the Department reviewed one (1) investigation that resulted in a recommendation by APS for unsubstantiation, and upheld the recommendation (100%). In SFY21, the Department reviewed zero (0) investigations that resulted in a recommendation by APS for unsubstantiation.

(13) the number of appeals of recommendations of substantiation that concluded with the Commissioner, including the number and percentage of these recommendations that the

Commissioner upheld during the previous fiscal year and comparisons with the two prior fiscal years.

The Commissioner heard eight (8) appeals in SFY23 of recommendations of substantiation. Of these eight (8) appeals, the Commissioner upheld six (6) (75%) and reversed two (2) (25%). The Commissioner heard 19 appeals in SFY22 of recommendations of substantiation. Of these 19 appeals, the Commissioner upheld 13 (68%) and reversed six (6) (32%). The Commissioner heard 19 appeals in SFY21 of recommendations of substantiation. Of these 19 appeals, the Commissioner upheld seven (7) (37%) and reversed 12 (63%).

(14) the number of appeals of recommendations of substantiation that concluded with the Human Services Board, including the numbers and percentages of these recommendations that the Board upheld during the previous fiscal year and comparisons with the two prior fiscal years.

In SFY23, four (4) appeals of recommendations of substantiation concluded with the Human Services Board. Of these four (4) appeals, four (4) (100%) recommendations were upheld by the Board and zero (0) (0%) were overturned. In SFY22, nine (9) appeals of recommendations of substantiation concluded with the Human Services Board. Of these nine (9) appeals, five (5) (56%) recommendations were upheld by the Board, and four (4) (44%) were overturned. In SFY21, six (6) appeals of recommendations of substantiation concluded with the Human Services Board. Of these six (6) appeals, three (3) (50%) recommendations were upheld by the Board, and three (3) (50%) were overturned.

(15) the number of appeals of recommendations of substantiation that concluded with the Vermont Supreme Court, including the numbers and percentages of these recommendations that the Court upheld during the previous fiscal year and comparisons with the two prior fiscal years.

In SFY23, zero (0) appeals of recommendations of substantiation concluded with the Vermont Supreme Court. In SFY22, zero (0) appeals of recommendations of substantiation concluded with the Vermont Supreme Court. There were also zero (0) appeals that concluded with the Court in SFY21.

(16) the number of expungement requests received during the previous fiscal year, including the number of requests that resulted in removal of an individual from the Adult Abuse Registry.

In SFY23, the Department received 24 expungement requests. Of these 24 requests, 13 resulted in expungement and removal from the Adult Abuse Registry, and 11 requests were denied.

(17) the number of individuals placed on the Adult Abuse Registry during the previous fiscal year and comparisons with the two prior fiscal years.

In SFY23, 38 individuals were placed on the Adult Abuse Registry. By comparison, in SFY22, 41 individuals were placed on the Adult Abuse Registry, and in SFY21, 55 individuals were placed on the Registry. Again, increased caseloads without additional staff capacity equates to less time per investigation and less opportunity to gather evidence that might lead to a substantiation and registry placement.

(18) the number of individuals removed from the Adult Abuse Registry during the previous fiscal year.

In SFY23, 14 individuals were removed from the Adult Abuse Registry.

Conclusion

On July 1, 2023, APS transitioned to a new State statute with broader protections and services for vulnerable adults. One exception is the explicit omission of “caregiver negligence” from the purview of Vermont APS operations. Caregiver negligence is included in all other states’ statutes; the absence of this in Vermont’s updated statute represents a significant gap in addressing protecting vulnerable Vermonters from maltreatment. DAIL is anticipating final Federal rules that will likely include “caregiver negligence” as part of maltreatment definitions. To comply with the future rules, DAIL will request a change in State statute.

As the reported data elements reflect, reports to APS have increased 115% over the last decade (since the last time staffing levels were adjusted for caseloads). The substantiation rate has decreased from 15% in SFY18 to 3% in SFY23 (the average national APS substantiation rate for abuse, neglect and exploitation was last reported at 18.9% in 2021³). Vermont APS has identified and made use of Federal limited service grant funds to help maintain essential baseline operational levels with a focus on victim safety. This source of Federal funding is anticipated to end September 30, 2024, without expectation for new funding options beyond a significantly smaller allotment (less than the equivalent of one full-time employee).

³ https://acl.gov/sites/default/files/programs/2021-10/2020_NAMRS_Report_ADA-Final%20%281%29.pdf