

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 consenting to
13 the sexual activity due to age, disability, or fear of retribution or hardship,
14 regardless of whether the individual has actual knowledge of the adult's status
15 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) “Acts of a sexual nature” means fondling, exposure of genitals, and
13 lewd and lascivious conduct.

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

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

17 (6) “Alleged victim” means the individual who is alleged to have been
18 abused, neglected, or exploited by the alleged perpetrator.

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

1 (8) “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 (9) “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)(10) “Commissioner” means the Commissioner of Disabilities,
18 Aging, and Independent Living.

19 (4)(11) “Department” means the Department of Disabilities, Aging, and
20 Independent Living.

1 (5)(12) “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)(13) “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 **(14)** “Expungement” means the removal of an individual’s name and
13 associated identifying information from the Adult Abuse Registry.

14 **(15)** “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 **(16)** “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 (17) “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 (18) “Lewd or lascivious conduct” has the same meaning as in
6 13 V.S.A. § 1375.

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

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

12 (21)(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)(22) “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)(23) “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 (24) “Provider” means an individual, organization, or entity that
13 provides care to adults known to be vulnerable.

14 (25) “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 (26) “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 (27) “Reporter” means the person who has submitted a report to Adult
2 Protective Services.

3 (40)(28) “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 (29)(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)(30) “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)~~(31) “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 (32) “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)~~(33) “Volunteer” means an individual who, without compensation,
20 provides services through a private or public organization.

1 (14)(34) “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 know of information of abuse, neglect, or exploitation of~~
20 ~~a vulnerable adult or who have 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 is a direct witness to evidence of abuse, neglect, or exploitation, the
6 individual shall report or be party to a report that is made on behalf of multiple
7 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~~
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 ~~the individual shall report unless the individual has reason to believe that the~~
14 ~~evidence of abuse, neglect, or exploitation has already been reported.~~

15 (3)(A) ~~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; Except as provided in~~
18 ~~subdivision (B) of this subsection (a), an individual listed in this subsection (a)~~
19 ~~shall not refuse to make a report required by this section on the grounds that~~
20 ~~making the report would violate a privilege or disclose a confidential~~
21 ~~communication.~~

1 (B) A crisis worker acting pursuant to 12 V.S.A. § 1614 and the State
2 Long-Term Care Ombudsman or a designee of the Office, as defined in section
3 7501 of this title, shall not be required to make a report under this subsection
4 (a) if the report would be based upon information received in a communication
5 that is:
6 (i) made to a crisis worker or State Long-Term Care Ombudsman
7 or a designee of the Office acting in the individual's professional capacity; and
8 (ii) intended by the parties to be confidential at the time the
9 communication is made.

10 ~~(4) a mental health professional, social worker, person or organization~~
11 ~~that offers, provides, or arranges for personal care for vulnerable adults;~~
12 ~~caregiver employed by a vulnerable adult; employee of or contractor involved~~
13 ~~in caregiving for a community mental health center; law enforcement officer;~~
14 ~~or individual who works regularly with vulnerable adults and who is an~~
15 ~~employee of an adult day care center, area agency on aging, senior center, or~~
16 ~~meal program designed primarily to serve vulnerable adults;~~

17 ~~(5) a hospital, nursing home, residential care home, home health agency,~~
18 ~~or any entity providing nursing or nursing related services for remuneration;~~
19 ~~intermediate care facility for adults with developmental disabilities; therapeutic~~
20 ~~community residence, group home, developmental home, school or contractor~~

1 ~~involved in caregiving; or an operator or employee of any of these facilities or~~
2 ~~agencies.~~

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

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

10 (1) the person making the report consents to disclosure;

11 (2) a judicial proceeding results from the report; ~~or~~

12 (3) a court, after a hearing, finds probable cause to believe the report
13 was not made in good faith and orders the Department to disclose the person's
14 identity; or

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

18 § 6904. NATURE AND CONTENT OF REPORT; TO WHOM MADE

19 A report shall be made ~~orally or in writing~~ to the Commissioner or the
20 Commissioner's designee ~~as soon as possible, but in no event later than 48~~
21 ~~hours thereafter. The report may also be made to a law enforcement officer. If~~

1 ~~an oral report is made by telephone or otherwise, the Commissioner or~~
2 ~~designee shall request that it be followed within one week by a report in~~
3 ~~writing. Reports shall contain~~ To be considered a report to the Commissioner
4 or designee, it shall contain the name and address of the reporter as well as the
5 names and addresses of the vulnerable adult and persons responsible for ~~his or~~
6 ~~her~~ the vulnerable adult's care, if known; the age of the vulnerable adult; the
7 nature of ~~his or her~~ the vulnerable adult's disability; the nature and extent of
8 the vulnerable adult's abuse, neglect, or exploitation together with any
9 evidence of previous abuse, neglect, or exploitation of the vulnerable adult;
10 and any other information that the reporter believes might be helpful in
11 establishing the cause of any injuries or reasons for the abuse, neglect, or
12 exploitation as well as in protecting the vulnerable adult. If the reporter is in
13 possession of documentation that establishes the alleged victim's conditions,
14 needs, or services, that shall be included in the report. Any evidence of
15 maltreatment shall also be cited in the report. If a report of abuse, neglect, or
16 exploitation involves the acts or omissions of the Commissioner or employees
17 of ~~that the~~ Department, then such reports shall be directed to the Secretary of
18 ~~the~~ Human Services, who shall cause the report to be investigated by
19 appropriate staff other than staff of the Department.

20 * * *

1 § 6906. ASSESSMENT AND INVESTIGATION

2 (a) Report of maltreatment.

3 (1) ~~The Commissioner shall cause an investigation to commence within~~
4 ~~48 hours after receipt of a report made pursuant to section 6904 of this title~~
5 Upon receipt of a report of maltreatment, the Department shall determine
6 whether the report constitutes an allegation of abuse, neglect, or exploitation as
7 defined in section 6902 of this title. The Department shall respond to reports
8 of alleged abuse, neglect, or exploitation that occurred in Vermont and to out-
9 of-State conduct when the vulnerable adult is a resident of Vermont.

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

12 (A) ~~Notify the reporter, the victim, and the victim's legal~~
13 ~~representative, if any, in writing if Adult Protective Services or the Division of~~
14 ~~Licensing and Protection decides not to investigate the report. The notification~~
15 ~~shall be provided within five business days after the decision is made and shall~~
16 ~~inform the reporter that he or she may ask the Commissioner to review the~~
17 ~~decision.~~

18 (B) ~~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 refers the report to another agency. The notification~~
21 ~~shall be provided within five business days after the referral is made.~~

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

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

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

1 (B) the relationship between the alleged victim and alleged
2 perpetrator;

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

4 (D) the detail and specificity of information provided in the report
5 regarding the alleged victim’s vulnerability and the alleged maltreatment.

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

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

12 (6) To the extent permitted by law, the Department may collaborate with
13 law enforcement, health care and service providers, and other departments and
14 agencies in Vermont and other jurisdictions to evaluate the risk to the
15 vulnerable adult and may enter into reciprocal agreements with law
16 enforcement, other departments and agencies, and other jurisdictions to further
17 the purposes of this section. In no event shall the Department disclose
18 information to other divisions, departments, or agencies unless such a
19 disclosure is necessary to further the express purpose of this section.

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

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

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

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

10 ~~(4) an interview with the reported victim, which interview may take~~
11 ~~place without the approval of the vulnerable adult’s parents, guardian, or~~
12 ~~caregiver, but cannot take place over the objection of the reported victim; and~~

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

15 (B) a determination as to whether the alleged victim meets the
16 definition of a vulnerable adult and whether the allegations, if true, meet the
17 statutory definition of abuse, neglect, or exploitation, or any combination
18 thereof; and

19 (C) in collaboration with the alleged victim, the identification of
20 resources and protective service needs that reduce the risk of future abuse,

1 neglect, or exploitation and improve or restore the care and safety of the
2 alleged victim.

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

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

8 (4) The Department shall provide written notice to the victim, or the
9 victim's representative who is not the subject of the assessment, of the
10 outcome of the assessment.

11 (c) Investigation. ~~Upon completion of the investigation, a written report~~
12 ~~describing all evidence obtained and recommending a finding of substantiated~~
13 ~~or unsubstantiated shall be submitted to the Commissioner or designee for final~~
14 ~~resolution. If the recommendation is for a finding of substantiated the person~~
15 ~~shall be given notice of the recommendation, and the evidence that forms the~~
16 ~~basis of the recommendation, and shall be notified of how a substantiated~~
17 ~~report might be used. The person shall be offered an opportunity to dispute the~~
18 ~~recommendation and may, within 15 days of notification, request an~~
19 ~~administrative hearing in front of the Commissioner or designee. Following~~
20 ~~the hearing, or if no hearing is requested within 15 days of notification, the~~
21 ~~Commissioner or designee shall make a finding of substantiated or~~

1 ~~unsubstantiated, and notify the person of the decision and of the right to~~
2 ~~appeal.~~

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

10 ~~(e) If a report is found to be unsubstantiated, the records shall be retained~~
11 ~~as part of the confidential records of the Department of Disabilities, Aging, and~~
12 ~~Independent Living. If no court proceeding is brought pursuant to subdivision~~
13 ~~6903(c)(3) of this title within six years of the date of the notice to the person~~
14 ~~against whom the complaint was lodged, the records relating to the~~
15 ~~unsubstantiated report shall be destroyed after notice to such person, unless he~~
16 ~~or she requests that the records not be destroyed.~~

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

20 (1) The Department shall:

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

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

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

14 (A) An interview with the alleged victim, which may take place
15 without the approval of the alleged victim’s parents, guardian, or caregiver, but
16 cannot take place over the objection of the alleged victim.

17 (B) An opportunity for the person who allegedly abused, neglected,
18 or exploited the alleged victim to be interviewed. If the person declines to be
19 interviewed, either through given notice or failure to respond, the alleged
20 perpetrator shall be notified that the alleged perpetrator’s declination may be

1 noted in the investigation and may be taken into account in any potential
2 appeal process.

3 (3) Upon completion of the investigation, the investigative summary
4 describing pertinent evidence obtained during the course of the investigation
5 and recommending a substantiation or unsubstantiation shall be submitted to
6 the Commissioner or designee. Prior to substantiation, the Department shall
7 interview the alleged perpetrator unless the alleged perpetrator declines. The
8 investigative summary shall include a recommendation of whether placement
9 on the Registry is appropriate. If the recommendation is for substantiation, the
10 alleged perpetrator shall be given written notice by certified mail of the
11 recommendation and a summary of the evidence that forms the basis of the
12 recommendation and shall be notified of any remedial options that may exist
13 and how a substantiated report might be used. The alleged perpetrator may
14 seek an administrative review of the Department’s intention to place the
15 alleged perpetrator’s name on the Registry by notifying the Department within
16 14 calendar days after the date listed on the Department’s notice of the right to
17 an administrative review. The Commissioner may grant an extension past the
18 14-day period for good cause, not to exceed 28 calendar days after the date
19 listed on the Department’s notice.

20 (4) The administrative review of the Department’s intention to
21 substantiate may be stayed if there is a related case pending in the Criminal or

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

13 (A) The Department shall hold an administrative review within 28
14 calendar days after receipt of the request for review. At least 14 calendar days
15 prior to the administrative review, the Department shall provide to the alleged
16 perpetrator requesting an administrative review the following: the redacted
17 investigation file, which means only the portion of the investigation file
18 relevant to an Adult Protective Services recommendation, redacted as
19 necessary to minimize disclosure of any confidential information; notice of
20 time and place of the administrative review; and administrative review

1 procedures, including information that may be submitted and mechanisms for
2 providing information.

3 (B) At the administrative review, the alleged perpetrator who
4 requested the review shall be provided with the opportunity to present
5 documentary evidence or other information that supports the alleged
6 perpetrator’s position and provides information to the reviewer in making the
7 most accurate decision regarding the allegation. In determining the weight to
8 be given any such evidence or information, the administrative reviewer shall
9 consider whether the alleged perpetrator had an opportunity to present the
10 evidence or information to the investigator during the investigation and, if so,
11 the reasons for the failure to present the evidence or information at that time.

12 The Department shall have the burden of proving that, based upon a
13 preponderance of evidence, it concluded that a reasonable person would
14 believe that the vulnerable adult has been abused, neglected, or exploited by
15 that alleged perpetrator. The administrative review may be held remotely by
16 telephone or through electronic means by mutual agreement of the parties.

17 (C) The Department shall establish an administrative case review unit
18 within the Department and may contract for the services of administrative
19 reviewers. An administrative reviewer shall be a neutral and independent
20 arbiter who has no prior involvement in the original investigation of the
21 allegation.

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

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

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

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

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

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

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

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

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

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

19 **(11)** If a report is found to be unsubstantiated, the records shall be
20 retained as part of the confidential records of the Department. If no court
21 proceeding is brought pursuant to section 6903 of this title within six years

1 following the date of the notice to the alleged perpetrator against whom the
2 complaint was lodged, the records relating to the unsubstantiated report may be
3 destroyed.

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

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

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

15 § 6907. REMEDIAL ACTION

16 (a) ~~Coordinated treatment plan~~ Protective services. If the investigation
17 produces evidence that the vulnerable adult has been abused, neglected, or
18 exploited, ~~the Commissioner shall arrange for the provision of protective~~
19 ~~services in accordance with a written coordinated treatment plan and protective~~
20 ~~services~~ are not in place, the Department shall pursue available protective
21 services.

1 (b) Consent to services.

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

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

15 (B) In the event that the vulnerable adult's agent under power of
16 attorney is the person responsible for the abuse, neglect, or exploitation, and
17 the agent refuses to consent to the investigation or the alleged victim's
18 protective services, the investigator may seek review of the agent's refusal by
19 filing a petition in Superior Court pursuant to 14 V.S.A. § 3510(b).

20 (C) In the event that the vulnerable adult's agent under advance
21 directive is the person responsible for the abuse, neglect, or exploitation, and

1 the agent does not consent to the investigation or the receipt of protective
2 services, the investigator may file a petition in Probate Court pursuant to 18
3 V.S.A. § 9718 to seek review under subdivision (b)(3) of that section as to
4 whether the refusal is consistent with the authority granted to the agent in the
5 advance directive.

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

10 * * *

11 § 6909. RETALIATORY ACTION BY EMPLOYER PROHIBITED

12 No employer or supervisor may discharge; demote; transfer; reduce pay,
13 benefits, or work privileges; prepare a negative work performance evaluation;
14 or take any other action detrimental to any employee who files a good faith
15 report in accordance with the provisions of this chapter, by reason of the
16 report. Any person making a report under this chapter shall have a civil cause
17 of action for appropriate compensatory and punitive damages against any
18 person who causes detrimental changes in the employment status of the
19 reporting party by reason of ~~his or her~~ making a report. Nothing in this section
20 grants immunity to a person reporting the person’s own perpetration of
21 maltreatment.

1 § 6910. INTERFERENCE BY CAREGIVER

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

16 § 6911. RECORDS OF ABUSE, NEGLECT, AND EXPLOITATION

17 (a) Access to records.

18 (1) ~~Information obtained through reports and investigations, including~~
19 ~~the identity of the reporter, shall remain confidential and shall not be released~~
20 ~~absent a court order, except as follows:~~ Subject to confidentiality or privilege
21 protections, the Department's Adult Protective Services shall have access to

1 any records or documents, including client-identifying information, financial
2 records, and medical and psychological records, necessary to the performance
3 of the Department's duties under this chapter. The duties include the
4 investigation of abuse, neglect, or exploitation or the provision of protective
5 services to a vulnerable adult. A person, agency, or institution that has a
6 record or document that the Department needs to perform its duties under this
7 chapter shall, without unnecessary delay, make the record or document
8 available to the Department. Providing access to records relevant to an
9 investigation by the Department or law enforcement under this provision shall
10 not be deemed a violation of any confidential communication privilege.
11 Access to any records that would violate or attorney client privilege shall not
12 be provided without a court order. For the purposes of this subsection,
13 "financial records" does not include records developed or maintained by the
14 Department of Financial Regulation.

15 (2) The Department is exempt from the payment of a fee otherwise
16 required or authorized by law to obtain a financial record from a person,
17 agency, or institution or a medical record, including a mental health record,
18 from a hospital or health care provider if the request for a record is made in the
19 course of an investigation by the Department.

20 (3) If the Department cannot obtain access to a record or document that
21 is necessary to properly investigate or to perform another duty under this

1 chapter, the Department may petition the Superior Court for access to the
2 record or document.

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

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

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

12 (7) A person shall not be held criminally or civilly liable for disclosing
13 or providing information or records to the Department pursuant to this
14 subsection. A person who in good faith makes an alleged victim's information
15 or a copy of the information available to an investigator in accordance with this
16 section shall be immune from civil or criminal liability for disclosure of the
17 information unless the person's actions constitute gross negligence,
18 recklessness, or intentional misconduct. Nothing in this section shall be
19 construed to provide civil or criminal immunity to a person suspected of
20 having abused, neglected, or exploited a vulnerable adult.

21 (b) Confidentiality of reports and documents.

1 ~~(1)(A)(i) The investigative report~~ Information obtained through reports
2 to and assessments and investigations conducted by the Department, including
3 the identity of the reporter, shall be confidential and shall not be released
4 absent a court order, except the final investigative summary report shall be
5 disclosed only to:

6 ~~(I)(i)~~ (i) the Commissioner or person designated to receive such
7 records;

8 ~~(II)(ii)~~ (ii) persons assigned by the Commissioner to investigate
9 reports;

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

12 ~~(IV)(iv)~~ (iv) the vulnerable adult or ~~his or her~~ the vulnerable adult's
13 representative;

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

16 ~~(VI)(vi)~~ (vi) the Secretary of Education when deemed appropriate
17 by the Commissioner;

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

1 ~~(VIII)~~(viii) the Commissioner of Financial Regulation when
2 deemed appropriate by the Commissioner for an investigation related to
3 financial exploitation;
4 ~~(IX)~~(ix) a law enforcement agency; and
5 ~~(X)~~(x) the State’s Attorney, or the Office of the Attorney
6 General, when the Department believes there may be grounds for criminal
7 prosecution or civil enforcement action, or in the course of a criminal or a civil
8 investigation.

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

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

1 shall be made to limit the information to the minimum necessary to accomplish
2 the intended purpose of the disclosure, and no other information, including the
3 identity of the reporter, shall be released absent a court order. Disclosures
4 necessary to conduct Adult Protective Services investigations or to make
5 referrals to law enforcement agencies, or to divisions or grantees of the
6 Department, shall be permitted, but reasonable efforts shall be made to limit
7 the information to the minimum necessary to accomplish the intended purpose
8 of the disclosure.

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

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

17 ~~(i) a parent of a child challenges a presumption of parentage under~~
18 ~~15C V.S.A. § 402(b)(3); or~~

19 ~~(ii) a parent of a child contests an allegation that he or she fostered~~
20 ~~or supported a bonded and dependent relationship between the child and a~~

1 ~~person seeking to be adjudicated a de facto parent under 15C V.S.A. §~~
2 ~~501(a)(2).~~

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

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

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

19 (2) the names of individuals convicted of a crime pursuant to 13 V.S.A.
20 § 1383; and

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

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

4 (1) The Commissioner or designee may disclose Registry information
5 only to:

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

7 ~~(2)~~(B) The public as required by the Nursing Home Reform Act of
8 1986 and regulations promulgated under the Act.

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

1 substantiated report, the ~~Commissioner~~ Department shall provide the Registry
2 information to the employer.

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

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

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

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

18 ~~(B)~~(ii) the Department’s child protection obligations under
19 chapters 49–59 of this title.

20 ~~(6)~~(G) The Commissioner of Health or the Commissioner’s designee
21 for purposes related to oversight and monitoring of persons who are served by

1 or compensated with funds provided by the Department of Health, including
2 persons to whom a conditional offer of employment has been made.

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

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

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

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

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

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

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

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

5 ~~(d)~~(e) An employer providing transportation services to children or
6 vulnerable adults may disclose Registry records obtained pursuant to
7 subdivision ~~(e)(3)(d)~~(1)(C) of this section to the Agency of Human Services or
8 its designee for the sole purpose of auditing the records to ensure compliance
9 with this chapter. An employer shall provide such records at the request of the
10 Agency or its designee. Only Registry records regarding individuals who
11 provide direct transportation services or otherwise have direct contact with
12 children or vulnerable adults may be disclosed.

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

16 ~~(f)~~(g) A person may at any time apply to the Department for expungement
17 of ~~his or her~~ the person's name from the Registry. The ~~petitioner~~ person shall
18 have the burden of showing why ~~his or her~~ the person's name should be
19 expunged from the Registry. The Department shall consider the person's
20 completion of a restorative justice process reparation and rehabilitation in
21 determining whether the person's name should be expunged from the Registry.

1 ~~(g) Any person who violates this section shall be fined not more than~~
2 ~~\$500.00.~~

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

4 * * *

5 § 6913. PENALTIES; ABUSE; NEGLECT; EXPLOITATION;
6 MANDATORY REPORTER'S FAILURE TO REPORT

7 (a) Whenever the ~~Commissioner~~ Department finds, after notice and
8 hearing, that a person has committed sexual abuse as defined in subdivision
9 6902(1)(D) of this title, ~~sexual exploitation as defined in subdivision~~
10 ~~6902(6)(D)~~, exploitation as defined in subdivision ~~6902(6)(A) or (B)~~ 6902(13)
11 of this title in an amount in excess of \$500.00, abuse that causes grievous
12 injury to or the death of a vulnerable adult, or neglect that causes grievous
13 injury to or the death of a vulnerable adult, the ~~Commissioner~~ Department may
14 impose an administrative penalty of not more than ~~\$10,000.00~~ \$25,000.00 for
15 each violation. The ~~Commissioner~~ Department shall notify the Office of
16 Professional Regulation, or any other professional licensing board applicable
17 to the violator, of any decision made pursuant to this subsection.

18 (b) The Department shall investigate allegations that a mandated reporter
19 has failed to make a required report when it appears that an investigation is
20 appropriate. Whenever the ~~Commissioner~~ Department finds, after notice and
21 hearing, that a mandatory reporter, as defined in ~~subdivisions 6903(a)(1), (2),~~

1 ~~(3), (4), and (5)~~ subsection 6903(a) of this title, has willfully violated the
2 provisions of ~~subsection~~ subdivision 6903(a)(1), the **Commissioner**
3 **Department** may impose an administrative penalty not to exceed ~~\$500.00~~
4 \$1,000.00 per violation. For purposes of this subsection, every 24 hours that a
5 report is not made beyond the period for reporting required by ~~subsection~~
6 section 6903(a) shall constitute a new and separate violation, and a mandatory
7 reporter shall be liable for an administrative penalty of not more than ~~\$500.00~~
8 \$1,000.00 for each 24-hour period, not to exceed a maximum penalty of
9 ~~\$5,000.00~~ \$25,000.00 per reportable incident.

10 (c) Whenever the Department finds that a mandatory reporter willfully or
11 knowingly withheld information, or provided false or inaccurate information,
12 the **Department** may impose an administrative penalty not to exceed \$1,000.00
13 per violation.

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

17 § 6914. ACCESS TO CRIMINAL RECORDS

18 (a) **The Commissioner may obtain from the Vermont Crime Information**
19 **Center the record of convictions of any person to the extent that the**
20 **Commissioner has determined by rule that such information is necessary to**
21 **protect vulnerable adults** The Commissioner may obtain from the Vermont

1 Crime Information Center the record of convictions of any person to the extent
2 that the Commissioner has determined that such information is necessary to
3 protect vulnerable adults.

4 (b) ~~An employer may ask the Commissioner to obtain from the Vermont~~
5 ~~Crime Information Center the record of convictions of a person who is a~~
6 ~~current employee, volunteer, or contractor, or a person to whom the employer~~
7 ~~has given a conditional offer of a contract, volunteer position, or employment.~~
8 ~~The request shall be in writing and shall be accompanied by a release by the~~
9 ~~current or prospective contractor or employee. If the person has a record of~~
10 ~~convictions, the Commissioner shall inform the employer of the date and type~~
11 ~~of conviction.~~

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

1 ~~(e)~~ The Commissioners of Disabilities, Aging, and Independent Living, of
2 Health, and of Mental Health or their designees may, for the protection of
3 vulnerable adults or for purposes related to oversight and monitoring of
4 persons who are served by or compensated with funds provided by the
5 Departments of Disabilities, Aging, and Independent Living, of Health, and of
6 Mental Health, ask the Vermont Crime Information Center for the record of
7 convictions of a person who is a current employee, volunteer, or contractor, or
8 a person to whom the employer has given a conditional offer of a contract,
9 volunteer position, or employment. If the individual has a record of
10 convictions, the Vermont Crime Information Center shall inform the
11 appropriate Commissioner, or the Commissioner's designee, department of the
12 date and type of conviction.

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

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

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

18 § 6915. ACCESS TO FINANCIAL INFORMATION

19 (a) As used in this chapter:

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

21 means:

- 1 (A) a bank as defined in 8 V.S.A. § 11101;
- 2 (B) a credit union as defined in 8 V.S.A. § 30101;
- 3 (C) a broker-dealer or investment advisor, as those terms are defined
- 4 in 9 V.S.A. § 5102; or
- 5 (D) a mutual fund as defined in 8 V.S.A. § 3461.
- 6 (2) “Capacity” means an individual’s ability to make and communicate
- 7 a decision regarding the issue that needs to be decided.
- 8 (3) “Financial information” means an original or copy of, or information
- 9 derived from:
- 10 (A) a document that grants signature authority over an account held
- 11 at a financial institution;
- 12 (B) a statement, ledger card, or other record of an account held at a
- 13 financial institution that shows transactions in or with respect to that account;
- 14 (C) a check, clear draft, or money order that is drawn on a financial
- 15 institution or issued and payable by or through a financial institution;
- 16 (D) any item, other than an institutional or periodic charge, that is
- 17 made under an agreement between a financial institution and another person’s
- 18 account held at a financial institution;
- 19 (E) any information that relates to a loan account or an application
- 20 for a loan;

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

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

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

11 (b)(1) A person having custody or control of the financial information of a
12 vulnerable adult shall make the information or a copy of the information
13 available to an Adult Protective Services investigator upon receipt of a ~~court~~
14 ~~order or receipt of~~ the investigator’s written request or, in the instances
15 described in subsections (d) and (e) of this section, upon receipt of a court
16 order.

17 (1)(2) The request shall include a statement signed by the account
18 holder, if ~~he or she~~ the account holder has capacity, or the account holder’s
19 guardian with financial powers or agent under a power of attorney consenting
20 to the release of the information to the investigator.

1 ~~(2)~~(c) If the vulnerable adult lacks capacity and does not have a guardian or
2 agent, or if the vulnerable adult lacks capacity and ~~his or her~~ the vulnerable
3 adult's guardian or agent is the alleged perpetrator, the request shall include a
4 statement signed by the investigator asserting that all of the following
5 conditions exist:

6 ~~(A)~~(1) The account holder is an alleged victim of abuse, neglect, or
7 financial exploitation.

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

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

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

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

18 ~~(F)~~(6) The Commissioner of ~~Disabilities, Aging, and Independent~~
19 ~~Living~~ has personally reviewed the request and confirmed that the conditions
20 set forth in ~~subdivisions (A) through (E) of this subdivision~~ (2) this subsection

1 have been met and that disclosure of the information is necessary to protect the
2 alleged victim from abuse, neglect, or financial exploitation.

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

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

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

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

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

20 ~~(h)~~(i) The person having custody or control of the financial information
21 shall provide the information to the investigator as soon as possible but, absent

1 extraordinary circumstances, ~~no~~ not later than 10 business days following
2 receipt of the investigator's written request or receipt of a court order or
3 subpoena requiring disclosure of the information.

4 ~~(i)~~(j) A person who in good faith makes an alleged victim's financial
5 information or a copy of the information available to an investigator in
6 accordance with this section shall be immune from civil or criminal liability
7 for disclosure of the information unless the person's actions constitute gross
8 negligence, recklessness, or intentional misconduct. Nothing in this section
9 shall be construed to provide civil or criminal immunity to a person suspected
10 of having abused, neglected, or exploited a vulnerable adult.

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

18 * * *

1 § 6917. WRITTEN COMMUNICATIONS

2 Any written communications from the Department, an administrative
3 reviewer, or the Human Services Board to the alleged victim or to the alleged
4 perpetrator shall use plain language.

5 § 6918. RULEMAKING

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

8 (1) conducting referrals on intakes, including:

9 (A) required referrals; and

10 (B) referrals on intake reports not accepted for assessment or
11 investigation;

12 (2) conducting assessments, including:

13 (A) the components of an assessment;

14 (B) the determinations of an assessment; and

15 (C) timelines required for the assessment; and

16 (3) conducting investigations, including:

17 (A) the components of an investigation;

18 (B) the determinations of an investigation; and

19 (C) timelines required for the investigation.

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

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

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§ 6932. JURISDICTION AND VENUE

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

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

(c) Proceedings under this subchapter may be commenced in the county in which the plaintiff vulnerable adult resides. If the vulnerable adult has left the residence to avoid abuse, neglect, or exploitation, the plaintiff vulnerable adult shall have the option to bring an action in the county of the previous residence or the county of the new residence.

§ 6933. REQUEST FOR RELIEF

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

- (1) an order that the defendant refrain from abusing, neglecting, or exploiting the vulnerable adult;
- (2) an order that the defendant immediately vacate the household;
- (3) an order that the defendant shall not contact or communicate with the vulnerable adult either directly or through a third party;

1 (4) an order that the defendant shall not come within a fixed distance
2 from the vulnerable adult;

3 (5) an order that the defendant shall not follow or stalk, as defined in 12
4 V.S.A. § 5131, the vulnerable adult;

5 (6) an order to deliver care plans, medicines, physicians' orders, and
6 medical records to the vulnerable adult or the vulnerable adult's representative;

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

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

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

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

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

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

1 directive, pursuant to subdivision 9702(a)(10) of this title, as not authorized to
2 bring an action under this section;

3 (2) a social worker or health care provider employed by or directly
4 associated with the health care provider, health care facility, or residential care
5 facility providing care to the principal;

6 (3) the Defender General if the principal is in the custody of the
7 Department of Corrections;

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

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

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

16 * * *

17 Sec. 4. ADULT PROTECTIVE SERVICES; FINANCIAL PROTECTIONS

18 On or before November 1, 2023, the Department of Disabilities, Aging, and
19 Independent Living, in collaboration with the Department of Financial
20 Regulation and representatives of financial institutions as defined in 33 V.S.A.
21 § 6915, shall submit a report to House Committee on Human Services and to

1 the Senate Committee on Health and Welfare providing proposed legislative
2 changes to protect vulnerable adults from financial abuse, neglect, and
3 exploitation.

4 Sec. 5. EFFECTIVE DATE

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

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13 (Committee vote: _____)

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Representative _____

FOR THE COMMITTEE