

H.171: An act relating to adult protective services

Summary as passed by House

Prepared by the Office of Legislative Counsel

Sec. 1. 33 V.S.A. chapter 69, subchapter 1 (Reports of Abuse of Vulnerable Adults) is amended to read:

§ 6901. PURPOSE

- Protect vulnerable adults whose health and welfare may be adversely affected through abuse, neglect, or exploitation
- Recognize and accommodate barriers for vulnerable adults that may impair both their response to maltreatment and their ability to substantiate allegations of maltreatment
- Require reporting of suspected abuse, neglect, and exploitation, investigation of reports, and establishment of protective services
- *Removes language pertaining to finding a nurturing and safe environment for vulnerable adults and intervening in family or substitute care situations only when necessary*
- Aims to uphold autonomy and provide opportunities for consideration of vulnerable adult's preferences

§ 6902. DEFINITIONS

- Significant changes to the definition sections, including substantial changes to what constitutes “abuse”, “exploitation”, and “neglect” (none of which include self-neglect)
- Numerous added definitions

§ 6903. REPORTING SUSPECTED ABUSE, NEGLECT, AND EXPLOITATION OF VULNERABLE ADULTS

- Streamlines list of mandatory reporters to “all employees, contractors, volunteers, or grantees who directly provide health care, law enforcement, caregiving, counseling, education, or social services to adults” who know of or have a reason to suspect abuse, neglect, or exploitation of a vulnerable adult

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

- Report made to Commissioner or designee, *but removes language that report can be made to a law enforcement officer*
- New language specifies that a reporter in possession of documentation establishing the alleged victim's conditions, needs, or services include that information in the report, as well as evidence of maltreatment

§ 6906. ASSESSMENT AND INVESTIGATION

- Report of maltreatment
 - Upon receipt of a report of maltreatment, DAIL determines whether it constitutes an allegation of abuse, neglect, or exploitation
 - DAIL must respond to reports about conduct occurring in-State or out-of-State if the vulnerable adult is a VT resident
 - If report is accepted as a report of abuse, neglect, or exploitation, DAIL determines whether to conduct an assessment or investigation or whether to screen out report. (Assessment may be used to determine whether an investigation is necessary.)

- If DAIL initiates an assessment or investigation, it shall be within:
 - 1 business day after receipt of accepted report involving serious injury, hospitalization, sexual abuse, or ongoing harm
 - 2 business days after receipt of accepted report in all other cases
- Determination to conduct an assessment shall include consideration of:
 - Severity of alleged maltreatment and injuries;
 - Relationship between alleged victim and perpetrator; and
 - Known history of the report
 - Detail and specificity of information in report on alleged victim's vulnerability and alleged maltreatment
- DAIL shall investigate accepted report involving allegations of serious maltreatment or ongoing risk of harm; it may investigate any report of maltreatment APS receives
- DAIL shall immediately begin an investigation if at any time during an assessment, an investigation is deemed appropriate
- To the extent permitted by law, DAIL may collaborate with law enforcement, health care and service providers, other VT agencies and agencies in other jurisdictions to evaluate risk to vulnerable adult
- DAIL may enter into reciprocal agreements
- Assessment
 - An assessment, to the extent reasonable based on report, shall include:
 - An interview with reporter and alleged victim, focused on ensuring immediate safety and mitigating future risk of harm;
 - A determination as to whether alleged victim meets the definition of a vulnerable adult, and whether allegations, if true, meet definitions of abuse, neglect, and/or exploitation;
 - ID resources and protective services needs to reduce risk of future maltreatment and improve care and safety of alleged victim
 - Services offered during or at conclusion of assessment can only be implemented through voluntary agreement or court action
 - If assessment closes w/o resulting in an investigation, there is no finding of abuse, neglect, or exploitation and no indication of the intervention in the registry, but DAIL shall document outcome of assessment
 - DAIL must provide written notice of outcome of assessment to victim and victim's representative
- Investigation
 - DAIL is required to:
 - Notify the reporter if it decides not to investigate or conduct an assessment w/in 5 business days of decision, and inform reporter that the reporter may ask DAIL to review decision
 - Notify the alleged victim and alleged victim's representative in writing of the outcome of the investigation w/in 5 business days of decision, and inform victim or representative that either may ask DAIL to review decision
 - Unless it will jeopardize vulnerable adult's health or safety, investigation must include:
 - Interview with alleged victim unless alleged victim objects

- Opportunity for alleged perpetrator to be interviewed; if person declines (by notice or failure to respond), the person will be notified that declination may be noted in investigation and may be considered in any potential appeal process
- At conclusion of investigation, an investigative summary is submitted to Commissioner or designee describing evidence and recommending either substantiation or unsubstantiation and whether placement on the registry is appropriate
 - DAIL must interview alleged perpetrator before substantiation unless alleged perpetrator declines
 - If recommendation is for substantiation, alleged perpetrator must be given written notice by certified mail of:
 - recommendation
 - summary of evidence forming basis of recommendation;
 - remedial options; and
 - how substantiated report might be used
- Alleged preparator may seek administrative review of placement on registry by notifying DAIL w/in 14 days after date listed on notice of right to administrative review; Commissioner may grant an extension up to total of 28 days for good cause
- Administrative review of DAIL's intent to substantiate may be stayed if there is a case pending in the Criminal or Family Division of the Superior Court arising out of the same conduct, during which time DAIL may add alleged perpetrator's name to the registry with a notation that the case is pending
 - Alleged perpetrator may exercise right to review, upon resolution of Superior Court case, by so requesting in writing w/in 28 days after case has been fully adjudicated; otherwise the decision becomes final
 - If administrative review is requested, it shall be held w/in 28 days; at least 14 days before review, DAIL must provide certain information to the alleged perpetrator
 - At review, the alleged perpetrator may present evidence or information
 - DAIL has burden of proving that a reasonable person would believe the vulnerable adult was abused, neglected, or exploited by alleged perpetrator by a preponderance of the evidence
 - DAIL must establish a case review unit and may contract for administrative reviewers, who are neutral and independent arbiters with no previous involvement in the investigation
- W/in 7 days of completed administrative review, reviewer shall either reject or accept DAIL's recommendation of substation or defer recommendation and direct further investigation and notify the alleged perpetrator of the decision (and where appropriate, of the opportunity to appeal)
- If administrative reviewer accepts recommendation of substantiation, a registry record is created w/in 2 business days, otherwise no record is created
- In exceptional circumstances, Commissioner (but not a designee) may reconsider an administrative reviewer's decision—and resulting penalty of creation of a registry record can be appealed to the Human Services Board
- W/in 30 days after receiving notice of substantiation, the alleged perpetrator may apply to the Human Services Board, the resulting expedited hearing shall be provided not later than 30 days after notice of substantiation

- Records are retained confidentially for 6 years after unsubstantiation
- Vulnerable adult, the adult representation, and alleged perpetrator's employer shall be notified upon final determination

§ 6907. REMEDIAL ACTION

- DAIL shall pursue protective services if they have not already been put in place and the investigation shows that the vulnerable adult has been maltreated, assuming consent from the vulnerable adult, the vulnerable adult's representative, or a court order
 - If the vulnerable adult's representative is responsible for the maltreatment and refuses to consent to the investigation or protective services, the investigator can seek court review of the representative's refusal
- Failure to consent to protective services does not automatically end investigation

§ 6909. RETALIATORY ACTION BY EMPLOYER PROHIBITED

- New language specifies that this section does not provide immunity to person reporting their own perpetration of maltreatment

§ 6910. INTERFERENCE BY CAREGIVER (in provision of protective services)

- New language is predominantly technical or conforming changes
- Repeals authority for court to modify terms of a coordinated treatment plan

§ 6911. RECORDS OF ABUSE, NEGLECT, AND EXPLOITATION

- Access to records
 - Subject to confidentiality/privilege protections, APS shall have access to any records/documents, including client-identifying information, financial records, medical and psychological records, necessary to perform its duties
 - Persons or entities with a record/document that APS needs shall make it available
 - If made in the course of an investigation, DAIL is not required to pay a fee to acquire a financial or medical record
 - If it cannot otherwise access a record, DAIL can petition the Superior Court for access, and on good cause shown the Court may order the person or entity in possession to provide access under the Court's terms
 - Person or entity in possession of a record is entitled to notice and hearing
 - Access to a confidential record is not waiver of confidentiality
 - Person who discloses alleged victim's information to DAIL investigator in good faith has immunity for the disclosure unless the actions constitute negligence, recklessness, or intentional misconduct
- Confidentiality of reports and documents
 - Information obtained through reports to DAIL and assessments/investigations conducted by DAIL, including ID of reporter, are confidential and cannot be released absent a court order, except those certain individuals listed in statute may receive a final investigative summary report
 - Allows necessary disclosures to conduct investigations to make referrals to law enforcement agencies or DAIL grantees, but reasonable efforts must be made to limit information to the minimum necessary

- Financial records disclosed to APS may only be used in a judicial or administrative proceeding or investigation directly related to a report
- Registry
 - DAIL is required to maintain a registry of substantiated providers that contains:
 - Name of individuals who regularly work or interact with vulnerable adults who are found to have maltreated a vulnerable adult in their role and date and nature of finding
 - Names of individuals convicted of a crime related to maltreatment
 - A personal identifier, aside from individual's name
 - A person can apply to DAIL for expungement of their name from the registry; DAIL must consider the person's completion of reparation and rehabilitation in deciding whether to expunge
- Disclosure of registry information
 - Includes an individual seeking to determine if the individual's own name is on the registry to the list of who the Commissioner or designee may disclose registry information to
- *Removes fine of \$500 for persons violating this section*

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

- Increases penalties throughout section
- DAIL must investigate allegations that a mandated reporter failed to make a report when investigation appears appropriate
- When DAIL finds that a mandatory reporter willfully or knowingly withheld information or provided false/inaccurate information, DAIL may impose an administrative penalty of not more than \$1,000.00 per violation

§ 6914. ACCESS TO CRIMINAL RECORDS

- Removes provisions allowing employers and organizations serving vulnerable adults to ask Commissioner to obtain information from Vermont Crime Information Center about current and prospective employees, volunteers, and contractors

§ 6915. ACCESS TO FINANCIAL INFORMATION

- New language is predominantly technical or conforming changes
- Removes ability for financial institutions to charge DAIL for cost of providing information

§ 6917. WRITTEN COMMUNICATIONS

- Requires that any written communications from DAIL, administrative reviewer, or Human Services Board alleged victim or perpetrator use plain language

RULEMAKING

- Directs the Commissioner to adopt APS rules, including rules on referrals, assessments, and investigations

Sec. 2. 33 V.S.A. chapter 69, subchapter 2 (Maltreatment Prevention for Vulnerable Adults) is amended to read:

§ 6932. JURISDICTION AND VENUE

- Conforming amendments (changing “plaintiff” to “vulnerable adult” and addition of the word “neglect”)

§ 6933. REQUEST FOR RELIEF

- Specifies that APS staff can seek relief from maltreatment on behalf of a vulnerable adult
- Expands the types of protective court orders that can be sought to protect a vulnerable adult

§ 6934. NOTICE

- Conforming amendment (gender neutral language)

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

- Amends advance directive statutes to allow APS to seek judicial review of an agent’s authority to refuse protective services for a vulnerable adult

Sec. 4. Adult Protective Services; Financial Protection

- Requires DAIL, in collaboration with DFR and representatives of financial institutions, to report to House Human Services and Senate Health & Welfare Committees by November 1, 2023 with proposed legislative changes to protect vulnerable adults from financial abuse, neglect, and exploitation

Sec. 5. Effective Date: July 1, 2023