

H.582

Introduced by Representative Noyes of Wolcott

Referred to Committee on

Date:

Subject: Human services; Department of Disabilities, Aging, and Independent  
Living; vulnerable adults; adult protective services

Statement of purpose of bill as introduced: This bill proposes to modify the  
definition of neglect for purposes of the statutes protecting vulnerable adults  
from abuse, neglect, and exploitation. It would require reports of alleged  
neglect in a State-licensed facility or program or by a State-licensed individual  
to be reported to the relevant licensing entity. The bill would also extend the  
time periods within which the Human Services Board must hold a fair hearing,  
and the hearing officer must issue findings and a recommendation, when an  
alleged perpetrator requests relief from the Board based on a substantiated  
report that the alleged perpetrator abused, neglected, or exploited a vulnerable  
adult.

An act relating to adult protective services

It is hereby enacted by the General Assembly of the State of Vermont:

Sec. 1. 33 V.S.A. § 6902 is amended to read:

§ 6902. DEFINITIONS

1 As used in this chapter:

2 \* \* \*

3 (21)(A) “Neglect” means ~~purposeful, knowing, or reckless failure or~~  
4 ~~omission by a caregiver that has resulted in, or could be expected to result in,~~  
5 ~~physical or psychological harm, including a failure or omission to:~~

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

11 (ii) ~~make a reasonable effort, in accordance with the authority~~  
12 ~~granted the caregiver, to protect a vulnerable adult from abuse, neglect, or~~  
13 ~~exploitation by others;~~

14 (iii) ~~carry out a plan of care for a vulnerable adult unless the~~  
15 ~~caregiver is acting pursuant to the wishes of the vulnerable adult or the~~  
16 ~~vulnerable adult’s representative, or an advance directive, as defined in 18~~  
17 ~~V.S.A. § 9701; or~~

18 (iv) ~~report significant changes in the health status of a vulnerable~~  
19 ~~adult to a physician, nurse, or immediate supervisor, when the caregiver is~~  
20 ~~employed by an organization that offers, provides, or arranges for personal~~  
21 ~~care~~ the failure of a caregiver, agent, or fiduciary to provide the goods or

1 services that are necessary to maintain the health or safety, or both, of a  
2 vulnerable adult.

3 (B) ~~Neglect~~ “Neglect” does not include self-neglect.

4 (C) The actions or inactions of a caregiver or fiduciary shall not be  
5 considered neglect if the caregiver or fiduciary is acting pursuant to:

6 (i) the wishes of the vulnerable adult;

7 (ii) at the direction and authority of the vulnerable adult’s  
8 representative; or

9 (iii) in accordance with the terms of the vulnerable adult’s  
10 advance directive.

11 \* \* \*

12 (26) “Report” means the statements ~~provided to Adult Protective~~  
13 ~~Services~~ from a reporter alleging that a vulnerable adult has been abused,  
14 neglected, or exploited.

15 (27) “Reporter” means the person who has submitted a report to Adult  
16 Protective Services or to a licensing entity in accordance with section 6904 of  
17 this chapter.

18 (28) “Representative” means a court-appointed guardian, an agent acting  
19 under an advance directive ~~executed pursuant to 18 V.S.A. chapter 231~~, or an  
20 agent under a power of attorney, unless otherwise specified in the terms of the  
21 power of attorney.

\* \* \*

(35) “Advance directive” has the same meaning as in 18 V.S.A. § 9701.

(36)(A) “Fiduciary” means an individual or entity with the legal  
responsibility to:

(i) make decisions on behalf of and for the benefit of another  
individual; and

(ii) act in good faith and with fairness.

(B) The term “fiduciary” includes a trustee, guardian, conservator,  
executor, agent under a power of attorney or an advance directive, or  
representative payee.

Sec. 2. 33 V.S.A. § 6904 is amended to read:

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

(a) A Except as otherwise provided for certain reports of neglect in  
subsection (b) of this section, a report shall be made to the Commissioner or  
the Commissioner’s designee. To be considered a report to the Commissioner  
or designee, it shall contain the name and address of the reporter as well as the  
names and addresses of the vulnerable adult and persons responsible for the  
vulnerable adult’s care, if known; the age of the vulnerable adult; the nature of  
the vulnerable adult’s disability; the nature and extent of the vulnerable adult’s  
abuse, neglect, or exploitation together with any evidence of previous abuse,  
neglect, or exploitation of the vulnerable adult; and any other information that

1 the reporter believes might be helpful in establishing the cause of any injuries  
2 or reasons for the abuse, neglect, or exploitation as well as in protecting the  
3 vulnerable adult. If the reporter is in possession of documentation that  
4 establishes the alleged victim's conditions, needs, or services, that shall be  
5 included in the report. Any evidence of maltreatment shall also be cited in the  
6 report. If a report of abuse, neglect, or exploitation involves the acts or  
7 omissions of the Commissioner or employees of the Department, then such  
8 reports shall be directed to the Secretary of Human Services, who shall cause  
9 the report to be investigated by appropriate staff other than staff of the  
10 Department.

11 (b)(1) If neglect is alleged to have been perpetrated within a facility  
12 licensed by the State or a program licensed by the State, or to have been  
13 perpetrated by an individual licensed by the State, the report shall be made to  
14 the relevant licensing entity as follows:

15 (A) Neglect within a licensed facility or program shall be reported to  
16 the applicable State licensing unit in accordance with State and federal  
17 licensing rules and regulations.

18 (B) Neglect by an individual licensed by the Office of Professional  
19 Regulation shall be reported to the Office of Professional Regulation.

20 (C) Neglect by an individual licensed by the Board of Medical  
21 Practice shall be reported to the Board of Medical Practice.

Sec. 3. 33 V.S.A. § 6906 is amended to read:

## § 6906. ASSESSMENT AND INVESTIGATION

\* \* \*

(c) Investigation.

\* \* \*

(10) Within 30 calendar days after the date of the notice advising that a report has been substantiated, an alleged perpetrator against whom a complaint has been lodged may apply to the Human Services Board for relief on the grounds that it is unsubstantiated. The Human Services Board shall hold a fair hearing under 3 V.S.A. § 3091. Unless the Commissioner agrees otherwise, the hearing shall be given priority by the Human Services Board, and an expedited hearing shall be provided, not later than ~~30~~ 90 calendar days after the date of the ~~notice advising that a report has been substantiated, and a decision~~ alleged perpetrator's request for a fair hearing, and the hearing officer's written findings and recommendation shall be issued within ~~seven~~ 30 calendar days after the hearing.

\* \* \*

1       Sec. 4. EFFECTIVE DATE

2       This act shall take effect on passage.