

1 H.112

2 Introduced by Representative Pugh of South Burlington

3 Referred to Committee on

4 Date:

5 Subject: Human services; adult protective services; law enforcement; financial
6 records

7 Statement of purpose of bill as introduced: This bill proposes to provide law
8 enforcement officers and adult protective services investigators with access to
9 the financial records of alleged victims of abuse, neglect, or exploitation. It
10 would require the custodian of the financial records of a vulnerable adult to
11 make those records available to a law enforcement officer or adult protective
12 services investigator.

13 An act relating to access to financial records in adult protective services
14 investigations

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

16 Sec. 1. 33 V.S.A. § 6915 is added to read:

17 § 6915. ACCESS TO FINANCIAL RECORDS

18 (a) A person having custody or control of the financial records of a
19 vulnerable adult for whom a report is required or authorized under section
20 6903 of this title shall make such records or a copy of such records available to

1 a law enforcement officer or an adult protective services worker investigating
2 whether the vulnerable adult was the victim of abuse, neglect, or exploitation
3 upon receipt of a written request for the records signed by the law enforcement
4 officer or adult protective services worker, as follows:

5 (1) For an alleged victim with capacity, the law enforcement officer or
6 adult protective services worker shall obtain the written consent of the alleged
7 victim prior to requesting the records.

8 (2)(A) For an alleged victim without capacity who has a court-appointed
9 guardian, the law enforcement officer or adult protective services worker shall
10 obtain the written consent of the guardian prior to requesting the records,
11 unless the guardian is the alleged perpetrator of the abuse, neglect, or
12 exploitation, in which case the officer or worker shall proceed pursuant to
13 subdivision (B) of this subdivision (2). A guardian who refuses to provide
14 consent pursuant to this section shall do so only if the guardian believes in
15 good faith that the refusal is in the best interests of the alleged victim. If a
16 guardian withholds consent, the law enforcement officer or adult protective
17 services worker may appeal to the Commissioner for a determination that
18 disclosure of the records is necessary to protect the alleged victim. If the
19 Commissioner determines that disclosure of the records is necessary to protect
20 the alleged victim, the Commissioner may direct the person with custody or
21 control of the records to disclose the records without the guardian's consent.

1 (B)(i) For an alleged victim without capacity who does not have a
2 guardian, the law enforcement officer or adult protective services worker shall
3 submit to the person with custody or control of the records a written statement
4 asserting that both of the following conditions exist:

5 (I) the records are needed to determine whether a violation of
6 law by a person other than the alleged victim has occurred, and the information
7 is not intended to be used against the alleged victim; and

8 (II) immediate enforcement activity that depends on the records
9 would be materially and adversely affected by waiting until the alleged victim
10 regains capacity.

11 (ii) The law enforcement officer or adult protective services
12 worker shall not be required to provide any details regarding the investigation
13 in support of the request for timely production of the records.

14 (b) If a vulnerable adult with capacity refuses to provide consent pursuant
15 to subdivision (a)(1) of this section, the person having custody or control of the
16 vulnerable adult's financial records shall not provide the records to the law
17 enforcement officer or adult protective services worker unless necessary to
18 comply with an order or warrant issued by a court, a subpoena or summons
19 issued by a judicial officer, or a grand jury subpoena, or as otherwise required
20 by law.

1 (c)(1) A law enforcement officer or adult protective services worker who
2 receives consent to obtain records from an alleged victim with capacity
3 pursuant to subdivision (a)(1) of this section or from the guardian of an alleged
4 victim without capacity pursuant to subdivision (a)(2)(A) of this section shall
5 include a copy of the written consent in the case file.

6 (2) A law enforcement officer or adult protective services worker who
7 obtains records pursuant to subdivision (a)(2)(B) of this section because the
8 alleged victim lacks capacity shall document in the case file the need for the
9 records obtained, including a copy of the written materials submitted to the
10 person with custody or control of the records pursuant to that subdivision.

11 (d)(1) For an alleged victim with capacity or an alleged victim without
12 capacity who has a court-appointed guardian, the custodian of the records shall
13 provide them to the requesting law enforcement officer or adult protective
14 services worker within 10 business days of the custodian's receipt of the
15 alleged victim's or guardian's written consent.

16 (2) If an alleged victim's guardian withholds consent but the
17 Commissioner determines that disclosure is necessary to protect the victim
18 pursuant to subdivision (a)(2)(A) of this section, the custodian of the records
19 shall provide them to the requesting law enforcement officer or adult protective
20 services worker within 10 business days of the custodian's receipt of the
21 Commissioner's determination.

1 (3) For an alleged victim without capacity who does not have a
2 guardian, the custodian of the records shall provide them to the requesting law
3 enforcement officer or adult protective services worker within 10 business
4 days of the custodian's receipt of the written statement described in
5 subdivision (a)(2)(B) of this section.

6 (e) A person who in good faith makes an alleged victim's financial records
7 or a copy of such records available to a law enforcement officer or adult
8 protective services worker in accordance with this section shall be immune
9 from civil or criminal liability for disclosure of the records unless the person's
10 actions constitute gross negligence, recklessness, or intentional misconduct.
11 Nothing in this subsection shall be construed to provide civil or criminal
12 immunity to a person suspected of having abused, neglected, or exploited a
13 vulnerable adult.

14 (f) The person having custody or control of the alleged victim's financial
15 records may charge and collect from the law enforcement officer or adult
16 protective services worker requesting a copy of such records the actual cost of
17 providing the copy, provided that a custodian shall not refuse to provide the
18 records until receipt of the payment.

19 (g) Records disclosed pursuant to this section are confidential and exempt
20 from public inspection and copying under the Public Records Act and may be

1 used only in a judicial or administrative proceeding or investigation directly
2 related to a report required or authorized under this section.

3 (h) As used in this section, “capacity” means an individual’s ability to
4 make and communicate a decision regarding the issue that needs to be decided.

5 Sec. 2. EFFECTIVE DATE

6 This act shall take effect on July 1, 2015.