

Adult Protective Services Statutory Review

APS Statute History

- ▶ Vermont's APS Statute - Title 33 Chapter 69 - was added in 1979
 - ▶ Adjustments were made in 1985, 1993, 2001, 2002, and 2013
 - ▶ Subchapters were added in 2015 and 2017
- ▶ Original statute anticipated vulnerable adults residing in institutions
 - ▶ Values in the original statute reflect a different era

Statutory Review Efforts

- ▶ September 2019: APS held an all-staff retreat to learn what elements of statute create barriers to protecting vulnerable adults
- ▶ February 2020: the APS Committee held a full-day workshop to review statute and plan for assessing statute towards APS program improvement
- ▶ June 2020 - June 2021: APS Committee devoted all meetings, with the exception of file review meetings, to statutory review
- ▶ October 2021 - May 2022: Vermont Certified Public Managers have selected an APS Statutory review project to compare to other states' APS statutes and make recommendations for change

Major Areas for Updating Statute

- ▶ Victim Rights
- ▶ Proportional Funding
- ▶ Self-Neglect
- ▶ Definitions
- ▶ Adult Abuse Registry
- ▶ Reporting requirements and Info Sharing
- ▶ Discretionary Powers and Differentiated Response
- ▶ Evidentiary Standards
- ▶ Review and Appeal Rights

Victim Rights

- ▶ Victims have no review or appeal rights under statute
 - ▶ Alleged perpetrators, and even reporters, have more rights than victims
- ▶ Existing statute is NOT in alignment with other statutory principles of “Self-Determination”
 - ▶ Older Vermonters Act (§ 6202) establishes principles of self-determination so that:
“Older Vermonters should be able to direct their own lives... Whatever services, supports, and protections are offered, older Vermonters deserve dignity and respect and must be at the core of all decisions affecting their lives, with the opportunity to accept or refuse any offering.”

Proportional Funding

- ▶ Vermont's APS statute is one of the few remaining State statutes that does not proportionally fund APS positions to the number of reports of maltreatment received and the number of investigations conducted
- ▶ APS has been level-funded for nearly a decade
- ▶ In the three years leading up to COVID-19, reports of maltreatment increased 23% in Vermont (3,312 in SFY16 to 4,080 in SFY19)
- ▶ APS investigations climbed 32% in just two years (664 in SFY17 to 875 in SFY19)
- ▶ Average investigations require 15-25 hours to complete (or 2 per week); in SFY20, investigators had to close an average of 13 cases per week, amounting to 3 available hours per investigation
- ▶ High caseloads diminish the ability to conduct full investigations; resulting substantiations have dropped by nearly 50% from SFY18 to SFY20 (15.4% down to 8.6%)
- ▶ Unexpected vacancies further exhaust resources; Vermont APS has not been fully staffed in several years

Self-Neglect

- ▶ DSM-5 in 2013 added “hoarding” as a mental disorder for the first time
- ▶ APS currently has no statutory authority to address cases of self-neglect
- ▶ In 2015, Vermont was one of five states that did not address self-neglect in its statute. Today, Vermont is the only state in the nation
- ▶ Area Agencies on Aging are the only Vermont entity with an established mandate to serve self-neglecting individuals
- ▶ In states where APS addresses self-neglect, these cases represent two-thirds to three-quarters of APS staff caseloads
- ▶ The Older Vermonters Act mandated a Self-Neglect Working Group be established and identified 16 required stakeholders tasked with a report due to the VT Legislature on July 1, 2022

Definitions

- ▶ “Vulnerability” has been the definition most discussed, amended and revised, and remains controversial
 - ▶ *(14)(D)(ii) because of the disability or infirmity, the individual has an impaired ability to protect himself or herself from abuse, neglect, or exploitation.*
- ▶ Inclusion of additional terms – such as *Preponderance*, *Reasonable Person*, *Willful*, etc. – that are not defined within statute create ambiguous standards in investigations
- ▶ Some definitions, such as *Mandatory Reporter* and *Activities of Daily Living*, remain ambiguous

Adult Abuse Registry

- ▶ Until this year, the Adult Abuse Registry (AAR) was the primary product and endgame for Vermont's APS efforts
- ▶ The Vermont AAR was established in an era that anticipated most perpetrators of maltreatment of vulnerable adults were professional caregivers in institutional settings
 - ▶ Values have shifted to supporting vulnerable adults to remain in their homes and communities, and often caregivers are family members or other non-professions for which the AAR is not a deterrent
- ▶ In a 2018 NAPSA survey about half of the states do not have registries. Of participating states that do have registries, 7 were open registries and 14 were closed registries.
- ▶ AAR's utility has plummeted over the years
 - ▶ Over 50,000 registry checks are made each year. In the last calendar year there were 67 positive "hits" resulting from those checks
 - ▶ Even with a positive hit, many employers are not obligated to, and do not, fire or refrain from hiring a candidate

Reporting Requirements and Information Sharing

- ▶ Although there are established Mandatory Reporter requirements and established fines for failure to report in statute, there is no mechanism or ability to enforce this requirement
- ▶ Many mandatory reporters in Vermont are not aware of that obligation, or even that APS exists as an entity to make reports
- ▶ Many APS partners and stakeholders have protocols that limit their ability to share information with APS
 - ▶ APS has no statutory authority to require relevant information from key partners such as law enforcement, State partners, other DAIL Divisions, and even Survey & Certification staff investigating the same allegations

Discretionary Powers and Differentiated Response

- ▶ APS has no statutory discretionary ability to investigate suspicious reports that do not meet the criteria of established vulnerability or abuse, neglect or exploitation (A/N/E)
- ▶ APS only has the statutory ability to recommend substantiation for registry placement
 - ▶ The Restorative Justice Program is a new, grant-funded effort to offer alternatives to registry placement, and reduce revictimization and recidivism
- ▶ APS has no case services established under statute
 - ▶ Restorative Justice Case Managers and Service Navigators are new APS limited-service positions made possible by grant funding
- ▶ The “Protective Services” of APS are not defined under statute
 - ▶ Statute refers to a “treatment plan” but this has historically created a lot of confusion and controversy about accountability for services
 - ▶ In most states, APS has more discretionary authority to coordinate with other agencies and call on them to act

Evidentiary Standards

- ▶ APS exists because vulnerable adults may not be able to engage in systems with the same privileges that others enjoy
 - ▶ All A/N/E is a crime, but APS exists to provide an alternative to the high bar of criminal convictions so that vulnerable adults may be served and protected despite their barriers to engaging in the systems
- ▶ The ambiguous notion of a “preponderance of evidence” needed to recommend substantiation has become an increasingly higher bar to clear in recent years
 - ▶ Appeal standards have escalated to criminal law standards, resulting in most appealed recommendations for substantiation being overturned (see *Review and Appeal Rights*)
 - ▶ The challenge in meeting this high bar is further exhausted by high caseloads where an investigator may only have 3 or 4 hours to complete an investigation, rather than the necessary 20 or 25 hours to gather enough evidence to make a recommendation for substantiation
 - ▶ The number of successfully substantiated individuals placed on the Adult Abuse Registry decreased by 51% in SFY21 (55 individuals, down from 113 in SFY20)

Review and Appeal Rights

- ▶ In addition to Victims having no review or appeal rights, alleged perpetrators (APs) benefit from a lax appeal process under the APS statute
 - ▶ Unlike DCF appeals that are heard by an independent body, APS appeals are first heard by its own Commissioner, who is placed in the conflicting position of deciding whether or not to remove a professional caregiver from the workforce
 - ▶ Also unlike DCF appeals, the AP is not placed on the Adult Abuse Registry until all appeal rights have been exhausted
 - ▶ There is no statutory timeframe required for appeals, and the appeal process often stretches on for years, during which time APs can continue to work with vulnerable adults
- ▶ Neither alleged victims, nor APS staff, have a role and do NOT participate in reviews or appeals. Under statute, both the DAIL Commissioner and the Human Services Board only hear from the AP
- ▶ *De novo* and *ex parte* standards imposed on appeal hearings limit evidence and testimony from the victim and the APS staff that conducted the investigation
- ▶ There is no statutory requirement for the AP to participate in an APS investigation, and their failure to participate is not considered in an appeal
 - ▶ Indeed, it is to the AP's benefit, and they are incentivized to NOT participate in an investigation
- ▶ The lack of codified evidentiary standards and an appeal process that favors the AP has resulted in the majority of appealed recommended substantiations being overturned