I. Civil Statute Protecting Dependent Adults and Elders from Neglect or Abuse: Vermont Statutes Annotated (V.S.A.) tit. 33 §§ 6901-6914

A. Conduct

1. Abuse:\(^1\)

(a) Any treatment of a vulnerable adult which places life, health, or welfare in jeopardy or which is likely to result in impairment of health;

(b) Any conduct committed with an intent or reckless disregard that such conduct is likely to cause unnecessary harm, unnecessary pain, or unnecessary suffering to a vulnerable adult;

(c) Unnecessary or unlawful confinement or unnecessary or unlawful restraint of a vulnerable adult;

(d) Any sexual activity with a vulnerable adult by a caregiver who volunteers for or is paid by a caregiving facility or program. This definition shall not apply to a consensual relationship between a vulnerable adult and a spouse, nor to a consensual relationship between a vulnerable adult and a caregiver hired, supervised, and directed by the vulnerable adult;

(e) Intentionally subjecting a vulnerable adult to behavior which should reasonably be expected to result in intimidation, fear, humiliation, degradation, agitation, disorientation, or other forms of serious emotional distress; or

(f) Administration, or threatened administration, of a drug, substance, or preparation to a vulnerable adult for a purpose other than legitimate and lawful medical or therapeutic treatment.

2. Exploitation:\(^2\)

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\(^1\) 33 V.S.A. § 6902(1)

\(^2\) 33 V.S.A § 6902(6)
(a) Willfully using, withholding, transferring, or disposing of funds or property of a vulnerable adult unlawfully for the wrongful profit or advantage of another.

(b) Acquiring possession or control of or an interest in funds or property of a vulnerable adult through the use of undue influence, harassment, duress, or fraud.

(c) The act of forcing or compelling a vulnerable adult against their will to perform services for the profit or advantage of another.

(d) Any sexual activity with a vulnerable adult when the vulnerable adult does not consent or when the actor knows or should know that the vulnerable adult is incapable of resisting or declining consent to the sexual activity due to age, disability, fear of retribution, or hardship.

3. **Neglect.** Purposeful or reckless failure or omission by a caregiver to:

   (a) Provide care necessary to maintain the health or safety of a vulnerable adult;

   (b) Make a reasonable effort to protect a vulnerable adult from abuse, neglect, or exploitation by others;

   (c) Carry out a plan of care for a vulnerable adult when such failure results in or could reasonably be expected to result in physical or psychological harm or a substantial risk of death to the vulnerable adult, unless the caregiver is acting pursuant to the wishes of the vulnerable adult or their representative; or

   (d) Report significant changes in the health status of a vulnerable adult to a physician, nurse, or supervisor.

   (e) Neglect may be repeated conduct or constitute a single incident.

B. **Vulnerable Adult**

1. **Definition:** Any person 18 years or older who:

   (a) Is a resident of a licensed nursing home;

   (b) Is a resident of a psychiatric hospital unit or facility;

   (c) Has been receiving personal care services for more than one month from a home health agency certified by the Vermont department of

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3.33 V.S.A § 6902(7)

4.33 V.S.A § 6902(14)
health or from a person or organization that offers, provides, or
arranges for personal care; or

(d) Regardless of residence or whether any type of service is received,
is impaired due to brain damage, infirmities of aging, or a physical,
mental, or developmental disability.

C. Persons/Entities Excluded From Statute

A person who makes a report in good faith alleging abuse, neglect, or exploitation
of a vulnerable adult is immune from both civil and criminal liability. However,
any person making such a report who is suspected of abusing, neglecting, or
exploiting a vulnerable adult is not entitled to civil or criminal immunity.5

D. Reporting Requirement for Litigation to State

A report must be made orally or in writing to the commissioner of disabilities,
aging, and independent living no later than 48 hours after the discovery of abuse.
If made orally, it must be followed by a written report within one week. A report
must contain the contact information of the reporter, the vulnerable person, and, if
known, the person responsible for their care. Furthermore, a report must contain,
if available, the vulnerable adults name, the nature of their disability, the nature
of the abuse, any evidence of abuse, as well as any information that may be helpful.
If such abuse is caused by anyone from the department of disabilities, aging, and
independent living, then the reports should instead be sent to the secretary of the
agency of human services.6

E. Preclusion of Arbitration

Voluntary arbitration is preclusive when the parties “were afforded full and fair
opportunity to litigate”. Agway, Inc. vs. Gray, 167 Vt. 313, 317 (Vt. 1997). This
opportunity is characterized by the ability to present evidence and progress
through arbitration much in the way of typical judicial proceedings. Id.

F. Relation to Medical Malpractice Actions

33 V.S.A § 6902(1)(D) specifically protects vulnerable adults from sexual
exploitation by caregivers. Caregivers include anybody providing medical care to
a vulnerable adult. Id., § 6902(2). If sexual abuse claims against medical
practitioners are not covered by their malpractice insurance policy, the victim of
such conduct may not recover damages from the insurance agency. ProSelect Ins.
Co. v. Levy, 190 Vt. 632, 635 (Vt. 2011) (Finding that a vulnerable adult’s
allegations of malpractice and sexual abuse by a psychiatrist were not covered
under the express terms of the malpractice insurance contract).

G. Criminal Provision

5 33 V.S.A. § 6908
6 33 V.S.A. § 6904
1. **Abuse**

(a) A person who engages in conduct intentionally or recklessly that is likely to result in unnecessary harm to a vulnerable adult will be imprisoned not more than one year and/or fined not more than $1,000.

(b) A person who commits an assault with actual or constructive knowledge that the victim is a vulnerable adult shall be imprisoned for not more than two years, or fined not more than $2,000, or both.

(c) A person who commits an aggravated assault with actual or constructive knowledge that the victim is a vulnerable adult shall be imprisoned up to 20 years, or fined not more than $10,000, or both.

2. **Abuse by Unlawful Restraint and Unlawful Confinement**

(a) A person shall not knowingly or recklessly cause or threaten to unlawfully confine or restrain a vulnerable person. Furthermore, they shall not threaten or actually unlawfully administer a drug or electroconvulsive therapy to a vulnerable adult. This does not apply to legitimate and lawful medical procedures necessary for the best interests of the vulnerable adult.

(b) Any person who violates part (a) shall:

(i) Be imprisoned for up to two years, or fined not more than $10,000, or both.

(ii) Be imprisoned up to three years, or fined not more than $10,000, or both, when the violation results in bodily injury.

(iii) In the event of serious bodily injury resulting from the violation, be imprisoned up to 15 years, or fined not more than $10,000, or both.

3. **Neglect**

(a) A caregiver who intentionally or recklessly neglects a vulnerable adult shall be imprisoned up to 18 months, or fined not more than $10,000, or both.

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7 13 V.S.A. § 1376
8 13 V.S.A. § 1377
9 13 V.S.A. § 1378
(b) A caregiver who violates (a), and as a result causes serious bodily injury to the vulnerable adult, shall be imprisoned up to 15 years, or fined not more than $10,000, or both.

4. Sexual Abuse\(^\text{10}\)

(a) A person who volunteers for or is paid by a caregiving facility or program shall not engage in any sexual activity with a vulnerable adult. A person in violation of this shall receive imprisonment for up to two years, or fined not more than $10,000, or both.

(b) No person regardless of having knowledge of the vulnerable status of the person shall engage in sexual activity with the vulnerable adult without the consent of the vulnerable adult, or if the person knows or has reason to know that the vulnerable adult is incapable of consenting to the sexual activity due to their vulnerability.

(i) Any person in violation of this will be imprisoned for not more than five years, or fined not more than $10,000, or both, if the sexual activity involved lewd and lascivious conduct.

(ii) Any person in violation of (b) due to sexual activity that is a sexual act shall receive up to 20 years imprisonment, or fined not more than $10,000, or both.

(iii) A caregiver in violation of (b) for lewd and lascivious conduct shall receive no more than seven years imprisonment, or a fine of no more than $10,000, or both. For a sexual act, the caregiver shall be imprisoned up to 25 years, or fined no more than $10,000, or both.

5. Financial Exploitation\(^\text{11}\)

(a) No person shall willfully use, withhold, transfer, or dispose of funds or property of a vulnerable adult for wrongful profit or advantage.

(b) No person shall willfully acquire possession, control of, or an interest in the funds or property of a vulnerable adult through undue influence, harassment, duress, or fraud.

(c) Any person who exploits assets valued $500 or less shall be imprisoned up to 18 months, or fined not more than $10,000, or both. In the event of exploitation of an amount worth over $500, the person shall be imprisoned for up to 10 years, or fined not more than $10,000, or both.

\(^{10}\) 13 V.S.A. § 1379

\(^{11}\) 13 V.S.A. § 1380
6. **Exploitation of Services**\(^{12}\)

(a) Any person who willfully forces or compels a vulnerable adult against his or her will to perform services for the profit or advantage of another shall be imprisoned not more than two years, or fined not more than $10,000, or both.

7. **Interplay With Civil Statute**

The attorney general may bring suit for damages on behalf of the state against the person who abused, unlawfully restrained, neglected, financially exploited, or exploited the services of a vulnerable person. The defendant has a right to trial by jury. Furthermore, a mere good faith report of the alleged abuse does not qualify as sufficient evidence of acting in reckless disregard.\(^{13}\)

H. **Statute of Limitations:** Six years — 12 V.S.A § 511


J. **Can Regulations Establish Standard of Care?**

Yes. In Vermont, regulations are admissible into evidence to establish the relevant standard of conduct that a person should have engaged in. *Ball v. Melsur Corp*, 161 Vt. 35, 43 (1993).

II. **DAMAGES**

A. **Damages Available**

1. Actual Damages
2. Special Damages
3. Punitive Damages
4. Injunctive Relief
5. Costs of Suit

B. **Does Pain and Suffering of Decedent Survive Death**

Yes. In an action to recover damages for bodily hurt or injury, if either party dies during litigation, the action will survive to reach final judgment. 14 V.S.A. § 1452.

C. **Attorney’s Fees Available:**

\(^{12}\) 13 V.S.A. § 1381

\(^{13}\) 13 V.S.A. § 1384
Yes. Vermont typically adheres to the “American Rule” for attorney’s fees, but it does award such fees when allowed for by statute. *Perez v. Travelers Ins. ex rel. Ames Dep’t Stores, Inc.*, 2006 VT 123, 181 Vt. 45, 50, 915 A.2d 750, 754 (2006). For cases involving vulnerable persons specifically, Vermont awarded attorney’s fees in the case of *Howard v. Dep’t of Soc. Welfare*, 163 Vt. 109 (1994) because the claim was brought under the Americans with Disabilities Act. *Id.* at 122-23.

D. Limitations on Damages

A vulnerable adult’s ability to recover damages against an insurance company under a medical practitioners malpractice insurance policy is limited by the express wording of the contract. *ProSelect Ins. Co. v. Levy*, 190 Vt. 632, 635 (Vt. 2011).

III. LEGISLATION AFFECTING STATUTE

A. Pending:

1. 2013 Bill Text VT H.B. 373

2. 2013 Bill Text VT S.B. 27

B. Anticipated: None.