

**From:** Barkus, Paul  
**Sent:** Wednesday, June 1, 2022 2:13 PM  
**To:** Duffort, Lola <[lduffort@vtdigger.org](mailto:lduffort@vtdigger.org)>  
**Subject:** Public Records Request / Molly Gray

Lola Duffort  
VTDigger.org  
Politics Reporter  
[lduffort@vtdigger.org](mailto:lduffort@vtdigger.org)

**RE: Public Records Request – Molly R. Gray**

Dear Ms. Duffort,

Please find the following in response to your public records request in the above-captioned matter.

1. Documents provided to Seven Days in response to their request filed with the Attorney General's Office on May 9, 2022. See <https://ago.vermont.gov/wp-content/uploads/2022/05/2022-05-20-London-response-to-Edgar-w-docs.pdf>
2. Any complaints and answers to complaints, as well as Informations or Motions to Dismiss signed or drafted by Molly Gray during her time at the Attorney General's Office. See *attached Memorandum in Support and State's Motion in Support of Second Spring's Motion to Quash*
3. Any memoranda or motions filed with a court or regulatory agency by Molly Gray during her time at the Attorney General's Office. See *attached Memorandum in Support and State's Motion in Support of Second Spring's Motion to Quash*
4. A list of all cases to which Molly Gray was assigned during her time at the Attorney General's Office. See *attached Final List of Cases Assigned*
5. Any drafts produced by Molly Gray are work product and not included in response to requests herein numbered 2 and 3, pursuant to 1 V.S.A. § 317(b)(4).

Should you believe that the requested information has been withheld in error, you may appeal that decision in writing to Deputy Attorney General, Joshua Diamond and addressed as follows:

Joshua Diamond, Esq.  
Deputy Attorney General  
Office of the Attorney General  
109 State Street  
Montpelier, VT 05609

Should you have any questions regarding this matter, please contact me.

Sincerely,

/s/ Paul A. Barkus

Paul A. Barkus  
Assistant Attorney General  
Criminal Division  
Office of the Attorney General of Vermont  
(802) 828-6907  
[paul.barkus@vermont.gov](mailto:paul.barkus@vermont.gov)

STATE OF VERMONT  
SUPERIOR COURT CRIMINAL DIVISION

Superior Court  
Orange County

Docket No.: 150-4-10 Oecr

STATE OF VERMONT

v.

Adam COOLEY

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**RESPONSE IN OPPOSITION TO DEFENDANT'S MOTION TO DIMISS**

NOW COMES the State of Vermont, by and through its Assistant Attorney General Molly Gray, and respectfully moves this Honorable Court to deny Defendant, Adam Cooley's, motion to dismiss. Defendant continues to pursue through a constitutional challenge, access to victim, J.S',, privileged medical health records in an effort to redefine 13 V.S.A. §1379(a) Vermont's Sexual Abuse of a Vulnerable Adult law to include an element that does not exist: "consent". Cooley Motion to Dismiss at 2. Further, Defendant now argues that J.S. "is not, in actual fact, a vulnerable adult, but instead has been swept up by an overbroad law" because of a plausible capacity to consent to sexual activity. Id. at 2.

Defendant has no constitutionally protected right under either the Vermont or U.S. Constitution to sexual activity with a patient of a licensed caregiving facility

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particularly where Defendant is an employee of the caregiving facility and a care provider. Further, Vermont's law is not overbroad because it does not violate Defendant's right to sexual activity in his private life. The arguments follow:

**I. Defendant's constitutional arguments are without merit because Defendant cannot assert deprivation of a constitutional right.**

Defendant fails to establish a violation of a constitutional right under the Vermont or U.S. Constitution.

a. There is no constitutional right to sexual activity with a "vulnerable adult" under Vermont's Common Benefits Clause

Defendant suggests that there is a fundamental constitutional right under the Vermont Constitution to sexual activity with an individual in a licensed residential facility. Cooley Motion to Dismiss at 3. Defendant's argument fails both under a Common Benefits Clause analysis or a separate "compelling interest" analysis.

The Common Benefits Clause of the Vermont Constitution provides that "government is, or ought to be, instituted for the common benefit, protection, and security of the people, nation, or community, and not for the particular emolument or advantage of any single person, family, or set of persons, who are a part only of that community." Vt. Const. ch. I, art. 7. The Vermont Supreme Court has rejected the rigid multi-tiered analytical framework federal courts apply to the analogous Equal Protection Clause, in favor of the more "inclusionary principle" at the core of the Common Benefits Clause. Baker v. State, 170 Vt. 194, 212, (1999).

In determining whether a law violates Vermont's Common Benefits Clause, the Vermont Supreme Court considers the following: (1) the "part of the community

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disadvantaged by the law, (2) the statutory basis that distinguishes those protected by the law and those excluded from protection, (3) the State's purpose in drawing a classification, and (4) the nature of the classification and whether it is "reasonably necessary" to accomplish the State's proffered objectives. Baker v. State, 170 Vt. 194, 213-15 (1999). Ultimately, a court must determine "whether the omission of a part of the community from the benefit, protection and security of the challenged law bears a reasonable and just relation to the governmental purpose." Id.

*First*, the "part of the community" that Defendant suggests is disadvantaged are individuals who work in and are hired by licensed caregiving facilities in Vermont.

*Second*, the statutory basis for the distinction is set forth in 13 V.S.A § 1379(a), Vermont's sexual abuse of a vulnerable adult law. Defendant is charged with violating that law, which provides that "[a] person who volunteers or is paid by a caregiving facility or program shall not engage in any sexual activity with a vulnerable adult."

*Third*, the purpose of Vermont's vulnerable adult laws is not to exclude Defendant from engaging in sexual activity in his private life, but rather to ensure that vulnerable adults are safe and protected from exploitation and abuse in licensed Vermont caregiving facilities. See State v. Breed, 198 Vt. 574, 587 (2015). In reviewing the State's vulnerable adult laws in 2005, the Legislature stated that "vulnerable adults are one of the most abused segments of our population." State v. Breed, 198 Vt. 574, 588 (2015). The Legislature further explained that the purpose of laws criminalizing exploitation and abuse "was not only to enhance the ability to prosecute persons under criminal law who abuse vulnerable adults but also to focus attention on the crucial role that

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prevention and training services can play to intervene at an early stage and ensure that vulnerable adults are not abused at all.” Id. Indeed, the Legislature established a separate charge and penalty to deter individuals hired by licensed facilities from engaging in sexual activity with vulnerable adults. Vermont’s sexual abuse of a vulnerable adult law, comes with:

a maximum penalty of two years in jail or a fine of \$10,000 or both. This section is arguably the most important part of this statute, as it criminalizes conduct that would otherwise be lawful, providing protections for vulnerable adults that are not available to them through any other criminal statute.

See Id at 589 (explaining 13 V.S.A § 1379(a), and its penalties). Vermont is not alone in protecting vulnerable adults. Ten other States recognize abuse against vulnerable adults as criminal conduct. Determination of Who is “Vulnerable Adult” Entitled to Protection Under Adult Protection Acts, 19 A.L.R.7th Art. 2, §2 (2016) (explaining how Arizona, Florida, Idaho, Michigan, Minnesota, Nebraska, Pennsylvania, South Carolina, Washington, and Wyoming determine their protected population under vulnerable adult statutes).

*Finally*, the “nature of [the] classification . . . is reasonably necessary to accomplish the State’s claimed objectives.” Baker, at 213–14. The challenged statute protects vulnerable adults from being sexually exploited by the very individuals who are entrusted with their care. It contains a carveout for sexual activity, in certain circumstances (e.g. a marital relationship), where a caregiver is “hired, supervised, and directed by the vulnerable adult.” See 13 V.S.A § 1379(a).

Here, Defendant was hired as Recovery Support Specialist at Second Spring, a licensed Level III Residential Treatment Facility for persons suffering from mental

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health and substance abuse disorders. State of Vermont, Information by Attorney General, at 1. The victim, J.S., had a history of serious mental health and substance abuse issues and was admitted after suffering a mental health breakdown. Id. at 2. Preventing employees, particularly those directly responsible for the treatment of patients, of licensed caregiving facilities from engaging in sexual activity with vulnerable adults entrusted with their care is reasonably necessary to Vermont's interest in ensuring vulnerable adults are not subject to exploitation or abuse. See State v. Breed, 198 Vt. 574, 587 (2015).

b. There is no fundamental right to sexual activity with a "vulnerable adult" under the Vermont Constitution

Defendant's claim that Vermont's law is overbroad also fails under the "compelling government interest" analysis asserted by Defendant. Cooley Motion to Dismiss at 3. As suggested by Defendant, in Brigham v. State, 166 Vt. 246, 265 (1997) the Court noted, "where a statutory scheme affects fundamental constitutional rights or involves suspect classifications, both federal and state decisions have recognized that proper equal protection analysis necessitates a more searching scrutiny; the State must demonstrate that any discrimination occasioned by the law serves a compelling governmental interest, and is narrowly tailored to serve that objective (emphasis added)). Even assuming this analysis (and not a due process clause analysis) applies to Defendant's alleged fundamental right to sexual activity in this case, Defendant's argument fails. As set out above, the State has a compelling interest in preventing employees, particularly those employees responsible for the treatment of patients, of licensed Vermont facilities from engaging in sexual activity with those entrusted with

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their safe treatment. Moreover, the law is narrowly tailored as it includes a carveout for sexual activity, where a caregiver is "hired, supervised, and directed by the vulnerable adult." See 13 V.S.A § 1379(a). For these reasons, a suggestion that Vermont's law is over broad as applied to Defendant is also without merit.

c. There is no constitutional right to sexual activity with a "vulnerable adult" under the U.S. Constitution

Defendant further contends that U.S. Supreme Court precedent precludes the State of Vermont from prohibiting such a relationship. See Cooley Motion to Dismiss at 4 (citing to Lawrence v. Texas, 539 U.S. 558 (2003)). Defendant is mistaken. Unlike the statute at issue in Lawrence v. Texas, Vermont's law is not premised on morality, but rather on public safety and the protection of vulnerable adults from exploitation and abuse. Vermont's law is not overbroad because it places no restriction on Defendant's sexual conduct in other instances or in the privacy of his home. In this case, Defendant was an employee of Second Spring where, but for his employment, he would not have encountered J.S.. Defendant was hired by Second Spring as a caregiver to support the safe treatment and rehabilitation of vulnerable adults receiving care in a licensed Vermont facility, not to initiate a sexual relationship with them. The State has an important and overriding public interest in ensuring vulnerable adults are safe and protected from exploitation and abuse.

**CONCLUSION**

For all the reasons stated, the State asks that this honorable Court deny Defendants motion to dismiss and find Defendant's constitutional arguments meritless.

VERMONT SUPERIOR COURT

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Dated: January 2, 2020

STATE OF VERMONT

THOMAS J. DONOVAN  
ATTORNEY GENERAL

By: Molly R. Gray  
MOLLY R. GRAY  
Assistant Attorney General

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STATE OF VERMONT

SUPERIOR COURT  
ORANGE COUNTY

CRIMINAL DIVISION  
Docket No. I50-4-19 Oocr

STATE OF VERMONT

v.

ADAM COOLEY

NOTICE OF APPEARANCE AS CO-COUNSEL

NOW COMES Molly R. Gray, Assistant Attorney General, and hereby enters her appearance as co-counsel on behalf of the State of Vermont, in the above-entitled matter, and respectfully requests that copies of all further notices and filings in this action be served upon her at 109 State Street, Montpelier, VT 05609-1001.

Dated at Montpelier, Vermont this 16<sup>th</sup> day of May, 2019.

Respectfully submitted,

STATE OF VERMONT

THOMAS J. DONOVAN, JR.  
ATTORNEY GENERAL

By: Molly R. Gray  
Molly R. Gray  
Assistant Attorney General

cc: Michael Shane, Esq.

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STATE OF VERMONT

SUPERIOR COURT  
Orange County

CRIMINAL DIVISION  
Docket No.: 150-4-10 Oecr

STATE OF VERMONT

v.

ADAM COOLEY

**MOTION IN SUPPORT OF SECOND SPRING VERMONT'S MOTION TO QUASH**

NOW COMES the State of Vermont, through its Attorney General, and respectively requests the Court to issue an order quashing the subpoena served by the defense upon Second Spring Vermont. The State agrees with Second Spring Vermont's legal analysis that defendant is not entitled to certain private and privileged records pertaining to the victim, J.S. and J.S. did not waive the patient privilege. Further, the State is not in possession of any of the victim's mental health or medical records.

Dated: August 22, 2019

STATE OF VERMONT

THOMAS J. DONOVAN  
ATTORNEY GENERAL

By:   
MOLLY R. GRAY  
Assistant Attorney General

Michael K. Shane, Esq.  
Richard Windish, Esq.

# List of Cases Assigned to Molly

## Co-Counsel in Washington County State's Attorney's Office Prosecutions:

1. Misty Dunster
2. Brian Blanchard, Jr.
3. Crystal Franklin
4. Shawn Monley

## AGO Prosecution Review:

1. Home Improvement Fraud
2. Bennington Police Sgt. Jason Burnham and Vermont State Trooper Thomas Sandberg
3. Orleans County Sheriff's Deputy Misconduct
4. Vermont State Police Trooper Ray Witkowski
5. St. Alban's Police Officer Jason Lawton
6. St. Joseph's Orphanage
7. Rutland City Police Officer Adam Lucia
8. St. Alban's Police Officer Joel Daugreilh
9. Berlin Police Officer John Helfant

## AGO Charged Prosecution:

1. David Donaldson
2. Aita Gurung
3. Adam Cooley

## Appeals:

1. Edwin Towne