

Bill as
Introduced

HB 1807-FN - AS INTRODUCED

2018 SESSION

18-2452
01/10

HOUSE BILL ***1807-FN***

AN ACT relative to exploitation of elderly, disabled, or impaired adults and establishing a protective order for vulnerable adults.

SPONSORS: Rep. Cushing, Rock. 21; Rep. Baldasaro, Rock. 5; Rep. McMahon, Rock. 7; Rep. Wallner, Merr. 10; Rep. LeBrun, Hills. 32; Rep. Heath, Hills. 14; Rep. Campion, Graf. 12; Rep. P. Long, Hills. 10; Rep. Messmer, Rock. 24; Sen. Carson, Dist 14; Sen. Fuller Clark, Dist 21; Sen. Hennessey, Dist 5

COMMITTEE: Health, Human Services and Elderly Affairs

ANALYSIS

This bill clarifies the law relating to financial exploitation of elderly, disabled, or impaired adults.

This bill also establishes a procedure for protective orders for vulnerable adults.

Explanation: Matter added to current law appears in ***bold italics***.
Matter removed from current law appears [~~in brackets and struckthrough~~].
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Eighteen

AN ACT relative to exploitation of elderly, disabled, or impaired adults and establishing a protective order for vulnerable adults.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 1 Financial Exploitation of Elderly, Disabled, or Impaired Adults. Amend the introductory
2 paragraph of RSA 631:9, I(b) to read as follows:

3 (b) In the absence of legal authority a person knowingly or recklessly through the use of
4 undue influence, harassment, duress, force, compulsion, [or] coercion, *or under any*
5 *circumstances where the person knew or had reason to know that the elderly, disabled, or*
6 *impaired adult lacked capacity to consent:*

7 2 New Chapter; Protective Orders for Vulnerable Adults. Amend RSA by inserting after
8 chapter 173-C the following new chapter:

9 CHAPTER 173-D

10 PROTECTIVE ORDERS FOR VULNERABLE ADULTS

11 173-D:1 Purpose. The purpose of this chapter is to enable vulnerable adults, to seek permanent
12 and temporary relief from abuse, exploitation and neglect.

13 173-D:2 Definitions. In this chapter:

14 I. "Abuse" means any one of the following:

15 (a) "Emotional abuse" means the misuse of power, authority, or both, verbal
16 harassment, or unreasonable confinement which results or could result in the mental anguish or
17 emotional distress of a vulnerable adult.

18 (b) "Physical abuse" means the use of physical force which results or could result in
19 physical injury to a vulnerable adult.

20 (c) "Sexual abuse" means contact or interaction of a sexual nature involving a
21 vulnerable adult without his or her informed consent.

22 (d) "Other abuse" means any of the following:

23 (1) Assault or reckless conduct as defined in RSA 631:1 through RSA 631:3.

24 (2) Criminal threatening as defined in RSA 631:4.

25 (3) Sexual assault as defined in RSA 632-A:2 through RSA 632-A:5.

26 (4) Interference with freedom as defined in RSA 633:1 through RSA 633:3-a.

27 (5) Destruction of property as defined in RSA 634:1 and RSA 634:2.

28 (6) Unauthorized entry as defined in RSA 635:1 and RSA 635:2.

29 (7) Harassment as defined in RSA 644:4.

30 (8) Cruelty to animals as defined in RSA 644:8.

1 II. "Authorized" means written consent provided by the vulnerable adult.

2 III. "Contact" means any action to communicate with another either directly or indirectly,
3 including, but not limited to, using any form of electronic communication, leaving items, or causing
4 another to communicate in such fashion.

5 IV. "Defendant" mean the person against whom the protective orders are sought and, if the
6 petition is granted, the restrained person.

7 V. "Department" means the department of health and human services.

8 VI. "Exploitation" means the improper use of a vulnerable adult's person or property for
9 another person's profit or advantage, or the breach of a fiduciary relationship through the use of a
10 person or a person's property for any purpose not in the proper and lawful execution of a trust,
11 including, but not limited to, situations where a person obtains money, property, or services from a
12 vulnerable adult through the use of undue influence, harassment, duress, deception, fraud or under
13 any circumstances where the person knew or had reason to know that the vulnerable adult lacked
14 capacity to consent.

15 VII. "Foreign protective order" means an order enforceable under RSA 173-D:14.

16 VIII. "Neglect" means an act or omission which results or could result in the deprivation of
17 essential services or supports necessary to maintain the minimum mental, emotional, or physical
18 health and safety of a vulnerable adult.

19 IX. "Plaintiff" means the vulnerable adult to be protected by the protective orders and, if
20 the court grants the petition, the protected person.

21 X. "Vulnerable" means that the physical, mental, or emotional ability of a person is such
22 that he or she is unable to manage personal, home, or financial affairs in his or her own best
23 interest, or he or she is unable to act or unable to delegate responsibility to a responsible caretaker
24 or caregiver.

25 173-D:3 Jurisdiction and Venue.

26 I. The district division and the judicial branch family division of the circuit courts shall
27 have concurrent jurisdiction over all proceedings under this chapter.

28 II. If the plaintiff has left the household or premises to avoid further abuse, the plaintiff
29 shall have the option to commence proceedings pursuant to RSA 173-D:4 in the county or district
30 where the plaintiff temporarily resides.

31 III. Proceedings under this chapter may be transferred to another court upon the motion of
32 any party or of the court as the interests of justice or the convenience of the parties may require.

33 173-D:4 Commencement of Proceedings; Hearing.

34 I. A vulnerable adult, guardian or attorney-in-fact of a vulnerable adult, or if authorized by
35 the vulnerable adult, the department, may seek relief pursuant to RSA 173-D:6 by filing a petition,
36 in the county or district where the plaintiff or defendant resides, alleging abuse, exploitation or
37 neglect by the defendant. Any person filing a petition containing false allegations of abuse shall be
38 subject to criminal penalties. Notice of the pendency of the action and of the facts alleged against

1 the defendant shall be given to the defendant, either personally or as provided in paragraph II. The
 2 plaintiff shall be permitted to supplement or amend the petition only if the defendant is provided an
 3 opportunity prior to the hearing to respond to the supplemental or amended petition. All petitions
 4 filed under this section shall include the home and work telephone numbers of the defendant, if
 5 known. Notice of the whereabouts of the plaintiff shall not be revealed except by order of the court
 6 for good cause shown. Any answer by the defendant shall be filed with the court and a copy shall be
 7 provided to the plaintiff by the court.

8 II. No filing fee or fee for service of process shall be charged for a petition or response under
 9 this section, and the plaintiff or defendant may proceed without legal counsel. Either a peace officer
 10 or the sheriff's department shall serve process under this section. Any proceeding under this
 11 chapter shall not preclude any other available civil or criminal remedy.

12 III. The clerks of the circuit courts shall supply forms for petitions and for relief under this
 13 chapter designed to facilitate pro se proceedings. All such petitions shall contain the following
 14 words: I swear that the foregoing information is true and correct to the best of my knowledge. I
 15 understand that making a false statement on this petition will subject me to criminal penalties.

16 IV. The findings of facts shall be final, but questions of law may be transferred from the
 17 circuit court to the supreme court.

18 V.(a) The court shall hold a hearing within 30 days of the filing of a petition under this
 19 section or within 10 days of service of process upon the defendant, whichever occurs later.

20 (b) The time frame established in this paragraph may be extended for an additional 10
 21 days upon motion by either party for good cause shown. A recusal by the judge or any act of God or
 22 closing of the court that interferes with the originally scheduled hearing shall not be cause for the
 23 dismissal of the petition. The court shall reschedule any hearing under this section in an
 24 expeditious manner.

25 VI. In any proceeding under this chapter, the court shall not be bound by the technical
 26 rules of evidence and may admit evidence which it considers relevant and material.

27 VII. In a proceeding under this chapter, a support person may accompany a party in court
 28 and, if the party is not represented by an attorney, may sit with the party at the table that is
 29 generally reserved for the party and the party's attorney. The support person is present to provide
 30 moral and emotional support for a person who alleges he or she is a victim of abuse. The support
 31 person is not present as a legal adviser and may not provide legal advice. The support person may
 32 assist the person who alleges he or she is a victim of abuse in feeling more confident that he or she
 33 will not be injured or threatened by the other party during the proceedings if the person who
 34 alleges he or she is a victim of abuse and the other party are required to be present in close
 35 proximity. This section does not preclude the court from exercising its discretion to remove the
 36 support person from the courtroom if the court believes the support person is prompting, swaying,
 37 or influencing the party assisted by the support person.

1 I. Upon a showing of an immediate and present danger of abuse, exploitation or neglect, the
 2 court may enter temporary orders to protect the plaintiff with or without actual notice to defendant.
 3 The court may issue such temporary orders by telephone, facsimile or any other methods approved
 4 by court rules. Such telephonically issued orders shall be made by a circuit court judge to a law
 5 enforcement officer, shall be valid in any jurisdiction in the state, and shall be effective until the
 6 close of the next regular court business day. Such orders shall be returnable to the circuit court
 7 where the plaintiff resides or to which the plaintiff has fled, unless otherwise ordered by the issuing
 8 judge. If non-telephonic temporary orders are made ex parte, the party against whom such relief is
 9 issued may file a written request with the clerk of the court and request a hearing on such orders.
 10 Such hearing shall be held no less than 3 business days and no more than 5 business days after the
 11 request is received by the clerk. Such hearings may constitute the final hearing described in RSA
 12 173-D:4, V. Such temporary relief may direct the defendant to relinquish to a peace officer any and
 13 all firearms and ammunition in the control, ownership, or possession of the defendant, or any other
 14 person on behalf of the defendant for the duration of the protective order. Other temporary relief
 15 may include:

16 (a) Protective orders:

- 17 (1) Restraining the defendant from abusing, exploiting or neglecting the plaintiff.
 18 (2) Restraining the defendant from entering the premises and curtilage where the
 19 plaintiff resides, except when the defendant is accompanied by a peace officer and, upon reasonable
 20 notice to the plaintiff, is allowed entry by the plaintiff for the sole purpose of retrieving toiletries,
 21 medication, clothing, business equipment, and any other items as determined by the court.
 22 (3) Restraining the defendant from withholding items of the plaintiff's personal
 23 property which are specified in the order. A peace officer shall accompany the plaintiff or his/her
 24 representative in retrieving such property to protect the plaintiff.
 25 (4) Restraining the defendant from contacting the plaintiff or entering a specified
 26 place frequented regularly by the plaintiff.
 27 (5) Directing the defendant to relinquish to the peace officer, in addition to the relief
 28 specified under this paragraph, any and all deadly weapons specified in the protective order that
 29 are in the control, ownership, or possession of the defendant, or any other person on behalf of the
 30 defendant.
 31 (6) Restraining the defendant from abusing the plaintiff, plaintiff's relatives,
 32 regardless of their place of residence, or plaintiff's household members in any way.
 33 (7) Restraining the defendant from taking, converting, or damaging property in
 34 which the plaintiff may have a legal or equitable interest.
 35 (8) Granting the plaintiff exclusive care, custody, or control of any animal owned,
 36 possessed, leased, kept, or held by the plaintiff or defendant in either household, and ordering the
 37 defendant to stay away from the animal and forbidding the defendant from taking, transferring,
 38 encumbering, concealing, committing an act of cruelty or neglect, or disposing of the animal.

1 (b) Other relief, including but not limited to:

2 (1) In the case of financial exploitation, prohibiting the defendant from transferring
3 or otherwise encumbering any of his or her assets other than for necessary household expenses,
4 provided, however, that such prohibition shall not extend to, encumber, or otherwise limit the
5 rights of creditors, mortgagees, or secured parties in such property.

6 (2) Restraining the defendant from taking any action which would lead to the
7 disconnection of any and all utilities and services to the parties' household, or the discontinuance of
8 existing business or service contracts, including, but not limited to, mortgage or rental agreements.

9 (3) An order enjoining a party from specified behavior that the court determines is
10 necessary to protect the vulnerable adult.

11 173-D:6 Relief.

12 I. A finding of abuse, exploitation, or neglect shall mean the defendant represents a credible
13 threat to the safety of the plaintiff or physical, mental, or financial well-being. Upon a showing of
14 abuse, exploitation, or neglect of the plaintiff by a preponderance of the evidence, the court shall
15 grant such relief as is necessary to bring about a cessation of abuse, exploitation, or neglect. Such
16 relief shall direct the defendant to relinquish to the peace officer any and all firearms and
17 ammunition in the control, ownership, or possession of the defendant, or any other person on behalf
18 of the defendant for the duration of the protective order. Other relief may include:

19 (a) Protective orders:

20 (1) Restraining the defendant from abusing, exploiting or neglecting the plaintiff.

21 (2) Restraining the defendant from entering the premises and curtilage where the
22 plaintiff resides, except when the defendant is accompanied by a peace officer and is allowed entry
23 by the plaintiff for the sole purpose of retrieving personal property specified by the court.

24 (3) Restraining the defendant from contacting the plaintiff or entering the plaintiff's
25 place of employment, school, or any specified place frequented regularly by the plaintiff or by any
26 family or household member.

27 (4) Restraining the defendant from abusing the plaintiff, plaintiff's relatives,
28 regardless of their place of residence, or plaintiff's household members in any way.

29 (5) Restraining the defendant from taking, converting, or damaging property in
30 which the plaintiff may have a legal or equitable interest.

31 (6) Directing the defendant to relinquish to the peace officer, in addition to the relief
32 specified under this paragraph, any and all deadly weapons specified in the protective order that
33 are in the control, ownership, or possession of the defendant, or any other person on behalf of the
34 defendant.

35 (7) Granting the plaintiff exclusive care, custody, or control of any animal owned,
36 possessed, leased, kept, or held by the plaintiff or defendant in either household, and ordering the
37 defendant to stay away from the animal and forbidding the defendant from taking, transferring,
38 encumbering, concealing, committing an act of cruelty or neglect, or disposing of the animal.

1 (b) Other relief including, but not limited to:

2 (1) Granting the plaintiff the exclusive use and possession of the premises and
3 curtilage of the plaintiff's place of residence, unless the defendant exclusively owns or leases and
4 pays for the premises and the defendant has no legal duty to support the plaintiff and provided,
5 however, that such relief shall not extend to, extinguish, encumber, or otherwise limit the
6 rights of creditors, mortgagees, or secured parties in such property.

7 (2) Restraining the defendant from withholding items of the plaintiff's personal
8 property specified by the court. A peace officer shall accompany the plaintiff in retrieving such
9 property to protect the plaintiff.

10 (3) Granting to the plaintiff the exclusive right of use and possession of the
11 household furniture, furnishings, or a specific automobile, unless the defendant exclusively owns
12 such personal property and the defendant has no legal duty to support the plaintiff.

13 (4) Ordering the defendant to make automobile, insurance, health care, utilities,
14 rent, or mortgage payments.

15 (5) Ordering the defendant to pay the plaintiff monetary compensation for losses
16 suffered as a direct result of the abuse, exploitation or neglect which may include, but not be limited
17 to, misappropriated funds, loss of earnings or support, medical and dental expenses, damage to
18 property, out-of-pocket losses for injuries sustained, and moving and shelter expenses.

19 (6) Ordering the defendant to pay reasonable attorney's fees.

20 II. The defendant shall be prohibited from purchasing, receiving, or possessing any deadly
21 weapons and any and all firearms and ammunition for the duration of the order. The court may
22 subsequently issue a search warrant authorizing a peace officer to seize any deadly weapons
23 specified in the protective order and any and all firearms and ammunition, if there is probable
24 cause to believe such firearms and ammunition and specified deadly weapons are kept on the
25 premises or curtilage of the defendant.

26 III. The court shall not deny the plaintiff protective orders based solely on a lapse of time
27 between an act of abuse, exploitation or neglect and the filing of a petition, provided that the
28 underlying act presents a credible threat to the plaintiff's current safety or physical, mental, or
29 financial well-being.

30 IV. No order made under this section shall supersede or affect any court order pertaining to
31 the possession of a residence or household furniture as determined by a circuit court, or title to real
32 or personal property.

33 V. Any order under this section shall be for a fixed period of time not to exceed one year,
34 but may be extended by order of the court upon a motion by the plaintiff, showing good cause, with
35 notice to the defendant, for one year after the expiration of the first order and thereafter each
36 extension may be for up to 5 years, upon the request of the plaintiff and at the discretion of the
37 court. The court shall review the order and each renewal thereof and shall grant such relief as may
38 be necessary to provide for the safety and well-being of the plaintiff. A defendant shall have the

1 right to a hearing on the extension of any order under this paragraph to be held within 30 days of
2 the extension. The court shall state in writing, at the respondent's request, its reason or reasons for
3 granting the extension. The court shall retain jurisdiction to enforce and collect any financial
4 compensation due to the plaintiff which accrued prior to the expiration of the protective order.

5 VI. Both parties shall be issued written copies of any orders issued by the court, and all
6 orders shall bear the following language: "A willful violation of this order is a crime, as well as
7 contempt of court. Violations of the protective provisions shall result in arrest and may result in
8 imprisonment." Orders shall clearly state how any party can request a further hearing and how the
9 plaintiff may bring a criminal complaint or a petition for contempt if there is a violation of any court
10 order.

11 VII.(a) No order issued under this chapter shall be modified other than by the court.

12 (b) If either party wishes the defendant to be excused from any provisions of an order of
13 protection, the remedy is to petition the court for modification of such order.

14 (c) A defendant who is restrained from contacting the plaintiff or entering the premises
15 of the plaintiff is prohibited from doing so even if invited by the plaintiff unless the restraining
16 order has been modified by the court.

17 (d) This paragraph shall give unequivocal direction to peace officers that orders for
18 protection are to be enforced as written and that no action by a party relieves them of the duty to
19 enforce the order.

20 VIII. Upon issuing an order against a defendant, in which a defendant is restrained from
21 having any contact with the plaintiff, the court shall advise the plaintiff that it would be unwise
22 and possibly unsafe for the plaintiff to contact the defendant. If the plaintiff wishes to contact the
23 defendant for any reason, the court shall advise the plaintiff that such contact be made only after
24 petitioning the court for a modification of the order. In an emergency situation, the plaintiff or
25 plaintiff's family may request that the local police department notify the defendant and the local
26 police may accompany the defendant to a designated location, such as a hospital, if appropriate.

27 IX. Notwithstanding any other provision of law, the department of health and human
28 services or the department of safety, its employees and agents, and law enforcement officials shall
29 not be held criminally or civilly liable for action taken under this chapter provided they are acting
30 in good faith and without gross negligence, and within the scope of their duties and authority.

31 IX.(a) A copy of each protective order issued under this chapter shall be transmitted to the
32 administrative office of the courts by facsimile or computer. An emergency protective order issued
33 telephonically shall be transmitted by telephone or facsimile to the department of safety.

34 (b) The administrative office of the courts shall enter information regarding the
35 protective orders into the state database which shall be made available to police and sheriff
36 departments statewide. The department of safety shall make available information regarding
37 emergency protective orders issued telephonically to police and sheriff departments statewide.

38 (c) The administrative office of the courts shall update the database upon expiration or

1 termination of a protective order.

2 (d) Notwithstanding any other provision of law, the administrative office of the courts
3 or the department of safety, its employees and agents, and law enforcement officials shall not be
4 held criminally or civilly liable for action taken under this chapter or RSA 458:16, provided they are
5 acting in good faith and without gross negligence, and within the scope of their duties and
6 authority.

7 X. If a criminal records check conducted by the department of safety indicates that a
8 potential buyer or transferee is prohibited from receipt or possession of a firearm pursuant to a
9 protective order issued under this chapter, the department of safety shall notify the administrative
10 office of the courts of the denial. The administrative office of the courts shall immediately notify the
11 plaintiff that the defendant has attempted to purchase or obtain a firearm in violation of the
12 protective order.

13 XI.(a) Within 15 days prior to the expiration of the protective orders, the defendant may
14 request, by motion to the court, the return of any and all firearms and ammunition and specified
15 deadly weapons held by the law enforcement agency while the protective order was in effect. Upon
16 receipt of such a motion, the court shall schedule a hearing no later than 15 days after the
17 expiration of the order. The court shall provide written notice to the plaintiff who shall have the
18 right to appear and be heard, and to the law enforcement agency which has control of the firearms,
19 ammunition, and specified deadly weapons. The scope of the hearing shall be limited to:

20 (1) Establishing whether the defendant is subject to any state or federal law or
21 court order that precludes the defendant from owning or possessing a firearm; and

22 (2) Under circumstances where the plaintiff has requested an extension of the
23 protective order, whether the plaintiff has established by a preponderance of the evidence that the
24 defendant continues to represent a credible threat to the safety of the plaintiff.

25 (b) If the court finds that the defendant is not subject to any state or federal law or
26 court order precluding the ownership or possession of firearms, or if the court denies the plaintiff's
27 request to extend the protective order, the court shall issue a written order directing the law
28 enforcement agency to return the requested firearms, ammunition, or deadly weapon to the
29 defendant.

30 (c) Law enforcement agencies shall not release firearms and ammunition and specified
31 deadly weapons without a court order granting such release. The law enforcement agency may
32 charge the defendant a reasonable fee for the storage of any firearms and ammunition and specified
33 deadly weapons taken pursuant to a protective order. The fee shall not exceed the actual cost
34 incurred by the law enforcement agency for the storage of the firearms and ammunition and
35 specified deadly weapons. The defendant may make alternative arrangements with a federally
36 licensed firearms dealer for the storage of firearms, at the defendant's own expense, upon approval
37 of the court. Such firearms shall be turned over to the appropriate law enforcement agency for
38 transfer to the storage facility. Retrieval of such firearms shall be through the law enforcement

1 agency responsible for their transfer to the storage facility pursuant to a court order as prescribed
2 in this paragraph.

3 (d) No law enforcement agency shall be held liable for alleged damage or deterioration
4 due to storage or transportation to any firearms and ammunition and specified deadly weapons held
5 by a law enforcement agency, so long as due care is used.

6 173-D:7 Permissible Contact.

7 I. A protective order issued pursuant to RSA 173-D:5 or RSA 173-D:6 shall not be construed
8 to prohibit an attorney, or any person acting on the attorney's behalf, who is representing the
9 defendant in an action brought under this chapter, or in any criminal proceeding concerning the
10 abuse alleged under this chapter, from contacting the plaintiff for a legitimate purpose within the
11 scope of the civil or criminal proceeding; provided, that the attorney or person acting on behalf of
12 the attorney: identifies himself or herself as a representative of the defendant; acknowledges the
13 existence of the protective order and informs the plaintiff that he or she has no obligation to speak;
14 terminates contact with the plaintiff if the plaintiff expresses an unwillingness to talk; and ensures
15 that any personal contact with the plaintiff occurs outside of the defendant's presence, unless the
16 court has modified the protective order to permit such contact.

17 II. A no-contact provision in a protective order issued pursuant to RSA 173-D:5 or RSA 173-
18 D:6 shall not be construed to:

19 (a) Prevent contact between counsel for represented parties; or

20 (b) Prevent a party from appearing at a scheduled court or administrative hearing; or

21 (c) Prevent a defendant or defendant's counsel from sending the plaintiff copies of any
22 legal pleadings filed in court relating to the petition or related civil or criminal matters.

23 III. A violation of this section may result in a finding of contempt of court.

24 173-D:8 Guardian Ad Litem. In all proceedings under this chapter, the court may appoint a
25 guardian ad litem to represent the interests of the vulnerable adult. The guardian ad litem may
26 continue to serve after the final disposition of the case.

27 173-D:9 Notification.

28 I. A copy of any order made under this chapter which prohibits any person from abusing
29 another shall be promptly transmitted to the local law enforcement agency having jurisdiction to
30 enforce such order.

31 II. Temporary orders shall be promptly served on the defendant by a peace officer.
32 Subsequent orders shall be sent to the defendant's last address of record. The defendant shall be
33 responsible for informing the court of any changes of address. Law enforcement agencies shall
34 establish procedures whereby a peace officer at the scene of an alleged violation of such an order
35 may be informed of the existence and terms of such order.

36 III. Any court-ordered changes or modifications of the order shall be effective upon issuance
37 of such changes or modifications, and shall be mailed or otherwise provided to the appropriate local
38 law enforcement agency and transmitted to the department of safety within 24 hours of the entry of

1 such changes or modification.

2 173-D:10 Violation of Protective Order; Penalty.

3 I.(a) When the defendant violates either a temporary or permanent protective order issued
4 or enforced under this chapter, peace officers shall arrest the defendant and ensure that the
5 defendant is detained until arraignment, provided that in extreme circumstances, such as when the
6 health of the defendant would be jeopardized by the temporary detention, a judge in response to a
7 request by the arresting law enforcement officer or agency, may order an alternative to detention
8 pending arraignment. Such arrests may be made within 12 hours without a warrant upon probable
9 cause, whether or not the violation is committed in the presence of a peace officer.

10 (b) Subsequent to an arrest, the peace officer shall seize any firearms and ammunition
11 in the control, ownership, or possession of the defendant and any deadly weapons which may have
12 been used, or were threatened to be used, during the violation of the protective order. The law
13 enforcement agency shall maintain possession of the firearms, ammunition, or deadly weapons until
14 the court issues an order directing that the firearms, ammunition, or deadly weapons be
15 relinquished and specifying the person to whom the firearms and ammunition or deadly weapons
16 will be relinquished.

17 II. The prosecution and sentencing for criminal contempt for a violation of a protective
18 order shall not preclude the prosecution of or sentencing for other criminal charges underlying the
19 contempt.

20 III. A person shall be guilty of a class A misdemeanor if such person knowingly violates a
21 protective order issued under this chapter or any foreign protective order enforceable under the
22 laws of this state. Charges made under this chapter shall not be reduced to a lesser charge, as
23 permitted in other instances under RSA 625:9.

24 IV. Any person convicted under paragraph III, or who has been convicted in another
25 jurisdiction of violating a protective order enforceable under the laws of this state, who, within 6
26 years of such conviction or the completion of the sentence imposed for such conviction, whichever is
27 later, subsequently commits and is convicted of one or more offenses involving abuse may be
28 charged with an enhanced penalty for each subsequent offense as follows:

29 (a) There shall be no enhanced charge under this section if the subsequent offense is a
30 class A felony or an unclassified felony;

31 (b) If the subsequent offense would otherwise constitute a class B felony, it may be
32 charged as a class A felony;

33 (c) If the subsequent offense would otherwise constitute a class A misdemeanor, it may
34 be charged as a class B felony;

35 (d) If the subsequent offense would otherwise constitute a class B misdemeanor, it may
36 be charged as a class A misdemeanor;

37 (e) If the subsequent offense would otherwise constitute a violation, it may be charged
38 as a class B misdemeanor.

1 V. A victim of abuse, exploitation, or neglect shall be entitled to all rights granted to victims
2 of crime under RSA 21-M:8-k.

3 173-D:11 Protection by Peace Officers.

4 I. Whenever any peace officer has probable cause to believe that a person has been abused,
5 exploited, or neglected, as defined in RSA 161-F:43 and RSA 173-D:2, that officer shall use all
6 means within reason to prevent further abuse, exploitation, or neglect including, but not limited to:

7 (a) Confiscating any deadly weapons involved in the alleged abuse, exploitation or
8 neglect and any firearms and ammunition in the defendant's control, ownership, or possession.

9 (b) Transporting or obtaining transportation for the victim to a place of safety, local
10 family member, or friend.

11 (c) Assisting the victim in removing toiletries, medication, clothing, and any other items
12 determined by the court.

13 (d) Giving the victim immediate and written notice of the rights of victims and of the
14 remedies and services available to victims of abuse, exploitation and neglect. The written notice
15 shall include a statement substantially as follows:

16 "If you are the victim of abuse, exploitation and neglect and you believe that law enforcement
17 protection is needed for your physical safety, you have the right to request that the officer assist in
18 providing for your safety, including asking for an emergency telephonic order for protection. You
19 may also request that the officer assist you in obtaining from your premises and curtilage, toiletries,
20 medication, clothing, business equipment, and any other items as determined by the court, and in
21 locating and taking you to a local safe place including, but not limited to, a place of safety a family
22 member's or friend's residence, or a similar place of safety. If you are in need of medical treatment,
23 you have the right to request that the officer assist you in obtaining an ambulance. You may
24 request a copy of the report filed by the peace officer, at no cost, from the law enforcement
25 department.

26 173-D:12 Notice to the Victim.

27 I. Notwithstanding the peace officer's obligations in RSA 173-D:11, all peace officers shall
28 give victims of abuse, exploitation, and neglect immediate and adequate notice of their right to go to
29 the circuit court of their county to file a petition asking for protective orders against the abusive
30 person and to seek a private criminal complaint.

31 II. The clerk of the court shall be responsible for advising victims of their right to request
32 that the judge issue an order which may include removing any and all firearms and ammunition in
33 the control, ownership, or possession of the defendant and may include:

34 (a) Restraining the defendant from abusing, exploiting, and/or neglecting the victim.

35 (b) Directing the defendant to leave and stay away from the victim's premises and
36 curtilage.

37 (c) Restraining the defendant from contacting the victim, or entering any specified place
38 frequented regularly by the victim.

1 (d) Restraining the defendant from abusing, in any way, the victim, household
2 members, or victim's relatives, regardless of their place of residence.

3 (e) Restraining the defendant from taking, converting, or damaging personal or real
4 property in which the victim may have a legal or equitable interest.

5 (f) Directing the defendant to temporarily relinquish to the peace officer specific deadly
6 weapons in the control, ownership, or possession of the defendant which may have been used, or
7 were threatened to be used, in an incident of abuse against the victim or any member of the victim's
8 household.

9 (g) Ordering the defendant to pay the victim monetary compensation for losses suffered
10 as a direct result of the abuse, exploitation, or neglect which may include, but not be limited to,
11 misappropriated funds, loss of earnings or support, medical and dental expenses, damage to
12 property, out-of-pocket losses for injuries sustained, and moving and shelter expenses.

13 (h) Ordering the defendant to pay reasonable attorney's fees.

14 173-D:13 Emergency Care; Limitation and Liability. Any act or omission of any peace officer
15 rendering emergency care or assistance to a victim under this chapter including, but not limited to
16 transportation, shall not impose civil liability upon the peace officer or the peace officer's
17 supervisors or employer if the care or assistance is rendered in good faith, unless the act or omission
18 is a result of gross negligence or willful misconduct.

19 173-D:14 Orders Enforceable.

20 I. Any protective order issued under this chapter shall be effective throughout the state.

21 II. Any protective order issued by any other state, tribal, or territorial court related to
22 abuse, exploitation or neglect of a vulnerable adult, including an ex parte order, shall be deemed
23 valid if the issuing court had jurisdiction over the parties and matter under the law of the state,
24 tribe, or territory, and the person against whom the order was made was given reasonable notice
25 and opportunity to be heard. There shall be a presumption of validity where an order appears
26 facially valid.

27 III. Any valid protective order, as defined in paragraph II, shall be accorded full faith and
28 credit throughout the state.

29 IV. A person entitled to protection under a foreign protective order, as defined in paragraph
30 II, may file such order in any circuit court by filing with the court a certified copy of the order.
31 Such person shall swear under oath in an affidavit to the best of such person's knowledge that the
32 order is presently in effect as written. Such filing shall be without fee or cost. The clerk of the
33 circuit court shall forward such order to the administrative office of the courts which shall enter
34 such order in the state database. Such filing shall not be a precondition to arrest or enforcement of
35 a foreign order.

36 V. A peace officer may rely upon a copy of any protective order issued under this chapter or
37 upon a copy of a foreign protective order, as defined in this section, which has been provided to the
38 peace officer by any source.

HB 1807-FN - AS INTRODUCED

- Page 13 -

1 VI. Law enforcement personnel may rely on the statement of the person protected by the
2 order that the order remains in effect as written.

3 173-D:15 Reporting and Referrals. Any law enforcement officer who investigates an alleged
4 incident of abuse, exploitation or neglect of a vulnerable adult shall report the matter to the
5 department pursuant to RSA 161-F:46 and advise the person subject to such violence of the
6 availability of programs from which that person may receive services.

7 173-D:16 Severability. If any provision of this chapter or the application of such provision to
8 any person or circumstance is held invalid, the invalidity does not affect other provisions or
9 applications of the chapter which can be given effect without the invalid provisions or applications,
10 and to this end the provisions of this chapter are severable.

11 3 Effective Date. This act shall take effect January 1, 2019.

HB 1807-FN- FISCAL NOTE
AS INTRODUCED

AN ACT relative to exploitation of elderly, disabled, or impaired adults and establishing a protective order for vulnerable adults.

FISCAL IMPACT: State County Local None

STATE:	Estimated Increase / (Decrease)			
	FY 2019	FY 2020	FY 2021	FY 2022
Appropriation	\$0	\$0	\$0	\$0
Revenue	\$0	\$0	\$0	\$0
Expenditures	Indeterminable Increase	Indeterminable Increase	Indeterminable Increase	Indeterminable Increase
<i>Funding Source:</i>	<input checked="" type="checkbox"/> General	<input type="checkbox"/> Education	<input type="checkbox"/> Highway	<input type="checkbox"/> Other

COUNTY:

Revenue	\$0	\$0	\$0	\$0
Expenditures	Indeterminable Increase	Indeterminable Increase	Indeterminable Increase	Indeterminable Increase

METHODOLOGY:

This bill clarifies RSA 631:9, relative to financial exploitation of elderly, disabled, or impaired adults. In addition, the bill establishes a process enabling vulnerable adults to seek permanent and temporary relief from abuse, exploitation, and neglect. The legislation authorizes, but does not mandate, the Department of Health and Human Services to file petitions alleging abuse, exploitation, or abuse by a defendant. If the Department were to file these petitions directly, there would likely be additional personnel costs, as well as mileage expenses for Department attorneys, adult protective services workers, and other necessary witnesses. Even if the Department does not directly file petitions, it assumes Department personnel will frequently be used as witnesses, resulting in mileage and other costs. The Department is unable to predict the extent of any cost increase.

This bill contains penalties that may have an impact on the New Hampshire judicial and correctional systems. There is no method to determine how many charges would be brought as a result of the changes contained in this bill to determine the fiscal impact on expenditures. However, the entities impacted have provided the potential costs associated with these penalties below.

Judicial Branch	FY 2019	FY 2020
Class B Misdemeanor	\$50	\$51
Class A Misdemeanor	\$72	\$73
Protective Order	\$156	\$158
Routine Criminal Felony Case	\$457	\$462
Appeals	Varies	Varies
It should be noted that average case cost estimates for FY 2019 and FY 2020 are based on data that is more than ten years old and does not reflect changes to the courts over that same period of time or the impact these changes may have on processing the various case types. An unspecified misdemeanor can be either class A or class B, with the presumption being a class B misdemeanor.		
Judicial Council		
Public Defender Program	Has contract with State to provide services.	Has contract with State to provide services.
Contract Attorney – Felony	\$825/Case	\$825/Case
Contract Attorney – Misdemeanor	\$300/Case	\$300/Case
Assigned Counsel – Felony	\$60/Hour up to \$4,100	\$60/Hour up to \$4,100
Assigned Counsel – Misdemeanor	\$60/Hour up to \$1,400	\$60/Hour up to \$1,400
It should be noted that a person needs to be found indigent and have the potential of being incarcerated to be eligible for indigent defense services. The majority of indigent cases (approximately 85%) are handled by the public defender program, with the remaining cases going to contract attorneys (14%) or assigned counsel (1%).		
Department of Corrections		
FY 2017 Average Cost of Incarcerating an Individual	\$36,960	\$36,960
FY 2017 Annual Marginal Cost of a General Population Inmate	\$4,555	\$4,555
FY 2017 Average Cost of Supervising an Individual on Parole/Probation	\$557	\$557
NH Association of Counties		
County Prosecution Costs	Indeterminable	Indeterminable
Estimated Average Daily Cost of Incarcerating an Individual	\$85 to \$110	\$85 to \$110

Many offenses are prosecuted by local and county prosecutors. When the Department of Justice has investigative and prosecutorial responsibility or is involved in an appeal, the Department would likely absorb the cost within its existing budget. If the Department needs to prosecute significantly more cases or handle more appeals, then costs may increase by an indeterminable amount.

AGENCIES CONTACTED:

Departments of Health and Human Services, Justice, and Corrections, Judicial Branch, Judicial Council, and New Hampshire Association of Counties

Committee Minutes

Senate Health and Human Services Committee
Kyle Baker 271-2609

HB 1807-FN, relative to exploitation of elderly, disabled, or impaired adults and establishing a protective order for vulnerable adults.

Hearing Date: March 27, 2018

Time Opened: 1:30pm

Time Closed: 2:00pm

Members of the Committee Present: Senators Bradley, Avard, Gray, Fuller Clark and Hennessey

Members of the Committee Absent : None

Bill Analysis: This bill clarifies the law relating to financial exploitation of elderly, disabled, or impaired adults.

This bill also establishes a procedure for protective orders for vulnerable adults.

Sponsors:

Rep. Cushing

Rep. Baldasaro

Rep. McMahon

Rep. Wallner

Rep. LeBrun

Rep. Heath

Rep. Campion

Rep. P. Long

Rep. Messmer

Sen. Carson

Sen. Fuller Clark

Sen. Hennessey

Who supports the bill: Heidi Kroll, National Academy of Elder Law Attorneys; Sen. Martha Hennessey; Brendan Williams, NH Healthcare Association; Meredith Cook, Roman Catholic Bishop of Manchester; Rep. Polly Campion; Rep. Mariellen MacKay; Sen. Martha Fuller Clark; Doug Mcnutt, AARP; Heather Carrol, Alzheimer's Association; Cheryl Steinburg, NH Legal Assistance; Dan Hobbs; Guy Chapelaine; Rep. Renny Cushing; Ryan Donnelly, Granite State Independent Living; Rep. Al Baldasaro; Gina Balkus, Home Health Association

Who opposes the bill: None

Who is neutral on the bill: Brandon Garod, Attorney Generals Office

Summary of testimony presented in support:

Rep. Al Baldasaro – Rockingham 5; Rep. Renny Cushing – Rockingham 21

- This bill clarifies the law relating to financial exploitation of elderly, disabled, or impaired adults.

- This bill seeks to clarify the bill we passed a few years ago.
- This legislation passed all committees and on the floor unanimously.

Cheryl Steinburg – NH Legal Assistance

- Exploitation of any persons is a very bad thing and New Hampshire has been leading the way in making sure our laws prevent exploitation from happening in our state.
- We passed a law a few years ago that went a long way in preventing elder exploitation and this bill would expand on that law to make sure we are protecting everyone that needs protection.
- This bill also establishes a procedure for protective orders for vulnerable adults.
- It's important to make sure we are protecting those from ever being exploited. Once exploitation happens it is very hard to get the money back and this would try to stop exploitation from ever happening.
- Gave an example of a client who had given her home to her children with the understanding that she could remain living there. The children ended up trying to sell the home and it took a court case to stop the sale.

Doug McNutt – AARP

- This bill will help prevent financial exploitation and elder abuse.
- This first part contains a change requested by the Attorney General's Office that ensures all exploiters who had reason to know that an elderly, disabled or impaired adult lacked capacity to consent, be held accountable.
- The second part establishes a civil protective order for vulnerable adults subject to abuse and neglect.
- It's important to do our best to try and stop exploitation from happening before a crime occurs.

Heather Carroll– Alzheimers Association.

- 24,000 NH citizens who have Alzheimer's or relate dementia.
- Cognitively impaired people are more vulnerable. Because of their situations they are usually the targets of exploitation.
- There are a few trends that we notice from families after their loved ones are victims of exploitation.
 - o Victim was in moderate to late stage Alzheimer's.
 - o Perpetrator was someone of trust such as a family member or caregiver.
 - o Veterans are specifically targeted because of steady pensions and the lack of ability for the VA to monitor for fraud and abuse.
- Financial abuse of a cognitively impaired person is a horrible crime and this bill will continue to support elderly and disabled persons against exploitation and financial abuse.

Ryan Donnelley – Granite State Independent Living

- Lives with a condition called Osteogenesis Imperfecta
- Persons with disabilities appreciate any ability to live independently.
- Have not personally been a victim of abuse but takes comfort in knowing that New Hampshire is on the front lines making sure that it is a crime to exploit those who depend on others for care.
- This bill bolsters these protections and will go far in helping the most vulnerable.

Rep. Mindi Messmer Rockingham 24

- This is a passionate issue for me, and overall there are around 5.5 Million people in the United States with Alzheimer's.
- This bill is important because we have seen cases like the one in Portsmouth, where an elderly woman had her estate attempted to be stolen.

Summary of testimony presented in opposition: None

Neutral Information Presented: None

Future Action: Pending

KRB

Date Hearing Report completed: April 2, 2018

Speakers

Senate Health and Human Services Committee

SIGN-IN SHEET

Date: 3/27/2018 Time: 1:30 p.m.

HB 1807- FN AN ACT relative to exploitation of elderly, disabled, or impaired adults and establishing a protective order for vulnerable adults.

Name/Representing (please print neatly)

	Support	Oppose	Speaking?	Yes	No
Hildi Kroll - National Academy of Elder Law Attorneys - NH Chapter	<input checked="" type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input checked="" type="checkbox"/>
Sen Hennessey SD#5	<input checked="" type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input checked="" type="checkbox"/>
Brendan Williams NH Health Care Association	<input checked="" type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input checked="" type="checkbox"/>
Pam DiNapoli NH Nurses Association	<input checked="" type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input checked="" type="checkbox"/>
Meredith Cook Roman Catholic Bishop of Manchester	<input checked="" type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input checked="" type="checkbox"/>
Rep Polly Cauffman Grafton 12	<input checked="" type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input checked="" type="checkbox"/>
Rep. Mandy Mackay Hills 30	<input checked="" type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input checked="" type="checkbox"/>
Senator Fuller Clark SD#21	<input checked="" type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input checked="" type="checkbox"/>
Doug Mc Nutt AARP	<input checked="" type="checkbox"/>	<input type="checkbox"/>		<input checked="" type="checkbox"/>	<input type="checkbox"/>
Heather Carroll Alzheimer's Association	<input checked="" type="checkbox"/>	<input type="checkbox"/>		<input checked="" type="checkbox"/>	<input type="checkbox"/>
Ceryl Steinberg - NH Legal Assistance	<input checked="" type="checkbox"/>	<input type="checkbox"/>		<input checked="" type="checkbox"/>	<input type="checkbox"/>
Dan Hobbs - NH Alliance for Healthy Aging	<input checked="" type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input checked="" type="checkbox"/>
Guy CHAPPELAIN Bedford	<input checked="" type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input checked="" type="checkbox"/>
Rep Penny Cushing Rock 21	<input checked="" type="checkbox"/>	<input type="checkbox"/>		<input checked="" type="checkbox"/>	<input type="checkbox"/>
Ryan Donnelly GRANITE STATE INDEPENDENT LIVING	<input checked="" type="checkbox"/>	<input type="checkbox"/>		<input checked="" type="checkbox"/>	<input type="checkbox"/>
Rep Al Baldasaro Rock-8575	<input checked="" type="checkbox"/>	<input type="checkbox"/>		<input checked="" type="checkbox"/>	<input type="checkbox"/>
Brandon Garod (w/ Ceryl Steinberg)	<input type="checkbox"/>	<input type="checkbox"/>		<input checked="" type="checkbox"/>	<input type="checkbox"/>
Gina Balkus Granite State Home Health Association	<input checked="" type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input checked="" type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>

Testimony

ALZHEIMER'S STATISTICS

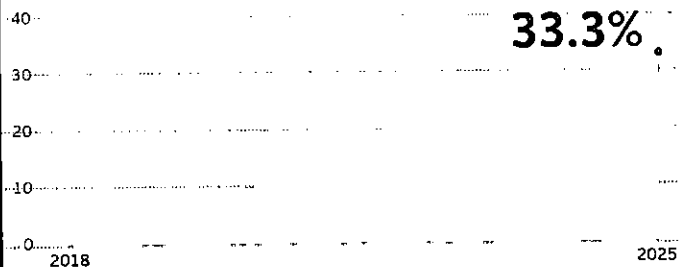
NEW HAMPSHIRE

65+ NUMBER OF PEOPLE AGED 65 AND OLDER WITH ALZHEIMER'S BY AGE*

* Totals may not add due to rounding

Year	65-74	75-84	85+	TOTAL
2018	3,900	10,000	10,000	24,000
2020	4,400	11,000	10,000	26,000
2025	5,100	15,000	12,000	32,000

Estimated percentage change



MEDICAID

\$236 MILLION

Medicaid costs of caring for people with Alzheimer's (2018)

39.2%

change in costs from 2018 to 2025

MEDICARE

\$22,185

per capita Medicare spending on people with dementia (2017)



HOSPICE (2015)

912

of people in hospice with a primary diagnosis of dementia

17%

of people in hospice have a primary diagnosis of dementia

HOSPITALS (2015)

1,366

of emergency department visits per 1,000 people with dementia

19.2%

dementia patient hospital readmission rate

NUMBER OF DEATHS FROM ALZHEIMER'S DISEASE (2015)

432

6th leading cause of death in New Hampshire

CAREGIVING (2017)

67,000
Number of Caregivers

76,000,000
Total Hours of Unpaid Care

\$961,000,000
Total Value of Unpaid Care

\$56,000,000
Higher Health Costs of Caregivers

US STATISTICS

Over **5 million Americans** are living with Alzheimer's, and as many as **16 million** will have the disease in 2050. The cost of caring for those with Alzheimer's and other dementias is estimated to total **\$277 billion** in 2018, increasing to **\$1.1 trillion** (in today's dollars) by mid-century. Nearly **one in every three seniors** who dies each year has Alzheimer's or another dementia.

For more information, view the 2018 **Alzheimer's Disease Facts and Figures** report at alz.org/facts.

cognitive decline in new hampshire

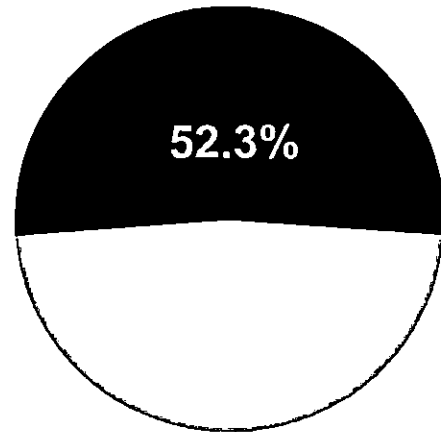
DATA FROM THE 2016 BEHAVIORAL RISK FACTOR SURVEILLANCE SYSTEM

In New Hampshire, 8.9 percent of those aged 45 and over report they are experiencing confusion or memory loss that is happening more often or is getting worse (“subjective cognitive decline”).

More than half of them have not talked to a health care professional about it.

For those with worsening memory problems, 42.8 percent say it has created “functional difficulties” – that is, caused them to give up day-to-day activities and/or interfered with work or social activities.

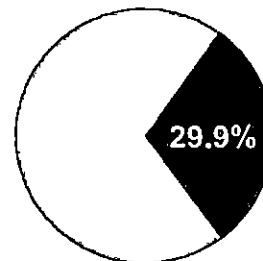
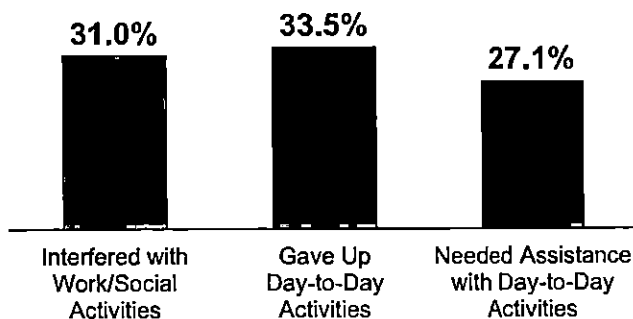
Percent with memory problems who have not talked to a health care provider



Percent of Those Aged 45+ with Subjective Cognitive Decline

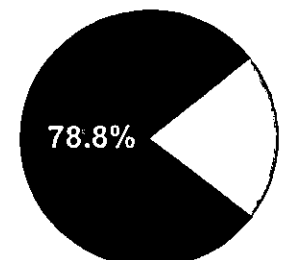
All	Gender		Age					Educational Attainment			
	Men	Women	45-59	60-64	65-74	75-79	80+	< High School	High School	Some College	College Grad
8.9%	8.1%	9.6%	8.9%	7.4%	7.7%	9.7%	15.4%	21.9%	9.1%	9.6%	5.5%

Percent with memory problems who say it created difficulties and burden



Percent with memory problems who live alone

Percent with memory problems who have at least one other chronic condition*



This Fact Sheet is supported by Cooperative Agreement #NU58DP006115 from the Centers for Disease Control and Prevention (CDC). Its contents are solely the responsibility of the Alzheimer's Association and do not necessarily represent the official views of the CDC.

*Defined as arthritis, asthma, COPD, cancer, cardiovascular disease, and diabetes

March 27, 2018
Hearing HB 1807

Re: exploitation of elderly, disabled or impaired adults and establishing a protective order
for vulnerable adults


Chairman Bradley and members of the Senate Health and Human Service Committee

AARP has approximately 230,000 members age 50 plus statewide, prevention of financial exploitation and elder abuse is a major priority for AARP. Since HB 1807 we believe will help prevent financial exploitation and elder abuse, AARP strongly supports HB 1807. The first part of HB 1807 includes a change requested by the Attorney General's Office that ensures all exploiters who "or had reason to know that an elderly, disabled or impaired adult lacked capacity to consent" be held accountable.

The second and largest part of the bill is to establish civil protective orders for vulnerable adults subject to abuse, neglect or exploitation. I have had past experience with these issues as the administrator of the Adult Protection Program in the Bureau of Elderly and Adult Services in Health and Human Services. Given my background, I recognize that these orders are very significant in that they offer an opportunity to prevent abuse and exploitation, rather than dealing with it after the fact when the abuse or exploitation has occurred, as can be the case with the criminal justice system and even in the Adult Protection System.

When someone has been financially exploited their money is gone and it is very difficult to get it back. This means that the resources the person was depending on are gone and this often leads to the victim needing to rely on public assistance. We also want to prevent abuse if at all possible. It is in everyone's best interest to try to prevent that. That is why AARP supports HB 1807 as a mechanism that can help prevent abuse and exploitation.

Respectfully submitted,


Douglas McNutt
AARP New Hampshire
603-230-4106
Dmcnutt@aarp.org

alzheimer's association®

Massachusetts/New Hampshire Chapter

Examples of Financial Exploitation in New Hampshire

Portsmouth, NH - June 2015

- Former Portsmouth Police Sgt. Aaron Goodwin is fired after being accused of exerting undue influence over 93-year-old Geraldine Webber, who suffered from dementia
- Goodwin met Webber at her home in 2010, where he went to investigate a crime
- After this meeting, Goodwin spent substantial time with Webber, both in-person and over the phone
- In 2012, Goodwin's name was written into Webber's will as the primary beneficiary of her estate (worth approximately \$2.7 million)
- Goodwin claimed that Webber's decision to change her will was one of sound mind, and that he wanted her to do "whatever made her happy"
- In August 2015, Goodwin was denied his inheritance due to the undue influence he exerted over Webber

Merrimack, NH - April 2016

- LNA Charlotte Torres (24) is charged with a Class A Felony (theft by unauthorized taking) for stealing from one of her patients
- Victim is a 71-year-old Merrimack resident, who has Alzheimer's and is a military veteran
- Torres worked for a home health agency in Nashua, NH and was caring for the man in his home
- During her time as a caregiver, Torres was seen coming from rooms in the house that she had no reason being in
- Family noticed that a substantial amount of the victim's late mother's jewelry was missing, as well as rings belonging to the victim's wife
- Family believes the stealing began sometime around September 2014

Nashua, NH - February 2017

- Ashton Haven (28) is charged with stealing from his grandmother, Beverly Haven (87), who has dementia
- Initial charges were filed in February 2017, with more following in May; altogether, Haven faces 7 felony charges
- Ashton Haven and his grandmother's daytime caregiver, Angelda Hardigree, were both involved in the exploitation
- Cases of exploitation include: the re-deeding of Beverly Haven's home, misused social security checks, unusual debit card transactions (\$1,000 at Best Buy), and \$35,000 equities from Beverly to pay debts in Ashton's name
- Ashton Haven and Hardigree also stopped taking Beverly Haven to the doctor and stopped getting her prescriptions, citing financial concerns as the reason

Center Harbor, NH - May 2017

- Keith Fitzgerald (52) is sentenced to 10 to 30 years in prison for stealing over \$400,000 from his father
- Fitzgerald's father, Clifford, (79) was dying of cancer in a hospital in New York at the time
- A probate judge found that Keith Fitzgerald was not fulfilling his fiduciary duties to his father
- Since Clifford Fitzgerald's death in 2010, Keith Fitzgerald has paid \$0 of the \$409,980 restitution ordered

Nashua, NH - July 2017

- 51-year-old Deborah Bernard is arrested for the financial exploitation of a senior
- Officials say that Bernard had been helping the elderly victim with "day-to-day tasks"
- Police were prompted to investigate by a letter from the Bureau of Elderly Adult Services, which aired concerns that the victim was being exploited
- Bernard made numerous withdrawals from the senior's bank account, totalling more than \$1,500

Hillsborough, NH - July 2017

- Jerry Newton (53) is indicted for the financial exploitation of his elderly mother
- Newton held power of attorney for his mother, and is believed to have misappropriated funds that were solely for her benefit
- Prosecutors claim that the exploitation lasted from September 2015 to August 2016, with financial amounts totalling approximately \$328,376

Exeter, NH - August 2017

- Thomas Gage (57), a disbarred attorney from Exeter, is indicted for the financial exploitation of a 71-year-old woman
- Gage was disbarred in 2016 for unrelated reasons
- Gage is believed to have acquired at least five credit cards from the woman, and spent a total of \$87,165 within the span of one year (January 2015 - January 2016)

Allenstown, NH - November 2017

- Karen McKinley (53) is indicted on 12 felony charges resulting from her attempt to con a 75-year-old male investor
- McKinley tried to swindle the victim out of almost \$300,000 over a period of four years
- Most of the thefts occurred when McKinley took money from the investor's portfolio, and then wired or transferred that money to other accounts
- McKinley transferred the victim's money into different bank accounts, some of which belonged to her parents, her daughter, and family friends

Testimony HB 1807

Senate Health & Human Services Committee

Good morning my name is Heather Carroll and I am here representing the Alzheimer's Association, and the 24,000 granite staters who currently have Alzheimer's or a related dementia. I am here to testify to encourage you to pass HB1807 strengthening the laws protecting vulnerable adults from financial exploitation. With cognitively impaired people their memory loss makes them vulnerable and it is often why they become a target. In a recent survey from the CDC focused in NH, 30% of people in our state that identify with having a memory problem live alone. If the person has family that is not local, has no family, or is in a homebound situation it leaves them, due to their health reliant on others for help with their daily activities; opening up a situation that could put them at risk for exploitation. I would love to sit here in front of you and say that these crimes are far and few between but I can't. The Alzheimer's Association has a 24 hour helpline for families and professionals who need help with any dementia issues as they arise. In 2016 our helpline received 31 calls from family members asking for specific information around financial exploitation of a cognitively impaired loved one living in New Hampshire. In 2017 it increased 55% to 48 calls. Already in 2018 we have received 15 calls.

There few trends that we have noticed in speaking with the families after instances of financial abuse have been identified and I would like to share with you today:

1. The person was usually in the mid stage of Alzheimer's disease and a very poor historian of what actually took place or how the money was stolen
2. The perpetrator was often in a position of trust such as a hired caregiver, family member or friend
3. Veterans with dementia were specifically targeted due to steady pensions coming in and the difficult reporting process the VA has to track theft, or the victim being too proud to report it to the VA

4. A shortage of trained direct care staff left people looking for care and hiring people who were not properly vetted .
5. Restitution was at times awarded but not delivered due to the money being long gone by the time the case went to court

Financial abuse is not just the theft of money. In almost all instances reported to the Association the goals of financial abuse perpetrators were achieved through deceit, threats, and emotional manipulation of the person with dementia. In addition, physical and sexual violence frequently occurred within the vortex of elemental greed and a disregard for the victim of the financial abuse. New research indicates that the instances of elder financial abuse not just ones against people with dementia are far higher than previously reported nationwide with many instances going unreported.

Financial abuse of someone with dementia appears to fall into three types of crimes: occasion, desperation, and predation. Crimes of occasion or opportunity are incidents of financial abuse or exploitation that occur because the victim is merely in the way of what the perpetrator wants. Crimes of desperation are typically those in which family members or friends become so desperate for money that they will do whatever it takes to get it. Many of these family members are dependent on the cognitively impaired relative for housing and money. Finally, crimes of predation or occupation occur are when a trusting relationship is fostered for the specific intention of financial abuse later. A relationship is built, either through a bond of trust created though developing a relationship (romantic or otherwise) or as a trusted professional advisor, and then used to financially exploit the impaired victim.

In conclusion, financial abuse of any vulnerable person but especially one with Alzheimer's disease decimates incomes both great and small. It creates health care inequities, fractures families, reduces available health care options, and increases rates of depression among elders. Alzheimer's is a very expensive disease, any theft of assets at a time where the person needs them the most in order to have quality care is horrible. Currently Alzheimer's disease costs taxpayers \$18.3 million dollars per hour. Financial abuse of a cognitive impaired

person is an intolerable crime resulting in losses of human rights and dignity. Despite growing public awareness from a parade of high-profile financial abuse victims, it remains underreported, under-recognized, and under-prosecuted. We have the opportunity with HB1807 to become a state that enables the Attorney General's office and their elder abuse task force to help families and victims of these awful crimes fight back.

I want to thank the NH Legislature, many of you sitting around this table for your incredible strides to make sure that the voices of people with Alzheimer's or any form of dementia are heard. For understanding that it is common sense values that drive your continued bipartisan support of our initiatives.

Being robbed of your memories is heinous enough; please help law enforcement and the court system protect the assets and stability of our most vulnerable granite staters.

Thank you.

Heather Carroll

Manager Public Policy

Alzheimer's Association MA/NH



NEW HAMPSHIRE LEGAL ASSISTANCE

Working for Equal Justice Since 1971

www.nhla.org

March 27, 2018

Senator Jeb Bradley, Chair
Health and Human Services Committee
New Hampshire State Senate
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Concord, NH 03301

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Berlin Office
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Berlin, NH 03570
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1-800-698-8969
Fax: 603-752-2248

Administration
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Re: HB 1807 – Relative to Exploitation of Elderly, Disabled, or Impaired
Adults and Establishing a Protective Order for Vulnerable Adults

Dear Chairman Bradley and Members of the Committee:

For over 40 years, the Senior Law Project of New Hampshire Legal Assistance has served our state's residents age 60 and older with civil legal problems affecting their most basic needs. As director of the Senior Law Project, I am writing in strong support of HB 1807. This bill will establish important protections that will help prevent abuse and exploitation of our state's most vulnerable seniors and people with disabilities.

Elder abuse is a major problem – impacting millions of older adults each year. Financial exploitation is one of the most prevalent forms of this abuse and is growing every year as the aging population increases. On a national level, it has been estimated that between \$2.9 billion - \$36.5 billion is stolen from older adults annually.¹ As the elder population continues to increase, this figure will only increase. By 2020, the U.S. Census predicts 20 percent of New Hampshire's 1.3 million residents will be 65 years or older up from 13.5 percent in 2010.² Additionally, disabled adults, particularly those with cognitive impairments such as Alzheimer's disease and other dementia related disorders are particularly vulnerable to being financially exploited.

Recognizing this ever growing problem, in 2014 the legislature passed legislation (now codified as RSA 631:8 – 10) that created the crime of exploitation of

¹ MetLife Mature Market Institute, *The MetLife Study of Elder Financial Abuse: Crimes of Occasion, Desperation, and Predation Against America's Elders*, June 2011, at <https://www.metlife.com/assets/cao/mmi/publications/studies/2011/mmi-elder-financial-abuse.pdf>; True Link, *The Link Report on Elder Financial Abuse 2015*, January 2015, at <http://documents.truelinkfinancial.com/True-Link-Report-On-Elder-Financial-Abuse-012815.pdf>.

² Grosky, Gretchen, "The changing face of NH: What it means to have the 2nd oldest population in the nation," *Union Leader* (Aug. 13, 2016) at <http://www.unionleader.com/The-changing-face-of-NH:-What-it-means-to-have-the-2nd-oldest-population-in-the-nation>.

elderly, disabled and impaired adults. In the short time that this new law has been in effect, it has made a significant impact in our state. The Attorney General's Office and County Attorneys have been widely using the new law to prosecute and convict exploiters.

However, in the course of investigating these cases, the Attorney General's Office recognized that there were situations where it was clear that exploitation had occurred but they could not prosecute since the specific conduct was not covered in the current statute. For this reason, we are proposing a small tweak in RSA 631:9. The proposed change will ensure that all exploiters are held accountable for their acts. With the proposed change, a person can be held criminally liable if they "knew or had reason to know that an elderly, disabled, or impaired adult lacked capacity to consent" to giving away their property or control of their property but sought their consent anyway. This minor change in the statute will greatly strengthen our state's ability to prosecute those who exploit our most vulnerable Granite Staters.

In addition to proposing a minor change in RSA 631:9, HB 1807 also seeks to establish civil protective orders for vulnerable adults subject to abuse, neglect or exploitation. While criminal prosecution is vitally important in combating financial exploitation and other forms of abuse, it does not always provide the opportunity for the victim to stop the abuse or recoup damages incurred from the abuse.

For this reason, in 2017 the National Center for Victims of Crime and American Bar Association Commission on Law and Aging developed model civil provisions to help victims rebuild their lives.³ One of the civil forms of relief recommended was the ability for victims to seek protective orders. Since many states' protective orders, such as New Hampshire's, focus on physical violence or threats of violence and limit the alleged perpetrators to family or household members, they may not be available to a victim of financial exploitation or other forms of abuse. However, protective orders can be vital in these cases by preventing future exploitive behavior and protect the victim from the offender's influence while criminal charges are being pursued.

Building on the success of our state's protection of victims of domestic violence, HB 1807 expands our current protective order laws to include vulnerable adults who are victims of abuse, neglect or exploitation. Vulnerable adults are defined, the same as our adult protective statute, RSA 169-F, as a person who is unable due to a physical, mental or emotional impairment to manage their own affairs or delegate responsibility to a responsible caregiver. If a vulnerable adult is abused, neglected or exploited as defined in the bill, they can then seek a protective order. It does not limit the offender to a significant other or family or household member. Some of the relief they can seek includes freezing the assets of an abuser and prohibiting the abuser from taking or converting any of the victims' property. There are also criminal penalties for persons who knowingly violate a protective order.

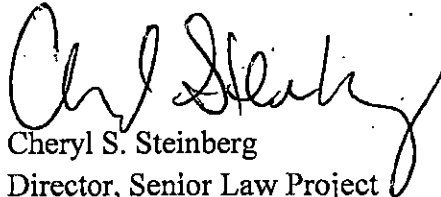
We used language from our state's domestic violence statute, RSA 173-B, as our foundation for creating the protective order provisions of this bill. RSA 173-B has been in place for nearly 20 years and has been an extremely effective tool for stopping and preventing future

³ The National Center for Victims of Crime, *Model Civil Provisions on Elder Financial Exploitation* at <http://victimsofcrime.org/docs/default-source/financial-fraud/model-civil-provisions-on-elder-financial-exploitation.pdf?sfvrsn=2>.

abuse. Providing vulnerable adults with a similar tool will allow them to access a user friendly and affordable method to obtain civil remedies not currently available in our state. During the drafting process, the bill was reviewed by several stakeholders including the NH Attorney General's Office, AARP-NH, the Alzheimer's Association, the NH Bankers Association, the NH Chapter of the National Academy of Elder Law Attorneys and the Disability Rights Center - NH.

HB 1807 is an important and necessary next step in protecting our state's most vulnerable citizens from abuse, neglect and exploitation. NHLA respectfully requests that the Committee recommend Ought to Pass on HB 1807. If you have any questions, please don't hesitate to call me at 206-2210.

Very truly yours,



Cheryl S. Steinberg
Director, Senior Law Project
Concord Office

Nashua man sentenced in elder abuse case

By **DOUG ALDEN**
New Hampshire Union Leader

NASHUA — A Nashua man accused of neglecting his dementia-ridden grandmother and spending about \$27,000 of her assets was sentenced Monday to 1-to-3 years in prison.

Ashton Haven, 29, pleaded guilty to one count of financial exploitation of an elder adult and two counts of theft by deception in a deal with prosecutors, who agreed to cap the maximum sentence they sought.

Police began investigating Haven last winter after the Bureau of Elderly and Adult Services raised concerns that Beverly Haven, who was diagnosed with dementia in 2013, was being neglected.

Brandon Garod, an assistant state attorney general, said Ashton Haven was responsible for managing his 88-year-old grandmother's money and paying her bills, but spent about \$27,000 on himself rather than his grandmother's care.

In addition to the money taken from her accounts, state investigators found Beverly Haven living in "very poor" conditions, Garod said.

Haven agreed to a deal with prosecutors that would cap his sentence at a maximum of three years, Garod said.

Judge Charles S. Temple

sentenced Haven to up to three years in New Hampshire State Prison on the elder exploitation charge with 90 days of the sentence suspended.

Temple also sentenced Haven to 1-to-3 years on the theft by deception charges, but suspended the sentence.



March 27, 2018

Senator Jeb Bradley, Chair
Health and Human Services Committee
New Hampshire State Senate
107 N. Main Street
Concord, NH 03301

Re: Letter in Support of HB 1807

Dear Chairman Bradley and Members of the Committee:

I am writing on behalf of the New Hampshire Alliance for Healthy Aging (NH AHA) in strong support of HB 1807. NH AHA is a statewide coalition of stakeholders focused on the health and well-being of older adults in New Hampshire. NH AHA works to promote its shared vision to create communities in New Hampshire that advance culture, policies and services which support older adults and their families.

NH AHA supports HB 1807 because it strengthens and enhances our state's ability to combat elder abuse, which is an ever growing problem in New Hampshire. The bill will improve our current financial exploitation criminal statute by expanding the circumstances when a person can be criminally liable for exploitation. The bill will also establish protective orders for vulnerable adults to give them civil remedies not currently available under our state law. While some civil remedies exist, they are complicated and typically require the assistance of an attorney to be successful. The protective orders proposed in this bill will provide a user- friendly and affordable method for victims to obtain relief.

HB 1807 is an important next step in ensuring that our state's most vulnerable citizens are protected from abuse. We urge the Committee to recommend Ought to Pass on HB 1807.

Sincerely,

Cheryl S. Steinberg
Member, Advocacy Steering Committee
NH Alliance for Health Aging

Financial exploitation bill HB 1807

Arian Deihim

Tue 3/27/2018 10:13 AM

Inbox

To:martha.hennessey@leg.state.nh.us <martha.hennessey@leg.state.nh.us>;

Cc:Cheryl Steinberg <csteinberg@nhla.org>;

Dear Committee Members:

I am writing in strong support of HB 1807. My grandparents were financially exploited by family members. When my grandfather fell ill he gave power of attorney to (the exploiter) and gave the exploiter their house under the verbal agreement that my grandparents could live there the rest of their life. The exploiter proceeded to write checks to himself as "caretaker" and donations to his church from my grandparents accounts. When asked for the checkbook he refused and continued exploiting my grandparents until they had his POA removed. Family members tried to sue the exploiter in response with no success.

After my grandfather died, the exploiter started living there and asking my grandmother to pay the bills and to get unnecessary repairs done to the house, eventually forcing her out of her home for refusing to pay the exploiter an exorbitant rent he started asking for.

After being kicked out of the home she lived in for 40 years, the exploiter placed the home on the market and was on the verge of selling it. We had no idea what to do. Thankfully, New Hampshire Legal Assistance agreed to represent my grandmother and went to superior court to stop the sale of the home. They went further to help create an agreement between the two parties to allow my grandmother to return to her home for the rest of her days, without having to deal with the exploiter anymore. There was no way we could have done this on our own and I feel forever indebted to them for what they have done for my family.

My understanding is that HB 1807 will create a new more user friendly process to help victims like my grandmother get immediate relief from exploitation or abuse. I think that this is extremely important. While we were very fortunate to receive help from New Hampshire Legal Assistance, I know that their resources are limited and they cannot help every vulnerable adult who has been victimized. I urge the Committee to pass HB 1807 so other vulnerable adults like my grandmother will have an easier way to get relief from exploitation or abuse.

Sincerely,

Arian Deihim

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