

Bill as
Introduced

HB 696-FN - AS AMENDED BY THE HOUSE

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2019 SESSION

19-0014

01/10

HOUSE BILL **696-FN**

AN ACT establishing a protective order for vulnerable adults.

SPONSORS: Rep. Cushing, Rock. 21; Rep. McMahon, Rock. 7; Rep. Campion, Graf. 12; Rep. Long, Hills. 10; Rep. Gordon, Graf. 9; Rep. Marsh, Carr. 8; Sen. Chandley, Dist 11; Sen. Carson, Dist 14; Sen. Hennessey, Dist 5.

COMMITTEE: Health, Human Services and Elderly Affairs

ANALYSIS

This bill 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 struck through~~]
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.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 Nineteen

AN ACT establishing a protective order for vulnerable adults.

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

1 1 New Chapter; Protective Orders for Vulnerable Adults. Amend RSA by inserting after chapter
2 173-C the following new chapter:

3 CHAPTER 173-D

4 PROTECTIVE ORDERS FOR VULNERABLE ADULTS

5 173-D:1 Purpose. The purpose of this chapter is to enable vulnerable adults, to seek permanent
6 and temporary relief from abuse, exploitation, and neglect.

7 173-D:2 Definitions. In this chapter:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

29 IV. "Defendant" means the person against whom the protective orders are sought and, if the
30 petition is granted, the restrained person.

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

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

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

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

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

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

18 173-D:3 Jurisdiction and Venue.

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

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

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

26 173-D:4 Commencement of Proceedings; Hearing.

27 I. A vulnerable adult, guardian, or attorney-in-fact of a vulnerable adult, or if authorized by
28 the vulnerable adult, the department, may seek relief pursuant to RSA 173-D:6 by filing a petition,
29 in the county or district where the plaintiff or defendant resides, alleging abuse, exploitation or
30 neglect by the defendant. Any person filing a petition containing false allegations of abuse shall be
31 subject to criminal penalties. Notice of the pendency of the action and of the facts alleged against
32 the defendant shall be given to the defendant, either personally or as provided in paragraph II. The
33 plaintiff shall be permitted to supplement or amend the petition only if the defendant is provided an
34 opportunity prior to the hearing to respond to the supplemental or amended petition. All petitions
35 filed under this section shall include the home and work telephone numbers of the defendant, if
36 known. Notice of the whereabouts of the plaintiff shall not be revealed except by order of the court

1 for good cause shown. Any answer by the defendant shall be filed with the court and a copy shall be
2 provided to the plaintiff by the court.

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

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

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

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

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

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

31 173-D:5 Temporary Relief.

32 I. Upon a showing of an immediate and present danger of abuse, exploitation, or neglect, the
33 court may enter temporary orders to protect the plaintiff with or without actual notice to defendant.
34 The court may issue such temporary orders by telephone, facsimile or any other methods approved
35 by court rules. Such telephonically issued orders shall be made by a circuit court judge to a law
36 enforcement officer, shall be valid in any jurisdiction in the state, and shall be effective until the
37 close of the next regular court business day. Such orders shall be returnable to the circuit court

1 where the plaintiff resides or to which the plaintiff has fled, unless otherwise ordered by the issuing
2 judge. If non-telephonic temporary orders are made ex parte, the party against whom such relief is
3 issued may file a written request with the clerk of the court and request a hearing on such orders.
4 Such hearing shall be held no less than 3 business days and no more than 5 business days after the
5 request is received by the clerk. Such hearings may constitute the final hearing described in RSA
6 173-D:4, V. Such temporary relief may include:

7 (a) Protective orders:

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

9 (2) Restraining the defendant from entering the premises and curtilage where the
10 plaintiff resides, except when the defendant is accompanied by a peace officer and, upon reasonable
11 notice to the plaintiff, is allowed entry by the plaintiff for the sole purpose of retrieving toiletries,
12 medication, clothing, business equipment, and any other items as determined by the court.

13 (3) Restraining the defendant from withholding items of the plaintiff's personal
14 property which are specified in the order. A peace officer shall accompany the plaintiff or his/her
15 representative in retrieving such property to protect the plaintiff.

16 (4) Restraining the defendant from contacting the plaintiff or entering a specified
17 place frequented regularly by the plaintiff.

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

20 (6) Restraining the defendant from taking, converting, or damaging property in
21 which the plaintiff may have a legal or equitable interest.

22 (7) Granting the plaintiff exclusive care, custody, or control of any animal owned,
23 possessed, leased, kept, or held by the plaintiff or by the plaintiff jointly with the defendant in either
24 household, and ordering the defendant to stay away from the animal and forbidding the defendant
25 from taking, transferring, encumbering, concealing, committing an act of cruelty or neglect, or
26 disposing of the animal.

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

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

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

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

1 (4) If the court makes a specific finding that it is necessary for the protection of the
2 plaintiff, the court may issue an order directing the defendant to relinquish to a police officer any
3 and all firearms and ammunition in the control, ownership, or possession of the defendant, or any
4 other person on behalf of the defendant for the duration of the protective order.

5 173-D:6 Relief.

6 I. A finding of abuse, exploitation, or neglect shall mean the defendant represents a credible
7 threat to the safety of the plaintiff or physical, mental, or financial well-being. Upon a showing of
8 abuse, exploitation, or neglect of the plaintiff by a preponderance of the evidence, the court shall
9 grant such relief as is necessary to bring about a cessation of abuse, exploitation, or neglect. Such
10 relief may include:

11 (a) Protective orders:

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

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

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

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

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

23 (6) Granting the plaintiff exclusive care, custody, or control of any animal owned,
24 possessed, leased, kept, or held by the plaintiff or by the plaintiff jointly with the defendant in either
25 household, and ordering the defendant to stay away from the animal and forbidding the defendant
26 from taking, transferring, encumbering, concealing, committing an act of cruelty or neglect, or
27 disposing of the animal.

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

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

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

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

4 (4) Ordering the defendant to make automobile, insurance, health care, utilities,
5 rent, or mortgage payments if the defendant has a legal or fiduciary duty to do so.

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

10 (6) If the court makes a specific finding that it is necessary for the protection of the
11 plaintiff, issuing an order directing the defendant to relinquish to a police officer any and all
12 firearms and ammunition in the control, ownership, or possession of the defendant, or any other
13 person on behalf of the defendant for the duration of the protective order.

14 (7) Ordering the defendant to pay reasonable attorney's fees.

15 II. If the court makes a specific finding that it necessary for the protection of the plaintiff,
16 the court may prohibit the defendant from purchasing, receiving, or possessing any deadly weapons
17 and any and all firearms and ammunition for the duration of the order. The court may subsequently
18 issue a search warrant authorizing a peace officer to seize any deadly weapons specified in the
19 protective order and any and all firearms and ammunition, if there is probable cause to believe such
20 firearms and ammunition and specified deadly weapons are kept on the premises or curtilage of the
21 defendant.

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

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

29 V. The findings of fact with respect to the protective order shall be final, but questions of law
30 may be transferred from the circuit court to the supreme court.

31 VI. Any order under this section shall be for a fixed period of time not to exceed one year,
32 but may be extended by order of the court upon a motion by the plaintiff, showing good cause, with
33 notice to the defendant, for one year after the expiration of the first order and thereafter each
34 extension may be for up to 5 years, upon the request of the plaintiff and at the discretion of the
35 court. The court shall review the order and each renewal thereof and shall grant such relief as may
36 be necessary to provide for the safety and well-being of the plaintiff. A defendant shall have the
37 right to a hearing on the extension of any order under this paragraph to be held within 30 days of

1 the extension. The court shall state in writing, at the respondent's request, its reason or reasons for
2 granting the extension. The court shall retain jurisdiction to enforce and collect any financial
3 compensation due to the plaintiff which accrued prior to the expiration of the protective order.

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

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

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

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

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

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

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

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

33 (c) The administrative office of the courts shall update the database upon expiration or
34 termination of a protective order.

35 (d) Notwithstanding any other provision of law, the administrative office of the courts,
36 the department of health and human services, or the department of safety, their employees and
37 agents, and law enforcement officials shall not be held criminally or civilly liable for action taken

1 under this chapter or RSA 458:16, provided they are acting in good faith and without gross
2 negligence, and within the scope of their duties and authority.

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

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

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

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

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

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

1 (d) No law enforcement agency shall be held liable for alleged damage or deterioration
2 due to storage or transportation to any firearms and ammunition and specified deadly weapons held
3 by a law enforcement agency, provided that due care is used.

4 173-D:7 Permissible Contact.

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

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

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

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

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

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

22 173-D:8 Guardian Ad Litem. In all proceedings under this chapter, the court may appoint a
23 guardian ad litem to represent the interests of the vulnerable adult. The guardian ad litem may
24 continue to serve after the final disposition of the case.

25 173-D:9 Notification.

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

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

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

1 173-D:10 Violation of Protective Order; Penalty.

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

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

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

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

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

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

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

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

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

36 (e) If the subsequent offense would otherwise constitute a violation, it may be charged as
37 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 means
6 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.

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 request
24 a copy of the report filed by the peace officer, at no cost, from the law enforcement department."

25 173-D:12 Notice to the Victim.

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

30 II. The clerk of the court shall be responsible for advising victims of their right to request
31 that the judge issue an order which may include:

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

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

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

1 (d) Restraining the defendant from abusing, in any way, the victim, household members,
2 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) Ordering the defendant to pay the victim monetary compensation for losses suffered
6 as a direct result of the abuse, exploitation, or neglect which may include, but not be limited to,
7 misappropriated funds, loss of earnings or support, medical and dental expenses, damage to
8 property, out-of-pocket losses for injuries sustained, and moving and shelter expenses.

9 (g) Ordering the removal of any and all firearms and ammunition in the control,
10 ownership, or possession of the defendant.

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

12 173-D:13 Emergency Care; Limitation and Liability. Any act or omission of any peace officer
13 rendering emergency care or assistance to a victim under this chapter including, but not limited to
14 transportation, shall not impose civil liability upon the peace officer or the peace officer's supervisors
15 or employer if the care or assistance is rendered in good faith, unless the act or omission is a result
16 of gross negligence or willful misconduct.

17 173-D:14 Orders Enforceable.

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

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

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

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

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

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

1 173-D:15 Reporting and Referrals. Any law enforcement officer who investigates an alleged
2 incident of abuse, exploitation, or neglect of a vulnerable adult shall report the matter to the
3 department pursuant to RSA 161-F:46 and advise the person subject to such violence of the
4 availability of programs from which that person may receive services.

5 173-D:16 Severability. If any provision of this chapter or the application of such provision to
6 any person or circumstance is held invalid, the invalidity does not affect other provisions or
7 applications of the chapter which can be given effect without the invalid provisions or applications,
8 and to this end the provisions of this chapter are severable.

9 2 Effective Date. This act shall take effect January 1, 2020.

HB 696-FN- FISCAL NOTE
AS AMENDED BY THE HOUSE (AMENDMENT #2019-0395h)

AN ACT establishing a protective order for vulnerable adults.

FISCAL IMPACT: State County Local None

STATE:	Estimated Increase / (Decrease)			
	FY 2020	FY 2021	FY 2022	FY 2023
Appropriation	\$0	\$0	\$0	\$0
Revenue	\$0	\$0	\$0	\$0
Expenditures	Indeterminable Increase	Indeterminable Increase	Indeterminable Increase	Indeterminable Increase
Funding Source:	<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 enacts a new chapter that provides a process enabling vulnerable adults to seek permanent and temporary relief from abuse, exploitation, and neglect. As part of this process, the Department of Health and Human Services is authorized, but not mandated, to file a petition in a county or district where the plaintiff or other defendant resides alleging abuse, exploitation, or neglect by the defendant. The Department states that, were it to directly file the petitions, there would likely be additional personnel costs as well as mileage expenses for Department lawyers, adult protective service workers, and any other witnesses necessary to properly prosecute the petition. In addition, the Department assumes that even in cases in which it is not the moving party filing the petition, its personnel would still be utilized as witnesses. The Department is unable to estimate the extent of any additional costs.

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 2020	FY 2021
Class B Misdemeanor	\$53	\$54
Class A Misdemeanor	\$76	\$77
Routine Criminal Felony Case	\$481	\$486
Protective Order	\$166	\$167
Warrant Request	\$76	\$77
Appeals	Varies	Varies
<p>It should be noted that average case cost estimates for FY 2020 and FY 2021 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.</p>		
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
<p>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%).</p>		
Department of Corrections		
FY 2018 Average Cost of Incarcerating an Individual	\$40,615	\$40,615
FY 2018 Annual Marginal Cost of a General Population Inmate	\$4,620	\$4,620
FY 2018 Average Cost of Supervising an Individual on Parole/Probation	\$571	\$571
NH Association of Counties		
County Prosecution Costs	Indeterminable	Indeterminable
Estimated Average Daily Cost of Incarcerating an Individual	\$105 to \$120	\$105 to \$120

The Department of Safety states the bill's fiscal impact will be under \$10,000. Any impact would be related to the expanded scope of current protective order procedures already in place for domestic violence protective orders.

The Department of Justice states the bill will have no fiscal impact as the offenses contemplated by the bill would typically be prosecuted by county prosecutors. Any appeals from convictions would be handled by the Department, but could be done within its existing budget.

AGENCIES CONTACTED:

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

HB 696-FN - AS AMENDED BY THE SENATE

27Feb2019... 0395h
05/23/2019 1968s

2019 SESSION

19-0014
01/10

HOUSE BILL **696-FN**

AN ACT establishing a protective order for vulnerable adults.

SPONSORS: Rep. Cushing, Rock. 21; Rep. McMahon, Rock. 7; Rep. Campion, Graf. 12; Rep. Long, Hills. 10; Rep. Gordon, Graf. 9; Rep. Marsh, Carr. 8; Sen. Chandley, Dist 11; Sen. Carson, Dist 14; Sen. Hennessey, Dist 5

COMMITTEE: Health, Human Services and Elderly Affairs

ANALYSIS

This bill 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 struck through~~].
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 Nineteen

AN ACT establishing a protective order for vulnerable adults.

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

1 1 New Chapter; Protective Orders for Vulnerable Adults. Amend RSA by inserting after chapter
2 173-C the following new chapter:

3 CHAPTER 173-D

4 PROTECTIVE ORDERS FOR VULNERABLE ADULTS

5 173-D:1 Purpose. The purpose of this chapter is to enable vulnerable adults, to seek permanent
6 and temporary relief from abuse, exploitation, and neglect.

7 173-D:2 Definitions. In this chapter:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

29 IV. "Defendant" means the person against whom the protective orders are sought and, if the
30 petition is granted, the restrained person.

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

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

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

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

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

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

19 173-D:3 Jurisdiction and Venue.

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

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

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

27 173-D:4 Commencement of Proceedings; Hearing.

28 I. A vulnerable adult, guardian, or attorney-in-fact of a vulnerable adult, or if authorized by
29 the vulnerable adult, the department, may seek relief pursuant to RSA 173-D:6 by filing a petition,
30 in the county or district where the plaintiff or defendant resides, alleging abuse, exploitation or
31 neglect by the defendant. Any person filing a petition containing false allegations of abuse shall be
32 subject to criminal penalties. Notice of the pendency of the action and of the facts alleged against
33 the defendant shall be given to the defendant, either personally or as provided in paragraph II. The
34 plaintiff shall be permitted to supplement or amend the petition only if the defendant is provided an
35 opportunity prior to the hearing to respond to the supplemental or amended petition. All petitions
36 filed under this section shall include the home and work telephone numbers of the defendant, if
37 known. Notice of the whereabouts of the plaintiff shall not be revealed except by order of the court

1 for good cause shown. Any answer by the defendant shall be filed with the court and a copy shall be
2 provided to the plaintiff by the court.

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

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

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

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

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

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

31 173-D:5 Temporary Relief.

32 I. Upon a showing of an immediate and present danger of abuse, exploitation, or neglect, the
33 court may enter temporary orders to protect the plaintiff with or without actual notice to defendant.
34 The court may issue such temporary orders by telephone, facsimile or any other methods approved
35 by court rules. Such telephonically issued orders shall be made by a circuit court judge to a law
36 enforcement officer, shall be valid in any jurisdiction in the state, and shall be effective until the
37 close of the next regular court business day. Such orders shall be returnable to the circuit court

1 where the plaintiff resides or to which the plaintiff has fled, unless otherwise ordered by the issuing
2 judge. If non-telephonic temporary orders are made ex parte, the party against whom such relief is
3 issued may file a written request with the clerk of the court and request a hearing on such orders.
4 Such hearing shall be held no less than 2 business days and no more than 3 business days after the
5 request is received by the clerk. Such hearings may constitute the final hearing described in RSA
6 173-D:4, V. Such temporary relief may include:

7 (a) Protective orders:

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

9 (2) Restraining the defendant from entering the premises and curtilage where the
10 plaintiff resides, except when the defendant is accompanied by a peace officer and, upon reasonable
11 notice to the plaintiff, is allowed entry by the plaintiff for the sole purpose of retrieving toiletries,
12 medication, clothing, business equipment, and any other items as determined by the court.

13 (3) Restraining the defendant from withholding items of the plaintiff's personal
14 property which are specified in the order. A peace officer shall accompany the plaintiff or his/her
15 representative in retrieving such property to protect the plaintiff.

16 (4) Restraining the defendant from contacting the plaintiff or entering a specified
17 place frequented regularly by the plaintiff.

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

20 (6) Restraining the defendant from taking, converting, or damaging property in
21 which the plaintiff has a legal or equitable interest.

22 (7) Granting the plaintiff exclusive care, custody, or control of any animal owned,
23 possessed, leased, kept, or held by the plaintiff or by the plaintiff jointly with the defendant in either
24 household, and ordering the defendant to stay away from the animal and forbidding the defendant
25 from taking, transferring, encumbering, concealing, committing an act of cruelty or neglect, or
26 disposing of the animal.

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

28 (1) In the case of financial exploitation, prohibiting the defendant from transferring
29 or otherwise encumbering any of his or her assets which equal or exceed the amount of assets
30 claimed to be exploited, provided, however, that such prohibition shall not extend to, encumber, or
31 otherwise limit the rights of creditors, mortgagees, or secured parties in such property.

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

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

1 (4) If the court makes a specific finding that it is necessary for the protection of the
2 plaintiff, the court may issue an order directing the defendant to relinquish to a police officer any
3 and all firearms and ammunition in the control, ownership, or possession of the defendant, or any
4 other person on behalf of the defendant for the duration of the protective order.

5 173-D:6 Relief.

6 I. A finding of abuse, exploitation, or neglect shall mean the defendant represents a credible
7 threat to the safety of the plaintiff or physical, mental, or financial well-being. Upon a showing of
8 abuse, exploitation, or neglect of the plaintiff by a preponderance of the evidence, the court shall
9 grant such relief as is necessary to bring about a cessation of abuse, exploitation, or neglect. Such
10 relief may include:

11 (a) Protective orders:

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

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

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

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

21 (5) Restraining the defendant from taking, converting, or damaging property in
22 which the plaintiff has a legal or equitable interest.

23 (6) Granting the plaintiff exclusive care, custody, or control of any animal owned,
24 possessed, leased, kept, or held by the plaintiff or by the plaintiff jointly with the defendant in either
25 household, and ordering the defendant to stay away from the animal and forbidding the defendant
26 from taking, transferring, encumbering, concealing, committing an act of cruelty or neglect, or
27 disposing of the animal.

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

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

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

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

4 (4) Ordering the defendant to make automobile, insurance, health care, utilities,
5 rent, or mortgage payments if the defendant has a legal or fiduciary duty to do so.

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

10 (6) If the court makes a specific finding that it is necessary for the protection of the
11 plaintiff, issuing an order directing the defendant to relinquish to a police officer any and all
12 firearms and ammunition in the control, ownership, or possession of the defendant, or any other
13 person on behalf of the defendant for the duration of the protective order.

14 (7) Ordering the defendant to pay reasonable attorney's fees.

15 II. If the court makes a specific finding that it necessary for the protection of the plaintiff,
16 the court may prohibit the defendant from purchasing, receiving, or possessing any deadly weapons
17 and any and all firearms and ammunition for the duration of the order. The court may subsequently
18 issue a search warrant authorizing a peace officer to seize any deadly weapons specified in the
19 protective order and any and all firearms and ammunition, if there is probable cause to believe such
20 firearms and ammunition and specified deadly weapons are kept on the premises or curtilage of the
21 defendant.

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

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

29 V. The findings of fact with respect to the protective order shall be final, but questions of law
30 may be transferred from the circuit court to the supreme court.

31 VI. Any order under this section shall be for a fixed period of time not to exceed one year,
32 but may be extended by order of the court upon a motion by the plaintiff, showing good cause, with
33 notice to the defendant, for one year after the expiration of the first order and thereafter each
34 extension may be for up to 5 years, upon the request of the plaintiff and at the discretion of the
35 court. The court shall review the order and each renewal thereof and shall grant such relief as may
36 be necessary to provide for the safety and well-being of the plaintiff. A defendant shall have the
37 right to a hearing on the extension of any order under this paragraph to be held within 30 days of

1 the extension. The court shall state in writing, at the respondent's request, its reason or reasons for
2 granting the extension. The court shall retain jurisdiction to enforce and collect any financial
3 compensation due to the plaintiff which accrued prior to the expiration of the protective order.

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

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

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

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

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

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

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

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

33 (c) The administrative office of the courts shall update the database upon expiration or
34 termination of a protective order.

35 (d) Notwithstanding any other provision of law, the administrative office of the courts,
36 the department of health and human services, or the department of safety, their employees and
37 agents, and law enforcement officials shall not be held criminally or civilly liable for action taken

1 under this chapter or RSA 458:16, provided they are acting in good faith and without gross
2 negligence, and within the scope of their duties and authority.

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

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

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

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

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

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

1 (d) No law enforcement agency shall be held liable for alleged damage or deterioration
2 due to storage or transportation to any firearms and ammunition and specified deadly weapons held
3 by a law enforcement agency, provided that due care is used.

4 173-D:7 Permissible Contact.

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

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

- 17 (a) Prevent contact between counsel for represented parties; or
18 (b) Prevent a party from appearing at a scheduled court or administrative hearing; or
19 (c) Prevent a defendant or defendant's counsel from sending the plaintiff copies of any
20 legal pleadings filed in court relating to the petition or related civil or criminal matters.

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

22 173-D:8 Guardian Ad Litem. In all proceedings under this chapter, the court may appoint a
23 guardian ad litem to represent the interests of the vulnerable adult. The guardian ad litem may
24 continue to serve after the final disposition of the case.

25 173-D:9 Notification.

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

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

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

1 173-D:10 Violation of Protective Order; Penalty.

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

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

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

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

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

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

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

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

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

36 (e) If the subsequent offense would otherwise constitute a violation, it may be charged as
37 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 means
6 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.

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 request
24 a copy of the report filed by the peace officer, at no cost, from the law enforcement department."

25 173-D:12 Notice to the Victim.

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

30 II. The clerk of the court shall be responsible for advising victims of their right to request
31 that the judge issue an order which may include:

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

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

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

1 (d) Restraining the defendant from abusing, in any way, the victim, household members,
2 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) Ordering the defendant to pay the victim monetary compensation for losses suffered
6 as a direct result of the abuse, exploitation, or neglect which may include, but not be limited to,
7 misappropriated funds, loss of earnings or support, medical and dental expenses, damage to
8 property, out-of-pocket losses for injuries sustained, and moving and shelter expenses.

9 (g) Ordering the removal of any and all firearms and ammunition in the control,
10 ownership, or possession of the defendant.

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

12 173-D:13 Emergency Care; Limitation and Liability. Any act or omission of any peace officer
13 rendering emergency care or assistance to a victim under this chapter including, but not limited to
14 transportation, shall not impose civil liability upon the peace officer or the peace officer's supervisors
15 or employer if the care or assistance is rendered in good faith, unless the act or omission is a result
16 of gross negligence or willful misconduct.

17 173-D:14 Orders Enforceable.

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

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

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

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

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

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, provided such person reasonably appears to be of
3 sound mind when making such statement.

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

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

12 2 Effective Date. This act shall take effect January 1, 2020.

HB 696-FN- FISCAL NOTE
 AS AMENDED BY THE SENATE (AMENDMENT #2019-1968s)

AN ACT establishing a protective order for vulnerable adults.

FISCAL IMPACT: State County Local None

STATE:	Estimated Increase / (Decrease)			
	FY 2020	FY 2021	FY 2022	FY 2023
Appropriation	\$0	\$0	\$0	\$0
Revenue	\$0	\$0	\$0	\$0
Expenditures	Indeterminable Increase	Indeterminable Increase	Indeterminable Increase	Indeterminable Increase
Funding Source:	<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 enacts a new chapter that provides a process enabling vulnerable adults to seek permanent and temporary relief from abuse, exploitation, and neglect. As part of this process, the Department of Health and Human Services is authorized, but not mandated, to file a petition in a county or district where the plaintiff or other defendant resides alleging abuse, exploitation, or neglect by the defendant. The Department states that, were it to directly file the petitions, there would likely be additional personnel costs as well as mileage expenses for Department lawyers, adult protective service workers, and any other witnesses necessary to properly prosecute the petition. In addition, the Department assumes that even in cases in which it is not the moving party filing the petition, its personnel would still be utilized as witnesses. The Department is unable to estimate the extent of any additional costs.

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 2020	FY 2021
Class B Misdemeanor	\$53	\$54
Class A Misdemeanor	\$76	\$77
Routine Criminal Felony Case	\$481	\$486
Protective Order	\$166	\$167
Warrant Request	\$76	\$77
Appeals	Varies	Varies
<p>It should be noted that average case cost estimates for FY 2020 and FY 2021 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.</p>		
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
<p>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%).</p>		
Department of Corrections		
FY 2018 Average Cost of Incarcerating an Individual	\$40,615	\$40,615
FY 2018 Annual Marginal Cost of a General Population Inmate	\$4,620	\$4,620
FY 2018 Average Cost of Supervising an Individual on Parole/Probation	\$571	\$571
NH Association of Counties		
County Prosecution Costs	Indeterminable	Indeterminable
Estimated Average Daily Cost of Incarcerating an Individual	\$105 to \$120	\$105 to \$120

The Department of Safety states the bill's fiscal impact will be under \$10,000. Any impact would be related to the expanded scope of current protective order procedures already in place for domestic violence protective orders.

The Department of Justice states the bill will have no fiscal impact as the offenses contemplated by the bill would typically be prosecuted by county prosecutors. Any appeals from convictions would be handled by the Department, but could be done within its existing budget.

AGENCIES CONTACTED:

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

**HB 696-FN FISCAL NOTE
 AS AMENDED BY THE SENATE (AMENDMENT #2019-1968s)**

AN ACT establishing a protective order for vulnerable adults.

FISCAL IMPACT: State County Local None

STATE:	Estimated Increase / (Decrease)			
	FY 2020	FY 2021	FY 2022	FY 2023
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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:

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METHODOLOGY:

This bill enacts a new chapter that provides a process enabling vulnerable adults to seek permanent and temporary relief from abuse, exploitation, and neglect. As part of this process, the Department of Health and Human Services is authorized, but not mandated, to file a petition in a county or district where the plaintiff or other defendant resides alleging abuse, exploitation, or neglect by the defendant. The Department states that, were it to directly file the petitions, there would likely be additional personnel costs as well as mileage expenses for Department lawyers, adult protective service workers, and any other witnesses necessary to properly prosecute the petition. In addition, the Department assumes that even in cases in which it is not the moving party filing the petition, its personnel would still be utilized as witnesses. The Department is unable to estimate the extent of any additional costs.

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.

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<p>It should be noted that average case cost estimates for FY 2020 and FY 2021 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.</p>		
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County Prosecution Costs	Indeterminable	Indeterminable
Estimated Average Daily Cost of Incarcerating an Individual	\$105 to \$120	\$105 to \$120

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The Department of Justice states the bill will have no fiscal impact as the offenses contemplated by the bill would typically be prosecuted by county prosecutors. Any appeals from convictions would be handled by the Department, but could be done within its existing budget.

AGENCIES CONTACTED:

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

HB 696-FN - FINAL VERSION

27Feb2019... 0395h
05/23/2019 1968s
27Jun2019... 2523-CofC

2019 SESSION

19-0014
01/10

HOUSE BILL **696-FN**

AN ACT establishing a protective order for vulnerable adults.

SPONSORS: Rep. Cushing, Rock. 21; Rep. McMahon, Rock. 7; Rep. Campion, Graf. 12; Rep. Long, Hills. 10; Rep. Gordon, Graf. 9; Rep. Marsh, Carr. 8; Sen. Chandley, Dist 11; Sen. Carson, Dist 14; Sen. Hennessey, Dist 5

COMMITTEE: Health, Human Services and Elderly Affairs

ANALYSIS

This bill 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 struck through~~].
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

1 IV. "Defendant" means the person against whom the protective orders are sought and, if the
2 petition is granted, the restrained person.

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

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

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

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

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

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

21 173-D:3 Jurisdiction and Venue.

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

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

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

29 173-D:4 Commencement of Proceedings; Hearing.

30 I. A vulnerable adult, guardian, or attorney-in-fact of a vulnerable adult, or if authorized by
31 the vulnerable adult, the department, may seek relief pursuant to RSA 173-D:6 by filing a petition,
32 in the county or district where the plaintiff or defendant resides, alleging abuse, exploitation or
33 neglect by the defendant. Any person filing a petition containing false allegations of abuse shall be
34 subject to criminal penalties. Notice of the pendency of the action and of the facts alleged against
35 the defendant shall be given to the defendant, either personally or as provided in paragraph II. The
36 plaintiff shall be permitted to supplement or amend the petition only if the defendant is provided an
37 opportunity prior to the hearing to respond to the supplemental or amended petition. All petitions

1 filed under this section shall include the home and work telephone numbers of the defendant, if
2 known. Notice of the whereabouts of the plaintiff shall not be revealed except by order of the court
3 for good cause shown. Any answer by the defendant shall be filed with the court and a copy shall be
4 provided to the plaintiff by the court.

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

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

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

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

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

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

33 173-D:5 Temporary Relief.

34 I. Upon a showing of an immediate and present danger of abuse, exploitation, or neglect, the
35 court may enter temporary orders to protect the plaintiff with or without actual notice to defendant.
36 The court may issue such temporary orders by telephone, facsimile or any other methods approved
37 by court rules. Such telephonically issued orders shall be made by a circuit court judge to a law

1 enforcement officer, shall be valid in any jurisdiction in the state, and shall be effective until the
2 close of the next regular court business day. Such orders shall be returnable to the circuit court
3 where the plaintiff resides or to which the plaintiff has fled, unless otherwise ordered by the issuing
4 judge. If non-telephonic temporary orders are made ex parte, the party against whom such relief is
5 issued may file a written request with the clerk of the court and request a hearing on such orders.
6 Such hearing shall be held no less than 2 business days and no more than 3 business days after the
7 request is received by the clerk. Such hearings may constitute the final hearing described in RSA
8 173-D:4, V. Such temporary relief may include:

9 (a) Protective orders:

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

11 (2) Restraining the defendant from entering the premises and curtilage where the
12 plaintiff resides, except when the defendant is accompanied by a peace officer and, upon reasonable
13 notice to the plaintiff, is allowed entry by the plaintiff for the sole purpose of retrieving toiletries,
14 medication, clothing, business equipment, and any other items as determined by the court.

15 (3) Restraining the defendant from withholding items of the plaintiff's personal
16 property which are specified in the order. A peace officer shall accompany the plaintiff or his/her
17 representative in retrieving such property to protect the plaintiff.

18 (4) Restraining the defendant from contacting the plaintiff or entering a specified
19 place frequented regularly by the plaintiff.

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

22 (6) Restraining the defendant from taking, converting, or damaging property in
23 which the plaintiff has a legal or equitable interest.

24 (7) Granting the plaintiff exclusive care, custody, or control of any animal owned,
25 possessed, leased, kept, or held by the plaintiff or by the plaintiff jointly with the defendant in either
26 household, and ordering the defendant to stay away from the animal and forbidding the defendant
27 from taking, transferring, encumbering, concealing, committing an act of cruelty or neglect, or
28 disposing of the animal.

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

30 (1) In the case of financial exploitation, prohibiting the defendant from transferring
31 or otherwise encumbering any of his or her assets which equal or exceed the amount of assets
32 claimed to be exploited, provided, however, that such prohibition shall not extend to, encumber, or
33 otherwise limit the rights of creditors, mortgagees, or secured parties in such property.

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

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

3 173-D:6 Relief.

4 I. A finding of abuse, exploitation, or neglect shall mean the defendant represents a credible
5 threat to the safety of the plaintiff or physical, mental, or financial well-being. Upon a showing of
6 abuse, exploitation, or neglect of the plaintiff by a preponderance of the evidence, the court shall
7 grant such relief as is necessary to bring about a cessation of abuse, exploitation, or neglect. Such
8 relief may include:

9 (a) Protective orders:

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

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

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

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

19 (5) Restraining the defendant from taking, converting, or damaging property in
20 which the plaintiff has a legal or equitable interest.

21 (6) Granting the plaintiff exclusive care, custody, or control of any animal owned,
22 possessed, leased, kept, or held by the plaintiff or by the plaintiff jointly with the defendant in either
23 household, and ordering the defendant to stay away from the animal and forbidding the defendant
24 from taking, transferring, encumbering, concealing, committing an act of cruelty or neglect, or
25 disposing of the animal.

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

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

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

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

1 (4) Ordering the defendant to make automobile, insurance, health care, utilities,
2 rent, or mortgage payments if the defendant has a legal or fiduciary duty to do so.

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

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

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

12 III. No order made under this section shall supersede or affect any court order pertaining to
13 the possession of a residence or household furniture as determined by a circuit court, or title to real
14 or personal property.

15 IV. The findings of fact with respect to the protective order shall be final, but questions of
16 law may be transferred from the circuit court to the supreme court.

17 V. Any order under this section shall be for a fixed period of time not to exceed one year, but
18 may be extended by order of the court upon a motion by the plaintiff, showing good cause, with
19 notice to the defendant, for one year after the expiration of the first order and thereafter each
20 extension may be for up to 5 years, upon the request of the plaintiff and at the discretion of the
21 court. The court shall review the order and each renewal thereof and shall grant such relief as may
22 be necessary to provide for the safety and well-being of the plaintiff. A defendant shall have the
23 right to a hearing on the extension of any order under this paragraph to be held within 30 days of
24 the extension. The court shall state in writing, at the respondent's request, its reason or reasons for
25 granting the extension. The court shall retain jurisdiction to enforce and collect any financial
26 compensation due to the plaintiff which accrued prior to the expiration of the protective order.

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

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

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

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

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

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

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

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

21 (c) The administrative office of the courts shall update the database upon expiration or
22 termination of a protective order.

23 (d) Notwithstanding any other provision of law, the administrative office of the courts,
24 the department of health and human services, or the department of safety, their employees and
25 agents, and law enforcement officials shall not be held criminally or civilly liable for action taken
26 under this chapter or RSA 458:16, provided they are acting in good faith and without gross
27 negligence, and within the scope of their duties and authority.

28 173-D:7 Permissible Contact.

29 I. A protective order issued pursuant to RSA 173-D:5 or RSA 173-D:6 shall not be construed
30 to prohibit an attorney, or any person acting on the attorney's behalf, who is representing the
31 defendant in an action brought under this chapter, or in any criminal proceeding concerning the
32 abuse alleged under this chapter, from contacting the plaintiff for a legitimate purpose within the
33 scope of the civil or criminal proceeding; provided, that the attorney or person acting on behalf of the
34 attorney: identifies himself or herself as a representative of the defendant; acknowledges the
35 existence of the protective order and informs the plaintiff that he or she has no obligation to speak;
36 terminates contact with the plaintiff if the plaintiff expresses an unwillingness to talk; and ensures

1 that any personal contact with the plaintiff occurs outside of the defendant's presence, unless the
2 court has modified the protective order to permit such contact.

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

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

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

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

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

10 173-D:8 Guardian Ad Litem. In all proceedings under this chapter, the court may appoint a
11 guardian ad litem to represent the interests of the vulnerable adult. The guardian ad litem may
12 continue to serve after the final disposition of the case.

13 173-D:9 Notification.

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

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

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

26 173-D:10 Violation of Protective Order; Penalty.

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

34 II. The prosecution and sentencing for criminal contempt for a violation of a protective order
35 shall not preclude the prosecution of or sentencing for other criminal charges underlying the
36 contempt.

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

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

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

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

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

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

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

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

22 173-D:11 Protection by Peace Officers.

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

26 (a) Confiscating any deadly weapons involved in the alleged abuse, exploitation or
27 neglect.

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

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

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

35 "If you are the victim of abuse, exploitation and neglect and you believe that law enforcement
36 protection is needed for your physical safety, you have the right to request that the officer assist in
37 providing for your safety, including asking for an emergency telephonic order for protection. You

1 may also request that the officer assist you in obtaining from your premises and curtilage, toiletries,
2 medication, clothing, business equipment, and any other items as determined by the court, and in
3 locating and taking you to a local safe place including, but not limited to, a place of safety a family
4 member's or friend's residence, or a similar place of safety. If you are in need of medical treatment,
5 you have the right to request that the officer assist you in obtaining an ambulance. You may request
6 a copy of the report filed by the peace officer, at no cost, from the law enforcement department."

7 173-D:12 Notice to the Victim.

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

12 II. The clerk of the court shall be responsible for advising victims of their right to request
13 that the judge issue an order which may include:

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

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

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

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

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

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

27 (g) Ordering the defendant to pay reasonable attorney's fees.

28 173-D:13 Emergency Care; Limitation and Liability. Any act or omission of any peace officer
29 rendering emergency care or assistance to a victim under this chapter including, but not limited to
30 transportation, shall not impose civil liability upon the peace officer or the peace officer's supervisors
31 or employer if the care or assistance is rendered in good faith, unless the act or omission is a result
32 of gross negligence or willful misconduct.

33 173-D:14 Orders Enforceable.

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

35 II. Any protective order issued by any other state, tribal, or territorial court related to abuse,
36 exploitation or neglect of a vulnerable adult, including an ex parte order, shall be deemed valid if the
37 issuing court had jurisdiction over the parties and matter under the law of the state, tribe, or

1 territory, and the person against whom the order was made was given reasonable notice and
2 opportunity to be heard. There shall be a presumption of validity where an order appears facially
3 valid.

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

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

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

15 VI. Law enforcement personnel may rely on the statement of the person protected by the
16 order that the order remains in effect as written, provided such person reasonably appears to be of
17 sound mind when making such statement.

18 173-D:15 Reporting and Referrals. Any law enforcement officer who investigates an alleged
19 incident of abuse, exploitation, or neglect of a vulnerable adult shall report the matter to the
20 department pursuant to RSA 161-F:46 and advise the person subject to such violence of the
21 availability of programs from which that person may receive services.

22 173-D:16 Severability. If any provision of this chapter or the application of such provision to
23 any person or circumstance is held invalid, the invalidity does not affect other provisions or
24 applications of the chapter which can be given effect without the invalid provisions or applications,
25 and to this end the provisions of this chapter are severable.

26 2 Effective Date. This act shall take effect January 1, 2020.

27
28 VETOED July 19, 2019

29 Veto Sustained September 18, 2019

30

HB 696-FN- FISCAL NOTE
 AS AMENDED BY THE SENATE (AMENDMENT #2019-1968s)

AN ACT establishing a protective order for vulnerable adults.

FISCAL IMPACT: State County Local None

STATE:	Estimated Increase / (Decrease)			
	FY 2020	FY 2021	FY 2022	FY 2023
Appropriation	\$0	\$0	\$0	\$0
Revenue	\$0	\$0	\$0	\$0
Expenditures	Indeterminable Increase	Indeterminable Increase	Indeterminable Increase	Indeterminable Increase
Funding Source:	<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 enacts a new chapter that provides a process enabling vulnerable adults to seek permanent and temporary relief from abuse, exploitation, and neglect. As part of this process, the Department of Health and Human Services is authorized, but not mandated, to file a petition in a county or district where the plaintiff or other defendant resides alleging abuse, exploitation, or neglect by the defendant. The Department states that, were it to directly file the petitions, there would likely be additional personnel costs as well as mileage expenses for Department lawyers, adult protective service workers, and any other witnesses necessary to properly prosecute the petition. In addition, the Department assumes that even in cases in which it is not the moving party filing the petition, its personnel would still be utilized as witnesses. The Department is unable to estimate the extent of any additional costs.

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 2020	FY 2021
Class B Misdemeanor	\$53	\$54
Class A Misdemeanor	\$76	\$77
Routine Criminal Felony Case	\$481	\$486
Protective Order	\$166	\$167
Warrant Request	\$76	\$77
Appeals	Varies	Varies
<p>It should be noted that average case cost estimates for FY 2020 and FY 2021 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.</p>		
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
<p>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%).</p>		
Department of Corrections		
FY 2018 Average Cost of Incarcerating an Individual	\$40,615	\$40,615
FY 2018 Annual Marginal Cost of a General Population Inmate	\$4,620	\$4,620
FY 2018 Average Cost of Supervising an Individual on Parole/Probation	\$571	\$571
NH Association of Counties		
County Prosecution Costs	Indeterminable	Indeterminable
Estimated Average Daily Cost of Incarcerating an Individual	\$105 to \$120	\$105 to \$120

The Department of Safety states the bill's fiscal impact will be under \$10,000. Any impact would be related to the expanded scope of current protective order procedures already in place for domestic violence protective orders.

The Department of Justice states the bill will have no fiscal impact as the offenses contemplated by the bill would typically be prosecuted by county prosecutors. Any appeals from convictions would be handled by the Department, but could be done within its existing budget.

AGENCIES CONTACTED:

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

Amendments

Sen. Chandley, Dist 11
May 14, 2019
2019-1954s
01/04

Amendment to HB 696-FN

1 Amend the introductory paragraph of RSA 173-D:5, I as inserted by section 1 of the bill by replacing
2 it with the following:

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

16
17 Amend RSA 173-D:5, I(a)(6) as inserted by section 1 of the bill by replacing it with the following:

18
19 (6) Restraining the defendant from taking, converting, or damaging property in
20 which the plaintiff has a legal or equitable interest.

21
22 Amend RSA 175-D:5, I(b)(1) as inserted by section 1 of the bill by replacing it with the following:

23
24 (1) In the case of financial exploitation, prohibiting the defendant from transferring
25 or otherwise encumbering any of his or her assets which equal or exceed the amount of assets
26 claimed to be exploited, provided, however, that such prohibition shall not extend to, encumber, or
27 otherwise limit the rights of creditors, mortgagees, or secured parties in such property.

28
29 Amend RSA 173-D:6, I(a)(5) as inserted by section 1 of the bill by replacing it with the following:

30
31 (5) Restraining the defendant from taking, converting, or damaging property in
32 which the plaintiff has a legal or equitable interest.

Amendment to HB 696-FN

- Page 2 -

1 Amend RSA 173-D:14, VI as inserted by section 1 of the bill by replacing it with the following:

2

3 VI. Law enforcement personnel may rely on the statement of the person protected by the
4 order that the order remains in effect as written, provided such person reasonably appears to be of
5 sound mind when making such statement.

UNAPPROVED

1954

Chandley → Hennessey
3-2 (Carson/French)

OTPA

Chandley → Hennessey
3-2 (Carson/French)

Chandley

Amendment to HB 696-FN

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5 sound mind when making such statement.

Committee Minutes

SENATE CALENDAR NOTICE

Judiciary

Sen Martha Hennessey, Chair
Sen Shannon Chandley, Vice Chair
Sen Melanie Levesque, Member
Sen Sharon Carson, Member
Sen Harold French, Member

Date: May 2, 2019

HEARINGS

Tuesday	05/07/2019	
(Day)	(Date)	
Judiciary	SH 100	9:00 a.m.
(Name of Committee)	(Place)	(Time)

9:00 a.m. **HB 481-FN-A-LOCAL** relative to the legalization and regulation of cannabis and making appropriations therefor.
(THE PREVIOUS HEARING FOR HB 481 WAS RECESSED ON MARCH 23RD)

9:45 a.m. **HB 696-FN** establishing a protective order for vulnerable adults.

10:15 a.m. **HB 291** establishing a committee to study certain findings and other initiatives regarding end-of-life care.

EXECUTIVE SESSION MAY FOLLOW

Sponsors:

HB 481-FN-A-LOCAL

Rep. Cushing
Rep. McGuire
Rep. Knirk

Rep. O'Connor
Rep. Webb
Rep. Conley

Rep. Cleaver
Rep. Tanner
Sen. Reagan

Rep. Butler
Rep. Wallace
Sen. Hennessey

HB 696-FN

Rep. Cushing
Rep. Gordon
Sen. Hennessey

Rep. McMahon
Rep. Marsh

Rep. Champion
Sen. Chandley

Rep. Long
Sen. Carson

HB 291

Rep. Butler
Sen. Hennessey

Rep. Knirk

Rep. Van Houten

Rep. M. Smith

Jennifer Horgan 271-2609

Martha S. Hennessey
Chairman

Senate Judiciary Committee
Jennifer Horgan 271-2609

HB 696-FN, establishing a protective order for vulnerable adults.

Hearing Date: May 7, 2019

Time Opened: 11:28 a.m.

Time Closed: 12:45 p.m.

Members of the Committee Present: Senators Hennessey, Chandley, Levesque, Carson and French

Members of the Committee Absent : None

Bill Analysis: This bill establishes a procedure for protective orders for vulnerable adults.

Sponsors:

Rep. Cushing

Rep. McMahon

Rep. Champion

Rep. Long

Rep. Gordon

Rep. Marsh

Sen. Chandley

Sen. Carson

Sen. Hennessey

Who supports the bill: Representative Cushing; Representative Horrigan; Representative Cleaver; Representative Chase; Representative Knight; Doug McNutt, AARP; Heather Carroll, Alzheimer Association; Cheryl Steinberg, NH Legal Assistance; Janice McDermott, Granite State Home Care and Hospice; Roger Desrosiers; Richard Moore

Who opposes the bill: Representative Horn; Representative Sylvia; Honorable Bob Clegg, Pro Gun NH; Honorable Joe Hannon, Gun Owners of New Hampshire; Honorable JR Hoell; Honorable Dan Itse, NHFC; Susan Olsen, WDLNH; Steven Stefanik; Donna Dowey; Karen Testerman; Katherine Cooper, NHACDL; Jane Skanta; K. Carelone Holmes; Aaron Penkacik; AR Dunn; Nina Amole; James Gaffney; Alvin See; Robert Newton; Charles Sims; Joan Soma; Bob Pagano; Thomas Carney; Scott Philbrock; Danial Dockham Jr.; Peter Pritchard; Penny Dean; Robert Kroepel; Steve Dane; Rick Castellano; Elise Catellano

Who is neutral on the bill: Jessica Eskeland

Summary of testimony presented in support:

Representative Cushing

- NH has one of the oldest populations in the country with approximately 20% of the population is over the age of 65.
- As individuals age they become increasingly vulnerable to exploitation.

- This bill is a continuum of legislation already enacted to help protect our elderly and vulnerable citizens.
- This grows out of a number of high-profile cases.
- In Portsmouth a police officer exercised undue influence on an elderly widow. The officer drained a fair amount of her assets and ended up being the beneficiary of her will.
- In 2014 the legislature made acts of financial exploitation illegal.
- However, there is no mechanism to go after that exploitation while it is in progress, allowing for an intervention in the courts.
- This is an outgrowth of work by the state through a number of stakeholders, including the Senior Law Project, the American Association of Retired People, Alzheimer's Association, the Bankers Association, the Disabilities Rights Center, and the National Academy of Elder Law.
- The language is modeled off of RSA173-B, the domestic violence protective order statute. That statute has saved lives and it has been upheld by our courts.
- Was surprised, respectfully, that some people considered this legislation to be a gun issue.
- This bill is narrowly tailored to be less protective of vulnerable adults than domestic violence victims.
- The provision that provides for the removal of firearms says specifically that the court must make a specific finding for the protection of the plaintiff.
- Some may wish to see this removed from the statute.
- However, when an elderly person is being exploited and told if they go to the police they will be killed there needs to be some kind protection.
- The NH Coalition Against Domestic and Sexual Violence has a minor amendment he supports that clarifies that a victim of domestic violence will still have access to RSA173-B. Will provide that to the committee if they so wish.

Representative Horrigan

- Firearms are something abusers use against vulnerable adults.
- We can work on the gun issue without banning everything.
- The abuse defined in the bill is very egregious conduct and there is a lot of due process involved.
- If someone makes a false complaint, they can be prosecuted for that.
- The permanent order has to be done in court and the defendant will have the opportunity to defend themselves.

Doug McNutt (AARP) (provided written testimony)

- If there are all these problems with this bill, then there are all the same problems with the domestic violence protective order statute.
- If someone is convicted of exploitation, the money is gone; if someone is convicted of abuse, the abuse has already happened.
- Once the money is gone, people end up on assistance and they become even more vulnerable.
- Senator French asked if this whole piece of legislation is to protect the vulnerable from financial losses.
 - It is to protect them from abuse, neglect, and exploitation. That could be physical or mental abuse.

- Senator French asked if this would primarily be from a relative.
 - Often it is a relative, but it could be friends or neighbors. Vulnerable does not mean incompetent. It just means they have some vulnerability.

Cheryl Steinberg (NH Legal Assistance)

- Elderly abuse and exploitation are a significant problem that is growing.
- The current adult protective statute does not allow any real action to be taken.
- This is meant to be preventative and stop the bleeding.
- There is no easy way for people to currently go to court and get relief.
- A parent gave their son and daughter-in-law the house mortgage free as long as she could continue living there. They tried to sell the house out from under her; they were able to get the sale stop but the average person does not know how to do that.
- This bill was driven by financial exploitation, but it is not addressing just that.
- RSA173-B is limited to household members, family, and intimate partners. Caregivers and other certain types of people do prey on older adults and 173-B would not cover that.
- Senator Levesque asked if removing firearms is a critical piece to have in this bill.
 - These go hand in hand. It is a small portion of the bill and was not the main intent, but it is important. If it is a simple financial exploitation no order will be issued.
- Senator Levesque asked if no action would be taken until the court deems so.
 - Correct. This was all based on the domestic violence protective order statute. To the extent there are constitutional issues, the NH Supreme Court has upheld 173-B which has the same provisions.
- Senator French asked how this would have affected the Geraldine Webber case in Portsmouth.
 - Geraldine would have had to file a petition against the officer. That was having her change her will, not stealing her money while she was alive. This bill is to empower the victim to get relief. Elderly and Adult Services could have gotten involved as well.

Heather Carroll (Alzheimer's Association)

- This strengthens the laws to protect older adults.
- Vulnerable people are often targeted and at risk for exploitation due to their dependency on others.
- In 2017 they received over 100 calls to their help line about abuse and financial exploitation.
- In 2018 it increased 52% and in 2019 they have already had 15 calls.
- Often when the police start opening an investigation restitution is very hard to get.
- Any abuse of a vulnerable person is an intolerable crime resulting in the loss of human rights and dignity.
- Currently this is under reported, under recognized and under prosecuted.

Summary of testimony presented in opposition:

Susan Olsen (Women's Defense League of NH) (provided written testimony)

- Opposes this bill because of the specific reference to the protective order which forcibly disarms individuals.
- Existing law already is in place to prevent such abuse.
- Chapter 161-F identifies the types of abuse.
- Chapter 42 states unambiguously states that the purpose is of this subdivision is to provide protection for vulnerable adults who are abused, neglected, or exploited.
- F:46 says any person has an obligation to report or cause a report to be made to local law enforcement if such abuse is identified.
- Concurrently Chapter 631:9 details the legal and criminal consequences for someone charged and found guilty of such abuse.
- Disagrees respectfully with the prime sponsor. This provides no aid or comfort to vulnerable adults.
- This bill leaves alleged abusers with baseball bats, brass knuckles, chainsaw, bear spray, and their bare hands.
- The only relief that this bill offers is just another piece of paper.
- Carol Brown of NJ held such a piece of paper and she was murdered in her driveway.
- Provided a way to easily RSA 173:B to include provisions and protections for vulnerable adults that will actually work.

Bob Clegg (Pro Gun NH)

- Thinks the bill belongs in another statute.
- To hear there is an amendment to use two statutes means people are already looking to see how they can abuse this.
- This will allow for the prosecution of the same crime under multiple statutes.
- It should just be in one statute so that when someone makes an accusation, everyone knows what they are defending themselves against.
- Wants the elderly to be protected but does not want to do it at the expense of fairness to everyone else.
- People are making false accusations on a regular basis and it is too easy to abuse this new one.
- If we could merge it, would be able to support it.

Honorable Joe Hannon (Gun Owners of NH) (provided written testimony)

- There are many reasons in the bill given to explain exploitation or other crimes against vulnerable adults.
- It is unclear whether someone has to be guilty of a violent crime or suspected of using physical force in order to have their firearms taken away.
- This bill does not make the courts bound by the rules of technical evidence.
- The bill says that police can confiscate any and all firearms on the premises. Therefore, law enforcement could take firearms from others that live in the home punishing them with no just cause.
- There is also a need for a hearing in order for an individual to get their property back after the expiration of the sentence.
- There is no incentive for the police to safeguard the property in their possession.
- The potential for false accusations and abuse is serious.
- In divorce or child custody cases this could be used as a weapon.

Steven Stefanik

- Opposed for two reasons: Article 14 of the US Constitution and Article 19 of NH Constitution.
- The Judiciary Committee is charged with deciding whether or not they are abiding by these constitutions.
- If the Committee fails, someone is going to take this to the Supreme Courts, state and federal.

Katherine Cooper (NH Association of Criminal Defense Lawyers)

- Page 10, paragraph 4 is a difficult paragraph to ascertain which crimes are going to be considered.
- To have these advanced penalties with additional felony exposure and punishment based on prior conduct.
- NH has a major incarceration issue and these types of enhancements are part of the reason of how we got there.
- Requiring law enforcement to rely on the statement of the person protected by the order seems ill advised as that person has been determined to not to be able to make sufficient decisions to care for themselves.
- The police should have to go to the courts and determine whether or not there is a legally enforceable order before it is enforced.
- There are several provisions that take away on an ex parte basis prior to a hearing a person's ability to spend their own money.
- This could prevent someone from being able to hire an attorney to represent them.
- A person could lose their car, control of their money, and their home.
- It is problematic that the court can order any animal to only be in the care of someone that has already been determined to not be able to care for themselves.
- Thinks these should be subject to the rules of evidence.
- It seems the primary concern is financial crimes, so if the bill was narrowed to that it would seem to make more sense.

Honorable JR Hoell

- The existing statutes already covers much of these concerns.
- The bill as drafted subverts the criminal justice system.
- It denies the rights of the accused person before they have been to a court.
- If the police come to your door and say they are here to collect your dogs, firearms, etc., they may not have the order on hand.
- Do you risk fighting a felony by not complying out of the gate? Someone's day in court could take weeks or even a month to occur.
- This could be a car or firearm depriving someone of property they may need to fund the attorney.
- If there are financial concerns the bill should address that. This bill does not do that.

Kathy Holmes (provided written testimony)

- People who break laws accuse the law-abiding citizens and use the court system to get away with these accusations.
- Judges are subjective and, in many cases, wrong.
- This denies the constitutional rights to people.

- The accuser owed her \$12,000 dollars.
- The judge had made her mind up ahead of time.
- Had to go all the way to the Supreme Court to get this fixed. It cost a lot of money to do that.
- The lawyers will always make out like a bandit.

Aaron Penkacik

- Believes the elderly need the protections in the bill.
- It is pervasive in society today.
- Opposed to the ex parte confiscation of firearms
- It violates Articles 2, 4, and 14 of the US Constitution.
- There is no accountability to maintain the evidence seized.
- Many firearm owners have their firearms returned not in the condition it was in when it was seized.

James Gaffney

- Is not denying the intentions of the bill, but as written it is non-specific and arbitrary,
- There is no definition of abuse or neglect and everything is subjective.
- It is going to be applied differently by every court.
- There are lots of wild accusations out there and this bill does not provide protections for people that are the subject of these allegations.
- We have major problems with our existing domestic violence statute. It is regularly used as a bargaining chip in separation and divorce proceedings.
- If you want to protect people, it has to be very specific.
- It has to protect the people it is trying to protect and those that could be falsely accused.

Honorable Dan Itse (provided written testimony)

- Page 3 line 32, says the court may issue such orders by telephone. If the order is issued telephonically you have no power to get a hearing. Whatever is done ex parte is permanent.
- Article 12. When property is confiscated there is no question since someone cannot get it back without a costly and lengthy hearing that you are being punished without being apprised of the crime in the first place.
- Shared a photo of a firearm that had been confiscated and the police etched "E8" on the body of the firearm in order to catalog it. That reduced its value by 70%.
- If it had historical value, that would have destroyed its value.
- If the state is going to intervene they have a duty to maintain the value of that property.
- In a civil case, if the value of the controversy is more than \$1500 or involves real estate you have a right to a trial by jury. This legislation makes no provisions for that.
- Senator French asked if the police could have used the serial number of that firearm rather than scratching it.
 - They could have used the serial number, or they could have tied a tag through the trigger guard. Defacing the property is not the only way to identify it.

Robert Newton

- Domestic violence is a certain kind of assault and crime in which appropriate actions have been legislated.
- This bill creates a much broader net.
- There are many instances where it would be completely inappropriate to confiscate someone's firearms.
- There are often three parties in these proceedings: the victim, accused and an attorney in fact.
- There seems to be no repercussions for making a false accusation.
- Suggests that if it turns out that the accuser did make a false accusation, that the accuser pay the cost related to the proceeding and any damages to the accused.
- With respect to confiscation of all assets of the accused on the basis of a ex parte, would suggest that it only provide such assets that are on the basis of the accusation.

Charles Sims (provided written testimony)

- Red flag laws violate every principle and liberty on which the country was founded.
- This presumes a person is guilty until proven innocent.
- Reviewed how red flag laws violate the constitution.
- Red flag laws are tantamount to a declaration of war on the people.
- Every instance of an innocent person subjected to a red flag law gun confiscation order will only magnify and strengthen the resentment and animosity in the hearts of the community against these laws and against those implementing them.
- This is a powder keg that could explode in an all-out rebellion at any time.
- Over 2 million times a year, citizens are protected by using a gun 80 times more than people are damaged by one.

Bob Pagano

- This does not seem to represent the citizens of NH. It seems to represent the citizens of California or New Jersey.
- Ex parte laws are the stuff of totalitarian states.
- When we remove due process, we are on a slippery slope to a very bad place.
- This is horribly flawed.

Thomas Carney

- Is a lawful gun owner and a senior citizen.
- Is sympathetic to a lot of the legislation, but the red flag component is troublesome.
- There is always a presumption that you are a proper person under that law and that the duty of the accuser is to prove you are not a proper person under the law.
- It is troubling that there is no due process.
- The practical applications are: if a dog is barking all night and he asks them to silence the dog and they don't. What prevents him from accusing his neighbor of brandishing a gun?
- The burden of proof should be on the accuser.

- On page 6, the burden should be to determine the person's demeanor. Is the person irrational and going to act on a threat of shooting?

Penny Dean

- Agrees with the many defects that have been brought up.
- This allows jurisdiction to reside where the plaintiff has fled.
- That is hugely problematic because it allows the plaintiff to form shop.
- It is an issue of fairness.
- This means choosing to go to a specific jurisdiction because she knows the judges favorable to her case.
- The first thing any attorney will ask you is who is the judge and who is the other attorney because that matters.
- We have basic ideas of fair play and substantial justice.
- If she never goes into Coos County she should not have to go up there in a case.
- Allowing one party to choose is patently unfair.

Robert Kroepel

- The bill implements a sophisticated restraint order law.
- Is not aware that current laws are inadequate or need to be replaced.
- It will not stop an individual with a true criminal intent.
- If you confiscate someone's firearms, they can use a kitchen knife or go to the black market to buy another gun.
- False accusations occur.
- The essence of the law is no man should injure another person.
- People have to be protected by the law unless they actually did something.
- There are sheriffs in OR and WA who will not implement this law.

jch

Date Hearing Report completed: May 13, 2019

Notice of Meeting: Committee of Conference

6/17/19

11:00 a.m.

LOB 204

HB 696-FN

establishing a protective order for vulnerable adults.

House Conferees: Cushing, Welch, Weber and R. Osborne

Senate Conferees: Hennessey, Levesque and French

Speakers

Senate Judiciary Committee

SIGN-IN SHEET

Date: 05/07/2019 Time: 9:45 a.m.

HB 696-FN AN ACT establishing a protective order for vulnerable adults.

Name/Representing (please print neatly)

Name/Representing	Support	Oppose	Speaking?	Yes	No
✓ SUSAN OLSEN WINDMILL	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Speaking?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
REP BARRY CUSHY	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Speaking?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
✓ Dr. Joe Harmon Vice President, GMA Owners of New Hampshire	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Speaking?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
✓ Steven Stefanik	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Speaking?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
✗ Donna Rowley/Sec Concord NH	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Speaking?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
✗ Karen Testerman	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Speaking?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
✓ Katherine Cope NHACPL	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Speaking?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
✗ JR Hoell - (former Rep)	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Speaking?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
✗ Doug McNutt AARP	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Speaking?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Jane Skantz	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Speaking?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
✓ Rep Timothy Horgan	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Speaking?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
✓ K. Cardone Holmes (Kathy)	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Speaking?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
✓ Heather Carroll Atz. Association	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Speaking?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
✓ Aaron Penkacik	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Speaking?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
✓ Cheryl Slinberg, ^{NH} Legal Assistance	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Speaking?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
✓ Rep Dan Hockett	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Speaking?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
✓ Nina Amol	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Speaking?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
✓ Rep Barry Cushman	<input type="checkbox"/>	<input type="checkbox"/>	Speaking?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
✗ Rep Staff Cleaver	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Speaking?	<input type="checkbox"/>	<input type="checkbox"/>

Senate Judiciary Committee

SIGN-IN SHEET

Date: 05/07/2019 Time: 9:45 a.m.

HB 696-FN AN ACT establishing a protective order for vulnerable adults.

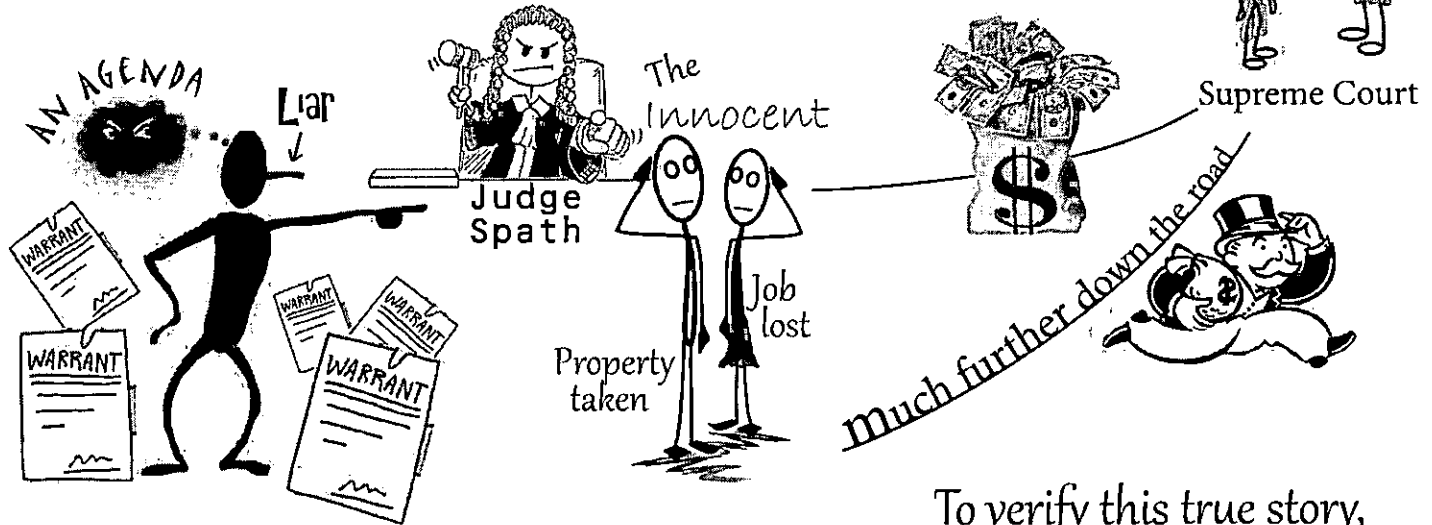
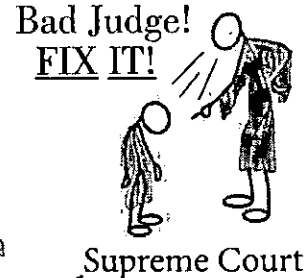
Name/Representing (please print neatly)

Name/Representing	Support	Oppose	Speaking?	Yes	No
Jessica Eskeland	<input type="checkbox"/>	<input type="checkbox"/>	Speaking?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Janice McDermott, Granite State Home Care + Hospice	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Speaking?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
JAMES GREENEY	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Speaking?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Raymond Chase Rollins Stratford, Conn.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Speaking?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Alvin See London Self	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Speaking?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Hon. Dan Ijse (NHFC)	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Speaking?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
XXXXXXXXXXXXXXXXXXXX sheet 1	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Speaking?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
REP WERNER D Hogn Merrimack 2	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Speaking?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Rep Mike Sylva Belknap 6	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Speaking?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Roger Desrosiers	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Speaking?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Rep Nicole Klen Knight	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Speaking?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
ROBERT NEWTON	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Speaking?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Charles SIMS	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Speaking?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
XXXXXXXXXXXX	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Speaking?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
BOB PAGANO	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Speaking?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>	Speaking?	<input type="checkbox"/>	<input type="checkbox"/>
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	<input type="checkbox"/>	<input type="checkbox"/>	Speaking?	<input type="checkbox"/>	<input type="checkbox"/>

Testimony

The case against HB696... Gun confiscation

People who BREAK the laws, accuse the law abiding ones.
They use the court system to get away with it.



To verify this true story,
Supreme Court Docket #2016-0375 --- Jamie Brien VS. K. Cardone Holmes

May 7, 2019
Hearing HB 696
Senate Judiciary Committee

Re: establishing a protective order for vulnerable adults

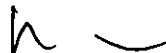
Chair Hennessey and members of the Senate Judiciary Committee

AARP has approximately 230,000 members age 50 plus statewide and prevention of financial exploitation and elder abuse is a major priority for AARP. We believe HB 696 will help prevent financial exploitation and elder abuse, AARP strongly supports HB 696.

The purpose 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 Director of Elderly and Adult Services in Health and Human Services, which administers the adult protection program. Given this background, I recognize that the orders that this bill would create, 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 696 as a mechanism that can help prevent abuse and exploitation.

Respectfully submitted,



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



NATIONAL RIFLE ASSOCIATION OF AMERICA
INSTITUTE FOR LEGISLATIVE ACTION
11250 WAPLES MILL ROAD
FAIRFAX, VIRGINIA 22030-7400

Lauren E. LePage
State Director

MEMORANDUM OF OPPOSITION

Date: May 7, 2019
To: Honorable Members of Senate Judiciary Committee
From: Lauren E. LePage
RE: HB 696

Honorable members of the Senate Judiciary Committee, on behalf of the National Rifle Association, I would like to express our opposition for HB 696 (Cushing – D); an act establishing a protective order for vulnerable adults.

This bill violates an individual's constitutional rights and allows for the seizure of firearms with an ex parte order, absent due process. In addition, orders to seize an individual's firearms can be issued on a basis that does not have a nexus to dangerousness – and for a reason that is completely unrelated to concerns that an individual is potentially dangerous with a firearm. The bill also requires the individual against whom the order is issued to go back to court to have their own constitutionally protected property returned, rather than simply returning the firearms and ammunition to the individual when the order expires. Lastly, law enforcement is immune from liability for any damages to firearms or ammunition stored with them for the duration of the order. There is no incentive for law enforcement to safeguard the valuable property of New Hampshire citizens.

For these reasons, on behalf of New Hampshire citizens and law-abiding gunowners, I respectfully urge the committee to oppose HB696. Please feel free to contact me at 703-267-1243 if you have additional questions or concerns. Thank you for your cooperation in this matter.

KEY: TEXT IN PURPLE TAKEN FROM HB 696 AS AMENDED

TEXT IN RED INDICATES LANGUAGE IDENTICAL IN HB 696 AS AMENDED AND CURRENTLY EXISTING IN RSA 173B

TEXT IN BLACK EXISTING IN RSA 173B BUT NOT FOUND IN HB 696 AS AMENDED

[NOTE: Paragraphs are not renumbered]

AMENDED CHAPTER 173-B

PROTECTION OF PERSONS FROM ABUSE, EXPLOITATION, NEGLECT DOMESTIC VIOLENCE

Section 173-B:1

CHAPTER 173-B

PROTECTION OF PERSONS FROM ABUSE, EXPLOITATION, NEGLECT AND DOMESTIC VIOLENCE

173-D:1 Purpose. The purpose of this chapter is to enable persons to seek permanent and temporary relief from abuse, exploitation, neglect and domestic violence.

173-B:1 Definitions. – In this chapter:

I. "Abuse" means the commission or attempted commission of one or more of the acts described in subparagraphs (a) through (h) by a family or household member or by a current or former sexual or intimate partner, where such conduct is determined to constitute a credible present threat to the petitioner's safety. The court may consider evidence of such acts, regardless of their proximity in time to the filing of the petition, which, in combination with recent conduct, reflects an ongoing pattern of behavior which reasonably causes or has caused the petitioner to fear for his or her safety or well-being:

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

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

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

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

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

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

(g) Harassment as defined in RSA 644:4.

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

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

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

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

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

III. "Applicant" means any private, town, city, or regional agency or organization applying for funds under RSA 173-B:16.

III. "Commissioner" means the commissioner of the department of health and human services.

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

V. "Coordinator" means the agency or organization appointed by the commissioner to administer the domestic violence grant program.

VI. "Cross orders for relief" means separate orders granted to parties in a domestic violence situation where each of the parties has filed a petition pursuant to this chapter on allegations arising from the same incident or incidents of domestic violence.

VII. "Deadly weapon" means "deadly weapon" as defined in RSA 625:11, V.

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

VIII. "Department" means the department of health and human services.

IX. "Domestic violence" means abuse as defined in RSA 173-B:1, I.

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

X. "Family or household member" means:

(a) Spouses, ex-spouses, persons cohabiting with each other, and persons who cohabited with each other but who no longer share the same residence.

(b) Parents and other persons related by consanguinity or affinity, other than minor children who reside with the defendant.

XI. "Firearm" means any weapon, including a starter gun, which will, is designed to, or may readily be converted to expel a projectile by the action of an explosive.

XII. "**Foreign protective order**" means an order enforceable under RSA 173-B:13.

XIII. "Fund" means the special fund for domestic violence programs established by RSA 173-B:15.

XIV. "Grantee" means any private, town, city, or regional agency or organization receiving funds under RSA 173-B:16.

XV. "Intimate partners" means persons currently or formerly involved in a romantic relationship, whether or not such relationship was ever sexually consummated.

XVI. "Mutual order for relief" means an order restraining both parties from abusing the other originating from a petition filed by one of the parties and arising from the same incident or incidents of domestic violence.

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

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

XVII. "Program" means services or facilities provided to domestic violence victims.

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

173-B:2 Jurisdiction and Venue. –

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

II. If the plaintiff has left the household or premises to avoid further abuse, the plaintiff shall have the option to commence proceedings pursuant to RSA 173-B:3 in the county or district where the plaintiff temporarily resides.

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

173-B:3 Commencement of Proceedings; Hearing. –

I. Any person, **vulnerable** adult, guardian, or attorney-in-fact of a **vulnerable** adult, or if authorized by the **vulnerable** adult, the department, may seek relief pursuant to RSA 173-B:5 by filing a petition, in the county or district where the plaintiff or defendant resides, alleging abuse, exploitation or neglect by the defendant. Any person filing a petition containing false allegations of abuse shall be subject to criminal penalties. Notice of the pendency of the action and of the facts alleged against the defendant shall be given to the defendant, either personally or as provided in paragraph III. The plaintiff shall be permitted to supplement or amend the petition only if the defendant is provided an opportunity prior to the hearing to respond to the supplemental or amended petition. All petitions filed under this section shall include the home and work telephone numbers of the defendant, if known. Notice of the whereabouts of the plaintiff shall not be revealed except by order of the court for good cause shown. Any answer by the defendant shall be filed with the court and a

copy shall be provided to the plaintiff by the court.

II. (a) The minority of the plaintiff shall not preclude the court from issuing protective orders against a present or former intimate partner, spouse, or ex-spouse under this chapter.

(b) A minor plaintiff need not be accompanied by a parent or guardian to receive relief or services under this chapter.

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

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

V. [Repealed.]

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

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

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

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

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

173-B:4 Temporary Relief. –

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

(a) Protective orders:

(1) Restraining the defendant from abusing the plaintiff.

(2) Restraining the defendant from entering the premises and curtilage where the plaintiff resides, except when the defendant is accompanied by a peace

officer and, upon reasonable notice to the plaintiff, is allowed entry by the plaintiff for the sole purpose of retrieving toiletries, medication, clothing, business equipment, and any other items as determined by the court.

(3) Restraining the defendant from withholding items of the plaintiff's personal property which are specified in the order. A peace officer shall accompany the plaintiff in retrieving such property to protect the plaintiff.

(4) Awarding custody of minor children to either party or, upon actual notice, to the department when it is in the best interest of a child.

(5) Denying the defendant visitation, ordering that visitation shall take place only at a supervised visitation center that uses a metal detection device and has trained security personnel on-site, ordering that visitation shall be supervised, or ordering a specific visitation schedule. Visitation shall only be ordered on an ex parte basis where such order can be entered consistent with the following requirements. In determining whether visitation can be safely ordered, the court shall consider the following factors:

(A) The degree to which visitation exposes the plaintiff or the children to physical or psychological harm.

(B) Whether the risk of physical or psychological harm can be removed by ordering supervised visitation or by ordering supervised visitation at a center that uses a metal detection device and has trained security personnel on-site.

(C) Whether visitation can be ordered without requiring the plaintiff and defendant to have contact regarding the exchange of children.

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

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

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

(9) Directing the defendant to relinquish to the peace officer, in addition to the relief specified in RSA 173-B:4, I, any and all deadly weapons specified in the protective order that are in the control, ownership, or possession of the defendant, or any other person on behalf of the defendant, for the duration of the protective order.

(10) Granting the petitioner exclusive care, custody, or control of any animal owned, possessed, leased, kept, or held by the petitioner, defendant, or a minor child in either household, and ordering the defendant to stay away from the animal and forbidding the defendant from taking, transferring, encumbering, concealing, committing an act of cruelty or neglect, or disposing of the animal.

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

(1) Awarding to the plaintiff the exclusive use and possession of an automobile, home, and household furniture, if the defendant has the legal duty to support the plaintiff or the plaintiff's minor children, or the plaintiff has contributed to the household expenses. The court shall consider the type and amount of contribution to be a factor.

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

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

II. The defendant may be prohibited from purchasing, receiving, or possessing any deadly weapons and any and all firearms and ammunition for the duration of the order. The court may subsequently issue a search warrant authorizing the peace officer to seize any deadly weapons specified in the protective order and any and all firearms and ammunition, if there is probable cause to believe such firearms and ammunition and specified deadly weapons are kept on the premises or curtilage of the defendant and if the court has reason to believe that all such firearms and ammunition and specified deadly weapons have not been relinquished by the defendant.

173-B:5 Relief. –

I. A finding of abuse exploitation, or neglect shall mean the defendant represents a credible threat to the safety of the plaintiff or physical, mental, or financial well-being. **Upon a showing of abuse exploitation, or neglect of the plaintiff by a preponderance of the evidence, the court shall grant such relief as is**

necessary to bring about a cessation of abuse exploitation, or neglect. Such relief shall direct the defendant to relinquish to the peace officer any and all firearms and ammunition in the control, ownership, or possession of the defendant, or any other person on behalf of the defendant for the duration of the protective order.

Other relief may include:

(a) Protective orders:

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

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

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

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

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

(6) Directing the defendant to relinquish to the peace officer, in addition to the relief specified in RSA 173-B:5, l, any and all deadly weapons specified in the protective order that are in the control, ownership, or possession of the defendant, or any other person on behalf of the defendant.

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

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

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

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

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

(4) Ordering the defendant to make automobile, insurance, health care, utilities, rent, or mortgage payments *if the defendant has a legal or fiduciary duty to do so.*

(5) Awarding temporary custody of the parties' minor children to either party or, where appropriate, to the department, provided that:

(A) Where custody of the parties' minor children with the department may be appropriate, the department shall receive actual notice of the hearing 10 days prior to such hearing provided that, if necessary, such hearing may be continued 10 days to provide the department adequate notice.

(B) The department may move at any time to rescind its custody of the parties' minor children.

(6) Establishing visitation rights with regard to the parties' minor children. The court shall consider, and may impose on a custody award, conditions necessary to assure the safety of the plaintiff and minor children. This may include orders denying visitation, requiring supervised visitation that shall take place only at a visitation center that uses a metal detection device and has trained security personnel on-site, or requiring supervised visitation, where such order can be entered consistent with the following requirements. In determining whether visitation shall be granted, the court shall consider whether visitation can be exercised by the non-custodial parent without risk to the plaintiff's or children's safety. In making such determination, the court shall consider, in addition to any other relevant factors, the following:

(A) The degree to which visitation exposes the plaintiff or the children to physical or psychological harm.

(B) Whether the risk of physical or psychological harm can be removed by ordering supervised visitation or by ordering supervised visitation at a center that uses a metal detection device and has trained security personnel on-site.

(C) Whether visitation can be ordered without requiring the plaintiff and defendant to have contact regarding the exchange of children.

(7) Directing the defendant to pay financial support to the plaintiff or minor children, unless the defendant has no legal duty to support the plaintiff or minor children.

(8) Directing the abuser to engage in a batterer's intervention program or personal counseling. If available, such intervention and counseling program shall focus on alternatives to aggression. The court shall not direct the plaintiff to engage in joint counseling services with the defendant. Court-ordered and court-referred mediation of cases involving domestic violence shall be prohibited.

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

(6) If the court makes a specific finding that it is necessary for the protection of the plaintiff, issuing an order directing the defendant to relinquish to a police officer any and all firearms and ammunition in the control, ownership, or possession of the defendant, or any other person on behalf of the defendant for the duration of the protective order.

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

II. If the court makes a specific finding that it necessary for the protection of the plaintiff, the defendant shall be prohibited from purchasing, receiving, or possessing any deadly weapons and any and all firearms and ammunition for the duration of the order. The court may subsequently issue a search warrant authorizing a peace officer to seize any deadly weapons specified in the protective order and any and all firearms and ammunition, if there is probable cause to believe such firearms and ammunition and specified deadly weapons are kept on the premises or curtilage of the defendant.

III. Reconciliation after a previous order, prior to filing the current action, shall not be grounds for denying or terminating a new or existing protective order. Furthermore, the court shall not deny the plaintiff protective orders based solely on a lapse of time between an act of abuse, exploitation, neglect or an act of domestic violence and the filing of a petition, provided that the underlying act presents a credible threat to the plaintiff's current safety or physical, mental, or financial well-being.

IV. No order made under this section shall supersede or affect any court order pertaining to the possession of a residence; household furniture; custody of children pursuant to RSA 169-B, 169-C, or 169-D; support or custody made under RSA 458; or custody of children of unwed parents as determined by a circuit court, or title to real or personal property.

V. The findings of fact with respect to the protective order shall be final, but questions of law may be transferred from the circuit court to the supreme court.

V. (a) Mutual orders for relief shall not be granted. A foreign mutual order for relief shall only be granted full faith and credit in New Hampshire if it meets the requirements set out in RSA 173-B:13, VII.

(b) Cross orders for relief may be granted only if:

(1) The court has made specific findings that each party has committed abuse against the other; and

(2) The court cannot determine who is the primary physical aggressor.

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

any order under this paragraph to be held within 30 days of the extension. The court shall state in writing, at the respondent's request, its reason or reasons for granting the extension. The court shall retain jurisdiction to enforce and collect the financial support obligation which accrued prior to the expiration of the protective order.

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

VIII. (a) No order issued under this chapter shall be modified other than by the court. Temporary reconciliations shall not revoke an order.

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

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

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

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

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

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

(c) The administrative office of the courts shall update the database upon expiration or termination of a protective order.

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

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

X. (a) Within 15 days prior to the expiration of the protective orders, the defendant may request, by motion to the court, the return of any and all firearms and

ammunition and specified deadly weapons held by the law enforcement agency while the protective order was in effect. Upon receipt of such a motion, the court shall schedule a hearing no later than 15 days after the expiration of the order. The court shall provide written notice to the plaintiff who shall have the right to appear and be heard, and to the law enforcement agency which has control of the firearms, ammunition, and specified deadly weapons. The scope of the hearing shall be limited to:

- (1) Establishing whether the defendant is subject to any state or federal law or court order that precludes the defendant from owning or possessing a firearm; and
- (2) Under circumstances where the plaintiff has requested an extension of the protective order, whether the plaintiff has established by a preponderance of the evidence that the defendant continues to represent a credible threat to the safety of the plaintiff.
- (b) If the court finds that the defendant is not subject to any state or federal law or court order precluding the ownership or possession of firearms, or if the court denies the plaintiff's request to extend the protective order, the court shall issue a written order directing the law enforcement agency to return the requested firearms, ammunition, or deadly weapon to the defendant.
- (c) Law enforcement agencies shall not release firearms and ammunition and specified deadly weapons without a court order granting such release. The law enforcement agency may charge the defendant a reasonable fee for the storage of any firearms and ammunition and specified deadly weapons taken pursuant to a protective order. The fee shall not exceed the actual cost incurred by the law enforcement agency for the storage of the firearms and ammunition and specified deadly weapons. The defendant may make alternative arrangements with a federally licensed firearms dealer for the storage of firearms, at the defendant's own expense, upon approval of the court. Such firearms shall be turned over to the appropriate law enforcement agency for transfer to the storage facility. Retrieval of such firearms shall be through the law enforcement agency responsible for their transfer to the storage facility pursuant to a court order as prescribed in this paragraph.
- (d) No law enforcement agency shall be held liable for alleged damage or deterioration due to storage or transportation to any firearms and ammunition and specified deadly weapons held by a law enforcement agency, so long as due care is used.

173-B:5-a Permissible Contact. –

I. A protective order issued pursuant to RSA 173-B:4 or RSA 173-B:5 shall not be construed to prohibit an attorney, or any person acting on the attorney's behalf, who is representing the defendant in an action brought under this chapter, or in any criminal proceeding concerning the abuse alleged under this chapter, from contacting the plaintiff for a legitimate purpose within the scope of the civil or criminal proceeding; provided, that the attorney or person acting on behalf of the attorney: identifies himself or herself as a representative of the defendant; acknowledges the existence of the protective order and informs the plaintiff that he or she has no obligation to speak; terminates contact with the plaintiff if the plaintiff expresses an unwillingness to talk; and ensures that any personal contact with the plaintiff occurs outside of the defendant's presence, unless the court has modified the protective order to permit such contact.

II. A no-contact provision in a protective order issued pursuant to RSA 173-B:4 or RSA 173-B:5 shall not be construed to:

- (a) Prevent contact between counsel for represented parties; or**
- (b) Prevent a party from appearing at a scheduled court or administrative hearing; or**
- (c) Prevent a defendant or defendant's counsel from sending the plaintiff copies of any legal pleadings filed in court relating to the domestic violence petition or related civil or criminal matters.**

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

173-B:6 Guardian Ad Litem. – In all proceedings under this chapter, the court may appoint a guardian ad litem to represent the interests of the vulnerable adult [or the] children of either or both parties. The guardian ad litem may continue to serve after the final disposition of the case.

173-B:7 Minority Not a Preclusion for Services. – The minority of any individual seeking assistance from any domestic violence program, as defined by RSA 173-B:1, shall not preclude provision of such requested services.

173-B:8 Notification. –

- I. A copy of any order made under this chapter which prohibits any person from abusing another shall be promptly transmitted to the local law enforcement agency having jurisdiction to enforce such order.
- II. Temporary orders shall be promptly served on the defendant by a peace officer. Subsequent orders shall be sent to the defendant's last address of record. The defendant shall be responsible for informing the court of any changes of address. Law enforcement agencies shall establish procedures whereby a peace officer at the scene of an alleged violation of such an order may be informed of the existence and terms of such order.
- III. Any court-ordered changes or modifications of the order shall be effective upon issuance of such changes or modifications, and shall be mailed or otherwise provided to the appropriate local law enforcement agency and transmitted to the department of safety within 24 hours of the entry of such changes or modifications.

173-B:9 Violation of Protective Order; Penalty.

- I. (a) When the defendant violates either a temporary or permanent protective order issued or enforced under this chapter, peace officers shall arrest the defendant and ensure that the defendant is detained until arraignment, provided that in extreme circumstances, such as when the health of the defendant would be jeopardized by the temporary detention, a judge in response to a request by the arresting law enforcement officer or agency, may order an alternative to detention pending arraignment. Such arrests may be made within 12 hours without a warrant upon probable cause, whether or not the violation is committed in the presence of a peace officer.
- (b) Subsequent to an arrest, the peace officer shall seize any firearms and ammunition in the control, ownership, or possession of the defendant and any deadly weapons which may have been used, or were threatened to be used, during the violation of the protective order. The law enforcement agency shall maintain possession of the firearms, ammunition, or deadly weapons until the court issues an order directing that the firearms, ammunition, or deadly weapons be relinquished and specifying the person to whom the firearms and ammunition or deadly weapons will be relinquished.
- II. The prosecution and sentencing for criminal contempt for a violation of a protective order shall not preclude the prosecution of or sentencing for other criminal charges underlying the contempt.
- III. A person shall be guilty of a class A misdemeanor if such person knowingly violates a protective order issued under this chapter, or RSA 458:16, III, or any foreign protective order enforceable under the laws of this state. Charges made under this chapter shall not be reduced to a lesser charge, as permitted in other instances under RSA 625:9.
- IV. Any person convicted under RSA 173-B:9, III, or who has been convicted in another jurisdiction of violating a protective order enforceable under the laws of this state, who, within 6 years of such conviction or the completion of the sentence imposed for such conviction, whichever is later, subsequently commits and is convicted of one or more offenses involving abuse may be charged with an enhanced penalty for each subsequent offense as follows:
 - (a) There shall be no enhanced charge under this section if the subsequent offense is a class A felony or an unclassified felony;
 - (b) If the subsequent offense would otherwise constitute a class B felony, it may be charged as a class A felony;
 - (c) If the subsequent offense would otherwise constitute a class A misdemeanor, it may be charged as a class B felony;
 - (d) If the subsequent offense would otherwise constitute a class B misdemeanor, it may be charged as a class A misdemeanor;
 - (e) If the subsequent offense would otherwise constitute a violation, it may be charged as a class B misdemeanor.
- V. A victim of domestic violence shall be entitled to all rights granted to victims of crime under RSA 21-M:8-k.

173-B:10 Protection by Peace Officers. –

- I. Whenever any peace officer has probable cause to believe that a person has been abused, exploited, or neglected as defined in RSA 173-B:1, that officer shall use all means within reason to prevent further abuse including, but not limited to:
 - (a) Confiscating any deadly weapons involved in the alleged domestic abuse exploitation, or neglect and any firearms and ammunition in the defendant's control, ownership, or possession.
 - (b) Transporting or obtaining transportation for the victim to a place of safety and any child, victim to a place of safety to a designated place to meet with a

domestic violence counselor, local family member, or friend.

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

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

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

II. Pursuant to RSA 594:10, an arrest for abuse may be made without a warrant upon probable cause, whether or not the abuse is committed in the presence of the peace officer. When the peace officer has probable cause to believe that the persons are committing or have committed abuse against each other, the officer need not arrest both persons, but should arrest the person the officer believes to be the primary physical aggressor. In determining who is the primary physical aggressor, an officer shall consider the intent of this chapter to protect the victims of domestic violence, the relative degree of injury or fear inflicted on the persons involved, and any history of domestic abuse between these persons if that history can reasonably be obtained by the officer.

173-B:11 Notice to the Victim. –

I. Notwithstanding the peace officer's obligations in RSA 173-B:9 and RSA 173-B:10, all peace officers shall give victims of abuse, exploitation, and neglect immediate and adequate notice of their right to go to the circuit court of their county to file a petition asking for protective orders against the abusive person and to seek a private criminal complaint.

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

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

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

(c) Giving the victim custody of any minor children, denying the defendant visitation, or requiring that visitation be supervised to ensure safety for the victim and minor children.

(d) Directing the defendant to support the victim and any minor children if the defendant has the legal responsibility to support either or both.

(e) Restraining the defendant from contacting the victim, or entering the victim's place of employment, school, or any specified place frequented regularly by the victim or by any family or household member.

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

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

(g) Ordering the removal of any and all firearms and ammunition in the control, ownership, or possession of the defendant. which may have been used, or were threatened to be used, in an incident of abuse against the victim or any member of the victim's household.

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

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

173-B:12 Emergency Care; Limitation and Liability. – Any act or omission of any peace officer rendering emergency care or assistance to a victim under this chapter or of domestic violence including, but not limited to transportation, shall not impose civil liability upon the peace officer or the peace officer's supervisors or employer if the care or assistance is rendered in good faith, unless the act or omission is a result of gross negligence or willful misconduct.

173-B:13 Orders Enforceable. –

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

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

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

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

V. A peace officer may rely upon a copy of any protective order issued under this chapter, or under RSA 458, or upon a copy of a foreign protective order, as defined in this section, which has been provided to the peace officer by any source.

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

VII. A mutual protective order issued by any other state, tribal, or territorial court against one who has petitioned, filed a complaint, or otherwise filed a written pleading for protection relating to domestic or family violence shall be accorded full faith and credit only if:

(a) A cross or counter petition, complaint, or other written pleading was filed seeking such protection order; and

(b) The court made specific findings of domestic or family violence by both parties and that each party was entitled to such order.

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

173-B:14 Orders of Support. –

I. In any action determining the obligation of the obligor to support the obligee or the parties' minor children including, but not limited to, actions for divorce pursuant to RSA 458; determination of parental rights and responsibilities pursuant to RSA 461-A; paternity pursuant to RSA 168-A; child support pursuant to RSA 161-B, RSA 161-C, and RSA 458; reimbursement of public assistance pursuant to RSA 161-C; and the uniform interstate family support act pursuant to RSA 546-B; the court shall take judicial notice of any support obligation established pursuant to this chapter upon the filing of a certified copy of the order by:

(a) Either party to the domestic violence proceeding.

(b) The department.

(c) Any other agency or person legally entitled to enforce the obligation of support for the minor children.

II. Any circuit court order for financial support shall include enforcement of any duly filed circuit court order from the date of filing forward, and shall include enforcement of any arrears which have been:

(a) Reduced to judgment by the circuit court;

(b) Documented by the department pursuant to an order to make payable through the department; or

(c) Documented by the obligee in a notarized statement, provided that the obligor shall have 30 days to object and request a hearing on the issue of arrears.

173-B:15 Fund for Domestic Violence Grant Program. – A special fund for domestic violence programs is established. The sole purpose of the fund shall be to provide revenues for the domestic violence program established in RSA 173-B:16, and shall not be available for any other purpose. The state treasurer shall

deposit all fees received by the department under RSA 457:29 in the fund. All moneys deposited in the fund shall be continually appropriated for the purposes of the domestic violence grant program and shall not lapse.

173-B:16 Grant Program Established. – A grant program is established within the department for the allocation of grant money to New Hampshire programs which provide aid and assistance to victims of domestic violence. The grant program shall be funded by the fund established under RSA 173-B:15.

173-B:17 Duties of the Commissioner. –

The commissioner shall:

- I. Administer the grant program established in RSA 173-B:16 through a coordinator. The costs of administration shall be covered by the fund, and shall not exceed 2 percent.
- II. Adopt rules, under RSA 541-A, relative to procedures under which interested New Hampshire programs may apply for funding.
- III. Appoint the coordinator.
- IV. Enter into a contract with the coordinator, subject to the approval of the governor and council.

173-B:18 Selection of Coordinator. – The commissioner shall be satisfied that the organization or agency chosen as the coordinator shall be qualified to provide at least those services listed in RSA 173-B:20.

173-B:19 Compensation for Coordinating Domestic Violence Grant Program. – Compensation for the functions and duties of coordinating the program shall not exceed 30 percent of the total revenues of the fund.

173-B:20 Duties of Coordinator. –

The coordinator shall be a statewide organization or agency which has demonstrated its ability, at a minimum, to:

- I. Serve as a clearinghouse for information relating to domestic violence.
- II. Conduct educational programs on domestic violence, both for the general public and for specialized interest groups, such as law enforcement and medical personnel.
- III. Provide technical assistance to local domestic violence programs in the areas of budget, management, and other such skills.
- IV. Enlist the assistance of public and voluntary health, education, welfare, legal, and rehabilitation agencies in a concerted effort to prevent domestic violence.
- V. Provide coordination and supervision of programs.
- VI. Assist the commissioner in the administration of the fund.
- VII. Publicize the availability of the fund and the date by which applications must be received, and act on all applications within 45 days of the application deadline.
- VIII. Notify each appropriate agency or organization in writing whether or not it is eligible for funds, and specify the amount available.
- IX. Publicize the availability of domestic violence programs to the public.
- X. Provide training for court advocates and social services agency advocates to accompany domestic violence victims.
- XI. Apply for and receive any federal funds for which this program may be eligible.
- XII. Ensure, as far as possible, that grants are awarded on a reasonable geographical basis throughout the state.
- XIII. Obtain and evaluate reports from each grantee, at least annually, on its operations under this chapter.

173-B:21 Criteria for Selection of Direct Service Grantees. –

The coordinator shall use all of the following criteria for selecting grantees:

- I. A grantee's ability to provide direct services to victims of domestic violence as follows:
 - (a) Shelter or safe homes on a 24-hours-a-day, 7-days-a-week basis.
 - (b) A 24-hours-a-day, 7-days-a-week switchboard for crisis calls.
 - (c) Temporary housing and food facilities.

(d) Psychological support and peer counseling.

(e) Referrals to existing services in the community and follow-up on the outcome of the referrals.

(f) A drop-in center to assist victims of domestic violence who have not yet made the decision to leave their homes, or who have found other shelter but who have a need for support services.

(g) Arrangements for school-aged children to continue their education during their stay at the center.

(h) Emergency transportation to a shelter and, when appropriate, arrangements with local law enforcement for assistance in providing such transportation.

(i) Trained court advocates and social service agency advocates to accompany domestic violence victims.

II. A grantee shall be a private or private nonprofit organization, or a public agency.

III. A grantee shall demonstrate the need for the services proposed by the program.

IV. A grantee shall establish its ability to secure community support and its efficiency of administration.

V. A grantee shall receive at least 50 percent of its funding from sources other than the fund, including town, city, county, federal, or private sources.

Contributions in kind, whether material, commodities, transportation, office space, or personal services, may be evaluated and counted as part of the required non-state funding.

173-B:22 Confidentiality. – All persons who are employed, appointed, or who volunteer under this chapter shall maintain confidentiality with regard to persons served by the coordinator and grantees and files kept by the coordinator and grantees, except for reasons of safety for other shelter residents or staff.

173-B:23 Referral. – Where centers are available, any law enforcement officer who investigates an alleged incident of domestic violence shall advise the person subject to such violence of the availability of programs from which that person may receive services.

173-B:24 Rights Reserved. – A person shall not be prejudiced by the court having jurisdiction under RSA 173-B for having left the residence or household with or without the children to avoid further domestic violence.

173-B:25 Severability. – If any provision of this chapter or the application of such provision to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the chapter which can be given effect without the invalid provisions or applications, and to this end the provisions of this chapter are severable.

173-B:26 Commission to Study Supervised Visitation Centers. – [Repealed 2014, 107:5, eff. Nov. 1, 2014.]

2 Effective Date. This act shall take effect January 1, 2020.

An Open Letter To Our Legislators, Judges And Lawmen

Published: Thursday, January 31, 2019

I know I am speaking for tens of thousands of my fellow Montanans and tens of millions of my fellow Americans when I write what I'm about to write.

The "red flag" laws that are sweeping the country violate every principle of liberty upon which our country was founded. There is no due process associated with "red flag" laws. A judge's order to seize the firearms from an American citizen who has not been accused of a crime, charged with a crime, convicted of a crime—or who never even threatened to commit a crime—based on the accusation of a single individual is anything but due process.

Our accuser could be a disgruntled employee, a bitter ex-spouse or relative, a vengeful neighbor, an anti-gun liberal or even an anti-gun policeman. By definition, "red flag" laws use mere suspicion of what one "might" do as justification to seize a person's firearms. Tactics such as these have been used in virtually every despotic regime of history. In the name of protecting society, the rights and liberties of individuals were denied. Eventually, these repressive governments included political or religious persuasion as triggering "red flags," which led to their disarmament—all in the name of public safety, of course.

You know as well as I do that when the rights of ONE American are abridged, the rights of ALL Americans are abridged. This is not yet a communist nation where the rights of the state—or even the rights of a majority of citizens—supersede the rights of the individual.

Furthermore, it is a fallacy to suggest that a mental health diagnosis, by itself, indicates that someone is automatically a threat to himself or others. Dr. Ann Bukacek, a highly-respected medical doctor in the community in which I live, recently wrote:

Mental health diagnoses given by physicians or other mental health care workers do not predict firearm violence. As a physician for over 30 years who has treated many patients with mental health diagnoses and some autistic spectrum patients, I have not had one of those patients commit an act of gun violence. I did have a patient who bludgeoned a man to death with a blunt object, and that patient carried no mental health diagnosis. Psychopaths with no conscience, especially the more intelligent ones, usually escape detection and/or a particular diagnosis.

This doctor's examination of the issue reflects reality.

Besides, under these "red flag" laws, exactly who is it that determines that someone is "crazy"? Is it one judge, who bases his or her conclusion on the accusations of just one individual? Is it up to politicians or government bureaucrats to define who is and who is not "crazy"?

There are some people who believe that anyone who would even own a firearm is "crazy." Others believe one's political or religious beliefs qualify him as "crazy." Heck! We have all read the documentation of various governments (local, State and federal) that have assigned all kinds of "crazy" (even "dangerous") definitions against people based on their interpretation of Bible prophecy or their association with political candidates such as former Congressman Ron Paul or their opposition to politically correct ideologies, etc.

Does the judge who issues a warrant to seize a person's firearms under a "red flag" law provide the accused with an opportunity to defend himself BEFORE violating his constitutional and Natural rights? No. Does the judge provide an opportunity for a close examination of the accusations against the accused (including investigating the accuser) BEFORE violating his constitutional and Natural rights? No. Does the judge allow the accused to face his accuser BEFORE violating his constitutional and

Natural rights? No.

“Red flag” laws turn the Bill of Rights and the fundamental legal doctrine that a man is innocent until proven guilty completely upside down. “Red flag” laws are a mockery to every constitutional principle of liberty since the Magna Carta. Seizing a citizen’s firearms by force (and thereby rendering him defenseless) without a crime being committed—or even the accusation of a crime being made—is old-fashioned TYRANNY. Such an act presumes a person is guilty until proven innocent.

Then there is this: After the guns are seized, it could take years for the victim to prove his innocence (or competence) and have his guns returned—and in what condition would they be when (and IF) returned? Furthermore, will you legislators, judges and police officers who collaborate to strip an innocent person’s ability to defend himself accept any responsibility when the real bad guys take advantage of this person’s vulnerability and invade his home and bludgeon or rape or even kill his family? Of course you won’t. But mark it down: You will be held responsible in the eyes of Almighty God—and in the eyes of the citizens you have victimized.

And are you really going to try and tell us that police officers are more competent and mentally stable than the rest of us? Are you kidding? The examples of improper, unsafe, careless and even homicidal acts of cops with guns are ubiquitous.

It was an FBI agent who was armed at a nightclub in Denver and then started gyrating and dancing like a madman until his handgun fell on the floor, discharged and wounded a fellow patron. But no official even questioned this officer’s fitness to possess a firearm—even AFTER that event took place.

Then there is the case of the Dallas police officer who walked into the wrong apartment and shot and killed the man who lived inside. Where was the “red flag” regarding this officer? And what about the two police officers in St. Louis who used a revolver to play Russian roulette, and one of the two wound up shooting and killing the other one? Why wasn’t a “red flag” raised about these nincompoops? These stories could go on forever.

Where are the “red flag” laws for the policemen and sheriff’s deputies in this country? The only difference between them and the rest of us who are being victimized by these draconian “red flag” laws is that they wear badges, and we do not—and the other difference is the vast majority of private citizens who carry firearms are not nearly as stupid and incompetent as the policemen mentioned above.

So much for equal justice under the law.

It has taken many of us a lifetime of hard work and labor to be able to obtain our gun collections; we have successfully passed FBI background checks and local and State requirements and obligations for responsible gun ownership, yet our guns are going to be confiscated overnight on the word of someone (an anonymous someone, at that) who claims we “might” be unsuitable to own a gun? Again, such an act turns American history and our Bill of Rights upside down.

Kris Kobach is the former Secretary of State of Kansas. He is a former professor of constitutional law at UMKC School of Law. He wrote an excellent analysis of the constitutional violations of these “red flag” laws:

1. The seizure of guns without any hearing at all. The laws all contain an *ex parte* provision that allows the state to temporarily seize a person’s guns without even notifying the gun owner or giving him a chance to be heard. This is the quintessential denial of due process. The Fourth Amendment makes clear that a person cannot be denied of liberty (to exercise one’s constitutional right to bear arms) without due process of law. This confiscation is “temporary,” but it can easily lead to long-term or permanent confiscation.
2. Based on the testimony of one unrelated person. The confiscation order can be based on the

testimony of only one person claiming that the gun owner poses a risk to the safety of himself or others. The law [proposed in Kansas] deceptively says that it has to be the testimony of a “family member.” But “family member” is defined to include “former dating partners” and anyone who has *ever* lived with the defendant. So a jilted former boyfriend or girlfriend, or even a roommate from years ago, could easily set in motion the disarming of a lawful gun owner.

3. Using a very low standard of proof. The standard for obtaining an *ex parte* order against a gun owner is absurdly low – one need only show “reasonable cause” to believe that the person may pose a risk. That’s even lower than the “probable cause” standard for obtaining a search warrant. In addition, the judge is forced to rush his decision and issue the confiscation order on the same day of the *ex parte* hearing. Within two weeks of the *ex parte* hearing, a hearing with the gun owner present must occur; the purpose is to put in place a long-term confiscation order. But even at that hearing, the standard of proof is far below the “beyond a reasonable doubt” standard used in criminal trials. Rather, it need only be shown by “a preponderance of evidence” that the person poses a risk of injury to self or others. What kind of evidence? Things like the “reckless storage” of firearms and drinking habits can be considered. If you keep a handgun in the bedside table and drink beer regularly, you may [be] in trouble.

4. Shifting the burden of proof to the gun owner. The long-term confiscation order lasts up to a year, but may be renewed indefinitely. Once it is in place, it becomes very difficult to remove. To have the confiscation order lifted, the gun owner must prove he does not pose a threat to himself or others. Proving a negative is nearly impossible. Adding insult to injury, the bill even authorizes local law enforcement to *charge the gun owner a storage fee* for confiscating and storing his guns.

The implementation of “red flag” laws (at any level) is unconscionable and totally unacceptable. And I am here to warn you that there are millions of Americans who will never submit to such oppression. None of us wants to see acts of violence committed against law enforcement personnel in America, but when law enforcers begin carrying out these draconian “red flag” laws, they will begin lighting the matches of resistance in the hearts of freedom-loving people in this country like hasn’t been seen in over 150 years.

We have already heard about Gary Willis, the Maryland man who was killed by police officers in his own home as they attempted to carry out a “red flag” order to seize his guns. This man had committed no crime; he had not been accused of committing a crime; he was given no hearing and no due process. Mr. Willis did not attempt to harm the officers; he merely resisted their efforts to disarm him, and he was killed on the spot—in his own home—by police officers who had taken an oath to protect the liberties of this poor innocent man.

I assure you, Mr. Willis will not be the last American to resist the attempted confiscation of his firearms.

Do you legislators, judges, county sheriffs, chiefs of police, sheriff’s deputies and city policemen not realize that “red flag” laws are tantamount to a declaration of war against the American people? Are you so far removed from “the laws of Nature and Nature’s God” that you cannot see this? Do you not realize that in spite of all of Great Britain’s abuses of power, our colonist forebears did not openly rebel against the Crown until King George sent troops to Lexington and Concord to confiscate the colonists’ firearms? You do understand that, right? And you do understand, do you not, that the blood of the colonists flows in the veins of we Americans?

At what point do the American people come to believe that you truly do NOT wish to honor your oath to the Constitution or behave in a manner that truly honors America’s Second Amendment and the

heritage of liberty that we all share as Americans? At what point do we Americans lose all respect for our civil magistrates and peace officers? For many Americans, that point will come when policemen bang on their doors at 5am and attempt to seize their guns.

Do you not realize that every single instance of an innocent person being subjected to a “red flag” gun confiscation order will only magnify and strengthen the resentment and animosity in the hearts of the community against these laws—and against the ones who are creating and implementing them? Do you not understand that this is a powder keg that could explode into all-out rebellion at any time? Do you want that? I don’t want that! I don’t want that for my wife and me, my children and grandchildren, my friends or my community.

Why would you legislators, judges and policemen even think about doing such a thing?

In the name of all that we hold dear, in the name of the brave men at Lexington Green and Concord Bridge, in the name of every American who has given his life in defense of the principles contained in our Declaration of Independence, our Constitution and our Bill of Rights—including many of our brave police officers and sheriff’s deputies—and in the name of the Natural Laws of our Creator, please STOP this madness before you literally tear our communities and our country apart.

As a legislator, you must not pass any semblance of a “red flag” law; as a judge, you must not issue a gun confiscation warrant on the basis of a “red flag” law; as a sheriff or chief of police, you must not order your officers to confiscate a citizen’s guns on the basis of a “red flag” warrant; and if you are a sheriff’s deputy or city policeman, you must not obey an order to confiscate your fellow citizens’ guns on the basis of a “red flag” law.

I beg you to realize what you are doing. I beg you to refuse to participate in this madness. I beg you to join your fellow churchmen, clubmen, neighbors, friends and townsmen and help us turn back this dastardly attempt to transform our constitutional republic into another repressive regime that, in the end, would require The People to tear it down.

“Red flag” laws are on the wrong side of history, the wrong side of our Constitution, the wrong side of liberty and on the wrong side of the laws of God.

Again, I beg you to think about what you are doing, about the pain you are causing, about the lives you are ruining and about the potential harm you are inflicting on our country. Please think this through.

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Fact Sheet: Guns Save Lives

A. Guns save more lives than they take; prevent more injuries than they inflict

* Guns used 2.5 million times a year in self-defense. Law-abiding citizens use guns to defend themselves against criminals as many as 2.5 million times every year — or about 6,850 times a day. [1] This means that each year, firearms are used more than 80 times more often to protect the lives of honest citizens than to take lives. [2]

* Of the 2.5 million times citizens use their guns to defend themselves every year, the overwhelming majority merely brandish their gun or fire a warning shot to scare off their attackers. Less than 8% of the time, a citizen will kill or wound his/her attacker.[3]

* As many as 200,000 women use a gun every year to defend themselves against sexual abuse.[4]

* Even anti-gun Clinton researchers concede that guns are used 1.5 million times annually for self-defense. According to the Clinton Justice Department, there are as many as 1.5 million cases of self-defense every year. The National Institute of Justice published this figure in 1997 as part of “Guns in America” — a study which was authored by noted anti-gun criminologists Philip Cook and Jens Ludwig.[5]

* Armed citizens kill more crooks than do the police. Citizens shoot and kill at least twice as many criminals as police do every year (1,527 to 606).[6] And readers of Newsweek learned that “only 2 percent of civilian shootings involved an innocent person mistakenly identified as a criminal. The ‘error rate’ for the police, however, was 11 percent, more than five times as high.”[7]

* Handguns are the weapon of choice for self-defense. Citizens use handguns to protect themselves over 1.9 million times a year. [8] Many of these self-defense handguns could be labeled as “Saturday Night Specials.”

B. Concealed carry laws help reduce crime

* Nationwide: one-half million self-defense uses. Every year, as many as one-half million citizens defend themselves with a firearm away from home. [9] * Concealed carry laws are dropping crime rates across the country. A comprehensive national study determined in 1996 that violent crime fell after states made it legal to carry concealed firearms. The results of the study showed:

* States which passed concealed carry laws reduced their murder rate by 8.5%, rapes by 5%, aggravated assaults by 7% and robbery by 3%; [10] and * If those states not having concealed carry laws had adopted such laws in 1992, then approximately 1,570 murders, 4,177 rapes, 60,000 aggravated assaults and over 11,000 robberies would have been avoided yearly.[11]

* Vermont: one of the safest five states in the country. In Vermont, citizens can carry a firearm without getting permission... without paying a fee... or without going through any kind of government-imposed waiting period. And yet for ten years in a row, Vermont has remained one of the top-five, safest states in the union — having three times received the “Safest State Award.”[12]

* Florida: concealed carry helps slash the murder rates in the state. In the fifteen years following the passage of Florida’s concealed carry law in 1987, over 800,000 permits to carry firearms were issued to people in the state. [13] FBI reports show that the homicide rate in Florida, which in 1987 was much higher than the national average, fell 52% during that 15-year period — thus putting the Florida rate below the national average. [14]

* Do firearms carry laws result in chaos? No. Consider the case of Florida. A citizen in the Sunshine State is far more likely to be attacked by an alligator than to be assaulted by a concealed carry holder.

1. During the first fifteen years that the Florida law was in effect, alligator attacks outpaced the number of crimes committed by carry holders by a 229 to 155 margin.

2. And even the 155 “crimes” committed by concealed carry permit holders are somewhat misleading as most of these infractions resulted from Floridians who accidentally carried their firearms into restricted areas, such as an airport. [15]

C. Criminals avoid armed citizens

* Kennesaw, GA. In 1982, this suburb of Atlanta passed a law requiring heads of households to keep at least one firearm in the house. The residential burglary rate subsequently dropped 89% in Kennesaw, compared to the modest 10.4% drop in Georgia as a whole. [16]

* Ten years later (1991), the residential burglary rate in Kennesaw was still 72% lower than it had been in 1981, before the law was passed. [17]

* Nationwide. Statistical comparisons with other countries show that burglars in the United States are far less apt to enter an occupied home than their foreign counterparts who live in countries where fewer civilians own firearms. Consider the following rates showing how often a homeowner is present when a burglar strikes:

* Homeowner occupancy rate in the gun control countries of Great Britain, Canada and Netherlands: 45% (average of the three countries); and, * Homeowner occupancy rate in the United States: 12.7%. [18] Rapes averted when women carry or use firearms for protection

* Orlando, FL. In 1966-67, the media highly publicized a safety course which taught Orlando women how to use guns. The result: Orlando’s rape rate dropped 88% in 1967, whereas the rape rate remained constant in the rest of Florida and the nation. [19]

* Nationwide. In 1979, the Carter Justice Department found that of more than 32,000 attempted rapes, 32% were actually committed. But when a woman was armed with a gun or knife, only 3% of the attempted rapes were actually successful. [20] Justice Department study:

* 3/5 of felons polled agreed that “a criminal is not going to mess around with a victim he knows is armed with a gun.” [21]

* 74% of felons polled agreed that “one reason burglars avoid houses when people are at home is that they fear being shot during the crime.”[22] * 57% of felons polled agreed that “criminals are more worried about meeting an armed victim than they are about running into the police.” [23]

[1] Gary Kleck and Marc Gertz, “Armed Resistance to Crime: The Prevalence and Nature of Self-Defense With a Gun,” 86 *The Journal of Criminal Law and Criminology*, Northwestern University School of Law, 1 (Fall 1995):164. Dr. Kleck is a professor in the school of criminology and criminal justice at Florida State University in Tallahassee. He has researched extensively and published several essays on the gun control issue. His book, *Point Blank: Guns and Violence in America*, has become a widely cited source in the gun control debate. In fact, this book earned Dr. Kleck the prestigious American Society of Criminology Michael J. Hindelang award for 1993. This award is given for the book published in the past two to three years that makes the most outstanding contribution to criminology. Even those who don’t like the conclusions Dr. Kleck reaches, cannot argue with his impeccable research and methodology. In “A Tribute to a View I Have Opposed,” Marvin E. Wolfgang

writes that, "What troubles me is the article by Gary Kleck and Marc Gertz. The reason I am troubled is that they have provided an almost clear-cut case of methodologically sound research in support of something I have theoretically opposed for years, namely, the use of a gun in defense against a criminal perpetrator.... I have to admit my admiration for the care and caution expressed in this article and this research. Can it be true that about two million instances occur each year in which a gun was used as a defensive measure against crime? It is hard to believe. Yet, it is hard to challenge the data collected. We do not have contrary evidence." Wolfgang, "A Tribute to a View I Have Opposed," *The Journal of Criminal Law and Criminology*, at 188.

Wolfgang says there is no "contrary evidence." Indeed, there are more than a dozen national polls — one of which was conducted by *The Los Angeles Times* — that have found figures comparable to the Kleck-Gertz study. Even the Clinton Justice Department (through the National Institute of Justice) found there were as many as 1.5 million defensive users of firearms every year. See National Institute of Justice, "Guns in America: National Survey on Private Ownership and Use of Firearms," *Research in Brief* (May 1997).

As for Dr. Kleck, readers of his materials may be interested to know that he is a member of the ACLU, Amnesty International USA, and Common Cause. He is not and has never been a member of or contributor to any advocacy group on either side of the gun control debate.

[2] According to the National Safety Council, the total number of gun deaths (by accidents, suicides and homicides) account for less than 30,000 deaths per year. See *Injury Facts*, published yearly by the National Safety Council, Itasca, Illinois.

[3] Kleck and Gertz, "Armed Resistance to Crime," at 173, 185.

[4] Kleck and Gertz, "Armed Resistance to Crime," at 185.

[5] Philip J. Cook and Jens Ludwig, "Guns in America: National Survey on Private Ownership and Use of Firearms," *NIJ Research in Brief* (May 1997); available at <https://www.ncjrs.gov/pdffiles/165476.pdf> on the internet. The finding of 1.5 million yearly self-defense cases did not sit well with the anti-gun bias of the study's authors, who attempted to explain why there could not possibly be one and a half million cases of self-defense every year. Nevertheless, the 1.5 million figure is consistent with a mountain of independent surveys showing similar figures. The sponsors of these studies — nearly a dozen — are quite varied, and include anti-gun organizations, news media organizations, governments and commercial polling firms. See also Kleck and Gertz, *supra* note 1, pp. 182-183.

[6] Kleck, *Point Blank: Guns and Violence in America*, (1991):111-116, 148.

[7] George F. Will, "Are We 'a Nation of Cowards'?" *Newsweek* (15 November 1993):93.

[8] *Id.* at 164, 185.

[9] Dr. Gary Kleck, interview with J. Neil Schulman, "Q and A: Guns, crime and self-defense," *The Orange County Register* (19 September 1993). In the interview with Schulman, Dr. Kleck reports on findings from a national survey which he and Dr. Marc Gertz conducted in Spring, 1993 — a survey which findings were reported in Kleck and Gertz, "Armed Resistance to Crime."

[10] One of the authors of the University of Chicago study reported on the study's findings in John R. Lott, Jr., "More Guns, Less Violent Crime," *The Wall Street Journal* (28 August 1996). See also John R. Lott, Jr. and David B. Mustard, "Crime, Deterrence, and Right-to-Carry Concealed Handguns," University of Chicago (15 August 1996); and Lott, *More Guns, Less Crime* (1998, 2000).

[11] Lott and Mustard, "Crime, Deterrence, and Right-to-Carry Concealed Handguns."

[12]Kathleen O'Leary Morgan, Scott Morgan and Neal Quitno, "Rankings of States in Most Dangerous/Safest State Awards 1994 to 2003," Morgan Quitno Press (2004) at <http://www.statestats.com/dang9403.htm>. Morgan Quitno Press is an independent private research and publishing company which was founded in 1989. The company specializes in reference books and monthly reports that compare states and cities in several different subject areas. In the first 10 years in which they published their Safest State Award, Vermont has consistently remained one of the top five safest states.

[13]Memo by Jim Smith, Secretary of State, Florida Department of State, Division of Licensing, Concealed Weapons/Firearms License Statistical Report (October 1, 2002).

14Florida's murder rate was 11.4 per 100,000 in 1987, but only 5.5 in 2002. Compare Federal Bureau of Investigation, "Crime in the United States," Uniform Crime Reports, (1988): 7, 53; and FBI, (2003):19, 79.

[15]John R. Lott, Jr., "Right to carry would disprove horror stories," Kansas City Star, (July 12, 2003).

[16]Gary Kleck, "Crime Control Through the Private Use of Armed Force," Social Problems 35 (February 1988):15.

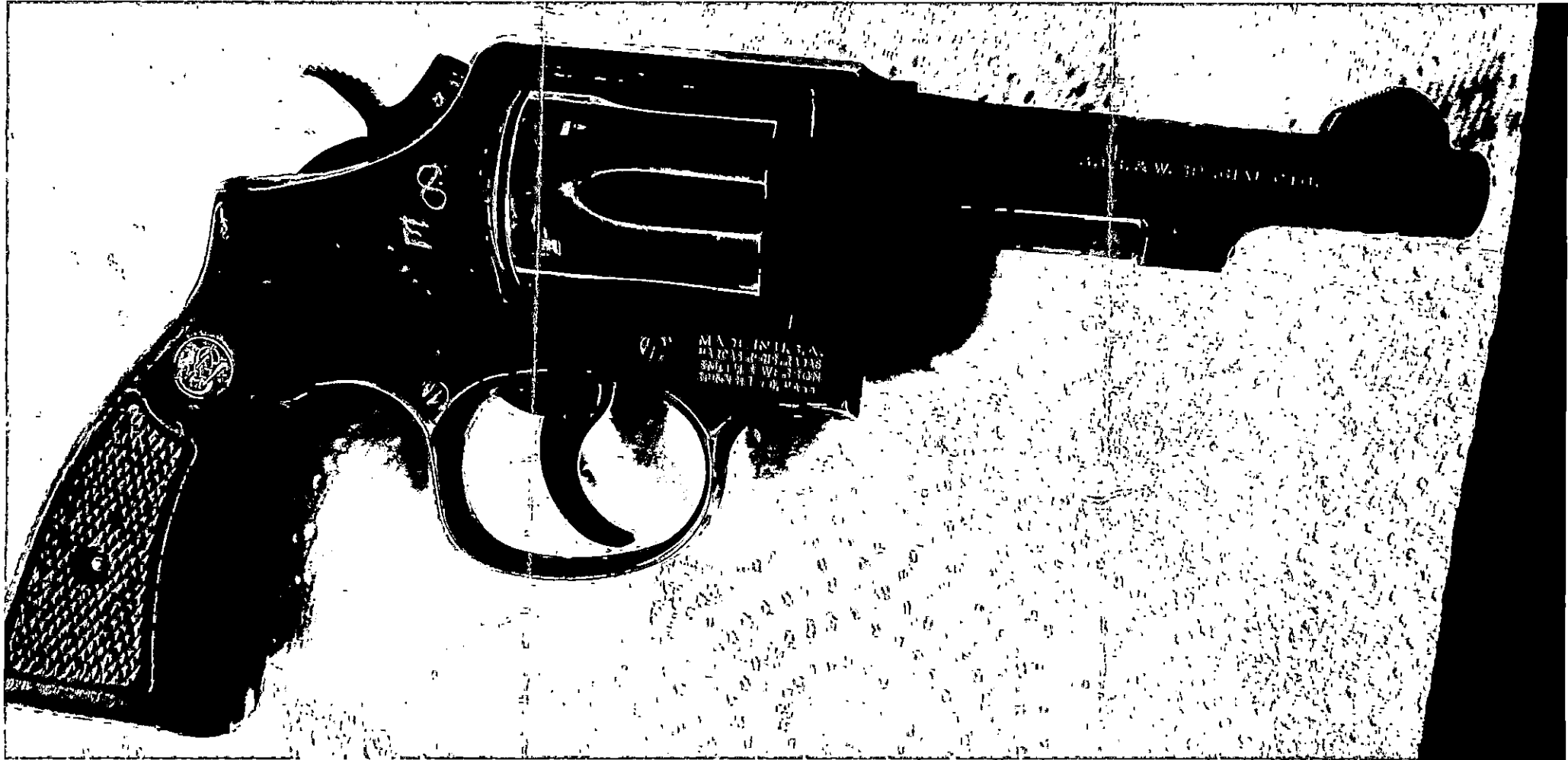
[17]Compare Kleck, "Crime Control," at 15, and Chief Dwaine L. Wilson, City of Kennesaw Police Department; "Month to Month Statistics: 1991." (Residential burglary rates from 1981-1991 are based on statistics for the months of March – October.)

[18]Kleck, Point Blank, at 140.

[19]Kleck, "Crime Control," at 13.

[20]U.S. Department of Justice, Law Enforcement Assistance Administration, Rape Victimization in 26 American Cities (1979), p. 31.

[21]U.S., Department of Justice, National Institute of Justice, "The Armed Criminal in America: A Survey of Incarcerated Felons," Research Report (July 1985): 27.



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Voting Sheets

Senate Judiciary Committee

EXECUTIVE SESSION

Bill # HB696

Hearing date: _____

Executive session date: _____

Motion of: 1954

VOTE: 3-2 (Carson/French)

<u>Made by</u> Hennessey <input type="checkbox"/>	<u>Seconded</u> Hennessey <input checked="" type="checkbox"/>	<u>Reported</u> Hennessey <input type="checkbox"/>
<u>Senator:</u> Chandley <input checked="" type="checkbox"/>	<u>by Senator:</u> Chandley <input type="checkbox"/>	<u>by Senator:</u> Chandley <input type="checkbox"/>
Carson <input type="checkbox"/>	Carson <input type="checkbox"/>	Carson <input type="checkbox"/>
Levesque <input type="checkbox"/>	Levesque <input type="checkbox"/>	Levesque <input type="checkbox"/>
French <input type="checkbox"/>	French <input type="checkbox"/>	French <input type="checkbox"/>

Motion of: OTPA

VOTE: 3-2 (Carson/French)

<u>Made by</u> Hennessey <input type="checkbox"/>	<u>Seconded</u> Hennessey <input type="checkbox"/>	<u>Reported</u> Hennessey <input type="checkbox"/>
<u>Senator:</u> Chandley <input checked="" type="checkbox"/>	<u>by Senator:</u> Chandley <input type="checkbox"/>	<u>by Senator:</u> Chandley <input type="checkbox"/>
Carson <input type="checkbox"/>	Carson <input type="checkbox"/>	Carson <input type="checkbox"/>
Levesque <input type="checkbox"/>	Levesque <input checked="" type="checkbox"/>	Levesque <input type="checkbox"/>
French <input type="checkbox"/>	French <input type="checkbox"/>	French <input type="checkbox"/>

<u>Committee Member</u>	<u>Present</u>	<u>Yes</u>	<u>No</u>	<u>Reported out by</u>
Senator Hennessey, Chairman	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator Chandley, Vice-Chair	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Senator Carson	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Senator Levesque	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator French	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

*Amendments: _____

Notes: _____

Committee Report

JUDICIARY

HB 696-FN, establishing a protective order for vulnerable adults.

Ought to Pass with Amendment, Vote 3-2.

Senator Shannon Chandley for the committee.

Docket of HB696**Bill Title:** establishing a protective order for vulnerable adults.**Official Docket of HB696.:**

Date	Body	Description
1/17/2019	H	Introduced 01/03/2019 and referred to Health, Human Services and Elderly Affairs HJ 3 P. 26
1/23/2019	H	Public Hearing: 01/30/2019 02:00 pm LOB 205
1/30/2019	H	Division II Subcommittee Work Session: 02/05/2019 10:00 am LOB 205
1/30/2019	H	==RECESSED== Executive Session: 02/05/2019 01:00 pm LOB 205
2/6/2019	H	Division II Subcommittee Work Session: 02/12/2019 10:00 am LOB 205
2/6/2019	H	==CONTINUED== Executive Session: 02/12/2019 01:00 pm LOB 205
2/13/2019	H	Committee Report: Ought to Pass with Amendment #2019-0395h for 02/27/2019 (Vote 22-0; RC) HC 13 P. 20
2/27/2019	H	Amendment #2019-0395h : AA VV 02/27/2019 HJ 6 P. 85
2/27/2019	H	Ought to Pass with Amendment 2019-0395h: MA RC 208-132 02/27/2019 HJ 6 P. 85
2/27/2019	H	Referred to Criminal Justice and Public Safety 02/27/2019 HJ 6 P. 91
3/6/2019	H	==ROOM CHANGE== Public Hearing: 03/26/2019 10:00 am LOB 206-208
3/6/2019	H	Executive Session: 03/27/2019 10:00 am LOB 204
3/28/2019	H	Majority Committee Report: Ought to Pass for 04/04/2019 (Vote 12-8; RC) HC 18 P. 4
3/28/2019	H	Minority Committee Report: Inexpedient to Legislate
4/4/2019	H	Lay on Table (Rep. Welch): MF DV 164-211 04/04/2019 HJ 12 P. 13
4/4/2019	H	Ought to Pass: MA RC 219-156 04/04/2019 HJ 12 P. 13
4/12/2019	S	Introduced 04/11/2019 and Referred to Judiciary; SJ 13
5/2/2019	S	Hearing: 05/07/2019, Room 100, SH, 09:45 am; SC 21
5/14/2019	S	Committee Report: Ought to Pass with Amendment #2019-1968s , 05/23/2019; SC 23
5/23/2019	S	Special Order to the beginning of the regular calendar, Without Objection, MA; 05/23/2019; SJ 17
5/23/2019	S	Committee Amendment #2019-1968s , AA, VV; 05/23/2019; SJ 17
5/23/2019	S	Ought to Pass with Amendment 2019-1968s, RC 13Y-10N , MA; OT3rdg; 05/23/2019; SJ 17
6/12/2019	H	House Non-Concurs with Senate Amendment 1968s and Requests CofC (Rep. Weber): MA VV 06/06/2019 HJ 18 P. 44
6/12/2019	H	Speaker Appoints: Reps. Welch, Cushing, Weber, R. Osborne 06/06/2019 HJ 18 P. 44
6/12/2019	S	Sen. Hennessey Accedes to House Request for Committee of Conference, MA, VV; (In recess 06/06/2019); SJ 20
6/12/2019	S	President Appoints: Senators Hennessey, Levesque, French; (In Recess 06/06/2019); SJ 20
6/13/2019	H	Conference Committee Meeting: 06/17/2019 11:00 am LOB 204
6/14/2019	S	Conferee Change; Senator Chandley Replaces Senator Levesque; SJ 21

6/20/2019	S	Conference Committee Report Filed, #2019-2523c ; 06/27/2019
6/27/2019	S	Conference Committee Report #2019-2523c , Adopted, VV; 06/27/2019; SJ 21
6/27/2019	H	Conference Committee Report 2523c: Adopted, RC 199-143 06/27/2019 HJ 20 P. 46
7/10/2019	S	Enrolled (In recess 06/27/2019); SJ 21
7/12/2019	H	Enrolled 06/27/2019 HJ 20 P. 56
7/24/2019	H	Vetoed by Governor Sununu 07/19/2019
9/18/2019	H	Veto Sustained 09/18/2019: RC 217-156 Lacking Necessary Two-Thirds Vote HJ 21 P. 55

NH House

NH Senate

Other Referrals

Senate Inventory Checklist for Archives

Bill Number: HB 696-FN

Senate Committee: Judiciary

Please include all documents in the order listed below and indicate the documents which have been included with an "X" beside

Final docket found on Bill Status

Bill Hearing Documents: {Legislative Aides}

Bill version as it came to the committee

All Calendar Notices

Hearing Sign-up sheet(s)

Prepared testimony, presentations, & other submissions handed in at the public hearing

Hearing Report

Revised/Amended Fiscal Notes provided by the Senate Clerk's Office

Committee Action Documents: {Legislative Aides}

All amendments considered in committee (including those not adopted):

- amendment # 1954 - amendment # 1968

___ - amendment # ___ ___ - amendment # ___

Executive Session Sheet

Committee Report

Floor Action Documents: {Clerk's Office}

All floor amendments considered by the body during session (only if they are offered to the senate):

___ - amendment # ___ ___ - amendment # ___

___ - amendment # ___ ___ - amendment # ___

Post Floor Action: (if applicable) {Clerk's Office}

Committee of Conference Report (if signed off by all members. Include any new language proposed by the committee of conference): 2523

___ Enrolled Bill Amendment(s)

___ Governor's Veto Message

All available versions of the bill: {Clerk's Office}

as amended by the senate ___ as amended by the house

final version

Completed Committee Report File Delivered to the Senate Clerk's Office By:

Committee Aide

Date

Senate Clerk's Office jm

June 17, 2019
2019-2523-CofC
01/04

1 Committee of Conference Report on HB 696-FN, establishing a protective order for vulnerable
2 adults.

3

4 Recommendation:

5 That the House recede from its position of nonconcurrence with the Senate amendment, and
6 concur with the Senate amendment, and

7 That the Senate and House adopt the following new amendment to the bill as amended by the
8 Senate, and pass the bill as so amended:

9

10 Amend RSA 173-D:5, I(b) as inserted by section 1 of the bill by deleting subparagraph (4).

11

12 Amend RSA 173-D:6 as inserted by section 1 of the bill by replacing it with the following:

13

14 173-D:6 Relief.

15 I. A finding of abuse, exploitation, or neglect shall mean the defendant represents a credible
16 threat to the safety of the plaintiff or physical, mental, or financial well-being. Upon a showing of
17 abuse, exploitation, or neglect of the plaintiff by a preponderance of the evidence, the court shall
18 grant such relief as is necessary to bring about a cessation of abuse, exploitation, or neglect. Such
19 relief may include:

20 (a) Protective orders:

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

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

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

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

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

32 (6) Granting the plaintiff exclusive care, custody, or control of any animal owned,
33 possessed, leased, kept, or held by the plaintiff or by the plaintiff jointly with the defendant in
34 either household, and ordering the defendant to stay away from the animal and forbidding the
35 defendant from taking, transferring, encumbering, concealing, committing an act of cruelty or

1 neglect, or disposing of the animal.

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

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

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

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

14 (4) Ordering the defendant to make automobile, insurance, health care, utilities,
15 rent, or mortgage payments if the defendant has a legal or fiduciary duty to do so.

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

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

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

25 III. No order made under this section shall supersede or affect any court order pertaining to
26 the possession of a residence or household furniture as determined by a circuit court, or title to real
27 or personal property.

28 IV. The findings of fact with respect to the protective order shall be final, but questions of
29 law may be transferred from the circuit court to the supreme court.

30 V. Any order under this section shall be for a fixed period of time not to exceed one year,
31 but may be extended by order of the court upon a motion by the plaintiff, showing good cause, with
32 notice to the defendant, for one year after the expiration of the first order and thereafter each
33 extension may be for up to 5 years, upon the request of the plaintiff and at the discretion of the
34 court. The court shall review the order and each renewal thereof and shall grant such relief as may
35 be necessary to provide for the safety and well-being of the plaintiff. A defendant shall have the
36 right to a hearing on the extension of any order under this paragraph to be held within 30 days of
37 the extension. The court shall state in writing, at the respondent's request, its reason or reasons for

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1 granting the extension. The court shall retain jurisdiction to enforce and collect any financial
2 compensation due to the plaintiff which accrued prior to the expiration of the protective order.

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

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

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

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

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

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

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

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

32 (c) The administrative office of the courts shall update the database upon expiration or
33 termination of a protective order.

34 (d) Notwithstanding any other provision of law, the administrative office of the courts,
35 the department of health and human services, or the department of safety, their employees and
36 agents, and law enforcement officials shall not be held criminally or civilly liable for action taken
37 under this chapter or RSA 458:16, provided they are acting in good faith and without gross

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1 negligence, and within the scope of their duties and authority.

2

3 Amend RSA 173-D:10, I as inserted by section 1 of the bill by replacing it with the following:

4

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

12

13 Amend RSA 173-D:12, II(g) and (h) as inserted by section 1 of the bill by replacing them with the
14 following:

15

16

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

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The signatures below attest to the authenticity of this Report on HB 696-FN, establishing a protective order for vulnerable adults.

Conferees on the Part of the Senate

Sen. Hennessey, Dist. 5

Sen. Chandley, Dist. 11

Sen. French, Dist. 7

Conferees on the Part of the House

Rep. Cushing, Rock. 21

Rep. Welch, Rock. 13

Rep. Weber, Ches. 1

Rep. R. Osborne, Graf. 7