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# Committee Report

**REGULAR CALENDAR**

**February 4, 2020**

**HOUSE OF REPRESENTATIVES**

**REPORT OF COMMITTEE**

The Majority of the Committee on Health, Human Services and Elderly Affairs to which was referred HB 1660-FN,

AN ACT establishing a protective order for vulnerable adults. Having considered the same, report the same with the following amendment, and the recommendation that the bill OUGHT TO PASS WITH AMENDMENT.

**Rep. Gary Woods**

**FOR THE MAJORITY OF THE COMMITTEE**

**MAJORITY  
COMMITTEE REPORT**

Committee:	Health, Human Services and Elderly Affairs
Bill Number:	HB 1660-FN
Title:	establishing a protective order for vulnerable adults.
Date:	February 4, 2020
Consent Calendar:	REGULAR
Recommendation:	OUGHT TO PASS WITH AMENDMENT 2020-0050h

**STATEMENT OF INTENT**

This bill, as amended, outlines a framework for assisting vulnerable adults who are being exploited. Care has been taken in several areas to address concerns present in previous bills. Emphasis is placed on helping the vulnerable individual leave the failing environment, if necessary, thus providing safety and interrupting any ongoing exploitation. Attention has been given to clarify the appropriate legal proceedings for the vulnerable individual. Issues involving children or domestic violence are not addressed in this bill as they are the subject of separate statutes. Applicants for a protective order are informed they may need to seek a domestic violence protection order to ensure their physical safety.

Vote 12-9.

Rep. Gary Woods  
FOR THE MAJORITY

Original: House Clerk  
Cc: Committee Bill File

## REGULAR CALENDAR

Health, Human Services and Elderly Affairs

**HB 1660-FN**, establishing a protective order for vulnerable adults. **MAJORITY: OUGHT TO PASS WITH AMENDMENT. MINORITY: INEXPEDIENT TO LEGISLATE.**

Rep. Gary Woods for the **Majority** of Health, Human Services and Elderly Affairs. This bill, as amended, outlines a framework for assisting vulnerable adults who are being exploited. Care has been taken in several areas to address concerns present in previous bills. Emphasis is placed on helping the vulnerable individual leave the failing environment, if necessary, thus providing safety and interrupting any ongoing exploitation. Attention has been given to clarify the appropriate legal proceedings for the vulnerable individual. Issues involving children or domestic violence are not addressed in this bill as they are the subject of separate statutes. Applicants for a protective order are informed they may need to seek a domestic violence protection order to ensure their physical safety. **Vote 12-9.**



**REGULAR CALENDAR**

**February 4, 2020**

**HOUSE OF REPRESENTATIVES**

**REPORT OF COMMITTEE**

**The Minority of the Committee on Health, Human Services and Elderly Affairs to which was referred HB 1660-FN,**

**AN ACT establishing a protective order for vulnerable adults. Having considered the same, and being unable to agree with the Majority, report with the following resolution: RESOLVED, that it is INEXPEDIENT TO LEGISLATE.**

**Rep. William Marsh**

**FOR THE MINORITY OF THE COMMITTEE**

**MINORITY  
COMMITTEE REPORT**

Committee:	Health, Human Services and Elderly Affairs
Bill Number:	HB 1660-FN
Title:	establishing a protective order for vulnerable adults.
Date:	February 4, 2020
Consent Calendar:	REGULAR
Recommendation:	INEXPEDIENT TO LEGISLATE

**STATEMENT OF INTENT**

A side-by-side comparison of this bill as introduced and HB 696 as vetoed by the Governor on July 19, 2019, finds the only differences are the addition of a sentence to the purpose statement saying this new law shall not prohibit the filing of a petition for relief under RSA 173-B or RSA 633:3-a and a change in the effective date. The minority believes these changes are insufficient to address the Governor's concerns, specifically by not adding any protection for pro se victims or their children who might file under this new statute; by not addressing protections for a vulnerable adult's minor children; by not restraining the defendant from entering the plaintiff's place of employment or school; by not allowing for the appointment of guardians ad litem to represent best interests of minor children involved; and by creating potential for violating the fourth amendment protections against unreasonable search and seizure. Until and unless these concerns are addressed, the minority believes this bill is Inexpedient to Legislate. The minority appreciates amendment 2020-0050h which removes the concern about second amendment violations by removing firearm confiscation from this bill, possibly excepting the "not limited to" clause on page 3 line 10 of the amendment.

Rep. William Marsh  
FOR THE MINORITY

Original: House Clerk  
Cc: Committee Bill File

## REGULAR CALENDAR

Health, Human Services and Elderly Affairs

**HB 1660-FN**, establishing a protective order for vulnerable adults. **INEXPEDIENT TO LEGISLATE.**

Rep. William Marsh for the **Minority** of Health, Human Services and Elderly Affairs. A side-by-side comparison of this bill as introduced and HB 696 as vetoed by the Governor on July 19, 2019, finds the only differences are the addition of a sentence to the purpose statement saying this new law shall not prohibit the filing of a petition for relief under RSA 173-B or RSA 633:3-a and a change in the effective date. The minority believes these changes are insufficient to address the Governor's concerns, specifically by not adding any protection for pro se victims or their children who might file under this new statute; by not addressing protections for a vulnerable adult's minor children; by not restraining the defendant from entering the plaintiff's place of employment or school; by not allowing for the appointment of guardians ad litem to represent best interests of minor children involved; and by creating potential for violating the fourth amendment protections against unreasonable search and seizure. Until and unless these concerns are addressed, the minority believes this bill is Inexpedient to Legislate. The minority appreciates amendment 2020-0050h which removes the concern about second amendment violations by removing firearm confiscation from this bill, possibly excepting the "not limited to" clause on page 3 line 10 of the amendment.

Original: House Clerk  
Cc: Committee Bill File

# COMMITTEE REPORT

*OK Law*

COMMITTEE: Health & Human Services

BILL NUMBER: HB 1660 - FN

TITLE: Establishing a protective order for vulnerable adults

DATE: 2/4/20 CONSENT CALENDAR: YES  NO

- OUGHT TO PASS
- OUGHT TO PASS W/ AMENDMENT
- INEXPEDIENT TO LEGISLATE
- INTERIM STUDY (Available only 2<sup>nd</sup> year of biennium)

Amendment No.
<u>0050h</u>

## STATEMENT OF INTENT:

See attached

COMMITTEE VOTE: 12-9

RESPECTFULLY SUBMITTED,

- |   |
|---|
| <ul style="list-style-type: none"> <li>• Copy to Committee Bill File</li> <li>• Use Another Report for Minority Report</li> </ul> |
|---|

Rep. Gary J. Wm  
For the Committee

HB1660-FN as amended outlines a framework for assisting vulnerable adults <sup>who are being exploited.</sup> experiencing ~~exploitation~~. Care has been taken in several areas

to address concerns present in previous bills. Emphasis is placed on helping the vulnerable individual leave the failing environment, if necessary, thus providing safety and interrupting any ongoing exploitation. Attention has been given to clarify the appropriate legal proceedings for the vulnerable individual. Issues involving children or domestic violence are not addressed in this bill as they are the subject

of separate statutes. <sup>removal</sup> Of specific note is the ~~absence~~ of any clause

indicating the confiscation of deadly weapons. This bill provides much needed remedies for vulnerable adults experiencing exploitation. This is accomplished in a timely manner and at the same time preserving the rights of all parties involved.

Applicants  
for a  
protective  
order  
are in need  
they may need to seek  
a domestic violence protection order to ensure their physical safety.

rights of all parties involved.



COMMITTEE: HHS & EA

BILL NUMBER: HD 1660

TITLE: Establishing a protective order for vulnerable adults

DATE: 2/4/20 CONSENT CALENDAR: YES  NO

- OUGHT TO PASS
- OUGHT TO PASS W/ AMENDMENT
- INEXPEDIENT TO LEGISLATE
- INTERIM STUDY (Available only 2<sup>nd</sup> year of biennium)

Amendment No. _____
------------------------

STATEMENT OF INTENT:

See attached.

COMMITTEE VOTE: 12-9

• Copy to Committee Bill File
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RESPECTFULLY SUBMITTED,

Rep. Willie Ross  
For the Minority

## Minority Report ITL

A side by side comparison of HB1660 as introduced and HB696 as vetoed by the Governor on July 19, 2019 finds the only differences are the addition of a sentence to the purpose statement saying this new law shall not prohibit the filing of petition for relief under RSA 173-B or RSA 633:3-a and a change in the effective date.

The minority believes these changes are insufficient to address the Governor's concerns, specifically by not adding any protection for pro se victims or their children who might file under this new statute; by not addressing protections for a vulnerable adult's minor children; by not restraining the defendant from entering the plaintiff's place of employment or school; by not allowing for the appointment of guardians ad litem to represent best interests of minor children involved; ~~by creating the real possibility that an individual's Second Amendment Constitutional rights could be violated without judicial oversight;~~ and by creating potential for violating the Fourth Amendment protections against unreasonable search and seizure.

Until and unless these concerns are addressed, the minority believes HB1660 inexpedient to legislate.

The minority <sup>appreciates</sup> ~~is supportive of~~ amendment 005PH which removes the concern about second amendment violations by removing firearm confiscation from this bill, possibly excepting the "not limited to" clause on p.3 line 10 of the amendment.

Amendment to HB 1660-FN

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

2

3 173-D:1 Purpose. The purpose of this chapter is to enable vulnerable adults to seek permanent  
4 and temporary relief from abuse, exploitation, and neglect.

5

6 Amend RSA 173-D:4, IV-VI as inserted by section 1 of the bill by replacing them with the following:

7

8 IV. Prior to filing a petition under this chapter, the plaintiff shall be required to complete a  
9 worksheet developed by the court outlining the plaintiff's rights and options for relief under this  
10 chapter, RSA 173-B, and RSA 633:3-a. The worksheet shall also advise plaintiffs that they may  
11 contact New Hampshire Legal Assistance and the New Hampshire Domestic Violence Hotline for  
12 assistance prior to filing a petition. Plaintiffs shall be required to sign the worksheet stating the  
13 following: "I understand my rights and options as explained in this worksheet. I am freely choosing  
14 to file this petition even though there are other petitions I may qualify for that are specifically  
15 designed for victims of domestic violence and stalking. I understand that using this petition may  
16 prevent me from getting additional protections for physical safety that may be available to me,  
17 including the right to ask the court to order the defendant to hand over their firearms or deadly  
18 weapons."

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

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

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

28 VII. The filing of a petition under this chapter, including any facts alleged or findings made  
29 regarding the plaintiff's mental or physical capacity, shall not be admitted as evidence for any  
30 purpose in any other court proceeding.

31 VIII. In a proceeding under this chapter, a support person may accompany a party in court  
32 and, if the party is not represented by an attorney, may sit with the party at the table that is



Amendment to HB 1660-FN

- Page 2 -

1 generally reserved for the party and the party's attorney. The support person is present to provide  
2 moral and emotional support for a person who alleges he or she is a victim of abuse. The support  
3 person is not present as a legal adviser and shall not provide legal advice. The support person may  
4 assist the person who alleges he or she is a victim of abuse in feeling more confident that he or she  
5 will not be injured or threatened by the other party during the proceedings if the person who alleges  
6 he or she is a victim of abuse and the other party are required to be present in close proximity. This  
7 section shall not preclude the court from exercising its discretion to remove the support person from  
8 the courtroom if the court believes the support person is prompting, swaying, or influencing the  
9 party assisted by the support person.

10  
11 Amend RSA 173-D:5 as inserted by section 1 of the bill by replacing it with the following:

12  
13 173-D:5 Temporary Relief.

14 I. Upon a showing of an immediate and present danger of abuse, exploitation, or neglect, the  
15 court may enter temporary orders to protect the plaintiff with or without actual notice to defendant.  
16 The court may issue such temporary orders by telephone, facsimile or any other methods approved  
17 by court rules. Such telephonically issued orders shall be made by a circuit court judge to a law  
18 enforcement officer, shall be valid in any jurisdiction in the state, and shall be effective until the  
19 close of the next regular court business day. Such orders shall be returnable to the circuit court  
20 where the plaintiff resides or to which the plaintiff has fled, unless otherwise ordered by the issuing  
21 judge. If non-telephonic temporary orders are made ex parte, the party against whom such relief is  
22 issued may file a written request with the clerk of the court and request a hearing on such orders.  
23 Such hearing shall be held no less than 2 business days and no more than 3 business days after the  
24 request is received by the clerk. Such hearings may constitute the final hearing described in RSA  
25 173-D:4, V.

26 II. Such temporary relief may include:

27 (a) Protective orders:

- 28 (1) Restraining the defendant from abusing, exploiting, or neglecting the plaintiff.  
29 (2) Restraining the defendant from entering the premises and curtilage where the  
30 plaintiff resides, except when the defendant is accompanied by a peace officer and, upon reasonable  
31 notice to the plaintiff, is allowed entry by the plaintiff for the sole purpose of retrieving toiletries,  
32 medication, clothing, business equipment, and any other items as determined by the court.  
33 (3) Restraining the defendant from withholding items of the plaintiff's personal  
34 property which are specified in the order. A peace officer shall accompany the plaintiff or his or her  
35 representative in retrieving such property to protect the plaintiff.  
36 (4) Restraining the defendant from contacting the plaintiff or entering a specified  
37 place frequented regularly by the plaintiff.

Amendment to HB 1660-FN

- Page 3 -

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

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

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

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

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

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

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

20

21 Amend RSA 173-D:11 as inserted by section 1 of the bill by replacing it with the following:

22

23 173-D:11 Protection by Peace Officers. Whenever any peace officer has probable cause to believe  
24 that a person has been abused, exploited, or neglected, as defined in RSA 161-F:43 and RSA 173-D:2,  
25 that officer shall use all means within reason to prevent further abuse, exploitation, or neglect  
26 including, but not limited to:

27 I. Transporting or obtaining transportation for the victim to a place of safety, local family  
28 member, or friend.

29 II. Assisting the victim in removing toiletries, medication, clothing, and any other items  
30 determined by the court.

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

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

**Amendment to HB 1660-FN**

**- Page 4 -**

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

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# Voting Sheets







2020 SESSION

Health, Human Services and Elderly Affairs

Bill #: HB 1660 Motion: OTPA AM #: 0050h Exec Session Date: 2-4-20

<u>Members</u>	<u>YEAS</u>	<u>Nays</u>	<u>NV</u>
Weber, Lucy M. Chairman	✓		
Campion, Polly Kent Vice Chairman	✓		
MackKay, James R.	✓		
Snow, Kendall A.	✓		
Freitas, Mary C.	✓		
Ticehurst, Susan J. Clerk	✓		
Knirk, Jerry L.	✓		
Salloway, Jeffrey C.	✓		
Cannon, Gerri D.			
Nutter-Upham, Frances E.	✓		
Osborne, Richard G.	✓		
Schapiro, Joe	✓		
Woods, Gary L.	✓		
McMahon, Charles E.		✓	
Nelson, Bill G.		✓	
Guthrie, Joseph A.		✓	
Fothergill, John J.		✓	
Marsh, William M.		✓	
Pearson, Mark A.		✓	
Acton, Dennis F.		✓	
DeClercq, Edward		✓	
Stapleton, Walter A.		✓	
<b>TOTAL VOTE:</b>	<b>12</b>	<b>9</b>	



2020 SESSION

Health, Human Services and Elderly Affairs - *Establishing a protective order for vulnerable adults.*

Bill #: HB 1660-FIN Motion: \_\_\_\_\_ AM #: 0050 h Exec Session Date: 2-4-20

<u>Members</u>	<u>YEAS</u>	<u>Nays</u>	<u>NV</u>
Weber, Lucy M. Chairman	✓		
Campion, Polly Kent Vice Chairman	✓		
MacKay, James R.	✓		
Snow, Kendall A.	✓		
Freitas, Mary C.	✓		
Ticehurst, Susan J. Clerk	✓		
Knirk, Jerry L.	✓		
Salloway, Jeffrey C.	✓		
Cannon, Gerri D.			
Nutter-Upham, Frances E.	✓		
Osborne, Richard G.	✓		
Schapiro, Joe	✓		
Woods, Gary L.	✓		
McMahon, Charles E.		✓	
Nelson, Bill G.		✓	
Guthrie, Joseph A.		✓	
Fothergill, John J.	✓		
Marsh, William M.	✓		
Pearson, Mark A.		✓	
Acton, Dennis F.		✓	
DeClercq, Edward		✓	
Stapleton, Walter A.		✓	
<b>TOTAL VOTE:</b>	<b>14</b>	<b>7</b>	



Amendment to HB 1660-FN

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Amendment to HB 1660-FN

- Page 2 -

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37 place frequented regularly by the plaintiff.

Amendment to HB 1660-FN

- Page 3 -

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

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

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

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11 (1) In the case of financial exploitation, prohibiting the defendant from transferring  
12 or otherwise encumbering any of his or her assets which equal or exceed the amount of assets  
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34 "If you are the victim of abuse, exploitation, and neglect and you believe that law enforcement  
35 protection is needed for your physical safety, you have the right to request that the officer assist in  
36 providing for your safety, including asking for an emergency telephonic order for protection. You  
37 may also request that the officer assist you in obtaining from your premises and curtilage, toiletries,

**Amendment to HB 1660-FN**

**- Page 4 -**

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

# Hearing Minutes

HOUSE COMMITTEE ON HEALTH, HUMAN SERVICES AND ELDERLY AFFAIRS

PUBLIC HEARING ON HB 1660-FN

**BILL TITLE:** establishing a protective order for vulnerable adults.

**DATE:** January 21, 2020

**LOB ROOM:** 205

**Time Public Hearing Called to Order:** 1:00 PM

**Time Adjourned:** 2:40 PM

**Committee Members:** Reps. Weber, Campion, Ticehurst, MacKay, Freitas, Knirk, Salloway, Cannon, Nutter-Upham, R. Osborne, Schapiro, Woods, McMahon, Nelson, Fothergill, M. Pearson, DeClercq and Stapleton

**Bill Sponsors:**

Rep. Cushing

Rep. Campion

Rep. Long

Rep. Weber

Rep. Berch

Rep. Murphy

Rep. K. Murray

Sen. Chandley

Sen. Hennessey

**TESTIMONY**

\* Use asterisk if written testimony and/or amendments are submitted.

**\*1 Rep. Cushing - Introduced the bill -**

Establishing protective orders for vulnerable adults has been dealt with by the committee before. This legislature has taken steps to address this vulnerable population in the state. In the past, legislation has been passed to establish financial exploitation as a crime. The protective order is akin to that for domestic stalking. A number of stakeholders and advocates, including the governor's office, have participated in developing this legislation. Offered amendment #2020-0050.

**Sen. Starr - Opposes -**

There is repetition and vagueness. All it does is offer welfare for lawyers. The intent was to do something nice for the elderly and infirm who lack family. Most of us when we get elderly have family. This sets the state up to act as family. He is not sure that putting the state in as family is the right thing to do. Page nine authorizes the police to confiscate every weapon in sight or out of sight. This sounds like a gun confiscation bill. He is against that. He is an NRA member and member of a range.

**\*2 Cheryl Steinberg, NH Legal Assistance - Supports -**

Supports the bill as amended. The idea is to provide immediate relief to vulnerable adults. There was controversy because of the gun confiscation provisions which have all been removed. The amendment removes the remaining deadly weapon provision in the bill. Under the purpose section of the amendment, the second sentence of the original bill will be struck. To avoid confusion resulting in people applying for the wrong relief, anyone applying for a protective order will fill out a worksheet describing the different types of petitions. No weapons will be confiscated under the vulnerable adults provision. Filing of a petition shall not be admitted as evidence in any other proceeding. The bill is about helping vulnerable adults who are being victimized or exploited. The criminal statute is for someone after a crime has been committed. This type of relief is to be affirmative, either preventing or stopping abuse early. Similar statutes provide this kind of relief. Morrill vs. Morrill requires due process, but the hearing may be flexible according to the demands of the situation. The time period for a hearing has been reduced to 2-3 days.

**Question:** Rep. Nutter-Upham: If someone was concerned about weapons, would they would fill out the worksheet and file through stalking laws or violence laws?

**Answer:** Anyone who wanted a protective order would fill out the worksheet and that would help them to determine which specific order would be appropriate.

**Question:** Rep. M. Pearson: Am I correct in believing that as of right now the bill has firearms references and they will be taken out by the amendment?

**Answer:** Another senate bill will be introduced with the same amendment.

**Question:** Rep. DeClercq: In the amendment, line 26, can the term "but not limited to" be interpreted to mean confiscation of weapons?

**Answer:** The district court and family division feel that they need to stay within the parameters of the statute itself.

**Question:** Rep. DeClercq: It would be at the discretion of the police officer whether anything else could be included. So, the police can do this anyway?

**Answer:** Yes.

**Question:** Rep. DeClercq: Would you be okay with "limited to"?

**Answer:** There might be other kinds of relief that would be totally unrelated to the weapons.

Rep. Weber: The bill will go to Criminal Justice to address these concerns.

**Question:** Rep. McMahon: Relative to the application of law and timing of when it is applied under chapter 631, is this bill needed when that law is already in place?

**Answer:** In the criminal law, it is after the fact. This is to help stop it. The criminal system is not designed to provide this immediate relief.

**Question:** Rep. Stapleton: On previous bills concerning ex parte orders, how do you address this?

**Answer:** There is nothing to address. The supreme court has addressed this. The constitution allows that under certain circumstances. The language in the bill is exactly the same as in those statutes.

#### **Dan Itse, NH Firearms Coalition –**

He appreciates the sponsor's attempt to remove deadly weapons from the statute. A search or arrest warrant must come with a designation of the reason why the police went there. The temporary relief section is flawed, as are the other statutes. If you get a written communication, you have no power to have a hearing. He suggests striking "non-telephonic". Family court is not a purely statutory court. It is an equity court. They are not completely bound. If there is no statute constraining them, they can do whatever is equitable. This is an issue that should be heard in district court and not family court.

#### **Mark Harwood - Opposes –**

He has elderly parents and does not understand how this is adding to the protection of someone who is vulnerable. He has seen 6 instances of protective orders for vulnerable adults. The actions defined are already criminal. The word "restraining" is present multiple times but there is nothing restraining the individual from hurting the person we are looking to protect. Regarding the clause about confiscating deadly weapons, this is about a crime that has already happened. It is an inanimate problem. The root of the problem is an individual. The police would remove the weapon but do nothing about the person. If you want to make it safer for elderly people you need to focus on the root of the problem, which is the human being. If the police believe there is a threat, they detain them and the next day they receive due process.

#### **\*3 Dave Wheeler, NH Firearms Coalition - Opposes –**

It is poorly written. Removing the reference to "deadly weapon" will be ineffective because there is a federal law, 18 USC section 922(g)(9). Alternatively, you could have a guardian or power of attorney. You don't have to take away a firearm. This is to prevent something from happening which is always subjective. You could be convicted for something that has not happened. This bill is not about a crime. It is almost like a civil procedure. Regarding the definition of abuse, if someone reports you for verbal harassment you could have your rights taken from you for something you said. Saying something "could" happen is subjective. If a protective order is sought, there is a federal statute. Our constitution and due process are not flexible. Every person has a right to due process before their property and 2<sup>nd</sup> amendment rights are taken from them. Telephonic orders cannot be verified by a person who answers the door. In cases of financial exploitation, someone should not lose their guns for that. There is no statute of limits. Line 15 states that the orders shall be final. You cannot face your accuser and the order will be final. Page 7, lines 17 & 18 states that your name will go into the state database at the Department of Public Safety but does not specify which database.

It may go into a database of prohibited persons. There is no procedure to get off the list. The system we have with DCYF ends up with a 90% false allegation rate. This is going to happen here.

**Question:** Rep. Stapleton: Questions line 20, page 3.

**Answer:** Technical rules of evidence are suspended, allowing hearsay evidence. You do not have the right to face your accuser. The burden of proof is preponderance of evidence, not beyond a reasonable doubt.

**Rep. Lucy Weber, former elder law attorney who represented vulnerable adults –**

She has observed that as someone aged or had limited powers, someone stepped in to help out. Eventually they would help themselves instead. A great number of people have been in this situation. Some have families who are able to step in and control what is going on but they have no legal authority. We have criminal statutes so if someone has stolen from an elder, they can be convicted criminally. This is a civil proceeding so what happens is you go to court and you get an order that protects a vulnerable adult. One thing it does is protect them from financial exploitation. If exploitation occurs, you can go to court and override the power of attorney. An amendment takes out the confiscation measure. A person with power of attorney has no supervision and appointment must come from the vulnerable adult themselves. Guardianship takes weeks or months to establish. Money can be gone before it can be gotten back. The court order would state exactly what you can and cannot do, not to criminalize the person doing the harm, but to protect the vulnerable adult. Once confiscation is removed what remains is what can be done to help the victim. Many things can be done that have nothing to do with inanimate objects.

**Question:** Rep. Nelson: If someone says their son is trying to kill them. what happens?

**Answer:** The first thing is that they can make an allegation. Without that, there isn't anything that the court can do. It is more likely that a caregiver is perhaps being a little forceful. That person needs to be removed from the situation. You would need some sort of supporting evidence.

**Question:** Rep. Nelson: So, nothing would be done until they went to court?

**Answer:** No, there is an ex parte proceeding, but it is very limited in time. It may mean taking the person to someplace safe. Then after a very short time, everyone goes to court and sorts it out.

**Question:** Rep. Stapleton: Guardianship takes some time. Is fiduciary reporting required? Is that an answer to some part of this problem?

**Answer:** Once guardianship has been established. The issue is twofold. First, guardianship does have that kind of protection, but the process takes time. The vulnerable person may understand what is going on but may not be able to get out of the situation. We don't want them to be stuck there until they can get out.

**Question:** Rep. Schapiro: Asks for clarity about federal law that automatically creates confiscation of weapons.

**Answer:** Rep. Weber: Unable to answer but guesses that is something that happens upon conviction of a crime, not something that happens under these circumstances.

**Joe Hannon, Gun Owners of New Hampshire – Opposes -**

Opposes the bill as written. Some of the definitions are mirrored in other criminal statutes. The definition of emotional abuse is vague. Regarding page 2, line 11, a foreign protective order from another state with less stringent or more expansive orders would automatically be considered protective orders under this bill. Regarding Page 3, line 20, there are rules in criminal proceedings but not civil proceedings. Regarding page 5, line 1, this is vague. Registry in a state database could be impactful and needs clarity. What database, who gets on it and how do you get out of it? Regarding page 9, line 26-27, confiscation of deadly weapons will be removed by the amendment. Regarding use of all means, change "not limited to" to "except". Probable cause is used in criminal cases and it is questionable whether it can be used in civil law. Regarding page 10, lines 28-3, what is not included is possible illegal activity.

**Aaron Penkacik - Opposes –**

The amendment corrects some objections. If there was confiscation of people's personal property, what guarantees that the property would be returned in the condition in which it was confiscated? Who would be responsible for the condition of the property? The root intention of the bill is good but to co-mingle it with a red flag law is disingenuous.



**Penny Dean, Private Attorney - Opposes -**

Regarding page 1, the definition of emotional abuse is vague and subjective. "Other abuse" lists 8 statutes that are in place, so the question is why are they included? She thinks it's included because people are frustrated with the length of the guardianship process. If you have been convicted of a felony in another jurisdiction, NH recognizes that. There is no exception for this. Regarding page 2 lines 12 & 13, "necessary" is a vague term. Regarding page 2, lines 22-26, the term "fled" is emotionally charged. You should not have to go to court to answer a charge in a place to which you have never been. This is called forum theft. By Federal law the mere temporary order is going to prohibit you from firearm ownership, so you don't need this bill.

**Question:** Rep. Stapleton: We have problem with abuse of forfeiture law. In your work experience can you site statistics on the retention of firearms?

**Answer:** One must go to court a second time and get a court order.

**\*4 Jeffery Dickinson, Granite State Independent Living - Supports -**

We are not talking about trivial things. We are talking about people like myself who need help with their activities of daily living. It's hard to get to the point where you need that kind of help. It puts you into a more vulnerable point than someone who is able bodied. There is a need for legislation for folks who have disabilities and if somebody becomes aggressive. Those of us with disabilities really can't defend ourselves and need extra protection. As for the gun issue, I have lived in NH all my life and am not against gun ownership. I don't think that should trump someone's right to be safe in their own home.

**Question:** Rep. Nelson: Is there any state that has legislation that would be acceptable to all sides?

**Answer:** Cheryl Steinberg: The point is it was taken from existing statutes and was drawn from those of other states as well.

Respectfully submitted,

  
Rep. Susan Ticehurst, Clerk



Rep. Cushing, Rock. 21  
January 13, 2020  
2020-0050h  
01/04

Amendment to HB 1660-FN

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

2

3 173-D:1 Purpose. The purpose of this chapter is to enable vulnerable adults to seek permanent  
4 and temporary relief from abuse, exploitation, and neglect.

5

6 Amend RSA 173-D:4, IV-VI as inserted by section 1 of the bill by replacing them with the following:

7

8 IV. Prior to filing a petition under this chapter, the plaintiff shall be required to complete a  
9 worksheet developed by the court outlining the plaintiff's rights and options for relief under this  
10 chapter, RSA 173-B, and RSA 633:3-a. The worksheet shall also advise plaintiffs that they may  
11 contact New Hampshire Legal Assistance and the New Hampshire Domestic Violence Hotline for  
12 assistance prior to filing a petition. Plaintiffs shall be required to sign the worksheet stating the  
13 following: "I understand my rights and options as explained in this worksheet. I am freely choosing  
14 to file this petition even though there are other petitions I may qualify for that are specifically  
15 designed for victims of domestic violence and stalking. I understand that using this petition may  
16 prevent me from getting additional protections for physical safety that may be available to me,  
17 including the right to ask the court to order the defendant to hand over their firearms or deadly  
18 weapons."

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

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

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

28 VII. The filing of a petition under this chapter, including any facts alleged or findings made  
29 regarding the plaintiff's mental or physical capacity, shall not be admitted as evidence for any  
30 purpose in any other court proceeding.

31 VIII. In a proceeding under this chapter, a support person may accompany a party in court  
32 and, if the party is not represented by an attorney, may sit with the party at the table that is

1 generally reserved for the party and the party's attorney. The support person is present to provide  
2 moral and emotional support for a person who alleges he or she is a victim of abuse. The support  
3 person is not present as a legal adviser and shall not provide legal advice. The support person may  
4 assist the person who alleges he or she is a victim of abuse in feeling more confident that he or she  
5 will not be injured or threatened by the other party during the proceedings if the person who alleges  
6 he or she is a victim of abuse and the other party are required to be present in close proximity. This  
7 section shall not preclude the court from exercising its discretion to remove the support person from  
8 the courtroom if the court believes the support person is prompting, swaying, or influencing the  
9 party assisted by the support person.

10  
11 Amend RSA 173-D:5 as inserted by section 1 of the bill by replacing it with the following:

12  
13 173-D:5 Temporary Relief.

14 I. Upon a showing of an immediate and present danger of abuse, exploitation, or neglect, the  
15 court may enter temporary orders to protect the plaintiff with or without actual notice to defendant.  
16 The court may issue such temporary orders by telephone, facsimile or any other methods approved  
17 by court rules. Such telephonically issued orders shall be made by a circuit court judge to a law  
18 enforcement officer, shall be valid in any jurisdiction in the state, and shall be effective until the  
19 close of the next regular court business day. Such orders shall be returnable to the circuit court  
20 where the plaintiff resides or to which the plaintiff has fled, unless otherwise ordered by the issuing  
21 judge. If non-telephonic temporary orders are made ex parte, the party against whom such relief is  
22 issued may file a written request with the clerk of the court and request a hearing on such orders.  
23 Such hearing shall be held no less than 2 business days and no more than 3 business days after the  
24 request is received by the clerk. Such hearings may constitute the final hearing described in RSA  
25 173-D:4, V.

26 II. Such temporary relief may include:

27 (a) Protective orders:

- 28 (1) Restraining the defendant from abusing, exploiting, or neglecting the plaintiff.  
29 (2) Restraining the defendant from entering the premises and curtilage where the  
30 plaintiff resides, except when the defendant is accompanied by a peace officer and, upon reasonable  
31 notice to the plaintiff, is allowed entry by the plaintiff for the sole purpose of retrieving toiletries,  
32 medication, clothing, business equipment, and any other items as determined by the court.  
33 (3) Restraining the defendant from withholding items of the plaintiff's personal  
34 property which are specified in the order. A peace officer shall accompany the plaintiff or his or her  
35 representative in retrieving such property to protect the plaintiff.  
36 (4) Restraining the defendant from contacting the plaintiff or entering a specified  
37 place frequented regularly by the plaintiff.

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

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

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

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

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

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

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

20  
21 Amend RSA 173-D:11 as inserted by section 1 of the bill by replacing it with the following:

22  
23 173-D:11 Protection by Peace Officers. Whenever any peace officer has probable cause to believe  
24 that a person has been abused, exploited, or neglected, as defined in RSA 161-F:43 and RSA 173-D:2,  
25 that officer shall use all means within reason to prevent further abuse, exploitation, or neglect  
26 including, but not limited to:

27 I. Transporting or obtaining transportation for the victim to a place of safety, local family  
28 member, or friend.

29 II. Assisting the victim in removing toiletries, medication, clothing, and any other items  
30 determined by the court.

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

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

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

UNAPPROVED

# Testimony

House Committee on Health, Human Services & Elderly Affairs  
Public Hearing on HB 1660-FN

Bill Title:	Establishing a protective order for vulnerable adults.		
Date:	1/21/20		
Room:	205	Time Public Hearing Called to Order:	1:00
		Time Adjourned:	2:40

Committee Members Present:

X	Schapiro
X	Cannon
X	Stapleton
X	Nutter-Upham
	Marsh
X	Salloway
X	Fothergill
X	Freitas
	Snow
X	MacKay
X	Ticehurst
X	Weber

	Guthrie
X	Osborne
	Acton
X	Woods
X	Pearson
X	Knirk
X	DeClercq
X	Nelson
X	McMahon
X	Campion

Testimony

\* Use asterisk if written testimony and/or amendments are submitted.

*	Attachment #	Name	Testimony:
*	#1	Rep. Cushing	Introduced the bill. Establishing protective orders for vulnerable adults has been dealt with by the committee before. This legislature has taken steps to address this vulnerable population in the state. In the past, legislation has been passed to establish financial exploitation as a crime. The protective order is akin to that for domestic stalking.



			A number of stakeholders and advocates, including the governor's office, have participated in developing this legislation. Offered amendment #2020-0050.
		Sen. Starr	Opposes the bill. There is repetition and vagueness. All it does is offer welfare for lawyers. The intent was to do something nice for the elderly and infirm who lack family. Most of us when we get elderly have family. This sets the state up to act as family. He is not sure that putting the state in as family is the right thing to do. Page nine authorizes the police to confiscate every weapon in sight or out of sight. This sounds like a gun confiscation bill. He is against that. He is an NRA member and member of a range.
*	#2	Cheryl Steinberg, NH Legal Assistance	Supports the bill as amended. The idea is to provide immediate relief to vulnerable adults. There was controversy because of the gun confiscation provisions which have all been removed. The amendment removes the remaining deadly weapon provision in the bill. Under the purpose section of the amendment, the second sentence of the original bill will be struck. To avoid confusion resulting in people applying for the wrong relief, anyone applying for a protective order will fill out a worksheet describing the different types of petitions. No weapons will be confiscated under the vulnerable adults provision. Filing of a petition shall not be admitted as evidence in any other proceeding. The bill is about helping vulnerable adults who are being victimized or exploited. The criminal statute is for someone after a crime has been committed. This type of relief is to be affirmative, either preventing or stopping abuse early. Similar statutes provide this kind of relief. Morrill vs. Morrill requires due process, but the hearing may be flexible according to the

			<p>demands of the situation. The time period for a hearing has been reduced to 2-3 days. Rep. Nutter-Upham: If someone was concerned about weapons, would they would fill out the worksheet and file through stalking laws or violence laws? Answer: Anyone who wanted a protective order would fill out the worksheet and that would help them to determine which specific order would be appropriate. Rep. M. Pearson: Am I correct in believing that as of right now the bill has firearms references and they will be taken out by the amendment? Answer: Another senate bill will be introduced with the same amendment. Rep. DeClercq: In the amendment, line 26, can the term "but not limited to" be interpreted to mean confiscation of weapons? Answer: The district court and family division feel that they need to stay within the parameters of the statute itself. Rep. DeClercq: It would be at the discretion of the police officer whether anything else could be included. So the police can do this anyway? Answer: Yes. Rep. DeClercq:, Would you be okay with "limited to"? Answer: There might be other kinds of relief that would be totally unrelated to the weapons. Rep. Weber: The bill will go to Criminal Justice to address these concerns. Rep. McMahon: Relative to the application of law and timing of when it is applied under chapter 631, is this bill needed when that law is already in place? Answer: In the criminal law, it is after the fact. This is to help stop it. The criminal system is not designed to provide this immediate relief. Rep. Stapleton: On previous bills concerning ex parte orders, how do you address this? Answer: There is nothing to address. The supreme court has addressed this. The constitution allows</p>
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			that under certain circumstances. The language in the bill is exactly the same as in those statutes.
		Dan Itse, NH Firearms Coalition	He appreciates the sponsor's attempt to remove deadly weapons from the statute. A search or arrest warrant must come with a designation of the reason why the police went there. The temporary relief section is flawed, as are the other statutes. If you get a written communication you have no power to have a hearing. He suggests striking "non-telephonic". Family court is not a purely statutory court. It is an equity court. They are not completely bound. If there is no statute constraining them, they can do whatever is equitable. This is an issue that should be heard in district court and not family court.
		Mark Harwood,	Opposes the bill. He has elderly parents and does not understand how this is adding to the protection of someone who is vulnerable. He has seen 6 instances of protective orders for vulnerable adults. The actions defined are already criminal. The word "restraining" is present multiple times but there is nothing restraining the individual from hurting the person we are looking to protect. Regarding the clause about confiscating deadly weapons, this is about a crime that has already happened. It is an inanimate problem. The root of the problem is an individual. The police would remove the weapon but do nothing about the person. If you want to make it safer for elderly people you need to focus on the root of the problem, which is the human being. If the police believe there is a threat, they detain them and the next day they receive due process.
*	#3	Dave Wheeler, NH Firearms Coalition	Opposes the bill. It is poorly written. Removing the reference to "deadly weapon" will be ineffective because there

			<p>is a federal law, 18 USC section 922(g)(9). Alternatively, you could have a guardian or power of attorney. You don't have to take away a firearm. This is to prevent something from happening which is always subjective. You could be convicted for something that has not happened. This bill is not about a crime. It is almost like a civil procedure. Regarding the definition of abuse, if someone reports you for verbal harassment you could have your rights taken from you for something you said. Saying something "could" happen is subjective. If a protective order is sought, there is a federal statute. Our constitution and due process are not flexible. Every person has a right to due process before their property and 2<sup>nd</sup> amendment rights are taken from them. Telephonic orders cannot be verified by a person who answers the door. In cases of financial exploitation, someone should not lose their guns for that. There is no statute of limits. Line 15 states that the orders shall be final. You cannot face your accuser and the order will be final. Page 7, lines 17 &amp; 18 states that your name will go into the state database at the Department of Public Safety but does not specify which database. It may go into a database of prohibited persons. There is no procedure to get off the list. The system we have with DCYF ends up with a 90% false allegation rate. This is going to happen here. Rep. Stapleton: Questions line 20, page 3. Technical rules of evidence are suspended, allowing hearsay evidence. You do not have the right to face your accuser. The burden of proof is preponderance of evidence, not beyond a reasonable doubt.</p>
		Rep. Lucy Weber	She is a former elder law attorney who represented vulnerable adults. She has

			<p>observed that as someone aged or had limited powers, someone stepped in to help out. Eventually they would help themselves instead. A great number of people have been in this situation. Some have families who are able to step in and control what is going on but they have no legal authority. We have criminal statutes so if someone has stolen from an elder they can be convicted criminally. This is a civil proceeding so what happens is you go to court and you get an order that protects a vulnerable adult. One thing it does is protect them from financial exploitation. If exploitation occurs you can go to court and override the power of attorney. An amendment takes out the confiscation measure. A person with power of attorney has no supervision and appointment must come from the vulnerable adult themselves. Guardianship takes weeks or months to establish. Money can be gone before it can be gotten back. The court order would state exactly what you can and cannot do, not to criminalize the person doing the harm, but to protect the vulnerable adult. Once confiscation is removed what remains is what can be done to help the victim. Many things can be done that have nothing to do with inanimate objects. Rep. Nelson: If someone says their son is trying to kill them. what happens? Answer: The first thing is that they can make an allegation. Without that, there isn't anything that the court can do. It is more likely that a caregiver is perhaps being a little forceful. That person needs to be removed from the situation. You would need some sort of supporting evidence. Rep. Nelson: So nothing would be done until they went to court? Answer: No, there is an ex parte proceeding but it is very limited in time.</p>
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			<p>It may mean taking the person to someplace safe. Then after a very short time, everyone goes to court and sorts it out. Rep. Stapleton: Guardianship takes some time. Is fiduciary reporting required? Is that an answer to some part of this problem. Answer: Once guardianship has been established. The issue is twofold. First, guardianship does have that kind of protection but the process takes time. The vulnerable person may understand what is going on but may not be able to get out of the situation. We don't want them to be stuck there until they can get out. Rep. Schapiro: Asks for clarity about federal law that automatically creates confiscation of weapons. Rep. Weber: Unable to answer but guesses that is something that happens upon conviction of a crime, not something that happens under these circumstances.</p>
		<p>Joe Hannon, Gun Owners of New Hampshire</p>	<p>Opposes the bill as written. Some of the definitions are mirrored in other criminal statutes. The definition of emotional abuse is vague. Regarding page 2, line 11, a foreign protective order from another state with less stringent or more expansive orders would automatically be considered protective orders under this bill. Regarding Page 3, line 20, there are rules in criminal proceedings but not civil proceedings. Regarding page 5, line 1, this is vague. Registry in a state database could be impactful and needs clarity. What database, who gets on it and how do you get out of it? Regarding page 9, line 26-27, confiscation of deadly weapons will be removed by the amendment. Regarding use of all means, change "not limited to" to "except". Probable cause is used in criminal cases and it is questionable whether it can be used in civil law. Regarding page 10, lines</p>

			28-3, what is not included is possible illegal activity.
		Aaron Penkacik	Opposes the bill. The amendment corrects some objections. If there was confiscation of people's personal property, what guarantees that the property would be returned in the condition in which it was confiscated? Who would be responsible for the condition of the property? The root intention of the bill is good but to comingle it with a red flag law is disingenuous.
		Penny Dean, Private Attorney	Opposes the bill. Regarding page 1, the definition of emotional abuse is vague and subjective. "Other abuse" lists 8 statutes that are in place so the question is why are they included? She thinks it's included because people are frustrated with the length of the guardianship process. If you have been convicted of a felony in another jurisdiction, NH recognizes that. There is no exception for this. Regarding page 2 lines 12 & 13, "necessary" is a vague term. Regarding page 2, lines 22-26, the term "fled" is emotionally charged. You should not have to go to court to answer a charge in a place to which you have never been. This is called forum theft. By Federal law the mere temporary order is going to prohibit you from firearm ownership so you don't need this bill. Rep. Stapleton: We have problem with abuse of forfeiture law. In your work experience can you site statistics on the retention of firearms? Answer: One must go to court a second time and get a court order.
*	#4	Jeffery Dickinson, Granite State Independent Living	Supports the bill. We are not talking about trivial things. We are talking about people like myself who need help with their activities of daily living. It's hard to get to the point where you need that kind of help. It puts you into a more

			<p>vulnerable point than someone who is able bodied. There is a need for legislation for folks who have disabilities and if somebody becomes aggressive. Those of us with disabilities really can't defend ourselves and need extra protection. As for the gun issue, I have lived in NH all my life and am not against gun ownership. I don't think that should trump someone's right to be safe in their own home. Rep. Nelson: Is there any state that has legislation that would be acceptable to all sides? Cheryl Steinberg: The point is it was taken from existing statutes and was drawn from those of other states as well.</p>
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Hearing recessed at

Respectfully submitted,

Rep. Susan Ticehurst, Clerk



147 N.H. 116  
Supreme Court of New Hampshire.

In the Matter of Maureen MORRILL and Bruce  
Morrill.

No. 2000-253.

|  
Oct. 29, 2001.

**Synopsis**

In connection with pending divorce proceedings, the Superior Court, Merrimack County, McGuire, J., granted wife's **ex parte** petition for restraining order against husband. Husband appealed. The Supreme Court, Duggan, J., held that: (1) trial court did not abuse its discretion in precluding couple's children from testifying in proceedings on wife's petition, and (2) as matter of apparent first impression, exclusion of children's testimony did not violate husband's right to **due process**.

Affirmed.

Nadeau, J., dissented with opinion in which Brock, C.J., joined.

West Headnotes (9)

<sup>[1]</sup> **Constitutional Law**  
↪ Resolution of Non-Constitutional Questions Before Constitutional Questions

Where a defendant brings both constitutional and non-constitutional claims on appeal, the reviewing court addresses the non-constitutional claim first, because if it finds that the trial court abused its discretion, it need not address the constitutional claim.

<sup>[2]</sup> **Protection of Endangered Persons**  
↪ Preliminary, **Ex Parte**, and Emergency Relief

Hearing on an **ex parte** petition for a domestic violence restraining order is a civil proceeding. RSA 173-B.

1 Cases that cite this headnote

<sup>[3]</sup> **Protection of Endangered Persons**  
↪ Weight and Sufficiency

Before the court may provide requested **relief** under the statute governing domestic violence restraining order petitions, a plaintiff must show by a preponderance of the evidence that the defendant committed the criminal acts she alleges in her petition and that such conduct constitutes a credible threat to her safety. RSA 173-B:1.

5 Cases that cite this headnote

<sup>[4]</sup> **Protection of Endangered Persons**  
↪ Admissibility

Standard of review applicable to petitions for domestic violence restraining orders gives a trial court broad discretion in determining the admissibility of evidence.

<sup>[5]</sup> **Divorce**  
↪ Mode and Conduct of Trial in General

Trial court did not abuse its discretion in precluding couple's children from testifying in proceedings on wife's petition for domestic violence restraining order against husband, where children's live testimony would have been largely cumulative of lengthy, handwritten statements given by them to police and read by the court, and where husband did not assert that children's live testimony would have differed from evidence presented through their written

statements describing in detail the incident that formed basis for petition. [RSA 173-B:3](#).

case. [U.S.C.A. Const.Amend. 14](#); [Const. Pt. 1, Art. 12](#).

1 Cases that cite this headnote

<sup>16]</sup>

**Constitutional Law**

⚡ Examination of State Constitution Before Federal Constitution

Where a defendant brings claims under both the state and federal constitutions, a reviewing court analyzes his claim under the state constitution first.

1 Cases that cite this headnote

<sup>17]</sup>

**Constitutional Law**

⚡ Orders for Protection

**Divorce**

⚡ Mode and Conduct of Trial in General

Exclusion of live testimony of couple's children in proceedings on wife's petition for domestic violence restraining order did not violate husband's right to **due process**, where husband was given adequate opportunity to present his case through cross-examination of adverse witnesses, his own testimony and children's handwritten statements; husband was permitted to cross-examine each of wife's witnesses, including wife, and to present his case through his own testimony and by offering children's handwritten statements, which gave lengthy detailed descriptions of their observations corroborating much of husband's testimony. [U.S.C.A. Const.Amend. 14](#); [Const. Pt. 1, Art. 12](#).

<sup>18]</sup>

**Constitutional Law**

⚡ Notice and Hearing

Specific components of a **due process** hearing must be tailored to suit the circumstances of the

<sup>19]</sup>

**Divorce**

⚡ Presentation and Reservation in Lower Court of Grounds of Review

Husband could not raise, for first time on appeal from superior court's grant of wife's petition for domestic violence restraining order, assertion that excluding testimony of couple's children at proceedings on petition denied him his right to public trial.

**Attorneys and Law Firms**

**\*\*691 \*116** Amy B. Davidson, of Pittsfield, by brief, for the plaintiff.

Jordan, Gfroerer & Weddleton, of Concord ([Roy Weddleton](#) on the brief), for the defendant.

**Opinion**

DUGGAN, J.

The defendant, Bruce Morrill, appeals a Superior Court ([McGuire, J.](#)) order granting a petition for a restraining order filed by the **\*117** plaintiff, Maureen (Morrill) Cummings. *See* [RSA ch. 173-B \(Supp. 2000\)](#). The defendant argues the superior court erred in refusing to allow the parties' children to testify about the alleged assault that formed the basis of the plaintiff's petition. We affirm.

The plaintiff filed an **ex parte** domestic violence petition in Concord District Court alleging that the defendant pushed her hard, bruised her and verbally threatened **\*\*692** her. *See* [RSA 173-B:3](#). The district court granted the petition and issued a temporary restraining order. *See* [RSA 173-B:4](#). Shortly thereafter, the plaintiff filed a divorce petition in superior court and moved to transfer



the domestic violence petition proceedings from district court to be consolidated with the divorce proceedings. See [RSA 173-B:3](#), IV. The superior court granted the motion and scheduled a final hearing on the domestic violence petition.

Prior to the hearing, the plaintiff filed a motion *in limine* to preclude the parties' two children from testifying because she was "trying hard to keep her children out of the middle of the adults' conflict ... [and a]llowing them to testify [was] not in their best interest and would, among other things, place them in the untenable position of having to 'take sides.'" The defendant objected, asserting that the children, ages fifteen and sixteen, were competent to testify and would provide the court with relevant evidence regarding the specific acts alleged in the plaintiff's petition, as well as an appropriate custody order and visitation schedule. Following an in-chambers hearing, the court ruled the children would not be permitted to testify. After hearing testimony from the plaintiff, the defendant and a police officer, and reviewing handwritten eyewitness statements made by the children, the court granted the plaintiff's petition for a restraining order and her request for temporary custody of the children, permitting the defendant unsupervised visitation.

<sup>141</sup> On appeal, the defendant argues that by excluding the children from testifying, the superior court abused its discretion and violated his right to **due process** of law. We address the defendant's non-constitutional claim first because if we find that the trial court abused its discretion, we need not address the constitutional claim. See *In re Barry*, 141 N.H. 170, 174, 681 A.2d 75 (1996).

<sup>121</sup> <sup>131</sup> The plaintiff's petition was brought under RSA chapter 173B. A hearing under RSA chapter 173-B is a civil proceeding. See *State v. Dumont*, 145 N.H. 240, 243, 761 A.2d 454 (2000). The purpose of the statute is "to preserve and protect the safety of the family unit for all family or household members by entitling victims of domestic violence to immediate and effective police protection and judicial **relief**." Laws 1979, 377:1, II. Before the court could provide the requested **relief** under the statute, the plaintiff had to show by a preponderance of the evidence that the \*118 defendant committed the criminal acts she alleged in her petition and that "such conduct constituted a credible threat to [her] safety." [RSA 173-B:1](#), I.

<sup>141</sup> RSA chapter 173-B has its own standard for the admissibility of evidence. "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." [RSA 173-B:3](#), VIII. This standard

gives a trial court broad discretion in determining the admissibility of evidence. See *In re Samantha L.*, 145 N.H. 408, 411-12, 761 A.2d 1093 (2000). "We will not reverse the trial court's ruling unless there is a clear abuse of that discretion." *Id.* (quotation omitted).

<sup>151</sup> After a careful review of the record, we are unable to conclude that the trial court abused its discretion. While the ages of the children and their willingness to testify supports the defendant's contention that it was error to exclude their testimony, the record also shows that the judge read the lengthy, handwritten statements that both children gave the police. In those statements the children described in detail the incident that \*\*693 formed the basis for the domestic violence petition. Both statements were helpful to their father's defense and contradicted some of their mother's testimony. The defendant does not assert the children's testimony would have differed from the evidence presented through their written statements, and therefore their live testimony would have been largely cumulative. See *State v. Davis*, 143 N.H. 8, 12, 718 A.2d 1202 (1998). We thus conclude that the trial court did not abuse its discretion in deciding not to let them testify. See *id.*

<sup>161</sup> We now address the defendant's argument that the trial court violated his **due process** rights when it precluded the children from testifying. We analyze his claim under the State Constitution first. See *State v. Ball*, 124 N.H. 226, 231, 471 A.2d 347 (1983). "Because the State Constitution is at least as protective as its federal counterpart, we will not conduct a separate federal analysis but will cite federal law only as an analytical aid." *Chandler v. Bishop*, 142 N.H. 404, 409, 702 A.2d 813 (1997) (citation omitted).

<sup>171</sup> We have not previously addressed what **due process** requires at a final hearing under RSA chapter 173-B. The statute itself requires notice to the defendant, [RSA 173-B:3](#), I, and a hearing within thirty days of the filing of the petition, [RSA 173-B:3](#), VII, but is silent as to other procedural safeguards.

Under the statute, the court is authorized to issue protective orders that include a wide range of **relief**, including awarding custody to either \*119 parent and excluding a defendant from residing in or even entering his own home. See [RSA 173-B:5](#). In recent years, many States have enacted similar statutes establishing comparable procedures designed to guarantee speedy access to the courts for victims of domestic violence. Other courts have uniformly held that final hearings must comply with the general principles of **due process** by affording affected parties an opportunity to be heard. See



*Knight v. Knight*, 525 N.W.2d 841, 843–44 (Iowa 1994); *Zuco v. Tucker*, 9 Neb.App. 155, 609 N.W.2d 59, 63–64 (2000); *Chanfrau v. Fernandez*, 782 So.2d 521, 522 (Fla.Dist.Ct.App.2001); *Striedel v. Striedel*, 15 S.W.3d 163, 166 (Tex.App.2000).

<sup>181</sup> “The fundamental requisite of **due process** is the opportunity to be heard.” *Goldberg v. Kelly*, 397 U.S. 254, 267, 90 S.Ct. 1011, 25 L.Ed.2d 287 (1970); *see also Town of Bethlehem v. Tucker*, 119 N.H. 927, 929, 409 A.2d 1334 (1979). While this “hearing must be at a meaningful time and in a meaningful manner,” *Goldberg*, 397 U.S. at 267, 90 S.Ct. 1011 (quotation omitted); *see also Duffley v. N.H. Interschol. Ath. Assoc., Inc.*, 122 N.H. 484, 486, 446 A.2d 462 (1982), “[d]ue process is flexible and calls for such procedural protections as the particular situation demands.” *Mathews v. Eldridge*, 424 U.S. 319, 334, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976) (quotation omitted); *see also Provencal v. Provencal*, 122 N.H. 793, 797, 451 A.2d 374 (1982). Accordingly, the specific components of the hearing must be tailored to suit the circumstances of the case. *Goldberg*, 397 U.S. at 268–71, 90 S.Ct. 1011; *see also Provencal*, 122 N.H. at 797, 451 A.2d 374.

In this case, the defendant was permitted to cross-examine each of the plaintiff’s witnesses, including the plaintiff. Further, the court permitted the defendant to present his case through his own testimony and by offering the children’s handwritten statements, which gave lengthy detailed descriptions of their observations corroborating much of the defendant’s testimony. The defendant was thus given the opportunity to present his case through cross-examination of adverse witnesses, his own testimony and the children’s handwritten **\*\*694** statements. Because he was given an adequate opportunity to present his case, we cannot say that excluding the children’s testimony on this record violated his right to **due process**. *Cf. Striedel*, 15 S.W.3d at 166 (depriving appellant any opportunity to present evidence violated **due process**); *Zuco*, 609 N.W.2d at 63–64 (holding court’s blanket policy limiting nonparty witnesses in protection order cases violates **due process**).

<sup>191</sup> Finally, the defendant asserts that excluding the children’s testimony denied him the right to a public trial. The defendant, however, did not raise this issue in the superior court as a distinct issue separate from the **\*120 due process** issue. We therefore decline to address it. *See Lake v. Sullivan*, 145 N.H. 713, 718, 766 A.2d 708 (2001).

*Affirmed.*

BRODERICK and DALIANIS, JJ., concurred; NADEAU, J., with whom BROCK, C.J., joined, dissented.

NADEAU, J., dissenting.

One of the most difficult appellate tasks is to review decisions made as a matter of judicial discretion. Although there are often no specific mandates or explicit proscriptions by which to guide the use of discretion, it must be exercised within discernible and reviewable boundaries. An appellate court will reverse such a decision only upon a finding that the trial court has “abused its discretion.” I think that characterization is unfortunate because it is too easily misunderstood by those not familiar with the concept of judicial discretion as misconduct by the judge.

When we determine whether a ruling made by a judge is a proper exercise of judicial discretion, we are really deciding whether the record establishes an objective basis sufficient to sustain the discretionary judgment made. I believe the record in this case does not sustain the exercise of judicial discretion preventing the children from testifying.

The children, fifteen and sixteen years old, were at court on the day of the final hearing, ready and anxious to testify. Both had witnessed the altercation that led to the domestic violence charge, had been interviewed by the police and had given written statements of the events. There was no question about their competence to testify or the relevance of their testimony. There was no suggestion their testimony would have been cumulative of other evidence offered by the defendant. The court did not conduct a preliminary interview with the children or appoint a guardian ad litem to represent their interests. No evidence was taken to determine whether testifying would be harmful to them; nor did the court weigh any harm it may have perceived against the right of the defendant to produce evidence. Nevertheless, following a chambers conference, the court prohibited the children from testifying.

The plaintiff’s motion *in limine* to prevent the children’s testimony was argued in chambers, off the record, on the day of the final hearing. No written findings were made to explain the court’s ruling. The only recorded indication of a reason for the judge’s decision appears at the conclusion of the final hearing, when she offered her personal opinion that “it’s offensive that you had the children here today. I don’t think it’s fair to them to put them in the

middle.”

\*121 Although the record indicates the judge read the children’s statements, it also indicates she received and read those statements in court during the final hearing—hardly a satisfactory substitute for recorded testimony in court upon a domestic violence charge which, if proved, would carry significant adverse consequences for \*\*695 the defendant relating to custody, visitation and other individual rights.

Because the record does not support any basis for the exercise of her discretion to prevent the children from testifying other than subjective opposition to their

participation, I would reverse. Respectfully, therefore, I dissent.

**BROCK, C.J.**, joins in the dissent.

**All Citations**

147 N.H. 116, 784 A.2d 690

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## New Hampshire Firearms Coalition

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### NH's Only No-Compromise Gun Rights Organization

Direct Contact: (603) 315-9002

Dear Committee members,

Today, January 21 you are hearing testimony on HB 1660, Protective Orders for Vulnerable Adults, "Elder Care, Gun Confiscation".

The Bill would establish a mechanism to enable vulnerable adults or others to seek permanent or 'temporary' relief from abuse, exploitation, and neglect by another person.

**But there are some serious issues hidden in the bill.** The definition of "Neglect" is very broad and could include withholding something as simple as watching TV ["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.] This statement could be used by a prosecutor to include almost anything.

The definition of abuse suggested is vague, and includes 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.

On the surface this bill sounds like a good thing, but as is typical these days there is an anti-gun aspect of it buried in the text. At the request of the vulnerable adult or their representative, **the court may enter orders to protect the adult with or without actual notice to the other person.** This order could be issued ex-parte with no due process or warning. And the court order could be issued for almost any reason, real or fabricated, under the vague definition of abuse. The court could be anywhere in the state, meaning that you could be facing a court hearing in Coos for something that allegedly happened in Salem, NH. The court hearing could be for an event that took place years ago as there is no statute of limitations.

Once the court order is issued, a police officer can [will] use all means they deem necessary to prevent further abuse. One of those means which is explicitly called out in the proposed bill is confiscating any deadly weapons involved in the alleged abuse. That means your firearms!

We have been told that the bill is to address financial exploitation, yet again, this bill is going after firearms and not after those who would steal from venerable adults. Even if theft was the issue, current law in [RSA 631:9](#) **631:9 Financial Exploitation of an Elderly, Disabled, or Impaired Adult.** – already covers this issue.

Next, these orders would be transferred to the NICS system, further preventing you from ever purchasing another firearm.

**So buried in this seemingly legitimate and good bill is another RED FLAG GUN CONFISCATION LAW!** Ex-parte confiscation of ANY personal property, including firearms, is unconstitutional and a

violation of your 2nd, 4th, 5th, and 14th Amendments to the United States constitution, as well as the New Hampshire Constitution.

NOW is the time to act! Show up at the State House and speak at the hearing, e-mail or call your representatives, notify your friends... We must stop these assaults on our rights!

This bill is an extremely unconstitutional bill violating numerous Natural and Constitutional rights. The bill would allow for ex-parte hearings to be used to strip citizens of personal property.

We at NHFC ask the you find this bill Inexpedient to Legislate.

Current law, RSA 631:8,9 already deals with this subject matter:

[<http://www.gencourt.state.nh.us/rsa/html/LXII/631/631-mrg.htm>].

Instead of trying to create new laws, just enforce the laws that are already on the books.

Respectfully,



JR Hoell  
Corporate Secretary - NHFC, Inc.

PS: Copies of RSA 631: 8-10 below:

## **Section 631:8**

### **631:8 Criminal Neglect of Elderly, Disabled, or Impaired Adults. –**

I. In this section:

- (a) "Adult" means any person who is 18 years of age or older.
- (b) "Caregiver" means any person who has been entrusted with, or has assumed the responsibility voluntarily, by contract, or by order of the court, for frequent and regular care of or services to an elderly, disabled, or impaired adult, including subsistence, medical, custodial, personal or other care, on a temporary or permanent basis. A caregiver shall not include an uncompensated volunteer, unless such person has agreed to provide care and is aware that the person receiving the care is dependent upon the care provided.
- (c) "Disabled adult" means an adult who has a diagnosed physical or mental impairment.
- (d) "Elderly adult" means an individual who is 60 years of age or older.
- (e) "Impaired adult" means any adult who suffers from an impairment by reason of mental illness, developmental disability, organic brain disorder, physical illness or disability, chronic use of drugs, chronic intoxication, memory loss, or other cause, that causes an adult to lack sufficient understanding or capacity to make or communicate reasonable decisions concerning the adult's person or property or exhibits the functional limitations as defined in RSA 464-A:2, VII. Impaired adult includes a person determined to be vulnerable under RSA 161-F or incapacitated under RSA 464-A.
- (f) "Neglect" means the failure or omission on the part of the caregiver to provide the care,

supervision, and services which he or she has voluntarily, or by contract, or by order of the court agreed to provide and which are necessary to maintain the health of an elderly, disabled, or impaired adult, including, but not limited to, food, clothing, medicine, shelter, supervision, and medical services, that a prudent person would consider necessary for the well-being of an elderly, disabled, or impaired adult. "Neglect" may be repeated conduct or a single incident.

(g) "Person" means any natural person, corporation, trust, partnership, unincorporated association, or any other legal entity.

(h) "Serious bodily injury" means serious bodily injury as defined in RSA 625:11, VI.

(i) "Undue influence" means the intentional use, by a person in a position of trust and confidence with an elderly, disabled, or impaired adult, of that position to obtain an unfair advantage over the elderly, disabled, or impaired adult, through actions or tactics, including, but not limited to, emotional, psychological, and legal manipulation.

II. Any caregiver who purposely causes serious bodily injury to an elderly, disabled, or impaired adult by neglect shall be guilty of a class A felony.

III. Any caregiver who knowingly or recklessly causes serious bodily injury to an elderly, disabled, or impaired adult by neglect shall be guilty of a class B felony.

IV. Nothing in this section shall be construed to alter or impair a person's right to self-determination or right to refuse medical treatment as described in RSA 151:21 and RSA 151:21-b.

V. Nothing in this section shall be construed to mean a person is abused, neglected, exploited, or in need of protective services for the sole reason that such person relies on or is being furnished treatment by spiritual means alone through prayer, in accordance with the tenets and practices of a church or religious denomination of which such person is a member or an adherent.

VI. Nothing in this section shall be construed to impose criminal liability on a person who has made a good faith effort to provide for the care of an elderly, disabled, or impaired adult, but through no fault of his or her own, has been unable to provide such care, or on a person who is carrying out the lawful request of an elderly or disabled adult who is competent to make his or her own decisions.

**Source.** 2002, 226:1. 2014, 151:2, 3, eff. Jan. 1, 2015. 2016, 59:8, eff. July 4, 2016.

## **Section 631:9**

### **631:9 Financial Exploitation of an Elderly, Disabled, or Impaired Adult. –**

I. Whoever commits any of the following acts against an elderly, disabled, or impaired adult, as defined in RSA 631:8, shall be guilty of financial exploitation and penalized pursuant to RSA 631:10 if:

(a) In breach of a fiduciary obligation recognized in law, including pertinent regulations, contractual obligations, documented consent by a competent person, including, but not limited to, an agent under a durable power of attorney, guardian, conservator, or trustee, a person, knowingly or recklessly, for his or her own profit or advantage:

(1) Fails to use the real or personal property or other financial resources of the elderly, disabled, or impaired adult to provide food, clothing, shelter, health care, therapeutic conduct, or supervision for the elderly, disabled, or impaired adult when under a duty to do so; or

(2) Unless authorized by the instrument establishing fiduciary obligation, deprives, uses, manages, or takes either temporarily or permanently the real or personal property or other financial resources of the elderly, disabled, or impaired adult for the benefit of someone other than the elderly, disabled, or impaired adult; or



(b) In the absence of legal authority a person knowingly or recklessly through the use of undue influence, harassment, duress, force, compulsion, coercion, or under any circumstances where the person knew that the elderly, disabled, or impaired adult lacked capacity to consent, or consciously disregarded a substantial and unjustifiable risk that the elderly, disabled, or impaired adult lacked capacity to consent:

(1) Acquires possession or control of an interest in real or personal property or other financial resources of an elderly, disabled, or impaired adult;

(2) Induces an elderly, disabled, or impaired adult against the elderly, disabled, or impaired adult's will to perform services for the profit or advantage of another; or

(3) Establishes a relationship with a fiduciary obligation to an elderly, disabled, or impaired adult that gives the person control of an interest in real or personal property or other financial resources of an elderly, disabled, or impaired adult.

II. State and local law enforcement agencies shall have concurrent jurisdiction to investigate reports of abuse, neglect, or exploitation of vulnerable adults as defined in RSA 161-F or incapacitated adults under RSA 464-A and all other crimes against elderly, disabled, or impaired adult victims including, but not limited to, the crimes set forth in RSA 631:8 and this section. Nothing in this paragraph shall be construed to alter the duties and responsibilities of the commissioner of the department of health and human services, or his or her designees, relative to investigating reports of abuse, neglect, self-neglect, or exploitation of vulnerable adults pursuant to RSA 161-F.

III. Nothing in this section requires a health or residential care facility, licensed under RSA 151, or any person to provide financial management or supervise financial management for an elderly, disabled, or impaired adult except as otherwise required by law.

IV. If the person knew or had reason to know that the elderly, disabled, or impaired adult lacked capacity to consent, consent is not a defense to a violation of this section.

V. Nothing in this section shall be construed to impose criminal liability on a person who makes a good faith effort to assist an elderly, disabled, or impaired adult in the management of funds, assets, or property which effort fails through no fault of the person.

**Source.** 2014, 151:4, eff. Jan. 1, 2015. 2016, 59:9, eff. July 4, 2016. 2018, 308:1, eff. Jan. 1, 2019.

## **Section 631:10**

### **631:10 Penalties. –**

I. Any person who violates RSA 631:9 and who knows or reasonably should know that the victim is an elderly, disabled, or impaired adult shall be guilty of:

(a) A class A felony if the funds, assets, or property involved in the exploitation of the elderly, disabled, or impaired adult is valued at \$1,500 or more; or

(b) A class B felony if the funds, assets, or property involved in the exploitation of the elderly, disabled, or impaired adult is valued at \$1,000 or more, but less than \$1,500; or

(c) A misdemeanor if the funds, assets, or property involved in the exploitation of the elderly, disabled, or impaired adult is valued at less than \$1,000.

II. A person convicted of financial exploitation shall be sentenced to make restitution of the full value of the fund, assets, or property involved in the exploitation to the elderly, disabled, or impaired adult or the adult's estate in accordance with RSA 651:63.

**Source.** 2014, 151:4, eff. Jan. 1, 2015.



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1/21/2020

Dear Members of the Health, Human Services and Elderly Affairs Committee,

Hello, my name is Ryan Donnelly. I am writing to you today on my own behalf, as well as that of Granite State Independent Living. GSIL is a state-wide non-profit organization that advocates and provides services for seniors and people with disabilities who wish to remain independent in their homes and communities. I am writing to you today in support of HB1660.

I myself am a person with a severe physical disability. I live with a condition called Osteogenesis Imperfecta. My bones break and fracture easily, I am unable to walk, and I am also short in stature. I value my independence, which includes driving my own van, holding a job, and being a part of my community. However, because of my condition, I rely on others for my personal day to day care.

There is a great deal of trust that comes in taking someone on to provide that day to day care. Unfortunately, there can be times when that trust is misplaced. I myself was a recent victim of serious emotional abuse and an instance of unwanted physical contact at the hands of a live-in caregiver. It was a traumatic, painful, and frightening ordeal for me and for my family.

As it stands right now, even for a vulnerable adult such as me the definition of abuse can prove to be too narrow. Because the nature of the abuse I was subjected to was primarily emotional, I was successful in receiving only a temporary protective order against my former caregiver. While I am fortunate that matters played out in such a way that this individual no longer resides in my home, I wish that more could have been done.

Which is precisely where this bill comes into play. For people with disabilities like myself as well as other vulnerable adults, HB1660 reasonably broadens the definition of abuse. This will allow the law to protect us, for we individuals who cannot protect ourselves. I know for certain that this bill will protect me.

With this in mind, I hope the members of this committee will choose to support HB1660. Thank you for the opportunity to testify to you today, and for all the hard work you perform on the behalf of all New Hampshire citizens.

Sincerely,

Ryan J. Donnelly  
Advocacy Coordinator



# SIGN UP SHEET

To Register Opinion If Not Speaking

Bill # HB 1660-FN Date 1/21/2020

Committee HHS & EA

\*\* Please Print All Information \*\*

Name	Address	Phone	Representing	(check one)	
				Pro	Con
REP TONY LEKAS	HILLSBOROUGH		37		X
REP ALICIA LEKAS	HILLSBOROUGH		37		X
REP BOB GREER			HILLS 37		X
Sen. Shannon Chandley			SD11	✓	
Rep Kathleen Haebzel			Rock 3		X
Donna McNutt		230-4106	AKA	✓	
Rep Dick Hinch	House Republican Office				X
Rep Linda Gould	Dist 7 Hills				X
Rep. Amanda Bouldin			Hills. 12	✓	
Rep. Andrew Bouldin			Hills 12	✓	
Rep Cornell			District 18	✓	
Rep Wendy Chase			Stratford Dist 18	✓	
REP LARRY GAGNE	HILLS 13				X
Marcia Garbat	Manch		self	✓	
Rep Kevin Craig	Cos 4				X
Gary Cahoon	Peterborough NH		NH Assoc of Residential	✓	
REP WERNER D. How			Care Homes MERRIMACK 2		X
William J Anderson	LACONIA		Belknap		X
Rep Mike Sylvia			Belknap 6		X
SUSAN OLSEN			Upper Meriden		X
BOB CREEG			PROV NH		X
RICHARD LEBELL			<del>Pro</del>		X
VICTORIA SULLIVAN			WINDHAM		X



# SIGN UP SHEET

To Register Opinion If Not Speaking

Bill # HB 1660 Date 1/21/2020

Committee HHS & EA

\*\* Please Print All Information \*\*

Name	Address	Phone	Representing	(check one)	
				Pro	Con
Jim McConnell	Swanzey		Self		<input checked="" type="checkbox"/>
Carla Gericke	Manchester	NH	Self		<input checked="" type="checkbox"/>
STIG HARDING	@ Dunbarton	NH	Self		<input checked="" type="checkbox"/>
MARK GUDIN	PELHAM	NH	SELF		<input checked="" type="checkbox"/>
Rep Kate Murray	New Castle		Rock. 24	<input checked="" type="checkbox"/>	
Lyn Schollet	CONCORD		NH CASV	<input checked="" type="checkbox"/>	AS AMENDED
Rep Tony Remonte	Soudown				<input checked="" type="checkbox"/>
Rep TOM Doleen	London				<input checked="" type="checkbox"/>
Jarah Freeman	NH Circuit Court Admin office - Available for Questions				
Donna Davy	Concord NH		Self		<input checked="" type="checkbox"/>
Senator Hennessey			SD#5	<input checked="" type="checkbox"/>	
<del>AN</del>	<del>Rockef</del>				<input checked="" type="checkbox"/>
Ann Moore	Concord NH		Ascentia Care Alliance	<input checked="" type="checkbox"/>	
Rep Nancy Murphy	Hillsborough		Mesumel	<input checked="" type="checkbox"/>	
Penny Brain	Concord				<input checked="" type="checkbox"/>
Leah Cushman	Weare		self		<input checked="" type="checkbox"/>
Rep Fran Franklin			Rock 37		<input checked="" type="checkbox"/>
Rep Seanine Notter			Hills 21		<input checked="" type="checkbox"/>
house Spencer	Concord		Self	<input checked="" type="checkbox"/>	
Lauren LePage	Sanford, ME		Natl Rifle Assoc.		<input checked="" type="checkbox"/>
Dawn McKinney			NH Alliance for Healthy Aging	<input checked="" type="checkbox"/>	
Jeffrey Dickinson	Concord NH		GSIL	<input checked="" type="checkbox"/>	
Adam Bergeron	Manchester NH		Self		<input checked="" type="checkbox"/>





# **Fiscal Note**

HB 1660-FN- FISCAL NOTE  
AS INTRODUCED

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	\$0	Indeterminable Increase	Indeterminable Increase	Indeterminable Increase
<i>Funding Source:</i>	<input checked="" type="checkbox"/> General	<input type="checkbox"/> Education	<input type="checkbox"/> Highway	<input type="checkbox"/> Other

COUNTY:

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

METHODOLOGY:

This bill establishes a procedure for vulnerable adults to petition for protective orders and seek permanent and temporary relief from abuse, exploitation, and neglect. The Department of Health and Human Services states that the bill allows, but does not require, it to file petitions on behalf of vulnerable adults. Should the Department choose to do so, it would incur personnel costs for the preparation and filing of petitions, as well as mileage expense for attorneys, adult protective service workers (APSW), and other necessary witnesses. The Department anticipates these expenditures will also result from petitions filed by outside parties, as APSWs or others may be required to testify at the resulting hearings. Despite this, the Department does not anticipate a need for additional staff.

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 2021	FY 2022
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Class B Misdemeanor	\$54	\$56
Class A Misdemeanor	\$77	\$79
Routine Criminal Felony Case	\$484	\$498
Appeals	Varies	Varies
It should be noted that average case cost estimates for FY 2021 and FY 2022 are based on data that is more than ten years old and does not reflect changes to the courts over that same period of time or the impact these changes may have on processing the various case types. An unspecified misdemeanor can be either class A or class B, with the presumption being a class B misdemeanor.		
Judicial Council		
Public Defender Program	Has contract with State to provide services.	Has contract with State to provide services.
Contract Attorney – Felony	\$825/Case	\$825/Case
Contract Attorney – Misdemeanor	\$300/Case	\$300/Case
Assigned Counsel – Felony	\$60/Hour up to \$4,100	\$60/Hour up to \$4,100
Assigned Counsel – Misdemeanor	\$60/Hour up to \$1,400	\$60/Hour up to \$1,400
It should be noted that a person needs to be found indigent and have the potential of being incarcerated to be eligible for indigent defense services. The majority of indigent cases (approximately 85%) are handled by the public defender program, with the remaining cases going to contract attorneys (14%) or assigned counsel (1%).		
Department of Corrections		
FY 2019 Average Cost of Incarcerating an Individual	\$44,400	\$44,400
FY 2019 Annual Marginal Cost of a General Population Inmate	\$5,071	\$5,071
FY 2019 Average Cost of Supervising an Individual on Parole/Probation	\$576	\$576
NH Association of Counties		
County Prosecution Costs	Indeterminable	Indeterminable
Estimated Average Daily Cost of Incarcerating an Individual	\$105 to \$120	\$105 to \$120

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

**AGENCIES CONTACTED:**

Department of Health and Human Services, Department of Justice, Department of Corrections, Judicial Branch, and Judicial Council



# Bill as Introduced

HB 1660-FN - AS INTRODUCED

2020 SESSION

20-2416  
01/04

HOUSE BILL

***1660-FN***

AN ACT

establishing a protective order for vulnerable adults.

SPONSORS:

Rep. Cushing, Rock. 21; Rep. Champion, Graf. 12; Rep. Long, Hills. 10; Rep. Weber, Ches. 1; Rep. Berch, Ches. 1; Rep. Murphy, Hills. 21; Rep. K. Murray, Rock. 24; Sen. Chandley, Dist 11; Sen. Hennessey, Dist 5

COMMITTEE:

Health, Human Services and Elderly Affairs

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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, 2021.