

Bill as
Introduced

HB 1660-FN - AS AMENDED BY THE HOUSE

19Feb2020... 0050h

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

ANALYSIS

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

Explanation:

Matter added to current law appears in ***bold italics***.

Matter removed from current law appears [~~in brackets and struck through.~~]

Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty

AN ACT establishing a protective order for vulnerable adults.

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

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

3 CHAPTER 173-D

4 PROTECTIVE ORDERS FOR VULNERABLE ADULTS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19 173-D:3 Jurisdiction and Venue.

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

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

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

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

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

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

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

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

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

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

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

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

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

34 VIII. In a proceeding under this chapter, a support person may accompany a party in court
35 and, if the party is not represented by an attorney, may sit with the party at the table that is
36 generally reserved for the party and the party's attorney. The support person is present to provide
37 moral and emotional support for a person who alleges he or she is a victim of abuse. The support

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

8 173-D:5 Temporary Relief.

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

21 II. Such temporary relief may include:

22 (a) Protective orders:

- 23 (1) Restraining the defendant from abusing, exploiting, or neglecting the plaintiff.
24 (2) Restraining the defendant from entering the premises and curtilage where the
25 plaintiff resides, except when the defendant is accompanied by a peace officer and, upon reasonable
26 notice to the plaintiff, is allowed entry by the plaintiff for the sole purpose of retrieving toiletries,
27 medication, clothing, business equipment, and any other items as determined by the court.
28 (3) Restraining the defendant from withholding items of the plaintiff's personal
29 property which are specified in the order. A peace officer shall accompany the plaintiff or his or her
30 representative in retrieving such property to protect the plaintiff.
31 (4) Restraining the defendant from contacting the plaintiff or entering a specified
32 place frequented regularly by the plaintiff.
33 (5) Restraining the defendant from abusing the plaintiff, plaintiff's relatives,
34 regardless of their place of residence, or plaintiff's household members in any way.
35 (6) Restraining the defendant from taking, converting, or damaging property in
36 which the plaintiff has a legal or equitable interest.
37 (7) Granting the plaintiff exclusive care, custody, or control of any animal owned,

1 possessed, leased, kept, or held by the plaintiff or by the plaintiff jointly with the defendant in either
2 household, and ordering the defendant to stay away from the animal and forbidding the defendant
3 from taking, transferring, encumbering, concealing, committing an act of cruelty or neglect, or
4 disposing of the animal.

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

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

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

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

15 173-D:6 Relief.

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

21 (a) Protective orders:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3 173-D:7 Permissible Contact.

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

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

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

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

21 173-D:8 Guardian ad Litem. In all proceedings under this chapter, the court may appoint a
22 guardian ad litem to represent the interests of the vulnerable adult. The guardian ad litem may
23 continue to serve after the final disposition of the case.

24 173-D:9 Notification.

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

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

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

37 173-D:10 Violation of Protective Order; Penalty.

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

8 II. The prosecution and sentencing for criminal contempt for a violation of a protective order
 9 shall not preclude the prosecution of or sentencing for other criminal charges underlying the
 10 contempt.

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

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

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

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

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

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

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

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

32 173-D:11 Protection by Peace Officers. Whenever any peace officer has probable cause to believe
 33 that a person has been abused, exploited, or neglected, as defined in RSA 161-F:43 and RSA 173-D:2,
 34 that officer shall use all means within reason to prevent further abuse, exploitation, or neglect
 35 including, but not limited to:

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

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

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

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

15 173-D:12 Notice to the Victim.

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

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

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

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

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

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

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

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

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

36 173-D:13 Emergency Care; Limitation and Liability. Any act or omission of any peace officer
37 rendering emergency care or assistance to a victim under this chapter including, but not limited to

1 transportation, shall not impose civil liability upon the peace officer or the peace officer's supervisors
2 or employer if the care or assistance is rendered in good faith, unless the act or omission is a result
3 of gross negligence or willful misconduct.

4 173-D:14 Orders Enforceable.

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

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

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

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

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

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

26 173-D:15 Reporting and Referrals. Any law enforcement officer who investigates an alleged
27 incident of abuse, exploitation, or neglect of a vulnerable adult shall report the matter to the
28 department pursuant to RSA 161-F:46 and advise the person subject to such violence of the
29 availability of programs from which that person may receive services.

30 173-D:16 Severability. If any provision of this chapter or the application of such provision to
31 any person or circumstance is held invalid, the invalidity does not affect other provisions or
32 applications of the chapter which can be given effect without the invalid provisions or applications,
33 and to this end the provisions of this chapter are severable.

34 2 Effective Date. This act shall take effect January 1, 2021.

HB 1660-FN- FISCAL NOTE
AS AMENDED BY THE HOUSE (AMENDMENT #2020-0050h)

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
Funding Source:	<input checked="" type="checkbox"/> General	<input type="checkbox"/> Education	<input type="checkbox"/> Highway	<input type="checkbox"/> Other

COUNTY:

Revenue	\$0	\$0	\$0	\$0
Expenditures	\$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
-----------------	---------	---------

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

HB 1660-FN - FINAL VERSION

19Feb2020... 0050h

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

ANALYSIS

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

Explanation:

Matter added to current law appears in ***bold italics***.

Matter removed from current law appears [~~in brackets and struck through~~]

Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty

AN ACT establishing a protective order for vulnerable adults.

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

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

3 CHAPTER 173-D

4 PROTECTIVE ORDERS FOR VULNERABLE ADULTS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19 173-D:3 Jurisdiction and Venue.

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

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

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

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

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

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

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

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

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

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

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

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

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

34 VIII. In a proceeding under this chapter, a support person may accompany a party in court
35 and, if the party is not represented by an attorney, may sit with the party at the table that is
36 generally reserved for the party and the party's attorney. The support person is present to provide
37 moral and emotional support for a person who alleges he or she is a victim of abuse. The support

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

8 173-D:5 Temporary Relief.

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

21 II. Such temporary relief may include:

22 (a) Protective orders:

- 23 (1) Restraining the defendant from abusing, exploiting, or neglecting the plaintiff.
24 (2) Restraining the defendant from entering the premises and curtilage where the
25 plaintiff resides, except when the defendant is accompanied by a peace officer and, upon reasonable
26 notice to the plaintiff, is allowed entry by the plaintiff for the sole purpose of retrieving toiletries,
27 medication, clothing, business equipment, and any other items as determined by the court.
28 (3) Restraining the defendant from withholding items of the plaintiff's personal
29 property which are specified in the order. A peace officer shall accompany the plaintiff or his or her
30 representative in retrieving such property to protect the plaintiff.
31 (4) Restraining the defendant from contacting the plaintiff or entering a specified
32 place frequented regularly by the plaintiff.
33 (5) Restraining the defendant from abusing the plaintiff, plaintiff's relatives,
34 regardless of their place of residence, or plaintiff's household members in any way.
35 (6) Restraining the defendant from taking, converting, or damaging property in
36 which the plaintiff has a legal or equitable interest.
37 (7) Granting the plaintiff exclusive care, custody, or control of any animal owned,

1 possessed, leased, kept, or held by the plaintiff or by the plaintiff jointly with the defendant in either
2 household, and ordering the defendant to stay away from the animal and forbidding the defendant
3 from taking, transferring, encumbering, concealing, committing an act of cruelty or neglect, or
4 disposing of the animal.

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

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

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

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

15 173-D:6 Relief.

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

21 (a) Protective orders:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3 173-D:7 Permissible Contact.

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

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

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

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

21 173-D:8 Guardian ad Litem. In all proceedings under this chapter, the court may appoint a
22 guardian ad litem to represent the interests of the vulnerable adult. The guardian ad litem may
23 continue to serve after the final disposition of the case.

24 173-D:9 Notification.

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

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

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

37 173-D:10 Violation of Protective Order; Penalty.

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

8 II. The prosecution and sentencing for criminal contempt for a violation of a protective order
9 shall not preclude the prosecution of or sentencing for other criminal charges underlying the
10 contempt.

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

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

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

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

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

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

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

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

32 173-D:11 Protection by Peace Officers. Whenever any peace officer has probable cause to believe
33 that a person has been abused, exploited, or neglected, as defined in RSA 161-F:43 and RSA 173-D:2,
34 that officer shall use all means within reason to prevent further abuse, exploitation, or neglect
35 including, but not limited to:

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

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

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

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

15 173-D:12 Notice to the Victim.

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

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

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

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

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

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

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

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

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

36 173-D:13 Emergency Care; Limitation and Liability. Any act or omission of any peace officer
37 rendering emergency care or assistance to a victim under this chapter including, but not limited to

1 transportation, shall not impose civil liability upon the peace officer or the peace officer's supervisors
2 or employer if the care or assistance is rendered in good faith, unless the act or omission is a result
3 of gross negligence or willful misconduct.

4 173-D:14 Orders Enforceable.

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

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

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

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

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

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

26 173-D:15 Reporting and Referrals. Any law enforcement officer who investigates an alleged
27 incident of abuse, exploitation, or neglect of a vulnerable adult shall report the matter to the
28 department pursuant to RSA 161-F:46 and advise the person subject to such violence of the
29 availability of programs from which that person may receive services.

30 173-D:16 Severability. If any provision of this chapter or the application of such provision to
31 any person or circumstance is held invalid, the invalidity does not affect other provisions or
32 applications of the chapter which can be given effect without the invalid provisions or applications,
33 and to this end the provisions of this chapter are severable.

34 2 Effective Date. This act shall take effect January 1, 2021.

HB 1660-FN- FISCAL NOTE
AS AMENDED BY THE HOUSE (AMENDMENT #2020-0050h)

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
Funding Source:	<input checked="" type="checkbox"/> General	<input type="checkbox"/> Education	<input type="checkbox"/> Highway	<input type="checkbox"/> Other

COUNTY:

Revenue	\$0	\$0	\$0	\$0
Expenditures	\$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

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

Committee Minutes

SENATE CALENDAR NOTICE
Judiciary

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

Date: February 27, 2020

HEARINGS

Tuesday

03/03/2020

(Day)

(Date)

Judiciary

State House 100

9:00 a.m.

(Name of Committee)

(Place)

(Time)

9:00 a.m.

Hearing on proposed Amendment #2020-0703s, to **SB 437**, relative to incarceration under a suspended sentence.

9:15 a.m.

HB 1660-FN

establishing a protective order for vulnerable adults.

EXECUTIVE SESSION MAY FOLLOW

Sponsors:

SB 437

Sen. D'Allesandro

HB 1660-FN

Rep. Cushing

Rep. Berch

Sen. Hennessey

Rep. Campion

Rep. Murphy

Rep. Long

Rep. K. Murray

Rep. Weber

Sen. Chandley

Jennifer Horgan 271-2609

Martha S. Hennessey
Chairman

Senate Judiciary Committee

Jennifer Horgan 271-2609

HB 1660-FN, establishing a protective order for vulnerable adults.

Hearing Date: March 6, 2020

Time Opened: 9:15 a.m.

Time Closed: 10:56 a.m.

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

Members of the Committee Absent : None

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

Sponsors:

Rep. Cushing

Rep. Campion

Rep. Long

Rep. Weber

Rep. Berch

Rep. Murphy

Rep. K. Murray

Sen. Chandley

Sen. Hennessey

Who supports the bill: Please See Sign-In Sheets

Who opposes the bill: Please See Sign-In Sheets

Who is neutral on the bill: Please See Sign-In Sheets

Summary of testimony presented in support:

Representative Cushing

- His mother is 94 years old and has dementia; his 57-year-old brother-in-law has down syndrome and onset dementia. Therefore, has a strong understanding of the reality for these vulnerable adults.
- This bill provides a mechanism whereby vulnerable adults who are being exploited can obtain a protective order.
- This legislation is a result of a collaborative process with the Senior Law Project at NH Legal Assistance, AARP, Alzheimer's Association, and the Disability Rights Center.

Cheryl Steinberg (NH Legal Assistance)

- Is here in support of the bill on behalf of the NH Alliance for Healthy Aging and the Senior Law Project at NH Legal Assistance.
- Elder abuse and exploitation are a big problem in NH and nationwide.
- It is estimated that anywhere between \$2.9-\$35.6 billion is stolen from older adults nationwide.

- NH is the second oldest state in the country; by 2030 it is estimated that 1 in 3 persons in the State are going to be 60 or older.
- With the exception of self-neglect, financial exploitation consists of the highest percentage of reports made to the Bureau of Elderly and Adult Services (BEAS).
- These reports have doubled over the last ten years and continues to grow.
- We have a criminal statute for other exploitation and elder neglect, but that does not provide for the opportunity for a victim to stop the abuse or recoup damages.
- BEAS is charged with investigating these issues, but they are limited in what they can do. They investigate reports of abuse, exploitation, or neglect and report any criminal acts to law enforcement.
- If a report is founded, BEAS can enter the offender's name into a registry, but they do not have the authority to take any direct action.
- If it is a civil matter, there is nothing law enforcement can do.
- This bill provides immediate relief to victims to protect them against the influence and actions of the offender while charges may be pursued.
- NH has protective orders against domestic violence and stalking, and this bill just expands that to vulnerable adults.
- Vulnerable is defined under this statute the same way as it is in the adult protective statute (RSA 161-F), as the physical, mental, or emotional ability of a person is such that he or she is unable to manage personal, home, or financial affairs in his or her own best interest, or he or she is unable to act or unable to delegate responsibility to a responsible caretaker or caregiver.
- In comparison to the domestic violence statute, this bill is not limited to just significant others or family members. This allows for protections against a caregiver.
- Gave an example of a case where a gentleman was disabled and living at home with his 13-year-old autistic son and a stepson from a former marriage. This stepson was only supposed to be there temporarily, but he ended up being there for three years. The stepson had a substance abuse problem, never paid any rent, never contributed to household expenses, and was abusive. After one particular incident the client told the stepson that he had to leave, but the stepson refused, threatened her client and became physical. Her client called the police, but the police said there was nothing they could do and that the client should file a domestic violence restraining order petition. The court said he did not qualify for that and told him to go back to the police and get a trespassing order. The police said that they do not do that because it is a civil matter. Eventually was able to get her client a no trespass order, but in the meantime her client and his autistic son had to move in with his sister because he could not stay in the house.
- The relief outlined in this bill is consistent with the domestic violence protective orders and is constitutional.
- The big difference between this bill and the domestic violence protective orders is that it does not allow for the confiscation of any firearms or deadly weapons.
- Providing vulnerable adults with this will allow them an accessible and user-friendly method to obtain relief not currently available to them.

- Many organizations support this bill including AARP, Alzheimer's Association, Granite State Independent Living, the Disability Rights Center, and the NH Coalition Against Domestic and Sexual Violence.

Doug McNutt (AARP)

- Disclosed that he worked at the Bureau of Elderly and Adult Services.
- The purpose of this bill is to create more of a preventative mechanism.
- In many of these financial exploitation cases, once the money is gone, it is gone.
- For someone who loses their lifetime savings, their ability to live their best life is compromised.
- There is a tendency for people to end up in nursing homes who may have not otherwise.
- Situations of exploitation can also make it difficult for people to get into nursing homes as they attempt to become Medicaid eligible and cannot explain what happened to their money.
- This bill is different from HB696 in two significant ways.
- One, there is language to deal with the concerns raised by the Coalition for Domestic and Sexual Violence.
- Two, the deadly weapons clause has been removed.
- With regard to telephonic orders; page 4 line 13-14 states, "Such telephonically issued orders shall be made by a circuit court judge to a law enforcement officer, shall be valid in any jurisdiction in the state, and shall be effective until the close of the next regular court business day."
- This is not open ended and the longest it could be effective for would be if it is over a weekend.
- Senator Levesque asked if he has seen other protective order laws in other states and how are they working,
 - His understanding is that there are approximately 20 other states that have something similar to this. Cannot say how those laws operate, but this bill is modeled after some of those.

Ryan Donnelly (Granite State Independent Living)

- Has a severe physical disability but values his independence, which includes driving a car, holding a job, and being a part of his community.
- Because of his condition, he relies on others for his personal day to day care.
- There is a great deal of trust that comes with taking someone on to provide that care. Unfortunately, there are times when that trust is broken.
- Was once a victim of serious emotional abuse and instance of unwanted physical contact at the hands of a live-in caregiver.
- It was a traumatic, painful, frightening ordeal for him and his family.
- As it stands right now, the definition of abuse can prove to be narrow.
- His abuse was mainly emotional, and he was only able to receive a temporary protective order against his former caregiver.
- Although his situation was ultimately resolved in a satisfactory manner, wishes more could have been done at the beginning of his ordeal.
- This bill will reasonably broaden the definition of abuse, allowing the law to protect those individuals who cannot protect themselves.

- This is not only for older citizens, but also those of sound mind with psychical disabilities who face abuse or exploitation at the hands of those that are supposed to be caring for their needs

Robert T. Joseph Jr

- Was a victim of abuse.
- Spoke to the abuses by pharmaceutical and insurance companies.
- Is a strong 2nd Amendment supporter with modifications in the sense that they need to look at the overall public health, safety and wellness.
- So many people have been killed by guns who should not have been.
- Has multiple myeloma and is disabled by his hearing.
- His abuse was by his former wife.
- Criminal charges were brought up by his former wife, which were false and misleading. The State forced him to retire because of the abuses and claims by his former wife.
- His supervisor in the Department he worked made fun of his hearing, which he feels was workplace abuse.
- We need to think about seniors being abused in the workplace.
- There was an article about him in the Concord Monitor on February 9th.
- Asked if there is going to be a statute of limitations on this bill.
- Does not see firearms mentioned in this bill except for one line.
- The abuse of people in any nature is reprehensible.
- Senator French asked if he is for or against the bill.
 - Supporting. There is not even a mention of firearms in this. Thinks the arguments of the people objecting to this due to firearms are not relevant to this discussion. People do have a right to defend themselves.

Ryan Sempf (Alzheimer's Association)

- This bill would ensure individuals who are often the target of exploitation and abuse are able to seek relief when they need that relief, and not have to go through the long drawn out process to receive that relief.
- Something you see often is a caregiver is living in the home and when a victim is seeking relief through the criminal system, that results in the victim having to leave the home while the caregiver stays in the home.
- Believes this bill solves that problem.
- Took out the provision of firearms to make sure this bill not controversial.
- Senator Levesque asked if a vulnerable adult is being abused, do you hear about that from family members or the adult.
 - Typically, it is from a family member especially if it is in a situation of a caregiver engaging in the abuse. When that family member or friend comes to the house, they notice things. It comes from a lot of different places. In cases of financial exploitation, they see bankers notice something weird going on. This would allow those who notice abuse or exploitation to be able to say something.
- Senator Levesque asked about the current recourse under other RSAs that have been mentioned.
 - Typically send them to NH Legal Assistance. Recourse tends to revolve around the criminal code, but that is not a fast-moving solution. This is

something that provides immediate relief to stop the abuse. If we think about physical abuse, one punch in the face can cause severe injury. We need to provide relief and then let the criminal process play out, so that all parties do have a chance to have their say while making sure the victim is protected.

Summary of testimony presented in opposition:

Honorable Daniel Itse (NH Firearms Coalition)

- Is extremely familiar with the issue of caring for vulnerable adults. Has a 44-year-old brother-in-law with down syndrome. Took care of his son, Jared, as his primary caregiver until his passing. The last five years of Jared's life he was a vulnerable adult.
- This bill does not directly address firearms, but it does not specifically protect firearms; that is the only form of property that is specifically protected in the state and federal constitutions.
- On page 4, line 11 the bill states "The court may issue such temporary orders by telephone, facsimile or any other methods approved by court rules. Such telephonically issued orders shall be made by a circuit court judge to a law enforcement officer, shall be valid in any jurisdiction in the state, and shall be effective until the close of the next regular court business day... If non-telephonic temporary orders are made ex parte, the party against whom such relief is issued may file a written request with the clerk of the court and request a hearing on such orders"
- That means that if the order is issued telephonically a person has no power to request a hearing; that is a serious issue of due process.
- This bill does nothing to particularly address the types of abuse he saw perpetrated against his son and it does not deal with meaningful consequences.
- Need to consider what types of abuse other than just financial can be perpetrated, enumerate them and devise a methodology for addressing them.
- Senator French asked how this bill would not have affected Jared.
 - Jared was not an adult when this happened, but they had a nurse who was abusing him financially. She had worked her way into ordering Jared's supplies, and she had built in the practice of ordering extra supplies and then traded those as payment for tattoos; she was committing Medicaid fraud which potentially put Jared and the family at risk. Also, Jared was on a medicine called Tranxene to control his seizures, which is an accumulative medicine; she would withhold the medication during her shift, so that when she wasn't there Jared was having seizures in order to make herself seem like the only one that could control them. Found evidence of this behavior and presented it to the nursing company and they withdrew her from the home but, because she was the wife of an outlaw biker gang president the nursing company did not feel comfortable removing her from their staff. There is nothing in this legislation that would require an individual's license to be removed for behavior like this.
- Senator French asked if there is anything else Mr. Itse would like to add.

- When Jared was an adult there was a situation of potential sexual abuse. If you are a vulnerable adult there are certain things caregivers must do that require intimate contact: changing diapers, cleaning up thereafter, bathing, etc. While they were training a nurse, the family was feeling uncomfortable. The other nurses came to them and said that that nurse was intimating providing sexual gratification. This bill does nothing to address taking that individual out of the nursing marketplace. That is a marketplace issue with the agencies and the nurse. This issue requires more than just passing a simple bill. Need to consider the needs and the risks for vulnerable adults. As someone who administered a trust on behalf of his son, knows that you have to be very cautious about where review of any alleged misuse of funds goes. The financial guardianship is set up under the probate court and they know what they are doing, and you have to do accounting every year. If there is an allegation you have to make sure it does not go to the wrong adjudicator: court, DHHS, or law enforcement. Maybe it requires greater supervision. It is very simple under those situations that what appears to be the right decision in the moment and is the right decisions and then the subsequent decisions that take place and then all the sudden you find yourself not really where you should be. Urges that Committee to really consider this legislation and produce a product that will address the needs of the community.

Aaron Penkacik

- The issue he has with this bill is that it includes ex parte orders.
- 18 U.S. Code § 922 says that a court order based on abuse where there is a domestic relationship is sufficient to ban the accused from owning firearms for life.
- This bill has the potential to induce that federal law, which is problematic.
- Thinks the intent of the bill is good and believes it is important to protect vulnerable adults.
- In New Jersey, a dating relationship is sufficient to enact the abuse clause in their law, which is very similar to this bill.
- Senator Levesque asked if the domestic violence statute enacts this a same ex parte order.
 - That is correct.
- Senator Levesque asked in the case of domestic violence is that ex parte appropriate.
 - Thinks due process is appropriate and ex parte side steps due process. Would say it would be inappropriate.
- Senator Levesque asked if he has heard of domestic violence cases where firearms are removed forever.
 - Has personally not heard of that. Just citing the federal code. This bill could allow that to happen.
- Senator Levesque asked if he believes vulnerable adults need to be protected.
 - He does.
- Senator French asked if he is concerned that the confiscation firearms by the State would trigger the federal law to make it a lifetime ban.

- There is nothing in this bill as currently written that allows the confiscation of firearms. The enactment of an ex parte order on someone through the court based on abuse where there is a domestic relationship is sufficient though to enact the federal law. There is a snowball effect this bill has that needs to be considered.

Honorable Joe Hannon (Gun Owners of NH)

- This bill is not acceptable.
- Page 5, line 13 reads, "(3) An order enjoining a party from specified behavior that the court determines is necessary to protect the vulnerable adult."
- That is a very broad statement that could include anything including purchasing or possessing firearms.
- This would allow the court to remove firearms even if it is not a violent action that causes the protective order.
- Financial abuse has nothing to do with firearms.
- Acts of violence or physical threats are already covered under existing laws.
- Page 5, line 18 states that it is by a preponderance of evidence, which is not a very high standard to meet.
- Page 5, line 26-28 states "(3) Restraining the defendant from contacting the plaintiff or entering the plaintiff's place of employment, school, or any specified place frequented regularly by the plaintiff or by any family or household member."
- In a place like NH with so many small towns, that could make it so that someone has to leave the town.
- They may not be allowed to go to the grocery store because it is frequented by the plaintiff or any member of the plaintiff's family or their child's own school.
- Understands a restraining order of a set distance but banning a person from a place that a person or their family members frequents is egregious.
- The fact that this can be extended for up to five years where it is a one-year order is excessive.
- Page 7, line 28 states "(b) The administrative office of the courts shall enter information regarding the protective orders into the state database which shall be made available to police and sheriff departments statewide...(c) The administrative office of the courts shall update the database upon expiration or termination of a protective order."
- What database is that? Does that mean it is deleted entirely or does it remain there with a notation? What are the procedures?
- Page 7, line 34 states "(d) Notwithstanding any other provision of law, the administrative office of the courts, the department of health and human services, or the department of safety, their employees and agents, and law enforcement officials shall not be held criminally or civilly liable for action taken under this chapter or RSA 458:16, provided they are acting in good faith and without gross negligence, and within the scope of their duties and authority."
- That addresses actions under the scope of these individuals' duties but under another section specifically for law enforcement officers it says that they can be sued for an omission.

- If a law enforcement does not take someone's firearms could they be sued for not removing someone's firearms from a situation?
- Page 9, line 34 states, "that officer shall use all means within reason to prevent further abuse, exploitation, or neglect including, but not limited to:" which does list some things, but it is very broad and all encompassing.
- This means it does not even have to be prescribed by law, just anything within the peace officer's reason, including taking someone's firearms.
- There are several other things wrong with the bill.
- Senator Carson asked if under this bill could it cause an individual go on the NICS list.
 - It is not explicitly clear in this bill, but it very well could be. The bill says an individual is put in a database, but it is not clear what database it is. There is nothing prohibiting law enforcement from doing that.
- Senator Carson asked if there is a way for an individual to come off the NICS list.
 - There is a federal mechanism, but it has been completely unfunded for as long as he can remember. There is no department or number to call. Does not know of anyone who has had their name removed. If anyone knows of anyone who has gotten off of the NICS list in any way he would like to know.
- Senator Carson stated that this bill is similar to HB696, which was vetoed by the Governor. The only difference is this bill says that this shall not prohibit the filing of a petition under RSA 173 or RSA 633:3 and a change in the effective date. The reasons the governor gave for vetoing HB696 were that it does not have any protections for pro se victims or their children that might file under the statute, it does not address protections for vulnerable adults' minor children, it does not restrain the defendant from entering the plaintiff's place of employment or school, it does not allow for the appointment of guardians ad litem to represent best interests of minor children involved, and it creates a potential violation of 4th Amendment protections. Asked if he would agree that the issues the Governor has raised have not been addressed in this bill.
 - Has not done a side-by-side, but it sounds correct and it sounds very bad. Does not see this going very far unless it is drastically changed.

Jay Edward Simkin (provided written testimony)

- Firearms are mentioned on page 3, line 20, "firearms or deadly weapons."
- This bill does not address the issue that the average person who might be the target of such an order does not have enough money to get a lawyer.
- This offense could involve potential prison time.
- Even though this is a civil matter, the investigation could lead to criminal charges.
- Therefore, a person has to have counsel.
- Has litigated with two states.
- MA wrongfully revoked his license to carry concealed. After 3.5 years and \$125,000 the MA supreme court ordered the license restored, from which you can reasonably infer that he had done nothing wrong.
- MA law made no provision for him to recoup his costs defending himself.

- There needs to be in this law a provision that a person who is a target of such order shall have their attorney's fees and costs reimbursed by the State within 30 days of presentation of the bill.
- Small law firms cannot carry litigation that could go on for months or even years.
- This litigation is not a cheap date.
- The second fatal defect of the bill is that there is no right of private action for a person wrongly accused to ensure that a perjurer is prosecuted.
- It says a person may be subject to criminal charges if they lie to a court, but as a practical matter perjury is not prosecuted.
- A right of private action means that a private attorney will be invested by law with the prosecutor's power limited to the prosecution of alleged perjury.
- This bill sets up folks to be railroaded.

William Smith

- Is a member of the Exeter Sportsman's Club.
- This appears to be nothing more of a little bite here and there in terms of abolishing 2nd Amendment rights.
- Referenced the analogy of cooking a frog and gradually turn up the heat.
- Would wish the Senate and the House would focus more on preserving our liberties rather than stealing them.
- Does not think this bill is intended to solve the problem it claims to be trying to.
- Thinks the intent focuses on guns.
- In every fascist state the number one priority is to get the guns out of the citizens' hands.

Michael Thornton

- Is a member of the NRA, Golden Eagles, Firearms Coalition, and Gun Owners of NH.
- This bill would make him guilty until proven innocent at his expense.
- Could not afford to prove himself innocent as a disabled veteran; therefore, he would be guilty.
- The right to confront his accuser is absent in this.
- The protection of due process is stripped away under this.
- This did not happen in NH, but his father was passing away and the last six months of his life were terrible. Was the primary caregiver at great personal financial cost.
- One night a salesman of a funeral parlor sold his father an overpriced service; he and his siblings attempted to cancel that contract and the funeral home filed a protective order against them.
- Had to pay an attorney to write a letter to the funeral home and at the same time he had to purchase another service plan.
- Was found fiscally responsible and the money was returned by the funeral home after a period of six weeks.
- The federal firearms regulations are cumbersome, and it takes forever to be taken off the list if you are on it.
- Senator Levesque asked what he was being accused of by the funeral home.

- Was being accused suborning his father's right to choose a more expensive, needlessly overpriced service. The funeral home was working in their own best interests, while he was acting in what his father had expressed to him of burying him with dignity, full military honors, and do it at a reasonable cost.

George R. Gurick Jr.

- The Baltimore Sun Newspaper had an article on the November 5, 2018 relative to red flag laws.
- The county of Anne Arundel's local police department raided the home of a 60-year-old man shortly after 5am, which resulted in the man's death at the hands of the police.
- This raid was made under Maryland's red flag law.
- There are 17 states that have similar red flag laws.
- Red flag laws essentially relieve someone of private property, specifically firearms, based on hearsay whether or not a sitting judge is involved.
- The Maryland legislature decided to seal all documents relative to actions by the police and the court under red flag laws.
- Further investigation revealed that complaints were made by the dead man's nieces and nephews that he was mean to them and they did not like him.
- The police took those complaints and decided to act even though the man had no known criminal history.
- The man answered the door at 5am with a pistol or revolver in his hand, discussion ensued, a scuffle ensued, a shot was fired and the report is not clear who fired the shot, and the result of that was that man was killed by police.
- Did not bring the article because he would rather people look for it themselves rather than take his word.
- This is an example of a red flag law violating the 2nd, 4th, 5th, 10th, and Part 1 of the 14th Amendments.
- Understands firearms were removed from this but given the vagueness of the language does not have confidence that firearms will not be put back in this bill or be added in in future legislation

Alan Rice (Gun Owners of America)

- This bill lacks due process due.
- After a person is subject to a telephonic order that is issued ex parte they can then request a hearing after the fact, that is not due process.
- Due process is a person getting a notice that there is going to be a hearing and they get to go to court and say this is false.
- Due process after the fact is not due process.
- Page 6, line 1 states "(b) Other relief including, but not limited to:" which frees the court to do whatever it wants to do, including seizing guns, ammunition, cars, boats, etc.
- Has seen judges take liberties they do not have, and this bill gives them the liberty to seize whatever they want.
- Is not insensitive to vulnerable adults who need assistance.
- RSAs 631:8-10 deals with the types of abuse that the supporters of this bill are saying this is trying to curb.

- We already have three RSAs with felony penalties if you abuse people.
- Realizes there is physical and emotional abuse, but we don't need a law that opens the door to confiscation of firearms or other property without due process.
- Under the federal domestic violence law, which could ban someone from owning firearms for life, the definition of intimate partner is open to the states; it does not necessarily have to be a sexual relationship.
- Senator French asked if he remembers the Geraldine Weber case in Portsmouth.
 - Believes that was the woman who was taken advantage of by a police officer who stole her money and she wrote him into her estate.
- Senator French stated that several officers were dismissed in Portsmouth for that same thing. Asked if this bill would have helped that case.
 - Thinks RSAs 631, 8-10 should have been invoked and those people should have been prosecuted. His mother lived with him in an in-law apartment and he saw the scams that come to the elderly. Is not insensitive to that, but that does not mean due process should be thrown out the window or we should throw away the basic tenants of jurisprudence. We already have laws where we can lock them up for a long time for this.

Penny Dean

- Thinks the world is not wordsmiths and nitpicky like lawyers are.
- People say that this only applies to intimate partners, but that is not true.
- Federal gun law has said recently that they look beyond what lawyers call the four corners of the paper. Even if this bill says we are not going to take guns, federal law is going to look beyond those four corners and say what happens.
- The federal government is going to look at their definitions under 18 USC § 921 (a) (32) which says "The term "intimate partner" means, with respect to a person, the spouse of the person, a former spouse of the person, an individual who is a parent of a child of the person, and an individual who cohabitates or has cohabited with the person." That covers many caregivers.
- 18 USC § 921 (a)(33)(A) talks about further penalty provisions.
- 18 USC § 922 (g)(8) states "who is subject to a court order that was issued after a hearing of which such person received actual notice, and at which such person had an opportunity to participate; restrains such person from harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child"
- The definition of "intimate partner" goes back to the federal definition and not the State definition.
- Page 1, line 9 talks about emotional abuse or verbal harassment. Taught in law school about an eggshell cranium; some people are very sensitive.
- If someone says to her 'you wear that bright pink color a lot' and she is sensitive to that, that is harassment; can she go get an order for that?
- Page 2 states "'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." How far does that 'could' go?

- Even people paid by the police to tell on other people are subject to the pains and penalties of perjury. This bill allows for the commitment of perjury for free.
- Page 3, line 31 states that “The filing of a petition under this chapter, including any facts alleged or findings made regarding the plaintiff’s mental or physical capacity, shall not be admitted as evidence for any purpose in any other court proceeding.” This means when she lies about something, she gets away with it.
- We have a constitution where damages give us a civil jury trial, and this takes away the right to a jury trial because the court is allowed to order damages.
- The average person cannot afford an attorney.
- At the end of a one-year period, has seen court after court renew domestic orders automatically even when nothing has happened during that year and the alleged part has not violated anything, but the person says they are still afraid of him.
- There is a case before the NH Supreme Court where the defendant’s name is Human; the plaintiff has filed three separate domestic violence protection orders each time Mr. Human had to give up his firearms which is a form of gun registration because each time they report his serial numbers and each time after a hearing the court dismissed it. How much is enough? Mr. Human gets no damages.

Honorable Robert Clegg (ProGun NH)

- Is not totally against everything in this bill but is against certain sections.
- Has been working on SB677 to ensure the needs of elders in abuse instances are available without getting the 2nd Amendment community up in arms.
- One of the problems is giving people the choice to file under the elder abuse law or do something under domestic violence.
- His brother was an abused adult. He had some problems in his life and one of his stepchildren from a former marriage came to live with him.
- His brother had a heart condition and a 12-year-old autistic child.
- This stepson moved in, refused to leave and threatened Mr. Clegg’s brother with death if he threw him out.
- Mr. Clegg was told by Nashua police that whether the stepson lived there with or without permission Mr. Clegg could not throw him out.
- The stepson had more rights than Mr. Clegg’s brother and Mr. Clegg had no rights at all.
- The stepson was a drug addict and was bringing people into the home to do drugs and lock the autistic child in a room.
- Cheryl Steinberg from Legal Aid assisted in getting the situation fixed.
- The judge granted him an order to get the police to throw the stepson out of the house, but the police refused to throw the stepson out claiming they did not have the authority to do so. They claimed they would get sued and lose.
- The statutes currently on the book do not work and they need to be fixed.
- Contacted the Hillsborough County Sheriff and the Sheriff said they would serve the stepson. Every time they came to get the stepson he would sing “someone is going to die tonight; someone is going to die in their sleep.”
- His brother had just come out of the hospital due to heart complications and was scared to death.

- Mr. Clegg could not help and could not even enter the house without being arrested for interfering with the stepson's place to live, couldn't throw out the drug addicts because they were the stepson's friends, and could not do anything about the needles on the floor.
- The stepson finally got served and removed. The stepson continued to harass his brother. His brother and nephew moved in with his daughter.
- Most of what is in this bill is necessary, but we don't need to say that every time someone does something, we are going to confiscate their guns.
- We have the domestic violence statutes and think we should keep them the way that they are.
- When someone steals grandma's money or yells at her that is no reason to confiscate their weapons.
- Has no problem with taking someone's guns if they used a gun in the commission of a crime.
- There are giant loopholes in the law and people are trying their best to fix them but the stumbling block is someone always has to throw in the confiscation of firearms.
- Thinks SB677 helps the elderly.
- You can't help his brother under the current laws.
- Senator Levesque asked if he would consider his brother's stepson to be a law abiding individual.
 - Absolutely not.
- Senator Levesque asked if Mr. Clegg thinks it is inappropriate for that person to have firearms or should they be able to keep them.
 - That had nothing to do with firearms. It had to do with someone who is abusive and would not leave the house. He was already a convicted felon. The issue in this bill is we are going to allow people to go under the domestic violence statute and take someone's guns. His brother's stepson had squatters' rights. All we need to do with this bill is remove the firearms aspect. Why is it that we always have to take someone's guns?
- Senator Levesque asked if he agrees that vulnerable adults should be protected.
 - Believes they should be protected but does not believe that protection always means to take away someone's right to self-protection

Neutral Information Presented:

Sarah Freeman (Circuit Court)

- Supervises the unit that enters orders of protection into the Nation Crime Information Center Protection Order File and removes those orders.
- When someone's name is run through the NICS background check, that reviews multiple databases.
- Protective orders are found in the check in the Protection Order File (NCIC).
- Frequently enters those orders in the court system and then remove them.
- People do not hear about the removal because it goes well in almost every single circumstance.
- In those protective orders there are two different ways a firearms prohibition can be done: a state prohibition or the federal Brady prohibition.

- The Brady federal law has multiple ways for someone to be disqualified from owning a weapon.
- The lifetime ban is for someone who has been convicted of a qualifying crime of misdemeanor domestic violence that is a conviction of a criminal statute.
- That lifetime ban is only lifetime in NH if that crime is not annulled, which it could be in the State.
- Civil protective orders are only federal prohibitions during the life of the protective order. Once the order expires that prohibition is gone.
- It is only a prohibition on a federal level if there is that qualifying relationship: the parties are spouses, former spouses, or cohabitate.
- Cohabitate means living together like husband and wife, husband and husband, or wife and wife in an intimate relationship.
- It does not refer to roommates.
- There has been some movement on the federal level in the Violence Against Women Act to broaden that, but thus far it is fairly limited.
- A temporary order is never Brady qualifying, it also requires a hearing.
- These ex parte orders would never invoke the federal Brady qualification.
- Only in these small limited circumstances would a vulnerable adult potentially ever invoke the Brady.

jch

Date Hearing Report completed: March 6, 2020

Speakers

SPEAKING

Senate Judiciary Committee SIGN-IN SHEET

Date: 03/03/2020 Time: 9:15 a.m.

HB 1660-FN AN ACT establishing a protective order for vulnerable adults.

Name/Representing (please print neatly)

Name/Representing	Support	Oppose	Speaking?	
✓ Aaron Penkacik	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Speaking?	<input checked="" type="checkbox"/>
Mark Cotton	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Speaking?	<input checked="" type="checkbox"/>
Sara Beniderm	<input type="checkbox"/>	<input type="checkbox"/>	Speaking?	<input checked="" type="checkbox"/>
✓ Dan Daniel Itse, NHFC	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Speaking?	<input checked="" type="checkbox"/>
✓ Doug McNulty AARP	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Speaking?	<input checked="" type="checkbox"/>
not ✓ Edward J. Martinez	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Speaking?	<input checked="" type="checkbox"/>
not ✓ TONY LEKAS HILLS 37	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Speaking?	<input checked="" type="checkbox"/>
✓ JAY E. SIMKIN	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Speaking?	<input checked="" type="checkbox"/>
✓ William Smith	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Speaking?	<input checked="" type="checkbox"/>
Thomas Steinberg	<input type="checkbox"/>	<input type="checkbox"/>	Speaking?	<input checked="" type="checkbox"/>
✓ Michael Thornton self	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Speaking?	<input checked="" type="checkbox"/>
(P+) ✓ Cheryl Steinberg NHFA	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Speaking?	<input checked="" type="checkbox"/>
✓ Ryan Donnelly GSIL	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Speaking?	<input checked="" type="checkbox"/>
✓ Sara Friedman	<input type="checkbox"/>	<input type="checkbox"/>	Speaking?	<input checked="" type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>	Speaking?	<input checked="" type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>	Speaking?	<input checked="" type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>	Speaking?	<input checked="" type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>	Speaking?	<input checked="" type="checkbox"/>

NOT SPEAKING

Senate Judiciary Committee SIGN-IN SHEET

Date: 03/03/2020 Time: 9:15 a.m.

HB 1660-FN AN ACT establishing a protective order for vulnerable adults.

Name/Representing (please print neatly)

Name/Representing (please print neatly)	Support	Oppose
JR Houle	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Rep John Burt Goffstoun, Weare, Deering	<input type="checkbox"/>	<input checked="" type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>

NOT SPEAKING

Senate Judiciary Committee SIGN-IN SHEET

Date: 03/03/2020 Time: 9:15 a.m.

HB 1660-FN AN ACT establishing a protective order for vulnerable adults.

Name/Representing (please print neatly)

Name/Representing (please print neatly)	Support	Oppose
Alvin See Self	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Sarah Freeman Circuit Ct. (unless info needed)	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Rep Nancy Murphy Hillsborough/Merrimack	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Jeanne Torrey Concord Self	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Erin McManus (Concord)	<input checked="" type="checkbox"/>	<input type="checkbox"/>
PAMELA Egan (Concord) Self	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Ryan Samp Alzheimer's Association	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Louise Spencer Concord Self	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Ryan Texier Self	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Deborah Jakobowski Self	<input checked="" type="checkbox"/>	<input type="checkbox"/>
KEVIN CRAIG Co's - 4	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Rep. Camarota Hills 7	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Marcia Garber Self	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Rep Mike Sylvia Belknap 6	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Rep. Trovati, Herraiz Stroud	<input checked="" type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>

NOT SPEAKING

Senate Judiciary Committee SIGN-IN SHEET

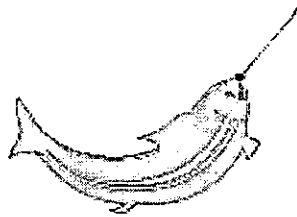
Date: 03/03/2020 Time: 9:15 a.m.

HB 1660-FN AN ACT establishing a protective order for vulnerable adults.

Name/Representing (please print neatly)

Name/Representing (please print neatly)	Support	Oppose
Senator Hennessey SD#5	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Thomas J. Vermouth	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Raymond S. Dionize	<input type="checkbox"/>	<input checked="" type="checkbox"/>
REP. DAVID MEDIC ROCU 29	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Shannon Chandley SD11	<input checked="" type="checkbox"/>	<input type="checkbox"/>
IRA IRA COHEN	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Keith A. Hudson	<input type="checkbox"/>	<input checked="" type="checkbox"/>
David Shrade	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Lisa Beaudoin, ABLE NH	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Brick Collins	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Eric Hubbard	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Alicia Hubbard	<input type="checkbox"/>	<input checked="" type="checkbox"/>
PETER MARQUES	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Dennis Thorell New Durham NH	<input type="checkbox"/>	<input checked="" type="checkbox"/>
STREIBERMAN - NEW LONDON	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Dawn McKinney NH Legal Assistance	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Michael McCosm	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Brenda W. Geom	<input type="checkbox"/>	<input checked="" type="checkbox"/>

Testimony



JAY EDWARD SIMKIN
SPORTING GOODS & POLICE SUPPLIES
FEDERALLY-LICENSED FIREARMS DEALER

Testimony

House Bill HB1660-FN

Senate Judiciary Committee

Room 100, State House

3 March 2020 / 9:15 a.m.

HB 1660-FN – as is – stacks the deck against an accused. Justice demands this bill be revised to level the “playing field”. If not, this bill should be withdrawn.

HB 1660-FN – as published – has two lethal defects. First, the bill does not provide that one accused of being a threat, should get prompt and full reimbursement from public funds, of his or her attorney’s fees and costs. As written, only those with “deep pockets” can respond effectively.

Few have the tens of thousands to litigate with a State. My effort to recoup an unlawfully-revoked Massachusetts firearm license cost about \$125,000 in attorney’s fees and costs. As the matter was one of first impression, much law research was needed. I did almost all of that research.

Absent my work – which took well over a thousand hours – the costs likely would have exceeded \$200,000. I refused to allow a lawless licenser – then and now an attorney – to besmirch my good name. Massachusetts law did not enable me to recoup any of my litigation outlays.

So, to level the playing field, HB 1660-FN must provide for reimbursement from public funds, of an accused person’s defense outlays, at their attorney’s usual hourly rate. Public defenders by law cannot handle civil matters. Bills must be paid within 30 days of submission, or there’s a 50% penalty. This will ensure prompt payment: many law firms cannot afford to fund lengthy litigation.

Second, HB1660-FN must contain a “right of private action”. If someone lies to a Court – e.g., during a bitter divorce – and so gets a “red flag” order, the law must authorize the accused person to hire an attorney empowered to prosecute the liar, if a prosecutor won’t. Few perjurers are prosecuted.

An accusation of child abuse can destroy a person’s good name. So, there must be sure recourse against those, who lie to Courts. Those, who testify honestly, should not fear wrongful prosecution: an attorney, who brings an obviously meritless prosecution, will be punished by the Court and/or by the Bar Association’s Professional Conduct Committee, which regulates attorneys’ conduct.

Thank You, Madame Chairwoman and Members of the Committee, for hearing my testimony. I’ll be happy to answer any questions related to my testimony.

Jennifer Horgan

From: Tom Carney <carneytom@outlook.com>
Sent: Tuesday, March 03, 2020 9:16 AM
To: Martha Hennessey; Shannon Chandley; Melanie Levesque; Sharon Carson; Harold French; Jennifer Horgan
Subject: NH HB 1660 : "Red Flag" Firearms Confiscations Regarding Elder Care Protection

Dear Honorable NH Senators;

I am writing to request that you will block the passage of HB1660.

The (above proposed) legislation constitutes a threat to the rights of "due process" that are constitutionally guaranteed to Hampshire citizens with regard to criminal allegations, and with regard to unlawful seizure of personal property by any department or agency of the State of New Hampshire.

Protective laws for elderly and for disabled, or otherwise vulnerable NH citizens is already in force under RSA 631 in sub paragraphs 632.4 a 631.8

It is imperative for the NH Legislature to protect the firearms ownership rights of law abiding NH citizens, and to safe guard due process protections afforded under the NH State Constitution

Please read this letter aloud during this committee's hearing today; and, please transcribe or enter it into the record of today!s legislative proceedings Thank you.

Very truly yours,
T. J. Carney
459 Main St.
Dublin, NH 03444

Voting Sheets

Senate Judiciary Committee

EXECUTIVE SESSION

Bill # HB1660

Hearing date: _____

Executive session date: _____

Motion of: ITL

VOTE: _____

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

Motion of: OTP

VOTE: 3-1 (French)

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

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

*Amendments: _____

Notes: _____

Committee Report

STATE OF NEW HAMPSHIRE
SENATE
REPORT OF THE COMMITTEE

Wednesday, March 4, 2020

THE COMMITTEE ON Judiciary

to which was referred **HB 1660-FN**

AN ACT

establishing a protective order for vulnerable
adults.

Having considered the same, the committee recommends that the Bill

OUGHT TO PASS

BY A VOTE OF: 3-1

Senator Shannon Chandley
For the Committee

Jennifer Horgan 271-2609

JUDICIARY

HB 1660-FN, establishing a protective order for vulnerable adults.

Ought to Pass, Vote 3-1.

Senator Shannon Chandley for the committee.

General Court of New Hampshire - Bill Status System

Docket of HB1660

Docket Abbreviations

Bill Title: establishing a protective order for vulnerable adults.*Official Docket of HB1660.:*

Date	Body	Description
12/16/2019	H	Introduced 01/08/2020 and referred to Health, Human Services and Elderly Affairs HJ 1 P. 30
1/8/2020	H	Public Hearing: 01/21/2020 01:00 pm LOB 205
1/22/2020	H	==CANCELLED== Subcommittee Work Session: 01/29/2020 09:00 am LOB 205
1/23/2020	H	Subcommittee Work Session: 01/30/2020 09:00 am LOB 205
1/29/2020	H	Executive Session: 02/04/2020 01:00 pm LOB 205
2/12/2020	H	Majority Committee Report: Ought to Pass with Amendment # 2020-0050h for 02/19/2020 (Vote 12-9; RC) HC 7 P. 22
2/12/2020	H	Minority Committee Report: Inexpedient to Legislate
2/19/2020	H	Amendment # 2020-0050h : AA VV 02/19/2020 HJ 4 P. 62
2/19/2020	H	Ought to Pass with Amendment 2020-0050h: MA RC 206-144 02/19/2020 HJ 4 P. 62
2/19/2020	H	Referred to Criminal Justice and Public Safety 02/19/2020 HJ 4 P. 62
2/19/2020	H	Referral Waived by Committee Chair per House Rule 46(f) 02/19/2020 HJ 4 P. 102
2/26/2020	S	Introduced 02/13/2020 and Referred to Judiciary; SJ 5
2/27/2020	S	Hearing: 03/03/2020, Room 100, SH, 09:15 am; SC 9
3/4/2020	S	Committee Report: Ought to Pass, 03/11/2020; SC 10
3/11/2020	S	Special Order to 03/12/2020, Without Objection, MA; 03/11/2020 SJ 6
3/12/2020	S	Ought to Pass: RC 14Y-10N, MA; OT3rdg; 03/12/2020; SJ 7
7/6/2020	S	Enrolled (In recess 06/29/2020); SJ 9
7/6/2020	H	Enrolled 06/30/2020

NH House

NH Senate

Other Referrals

Senate Inventory Checklist for Archives

Bill Number: HB1660

Senate Committee: Judiciary

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

Final docket found on Bill Status

Bill Hearing Documents: {Legislative Aides}

Bill version as it came to the committee

All Calendar Notices

Hearing Sign-up sheet(s)

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

Hearing Report

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

Committee Action Documents: {Legislative Aides}

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

___ - amendment # ___ ___ - amendment # ___

___ - amendment # ___ ___ - amendment # ___

Executive Session Sheet

Committee Report

Floor Action Documents: {Clerk's Office}

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

___ - amendment # ___ ___ - amendment # ___

___ - amendment # ___ ___ - amendment # ___

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

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

Enrolled Bill Amendment(s)

Governor's Veto Message

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

___ as amended by the senate ___ as amended by the house

___ final version

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

Jennifer Horgan
Committee Aide

7/23/20
Date

Senate Clerk's Office JM