

HB 1660-FN - VERSION ADOPTED BY BOTH BODIES

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

19Feb2020... 0050h

20-2416

01/04

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

CHAPTER 173-D**PROTECTIVE ORDERS FOR VULNERABLE ADULTS**

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

173-D:2 Definitions. In this chapter:

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

- (a) "Emotional abuse" means the misuse of power, authority, or both, verbal harassment, or unreasonable confinement which results or could result in the mental anguish or emotional distress of a vulnerable adult.
- (b) "Physical abuse" means the use of physical force which results or could result in physical injury to a vulnerable adult.
- (c) "Sexual abuse" means contact or interaction of a sexual nature involving a vulnerable adult without his or her informed consent.
- (d) "Other abuse" means any of the following:
 - (1) Assault or reckless conduct as defined in RSA 631:1 through RSA 631:3.
 - (2) Criminal threatening as defined in RSA 631:4.
 - (3) Sexual assault as defined in RSA 632-A:2 through RSA 632-A:5.
 - (4) Interference with freedom as defined in RSA 633:1 through RSA 633:3-a.
 - (5) Destruction of property as defined in RSA 634:1 and RSA 634:2.
 - (6) Unauthorized entry as defined in RSA 635:1 and RSA 635:2.
 - (7) Harassment as defined in RSA 644:4.

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

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

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

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

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

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

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

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

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

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

173-D:3 Jurisdiction and Venue.

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

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

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

173-D:4 Commencement of Proceedings; Hearing.

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

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

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

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

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

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

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

VII. 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.

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

173-D:5 Temporary Relief.

I. Upon a showing of an immediate and present danger of abuse, exploitation, or neglect, the court may enter temporary orders to protect the plaintiff with or without actual notice to defendant. The court may issue such temporary orders by telephone, 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. Such orders shall be returnable to the circuit court where the plaintiff resides or to which the plaintiff has fled, unless otherwise ordered by the issuing judge. If non-telephonic temporary orders are made ex parte, the party against whom such relief is issued may file a written request with the clerk of the court and request a hearing on such orders. Such hearing shall be held no less than 2 business days and no more than 3 business days after the request is received by the clerk. Such hearings may constitute the final hearing described in RSA 173-D:4, V.

II. Such temporary relief may include:

(a) Protective orders:

- (1) Restraining the defendant from abusing, exploiting, or neglecting the plaintiff.
- (2) Restraining the defendant from entering the premises and curtilage where the plaintiff resides, except when the defendant is accompanied by a peace officer and, upon reasonable notice to the plaintiff, is allowed entry by the plaintiff for the sole purpose of retrieving toiletries, medication, clothing, business equipment, and any other items as determined by the court.
- (3) Restraining the defendant from withholding items of the plaintiff's personal property which are specified in the order. A peace officer shall accompany the plaintiff or his or her representative in retrieving such property to protect the plaintiff.
- (4) Restraining the defendant from contacting the plaintiff or entering a specified place frequented regularly by the plaintiff.
- (5) Restraining the defendant from abusing the plaintiff, plaintiff's relatives, regardless of their place of residence, or plaintiff's household members in any way.
- (6) Restraining the defendant from taking, converting, or damaging property in which the plaintiff has a legal or equitable interest.
- (7) Granting the plaintiff exclusive care, custody, or control of any animal owned, possessed, leased, kept, or held by the plaintiff or by the plaintiff jointly with the defendant in either household, and ordering the defendant to stay away from the animal and forbidding the defendant from taking, transferring, encumbering, concealing, committing an act of cruelty or neglect, or disposing of the animal.

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

- (1) In the case of financial exploitation, prohibiting the defendant from transferring or otherwise encumbering any of his or her assets which equal or exceed the amount of assets claimed to be exploited, provided, however, that such prohibition shall not extend to, encumber, or otherwise limit the rights of creditors, mortgagees, or secured parties in such property.
- (2) Restraining the defendant from taking any action which would lead to the disconnection of any and all utilities and services to the parties' household, or the discontinuance of existing business or service contracts, including, but not limited to, mortgage or rental agreements.
- (3) An order enjoining a party from specified behavior that the court determines is necessary to protect the vulnerable adult.

173-D:6 Relief.

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

(a) Protective orders:

- (1) Restraining the defendant from abusing, exploiting or neglecting the plaintiff.
- (2) Restraining the defendant from entering the premises and curtilage where the plaintiff resides, except when the defendant is accompanied by a peace officer and is allowed entry by the plaintiff for the sole purpose of retrieving personal property specified by the court.
- (3) Restraining the defendant from contacting the plaintiff or entering the plaintiff's place of employment, school, or any specified place frequented regularly by the plaintiff or by any family or household member.
- (4) Restraining the defendant from abusing the plaintiff, plaintiff's relatives, regardless of their place of residence, or plaintiff's household members in any way.
- (5) Restraining the defendant from taking, converting, or damaging property in which the plaintiff has a legal or equitable interest.
- (6) Granting the plaintiff exclusive care, custody, or control of any animal owned, possessed, leased, kept, or held by the plaintiff or by the plaintiff jointly with the defendant in either household, and ordering the defendant to stay away from the animal and forbidding the defendant from taking, transferring, encumbering, concealing, committing an act of cruelty or neglect, or disposing of the animal.

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

- (1) Granting the plaintiff the exclusive use and possession of the premises and curtilage of the plaintiff's place of residence, unless the defendant exclusively owns or leases and pays for the premises and the defendant has no legal duty to support the plaintiff and provided, however, that such relief shall not extend to, extinguish, encumber, or otherwise limit the rights of creditors, mortgagees, or secured parties in such property.
- (2) Restraining the defendant from withholding items of the plaintiff's personal property specified by the court. A peace officer shall accompany the plaintiff in retrieving such property to protect the plaintiff.
- (3) Granting to the plaintiff the exclusive right of use and possession of the household furniture, furnishings, or a specific automobile, unless the defendant exclusively owns such personal property and the defendant has no legal duty to support the plaintiff.
- (4) Ordering the defendant to make automobile, insurance, health care, utilities, rent, or mortgage payments if the defendant has a legal or fiduciary duty to do so.
- (5) Ordering the defendant to pay the plaintiff monetary compensation for losses suffered as a direct result of the abuse, exploitation, or neglect which may include, but not be limited to, misappropriated funds, loss of earnings or support, medical and dental expenses, damage to property, out-of-pocket losses for injuries sustained, and moving and shelter expenses.
- (6) Ordering the defendant to pay reasonable attorney's fees.

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

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

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

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

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

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

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

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

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

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

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

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

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

(d) Notwithstanding any other provision of law, the administrative office of the courts, the department of health and human services, or the department of safety, 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.

173-D:7 Permissible Contact.

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

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

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

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

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

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

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

173-D:9 Notification.

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

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

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

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

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

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

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

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

- (a) There shall be no enhanced charge under this section if the subsequent offense is a class A felony or an unclassified felony;
- (b) If the subsequent offense would otherwise constitute a class B felony, it may be charged as a class A felony;
- (c) If the subsequent offense would otherwise constitute a class A misdemeanor, it may be charged as a class B felony;
- (d) If the subsequent offense would otherwise constitute a class B misdemeanor, it may be charged as a class A misdemeanor;
- (e) If the subsequent offense would otherwise constitute a violation, it may be charged as a class B misdemeanor.

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

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

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

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

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

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

173-D:12 Notice to the Victim.

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

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

- (a) Restraining the defendant from abusing, exploiting, and/or neglecting the victim.
- (b) Directing the defendant to leave and stay away from the victim's premises and curtilage.
- (c) Restraining the defendant from contacting the victim, or entering any specified place frequented regularly by the victim.
- (d) Restraining the defendant from abusing, in any way, the victim, household members, or victim's relatives, regardless of their place of residence.
- (e) Restraining the defendant from taking, converting, or damaging personal or real property in which the victim may have a legal or equitable interest.
- (f) Ordering the defendant to pay the victim monetary compensation for losses suffered as a direct result of the abuse, exploitation, or neglect which may include, but not be limited to, misappropriated funds, loss of earnings or support, medical and dental expenses, damage to property, out-of-pocket losses for injuries sustained, and moving and shelter expenses.
- (g) Ordering the defendant to pay reasonable attorney's fees

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

173-D:14 Orders Enforceable.

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

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

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

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

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

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

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

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

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

LBAO
20-2416
Amended 3/4/20

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:	☒ General ☐ Education ☐ Highway ☐ 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