Bill as Introduced

HB 180-FN – AS INTRODUCED

2001 SESSION

01-0253
04/09

HOUSE BILL ***180-FN***

AN ACT relative to criminal neglect of elderly, disabled, or impaired adults.

SPONSORS: Rep. Flora, Hills 15; Rep. Sargent, Hill 3; Rep. P. Katsakiores, Rock 13; Rep. O'Keefe, Rock 21; Sen. D'Allesandro, Dist 20

COMMITTEE: Criminal Justice and Public Safety

ANALYSIS

This bill establishes criminal penalties for the neglect of elderly, disabled, or impaired adults.

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

01-0253
04/09

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand One

AN ACT relative to criminal neglect of elderly, disabled, or impaired adults.

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

1 New Section; Criminal Neglect of Elderly, Disabled, or Impaired Adults. Amend RSA 631 by inserting after section 7 the following new section:

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

I. In this section:

(a) "Adult" means any person who is 18 years of age or older.

(b) "Caregiver" means any person who has been entrusted with, or has assumed the responsibility voluntarily, by contract, or by order of the court, for frequent and regular care of or services to an elderly, disabled, or impaired adult, including subsistence, medical, custodial, personal or other care, on a temporary or permanent basis. "Caregiver" includes, but is not limited to, relatives, household members, guardians, neighbors, and employees and volunteers of a facility as defined in this section.

(c) "Disabled adult" means an adult who has a diagnosed physical or mental impairment.

(d) "Elderly adult" means an individual who is 60 years of age or older.

(e) "Facility" means any location providing day or residential care or treatment for disabled adults or elderly persons. The term "facility" includes, but is not limited to, any hospital, training center, state institution, nursing home, assisted living facility, adult family care home, adult day care center, group home, mental health treatment center, or home health care provider.

(f) "Impaired adult" means any adult who suffers from an impairment by reason of mental illness, developmental disability, organic brain disorder, physical illness or disability, chronic use of drugs, chronic intoxication, memory loss, or other cause, that causes an adult to lack sufficient understanding or capacity to make or communicate reasonable decisions concerning the adult's person or property or to be substantially impaired in the adult's ability to provide adequately for his or her own care and custody.

(g) "Neglect" means the failure or omission on the part of the caregiver to provide the care, supervision, and services necessary to maintain the health of an elderly, disabled, or impaired adult, including, but not limited to, food, clothing, medicine, shelter, supervision, and medical services, that a prudent person would consider necessary for the well-being of an elderly, disabled, or impaired adult. The term "neglect" also means the failure of a caregiver to make a reasonable effort to protect a disabled adult or an elderly person from abuse, neglect, or exploitation by others. "Neglect" is repeated conduct or a single incident of carelessness which produces or could reasonably be expected to result in serious bodily injury.

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

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

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

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

2 Effective Date. This act shall take effect January 1, 2002.

LBAO
01-0253
1/5/01

HB 180-FN - FISCAL NOTE

AN ACT relative to criminal neglect of elderly, disabled, or impaired adults.

FISCAL IMPACT:

The Office of Legislative Budget Assistant is unable to complete a fiscal note for this bill as it is awaiting information from an agency.

LBAO
01-0253
Revised 1/16/01

HB 180 FISCAL NOTE

AN ACT relative to criminal neglect of elderly, disabled, or impaired adults.

FISCAL IMPACT:

The Administrative Office of the Courts, Judicial Council and the Department of Corrections have determined this bill may increase state expenditures by an indeterminable amount in FY 2002 and each year thereafter. There will be no fiscal impact on county and local expenditures or state, county and local revenue.

METHODOLOGY:

The Administrative Office of the Courts stated this bill may have little, if any, fiscal impact on the Branch as it will not significantly impact caseload.

The Judicial Council assumed that any cases arising from the enactment of this law for which the Indigent Defense Fund may be liable, will in the first instance be handled by the public defender or contract attorneys who accept these cases on a fixed fee contract rate of $687.50 for each felony charge. If an assigned counsel attorney must be used, the hourly rate of $60, with a fee cap of $3,000 for a misdemeanor and $3,000 for felony cases, will apply. If a motion to exceed the fee cap is approved and/or "services other than counsel" are approved, these will also be chargeable to the Indigent Defense Fund. The Council is unable to predict the number of cases or trials, which may arise as a result of the passage of this legislation, therefor, they are unable to estimate the dollar amount of the anticipated costs of such representation.

The Department of Corrections is unable to predict how many, if any, individuals would be incarcerated in a state prison as result of this legislation. The average cost of incarceration for FY 2000 was $20,557 per inmate. The average cost of probation/parole supervision was $840 per inmate.

The Departments of Justice and Health and Human Services have stated this bill will have no fiscal impact on their respective departments.

Amendments

Rep. Flora, Hills. 15
January 23, 2001
2001-0042h
04/09

Amendment to HB 180-FN

Amend RSA 631:8, I (g) as inserted by section 1 of the bill by replacing it with the following:

(g) "Neglect" means the failure or omission on the part of the caregiver to provide the care, supervision, and services necessary to maintain the health of an elderly, disabled, or impaired adult, including, but not limited to, food, clothing, medicine, shelter, supervision, and medical services, that a prudent person would consider necessary for the well-being of an elderly, disabled, or impaired adult. The term "neglect" also means the failure of a caregiver to make a reasonable effort to protect a disabled adult or an elderly person from abuse, neglect, or exploitation by others. "Neglect" is repeated conduct or a single incident which produces or could reasonably be expected to result in serious bodily injury.

Amend RSA 631:8 as inserted by section 1 of the bill by inserting after paragraph III the following new paragraphs:

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

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

Amend the bill by replacing section 2 with the following:

2 Effective Date. This act shall take effect upon its passage.

Speakers

SIGN UP SHEET

To Register Opinion If Not Speaking

Bill # 180-FN Date 1/16/2001

Committee Criminal Justice + Public Safety

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

Name	Address	Phone	Representing	(check one) Pro	Con
Doug McNutt	129 Pleasant	271-4681	DEAS	X	
JOE BYRON	555 AUBURN ST MANCH. NH. 03103	644-2240			
DEP. JEFF CZAPIEC	MANCH. POLICE DEPT.	668-8711	SENIOR SERV. UNIT	✓	

Hearing Minutes

HOUSE COMMITTEE ON CRIMINAL JUSTICE AND PUBLIC SAFETY

PUBLIC HEARING ON HB 180-FN

BILL TITLE: relative to criminal neglect of elderly, disabled, or impaired adults.

DATE:

LOB ROOM: 204 **Time Public Hearing Called to Order:** 1:30 pm

Time Adjourned: 2:55 pm.

(please circle if present)

Committee Members: Reps. Welch, Tholl, Sargent, Flora, Mikowleski, Fesh, Jones, Kennedy, Lessard, W. Kelley, K. Gilbert, Nedeau, Stevens, Knowles, Berube, O'Keefe, Callaghan, Rodd, Splaine and Movsesian.

Bill Sponsors: Reps. Flora, Sargent, P. Katsakiores, O'Keefe Sen. D'Allesandro

TESTIMONY

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

See attached :

New Hampshire House of Representatives
Criminal Justice and Public Safety Committee
Committee Minutes

Bill Number - HB 180-FN **Date of meeting** - January 16, 2001
Presiding - Rep. David A. Welch, Chair

Testifying:

1. Rep. Kathleen Flora, Hillsborough Dist. # 15, 9 Hitching Post Rd., Bedford, NH (472-2401). Prime sponsor, in support. Worked on the bill through the summer to clear up some objections to the original bill.

2. Sen. L. D'Allesandro, Dist. # 20, 332 St. James Ave., Manchester, NH (669-3454), co-sponsor, in support. His father was taunted in a nursing home; there was an altercation; he ended up with a broken arm. Need to protect the elderly.

In answer to question from Rep. Welch: This bill addresses cases of "knowingly", "purposely", or "recklessly" causes serious bodily injury.

Rep. Kennedy: questions the 'voluntarily' context. If he volunteered to bring soup to someone 2 days in a row, then didn't bring any the 3rd and subsequent days, is he guilty of neglect? Response: No, you have to willfully and purposely cause serious bodily injury.

3. Rep. Phyllis Katsakiores, Rockingham Dist. #13, Bradford St., Derry, NH (434-9587), co-sponsor, in support. Talked about a Manchester neglect case. There is already an abuse statute on the books. We're talking about real neglect here, not the good-hearted people.

4. Douglas McNutt, DEAS, Adult Protection, 129 Pleasant St., Concord, NH (271-4681). Worked with the committee drafting this bill. Gave history of original bill & the evolution into the present bill. The bill evolved because the case above—an elderly woman being taken care of by her son. She'd been removed against doctor's order from a nursing home; admitted to hospital, covered with feces, urine, and decubiti. Atty. General & others were involved in determining whether or not legislation was warranted. Echoed the "knowingly, purposefully & recklessly" arguments.

Rep. Gilbert: What's the complaint process?

Response: DEAS can be notified and do an investigation and report under the civil statute. This bill would create a criminal statute, and citizen could report it to the local police depts., too.

5. Joe Byron, retired Manchester Police Dept, Senior Services Officer for the last 4 years, 555 Auburn St., Manchester, NH (644-2240), in support. He investigated the case referred to. No criminal statute existed to prosecute the case. The neglect in this case was long term.

6. Jeffrey Cahill, Asst. Atty. General, Director of Medicaid Fraud Unit, (271-1246), in support. Abuse not really a problem in NH nursing homes. Legislation is necessary to provide an "aura of security". Person in this case might have been prosecuted under present law. This bill puts the public on notice that they have the responsibility as caregivers, and defines that. There's deterrent value. Police can say at the beginning of abuse that the caregiver might be charged if improvements don't occur. "Purposely" refers to pre-meditation. There are high burdens of proof in this bill.

Rep. Fesh: Would "willfully and wanton" be better words?

Response: Purposely is what we use in assault statutes. Willfully may be a higher bar.

7. Carolyn A. Virtue, (228-2400), in support with some concerns. She is a caregiver. Her staff provide intermittent support—maybe 2 hours a day—to some clients, but are considered caregivers. Also, these individuals who receive care have a statutory right to refuse treatment which may in the end, cause them bodily harm. Patient can choose to be "at risk" if they are mentally competent, and the caregiver shouldn't be penalized.

continued on page 2

New Hampshire House of Representatives
Criminal Justice and Public Safety Committee
Committee Minutes

Bill Number - HB 180-FN **Date of meeting** - January 16, 2001
Page 2

Atty. Cahill: You're not withholding care.

Ms. Virtue: Need language which acknowledges people's right to refuse treatment and the caregiver, in those instances will not be held responsible.

8. Bob Dunn, representing N.H. Health Care Assn., (226-1000), no position. Has a problem making it applicable to facilities like nursing homes. They are highly regulated.

Rep. Kennedy: Wouldn't you feel safer if a policeman could step into that nursing home if neglect occurs?

Response: I'd feel perfectly safe under the present nursing home regulations.

Rep. Knowles: If you're regulated so tightly and closely, why are you concerned that n.homes are included?

Response: There have been no such incidents, and it's unnecessary to include them.

Rep. Sargent: similar question as Rep. Knowles. Even if in a nursing home, if someone is neglected to this extent, shouldn't they be prosecuted..

Response: similar to above.

Rep. Berube: similar question.

Sub-committee appointed: Chair-Rep. Sargent; Reps. Flora, O'Keefe, Knowles, Stevens

Rep. Maxwell D. Sargent - Clerk

Sub-Committee Actions

HOUSE COMMITTEE ON CRIMINAL JUSTICE AND PUBLIC SAFETY

SUBCOMMITTEE WORK SESSION ON HB 180-FN

BILL TITLE: relative to criminal neglect of elderly, disabled, or impaired adults.

DATE: 1/23/01

Subcommittee Members: Reps. Sargent, Flora, O'Keefe, Knowles, Stevens
CHAIR

Comments and Recommendations:

Amendments:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Motions: OTP, OTP/A, ITL, Re-Refer, Interim Study (Please circle one.)

Moved by Rep. Flora

Seconded by Rep. O'Keefe

Vote: ~~3~~ 5-0

Motions: OTP, OTP/A, ITL, Re-Refer, Interim Study (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote:

Respectfully submitted,

Rep.
Subcommittee Chairman/Clerk

Sub-Committee Minutes

New Hampshire House of Representatives
Criminal Justice and Public Safety Committee
Sub -Committee Minutes

Bill Number - HB 180-FN **Date of meeting** - January 23, 2001
Presiding - Rep. Maxwell D. Sargent, Chair

Bob Dunn: Nursing Homes don't want to be faced with deficiencies. Particularly hot issue with the Federal Government now with almost zero deficiency tolerance. Don't want to be in a position where's there's a deficiency open to criminal proceedings.

Reps. Sargent, Flora and Katsakiores agreed that nursing homes shouldn't be excluded as it might look like a 'cover-up'.
Home Health: What if someone who goes into the home calls in sick or doesn't show, and person falls down and breaks hip. Does reporting get them out of the loop?

Discussion about the patient's bill of rights, and how language should be included in the legislation to ensure that it doesn't infringe upon self-determination or right to refuse treatment. (Atty. Doug McNutt discussed the issue with the sub-committee).
Lyn Koontz—DEAS—also was part of the discussion.

It was discussed about changing 'carelessness' to 'recklessness.
RSA 161F-57 mandates abuse reporting.
Jeanette Gagnon, DEAS, and Jim Monahan, NH Assn. of Counties both entered into the discussions re: definition of caregiver.

Doug McNutt spoke about the issue of vicarious liability; can facility be held liable if employee neglects a resident/patient?

The sub-committee unanimously voted to recommend passage as amended: adding the self-determination language, the recklessness word, and later agreed to put in the religious exemption wording offered up by the delegate from the Christian Science Church.

Voting Sheets

OK

HOUSE COMMITTEE ON CRIMINAL JUSTICE AND PUBLIC SAFETY

EXECUTIVE SESSION on HB 180-FN

BILL TITLE: **relative to criminal neglect of elderly, disabled, or impaired adults.**

DATE: 2/21/01

LOB ROOM: 204

Amendments:

Sponsor: Rep. FLORA — OLS Document #: 2001-0042h

Sponsor: Rep. — OLS Document #:

Sponsor: Rep. — OLS Document #:

Motions: OTP, OTP/A, ITL, Re-Refer, Interim Study (Please circle one.)

Moved by Rep. SARGENT

Seconded by Rep. Tholl

Vote: 14-0 (Please attach record of roll call vote.)

Motions: OTP, OTP/A, ITL, Re-Refer, Interim Study (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote: (Please attach record of roll call vote.)

CONSENT CALENDAR VOTE: 14-0

(Vote to place on Consent Calendar must be unanimous.)

Statement of Intent: Refer to Committee Report

Respectfully submitted,

Rep. Maxwell D. Sargent, Clerk

OFFICE OF THE HOUSE CLERK 2001 SESSION

CRIMINAL JUSTICE AND PUBLIC SAFETY

Bill #: HB 180-FN **Title:** relative to criminal neglect of elderly, disabled or impaired adults

PH Date: 01/16/01 **Exec Session Date:** 02/21/01

Motion: Ought to Pass with Amendment **Amendment #:** 2001-0042h

MEMBER	YEAS	NAYS
Welch, David A, Chairman	✓	
Tholl, John E, Vice Chairman	✓	
Sargent, Maxwell D	✓	
Flora, Kathleen M	absent	
Mikowlski, Walter J	absent	
Fesh, Bob M	✓	
Jones, Constance A	✓	
Kennedy, Richard E	absent	
Lessard, Rudy	absent	
Kelley, William J	absent	
Gilbert, Karl I	✓	
Nedeau, Stephen H	✓	
Stevens, Stanley E	✓	
Knowles, William V	absent	
Berube, Roger R	✓	
O'Keefe, Patricia M	✓	
Callaghan, Frank D	✓	
Rodd, Beth	✓	
Splaine, James R	✓	
Movsesian, Lori A	✓	
TOTAL VOTE:	14	0

Printed: 12/21/2000

Committee Report

COMMITTEE REPORT

COMMITTEE: **Criminal Justice and Public Safety**

BILL NUMBER: **HB 180-FN**

TITLE: relative to criminal neglect of elderly, disabled, or impaired adults.

DATE: Feb. 21, 2001 CONSENT CALENDAR YES ☒ NO ☐

☐ OUGHT TO PASS

☒ OUGHT TO PASS WITH AMENDMENT

☐ INEXPEDIENT TO LEGISLATE

☐ REFER TO COMMITTEE FOR INTERIM STUDY
(Available only in second year of biennium.)

STATEMENT OF INTENT
(Include Committee Vote)

HB 180-FN addresses the issue of criminal neglect of the elderly by a caregiver. This bill makes it a class B felony for a caregiver who knowingly or recklessly causes serious bodily injury by neglect of an elderly, disabled or impaired adult. Neglect is specifically defined, and is described as repeated conduct or a single incident which produces or could reasonably be expected to result in serious bodily injury. The committee heard of a horrifying case of neglect in Manchester, for which the authorities were in a quandary on what charges to bring forth. This bill is intended for those most serious and egregious cases of neglect. It also includes a provision to protect a person's right to self-determination or right to refuse treatment, and also a person's right to spiritual healing even if that conflicts with recommended medical treatment.

Vote 14-0.

Rep. Maxwell D. Sargent
FOR THE COMMITTEE

Original: House Clerk
cc: Committee Bill file

USE ANOTHER REPORT FOR MINORITY REPORT

CONSENT CALENDAR

Criminal Justice and Public Safety

HB 180-FN, relative to criminal neglect of elderly, disabled, or impaired adults. **OUGHT TO PASS WITH AMENDMENT**

Rep. Maxwell D. Sargent for Criminal Justice and Public Safety: HB 180-FN addresses the issue of criminal neglect of the elderly by a caregiver. This bill makes it a class B felony for a caregiver who knowingly or recklessly causes serious bodily injury by neglect of an elderly, disabled or impaired adult. Neglect is specifically defined, and is described as repeated conduct or a single incident which produces or could reasonably be expected to result in serious bodily injury. The committee heard of a horrifying case of neglect in Manchester, for which the authorities were in a quandary on what charges to bring forth. This bill is intended for those most serious and egregious cases of neglect. It also includes a provision to protect a person's right to self-determination or right to refuse treatment, and also a person's right to spiritual healing even if that conflicts with recommended medical treatment. **Vote 14-0.**

2/25/01

To: Rep. Kathy Flora + DAVE WELCH

From: Max Sargent

Good morning, Kathy! We voted on HB 180 on Wednesday. No one was eager to make the motion, so yours truly got the job! I told Dave that I wanted to give you the opportunity to either do the blurb or at least have input.
Here is a draft I've come up with, totally open to your suggestions! We need to get this over to the State House by Wednesday a.m. I will do that if you can get back to me with your suggestions.

Thanks!

HB 180-FN addresses the issue of criminal neglect of the elderly by a caregiver. This bill makes it a class B felony for a caregiver who knowingly or recklessly causes serious bodily injury by neglect of an elderly, disabled or impaired adult. Neglect is specifically defined, and is described as repeated conduct or a single incident which produces or could reasonably be expected to result in serious bodily injury. The committee heard of a horrifying case of neglect in Manchester, for which the authorities were in a quandary on what charges to bring forth. This bill is intended for those most serious and egregious cases of neglect. It also includes a provision to protect a person's right to self-determination or right to refuse treatment, and also a person's right to spiritual healing even if that conflicts with recommended medical treatment.

2/27 - Dave — Kathy hasn't responded, so she may be out of town. Do you want to go with this?
— Max

COMMITTEE REPORT

COMMITTEE: **Criminal Justice and Public Safety**

BILL NUMBER: **HB 180-FN**

TITLE: relative to criminal neglect of elderly, disabled or impaired adults.

DATE: 2/21/01 CONSENT CALENDAR YES ☒ NO ☐

☐ OUGHT TO PASS

☒ OUGHT TO PASS WITH AMENDMENT

☐ INEXPEDIENT TO LEGISLATE

☐ RE-REFER

☐ REFER TO COMMITTEE FOR INTERIM STUDY
(Available only in second year of biennium.)

STATEMENT OF INTENT
(Include Committee Vote)

Vote 14-0

Rep. SARGENT
FOR THE COMMITTEE

Original: House Clerk
cc: Committee Bill file

USE ANOTHER REPORT FOR MINORITY REPORT