Bill as Introduced

HB 180-FN – AS AMENDED BY THE HOUSE

08mar01...0042h

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

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 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.

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.

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

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

Senate Judiciary
June 6, 2001
2001-1504s
04/09

Amendment to HB 180-FN

Amend RSA 631:8, I and II as inserted by section 1 of the bill by replacing it with the following:

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.

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

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

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

(f) "Neglect" means the failure or omission on the part of the caregiver to provide the care, supervision, and services which he or she has voluntarily, by contract, or by order of the court agreed to provide and which are necessary to maintain the health of an elderly, disabled, or impaired adult, including, but not limited to, food, clothing, medicine, shelter, supervision, and medical services, that a prudent person would consider necessary for the well-being of an elderly, disabled, or impaired adult. 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.

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

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

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

Senate Judiciary
January 22, 2002
2002-2255s
04/10

Amendment to HB 180-FN

Amend the bill by replacing all after the enacting clause with the following:

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. A caregiver shall not include an uncompensated volunteer unless such person has agreed to provide care and is acting in a fiduciary capacity.

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

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

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

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

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

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

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

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

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

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

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

2 Effective Date. This act shall take effect 60 days after its passage.

Committee Minutes

Date: May 2, 2001
Time: 11:05 a.m.
Room: 103 LOB

The Senate Committee on Judiciary held a hearing on the following:

HB 180-FN relative to criminal neglect of elderly, disabled, or impaired adults.

Members of Committee present: Senator Gordon
Senator Pignatelli
Senator Prescott
Senator Roberge
Senator Fernald

The Chair, Senator Edward M. Gordon, opened the hearing.

Senator Edward M. Gordon, D. 2: I will open the hearing on HB 180-FN relative to criminal neglect of elderly, disabled or impaired adults.

Rep. Flora cannot make it today so we will open the hearing and accept testimony but will offer Rep. Flora the opportunity to speak to us.

Okay I guess there was a...my understanding is that Joe Byron, you have another obligation and you have to get in and out.

Please take a seat.

Joe Byron: Thank you. Mr. Chairman, while I am testifying would you mind if I distributed some photographs? They are something that I am going to testify about.

Senator Edward M. Gordon, D. 2: Actually, just give them to the Secretary and she'll pass them around.

Joe Byron: Just for a warning, they are very graphic. It's of a neglect case and this was pictures of the neglect case.

Good morning. My name is Joe Byron and thank you for having me here today. I recently retired from the Manchester Police Department after 24 years.

The last four years with the police department I served as the Senior Services Officer, one of only two full time Senior Services Officers in the state. Although my assignment was very gratifying I was extremely surprised by some of the things that I witnessed as the Senior Services Officer.

This neglect case came to light as the result of an investigation by the Division of Elderly and Adult Services. During our investigation we looked for criminal neglect in the statute and it wasn't to be found. As a result of countless hours of collaborative efforts by many agencies, we are here today to ask your assistance in the passage of this bill.

You have the photographic images of the victim in this case. I have to warn you that they are very graphic. As you look at these photographs, just imagine how long this person suffered. Imagine the pain that she endured for such a long period of time. Imagine how long it took for her skin to get stained by her own feces. I can assure you that after you look at these images, it will not be the last time that you think of this person and the suffering that she endured to get to the state that she was in, in these photographs.

Thank you.

Senator Edward M. Gordon, D. 2: Any questions for Mr. Byron? Seeing none, thank you for coming today. We appreciate your coming to give your testimony.

Rep. Katsakiores, did you wish to testify?

Rep. Phyllis Katsakiores, Rock, 13: Good morning Mr. Chairman and members of the Senate. For the record my name is Rep. Phyllis Katsakiores, and I representing Derry, Rockingham, 13.

I think that Mr. Byron that just testified kind of gave you an example of what the bill was about. The way I got involved in it is that he had called me and told me about these cases that were arising in the city of Manchester. That the emergency wards in the hospitals were calling him, telling him about real grievous conditions of elderly that had come in, and that they would like to have prosecution and go to court. And there was nothing on the books that explains or does anything that has legislation that covers neglect. There's elderly abuse, there's elderly...but there's no neglect. So he felt very seriously that there should be something in there that would take care of the word "neglect."

There's so many people here that really want to testify on this that has the real meaning of it, and I just wanted to introduce the bill, but I would be happy to answer any questions.

Senator Edward M. Gordon, D. 2: Any questions? Sen. Roberge.

Senator Sheila Roberge, D. 9: Yes. The person who, I should have asked Officer Byron, the person whose pictures those are, where did that person live? Was it a nursing home? Were they living alone?

Rep. Phyllis Katsakiores, Rock, 13: She lived with her son. The son was the care giver.

Senator Sheila Roberge, D. 9: Her son! Oh...in a home setting.

Rep. Phyllis Katsakiores, Rock, 13: Yes. It was a home setting.

Senator Sheila Roberge, D. 9: Did she happen to have visiting nurses so that..

Rep. Phyllis Katsakiores, Rock, 13: No the son stopped all that.

Senator Sheila Roberge, D. 9: Oh, he did.

Rep. Phyllis Katsakiores, Rock, 13: He didn't allow anybody into the house until she got so bad. I guess there was more than one time that this elderly lady was taken to the emergency ward and that's when the emergency ward got a hold of Joe Byron and said, you know, you've got a

problem here and it has to be taken care of. And this is how it all came about.

Senator Sheila Roberge, D. 9: And then did they have to return her back to that?

Rep. Phyllis Katsakiores, Rock, 13: There was nothing, right. They did. They had to return her back because there was nothing to address neglect. And she died just a few months after those photos were taken.

Senator Edward M. Gordon, D. 2: Any other questions? Seeing none, thank you Representative.

Rep. Phyllis Katsakiores, Rock, 13: Thank you very much.

Senator Edward M. Gordon, D. 2: Doug McNutt.

Douglas P. McNutt: Mr. Chair, members of the committee. For the record my name is Doug McNutt. I am the Administrator of the Office of Community Services within the Division of Elderly and Adult Services.

And it is through our involvement with protective services program that we were involved in this matter. I have some brief written testimony which I will submit to the committee. **(See Attachment "A")** I basically want to go over the history of this.

This involved a case of an individual who had had a series of visits to the hospital and subsequently was in a nursing home. The son described in this case took the mother from the nursing home and I don't have, I do have in my possession the records, but it is my memory that was home for about a month or so prior to ending up again in the emergency room and ultimately dying in the hospital.

As a result of this we brought together a group of people in the beginning of 1999 that included local law enforcement, included the criminal bureau from the Attorney General's Office, and included people from our department and it initially included emergency room people from CMC.

As Officer Byron indicated there was a conclusion that there wasn't an effective way to prosecute people for criminal neglect. Certainly assaults

and financial crimes are more adequately covered under the criminal code, or at least that was the assessment of the group.

Out of that grew HB 1520 which was submitted last year, went through the criminal justice committee, was sent to study. A couple of significant changes were made, the original bill as drafted had misdemeanor penalties and included a negligent state of mind.

As a result of that study committee it was felt that there should only be *purposely, knowingly and recklessly* added as mental states and *requiring serious bodily injury.*

That bill came to the House this year. There were a couple of amendments made in the House this year to deal with an exception, sort of a Christian Science exception, I guess, for spiritual treatment, and also a number of providers were concerned about the fact that there are numbers of people who refuse treatment, and would you be considered to be neglecting someone who is actually refusing treatment. So again there was another provision added to the bill to deal with that concern.

So that's how the bill has found its way to this committee. As I say, there had been study and work on this bill for, at this point approximately two years. And it comes to you today in this form.

We think that in it's current from the bill is narrowly drafted, will not bring in people who have not committed what I think is a fairly egregious criminal act, and therefore I present it to you for your approval.

I am happy to answer any questions you might have.

Senator Edward M. Gordon, D. 2: Questions? Senator Fernald.

Senator Mark Fernald, D. 11: Let's say a family member, let's say we have an elderly person who lives in Dover and we have a family member who lives in Keene, a son. And the son knows the mother needs some help over in Dover and so hires a nurse to look in on the mother every day. And whoever is hired isn't doing a good job and the person really is suffering. But the son doesn't know it.

Does the son get prosecuted under this statute?

Douglas P. McNutt: Well, again, Attorney Cahill is here from the Attorney General's Office and he is a criminal lawyer. The issue there I think goes to whether or not, the knowingly business, and I don't know. At some point I suppose, if you hadn't visited your mother for a year you might argue that you haven't fulfilled your duty to observe her and see that that's working out. Obviously I think if it is a short period of time and you think that person is there, you know, I think those are judgments prosecutors have to make based on the statute.

Senator Edward M. Gordon, D. 2: Any other questions? Senator Prescott.

Senator Russell E. Prescott, D. 19: Thank you Mr. Chairman.

When you describe caregiver the second time in Section I, part (b), line 9.

Douglas P. McNutt: Yes.

Senator Russell E. Prescott, D. 19: Neighbors are referenced? And then in line 28 it, well that section (g) of "neglect", that's a lot you are asking a neighbor to be responsible for.

Douglas P. McNutt: Yes, I think though, Senator, the intent of that definition is a person who has been entrusted with or has assumed the responsibility. I would not argue that a neighbor who happens to visit periodically has assumed that responsibility. I think the intent here is that somebody, it says here "by contract, or by order of the court". I mean you might have a neighbor who has power of attorney or who might have some significant responsibility for the person as opposed to a neighbor who simply would visit or has a regular neighbor relation. I don't think that we're in any way assuming that every neighbor is responsible as a care giver.

Senator Russell E. Prescott, D. 19: So we need to narrow part (b) to define caregiver and that it may be a neighbor.

Douglas P. McNutt: That may be so, sir. I guess I'd have to look at it.

Senator Russell E. Prescott, D. 19: Good. Thank you.

Senator Edward M. Gordon, D. 2: I guess, just if I could follow up on Sen. Prescott's question. Why is that sentence that begins on line 9 and goes through 11 needed at all. Doesn't that actually seem to cause more problems than it solves in the fact that I am concerned that that might have a cooling effect on people. Particularly, I live next door, have a next door to a little old lady, looking in on her occasionally, know she's probably not living in circumstances which I think are great, but that's a matter of her choice. I don't want to think that because I have taken on myself to do that that I have now subjected myself to liability. To be exact, potentially criminal liability.

Douglas P. McNutt: Senator, I am not sure that, you are referring to the sentence that begins with "caregiver" includes.

Senator Edward M. Gordon, D. 2: Right.

Douglas P. McNutt: I am not sure that is needed either, but maybe somebody behind me has a different opinion, so I agree with you, I am not sure that is necessary.

Senator Edward M. Gordon, D. 2: Any other questions?

Thanks Doug. Senator D'Allesandro, did you wish to speak on HB 180? I know you are a sponsor.

Senator Lou D'Allesandro, D. 20: Yes. Thank you. If I could speak briefly. I appreciate your giving me this opportunity. For the record I am Lou D'Allesandro, Senator from district 20, Manchester wards 3, 4, 10, and 11 and the town of Goffstown.

I come before you in support of HB 180. We, Phyllis Katsakiores and myself sponsored this in the last session of the legislature. And it went to interim study. This is the result of that bill and the work that has been done over the summer with regard to this piece of legislation.

I just want to iterate a couple of experiences that would appear to me to be good rationale for a piece of legislation like this.

First of all our population is growing older and we are choosing to be put in nursing facilities or cared for by our children or relatives. And there have been ample circumstances where abuse has taken place.

I am going to give you an iteration of two cases of abuse which I think are absolutely indicative of what's happening in this environment.

My father was placed in a nursing home. My father had Alzheimer's. We paid a lot of money for my father to be taken care of. We paid about $7000 a month. He was constantly harassed by a member of the staff to the point where my father got into an altercation with the member of the staff. They go into a fight. My father was 85 years old, gets into a fight and in terms of trying to defend himself breaks his arm.

Now they were harassing my father. And he was a volatile person, and those of you who have had any association with people with Alzheimer's know that that's an effect. When people are harassed they come out and sometimes react very, very violently. We went to the people at this particular nursing home, and really had no recourse. This was an out of state nursing home.

So I think things like that are happening all the time. We sponsored this bill and about two weeks later we had an incident and I think Phyllis can give you an iteration of this where a member of a family killed a person. And that was in New Hampshire. This was last year after we put this bill together. It was in a nursing facility and we said, gee, here is a remarkable situation that goes right into what we were talking about in terms of elderly abuse and neglect.

I think that it's important that we put something in place that says that people do have some protection. And if they are being abused there is a penalty for it. We are living longer , we are requiring care and it just seems to me that when we accept this we also accept the responsibility to do it in a proper manner. That's the genesis of this bill, that's why I am on the bill. I have a deep concern for what is happening.

Officer Joe Byron who was the officer in charge of the elderly in Manchester, Joe and I were talking for a couple of years about problems. And Joe was involved with these on a rather regular basis in his position as the officer in charge of the elderly in Manchester. And I am sure that Joe in his testimony gave you ample circumstances as to why this piece of legislation is required.

That basically I why I co-sponsored the bill. I believe strongly that we need this type of legislation and I will try and answer any questions that you might have.

Senator Debora B. Pignatelli, D. 13: Senator Roberge has a question for you.

Senator Sheila Roberge, D. 9: I am a little bit concerned that for instance you are a care giver to my mother and mother is bed ridden and for some reason or another I have to go out and do some errands and she decides that she is going to get up and go to the bathroom by herself.

You've got a part in here which says serious bodily injury. What about as a result she gets up and she really isn't supposed to and is not really capable of doing such. And I've just gone out for a few minutes but I haven't really hired anybody to baby sit her while I'm gone, because I don't foresee that she's going to get out of bed. What kind of problem could that cause for me.

Senator Lou D'Allesandro, D. 20: Well, I don't think that would cause a problem for you because I think in the bill when they talk about neglect, it says that *"neglect" is repeated conduct or a single incident of carelessness which produces or could reasonably be expected to result in serious bodily injury.*

So the incident that you have given the iteration of, wasn't an intent to cause bodily harm. And I think in the context of the word neglect you have to, you have to fail to do something. And in terms of failing to do something failing to make a reasonable effort to protect the disabled adult or elderly person.

So it would appear to me and using good judgment that your case wouldn't result in a situation where there would be a crime committed. You know, I think in all situations there has to be an *intent* to neglect. And I think an intent from my standpoint means you willfully do something that causes bodily harm. Physical abuse, and that's situation.

And that's what we see occurring, it's not the situation that you mentioned. Most people in that situation are caring; they are working diligently to try to provide the kind of care that they have accepted the responsibility for.

What we are talking about is, when they beat them up! And that happens. And that's happening too frequently, all too frequently.

Senator Debora B. Pignatelli, D. 13: Any other questions? Thank you Senator D'Allesandro.

Senator Lou D'Allesandro, D. 20: Thank you Senator. I appreciate it.

Senator Debora B. Pignatelli, D. 13: Ed Brueggemann?

Edward Brueggemann, AARP: When I heard the heat was on in the Senate and the House to act, I didn't know it meant superheating their hearing rooms.

(laughter)

Susan Duncan: You got that right.

Senator Debora B. Pignatelli, D. 13: You think it's warm in here?

Susan Duncan: It is very stuffy.

Edward Brueggemann, AARP: My name is Ed Brueggemann. I live in Concord and have lived in New Hampshire for 30 years. I am here…

Senator Debora B. Pignatelli, D. 13: Just a minute, Mr. Brueggemann.

(windows being opened)

Senator Russell E. Prescott, D. 19: We are addressing your first comment.

Senator Debora B. Pignatelli, D. 13: We react in the Senate.

Edward Brueggemann, AARP: You really get results!

Senator Debora B. Pignatelli, D. 13: Now we are all awake.

Senator Mark Fernald, D. 11: When we try to do the people's business. When the people speak, we listen.

Edward Brueggemann, AARP: Well you are going to have ample opportunity, I hear.

(Mr. Brueggemann resumes with written testimony, Attachment "B")

That's as straight forward as I can be.

Senator Debora B. Pignatelli, D. 13: We appreciate it. Thanks. Any questions? Thanks again.

Jeff Cahill form the Attorney General's Office. Good morning.

Jeff Cahill, AG's Office: Good morning. I won't say it's too cold in here now.

(laughter)

My name is Jeff Cahill, Assistant Attorney General, and I am here to testify on behalf of the Office of Attorney General and the Department of Justice in favor of this legislation. In terms of how it would effect the existing criminal laws, it would add two criminal statutes, two criminal provisions.

One would be a class A felony, and what it would do would make it a crime for an individual care giver, as defined by statute to purposely cause serious bodily injury to the identified victims in the statute. That being, a disabled adult, and elderly adult, or an adult as defined .

To try and make that clear as to what that would involve in terms of a prosecution, to act purposely is to try to have the conscious object to cause the intended result. So the defendant in that case, it would have at the outset of that defendants conduct, their failure to act or their acting in conformity with the definition of neglect, it is their conscious object to cause the harm. That individual wants the victim to suffer the serious bodily injury that comes about. Otherwise the state wouldn't be able to charge "purposely". That's the class A felony that is being added.

The other criminal statute being added is a class B felony which addresses two lesser mental states, which is why it is ratcheted down from a class A

felony to a class B felony. The mental states for a class B felony are whether the defendant acts knowingly or recklessly.

To act recklessly is to be aware of and consciously disregard a substantial risk that the, in this case, serious bodily injury will come about. The defendant will have to act – behave in a manner where that form of neglect would be something that is a gross deviation from what a law abiding person would engage him or herself in.

So this is certainly not legislation that is designed to criminalize negligent conduct. Even negligent criminal conduct, which is a crime. I mean, if someone can cause a negligent homicide, this, the mental states required of convictions with these two provisions require higher mental state, a more criminal mental state than negligent.

The hypothetical that Senator Roberge provided, it is only my opinion but from my experience that as defined, you would need more facts, but that doesn't even sound like that was an act of negligence to go out of the home and then the adult or impaired adult suffers an injury while the caregiver is not at home, let alone it being an act of recklessness.

One typical situation that I guess I would foresee is where this legislation if on the books would provide a great value, is taking the case of the Manchester resident who over a period of time slowly suffered and sustained injuries that probably at the outset were mere bodily injuries. Bedsores, lesions, that because there was no intervention, grew worse, and over time became what would be clearly defined as serious bodily injuries.

Serious bodily injury is the only type of injury that can be prosecuted under this new legislation. And serious bodily injuries are defined by statute already as *a severe permanent or protracted loss of a function of the body.* So it wouldn't be mere bruising by any means.

In that particular case, had law enforcement had criminal provisions in place, it's certainly conceivable in that case and in future cases that law enforcement could intervene before an injury, before a deteriorating condition went from bodily injury to serious bodily injury.

In that regard there would be a deterrent value where law enforcement would feel they could educate and council the caregiver, that clearly you are

not, this is in a deteriorating situation, you are running a risk of being a defendant in a future criminal case. You need to take other steps before the person you are caring for suffers serious bodily injury.

The other important aspect of this legislation is that it provides a definition of who a caregiver is. It provides that notice to people in the community that by assuming the duty of being a caregiver, either by contract or voluntarily, that he or she assumes a duty under the criminal law to not, at a minimum, to not engage in reckless neglect causing serious bodily injury.

Senator Mark Fernald, D. 11: I want to follow up on Senator Roberge's question. She asked a "supervision" question and the word "supervision" appears on line 25.

And this is sort of taken from cases in the newspaper. An elderly person has Alzheimer's; a family member is the caregiver in the home; and the elderly parent is living with the child and the child goes out to do shopping.

Mom's always been fine at home alone without leaving, knows not to turn on the stove, knows not to do this or that, well, mom wanders out of the house never to be seen again – or is injured. We have had some cases where people have completely disappeared, Alzheimer's adults who have walk out of the house or injure themselves. And I guess my concern is, do these people then get charged with basically neglect, for failing to provide adequate supervision?

And my question to you is, in that circumstance what's your reading with what happens under this if this becomes law.

Jeff Cahill, AG's Office: Ah, under this proposed criminal legislation the state would have to prove four or five elements. They would have to prove number one, that the defendant acted recklessly. Aware of and consciously disregarded a substantial risk, in this case that the victim would do what the victim did and suffer serious bodily injury as a result.

At a minimum I would expect that there would have to be additional facts that this wandering had occurred before. That in the light of that reality, in the light of that pattern of wandering or previous risk that the care giver did not take any other action or precautions.

My sense is that at a minimum you would have to have those kinds of facts to have it start to look like recklessness. You know, I hate to use this as an example but by analogy, the dog bite situation. Where, what is it, if you own a dog and a dog bites somebody, are you automatically negligent? At most you are negligent, you are certainly not reckless. And then there is the old adage, you get one free bite before you are put on notice that your dog is potentially dangerous.

I am not saying that is a good example but it comes to mind in terms of fleshing out negligent versus reckless.

Senator Mark Fernald, D. 11: Can I make one more comment?

Senator Debora B. Pignatelli, D. 13: Certainly.

Senator Mark Fernald, D. 11: Where you involved in the drafting of this?

Jeff Cahill, AG's Office: I was not directly involved in the drafting. Our office was. Walter Maroney, when he was with consumer, and a second lawyer there. I do know that in terms of looking at what definitions would make sense and would be appropriate, they did research other states, and the definitions that are in place there as I understand them, can be fairly easily be found in other states.

This is not drafting sort of, in some back room where we think these are good ideas. They are actually in place in other states and I would be happy to accept the responsibility to put together some composite or find what other states have laws that already resemble this.

Senator Mark Fernald, D. 11: The reason why I ask is I wanted your take on two different things from a drafting point of view. I think everybody would agree that someone who is providing care and is neglecting that person, like we've seen in the photos and I'm sure there are many other circumstances, stories that haven't been brought before us, that would obviously be someone who is neglecting someone who is in their care. But the words that I want to focus on are supervision and services, because we've, in this bill, we broaden caregiver to be not simply, in addition to somebody who is providing personal care, we've also included someone who is providing supervision and someone who is providing services.

I don't see gray area with care. If you are caring for someone on a daily basis and they are injured and it is because of your neglect, it is kind of obvious to everybody including probably the perpetrator that they're responsible for what happened and you know, they were following it.

But I am wondering, what are we trying to protect against when we have the word supervision and services in the definition of care and caregiver, or, are we being too broad? That's my question.

Jeff Cahill, AG's Office: The target of the legislation in only a caregiver. The state can only prosecute someone who fits the definition of caregiver, so in that respect your point is well taken in terms of why have supervision in the definition of neglect if a supervisor of a caregiver... that begs the question.

I suppose in theory if you have a CNA providing the direct care and the CNA let's say was a registered nurse in the home. the registered nurse is by contract and by care plan is supposed to be providing medication, pain medication, what have you, to the resident, that at home resident. And that care giver has, let's say his or her own drug problem and they start using the drugs themselves rather than providing the antibiotics, whatever it might be. The caregiver certainly might be subject to criminal prosecution for neglect. Their question may become, does that nurse's employer or supervisor, would they fit within the definition of caregiver so that he or she is also ... they still have to fit in the definition of caregiver...

Senator Mark Fernald, D. 11: Well but what I see in here, the definition of caregiver includes on line 8 the word "services" and neglect on line 25 includes *supervision* and *services*. And I guess my question is, I like the bill but I am wondering, should we amend the bill and take those words out? And if we do are we doing damage to the bill? Or are we making it less broad but maybe that's a good thing to do.

I mean one question someone had raised was are people going to become aware of this law and be frightened away from helping their neighbors or their relatives because they are helping Aunty with her, they are doing her check book now because she can't handle it anymore. And they hire a nurse and meals on wheels to look in on her. And the people who are

looking in on her aren't doing a good job, and so now *I* am guilty of bad supervision because I hired the wrong people.

And I know you are going to say, well the state has to prove purposely and recklessly and this and that, but I am trying to think about from the point of view of the average person who is trying to help Aunty and is worried now that they are going to be tagged with neglect of supervision because we hired the wrong people to look in on Aunty or provide her meals or what have you. So I guess my question is to everybody listening, how important are the words supervision and services in here. Or are we really trying to get at the people who are direct caregivers who are doing no job at all or a lousy job.

Jeff Cahill, AG's Office: The latter. The goal here is to influence the conduct of the direct care provider who is in the, either providing the actual care in the facility or providing actual care in the home, such that the adult victim doesn't sustain the kind of injury we are talking about.

So the hands-on caregiver is the target, but in the case of the Manchester photos that family member was the caregiver because that family member had assumed the…

Senator Mark Fernald, D. 11: No problem with that circumstance but I don't think we will, I assume we will not exec on this today. But my question to those here is, if we took out those words, can we think of circumstances we are aware of where people should be prosecuted for negligent supervision of negligent provision of services that they would then escape if we made that change?

Jeff Cahill, AG's Office: In terms of whether be vulnerable to prosecution you would still have to show that supervisor, that company acted recklessly. And you'd probably need some evidence that that caregiver in the field was directed to do "X" vs. "Y" for that supervisor to have, at the supervisory level to have criminal exposure.

Obviously there is no response to your type of theory in criminal …

Senator Mark Fernald, D. 11: But I am worried still about the effect on the mindset of the general public, because I mean you can see the news stories, Alzheimer's sufferer wanders off when daughter is off shopping and

the news paper is going to say she was found after she was hit by a car and had a broken leg, and police are investigating whether this is neglect by failing to provide supervision and people's alarm bells are going to go off. "Oh my God I can't have my mother in my home, or I can't leave anybody alone for a minute ever again because my name is going to be in the newspaper as a possible neglect person who failed to provide supervision.

And it may well be that if this appears in the newspaper 99 times and 99 times the AG's office says there is no violation of the statute here. But it is going to affect the way people are viewing this whole situation of what kind of care they want to provide. And I know Carol Stamatakis wants to jump up and join in this. So I'll stop talking and let other people ask questions and speak.

Senator Debora B. Pignatelli, D. 13: Are there any other questions for this witness? Thank you very much.

Jeff Czarnec?

Jeff Czarnec: Thank you. I am Detective Czarnec with the City of Manchester Police Department and the Senior Services Unit. I am taking over for Joe Byron who has since retired.

The law enforcement community, and I think I can speak on behalf of them, we are naturally very much in favor of this and personally I am because of the plethora of cases that involve senior citizens. I cover all cases age 55 and up.

I think some of the question appears to be related to investigative protocol. And some of these issues did come up and concerns came to light in the previous committee that had been examining this bill. If I could give you some assurance here that this isn't going to turn into some sort of nazi-esque witch hunt that any Good Samaritan who decides to, you know, look in on a neighbor is going to stand to suffer under some sort of weight of prosecution because somebody is going to pick up the phone and make these allegations.

We investigate every single case thoroughly and not every single case no matter what it is, is going to give rise to a criminal case nor is it going to give rise to some sort of sensationalist article in the media that is going to exacerbate a situation. It's not that case.

As a 22 year veteran I can only give you the assurance that we investigate allegations from square one. We have to operate the lynch pins of probable cause. Couple of states of mind and a number of circumstances that may have given rise to, one of the definitions in the statute. Investigative protocol dictates a thorough, comprehensive investigation of any and all allegations. It is not necessarily going to give rise to prosecution if someone is acting in the scenario to shift capacity. That is just not going to be the case.

This bill is very specific, I can tell you this. Most of these cases, if they give rise to prosecution are going to be forensic based. It's going to come to light because medical testimony, or that we have been alerted by the medical community, that's where these cases are going to be coming form . This is not a pressure sore. This is not going out to grab some milk and grandmom gets hurt. Unless there is a substantial proven pattern, i.e. leading to some kind of developed case, fine. But that's not the case. We are not going to be targeting neighbors, friends or otherwise. We are looking at the *obligation* the obligation that someone has assumed, because there you are sharing a household, they are benefiting from the favor of the senior citizen ID, or mother, what have you.

As in the case with the photographs that Joe Byron presented. There was obligation there based upon there was sharing, they were mutually agreed upon and he was benefiting by the, I believe the parents' good will. So there was an obligation there.

We always have an obligation to report crime when we see it anyway. So I don't see that this is going beyond the scope of a natural progression of events with respect to investigations. If I could assuage the fears of investigative protocol, that's pretty much why I am here and in support of the bill.

Senator Edward M. Gordon, D. 2: I guess the question, obviously if you have, I'm just thinking of relating this to children who also are dependent on parents. Maybe this question was already asked while I was gone, I don't know. And there are parents who are neglectful to their children that may result in their having serious bodily injury. Are there – and because the children are dependent just the way an adult would be, so I guess the question I have is are there laws in place for children in that respect?

Jeff Czarnec: Yes. I don't think I am stepping out of bounds on this one but I believe this legislation basically mirrors the already in effect protective laws that affect children.

Senator Edward M. Gordon, D. 2: And I guess if that's the...the question to that is why would we identify them separately as a adult and children as opposed to put them together in regard to neglectful conduct generally of another person who is a dependent.

Jeff Czarnec: I think because of the terminology that is defined by the term "vulnerability". When we look at people who are, quote, "vulnerable" there are certain things that will lead to that; i.e., medical conditions, physical and/or emotional mental conditions all compounding in a deterioration of the ability to be independent or autonomous. These are some of the things we have had to examine anyway. If you have someone 85 years old who believe they are autonomous, naturally they don't appear to be vulnerable and no one is caring for them because of their vulnerable condition. If someone is vulnerable, usually someone will step in either contractually or there's a family obligation to care for that person because they are now vulnerable because of certain physical circumstances etc.

So it's the same way with children. It transcends from children are vulnerable because of their maturation. And we experience a great deal of senior citizens that are vulnerable because of their, because of their disintegration or deterioration of their physical condition.

Senator Edward M. Gordon, D. 2: Any questions? Thank you for your testimony and thank you very much for coming today.

Jeff Czarnec: Thank you.

Senator Edward M. Gordon, D. 2: Carol Stamatakis?

Carol Stamatakis: I wasn't actually planning to speak. I think Senator Fernald had raised a question about supervision and I was kind of responding to and simply making a point that some individuals require both care and supervision. The care may be seen as meeting their hygiene needs, their need for eating, their need for having their medication monitored or assistance with medication.

Particularly individuals with memory disorder may have a tendency to do things such as, I think the example given was to leave the house. Some individuals do this constantly. We had a case of an individual who was frequently setting fires. Not leaving the stove on but actually setting fires. And there I think the term supervision would be assumed to be a part of caretaking and that's why that word appears. To be clear that that individual if he takes on the caretaking responsibility would be responsible for assuring that the individual gets their supervision as required.

Senator Mark Fernald, D. 11: So you think that if we were to take supervision out that would weaken the bill.

Carol Stamatakis: It might leave a gap in those situations. That would be my concern.

Senator Edward M. Gordon, D. 2: If you just could come up Carol. There will be other questions for you as well.

Carol Stamatakis: Sure.

Senator Edward M. Gordon, D. 2: Do you have a follow up for that, Senator Fernald? If not I have another question.

Senator Mark Fernald, D. 11: Go ahead.

Senator Edward M. Gordon, D. 2: In terms of prosecuting this will the department prosecute these at all or will there be only independent police.

Carol Stamatakis: Yes it would be either the police or the Attorney General's Office. Our office isn't involved with criminal prosecution. We may make a referral to the police if it appears as if a crime has been committed. And if this bill were to pass and we had a situation that appeared to fall within the scope, we would make a referral to law enforcement. And then they would make a determination of whether to prosecute.

Senator Edward M. Gordon, D. 2: And I guess the question is, in terms of the Department, from the Department's perspective obviously recognizing

the case, or the file that was passed around here was certainly heinous, how many referrals do you think the Department would make based on ...

Carol Stamatakis: I don't know. I know that there have been a number of cases where, you know, it was felt that a law of this nature was needed. Cases that appeared as if they were cases that should be prosecuted. And we haven't been able to make those referrals. I don't know if anyone else here has any sense of numbers.

(voice in the back of the room) It would be a limited number. We are not talking about (inaudible), we are talking about in a year I guess about a half of a dozen cases, maybe.

Senator Edward M. Gordon, D. 2: Has anybody mentioned home health while I was gone? Home health aids? What happens if you are the Visiting Nurse Association and you come in and you are providing what you are ordered as far as medical care, and someone makes a determination of this person as not properly cared for. Are they subject to liability?

Carol Stamatakis: We've looked at that in the past and I believe the determination was that they would not be as long as they were carrying out their responsibilities according to the care plan. So only if that individual did something with one of those extreme mental states, which I think are reckless, knowing, whatever the third one is, but they are very extreme mental states. So You would have to have a caretaker doing something with those required mental states and resulting in serious bodily injury. So again I think we are looking at a fairly restrictive situation.

Senator Edward M. Gordon, D. 2: Would you believe that we just had a bill earlier today that would exempt volunteers from liability. Now we have a bill which would create more criminal liability for volunteers. And next year I predict that the Visiting Nurses, if we pass this, the Visiting Nurses Association will be in here asking to be exempted from liability from the statute.

Carol Stamatakis: Yes, I think again though you need to look at the definition of caregiver because that qualifies everything. And also I think you had suggests earlier taking out that last sentence, and I don't think anybody has any objection to that.

You know, I think it may create more confusion than it resolves.

Senator Edward M. Gordon, D. 2: Any more questions? Thank you, Carol. Does anyone else wish to testify on HB 180.

Ed Brueggeman: Would you be open to an additional comment about Senator Fernald's question?

Senator Edward M. Gordon, D. 2: Very brief one, sure.

Ed Brueggeman: While these people know more about this from a professional point of view, I would argue for not eliminating the supervision provisions. A lot of caregiving is provided by agencies. And if an agency doesn't know that a caregiver is being abusive, then of course they are not liable. But I can imagine a case where because of the labor shortage, a caregiver is abusive, and it turns out that they were abusive in two other situations but were reassigned cause they didn't want to let the person go because they needed the help.

In a case like that I think you need to hold the agency responsible for some liability then too. In terms of it's supervisory role to assure that people are properly trained, and can fulfill their responsibilities.

Senator Mark Fernald, D. 11: I think you are talking about something entirely different. This bill only has to do with criminal neglect. So if a nursing home has an employee who's abusing residents, that is an entirely different statute. And Senator D'Allesandro sort of mentioned that too and I think that is an entirely different circumstance.

The supervision that we are talking about here is the supervision of the person in need of care, not the supervision of the employees who are providing the care. So I don't think we are talking about a different kind of supervision than what you are talking about.

Senator Edward M. Gordon, D. 2: Okay. Would you be amenable to an addition to the bill that says specifically that this bill exempts any professional caregivers who are ...

(Several Senators) No, no.

Senator Mark Fernald, D. 11: I don't want to do that. These people are licensed and they do a lousy job, and they should be accountable.

Senator Sheila Roberge, D. 9: No, you don't want to do that.

Senator Edward M. Gordon, D. 2: Okay, I just know where it's going.

Senator Sheila Roberge, D. 9: Well, we know, but...

Senator Edward M. Gordon, D. 2: Okay.

Senator Mark Fernald, D. 11: I am more worried the other way, but, I wouldn't do that.

Senator Edward M. Gordon, D. 2: Is there anyone else who would like to offer testimony on HB 180. Seeing none I will declare the hearing closed.

The hearing on HB 180 was closed at 11:55a.m.

This verbatim transcript submitted by
Jennifer Ruffing, Senate Judiciary Committee Secretary.

Attachment "A"

TESTIMONY

HB180

MAY 2, 2001

My name is Douglas McNutt and I am the Administrator of the Office of Community Services within the Division of Elderly and Adult Services. One of the responsibilities of the office is to investigate and to provide services to prevent the abuse, neglect and exploitation of adults under RSA 161-F:42. I am here today to speak in favor of this bill on behalf of the Department of Health and Human Services.

The purpose of this bill is to provide a criminal penalty for those cases of neglect that are the result of the failure of a caregiver to provide services necessary for the person the caregiver has responsibility for. This bill clearly defines who is a caregiver and clearly defines the actions would result in criminal prosecution, as well as the penalties. This penalty would only be imposed in cases that result in serious bodily injury caused by knowing, purposeful or reckless conduct.

This bill has grown out of the work of a committee that was formed in 1999 in the aftermath of two cases of neglect in the Manchester area. The group that was formed included representatives from local law enforcement, the Department of Justice and the Department of Health and Human Services. The conclusion was that there wasn't an adequate criminal penalty for this kind of act. This bill was originally submitted as HB 1520 in the last session. It was sent to interim study and was reviewed in detail over the summer by a sub-committee, which produced the current draft. Significant changes to the bill included removing negligence as mental state and requiring "serious bodily injury" as opposed to "bodily injury". In this session the bill was amended to include an exception for those relying on spiritual treatment. The bill also makes clear that it does not override a person's right to refuse treatment.

This bill is intended to act as a deterrent for caregivers who neglect their responsibilities to the point that the adults in their care are seriously injured. It is hoped that this will be step in addressing the issue of neglect of elderly and disabled adults.

I would be happy to address any questions you may have.

Douglas P. McNutt
Administrator
Division of Elderly and Adult Services
129 Pleasant St.
Concord, New Hampshire 03301
271-4681
dmcnutt@dhhs.state.nh.us

Attachment "B"

AARP

Testimony before Senate Judiciary Committee

May 2, 2001

My name is Edward Brueggemann. I live in Concord and have lived in NH for 30 years. I am here today as a volunteer for AARP and its' State Legislative Committee to make a statement in support of House Bill 180- to establish criminal penalties for the neglect and abuse of elderly, impaired and disabled adults.

When this bill first found its way out of the legislative grinder, we discussed it in our Legislative Committee. Then we heard so of the horror stories which prompted the filing of this legislation. I remember laughingly saying to the committee, "Well, here is one bill that will not face opposition." We regret that we were not more vocal in our support in the House. Others can make the technical arguments and answer questions about the bill itself. But AARP, with its' 204,000 members in NH, sees no reason to delay or defer in this area of the law.

AARP encourages the Committee to vote ought-to-pass and move this matter to the full Senate for its support . AARP New hampshire supports HB 180.

I thank you for the opportunity to share our views.

Respectfully submitted.

Edward D. Brueggemann
149 East Side Dr. #155
Concord, NH 03301-5475
603-225-2460

HB180 – relative to criminal neglect of elderly, disabled, or impaired adults

Senate Judiciary Executive Session- 1/2/02

Senators present: Senator Gordon
Senator Pignatelli
Senator Fernald
Senator Roberge
Senator Prescott

Susan Duncan: You have in your packet a colored amendment from HHS.

Senator Gordon: The issue is the definition of "caregiver". We want to make sure this legislation will not be misinterpreted. HHS Proposal - first suggestion: red print on the first page: "A caregiver shall not include an uncompensated volunteer unless such person has agreed to provide care and is acting in a fiduciary capacity." Second suggestion: page 2, definition of "neglect". Page 2, Paragraph II: take out "means of". Paragraph III: take out "means of". Paragraph IV, change to "negligently" causes... ; take out "by means of neglect". Paragraph (f), last sentence: "Neglect may be repeated conduct or a single incident.

Senator Fernald: We should take out "which results in serious bodily injury".

Senator Gordon: Paragraph VII should have the following addition at end of sentence: "or on a person who is carrying out the requests of an elderly or disabled person who is competent to make his or her own decisions".

Susan Duncan: What do you want to do about effective date?

Senator Gordon: 60 days.

Senator Gordon: Authorize Senator Fernald to have it ready for the Senate floor.

Vote: Ought to Pass w/Amendment 5-0. Senator Fernald will take it to the floor.
GB 1/2/02

HB 180 – relative to criminal neglect of elderly, disabled, or impaired adults

Senate Judiciary Executive Session – 1/9/02

Senators present: Senator Gordon
Senator Fernald
Senator Roberge
Senator Prescott

Senator Gordon: We have a letter from Bob Dunn regarding conduct that constitutes various levels of criminal act.

Senator Fernald: Do we want negligent care criminalized? Paragraph IV, the distinction between serious bodily injury and bodily injury, which is clear. That was our intent. Create distinction and less penalty. Serious bodily injury as opposed to no serious bodily injury.

Senator Gordon: Let's take out that paragraph. Our concern is what constitutes bodily injury. How do you define bodily injury other than serious bodily injury? The department says it is OK to take out that section.

Attorney Lehmann: Read definition of serious bodily injury from statute.

Senator Fernald: Move to reconsider last week's vote.

Senator Prescott: Seconded

Senator Fernald: Propose that HB180 be further amended by taking out Paragraph IV and renumber other roman numerals.

Senator Prescott: Seconded

Vote: Ought to Pass as Amended 4-0.

Senator Fernald will take it to the Floor.

GB 1/9/02

Speakers

SENATE JUDICIARY COMMITTEE

Date: 5/02/01 **Time:** 10:45AM **Public Hearing on:** HB 180 FN

FAVOR	OPPOSED	Name	Representing	SPEAKING?
☒	☐	Joe Byron	Retired - Manchester Police Dept	☒
☒	☐	Doug McNutt	DEAS	☒
☒	☐	Jeff Cahill	AG's Office	☒
☒	☐	Jeff Czarnec	Manchester Police Dept	☒
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SENATE JUDICIARY COMMITTEE

Date: 5/02/01 **Time:** 10:45AM **Public Hearing on:** HB 180 FN

FAVOR	OPPOSED	Name	Representing	SPEAKING?
☒	☐	Ed Brueggemann	AARP	☒
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Hearing Minutes

HB 180-FN – AS AMENDED BY THE HOUSE

08mar01...0042h

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.~~ Is this needed.

(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 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.

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.

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

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.

Testimony

The Senate of the State of New Hampshire

107 N. Main Street, Room 302, Concord, N.H. 03301-4951

NED GORDON
Vice President – Policy
District 2

Office 271-2111

TTY/TDD
1-800-735-2964

August 29, 2001

Ellen Sheridan, Chairperson
Legislative Committee
State Committee on Aging
9 Fiskill Farm
Concord, NH 03301

RE: HB 180 – *AN ACT RELATIVE TO CRIMINAL NEGLECT OF ELDERLY, DISABLED, OR IMPAIRED ADULTS.*

Dear Chairperson Sheridan:

I am writing in response to your letter dated August 22, 2001, in which you expressed dismay over the re-referred status of HB 180. I take full responsibility for its referral back to the Senate Judiciary Committee for further consideration, and continue to believe that it was the appropriate course of action.

HB 180 was retained for two reasons. The first has to do with procedure. There is a related bill, HB 463, relative to protective services to adults, which is also being considered by the Senate Judiciary Committee. HB 463 did receive opposition, and was re-referred. As HB 180 and HB 463 contain similar subject matter (abuse and neglect of the elderly), I thought it would be wise to address them contemporaneously.

The second reason has more to do with the substance of the legislation. The Senate Judiciary Committee had concerns with regard to the broad scope of the bill. The Committee hastily drafted an amendment at the end of the session in an attempt to address those issues. I had an uncomfortable feeling that due to time constraints the Committee had not been thorough in its deliberations. Frankly, as the Chairperson, I did not want to send out an inferior work product, just for the sake of passing the bill.

HB 180 raises some very important policy issues. As originally passed by the House, it was very expansive in its application. Many elderly persons reach out informally to friends and neighbors to provide them with assistance. I believe we must be careful in enacting legislation that could have a chilling effect on the willingness of people to provide support to people in need. I also think we must proceed cautiously whenever criminalizing conduct which may not arise from criminal intent. In addition, I think we must be sure that we have struck the proper balance between government intrusion and individual rights.

I applaud the intent of HB 180 and I anticipate that it will be enacted into law. However, I do not see my responsibility as a Senator to simply rubber stamp proposals that have significant public policy implications. I think my constituents would expect me to give this bill thoughtful consideration, and I intend to do so.

Thank you very much for your letter. I hope you will share this response with the other members of the State Committee on Aging. If you have continuing concerns or new questions, please do not hesitate to contact me.

Sincerely,

Ned Gordon

Edward Marshall Gordon
Chair
Senate Judiciary Committee

EMG:sfd
Enclosure
C: Commissioner Donald Shumway
Director Catherine Keane
Mendon MacDonald, M.D.
M. Mary Mongan
Weston Gardner
Rep. Peter Batula
Rep. Robert Chabot
Senator Caroline McCarley
Members of the Senate Judiciary Committee
[file: Ellen Sheridan re HB 180]

STATE OF NEW HAMPSHIRE

DEPARTMENT OF HEALTH AND HUMAN SERVICES

STATE COMMITTEE ON AGING

Advisory Committee to the
Division of Elderly and Adult Services

129 Pleasant Street, Brown Building, Concord, NH 03301-3857
603-271-4680 1-800-351-1888 FAX: 271-4643 TDD Access: 1-800-735-2964

Donald L. Shumway
Commissioner

Director:
Catherine A. Keane

Officers:

Mendon MacDonald, MD
Chairperson
Gilford, NH

M. Mary Mongan
Vice Chairperson
Manchester, NH

Weston T. Gardner
Clerk
Plymouth, NH

Members:

Hon. Peter Batula
Merrimack, NH

Hon. Robert Chabot
Manchester, NH

Barclay Chase
Keene, NH

Joan Doran
New London, New Hampshire

Robert Forsing
Raymond, NH

Irene Gavin
Charlestown, NH

Suzanne Keller
Merrimack, NH

Thaddeus E. Klemarczyk
Exeter, NH

Albert (Jack) LaBonte
Somersworth, NH

Hon. Caroline McCarley
Rochester, NH

Marge McClellan
Berlin, New Hampshire

Robert Montgomery
Goffstown, NH

Susan Presby
Littleton, NH

Ellen Sheridan
Concord, NH

Virginia Sullivan
Swanzey, NH

August 22, 2001

The Honorable Edward Gordon
PO Box 112
Bristol NH 03222

Dear Senator Gordon, Re: HB 180

This bill, which would make neglect of our state's vulnerable elderly a criminal offense, was supported and followed with interest by the State Committee on Aging during the recent legislative session.

We are dismayed to learn that it was retained in your Senate Judiciary Committee, and cannot understand why any further study is needed. It was a request of the Division of Elderly and Adult Services, and had favorable testimony and easy passage in the House, as well as strongly favorable testimony in your Senate Committee.

Would you please (a) let us know what the problem seems to be, and (b) recommend HB 180 for Senate passage at the earliest possible date?

Sincerely,

Ellen Sheridan

Ellen Sheridan, Chairman
SCOA Legislative Committee
9 Fiskill Farm
Concord NH 03301
603-224-7612

Proposed by HHS **Dec. 2001**

HB 180-FN

2001 SESSION

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.

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.~~ A "caregiver" shall not include an uncompensated volunteer unless such person has agreed to provide care or services and knows or should know that he or she is being relied upon to provide care or services.

(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.~~

(e) ~~(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.

(f) ~~(g)~~ "Neglect" means the failure or omission on the part of the caregiver to provide the care, supervision, and services **which he or she has voluntarily, or by contract, or by order of the court agreed to provide and which are** necessary to maintain the health of an elderly, disabled, or impaired adult, including, but not limited to, food, clothing, medicine, shelter, supervision, and medical services, that a prudent person would consider necessary for the well-being of an elderly, disabled, or impaired adult. [~~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.

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

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

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

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

IV. Any caregiver who knowingly, purposely or recklessly causes bodily injury to an elderly, disabled, or impaired adult by means of neglect shall be guilty of a class A misdemeanor .

V. ~~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.

VI. ~~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.

VII. Nothing in this Section shall be construed to impose criminal liability on a person who has made a good faith effort to provide for the care of an elderly, disabled or impaired adult, but through no fault of his or her own has been unable to provide such care.

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

TO: Office of Legislative Services

FROM: Senator Mark Fernald
Senate Judiciary Committee

RE: HB 180 – relative to criminal neglect of elderly, disabled, or impaired adults

DATE: January 3, 2002

Please prepare an amendment to HB 180 based on the attached notes and e-mail it to me for review. Thank you.

Proposed by HHS **Dec. 2001**

HB 180-FN

2001 SESSION

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.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand One

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(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.~~

(e) ~~(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.

(f) ~~(g)~~ "Neglect" means the failure or omission on the part of the caregiver to provide the care, supervision, and services **which he or she has voluntarily, or by contract, or by order of the court agreed to provide and which are** necessary to maintain the health of an elderly, disabled, or impaired adult, including, but not limited to, food, clothing, medicine, shelter, supervision, and medical services, that a prudent person would consider necessary for the well-being of an elderly, disabled, or impaired adult. [~~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~~.

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

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

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

IV. Any caregiver who ~~knowingly, purposely or recklessly~~ negligently causes bodily injury to an elderly, disabled, or impaired adult by ~~means of~~ neglect shall be guilty of a class A misdemeanor.

V. ~~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.

VI. ~~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.

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

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

60 days

or on a person who is carrying out the request of an elderly or disabled person who is competent to make his or her own decisions.

DEVINE, MILLIMET & BRANCH
PROFESSIONAL ASSOCIATION • ATTORNEYS AT LAW

49 North Main Street
P.O. Box 3610
Concord, NH 03302

Tel: 603-226-1000
Fax: 603-226-1001

Manchester, NH
North Hampton, NH
Andover, MA

January 9, 2002

Senator Mark Fernald
State House, Room 302
107 North Main Street
Concord, NH 03301-4951

Re: HB 180 (Criminal Neglect)

Dear Senator Fernald:

I have reviewed the proposed amendment to HB 180 which was reviewed by the Judiciary Committee on January 2, 2002. The negligence provisions which were inserted into the bill during that executive session present significant problems for the New Hampshire Health Care Association.

As the bill apparently stands, based upon the draft submitted by DHHS to the Committee on the morning of January 2nd, and the changes made by the Committee, there are three levels of criminal misconduct proscribed in HB 180.

The first level is purposeful neglect (proposed new RSA 631:8, II). Reading that in conjunction with RSA 626:2, II (a) (defining "purposeful" conduct) and the definition of "neglect" in HB 180, this section sanctions the failure to provide the necessary care, supervision and services when the conscious object is to cause serious bodily injury thereby.

The second level of conduct addressed is "knowing" or "reckless" behavior (proposed new RSA 631:8, II). Read in conjunction with RSA 626:2, II (b) and (c) (defining "knowing" and "reckless" for the purposes of the Criminal Code), this section punishes behavior when a person is aware that his conduct is of such a nature that he is causing serious bodily injury by failing to provide the necessary services ("knowing"), or when the person is aware of and consciously disregards a substantial and unjustifiable risk that serious bodily injury will result from his failure to provide the necessary services ("recklessly").

The third level of conduct is negligence (proposed new RSA 631:8, IV), and it is this provision which I think presents a problem. It is important to recognize that, prior to January 2nd, this legislation did not contain any negligence provisions, and the negligence language has never been the subject of a public hearing. Indeed, as I

understand it, neither the Attorney General's Office nor DHHS (the two entities who requested this legislation) ever sought to add negligence provisions to the bill.

The negligence provision would criminalize behavior when a person "fails to become aware of a substantial and unjustifiable risk" that failure to provide the necessary care, supervision and services will cause bodily injury. See RSA 626:2, II (d) (defining negligent conduct for purposes of the Criminal Code). The risk must be of such a nature that the failure is a gross deviation from conduct a reasonable person would observe. Id.

Our problems arise on two fronts. First, we are extremely troubled by the concept of criminalizing negligence (even negligence which has the gross deviation standard built in). Elderly residents of nursing homes, almost by definition, tend to be frail and susceptible to injuries. Nursing homes already are subject to astronomical insurance premiums because of the risk of lawsuits arising out of injuries to residents. If this provision is enacted, the nursing homes will run the risk of criminal prosecution every time a patient suffers an injury. The questions of whether the risk was "substantial and unjustifiable" and whether the failure was a "gross deviation" are the stuff of expert witnesses. These questions run far afield of the sort of conscious intent or affirmative disregard which the House version of this bill sought to prohibit.

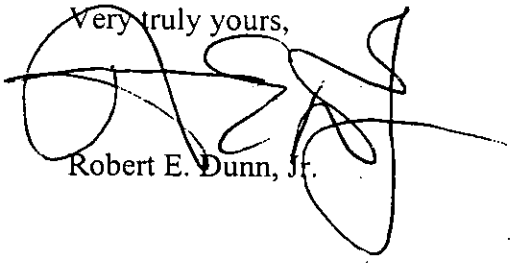
Secondly, under the bill as amended, the nursing homes would be subject to this criminal liability for negligence despite the fact that the nursing homes in this state are not the cause of the problems which this bill seeks to address. The genesis of this legislation was the misconduct of a son towards his mother in their own home. I believe that both the sponsors and the relevant state agencies have acknowledged that this bill does not arise as a result of any problems which have existed in New Hampshire nursing homes.

Nursing homes, it is often said, are more highly regulated than the nuclear power industry. They have an excellent care and safety record in this state. Given all that, nursing homes should not be made subject to criminal prosecution for conduct which is at a lower culpability level than even the sponsors and the executive branch were seeking to cover in the first place.

Accordingly, I ask that the Committee reconsider its decision to amend the bill by adding the negligence provision. I recommend and request that the entire proposed new RSA 631:8, IV (as found in the DHHS amendment given to the Committee on January 2nd) be stricken. This would mean that the bill would still sanction the purposeful, knowing or reckless causing of serious bodily injury by neglect. It would remove the negligence provisions, as well as the amended RSA 631:18, IV which was first proposed by DHHS on January 2nd to penalize conduct which results in mere bodily injury. I have discussed this with Carol Stamatakis of DHHS, and she has kindly informed me that DHHS would not object to this course of action.

Thank you for your consideration. Please don't hesitate to contact me if you have any questions.

Very truly yours,



Robert E. Dunn, Jr.

RED:tp
cc: Members of the Senate Judiciary Committee
John Poirier, NHHCA
Carol Stamatakis, DHHS

Voting Sheets

Senate Judiciary Committee

EXECUTIVE SESSION

Bill # HB 180

Hearing date: 01/02/02 **Room:** LOB 102

Motion of: _____

OTP 6-0 Fernald to floor

Made by Senator:		*Seconded by Senator:*	
Gordon	☐	Gordon	☐
Pignatelli	☐	Pignatelli	☐
Prescott	☐	Prescott	☑ 5-0
Roberge	☐	Roberge	☐
Fernald	☑	Fernald	☐

Committee Member	*Present*	*Vote*	*Reported out by*
Senator N. Gordon, Chairman	☑		
Senator D. Pignatelli, Vice-Chair	☑		
Senator R. Prescott	☑		
Senator S. Roberge	☑		
Senator M. Fernald	☑		

***Amendments:** _____

NOTES: _____

Committee Report

STATE OF NEW HAMPSHIRE

SENATE

REPORT OF THE COMMITTEE

Date:

THE COMMITTEE ON Judiciary

to which was referred House Bill 180-FN

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

VOTE: 5-0

AMENDMENT DOC # 2001-1504s

Having considered the same, report the same with the following amendment and recommend that the bill: **AS AMENDED OUGHT TO PASS.**

Senator Mark Fernald
For the Committee

STATE OF NEW HAMPSHIRE

SENATE

REPORT OF THE COMMITTEE

Date:

THE COMMITTEE ON Judiciary

to which was referred HB180

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

VOTE: 4-0

AMENDMENT DOC # 2002-2255s

Having considered the same, report the same with the following amendment and recommend that the bill: **AS AMENDED OUGHT TO PASS.**

Senator Mark Fernald
For the Committee

HB180 Docket

Next|Prev|Results List|Main|Bill Status

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

Date	Body	Description
1/4/2001	**H**	Introduced and ref to Crim Just & PSfty; HJ15, p171
1/9/2001	**H**	Copy to Chairman on 1/9/2001
1/10/2001	**H**	Hearing Jan 16 1:30 RM204,LOB
1/17/2001	**H**	Subcom Work Session Jan 23 1:00 RM204,LOB
2/21/2001	**H**	Maj Report OTP/AM for Mar 8 (vote 14-0;CC)
2/21/2001	**H**	Prop Comm Am{0042}; HC21, p338-339
3/8/2001	**H**	Passed with Am; HJ23, p365-366 + 391
3/29/2001	**S**	Introduced and Ref. to Judiciary; SJ 7, Pg.89
4/26/2001	**S**	Hearing; May 2, 2001, Room 103, LOB,10:45 a.m.; SC20
6/6/2001	**S**	Committee Report; Ought to Pass with Amendment {1504}, [06/07/01]; SC29, Pg.16-17
6/7/2001	**S**	Ouhght to Pass with Amendment {1504}, [not voted on]; SJ 17, Pg.379-380
6/7/2001	**S**	Sen. Fernald sub motion of Rereferred to Committee, MA, VV; SJ 17, Pg.380

Next|Prev|Results List|Main|Bill Status

Docket Abbreviations

|HB180 Docket

Next|Prev|Results List|Main|Bill Status

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2/21/2001	H	Prop Comm Am{0042}; HC21, p338-339
3/8/2001	H	Passed with Am; HJ23, p365-366 + 391
3/29/2001	S	Introduced and Ref. to Judiciary; SJ 7, Pg.89
4/26/2001	S	Hearing; May 2, 2001, Room 103, LOB,10:45 a.m.; SC20
6/6/2001	S	Committee Report; Ought to Pass with Amendment {1504}, [06/07/01]; SC29, Pg.16-17
6/7/2001	S	Ought to Pass with Amendment {1504}, [not voted on]; SJ 17, Pg.379-380
6/7/2001	S	Sen. Fernald sub motion of Rereferred to Committee, MA, VV; SJ 17, Pg.380
1/22/2002	S	Committee Report; Ought to Pass with Amendment, {2255}, [01/24/02]; SC6, Pg.8-9
1/24/2002	S	Ought to Pass with Amendment, {2255}, AA, VV; Refer to Finance [Rule 24]; SJ 3, Pg.42-43
2/12/2002	S	Committee Report; Ought to Pass, [02/14/02]; SC11A
2/14/2002	S	Ought to Pass, MA, VV; OT3rdg, MA, VV; SJ 5, Pg.87
3/21/2002	H	House Nonconc with Sen Am, req Conf Comm, Rep Welch MA VV; HJ28, p1100
3/21/2002	H	(Spkr Appts Reps: Sargent, Hess, O'Keefe and Knowles)
4/25/2002	S	Sen. Gordon Accedes to House Reques For Committee of Conference, MA, VV
4/25/2002	S	Pres. Appts.; Senators Gordon, Fernald, Roberge
4/25/2002	H	Conf Comm meeting Apr 29 1:00 RM204,LOB
4/30/2002	H	Conferee Change: Rep Hess replaces Rep P Katsakiores;
4/30/2002	S	Conference Committee Report; Senate Am + New Am {3706}, Filed;
5/2/2002	S	Conference Committee Report {3706}; Adopted, VV
5/2/2002	H	Conf Comm Report Adopted VV;

Next|Prev|Results List|Main|Bill Status

Docket Abbreviations