

HB 597-FN - AS AMENDED BY THE HOUSE

6Jan2022... 2164h

2021 SESSION

21-0616  
06/04

HOUSE BILL            **597-FN**

AN ACT                relative to the expectation of privacy.

SPONSORS:            Rep. Erf, Hills. 2; Rep. Edwards, Rock. 4; Rep. Hopper, Hills. 2; Sen. Ward, Dist 8

COMMITTEE:          Judiciary

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AMENDED ANALYSIS

This bill regulates the collection, retention, and use of personal information and establishes a cause of action for violations of an individual's expectation of privacy in personal information.

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                         Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

*In the Year of Our Lord Two Thousand Twenty One*

AN ACT relative to the expectation of privacy.

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

1 1 New Chapter; Expectation of Privacy. Amend RSA by inserting after chapter 507-G the  
2 following new chapter:

3 CHAPTER 507-H

4 EXPECTATION OF PRIVACY

5 507-H:1 Definitions. In this chapter:

6 I. "Personal information" means an individual's name, date or place of birth; social security  
7 number; address; employment history; credit history; financial and other account numbers; cellular  
8 telephone numbers; voice over Internet protocol or landline telephone numbers; location information;  
9 biometric identifiers including fingerprints, facial photographs or images, retinal scans, genetic  
10 profiles, and DNA/RNA data; or other identifying data unique to that individual.

11 II. "Third party providers of information and services" means individuals or organizations  
12 which collect personal information about an individual in order to provide information or services to  
13 that individual, including but not limited to cellular and land-line telephone, electric, water, and  
14 other utility services; Internet service providers; cable television providers; streaming services; social  
15 media providers; email service providers; banks and financial institutions; insurance companies; and  
16 credit card companies.

17 507-H:2 Expectation of Privacy in Personal Information.

18 I. An individual shall have an expectation of privacy in personal information, including  
19 content and usage, given or available to third-party providers of information and services, and not  
20 available to the public.

21 II. No municipal, county, state, or federal department, agency, employee, elected official, or  
22 contractor shall, acquire, collect, retain, or use any personal information of any individual residing in  
23 New Hampshire from any third-party provider.

24 III. Paragraph II shall not apply to:

25 (a) Personal information acquired, collected, retained, or used by any state regulatory or  
26 administrative agency when such acquisition, collection, retention, or use is within the agency's  
27 regulatory, investigative, adjudicatory, or administrative function.

28 (b) A warrant signed by a judge and based on probable cause has been issued or a  
29 judicially-recognized exception to the warrant requirement applies.

30 (c) In the case of the division of emergency services and communications when handling  
31 emergency 911 telecommunications.

1 (d) In an emergency where the immediate danger of death or serious physical injury to  
2 an individual requires the disclosure, without delay, of personal information concerning a specific  
3 individual and where a warrant cannot be obtained in time to prevent the identified danger.

4 (e) Where the acquisition, collection, retention or use of personal information is  
5 authorized or required by state or federal law, provided that such personal information is requested  
6 of and supplied by a third-party provider of information and services for named individuals only or,  
7 in the case of employees and/or contractors of a third-party provider of information and services, for  
8 all of its employees and/or contractors.

9 (f) Where the individual to whom personal information in the possession of third-party  
10 providers of information and services pertains:

11 (1) Provides it to a municipal, county, state, or federal department, agency,  
12 employee, elected official, or contractor, but only for the purpose for which it is provided, including  
13 but not limited to credit card transactions and affinity programs; or

14 (2) Authorizes access to it by a municipal, county, state, or federal department,  
15 agency, employee, elected official, or contractor, but only for the purpose for which such  
16 authorization is granted.

17 IV. Any person violating the provisions of this section shall be guilty of a violation if a  
18 natural person, or guilty of a misdemeanor if any other person.

19 V. A person who suffers injury as a result of a violation of this chapter shall be entitled to  
20 damages from the person who committed the violation of not less than \$1,000 for each such violation  
21 and an award of costs and reasonable attorney fees.

22 507-H:3 Action Against a Corporation. This chapter shall not be construed to create a cause of  
23 action against a corporation or its officers, employees, or agents for providing information to a  
24 municipal, state, or federal department, agency, employee, or contractor in accordance with the  
25 provisions of this chapter.

26 507-H:4 Federal Preemption. If federal law preempts any provision of this chapter, that  
27 provision shall not apply.

28 2 Regulation of Biometric Information; Collection of Biometric Data Prohibited. Amend RSA  
29 359-N:2, I(c) to read as follows:

30 (c) Obtain, retain, or provide any individual's biometric data except as set forth in this  
31 chapter *or in RSA 507-H*.

32 3 Effective Date. This act shall take effect on January 1, 2023.

**HB 597-FN- FISCAL NOTE**  
AS AMENDED BY THE HOUSE (AMENDMENT #2021-2164h)

AN ACT relative to the expectation of privacy.

**FISCAL IMPACT:**     State             County             Local             None

STATE:	Estimated Increase / (Decrease)			
	FY 2022	FY 2023	FY 2024	FY 2025
<b>Appropriation</b>	\$0	\$0	\$0	\$0
<b>Revenue</b>	\$0	\$0	\$0	\$0
<b>Expenditures</b>	\$0	Indeterminable Increase	Indeterminable Increase	Indeterminable Increase
<b>Funding Source:</b>	<input checked="" type="checkbox"/> General	<input type="checkbox"/> Education	<input type="checkbox"/> Highway	<input type="checkbox"/> Other

**COUNTY:**

<b>Revenue</b>	\$0	\$0	\$0	\$0
<b>Expenditures</b>	\$0	Indeterminable Increase	Indeterminable Increase	Indeterminable Increase

**METHODOLOGY:**

This bill establishes a cause of action for violations of an individual's expectation of privacy in personal information. This bill contains penalties that may have an impact on the New Hampshire judicial and correctional systems. There is no method to determine how many charges would be brought as a result of the changes contained in this bill to determine the fiscal impact on expenditures. However, the entities impacted have provided the potential costs associated with these penalties below.

Judicial Branch	FY 2021	FY 2022
Violation Level Offense	\$53	\$53
Class B Misdemeanor	\$55	\$55
Class A Misdemeanor	\$78	\$78
Routine Civil Case	\$526	\$526
Appeals	Varies	Varies
It should be noted that average case cost estimates for FY 2021 and FY 2022 are based on data that is more than ten years old and does not reflect changes to the courts over that same period of time or the impact these changes may have on processing the various case types. An unspecified misdemeanor can be either class A or class B, with the presumption being a class B misdemeanor.		
Judicial Council		
Public Defender Program	Has contract with State to	Has contract with State to

	provide services.	provide services.
Contract Attorney – Misdemeanor	\$300/Case	\$300/Case
Assigned Counsel – Misdemeanor	\$60/Hour up to \$1,400	\$60/Hour up to \$1,400
It should be noted that a person needs to be found indigent and have the potential of being incarcerated to be eligible for indigent defense services. The majority of indigent cases (approximately 85%) are handled by the public defender program, with the remaining cases going to contract attorneys (14%) or assigned counsel (1%).		
NH Association of Counties		
County Prosecution Costs	Indeterminable	Indeterminable
Estimated Average Daily Cost of Incarcerating an Individual	\$105 to \$120	\$105 to \$120

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

**AGENCIES CONTACTED:**

Judicial Branch, Department of Justice, Judicial Council, and New Hampshire Association of Counties