

HB 314-FN - AS INTRODUCED

2023 SESSION

23-0451

04/05

HOUSE BILL                    ***314-FN***

AN ACT                    relative to the expectation of privacy in the collection and use of personal information.

SPONSORS:            Rep. Erf, Hills. 28; Rep. Lynn, Rock. 17

COMMITTEE:          Judiciary

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                                Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

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

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

CHAPTER 507-H  
EXPECTATION OF PRIVACY

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

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

3 (c) The division of emergency services and communications when handling emergency  
4 911 telecommunications.

5 (d) An emergency where the immediate danger of death or serious physical injury to an  
6 individual requires the disclosure, without delay, of personal information concerning a specific  
7 individual, telephone number, user name, or other unique identifier, and where a warrant cannot be  
8 obtained in time to prevent the identified danger.

9 (e) Cases where the acquisition, collection, retention or use of personal information is  
10 authorized or required by state or federal law, provided that such personal information is requested  
11 of and supplied by a third-party provider of information and services for named individuals only or,  
12 in the case of employees and/or contractors of a third-party provider of information and services, for  
13 all of its employees and/or contractors.

14 (f) Cases where the individual to whom personal information in the possession of third-  
15 party providers of information and services pertains:

16 (1) Provides it to a government entity, but only for the purpose for which it is  
17 provided, including but not limited to credit card transactions and affinity programs; or

18 (2) Authorizes access to it by a government entity, but only for the purpose for which  
19 such authorization is granted.

20 (g) Inquiries by a grand jury.

21 IV. Any person who knowingly violates the provisions of this section shall be guilty of a  
22 violation if a natural person, or guilty of a misdemeanor if any other person.

23 V. A person who suffers injury as a result of a violation of this chapter shall be entitled to  
24 damages from the government entity responsible for the violation of not less than \$1,000 for each  
25 such violation and an award of costs and reasonable attorney fees.

26 507-H:3 Action Against a Nongovernment Entity. This chapter shall not be construed to create  
27 a cause of action against a nongovernment entity for providing information to a government entity.

28 507-H:4 Federal Preemption. If federal law preempts any provision of this chapter, that  
29 provision shall not apply.

30 2 Regulation of Biometric Information; Collection of Biometric Data Prohibited. Amend RSA  
31 359-N:2, I(c) to read as follows:

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

34 3 Effective Date. This act shall take effect on January 1, 2024.

**HB 314-FN- FISCAL NOTE**  
**AS INTRODUCED**

AN ACT relative to the expectation of privacy in the collection and use of personal information.

**FISCAL IMPACT:**    ☒ **State**                    ☒ **County**                    ☐ **Local**                    ☐ **None**

STATE:	Estimated Increase / (Decrease)			
	FY 2023	FY 2024	FY 2025	FY 2026
<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 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. 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 2023	FY 2024 through 12/31/23	FY 2024 (Starting 1/1/24 with repeal of Felonies First)
Violation and Misdemeanor Level Offense	\$119	\$122	\$122
Appeals	Varies	Varies	Varies
Judicial Council	FY 2023		FY 2024
Public Defender Program	Has contract with State to provide services.		Has contract with State to provide services.
Contract Attorney – Misdemeanor	\$300/Case		\$300/Case

	\$70 administrative fee \$100 incarceration fee (If applicable)	\$70 administrative fee \$100 incarceration fee (If applicable)
Assigned Counsel- Misdemeanor. Travel time to court does not count toward the cap.	\$90/Hour up to \$2,000	\$90/Hour up to \$2,000
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. Historically, approximately 85% of the indigent defense caseload has been handled by the public defender program, with the remaining cases going to contract attorneys (14%) or assigned counsel (1%). Beginning in March of 2021, the public defender program has had to close intake of new cases due to excessive caseloads. Due to these closures, the contract and assigned counsel program have had to absorb significantly more cases. The system is experiencing significant delays in appointing counsel and the costs of representation have increased due to travel time and multiple appointments.		
NH Association of Counties	FY 2023	FY 2024
County Prosecution Costs	Indeterminable	Indeterminable
Estimated Average Daily Cost of Incarcerating an Individual	\$105 to \$125	\$105 to \$125

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 may be able to absorb the cost within its existing budget. However, if the Department needs to prosecute significantly more cases or handle more appeals, then costs will increase by an indeterminable amount.

**AGENCIES CONTACTED:**

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