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

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty Three

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

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

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

3 CHAPTER 507-H

EXPECTATION OF PRIVACY

507-H:1 Definitions. In this chapter:

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- I. "Personal information" means an individual's name, date or place of birth; social security number; address; employment history; credit history; financial and other account numbers; cellular telephone numbers; voice over Internet protocol or landline telephone numbers; location information; biometric identifiers including fingerprints, facial photographs or images, retinal scans, genetic profiles, and DNA/RNA data; or other identifying data unique to that individual.
- II. "Third party providers of information and services" means individuals or organizations which collect personal information about an individual in order to provide information or services to that individual, including but not limited to cellular and land-line telephone, electric, water, and other utility services; Internet service providers; cable television providers; streaming services; social media providers; email service providers; banks and financial institutions; insurance companies; and credit card companies.
- III. "Government entity" means municipal, county state or federal department, agency board, commission, or employee, elected official, or contractor. "Government entity" shall not apply to a federal government agency to the extent that federal statute preempts such application.
 - 507-H:2 Expectation of Privacy in Personal Information.
- I. Except as otherwise provided in law, an individual shall have a reasonable expectation of privacy in personal information, including content and usage, given or available to third-party providers of information and services, and not available to the public.
- II. No government entity shall, acquire, collect, retain, or use any personal information of any individual residing in New Hampshire from any third-party provider.

III. Paragraph II shall not apply to:

(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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- (b) A warrant signed by a judge and based on probable cause has been issued or a judicially-recognized exception to the warrant requirement applies.
- (c) The division of emergency services and communications when handling emergency 911 telecommunications.
- (d) An emergency where the immediate danger of death or serious physical injury to an individual requires the disclosure, without delay, of personal information concerning a specific individual, telephone number, user name, or other unique identifier, and where a warrant cannot be obtained in time to prevent the identified danger.
- (e) Cases where the acquisition, collection, retention or use of personal information is authorized or required by state or federal law, provided that such personal information is requested of and supplied by a third-party provider of information and services for named individuals only or, in the case of employees and/or contractors of a third-party provider of information and services, for all of its employees and/or contractors.
- (f) Cases where the individual to whom personal information in the possession of thirdparty providers of information and services pertains:
- (1) Provides it to a government entity, but only for the purpose for which it is provided, including but not limited to credit card transactions and affinity programs; or
- (2) Authorizes access to it by a government entity, but only for the purpose for which such authorization is granted.
 - (g) Inquiries by a grand jury.

- IV. Any person who knowingly violates the provisions of this section shall be guilty of a violation if a natural person, or guilty of a misdemeanor if any other person.
- V. A person who suffers injury as a result of a violation of this chapter shall be entitled to damages from the government entity responsible for the violation of not less than \$1,000 for each such violation and an award of costs and reasonable attorney fees.
- 507-H:3 Action Against a Nongovernment Entity. This chapter shall not be construed to create a cause of action against a nongovernment entity for providing information to a government entity.
- 507-H:4 Federal Preemption. If federal law preempts any provision of this chapter, that provision shall not apply.
 - 2 Regulation of Biometric Information; Collection of Biometric Data Prohibited. Amend RSA 359-N:2, I(c) to read as follows:
- (c) Obtain, retain, or provide any individual's biometric data except as set forth in this chapter *or in RSA 507-H*.
 - 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: [X] State [X] County [] Local [] None

	Estimated Increase / (Decrease)					
STATE:	FY 2023		FY 2024		FY 2025	FY 2026
Appropriation	\$0		\$0		\$0	\$0
Revenue	\$0		\$0		\$0	\$0
Expenditures	\$0		Indeterminable Increase		Indeterminable Increase	Indeterminable Increase
Funding Source:	[X] General	[] Education	[] Highway [] Other

COUNTY:

Revenue	\$0	\$0	\$0	\$0
Expenditures	\$0	Indeterminable	Indeterminable	Indeterminable
	Φυ	Increase	Increase	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 202	23	FY 2024
Public Defender Program		Ias contract wi provide sei		Has contract with State to provide services.
Contract Attorney – Misdemeanor		\$300/Ca	ase	\$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