

Bill as  
Introduced

HB 311 - AS INTRODUCED

2013 SESSION

13-0700  
05/10

HOUSE BILL

**311**

AN ACT

establishing a statutory expectation of privacy in personal materials.

SPONSORS:

Rep. Kurk, Hills 2

COMMITTEE:

Judiciary

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ANALYSIS

This bill establishes a statutory expectation of privacy in personal materials.

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.



# Amendments

Amendment to HB 311

1 Amend RSA 507-H:1, I and II as inserted by section 1 of the bill by replacing them with the  
2 following:

3  
4 I. In this section:

5 (a) "Individual" means a human being, living or deceased.

6 (b) "Government" means federal, state and local agencies and departments, and any  
7 political subdivisions thereof, including employees, agents, and contractors.

8 (c) "Person" means individuals, corporations, organizations, for profit and not-for-profit  
9 entities, excluding the government.

10 (d) "Personally identifiable information" means:

11 (1) A person's name, date or place of birth, social security number, address,  
12 employment history, credit history, financial information, account numbers, cellular telephone, voice  
13 over internet protocol or landline telephone numbers, biometric identifiers including fingerprints,  
14 facial photographs or images, retinal scans, DNA/RNA or other identifying data unique to that  
15 individual; or

16 (2) One or more pieces of information that, when considered together or in the  
17 context of how the information is presented or gathered, are sufficient to specify a unique individual.

18 (e) "Personal materials" means physical items owned or possessed by an individual and  
19 abandoned intentionally or unintentionally, including without limitation, fingerprints, saliva, hair,  
20 household papers and effect, in private and public places.

21 II. Subject to a warrant supported by probable cause pursuant to Part I, Art. 19 of the  
22 New Hampshire constitution in the case of governments, and a court order signed by a judge in the  
23 case of persons, each individual has an expectation of privacy and protection from intrusion by  
24 government and persons in his or her personally identifiable information in his or her personal  
25 materials.

Amendment to HB 311

1 Amend RSA 507-H:1 as inserted by section 1 of the bill by replacing it with the following:

2  
3 507-H:1 Expectation of Privacy.

4 I. In this section:

5 (a) "Individual" means a living human being.

6 (b) "Government" means federal, state and local agencies and departments, and any  
7 political subdivisions thereof, including employees, agents, and contractors.

8 (c) "Person" means individuals, corporations, organizations, for profit and not-for-profit  
9 entities, excluding the government.

10 (d) "Personally identifiable information" means:

11 (1) A person's name, date or place of birth, social security number, address,  
12 employment history, credit history, financial information, account numbers, cellular telephone, voice  
13 over internet protocol or landline telephone numbers, biometric identifiers including fingerprints,  
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15 individual; or

16 (2) One or more pieces of information that, when considered together or in the  
17 context of how the information is presented or gathered, are sufficient to specify a unique individual.

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20 household papers and effects, in private and public places.

21 II. Subject to a warrant supported by probable cause pursuant to Part I, Art. 19 of the  
22 New Hampshire constitution in the case of governments, and a court order signed by a judge in the  
23 case of persons, each individual has an expectation of privacy and protection from intrusion by  
24 government and persons in his or her personally identifiable information in his or her personal  
25 materials.

26 III. Nothing in this chapter shall limit the collection of personally identifiable information by  
27 law enforcement agencies at crime scenes or its examination and analysis by forensic laboratories.  
28 The admissibility of biometric evidence and expert opinion based on such evidence at trials shall be  
29 determined by the presiding judge within the parameters and limits specified in the rules of  
30 evidence.

31 IV. Each knowing violation of privacy under paragraph II is a separate offense. For the first  
32 violation or series of violations, a person shall be guilty of a class B misdemeanor and shall incur a

**Amendment to HB 311**

**- Page 2 -**

1 fine of \$1,000. For each subsequent knowing violation, the person shall be guilty of a class B felony  
2 and shall incur a fine of \$2,000. In addition, in a civil case, for the first knowing violation or series of  
3 violations, a person injured by a violation of this section shall be awarded the higher of actual  
4 damages or \$1,000, and for each subsequent knowing violation, the higher of actual damages or  
5 \$2,000. The person shall also be awarded court costs and reasonable attorney's fees.

# Speakers





# Hearing Minutes

HOUSE COMMITTEE ON JUDICIARY

PUBLIC HEARING ON HB 311

**BILL TITLE:** establishing a statutory expectation of privacy in personal materials.

**DATE:** January 29, 2013

**LOB ROOM:** 208      **Time Public Hearing Called to Order:** 10:01 am

**Time Adjourned:** 10:43 am

(please circle if present)

**Committee Members:** Reps. Marjorie Smith, Wall, P. Sullivan, Horrigan, Watrous, Hackel, Woodbury, Berch, Phillips, Gale, Heffron, Rowe, Luther, Sylvia, Hopper, Peterson, Takesian, D. Thompson, Kappler and Hagan.

**Bill Sponsor:** Rep. Kurk, Hills 2

TESTIMONY

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

**\*Rep. Kurk**, prime sponsor - support

Introduced the bill and provided the committee with copies of the proposed amendment 12-13-0018h predicated on "Goss Case" and restores to the Legislature the ability to define the parameters of expectations of privacy regarding discarded items that may be subject to search.

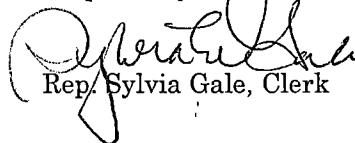
RX – Ought to Pass with Amendment (specific to personally indentifying information that may be contained therein or on)

**Elizabeth C. Woodcock**, New Hampshire Attorney General's Office - oppose

**Chris Casco**, New Hampshire Department of Safety - oppose

Feels that the bill as proposed would impede enforcement investigations.

Respectfully submitted,

  
Rep. Sylvia Gale, Clerk

HOUSE COMMITTEE ON JUDICIARY

PUBLIC HEARING ON HB 311

BILL TITLE: establishing a statutory expectation of privacy in personal materials.

DATE: {Type HEARING DATE here} 11/29/13

LOB ROOM: 208 Time Public Hearing Called to Order: {Time} 10:01 AM

Time Adjourned: {Time} 10:43 AM

(please circle if present)

Committee Members: Reps. Marjorie Smith, Wall, P. Sullivan, Horrigan, Watrous, Hackel, Woodbury, Berch, Phillips, Gale, Heffron, Rowe, Luther, Sylvia, Hopper, Peterson, Takesian, D. Thompson, Kappler and Hagan, Hess

Bill Sponsor: Rep. Kurk, Hills 2

TESTIMONY

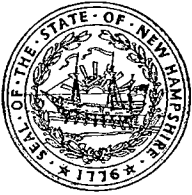
\* Use asterisk if written testimony and/or amendments are submitted.

Rep. Kurk (Prime Sponsor)  
presented bill to Cmte.  
- provided copies of proposed amendment # 20130088h  
→ predicated on "Goss" case - restores to Legislature the ability to define the parameters of expectations of privacy regarding discarded items that may be subject to search.  
Rx - OTP-A (specific to personally identifying info that may be contained therein or on)

Respectfully submitted,  
Atty Elizabeth Woodcock - ASH Dept of Justice / office of Atty General  
Rep. Sylvia Gale, Clerk  
- opposed to bill

\* Chris Casco - Atty for Dept of Safety  
- opposed to bill -  
feels that bill as proposed would impede law enforcement investigate  
Hess

# Testimony



# State of New Hampshire

DEPARTMENT OF SAFETY  
JAMES H. HAYES BLDG. 33 HAZEN DR.  
CONCORD, N.H. 03305  
603/271-2559

JOHN J. BARTHELMES  
COMMISSIONER OF SAFETY

EARL M. SWEENEY  
ASSISTANT COMMISSIONER

## NH DEPARTMENT OF SAFETY

### LEGISLATIVE POSITION PAPER

**HB 311** SB\_\_ AS INTRODUCED (  ) AMENDMENT NO. \_\_\_\_

This bill deals with the expectation for privacy for personal, communication and financial information. It states that without a warrant or a court order, persons and organizations have an expectation of privacy in any items they owned or possessed and abandoned, intentionally or unintentionally in private or public places, including but not limited to fingerprints, saliva, hair, household papers and effects.

For each knowing violation of privacy the person committing it would be guilty of a class B misdemeanor and fined \$1,000 for a first offense and \$2,000 for any subsequent offense, and each violation would be a separate offense. In addition, the person could be sued civilly if he or she claimed to be injured in any way by the collection of these materials and be awarded \$1,000 or actual damages for a first knowing violation and \$2,000 or actual damages for each subsequent knowing violation. The plaintiff would also be awarded court costs and "reasonable attorney's fees".

This bill creates a right in abandoned property that does not currently exist. The state and federal Supreme Courts have established a long track record of court cases that deal with the reasonable expectation of privacy as protected by the Constitution and we feel that case law is the best way to deal with these situations and give "bright line" guidelines to law enforcement. The severe penalties it sets forth, civil and criminal penalties for violations, could deter police officers and other governmental officials from doing their jobs, and act to protect criminal conduct.

HB 311 would overturn a recognized exception to the warrant requirement that the N.H. Supreme Court discussed in the cases of *State v. Westover*, 140 N.H. 375 (1995) and *State v. Jarret*, 116 N.H. 590 (1976). In the *Jarret* case, a police officer placed an individual who appeared to be ill and who could not produce I.D. into a police cruiser to determine who he was, where he lived, and what was wrong with him, to determine if he needed medical attention. Once in the cruiser and on the way to the police station, the individual took something from his pocket and put it behind the rear seat cushions. Police officers always check over their vehicle after someone has been transported in it, in case there were weapons that another person being transported in the cruiser could use for an assault or escape. After they arrived at the station the officer checked behind the seat and discovered amphetamine pills. The officer had not obtained a search warrant to search his own cruiser, nor a court order, before looking

behind the seat. The individual was charged with possession of dangerous drugs. The District Court allowed the pills to be introduced as evidence in Jarret's trial because Jarret had abandoned them. The Supreme Court upheld the conviction because the man had abandoned the property in the cruiser and therefore, the officer properly seized it without a warrant, as abandoned property. Although the officer noticed the man appeared to be putting something behind the seat, he did not have probable cause to believe it as evidence or contraband, it might have been something as simple as a Kleenex. Therefore, he could not have obtained a warrant and if he seized the drugs and HB 311 was law, that act would have subjected him to a mandatory fine of \$1,000, given him a criminal record, and the possibility of having to answer a civil suit. A law like this can lead to absurd results.

On the other hand, because each case stands on its own, the Supreme Court decided a case out of Bristol where a police officer followed a car that was exceeding the speed limit into the parking lot of a store. A passenger alighted from the car as the officer approached, took his leather jacket off and laid it down in the parking lot, went into the store and purchased something. Curious, the officer picked up the jacket and checked the pockets, and found some marijuana. The police charged the individual with possession of marijuana and introduced the drugs as evidence at the trial. The District Court allowed this but the NH Supreme Court overturned the conviction because this did not meet the test of "abandoned property", in that there was no indication that he was abandoning the jacket or that he did not intend to retrieve it when he returned to the car.

In another case a known criminal was eating at a restaurant where a Detective who recognized him and the Detective's wife were eating at a nearby table. When the Detective realized that the gangster had left his coat hanging on the hook in back of the booth, he went over out of curiosity, went through the pockets and found evidence of illegal gambling. The court would not allow the evidence to be used, because there was nothing to indicate that the man had simply forgot to pick up his jacket nor that he would not return to get it once he realized what he had done. It did not meet the test for "abandoned property".

In a case in another state, a little girl disappeared and her body was found and the medical examiner reported that she had been raped before she was killed and a sample of semen had been obtained from her clothing. The police invited a known sex offender to come to the station and speak with them. He did so, and denied knowing the girl or having anything to do with her. The police had no evidence to hold him and told him he was free to go. He called a taxi for a ride, lit a cigarette and when his ride came, he threw the cigarette butt out in the parking lot of the police station and jumped into the taxi and left. The Detective happened to be leaving the building at the same time, seized the cigarette and had it tested for DNA and the lab linked his DNA sample to the DNA taken off the little girl's clothing and the man was convicted of murder. The DNA sample was allowed into evidence because it came from the cigarette butt the man abandoned. There would have been insufficient evidence to get a search warrant to collect the cigarette butt.

In other cases, people have paid their hotel bill and checked out of a hotel room and the cleaning staff has found evidence of a crime left behind in the room and called the police. The police were able to

accept the abandoned items from the cleaning staff and after arresting the person, use that evidence in court as abandoned property.

The United States Supreme Court ruled in the case of *California v. Greenwood*, 486 U.S. 35 (1988) that when someone puts their garbage out in the street for collection, it is abandoned property and they have no reasonable expectation of privacy in it, because not only the police, but anyone could come along and rummage through it, dogs could scatter it to the winds, and birds could pick at it. However, if the person shreds his papers before putting them out for collection, he has manifested an expectation of privacy in the shredded papers, that expectation is reasonable, and they cannot be searched without a warrant.

In another United States Supreme Court case, *California v. Hodari D.*, 499 U.S. 621 (1990), the police were chasing a car and the driver began throwing items out the car window along the way. After dealing with the violation they were chasing him for, the police went back and retrieved the items thrown from the vehicle and discovered they were contraband. The police brought additional charges and introduced these items in court and the Supreme Court ruled that by throwing them out of the car, Hodari D. had abandoned them and no warrant was required to collect them.

Hopefully, this small sampling of examples of the Constitution in action are sufficient to demonstrate to you that these rules are well settled, were carefully decided, and this body of case law has come down over the years and protects people's expectation of privacy when that expectation is reasonable. HB 311, if it passes, will encourage people to discard drugs, weapons, or other evidence of criminal activity before the police may obtain it, because the police will have to go through a burdensome legal process before seizure is allowed. Also, a person could secrete dangerous weapons while being pursued by an officer, who will have no legal authority to seize them absent probable cause or a court order. This bill would subject police officers to unfair criminal prosecution and civil liability, while at the same time protecting criminal behavior. The bill is overkill, and it should be found inexpedient to legislate.

APPROVED:

*Earl M. Sweeney*

**Assistant Commissioner**



# Voting Sheets

HOUSE COMMITTEE ON JUDICIARY

EXECUTIVE SESSION on HB 311

**BILL TITLE:** establishing a statutory expectation of privacy in personal materials.

**DATE:** February 5, 2013

**LOB ROOM:** 208

**Amendments:**

Sponsor: Rep.

OLS Document #:

Sponsor: Rep.

OLS Document #:

Sponsor: Rep.

OLS Document #:

**Motions:** OTP, OTP/A, ITL, Retained (Please circle one.)

Moved by Rep. Woodbury

Seconded by Rep. Berch

Vote: 15-4 (Please attach record of roll call vote.)

**Motions:** OTP, OTP/A, ITL, Retained (Please circle one.)

Moved by Rep.

Seconded by Rep.

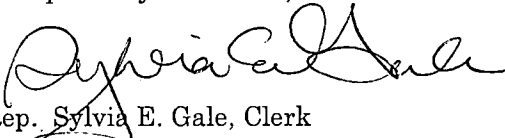
Vote: (Please attach record of roll call vote.)

**CONSENT CALENDAR VOTE: NO**

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

**Statement of Intent:** Refer to Committee Report

Respectfully submitted,

  
Rep. Sylvia E. Gale, Clerk

HOUSE COMMITTEE ON JUDICIARY

EXECUTIVE SESSION on HB 311

**BILL TITLE:** establishing a statutory expectation of privacy in personal materials.

**DATE:** {Type DATE} 2-5-13

**LOB ROOM:** 208

Amendments:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Motions: OTP, OTP/A, ITL, Retained (Please circle one.)

Moved by Rep. Woodbury

Seconded by Rep. Berch

Vote: (Please attach record of roll call vote.) 15-4

Motions: OTP, OTP/A, ITL, Retained (Please circle one.)

Moved by Rep.

Seconded by Rep.

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

**CONSENT CALENDAR VOTE:** {Type VOTE}

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

Statement of Intent: Refer to Committee Report

Respectfully submitted,

Rep. Sylvia E. Gale, Clerk



STATE OF NEW HAMPSHIRE  
OFFICE OF THE HOUSE CLERK

1/10/2013 11:55:21 AM  
Roll Call Committee Registers  
Report

2013 SESSION

JUDICIARY

Bill #: HB 311 Title: establishing a statutory depenation of  
privacy in personal materials  
PH Date: 1 1 29 13 Exec Session Date: 2 1 5 13  
Motion: ITL Amendment #: \_\_\_\_\_

MEMBER	YEAS	NAYS
Smith, Marjorie K, Chairman	15	
Wall, Janet G, V Chairman	1	
<del>Hackel, Paul L</del> Carey, Laurie	2	
Watrous, Rick H	3	
Sullivan, Peter M		
Horrigan, Timothy O	4	
Berch, Paul S	5	
Gale, Sylvia E, Clerk	6	
Heffron, Frank H	7	
Phillips, Larry R	8	
Woodbury, David	9	
Rowe, Robert H,	10	
Hagan, Joseph M	11	
Peterson, Lenette M,	12	
Hopper, Gary S		1
Kappler, Lawrence M	13	
Luther, Robert A	14	
Sylvia, Michael J		2
Takesian, Charlene F		3
Thompson, David H		4
<b>TOTAL VOTE:</b>	<b>15</b>	<b>4</b>

# Committee Report

**REGULAR CALENDAR**

**February 6, 2013**

**HOUSE OF REPRESENTATIVES**

**REPORT OF COMMITTEE**

**The Committee on JUDICIARY to which was referred**

**HB 311,**

**AN ACT establishing a statutory expectation of privacy**

**in personal materials. Having considered the same,**

**report the same with the following Resolution:**

**RESOLVED, That it is INEXPEDIENT TO LEGISLATE.**

**Rep. David Woodbury**

**FOR THE COMMITTEE**

Original: House Clerk

Cc: Committee Bill File

## COMMITTEE REPORT

Committee:	JUDICIARY
Bill Number:	HB311
Title:	establishing a statutory expectation of privacy in personal materials.
Date:	February 6, 2013
Consent Calendar:	NO
Recommendation:	INEXPEDIENT TO LEGISLATE

### STATEMENT OF INTENT

This bill establishes an expectation of privacy in certain "personal materials" such as fingerprints, saliva, hair and household papers unless a warrant supported by probable cause issues. Breaches of this privacy right are punishable as a class B misdemeanor or class B felony for subsequent violations. The Committee was unable to foresee and appreciate the ramifications of this bill and felt that too many unanswered questions remained to support passage.

Vote 15-4.

Rep. David Woodbury  
FOR THE COMMITTEE

Original: House Clerk  
Cc: Committee Bill File

**REGULAR CALENDAR**

**JUDICIARY**

**HB311**, establishing a statutory expectation of privacy in personal materials. **INEXPEDIENT TO LEGISLATE.**

Rep. David Woodbury for JUDICIARY. This bill establishes an expectation of privacy in certain "personal materials" such as fingerprints, saliva, hair and household papers unless a warrant supported by probable cause issues. Breaches of this privacy right are punishable as a class B misdemeanor or class B felony for subsequent violations. The Committee was unable to foresee and appreciate the ramifications of this bill and felt that too many unanswered questions remained to support passage. **Vote 15-4.**



# COMMITTEE REPORT

COMMITTEE: Judiciary

BILL NUMBER: HB 311

TITLE: Establishing a statutory expectation of privacy in personal materials

DATE: 2/5/13 CONSENT CALENDAR: YES  NO

- OUGHT TO PASS
- OUGHT TO PASS W/ AMENDMENT
- INEXPEDIENT TO LEGISLATE
- INTERIM STUDY (Available only 2<sup>nd</sup> year of biennium)

Amendment No. _____
------------------------

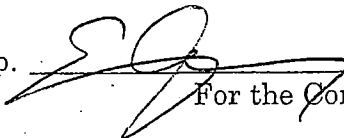
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This bill establishes an expectation of privacy in certain "personal materials" such as fingerprints, saliva, hair and household papers unless a warrant supported by probable cause issues. Breaches of this privacy right are punishable as a class B misdemeanor or class B felony depending on subsequent violations. The Committee was unable to foresee and appreciate the ramifications of this bill and felt that too many unanswered questions remained to ~~allow~~ <sup>support</sup> passage.

COMMITTEE VOTE: 15-4

RESPECTFULLY SUBMITTED,

- |   |
|---|
| <ul style="list-style-type: none"> <li>• Copy to Committee Bill File</li> <li>• Use Another Report for Minority Report</li> </ul> |
|---|

Rep.  For the Committee

MAJORITY REPORT

JUDICIARY

HB 311, establishing a statutory expectation of privacy in personal materials.

RECOMMENDATION: INEXPEDIENT TO LEGISLATE VOTE: 15-4

This bill establishes an expectation of privacy in certain "personal materials" such as fingerprints, saliva, hair and household papers unless a warrant supported by probable cause issues. Breaches of this privacy right are punishable as a class B misdemeanor or class B felony for subsequent violations. The Committee was unable to foresee and appreciate the ramifications of this bill and felt that too many unanswered questions remained to support passage.

Rep. David Woodbury

OK MKS