

HB 1236 - AS AMENDED BY THE HOUSE

12Mar2020... 0976h

2020 SESSION

20-2464

06/04

HOUSE BILL ***1236***

AN ACT relative to the expectation of privacy.

SPONSORS: Rep. Erf, Hills. 2; Rep. Edwards, Rock. 4; Rep. Cordelli, Carr. 4; Rep. Keans,
Straf. 23; Sen. Ward, Dist 8

COMMITTEE: Judiciary

ANALYSIS

This bill establishes a cause of action for violations of an individual's expectation of privacy in personal information.

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 Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.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

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

11 507-H:2 Expectation of Privacy in Personal Information.

12 I. An individual shall have an expectation of privacy in personal information, including
13 content and usage, given or available to third-party providers of information and services, including
14 cellular and land-line telephone, electric, water, and other utility services; Internet service providers;
15 cable television providers; streaming services; social media providers; email service providers; banks
16 and financial institutions; insurance companies; and credit card companies.

17 II.(a) No municipal, county, state, or federal department, agency, employee, elected official,
18 or contractor shall acquire, collect, retain, or use the personal information described in paragraph I,
19 directly or indirectly, related to customers of third-party providers of information and services
20 located in New Hampshire except:

21 (1) Pursuant to a warrant signed by a judge and based on probable cause or
22 pursuant to a judicially-recognized exception to the warrant requirement.

23 (2) In the case of the division of emergency services and communications, when
24 handling emergency 911 telecommunications.

25 (3) Pursuant to a validly issued subpoena by an entity authorized by state law to
26 issue such subpoena.

27 (4) In an emergency.

28 (5) If the individual to whom the personal information pertains provides access to it
29 or authorizes access to it, but only for the purpose for which such access is granted.

30 (b) Subparagraph (a) shall not apply to personal information described in paragraph I if
31 authorized or required by a municipal, county, state, or federal department, agency, employee,

HB 1236 - AS AMENDED BY THE HOUSE
- Page 2 -

1 elected official, or contractor pursuant to state or federal law, provided that such information is
2 requested of and supplied by a third-party provider of information and services for named
3 individuals only or, in the case of employees and/or contractors of a third-party provider of
4 information and services, for all of its employees and/or contractors.

5 (c) Subparagraph (a) shall not apply to personal information described in paragraph I if
6 the individual to whom it pertains:

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

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

13 III. No municipal, state, county, or federal department, agency, employee, elected official, or
14 contractor shall acquire, collect, or retain or use personal information to create dossiers, files, or
15 databases with respect to any individual unless the dossier, file, or database is authorized or
16 required by state or federal law.

17 IV. This chapter shall not apply to personal information acquired, collected, retained, or
18 used by any state regulatory agency with respect to a particular individual when such acquisition,
19 collection, retention, or use is within the agency's regulatory, investigative, adjudicatory, or
20 administrative function.

21 V. Any person violating the provisions of this section shall be guilty of a violation if a
22 natural person, or guilty of a misdemeanor if any other person.

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

26 507-H:3 Action Against a Corporation. This chapter shall not be construed to create a cause of
27 action against a corporation or its officers, employees, or agents for providing information to a
28 municipal, state, or federal department, agency, employee, or contractor in accordance with the
29 provisions of this chapter.

30 507-H:4 Federal Preemption. If federal law preempts any provision of this chapter, that
31 provision shall not apply.

32 2 Regulation of Biometric Information; Collection of Data Prohibited. Amend RSA 359-N:2, I(c)
33 to read as follows:

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

36 2 Effective Date. This act shall take effect upon its passage.

HB 1236- FISCAL NOTE
AS AMENDED BY THE HOUSE (AMENDMENT #2020-0976h)

AN ACT relative to the expectation of privacy.

FISCAL IMPACT: ☒ State ☒ County ☐ Local ☐ None

STATE:	Estimated Increase / (Decrease)			
	FY 2020	FY 2021	FY 2022	FY 2023
Appropriation	\$0	\$0	\$0	\$0
Revenue	\$0	\$0	\$0	\$0
Expenditures	\$0	Indeterminable Increase	Indeterminable Increase	Indeterminable Increase
Funding Source:	<input checked="" type="checkbox"/> General	<input type="checkbox"/> Education	<input type="checkbox"/> Highway	<input type="checkbox"/> Other

COUNTY:

Revenue	\$0	\$0	\$0	\$0
Expenditures	\$0	Indeterminable Increase	Indeterminable Increase	Indeterminable Increase

METHODOLOGY:

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	\$52	\$54
Class B Misdemeanor	\$54	\$56
Class A Misdemeanor	\$77	\$79
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 provide services.	Has contract with State to provide services.
Contract Attorney –	\$300/Case	\$300/Case

Misdemeanor		
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%).		
Department of Corrections		
FY 2019 Average Cost of Incarcerating an Individual	\$44,400	\$44,400
FY 2019 Annual Marginal Cost of a General Population Inmate	\$5,071	\$5,071
FY 2019 Average Cost of Supervising an Individual on Parole/Probation	\$576	\$576
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.

It is assumed any fiscal impact would not occur until FY 2021.

AGENCIES CONTACTED:

Judicial Branch, Departments of Corrections and Justice, Judicial Council, and New Hampshire Association of Counties