

Bill as Introduced

HB 1372 - AS AMENDED BY THE HOUSE

17Feb2010... 0294h

2010 SESSION

10-2439

04/05

HOUSE BILL **1372**

AN ACT establishing a committee to study the provisions of RSA 570-A, the wiretapping and eavesdropping statute, and to study permitting a person to record a law enforcement officer in the course of such officer's official duties.

SPONSORS: Rep. Winters, Hills 17; Rep. R. Holden, Hills 7

COMMITTEE: Criminal Justice and Public Safety

AMENDED ANALYSIS

This bill establishes a committee to study permitting a person to record a law enforcement officer in the course of such officer's official duties.

.....

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.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

AN ACT establishing a committee to study the provisions of RSA 570-A, the wiretapping and eavesdropping statute, and to study permitting a person to record a law enforcement officer in the course of such officer's official duties.

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

1 1 Committee Established. There is established a committee to study permitting a person to
2 record a law enforcement officer in the course of such officer's official duties.

3 2 Membership and Compensation.

4 I. The members of the committee shall be as follows:

5 (a) Four members of the house of representatives, one of whom shall be from the
6 criminal justice and public safety committee, appointed by the speaker of the house of
7 representatives.

8 (b) One member of the senate, appointed by the president of the senate.

9 II. Members of the committee shall receive mileage at the legislative rate when attending to
10 the duties of the committee.

11 3 Duties. The committee shall study the provisions of RSA 570-A, the wiretapping and
12 eavesdropping statute, to determine if revisions are needed to update the statute and shall study any
13 issues associated with permitting any person to make a video and audio recording of a law
14 enforcement officer in the course of such officer's official duties. The committee may solicit testimony
15 from any person with information or expertise relevant to the committee's objective.

16 4 Chairperson; Quorum. The members of the committee shall elect a chairperson from among
17 the members. The first meeting of the committee shall be called by the first-named house member.
18 The first meeting of the committee shall be held within 45 days of the effective date of this section.
19 Three members of the committee shall constitute a quorum.

20 5 Report. The committee shall report its findings and any recommendations for proposed
21 legislation to the speaker of the house of representatives, the president of the senate, the house
22 clerk, the senate clerk, the governor, and the state library on or before November 1, 2010.

23 6 Effective Date. This act shall take effect upon its passage.

Amendments

Sen. Reynolds, Dist. 2
April 22, 2010
2010-1542s
04/09

Amendment to HB 1372

1 Amend section 2 of the bill by replacing paragraph I with the following:

2

3 I. The committee shall consist of 5 members of the house of representatives, one of whom
4 shall be from the criminal justice and public safety committee, appointed by the speaker of the house
5 of representatives.

Senate Judiciary
May 4, 2010
2010-1888s
04/09



Amendment to HB 1372

1 Amend section 2 of the bill by replacing paragraph I with the following:

2

3 I. The committee shall consist of 5 members of the house of representatives, one of whom
4 shall be from the criminal justice and public safety committee, appointed by the speaker of the house
5 of representatives.

Committee Minutes

**SENATE CALENDAR NOTICE
JUDICIARY**

- ✓ Senator Deborah Reynolds Chairman
- ✓ Senator Bette Lasky V Chairman
- ✓ Senator Matthew Houde
- ✓ Senator Sheila Roberge
- ✓ Senator Robert Letourneau

For Use by Senate Clerk's Office ONLY	
<input type="checkbox"/>	Bill Status
<input type="checkbox"/>	Docket
<input type="checkbox"/>	Calendar
Proof: <input type="checkbox"/>	Calendar <input type="checkbox"/> Bill Status

Date: April 19, 2010

HEARINGS

Wednesday 4/28/2010

JUDICIARY	SH 103	1:00 PM
(Name of Committee)	(Place)	(Time)

EXECUTIVE SESSION MAY FOLLOW

Comments: HEARINGS TO COMMENCE AT 1:00 OR IMMEDIATELY FOLLOWING SESSION

- | | | |
|---------|--------|---|
| 1:00 PM | HB1167 | establishing a committee to study parole boards and parole board procedures. |
| 1:15 PM | HB1372 | (New Title) establishing a committee to study the provisions of RSA 570-A, the wiretapping and eavesdropping statute, and to study permitting a person to record a law enforcement officer in the course of such officer's official duties. |
| 1:30 PM | HB1373 | establishing a committee to study the effects of current state and federal laws on illegal drugs and the possession and use of such drugs. |
| 1:45 PM | HB1474 | (New Title) establishing a legislative committee to review the New Hampshire child support guidelines. |
| 2:00 PM | HB1533 | (New Title) establishing a committee to study the statute governing annulment of criminal records. |
| 2:15 PM | HCR22 | (New Title) urging Congress to develop and pass a comprehensive immigration reform program. |
| 2:30 PM | HJR20 | urging Congress to maintain the crime victims fund established in the Victims of Crimes Act and to continue to fully fund federal contributions to state and local victim services organizations. |

Sponsors:

- | | | | |
|---|------------------------|---------------------|----------------------|
| HB1167
Rep. Laura Pantelakos | Rep. Stephen Shurtleff | Rep. David Welch | Rep. Everett Weare |
| HB1372
Rep. Joel Winters | Rep. Rip Holden | | |
| HB1373
Rep. Joel Winters | Rep. Paul Ingretson | | |
| HB1474
Rep. David Bickford | | | |
| HB1533
Rep. James Splaine | Rep. Paul McEachern | | |
| HCR22
Rep. Jordan Ulery
Rep. L. Mike Kappler | Rep. Andrew Renzullo | Rep. Fran Wendelboe | Rep. William O'Brien |
| HJR20
Rep. Robert Cushing | | | |

Gail Brown 271-3076

Sen. Deborah Reynolds
Chairman

Judiciary Committee

Hearing Report

TO: Members of the Senate

FROM: Susan Duncan, *Senior Legislative Aide*

RE: Hearing report on **HB 1372 – AN ACT (New Title) establishing a committee to study the provisions of RSA 570-A, the wiretapping and eavesdropping statute, and to study permitting a person to record a law enforcement officer in the course of such officer’s official duties.**

HEARING DATE: April 27, 2010

MEMBERS OF THE COMMITTEE PRESENT: Senators Reynolds, Lasky, Roberge and Houde

MEMBERS OF THE COMMITTEE ABSENT: Senator Letourneau

Sponsor(s): Representative Winters; Representative R. Holden

What the bill does: This bill establishes a committee to study permitting a person to record a law enforcement officer in the course of such officer’s official duties.

Who supports the bill: Representative Winters; Representative Schlachman; Representative Skinder; Carla Gericke; William Rodriguez; Robert Constantine; Representative Infantine; Representative R. Holden; Representative Ingbretson; Representative Bickford; Chris Dornin;

Who opposes the bill: No one

Summary of testimony received:

- Representative Winters introduced the legislation and provided handouts to Committee members. He said that this legislation is similar to HB 312 from last year. He told of a number of stories that have happened where people have been arrested and charged with a felonies – which is not a valid interpretation of the law.
- He told of a man with a video camera in his motorcycle helmet who ended up having an undercover policeman waiving his gun at him and pulling him over.
- He asked to have a study committee so that this can be looked at and reviewed.

- He said, again, that people are being charged with felony-level offenses and yet the law clearly says that it is a misdemeanor. He said that police are using the law to intimidate people.
- He explained that the statute was written back in the 1970's to apply with telephones and that it needs to be adapted to cover current devices.
- Senator Reynolds asked if it would be okay to go forward without a member of the Senate, owing to the demands on time and the vast number of committees being requested. Representative Winters responded that he would very much appreciate having the legislation go forward.
- In response to Amendment #1663h which Representative Winters had distributed in his original packet of materials, Senator Reynolds said that her memory was that there were objections when this was brought forward before. She asked if he still wants a study committee. Representative Winters responded "oh, yes."
- Carla Gericke testified in support and explained that she is the Program Director of the NH Writers Project which encourages literature in NH. She said that she has never been in trouble and was In-house attorney for a Fortune 500 company. However she said that she was charged with wiretapping by the Weare Police, as a felony with a potential 7 year prison sentence. She said that the police confiscated her camera. She questioned whether in a day where there are full body scans and other monitoring devices, if this statute makes sense. She said that if "Joe Six Pack" doesn't mind being watched, then the same should be true for the police – and they should have accountability, too. She said that testimony in the prior hearing was that people are not arrested under wiretapping laws, but that she is here to tell Committee otherwise. She said that only a clear answer from the Legislature will help the situation stating that videotaping a police officer is legal.
- Senator Reynolds asked about what she was charged with and asked her to please leave a copy of the police complaint. (*Note: The police complaint indicates that both a Class A Misdemeanor as well as the Felony boxes were marked.*)
- William Rodriguez testified in support and said that he had arrived after Ms. Gericke was charged – but he was also charged.
- Chris Dornin testified in support and said that the bill would simply study the matter. He asked "what do the cops have to hide?" He also suggested that the Committee just adopt the amendment and make it law right now.

Fiscal Impact: Not applicable.

Future Action: The Committee took the bill under advisement.

sfd
[file: HB]
Date: April 29, 2010

Date: April 28, 2010
Time: 1:48 p.m.
Room: State House Room 103

24B

The Senate Committee on Judiciary held a hearing on the following:

HB 1372 (New Title) establishing a committee to study the provisions of RSA 570-A, the wiretapping and eavesdropping statute, and to study permitting a person to record a law enforcement officer in the course of such officer's official duties.

Members of Committee present: Senator Reynolds
Senator Lasky
Senator Houde
Senator Roberge
Senator Letourneau

The Chair, Senator Deborah R. Reynolds, opened the hearing on HB 1372 and invited the prime sponsor, Representative Joel Winters, to introduce the legislation.

Representative Winters: Thank you, Madam Chair. Good afternoon. For the record, my name is Joel Winters. I represent Hillsborough District 17, Manchester's wards 10, 11 and 12. I'm here today to ask your support for HB 1372.

I'm pretty sure you all know the history of this bill because it looks similar to something that I brought you last year, which was HB 312 on the issue of citizens being able to record law enforcement in the performance of their duties. There were still unanswered questions last year. I think I talked to each of you about turning it into a study committee, but you had the budget and you were very busy. I was reminded that there is always next year, so I came back this year with a study committee. I would hope you will support it.

Very briefly, I handed out packets of information. I have just one story about a gentleman who was arrested and charged with a felony under the wiretapping laws for recording his own conversation with police. There are a

RWB

lot of examples and it is really disturbing to read cases of a man riding a motorcycle in Florida with a video camera built into his helmet. A plain clothes officer pulled him over, jumped out of his car waving his gun, and when the motorcyclist put this video on u-tube, he found himself charged with a felony, held in jail for twenty-six hours before he get out because he showed what happened. There's a lot of disturbing stories like that.

Another reason to support this is the House actually had a couple of other bills, like HB 1501 that also wanted to address something in the wiretapping laws and the House felt we have one study committee and let them look at all the issues.

The second part of the handout that I distributed is the actual law and you will see that section that I have highlighted that the person, people are being charged with felonies under this and since the law is very clear, and the highlighted section it is only a misdemeanor. If you are one of the parties that are doing the recording, supports my contention that the police are using, in some cases, are using this law to intimidate people when I don't think they should be. I don't know if you can tell by the language here that this current law is from back in the '70s. It is very clearly meant to apply to telephones and those sorts of oral communications and we really do need to take a look and see how new technology should be addressed under our laws.

Please see Attachment #1 - documents presented by Representative Winters.

And, finally, at the end of the packet, I did bring you an amendment. On the off chance you are convinced that we do need to act now and solve this problem, I brought you an amendment that would do the same things that I asked you to do last year with HB 312. I don't expect you to pass it, but I figured it couldn't hurt to add it and at least give you that option.

Please see Attachment #2 - Representative Winters' proposed amendment 2010-1663h.

So, with that, I will complete my testimony. I would be happy to answer any questions the Committee might have.

Senator Deborah R. Reynolds, D. 2: Thank you very much, Representative. And, just in terms or process here, we appreciate the fact that you started this out initially as a study committee. There are, unfortunately, constraints on time, so I'm not sure that we would be able to pass this with having a Senate member involved and I'm wondering how you would feel about that.

Representative Winters: Thank you for the question. We actually, in the House, actually went ahead and dropped it down to a single Senate member from the standard three.

Senator Bette R. Lasky, D. 13: Not low enough.

Representative Winters: Not low enough. Well, if the Senate... You will also see that we did increase it to four House members so that if the Senator was unable to attend, we could still have a quorum. But, if you chose to remove yourself, maybe I would still appreciate the study committee.

Senator Deborah R. Reynolds, D. 2: Thank you, Representative. It is just that there would be a desire to support this, but we may not be able to accommodate having a Senator.

My other question, and maybe other members may have questions about, in terms of your amendment, as I recall when we had this bill last year, there was concern about law enforcement. So, once again, is it clear that whatever happens here, you still would like to have at least the study committee proceed.

Representative Winters: Oh, yes. Definitely. I'm not expecting you to adopt the amendment, but I understand there are some people who will be testifying today that have very recently been arrested and charged under this. If you were so persuaded that this problem should be addressed quickly, I wanted to at least give you a vehicle to do so.

Senator Deborah R. Reynolds, D. 2: Thank you very much, Representative. Any questions of Representative Winters? Seeing none, thank you very much for your testimony.

Representative Winters: Thank you.

Senator Deborah R. Reynolds, D. 2: Representative Schlachman has signed in in support, does not wish to speak. Representative Carla Skinder has signed in in support, does not wish to speak. Representative Infantine has signed in in support, does not wish to speak, as has Representative Holden and Representative Paul Ingretson. Representative David Bickford, who is also here, has signed in in support, does not wish to speak. So, the speakers I have include the next person is Carla Gericke. Is Carla here? Come forward. Welcome.

Carla Gericke: Good afternoon. Thank you very much for having me here. On advice of my counsel, I will be reading my statement here today.

JWB

LMB

My name is Carla Gerick. I am the Program Director of the New Hampshire Writers Project, a twenty-year-old statewide non-profit organization.

Senator Deborah R. Reynolds, D. 2: Carla? I'm sorry to interrupt you. I apologize. It looks like you have a lengthy statement and we probably cannot...

Ms. Gericke: It is under five minutes. Sorry.

Senator Deborah R. Reynolds, D. 2: Okay. We have about six other bills after this, so we are somewhat limited in time. We have at least two other people who want to testify. So, go right ahead.

Ms. Gericke: So, my name is Carla Gericke. I am the Program Director of the New Hampshire Writers Project, a twenty-year-old statewide non-profit organization which supports the development of individual writers and encourages an audience for literature in New Hampshire. I'm an active member of my community and I brought some examples of the work we do.

I have never been in trouble with the law before. I have never been arrested before now. In fact, I worked as an in-house attorney for a Fortune 500 company in California before moving to the east coast. I feel compelled to testify here today regarding HB 1372 since I have been charged with wiretapping while video taping the Weare police on March 24th of this year and the charges alleged that this happened in a public place with people who knew they were being audio recorded. This is not a light matter. The charge is a felony and it carries a seven-year prison sentence. I'm fighting these charges on my time and at my own expense to my obvious personal and financial detriment.

Not only have the police charged me under the wiretapping statute, they also confiscated my camera, resulting in me having to hire a camera and a photographer to record my organization's annual conference at Southern New Hampshire University on April 17th. This added more than \$270 to my expenses, which may not sound like a lot of money here, but my budget is very small and stretched.

I cannot speak about the particulars of my pending case, but I would like to make a few general observations. Police officers are public servants and, as such, they can have no expectation of privacy while conducting their mandated duties. As our country moves more and more towards a surveillance state, a deplorable development in a free society, with video cameras on street corners, cameras on traffic lights, full body scans before

JB

boarding a plane. You often hear the argument that if Joe Six Pack has nothing to hide, he should not mind being watched. Well, I say the same to you here today. If the police have nothing to hide, they should be open to public scrutiny and surveillance themselves. If they have nothing to hide, they should welcome the transparency that independent footage brings.

In a time when the New Hampshire courts are faced with furloughs because of budget cuts, where our prisons are already overcrowded, you can take a stand and end the confusion about videotaping police officers. You can make it easier for the people of New Hampshire to know and understand their rights. You can be the ones who enable us to keep our police accountable to the people they are supposed to serve.

It is my understanding that you received testimony from the law enforcement community and it sounds like this was last year, alleging that they don't arrest people under the wiretapping laws and, as such, that New Hampshire does not need this amendment. Well, I and others here today, as well as hundreds of other American citizens across the country, are your witnesses to provide otherwise. Until you pass this amendment, there will be more cases like mine dragging through the court system, expending unnecessary resources. Maybe next time it will be one of your neighbors; maybe it will be a family member. Maybe one day, it might be you. The only clear answer for you as representatives of the people, only the clear answer from you as representatives of the people will help otherwise law-abiding citizens like me from being unjustly and arbitrarily persecuted.

I strongly encourage you to support the amendment and have it entered into law that videotaping a police officer is always unequivocally, unquestionably, the right of the citizens of the live free or die state.

Thank you for your time.

Senator Deborah R. Reynolds, D. 2: Thank you very much. I do have a quick question for you, if I could, if you would entertain questions. You have some very sincere and forthright testimony and my question to you is this. There is nothing in RSA 570-A that says you could be charged. Well, I guess, in terms of culpability. I think Representative Winters pointed out that the part of the section of the statute that we're talking about you could be charged with a misdemeanor, but you also could be charged with a felony according to RSA 578:2, I and I guess my question here is, were you charged under this or were you charged for criminal mischief or disobeying a police officer? What were you charged with?

JMB

Ms. Gericke: I was charged and I have the complaint forms here. **Please see Attachment #3.**

Senator Deborah R. Reynolds, D. 2: Okay. If you wouldn't mind giving us that, that would be very helpful. Thank you very much. Any other questions of Carle Gericke? Seeing none, thank you very much for coming today.

Ms. Gericke: Thank you for your time.

Senator Deborah R. Reynolds, D. 2: William Rodriquez?

William Rodriquez: I also brought a copy of the complaint.

Senator Deborah R. Reynolds, D. 2: if you could just state your name for the record, sir.

Mr. Rodriquez: Yes, it is William Rodriquez and I guess I will start by just saying you are absolutely right. Even if we had committed the crime of eavesdropping or wiretapping, because they were directly informed that they were being recorded, should have been charged with a misdemeanor and out of whatever motives I won't go over, decided to make it a felony charge anyway.

It is clear that this body did not intend for the statute to be used that way. One doesn't have to read past the title to see that. It is called eavesdropping and wiretapping. Now, how someone can inflate videotaping in public, someone who has been informed, in the performance of their public duties, with eavesdropping or wiretapping is beyond me, but the fact is that people are being persecuted under this statute and it needs some clarification.

So, I also included on there the contact information for Sgt. Lou Chatel, the Weare Police Department Prosecutor and if you felt so moved, you could contact him and speak to him directly on this matter, perhaps ask him not to force us to use up any more of the taxpayers' money, not only defending against this, but in the inevitable loss, we would have to file for damages and I would like to avoid all of that.

Please see Attachment #4 – William Rodriquez's complaint from the Weare Police Department.

Senator Deborah R. Reynolds, D. 2: You were with this Ms. Gericke?

Mr. Rodriguez: I arrived on the scene afterward and was taken into custody after the fact. I was taken into custody after the fact, not during the incident and I arrived on the scene late. But, they are slightly related.

Senator Deborah R. Reynolds, D. 2: But, it is the same day, the same approximate time.

Mr. Rodriguez: Correct.

Senator Deborah R. Reynolds, D. 2: So, did she call you?

Mr. Rodriguez: Actually, a friend of ours was driving by and that's how we found out.

Senator Deborah R. Reynolds, D. 2: Thank you, sir.

Mr. Rodriguez: You bet.

Senator Deborah R. Reynolds, D. 2: Any questions? We have heard from a number of people who wanted to talk about Representative Winters' amendment. I do not see anyone else signed in in support or opposition to HB 1372. Mr. Dornin, did you want to come forward? Thank you.

Chris Dornin: I'm Chris Dornin, working for Smarter Criminal Laws. The bill simply would study the merits of letting citizens videotape the investigating officer. At the moment, a citizen is mostly entrenched upon. What do the cops have to hide? Why study this? Why not amend it and make it law now?

Senator Deborah R. Reynolds, D. 2: Any questions of Mr. Dornin? Thank you very much for your testimony, Chris.

Is there anyone else here who was planning on testifying relative to HB 1372? If not, seeing none, thank you all for coming and I am going to close the hearing.

Hearing concluded at 2:00 p.m.

Respectfully submitted,



L. Gail Brown

Senate Secretarial Supervisor

9/15/10

4 Attachments

Rochester man arrested for wiretapping

[Print](#)

Written by Matt Kanner

Wednesday, 16 May 2007

Representative Winter

after allegedly recording a DWI investigation

Police recently charged a Rochester man with a felony count of wiretapping after they discovered he was recording his investigation for driving while intoxicated.

The incident raises the question of when the act of recording a conversation becomes a criminal offense.

Rochester Police Officer Michael Brinkman was patrolling the area of Common Street shortly before 3 a.m. on Monday, March 7, when he noticed a suspicious vehicle parked in a space by the Rochester Commons. The vehicle's sole occupant was sitting in the driver's seat listening to the radio with the keys in the ignition, according to a court affidavit.

As Brinkman approached the vehicle, he detected a strong odor of alcohol and asked the driver if he had been drinking. The driver, 48-year-old Christopher A. Power, of 52 Chestnut St., admitted to drinking some beer earlier in the evening and said he was listening to music because he was stressed out, the affidavit states.

After conducting field sobriety tests, Brinkman arrested Power on a misdemeanor charge of driving while intoxicated. During the arrest process, Officer Aaron Garneau arrived and began searching the vehicle. He found a running Panasonic Micro Recorder on the driver's seat cushion, Police Capt. Paul Callaghan said. Callaghan declined to specify how long the device had been running.

The discovery prompted police to tack on an additional charge of wiretapping, a Class B felony punishable by up to seven years in prison and a fine up to \$4,000. Power was held overnight on \$2,500 cash bail, but a district court judge converted the bail to \$2,500 personal recognizance during his arraignment later that day.

The law regarding wiretapping falls under RSA 570-A:2 (which can be viewed online by visiting www.gencourt.state.nh.us and clicking on "miscellaneous links"). According to a complaint form filed at Rochester District Court, Power violated the law by intercepting an oral conversation between himself and Officer Garneau without Garneau's knowledge.

Callaghan explained that it is illegal in New Hampshire to record any conversation without consent from all involved parties, regardless of where the conversation occurs. "In New Hampshire, you have to have two-party consent," Callaghan said. "You have to have consent of the other person." Wiretapping cases are uncommon in Rochester, he added.

Reached by phone on Thursday, May 10, Power said he did not wish to speak about the incident until after he had consulted with an attorney. He was in the process of looking for an attorney from a private firm to represent him.

Nashua police arrested a man on a similar charge last summer after he used a home security system to videotape an encounter with detectives who were looking for his son in connection with a mugging. The man delivered the tape to the police department to complain that a detective had been rude to him, but police arrested him for wiretapping.

The case drew national media attention, and police eventually decided to drop the charge. Nashua Police at the time maintained that the recording was illegal, but they worried it would be difficult to convince a jury.

Power is scheduled to return to Rochester District Court for a probable cause hearing on May 24, at which time a judge will determine whether sufficient evidence exists to send the case to Strafford County Superior Court. Power pleaded not guilty to the DWI charge, but has not entered a plea on the wiretapping charge because the District Court has no jurisdiction over felonies.

[Close Window](#)

TITLE LVIII PUBLIC JUSTICE

CHAPTER 570-A WIRETAPPING AND EAVESDROPPING

Section 570-A:2

570-A:2 Interception and Disclosure of Telecommunication or Oral Communications Prohibited. –

I. A person is guilty of a class B felony if, except as otherwise specifically provided in this chapter or without the consent of all parties to the communication, the person:

(a) Wilfully intercepts, endeavors to intercept, or procures any other person to intercept or endeavor to intercept, any telecommunication or oral communication;

(b) Wilfully uses, endeavors to use, or procures any other person to use or endeavor to use any electronic, mechanical, or other device to intercept any oral communication when:

(1) Such device is affixed to, or otherwise transmits a signal through, a wire, cable, or other like connection used in telecommunication, or

(2) Such device transmits communications by radio, or interferes with the transmission of such communication, or

(3) Such use or endeavor to use (A) takes place on premises of any business or other commercial establishment, or (B) obtains or is for the purpose of obtaining information relating to the operations of any business or other commercial establishment; or

(c) Wilfully discloses, or endeavors to disclose, to any other person the contents of any telecommunication or oral communication, knowing or having reason to know that the information was obtained through the interception of a telecommunication or oral communication in violation of this paragraph; or

(d) Willfully uses, or endeavors to use, the contents of any telecommunication or oral communication, knowing or having reason to know that the information was obtained through the interception of a telecommunication or oral communication in violation of this paragraph.

I-a. A person is guilty of a misdemeanor if, except as otherwise specifically provided in this chapter or without consent of all parties to the communication, the person knowingly intercepts a telecommunication or oral communication when the person is a party to the communication or with the prior consent of one of the parties to the communication, but without the approval required by RSA 570-A:2, II(d).

II. It shall not be unlawful under this chapter for:

(a) Any operator of a switchboard, or an officer, employee, or agent of any communication common carrier whose facilities are used in the transmission of a telecommunication, to intercept, disclose, or use that communication in the normal course of employment while engaged in any activity which is a necessary incident to the rendition of service or to the protection of the rights or property of the carrier of such communication; provided, however, that said communication common carriers shall not utilize service observing or random monitoring except for mechanical or service quality control checks.

(b) An officer, employee, or agent of any communication common carrier to provide information, facilities, or technical assistance to an investigative or law enforcement officer who, pursuant to this chapter, is authorized to intercept a telecommunication or oral communication.

(c) Any law enforcement officer, when conducting investigations of or making arrests for offenses enumerated in this chapter, to carry on the person an electronic, mechanical or other device which intercepts oral communications and transmits such communications by radio.

(d) An investigative or law enforcement officer in the ordinary course of the officer's duties pertaining to the conducting of investigations of organized crime, offenses enumerated in this chapter, solid waste violations under RSA 149-M:9, I and II, or harassing or obscene telephone calls to intercept a telecommunication or oral communication, when such person is a party to the communication or one of the parties to the communication has given prior consent to such interception; provided, however, that no such interception shall be made unless the attorney general, the deputy attorney general, or an assistant attorney general designated by the attorney general determines that there exists a reasonable suspicion that evidence of criminal conduct will be derived from such interception. Oral authorization for the interception may be given and a written memorandum of said determination and its basis shall be made within 72 hours thereafter. The memorandum shall be kept on file in the office of the attorney general.

(e) Where the offense under investigation is defined in RSA 318-B, the attorney general to delegate authority under RSA 570-A:2, II(d) to a county attorney. The county attorney may exercise this authority only in the county where the county attorney serves. The attorney general shall, prior to the effective date of this subparagraph, adopt specific guidelines under which the county attorney may give authorization for such interceptions. Any county attorney may further delegate authority under this section to any assistant county attorney in the county attorney's office.

(f) An officer, employee, or agent of the Federal Communications Commission, in the normal course of employment and in discharge of the monitoring responsibilities exercised by the commission in the enforcement of chapter 5 of title 47 of the United States Code, to intercept a telecommunication, or oral communication transmitted by radio, or to disclose or use the information thereby obtained.

(g) Any law enforcement officer, when conducting investigations of or making arrests for offenses enumerated in this chapter, to carry on the person an electronic, mechanical or other device which intercepts oral communications and transmits such communications by radio.

(h) Any municipal, county, or state fire or police department, the division of emergency services and communications as created by RSA 21-P:48-a, including the bureau of emergency communications as defined by RSA 106-H, or any independently owned emergency service, and their employees in the course of their employment, when receiving or responding to emergency calls, to intercept, record, disclose or use a telecommunication, while engaged in any activity which is a necessary incident to the rendition of service or the protection of life or property.

(i) Any public utility regulated by the public utilities commission, and its employees in the course of employment, when receiving central dispatch calls or calls for emergency service, or when responding to central dispatch calls or calls for emergency service, to intercept, record, disclose or use a telecommunication, while engaged in any activity which is a necessary incident to the rendition of service, or the protection of life and property. Any public utility recording calls pursuant to this subparagraph shall provide an automatic tone warning device which automatically produces a distinct signal that is repeated at regular intervals during the conversation. The public utilities commission may adopt rules relative to the recording of emergency calls under RSA 541-A.

(j) A uniformed law enforcement officer to make an audio recording in conjunction with a video recording of a routine stop performed in the ordinary course of patrol duties on any way as defined by RSA 259:125, provided that the officer shall first give notification of such recording to the party to the communication.

(k) (1) The owner or operator of a school bus, as defined in RSA 259:96, to make an audio recording in conjunction with a video recording of the interior of the school bus while students are being transported to and from school or school activities, provided that the school board authorizes audio recording, the school district provides notification of such recording to the parents and students as part of the district's pupil safety and violence prevention policy required under RSA 193-F:3, I(b), and there is a sign informing the occupants of such recording prominently displayed on the school bus.

(2) Prior to any audio recording, the school board shall hold a public hearing to determine whether audio recording should be authorized in school buses, and if authorized, the school board shall establish an administrative procedure to address the length of time which the recording is retained, ownership of

the recording, limitations on who may listen to the recording, and provisions for erasing or destroying the recording. Such administrative procedure shall permit the parents or legal guardian of any student against whom a recording is being used as part of a disciplinary proceeding to listen to the recording. In no event, however, shall the recording be retained for longer than 10 school days unless the school district determines that the recording is relevant to a disciplinary proceeding, or a court orders that it be retained for a longer period of time. An audio recording shall only be reviewed if there has been a report of an incident or a complaint relative to conduct on the school bus, and only that portion of the audio recording which is relevant to the incident or complaint shall be reviewed.

(1) A law enforcement officer in the ordinary course of the officer's duties using any device capable of making an audio or video recording, or both, and which is attached to and used in conjunction with a TASER or other similar electroshock device. Any person who is the subject of such recording shall be informed of the existence of the audio or video recording, or both, and shall be provided with a copy of such recording at his or her request.

Source. 1969, 403:1. 1975, 385:2. 1977, 588:16. 1979, 282:1. 1985, 263:2. 1988, 25:3. 1990, 96:1; 191:2. 1992, 174:2. 1995, 195:1; 280:10, I, II, III. 1996, 251:24, eff. Aug. 9, 1996; 274:1-5, eff. Jan. 1, 1997. 2002, 257:11, eff. July 1, 2002. 2003, 319:129, eff. Sept. 4, 2003. 2004, 171:21, eff. July 24, 2004. 2006, 69:1, eff. June 24, 2006. 2008, 139:1, eff. Aug. 5, 2008; 361:11, eff. July 11, 2008.

Rep. Winters, Hills. 17
April 27, 2010
2010-1663h
04/10

Attachment # 2

Amendment to HB 1372

1 Amend the title of the bill by replacing it with the following:

2

3 AN ACT establishing a committee to study the provisions of RSA 570-A, the wiretapping
4 and eavesdropping statute and to study permitting a person to record a law
5 enforcement officer in the course of such officer's official duties, and relative to
6 permitting the recording of a law enforcement officer after notice is given to such
7 officer.
8

9 Amend the bill by replacing all after section 5 with the following:

10

11 6 New Paragraph; Wiretapping and Eavesdropping; Recording a Law Enforcement Officer.

12 Amend RSA 570-A:2 by inserting after paragraph II the following new paragraph:

13 III. A law enforcement officer, in the course of such officer's official duties, shall be deemed
14 to have consented to an audio recording, video recording, or both, provided that notification of the
15 recording shall first be given to the officer.

16 7 Effective Date.

17 I. Section 6 of this act shall take effect January 1, 2011.

18 II. The remainder of this act shall take effect upon its passage.

Amendment to HB 1372
- Page 2 -

2010-1663h

AMENDED ANALYSIS

This bill allows a person to make a recording of a law enforcement officer in the course of such officer's official duties and establishes a committee to study permitting a person to record a law enforcement officer in the course of such officer's official duties.

Attachment #3

#B1372

Docket # _____ TN # G34938

The State of New Hampshire
COMPLAINT

Docket # _____

DOMESTIC VIOLENCE RELATED

VIOLATION

CLASS A MISDEMEANOR
 CLASS B

FELONY

YOU ARE HEREBY NOTIFIED TO APPEAR BEFORE SAID COURT

AT 8:15 O'CLOCK IN THE AM ~~PM~~ ON 04/20 YR 10
UNDER PENALTY OF LAW TO ANSWER TO A COMPLAINT
CHARGING YOU WITH THE FOLLOWING OFFENSE:

TO THE Goffstown COURT, COUNTY OF Hillsborough

THE UNDERSIGNED COMPLAINS THAT: PLEASE PRINT

NAME GERICKE CARLA
Last Name First Name MI

10 BENNING WEST LEBANON, NH
Address State Zip

DOB 02/18/72 OP. LIC.# _____

F M S, O, B T, G, O
Sex Race Height Weight WRITE OUT: BLACK GREEN
Color of Hair Color of Eyes

COMM. VEH. COMM. DR. LIC. HAZ. MAT.

AT 18 EAST RD WEARE, NH
(Location)

ON THE 23 DAY OF March YR. 10 at 11:28 P.M.

on/at in said county and state, did commit the offense of INTERCEPTION

A DISCLOSURE OF TELECOMMUNICATIONS RECORDATION PROHIBITS
contrary to RSA 570:A

and the laws of New Hampshire for which the defendant should be held to
answer, in that the defendant did

did knowingly intercept an oral communication when a person
is party to the communication, to wit: the defendant, in
that the defendant audio recorded Sgt. Joseph Kelley during
a motor vehicle stop and after Sgt. Kelley advised the
defendant to stop recording,

PCH 5/4/10 @ 11:00

against the peace and dignity of the State.

SERVED IN HAND

Officer BRANDON F MONTPLAISIR, Weare Police Department

Complainant _____ Dept. _____

Personally appeared the above named complainant and made oath that the
above complaint by him/her subscribed is, in his/her belief, true.

DATE _____

Attachment #4

Docket # _____ TN # _____

The State of New Hampshire COMPLAINT

Charged as Felony, but 8 = Misd

Docket #

- DOMESTIC VIOLENCE RELATED
- VIOLATION CLASS A MISDEMEANOR FELONY
- CLASS B

YOU ARE HEREBY NOTIFIED TO APPEAR BEFORE SAID COURT
AT 9:15 O'CLOCK IN THE AM/PM ON 04/20 YR. 10
UNDER PENALTY OF LAW TO ANSWER TO A COMPLAINT
CHARGING YOU WITH THE FOLLOWING OFFENSE:

TO THE Goffstown COURT, COUNTY OF Hillsborough

THE UNDERSIGNED COMPLAINS THAT: PLEASE PRINT

NAME RODRIGUEZ WILLIAM
Last Name First Name MI

31 HOYT RD. GRAFTON, NH 02240
Address State Zip

DOB 10/27/71 OP. LIC.# AZ 610714798

<input checked="" type="checkbox"/> M	<input checked="" type="checkbox"/> W	<u>5 0 6</u>	<u>170</u>	WRITE OUT: <u>BLACK</u>	<u>BROWN</u>
<small>Sex</small>	<small>Race</small>	<small>Height</small>	<small>Weight</small>	<small>Color of Hair</small>	<small>Color of Eyes</small>

- COMM. VEH. COMM. DR. LIC. HAZ. MAT.

AT 144 NORTH STARK HWY WEARE NH
(Location) A.M.

ON THE 25 DAY OF March YR. 10 at 12:05 P.M.

on/at in said county and state, did commit the offense of INTERCEPTION

OF ORAL COMMUNICATIONS PROHIBITED contrary to RSA 570:A

and the laws of New Hampshire for which the defendant should be held to

answer, in that the defendant did

did knowingly intercept an oral communication when a person is party to the communication, to wit: the defendant, in that the defendant audio recorded Lt. James Carney during a motor vehicle stop and after Lt. Carney advised the defendant to stop recording.

against the peace and dignity of the State.

- SERVED IN HAND

Sergeant ROBERT J PETERSON, Weare Police Department

Complainant [Signature] Dept. [Signature]

Personally appeared the above named complainant and made oath that the above complaint by him/her subscribed is, in his/her belief, true.

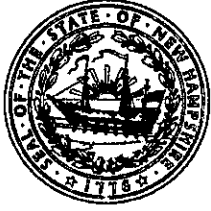
DATE 4-16-10 [Signature]
Justice of the Peace

138-2010-CR-573 (3311160) Rodriguez

Weare Prosecutor
Lou Chatel
603-529-7775

Speakers

Testimony



State of New Hampshire

HOUSE OF REPRESENTATIVES

CONCORD

MEMORANDUM

DATE: November 1, 2010

TO: Honorable John H. Lynch, Governor
Honorable Terie Norelli, Speaker of the House
Honorable Sylvia B. Larsen, President of the Senate
Honorable Karen O. Wadsworth, House Clerk
Tammy L. Wright, Senate Clerk
Michael York, State Librarian

FROM: Representative Laura Pantelakos, Chairman

SUBJECT: Final Report on HB 1372, Chapter 278, Laws of 2010

Pursuant to HB 1372, Chapter 278, Laws of 2010, enclosed please find the Final Report of the Committee to Study Permitting a Person to Record a Law Enforcement Officer in the Course of Such Officer's Official Duties.

If you have any questions or comments regarding this report, please do not hesitate to contact me.

LP/ta

Enclosures

cc: Members of the Committee

Committee to Study Permitting a Person to Record a Law Enforcement
Officer in the Course of Such Officer's Official Duties
(HB 1372, Chapter 278, Laws of 2010)

Final Report
October 28, 2010

Rep. Laura Pantelakos, Chair
Rep. Stephen Nedeau
Rep. Thomas Buco
Rep. Ronald Boisvert
Rep. Eric Stohl

The committee was established to study the provisions of RSA 570-A, the wiretapping and eavesdropping statute, to determine if revisions are needed to update the statute and also to study any issues associated with permitting any person to make a video and audio recording of a law enforcement officer in the course of such officer's official duties.

The committee heard from a variety of interested parties, including the bill's sponsor, the Attorney General's Office, representatives from law enforcement, a defense attorney representing persons charged under the statute, as well as from members of the public.

The sponsor explained that he filed HB 1372 to study this subject in response to the issues raised by HB 312 in 2009 which would have allowed any person to make an audio or video recording of a law enforcement officer in the course of such officer's official duties. Under current law, audio recording of another person without that person's consent is a violation of the wiretapping statute; the sponsor had introduced HB 312 in response to certain incidents where persons who had recorded their encounters with law enforcement had been charged with a felony under the statute. The sponsor believes that the statute is not intended to apply to open audio or video recording, but only to the surreptitious use of such devices. He also believes that the "expectation of privacy" standard required by the statute does not apply to public places where a person is openly recording, that the statute requires only notice of such recording and not consent.

The committee also heard from a defense attorney who has represented individuals who have been charged under the wiretapping statute for recording law enforcement during the course of their duties. He stated that none of the individuals had been convicted, the charges having been dropped prior to trial, but that he believed that charging a person with a felony under RSA 570-A was an inappropriate use of the statute. He stated that, in his opinion, a video and audio recording of the encounter is the defendant's best evidence in court in refuting the officer's account of the incident and that the taping of a public official performing a public duty in a public place should not be subject to the wiretapping statute.

Representatives from law enforcement stated that each case is dependant on the facts of the particular situation. They argue that it is the officer's duty to control the scene of the encounter to protect both the officer and the individual; they also stated that in certain instances they may ask a person recording the incident to step away from the scene, but not cease their recording of the incident. In response to the particular incidents detailed by the sponsor and the defense attorney, law enforcement and the Attorney General's Office stated that it was possible that the statute was misapplied, but that only the details of one side (the defendants') of these incidents was being presented and that other considerations may have been present.

The committee is concerned about the misapplication or abuse of the wiretapping statute; however, the committee does not support a broad authorization to allow a person to record a law enforcement officer during the course of the officer's official duties. The committee believes that officer safety is the paramount concern in any encounter between law enforcement and the public and does not support any law which would hinder the officer's ability to control the scene or compromise public safety. While the committee is cognizant of the fact that a few individuals have been charged with felonies under the current statute, it notes that no person has been convicted or sentenced for such an offense and that these isolated incidents are not indicative of a larger deficiency with the law; the committee believes that the remedy for possible misapplication or misunderstanding of the statute is better training of law enforcement, not a wholesale change to the law.

The committee does believe that RSA 570-A should be updated to reflect changes in technology since the enactment of the statute. To that end, the committee tasked the Attorney General's Office with identifying areas of the statute which should be amended and to offer its recommendations; the attached draft reflects those recommendations which are detailed below:

• **RSA 570-A:1**

The current definitions of "telecommunication" and "communications common carrier" are deleted and replaced with new definitions of "wire communication" and "electronic communications." The former definitions employed outdated language and are inconsistent with current federal law – the new definitions reflect modern technology and are consistent with federal law.

Throughout the chapter, "telecommunication" is replaced with "wire, electronic or oral communication" and "communications common carrier" is replaced with "provider of wire or electronic communication services."

• **RSA 570-A:2, II**

Current subparagraphs (c) and (d) contain exceptions to the prohibition against non-consensual taping which apply to law enforcement officers. Subparagraph (c) allows an officer to wear an interception device when he or she is investigating or making an arrest,

for purposes of officer safety. Subparagraph (d), which is the so-called “one-party consent” portion of the statute, permits a consenting officer or civilian to intercept and record communications between him or herself and the target of the investigation. Under the current statute, these exceptions apply only when the investigation or arrest is for an enumerated offense listed in RSA 570-A:7. The amendments to (c) and (d) delete the reference to the enumerated offenses and permits the interception for any felony offense or certain misdemeanor offenses (criminal threatening, harms or threats to certain government officials, harassment and stalking); the Attorney General’s Office explained that this amendment is necessary to allow law enforcement to utilize the statute for investigation of additional crimes.

Under the current statute, a one-party consent interception is illegal unless it is authorized by the Attorney General’s Office or, in the case of drug investigations, by the county attorney. The Attorney General has issued guidelines for the county attorneys to follow when exercising that authority. The amendment to subparagraph (e) expands the county attorneys’ authority to authorize one-party consent interceptions to match that of the Attorney General’s Office and provides that the written authorizations shall be kept on file in the county attorneys’ office.

Finally, the amendment deletes current subparagraph (g) which is duplicative of current subparagraph (c).

• **RSA 570-A:7**

The list of enumerated offenses referenced in RSA 570-A:2, II (c) and (d) which are eligible for wiretap investigations is left unchanged.

• **RSA 7:6-b**

The references to “communications common carrier” are deleted and replaced with “provider of wire or electronic communication services.”

The committee appreciates the recommendations made by the Attorney General’s Office to RSA 570-A. The committee believes that the statute should be effectively updated to meet the needs of modern technology and to provide law enforcement with the necessary tools to perform investigations while also protecting public safety and individual rights.

Respectfully submitted,

Rep. Laura Pantelakos, Chair

Attorney General's Recommendation

570-A:1 Definitions. – As used in this chapter:

I. [~~""Telecommunication" means the transfer of any form of information in whole or in part through the facilities of a communications common carrier. ""Telecommunication" does not include any communication made through a tone only paging system or from a tracking device.~~] **"Wire communication" means any aural transfer made in whole or in part through the use of facilities for the transmission of communications by the aid of wire, cable, or other like connection between the point of origin and the point of reception (including the use of such connection in a switching station).**

II. **"Oral communication" means any oral communication uttered by a person exhibiting an expectation that such communication is not subject to interception under circumstances justifying such expectation.**

III. **"Intercept" means the aural or other acquisition of, or the recording of, the contents of any [~~telecommunication~~] *wire, electronic* or oral communication through the use of any electronic, mechanical, or other device.**

IV. **"Electronic, mechanical, or other device" means any device or apparatus which can be used to intercept a [~~telecommunication~~] *wire, electronic* or oral communication other than:**

(a) Any telephone or telegraph instrument, equipment, facility or any component thereof:

(1) **Furnished to the subscriber or user by a [~~communication carrier~~] *provider of wire or electronic communication services* in the ordinary course of its business and being used by the subscriber or user in the ordinary course of its business or furnished by such subscriber or user for connection to the facilities of such service and used in the ordinary course of its business in accordance with applicable provisions of telephone and telegraph company rules and regulations, as approved by the public utilities commission;**

(2) **Being used by a communication common carrier in the ordinary course of its business, or by an investigative or law enforcement officer in the ordinary course of his duties pursuant to this chapter;**

(3) **Being used by a [~~communication common carrier~~] *provider of wire or electronic communication services* in the ordinary course of its business, or by an investigative or law enforcement officer in the ordinary course of his duties;**

(b) **A hearing aid or similar device being used to correct subnormal hearing to not better than normal.**

V. **"Person" means any employee or agent of the state or political subdivision thereof, and any individual, partnership, association, joint stock company, trust, or corporation.**

VI. **"Investigative or law enforcement officer" means any officer of the state or political subdivision thereof who is empowered by law to conduct investigations of or to make arrests for offenses enumerated in this chapter, and any attorney authorized by law to prosecute or participate in the prosecution of such offenses.**

VII. **"Contents", when used with respect to any [~~telecommunication~~] *wire, electronic* or oral communication, includes any information concerning the identity of the parties to such communication or the existence, substance, purport, or meaning of that communication.**

VIII. "'Judge of competent jurisdiction" means a judge of the superior court.

~~[IX. "'Communications common carrier" means a person engaged in providing communications services to the general public through transmission of any form of information between subscribers by means of wire, cable, radio or electromagnetic transmission, optical or fiber optic transmission, or other means which transfers information without physical transfer of medium, whether by switched or dedicated facilities. A person engaged in radio or television broadcasting or any other general distribution of any form of communications shall not thereby be deemed a communications common carrier.]~~

X. "'Aggrieved person" means a person who was a party to any intercepted ~~[telecommunication]~~ *wire, electronic* or oral communication or a person against whom the interception was directed.

XI. "'Organized crime" means the unlawful activities of the members of a highly organized, disciplined association engaged in supplying illegal goods and services, including but not limited to homicide, gambling, prostitution, narcotics, marijuana or other dangerous drugs, bribery, extortion, blackmail and other unlawful activities of members of such organizations.

XII. [Repealed.]

XIII. "Electronic communication" means any transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photoelectronic or photooptical system, but does not include:

- (a) any wire or oral communication;*
- (b) any communication made through a tone-only paging device;*
- (c) any communication from a tracking device; or*
- (d) electronic funds transfer information stored by a financial institution in a communications system used for the electronic storage and transfer of funds.*

570-A:2 Interception and Disclosure of ~~[Telecommunication]~~ Wire, Electronic or Oral Communications Prohibited. –

I. A person is guilty of a class B felony if, except as otherwise specifically provided in this chapter or without the consent of all parties to the communication, the person:

(a) Wilfully intercepts, endeavors to intercept, or procures any other person to intercept or endeavor to intercept, any ~~[telecommunication]~~ *wire, electronic* or oral communication;

(b) Wilfully uses, endeavors to use, or procures any other person to use or endeavor to use any electronic, mechanical, or other device to intercept any oral communication when:

(1) Such device is affixed to, or otherwise transmits a signal through, a wire, cable, or other like connection used in ~~[telecommunication]~~, *wire or electronic communication* or

(2) Such device transmits communications by radio, or interferes with the transmission of such communication, or

(3) Such use or endeavor to use (A) takes place on premises of any business or other commercial establishment, or (B) obtains or is for the purpose of

obtaining information relating to the operations of any business or other commercial establishment; or

(c) Wilfully discloses, or endeavors to disclose, to any other person the contents of any ~~[telecommunication]~~ *wire, electronic* or oral communication, knowing or having reason to know that the information was obtained through the interception of a ~~[telecommunication]~~ *wire, electronic* or oral communication in violation of this paragraph; or

(d) Willfully uses, or endeavors to use, the contents of any ~~[telecommunication]~~ *wire, electronic* or oral communication, knowing or having reason to know that the information was obtained through the interception of a ~~[telecommunication]~~ *wire, electronic* or oral communication in violation of this paragraph.

I-a. A person is guilty of a misdemeanor if, except as otherwise specifically provided in this chapter or without consent of all parties to the communication, the person knowingly intercepts a ~~[telecommunication]~~ *wire, electronic* or oral communication when the person is a party to the communication or with the prior consent of one of the parties to the communication, but without the approval required by RSA 570-A:2, II(d).

II. It shall not be unlawful under this chapter for:

(a) Any operator of a switchboard, or an officer, employee, or agent of any ~~[communication-common-carrier]~~ *provider of wire or electronic communication services* whose facilities are used in the transmission of a ~~[telecommunication]~~ *wire or electronic communication*, to intercept, disclose, or use that communication in the normal course of employment while engaged in any activity which is a necessary incident to the rendition of service or to the protection of the rights or property of the carrier of such communication; provided, however, that said ~~[communication-common-carriers]~~ *provider of wire or electronic communication services* shall not utilize service observing or random monitoring except for mechanical or service quality control checks.

(b) An officer, employee, or agent of any ~~[communication-common-carrier]~~ *provider of wire or electronic communication services* to provide information, facilities, or technical assistance to an investigative or law enforcement officer who, pursuant to this chapter, is authorized to intercept a ~~[telecommunication]~~ *wire, electronic* or oral communication.

(c) Any law enforcement officer, when conducting ~~[investigations of or making arrests for offenses enumerated in this chapter]~~ *an investigation or making an arrest for any felony offense*, to carry on ~~[the]~~ *his or her* person an electronic, mechanical or other device which intercepts oral communications and transmits such communications ~~[by radio]~~ *for the purpose of officer safety*.

(d) An investigative or law enforcement officer ~~[in the ordinary course of the officer's duties pertaining to the conducting of investigations of organized crime, offenses enumerated in this chapter, solid waste violations under RSA 149-M:9, I and II, or harassing or obscene telephone calls]~~ *in the course of an investigation of any felony offense, Criminal Threatening under RSA 631:4, Harms or Threats to Certain Government Officials under RSA 631:4-a, Harassment under RSA 644:4, Stalking under RSA 633:3-a, or an attempt or conspiracy to commit such an offense* to intercept a ~~[telecommunication]~~ *wire, electronic* or oral communication, when such person is a party to the communication or one of the parties to the communication has given prior consent to such interception; provided, however, that no such interception shall be made

unless the attorney general, the deputy attorney general, or an assistant attorney general designated by the attorney general determines that there exists a reasonable suspicion that evidence of criminal conduct will be derived from such interception. Oral authorization for the interception may be given and a written memorandum of said determination and its basis shall be made within 72 hours thereafter. The memorandum shall be kept on file in the office of the attorney general.

(e) ~~[Where the offense under investigation is defined in RSA 318-B,]~~ The attorney general to delegate authority under RSA 570-A:2, II(d) to a county attorney. The county attorney may exercise this authority only in the county where the county attorney serves. The attorney general shall ~~[, prior to the effective date of this subparagraph,]~~ adopt specific guidelines under which the county attorney may give authorization for such interceptions. Any county attorney may further delegate authority under this section to any assistant county attorney in the county attorney's office. ***The written memorandum of authorization issued pursuant to this delegated authority shall be kept on file in the office of the county attorney where the authorization was given.***

(f) An officer, employee, or agent of the Federal Communications Commission, in the normal course of employment and in discharge of the monitoring responsibilities exercised by the commission in the enforcement of chapter 5 of title 47 of the United States Code, to intercept a ~~[telecommunication,]~~ ***wire, electronic*** or oral communication ~~[transmitted by radio]~~, or to disclose or use the information thereby obtained.

~~[(g) Any law enforcement officer, when conducting investigations of or making arrests for offenses enumerated in this chapter, to carry on the person an electronic, mechanical or other device which intercepts oral communications and transmits such communications by radio.]~~

(h) Any municipal, county, or state fire or police department, the division of emergency services and communications as created by RSA 21-P:48-a, including the bureau of emergency communications as defined by RSA 106-H, or any independently owned emergency service, and their employees in the course of their employment, when receiving or responding to emergency calls, to intercept, record, disclose or use a ~~[telecommunication,]~~ ***wire or electronic communication*** while engaged in any activity which is a necessary incident to the rendition of service or the protection of life or property.

(i) Any public utility regulated by the public utilities commission, and its employees in the course of employment, when receiving central dispatch calls or calls for emergency service, or when responding to central dispatch calls or calls for emergency service, to intercept, record, disclose or use a ~~[telecommunication,]~~ ***wire or electronic communication*** while engaged in any activity which is a necessary incident to the rendition of service, or the protection of life and property. Any public utility recording calls pursuant to this subparagraph shall provide an automatic tone warning device which automatically produces a distinct signal that is repeated at regular intervals during the conversation. The public utilities commission may adopt rules relative to the recording of emergency calls under RSA 541-A.

(j) A uniformed law enforcement officer to make an audio recording in conjunction with a video recording of a routine stop performed in the ordinary course of patrol duties on any way as defined by RSA 259:125, provided that the officer shall first give notification of such recording to the party to the communication.

(k) (1) The owner or operator of a school bus, as defined in RSA 259:96, to make an audio recording in conjunction with a video recording of the interior of the school bus while students are being transported to and from school or school activities, provided that the school board authorizes audio recording, the school district provides notification of such recording to the parents and students as part of the district's pupil safety and violence prevention policy required under RSA 193-F:3, I(b), and there is a sign informing the occupants of such recording prominently displayed on the school bus.

(2) Prior to any audio recording, the school board shall hold a public hearing to determine whether audio recording should be authorized in school buses, and if authorized, the school board shall establish an administrative procedure to address the length of time which the recording is retained, ownership of the recording, limitations on who may listen to the recording, and provisions for erasing or destroying the recording. Such administrative procedure shall permit the parents or legal guardian of any student against whom a recording is being used as part of a disciplinary proceeding to listen to the recording. In no event, however, shall the recording be retained for longer than 10 school days unless the school district determines that the recording is relevant to a disciplinary proceeding, or a court orders that it be retained for a longer period of time. An audio recording shall only be reviewed if there has been a report of an incident or a complaint relative to conduct on the school bus, and only that portion of the audio recording which is relevant to the incident or complaint shall be reviewed.

(l) A law enforcement officer in the ordinary course of the officer's duties using any device capable of making an audio or video recording, or both, and which is attached to and used in conjunction with a TASER or other similar electroshock device. Any person who is the subject of such recording shall be informed of the existence of the audio or video recording, or both, and shall be provided with a copy of such recording at his or her request.

570-A:3 Manufacture, Distribution, Possession, and Advertising of [Telecommunication] Wire, Electronic or Oral Communication Intercepting Devices Prohibited. –

I. A person is guilty of a class B felony if, except as otherwise specifically provided in this chapter, he:

(a) Manufactures, assembles, possesses, or sells any electronic, mechanical, or other device, knowing or having reason to know that the design of such device renders it primarily useful for the purpose of the surreptitious interception of [telecommunications] *wire, electronic* or oral communications; or

(b) Places in any newspaper, magazine, handbill, or other publication any advertisement of:

(1) Any electronic, mechanical, or other device knowing or having reason to know that the design of such device renders it primarily useful for the purpose of the surreptitious interception of [telecommunications] *wire, electronic* or oral communications, or

(2) Any other electronic, mechanical, or other device, where such advertisement promotes the use of such device for the purpose of the surreptitious interception of [telecommunications] *wire, electronic* or oral communications.

II. It shall not be unlawful under this section for:

(a) A ~~[communications common carrier]~~ *provider of wire or electronic communication services* or an officer, agent, or employee of, or a person under contract with, *such a* ~~[communications common carrier]~~ *provider*, in the normal course of the ~~[communications common carrier's]~~ *provider's* business, or

(b) An officer, agent, or employee of, or a person under contract with, the state, or a political subdivision thereof, in the normal course of the activities of the state, or a political subdivision thereof, to manufacture, assemble, possess, or sell any electronic, mechanical, or other device knowing or having reason to know that the design of such device renders it primarily useful for the purpose of the surreptitious interception of ~~[telecommunications]~~ *wire, electronic* or oral communications.

570-A:4 Confiscation of ~~[Telecommunication]~~ *Wire, Electronic* or Oral Communication Intercepting Devices. – Any electronic, mechanical, or other device used, sent, carried, manufactured, assembled, possessed, sold, or advertised in violation of RSA 570-A:2 or 570-A:3 may be seized and forfeited to the state according to the procedure set forth in RSA 617.

570-A:5 Immunity of Witnesses. – Whenever, in the judgment of the attorney general, the testimony of any witness, or the production of books, papers, or other evidence by any witness, in any case or proceeding before any grand jury or superior court involving any violation of this chapter or any of the offenses enumerated in RSA 570-A:7, or any conspiracy to violate this chapter or any of the offenses enumerated in RSA 570-A:7, is necessary to the public interest, the attorney general, or a county attorney upon the written approval of the attorney general, shall make application to the superior court that the witness shall be instructed to testify or produce evidence subject to the provisions of this section, and upon order of the court such witness shall not be excused from testifying or from producing books, papers, or other evidence on the ground that the testimony or evidence required of him may tend to incriminate him or subject him to a penalty or forfeiture. No such witness shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, nor shall testimony so compelled be used as evidence in any criminal proceeding (except in the proceeding described in the next sentence) against him in any court. No witness shall be exempt under this section from prosecution for perjury or contempt committed while giving testimony or producing evidence under compulsion as provided in this section.

570-A:6 Prohibition of Use as Evidence of Intercepted ~~[Telecommunications]~~ *Wire, Electronic* or Oral Communications. – Whenever any ~~[telecommunication]~~ *wire, electronic* or oral communication has been intercepted, no part of the contents of such communication and no evidence derived therefrom may be received in evidence in any trial, hearing, or other proceeding in or before any court, grand jury, department, officer, agency, regulatory body, legislative committee, or other authority of the state, or a political subdivision thereof, if the disclosure of that information would be in violation of this chapter.

570-A:7 Authorization for Interception of [Telecommunications] Wire, Electronic or Oral Communications. – The attorney general, deputy attorney general, or a county attorney, upon the written approval of the attorney general or deputy attorney general, may apply to a judge of competent jurisdiction for an order authorizing or approving the interception of [telecommunications] *wire, electronic* or oral communications, and such judge may grant, in conformity with RSA 570-A:9, an order authorizing or approving the interception of [telecommunications] *wire, electronic* or oral communications by investigative or law enforcement officers having responsibility for the investigation of the offenses as to which the application is made, when such interception may provide, or has provided, evidence of the commission of organized crime, as defined in RSA 570-A:1, XI, or evidence of the commission of the offenses of homicide, kidnapping, gambling, theft as defined in RSA 637, corrupt practices as defined in RSA 640, child pornography under RSA 649-A, computer pornography and child exploitation under RSA 649-B, criminal conduct in violation of the securities law, as defined in RSA 421-B:3, 421-B:4, 421-B:5, 421-B:19, and 421-B:24, criminal conduct in violation of the security takeover disclosure laws, as defined in RSA 421-A:3, 421-A:7, 421-A:8, 421-A:11, and 421-A:13, robbery as defined in RSA 636:1, arson as defined in RSA 634:1, hindering apprehension or prosecution as defined in RSA 642:3, tampering with witnesses and informants as defined in RSA 641:5, aggravated felonious sexual assault as defined in RSA 632-A:2, felonious sexual assault as defined in RSA 632-A:3, escape as defined in RSA 642:6, bail jumping as defined in RSA 642:8, insurance fraud as defined in RSA 638:20, dealing in narcotic drugs, marijuana, or other dangerous drugs, hazardous waste violations under RSA 147-A:4, I, or any conspiracy to commit any of the foregoing offenses.

570-A:8 Authorization for Disclosure and Use of Intercepted [Telecommunications] Wire, Electronic or Oral Communications. –

- I. Any law enforcement officer who, by any means authorized by this chapter, has obtained knowledge of the contents of any [telecommunication] *wire, electronic* or oral communication, or evidence derived therefrom, may disclose such contents to another law enforcement officer to the extent that such disclosure is appropriate to the proper performance of the official duties of the officer making or receiving the disclosure.
- II. Any law enforcement officer who, by any means authorized by this chapter, has obtained knowledge of the contents of any [telecommunication] *wire, electronic* or oral communication or evidence derived therefrom may use such contents to the extent such use is appropriate to the proper performance of the officer's official duties.
- III. Any person who has received, by any means authorized by this chapter, any information concerning a [telecommunication] *wire, electronic* or oral communication or evidence derived therefrom intercepted in accordance with the provisions of this chapter may disclose the contents of that communication or such derivative evidence while giving testimony under oath or affirmation in any criminal proceeding in any court of the United States or of any state or in any federal or state grand jury proceeding.
- IV. No otherwise privileged [telecommunication] *wire, electronic* or oral communication intercepted in accordance with, or in violation of, the provisions of this chapter shall lose its privileged character.
- V. When a law enforcement officer, while engaged in intercepting [telecommunications] *wire, electronic* or oral communications in the manner authorized herein, intercepts

[telecommunications] *wire, electronic* or oral communications relating to offenses other than those specified in the order of authorization or approval, the contents thereof, and evidence derived therefrom, may be disclosed or used as provided in paragraphs I and II. Such contents and any evidence derived therefrom may be used under paragraph III, when authorized or approved by a judge of competent jurisdiction where such judge finds on subsequent application that the contents were otherwise intercepted in accordance with the provisions of this chapter. Such application shall be made as soon as practicable.

570-A:9 Procedure for Interception of [Telecommunication] Wire, Electronic or Oral Communications. –

I. Each application for an order authorizing or approving the interception of a [telecommunication] *wire, electronic* or oral communication shall be made in writing upon oath or affirmation to a judge of competent jurisdiction and shall state the applicant's authority to make such application. Each application shall include the following information:

(a) The identity of the law enforcement officer making the application, and the officer authorizing the application;

(b) A full and complete statement of the facts and circumstances relied upon by the applicant to justify the applicant's belief that an order should be issued, including: (1) Details as to the particular offense that has been, is being, or is about to be committed, (2) A particular description of the nature and location of the facilities from which or the place where the communication is to be intercepted, (3) A particular description of the type of communications sought to be intercepted, (4) The identity of the person, if known, committing the offense and whose communications are to be intercepted;

(c) A full and complete statement as to whether or not other investigative procedures have been tried and failed or why they reasonably appear to be unlikely to succeed if tried or to be too dangerous;

(d) A statement of the period of time for which the interception is required to be maintained. If the nature of the investigation is such that the authorization for interception should not automatically terminate when the described type of communication has been first obtained, the application shall include a particular description of facts establishing probable cause to believe that additional communications of the same type will occur thereafter;

(e) A full and complete statement of the facts concerning all previous applications known to the individual authorizing and making the application, made to any judge for authorization to intercept, or for approval of interceptions of, [telecommunications] *wire, electronic* or oral communications involving any of the same persons, facilities or places specified in the application, and the action taken by the judge on each such application; and

(f) Where the application is for the extension of an order, a statement setting forth the results thus far obtained from the interception, or a reasonable explanation of the failure to obtain such results.

II. The judge may require the applicant to furnish additional testimony or documentary evidence in support of the application.

III. Upon such application, the judge may enter an ex parte order, as requested or as modified, authorizing or approving interception of [telecommunication] *wire, electronic*

or oral communications, if the judge determines on the basis of the facts submitted by the applicant that:

(a) There is probable cause for belief that an individual is committing, has committed, or is about to commit a particular offense enumerated in RSA 570-A:7;

(b) There is probable cause for belief that particular communications concerning that offense will be obtained through such interception;

(c) Normal investigative procedures have been tried and have failed or reasonably appear to be unlikely to succeed if tried or to be too dangerous;

(d) There is probable cause for belief that the facilities from which, or the place where, the [telecommunications] *wire, electronic* or oral communications are to be intercepted are being used, or are about to be used, in connection with the commission of such offense, or are leased to, listed in the name of, or commonly used by such person.

IV. Each order authorizing or approving the interception of any [telecommunication] *wire, electronic* or oral communication shall specify:

(a) The identity of the person, if known, whose communications are to be intercepted;

(b) The nature and location of the communications facilities as to which, or the place where, authority to intercept is granted;

(c) A particular description of the type of communication sought to be intercepted, and a statement of the particular offense to which it relates;

(d) The identity of the agency authorized to intercept the communications, and of the person authorizing the application; and

(e) The period of time during which such interception is authorized, including a statement as to whether or not the interception shall automatically terminate when the described communication has been first obtained.

V. No order entered under this section may authorize or approve the interception of any [telecommunication] *wire, electronic* or oral communication for any period longer than is necessary to achieve the objective of the authorization, nor in any event longer than 10 days. Extensions of an order may be granted, but only upon application for an extension made in accordance with paragraph I, and the court making the findings required by paragraph III. The period of extension shall be no longer than the authorizing judge deems necessary to achieve the purposes for which it was granted and in no event for longer than 10 days. Every order and extension thereof shall contain a provision that the authorization to intercept shall be executed as soon as practicable, shall be conducted in such a way as to minimize the interception of communications not otherwise subject to interception under this chapter, and must terminate upon attainment of the authorized objective, or in any event in 10 days.

VI. Whenever an order authorizing interception is entered pursuant to this chapter, the order may require reports to be made to the judge who issued the order showing what progress has been made toward achievement of the authorized objective and the need for continued interception. Such reports shall be made at such intervals as the judge may require.

VII. (a) The contents of any [telecommunication] *wire, electronic* or oral communication intercepted by any means authorized by this chapter shall, if possible, be recorded on tape or wire or other comparable device. The recording of the contents of any [telecommunication] *wire, electronic* or oral communication under this paragraph shall

be done in such way as will protect the recording from editing or other alterations. Immediately upon the expiration of the period of the order or extensions thereof, such recordings shall be made available to the judge issuing such order and sealed under the judge's directions. Custody of the recordings shall be wherever the judge orders. They shall not be destroyed except upon an order of the issuing or denying judge and in any event shall be kept for 10 years. Duplicate recordings may be made for use or disclosure pursuant to the provisions of RSA 570-A:8, I and II, for investigations. The presence of the seal provided for by this paragraph, or a satisfactory explanation for the absence thereof, shall be a prerequisite for the use or disclosure of the contents of any [telecommunication] *wire, electronic* or oral communication or evidence derived therefrom under RSA 570-A:8, III.

(b) Applications made and orders granted under this chapter shall be sealed by the judge. Custody of the applications and orders shall be wherever the judge directs. Such applications and orders shall be disclosed only upon a showing of good cause before a judge of competent jurisdiction and shall not be destroyed except on order of the issuing or denying judge, and in any event shall be kept for 10 years.

(c) Any violation of the provisions of this paragraph may be punished as contempt of the issuing or denying judge.

VIII. The contents of any intercepted [telecommunication] *wire, electronic* or oral communication or evidence derived therefrom shall not be received in evidence or otherwise disclosed in any trial, hearing, or other proceeding in a state court unless each party, not less than 10 days before the trial, hearing, or proceeding, has been furnished with a copy of the court order, and accompanying application, under which the interception was authorized or approved. This 10-day period may be waived by the judge if the judge finds that it was not possible to furnish the party with the above information 10 days before the trial, hearing, or proceeding and that the party will not be prejudiced by the delay in receiving such information.

IX. (a) Any aggrieved person in any trial, hearing, or proceeding in or before any court, department, officer, agency, regulatory body, or other authority of the state, or a political subdivision thereof, may move to suppress the contents of any intercepted [telecommunication] *wire, electronic* or oral communication, or evidence derived therefrom, on the grounds that:

- (1) The communication was unlawfully intercepted;
- (2) The order of authorization or approval under which it was intercepted is insufficient on its face; or
- (3) The interception was not made in conformity with the order of authorization or approval.

Such motion shall be made before the trial, hearing, or proceeding unless there was no opportunity to make such motion or the person was not aware of the grounds of the motion. If the motion is granted, the contents of the intercepted [telecommunication] *wire, electronic* or oral communication, or evidence derived therefrom, shall be treated as having been obtained in violation of this chapter. The judge, upon the filing of such motion by the aggrieved person, may, in the judge's discretion, make available to the aggrieved person or such person's counsel for inspection such portions of the intercepted communication or evidence derived therefrom as the judge determines to be in the interests of justice.

(b) In addition to any other right to appeal, the state shall have the right to appeal from an order granting a motion to suppress made under subparagraph IX(a), or the denial of an application for an order of approval, if the attorney shall certify to the judge or other official granting such motion or denying such application that the appeal is not taken for purposes of delay. Such appeal shall be taken within 30 days after the date the order was entered and shall be diligently prosecuted.

X. If an order authorizing interception is entered pursuant to this chapter, the order, upon request of the attorney general or deputy attorney general, shall direct that a communication common carrier shall furnish to the law enforcement agency designated by the attorney general all information, facilities or technical assistance necessary to accomplish the interception unobtrusively and with a minimum of interference with the services that such communication common carrier is according the person whose communications are to be intercepted. The communication common carrier shall furnish such facilities or technical assistance at its prevailing rate or tariff.

570-A:9-a Authorization for Installation and Use of Pen Register Devices. –
[Repealed 1988, 25:7, II, eff. July 1, 1988.]

570-A:9-b Use of Interpreters. – Notwithstanding any other provision of this chapter, an investigative or law enforcement officer supervising an interception under this chapter in which the intercepted communication is in a code or foreign language may utilize the assistance and participation of a qualified interpreter to translate the language being used into English. Such interpreter, before entering upon his or her duties, shall take an oath that he or she will make a true interpretation in an understandable manner to the best of his or her skill and judgment.

570-A:10 Reports Concerning Intercepted [Telecommunications] Wire, Electronic or Oral Communications. –

I. Within 30 days after the expiration of an order, or each extension thereof, entered under RSA 570-A:9, or the denial of an order approving an interception, the issuing or denying judge shall report to the administrative office of the United States Courts:

- (a) The fact that an order or extension was applied for;
- (b) The kind of order or extension applied for;
- (c) The fact that the order or extension was granted as applied for, was modified, or was denied;
- (d) The period of interceptions authorized by the order, and the number and duration of any extensions of the order;
- (e) The offense specified in the order or application, or extension of an order;
- (f) The identity of the applying investigative or law enforcement officer and agency making the application and the person authorizing the application; and
- (g) The nature of the facilities from which or the place where communications were to be intercepted.

II. In January of each year, each county attorney shall report to the attorney general who shall report, in turn, to the administrative office of the United States Courts:

- (a) The information required by subparagraphs I(a) through (g) with respect to each application for an order or extension made during the preceding calendar year;

(b) A general description of the interceptions made under such order or extension, including: (1) The approximate nature and frequency of incriminating communications intercepted, (2) The approximate nature and frequency of other communications intercepted, (3) The approximate number of persons whose communications were intercepted, and (4) The approximate nature, amount, and cost of the manpower and other resources used in the interceptions;

(c) The number of arrests resulting from interceptions made under such order or extension, and the offenses for which arrests were made;

(d) The number of trials resulting from such interceptions;

(e) The number of motions to suppress made with respect to such interceptions, and the number granted or denied;

(f) The number of convictions resulting from such interceptions and the offenses for which the convictions were obtained and a general assessment of the importance of the interceptions; and

(g) The information required by subparagraphs (b) through (f) of this paragraph with respect to orders or extensions obtained in a preceding calendar year.

III. On or before December 1 of each odd numbered year, the attorney general shall include in the report required by RSA 7:37, a report concerning the number of applications for orders authorizing or approving the interception of ~~[telecommunications]~~ *wire, electronic* or oral communications and the number of orders and extensions granted or denied during the preceding 2 years.

570-A:11 Recovery of Civil Damages Authorized. – Any person whose ~~[telecommunication]~~ *wire, electronic* or oral communication is intercepted, disclosed, or used in violation of this chapter shall have a civil cause of action against any person who intercepts, discloses, or uses, or procures any other person to intercept, disclose or use such communications, and be entitled to recover from any such person: (a) actual damages but not less than liquidated damages computed at the rate of \$100 a day for each day of violation or \$1,000, whichever is higher; (b) punitive damages; and (c) a reasonable attorney's fee and other litigation costs reasonably incurred. Good faith reliance on a court order or on a representation made by the attorney general, deputy attorney general or a county attorney shall constitute a complete defense to any civil or criminal action brought under this chapter.

7:6-b Certain Records of ~~[Communications Common Carriers]~~ Providers of Wire or Electronic Communication Services. –

I. Every ~~[communications common carrier as defined in RSA 570-A:1, IX,]~~ *provider of wire or electronic communication services* upon the written demand of the attorney general that the attorney general has reasonable grounds for belief that the service furnished to a person or to a location by such ~~[communications common carrier]~~ *provider* has been, is being, or may be used for an unlawful purpose, shall furnish to the attorney general:

(a) The names and addresses of persons to whom stated listed or unlisted telephone numbers are assigned.

(b) The names and addresses of persons to whom any stated or identified services are provided.

(c) Any local and long distance billing records for any subscriber to, or customer of telephone service or wireless telephone service as defined in RSA 638:21, XI.

(d) The length of service provided to a subscriber or customer by the ~~[communications common carrier]~~ **provider**.

(e) The types of services provided to the subscriber or customer by the ~~[communications common carrier]~~ **provider**, and

(f) The telephone number or other subscriber number or identity.

II. No such ~~[communications common carrier]~~ **provider of wire or electronic communication services** nor any agent, servant, or employee thereof, shall be civilly or criminally responsible or liable for furnishing or delivering any records or information in compliance with said demand and the attorney general shall not disclose any information obtained as a result of said demand except as it is essential to the proper discharge of the attorney general's duties. Any such written demand by the attorney general shall be understood to constitute an administrative subpoena for purposes of determining compliance with federal law.

III. The attorney general may delegate authority under this section to any assistant attorney general. Where the offense under investigation is defined in RSA 318-B or RSA 649-B, the attorney general may delegate authority under this section to a county attorney. A county attorney may further delegate authority under this section to any assistant county attorney in the county attorney's office. The county attorney may exercise this authority only in cases within the jurisdiction of that county attorney. The attorney general shall adopt rules, pursuant to RSA 541-A, relative to:

(a) Circumstances under which an assistant attorney general, a county attorney, or an assistant county attorney may issue such demands to ~~[communications common carriers]~~ **providers of wire or electronic communication services** under this section.

(b) The procedures for applying for such demands.

(c) The records of such demands which shall be kept and maintained.

Voting Sheets

Senate Judiciary Committee

EXECUTIVE SESSION

Bill # HB 1372

Hearing date: 4/28/10

Executive session date: 5/4/10

Motion of: OTP

VOTE: _____

Made by Reynolds
Senator: Lasky
 Houde
 Letourneau
 Roberge

Seconded Reynolds
by Senator: Lasky
 Houde
 Letourneau
 Roberge

Reported Reynolds
by Senator: Lasky
 Houde
 Letourneau
 Roberge

Motion of: OTP/A

VOTE: 4-0

Made by Reynolds
Senator: Lasky
 Houde
 Letourneau
 Roberge

Seconded Reynolds
by Senator: Lasky
 Houde
 Letourneau
 Roberge

Reported Reynolds
by Senator: Lasky
 Houde
 Letourneau
 Roberge

<u>Committee Member</u>	<u>Present</u>	<u>Yes</u>	<u>No</u>	<u>Reported out by</u>
Senator Reynolds, Chairman	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator Lasky, Vice-Chair	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator Houde	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator Letourneau	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator Roberge	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

*Amendments: Amendment 1542 - Reynolds

Rep Winkas amendment 1663h

Notes: _____

Committee Report

STATE OF NEW HAMPSHIRE
SENATE
REPORT OF THE COMMITTEE

Date: May 5, 2010

THE COMMITTEE ON Judiciary

to which was referred House Bill 1372

AN ACT (New Title) establishing a committee to study the provisions of RSA 570-A, the wiretapping and eavesdropping statute, and to study permitting a person to record a law enforcement officer in the course of such officer's official duties.

Having considered the same, the committee recommends that the Bill:

OUGHT TO PASS WITH AMENDMENT

BY A VOTE OF: 4-0

AMENDMENT # 1888s

Senator Bette R. Lasky
For the Committee

L. Gail Brown 271-3076

New Hampshire General Court - Bill Status System

Docket of HB1372

Docket Abbreviations

Bill Title: (New Title) establishing a committee to study the provisions of RSA 570-A, the wiretapping and eavesdropping statute, and to study permitting a person to record a law enforcement officer in the course of such officer's official duties.

Official Docket of HB1372:

Date	Body	Description
01/06/2010	H	Introduced and Referred to Criminal Justice and Public Safety; HJ 6 , PG.237
01/06/2010	H	Public Hearing: 1/7/2010 11:00 AM LOB 204
01/14/2010	H	Subcommittee Work Session: 1/25/2010 11:00AM LOB 204 (Members: Reps Pantelakos(Ch), Stevens & Weare
01/28/2010	H	Subcommittee Work Session: 2/1/2010 11:00 AM LOB 204 (Members: Reps Pantelakos(Ch), Weare & Stevens)
02/03/2010	H	Executive Session: 2/9/2010 10:00 AM LOB 204
02/09/2010	H	Committee Report: Ought to Pass with AM #0294h (NT) for Feb 17 CC (Vote 18-0); HC 14 , PG.582
02/09/2010	H	Proposed Committee Amendment #0294h (New Title); HC 14 , PG.636
02/17/2010	H	Amendment #0294h (New Title) Adopted, VV; HJ 18 , PG.934-935
02/17/2010	H	Ought to Pass with Amendment #0294h (New Title): MA VV; HJ 18 , PG.934-935
03/03/2010	S	Introduced and Referred to Judiciary
04/19/2010	S	Hearing: April 28, 2010, Room 103, State House, 1:15 p.m.; SC17
05/06/2010	S	Committee Report: Ought to Pass with Amendment 1888s, 5/12/10; SC19
05/12/2010	S	Committee Amendment 1888s, AA, VV; SJ 18 , Pg.476
05/12/2010	S	Ought to Pass with Amendment 1888s, MA, VV; OT3rdg; SJ 18 , Pg.476
05/12/2010	S	Passed by Third Reading Resolution; SJ 18 , Pg.497
05/19/2010	H	House Concurs with Senate AM #1888s (Rep Shurtleff): MA VV; HJ 46 , PG.2225
06/02/2010	S	Enrolled; SJ 21 , Pg.777
06/02/2010	H	Enrolled; HJ 51 , PG.2322
07/09/2010	H	Signed by the Governor 07/08/2010; Effective 07/08/2010; Chapter 0278

NH House

NH Senate

Contact Us

*New Hampshire General Court Information Systems
107 North Main Street - State House Room 31, Concord NH 03301*

Other Referrals

COMMITTEE REPORT FILE INVENTORY

HB 1372

ORIGINAL REFERRAL

RE-REFERRAL

1. THIS INVENTORY IS TO BE SIGNED AND DATED BY THE COMMITTEE SECRETARY AND PLACED INSIDE THE FOLDER AS THE FIRST ITEM IN THE COMMITTEE FILE.
2. PLACE ALL DOCUMENTS IN THE FOLDER FOLLOWING THE INVENTORY IN THE ORDER LISTED.
3. THE DOCUMENTS WHICH HAVE AN "X" BESIDE THEM ARE CONFIRMED AS BEING IN THE FOLDER.
4. THE COMPLETED FILE IS THEN DELIVERED TO THE CALENDAR CLERK.

DOCKET (Submit only the latest docket found in Bill Status)

COMMITTEE REPORT

CALENDAR NOTICE on which you have taken attendance

HEARING REPORT (written summary of hearing testimony)

HEARING TRANSCRIPT (verbatim transcript of hearing)

List attachments (testimony and submissions which are part of the transcript) by number [1 thru 4 or 1, 2, 3, 4] here: 4

SIGN-UP SHEET

ALL AMENDMENTS (passed or not) CONSIDERED BY COMMITTEE:

- AMENDMENT # 1888 - AMENDMENT # _____
 - AMENDMENT # 1542 - AMENDMENT # _____

ALL AVAILABLE VERSIONS OF THE BILL:

AS INTRODUCED AS AMENDED BY THE HOUSE
 FINAL VERSION AS AMENDED BY THE SENATE

PREPARED TESTIMONY AND OTHER SUBMISSIONS (Which are not part of the transcript)

List by letter [a thru g or a, b, c, d] here: _____

EXECUTIVE SESSION REPORT

OTHER (Anything else deemed important but not listed above, such as amended fiscal notes):

IF YOU HAVE A RE-REFERRED BILL, YOU ARE GOING TO MAKE UP A DUPLICATE FILE FOLDER

DATE DELIVERED TO SENATE CLERK

9/22/10

[Signature]
COMMITTEE SECRETARY