

Bill as Introduced

HB 478-FN-LOCAL - AS INTRODUCED

2011 SESSION

11-0490
03/05

HOUSE BILL ***478-FN-LOCAL***

AN ACT relative to testimony by video teleconference.

SPONSORS: Rep. Umberger, Carr 1; Rep. Ulery, Hills 27; Sen. Bradley, Dist 3

COMMITTEE: Criminal Justice and Public Safety

ANALYSIS

This bill authorizes testimony by video teleconference at department of safety administrative hearings and in district and superior court motor vehicle cases.

Explanation: Matter added to current law appears in ***bold italics***.
 Matter removed from current law appears [~~in brackets and struckthrough.~~]
 Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Eleven

AN ACT relative to testimony by video teleconference.

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

1 1 New Paragraph; Bureau of Hearings; Testimony by Video Teleconference. Amend RSA 21-
2 P:13 by inserting after paragraph II the following new paragraph:

3 III. The commissioner of safety or designee is authorized, whenever the commissioner deems
4 it feasible, upon giving timely written notice to the parties, to provide to the parties to an
5 administrative hearing the opportunity to hold the hearing and take testimony by video
6 teleconference, provided that testimony is limited to the matters relating to hearings that are open to
7 the public in accordance with RSA 541-A. Either party shall have an opportunity to file a timely
8 written objection to the introduction of testimony by video teleconference, stating its reasons for the
9 objection, and the commissioner or designee, upon determining that one or more of the parties would
10 be substantially disadvantaged in presenting their case by video teleconference, may order live
11 testimony. For purposes of this section, "video teleconference" includes the use of any technology
12 that provides live, interactive aural and visual communication.

13 2 Testimony by Video Teleconference. Amend the subdivision heading preceding RSA 516:37 to
14 read as follows:

15 Testimony by Video Teleconference in Criminal *and Motor Vehicle* Cases

16 3 New Section; Testimony by Video Teleconference for Motor Vehicle Violations. Amend
17 RSA 516 by inserting after section 37 the following new section:

18 516:38 Testimony by Video Teleconference for Motor Vehicle Violations. In any contested case
19 for an alleged motor vehicle violation in district or superior court at which a keeper of the records or
20 technical specialist from the department of safety, bureau of hearings or division of motor vehicles is
21 summoned to testify, the state may move to take the testimony of the keeper of the records or
22 technical specialist by video teleconference, provided that the testimony is limited to expert
23 testimony or to the results of and matters relating to records of the department of safety. Notice
24 shall be provided to the defendant, and the defendant shall have an opportunity to object to the
25 introduction of testimony by video teleconference. For purposes of this section, "video teleconference"
26 includes the use of any technology that provides live, interactive aural and visual communication.

27 4 Effective Date. This act shall take effect 60 days after its passage.

LBAO
11-0490
01/19/11

HB 478-FN - FISCAL NOTE

AN ACT relative to testimony by video teleconference.

FISCAL IMPACT:

Due to time constraints, the Office of Legislative Budget Assistant is unable to provide a fiscal note for this bill at this time. When completed, the fiscal note will be forwarded to the House Clerk's Office.

Amendments



Amendment to HB 478-FN-LOCAL

1 Amend the bill by replacing section 1 with the following:

2

3 1 New Paragraph; Bureau of Hearings; Testimony by Video Teleconference. Amend RSA 21-
4 P:13 by inserting after paragraph II the following new paragraph:

5 III. The commissioner of safety or designee is authorized, whenever the commissioner deems
6 it feasible, upon giving timely written notice to the parties, to provide to the parties to an
7 administrative hearing the opportunity to hold the hearing and take testimony by video
8 teleconference, provided that testimony is limited to the matters relating to hearings that are open to
9 the public in accordance with RSA 541-A. Either party may have an opportunity to file a timely
10 written objection to the introduction of testimony by video teleconference, stating its reasons for the
11 objection, and the commissioner or designee, upon determining that one or more of the parties would
12 be disadvantaged in presenting their case by video teleconference, may order live testimony. For
13 purposes of this section, "video teleconference" includes the use of any technology that provides live,
14 interactive aural and visual communication.

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16 Amend the bill by replacing section 3 with the following:

17

18 3 New Section; Testimony by Video Teleconference for Motor Vehicle Violations. Amend
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Amendment to HB 478-FN-LOCAL

*Error
Not Used*

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Speakers

Hearing Minutes

HOUSE COMMITTEE ON CRIMINAL JUSTICE AND PUBLIC SAFETY

PUBLIC HEARING ON HB 478-FN-LOCAL

BILL TITLE: relative to testimony by video teleconference.

DATE: February 10, 2011

LOB ROOM: 204 Time Public Hearing Called to Order: 1:30 p.m.

Time Adjourned: 2:00 p.m.

(please circle if present)

Committee Members: Reps. Swinford, Gagne, Welch, Fields, Fesh, Charron, Villeneuve, Antosz, Greazzo, Kreis, Parsons, Tasker, Warden, Pantelakos, Berube, Shurtleff and Ginsburg.

Bill Sponsors: Rep. Umberger, Carr 1; Rep. Ulery, Hills 27; Sen. Bradley, Dist 3

TESTIMONY

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

Rep. Karen Umberger, Carroll County - Sponsor.

Rep. Lee Quant - Support - No testimony.

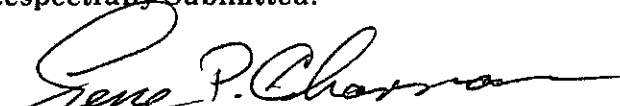
Dale Trombley, Judicial Branch - Supports - Says that Capital Funds are being set at \$500,000.00.

*Chris Casco, Department of Safety - Supports - Has written testimony, also explained the savings that the program would produce.

Claire Ebel - Supports - TWO FLAWS. Administration License Supt. Support, but notes - 2 changes - no testimony attached.

*Atty. Michael Icopino - Attached testimony. Urges ITL.

Respectfully Submitted:


Rep. Gene P. Charron, Clerk

HOUSE COMMITTEE ON CRIMINAL JUSTICE AND PUBLIC SAFETY

PUBLIC HEARING ON HB 478-FN-LOCAL

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Bill Sponsors: Rep. Umberger, Carr 1; Rep. Ulery, Hills 27; Sen. Bradley, Dist 3

TESTIMONY

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

HB 478

Video Conferencing -

1:30 ① Rep. Karen Umberger-Carroll Counts
sponsor.

② Rep Lee Quant - support no testimony.

③ Dale Tronley - judicial branch.
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4 support. Chris Casco - HQ opt. g safety - has
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savings that the program would produce

5 support. CHAIRE EBEL - TWO FLAWS
Admin license supp. support but
notes - 2 changes - notes
attached.

1:55 Atty Michael I COPINO

6 attached testimony. URGES ITC

CLOSED
2:00 PM.

Testimony

Department of Safety Comments on HB_478-FN___ SB ___ as Introduced (x) as amended()

[This bill allows testimony by video teleconference at Department of Safety administrative hearings and in district and superior court motor vehicle cases.]

This bill, which was previously sponsored by Rep. Umberger and did not pass, is back again thanks to her patience and persistence and because it makes even more sense today than when it was previously introduced.

Simply put, the bill allows Department of Safety Hearings Examiners, police officers, litigants and their attorneys if they have one, to participate in hearings by video teleconference without driving to Concord to the Department of Safety or to some remote location elsewhere in the state for an in-person appearance. The hearings would be taped so a public record of the proceeding could be retained. Either party would be allowed to file a written objection to holding the hearing in this manner, and if the Commissioner of Safety or designee found that one or more parties would be at a substantial disadvantage by presenting their case in this fashion, the Commissioner could order that an in-person hearing be scheduled. Although the majority of hearings we hold involve motor vehicle cases, the Bureau of Hearings holds a variety of other hearings for such things as boating violations, fire code issues, license suspension hearings for plumbers, gasfitters, electricians, dynamite and explosives companies, fireworks distributors, private detectives and security guards, driver education schools, emergency medical technicians and paramedics, and more.

This technology is used all the time in everyday life. Many people today have a program called Skype on their home or office computers that allows them to make telephone calls where they both hear the party on the other end and also see a live video image of them on their computer screen, and the party on the other end has the same. All it requires is that the room be well lighted and the computer has a microphone and a small, inexpensive TV camera attached. Most laptop and desktop computers that you buy today have those devices as standard equipment, and your children and grandchildren are probably already using them to communicate with friends and relatives in distant locations. There is no mystery to it, and it works well.

The Department of Safety already has the necessary equipment which was provided under a federal grant and that it can use for training employees at remote locations and communication with outlying offices in an emergency. We have also experimented with it for hearings with the cooperation of a number of attorneys who have tried the idea and embraced it because of the time it saves them which enables them to increase their caseload accordingly. We have also offered it to persons living in other states who had violations on their record in New Hampshire that they needed to clear before their home state license was suspended for not complying with some situation they got into in New Hampshire. Rather than cost them hundreds of dollars to fly back here, they were able to appear at a hearing by video and have the case concluded and their operating privileges restored.

In one case a gentleman from Great Britain pled guilty to a traffic violation that he did not feel he was guilty of, but pled and paid his fine because he was due to fly back to his home and could not stay

behind to attend a hearing. If the District Court had this capability up and running, he could have appeared by video from his living room in Great Britain and felt that justice was served.

With this system, a Hearings Examiner in a room at Concord can connect with a defendant at his or her home or lawyer's office and the police officer/complainant at his or her home or the police station and the hearing can go forth with each party able to see and hear the other. This will save thousands of dollars to the State and Local governments in police overtime and witness fees, will save defendants from paying hundreds of dollars in billable hours for their lawyers to drive back and forth to Concord for the hearing, enable their lawyers to take more cases instead of spending time driving on the road, and be a great time saver for the ever leaner staff at the Bureau of Hearings so they can hear cases more promptly and expeditiously. If there is a case where there is a particular need for everyone to be face to face in person, which can be accommodated. It's a win-win for everyone – the police, the Department of Safety, the police, the attorneys and the litigants and a cost saver in these times of tight budgets.

The bill will also enable laboratory personnel, keepers of the records and other expert testimony to take place by video, again saving time and money.

Video testimony is nothing new. We have experimented with it and all sides say it works and works well. Prior to this, the courts have been using it in New Hampshire for several years. Defendants are routinely arraigned by some courts from Jail, rather than being transported back and forth to the court in handcuffs accompanied by two police or corrections officers for a simple arraignment hearing. Some Superior Courts that have the equipment allow crime lab personnel to testify to the results of evidentiary testing by video from Concord, sparing them the time and expense of spending hours driving to another part of the state when they could be back in the lab addressing the ever-present backlog of cases waiting to be analyzed.

There is another important aspect to the passage of this bill, also. The Administrative Office of the Courts and the Department of Safety, each having been challenged by the Governor and the Legislative leadership to "think outside the box" and devise ways to do more with less, are working on plans to transfer the trial process for minor motor vehicle violations (not major ones like DWI) to an administrative hearing process where they would appear before a Department of Safety Hearings Examiner rather than a District Court judge. These hearings would be offered at a few District Courthouses around the state and if this bill passes, we could also offer defendants the opportunity to appear by video teleconference rather than giving up a day's pay at work to tell their story over something such as a stop sign or an uninspected vehicle violation.

This bill presents a unique opportunity. We urge you to consider it carefully and recommend its passage.

NEW HAMPSHIRE ASSOCIATION OF CRIMINAL DEFENSE LAWYERS

Points in Opposition to HB 478
An Act Relative to Testimony by Video Teleconference
before the
NEW HAMPSHIRE HOUSE OF REPRESENTATIVES
Criminal Justice and Public Safety Committee

The New Hampshire Association of Criminal Defense Lawyers urges the Committee to report that this Bill is **INEXPEDIENT TO LEGISLATE** for the following reasons:

1. One of the most fundamental rights stemming from our constitutions is the right to confront one's accusers. In the case of *Crawford v. Washington*, Justice Antonin Scalia referred to this right as a "bedrock procedural guarantee." According to Justice Scalia this fundamental right has its roots as far back as the trial of Sir Walter Raleigh a case which was widely recognized as degrading and injurious to the concept of justice in England.

2. Even more recently Justice Scalia and the US Supreme Court has confirmed the importance of this right in the case of *Melendez-Diaz v. Massachusetts*. In *Melendez-Diaz*, Justice Scalia, in the face of very technical arguments from the government found no reason to do anything but apply the right of confrontation in a straightforward manner to experts and analysis witnesses. In other words their testimony, including cross-examination could not be substituted with certificates or reports.

3. The Sixth Amendment to the federal constitution states that: "In all criminal prosecutions the accused shall enjoy the right . . . to confronted with the witnesses against him." The New Hampshire Constitution is even more specific about this fundamental principle. Part I Article 15 of our State Constitution states: "Every subject shall have a right . . . to meet the witnesses against him face to face . . ."

4. The presence of the witness is extremely important to fair trial rights. Only when a witness is present for the judge (hearing examiner) or jury to see can truthfulness and veracity really be assessed.

If you have questions for NHACDL please feel free to contact:
Katherine Cooper, Exec. Director
603-669-7777
or
Mike Iacopino
603-668-8300

Voting Sheets

HOUSE COMMITTEE ON CRIMINAL JUSTICE AND PUBLIC SAFETY

EXECUTIVE SESSION on HB 478-FN-LOCAL

BILL TITLE: relative to testimony by video teleconference.

DATE: March 9, 2011

LOB ROOM: 204

Amendments:

Sponsor: Rep. Stephen J. Shurtleff OLS Document #: 2011 0767h

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

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

Moved by Rep. Philip E. Ginsburg

Seconded by Rep. Phil J. Greazzo

Vote: 17-0 (Please attach record of roll call vote.)

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

Moved by Rep.

Seconded by Rep.

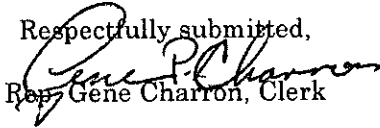
Vote: (Please attach record of roll call vote.)

CONSENT CALENDAR VOTE: NO

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

Statement of Intent: Refer to Committee Report

Respectfully submitted,


Rep. Gene Charron, Clerk

HOUSE COMMITTEE ON CRIMINAL JUSTICE AND PUBLIC SAFETY

EXECUTIVE SESSION on HB 478-FN-LOCAL

BILL TITLE: relative to testimony by video teleconference.

DATE: 3-9-2011

LOB ROOM: 204

Amendments:

Sponsor: Rep. *shurtleff*

OLS Document #: 2011-0767 H

Sponsor: Rep.

OLS Document #:

Sponsor: Rep.

OLS Document #:

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

Moved by Rep. *Conner*

Seconded by Rep. *Sreazzo*

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

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

Moved by Rep.

Seconded by Rep.

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

CONSENT CALENDAR VOTE:

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

Statement of Intent: Refer to Committee Report

Respectfully submitted,

Rep. Gene Channon, Clerk

Gene Channon

~~Consent~~
regular

117-0

CRIMINAL JUSTICE AND PUBLIC SAFETY

Bill #: HB 478-FN-2 Title: Relative to testimony by video teleconference.

PH Date: ~~02/10/11~~
02 10 11

Exec Session Date: 03/10/11

Motion: _____

Amendment #: 2011-0767H

MEMBER	YEAS	NAYS
Swinford, Elaine B, Chairman	✓	
Gagne, Larry G, V Chairman	✓	
Welch, David A	✓	
Fields, Dennis H	✓	
Fesh, Robert M	✓	
Charron, Gene P	✓	
Villeneuve, Moe	✓	
Antosz, Jason P	✓	
Greazzo, Phil J	✓	
Kreis, Kenneth	✓	
Parsons, Robbie L	✓	
Tasker, Kyle J	✓	
Warden, Mark	✓	
Pantelakos, Laura C	✓	
Berube, Roger R	✓	
Shurtleff, Stephen J	✓	
Ginsburg, Philip E	✓	
	17	0

CRIMINAL JUSTICE AND PUBLIC SAFETY

Bill #: HB 478-FNL Title: Testimony - by Video - Teleconference

PH Date: 02/10/11

Exec Session Date: 3-1-10-2011

Motion: OTP/A

Amendment #: _____

MEMBER	YEAS	NAYS
Swinford, Elaine B, Chairman	✓	
Gagne, Larry G, V Chairman	✓	
Welch, David A	✓	
Fields, Dennis H	✓	
Fesh, Robert M	✓	
Charron, Gene P	✓	
Villeneuve, Moe	✓	
Antosz, Jason P	✓	
Greazzo, Phil J	✓	
Kreis, Kenneth	✓	
Parsons, Robbie L	✓	
Tasker, Kyle J	✓	
Warden, Mark	✓	
Pantelakos, Laura C	✓	
Berube, Roger R	✓	
Shurtleff, Stephen J	✓	
Ginsburg, Philip E	✓	
	17	0
TOTAL VOTE:		

Committee Report

REGULAR CALENDAR

March 10, 2011

HOUSE OF REPRESENTATIVES

REPORT OF COMMITTEE

The Committee on CRIMINAL JUSTICE AND PUBLIC SAFETY to which was referred HB478-FN-L,

AN ACT relative to testimony by video teleconference.

Having considered the same, report the same with the recommendation that the bill **OUGHT TO PASS**.

Rep. Phil J Greazzo

FOR THE COMMITTEE

COMMITTEE REPORT

Committee:	CRIMINAL JUSTICE AND PUBLIC SAFETY
Bill Number:	HB478-FN-L
Title:	relative to testimony by video teleconference.
Date:	March 9, 2011
Consent Calendar:	NO
Recommendation:	OUGHT TO PASS

STATEMENT OF INTENT

The committee recommended that this bill Ought to Pass because of the significant savings it will provide to cities and towns when officers and others are relieved of the burden of taking time off to travel to hearings in Concord in District and Superior Court in motor vehicle cases. Video teleconference will provide similar savings for state laboratory personnel and will relieve parties who have left the state from the expense and time required to appear in person.

Vote 17-0.

Rep. Phil J Greazzo
FOR THE COMMITTEE

Original: House Clerk
Cc: Committee Bill File

REGULAR CALENDAR

CRIMINAL JUSTICE AND PUBLIC SAFETY

HB478-FN-L, relative to testimony by video teleconference. **OUGHT TO PASS.**

Rep. Phil J Greazzo for **CRIMINAL JUSTICE AND PUBLIC SAFETY**. The committee recommended that this bill Ought to Pass because of the significant savings it will provide to cities and towns when officers and others are relieved of the burden of taking time off to travel to hearings in Concord in District and Superior Court in motor vehicle cases. Video teleconference will provide similar savings for state laboratory personnel and will relieve parties who have left the state from the expense and time required to appear in person. **Vote 17-0.**

Original: House Clerk

Cc: Committee Bill File

HB 478-FN-Local relative to testimony by video teleconference.

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**Rep. Phil J. Greazzo
For the Committee
17-0 RC OTP**

Rep Elaine Sponfer

COMMITTEE REPORT

COMMITTEE: Criminal Justice and Public Safety
BILL NUMBER: HB 478 FN Local
TITLE: Relative to testimony by teleconference.

DATE: March 29, 2011 CONSENT CALENDAR: YES NO

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

Amendment No. _____

STATEMENT OF INTENT:

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towns when officers and others are relieved of the burden of
taking time off to travel to hearings in Concord or in District
and Superior Court in motor vehicle cases. Video teleconference
will provide similar savings for state laboratory personnel,
and means will relieve parties who have left the state
from the expense and time required to appear
in person.

COMMITTEE VOTE: over 17-0

- Copy to Committee Bill File
- Use Another Report for Minority Report

RESPECTFULLY SUBMITTED,

Paul Ginsburg
 Rep. [Signature]
 For the Committee