

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.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

CHAPTER 220
HB 478-FN-LOCAL - FINAL VERSION

05/11/11 1779s

2011 SESSION

11-0490
03/05

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COMMITTEE: Criminal Justice and Public Safety

AMENDED ANALYSIS

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 Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

CHAPTER 220
HB 478-FN-LOCAL – FINAL VERSION

05/11/11 1779s

11-0490
03/05

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:

1 220:1 New Paragraph; Bureau of Hearings; Testimony by Video Teleconference. Amend RSA
2 21-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.

13 220:2 Testimony by Video Teleconference. Amend the subdivision heading preceding RSA
14 516:37 to read as follows:

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

16 220:3 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 court at which a keeper of the records or technical
20 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. Similarly, in any contested case for an alleged
26 motor vehicle violation in district court, the defendant may move to take the testimony of his or her
27 own expert witness by video teleconference, provided that the testimony is limited to expert
28 testimony or to the results of and matters relating to records of the department of safety. Notice
29 shall be provided to the state, and the state shall have an opportunity to object to the introduction of

CHAPTER 220
HB 478-FN-LOCAL – FINAL VERSION
- Page 2 -

1 testimony by video teleconference. Examination and cross-examination of the expert witness shall
2 proceed in the same manner as permitted at a contested case for an alleged motor vehicle violation in
3 district court. For purposes of this section, "video teleconference" includes the use of any technology
4 that provides live, interactive aural and visual communication.

5 220:4 Effective Date. This act shall take effect 60 days after its passage.

6 Approved: June 28, 2011

7 Effective Date: August 27, 2011

Amendments

Sen. Houde, Dist. 5
April 28, 2011
2011-1639s
03/05

Amendment to HB 478-FN-LOCAL

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

2

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

5 516:38 Testimony by Video Teleconference for Motor Vehicle Violations. In any contested case
6 for an alleged motor vehicle violation in district or superior court at which a keeper of the records or
7 technical specialist from the department of safety, bureau of hearings or division of motor vehicles is
8 summoned to testify, the state may move to take the testimony of the keeper of the records or
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13 motor vehicle violation in district or superior court, the defendant may move to take the testimony of
14 his or her own expert witness by video teleconference, provided that the testimony is limited to
15 expert testimony or to the results of and matters relating to records of the department of safety.
16 Notice shall be provided to the state, and the state shall have an opportunity to object to the
17 introduction of testimony by video teleconference. Examination and cross-examination of the expert
18 witness shall proceed in the same manner as permitted at a contested case for an alleged motor
19 vehicle violation in district or superior court. For purposes of this section, "video teleconference"
20 includes the use of any technology that provides live, interactive aural and visual communication.



Amendment to HB 478-FN-LOCAL

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19 district court. For purposes of this section, "video teleconference" includes the use of any technology
20 that provides live, interactive aural and visual communication.

Amendment to HB 478-FN-LOCAL
- Page 2 -



2011-1779s

AMENDED ANALYSIS

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

Committee Minutes

**SENATE CALENDAR NOTICE
JUDICIARY**

Senator Matthew Houde Chairman
 Senator Sharon Carson V Chairman
 Senator Fenton Groen
 Senator Jim Luther

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 5, 2011

HEARINGS

Thursday

4/14/2011

JUDICIARY

LOB 101

1:00 PM

(Name of Committee)

(Place)

(Time)

EXECUTIVE SESSION MAY FOLLOW

1:00 PM	HB146	(New Title) relative to the right of a jury to judge the application of the law in relationship to the facts in controversy.
1:15 PM	HB174	relative to insurance coverage for court-ordered counseling in divorce proceedings.
1:30 PM	HB254	relative to offers of judgments.
1:45 PM	HB259	requiring the supreme court to adopt rules of evidence for the judicial branch family division.
2:00 PM	HB478-FN-L	relative to testimony by video teleconference.

Sponsors:

HB146

Rep. Lars Christiansen

HB174

Rep. Amy Perkins

Rep. Timothy Comerford

HB254

Rep. Brian Murphy

Rep. Steven Smith

Rep. Norman Tregenza

Rep. Robert Huxley

HB259

Rep. Kenneth Sheffert

HB478-FN-L

Rep. Karen Umberger

Rep. Jordan Ulery

Sen. Jeb Bradley

Susan Duncan 271-8631

Sen. Matthew Houde

Chairman

Judiciary Committee

Hearing Report

TO: Members of the Senate

FROM: Susan Duncan, Senior Legislative Aide

RE: Hearing report on HB 478-FN-L – relative to testimony by video teleconference.

HEARING DATE: April 14, 2011

MEMBERS OF THE COMMITTEE PRESENT: Senators Houde, Carson and Luther

MEMBERS OF THE COMMITTEE ABSENT: Senator Groen

Sponsor(s): Representatives Umberger and Ulery; Senator Bradley

What the bill does: This bill authorizes testimony by video teleconference at Department of Safety administrative hearings and in District and Superior Court motor vehicle cases.

Who supports the bill: Representative Umberger; Representative B. Guida; Representative S. DeLemus; Attorney Howard Zibel on behalf of the Supreme Court and Judicial Branch;

Who opposes the bill: Attorney Michael Iacopino on behalf of the NH Association of Criminal Defense Lawyers;

Summary of testimony received:

- **Senator Houde** opened the hearing at 3:11 p.m.
- **Representative Umberger** introduced the legislation and explained that the bill is to authorize video teleconference for traffic hearings at the Department of Motor Vehicles as well as in the Superior and District Courts.
- She explained that this provision will definitely save us money – and told of folks who should appear but just don't show up.
- She said that there is no requirement for a hearing to be held by video conference, but is an option.
- She noted that in criminal cases, this is already allowed.
- She said that if the equipment and means are available, then it should be utilized – and used Carroll County as an example where the equipment is not available.

- She said that the Department of Safety is already doing this and they funded it with a federal safety grant to obtain the equipment.
- She noted that additional funding is already in the budget for the courts to purchase new equipment.
- **Attorney Michael Iacopino** testified in opposition. He commented that a driver's license is required in order to earn a living in NH – as this is a largely rural state with little public transportation available. He said that this legislation takes the ability of the person hearing the case to gauge the reliability of the witness. He remarked that when we are talking about something as important as a driver's license it is important to physically see the individual testifying in order to get a gauge on the credibility of the witness. He said that having hearings by videoconference moves these cases to second class standards.
- He noted that section 3 appears to provide a right to the state which is not provided to the defendant. He said that the defendant could very well have a mechanic who could testify that the light was not off. He asked the committee to please find this legislation "Inexpedient to Legislate."
- **Senator Luther** asked about the criminal case provisions whereby video conference is legal. **Attorney Iacopino** responded that they had opposed this as well.
- **Senator Carson** commented about "may" versus "shall" – and noted that she was having trouble understanding his opposition. **Attorney Iacopino** explained that this legislation removes the ability of individuals to gauge the voracity of the witnesses. He said that these are very important matters and that there should be some live test.
- **Senator Carson** remarked that the defendant has the right to object – that nothing is being taken away here. **Attorney Iacopino** agreed, but noted that currently, people must attend in person and he fears that these will be granted as a matter of course as a means of increasing our profitability – but not doing justice.
- **Senator Houde** closed the hearing at 3:28 p.m.

Funding: See attached fiscal note.

Future Action: The Committee took the bill under advisement.

sfd

[file: HB 0478-FN-L report]

Date: April 18, 2011

Speakers

Testimony

WRITTEN TESTIMONY OF
Katherine Cooper
Michael J. Iacopino

on behalf of

THE NEW HAMPSHIRE ASSOCIATION OF CRIMINAL DEFENSE LAWYERS

before

**THE NEW HAMPSHIRE SENATE
JUDICIARY COMMITTEE**

HB 478

April 14, 2011

I. INTRODUCTION

The New Hampshire Association of Criminal Defense Lawyers (NHACDL) consists of approximately 300 Granite State lawyers whose practices include a significant amount of criminal defense work. Our membership includes private practitioners, and state and federal public defenders. NHACDL is the local affiliate of the National Association of Criminal Defense Lawyers and shares its mission to ensure due process and fairness in the administration of the criminal justice system. NHACDL provides its membership with significant continuing legal education opportunities in the field of criminal defense. Additionally, we facilitate communication amongst members of our organization on the issues which confront criminal defense lawyers on a daily basis. NHACDL will also, from time to time, take public positions with respect to important cases before the courts, or proposed legislation, which affects fairness and due process in the administration of the criminal justice system.

II. HB 478

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. The ability to defend during an administrative hearing on the status of a person's driver's license is crucial in New Hampshire. Because of the rural nature of the state and lack of public transportation, the loss of a driver's license dooms many to unemployment and the inability to obtain basic services such as health care and complete life tasks like grocery shopping. Loss of a license is no small matter.

2. Eliminating the ability of a defendant to question witnesses in person is a significant barrier to defending one's drivers license. 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.

3. Even more recently Justice Scalia and the US Supreme Court confirmed the importance of this right in the case of Melendez-Diaz v. Massachusetts. In Melendez-Diaz, in the face of very technical arguments from the government, Justice Scalia found no reason to do anything but apply the right of confrontation in a straightforward manner to experts and analysis witnesses. In other words, the testimony of witnesses like those included in HB 478 could not be substituted with certificates or reports. The use of video to provide this information likewise gives it less relevance and decreases the effectiveness of communication between the witness, the attorneys and the hearing examiners. Moreover, it is much more difficult to gauge the credibility of the witness via video because the body language and mannerisms of the witnesses can be hidden or obscured by the use of video.

4. The Sixth Amendment to the federal constitution states that: “In all criminal prosecutions the accused shall enjoy the right . . . to be 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 . . .”

5. 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.

6. Minor cost savings to the state should not be given priority over the rights of New Hampshire's citizens.

7. Wherefore, NHACDL respectfully requests that this committee find this bill Inexpedient to Legislate.

Contact Information
www.nhacdl.org

The New Hampshire Association of Criminal Defense Lawyers (NHACDL) is a voluntary bar association consisting of approximately three hundred New Hampshire lawyers who devote a significant part of their practice to the representation of the criminally accused. NHACDL membership includes state and federal public defenders and private practitioners. NHACDL is the New Hampshire affiliate of the National Association of Criminal Defense Lawyers and shares its mission to ensure justice and due process for persons accused of crime and to promote the proper and fair administration of criminal justice.

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Committee Report

STATE OF NEW HAMPSHIRE

SENATE

REPORT OF THE COMMITTEE

Date: May 5, 2011

THE COMMITTEE ON Judiciary

to which was referred House Bill 478-FN

AN ACT relative to testimony by video teleconference.

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

OUGHT TO PASS WITH AMENDMENT

BY A VOTE OF: 4-0

AMENDMENT # 1779s

Senator Matthew Houde
For the Committee

Danielle Barker 271-3091

New Hampshire General Court - Bill Status System

Docket of HB478

Docket Abbreviations

Bill Title: relative to testimony by video teleconference.*Official Docket of HB478:*

Date	Body	Description
1/21/2011	H	Introduced 1/6/2011 and Referred to Criminal Justice and Public Safety; HJ 11 , PG. 188
2/1/2011	H	Public Hearing: 2/10/2011 1:00 PM LOB 204
2/16/2011	H	==CANCELLED== Executive Session: 2/22/2011 10:00 AM LOB 204
3/2/2011	H	Executive Session: 3/9/2011 10:00 AM LOB 204
3/9/2011	H	Committee Report: Ought to Pass for Mar 15 (Vote 17-0; RC); HC 22 , PG.549
3/15/2011	H	Ought to Pass: MA VV; HJ 26 , PG.774
3/23/2011	S	Introduced and Referred to Judiciary; SJ 11 , Pg.193
4/6/2011	S	Hearing: 4/14/11, Room 101, LOB, 2:00 p.m.; SC19
5/5/2011	S	Committee Report: Ought to Pass with Amendment #2011-1779s, 5/11/11; SC23
5/11/2011	S	Committee Amendment 1779s, AA, VV; SJ 16
5/11/2011	S	Ought to Pass with Amendment 1779s, MA, VV; Refer to Finance Rule 4-3; SJ 16
5/19/2011	S	Committee Report: Ought to Pass, 5/25/11; SC25
5/25/2011	S	Ought to Pass, MA, VV; OT3rdg; SJ 18
5/25/2011	S	Passed by Third Reading Resolution
6/8/2011	H	House Concurs with Senate AM 1779s (Rep Swinford): MA VV; HJ 51 , PG.1714
6/8/2011	S	Enrolled
6/8/2011	H	Enrolled
6/28/2011	H	Signed By Governor 06/28/2011; Effective 08/27/2011; Chapter 0220

NH House

NH Senate

Other Referrals

