

# Bill as Introduced

HB 445-FN - AS INTRODUCED

2011 SESSION

11-0135

06/04

HOUSE BILL

***445-FN***

AN ACT

relative to the regulation of electronic tracking devices.

SPONSORS:

Rep. Kurk, Hills 7; Rep. L. Jones, Straf 1

COMMITTEE:

Commerce and Consumer Affairs

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ANALYSIS

This bill prohibits the use of electronic tracking devices to track an individual without the consent of the individual or a court order.

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Explanation:

Matter added to current law appears in ***bold italics***.

Matter removed from current law appears [~~in brackets and struck through~~].

Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

*In the Year of Our Lord Two Thousand Eleven*

AN ACT relative to the regulation of electronic tracking devices.

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

1 1 New Chapter; Regulation of the Use of Electronic Tracking Devices. Amend RSA by inserting  
2 after chapter 358-S the following new chapter:

3 CHAPTER 358-T

4 REGULATION OF THE USE OF ELECTRONIC TRACKING DEVICES

5 358-T:1 Definitions. In this chapter:

6 I. "Electronic tracking device" means any item, application, or mark that is passively or  
7 actively capable of transmitting electronically an individual's location, or is capable of following or  
8 plotting the path of an individual, including, without limitation, devices using global position  
9 satellites and radio frequency identification. An electronic tracking device shall not include the  
10 following:

11 (a) Bar codes or similar markings that do not transmit information.

12 (b) Locating technology used by the enhanced 911 system.

13 (c) Commercial mobile radio service as described in 47 U.S.C. section 332 when used to  
14 provide such service.

15 II. "Person" means an individual, corporation, business trust, estate, trust, partnership,  
16 limited liability corporation, association, foundation, joint venture, government, government  
17 subdivision, agency or instrumentality, public corporation, or any other legal or commercial entity.

18 III. "Reasonable notice" means notice provided:

19 (a) In plain English.

20 (b) In a type size that may be read by an average individual.

21 (c) In person, by a label attached to the personal property containing the electronic  
22 tracking device, by electronic means, or by poster at the entrances to real property.

23 IV. "Track" means to locate, follow, or plot the path of an individual or personal property  
24 owned by, or in the lawful possession of, the individual by means of an electronic tracking device.

25 358-T:2 Use of Electronic Tracking Devices Prohibited.

26 I. Except as otherwise provided in this chapter, no person shall use an electronic tracking  
27 device to track an individual without the consent of the individual or the parent or legal guardian of  
28 the individual, or a valid court order.

29 II. No individual shall be offered an incentive, denied an opportunity, or in any way treated  
30 by a person differently from any other individual as a consequence of providing or withholding such  
31 consent.

1           358-T:3 Exceptions. This chapter shall not apply to:

2           I. An electronic tracking device that tracks personal property exclusively and is activated  
3 solely for that purpose in order to locate the property in cases, such as rental cars, where the owner  
4 has reason to believe the property is being used in violation of a contract governing its use; provided,  
5 however, that where such activation occurs and an individual has been tracked, the burden of  
6 proving that the purpose of the activation was to locate the property shall fall on the owner.

7           II. An electronic tracking device that tracks personal property and is used on real property  
8 by the owner or lessee of that real property where the possessor of the personal property has been  
9 provided reasonable notice of the use of the device.

10          III. An electronic tracking device used by an employer in connection with an employment  
11 relationship during working hours where the employee has been provided reasonable notice of the  
12 use of the device.

13          IV. An electronic tracking device used by the state or a political subdivision, department, or  
14 agency:

15           (a) To locate a person who is incarcerated in the state prison or county jail, is housed in  
16 a mental health facility pursuant to a court order after having been charged with a crime, is subject  
17 to court-ordered electronic monitoring, or is a resident of a state or county hospital, nursing facility,  
18 or assisted living facility.

19           (b) To collect funds for the use of a toll road or bridge it owns and operates.

20           (c) In connection with a credit, debit, or financial account card issued to an individual for  
21 use on behalf of the state, political subdivision, department, or agency.

22          358-T:4 Penalties.

23          I. Any person convicted of violating this chapter shall be guilty of a class A misdemeanor.  
24 Each such act shall constitute a separate offense.

25          II. An aggrieved individual or the state may bring suit for \$1,000 or actual damages,  
26 whichever is greater, plus court costs and reasonable attorney's fees, for each violation of this  
27 chapter.

28          2 Effective Date. This act shall take effect January 1, 2012.

LBAO  
11-0135  
12/27/10

**HB 445-FN - FISCAL NOTE**

AN ACT           relative to the regulation of electronic tracking devices.

**FISCAL IMPACT:**

The Judicial Branch, the Judicial Council, and the New Hampshire Association of Counties state this bill may increase state and county expenditures by an indeterminable amount in FY 2012 and each year thereafter. There is no fiscal impact on local expenditures or county and local revenue.

**METHODOLOGY:**

The Judicial Branch states this bill adds RSA 358-T to regulate use of electronic tracking devices. RSA 358-T:4,I establishes a misdemeanor A for violation of various regulations and RSA 358-T:4,II allows an aggrieved individual or the state to sue for \$1,000 or actual damages plus costs and attorney fees for each violation. The Branch states this bill could result in an increase in costs to the Branch by adding the misdemeanor A and complex civil cases. The Branch has no information to estimate how many cases will be brought but does have estimated costs for processing a misdemeanor A case and a complex civil case. The Branch states a misdemeanor A case costs \$60.03 per case in FY 2012 and \$60.88 per case in FY 2013 and each year thereafter. A complex civil case costs \$640.23 in FY 2012 and \$648.08 in FY 2013 and each year thereafter. The possibility of appeals increases the likelihood the fiscal impact on the Branch will exceed \$10,000.

The Judicial Council states this bill may result in an indeterminable increase in general fund expenditures. The Council states if an individual is found to be indigent, the flat fee of \$275 per misdemeanor is charged by a public defender or contract attorney. If an assigned counsel attorney is used the fee is \$60 per hour with a cap of \$1,400 for a misdemeanor charge. The Council also states additional costs could be incurred if an appeal is filed. The public defender, contract attorney and assigned counsel rates for Supreme Court appeals is \$2,000 per case, with many assigned counsel attorneys seeking permission to exceed the fee cap. Requests to exceed the fee cap are seldom granted. Finally, expenditures would increase if services other than counsel are requested and approved by the court during the defense of a case or during an appeal.

**HB 445-FN - AS INTRODUCED**

**- Page 4 -**

The New Hampshire Association of Counties states to the extent an individual is prosecuted, convicted, and sentenced to incarceration, the counties may have increased expenditures. The Association is unable to determine the number of individuals who might be detained, prosecuted or incarcerated as a result of this bill. The average annual cost to incarcerate an individual in a county correctional facility is approximately \$35,000.

The Department of Justice states this bill will have no fiscal impact on the Department as misdemeanor charges are typically prosecuted by local or county prosecutors.

HB 445-FN - AS AMENDED BY THE HOUSE

1Feb2012... 0084h

2011 SESSION

11-0135  
06/04

HOUSE BILL        **445-FN**

AN ACT            relative to the regulation of electronic tracking devices.

SPONSORS:        Rep. Kurk, Hills 7; Rep. L. Jones, Straf 1

COMMITTEE:       Commerce and Consumer Affairs

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This bill prohibits the use of electronic tracking devices to track an individual without the consent of the individual or a court order.

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STATE OF NEW HAMPSHIRE

*In the Year of Our Lord Two Thousand Eleven*

AN ACT relative to the regulation of electronic tracking devices.

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

1 1 New Chapter; Regulation of the Use of Electronic Tracking Devices. Amend RSA by inserting  
2 after chapter 358-S the following new chapter:

3 CHAPTER 358-T

4 REGULATION OF THE USE OF ELECTRONIC TRACKING DEVICES

5 358-T:1 Definitions. In this chapter:

6 I. "Electronic tracking device" means any item, application, or mark that is passively or  
7 actively capable of transmitting electronically an individual's location, or is capable of following or  
8 plotting the path of an individual, including, without limitation, devices using global position  
9 satellites. An electronic tracking device shall not include the following:

10 (a) Bar codes or similar markings that do not transmit information.

11 (b) Locating technology used by the enhanced 911 system or to facilitate an emergency  
12 response.

13 (c) Commercial mobile radio service as described in 47 U.S.C. section 332 when used to  
14 provide such service.

15 II. "Person" means an individual, corporation, business trust, estate, trust, partnership,  
16 limited liability corporation, association, foundation, joint venture, government, government  
17 subdivision, agency or instrumentality, public corporation, or any other legal or commercial entity.

18 III. "Reasonable notice" means notice provided:

19 (a) In plain English.

20 (b) In a type size that may be read by an average individual, considering the physical  
21 location of the individual in relation to the type.

22 (c) In person, by a label attached to the personal property containing the electronic  
23 tracking device, by electronic means, or by poster at the entrances to real property.

24 IV. "Track" means to locate, follow, or plot the path of an individual or personal property  
25 owned by, or in the lawful possession of, the individual by means of an electronic tracking device.

26 358-T:2 Use of Electronic Tracking Devices Prohibited. Except as otherwise provided in this  
27 chapter, no person shall use an electronic tracking device to track an individual without the consent  
28 of the individual or the parent or legal guardian of the individual, or a valid court order.

29 358-T:3 Exceptions. This chapter shall not apply to:

30 I. An electronic tracking device that tracks personal property exclusively and is activated



1 solely for that purpose in order to locate the property in cases, such as rental cars, where the owner  
2 has reason to believe the property is being used in violation of a contract governing its use; provided,  
3 however, that where such activation occurs and an individual has been tracked, the burden of  
4 proving that the purpose of the activation was to locate the property shall fall on the owner.

5 II. An electronic tracking device that tracks personal property and is used on real property  
6 by the owner or lessee of that real property.

7 III. An electronic tracking device used by an employer on or within the employer's personal  
8 or real property, in connection with an employment relationship or work-related functions, during or  
9 after working hours, upon reasonable notice to the employee.

10 IV. An electronic tracking device used by a nursing facility, assisted living facility, the state,  
11 or a political subdivision, department, or agency:

12 (a) To locate a person who is a resident of a nursing facility or assisted living facility,  
13 incarcerated in the state prison or county jail, housed in a mental health facility pursuant to a court  
14 order after having been charged with a crime, subject to court-ordered electronic monitoring, or  
15 resident of a state or county hospital.

16 (b) To collect funds for the use of a toll road or bridge it owns and operates in accordance  
17 with the provisions of RSA 236:31 and RSA 237:16-e.

18 V. An electronic tracking device that is affixed to products for use in supply chain security or  
19 to ensure product integrity, regardless of whether such device incidentally allows tracking of  
20 employees, contracted distribution agents, or other persons who may accompany the products. This  
21 provision shall not be construed to permit the tracking of consumer purchases at the retail level.

22 VI. An electronic tracking device the use of which is activated by or at the request of an  
23 individual, relates to the individual, and locates the individual but does not follow or plot the path of  
24 the individual or personal property owned by or in the lawful possession of the individual. For the  
25 purpose of this subparagraph, the consent of one individual in a motor vehicle shall be considered  
26 consent by all individuals in that motor vehicle.

27 358-T:4 Penalties.

28 I. Any person convicted of violating this chapter shall be guilty of a class A misdemeanor.  
29 Each such act shall constitute a separate offense.

30 II. An aggrieved individual or the state may bring suit for \$1,000 or actual damages,  
31 whichever is greater, plus court costs and reasonable attorney's fees, for each violation of this  
32 chapter.

33 2 Effective Date. This act shall take effect January 1, 2013.

LBAO  
11-0135  
12/27/10

**HB 445-FN - FISCAL NOTE**

AN ACT relative to the regulation of electronic tracking devices.

**FISCAL IMPACT:**

The Judicial Branch, the Judicial Council, and the New Hampshire Association of Counties state this bill may increase state and county expenditures by an indeterminable amount in FY 2012 and each year thereafter. There is no fiscal impact on local expenditures or county and local revenue.

**METHODOLOGY:**

The Judicial Branch states this bill adds RSA 358-T to regulate use of electronic tracking devices. RSA 358-T:4,I establishes a misdemeanor A for violation of various regulations and RSA 358-T:4,II allows an aggrieved individual or the state to sue for \$1,000 or actual damages plus costs and attorney fees for each violation. The Branch states this bill could result in an increase in costs to the Branch by adding the misdemeanor A and complex civil cases. The Branch has no information to estimate how many cases will be brought but does have estimated costs for processing a misdemeanor A case and a complex civil case. The Branch states a misdemeanor A case costs \$60.03 per case in FY 2012 and \$60.88 per case in FY 2013 and each year thereafter. A complex civil case costs \$640.23 in FY 2012 and \$648.08 in FY 2013 and each year thereafter. The possibility of appeals increases the likelihood the fiscal impact on the Branch will exceed \$10,000.

The Judicial Council states this bill may result in an indeterminable increase in general fund expenditures. The Council states if an individual is found to be indigent, the flat fee of \$275 per misdemeanor is charged by a public defender or contract attorney. If an assigned counsel attorney is used the fee is \$60 per hour with a cap of \$1,400 for a misdemeanor charge. The Council also states additional costs could be incurred if an appeal is filed. The public defender, contract attorney and assigned counsel rates for Supreme Court appeals is \$2,000 per case, with many assigned counsel attorneys seeking permission to exceed the fee cap. Requests to exceed the fee cap are seldom granted. Finally, expenditures would increase if services other than counsel are requested and approved by the court during the defense of a case or during an appeal.

**HB 445-FN - AS AMENDED BY THE HOUSE**

**- Page 4 -**

The New Hampshire Association of Counties states to the extent an individual is prosecuted, convicted, and sentenced to incarceration, the counties may have increased expenditures. The Association is unable to determine the number of individuals who might be detained, prosecuted or incarcerated as a result of this bill. The average annual cost to incarcerate an individual in a county correctional facility is approximately \$35,000.

The Department of Justice states this bill will have no fiscal impact on the Department as misdemeanor charges are typically prosecuted by local or county prosecutors.

LBAO  
11-0135  
Amended 02/03/12

HB 445 FISCAL NOTE

AN ACT relative to the regulation of electronic tracking devices.

**FISCAL IMPACT:**

The Judicial Branch, Judicial Council, and New Hampshire Association of Counties state this bill, as amended by the House (Amendment #2012-0084h), may increase state and county expenditures by an indeterminable amount in FY 2012 and each year thereafter. There is no fiscal impact on local expenditures, or county and local revenue.

**METHODOLOGY:**

The Judicial Branch states this bill adds RSA 358-T to regulate use of electronic tracking devices. RSA 358-T:4,I establishes a misdemeanor A for violation of various regulations and RSA 358-T:4,II allows an aggrieved individual or the state to sue for \$1,000 or actual damages plus costs and attorney fees for each violation. The Branch states this bill could result in an increase in costs to the Branch by adding the misdemeanor A and complex civil cases. The Branch has no information to estimate how many cases will be brought but does have estimated costs for processing a misdemeanor A case and a complex civil case. The Branch states a misdemeanor A case costs \$60.03 per case in FY 2012 and \$60.88 per case in FY 2013 and each year thereafter. A complex civil case costs \$640.23 in FY 2012 and \$648.08 in FY 2013 and each year thereafter. The possibility of appeals increases the likelihood the fiscal impact on the Branch will exceed \$10,000.

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The Department of Justice states this bill will have no fiscal impact on the Department as misdemeanor charges are typically prosecuted by local or county prosecutors.

# Amendments

Amendment to HB 445-FN

1 Amend RSA 358-T:3 as inserted by section 1 of the bill by replacing it with the following:

2

3 358-T:3 Exceptions. This chapter shall not apply to:

4 I. An electronic tracking device that tracks personal property exclusively and is activated  
5 solely for that purpose in order to locate the property in cases, such as rental cars, where the owner  
6 has reason to believe the property is being used in violation of a contract governing its use; provided,  
7 however, that where such activation occurs and an individual has been tracked, the burden of  
8 proving that the purpose of the activation was to locate the property shall fall on the owner.

9 II. An electronic tracking device that tracks personal property and is used on real property  
10 by the owner or lessee of that real property where the possessor of the personal property has been  
11 provided reasonable notice of the use of the device.

12 III. An electronic tracking device used by an employer on or within the employer's personal  
13 or real property, in connection with an employment relationship or work-related functions, during or  
14 outside working hours, where the employee has been provided reasonable notice of the use of the  
15 device.

16 IV. An electronic tracking device used by a nursing facility, assisted living facility, the state,  
17 or a political subdivision, department, or agency:

18 (a) To locate a person who is a resident of a nursing facility or assisted living facility,  
19 incarcerated in the state prison or county jail, housed in a mental health facility pursuant to a court  
20 order after having been charged with a crime, subject to court-ordered electronic monitoring, or  
21 resident of a state or county hospital.

22 (b) To collect funds for the use of a toll road or bridge it owns and operates.

23 (c) In connection with a credit, debit, or financial account card issued to an individual for  
24 use on behalf of the state, political subdivision, department, or agency.

25 V. An electronic tracking device that is affixed to products for use in supply chain security or  
26 to ensure product integrity, regardless of whether such device incidentally allows tracking of  
27 employees, contracted distribution agents, or other persons who may accompany the products. This  
28 provision shall not be construed to permit the tracking of consumer purchases at the retail level.

Amendment to HB 445-FN

Not Adopted

1 Amend RSA 358-T:3 as inserted by section 1 of the bill by replacing it with the following:

2

3 358-T:3 Exceptions. This chapter shall not apply to:

4 I. An electronic tracking device that tracks personal property exclusively and is activated  
5 solely for that purpose in order to locate the property in cases, such as rental cars, where the owner  
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# Committee Minutes

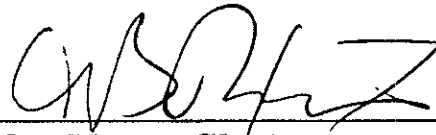
**HOUSE COMMITTEE ON  
COMMERCE AND CONSUMER AFFAIRS**

**BILL NUMBER:** HB 445-FN

**BILL TITLE:** relative to the regulation of electronic tracking devices.

**DATE:** 3-9-11

**THE COMMITTEE HAS VOTED TO RETAIN THIS BILL.**

A handwritten signature in black ink, appearing to read "John Hunt", is written over a horizontal line.

**John Hunt, Chairman**

# Speakers





# Hearing Minutes

HOUSE COMMITTEE ON COMMERCE AND CONSUMER AFFAIRS

PUBLIC HEARING ON HB 445-FN

**BILL TITLE:** relative to the regulation of electronic tracking devices.  
**DATE:** 3-1-11  
**LOB ROOM:** 302      **Time Public Hearing Called to Order:** 1430  
**Time Adjourned:** 1455

(please circle if present)

**Committee Members:** Reps. Hunt, Coffey, Belanger, Flanders, Quandt, Headd, Olevins, Palfrey, Sullivan, Bergevin, Manuse, Maura, McGuinness, Rice, Taylor, Meaden, Gidge and Schlachman.

**Bill Sponsors:** Rep. Kurk and L. Jones

TESTIMONY

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

**\*Rep. Neal Kurk, prime sponsor** – Opened bill; handed out amendment #0549h. Read the 4<sup>th</sup> amendment of the US Constitution. Read from a prepared statement; believes we New Hampshire should be protected from electronic tracking devices; RFID & GPS systems. Discussed the intent of his amendment.

**Honorable Joel Winters** – Former representative. Supports bill. Shares Rep. Kurk's concerns about police tracking. Believes that putting a tracking device in anything without individual being made aware.

**Kathleen Carroll, HID Global** – Opposes the bill. Believes bill based on misunderstanding of modern technology. RFID is not a tracking technology; it is an identification technology.

**Curtis Berry, Retail Merchants Assn. of NH** – Opposes the bill. Requests Section 2 be struck; pg. 2, line 8-9 "where as"; pg 1, line 29-31.

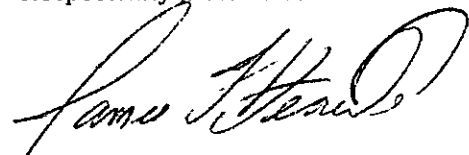
**\*Eric Ebenstein, Tech America** – Opposes bill. Gone over this for several years. We have been offering amendments but can't get any negotiations. This is a bill looking for a problem. Legislation should be technology neutral.

**Martin Honigsberg, Hertz Corp.** – Opposes bill. Reference to cars; owns the cars and should have the right to track its own cars. Rental cars should be exempt.

**Curtis Barry, Alliance of Automobile Manufacturers** – Handed out amendment offered by the Alliance of Automobile Manufacturers; see file.

Kathy Veracco, Verizon Wireless – Opposes the bill. We believe bill does not cover WIFI technology continues to change; every time a new change comes out we would have to address it in legislation.

Respectfully Submitted:



James F. Headd, Clerk



HOUSE COMMITTEE ON COMMERCE AND CONSUMER AFFAIRS

PUBLIC HEARING ON HB 445-FN

BILL TITLE: relative to the regulation of electronic tracking devices.

DATE: 3-1-11

LOB ROOM: 302 Time Public Hearing Called to Order: 1430

Time Adjourned: 1455

(please circle if present)

Committee Members: Reps. Hunt, Coffey, Belanger, Flanders, Quandt, Headd, Nevins, Palfrey, Sullivan, Bergevin, Manuse, Mauro, McGuinness, Rice, Taylor, Meader, Gidge and Schlachman

Bill Sponsors: Rep. Kurk and L. Jones

TESTIMONY

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

#1 Rep. Kurk - Sponsor - opened Bill  
handed out amendment 0549h -  
Read for 4th amendment of the US  
Constitution -  
Read from a prepared statement -  
Believes we New Hampshire should be protected  
from electronic tracking devices - RFID - GPS  
Systems  
Discussed the intent of the amendment

Pg 2 AD 445 PN

#2

Former Rep Joel Winters  
Supports HR 445 - Shares  
Rep Kuck's concern about police  
tracking - Believes that putting a tracking  
device in anything without individual  
being made aware.

#3

Kathleen Carroll - Representative HID  
Market - Opposes Bill -  
Believes Bill poses a misunderstanding  
of modern technology -  
RFID is not a tracking technology  
It is an identification technology

#4

Curtis Berry - Retail Merchants  
Assoc - of NP - Opposes the Bill  
Request 2 sections be struck ~~II~~  
~~Line of change~~  
(Do not get one section)  
Pg 2 - Line 8-9 Where ...  
Pg 1 Line 29-31

#5

Eric R. B. Fenster - Tech America  
Opposes Bill - gone over this  
for several years.

#3

HB 445

We have been offering comments  
but can't get any legislation -  
This is a Bill looking for a  
problem  
Legislation should be Technology  
Neutral -

#6

Martin Honigberg - Hertz  
Corp - oppose S. 111 - Reter  
of cars own, the car ul  
should have the right to make its  
own cars. Rental cars should  
be exempt -

#7

Curtis Ray - funded as  
an amendment offered by the Alliance  
of Automobile Manufacturers - enclosed

#8

Kathy Versaco - Verizon wireless  
opposes Bill - We believe  
Bill does not cover WIFI - Technology  
continues to change - every time a new  
change come out we would have  
to address it legislatively

HOUSE COMMITTEE ON CRIMINAL JUSTICE AND PUBLIC SAFETY

PUBLIC HEARING ON HB 445-FN

**BILL TITLE:** relative to the regulation of electronic tracking devices.

**DATE:** March 6, 2012

**LOB ROOM:** 204      **Time Public Hearing Called to Order:** 10:06 a.m.

**Time Adjourned:** 10:20 a.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. Kurk, Hills 7; Rep. L. Jones, Straf 1

TESTIMONY

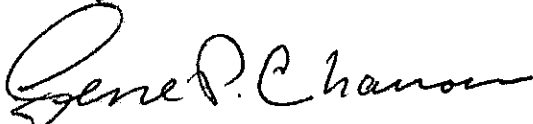
\* Use asterisk if written testimony and/or amendments are submitted.

Rep. Neal Kurk – Explained the penalty of the bill which is why this bill is back before the Committee.

Brendan Perry representing Tech America Association provided testimony. Not in favor of bill. ITL or Interim Study.

**SUBCOMMITTEE:** Reps. Kyle Tasker, Chair, Stephen Shurtleff and Kenneth Kreis.

Respectfully Submitted:



Rep. Gene Charron, Clerk

HOUSE COMMITTEE ON CRIMINAL JUSTICE AND PUBLIC SAFETY

PUBLIC HEARING ON HB 445-FN

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

**Bill Sponsors:** Rep. Kurk, Hills 7; Rep. L. Jones, Straf 1

TESTIMONY

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HB-445FD

10:06

Rep Neal Hurk - Explained the penalty of the bill which is why this bill is back before the Committee -

① 10:15 Brennon Perry representing Tech America Assoc. Testimony provided, not in favor of bill - ITL - OR Study ~~is~~

10:20

Tosher  
Shurt  
Kreiss

HB-145  
Discussion -

Sub-Committee -

Tosher  
Shurtleff  
Kreiss

3/20/2012

Chan - Dave Walsh  
Phil Einberg  
Laura Pantalone  
Jason Anlog  
Gene Charoni



# Sub-Committee Actions

HOUSE COMMITTEE ON COMMERCE AND CONSUMER AFFAIRS

SUBCOMMITTEE WORK SESSION ON HB 445-FN

**BILL TITLE:** relative to the regulation of electronic tracking devices.

**DATE:** October 25, 2011

**Subcommittee Members:** Reps. Coffey, Palfrey, Sullivan, Mauro, McGuinness, Rice, Meader, Schlachman, and Hunt

**Comments and Recommendations:**

**Amendments:**

Sponsor: Rep. Kurk	OLS Document #:	2011	0549h
Sponsor: Rep.	OLS Document #:		
Sponsor: Rep.	OLS Document #:		

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

Moved by Rep.

Seconded by Rep.

Vote: 4-4

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

Moved by Rep.

Seconded by Rep.

Vote:

Respectfully submitted,

Rep. John Hunt  
Subcommittee Chairman/Clerk

HOUSE COMMITTEE ON COMMERCE AND CONSUMER AFFAIRS

SUBCOMMITTEE WORK SESSION ON HB 445-FN

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**Comments and Recommendations:**

**Amendments:**

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

**Motions:** *on the amendment*  
OTP, OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote: *7-1*

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

Moved by Rep.

Seconded by Rep.

Vote: *4-4*

*Respected*  
*AGH*  
Respectfully submitted,

Rep.  
Subcommittee Chairman/Clerk

10/20/11

The only biometric data that DMV collects (with one exception) is the photograph for the driver license which, as you know, the licensee can opt to have not retained on the database once the license is issued. The other instance is that federal homeland security law requires that applicants for a hazardous materials endorsement on a CDL (commercial driver license) be fingerprinted and those prints are transmitted by live scan to the FBI who checks to see if the person has any connection to terrorism. Once the check is completed the prints are destroyed. Also, under RSA 189:13-a, applicants to become driver education instructors are fingerprinted and those prints are destroyed once the driver education instructor license is issued. The Pupil Transportation Safety Office has a similar requirement for school bus drivers but the DMV does not request or retain them - the school bus contractors that hire them have that responsibility.

I cannot speak to what biometrics local police or sheriffs may collect. I assume it is similar to what State Police does.

State Police fingerprints persons who are arrested for crimes and those prints, either inked or electronic live scan, are forwarded to the State Police Criminal Records Unit, who in turn sends a set to the FBI for the national criminal record database.

We take applicant fingerprints for applications for State Trooper jobs and those are checked for criminal records and become part of the Trooper's personnel file if hired. If not hired, they are destroyed. Applicant prints are sent to the FBI for a national check and once the check is performed they are destroyed.

Our Criminal Records Unit processes fingerprints from applicants for the many jobs such as nurses, school teachers, child care workers, police officers, etc., who the Legislature has required to have criminal record checks performed on. We check our state files and then forward the fingerprint data to the FBI for a national check, and if there is no criminal record, the print data is destroyed, both at the FBI and at our Criminal Records unit. Applicant fingerprinting is not required for any position for which the law requires only a check by name and date of birth.

We sometimes take "elimination prints" in criminal investigations and once those are compared by the Crime Lab with latent prints taken at the crime scene the prints are returned to the submitting law enforcement agency for disposal once the Lab has completed the analysis. State Police cases in which elimination prints are taken remain with the evidence until the case is closed, all appeals have run their course and the evidence can be destroyed. If a match is made, then a copy of the card is retained for documentation purposes. An elimination print is never uploaded to the AFIS/IAFIS federal database.

When latent prints are lifted at a crime scene and there are no suspects, those latents are kept forever at the Crime Lab in anticipation that there may someday be a break in the case.

Blood, breath or urine samples are taken by state and local police in DWI cases and they are analyzed by the Crime Lab for alcohol or drug content. Urine and blood samples, consistent with RSA 265-A:7, are destroyed 30 days after the results are reported, via a biohazardous disposal service, unless the defenant requests a "hold" for independent analysis.

Correctional, probation and parole agencies take urine samples from prisoners, probationers and parolees under terms and conditions of sentence or parole and these are analyzed by the Crime Lab for drugs. The samples are held for 60 days and then destroyed via a biohazardous disposal service.

When DNA is found at a crime scene, persons of interest may be asked, or in some cases required by court order, to submit a DNA sample, which commonly consists of a swab of the mouth. This is limited to DNA markers that may be used for law enforcement identification purposes only. No DNA information which is obtained from a suspect reference (known biological) sample is allowed in the National DNA Index System (NDIS). All DNA profiles obtained in relation with evidence submitted to the Lab are retained in the case file, and certain ones are included in a computerized database. All DNA samples

collected in a criminal investigation are returned to the submitting agency upon completion of the analysis, with the exception of Major Crime Unit evidence which is maintained until destruction orders are received.

The Legislature, as you know, requires the collection of DNA samples from convicted felons at correctional institutions pursuant to RSA 651-C. These are maintained at the Crime Lab for confirmation purposes should that become necessary. The DNA profiles obtained from these samples are uploaded into the NDIS. There are criminal penalties associated with the improper release of information or DNA samples obtained under RSA 651-C. By Federal law we are required to have an expungement procedure in the event that an individual's conviction is overturned, which is spelled out in the Department's Administrative Rules (Saf-C 6705.)

Marine Patrol and the Fire Marshal take fingerprints from applicants for Boating Enforcement Officer and Fire Investigator positions, and these are handled just like State Police applicant prints.

I am checking to make sure I have not missed anything, but I believe this list is complete.

As to the bill, HB 244- paragraph I (a) would include a livescan machine that is used to capture applicant fingerprints. Paragraph II (prohibition in paragraph I) exempts the bio data collection of law enforcement agencies, which covers all of our applicant fingerprint laws except the education background checks- that statute also allows school personnel (or a private entity) to capture the fingerprint impressions, so that may be a violation of paragraph I that would need to be addressed. Jeffrey Kellett who heads the State Police Criminal Records Unit, would be able to assist you with that concern if needed.

As to your second question, I checked with Butch Knowlton at DOT and he tells me they are establishing a traffic monitoring system on the turnpike which will send live feed of traffic tieups, accidents, etc., to the DOT Traffic Management Center under their control. This application is no more than they are using elsewhere in NH with the same protective statutes and policies applied.

I hope this is what you were looking for - if not, let me know.

Earl Sweeney, Asst. Comm. DOS

Amendment to HB 445-FN

1 Amend RSA 358-T:3 as inserted by section 1 of the bill by replacing it with the following:

2  
3 358-T:3 Exceptions. This chapter shall not apply to:

4 I. An electronic tracking device that tracks personal property exclusively and is activated  
5 solely for that purpose in order to locate the property in cases, such as rental cars, where the owner  
6 has reason to believe the property is being used in violation of a contract governing its use; provided,  
7 however, that where such activation occurs and an individual has been tracked, the burden of  
8 proving that the purpose of the activation was to locate the property shall fall on the owner.

9 II. An electronic tracking device that tracks personal property and is used on real property  
10 by the owner or lessee of that real property where the possessor of the personal property has been  
11 provided reasonable notice of the use of the device.

12 III. An electronic tracking device used by an employer on or within the employer's personal  
13 or real property, in connection with an employment relationship or work-related functions, during or  
14 outside working hours, where the employee has been provided reasonable notice of the use of the  
15 device.

16 IV. An electronic tracking device used by a nursing facility, assisted living facility, the state,  
17 or a political subdivision, department, or agency:

18 (a) To locate a person who is a resident of a nursing facility or assisted living facility,  
19 incarcerated in the state prison or county jail, housed in a mental health facility pursuant to a court  
20 order after having been charged with a crime, subject to court-ordered electronic monitoring, or  
21 resident of a state or county hospital.

22 (b) To collect funds for the use of a toll road or bridge it owns and operates.

23 (c) In connection with a credit, debit, or financial account card issued to an individual for  
24 use on behalf of the state, political subdivision, department, or agency.

25 V. An electronic tracking device that is affixed to products for use in supply chain security or  
26 to ensure product integrity, regardless of whether such device incidentally allows tracking of  
27 employees, contracted distribution agents, or other persons who may accompany the products. This  
28 provision shall not be construed to permit the tracking of consumer purchases at the retail level.

HOUSE COMMITTEE ON CRIMINAL JUSTICE AND PUBLIC SAFETY

SUBCOMMITTEE WORK SESSION ON HB 445-FN

**BILL TITLE:** relative to the regulation of electronic tracking devices.

**DATE:** September 13, 2012

**Subcommittee Members:** Reps. Welch, Tholl, Shurtleff, Kreis, Ginsburg, Antosz, and  
Pantelakos

**Comments and Recommendations:**

**Amendments:**

Sponsor: Rep.	OLS Document #:
Sponsor: Rep.	OLS Document #:
Sponsor: Rep.	OLS Document #:

**Motions:** Recommended or Not Recommended for Future Legislation (Please circle one.)

Moved by Rep. Tholl

Seconded by Rep. Ginsburg

Vote: 5-0

**Motions:** Recommended or Not Recommended for Future Legislation (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote:

Respectfully submitted,

Rep. David Welch  
Subcommittee Chairman Clerk

HOUSE COMMITTEE ON CRIMINAL JUSTICE AND PUBLIC SAFETY

SUBCOMMITTEE WORK SESSION ON HB 445-FN

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**Comments and Recommendations:**

**Amendments:**

Sponsor: Rep. OLS Document #:  
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Sponsor: Rep. OLS Document #:

**Motions:** Recommended or Not Recommended for Future Legislation (Please circle one.)

Moved by Rep. Tholl  
Seconded by Rep. Ginsburg  
Vote: 5-0

**Motions:** Recommended or Not Recommended for Future Legislation (Please circle one.)

Moved by Rep.  
Seconded by Rep.  
Vote:

Respectfully submitted,  
Rep. David Welch  
Subcommittee Chairman Clerk



# Sub-Committee Minutes

HOUSE COMMITTEE ON COMMERCE AND CONSUMER AFFAIRS

SUBCOMMITTEE WORK SESSION ON HB 445-FN

**BILL TITLE:** relative to the regulation of electronic tracking devices.

**DATE:** September 27, 2011

**Subcommittee Members:** Reps. Coffey, Palfrey, Sullivan, Mauro, McGuinness, Rice, Meador,  
Schlachman, and Hunt

**Comments and Recommendations:** Continue discussion on later date.

**Amendments:**

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

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

Moved by Rep.

Seconded by Rep.

Vote:

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

Moved by Rep.

Seconded by Rep.

Vote:

Respectfully submitted,

Rep. Jennifer Coffey  
Subcommittee Chairman/Clerk

HOUSE COMMITTEE ON COMMERCE AND CONSUMER AFFAIRS  
SUBCOMMITTEE WORK SESSION ON HB 445-FN

**BILL TITLE:** relative to the regulation of electronic tracking devices.

**DATE:** September 27, 2011

**Subcommittee Members:** Reps. Coffey, Palfrey, Sullivan, Mauro, McGuinness, Rice, Meader, Schlachman, and Hunt

**Comments and Recommendations:**

*Continue discussion on later date*

**Amendments:**

Sponsor: Rep.	OLS Document #:
Sponsor: Rep.	OLS Document #:
Sponsor: Rep.	OLS Document #:

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

Moved by Rep.  
Seconded by Rep.  
Vote:

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

Moved by Rep.  
Seconded by Rep.  
Vote:

Respectfully submitted,

Rep.  
Subcommittee Chairman/Clerk



HOUSE COMMITTEE ON COMMERCE AND CONSUMER AFFAIRS

SUBCOMMITTEE WORK SESSION ON HB 445-FN

**BILL TITLE:** relative to the regulation of electronic tracking devices.

**DATE:** October 18, 2011

**Subcommittee Members:** Reps. Coffey, Palfrey, Sullivan, Mauro, McGuinness, Rice, Meader, Schlachman, and Hunt

**Comments and Recommendations:** Review the latest amendment.

**Amendments:**

Sponsor: Rep.	OLS Document #:
Sponsor: Rep.	OLS Document #:
Sponsor: Rep.	OLS Document #:

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

Moved by Rep.

Seconded by Rep.

Vote:

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

Moved by Rep.

Seconded by Rep.

Vote:

Respectfully submitted,

Rep. John Hunt  
Subcommittee Chairman/Clerk

HOUSE COMMITTEE ON COMMERCE AND CONSUMER AFFAIRS

SUBCOMMITTEE WORK SESSION ON HB 445-FN

**BILL TITLE:** relative to the regulation of electronic tracking devices.

**DATE:** October 18, 2011

**Subcommittee Members:** Reps. Coffey, Palfrey, Sullivan, Mauro, McGuinness, Rice, Meader, Schlachman, and Hunt

**Comments and Recommendations:**

*review the latest amendment*

**Amendments:**

Sponsor: Rep.

OLS Document #:

Sponsor: Rep.

OLS Document #:

Sponsor: Rep.

OLS Document #:

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

Moved by Rep.

Seconded by Rep.

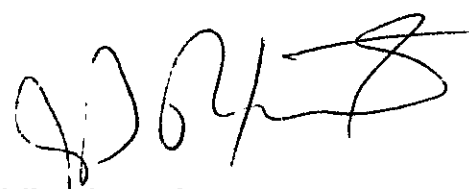
Vote:

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

Moved by Rep.

Seconded by Rep.

Vote:



Respectfully submitted,

Rep.  
Subcommittee Chairman/Clerk

HOUSE COMMITTEE ON CRIMINAL JUSTICE AND PUBLIC SAFETY

SUBCOMMITTEE WORK SESSION ON HB 445-FN

**BILL TITLE:** relative to the regulation of electronic tracking devices.

**DATE:** June 21, 2012

**Subcommittee Members:** Reps. Welch, Shurtleff, Kreis, Ginsburg, Antosz, Tholl, and Pantelakos

**Comments and Recommendations:**

**Amendments:**

Sponsor: Rep.	OLS Document #:
Sponsor: Rep.	OLS Document #:
Sponsor: Rep.	OLS Document #:

**Motions:** Recommended or Not Recommended for Future Legislation (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote:

**Motions:** Recommended or Not Recommended for Future Legislation (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote:

Respectfully submitted,

Rep. David Welch  
Subcommittee Chairman Clerk

HOUSE COMMITTEE ON CRIMINAL JUSTICE AND PUBLIC SAFETY

SUBCOMMITTEE WORK SESSION ON HB 445-FN

**BILL TITLE:** relative to the regulation of electronic tracking devices.

**DATE:** June 21, 2012

**Subcommittee Members:** Reps. Welch, Shurtleff, Kreis, Ginsburg, Antosz, and Tholl *Pantelakos*

**Comments and Recommendations:**

**Amendments:**

Sponsor: Rep.	OLS Document #:
Sponsor: Rep.	OLS Document #:
Sponsor: Rep.	OLS Document #:

**Motions:** Recommended or Not Recommended for Future Legislation (Please circle one.)

Moved by Rep.  
Seconded by Rep.  
Vote:

**Motions:** Recommended or Not Recommended for Future Legislation (Please circle one.)

Moved by Rep.  
Seconded by Rep.  
Vote:

Respectfully submitted,

Rep.  
Subcommittee Chairman/Clerk

# Testimony



**HB 455, relative to the regulation of electronic tracking devices**

**Amendment Requested by the Alliance of Automobile Manufacturers**

(Page 1 Line 12)

358-T:1 Definitions. In this chapter:

I. "Electronic tracking device" means any item, application, or mark that is passively or actively capable of transmitting electronically an individual's location, or is capable of following or plotting the path of an individual, including, without limitation, devices using global position satellites and radio frequency identification. An electronic tracking device shall not include the following:

(a) Bar codes or similar markings that do not transmit information.

(b) Locating technology used by the enhanced 911 system, or for the purpose of facilitating an emergency response.

(c) Commercial mobile radio service as described in 47 U.S.C. section 332 when used to provide such service.

(Page 1 Line 26)

358-T:2 Use of Electronic Tracking Devices Prohibited.

I. Except as otherwise provided in this chapter, no person shall use an electronic tracking device to track an individual without the consent of the individual or the parent or legal guardian of the individual, or a valid court order. *This section shall not apply when the registered owner, lessor or lessee of a vehicle has consented to the use of the electronic tracking device with respect to that vehicle.*

2-18-11

LSR 0135 Location Awareness

~~Deleted:~~ Electronic Tracking.

I. Except as otherwise provided in this chapter, no person may knowingly use a location awareness device to locate an individual without (a) providing reasonable notice to the individual, or the parent or legal guardian of the individual, or (b) a valid court order.

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II. "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability corporation, association, foundation, joint venture, government, government subdivision, agency or instrumentality, public corporation or any other legal or commercial entity.

~~Deleted:~~ II. No individual shall be offered an incentive, denied an opportunity, or in any way treated by a person differently from any other individual as a consequence of providing or withholding such consent.

III. "Locate" means to find, follow or plot the geographic path of an individual or personal property owned by or in the lawful possession of the individual by means of a location awareness device.

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IV. "Location awareness device" means any item, application or mark that is passively or actively capable of electronically locating an individual's location, or allows for following or plotting the path of an individual, including without limitation devices using global position satellites and radio frequency identification. A location awareness device shall not include the following:

~~Deleted:~~ an electronic tracking device.

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- (a) bar codes or similar markings that do not transmit information;
- (b) locating technology used by the enhanced 911 system when used for the purpose of providing assistance in the event of an emergency; and
- (c) commercial mobile radio service as described in 47 U.S.C. section 332 when used to provide such service.

(d) an operating system, store, or marketplace that enables access to applications

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V. "Reasonable notice" means notice provided (a) in plain English, (b) in a type size that may be read by an average individual considering the location of the individual in relation to the notice, and (c) in person, by a label attached to the personal property containing the location awareness device, by electronic means, or by poster at the entrances to real property.

VI. This chapter shall not apply to:

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(a) a location awareness device that tracks personal property exclusively and is activated solely for that purpose in order to locate the property in cases, such as rental cars, where its owner has reason to believe the property is being used by an individual in violation of a contract governing its use, where the possessor of the personal property has been provided reasonable notice of the employment of the device; provided, however, that where such activation occurs and an individual has been located, the burden of proving that the purpose of the activation was to locate the property shall fall on the owner;

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(b) a location awareness device that is employed in connection with personal property offered

for sale by the seller of such personal property during the time the seller is the owner of the personal property, and is used on real property by the owner or lessee of that real property where the a customer possessor of the personal property has been provided reasonable notice of the use of the device;

(c) a location awareness device used by an employer in connection with an employment relationship during working hours where the employee has been provided reasonable notice of the use of the device; and

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(d) a location awareness device used by the state or a political subdivision, department or agency:

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(i) to locate a person an individual who is incarcerated in the state prison or county jail, is housed in a mental health facility pursuant to a court order after having been charged with a crime, is subject to court-ordered electronic monitoring, or is a resident of a state or county hospital, nursing facility or assisted living facility;

(ii) to collect funds for the use of a toll road or bridge it owns and operates; or

(iii) in connection with a credit, debit or financial account card issued to an individual for use on behalf of the state, political subdivision, department or agency; and

(e) a location awareness device used by the operator of a privately-owned hospital, nursing facility, assisted living facility or mental health facility to locate a resident of such facility.

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(f) device location awareness device that displays to any individual being located, their physical location as part of an online mapping or other service that provides directions to such user.

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Deleted: services, such as with rental cars

VII. Penalties.

a. Any person convicted of violating this chapter shall be guilty of a class A misdemeanor. Each such act shall constitute a separate offense.

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b. The state [or an individual who suffers harm as a result of being located in violation of this Act] may bring suit for \$1,000 or actual damages, whichever is greater, plus court costs and reasonable attorney's fees, for each violation of this chapter.

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New Hampshire

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Tuesday, March 1<sup>st</sup>, 2:30 PM

Good afternoon Chairman Hunt and members of the House Commerce and Consumer Affairs Committee.

My name is Eric Ebenstein and I am the Northeast Regional Director for TechAmerica, the nation's leading technology trade association representing approximately 1,200 high tech companies. TechAmerica's membership includes companies from all facets of the technology world that is revolutionizing our economy and our society including computer hardware, computer software, cellphone, and Radio Frequency Identification (RFID) manufacturers.

I would like to thank you for calling this hearing and for allowing me the opportunity to share my comments regarding HB 445, An Act relative to the regulation of electronic tracking devices.

TechAmerica member companies are committed to protecting the security and privacy of all of their customers, especially when dealing with use of their personal electronics, on which they rely on a daily basis. The private and public sectors share this goal equally.

Last year I testified in the Senate as to why the products targeted in last year's RFID bill would not cause the harm alleged of them. The Senate was also informed that the technology does not increase a person's risk to personal information theft, and above all, the state should not overly regulate this technology. As ever, we propose that standards remain technology neutral, allowing the marketplace to dictate winners and losers and that the citizens of New Hampshire be allowed to choose which products they can avail themselves of.

Now, as last year, TechAmerica is opposed to HB 445. We are confident it unnecessarily creates a prohibition on location awareness devices and would deprive New Hampshire citizens of technology that they like, want and use without incident. Also, if adopted, the bill would require companies to comply with a notice structure that is unnecessary and confusing.

This bill targets some of the items that people rely on most in their day-to-day travel – GPS and mapping functions chief among them. Moreover, the industry already regulates itself in this area, as it wants to make sure it doesn't alienate its customer base. Upon using a device or application that has location awareness software, there is a pop-up notification alerting or asking the user to press "yes" or "allow" before continuing.

In past years, TechAmerica has attempted to work out a negotiated solution on similar legislation and has provided amended language. For the past four years we have heard the possibility of tracking technology being potentially and unknowingly used against consumers, yet, to date, there have been no reports of any such incidences. We have heard that this is a preemptive approach at consumer protection but we would argue there are far greater safeguards to consumers built into this technology than what currently exist.

While TechAmerica agrees that all technologies have the potential for misuse, we urge New Hampshire to follow the lead of both the federal and state governments in targeting illegal behavior rather than technology. Within New Hampshire itself, the government has legislated against bad behavior rather than technology. Adoption of this legislation will place New Hampshire on the map as having the most restrictive laws prohibiting the use of tracking technology in the country and send a negative message to companies wishing to use this technology in your state.

In closing, TechAmerica strongly encourages the members of the House Commerce and Consumer Affairs Committee not to adopt HB 445 and instead continue its discussions with the technology community to address any questions or issues you may have.

Again, I have an amendment for the Committee to consider and would be happy to address our suggested changes. If not, I will submit the amendment along with my written testimony.

We look forward to working with you on this issue.

Thank you.

#### **About TechAmerica**

*TechAmerica is the leading voice for the U.S. technology industry – the driving force behind productivity growth and jobs creation in the United States and the foundation of the global innovation economy. Representing approximately 1,200 member companies of all sizes from the public and commercial sectors of the economy, it is the industry's largest advocacy organization and is dedicated to helping members' top and bottom lines. TechAmerica is also the technology industry's only grassroots-to-global advocacy network, with offices in state capitals around the United States, Washington, D.C., Europe (Brussels) and Asia (Beijing). It was formed by the merger of AeA (formerly the American Electronics Association), the Cyber Security Industry Alliance (CSIA), the Information Technology Association of America (ITAA) and the Government Electronics & Information Technology Association (GEIA). Learn more about TechAmerica at [www.techamerica.org](http://www.techamerica.org).*

**HB445 –FN relative to the regulation of electronic tracking devices.**

Good afternoon. Thank you very much for the opportunity to share my concerns about House Bill 445, an act relative to the regulation of electronic tracking devices. My name is Kathleen Carroll and I am director of government relations and chief privacy officer for HID Global, a provider of secure identity solutions for users worldwide. I am also a Certified Information Privacy Professional.

My concern is that HB 445 is built on a very deep and dangerous misunderstanding of how technology works and the benefits it delivers to citizens here in New Hampshire and around the globe where “live free or die” is a motto and a reality today for many people.

This is why I characterize the misunderstanding as dangerous. We become less free when our policies, our laws are based on fear and not fact. And here, I will quote directly from the definitions section of the bill, “ Electronic tracking device” means any item, application or mark that is passively or actively capable of transmitting electronically an individual’s location, or is capable of following or plotting the path of an individual, including, without limitation, devices using global position satellites and radio frequency identification technology.

The term “electronic tracking device” seems to imply that these technologies are used to track people – something I am sure we are all opposed to. The reality is quite different and I will explain why.

I am not an expert in global position satellites but I have been studying the privacy implications of radio frequency identification technology or RFID for nearly six years now.

First and foremost, RFID is not an “electronic tracking technology,” it is, and always has been, an identification technology going back to World War II when it could identify friend or foe.

Today, RFID is used in many types of applications, from identifying livestock to insuring drug authenticity to insuring secure identities to helping pet owners find their pets.

I will use this application to show you why RFID is not an “electronic tracking technology.” Just a few weeks ago in California, a family was reunited with its pet after it went missing in Sacramento. A woman in the state of Washington found the dog and took him to the local shelter. The reason this story has a happy ending is because the dog had an RFID microchip and the shelter happened to have a reader capable of reading the chip which contained information about the pet’s owner.

The reason I am telling you this story is that no one knows how the dog got from California to Washington. No one could plot his journey because of the RFID microchip. But they were able to locate the dog’s owner because of the microchip and because a good Samaritan turned the dog into a shelter that happened to have a reader – otherwise the dog would never have been returned home to its very happy owners.

RFID identified the dog and identified its owner. It did not track the dog’s journey from California to Washington.

There are many other examples such as Fast Pass systems used to speed citizens through toll booths. Yes, the readers identify the RFID tag information so payment can be collected. But beyond that, the reader does not know who is driving the vehicle.

So the only certainty is that the RFID transponder was read on a certain day at a certain time on a certain highway. Beyond that, there is no ability

to track an individual – unless readers are placed at regular intervals along the individual's entire journey.

Several states have introduced and passed legislation that limits access to the data collected by Fast Pass systems, requiring a subpoena before data is released. From a privacy perspective, such data should also be retained only as long as necessary to ensure proper payment and to resolve any disputes. This is an example of good policy. Giving citizens the freedom to travel quickly through toll booths but guarding the data collected.

Making citizens think that RFID is a tracking technology might make them afraid to use the technology. In my opinion this would be a loss for all concerned. Individuals should be free to choose to use technology and that choice should be based on facts not fears.

An informed policy decision requires an understanding of technology and how it works but more than that, it requires an understanding of the practices regarding those technologies that are prevalent in the marketplace. Ladies and gentlemen, the marketplace exists at the whim of the consumer. Without the consumer's trust, the marketplace withers and dies.

Industry understands this because industry is made up of people like you and me. And industry is making every effort to deploy these technologies in a privacy protective manner.

In fact, the Security Industry Association which is made up of manufacturers and integrators of security technologies such as RFID recently adopted a privacy framework for use and deployment to ensure these privacy protections.

In closing, I would respectfully suggest that HB 445 is a piece of legislation in search of a problem that does not exist. More importantly, the bill is not premised on facts that should inform good policy.



March 5, 2012

Honorable Elaine Swinford  
Chair, Criminal Justice and Public Safety Committee  
New Hampshire House of Representatives  
107 North Main Street  
Concord, NH 03301

Dear Chairman Swinford:

On behalf of CTIA-The Wireless Association<sup>®</sup>, TechAmerica, and our member companies, we appreciate the opportunity to submit written testimony in opposition to HB 445. If adopted, HB 445 would distinguish New Hampshire as the first state to adopt an unmerited, onerous and unworkable consumer protection statute that will adversely affect wireless and application providers operating in the state.

Specifically, this law would expose providers to costly legal liability and potentially stifle wireless innovation in the state. In addition to the negative impact HB 445 will have on the wireless industry and small businesses, consumers will likely be adversely affected since service providers will be required to develop and provide what he bill terms a "reasonable notice".

During our testimony before the Commerce Committee who unanimously recommended the bill be sent to interim study, we described the bill as a solution looking for a problem. It should be noted that the policy of HB 445 is not new to the New Hampshire legislature. On at least 3 separate occasions the legislature has failed to adopt similar tracking legislation.

In addition to this legislation's expanded legal liability for providers, our other concerns include the following:

- HB 445 would place burdensome regulations on wireless providers offering Location-Based Services (LBS) in New Hampshire. If enacted, these regulations could inhibit providers from offering such services that New Hampshire consumers have come to rely on.
- As the wireless industry evolves, it continues to deliver innovative products and services to meet consumer demand. This innovation has not only benefited consumers, but it has also spurred economic activity across the country, including New Hampshire. HB 445 threatens the very technological advancement that consumers now expect from the wireless industry.
- Wireless providers have already developed guidelines for practices that HB 445 ostensibly seeks to regulate. CTIA's "*Best Practices and Guidelines for Location-Based Services*,"<sup>1</sup> are intended to promote and protect user privacy as new and exciting LBS products are developed and deployed. These guidelines give providers the flexibility to address changes in the evolving wireless ecosystem. This flexibility is absolutely necessary and would be noticeably absent in the type of inflexible state law proposed by HB 445.
- CTIA's guidelines afford providers a national framework to operate within, which is essential for services that do not recognize state borders. If the New Hampshire passes this first-in-the-nation law, this framework will be threatened and will lead to a patchwork of unworkable state-by-state regulations.

Our member's opposition to HB 445 extends beyond the purview of policy to include what we believe are unwarranted and unenforceable penalty provisions. According to section 358-T: 4 an individual convicted of violating this chapter shall be guilty of a class A misdemeanor. In addition an aggrieved individual may bring suit for \$1,000 in damages.

<sup>1</sup> See CTIA Best Practices and Guidelines for Location-Based Services, available at: [http://files.ctia.org/pdf/CTIA\\_LBS\\_Best\\_Practices\\_Adopted\\_03\\_10.pdf](http://files.ctia.org/pdf/CTIA_LBS_Best_Practices_Adopted_03_10.pdf) (last visited Jan 6, 2012).

In closing, HB 445 will hamper the deployment of innovative services a result that will negatively impact consumers, businesses, and New Hampshire's economy. TechAmerica and its members welcome any opportunity to work with the Criminal Justice and Public Safety Committee to obtain a suitable solution that delivers a fair and methodical solution that provides consumers the services they expect in a safe and responsible fashion. Please contact Brendan Perry at 603-496-8727 if you need immediate assistance.

Sincerely,

Gerard Keegan  
Director, State Legislative Affairs  
CTIA-The Wireless Association®

Marie Lee  
Vice President and Counsel, Public Policy  
TechAmerica



March 19, 2012

Honorable Elaine Swinford  
Chair, Criminal Justice and Public Safety Committee  
New Hampshire House of Representatives  
107 North Main Street  
Concord, NH 03301

Dear Chairman Swinford:

HB 445 is legislation that seeks to add a level of new state regulation to the manufacturing, sale and operation of electronic devices that have the ability to track a person's location. However, in its current form, there are a significant number of problems with the bill that will make it confusing and difficult to identify and enforce penalties. The result will likely be many unintended consequences.

As the Committee is aware, the House Commerce Committee voted 18-0 to send this bill to interim study. In part, this recommendation was associated with questions about how to implement the legislation, who it might apply to and how to fairly enforce it. Many of the same issues arose with similar legislation (HB 1675) that the Criminal Justice Committee also voted to send to interim study in February of this year.

Of particular concern to the cellular telephone industry is how HB 445 would expose many businesses to a vague set of penalties. In section 1, this bill applies to most smart phones, as they have built into their operations the ability to locate cellular connections and when activated by the consumer, use GPS functions to locate the device for public safety, commerce and convenience purposes.

Under the proposed law, which amends the consumer protection statute, if the device "tracks" a person without their "consent", a new state law would be violated. However, it remains unclear who is violating the law. HB 445 could be read to suggest that the device manufacturer, the cellular phone service provider, any person who sold the device, the developer, seller or host of an "app" on the device or someone that misuses the device for notorious purposes might be in violation. This part of the bill has never been clarified. HB 445 offers no guidance on this fundamental question, and this calls into question if the penalties section can even be applied.

The bill also seems to leave these open questions up to either the Attorney General who will need to interpret the law under the consumer protection act, or trial courts where the business that built, sold or managed the device will likely be sued under a civil action penalty provision of the law.

Given what appears to be unfinished work on the bill (which in part is likely why the Commerce Committee recommended further study) in its current form it creates a lot of confusion for the industry to attempt to comply with the law and to avoid penalties. This is especially true with regard to the section that requires that someone (again we do not know who) needs to gain consent before the device can be used for its intended purpose. The law does not offer any guidance about who approves, how the consent is gained or if it needs to be acquired once the device is purchased, turned on or every time the device is used.

While we appreciate that the House Criminal Justice Committee is only looking at the penalties section of the bill, clearly the lack of detail about who under the new law would be exposed to the penalties and how such penalties can be avoided suggests that the bill is not ready to be enacted.

We hope this letter offers the Committee some additional information about the narrow penalties provisions of HB 445.

Best Regards,

Gerard Keegan  
Director, State Legislative Affairs  
CTIA-The Wireless Association®

Marie Lee  
Vice President and Counsel, Public Policy  
TechAmerica



**HOUSE COMMITTEE RESEARCH OFFICE**  
New Hampshire House of Representatives  
4<sup>th</sup> Floor, Legislative Office Building  
Concord, NH 03301  
Tel: (603) 271-3600  
Fax: (603) 271-6689

*James S. Cianci, Esq., Committee Legal Counsel*  
*(603) 271-3683*  
*james.cianci@leg.state.nh.us*

To: Rep. Elaine Swinford, Chair  
House Committee on Criminal Justice & Public Safety

From: Jim Cianci, Committee Legal Counsel  
House Committee Services

Date: March 1, 2012

Re: HB 445 relative to the regulation of electronic tracking devices  
HB 1537 relative to violations of privacy occurring outside a private place

---

### **HB 445**

HB 445 was originally referred to Commerce & Consumer Affairs in 2011 and was retained over the summer; the committee then recommended Interim Study (14-0):

Rep. Jennifer R Coffey for Commerce and Consumer Affairs: Per the request of the prime sponsor and with the support of the full committee present to vote the bill is recommended for Interim Study for further review due to many issues raised in multiple meetings throughout the year.

In the full House, the bill was removed from the Consent Calendar and the Interim Study recommendation failed on a roll call vote of 158-183. The House adopted a floor amendment on a roll call vote of 293-53 and subsequently voted Ought to Pass with Amendment by a voice vote.

HB 445 contains a criminal penalty in new RSA 358-T:4, I which provides that any person convicted of violating the provisions of the chapter shall be guilty of a class A misdemeanor. Each act shall constitute a separate offense.

## HB 1537

HB 1537 was originally referred to Constitutional Review & Statutory Recodification which recommended Ought to Pass with Amendment (10-0):

Rep. Christopher W Serlin for Constitutional Review and Statutory Recodification: The committee was concerned that though the bill was constitutionally necessary the original language of HB 1537 might be too broad, and create unintended consequences. After some discussion and with the support of the bill's sponsor, the committee updated an existing RSA: 644:9(c), with language that would wrap existing policy law around the new duties (and capabilities) which triggered the sponsor's original concern. We believe the language is simple, uncomplicated and recognize that a second committee will have the opportunity to execute these minor changes.

The full House subsequently adopted the committee recommendation on a voice vote.

HB 1537 amends current RSA 644:9, I (c) (see attached) but does not amend the current criminal penalty which remains a class A misdemeanor.

# TITLE LXII CRIMINAL CODE

## CHAPTER 644 BREACHES OF THE PEACE AND RELATED OFFENSES

### Section 644:9

#### **644:9 Violation of Privacy. –**

I. A person is guilty of a class A misdemeanor if such person unlawfully and without the consent of the persons entitled to privacy therein, installs or uses:

(a) Any device for the purpose of observing, photographing, recording, amplifying, broadcasting, or in any way transmitting images or sounds of the private body parts of a person including the genitalia, buttocks, or female breasts, or a person's body underneath that person's clothing; or

(b) In any private place, any device for the purpose of observing, photographing, recording, amplifying or broadcasting, or in any way transmitting images or sounds in such place; or

(c) Outside a private place, any device for the purpose of hearing, recording, amplifying, broadcasting, or in any way transmitting images or sounds originating in such place which would not ordinarily be audible or comprehensible outside such place.

II. As used in this section, "private place" means a place where one may reasonably expect to be safe from surveillance including public restrooms, locker rooms, the interior of one's dwelling place, or any place where a person's private body parts including genitalia, buttocks, or female breasts may be exposed.

III. A person is guilty of a class A misdemeanor if that person knowingly disseminates or causes the dissemination of any photograph or video recording of himself or herself engaging in sexual activity with another person without the express consent of the other person or persons who appear in the photograph or videotape. In this paragraph, "disseminate" and "sexual activity" shall have the same meaning as in RSA 649-A:2.

III-a. A person is guilty of a misdemeanor if, for the purpose of arousing or gratifying the person's sexual desire, he or she knowingly views another person, without that person's knowledge or consent, in a place where one would have a reasonable expectation of privacy. For purposes of this paragraph, "views" means looking at another person with the unaided eye or any device intended to improve visual acuity.

IV. A person is guilty of a misdemeanor if such person knowingly enters any residential curtilage, as defined in RSA 627:9, I, or any other private place as defined in paragraph II of this section, without lawful authority and looks into the residential structure thereon or other private place with no legitimate purpose.

V. Paragraphs I and II shall not be construed to impair or limit any otherwise lawful activities of law enforcement personnel, nor are paragraphs I and II intended to limit employees of governmental agencies or other entities, public or private, who, in the course and scope of their employment and supported by articulable suspicion, attempt to capture any type of visual image, sound recording, or other physical impression of a person during an investigation, surveillance, or monitoring of conduct to obtain evidence of suspected illegal activity, the suspected violation of any administrative rule or regulation, a suspected fraudulent insurance claim, or any other suspected fraudulent conduct or activity involving a violation of law, or pattern of business practices adversely affecting the public health or safety.

**Source.** 1971, 518:1. 1995, 280:9. 2003, 256:1. 2004, 212:1, 2. 2005, 264:1, eff. Jan. 1, 2006. 2008, 334:7, eff. Jan. 1, 2009.

# Voting Sheets

HOUSE COMMITTEE ON COMMERCE AND CONSUMER AFFAIRS

EXECUTIVE SESSION on HB 445-FN

**BILL TITLE:** relative to the regulation of electronic tracking devices.

**DATE:** 3-9-11

**LOB ROOM:** 302

**Amendments:**

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

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

Moved by Rep.

Seconded by Rep.

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

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

Moved by Rep.

Seconded by Rep.

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

**CONSENT CALENDAR VOTE:** Consent or Regular (Circle One)

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

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

Respectfully submitted,

Rep. Jim Headd, Clerk



HOUSE COMMITTEE ON COMMERCE AND CONSUMER AFFAIRS

EXECUTIVE SESSION on HB 445-FN

BILL TITLE: relative to the regulation of electronic tracking devices.

DATE: ~~3-1-11~~ ~~3-3-11~~ 3-9-11

LOB ROOM: 302

Amendments:

Sponsor: Rep.	OLS Document #:
Sponsor: Rep.	OLS Document #:
Sponsor: Rep.	OLS Document #:

*Retain*

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

Moved by Rep. *[Signature]*

Seconded by Rep. *[Signature]*

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: Consent or Regular (Circle One)

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

Statement of Intent: Refer to Committee Report

Respectfully submitted,

Rep. Jim Headd, Clerk

HOUSE COMMITTEE ON COMMERCE AND CONSUMER AFFAIRS

EXECUTIVE SESSION on HB 445-FN

**BILL TITLE:** relative to the regulation of electronic tracking devices.

**DATE:** October 25, 2011

**LOB ROOM:** 302

**Amendments:**

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

**Motions:** OTP, OTP/A, ITL, Interim Study (Please circle one.) Tabled till 11/1

Moved by Rep. Rice

Seconded by Rep. Coffey

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. Jim Headd, Clerk

HOUSE COMMITTEE ON COMMERCE AND CONSUMER AFFAIRS

EXECUTIVE SESSION on HB 445-FN

**BILL TITLE:** relative to the regulation of electronic tracking devices.

**DATE:** October 25, 2011

**LOB ROOM:** 302

Amendments:

Sponsor: Rep.

OLS Document #:

Sponsor: Rep.

OLS Document #:

Sponsor: Rep.

OLS Document #:

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

Moved by Rep.

Seconded by Rep.

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

*RICE*  
*Cuffy*

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

Moved by Rep.

Seconded by Rep.

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

*TAB keep*  
*11/1*

**CONSENT CALENDAR VOTE:**

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

Statement of Intent: Refer to Committee Report

Respectfully submitted,

Rep. Jim Headd, Clerk



HOUSE COMMITTEE ON COMMERCE AND CONSUMER AFFAIRS

EXECUTIVE SESSION on HB 445-FN

**BILL TITLE:** relative to the regulation of electronic tracking devices.

**DATE:** November 1, 2011

**LOB ROOM:** 302

**Amendments:**

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

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

Moved by Rep. Coffey

Seconded by Rep. Flanders

Vote: 14-0 (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: YES**

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

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

Respectfully submitted,

Rep. Jim Headd, Clerk

HOUSE COMMITTEE ON COMMERCE AND CONSUMER AFFAIRS

EXECUTIVE SESSION on HB 445-FN

**BILL TITLE:** relative to the regulation of electronic tracking devices.

**DATE:** November 1, 2011

**LOB ROOM:** 302

**Amendments:**

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

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

Moved by Rep.

Seconded by Rep.

Vote: 14-0 (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: 14-0

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

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

Respectfully submitted,

Rep. Jim Headd, Clerk

COMMERCE AND CONSUMER AFFAIRS

Bill #: HB 445 Title: Regulation of Electronic Tracking Device

PH Date:      /      /      Exec Session Date: 11 / 1 / 11

Motion: INTERIM STUDY Amendment #:     

MEMBER	YEAS	NAYS
Hunt, John B, Chairman	/	
Coffey, Jennifer R, V Chairman	/	
Belanger, Ronald J	/	
Flanders, Donald H	/	
Quandt, Matt J	/	
Headd, James F, Clerk	/	
Nevins, Chris F	/	
Palfrey, David J	/	
Sullivan, James M	/	
Bergevin, Jerry E	/	
Manuse, Andrew J	/	
Mauro, Donna C	/	
McGuinness, Sean M	/	
Rice, Frederick C	/	
Taylor, Kathleen N	/	
Meader, David R	/	
Ridge, Kenneth N	/	
Schlachman, Donna L	/	
	14-	0

HOUSE COMMITTEE ON CRIMINAL JUSTICE AND PUBLIC SAFETY

EXECUTIVE SESSION on HB 445-FN

**BILL TITLE:** relative to the regulation of electronic tracking devices.

**DATE:** March 20, 2012

**LOB ROOM:** 204

**Amendments:**

Sponsor: Rep.

OLS Document #:

Sponsor: Rep.

OLS Document #:

Sponsor: Rep.

OLS Document #:

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

Moved by Rep. Stephen J. Shurtleff

Seconded by Rep. Bob Fesh

Vote: 14-0 (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: 14-0

(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 445-FN

BILL TITLE: relative to the regulation of electronic tracking devices.

DATE: 3/20/2012

LOB ROOM: 204

Amendments:

Sponsor: Rep.

OLS Document #:

Sponsor: Rep.

OLS Document #:

Sponsor: Rep.

OLS Document #:

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

Moved by Rep. SHURTLEFF

Seconded by Rep. FESH-

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.)

-Consent-

Statement of Intent: Refer to Committee Report

Respectfully submitted,

  
Rep. Gene Charron, Clerk

CRIMINAL JUSTICE AND PUBLIC SAFETY

Bill #: HB 445-FN Title: Relative to the regulation of electronic tracking devices.

PH Date: 03/06/2012

Exec Session Date: 3/20/2012 -

Motion: INTERIM STUDY

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, Clerk	✓	
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	✓	
	14	0

HOUSE COMMITTEE ON CRIMINAL JUSTICE AND PUBLIC SAFETY

EXECUTIVE SESSION on HB 445-FN

**BILL TITLE:** relative to the regulation of electronic tracking devices.

**DATE:** October 10, 2012

**LOB ROOM:** 204

**Amendments:**

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

**Motions:** Recommended or Not Recommended for Future Legislation (Please circle one.)

Moved by Rep. Gagne

Seconded by Rep. Shurtleff

Vote: 12-0 (Please attach record of roll call vote.)

**Motions:** Recommended or Not Recommended for Future Legislation (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 Charron, Clerk

HOUSE COMMITTEE ON CRIMINAL JUSTICE AND PUBLIC SAFETY

EXECUTIVE SESSION on HB 445-FN

**BILL TITLE:** relative to the regulation of electronic tracking devices.

**DATE:** October 10, 2012

**LOB ROOM:** 204

**Amendments:**

Sponsor: Rep.

OLS Document #:

Sponsor: Rep.

OLS Document #:

Sponsor: Rep.

OLS Document #:

**Motions:** Recommended or Not Recommended for Future Legislation (Please circle one.)

Moved by Rep. *Gagne*.

Seconded by Rep. *Rep. Shurtlett*

Vote: *12-0* (Please attach record of roll call vote.)

**Motions:** Recommended or Not Recommended for Future Legislation (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,

*Gene Charron*  
Rep. Gene Charron, Clerk

CRIMINAL JUSTICE AND PUBLIC SAFETY

Bill #: HB 945 Title: Electronic Tracking Devices

PH Date:     /    /    

Exec Session Date: 10/10/2012

Motion: To recommend future legislation · 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, Clerk	✓	
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		
	12	0

# Committee Report

**CONSENT CALENDAR**

**November 3, 2011**

**HOUSE OF REPRESENTATIVES**

**REPORT OF COMMITTEE**

The Committee on COMMERCE AND CONSUMER AFFAIRS to which was referred HB445-FN,

AN ACT relative to the regulation of electronic tracking devices. Having considered the same, report the same with the recommendation that the bill be REFERRED FOR INTERIM STUDY.

**Rep. Jennifer R Coffey**

**FOR THE COMMITTEE**

## COMMITTEE REPORT

Committee:	COMMERCE AND CONSUMER AFFAIRS
Bill Number:	HB445-FN
Title:	relative to the regulation of electronic tracking devices.
Date:	November 3, 2011
Consent Calendar:	YES
Recommendation:	REFER TO COMMITTEE FOR INTERIM STUDY

### STATEMENT OF INTENT

Per the request of the prime sponsor and with the support of the full committee present to vote the bill is recommended for Interim Study for further review due to many issues raised in multiple meetings throughout the year.

Vote 14-0.

Rep. Jennifer R Coffey  
FOR THE COMMITTEE

Original: House Clerk  
Cc: Committee Bill File



## **CONSENT CALENDAR**

### **COMMERCE AND CONSUMER AFFAIRS**

**HB445-FN**, relative to the regulation of electronic tracking devices. **REFER TO COMMITTEE FOR INTERIM STUDY.**

Rep. Jennifer R Coffey for **COMMERCE AND CONSUMER AFFAIRS**. Per the request of the prime sponsor and with the support of the full committee present to vote the bill is recommended for Interim Study for further review due to many issues raised in multiple meetings throughout the year. **Vote 14-0.**

Original: House Clerk  
Cc: Committee Bill File

HB 445-FN

Interim Study

Per the request of the prime sponsor and with the support of the full committee present to vote the bill is recommended for Interim Study for further review due to many issues raised in multiple meetings throughout the year.

Jennifer Coffey



# State of New Hampshire

HOUSE OF REPRESENTATIVES

CONCORD

HB 445

Per the request of  
the prime sponsor and with  
the support of the full  
Committee present to vote  
the bill is recommended  
for interim study for  
further review due  
to many issues raised  
in multiple meetings  
~~of the ~~committee~~~~  
throughout the year.

(SBJ)

**CONSENT CALENDAR**

**March 28, 2012**

**HOUSE OF REPRESENTATIVES**

**REPORT OF COMMITTEE**

**The Committee on CRIMINAL JUSTICE AND PUBLIC SAFETY to which was referred HB445-FN,**

**AN ACT relative to the regulation of electronic tracking devices. Having considered the same, report the same with the recommendation that the bill be REFERRED FOR INTERIM STUDY.**

**Rep. Stephen J Shurtleff**

**FOR THE COMMITTEE**

## COMMITTEE REPORT

Committee:	<b>CRIMINAL JUSTICE AND PUBLIC SAFETY</b>
Bill Number:	<b>HB445-FN</b>
Title:	<b>relative to the regulation of electronic tracking devices.</b>
Date:	<b>March 21, 2012</b>
Consent Calendar:	<b>YES</b>
Recommendation:	<b>REFER TO COMMITTEE FOR INTERIM STUDY</b>

### STATEMENT OF INTENT

This bill would prohibit the use of tracking devices to track an individual without the consent of the individual or a court order. The committee feels that this bill has tremendous merit. Unfortunately, a sub-committee that was formed to study this bill never met, which left the committee with many unanswered questions. However, the committee felt that a true Interim Study, which should include representatives from the Science and Technology Committee, would produce an excellent piece of legislation.

Vote 14-0.

Rep. Stephen J Shurtleff  
FOR THE COMMITTEE

Original: House Clerk  
Cc: Committee Bill File

## CONSENT CALENDAR

### CRIMINAL JUSTICE AND PUBLIC SAFETY

**HB445-FN**, relative to the regulation of electronic tracking devices. **REFER TO COMMITTEE FOR INTERIM STUDY.**

Rep. Stephen J Shurtleff for **CRIMINAL JUSTICE AND PUBLIC SAFETY**. This bill would prohibit the use of tracking devices to track an individual without the consent of the individual or a court order. The committee feels that this bill has tremendous merit. Unfortunately, a sub-committee that was formed to study this bill never met, which left the committee with many unanswered questions. However, the committee felt that a true Interim Study, which should include representatives from the Science and Technology Committee, would produce an excellent piece of legislation. **Vote 14-0.**

Original: House Clerk  
Cc: Committee Bill File

**HB 445-FN relative to the regulation of electronic tracking devices.**

**This bill would prohibit the use of tracking devices to track an individual without the consent of the individual or a court order.**

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**Unfortunately, a sub-committee that was formed to study this bill never met, which left the committee with many unanswered questions. However, the committee felt that a true Interim Study, which should include representatives from the Science and Technology Committee, would produce an excellent piece of legislation.**

**Rep. Stephen J. Shurtleff  
For the Committee  
14-0 Interim Study - CC**

*Rep. Elaine Swenford*

COMMITTEE REPORT

COMMITTEE: Criminal Justice and Public Safety

BILL NUMBER: HB 445-FN

TITLE: Relative to the regulation of electronic tracking devices.

DATE: 3/20/12 CONSENT CALENDAR: YES  NO

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

Amendment No. \_\_\_\_\_

STATEMENT OF INTENT:

This bill would prohibit the use of tracking devices to track an individual without the consent of the individual or a court order. The committee feels that this bill has tremendous merit. Unfortunately, a sub-committee that was formed to study this bill never met, which left the committee with many <sup>unanswered</sup> questions. However the committee felt that a true ~~interim~~ Interim Study, which <sup>should include</sup> ~~should include~~ ~~representatives~~ <sup>would</sup> ~~could~~ produce an excellent <sup>piece</sup> ~~piece~~ of regulation.

Rep. Elaine Sutford

COMMITTEE VOTE: 14-0

RESPECTFULLY SUBMITTED,

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

Rep. Starr / Starr  
For the Committee



# INTERIM STUDY COMMITTEE REPORT

COMMITTEE: CRIMINAL JUSTICE AND PUBLIC SAFETY  
BILL NUMBER: HB 445-FN  
TITLE: Relative to the regulation of electronic tracking devices.  
DATE: October 10, 2012

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RECOMMENDED FOR FUTURE LEGISLATION

NOT RECOMMENDED FOR FUTURE LEGISLATION

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STATEMENT OF INTENT: (May be handwritten)

The subcommittee recommended this bill as worthy for future legislation before the full committee. After a brief discussion the bill was accepted for future legislation.

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COMMITTEE VOTE: 12-0 (Attach Committee Voting Sheet)

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Rep. Larry G. Gagne

INTERIM STUDY  
COMMITTEE REPORT

COMMITTEE: CRIMINAL JUSTICE & PUBLIC SAFETY

BILL NUMBER: HB-445 FN

TITLE: Relative to the regulation of electronic tracking  
services

DATE: 10-10-12

RECOMMENDED FOR FUTURE LEGISLATION

NOT RECOMMENDED FOR FUTURE LEGISLATION

STATEMENT OF INTENT: (May be handwritten)

*The sub-committee recommended this bill as worthy for  
future (recommendation) legislation before the full committee.  
After a brief discussion the bill was accepted for  
future legislation*

COMMITTEE VOTE: 12-0 (Attach Committee Voting Sheet)

*Rep. Elaine Swanson*

Rep. Larry D. Grage  
For the Committee

## INTERIM STUDY COMMITTEE REPORT

COMMITTEE: CRIMINAL JUSTICE AND PUBLIC SAFETY  
BILL NUMBER: HB 445-FN  
TITLE: Relative to the regulation of electronic tracking devices.  
DATE: October 10, 2012

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**RECOMMENDED FOR FUTURE LEGISLATION**

**NOT RECOMMENDED FOR FUTURE LEGISLATION**

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STATEMENT OF INTENT: (May be handwritten)

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This bill would prohibit the use of electronic tracking devices to track an individual without the consent of the individual or a court order. The committee unanimously believes that the subject of this bill is worthy of future legislation.

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COMMITTEE VOTE: 12-0 (Attach Committee Voting Sheet)

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Rep. Larry G. Gagne

## HB 445

This bill would prohibit the use of electronic tracking devices to track an individual without the consent of the individual or a court order. The committee unanimously believes that the subject of this bill is worthy of future legislation.