

Bill as Introduced

HB 553 - AS INTRODUCED

2011 SESSION

11-0131

04/03

HOUSE BILL **553**

AN ACT relative to the law on wiretapping and eavesdropping.

SPONSORS: Rep. Ulery, Hills 27

COMMITTEE: Criminal Justice and Public Safety

ANALYSIS

This bill makes various changes to the wiretapping and eavesdropping statute.

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 Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.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

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

1 1 Wiretapping and Eavesdropping; Definitions. RSA 570-A:1 is repealed and reenacted to read
2 as follows:

3 570-A:1 Definitions. As used in this chapter:

4 I. "Aggrieved person" means a person who was a party to any intercepted wire, electronic, or
5 oral communication or a person against whom the interception was directed.

6 II. "Contents," when used with respect to any wire, electronic, or oral communication,
7 includes any information concerning the identity of the parties to such communication or the
8 existence, substance, purport, or meaning of that communication.

9 III. "Electronic communication" means any transfer of signs, signals, writing, images,
10 sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio,
11 electromagnetic, photoelectronic, or photo-optical system, but does not include:

12 (a) A wire or oral communication;

13 (b) A communication made through a tone-only paging device;

14 (c) A communication from a tracking device; or

15 (d) Electronic funds transfer information stored by a financial institution in a
16 communication system used for the electronic storage and transfer of funds.

17 IV. "Electronic, mechanical, or other device" means any device or apparatus which can be
18 used to intercept a wire, electronic, or oral communication other than:

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

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

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

29 (3) Being used by a provider of wire or electronic communication services in the
30 ordinary course of its business, or by an investigative or law enforcement officer in the ordinary
31 course of his or her duties;

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

3 V. "Intercept" means the covert aural or other acquisition of, or the recording of, the contents
4 of any wire, electronic, or oral communication through the use of any electronic, mechanical, or other
5 device.

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

10 VII. "Judge of competent jurisdiction" means a judge of the superior court.

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

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

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

20 XI. "Wire communication" means the aural transfer made in whole or in part through the
21 use of facilities for the transmission of communications by the aid of wire, cable, or other like
22 connection between the point of origin and the point of reception, including the use of such
23 connection in a switching station.

24 2 Wiretapping and Eavesdropping; Interception and Disclosure. Amend RSA 570-A:2 to read as
25 follows:

26 570-A:2 Interception and Disclosure of [~~Telecommunication~~] *Wire, Electronic, or Oral*
27 *Communications Prohibited.*

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

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

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

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

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

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

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

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

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

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

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

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

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

36 (d) An investigative or law enforcement officer ~~[in the ordinary course of the officer's~~
37 ~~duties pertaining to the conducting of investigations of organized crime, offenses enumerated in this~~

1 ~~chapter, solid waste violations under RSA 149 M:9, I and II, or harassing or obscene telephone calls]~~
2 ***in the course of an investigation of any felony offense, criminal threatening under RSA***
3 ***631:4, harms or threats to certain government officials under RSA 631:4-a, harassment***
4 ***under 644:4, stalking under RSA 633:3-a, or an attempt or conspiracy to commit such***
5 ***offense, to intercept a [telecommunication] wire, electronic, or oral communication, when such***
6 ***person is a party to the communication or one of the parties to the communication has given prior***
7 ***consent to such interception; provided, however, that no such interception shall be made unless the***
8 ***attorney general, the deputy attorney general, or an assistant attorney general designated by the***
9 ***attorney general determines that there exists a reasonable suspicion that evidence of criminal***
10 ***conduct will be derived from such interception. Oral authorization for the interception may be given***
11 ***and a written memorandum of said determination and its basis shall be made within 72 hours***
12 ***thereafter. The memorandum shall be kept on file in the office of the attorney general.***

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

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

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

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

36 (i) (h) Any public utility regulated by the public utilities commission, and its employees
37 in the course of employment, when receiving central dispatch calls or calls for emergency service, or

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

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

12 ~~[(h)]~~ (j)(1) The owner or operator of a school bus, as defined in RSA 259:96, to make an
13 audio recording in conjunction with a video recording of the interior of the school bus while students
14 are being transported to and from school or school activities, provided that the school board
15 authorizes audio recording, the school district provides notification of such recording to the parents
16 and students as part of the district's pupil safety and violence prevention policy required under RSA
17 193-F, and there is a sign informing the occupants of such recording prominently displayed on the
18 school bus.

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

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

36 (l) *A person to make an inadvertent audio recording of a conversation or a*
37 *video recording of an event occurring in a public place.*

1 3 Wiretapping and Eavesdropping; Manufacture, Distribution, Possession, and Advertising.
2 Amend RSA 570-A:3 to read as follows:

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

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

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

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

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

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

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

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

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

30 4 Wiretapping and Eavesdropping; Confiscation of Intercepting Devices. Amend the section
31 heading in RSA 570-A:4 to read as follows:

32 570-A:4 Confiscation of [Telecommunication] *Wire, Electronic*, or Oral Communication
33 Intercepting Devices.

34 5 Wiretapping and Eavesdropping; Prohibition of Use. Amend RSA 570-A:6 to read as follows:

35 570-A:6 Prohibition of Use as Evidence of Intercepted [Telecommunications] *Wire, Electronic*,
36 or Oral Communications. Whenever any [telecommunication] *wire, electronic*, or oral
37 communication has been intercepted, no part of the contents of such communication and no evidence

1 derived therefrom may be received in evidence in any trial, hearing, or other proceeding in or before
2 any court, grand jury, department, officer, agency, regulatory body, legislative committee, or other
3 authority of the state, or a political subdivision thereof, if the disclosure of that information would be
4 in violation of this chapter.

5 6 Wiretapping and Eavesdropping; Authorization for Interception. Amend RSA 570-A:7 to read
6 as follows:

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

29 7 Wiretapping and Eavesdropping; Authorization for Disclosure. Amend RSA 570-A:8 to read as
30 follows:

31 570-A:8 Authorization for Disclosure and Use of Intercepted [~~Telecommunications~~] *Wire,*
32 *Electronic*, or Oral Communications.

33 I. Any law enforcement officer who, by any means authorized by this chapter, has obtained
34 knowledge of the contents of any [~~telecommunication~~] *wire, electronic*, or oral communication, or
35 evidence derived therefrom, may disclose such contents to another law enforcement officer to the
36 extent that such disclosure is appropriate to the proper performance of the official duties of the
37 officer making or receiving the disclosure.

1 II. Any law enforcement officer who, by any means authorized by this chapter, has obtained
2 knowledge of the contents of any [telecommunication] *wire, electronic*, or oral communication or
3 evidence derived therefrom may use such contents to the extent such use is appropriate to the proper
4 performance of the officer's official duties.

5 III. Any person who has received, by any means authorized by this chapter, any information
6 concerning a [telecommunication] *wire, electronic*, or oral communication or evidence derived
7 therefrom intercepted in accordance with the provisions of this chapter may disclose the contents of
8 that communication or such derivative evidence while giving testimony under oath or affirmation in
9 any criminal proceeding in any court of the United States or of any state or in any federal or state
10 grand jury proceeding.

11 IV. No otherwise privileged [telecommunication] *wire, electronic*, or oral communication
12 intercepted in accordance with, or in violation of, the provisions of this chapter shall lose its
13 privileged character.

14 V. When a law enforcement officer, while engaged in intercepting [telecommunications]
15 *wire, electronic*, or oral communications in the manner authorized herein, intercepts
16 [telecommunications] *wire, electronic*, or oral communications relating to offenses other than those
17 specified in the order of authorization or approval, the contents thereof, and evidence derived
18 therefrom, may be disclosed or used as provided in paragraphs I and II. Such contents and any
19 evidence derived therefrom may be used under paragraph III, when authorized or approved by a
20 judge of competent jurisdiction where such judge finds on subsequent application that the contents
21 were otherwise intercepted in accordance with the provisions of this chapter. Such application shall
22 be made as soon as practicable.

23 8 Wiretapping and Eavesdropping; Procedure for Interception. Amend RSA 570-A:9 to read as
24 follows:

25 570-A:9 Procedure for Interception of [Telecommunication] *Wire, Electronic*, or Oral
26 Communications.

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

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

33 (b) A full and complete statement of the facts and circumstances relied upon by the
34 applicant to justify the applicant's belief that an order should be issued, including: (1) Details as to
35 the particular offense that has been, is being, or is about to be committed, (2) A particular
36 description of the nature and location of the facilities from which or the place where the
37 communication is to be intercepted, (3) A particular description of the type of communications sought

1 to be intercepted, (4) The identity of the person, if known, committing the offense and whose
2 communications are to be intercepted;

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

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

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

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

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

21 III. Upon such application, the judge may enter an ex parte order, as requested or as
22 modified, authorizing or approving interception of [~~telecommunication~~] *wire, electronic*, or oral
23 communications, if the judge determines on the basis of the facts submitted by the applicant that:

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

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

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

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

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

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

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

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

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

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

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

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

25 VII.(a) The contents of any ~~[telecommunication]~~ **wire, electronic**, or oral communication
26 intercepted by any means authorized by this chapter shall, if possible, be recorded on tape or wire or
27 other comparable device. The recording of the contents of any ~~[telecommunication]~~ **wire, electronic**,
28 or oral communication under this paragraph shall be done in such way as will protect the recording
29 from editing or other alterations. Immediately upon the expiration of the period of the order or
30 extensions thereof, such recordings shall be made available to the judge issuing such order and
31 sealed under the judge's directions. Custody of the recordings shall be wherever the judge orders.
32 They shall not be destroyed except upon an order of the issuing or denying judge and in any event
33 shall be kept for 10 years. Duplicate recordings may be made for use or disclosure pursuant to the
34 provisions of RSA 570-A:8, I and II, for investigations. The presence of the seal provided for by this
35 paragraph, or a satisfactory explanation for the absence thereof, shall be a prerequisite for the use or
36 disclosure of the contents of any ~~[telecommunication]~~ **wire, electronic**, or oral communication or
37 evidence derived therefrom under RSA 570-A:8, III.

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

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

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

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

20 (1) The communication was unlawfully intercepted;

21 (2) The order of authorization or approval under which it was intercepted is
22 insufficient on its face; or

23 (3) The interception was not made in conformity with the order of authorization or
24 approval.

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

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

1 X. If an order authorizing interception is entered pursuant to this chapter, the order, upon
 2 request of the attorney general or deputy attorney general, shall direct that a [~~communication~~
 3 ~~common-carrier~~] **provider of wire or electronic communication services** shall furnish to the law
 4 enforcement agency designated by the attorney general all information, facilities, or technical
 5 assistance necessary to accomplish the interception unobtrusively and with a minimum of
 6 interference with the services that such [~~communication—common-carrier~~] **provider of wire or**
 7 **electronic communication services** is according the person whose communications are to be
 8 intercepted. The [~~communication—common-carrier~~] **provider of wire or electronic**
 9 **communication services** shall furnish such facilities or technical assistance at its prevailing rate
 10 or tariff.

11 9 Wiretapping and Eavesdropping; Reports Concerning Intercepted Communications. Amend
 12 the section heading in RSA 570-A:10 to read as follows:

13 570-A:10 Reports Concerning Intercepted [~~Telecommunications~~] **Wire, Electronic, or Oral**
 14 **Communications.**

15 10 Wiretapping and Eavesdropping; Reports Concerning Intercepted Communications. Amend
 16 RSA 570-A:10, III to read as follows:

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

21 11 Wiretapping and Eavesdropping; Recovery of Civil Damages. Amend RSA 570-A:11 to read
 22 as follows:

23 570-A:11 Recovery of Civil Damages Authorized. Any person whose [~~telecommunication~~] **wire,**
 24 **electronic, or oral communication** is intercepted, disclosed, or used in violation of this chapter shall
 25 have a civil cause of action against any person who intercepts, discloses, or uses, or procures any
 26 other person to intercept, disclose, or use such communications, and be entitled to recover from any
 27 such person: (a) actual damages but not less than liquidated damages computed at the rate of \$100 a
 28 day for each day of violation or \$1,000, whichever is higher; (b) punitive damages; and (c) a
 29 reasonable attorney's fee and other litigation costs reasonably incurred. Good faith reliance on a
 30 court order or on a representation made by the attorney general, *the* deputy attorney general, or a
 31 county attorney shall constitute a complete defense to any civil or criminal action brought under this
 32 chapter.

33 12 Attorney General; Records. Amend RSA 7:6-b to read as follows:

34 7:6-b Certain Records of [~~Communications Common Carriers~~] **Providers of Wire or Electronic**
 35 **Communication Services.**

36 I. Every [~~communications common carrier, as defined in RSA 570 A:1, IX~~] **provider of wire**
 37 **or electronic communication services**, upon the written demand of the attorney general that the

1 attorney general has reasonable grounds for belief that the service furnished to a person or to a
2 location by such [~~communications common-carrier~~] **provider** has been, is being, or may be used for
3 an unlawful purpose, shall furnish to the attorney general:

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

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

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

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

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

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

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

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

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

32 (b) The procedures for applying for such demands.

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

34 13 Pen Register, Trap and Trace Devices; Definitions. Amend RSA 570-B:1, I to read as follows:

35 I. "Telecommunication" [~~has the meaning set forth in RSA 570-A:1~~] means "**electronic**
36 **communication**" as defined in RSA 570-A:1, III, or "**wire communication**" as defined in RSA
37 570-A:1, XI.

1 14 Obstructing Governmental Operations; Hindering Apprehension or Prosecution. Amend RSA
2 642:3, I(f) to read as follows:

3 (f) Having knowledge that an investigative or law enforcement officer has been
4 authorized or has applied for authorization under RSA 570-A to intercept a [~~telecommunication~~]
5 *wire, electronic*, or oral communication, or under RSA 570-B to install and use a pen register or
6 trap and trace device, gives notice of the possible interception or installation and use to any person.

7 15 Effective Date. This act shall take effect January 1, 2012.

Amendments

"Not Adopted"

Amendment to HB 553

1 Amend RSA 570-A:1, III as inserted by section 1 of the bill by replacing it with the following:

2
3 III. "Electronic communication" means any transfer of signs, signals, writing, images,
4 sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio,
5 electromagnetic, photoelectronic, or photo-optical system, but does not include:

- 6 (a) A wire or oral communication;
7 (b) A communication made through a tone-only paging device; or
8 (c) A communication from a tracking device.

9
10 Amend RSA 570-A:2, II(d) as inserted by section 2 of the bill by replacing it with the following:

11
12 (d) An investigative or law enforcement officer ~~[in the ordinary course of the officer's~~
13 ~~duties pertaining to the conducting of investigations of organized crime, offenses enumerated in this~~
14 ~~chapter, solid waste violations under RSA 149 M:9, I and II, or harassing or obscene telephone calls]~~
15 **in the course of an investigation of any felony offense, criminal threatening under**
16 **RSA 631:4, harms or threats to certain government officials under RSA 631:4-a, harassment**
17 **under 644:4, stalking under RSA 633:3-a, prostitution and related offenses under**
18 **RSA 645:2, or an attempt or conspiracy to commit such offenses,** to intercept a
19 ~~[telecommunication]~~ **wire, electronic,** or oral communication, when such person is a party to the
20 communication or one of the parties to the communication has given prior consent to such
21 interception; provided, however, that no such interception shall be made unless the attorney general,
22 the deputy attorney general, or an assistant attorney general designated by the attorney general
23 determines that there exists a reasonable suspicion that evidence of criminal conduct will be derived
24 from such interception. Oral authorization for the interception may be given and a written
25 memorandum of said determination and its basis shall be made within 72 hours thereafter. The
26 memorandum shall be kept on file in the office of the attorney general.

27
28 Amend RSA 570-A:2, II as inserted by section 2 of the bill by inserting after subparagraph (l) the
29 following new subparagraph:

30
31 (m) **An officer, employee, or agent of a financial institution conducting**



1 *electronic communications or wire communications in the normal course of business.*

2

3 Amend the bill by inserting after section 14 the following and renumbering the original section 15 to
4 read as 16:

5

6 15 Legislative Intent. The general court intends that this bill shall apply to covert or
7 surreptitious interceptions of wire, electronic, or oral communications and is not intended to
8 interfere with the routine and lawful course of business or law enforcement.

Committee Minutes

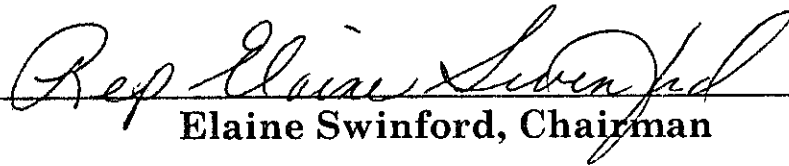
**HOUSE COMMITTEE ON
CRIMINAL JUSTICE AND PUBLIC SAFETY**

BILL NUMBER: HB 553-FN

BILL TITLE: relative to the law on wiretapping and
eavesdropping.

DATE: March 10, 2011

THE COMMITTEE HAS VOTED TO RETAIN THIS BILL.


Elaine Swinford, Chairman

Speakers

Hearing Minutes

HOUSE COMMITTEE ON CRIMINAL JUSTICE AND PUBLIC SAFETY

PUBLIC HEARING ON HB 553

BILL TITLE: relative to the law on wiretapping and eavesdropping.

DATE: March 1, 2011

LOB ROOM: 204 Time Public Hearing Called to Order: 1:47 p.m.

Time Adjourned: 2:35 p.m.

(please circle if present)

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

Bill Sponsors: Rep. Ulery, Hills 27

TESTIMONY

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

*Rep. Jordan Ulery - Spoke to the bill. Written testimony provided.

*Anne Rice, Attorney General's Office - Supports. Has written testimony. Explained by page the changes. Wants to add prostitution to the bill. Expand Criminal Threat, Harassment, stalking. The word covert has a little concern - it would open up two speaking and a third person - recording without consent.

Joel Winters - Opposes bill. Presented his points of opposition.

Claire Ebel - Has concerns. Has problems Page 1 9-10-11 images = the sword covert (Eliminate the word covert) does not like expansion of including many more felonies. Line 4-5. Bottom page 5 - Line 36-37 - a person who makes an inadvertent recording.

Chief Ryan Heath - Alton Police Representing Police of Chiefs Association - Supports. No written testimony.

Respectfully Submitted:



Rep. Gene P. Charron, Clerk

HOUSE COMMITTEE ON CRIMINAL JUSTICE AND PUBLIC SAFETY

PUBLIC HEARING ON HB 553

BILL TITLE: relative to the law on wiretapping and eavesdropping.

DATE:

LOB ROOM: 204

Time Public Hearing Called to Order: 1:47

Time Adjourned: 2:35

(please circle if present)

Committee Members: Reps. Swinford, Gagne, Welch, Fields, Pesh, Charren, Villeneuve, Antosz, Creazzo, Kreis, Parsons, Tasker, Warden, Pantelakos, Berube, Shurtleff and Ginsburg.

Bill Sponsors: Rep. Ulery, Hills 27

TESTIMONY

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

Wire Tapping - eaves dropping

HB-553

I

① 1:47 Rep Jordan Clergy - spoke to the bill,
Written testimony provided.

2 1:50 ANNE RICE - Attorney General's office
support Has written testimony. Explained
by page the changes. Wants to add
prostitution to the bill. expand
Criminal threat, Harassment, stalking.
The word Covert has a little concern
it would open up two speaking
and a third person - recording
without consent.

③ 2:15 Paul Winters - opposes bill. presented his
points of opposition.

④ 2:20 Claire Ebel - has concerns. has problems
page 1. 9-10-11 images = the word
Covert (eliminate the word Covert)
does not like expansion of including
many more felonies. Line 4-5
Bottom page 5 - line 36-37
a person who makes an inadvertent
recording:

~~225 Ryan Heath, 12th Chiefs & Police Assn.
Chief of Alton N.H.~~

HB-553

2-1-2011

5) 2:25
support

Chief Ryan Heath Alton Police representing
Chief of Police Assn. No Written

CLOSED - 2:35

Sub-Committee Actions

HOUSE COMMITTEE ON CRIMINAL JUSTICE AND PUBLIC SAFETY

SUBCOMMITTEE WORK SESSION ON HB 553-FN

BILL TITLE: relative to the law on wiretapping and eavesdropping.

DATE: September 27, 2011

Subcommittee Members: Reps. Warden, Pantelakos, Antosz, Villeneuve, and Ginsburg

Comments and Recommendations: Christiana Thorton for NH Bankers Association – They need a carve-out for their electronic/video surveillance. They asked Rep. Ulery for an amendment. Rep. Lambert – How far will this go? Will it include all personal information, emails, etc.? Problem with definition of stored information.

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. Ginsburg

Seconded by Rep. Villeneuve

Vote: 4-0

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

Moved by Rep.

Seconded by Rep.

Vote:

Respectfully submitted,

Rep. Warden
Subcommittee Chairman/Clerk

HOUSE COMMITTEE ON CRIMINAL JUSTICE AND PUBLIC SAFETY

SUBCOMMITTEE WORK SESSION ON HB 553-FN

BILL TITLE: relative to the law on wiretapping and eavesdropping.

DATE: September 27, 2011

Subcommittee Members: Reps. Warden, Pantelakos, Antosz, and Ginsburg Villeneuve Appointed

Comments and Recommendations:

Amendments:

Sponsor: Rep. Antosz

OLS Document #:

Sponsor: Rep.

OLS Document #:

Sponsor: Rep.

OLS Document #:

started
meeting at
12:55

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

Moved by Rep. Ginsburg

Seconded by Rep. Villeneuve

Vote: 4-0

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

Moved by Rep.

Seconded by Rep.

Vote:

Respectfully submitted,

Rep.
Subcommittee Chairman/Clerk

9-27-11

HB 553

TEST. ^{Christiana Thorton, for}

→ NHT Bankers Association

They need a carve-out for their electronic/video surveillance. They asked Rep. Utery for an amendment

test

Rep. Lambert - how far will this go? Will it include all personal information, emails, etc? Problem of definition of stored information.
This

HOUSE COMMITTEE ON CRIMINAL JUSTICE AND PUBLIC SAFETY

SUBCOMMITTEE WORK SESSION ON HB 553

BILL TITLE: relative to the law on wiretapping and eavesdropping.

DATE: August 29, 2012

Subcommittee Members: Reps. Warden, Welch, Antos, Ginsburg and Pantelakos. Also in attendance: Rep. Ulery, Jim Cianci, Rep. Swinford, and four in audience.

Comments and Recommendations: Additional issues to consider: One vs. two party notification. Remove reference to tracking devices. Possibility of civil penalties. Perhaps scrap the entire statute and start over. Definition of privacy narrowed. Harm or damage must be done/intent.

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. Welch

Seconded by Rep. Ginsburg

Vote: 4-0

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

Moved by Rep.

Seconded by Rep.

Vote:

Respectfully submitted,

Rep. Mark Warden
Subcommittee Chairman/Clerk

HOUSE COMMITTEE ON CRIMINAL JUSTICE AND PUBLIC SAFETY

SUBCOMMITTEE WORK SESSION ON HB 553

BILL TITLE: relative to the law on wiretapping and eavesdropping.

DATE: August 29, 2012 ✓

Subcommittee Members: Reps. Warden, Welch, Antos, Ginsburg, and Pantelakes

Also in attendance: Rep. Uery, James Cianci, Rep. Swinford + 4 Mandreue

Comments and Recommendations:

S

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. Welch

Seconded by Rep. Ginsburg

Vote: 4-0

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

Moved by Rep.

Seconded by Rep.

Vote:

Respectfully submitted,

Rep. Warden
Subcommittee Chairman/Clerk

Mark Warden
8/29/12

Additional issues to consider

- One v. two party notification
- Remove reference to tracking devices
- Possibility of civil penalties
- Perhaps scrap the entire statute & start over
- Definition of privacy narrowed
- Harm or damage must be done/intent

Sub-Committee Minutes

HOUSE COMMITTEE ON CRIMINAL JUSTICE AND PUBLIC SAFETY

SUBCOMMITTEE WORK SESSION ON HB 553

BILL TITLE: relative to the law on wiretapping and eavesdropping.

DATE: August 15, 2012

Subcommittee Members: Reps. Warden, Welch, Antosz, Ginsburg, and Pantelakos

Comments and Recommendations: Please see attached notes.

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. Mark Warden
Subcommittee Chairman/Clerk

HOUSE COMMITTEE ON CRIMINAL JUSTICE AND PUBLIC SAFETY

SUBCOMMITTEE WORK SESSION ON HB 553

BILL TITLE: relative to the law on wiretapping and eavesdropping.

DATE: August 15, 2012

Attendance:
Subcommittee Members: Reps. Warden, Welch, Santosz, Ginsbur, 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.
Subcommittee Chairman/Clerk

8/15 We heard testimony. We agreed to reconvene the subcommittee to finalize the recommendations

HOUSE SCHEDULING NOTICE

CRIMINAL JUSTICE AND PUBLIC SAFETY

WORK SESSION - INTERIM STUDY - SUBCOMMITTEE

WEDNESDAY 8/15/2012

CRIMINAL JUSTICE AND PUBLIC SAFETY	LOB 203	10:00 AM
(Name of Committee)	(Place)	(Time)

10:00 AM HB553 relative to the law on wiretapping and eavesdropping.

Sponsors:

HB553

Rep. Jordan Ulery

Comments: * Please note the room!

8/15/12

Testimony - Darrel Quinlan of Keene. Mentioned trial of Adam Mueller + Glik decision.

Model 57A.2 to change all parties to one party
Bring to compliance w/ federal law

Test Rep. Theberge - spoke w/ seniors. They are concerned about public officials being on the record. He thinks the "intent" s/b considered

Test # Sponsor Rep. Ulery - purpose is to update the statute w/ technology. It needs to be updated. Simple solution is to make us a one-party state.

Test Rep. Cohn - We need to be crystal clear on the definition of a public official. One-party consent would be one fix.

Rep. Ginsburg - He sees both sides of this issue.

Judith Johnston

271-3565

Rep. Elaine Swinford

Scheduled By: Heather Ebbs 271-3125

Created: 8/8/2012 at 11:20:33AM

Chairman:

8/15

Test. Ian Freeman - Radio show host.

He supports the idea of 1 party consent.
Bad businesses + public officials are being
protected by the 2 party consent.
It should not be illegal.

Test. Bill Allen - Constitution says "at all
times accountable" Inevitable

Test. Rep. Susan Delamater - Let's make this
clear that it's a one-party statute. Constitutional.

Test. Dale Everett of Manchester. Modern
technology makes these things much more accurate.

Test. Carla Genick of Manchester. There should be
the same for everyone, private + public officials.

Test. There's a from Henniker - she had a situation
where somebody videorecorded a traffic stop she
was in, and the policeman went crazy.

Test. Rep. Lem / warden - The same police have
taken this to far.

Test. Brecken Perry - TIAA - Technology

Chief Goldstein - Chiefs Association.

Definitional issues at play here. We must be
careful on ~~the~~ definitions.

In Franklin, they record all incoming

phone calls and there is no message/warning.

Test - Ben Azari AAG This law is old/outdated
This bill tries to fix the problem 11/2/12

8/15/12

Test Ben Agati = Atty. General's Office. AAG.
We need to better clarify things such as amplified microphones

Test Beth Sargeant - for brief
idea: "reasonable" needs to be

Test Tom from Devereux -

Test Oz in Mauderster
Interception is not necessarily part of the law regarding confidentiality

Test William Kostic - other laws against trespassing or stalking
don't give you the right to record anywhere you want.
"reasonable expectation of privacy" is key.
Mark Warden - perhaps this should be a
civil not criminal issue, particularly when recordings are made public

Wm. Kostic - There's no way for the law to keep up w/ technology. Use reasonable expectation of ~~the~~ privacy as the standard.

Test Bill Domenico - he was shocked at how complicated the law is. The sale or distribution of recording devices can be a felony!

Rep. Welch - look e right to privacy. Be careful to determine what is a crime. Keep it clear + simple
Warden - yes, rec. legislation on 2 pts: 1) what is a public official
2) 1 part or 2 parts
Rep. Gorking - Define public official + under what circumstances we have to fundamentally change the law.

CHAPTER 65
HB 127-FN - FINAL VERSION

4Jan2012... 2702h

11-0098
04/03

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twelve

AN ACT relative to the definition of oral communication.

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

- 1 65:1 Wiretapping and Eavesdropping; Definitions. Amend RSA 570-A:1, II to read as follows:
2 II. "Oral communication" means any ~~[oral]~~ *verbal* communication uttered by a person
3 ~~[exhibiting an]~~ *who has a reasonable* expectation that ~~[such]~~ *the* communication is not subject to
4 interception, under circumstances justifying such expectation.
5 65:2 Effective Date. This act shall take effect 60 days after its passage.
6
7 Approved: May 15, 2012
8 Effective Date: July 14, 2012

Rep. Antosz - He agrees w/ the people in that
we the law should consider the intent of actions

Rep. Ulen - we probably need several
different pieces of legislation

Welch - we cannot amend this law, but
we can make recommendations
prob. 3 other bills.

S/C Report 5/ have recommendations

Darrel Gurney

Written testimony
8/15/12

I would like to thank Representative Warden for inviting me here today.

To the other members of the committee, I ask that you listen to what I'm about to say, not because I'm a voter, not because I'm a journalist, and not because I was the chairman of a national political party. I ask that you listen, because I'm speaking the truth and because I'm speaking from the heart!

This past Monday my friend, Ademo Freeman, was convicted by a jury on 3 counts of felony wiretapping because he recorded phone conversations with public officials without the consent of said officials. While Ademo did violate the NH wiretapping law, the NH law violates federal court precedent. Last year the 1st circuit court ruled that filming public officials while on duty is a "basic and well-established liberty safeguarded by the First Amendment."

The 1st Circuit Court ruling was cited by a judge in Illinois as a "pervasive authority" for ruling on similar cases. Specifically the case of an Michael Allison, who had been convicted of five counts of felony eavesdropping and sentenced to 75 years in prison. The Illinois law makes it a felony to record a conversation without consent of ALL parties involved, regardless of the circumstances. Allison's troubles began when he recorded his encounters with police who were seizing cars from his front yard. Allison then attempted to record his court appearance and was arrested for supposedly violating the Judge's privacy. However, there is good news for Mr. Allison, another Judge (David Frankland) dismissed the charges against Michael Allison and ruled, "A statute intended to prevent unwarranted intrusion into a citizen's privacy cannot be used as a shield for public officials who cannot assert a comparable right to privacy in their public duties... Such action impedes the free flow of information concerning public officials and violates the First Amendment right to gather information."

Additionally, the ACLU is challenging the Illinois law in the 7th Circuit Court of Appeals, with the court expected to issue a decision in the next month. And a Chicago jury recently acquitted a woman

for secretly recording a conversation with police regarding a sexual harassment complaint she was attempting to file against the department.

Illinois along with New Hampshire are 2 of the dozen states that require all party consent for recordings. This restriction makes it a crime, in many circumstances, to attempt to hold public officials accountable.

I'm reminded of the quote from Plato "We can easily forgive a child who is afraid of the dark; the real tragedy of life is when men are afraid of the light." I would like to ask the committee to modify RSA 570-A:2 so that the term "all parties" is replaced with "at least one party." and include the phrase "It is neither invasion of privacy nor wiretapping nor eavesdropping to record a telephone conversation if a party to the conversation."

At the very least the committee should bring New Hampshire law in compliance with federal court precedent which states, "filming public officials while on duty is a 'basic and well-established liberty safeguarded by the First Amendment'."

This committee can bring New Hampshire's law into compliance the easy way, through legislation; or the hard way, through the courts. If the law is not changed through the State Legislature, I am tempted to challenge the law in federal court myself and I'm willing to record phone conversations with every Legislator in the State of New Hampshire if that is what it takes to bring about this much needed change in state law.

Testimony

1

JORDAN
ULERY

EXECUTIVE SUMMARY HB553

Modifying RSA 570-A:1 and associated law

This bill modernizes components of the Wire-Tape bill to bring NH Hampshire law into the 21st Century by adding new forms of wire, photo-optic and electronic communications. This bill increases personal privacy of the individual, allows for recording of activities in public where no right to privacy is expected and included inadvertent or accidental recording of aural communications in a public place as an exemption. The key language is "wire" and "electronic" which appear over and over in the bill. These two terms are defined as:

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

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

XI. "Wire communication" means the aural transfer made in whole or in part through the use of facilities for the transmission of communications by the aid of wire, cable, or other like connection between the point of origin and the point of reception, including the use of such connection in a switching station.

Explanation:

Electronic now includes you wireless and your photo-optic. It also includes those people who sneak a ride on your wireless LAN or who use directional amplifiers to grab your photo-optic or cable connection to the internet so they get free service.

Pagers and tracking devices are excluded for good reason. Tone-only pagers are used for many security purposes. Perhaps you have a high-tec car alarm that pages you is the vehicle is moved. Pagers are frequently used for fire service notification.

A communication from tracking device refers to items used by FedEx, UPS, trucking companies, taxi companies, and courier companies – actually the list is endless. Each Legislator who has EZ-Pass has such a device mounted high on their car windshield.

Electronic funds transfer is covered under other sections of law and if included here would only add a needless layer of bureaucracy to banks, credit union, the State Treasures office and your home computer. Consult further RSA 384-B.

KEY ELEMENTS:

Section 2:

570-A:2 Change of title to include wire and electronic communication. This would then include cell phone, an electronic communication as well a wireless LAN or WAN operations.

Paragraph II:

This section makes it lawful for the provider of electronic media services (including Umma, Vonage, Sprint, and cable operations) to provide information to another in the course of business operations. This is the same privilege that exists for telephone operations currently. It also places a burden upon these companies comparable to those applied to "the phone company."

Section (c) is an added benefit to the public and the police. Currently on-person cameras are easily available to uniformed personnel. This section allows a LEO to have such a camera, with audio, carried while affecting a felony arrest. This should result in fewer specious claims of brutality, provide protection to the officer and perhaps more importantly provide protection to the person being arrested. Although, having been involved in several felony arrests in the long past, people being arrested do not always act or think with the greatest reasoning. These recording may be accessible by the general public under RSA 91-A as they deal with the action of an arrest, which is public record. They would certainly be available in a subsequent court case.

Section (d) does allow police to make an intercept in a felony investigation, but only after obtaining an order from the court or the AG's permission (by the writing of guidelines for the County Attorney) to do so. Police cannot willy-nilly tap lines. Currently police can do exactly this in the case of organized crime, solid waste violations and harassing telephone calls - but not a child rape or murder investigation. This expands police authority, but only slightly in that a protocol must be followed and there is a tracking system, a record keeping system, in place that the defendant can access if needed. Please refer to RSA 7-6:b and as modified in Section 12 of this bill for details on records and applications. Please refer to RSA 570-A:6, 7, 9 for the details of how order for intercepts are undertaken (modified with wire and electronic in this bill).

If the police and County Attorney keep poor records (Section (e)) then the person being recorded has this law to protect his or her rights. If there is a good reason for the recording according to rules, then the public is protected. This is not secret as are the FISA court subpoenas, but allows the New Hampshire police to take action if and when immediate action to save a life (in cases of threats to others stalking and perhaps public officials) is necessary. The AG already has to provide rules and guidelines with RSA 541-A and received JLCAR approval so there is legislative oversight of the rules and implementation of this provision.

Section (l) is new and allows you to use a commercially available video camera that has audio recording capability (find a video camera that does not have audio and you have an antique camera) in a public place to record your kids at play. Currently you are committing a crime if you use such a device in a

public place and happen to record the conversation of another without their permission. How often have any of you asked permission of all present to record their voices at a birthday party. If you did not do not respond because you may have committed a serious crime. This is the inherent problem of being a two-party audio recording state. The result is a list of exceptions already established in law for busses, police stops (interestingly the police can record the stop but you cannot?), etc.

MANUFACTURE:

RSA 570-A:3 was modified to include devices available for secret recording of aural communications or taking the recording from the air. Currently it is not illegal for a person to tap into your cable and record your "telephone" communication traveling via cable. Actually "tap" is an incorrect term because all one is doing is reading the emanating electronic signal not physically tapping into the cable. We did this to the Soviet Navy for decades off Vladivostok in thousands of feet of cold water. This section modifies existing law to include electronic and wire. It also uses the word surreptitious. Note that the primary function must be for the intercept of communications as defined, not for the enhancement of deer rutting sounds or a bird singing high up in a tree. It may, if one were anally retentive, apply to WMUR using a shotgun mike to film a UNH hockey game. Again, this is one of the problems with law in general (as soon as you make a law exceptions creep in) and with a one-party law in particular.

Proposed Changes to HB 553
Submitted by Associate Attorney General Ann Rice

Section 1, page 1, lines 17 through 28

RSA 570-A:1, IV. "'Electronic, mechanical, or other device" means any device or apparatus which can be used to intercept a [~~telecommunication~~] **wire, electronic** or oral communication other than:

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

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

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

Section 1, page 3, line 32-33:

Insert after the words "felony offense" the phrase, "**or an offense under RSA 645:2,**"

Section 1, page 4, line 4: insert after "RSA 633:3-a," the phrase "**prostitution and related offenses under RSA 645:2,**"

Rep. Charon

HB 553 - AS INTRODUCED

4

3/1
204
1:00

2011 SESSION

11-0131
04/03

HOUSE BILL

553

AN ACT

relative to the law on wiretapping and eavesdropping.

SPONSORS:

Rep. Ulery, Hills 27

COMMITTEE:

Criminal Justice and Public Safety

Clare Eul scribbles

ANALYSIS

This bill makes various changes to the wiretapping and eavesdropping statute.

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 law on wiretapping and eavesdropping.

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

1 1 Wiretapping and Eavesdropping; Definitions. RSA 570-A:1 is repealed and reenacted to read
2 as follows:

3 570-A:1 Definitions. As used in this chapter:

4 I. "Aggrieved person" means a person who was a party to any intercepted wire, electronic, or
5 oral communication or a person against whom the interception was directed.

6 II. "Contents," when used with respect to any wire, electronic, or oral communication,
7 includes any information concerning the identity of the parties to such communication or the
8 existence, substance, purport, or meaning of that communication.

9 III. "Electronic communication" means any transfer of signs, signals, writing, images
10 sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio,
11 electromagnetic, photoelectronic, or photo-optical system, but does not include:

12 (a) A wire or oral communication;

13 (b) A communication made through a tone-only paging device;

14 (c) A communication from a tracking device; or

15 ? *delete* (d) Electronic funds transfer information stored by a financial institution in a
16 communication system used for the electronic storage and transfer of funds.

17 IV. "Electronic, mechanical, or other device" means any device or apparatus which can be
18 used to intercept a wire, electronic, or oral communication other than:

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

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

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

29 (3) Being used by a provider of wire or electronic communication services in the
30 ordinary course of its business, or by an investigative or law enforcement officer in the ordinary
31 course of his or her duties;

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

3 V. "Intercept" means the ~~covert~~ aural or other acquisition of, or the recording of, the contents No!
4 of any wire, electronic, or oral communication through the use of any electronic, mechanical, or other
5 device.

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

10 VII. "Judge of competent jurisdiction" means a judge of the superior court.

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

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

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

20 XI. "Wire communication" means the aural transfer made in whole or in part through the
21 use of facilities for the transmission of communications by the aid of wire, cable, or other like
22 connection between the point of origin and the point of reception, including the use of such
23 connection in a switching station.

24 2 Wiretapping and Eavesdropping; Interception and Disclosure. Amend RSA 570-A:2 to read as
25 follows:

26 570-A:2 Interception and Disclosure of ~~[Telecommunication]~~ **Wire, Electronic, or Oral**
27 **Communications Prohibited.**

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

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

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

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

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

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

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

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

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

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

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

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

31 (c) Any law enforcement officer, when conducting ~~[investigations of or making arrests for~~
32 ~~offenses enumerated in this chapter]~~ **an investigation or making an arrest for any felony**
33 **offense**, ^{listed} to carry on ~~[the]~~ **his or her** person an electronic, mechanical, or other device which
34 intercepts oral communications and transmits such communications ~~[by radio]~~ **for the purpose of**
35 **the officer's safety.** AG: add prohibition

36 (d) An investigative or law enforcement officer ~~[in the ordinary course of the officer's~~
37 ~~duties pertaining to the conducting of investigations of organized crime, offenses enumerated in this~~

add
list of

list the felonies

1 chapter, solid waste violations under RSA 149-M:9, I and II, or harassing or obscene telephone calls] ^{*listed*}
2 *in the course of an investigation of any felony offense, criminal threatening under RSA*
3 *631:4, harms or threats to certain government officials under RSA 631:4-a, harassment*
4 *under 644:4, stalking under RSA 633:3-a, ^{*or prosecution or*} or an attempt or conspiracy to commit such*
5 *offense,]* to intercept a [telecommunication] wire, electronic, or oral communication, when such
6 person is a party to the communication or one of the parties to the communication has given prior
7 consent to such interception; provided, however, that no such interception shall be made unless the
8 attorney general, the deputy attorney general, or an assistant attorney general designated by the
9 attorney general determines that there exists a reasonable suspicion that evidence of criminal
10 conduct will be derived from such interception. Oral authorization for the interception may be given
11 and a written memorandum of said determination and its basis shall be made within 72 hours
12 thereafter. The memorandum shall be kept on file in the office of the attorney general.

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

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

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

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

36 (i) Any public utility regulated by the public utilities commission, and its employees
37 in the course of employment, when receiving central dispatch calls or calls for emergency service, or

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

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

12 ~~[(k)]~~ (j)(1) The owner or operator of a school bus, as defined in RSA 259:96, to make an
13 audio recording in conjunction with a video recording of the interior of the school bus while students
14 are being transported to and from school or school activities, provided that the school board
15 authorizes audio recording, the school district provides notification of such recording to the parents
16 and students as part of the district's pupil safety and violence prevention policy required under RSA
17 193-F, and there is a sign informing the occupants of such recording prominently displayed on the
18 school bus.

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

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

36 (l) A person to make an inadvertent audio recording of a conversation ~~for a~~
37 ~~video recording of an event occurring in a public place~~ However, no private or
public use may be made of such a recording,
an audio

1 3 Wiretapping and Eavesdropping; Manufacture, Distribution, Possession, and Advertising.
2 Amend RSA 570-A:3 to read as follows:

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

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

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

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

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

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

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

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

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

30 4 Wiretapping and Eavesdropping; Confiscation of Intercepting Devices. Amend the section
31 heading in RSA 570-A:4 to read as follows:

32 570-A:4 Confiscation of [Telecommunication] *Wire, Electronic*, or Oral Communication
33 Intercepting Devices.

34 5 Wiretapping and Eavesdropping; Prohibition of Use. Amend RSA 570-A:6 to read as follows:

35 570-A:6 Prohibition of Use as Evidence of Intercepted [Telecommunications] *Wire, Electronic*,
36 or Oral Communications. Whenever any [telecommunication] *wire, electronic*, or oral
37 communication has been intercepted, no part of the contents of such communication and no evidence

1 derived therefrom may be received in evidence in any trial, hearing, or other proceeding in or before
2 any court, grand jury, department, officer, agency, regulatory body, legislative committee, or other
3 authority of the state, or a political subdivision thereof, if the disclosure of that information would be
4 in violation of this chapter.

5 6 Wiretapping and Eavesdropping; Authorization for Interception. Amend RSA 570-A:7 to read
6 as follows:

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

29 7 Wiretapping and Eavesdropping; Authorization for Disclosure. Amend RSA 570-A:8 to read as
30 follows:

31 570-A:8 Authorization for Disclosure and Use of Intercepted [Telecommunications] *Wire,*
32 *Electronic*, or Oral Communications.

33 I. Any law enforcement officer who, by any means authorized by this chapter, has obtained
34 knowledge of the contents of any [telecommunication] *wire, electronic*, or oral communication, or
35 evidence derived therefrom, may disclose such contents to another law enforcement officer to the
36 extent that such disclosure is appropriate to the proper performance of the official duties of the
37 officer making or receiving the disclosure.

1 II. Any law enforcement officer who, by any means authorized by this chapter, has obtained
2 knowledge of the contents of any [~~telecommunication~~] *wire, electronic*, or oral communication or
3 evidence derived therefrom may use such contents to the extent such use is appropriate to the proper
4 performance of the officer's official duties.

5 III. Any person who has received, by any means authorized by this chapter, any information
6 concerning a [~~telecommunication~~] *wire, electronic*, or oral communication or evidence derived
7 therefrom intercepted in accordance with the provisions of this chapter may disclose the contents of
8 that communication or such derivative evidence while giving testimony under oath or affirmation in
9 any criminal proceeding in any court of the United States or of any state or in any federal or state
10 grand jury proceeding.

11 IV. No otherwise privileged [~~telecommunication~~] *wire, electronic*, or oral communication
12 intercepted in accordance with, or in violation of, the provisions of this chapter shall lose its
13 privileged character.

14 V. When a law enforcement officer, while engaged in intercepting [~~telecommunications~~]
15 *wire, electronic*, or oral communications in the manner authorized herein, intercepts
16 [~~telecommunications~~] *wire, electronic*, or oral communications relating to offenses other than those
17 specified in the order of authorization or approval, the contents thereof, and evidence derived
18 therefrom, may be disclosed or used as provided in paragraphs I and II. Such contents and any
19 evidence derived therefrom may be used under paragraph III, when authorized or approved by a
20 judge of competent jurisdiction where such judge finds on subsequent application that the contents
21 were otherwise intercepted in accordance with the provisions of this chapter. Such application shall
22 be made as soon as practicable.

23 8 Wiretapping and Eavesdropping; Procedure for Interception. Amend RSA 570-A:9 to read as
24 follows:

25 570-A:9 Procedure for Interception of [~~Telecommunication~~] *Wire, Electronic*, or Oral
26 Communications.

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

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

33 (b) A full and complete statement of the facts and circumstances relied upon by the
34 applicant to justify the applicant's belief that an order should be issued, including: (1) Details as to
35 the particular offense that has been, is being, or is about to be committed, (2) A particular
36 description of the nature and location of the facilities from which or the place where the
37 communication is to be intercepted, (3) A particular description of the type of communications sought

1 to be intercepted, (4) The identity of the person, if known, committing the offense and whose
2 communications are to be intercepted;

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

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

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

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

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

21 III. Upon such application, the judge may enter an ex parte order, as requested or as
22 modified, authorizing or approving interception of [~~telecommunication~~] *wire, electronic*, or oral
23 communications, if the judge determines on the basis of the facts submitted by the applicant that:

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

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

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

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

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

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

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

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

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

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

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

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

25 VII.(a) The contents of any ~~[telecommunication]~~ *wire, electronic*, or oral communication
26 intercepted by any means authorized by this chapter shall, if possible, be recorded on tape or wire or
27 other comparable device. The recording of the contents of any ~~[telecommunication]~~ *wire, electronic*,
28 or oral communication under this paragraph shall be done in such way as will protect the recording
29 from editing or other alterations. Immediately upon the expiration of the period of the order or
30 extensions thereof, such recordings shall be made available to the judge issuing such order and
31 sealed under the judge's directions. Custody of the recordings shall be wherever the judge orders.
32 They shall not be destroyed except upon an order of the issuing or denying judge and in any event
33 shall be kept for 10 years. Duplicate recordings may be made for use or disclosure pursuant to the
34 provisions of RSA 570-A:8, I and II, for investigations. The presence of the seal provided for by this
35 paragraph, or a satisfactory explanation for the absence thereof, shall be a prerequisite for the use or
36 disclosure of the contents of any ~~[telecommunication]~~ *wire, electronic*, or oral communication or
37 evidence derived therefrom under RSA 570-A:8, III.

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

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

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

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

20 (1) The communication was unlawfully intercepted;

21 (2) The order of authorization or approval under which it was intercepted is
22 insufficient on its face; or

23 (3) The interception was not made in conformity with the order of authorization or
24 approval.

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

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

1 X. If an order authorizing interception is entered pursuant to this chapter, the order, upon
 2 request of the attorney general or deputy attorney general, shall direct that a [~~communication~~
 3 ~~common-carrier~~] **provider of wire or electronic communication services** shall furnish to the law
 4 enforcement agency designated by the attorney general all information, facilities, or technical
 5 assistance necessary to accomplish the interception unobtrusively and with a minimum of
 6 interference with the services that such [~~communication-common-carrier~~] **provider of wire or**
 7 **electronic communication services** is according the person whose communications are to be
 8 intercepted. The [~~communication-common-carrier~~] **provider of wire or electronic**
 9 **communication services** shall furnish such facilities or technical assistance at its prevailing rate
 10 or tariff.

11 9 Wiretapping and Eavesdropping; Reports Concerning Intercepted Communications. Amend
 12 the section heading in RSA 570-A:10 to read as follows:

13 570-A:10 Reports Concerning Intercepted [~~Telecommunications~~] **Wire, Electronic,** or Oral
 14 Communications.

15 10 Wiretapping and Eavesdropping; Reports Concerning Intercepted Communications. Amend
 16 RSA 570-A:10, III to read as follows:

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

21 11 Wiretapping and Eavesdropping; Recovery of Civil Damages. Amend RSA 570-A:11 to read
 22 as follows:

23 570-A:11 Recovery of Civil Damages Authorized. Any person whose [~~telecommunication~~] **wire,**
 24 **electronic,** or oral communication is intercepted, disclosed, or used in violation of this chapter shall
 25 have a civil cause of action against any person who intercepts, discloses, or uses, or procures any
 26 other person to intercept, disclose, or use such communications, and be entitled to recover from any
 27 such person: (a) actual damages but not less than liquidated damages computed at the rate of \$100 a
 28 day for each day of violation or \$1,000, whichever is higher; (b) punitive damages; and (c) a
 29 reasonable attorney's fee and other litigation costs reasonably incurred. Good faith reliance on a
 30 court order or on a representation made by the attorney general, **the** deputy attorney general, or a
 31 county attorney shall constitute a complete defense to any civil or criminal action brought under this
 32 chapter.

33 12 Attorney General; Records. Amend RSA 7:6-b to read as follows:

34 7:6-b Certain Records of [~~Communications Common Carriers~~] **Providers of Wire or Electronic**
 35 **Communication Services.**

36 I. Every [~~communications common carrier, as defined in RSA 570-A:1, IX~~] **provider of wire**
 37 **or electronic communication services,** upon the written demand of the attorney general that the

1 attorney general has reasonable grounds for belief that the service furnished to a person or to a
2 location by such [~~communications common carrier~~] **provider** has been, is being, or may be used for
3 an unlawful purpose, shall furnish to the attorney general:

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

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

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

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

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

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

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

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

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

32 (b) The procedures for applying for such demands.

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

34 13 Pen Register, Trap and Trace Devices; Definitions. Amend RSA 570-B:1, I to read as follows:

35 I. "Telecommunication" [~~has the meaning set forth in RSA 570-A:1~~] **means "electronic**
36 **communication" as defined in RSA 570-A:1, III, or "wire communication" as defined in RSA**
37 **570-A:1, XI.**

1 14 Obstructing Governmental Operations; Hindering Apprehension or Prosecution. Amend RSA
2 642:3, I(f) to read as follows:

3 (f) Having knowledge that an investigative or law enforcement officer has been
4 authorized or has applied for authorization under RSA 570-A to intercept a [~~telecommunication~~]
5 *wire, electronic*, or oral communication, or under RSA 570-B to install and use a pen register or
6 trap and trace device, gives notice of the possible interception or installation and use to any person.

7 15 Effective Date. This act shall take effect January 1, 2012.

House Bill 553
Notes of Testimony in Support
Associate Attorney General Ann Rice
March 1, 2011

- Bill the result of a study committee
- AG requested an updating of the language of RSA 570-A
 - Reflect current technology
 - Make language of our law consistent with federal law
 - Address some weaknesses in the law re: law enforcement investigations
- RSA 570-A governs interception of telecommunications and oral communication through the use of a device
 - Definition of telecommunications = any form of information transferred in whole or part through the facilities of a communications common carrier
 - That language was derived from federal statute
 - Federal statutes have changed – term “communications common carrier” no longer used
 - When law enforcement deals with providers of internet, digital phone service --- we’re talking two different languages
 - Most of HB 570 is intended to bridge that gap
- Major technical changes:
 - “telecommunications” is changed to “wire and electronic communication”
 - “communication common carrier” is changed to provider of wire or electronic communication services
 - Added definitions of “wire communication” and “electronic communication”
- Changes to RSA 7:6-b and RSA 570-B
 - RSA 7:6-b – change references to “communication common carrier” to “provider of wire or electronic communication services”
 - RSA 570-B – uses the word “telecommunications” – changed to wire or electronic communications”

Other changes:

- RSA 570-A:2, II (c) and (d)
 - (c) currently allow police to wear an interception device when investigating/arresting, for personal safety
 - Allowed only for certain listed offenses
 - List does not include common felonies, such as assault, theft, prostitution
 - Numerous incidents of officers investigating prostitution under cover, cannot wear a device because prostitution is not a listed offense
 - Proposal – to allow for all felony offenses
- RSA 570-A:2, II(d)
 - Allows AG / County Attorney to authorize interception with on-party consent

- Only for listed offenses – under RSA 570-A:7
 - Listed offenses do not include common felonies like thefts, assaults, nor does it include attempts
 - Proposal is to expand the authority for all felony offenses, and to Criminal Threatening, Harm to Certain Government Officials, Harassment, Stalking, or an attempt or conspiracy to commit any of these
 - No change to RSA 570-A:7, which pertains to wiretapping
- RSA 570-A:2, (e)
 - Currently, county attorneys can only authorize one-party intercepts for drug cases
 - Required to send all their paperwork to AG's office
 - Any one-party intercept for other crimes must be authorized by AG
 - County attorneys prosecute most felonies
 - They should be involved on ground floor of investigation
 - Proposal
 - make County Attorney authority consistent with AG
 - Require County Attorney to retain paperwork
 - Doesn't eliminate AG guidelines, training

Changes Not Included In Study Commission Report

- AG is not taking a position on those proposals
- RSA 570-A:1, V – changed the definition of intercept by adding the word “covert”
 - So long as the recording device was open and visible – interception would be OK
 - It would no longer be a crime for:
 - A party to a conversation to openly tape-record w/o consent
 - A 3rd party to openly tape-record other's conversation so long as one party to the conversation consents
 - Leaves open the issue of tape-recording someone who has expressly stated he/she does not consent
- RSA 570-A:2, II(1) – new paragraph
 - Inadvertent audio or video recording in a public place
 - Video recording is not prohibited under the law
 - Interception is only a crime if done knowingly – inadvertence suggests no intent

Mistake in Bill: RSA 570-A:1, IV

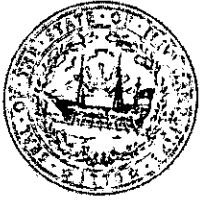
- Corrected language is attached

RSA 570-A:1, IV. ""Electronic, mechanical, or other device" means any device or apparatus which can be used to intercept a [~~telecommunication~~] *wire, electronic* or oral communication other than:

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

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

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



State of New Hampshire

GENERAL COURT

CONCORD

MEMORANDUM

DATE: November 1, 2010

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

FROM: Representative Laura Pantelakos, Chairman

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

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

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

LP/ta

Enclosures

cc: Members of the Committee

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

Final Report
October 28, 2010

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

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

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

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

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

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

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

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

• **RSA 570-A:1**

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

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

• **RSA 570-A:2, II**

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

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

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

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

• **RSA 570-A:7**

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

• **RSA 7:6-b**

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

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

Respectfully submitted,

Rep. Laura Pantelakos, Chair

Attorney General's Recommendation

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

XII. [Repealed.]

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- (a) There is probable cause for belief that an individual is committing, has committed, or is about to commit a particular offense enumerated in RSA 570-A:7;
- (b) There is probable cause for belief that particular communications concerning that offense will be obtained through such interception;
- (c) Normal investigative procedures have been tried and have failed or reasonably appear to be unlikely to succeed if tried or to be too dangerous;
- (d) There is probable cause for belief that the facilities from which, or the place where, the [telecommunications] *wire, electronic* or oral communications are to be intercepted are being used, or are about to be used, in connection with the commission of such offense, or are leased to, listed in the name of, or commonly used by such person.

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

- (a) The identity of the person, if known, whose communications are to be intercepted;
- (b) The nature and location of the communications facilities as to which, or the place where, authority to intercept is granted;
- (c) A particular description of the type of communication sought to be intercepted, and a statement of the particular offense to which it relates;
- (d) The identity of the agency authorized to intercept the communications, and of the person authorizing the application; and
- (e) The period of time during which such interception is authorized, including a statement as to whether or not the interception shall automatically terminate when the described communication has been first obtained.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) The procedures for applying for such demands.

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

Voting Sheets

HOUSE COMMITTEE ON CRIMINAL JUSTICE AND PUBLIC SAFETY

EXECUTIVE SESSION on HB 553

BILL TITLE: relative to the law on wiretapping and eavesdropping.

DATE: March 10, 2011

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.)

(RETAINED)

Moved by Rep. Mark Warden

Seconded by Rep. Laura C. Pantelakos

Vote: 15-2 (Please attach record of roll call vote.)

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

Moved by Rep.

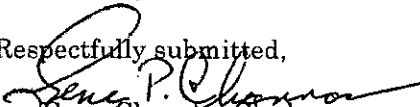
Seconded by Rep.

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

CONSENT CALENDAR VOTE:

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

Statement of Intent: Refer to Committee Report

Respectfully submitted,

Rep. Gene Charron, Clerk

HOUSE COMMITTEE ON CRIMINAL JUSTICE AND PUBLIC SAFETY

EXECUTIVE SESSION on HB 553

BILL TITLE: relative to the law on wiretapping and eavesdropping.

DATE: 3-10-2011

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.) *retain -*

Moved by Rep. *warden*

Seconded by Rep. *Pantatakas -*

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,
Gene Charron
Rep. Gene Charron, Clerk

~~15-2~~
15-2
retain

CRIMINAL JUSTICE AND PUBLIC SAFETY

Bill #: HB 553 Title: Relative to the law on wiretapping and eavesdropping.

PH Date: 03/01/2011

Exec Session Date: 3/10/2011

Motion: To Retain -

Amendment #: _____

MEMBER	YEAS	NAYS
Swinford, Elaine B, Chairman	✓	
Gagne, Larry G, V Chairman	✓	
Welch, David A	✓	
Fields, Dennis H	✓	
Fesh, Robert M	✓	
Charron, Gene P	✓	
Villeneuve, Moe	✓	
Antosz, Jason P	✓	
Greazzo, Phil J	✓	✓
Kreis, Kenneth	✓	
Parsons, Robbie L		✓
Tasker, Kyle J	✓	
Warden, Mark	✓	
Pantelakos, Laura C	✓	
Berube, Roger R	✓	
Shurtleff, Stephen J	✓	
Ginsburg, Philip E	✓	
	15	2

HOUSE COMMITTEE ON CRIMINAL JUSTICE AND PUBLIC SAFETY

EXECUTIVE SESSION on HB 553-FN

BILL TITLE: relative to the law on wiretapping and eavesdropping.

DATE: October 20, 2011

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. Warden

Seconded by Rep. Ginsburg

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

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

Moved by Rep.

Seconded by Rep.

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

CONSENT CALENDAR VOTE: YES

(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 553-FN

BILL TITLE: relative to the law on wiretapping and eavesdropping.

DATE: October 20, 2011

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. *Warden*

Seconded by Rep. *GINSBERS*

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

*17-0
Blurb*

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

Moved by Rep.

Seconded by Rep.

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

CONSENT CALENDAR VOTE:

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

Statement of Intent: Refer to Committee Report

Respectfully submitted,

Rep. Gene Charron, Clerk

CONSENT

CRIMINAL JUSTICE AND PUBLIC SAFETY

Bill #: HD 553 Title: _____
FBI

PH Date: ____/____/____

Exec Session Date: ____/____/____

Motion: Refer to 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	✓	
Villeneuve, Moe	✓	
Antosz, Jason P	✓	
Greazzo, Phil J	✓	
Kreis, Kenneth <i>Replen.</i>	✓	
Parsons, Robbie L	✓	
Tasker, Kyle J	✓	
Warden, Mark	✓	
Pantelakos, Laura C	✓	
Berube, Roger R	✓	
Shurtleff, Stephen J	✓	
Ginsburg, Philip E	✓	
	17	0
TOTAL VOTE:		

HOUSE COMMITTEE ON CRIMINAL JUSTICE AND PUBLIC SAFETY

EXECUTIVE SESSION on HB 553

BILL TITLE: relative to the law on wiretapping and eavesdropping.

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. Warden

Seconded by Rep. Gagne

Vote: 11-1 (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 553

BILL TITLE: relative to the law on wiretapping and eavesdropping.

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.

Seconded by Rep.

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

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

Moved by Rep. *Ward*

Seconded by Rep. *Jagme*

Vote: *11-1* (Please attach record of roll call vote.)

CONSENT CALENDAR VOTE: *11-1*

(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 #: _____ Title: _____

PH Date: ____/____/____

Exec Session Date: ____/____/____

Motion: _____

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	✓	No -
Ginsburg, Philip E		
	11	1

TOTAL VOTE:

Printed: 12/21/2011

Committee Report

CONSENT CALENDAR

October 25, 2011

HOUSE OF REPRESENTATIVES

REPORT OF COMMITTEE

The Committee on CRIMINAL JUSTICE AND PUBLIC SAFETY to which was referred HB553,

AN ACT relative to the law on wiretapping and eavesdropping. Having considered the same, report the same with the recommendation that the bill be REFERRED FOR INTERIM STUDY.

Rep. Mark Warden

FOR THE COMMITTEE

COMMITTEE REPORT

Committee:	CRIMINAL JUSTICE AND PUBLIC SAFETY
Bill Number:	HB553
Title:	relative to the law on wiretapping and eavesdropping.
Date:	October 25, 2011
Consent Calendar:	YES
Recommendation:	REFER TO COMMITTEE FOR INTERIM STUDY

STATEMENT OF INTENT

The committee felt that the intent of the bill, which is to update language in the wiretapping and eavesdropping statute to reflect modern technology, is good. However, we felt that other bills still in play referencing the statute should be decided first.

Vote 17-0.

Rep. Mark Warden
FOR THE COMMITTEE

Original: House Clerk
Cc: Committee Bill File

CONSENT CALENDAR

CRIMINAL JUSTICE AND PUBLIC SAFETY

HB553, relative to the law on wiretapping and eavesdropping. **REFER TO COMMITTEE FOR INTERIM STUDY.**

Rep. Mark Warden for **CRIMINAL JUSTICE AND PUBLIC SAFETY**. The committee felt that the intent of the bill, which is to update language in the wiretapping and eavesdropping statute to reflect modern technology, is good. However, we felt that other bills still in play referencing the statute should be decided first. **Vote 17-0.**

Original: House Clerk
Cc: Committee Bill File

HB 553-FN

Interim Study

The committee felt that the intent of the bill, which is to update language in the wiretapping and eavesdropping statute to reflect modern technology, is good. However, we felt that other bills still in play referencing the statute should be decided first.

Mark Warden

COMMITTEE REPORT

COMMITTEE: CJPS

BILL NUMBER: HB 553

TITLE: _____

DATE: Oct. 20, 2011 CONSENT CALENDAR: YES NO

- OUGHT TO PASS
 - OUGHT TO PASS W/ AMENDMENT
 - INEXPEDIENT TO LEGISLATE
 - INTERIM STUDY (Available only 2nd year of biennium)
- Amendment No.

STATEMENT OF INTENT:

The committee felt that the intent of the bill, which is to update language in the wiretapping and eavesdropping statute to reflect modern technology, is good. However, we felt that other bills still in play referencing the statute should be decided first.

COMMITTEE VOTE: 17-0

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

RESPECTFULLY SUBMITTED,
Mark Warden Rep. Warden
Rep. _____
For the Committee
Rep. Elaine Swenford

**INTERIM STUDY
COMMITTEE REPORT**

COMMITTEE: CRIMINAL JUSTICE AND PUBLIC SAFETY
BILL NUMBER: HB 553
TITLE: Relative to the law on wiretapping and eavesdropping.
DATE: October 10, 2012

RECOMMENDED FOR FUTURE LEGISLATION

NOT RECOMMENDED FOR FUTURE LEGISLATION

STATEMENT OF INTENT: (May be handwritten)

The committee agreed that current statute has not kept up with changes in technology, thus changes in definitions are recommended. Several other aspects of the law should also be addressed.

COMMITTEE VOTE: 11-1 (Attach Committee Voting Sheet)

Rep. Mark Warden

INTERIM STUDY
COMMITTEE REPORT

COMMITTEE: CJFS
BILL NUMBER: HB 553
TITLE: Relative to law on wiretapping and eavesdropping
DATE: Oct. 10, 2012

RECOMMENDED FOR FUTURE LEGISLATION

NOT RECOMMENDED FOR FUTURE LEGISLATION

STATEMENT OF INTENT: (May be handwritten)

The committee agreed that current statute has not kept up with changes in technology, thus changes in definitions are recommended. Several other aspects of the law should also be addressed.

COMMITTEE VOTE: 11-1 (Attach Committee Voting Sheet)

Rep. Elaine Swanson
Rep. Mark Warden
Rep. Mark Warden

For the Committee

**INTERIM STUDY
COMMITTEE REPORT**

COMMITTEE: CRIMINAL JUSTICE AND PUBLIC SAFETY
BILL NUMBER: HB 553
TITLE: Relative to the law on wiretapping and eavesdropping.
DATE: October 10, 2012

RECOMMENDED FOR FUTURE LEGISLATION

NOT RECOMMENDED FOR FUTURE LEGISLATION

STATEMENT OF INTENT: (May be handwritten)

This bill makes various changes to the wiretapping and eavesdropping statute. The committee agrees that the current statute has not kept up with the changes in technology, thus changes in definitions are recommended. Several other aspects of the law, including the recording of public officials, should also be addressed.

COMMITTEE VOTE: 11-1 (Attach Committee Voting Sheet)

Rep. Mark Warden

HB 553

This bill makes various changes to the wiretapping and eavesdropping statute. The committee agrees that the current statute has not kept up with the changes in technology, thus changes in definitions are recommended. Several other aspects of the law, including the recording of public officials, should also be addressed.

Proposed - Majority Report Blurb for HB 553 – Relative to the law on wiretapping & eavesdropping

Based on hearings during interim study, the committee finds a definite need to revise, reform or repeal existing statutes related to eavesdropping and wiretapping. The subcommittee heard from a large number of individuals representing the general public who are alarmed by the misuse of current statute by law enforcement, prosecutors, and the courts. Testimony included accounts of felony prosecutions of citizens who were merely trying to hold public officials accountable by video and audio recording the officials while on duty. We heard of no incidents of actual clandestine “wiretapping” as the practice is commonly known, but we did hear of too many instances of government employees charging and prosecuting members of the public who were recording their personal interactions with state and local employees.

Many other states have a one-party rule, wherein as long as one person in the conversation knows he is being recorded, there is nothing illegal about it. Our state has a “two-party consent” rule, meaning both/all parties must agree to be recorded or it is against the law to record. This is antiquated, particularly in light of technological advances in digital recording devices. NH law has not kept up with technological innovation.

The committee unanimously agreed that the current statute is much too complicated and poorly worded to be understood easily. This has led and will continue to lead to misinterpretation by the people and law enforcement alike, as well as arbitrary and inconsistent application (or misapplication) of the law.

Future legislation should concentrate on very narrowly defining what is illegal behavior and should include a requirement of harmful intent in order to find guilt. Current statute is unworkable. Likely the best approach is to scrap the entire statute and start over. With other criminal penalties for crimes such as intent to defraud, libel, slander and the like, there may not even be a need for this chapter in law. A requirement that the recorded individual show actual harm or damages may be an appropriate requisite for a violation. Another approach is to make wiretapping a civil—not criminal—offense.

Rep. Mark Warden for the committee

Mark Warden

10/10/12