

# Bill as Introduced

HB 145 - AS INTRODUCED

2011 SESSION

11-0068

01/04

HOUSE BILL **145**

AN ACT permitting the audio and video recording of any public official while in the course of his or her official duties.

SPONSORS: Rep. Baldasaro, Rock 3; Rep. Jennifer Coffey, Merr 6; Rep. Hikel, Hills 7; Rep. L. Christiansen, Hills 27; Rep. Itse, Rock 9

COMMITTEE: Criminal Justice and Public Safety

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ANALYSIS

This bill permits the audio and video recording of any public official while in the course of his or her official duties.

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

*In the Year of Our Lord Two Thousand Eleven*

AN ACT                    permitting the audio and video recording of any public official while in the course  
of his or her official duties.

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

1            1 New Subparagraph; Audio and Video Recording of Public Official in the Course of Official  
2 Duties Permitted. Amend RSA 570-A:2, II by inserting after subparagraph (l) the following new  
3 subparagraph:

4                    (m) Any person to make an audio or video recording, or both, of any public official while  
5 in the course of his or her official duties. This subparagraph shall not apply to emergency medical  
6 personnel.

7            2 Effective Date. This act shall take effect January 1, 2012.

HB 145 - AS AMENDED BY THE HOUSE

15Mar2011... 0766h

2011 SESSION

11-0068

01/04

HOUSE BILL **145**

AN ACT permitting the audio and video recording of a law enforcement officer while in the course of his or her official duties.

SPONSORS: Rep. Baldasaro, Rock 3; Rep. Jennifer Coffey, Merr 6; Rep. Hikel, Hills 7; Rep. L. Christiansen, Hills 27; Rep. Itse, Rock 9

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AMENDED ANALYSIS

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HB 145 - AS AMENDED BY THE HOUSE

15Mar2011... 0766h

11-0068  
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- 1            1 New Subparagraph; Audio and Video Recording of Public Official in the Course of Official  
2 Duties Permitted. Amend RSA 570-A:2, II by inserting after subparagraph (l) the following new  
3 subparagraph:  
4                    (m) Any person to make an audio or video recording of a law enforcement officer in the  
5 course of his or her official duties; provided that:  
6                    (1) The person making the recording shall first give notification of the recording to  
7 the officer;  
8                    (2) The person making the recording is personally interacting with the officer or is  
9 recording the officer in a public area; and  
10                    (3) The act of recording does not interfere with the officer's ability to perform his or  
11 her official duties.  
12            2 Effective Date. This act shall take effect January 1, 2012.

# Amendments

Sen. Groen, Dist. 6  
August 5, 2011  
2011-2538s  
01/10

Amendment to HB 145

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

2

3 AN ACT permitting the audio and video recording of a public official while in the course of  
4 his or her official duties.  
5

6 Amend RSA 570-A:2, II(m) as inserted by section 1 of the bill by replacing it with the following:

7

8 (m) Any person to make an audio or video recording of a public official in the course of  
9 his or her official duties; provided that:

10 (1) The person making the recording is personally interacting with the public official  
11 or is recording the public official in a public area; and

12 (2) The act of recording does not interfere with the public official's ability to perform  
13 his or her official duties.  
14

15 Amend the bill by replacing section 2 with the following:

16

17 2 Effective Date. This act shall take effect January 1, 2013.

**Amendment to HB 145**  
**- Page 2 -**

2011-2538a

**AMENDED ANALYSIS**

This bill permits the audio and video recording of a public official while in the course of his or her official duties.





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

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6 Amend RSA 570-A:2, II(m) as inserted by section 1 of the bill by replacing it with the following:

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8 (m) Any person to make an audio or video recording of a public official in the course of  
9 his or her official duties; provided that:

10 (1) The person making the recording is personally interacting with the public official  
11 or is recording the public official in a public area; and

12 (2) The act of recording does not interfere with the public official's ability to perform  
13 his or her official duties.

14

15 Amend the bill by replacing section 2 with the following:

16

17 2 Effective Date. This act shall take effect January 1, 2013.



Sen. Groen, Dist. 6  
August 22, 2011  
2011-2554s  
09/04

Amendment to HB 145

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

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3 AN ACT permitting the audio and video recording of a public official while in the course of  
4 his or her official duties.  
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9 his or her official duties; provided that:

10 (1) The person making the recording is personally interacting with the public official  
11 or is recording the public official in a public area;

12 (2) The act of recording does not interfere with the public official's ability to perform  
13 his or her official duties; and

14 (3) Any such audio or video recording shall remain the private property of the person  
15 making the recording..  
16

17 Amend the bill by replacing section 2 with the following:

18

19 2 Effective Date. This act shall take effect January 1, 2013.

Amendment to HB 145  
- Page 2 -

2011-2554s

AMENDED ANALYSIS

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19 2 Effective Date. This act shall take effect January 1, 2013.

Amendment to HB 145

- Page 2 -



2011-2554s

AMENDED ANALYSIS

This bill permits the audio and video recording of a public official while in the course of his or her official duties.



Sen. Houde, Dist. 5  
January 3, 2012  
2012-0083s  
01/09

Amendment to HB 145

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

2

3 2 Applicability. The provisions of section 1 of this act shall not apply to the courts of this state.

4 3 Effective Date. This act shall take effect January 1, 2013.



Sen. Houde, Dist. 5  
January 3, 2012  
2012-0083s  
01/09

Amendment to HB 145

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

2

3 2 Applicability. The provisions of section 1 of this act shall not apply to the courts of this state.

4 3 Effective Date. This act shall take effect ~~January 1, 2013.~~

July 1, 2012.

" Nothing in this section shall be construed to permit a person to  
audio or video tape either in a courtroom or any other place  
in a court facility w/o prior approval of the ~~competent~~  
judge."

Sen. Groen, Dist. 6  
January 5, 2012  
2012-0119s  
01/10

Amendment to HB 145

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

2

3 AN ACT permitting the audio and video recording of a public official while in the course of  
4 his or her official duties.

5

6 Amend the bill by replacing all after the enacting clause with the following:

7

8 1 New Subparagraph; Audio and Video Recording of Public Official in the Course of Official  
9 Duties Permitted. Amend RSA 570-A:2, II by inserting after subparagraph (l) the following new  
10 subparagraph:

11 (m)(1) Any person to make an audio or video recording of a public official acting in the  
12 course of his or her official duties; provided that:

13 (A) The person making the recording must have the recording device in plain  
14 view in a manner that would alert a reasonable public official observing such person that a recording  
15 is being made;

16 (B) The person making the recording is doing so from a location that is either  
17 such person's own private property, from the private property of a person who has authorized or  
18 assented to the making of the recording, or from a public or private space generally accessible to the  
19 public; and

20 (C) The act of recording does not physically interfere with the public official's  
21 ability to perform his or her official duties.

22 (2) Any audio or video recording of a public official shall remain the property of its  
23 owner. In the event that such property is seized by law enforcement authorities, a copy of the audio  
24 or video recording shall be provided to the owner of the property within 10 days of the day the  
25 property is seized.

26 2 Effective Date. This act shall take effect July 1, 2012.

**Amendment to HB 145**

**- Page 2 -**

2012-0119s

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19 public; and

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21 ability to perform his or her official duties.

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23 owner. In the event that such property is seized by law enforcement authorities, a copy of the audio  
24 or video recording shall be provided to the owner of the property within 10 days of the day the  
25 property is seized.

26 (3) This subparagraph shall not be construed to permit a person to audio or  
27 videotape either in a courtroom or any other place within a court facility without prior approval of  
28 the presiding justice.

29 (4) This subparagraph shall not be construed to expand or contract public access to  
30 government buildings, facilities, meetings, records, or other places or information.

31 (5) For the purposes of this subparagraph "public official" means any officer or  
32 employee of the state or a political subdivision of the state, or of the general court, or any person

Amendment to HB 145  
- Page 2 -



- 1 otherwise performing a government function.
- 2       2 Effective Date. This act shall take effect July 1, 2012.



2012-0522s

AMENDED ANALYSIS

This bill permits the audio and video recording of a public official while in the course of his or her official duties.



Amendment to HB 145

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

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3 AN ACT                    permitting the audio and video recording of a public official while in the course of  
4 his or her official duties.  
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10 subparagraph:

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12 course of his or her official duties; provided that:

13                            (A) The person making the recording must have the recording device in plain  
14 view in a manner that would alert a reasonable public official observing such person that a recording  
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16                            (B) The person making the recording is doing so from a location that is either  
17 such person's own private property, from the private property of a person who has authorized or  
18 assented to the making of the recording, or from a public or private space generally accessible to the  
19 public; and

20                            (C) The act of recording does not physically interfere with the public official's  
21 ability to perform his or her official duties.

22                            (2) Any audio or video recording of a public official shall remain the property of its  
23 owner. In the event that such property is seized by law enforcement authorities, a copy of the audio  
24 or video recording shall be provided to the owner of the property within 10 days of the day the  
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30 government buildings, facilities, meetings, records, or other places or information.

31                            (5) For the purposes of this subparagraph "public official" means any officer or  
32 employee of the state or a political subdivision of the state, or of the general court, or any person

Amendment to HB 145  
- Page 2 -



- 1 otherwise performing a government function.
- 2 2 Effective Date. This act shall take effect July 1, 2012.



2012-0575s

AMENDED ANALYSIS

This bill permits the audio and video recording of a public official while in the course of his or her official duties.

# Committee Minutes

**SENATE CALENDAR NOTICE  
JUDICIARY**

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

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

**Date: May 4, 2011**

**HEARINGS**

**Thursday**

**5/26/2011**

**JUDICIARY**

**LOB 101**

**1:00 PM**

(Name of Committee)

(Place)

(Time)

1:00 PM HB110

1:15 PM HB145

**EXECUTIVE SESSION MAY FOLLOW**

requiring professional safety and security services personnel to report certain criminal offenses.

(New Title) permitting the audio and video recording of a law enforcement officer while in the course of his or her official duties.

**Sponsors:**

**HB110**

Rep. Rick Ladd

Rep. Susan Emerson

Rep. Stephen Shurtleff

**HB145**

Rep. Alfred Baldasaro

Rep. Jennifer Coffey

Rep. John Hikel

Rep. Lars Christiansen

Rep. Daniel Itse



# Judiciary Committee

## Hearing Report

**TO:** Members of the Senate

**FROM:** Susan Duncan, Senior Legislative Aide

**RE:** Hearing report on HB 145 – (New Title) permitting the audio and video recording of a law enforcement officer while in the course of his or her official duties.

**HEARING DATE:** May 26, 2011

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

**MEMBERS OF THE COMMITTEE ABSENT:** No one

**Sponsor(s):** Representative Baldasaro with Representatives Coffey, Hikel, L. Christiansen and Itse

**What the bill does:** This bill permits the audio and video recording of a law enforcement officer while in the course of his or her official duties.

**Who supports the bill:** Representative Baldasaro with Representatives Itse, Warden, Lambert with David Crawford, William Kistrie, Bill Alleman, Claire Ebel, Denis Goddard, Attorney Seth Hipple, Carla Geriche, John Lewicke, Attorney Brandon Ross, Garret Ean, Keith Carlsen

**Who opposes the bill:** Hanover Police Chief Nick Giaccone

*(Please note that some of those in support favor the bill as introduced as opposed to the House amended version)*

**Others testifying:** Attorney Ann Rice, Dept. of Justice

### Summary of testimony received:

- **Senator Houde** opened the hearing at 2:23 p.m.
- **Representative Baldasaro** introduced the bill and noted for the record that he is currently being videotaped but that no where had he given his authorization. He spoke of an issue that happened in Nashua a few years back and remarked that there are now problems cropping up all around New Hampshire. He said that folks who defend themselves against these felony charges spend thousands of their own

dollars to fight them. He explained that a camera on his own property is not a problem – but if it has sound, then it can be charged as wiretapping. Senator Carson asked about some of the sections of the bill – and Representative Baldasaro responded that he does not support the language of the bill as amended by the House, but the bill as introduced. He asked that various sections be removed from the bill. Senator Carson asked about the scenario where she was interacting with a police officer and her husband begins to videotape the incident – could he be charged. Representative Baldasaro responded that he could be. He said that the bill should go back to the original intent where it said “public official.” Senator Carson asked about having someone right in her face with a cell phone or video camera and isn’t that offensive. Representative Baldasaro cited an incident that happened in the House with Representative Hopper who pulled out his camera. He said that this ended up on U-Tube.

- **Senator Groen** asked about lines 8 and 9, #2, as long as recording in a public area – and asked if the home is protected. Representative Baldasaro responded that every single time we go into a store now, we are videotaped.
- **Representative Itse**, citing the Constitution, explained that public officials should have no expectation of privacy. He noted that Representative Coffey had pointed out in the House that there are some privacy issues such as an EMT treating a patient at the scene of an accident.
- **Senator Luther** asked if he supports the bill as amended or introduced. Representative Itse responded “as introduced.” Senator Houde asked about recording public officials in a public place, but not in private. Representative Itse responded as they are executing their official duties.
- **Chief Giaccone** testified in opposition on behalf of the NH Police Chiefs Association. He said that this would allow police to be videotaped and that they are concerned when the individual is a minor or that the presence of cameras could sometimes take a volatile or potentially deadly situation and make it worse. He said that they are also concerned with the integrity of the recording or it ending up on U-Tube. He asked that the bill be killed.
- **Senator Carson**, in recounting the proliferation of reality television shows, noted that we see cameras mounted on police cars taping incidents of police stops. The Chief responded that these exceptions have already been carved out in statute.
- **William Kostric** testified in support and noted that the law already says that they can record in public and spoke to a reasonable expectation of privacy but that the purpose of this bill is to inform police that they cannot file law suits against individuals who are taping them. He said that he is opposed to the bill as amended by the

House but supports the bill as introduced. He noted that all public officials should be included.

- **Claire Ebel** testified that this bill actually protects police officers as sometimes allegations made against them are proven to be false. She had suggestions as to how to fix the legislation and felt that the order should be changed with the three sections.
- **Attorney Rice** testified that they were opposed to the bill as introduced and that they can live with the changes in the version as adopted by the House. Regarding the inclusion of all public officials, she noted that they are all acting in their public capacity – even when working in their private offices, thus the language on lines 8 and 9. Regarding other interactions, she said “yes, if in a public place.” She said that Ms. Ebel’s suggestion is a very good one and commented on the need to not interfere with an official’s ability to perform their duties.
- **Denis Goddard** testified strongly in support of the original bill but with concerns with the amended version. He said that NH is getting a reputation like New York with news stories on these incidents – and that the number of these incidents is alarming.
- **Attorney Hipple** spoke of the number of cases that he has represented and that he filed a federal law suit against the Town of Weare. He said that he supports the original language, not the amended version. He noted that the original statute was written long before we had the numerous technological devices that everyday citizens now carry. He commented about a reasonable expectation of privacy – and that public officials do not have this expectation.
- He told of a camera that was seized 13 months ago, the charges were dropped against the individual 11 months ago but the camera has still not been returned to her, in spite of orders from the court to do so.
- He noted that the current language would make the Rodney King recording illegal.
- He spoke of Channel 9 News filming firefighters at a fire and how this would not be allowed. He said that simpler is better and provided some clarification. He said that public employees do not have a reasonable expectation of privacy while performing their public duties. He said that it is acceptable to add “in public” to further clarify that one’s office is not considered public. He said that having the consent line in there would cause litigation in order to prove that notice was provided.
- **Carla Gericke** testified in support. She explained that she was arrested in Weare (and that she was a practicing attorney in California), taken to court and then the charges were dropped. She explained that the police officers can tape them – and that we should be able to do the same. She said that they will not return her camera because they are saying that they might come back and charge her again. She said that there should be no expectation of privacy if

you're on the job. She said that she agrees with Attorney Hipple's language suggestion and that this would level the playing field.

- **Representative Lambert** testified in support and told of an incident where the recorder was on the seat – and the police officer asked if he was recording the incident. The response was “no, but I am now.” He said that the research they did into this issue was scary. He said when these laws were written in the 1950's, there was no idea that normal folks would be having these recorders so readily available. He said that the police, on advice from their unions, were advised to charge folks with a felony as soon as the incident happens and then they can take the recordings as evidence. He told of an incident with a cell phone where someone was in the process of leaving a message for someone – and got arrested for making a recording. He said that public officials should have no expectation of privacy when doing their job and asked that the bill be amended to show this. He said that this is an important protection of the rights of our citizens.
- **John Lewicke** testified in support of the bill as introduced. He cited Article 15 of the Bill of Rights and said that this current practice is depriving citizens of their rights.
- **Attorney Ross** testified that he has never seen anyone actually convicted of these charges – that they get dropped before they get to that stage. He said that as amended, it creates a three-prong test and that an individual would have to meet all three. He asked about the specifics of notification and noted that it is not spelled out. He said that the Rodney King tapes would never have been allowed.
- **Keith Carlson** testified in support of the bill as introduced and spoke of a *Union-Leader* editorial. He also asked that the bill be effective sooner than January 1 of next year. He spoke of support by John Stossel as well as *USA Today*.
- **Senator Houde** closed the hearing at 3:25 p.m.

**Funding:** Not applicable.

**Action:** Senator Carson moved to re-refer the bill. Senator Luther seconded the motion which was adopted 4 to 0 by the Committee. Senator Carson will report the bill out of Committee.

sfd

[file: HB 0145 report]  
Date: May 27, 2011

# Speakers



# SENATE JUDICIARY COMMITTEE

Date: May 26, 2011

Time: 1:15 p.m. Public Hearing on

**HB 145 - (New Title) permitting the audio and video recording of a law enforcement officer while in the course of his or her official duties.**

Please check box(es) that apply:

Please check if

SPEAKING FAVOR  OPPOSED

NAME (Please print)

REPRESENTING

SPEAKING FAVOR	OPPOSED	NAME (Please print)	REPRESENTING
<input checked="" type="checkbox"/>	<input type="checkbox"/>	NICK GIACCONE	N.H. C.P.
<input checked="" type="checkbox"/>	<input type="checkbox"/>	David Crawford	Copblock.org
<input checked="" type="checkbox"/>	<input type="checkbox"/>	William Kostic	- myself
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Rep. Mark Warden Goffstein	Warden
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Bill Aleman	self
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Rep. Al Baldasaro	Rockingham - Dist 3
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Clairie Ebel	NHCLU
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Denis Goddard	NH Liberty Alliance
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Rep. John O'Rourke	Rock. 9
<input checked="" type="checkbox"/>	<input type="checkbox"/>	AG Ann Liu	AG
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Howie Zibel	Courts
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*opposed to amendments, supports original bill*

*Answer to the order*





# Testimony

## Wiretapping charge for man accused of recording party bust on cell phone

By **Elizabeth Dinan**  
edinan@seacoastonline.com  
July 06, 2010 3:12 PM

PORTSMOUTH — A New Castle man arrested at a July 4 house party is charged with a count of wiretapping, alleging he used his cell phone to film the police response.

A press release about the party where 20 people were charged did not disclose the wiretapping arrest, but police confirmed Tuesday that Adam H. Whitman, 20, of New Castle was arrested for wiretapping. However, the charge is likely to be dismissed and/or replaced with another charge, possibly disorderly conduct or obstructing government administration, said Capt. Mike Schwartz.

The police spokesman said Whitman was "impaired by alcohol" when he was arrested and when the case was later reviewed, wiretapping didn't seem to be "a viable charge." According to the sergeant, police continue to review the case which entails files from city police, as well as officers from the responding towns of New Castle, Rye, Greenland and state troopers.

Police confiscated two cell phones, one of them Whitman's, said Schwartz, adding that detectives are investigating where the minors got the alcohol.

"Consider the maelstrom of 30 kids, a kid passed out on the lawn and kids on the roof," said Schwartz. "Safety was the primary concern of police. We go into it not thinking what we're going to charge them with, but how do we resolve this safely for the kid on the roof, the kid on the lawn and our officers."

Police responded to the party at 78 Lawrence St. at 12:40 a.m. July 4, based on a citizen complaint, he said. There, police allege, a party-goer was found passed out on the lawn and transported by ambulance to the hospital. Others were on the roof and all were underage and under the influence of alcohol, said Schwartz. Those who could not reach parents to come get them and turn themselves in later for unlawful possession charges were taken into custody, said Schwartz.

Whitman, his brother Bradford Whitman, 22, and Joseph Grattan, 22, of 449 Broad St., Portsmouth, were charged with disorderly conduct for allegedly "riling up the crowd," said Schwartz.

"They were keeping us from doing our job, which is really to keep (them) safe," he said.

Three others charged were intoxicated passengers in an SUV that crashed into Putnam's Ski and Snowboard shop about a year ago. Walter Dunfey, 18, of 146 Clark Road, Rye; Matthew Berube, 19, of 41 Liberty Common, Rye; and Corey Langmaid, 19, of 12 Sanderson Road, Greenland were again charged with unlawful possession of alcohol at the July 4 party.

All three have pleaded guilty or negotiated plea deals that resulted in violation-level convictions for unlawful possession of alcohol, or in Langmaid's case, the charge being placed on file without a finding, pending his good behavior.

Benjamin Middleton, a 19-year-old police said lives at 78 Lawrence St., was charged with a misdemeanor count of facilitating an underage house party and a violation-level count of unlawful possession of alcohol.

Also charged with unlawful possession of alcohol are Katelyn Hanson, 19, of 376 Middle Road, Portsmouth; Christopher Macdonald, 19, of 40 Captains Landing, Newington; Adam Studer, 19, of 26 Coakley Road, Portsmouth; Gallagher Hogan, 19, of 10 Coakley Road, Portsmouth; Maxwell Agrodnia, 19, of 11 September Drive, Greenland; Keith Peyser, 19, of 43 Gosport Road, Portsmouth; Nicholas Fudge, 20, of 115 Sagamore Road, Rye; Samuel Curren, 20, of 115 Sagamore Road, Rye; John Merighan, 20, of 219 Washington St., Dover; Carl A. Smith, 19, of 246 Washington Road, Rye; Carolyn Vorce, 19, of 91 Beach Hill Road, New Castle; Shoshanna Harmon, 17, of 410 Sagamore Road, Rye; and Tyler J. Melanson, 19, of 37 Post Road in Greenland.

## New Hampshire

It is a felony to intercept or disclose the contents of any telecommunication or oral communication without the consent of all parties. N.H. Rev. Stat. Ann. § 570-A:2-I. It is punishable by imprisonment of one to seven years. N.H. Rev. Stat. Ann § 625:9. However, it is only a misdemeanor if a party to a communication, or anyone who has the consent of only one of the parties, intercepts a telecommunication or oral communication. N.H. Rev. Stat. Ann § 570-A:2-I. Misdemeanors are punishable by imprisonment up to one year. N.H. Rev. Stat. Ann § 625:9.

Any person whose telecommunication or oral communication is intercepted or disclosed has a civil cause of action against any person who unlawfully obtains such communication and is entitled to recover: actual damages at a rate of \$100 per day or \$1,000, whichever is greater; punitive damages; and reasonable attorney fees or other litigation costs. N.H. Rev. Stat. Ann § 570-A:11.

In addition, it is a violation of privacy to install or use any device for the purpose of observing, photographing, or recording in or outside any private place. N.H. Rev. Stat. Ann § 644:9-I. The state's highest court has held that a classroom was not a private place where a school custodian could reasonably expect to be safe from video surveillance. *State v. McLellan*, 744 A.2d 611, 615 (N.H. 1999).

### **A Practical Guide to Taping Phone Calls and In-Person Conversations in the 50 States and D.C.**

- [Introduction](#)
- [State-by-state guide](#)
- [Tape-recording laws at a glance](#)
- [Consent and its limits](#)
- [Interstate phone calls](#)
- [Possession and publication](#)
- [The FCC's role](#)
- [Cellular & cordless calls](#)
- [Citations to cases](#)

## Concord Police Continue to Abuse Wiretapping Statute

Posted on October 30, 2010 by freeconcord

by Garret Ean

Oct 30 2010

In Concord, you may be forcibly prevented from filming police.

Concord's Police Department is of recent developing a bit of a negative reputation when it comes to allowing its subjects to film their civil servants as they hand out tickets, make arrests, and the like.

The issue of filming/recording the police has gotten some overdue attention recently following the case of Anthony Graber in Maryland. Graber was performing some stunts on his motorcycle and recording the action with a helmet cam. An undercover officer, who would have otherwise been more than justified in stopping and citing Mr. Graber, decided to jump out of his car suspiciously and pull out a gun, all of this prior to identifying himself as a police officer.

Full video: <http://www.youtube.com/watch?v=RK5bMSyJCsg>

Graber was cited and went on his way. It wasn't until days later, after he'd posted the video of the officer's inappropriate behavior on YouTube, that he faced felony charges for the crime of videotaping in public.

Despite no disciplinary action being taken against Joseph Uhler, the reckless state trooper in this case, the state charged Mr. Graber with felony wiretapping. Over the recording alone, Graber spent 26 hours in a cage. His family's home was ransacked by police while they too were also detained. All of this for the crime of documenting police misconduct. Fortunately, the charges would be thrown out by a judge. For more on Graber's case, see <http://www.pixiq.com/article/maryland-motorcyclist-spends-26-hours-in-jail-on-wiretapping-charge-for-filming-cop-with-gun>

As the name implies, wiretapping statutes were designed to prevent the criminal tapping of wires. Intended to recognize the bugging of one's home or phone as a criminal invasion of privacy, these codes are being abused by police departments around the nation to prevent citizen-subjects from having a means of holding the police accountable.

### The Proliferation of Video Recording Technology

As audio/video recording devices get less expensive and more durable, we enter an age in which anything anywhere could potentially be recorded. Andrew Napolitano is credited with coining the phrase, "the camera is the new gun". For police officers who are always on their best behavior, the technology proliferation should pose no threat. But for officers whose tactics are what could be called morally questionable, cameras pose a threat to their way of life.

While it is hard for many to accept, especially those who do not belong to a targeted demographic, there are many people who are attracted to power for the wrong reasons and the power that accompanies being a police officer presents no exception.

## Wiretapping Statutes in New Hampshire

New Hampshire's Wiretapping statute is written in such a way so as to muddle the English language and give the reader a variety of possible interpretations to choose from.

When reading the main clause of the statute, one would get the impression that it is impossible to record someone without their consent (the word 'consent' implies that a positive affirmation may be necessary to proceed, but in this statute this is not the case).

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

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

Definitions are what make all the difference here. Since "intercept" sounds rather ambiguous, the state defines it within this particular statute as, "...the aural or other acquisition of, or the recording of, the contents of any telecommunication or oral communication through the use of any electronic, mechanical, or other device."

One word/phrase that is crucially changed in meaning once put into context within the statute is "oral communication". The statute defines oral communication as, "any oral communication\* uttered by a person exhibiting an expectation that such communication is not subject to interception under circumstances justifying such expectation."

\*Beginning the definition of a phrase with the phrase demonstrates the linguistic precision of legalese, the language of the State.

Being as how it is not a crime to film in public, it is not illegal for someone to film an officer of the state in public, especially once the agent has been informed that a legal recording is occurring. Granted, the statute is terribly written. Taking the first sentence out of context would give one the impression that any recording of an oral communication is illegal without expressed consent. However, this is not the case, as it would effectively prohibit the use of any audio recording device in the state. This legal confusion is being exploited by police officers as a means to intimidate those who wish to do nothing but hold them responsible for their actions by recording them. When it is an individual officer abusing his power, the individual transgression can be dealt with. When the problem becomes systemic, it has reached the level of corruption.

### An Expectation of Privacy?

Let us consider the notion that officers are claiming they have a right to privacy while at the same time invading someone else's privacy. Individuals on the receiving end of police encounters are more often than not involuntary participants in the dialogue. Keeping in mind that it is very likely that a police officer will have to relay information regarding encounters with you in a court of law, how could there be any claim that the interaction is private?

Whenever you are interacting with a uniformed police officer, you are dealing with them in their official capacity. They work for you (whether you like it or not), though unlike anyone else you may contract the labor of, you

cannot fire these employees. There could hardly be a more outwardly public interaction than one with a police officer. So why is it that officers are claiming that their right to privacy deems you a felon for recording them?

Could the officers be claiming they have a right to privacy so that they may fudge their police reports? After all, it makes their own job easier if the only official report from the scene is from the officer, where what he says happened is what is presumed to have happened. If video recording of officers were allowed, then officers would have the grueling task ahead of them of getting their own story straight until it was consistent in both their report and the video evidence.

These were precisely the motivations behind threatening Anthony Graber with a felony. Mr. Uhler neglected to mention in his report that he had ever pulled his gun. And Mr. Graber's posting of that fact on YouTube threatened Mr. Uhler's integrity. An officer of his status could not allow such a demonstration of his recklessness to be posted on the internet unpunished.

### **Wiretapping Statute Abuse Outside of Concord**

Elsewhere in the state, citizen-subjects have been arrested and had their cameras stolen, only to be released.

[http://docs.google.com/viewer?  
a=v&pid=sites&srcid=bmhsZWdHbHNlcnZpY2VzLmNvbXx3d3d8Z3g6MmU5YiNkYTOzNTMxOTg3ZQ&pli=1](http://docs.google.com/viewer?a=v&pid=sites&srcid=bmhsZWdHbHNlcnZpY2VzLmNvbXx3d3d8Z3g6MmU5YiNkYTOzNTMxOTg3ZQ&pli=1)

The Union Leader reported on October 18th the stories of Carla Gericke and William Rodriguez, who were arrested on felony wiretapping charges. They were never indicted, but the state is refusing to return their cameras. Currently, an attorney working on their behalf is fighting for a review of Weare PD's own recordings, which they claim don't exist. A quote from attorney Seth Hipple at the end of the article sums it up: "The defendant is trying to make it public and the state is trying to hide it, so who do you believe?"

The article also appeared on the front page of the Goffstown News on October 21.

In November of 2008, Cooper Travis was arrested at his home after an officer claimed to 'withdraw consent' from being recorded. The video is here: <http://www.youtube.com/watch?v=ZcL-boGdopg>

In July of this year, Adam Mueller and Pete Eyre of New Hampshire traveled to Greenfield, Massachusetts to bail a friend out of jail. They tried to film their encounters with police, and were arrested for felony wiretapping. The story was covered by Penn Jillette in his video series 'Penn Point'.

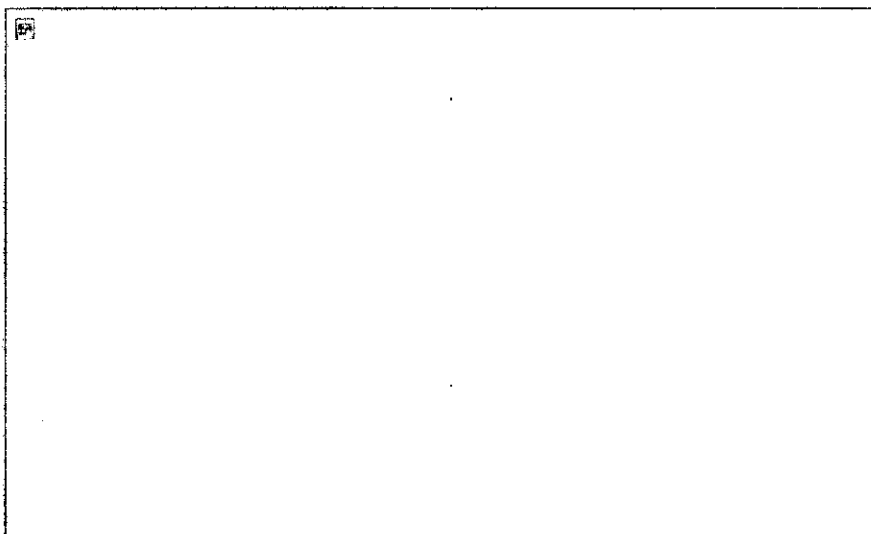
<http://www.youtube.com/watch?v=nTuiOrhSkhw>

In my encounters with Concord Police, I have been lied to thrice by different officers, being told that their informing me that they did not want to be recorded was enough to make me a felon if I did not stop. Because of such confusion, I begin any recording of a police encounter by alerting the officer that I am recording, so that there can be no later claim that there was an expectation of privacy. When there are multiple officers on the scene (and in Concord, they will call multiple officers to any scene, regardless of how innocuous) I inform each officer on record that they are being recorded as soon as they arrive.

### **Police Confusion becomes Police Threatening**

When an officer is confused about the law, that they would accept being corrected is respectable. Four out of four officers that approached me in the early hours of June 29, 2010 were incorrect in their interpretation of the statute. Three out of four were professional enough to accept my rebuttal to their assertion that my recording them was a crime. The last officer to arrive on the scene, identified later as Sgt. Michael Pearl, instead of acknowledging a confusion and allowing me to continue recording, felt it necessary to forcibly stop my recording of him. He screamed in my face and aggressively snatched the phone out of my hand. Despite the fact that the recording had already ended, he then powered the phone off, and ordered me to put it in my pocket. I instantly began exercising my fifth amendment rights (as you almost always should — do not talk to police) and was released shortly thereafter.

On July 9th, I filed a complaint with the police department over a number of issues. The first was the constitutionality of the detention. My offense was being out late at night — literally. I was not even told I was suspected in any recent crime. I was told that there were missing juveniles and that I looked young. When I asked if I matched the description of any missing juveniles, I was told the missing juveniles were females. Video of the complaint being filed is here:



<http://www.youtube.com/watch?v=dGsMyRvePjc>

The second issue was that I was misinformed (hopefully that and not actually lied to) by police when I was told I could not record them. I respect that, Mr. Pearl excepted, the three other officers never felt compelled to attack me over my peaceful recording.

My third issue was the physical assault, and also the otherwise nastily patronizing demeanor of Mr. Pearl. His behavior that night more resembled the thugs he is paid to pacify than the standard of the office which calls him to be controlled and collected in the face of intimidation. Instead of confronting peaceful noncompliance with his authority with professional problem solving, he decided to fall back on a policy of might makes right.

After relaying my story to Officer Mike McGuire, my suggested retribution was fairly straightforward. (You can read my report below). I wrote,

*"I would appreciate this situation be rectified by Concord Police Department educating their officers on the specifics of the wiretapping statute, and publicly stating their policy when officers are being legally recorded. So long as he understands why he acted inappropriately, I would appreciate an apology from the officer who grabbed my phone out of my hand, who identified himself as the midnight shift supervisor."* (That was a polite way of asking for not just an apology, but an understanding of why assaulting peaceful people is wrong).

I received a letter back from CPD in August that relayed to me very little information. It seems they have concluded the case, despite the fact that they make almost no statements about their findings on the incident. It is difficult to interpret what message the Concord Police Department was trying to relay with this piece of mail, but the impression I received was that they were not particularly interested in investigating my complaint. My complaint report and the letter I received in response about a month later are linked in .pdf format below.

[http://freeconcord.files.wordpress.com/2010/10/cpd\\_report\\_0010001.pdf](http://freeconcord.files.wordpress.com/2010/10/cpd_report_0010001.pdf)

[http://freeconcord.files.wordpress.com/2010/10/cpd\\_letter\\_0010001.pdf](http://freeconcord.files.wordpress.com/2010/10/cpd_letter_0010001.pdf)

I will be following up with Concord Police Department shortly to see what the findings of the investigation are.

### **Concord Police Department's Continuing Incidents**

Paula Werme of nhdcyf.info has put together three main legal reasons taping is not illegal. Though legal reasons are not necessarily logical reasons, you may find them interesting. The link is:

<http://nhdcyf.info/taping.html>

Video recording is not something totally foreign to Concord PD. There are several instances on YouTube in which there are cameras at protest or outreach events, and seldom are officers even reactive to them.

During a September 4th chalking of the federal compound on Pleasant St, a Concord Police officer told Dave Ridley, freelance journalist of ridleyreport.com that his recording of him was illegal. The unidentified officer in the video claimed to be cutting Dave a break by not arresting him (and was surprisingly cordial as though he were not threatening Dave's sovereignty). It is commendable that they did not try to break up the peaceful protest, but the claim that Dave can't record is unfounded, as Dave points out in the video. The officer evades any discussion of the law and reasserts that he is correct, but that he'll be nice enough to cut Dave a break by not kidnapping him.

<http://www.youtube.com/watch?v=iWuOOrgcCsc>

The case of baby Cheyenne made headlines in some national circuits, as the State cited a political affiliation in its list of justifications for taking the sixteen-hour-old daughter of Johnathan Irish and Stephanie Taylor. While there are already countless pieces written on the State's missteps in handling that case, the issue of recording was rather obscured by the severity of all other factors in the case. In an interview with Dave Ridley, Stephanie Taylor explains that she was forcibly prevented from recording authorities as they took custody of her child. Concord Police were at the time present in the room with Hospital Security and DCYF.

<http://www.youtube.com/watch?v=Fv4NvRoKLcg>



Stephanie Taylor reports Concord Police did in fact inform her that recording was illegal, and threatened her with further assault if she were to start recording. At 2:08 in the video, "I saw the police officer say it, but I heard other people in the room saying it as well. That [it] would not be allowed to be recorded."

This level of irresponsibility borders on criminal. The state was already facing long overdue attention for DCYF's constitutionally questionable investigation and enforcement tactics. To say that any agency undertaking an act this controversial claims any right of privacy is an abuse of power that this organization was never morally delegated. The members of all organizations involved, Concord Hospital, Concord Police Department, and of course DCYF, ought to do a lot of thinking as to what their role is as an actor for an agency using an abuse of a statute to its own advantages. And for the actors who were personally involved in preventing recording — consider whom you may owe an apology.

### **What can we do?**

And what does "we" mean? Unless you want Concord to continue as a haven of incentive for police irresponsibility, let it be clear that you as an individual will film the police for your own safety and for their accountability. Honest officers have nothing to hide and should be delighted with the prospect of police-civilian relations occurring legally and respectfully.

Perhaps more people should contact the Concord Police Department and request a public statement from them which will clarify their policy on being recorded legally and peacefully. The misinformation they have been giving their subjects will not stand up to public scrutiny. It is not a crime to film a police officer.

To contact Concord Police, call 603-225-8600, or e-mail [police@concordnh.gov](mailto:police@concordnh.gov). If you are a Concord resident, let them know your opinion on whether one should be assaulted and threatened with a felony for recording them as they work for you.

### **Don't Fear Those Who Supposedly Work For You**

If you are nervous that you may be intimidated out of recording by police in the state of New Hampshire, I've provided a link to a .pdf below that will print out a number of convenient cards that you can put in your wallet with the relevant portions of the wiretapping RSA printed on it. If you get questioned for recording, be sure to get yourself on tape showing the officer the statute.

[http://freeconcord.files.wordpress.com/2010/10/570a\\_cards.pdf](http://freeconcord.files.wordpress.com/2010/10/570a_cards.pdf)

If you are ever in Concord after hours, try to have a video camera (or two) handy. Assert your rights, or lose them.

re:  
          

HB 145

## Federal court weighs in on videotaping; state lawmakers eye statutory changes

By SHAWNE K. WICKHAM  
New Hampshire Sunday News

Videotaping a police officer carrying out his or her duties is protected under the First Amendment.

That's how the First Circuit Court of Appeals in Boston ruled Aug. 26 in a case involving a man arrested for using his cell phone to record a police arrest on Boston Common four years ago. The man, a Boston lawyer, brought suit against the police officers for allegedly violating his constitutional rights.

In rejecting the officers' claim of immunity, the court found that "gathering information about government officials in a form that can readily be disseminated to others serves a cardinal First Amendment interest..." But it noted the right to film "may be subject to reasonable time, place and manner restrictions."

In its ruling, the federal appeals court, which has jurisdiction over New Hampshire, said such a recording wasn't covered under Massachusetts' wiretap law, which makes it a crime to secretly record someone. Using a recording device in plain sight, the court found, "is, on its own, sufficient evidence from which to infer the subjects' actual knowledge of the recording."

The ruling has relevance in New Hampshire, which has a similar wiretapping law (RSA 570-A:2) that makes it illegal to record someone without their consent. But the law may become moot.

“

*"I think that the number of police officers who go overboard or use excessive force, I think they're very few and far between. Maybe the police need to shine their own image, so to speak."*

REP. DAVID WELCH,  
R-Kingston

A bill in the state Legislature would make an exception to RSA 570-A:2 to allow anyone to "make an audio or video recording of a law enforcement officer in the course of his or her official duties." That's as long as the person notifies the officer; is personally interacting with the officer or is in a public area; and does not interfere with the officer's ability to perform his or her duties.

House Bill 145 passed the House in March; the Senate is expected to take it up in January.

State Rep. David Welch, R-Kingston, a member of the House Criminal Justice and

Public Safety Committee, said police officers told that committee they had no problem with the proposed law.

Rep. John Tholl, R-Whitefield, is a retired police chief. He said he doesn't have a problem with civilians recording police officers.

But under current state law, he said, "You're not allowed to record a conversation taking place between people unless both parties agreed to it." And that includes the audio portion of a videotape, he said.

With all the recording devices out there today, Tholl said, it would be impossible to stop people from videotaping police officers doing their jobs. But he said it's too easy for a partial or edited video to misrepresent what happened.

Tholl said he also has a problem with someone filming while police interview witnesses to a crime.

"Can you imagine how many people would tell you what happened if somebody was videotaping it and it could be on TV?" he asked. "It would be detrimental to doing any investigations at all."

Welch said the proliferation of caught-on-tape incidents involving police officers that are posted on Internet sites could give the public a negative impression of police.

"I think that the number of police officers who go overboard or use excessive force, I think they're very few and far between," he said. "Maybe the police need to shine their own image, so to speak."

*David Welch*  
10/17

**Duncan, Susan**

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**From:** Seth Hipple [sjhipple@nhlegalservices.com]  
**Sent:** Thursday, April 28, 2011 10:51 AM  
**To:** Houde, Matthew; Carson, Sharon; Luther, Jim; Groen, Fenton  
**Subject:** Please Support HB 145 - Right to Record

Members of the Judiciary Committee,

My name is Seth Hipple and I am an attorney from Concord, NH. I ask that you SUPPORT HB 145, which would clarify that citizens have the right to record police officers - their public servants - while in the course of the officer's official duties, so long as they inform the officer and the recording does not interfere with the officer's official duties.

This legislation is clearly necessary. In the last 13 months, I have represented not one but two individuals charged with *felonies* for doing nothing more than openly and non-secretly recording a police officer while that officer was on the job. Neither are alleged to have ever interfered with that officer, yet they were charged with felonies.

I would happily answer any questions you have about this legislation. You may reach me on my cell at 603-724-8747.

Best Regards,

--

Seth J. Hipple, Esq. | The Law Offices of Martin & Hipple, PLLC | [www.NHLegalServices.com](http://www.NHLegalServices.com)  
Email: [SJHipple@NHLegalServices.com](mailto:SJHipple@NHLegalServices.com) | Phone: 877-NH-LAW-09 | 36 Warren St., Ste 1;  
Concord, NH 03301

4/28/2011

- 1 -

## FEDERAL BUREAU OF INVESTIGATION

Date of transcription 01/19/2005

An initial TENNESSEE BUREAU OF INVESTIGATION (TBI) investigation created a transcript of the EUGENE SILER recording from July 8, 2004. TBI provided FBI KNOXVILLE the SILER recording and a copy of the associated transcript. On November 19, 2004, Special Agent (SA) JOSHUA T. MCKINNEY revised the original transcript, provided by TBI (see serial 24).

On January 19, 2004, following interviews of WILLIAM PAUL CARROLL (see serial 27) and GERALD DAVID WEBBER (see serial 28), SA MCKINNEY revised the transcript, originally provided by TBI and previously revised on November 19, 2004, with the clarifications provided by CARROLL and WEBBER. The revised transcript is attached to this FD-302.

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Investigation on 01/19/2005 at Knoxville, Tennessee

File # 282A-KX-69820-29 Date dictated 01/19/2005

by SA JOSHUA T. MCKINNEY *J.T.M.*

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fucking seeing blood. He'll beat your ass and lick it off of ya. And if you think we're here playing, you're wrong. I want you to start talking right now about nothing else but other than but where your dope's hid at and where your money's at. And then we'll talk about everything else. Start telling him.

Eugene: (unintelligible)

Officer Franklin: Un-cuff him. Un-cuff him and make him sign that damn form.

Officer Franklin: If he don't sign it, if he don't sign it, I'm gonna slap his fucking fingers.

Officer Webber: What hand.. Are you right handed?

Officer Franklin: Cuff him in front. We'll be nice to him, but that's as far as it's going.

Eugene: ... have somebody read what I'm signing first.

Officer Monday: No you ain't. We ain't reading a fucking thang. You just need to sign it.

Officer Franklin: Only thing that sign says... you've been informed we're here to search your damn premises and you're gonna let us. That's all it says.

Officer Monday: Are you gonna sign?

Eugene: (unintelligible)

Officer Monday: Look. If you don't think we're fucking, look here. We're getting ready to fucking juice your ass, so you either fucking sign it or get the juice.

Eugene: (unintelligible)

Officer Webber: Stand him up and I'll take his pants down.

Eugene: (unintelligible)

Officer Webber: (muffled) You either sign that..

Officer Monday: Sign it!

Officer Webber: Sign that. It's fixin' to get ugly.

Eugene: (unintelligible)

Officer Webber: No. You need to sign that.

Eugene: ...the one that you want.

Officer Webber: I want you and we got 'cha, and you need to sign that.

Eugene: (unintelligible)

Officer Webber: No, you need to sign that. I want you

Eugene: (unintelligible)

Officer Monday: Eugene, look! Sign the Slapping, striking, or hitting sounds.

Eugene: (cries out)

Denis Goddard  
757 Penacook Rd  
Hopkinton, NH 03229  
603 892 9266  
Testimony Re: HB145

- \* Law Enforcement are the public servants most capable of mistreating citizens
- \* NH Constitution Part I, Art 8 says officers are "at all times accountable" to the people
- \* Nobody would know what happened to Rodney King had it not been for the cameras

Over the past several years, several bills related to this same issue have been proposed. There is an unfortunate reason that this issue is a perennial one. That reason is that New Hampshire is acquiring a reputation as being a state where the "wiretapping" statutes are abused, by police officers, on a regular basis. This is evident from a quick Google search; the depressing results of which I include in my written testimony (see below)

I want to call to your attention an illustrative case from another state, Tennessee, the case of Eugene Siler. Siler was an illiterate, and allegedly a small-time drug dealer. When 3 police officers entered his home without a warrant, he demanded that they leave. When they did not, he surreptitiously started an audiotape recorder, which recorded Mr. Siler being asked to sign a form authorizing the police to search his home. When he did not, he was literally and brutally tortured -- with beatings, and electrical shocks to his testicles. I submit with my written testimony the FBI transcript of the recording.

I would point out that in New Hampshire, rather than being in possession of exonerating evidence, Mr. Siler would face charges of felony wiretapping.

Please restore the language adopted by the House.

Please restore New Hampshire's reputation as a state where abuse is not tolerated and where rights are respected.

###

**New Hampshire Police Charge Man With 'Wiretapping' Because He Made A Phone Call During Traffic Stop *(from the you-can't-be-serious dept)***

<http://www.techdirt.com/articles/20110307/04293513383/new-hampshire-police-charge-man-with-wiretapping-because-he-made-phone-call-during-traffic-stop.shtml>

**Man Faces 7 Year Sentence Under "Wiretapping Law" For Filming Police**

OK for police and government to film and wiretap US citizens though

<http://tinyurl.com/3b19r96>

**NH Cops Use Wiretapping Laws to Crack Down on Citizens Who Tape Them**

<http://deadlinelive.info/2011/03/09/nh-cops-use-wiretapping-laws-to-crackdown-on-citizens-who-videotape-them/>

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PARTNERS:

Stephen T. Martin, Esq.

Seth J. Hipple, Esq.\*

\*Also admitted in MA

May 26, 2011

**Re: HB 145, Senate Judiciary Committee Hearing  
Written Testimony of Seth Hipple**

Members of the Committee:

My name is Attorney Seth Hipple. I'm from Concord. You may have read in the Union Leader about the cases in which I represent or have represented defendants charged with felonies under the wiretapping law for openly recording police activity in public. You may have also read that my firm recently filed a federal lawsuit against the Town of Weare for the arrest of one of those clients. Therefore, as you can imagine, I have spent a significant amount of time reading, researching, and thinking about RSA 570-A.

I will cover three things in my brief testimony: (1) why passing an on-the-job-on-the-record bill would actually not change the law, (2) why it's needed anyway, and (3) why this bill isn't the ideal way to do it.

**First, the law of the land already allows people to record police in public;** yes, even with audio. The First Amendment protects the right openly to record police because the behavior of police officers is a matter of great public concern. Police officers are vested with substantial power, including the authority to use force and to deprive individuals of their freedom. While most police officers act lawfully, police abuse of authority carries great potential for harm.

This is why federal courts have already established that the recording of police officers is an activity protected by the First Amendment to the United States Constitution and cannot be subject to criminal penalties. In the case of *Iacobucci v. Boulter*, 193 F.3d 14 (1st Cir. 1999), the First Circuit Court of Appeals – which is the Court having jurisdiction over New Hampshire – found that the right to record (video *and* audio) public officials in public was “sufficiently clear.” *Id.* at 24. In that case, the Court upheld a six figure jury award to a man who was arrested for recording public officials in public. Obviously, as an attorney whose firm has just filed a federal lawsuit in a nearly identical case, I find this case interesting. Similarly, the 11th Circuit Court of Appeals has held



that the right to record police on public property and “gather information about what public officials do on public property, and specifically, a right to record matters of public interest” is a right protected by the First Amendment. *Smith v. City of Cumming*, 212 F.3d 1332, 1333 (11th Cir. 2000). The Ninth Circuit Court of Appeals has recognized a First Amendment right to record (video *and* audio) matters of public interest. *Fordyce v. City of Seattle*, 55 F.3d 436, 439 (9th Cir. 1995).

The statute itself – NH RSA 570-A – already allows the recording of public employees in public. RSA 570-A:1, II defines oral communication as “*any oral communication uttered by a person exhibiting an expectation that such communication is not subject to interception under circumstances justifying such expectation.*” Public employees performing the public’s duties in public have no such expectation and if they do, it is not under circumstances justifying this expectation. The law was never meant to prevent citizens from holding their government accountable.

The charges of wiretapping are themselves illegal. This is why no one has been convicted of these charges.

**So why is a statutory change still necessary?** There is a major problem in New Hampshire right now: I have represented two defendants in the last 12 months alone arrested on *felony* charges for simply openly recording police activity. I am personally aware of two other arrests for the same charges. A few police departments are choosing to shatter lives, drain bank accounts, and threaten serious loss of freedom for simply being held accountable. Yes, lawyers like me can and are filing lawsuits to curb this type of activity. But this takes time and money at the expense of innocent people. Further, for those who cannot afford a lawyer, they may feel they have no choice but to take a plea deal, which would be a real shame. This must stop now. You can stop it now.

**The question then becomes how it should be stopped.** I’ll be frank with you: the current bill is a mess. This bill actually would further restrict people’s right to record police. People already have that right, but this bill would add restrictions to it.

When the law elaborates a specific thing and says “this is legal,” what it does is imply that other activity not falling in that description is illegal. This bill would therefore lead to absurd results. Imagine, for instance, that a WMUR reporter with a 10-foot boom microphone was recording firefighters from a safe distance on YMCA property to avoid being in the way of the firefighters. However, the firefighters were busy and their back was turned and they didn’t give explicit permission. This scenario is without a doubt legal now. This bill would unconstitutionally criminalize it. This is because the law exempts only police officers, not firefighters. It requires explicit permission: the 10-foot boom microphone wouldn’t be enough. Lastly, it requires that the recording take place in a public area, so the reporter standing on private property would be outside the provisions of this law.

Therefore, something legal now would become murky, requiring years of litigation in federal courts. This would be a step backward. Yes, the Federal Courts

would eventually knock the law down, but not before causing a lot of trouble for reporters and the towns who were sued for the arrests that would come from this law.

**So how should the bill be structured instead?** Simpler is better. Simply state what the Courts have already held and what every reasonable person in this room already knows: "Public employees do not have a reasonable expectation of privacy while performing their public duties."

To be clear: this change would not allow people to just walk into police stations, get in people's ways and record willy nilly. We already have disorderly conduct and criminal trespass statutes to take care of those scenarios. A person refusing to leave would still be breaking the law, but could not be charged with wiretapping.

My recommended change is fifteen words:

**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.

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. ***Public employees do not have a reasonable expectation of privacy while performing their public duties.***

Seth Hipple, Esq.  
36 Warren Street, Suite 1  
Concord, NH 03301  
603-724-8747  
[SJHipple@NHLegalServices.com](mailto:SJHipple@NHLegalServices.com)

**HB 145 - COMMISSIONERS LEGISLATIVE GROUP PROPOSED  
AMENDMENT TO SENATE JUDICIARY COMMITTEE  
AMENDMENT 2012-0119s**

Amendment to HB 145

(NEW TITLE) AN ACT permitting the audio and video recording of a government official while in the course of his or her official duties.

Amend the bill by replacing all after the enacting clause with the following:

1 New Subparagraph; Audio and Video Recording of Public Official in the Course of Official Duties Permitted. Amend RSA 570-A:2, II by inserting after subparagraph (l) the following new subparagraph:

(m)(1) Any person to make an audio or video recording of an elected official, a public employee, or a public official, as defined in RSA 15-B:2, paragraphs III, IX, and X, respectively (hereinafter "government official"), acting in the course of his or her official duties; provided that:

(A) The person making the recording must have the recording device in plain view in a manner that would alert a reasonable government official observing such person making a recording of him or her that a recording is being made or, when the recording is of a conversation over a telephone or similar device, the person must announce to the government official at the beginning of the call that the conversation is being recorded;

(B) The person making the recording is doing so from a location that is either such person's own private property, from the private property of a person who has authorized or assented to the making of the recording, or from a public or private space generally accessible to the public;

(2) Any recording made from a public or private space generally accessible to the public, under this subparagraph, shall be subject to reasonable time, place, and manner restrictions, including those determined by the government official's employer. Manner restrictions may include, but not be limited to, a prohibition on such recording activities if they are not undertaken in a peaceful manner, or if they would interfere with or impair a government official's performance of his or her official duties.

(3) No person shall make an audio or video recording under this subparagraph if:

(A) The government official is communicating with a third-party member of the public who has not given knowing, written or oral consent to the recording being made; or

(B) The information being recorded is confidential under state or federal law; or

(C) The making of such recording would otherwise be impermissible under RSA 91-A, would constitute a recording of a non-public session under RSA 91-A, or would include making a recording of a non-meeting as defined in RSA 91-A.

(4) The provisions of this subparagraph shall not apply to any judicial branch officer or employee acting in the course of his or her official duties.

(5) Any audio or video recording of a government official shall remain the property of its owner. In the event that such property is seized by law enforcement authorities, a copy of the audio or video recording shall be provided to the owner of the property within 10 days of the day the property is seized.

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

**ATTORNEY GENERAL  
DEPARTMENT OF JUSTICE**

33 CAPITOL STREET  
CONCORD, NEW HAMPSHIRE 03301-6397

MICHAEL A. DELANEY  
ATTORNEY GENERAL



ANN M. RICE  
DEPUTY ATTORNEY GENERAL

January 20, 2012

Senator Matthew Houde  
Legislative Office Building, Room 101-A  
33 North State Street  
Concord, NH 03301

Re: HB 145 – Permitting the Audio and Video Recording of Any Public Official While in the Course of His or Her Official Duties

Dear Senator Houde:

We are writing to voice our concerns about HB 145, which would permit the audio recording of any public official in the course of his or her official duties. We fully support the policy of government transparency and accountability, upon which the bill is based. However, we believe that the ramifications of the legislation have not been fully considered and will result in many unintended consequences.

When the Senate Judiciary Committee received HB 145 from the House, the bill was far more limited in scope, applying only to law enforcement officials. After the public hearing, the committee amended the bill to expand its coverage to all public officials, presumably at all levels of government. Had we, as the heads of state agencies, had notice that the Judiciary Committee was considering such an amendment, we would have made every effort to appear and testify to our many concerns. However, there was no such opportunity.

This procedural omission becomes more significant when the implications of the bill are considered. HB 145 would fundamentally change New Hampshire's long-standing prohibition against audio recording another person without that person's consent. Currently to do so constitutes a crime under RSA 570-A:2. HB 145 would completely eliminate that prohibition as it pertains to public officials. Notably, the bill contains no reference to RSA 570-A.

Although seemingly simple to apply, the language of HB 145 leaves many unanswered questions. While it allows for the audio recording of public officials, it does not address how it would apply when there are non-public officials involved in the interaction. For instance, if a legislator were

engaged in a conversation with a constituent and another person chose to audio record that conversation, could that non-public official refuse to allow it? Would it be permissible for someone to audio record the interactions between a clerk at the Department of Motor Vehicles and every member of the public who is served by that clerk, including interactions that involve the disclosure of confidential personal information? The bill provides no guidance for these situations.

HB 145 also contains no definition of the term “public official,” leaving it unclear to whom the bill would apply. The only statutory definition of the term is set forth in RSA 15-B:2 X, and includes “any unclassified, or nonclassified executive branch employee, but shall not include any commissioned, unclassified, or nonclassified employee elected by the legislature.” If HB 145 is intended to reach only that limited class of state employees, it must be made clear.

The bill provides that a person must be recording the public official from his or her private property, from private property with another’s consent or from “a public or private space generally accessible to the public.” The meaning of “generally accessible” is not clear. Would it include an agency conference room into which members of the public frequently are invited, even if that room is not considered in a public area? Many of the government offices are located in spaces where there is little physical separation between the public areas and private space. For example, a person talking to the receptionist at some state agencies is just a few feet away from the door of the commissioner’s office, where confidential discussions regularly occur. Many of the district offices for the Division of Family Assistance have little private space for clients to converse with caseworkers about sensitive topics such as financial need. The prospect of those conversations being audio recorded may force agencies to expend money to reconfigure office space to prevent the recording of private conversations from public areas.

While the bill would require that the audio recording device be in plain view, so as to alert the public official that a recording is being made, there is no similar provision for notice when a telephone conversation is being recorded.

The bill will create problems for enforcement of the provisions in RSA 91-A—the Right to Know law—pertaining to public and non-public meetings. Currently, the law provides that a public body may go into non-public session to discuss specified confidential matters, such as disciplinary or personnel matters, and to seal the minutes of the session if appropriate. However, if a participant in a non-public session chose to exercise his or her right under HB 145 to audio record the public officials and play that recording to others, it would thwart the purpose behind having non-public sessions and potentially violate the privacy interests of those whose matters are being discussed.

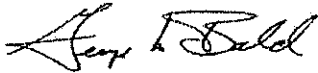
Finally, while HB 145 is intended to create openness and transparency in government, unfortunately it may have the opposite effect. In general, government officials in New Hampshire are easily accessible to members of the public. However, the prospect of being audio recorded can be intimidating and may cause public officials to become reluctant to engage with the public, even in routine encounters.

We respectfully suggest that all of these concerns need to be addressed before a bill such as HB 145 is voted upon by the full Senate. For that reason, we urge you to oppose HB 145 in its current form

and to instead ensure that this bill is the subject of thorough hearings and study before it is brought to the Senate floor for a vote.

If you have any questions, please call NH Department of Environmental Services Commissioner Tom Burack at 271-2958 or Attorney John Williams of the NH Department of Health and Human Services at 271-9395.

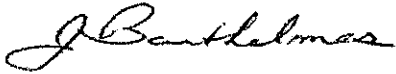
Respectfully submitted,



George Bald, Commissioner  
NH Department of Resources and  
Economic Development



George N. Copadis, Commissioner  
NH Department of Labor



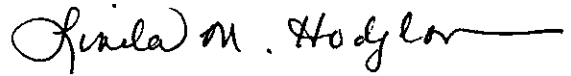
John J. Barthelmes, Commissioner  
NH Department of Safety



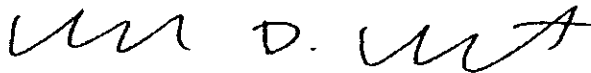
Michael A. Delaney, Attorney General  
NH Department of Justice



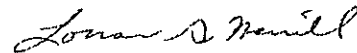
Thomas S. Burack, Commissioner  
NH Department of Environmental Services



Linda M. Hodgdon, Commissioner  
NH Department of Administrative Services



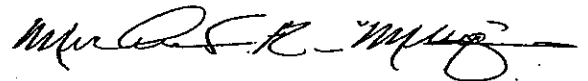
Christopher Clement, Commissioner  
NH Department of Transportation



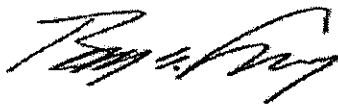
Lorraine Merrill, Commissioner  
NH Department of Agriculture, Markets & Food



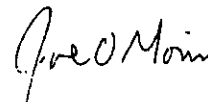
Kevin Clougherty, Commissioner  
NH Department of Revenue Administration



Michael R. Milligan, Commissioner  
NH State Liquor Commission



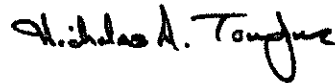
Barry E. Conway, Commandant  
NH Veterans Home



Joanne O. Morin, Director  
NH Office of Energy and Planning



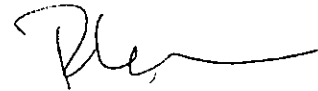
Glenn Normandeau, Director  
NH Fish & Game Department




Nicholas A. Toumpas, Commissioner  
NH Department of Health and Human Services



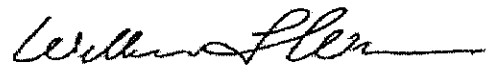
Tara Reardon, Commissioner  
NH Employment Security



Ronald A. Wilbur  
Bank Commissioner



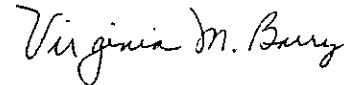
William N. Reddel, Major General  
NH Adjutant General's Department



William L. Wrenn, Commissioner  
NH Department of Corrections



Roger Sevigny, Commissioner  
NH Insurance Department



Virginia M. Barry, Commissioner  
NH Department of Education

cc: All New Hampshire Senators



HR 145

# Convicted firefighter impersonator seeks bail modification

By **BEA LEWIS**

blewis@citizen.com

CONCORD – The lawyer representing a free-lance photojournalist convicted of impersonating a firefighter to gain access to a fatal car crash scene, told a judge on Wednesday her client's bail conditions prevent him from making a living.

Brian K. Blackden, 46, of Concord appeared in Merrimack County Superior Court with his Attorney Penny Dean seeking modification to his bail conditions.

Following a bench trial in Concord District Court, Judge Gerard Boyle found Blackden guilty of a Class A misdemeanor and fined him \$1,000 plus a \$240 penalty assessment.

Boyle subsequently amended the conviction to a Class B misdemeanor and Blackden says he'll file an appeal with the New Hampshire Supreme Court.

As part of his bail conditions, Blackden was precluded from coming within 500 ft. of an accident. Those conditions remain in place because of his appeal.

Other conditions of his bail include that he commits no further crimes and not drink alcohol or use illicit drugs. Such conditions are typically ordered as part of bail.

Dean argued on Wednesday that her client has never used drugs and has signed an affidavit to that effect; maintaining that bail condition reflects negatively on Blackden's reputation.

Blackden was arrested in November 2010 following a three-month investigation by State Police into his actions at the scene of a fatal accident in August.

Besides the impersonating an emergency personnel conviction, Blackden was also found guilty by Judge Boyle of displaying red lights without authorization on the converted ambulance he drove to the Interstate 93 crash scene in Canterbury.

Blackden says he turned on the ambulance lights to caution oncoming cars after fire officials instructed him to park behind their vehicles at the accident scene. His appeal, he said, cites conflicting statutes on the use of red emergency lights.

Blackden previously sold his work to local media outlets and to a national first responder publication. He maintains he wears protective gear to be safe, not to sneak onto a scene.

Following the hearing, Judge Larry Smukler said he had taken the case under advisement and would issue a ruling on the requested bail modifications at a later date.

# TITLE I

## THE STATE AND ITS GOVERNMENT

### CHAPTER 15-B

#### GIFTS, HONORARIUMS, AND EXPENSE REIMBURSEMENTS

##### Section 15-B:2

**15-B:2 Definitions.** – For the purposes of this chapter:

I. "Agency" means the executive branch and any department, division, board, commission, or equivalent entity of the executive branch.

II. "Constitutional official" means the secretary of state, the state treasurer, their deputies, assistants, and all employees of their departments.

III. "Elected official" means the governor, members of the executive council, members of the general court, county commissioners, county sheriffs, county treasurers, county attorneys, registers of deeds, and registers of probate.

IV. "Expense reimbursement" shall mean any price, charge, fee, expense, or other cost which is waived, forgiven, reduced, prepaid, or reimbursed in any form for the reasonable expenses of attendance, registration, travel, meals, or lodging related to a bona fide conference, meeting, seminar or educational or informational program, when the source of such reimbursement is other than the state, a county, or the United States of America.

V. (a) "Gift" means:

(1) Money in any amount, whether in the form of cash, check or any other negotiable or non-negotiable instrumentality for the transfer of money.

(2) Any other tangible thing, intangible thing, service, or the use thereof having more than insignificant economic value. Any such item with a value of less than \$25 is presumed to be of insignificant economic value.

(b) Notwithstanding subparagraph (a), "gift" shall not include:

(1) A political contribution as defined in RSA 664.

(2) A commercially reasonable loan, made in the ordinary course of business.

(3) Repayment to an elected official, public official, public employee, constitutional official, or legislative employee of a bona fide loan made by such a person.

(4) A ceremonial plaque, award, or other commemorative object, which is personally inscribed to the recipient and which has inconsequential economic value. A ceremonial object or award with a value of \$150 or less is presumed to be of inconsequential economic value.

(5) Objects or services which primarily serve an informational purpose provided in

the ordinary course of business, such as reports, books, maps, or charts.

(6) Money in any form, an object, or any tangible or intangible thing or service of economic value, where the donor's act of giving is purely private and personal in nature and the money, object, or tangible or intangible thing or service of economic value would have been given and received even if the person were not an elected official, public official, public employee, constitutional official, or legislative employee.

(7) Wages, salary, benefits, mileage, or payment for expenses received by the person in his or her regular course of employment or business which is unrelated to the government position held.

(8) Wages, salary, benefits, mileage, or payment for expenses paid to the person by the state, a county, or the United States of America related to performance of official duties.

(9) Tickets or free admission to a charitable, ceremonial, or political event provided that:

(A) The proceeds of the event are subject to the political contributions and expenditure reporting law, RSA 664; or

(B) The event is sponsored by a charitable organization that is registered with the division of charitable trusts, department of justice, or which is a charitable organization pursuant to section 501(c)(3) of the federal tax code; or

(C) The event is published as an event open for attendance by any member of the general court in the calendar of the senate or the house.

(10) Meals, beverages, lodging, or transportation associated with attendance at:

(A) Any event for which the primary significance is ceremonial or celebratory, provided the event is public or, if by invitation only, is planned to have an attendance greater than 50 people; or

(B) Any event where the person is attending in an official capacity representing the state and/or the senate, house, or the agency of which the person is a member.

(11) Expense reimbursement or an honorarium.

(12) Meals and beverages consumed at a meeting or event, the purpose of which is to discuss official business.

(13) Monetary or non-monetary awards or recognition issued under the suggestion and extraordinary service award program under RSA 99-E.

VI. "Honorarium" means a payment in any form to an elected official, public official, public employee, constitutional official, or legislative employee for an appearance, speech, written article or other document, service as a consultant or advisor, or participation in a discussion group or similar activities. Honorarium does not include a payment for such activities for which the person is being compensated by the state, a county, the United States of America, or by any other employer or client, where the activity giving rise to the honorarium is not related to or associated with any public office or government employment.

VII. "Family member" shall mean any person related to and living in the same domicile as the elected official, public official, public employee, constitutional official, or legislative employee, who shares a common economic interest in the expenses of daily living, including, but not limited to, a spouse, child, or parents.

VIII. "Legislative employee" means any person employed by the legislative branch.

VIII-a. "Official business" means, for elected members of the general court and

legislative employees, the discussion or transaction of legislative business, namely, any official action or non-action with regard to any potential pending or existing bill, resolution, amendment, report, or study, any other matter pending or proposed in a committee or in either house of the general court, or an issue of public policy which is or may be the subject of legislative attention, or any other matter which is within the official jurisdiction or cognizance of the general court.

IX. "Public employee" means any person, including but not limited to a classified or non-classified employee or volunteer, who conducts state business on behalf of the governor, any executive branch official, agency, or the general court.

X. "Public official" means a commissioned, unclassified, or nonclassified executive branch employee, but shall not include any commissioned, unclassified, or nonclassified employee elected by the legislature.

XI. "Value" means the amount at which property or services would change hands between a willing buyer and a willing seller when neither is under any compulsion to buy or sell and both have reasonable knowledge of the relevant facts.

Source. 2006, 21:9, eff. June 2, 2006. 2007, 354:2-4, eff. Sept. 15, 2007. 2008, 89:1, eff. July 20, 2008. 2009, 203:6, eff. Sept. 13, 2009.

**Complete Document**

**Can Be Viewed**

**In Bill Folder**

655 F.3d 78, 39 Media L. Rep. 2257  
(Cite as: 655 F.3d 78)

## C

United States Court of Appeals,  
First Circuit.  
Simon GLIK, Plaintiff, Appellee,  
v.

John CUNNIFFE, in his individual capacity; Peter J. Savalis, in his individual capacity; Jerome Hall-Brewster, in his individual capacity; City of Boston, Defendants, Appellants.

No. 10-1764.  
Heard June 8, 2011.  
Decided Aug. 26, 2011.


**Background:** Arrestee brought suit under § 1983, claiming that his arrest for filming police officers arresting a young man constituted a violation of his rights under the First and Fourth Amendments. The United States District Court for the District of Massachusetts, William G. Young, J., denied officers qualified immunity on arrestee's constitutional claims, and officers appealed.

**Holdings:** The Court of Appeals, Lipez, Circuit Judge, held that:

- (1) officers were not entitled to qualified immunity on First Amendment claim, and
- (2) officers were not entitled to qualified immunity on arrestee's Fourth Amendment claim.

Affirmed.

West Headnotes

[1] Federal Courts 170B  574

170B Federal Courts  
170BVIII Courts of Appeals

170BVIII(C) Decisions Reviewable  
170BVIII(C)2 Finality of Determination  
170Bk572 Interlocutory Orders Appealable  
170Bk574 k. Other particular orders.  
Most Cited Cases

Denial of a motion to dismiss on qualified immunity grounds, unlike denial of a typical motion to dismiss, is immediately appealable on interlocutory review.

[2] Constitutional Law 92  1925

92 Constitutional Law  
92XVIII Freedom of Speech, Expression, and Press  
92XVIII(P) Public Employees and Officials  
92k1925 k. In general. Most Cited Cases

Constitutional Law 92  1955

92 Constitutional Law  
92XVIII Freedom of Speech, Expression, and Press  
92XVIII(P) Public Employees and Officials  
92k1955 k. Police and other public safety officials. Most Cited Cases

Filming or videotaping of government officials engaged in their duties in a public place, including police officers performing their responsibilities, is protected by First Amendment. U.S.C.A. Const.Amend. 1.

[3] Constitutional Law 92  1551

92 Constitutional Law

655 F.3d 78, 39 Media L. Rep. 2257  
(Cite as: 655 F.3d 78)

and were aware, based on their asking Glik whether he was recording audio, that cell phones may have sound recording capabilities. The fact that a cell phone may have other functions is thus irrelevant to the question of whether Glik's recording was "secret."

Appellants' argument reduces to the contention that, though they were aware of Glik's recording, they initially thought Glik was taking pictures of them rather than recording video and audio. This is almost precisely the argument rejected by the four concurring justices in *Rivera*, and it runs directly contrary to the logic of *Hyde's* "plain view" discussion. Taking the appellants' argument to its logical end, the *Hyde* defendant's recording would have escaped a wiretap offense only if he had held his tape recorder in plain view *and* there was affirmative evidence that the officers were aware that the device was switched on and recording audio. To the contrary, *Hyde* makes the point that the use in plain view of a device commonly known to record audio is, on its own, sufficient evidence from which to infer the subjects' actual knowledge of the recording. See *750 N.E.2d at 971* (noting that recording would not have been secret under the statute if "the defendant had simply informed the police of his intention to tape record the encounter, or even held the tape recorder in plain sight" (emphasis added)). Simply put, a straightforward reading of the statute and case law cannot support the suggestion that a recording made with a device known to record audio and held in plain view is "secret."

We thus conclude, on the facts of the complaint, that Glik's recording was not "secret" within the meaning of Massachusetts's wiretap statute, and therefore the officers lacked probable cause to arrest him. Accordingly, the complaint makes out a violation of Glik's Fourth Amendment rights.

## 2. Was the Absence of Probable Cause Clearly Established Under the Circumstances?

Appellants contend that, regardless of whether Glik's conduct in fact violated the wiretap law, the state of the law was such that a reasonable officer would not have understood that arresting Glik for a wiretap offense under the circumstances alleged in the complaint would violate Glik's Fourth Amendment rights. They point out, rightly, that a lesser showing is required for an officer to be entitled to

qualified immunity from a Fourth Amendment claim based on a warrantless arrest than to establish probable cause. See *Cox v. Hainey*, 391 F.3d 25, 31 (1st Cir.2004). Officers are entitled to qualified immunity "so long as the presence of probable cause is at least arguable." *Ricci v. Urso*, 974 F.2d 5, 7 (1st Cir.1992) (quoting *Prokey v. Watkins*, 942 F.2d 67, 72 (1st Cir.1991)).

[6] The presence of probable cause was not even arguable here. The allegations of the complaint establish that Glik was openly recording the police officers and that they were aware of his surveillance. For the reasons we have discussed, we see no basis in the law for a reasonable officer to conclude that such a conspicuous act of recording was "secret" merely because the officer did not have actual knowledge of whether audio was being recorded. We thus agree with the district court that, at this stage in the litigation, the officers are not entitled to qualified immunity from Glik's Fourth Amendment claim.

### \*89 III.

For the reasons set forth above, we affirm the district court's order denying appellants' claim of qualified immunity.

*So ordered.*

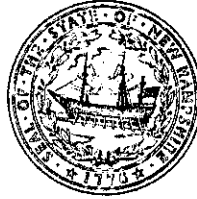
C.A.1 (Mass.),2011.  
Glik v. Cunniffe  
655 F.3d 78, 39 Media L. Rep. 2257

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ATTORNEY GENERAL  
DEPARTMENT OF JUSTICE

33 CAPITOL STREET  
CONCORD, NEW HAMPSHIRE 03301-6397

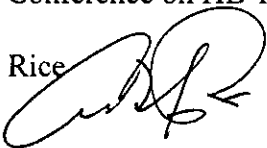
MICHAEL A. DELANEY  
ATTORNEY GENERAL



ANN M. RICE  
DEPUTY ATTORNEY GENERAL

MEMO

TO : Members of the Committee of Conference on HB 145

FROM : Deputy Attorney General Ann Rice 

DATE : May 24, 2012

RE : House Bill 145 – Permitting the audio and video recording of a law enforcement officer while in the course of his or her official duties.

During the Senate hearing on HB 145, there was considerable discussion about the First Circuit Court of Appeals' opinion in *Glik v. Cunniffe*, 655 F.3d 78 (1<sup>st</sup> Cir. 2011), regarding the public's constitutional right to audio record law enforcement, and whether police officers were acting in accordance with the opinion. I told members of the committee that our office would issue a memo to law enforcement alerting them to the *Glik* opinion. That memo was issued in March. I have attached a copy for your review and consideration during the committee of conference.



**ATTORNEY GENERAL  
DEPARTMENT OF JUSTICE**


33 CAPITOL STREET  
CONCORD, NEW HAMPSHIRE 03301-6397

MICHAEL A. DELANEY  
ATTORNEY GENERAL



ANN M. RICE  
DEPUTY ATTORNEY GENERAL

TO: County Attorneys  
All Law Enforcement Agencies

FROM: Michael A. Delaney, Attorney General 

RE: Audio Recording Law Enforcement Officers

DATE: March 22, 2012

I am aware that in the recent past a number of police departments have arrested individuals for audio and or video recording police officers in public engaged in official duties. I want to alert all law enforcement agencies to a recent opinion of the First Circuit Court of Appeals, which makes such arrests illegal. On August 25, 2011, the Court issued an opinion in Glick v. Cunniffe, 655 F.3d 78 (1<sup>st</sup> Cir. 2011), holding that members of the public have a right, under the first amendment to federal constitution, to video and audio record law enforcement officers in a public place when the officers are acting in the course of their official duties, provided that the recording is done peacefully and does not interfere with the officers' performance of their duties.

Mr. Glick was arrested for filming several police officers in the Boston Common as they arrested another individual. He was charged with multiple offenses, including a violation of the Massachusetts wiretap statute. The charges were ultimately dismissed as lacking probable cause. Glick sued the police department, claiming that the arrest violated his rights under the First and Fourth Amendments. The officers raised a defense of qualified immunity, arguing that at the time of arrest the law did not clearly establish clear that Glick had a right to record the officers. The First Circuit Court of Appeals disagreed, finding that it was well established that "a citizen's right to film government officials, in the discharge of their duties in a public space is a basic, vital, and well-established liberty safeguarded by the First Amendment." *Id.* at 86.

The Court recognized that the right to record is not unlimited, and may be subject to reasonable time, place and manner restrictions. Although the Court did not specify the types of restrictions that would be permissible, it implicitly acknowledged that a person does not have a right to record in a manner that would impair or interfere with an officer's ability to perform his or her duties. The Court also observed that the Boston Common, where Mr. Glick was arrested, is a prime example of a public forum where the state's ability to limit the exercise of First

---

Amendment activity is most restricted. The Court pointed to other cases in which the right to record had been upheld, including a photographer taking photos of a car accident scene, a journalist video recording a crime scene, the filing of a public official outside his home.

While the Glick decision leaves much unanswered in terms of when and how the right to record may be limited, it makes clear that a person has a First Amendment right to both video and audio record police officers engaged in official duties in public places such as a park, in a public meeting, or on a public street or sidewalk, provided it does not interfere with the officer's performance of those duties. If a person engaging in such recording activity is arrested, the arresting officer could be subject to liability for his or her actions.

If you have questions about how the Glick decision may impact your department's policies and procedures, I would encourage you to consult with the attorney for your municipality or county.

#713247

**Duncan, Susan**

---

**From:** Howard J. Zibel [hzibel@courts.state.nh.us]  
**Sent:** Tuesday, August 09, 2011 5:03 PM  
**To:** Houde, Matthew; Carson, Sharon; Luther, Jim; Groen, Fenton  
**Cc:** Duncan, Susan; Lehmann, Richard  
**Subject:** HB 145 (audio and video recording of public official)

Dear Senate Judiciary Committee:

I did not testify in the Senate on this bill because the House had amended it to apply to only law enforcement. I did testify in the House on behalf of the judicial branch when the bill, as introduced, was applicable to all public officials. Since you are now considering amending the bill to again apply to all public officials, I thought I would share with you the substance of my testimony before House Criminal Justice and Public Safety.

My testimony was divided into two parts: in the courtroom and outside the courtroom but within the courthouse. Inside the courtroom, case law in New Hampshire has held, as a matter of constitutional law, that judges control what occurs in the courtroom. Thus, there could be constitutional issues with allowing any person to make an audio or video recording of a judge in the course of his or her official duties. Regarding outside the courtroom but within the courthouse, the same constitutional issues are not necessarily present; however, you may want to consider some public policy issues as to why the audio and video recording of public officials in the courthouse may not be in the public interest. Much activity goes on in courthouse lobbies and other public, non courtroom, areas. Lawyers are often talking with clients. Their private conversations may be picked up by the recordings. Numerous individuals are often in courthouses for confidential matters, such as juvenile hearings. They have a reasonable expectation that their presence in the courthouse should not be recorded.

In sum, on behalf of the judicial branch, I urge you to consider the above as you deliberate amending HB 145.

Howard J. Zibel, General Counsel  
New Hampshire Judicial Branch

8/10/2011

To: Members of the Senate Judiciary Committee

8/5/11

From: Dennis Hamel, citizen and taxpayer, Henniker NH

Subj: Changes to the videotape law HB 145

Ladies and Gentlemen of the Committee,

As you know, New Hampshire rightly seeks to keep government open and honest. Executive sessions are severely limited, and secrecy is generally frowned on.

It is clear to me that ON THE JOB, MEANS ON THE RECORD.

Sunshine (in the form of public scrutiny) is an excellent cleanser.

I note with interest the pleadings of various police functionaries claiming that officers doing their paid jobs should enjoy dispensation from this simple bit of clarity.

Please do not be swayed. The police routinely video record persons SUSPECTED of breaking a law, and just as routinely 'lose' videotapes and recordings that may be exculpatory.

Being open and above board should be a two way street.

I am asking that you lead by advocating that ALL public employees should understand - while drawing a paycheck and in performance of their jobs, they have no reasonable expectation of privacy.

Protect those same employees during 'down' time (lunch, breaks etc) as needed but do NOT be moved by the nonsense that every undercover operation will (or even could) be compromised with an open and clear record.

In particular, ANYONE involved in a traffic stop must have the right to record (I would say even with notice to the police involved) and that record (audio, video or both) be should be allowed as evidence in court.

If you wrongly believe police do not routinely abuse their position, picture this:

Every time you see a police car on a divided highway it is *passing* all the cars which are now doing the speed limit because of the police presence.

RSA 265:61 (exceptions to speed limit law) reads as follows:

**265:61 Speed Exception.** - The speed limitations set forth in RSA 265:60 shall not apply to vehicles when driven with due regard for safety under the direction of the peace officers in the chase or apprehension of violators of the law or of persons charged with or suspected of any such violation, nor to fire department or fire patrol vehicles when traveling in response to a fire alarm, nor to public or private ambulances or other emergency vehicles when traveling in emergencies. This exemption shall not, however, protect the driver of any such vehicle from the consequences of a reckless disregard of the safety of others.

You may note as I do that no such exemption exists for cruising down the highway...

Thank you for your consideration in this matter.



re: HB 145

# CONCORD MONITOR

Published on *Concord Monitor* (<http://www.concordmonitor.com>)

[Home](#) > Photographer fights the law

CONCORD

## Photographer fights the law

Local man takes case to higher court

By [Maddie Hanna](#) / [Monitor staff](#)  
Created 08/05/2011 - 00:00

It's been several months since Concord photographer Brian Blackden was found guilty of impersonating an emergency responder for showing up at a Canterbury crash scene dressed like a firefighter. But convictions haven't put an end to Blackden's battles with the courts and the police.

Today, Blackden is trying to appeal his conviction - and he has an appeal pending before the state Supreme Court on a related matter. He's preparing to sue the state troopers association. And he says he's been harassed by members of a police motorcycle club who, he says, robbed his business.

"It's a personal thing with certain members of the state police," Blackden said yesterday, explaining why he plans to pursue the appeals and lawsuit. "And this is not a brand new fight."

Besides the impersonating emergency personnel conviction, Blackden was also found guilty by a Concord district court judge earlier this year of displaying red lights without authorization on the converted ambulance he drove to the Interstate 93 crash scene last August.

He appealed that conviction to the state Supreme Court, which last month accepted his case. Blackden, who said he turned on the ambulance's lights to caution oncoming cars after fire officials instructed him to park behind their vehicles at the accident scene, said his appeal cites conflicting statutes on the use of red emergency lights.

He's also trying to appeal his conviction for impersonating emergency personnel and said he will go before the court next week to argue to change his bail conditions, which have remained in place because of his appeal and bar him from coming within 500 feet of an accident.

"It's a matter of principle, number one, because I did nothing wrong," said Blackden, who hasn't taken pictures at accident scenes since he was arrested last year. A former freelance photographer who sold his work to local media outlets and to a national first responder publication, Blackden maintains that he wears protective gear to be safe, not to sneak onto a scene.

But Blackden - who has a pending lawsuit against the state police for taking his camera after the August incident - said he's also motivated by past run-ins with members of the state police.

"There's been bad blood between a few people, and this is stemming from that," he said. "And it's payback time."

Blackden, who tried earlier this year to gain ownership of the state troopers association trade name, said he's now preparing to sue the association for allegedly using his photos on a website without his permission. The association, which had let its nonprofit status lapse with the secretary of state's office, was eventually able to reregister its name.

Blackden said this week his goal in that dispute had been to get the state troopers to claim ownership of their name for the purposes of the copyright infringement lawsuit he intends to file. "Now that I have them always up to owning the name, I can prove they stole my photographs," he said.

A message sent to the troopers association through its website was unreturned yesterday. Trooper Bill Graham, the association's past president, said in an email yesterday that the dispute over the trade name had been resolved, and there were "no additional issues related to that incident."

Blackden is also fighting the state through the Division of Motor Vehicles after a trooper at the crash scene in Canterbury last August filed motions to revoke Blackden's driver's license as well as the plates on his ambulance, according to Blackden.

"It gets to the point of ludicrous," said Blackden, who said he already took the bulbs out of the ambulance's red lights last year at a judge's instruction. Blackden also uses the ambulance as a showroom for his pepper spray supply business, which is based on North State Street.

Meanwhile, Blackden said he's continued to have trouble at his business since May, when he reported being robbed by five members of a police motorcycle club who showed up at the store and took a vest that Blackden said bore their club's colors.

The Monitor has not named the club since no arrests have been made, but Blackden has publicized the group's website to local media outlets and is offering a reward for information that leads to the arrests of club members involved in the May 21 incident.

"My goal is obviously to bring these people to justice and know who they are so I can protect myself from them," he said, noting that motorcycles have repeatedly driven by his store since the incident, slowing and revving their engines. The female mannequin often on display outside his shop was also beheaded, Blackden said, and he's gotten numerous hang-up phone calls at his store.

"In my opinion, it's a form of harassment," he said.

Concord police Lt. Keith Mitchell said this week the theft reported by Blackden is still under investigation.

"We really do hope we can conclude this in the very near future," Mitchell said.

***(Maddie Hanna can be reached at 369-3321 or [mhanna@cmonitor.com](mailto:mhanna@cmonitor.com).)***

Crime Law & Justice CONCORD (NH) Police Brian Blackden Maddie Hanna Monitor staff

**Source URL:** <http://www.concordmonitor.com/article/271992/photographer-fights-the-law>

**Links:**

[1] <http://www.concordmonitor.com/photo/brian-blackden>

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# CONCORD Photographer fights the law

Local man takes case to higher court



Photo by Katie Barnes / Monitor staff

Brian Blackden is pictured wearing his marked photographer's firefighter's helmet next to his first responder vehicle at his home in Concord on Wednesday, August 25, 2010. While photographing a fatal accident in Canterbury on Wednesday, August 25, 2010, a state trooper ordered that Blackden hand over his camera because authorities were unsure of his new organization affiliation. The New Hampshire State Police have not returned Blackden's camera, and say they are considering pressing charges because he was dressed like a firefighter. Blackden is a freelance photographer and covers spot news for various news organizations, including the Concord Monitor. Purchase photo reprints at PhotoExtra »

By Maddie Hanna / Monitor staff  
August 5, 2011

It's been several months since Concord photographer Brian Blackden was found guilty of impersonating an emergency responder for showing up at a Canterbury crash scene dressed like a firefighter. But convictions haven't put an end to Blackden's battles with the courts and the police.

Today, Blackden is trying to appeal his conviction - and he has an appeal pending before the state Supreme Court on a related matter. He is preparing to sue the state troopers' association. And he says he's been harassed by members of a police motorcycle club who, he says, robbed his business.

"It's a personal thing with certain members of the state police," Blackden said yesterday, explaining why he plans to pursue the appeals and lawsuit. "And this is not a brand new fight."

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Mitt Romney returns to New Hampshire on Monday for a trip...

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09:24 AM

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08:30 AM

Laconia Bike Week revenue tops \$50,000  
LACONIA, N.H. (AP) -- It looks as if Motorcycle Week...

07:26 AM

Laconia mayor announces re-election bid  
LACONIA, N.H. (AP) -- Laconia Mayor Mike Seymour says...

07:14 AM

Rochester moves forward with magnet school plans  
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## New Hampshire Municipal Association

January 31, 2012

The Honorable Matthew Houde, Chairman  
Senate Judiciary Committee  
Room 101, Legislative Office Building  
Concord, NH 03301

Re: HB 145, an act permitting the audio and video recording of a public official while in the course of his or her official duties.

Dear Mr. Chairman and Honorable Committee Members:

On behalf of the New Hampshire Municipal Association, I write to express our concerns with the committee amendment #2012-0119s on HB 145. HB 145, as amended by the House, was far more limited in scope, applying only to law enforcement officials. This amendment appears to expand the permission to audio/video recording of all public officials, not just law enforcement, and at all levels of government.

NHMA is aware of a letter addressed to Senate President Peter Bragdon and the full Senate, dated January 20, 2012, and signed by most, if not all, of New Hampshire's agency and department heads. NHMA shares the same concerns articulated by state agency heads in this letter.

NHMA too supports the policy of governmental transparency and accountability, but we urge you to study further the unintended consequences this bill may have on local government officials who serve openly and honestly to meet the needs of our citizens every day. We urge you to recommit this bill for further study and greater public input.

Thank you for opportunity to express our concerns with this bill.

Sincerely,

Cordell A. Johnston  
Government Affairs Counsel

Cc: Senate Judiciary Committee



Amendment to HB 225-FN

1 Amend the bill by replacing all after the enacting clause with the following:

2  
3 1 Return of Personal Property Seized by Law Enforcement Agencies. Amend RSA 595-A:6 to  
4 read as follows:

5 595-A:6 Seizure, Custody and Disposition of Articles; Exceptions.

6 *I. Except as provided in paragraph II, if an officer in the execution of a search warrant,*  
7 *or by some other authorized method, finds property or articles he is empowered to take, he shall*  
8 *seize and safely keep them under the direction of the court or justice so long as necessary to permit*  
9 *them to be produced or used as evidence in any trial. Upon application by a prosecutor, defendant,*  
10 *or civil claimants, the court, prior to trial or upon an appeal after trial, shall, upon notice to a*  
11 *defendant and hearing, and except for good cause shown, order returned to the rightful owners any*  
12 *stolen, embezzled or fraudulently obtained property, or any other property of evidential value, not*  
13 *constituting contraband. This section shall apply regardless of how possession of the property was*  
14 *obtained by the state. Photographs or other identification or analysis made of the returned property*  
15 *shall be admissible at trial as secondary evidence, in lieu of the originals, for all relevant purposes,*  
16 *including ownership. In the case of unknown, unapprehended defendants, or defendants wilfully*  
17 *absent from the jurisdiction, the court shall have discretion to appoint a guardian ad litem to*  
18 *represent the interest of such unknown or absent defendants. The judicial findings on such matters*  
19 *as ownership, identification, chain of possession or value made at such an evidentiary hearing for the*  
20 *restoration of property to the rightful owners shall thereafter be admissible at trial, to be considered*  
21 *with other evidence on the same issues, if any, as may be admitted before the finder of fact. All other*  
22 *property seized in execution of a search warrant or otherwise coming into the hands of the police*  
23 *shall be returned to the owner of the property, or shall be disposed of as the court or justice orders,*  
24 *which may include forfeiture and either sale or destruction as the public interest requires, in the*  
25 *discretion of the court or justice, and in accordance with due process of law. Any property, the*  
26 *forfeiture and disposition of which is specified in any general or special law, shall be disposed of in*  
27 *accordance therewith.*

28 *II. Upon the acquittal of or dismissal of criminal proceedings against a person*  
29 *charged with a crime or upon the disposal of criminal proceedings against a person by nol*  
30 *prosequi or upon a finding that no abuse has occurred in a proceeding against a person*  
31 *under RSA 173-B, any personal property owned by such person, including weapons,*  
32 *confiscated by a law enforcement agency or entity under this section shall be returned to*



1 *the person or made available to the person by the law enforcement agency or entity that*  
2 *confiscated the personal property within 10 days of the date on which the acquittal or*  
3 *dismissal or nol prosequi or determination of no finding became a final judgment, not*  
4 *subject to appeal. For purposes of this section, any court rule, statute, or common law*  
5 *allowing for an appeal to be taken after expiration of any appeal period shall not count*  
6 *toward such appeal period. This section shall not apply to illegal contraband or to*  
7 *personal property that a person, is prohibited from possessing under state or federal law.*  
8 *Property held for use as evidence in a case involving a co-defendant may be retained by the*  
9 *law enforcement agency or entity pursuant to law authorizing property owned by a third*  
10 *person to be held for use as evidence in a case involving a person other than the property*  
11 *owner. If after diligent efforts the agency or entity is unable to comply with this section, it*  
12 *may file a request with the court for an extension or exemption. Any agency or entity not*  
13 *complying with this paragraph shall pay a civil penalty of \$100 per day to the person for*  
14 *each day the agency or entity is in noncompliance, not to exceed a total civil penalty of*  
15 *\$10,000.*

16 2 Effective Date. This act shall take effect January 1, 2013.



2012-0521s

AMENDED ANALYSIS

This bill requires that personal property confiscated by law enforcement agencies be returned or made available to the owner within 10 days of receipt of written notice of the acquittal or dismissal of proceedings against a person charged with a crime.

# Proposal to allow taping of police fails in the House

By CARA HOGAN  
chogan@eagletribune.com

The New Hampshire House killed a bill yesterday to allow citizens to record public officials, with some arguing it was an unnecessary law.

House Bill 145 would have made it legal for anyone to make video or audio recordings of public officials on the job, including police officers on duty. The bill passed the Senate, but failed in the House, 148-175.

Bill co-sponsor Rep. Jennifer Coffey, R-Andover, said she was disappointed.

"I think, unfortunately, some people had misconceptions about the bill," she said. "There was concern that the newly amended language of the bill could be harmful."

Some lawmakers thought

the First Circuit Court of Appeals decision in *Glik v. Cunniffe* already made recording police officers legal, according to bill sponsor Rep. Al Baldasaro, R-Londonderry.

"They were saying the Glik decision covered it all, so there was no reason for this legislation," he said. "But I'm saying it doesn't. The Glik case left the door open for many issues."

The Attorney General's Office wrote a letter to all state law enforcement in March, explaining the court decision and its implications for local departments.

"I am aware that in the past a number of police officers have arrested individuals for audio or video recording police officers in public engaged in official duties," Deputy Attorney General Ann Rice wrote.

"Members of the public have a right, under the First Amendment of the Constitution, to video and audio record law enforcement officers in a public place ... provided the recording is done peacefully and does not interfere with the officer's performance of their duties."

Some legislators argued the letter was enough.

But Coffey said the proposed bill would have extended those rights to include all public officials.

"Unfortunately, people are focusing only on police officers, but it's officials in the course of doing their duty," she said.

"It's about transparency in the government."

HB 145

The court ruling also didn't specify what happens if an officer does confiscate a camera or what constitutes interfering with an officer on duty, Baldasaro said.

"If they take your film or camera, they can hold it as long as they want as evidence," he said. "With this bill, they had 10 days to give it back."

The bill was opposed by many police officers because it would hold them accountable on the job, Baldasaro said.

"Police officers didn't want this, without a doubt," he said. "One Representative gave a very passionate speech and, of course, her husband is a police officer."

The sponsors of the bill don't intend to give up, though this year's legislative session has ended.

"This is something we've been working on for a long time," Coffey said. "As long as I get reports from constituents that there's been issue, I'm going to keep fighting for their rights. Hopefully, we'll bring this back next session."

*Cagle Tribune*  
6/7/12

# Committee Report

STATE OF NEW HAMPSHIRE  
SENATE  
REPORT OF THE COMMITTEE

Date: May 26, 2011

THE COMMITTEE ON Judiciary

to which was referred House Bill 145

AN ACT (New Title) permitting the audio and video recording of a law enforcement officer while in the course of his or her official duties.

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

**BE RE-REFERRED TO COMMITTEE**

BY A VOTE OF: 4-0

AMENDMENT # s

Senator Sharon M. Carson  
For the Committee

Susan Duncan 271-8631

## New Hampshire General Court - Bill Status System

**Docket of HB145**

Docket Abbreviations

**Bill Title:** (New Title) permitting the audio and video recording of a law enforcement officer while in the course of his or her official duties.

*Official Docket of HB145:*

<b>Date</b>	<b>Body</b>	<b>Description</b>
1/11/2011	H	Introduced 1/6/2011 and Referred to Criminal Justice and Public Safety; <b>HJ 11</b> , PG. 174
1/18/2011	H	Public Hearing: 1/25/2011 10:30 AM LOB 204
1/25/2011	H	==CANCELLED== Executive Session: 2/3/2011 10:00 AM LOB 204
2/3/2011	H	Subcommittee Work Session: 2/8/2011 9:15 AM LOB 204
2/10/2011	H	==RESCHEDULED== Work Session: 2/15/2011 8:30 AM LOB 204 (Orig 8:00 AM)
2/16/2011	H	Subcommittee Work Session: 2/22/2011 8:31 AM LOB 204
3/2/2011	H	Subcommittee Work Session: 3/9/2011 9:00 AM LOB 204
3/2/2011	H	Executive Session: 3/9/2011 10:00 AM LOB 204
3/10/2011	H	Committee Report: Ought to Pass with Amendment #0766h(NT) for Mar 15 (Vote 13-4; RC); <b>HC 22</b> , PG.548
3/10/2011	H	Proposed Committee Amendment <b>#2011-0766h</b> (New Title); <b>HC 23</b> , PG.587
3/15/2011	H	Amendment #0766h (New Title) Adopted, <b>RC 215-151</b> ; <b>HJ 26</b> , PG.759-761
3/15/2011	H	Ought to Pass with Amendment #0766h(NT): MA DIV 296-70; <b>HJ 26</b> , PG.759-761
3/23/2011	S	Introduced and Referred to Judiciary; <b>SJ 11</b> , Pg.190
5/5/2011	S	Hearing: 5/26/11, Room 101, LOB, 1:15 p.m.; <b>SC23</b>
5/26/2011	S	Committee Report: Rereferred to Committee, 6/1/11; <b>SC26</b>
6/1/2011	S	Rereferred to Committee, MA, VV; <b>SJ 19</b> , Pg.519

NH House

NH Senate

STATE OF NEW HAMPSHIRE  
SENATE  
REPORT OF THE COMMITTEE

Date: January 9, 2012

THE COMMITTEE ON Judiciary

to which was referred House Bill 145

AN ACT (New Title) permitting the audio and video recording of a law enforcement officer while in the course of his or her official duties.

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

**OUGHT TO PASS WITH AMENDMENT**

BY A VOTE OF: 3 - 1

AMENDMENT # 0138s

Senator Fenton Groen  
For the Committee

Susan Duncan 271-8631



STATE OF NEW HAMPSHIRE  
SENATE  
REPORT OF THE COMMITTEE

Date: February 2, 2012

THE COMMITTEE ON Judiciary

to which was referred House Bill 145

AN ACT (New Title) permitting the audio and video recording of a law enforcement officer while in the course of his or her official duties.

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

**OUGHT TO PASS WITH AMENDMENT**

BY A VOTE OF: 2-1

AMENDMENT # 0575s

Senator Fenton Groen  
For the Committee

Susan Duncan 271-8631

## New Hampshire General Court - Bill Status System

**Docket of HB145**

Docket Abbreviations

**Bill Title:** (New Title) permitting the audio and video recording of a law enforcement officer while in the course of his or her official duties.

*Official Docket of HB145:*

<b>Date</b>	<b>Body</b>	<b>Description</b>
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2/10/2011	H	==RESCHEDULED== Work Session: 2/15/2011 8:30 AM LOB 204 (Orig 8:00 AM)
2/16/2011	H	Subcommittee Work Session: 2/22/2011 8:31 AM LOB 204
3/2/2011	H	Subcommittee Work Session: 3/9/2011 9:00 AM LOB 204
3/2/2011	H	Executive Session: 3/9/2011 10:00 AM LOB 204
3/10/2011	H	Committee Report: Ought to Pass with Amendment #0766h(NT) for Mar 15 (Vote 13-4; RC); <b>HC 22</b> , PG.548
3/10/2011	H	Proposed Committee Amendment <b>#2011-0766h</b> (New Title); <b>HC 23</b> , PG.587
3/15/2011	H	Amendment #0766h (New Title) Adopted, <b>RC 215-151</b> ; <b>HJ 26</b> , PG.759-761
3/15/2011	H	Ought to Pass with Amendment #0766h(NT): MA DIV 296-70; <b>HJ 26</b> , PG.759-761
3/23/2011	S	Introduced and Referred to Judiciary; <b>SJ 11</b> , Pg.190
5/5/2011	S	Hearing: 5/26/11, Room 101, LOB, 1:15 p.m.; <b>SC23</b>
5/26/2011	S	Committee Report: Rereferred to Committee, 6/1/11; <b>SC26</b>
6/1/2011	S	Rereferred to Committee, MA, VV; <b>SJ 19</b> , Pg.519
2/2/2012	S	Committee Report: Ought to Pass with Amendment <b>#2012-0575s</b> , NT, 2/8/12; <b>SC6</b>
2/8/2012	S	Committee Amendment 0575s, NT, AA, VV; <b>SJ 4</b> , Pg.109
2/8/2012	S	Sen. Groen Floor Amendment <b>#2012-0673s</b> , AA, VV; <b>SJ 4</b> , Pg.110
2/8/2012	S	Sen. Houde Floor Amendment <b>#2012-0670s</b> , AF, VV; <b>SJ 4</b> , Pg.110
2/8/2012	S	Sen. Houde Floor Amendment <b>#2012-0678s</b> , AF, VV; <b>SJ 4</b> , Pg.111
2/8/2012	S	<b>Ought to Pass with Amendment</b> 0575s, NT, 0673s, <b>RC 18Y-5N</b> , MA; OT3rdg; <b>SJ 4</b> , Pg.112
3/7/2012	H	House Non-Concurs with Senate AM's and Requests C of C (Rep Swinford): MA VV; <b>HJ 21</b> , PG.1253
3/7/2012	H	Speaker Appoints: Reps Welch, Warden, Parsons, and Ginsburg; <b>HJ 21</b> , PG.1253
5/2/2012	S	Sen. Houde Accede to House Request for Committee of Conference MA, VV

5/2/2012	S	President Appoints: Senators Groen, Luther, and Houde
5/23/2012	H	Conference Committee Meeting: 5/29/2012 8:30 AM LOB 204 ==TIME CHANGE (Orig 9:00 AM)==
5/30/2012	H	Conferee Change: Rep Swinford Replaces Rep Ginsburg; <b>HJ 47</b> , PG.2507
5/30/2012	S	Conferee Change; Senator Carson Replaces Senator Houde
5/31/2012	S	Conference Committee Report <b>#2012-2390c</b> ; Senate Amendment + New Amendment, Filed
6/6/2012	S	Conference Committee Report 2390c; <b>RC 17Y-6N</b> , Adopted
6/6/2012	H	Conference Committee Report #2390c Failed, DIV 148-175

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NH House

NH Senate

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# Other Referrals

HB 145 -- (NEW TITLE) PERMITTING THE AUDIO AND VIDEO RECORDING OF A LAW ENFORCEMENT OFFICER WHILE IN THE COURSE OF HIS OR HER OFFICIAL DUTIES.

# COMMITTEE REPORT FILE INVENTORY

ORIGINAL REFERRAL                       RE-REFERRAL

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

- DOCKET (Submit only the latest docket found in Bill Status)
- COMMITTEE REPORT
- CALENDAR NOTICE
- HEARING REPORT
- PREPARED TESTIMONY AND OTHER SUBMISSIONS HANDED IN AT THE PUBLIC HEARING

SIGN-UP SHEET(S) (2)

**ALL AMENDMENTS (passed or not) CONSIDERED BY COMMITTEE:**

- AMENDMENT # 25545                       - AMENDMENT # 01195
- AMENDMENT # 25385                       - AMENDMENT # 00835

**ALL AVAILABLE VERSIONS OF THE BILL:**

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

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

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DATE DELIVERED TO SENATE CLERK

1/9/2012

BY:

Susan A. Weaver  
COMMITTEE AIDE

May 29, 2012  
2012-2390-CofC  
01/09

Committee of Conference Report on HB 145, an act permitting the audio and video recording of a law enforcement officer while in the course of his or her official duties.

Recommendation:

That the House recede from its position of nonconcurrence with the Senate amendment, and concur with the Senate amendment, and

That the Senate and House adopt the following new amendment to the bill as amended by the Senate, and pass the bill as so amended:

Amend RSA 570-A:2, II(m)(2) as inserted by section 1 of the bill by replacing it with the following:

(2) Any audio or video recording of a public official shall remain the property of its owner. In the event that such property is seized by law enforcement authorities, the device containing the audio or video recording along with the audio or video file shall be provided to the owner of the property within 10 business days of the day the property is seized.

The signatures below attest to the authenticity of this Report on HB 145, an act permitting the audio and video recording of a law enforcement officer while in the course of his or her official duties.

Conferees on the Part of the Senate

Conferees on the Part of the House

\_\_\_\_\_  
Sen. Groen, Dist. 6

\_\_\_\_\_  
Rep. Welch, Rock. 8

\_\_\_\_\_  
Sen. Luther, Dist. 12

\_\_\_\_\_  
Rep. Warden, Hills. 7

\_\_\_\_\_  
Sen. Carson, Dist. 14

\_\_\_\_\_  
Rep. Parsons, Straf. 3

\_\_\_\_\_  
Rep. Swinford, Belk. 5

HB 145-- (NEW TITLE) PERMITTING THE AUDIO AND VIDEO RECORDING OF A  
LAW ENFORCEMENT OFFICER WHILE IN THE COURSE OF HIS OR HER  
OFFICIAL DUTIES.

COMMITTEE REPORT FILE INVENTORY

\_\_\_\_\_ ORIGINAL REFERRAL      \_\_\_\_\_ RE-REFERRAL

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- PREPARED TESTIMONY AND OTHER SUBMISSIONS
- SIGN-UP SHEET(S)

ALL AMENDMENTS (passed or not) CONSIDERED BY COMMITTEE:  0538s       0521s       2554s  
 - AMENDMENT # 0575s       - AMENDMENT # 0119s  
 - AMENDMENT # 0522s       - AMENDMENT # 0083s

ALL AVAILABLE VERSIONS OF THE BILL:  
 AS INTRODUCED       AS AMENDED BY THE HOUSE  
\_\_\_\_\_ FINAL VERSION      \_\_\_\_\_ AS AMENDED BY THE SENATE

OTHER (Anything else deemed important but not listed above, such as amended fiscal notes): Comm. of Conf. Report

DATE DELIVERED TO SENATE CLERK 6/14/12      Suzanne Durbin  
BY COMMITTEE AIDE