

Committee Report

REGULAR CALENDAR

March 10, 2021

HOUSE OF REPRESENTATIVES

REPORT OF COMMITTEE

The Minority of the Committee on Criminal Justice and Public Safety to which was referred HB 539,

AN ACT relative to records of communications common carriers. Having considered the same, and being unable to agree with the Majority, report with the following resolution: RESOLVED, that it is INEXPEDIENT TO LEGISLATE.

Rep. David Meuse

FOR THE MINORITY OF THE COMMITTEE

**MINORITY
COMMITTEE REPORT**

Committee:	Criminal Justice and Public Safety
Bill Number:	HB 539
Title:	relative to records of communications common carriers.
Date:	March 10, 2021
Consent Calendar:	REGULAR
Recommendation:	INEXPEDIENT TO LEGISLATE

STATEMENT OF INTENT

During testimony for this bill, the committee heard from the sponsor and two parties advocating for its passage. We did not hear from any telephone service carriers or from the New Hampshire Attorney General's Office, whose ability under the current statute to issue an order to carriers to turn over phone records would be eliminated by this bill. While the minority agrees that protecting individual privacy from state intrusion is an obligation under the New Hampshire Constitution, we felt that making such a significant change to the law without hearing from the affected parties would be premature and has the potential to lead to unintended consequences.

Rep. David Meuse
FOR THE MINORITY

Original: House Clerk
Cc: Committee Bill File

REGULAR CALENDAR

Criminal Justice and Public Safety

HB 539, relative to records of communications common carriers. **INEXPEDIENT TO LEGISLATE.** Rep. David Meuse for the **Minority** of Criminal Justice and Public Safety. During testimony for this bill, the committee heard from the sponsor and two parties advocating for its passage. We did not hear from any telephone service carriers or from the New Hampshire Attorney General's Office, whose ability under the current statute to issue an order to carriers to turn over phone records would be eliminated by this bill. While the minority agrees that protecting individual privacy from state intrusion is an obligation under the New Hampshire Constitution, we felt that making such a significant change to the law without hearing from the affected parties would be premature and has the potential to lead to unintended consequences.

Original: House Clerk
Cc: Committee Bill File

REGULAR CALENDAR

March 10, 2021

HOUSE OF REPRESENTATIVES

REPORT OF COMMITTEE

The Majority of the Committee on Criminal Justice and Public Safety to which was referred HB 539,

AN ACT relative to records of communications common carriers. Having considered the same, report the same with the recommendation that the bill OUGHT TO PASS.

Rep. Dave Testerman

FOR THE MAJORITY OF THE COMMITTEE

**MAJORITY
COMMITTEE REPORT**

Committee:	Criminal Justice and Public Safety
Bill Number:	HB 539
Title:	relative to records of communications common carriers.
Date:	March 10, 2021
Consent Calendar:	REGULAR
Recommendation:	OUGHT TO PASS

STATEMENT OF INTENT

The bill as currently written clearly violates the Fourth Amendment of U.S. Constitution regarding unwarranted searches because it allows authorities unwarranted access to records from common carriers. This bill will to stop unwarranted governmental intrusion into citizens private or personal information by requiring a search warrant or a judicially-recognized exception to the warrant requirement before providing such information.

Vote 13-8.

Rep. Dave Testerman
FOR THE MAJORITY

Original: House Clerk
Cc: Committee Bill File

REGULAR CALENDAR

Criminal Justice and Public Safety

HB 539, relative to records of communications common carriers. **MAJORITY: OUGHT TO PASS. MINORITY: INEXPEDIENT TO LEGISLATE.**

Rep. Dave Testerman for the **Majority** of Criminal Justice and Public Safety. The law as currently written clearly violates the 4th Amendment of U.S. Constitution regarding unwarranted searches because it allows authorities unwarranted access to records from common carriers. This bill will to stop unwarranted governmental intrusion into the citizen's private or personal information by requiring a search warrant or a judicially-recognized exception to the warrant requirement before providing such information. **Vote 13-8.**

Original: House Clerk

Cc: Committee Bill File

Voting Sheets



2021 SESSION

Criminal Justice and Public Safety

 Bill #: 539 Motion: OTP AM #: _____ Exec Session Date: 3/10/2021
13/8

<u>Members</u>	<u>YEAS</u>	<u>Nays</u>	<u>NV</u>
Abbas, Daryl A. Chairman	13		
Welch, David A. Vice Chairman	1		
Burt, John A.	2		
Hopper, Gary S. <i>Spillane</i>	3		
Green, Dennis E.	4		
Wallace, Scott	5		
Testerman, Dave	6		
True, Chris	7		
Pratt, Kevin M.	8		
Marston, Dick	9		
Rhodes, Jennifer M. Clerk	10		
Harriott-Gathright, Linda C.		1	
Pantelakos, Laura C. <i>Billby</i>		2	
O'Hearne, Andrew S.		3	
Bordenet, John	11		
Meuse, David		4	
Newman, Ray E.		5	
Bouldin, Amanda C.		6	
Conley, Casey M.	12		
Klein-Knight, Nicole		7	
Bradley, Amy		8	



2021 SESSION

Criminal Justice and Public Safety

Bill #: _____ Motion: _____ AM #: _____ Exec Session Date: _____

TOTAL VOTE: _____

HOUSE COMMITTEE ON CRIMINAL JUSTICE AND PUBLIC SAFETY

EXECUTIVE SESSION on Bill # 539

BILL TITLE: Relative to records of communication centers

DATE: 3/14/2001 Callia

LOB ROOM: _____

MOTION: (Please check one box)

- OTP
- ITL
- Retain (1st year)
- Adoption of Amendment # _____ (if offered)
- Interim Study (2nd year)

Moved by Rep. Testerman Seconded by Rep. Spillane Vote: 13/8

MOTION: (Please check one box)

- OTP
- OTP/A
- ITL
- Retain (1st year)
- Adoption of Amendment # _____ (if offered)
- Interim Study (2nd year)

Moved by Rep. _____ Seconded by Rep. _____ Vote: _____

MOTION: (Please check one box)

- OTP
- OTP/A
- ITL
- Retain (1st year)
- Adoption of Amendment # _____ (if offered)
- Interim Study (2nd year)

Moved by Rep. _____ Seconded by Rep. _____ Vote: _____

MOTION: (Please check one box)

- OTP
- OTP/A
- ITL
- Retain (1st year)
- Adoption of Amendment # _____ (if offered)
- Interim Study (2nd year)

Moved by Rep. _____ Seconded by Rep. _____ Vote: _____

CONSENT CALENDAR: _____ YES _____ NO /

Minority Report? / Yes _____ No _____ If yes, author, Rep: Reuse Motion _____

Respectfully submitted: _____
Rep Natalie Wells, Clerk

[Signature]
Senator Rhodes

Public Hearing

HOUSE COMMITTEE ON CRIMINAL JUSTICE AND PUBLIC SAFETY

PUBLIC HEARING ON HB 539

BILL TITLE: relative to records of communications common carriers.

DATE: March 10, 2021

LOB ROOM: hybrid **Time Public Hearing Called to Order:** 9:10 a.m.

Time Adjourned: 9:45 a.m.

Committee Members: Reps. Abbas, Welch, Rhodes, Burt, Hopper, Green, Wallace, Testerman, True, Pratt, Marston, Harriott-Gathright, Pantelakos, O'Hearne, Bordenet, Meuse, R. Newman, Amanda Bouldin, Conley, Klein-Knight and Bradley

Bill Sponsors:
Rep. Yokela

TESTIMONY

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

Rep. Yokela, sponsor - Introduced bill. Would like to see the loop hole closed for government to have to secure a search warrant before being able to access phone records.

Rep. Bordenet - Is the search warrant able to be obtained via phone?

A. What ever is necessary to produce search warrant.

Rep. Spillane - Would this make the AG the only one who could produce the warrant.

A. Law enforcement would be the ok to decide.

Rep. Meuse - Would location data be something they could ask a search warrant for.

A. Believes there is a separate RSA to address that.

Rep. Harriett Gathright - How would this help with what happened at the capital.

A. This question has been answered.

Rep. Tree - Could you give an example of something this would pertain to?

A. A specific item they are looking for.

Penny Dean - Supports - This is a 4th amendment violation to not have this in order to ask for certain info. Would be in support of the consumer.

Rep.. Abbas - Who owns the data in the phone

A. The carrier

Rep. Burt - Would this allow the warrant to search for ?

A. Believes it would

Jay Simkin - supports - Invasion of privacy to not have.

Respectfully submitted,

Rep. Jennifer Rhodes, Clerk

House Remote Testify

Criminal Justice and Public Safety Committee Testify List for Bill HB539 on 2021-03-10

Support: 13 Oppose: 0 Neutral: 2 Total to Testify: 1

[Export to Excel](#)

<u>Name</u>	<u>City, State</u> <u>Email Address</u>	<u>Title</u>	<u>Representing</u>	<u>Position</u>	<u>Testifying</u>	<u>Non-Germane</u>	<u>Signed Up</u>
Dean, Penny	Concord, NH Penny@pennydean.com	A Member of the Public	Myself	Support	Yes (5m)	No	3/10/2021 5:06 AM
Groetzinger, Tonda	Farmington, NH groetzinger6@aol.com	A Member of the Public	Myself	Support	No	No	3/10/2021 9:13 AM
Howard Jr., Raymond	Alton, NH brhowardjr@yahoo.com	An Elected Official	Myself	Support	No	No	3/10/2021 9:13 AM
Simkin, Jay	Nashua, NH, USA, NH jaysimkin@juno.com	A Member of the Public	Myself	Support	No	No	3/10/2021 8:48 AM
Skorup, Brent	Arlington, VA bskorup@mercatus.gmu.edu	A Member of the Public	Myself	Neutral	No	No	3/4/2021 12:08 PM
Scarponi, Ellen	Canterbury, NH ellenscarp1@gmail.com	A Lobbyist	Consolidated Communications	Neutral	No	No	3/4/2021 12:23 PM
sauve, michael	loudon, NH michael.s.sauve@gmail.com	A Member of the Public	Myself	Support	No	No	3/6/2021 3:39 PM
DeMark, Richard	Meredith, NH demarknh114@gmail.com	A Member of the Public	Myself	Support	No	No	3/6/2021 4:24 PM
Larson, Ruth	Alton, NH ruthlarson@msn.com	A Member of the Public	Myself	Support	No	No	3/7/2021 6:00 PM
Howland, Curt	Manchester, NH howland@priss.com	A Member of the Public	Myself	Support	No	No	3/7/2021 8:27 PM
Axelman, Elliot	HOOKSETT, NH aluaxelman@gmail.com	A Member of the Public	Myself	Support	No	No	3/9/2021 2:50 AM
Hope, Lucinda	Tilton, NH lmhope46@gmail.com	A Member of the Public	Myself	Support	No	No	3/9/2021 8:49 AM
Cooper, Katherine	Epping, NH Katherine@NHACDL.org	A Lobbyist	NH Association of Criminal Defense Lawyers	Support	No	No	3/9/2021 4:08 PM

See, Alvin	Loudon, NH absee@4Liberty.net	A Member of the Public	Myself	Support	No	No	3/9/2021 8:34 PM
Baird, Cathryn	Newport, NH freewillfarm@comcast.net	A Member of the Public	Myself	Support	No	No	3/10/2021 8:08 AM

Testimony

Archived: Friday, March 5, 2021 9:12:59 AM

From: [Michael Hogg](#)

Sent: Thursday, March 4, 2021 12:55:28 PM

To: ~House Criminal Justice and Public Safety

Cc: [Josh Yokela](#)

Subject: NH House Remote Testify: 9:00 am - HB539 in House Criminal Justice and Public Safety

Importance: Normal

Attachments:

Skorup - 3.10 Testimony HB 539.pdf ;



Good afternoon,

I am pleased to submit the attached testimony on behalf of Brent Skorup, Senior Research Fellow at the Mercatus Center at George Mason University.

He will be unable to appear at the hearing, but he is happy to speak with any members of the committee who have questions, concerns or comments.

Thank you,

Michael Hogg

State Outreach Associate

Mercatus Center at George Mason University

Cell: 717-880-7729



[*Bridging the Gap Between Academic Ideas and Real-World Problems.*](#)

Bill as
Introduced

HB 539 - AS INTRODUCED

2021 SESSION

21-0740
10/11

HOUSE BILL **539**
AN ACT relative to records of communications common carriers.
SPONSORS: Rep. Yokela, Rock. 33
COMMITTEE: Criminal Justice and Public Safety

ANALYSIS

This bill requires that customer information in records of communications common carriers only be provided pursuant to a search warrant or a judicially-recognized exception to the warrant requirement.

.....

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 Twenty One

AN ACT relative to records of communications common carriers.

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

1 1 Attorney General; Records of Communications Common Carriers. Amend RSA 7:6-b to read
2 as follows:

3 7:6-b Certain Records of Communications Common Carriers.

4 I. Every communications common carrier, as defined in RSA 570-A:1, IX, ~~[upon the written~~
5 ~~demand of the attorney general that the attorney general has reasonable grounds for belief that the~~
6 ~~service furnished to a person or to a location by such communications common carrier has been, is~~
7 ~~being, or may be used for an unlawful purpose, shall furnish to the attorney general]~~ **shall ensure**
8 **its customers be kept free from governmental intrusion into their private or personal**
9 **information by requiring a search warrant or a judicially-recognized exception to the**
10 **warrant requirement before providing information about its customers to a governmental**
11 **entity, such information includes, but it not limited to:**

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

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

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

18 (d) The length of service provided to a subscriber or customer by the communications
19 common carrier.

20 (e) The types of services provided to the subscriber or customer by the communications
21 common carrier, and

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

23 II. No such communications common carrier nor any agent, servant, or employee thereof,
24 shall be civilly or criminally responsible or liable for furnishing or delivering any records or
25 information in compliance with ~~[said demand and the attorney general shall not disclose any~~
26 ~~information obtained as a result of said demand except as it is essential to the proper discharge of~~
27 ~~the attorney general's duties. Any such written demand by the attorney general shall be understood~~
28 ~~to constitute an administrative subpoena for purposes of determining compliance with federal law]~~ **a**
29 **search warrant or a judicially-recognized exception to the warrant requirement.**

30 ~~[III. The attorney general may delegate authority under this section to any assistant~~
31 ~~attorney general. Where the offense under investigation is defined in RSA 318-B or RSA 649-B, the~~

HB 539 - AS INTRODUCED

- Page 2 -

1 ~~attorney general may delegate authority under this section to a county attorney. A county attorney~~
2 ~~may further delegate authority under this section to any assistant county attorney in the county~~
3 ~~attorney's office. The county attorney may exercise this authority only in cases within the~~
4 ~~jurisdiction of that county attorney. The attorney general shall adopt rules, pursuant to RSA 541-A,~~
5 ~~relative to:~~

6 ~~_____ (a) Circumstances under which an assistant attorney general, a county attorney, or an~~
7 ~~assistant county attorney may issue such demands to communications common carriers under this~~
8 ~~section.~~

9 ~~_____ (b) The procedures for applying for such demands.~~

10 ~~_____ (c) The records of such demands which shall be kept and maintained.]~~

11 2 Effective Date. This act shall take effect January 1, 2022.