

Written Testimony for SB1149:

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TO: Judiciary Committee:

Proposed changes to Sec. 52-570d (Recording of telephonic communications.) of the **GENERAL STATUTES OF CONNECTICUT (Revised to January 1, 2011 edition) (No change in Revised January 1, 2011 edition)**. (Author: [Lawrence S. Jezouit](mailto:ljez@comcast.net))(ljez@comcast.net)(860 953-3909)

NOTE: See the attached document titled AN ACT CONCERNING THE RECORDING OF TELEPHONIC COMMUNICATIONS to read the proposed substitute language and proposed new provisions. The attached document is the product of the LCO No. 4247.

Note: The author has cited several documents, e.g., state and federal legislative history, acts, FCC CFR, etc., throughout this testimony to substantiate the authored text. Most, if not all, have been computer scanned as a .pdf file and would be available to be forwarded via e-mail on request.

Preface: Each elected official of the Connecticut State Legislature should avail themselves of this opportunity to provide their constituents with an increased measure of **fairness** and a set of **efficient** procedures for recording telephonic communications **while at the same time preserving and protecting their right to privacy**, that is to say no proposed change herein alters the intent or requirements of the existing statute where every-other-party consent remains in effect. To gain insight into the section's operation and to modernize the section's language, the Connecticut Legislators should update to a mindset that the section will operate as follows: Ensure the privacy rights of any given party by requiring consent of every party but change the inherent assumption that only one party intends to record the telephonic communication to a given that every party intends to record the telephonic communication.

When reviewing and evaluating this document, please keep in mind that section 52-570d, enacted under Public Act 90-305, (SB455 as amended), effective October 1990, as well as the remaining General Statutes of Connecticut were legislated by Connecticut Lawmakers on behalf of the people of Connecticut and operate only within that jurisdiction.

FCC Record, Volume 02, Number 02, pages 502 through 506, inclusive (FCC in the matter of: Use of Recording Devices in Connection with Telephone Service, Adopted Dec. 23, 1986; Released Jan. 26, 1987). At page 502 the Commission speaks of "Title III of the Omnibus Crime Control and Safe Streets Act of 1968," which is Pub. L. 90-351, June 19, 1968, 82 Stat.; Title III, that includes 18USC2511(2)(d). at page 504, the Commission states:

Moreover, the Omnibus Act does not limit the states' authority to impose stricter regulations within their own **jurisdiction**.²³ [Emphasis added.]

Footnote 23: S. Rep. No. 1097, 90th Cong. 2d Sess., reprinted in 1968 U.S. Code Cong. and Ad. News 1281.

I, the author of this document, did read the legislative history that was provided to me by the Connecticut State Library. (Judiciary Committee – March 17, 1990, Senate proceedings – April 26, 1990, and House proceedings – May 9, 1990) The Bill's documented legislative history starts on March 17, 1990 as an excerpt from the Judiciary Committee's proceedings. My understanding is that the Chief State Atty. is going over the Committee's agenda as it affects that office. When first speaking of SB455, the Attorney opens with "... We realize the backdrop under which this proposal is before you." (leg. hist. page 1091) From that, one must infer that there had been a significant amount of "back and forth" going on among citizen proponents, legislators and the executive that is not on record. In a nut shell, the State's Attorney opposes enactment by stating "We just

think this bill creates more problems that [sic] it would solve and there would be an awful lot of litigation involved, so we would oppose it.” (leg. hist. page 1092)

A fair reading of subsequent portions of the March 17, 1990 legislative history at pages 1199 and 1200 leads one to conclude that crusaders carrying the banner for *individual privacy* as represented by a spokesperson “... testifying on behalf of the American Civil Liberties Union of Connecticut (ACLU/C) for different bills...” will win the day. However, because “backdrop” information is not on record, one cannot say definitively why the bill was processed since §§53a-187(a)(1)’s second sentence (“...The normal operation of a telephone or telegraph corporation **and the normal use of the services and facilities furnished by such corporation pursuant to its tariffs shall not be deemed "wiretapping".**”) had already made effective most of the language of SB455. One can only surmise that the ACLU/C wanted to set out harsher penalties because absent the “tariff” language of §52-570d that is all that remains except for a few of exemption paragraphs. (To verify tariff language, see the file SNET_Tariff-Recording.pdf, which may be found using the following path of folder names: State-DC-US_Law then Connecticut_T-NP then CT-Dept-Public-Utilities-Commission and should be available through the Judiciary Committee. Note that the dates on the tariff pages precede P.A. 90-305.) The spokesperson states: “Under present state and federal criminal laws, at least one part [sic – most likely said “party”] to a telephone conversation must provide consent; otherwise it’s not [sic – **to be consistent with statute, the lobbyist should not have said “not.”**] a violation of the criminal statutes.” (See details next paragraph.)

Additionally, the Office of Legislative Research’s (OLR) Bill Analysis reads in part “... Current law requires the knowledge of only one party.” However; the OLR analysis does not provide any citation or further reference and use of the word “knowledge” instead of the statute’s “consent” could cause a reader to assimilate an incorrect understanding of the raised bill, SB 455. It is most likely that each was referring to sections 53a-187 through 53a-189 (PART XVII* TAMPERING WITH PRIVATE COMMUNICATIONS, EAVESDROPPING AND VOYEURISM) of the General Statutes of Connecticut. Except for the definitions set out in §§53a-187(a) and the “tag” at the end of 53a-189, a fair reading of those sections would lead one to conclude that they are at best minimally on point with regard to the legislation being considered except for that part of §§53a-187(a)(1) that codifies the tariffs. Those sections concern a “person” who, by the Legislature’s language, is **not** a “**sender or receiver,**” (hereinafter referred to as “a non-party-person”), to the communication. A sender or receiver would have had to have given consent for the non-party-person’s action not to have been a criminal offense.

My several proposed changes retain the “every-other-party” consent requirement, which, in effect, incorporates the legislation’s intent – maintaining an individual’s **right to privacy**, before any recording of a telephonic communication within Connecticut’s jurisdiction is permitted, i.e., subsection (a) paragraph (1) of section 52-570d. I also retain the “default” consent set out in subsection (a) paragraphs (2) and (3) where consent is in the form of “implied” or “informed” rather than express consent.

I do propose conditions that make the section **fairer** to any party operating under Connecticut’s jurisdiction by introducing **equal status for all parties** meaning that if a party has gained permission to record, then any party will also have that permission.

I do propose to eliminate shortfalls in the existing statute as specified below as well as make its operation more reasonable and efficient as it **relates to every party having an equal opportunity to record.**

I do propose exception language that would permit a party under Connecticut’s jurisdiction to record a telephonic communication that is being conducted with another jurisdiction or set of jurisdictions that operate under a less stringent consent scheme and where the party under Connecticut’s jurisdiction may record based on the far end’s law. I do take into account that if any other party involved is under CT’s jurisdiction in that communication, then CT statute applies between and among every party that is under CT’s jurisdiction. I do propose to ensure fairness between jurisdictions that operate under an every-party consent scheme, which could be argued as being the jurisdictions of Maryland and Washington only. As an example, Massachusetts

(MA) is “considered” an “an all-party” consent state. However, if a party in CT is a party to a communication with a party in MA and the CT party makes a verbal announcement at the beginning of the recording, then no consent is required of the MA party **and** there is no violation of the General Laws of MA. A violation of MA’s §§99 B.4. occurs only when the recording is made “secretly” from the perspective of the MA party. The subsection’s element “secretly record” cannot be met provided the announcement can be proven, e.g., the announcement is part of the recording.

§§99 B.4. The term “interception” means to ... **secretly record**, ... the contents of any wire ... communication through the use of any intercepting device by any person other than a person given prior authority by all parties to such communication;

Another example like Massachusetts is California’s Penal Code Sec. 632 (a) if (c) is not met. CA’s penal code reads:

(a) Every person who, intentionally and without the consent of all parties to a confidential communication, ... records the confidential communication, whether the communication is carried on among the parties in the presence of one another or by means of a ... telephone, ... shall be punished by a fine not exceeding two thousand five hundred dollars (\$2,500), or imprisonment in the county jail not exceeding one year, or in the state prison, or by both that fine and imprisonment.

(c) The term "confidential communication" includes any communication carried on in circumstances as may reasonably indicate that any party to the communication desires it to be confined to the parties thereto, but excludes a communication ... in any other circumstance in which the parties to the communication may reasonably expect that the communication may be overheard or recorded.
[Emphasis added.]

With regard to fairness, there exists a far more persuasive analysis set out by the California Supreme Court in *Kearney v. Salomon Smith Barney, Inc.*, 137 P3d 914 or 39 Cal. 4th 95 (2006). The court recognizes that a party in California governed by California’s labeled “all-party consent scheme” is at a disadvantage when compared to a party governed by a legislatively bestowed consent scheme, which means that the legislature has given the party to the communication consent to record it. The opinion reads in part:

“For the reasons discussed at length below, we conclude that this case presents a true conflict between California and Georgia law ... and potentially would place local California businesses (that would continue to be subject to California’s protective privacy law) at an unfair competitive disadvantage vis-à-vis their out-of-state counterparts.”

If put into a context applicable to a party governed by Connecticut’s § 52-570d(a)(1), the text would read: ... this case presents a true conflict between [Connecticut statute] and [any legislatively bestowed consent scheme] ... and potentially would place [the Connecticut party] (that would continue to be subject to [Connecticut’s] protective privacy law) at an **unfair** ... disadvantage vis-à-vis their out-of-state counterparts. [Emphasis added.]

Simply put, a party under that jurisdiction’s legislatively bestowed consent scheme has no concern with a right to privacy issue and is not offended if the opposite party records. **Simply said, there is no invasion of a party’s right to privacy when in law and/or in fact, none is expected.** I did complete some research taking into account the U. S. Census Bureau’s estimated population for 2009 in relation to Federal, States and D.C. law either “legislatively bestowed” versus an “all-party” consent scheme. Percentages follow: (1) Under “legislatively bestowed consent” – 64.68056%, (2) Under “all-party consent” – 35.31944%. (Suggested Citation: Annual Estimates of the Resident Population for the United States, States, and District of Columbia: July 1, 2009 (NST-EST2009-01): Source: U.S. Census Bureau, Population Division: Release Date: December 2009)

Again, my only purpose is to put Connecticut residents on an equal footing with at least 38 other states, U. S. Code and D.C. law where those laws provide for recording by a party to the telephonic communication without additional consent.

The Conventions for understanding this document follow: (Applicable to the text of **Sec. 52-570d. Action for illegal recording of private telephonic communications.** See below.)

- (1) Text that is background shaded in **yellow** and displayed with a strikethrough (~~strikethrough~~) denotes the section's text as it existed in the Jan. 1, 2011 edition of the General Statutes. The purpose of this set of emphasis is to denote text that would be deleted from the section by the proposed changes.
- (2) Text that is displayed in **bold** and enclosed by a bracket set [] and immediately followed by a number or number/letter suffix in bolded superscript denotes the text that would be inserted into the section.
- (3) The label "**Rationale**" preceded by a bolded superscript number or number/letter is used to identify the author's explanation to substantiate and/or enumerate each proposed change. To set the Rationale's text aside from the statute's text, it is set out in a smaller size font and immediately follows the statute's subsection/paragraph/clause as may be the case.
- (4) The label "**Shortfall-(n)**" is used to preface an interpretation of how a part or parts of the existing §52-570d (2011 edition) language operates.
- (5) The phrases "telephonic communication," "oral telephonic communication" and the word "communication/s" as used herein are interchangeable and have the same meaning and intent as the section's original term, "private telephonic communications."
- (6) To further facilitate any review of the existing to the proposed statute, one should access the document titled AN ACT CONCERNING THE RECORDING OF TELEPHONIC COMMUNICATIONS, which is included as an attachment to this document and is the text of LCO No.4247 (Raised Bill No. 1149). **Please note that (Raised) SB1149 has adopted every proposed change that is set out below.** What is relevant is the "Rationale" and "Shortfall-(n)" portions below because they substantiate and explain those changes and additions.

Sec. 52-570d. Action for illegal recording of private¹ telephonic communications. (a) No ~~person~~ [party, active or otherwise, in a telephonic communication]² shall [,by any means,]² ~~use any instrument, device or equipment to~~ record [or cause to be recorded that]² ~~an oral private¹ telephonic communication unless [it]² the use of such instrument, device or equipment~~ (1) is preceded by [documented and reciprocal]² consent of ~~all parties~~ [every other party]² ~~to the communication and such prior [to or as part of]² consent either is obtained in writing or is part of, and obtained at the start of, the [any]² recording, or (2) is preceded by verbal notification which is recorded at the beginning and is part of the communication~~ ~~by the recording party~~ [and if any party provides verbal notification, any party may record provided that verbal notification or another is recorded]^{2a}, or (3) is accompanied by an automatic tone warning ~~device which~~ [that]² ~~automatically~~ produces a distinct signal that is repeated at intervals of approximately fifteen seconds during the communication while ~~such instrument, device or equipment is in use~~ [recording]² [and if any party provides the automatic tone warning, any party may record].^{2a}

¹ **Rationale:** By striking the word "private," (that exists in two places as follows: the caption or catchline and within subsection (a)'s first sentence that is before subsection (a)'s paragraph (1)), the section is enhanced with more clarity. The original language created ambiguity by using the adjective "private."

It should also be noted that subsection (b) paragraphs (1) through (8) contain the term **telephonic communication/s** but **DO NOT** contain the term "private telephonic communication/s." Why would the provisions

of subsection (b), which are exceptions or exclusions or exemptions to subsection (a), be crafted in such a manner as to be broader than the catchline and language of subsection (a)? Does the section unwittingly become ambiguous because of the discrepancy of the terms?

Without inclusion of a definition in the statute for the term “private telephonic communications,” was the original intent to exclude “business” and “public” telephonic communication? How would one determine whether or not any given telephonic communication should be deemed “private” when in fact one party was an “ordinary” party on a home phone and one party was a “salesperson” on a phone at a car dealership?

A review of the legislative history for SB 455 as amended (P.A. 90-305) would, more likely than not, lead one to conclude that the intent of the section was to protect the **privacy rights** of the people of Connecticut rather than to distinguish among the several types or classifications of telephonic communications. As an example, in the Judiciary Committee’s hearing, the spokesperson for the ACLU\C states: “If the principle of individual privacy means anything, it means that all parties to **a telephone conversation**, should have the opportunity to at least consent to a tape recording of that conversation.” (Emphasis added. See the legislative history of the Judiciary Committee, March 17, 1990, 112/pat or at page 1200 CT State Library, first full paragraph.) From that statement, it is clear that the spokesperson does not attempt to distinguish one type of telephonic communication from another. (Additional legislative history: Senate proceedings on April 26, 1990 at pages 1413 – 1418; 1441 and House proceedings on May 9, 1990 at pages 10514 – 10536 where the page numbering refers to documents obtained from the CT State Library.)

Additional examples excerpted from the legislative history:

(1) AT 1415 Senator O’Leary speaking: “...I think that what the bill is reaching to is a sense that many of us have that there is a right of privacy. It’s not specifically spelled out in the Constitution or in the First 10 Amendments to the Constitution but I think that every American has a feeling that there are certain areas where he is entitled to a degree of privacy and I think the conversation between two individuals falls into that category ...”

(2) AT 10515 SPEAKER BALDUCCI: The question is on passage. Will you remark, Sir?

REP. MINTZ: (140th) [The bill’s manager] Yes, thank you, Mr. Speaker. What this bill does is prohibit **any telephone conversation** from being recorded without the knowledge of all parties to the conversation. [Emphasis added.]

(3) AT 10524 REP. RENNIE: (14th) speaking: “Another question to Representative Mintz, ... , what great wrong is it we’re trying to correct with this today? ... “

REP. MINTZ: (140th) [The bill’s proponent manager speaking] “ ... , I believe it is a privacy issue that when **you’re a party to a telephone conversation** you should know whether or not that telephone conversation is private, or if it’s being recorded. If it’s being recorded, you should know, have the opportunity to know that it’s being recorded and be able to treat that conversation in a non-private manner.” [Emphasis added.]

(3) AT 10533 REP. MINTZ: (140th) [The bill’s manager speaking] “ ... , the intent of the legislation is to make sure that the conversation remains private.

² **Shortfall-(1):** Subsection (a) in conjunction with paragraph (1) operates within a two or multiple party Connecticut intra-jurisdictional communication in such a manner that puts the first party that agrees to the other’s recording at a distinct disadvantage. The language, as it exists, operates in a **singular sequential event scenario**. Take the case where an oral telephonic communication begins between parties who are acting pursuant to Connecticut’s jurisdiction and where **both** intend to record the communication. “**Person**” A asks “**Person**” B to agree to the recording and obtains an affirmative response. The paragraph’s operation then requires that “**Person**” B obtain an affirmative response. If “**Person**” A denies “**Person**” B’s request, then according to the operation of subsection (a) paragraph (1) and what has transpired, “**Person**” A is permitted to record whereas “**Person**” B is not and would be subject to the penalties of subsection (c) if the recording were to

be made. Exclusive of “**Person**” B terminating the telephonic communication, this shortfall can be mitigated by eliminating the **singular sequential event scenario** and substituting an all or none group consent concept, which would incorporate parties being fair to and respectful of one another. The group consent concept deters mischief where one party obtains consent while denying it to any other.

Further, there is definitive documented evidence that justifies the conclusion that the language was intended to operate as a **singular sequential event scenario**. Although I cannot offer definitive proof because of the paucity of the legislative history, I can present a reasonable evidentiary trail as follows:

Step 1. Introduction of the bare bones “original” SB 455 as obtained from Connecticut State Library and it reads:

STATE OF CONNECTICUT
 Raised Rill No. 455
 Referred to Committee on **JUDICIARY**

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LCO No. 2608

Introduced by (JUD)

General Assembly
 February Session, A.D., 1990

AN ACT CONCERNING THE RECORDING OF TELEPHONE CONVERSATIONS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

(NEW) (a) No person shall record a private telephonic communication by means of any instrument, device or equipment without the prior consent of all participants in such communication.

[NOTES: 1. It is significant to fix the event by date: “February Session, A.D., 1990.” **2.** Line numbers and extraneous markings have been deleted for brevity sake. **3.** An Acrobat pdf file of the original material is available upon request. **4.** Subsections (b) and (c) are not germane to the **singular sequential event scenario**.]

Step 2. Perform an examination of the legislative history. Specifically, clues derived from testimony: Judiciary Committee – March 17, 1990:

1. Repeated from the **Preface** section above as spoken by Chief State Atty.: “... We realize the backdrop under which this proposal is before you.” (leg. hist. page 1091)
2. Spoken by lobbyist on behalf of ACLU/C: “The Federal Communication Commission does have a tariff requirement on telephone companies which provides that both parties to a telephone conversation much [sic – most likely should read “must”] consent. However, this requirement is seldom voiced by the telephone company and does not carry significant sanctions.”

[NOTES: 1. It is significant to fix the event by date: “March 17, 1990, which is **after** the first iteration of SB 455 – February Session, A.D., 1990.” **2.** Why does the Chief State Atty. mention “backdrop?” What was going on? **3.** Why does the lobbyist mention “The Federal Communication Commission [and] telephone companies?” **4.** Please note the context of the ACLU/C testimony where there appears to be a thirst for “significant sanctions.” **5.** An Acrobat pdf file of the original material is available upon request.]

Step 3. Introduction of the “Substitute” SB 455 as amended by Schedule A as obtained from Connecticut State Library and it reads:

File No. 523

Substitute Senate Bill No. 455

Senate, April 18, 1990. The Committee on Judiciary reported through SEN. AVALLONE, 11th DIST., Chairman of the Committee on the part of the Senate, that the substitute bill ought to pass.

AN ACT CONCERNING THE RECORDING OF TELEPHONE CONVERSATIONS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

(NEW) (a) No person shall use any instrument, device or equipment to record an oral private telephonic communication unless—~~(1) Such instrument, device or equipment can be physically connected to and disconnected from the telephone line or switched on and off; and (2) the use of such instrument, device or equipment (3) (1) is preceded by consent of all-parties to the communication and such prior consent either is obtained in writing or is part of, and obtained at the start of, the recording, or (4) (2) is preceded by verbal notification which is recorded at the beginning and is part of the communication by the recording party, or (5) (3) is accompanied by an automatic tone warning device which automatically produces a distinct signal that is repeated at intervals of approximately fifteen seconds during the communication while such instrument, device or equipment is in use.~~

[NOTES: 1. It is significant to fix the event by date: April 18, 1990, which is **after** the previous two step's documents. **2.** Line numbers and extraneous markings have been deleted for brevity sake. **3.** The strikethroughs represent hand made changes to the "Substitute" and is most likely the referenced Schedule A. See legislative history of Senate proceedings **April 26, 1990** at pages 1413 and 1414. **4.** Subsections (b) and (c) are not germane to the **singular sequential event scenario**. **5.** An Acrobat pdf file of the original material is available upon request. **6.** Compare the "original" SB 455 to the "Substitute as amended, which was developed in the "backdrop" environment. The Substitute introduces efficiency and fairness in that it sets out options and choices. **7.** Link the FCC – "telephone company" comment to the language of the "Substitute" and the result is Step 4 next.]

Step 4. The lobbyist's comment regarding **FCC tariff** prompted me to research the FCC's regulation (Title 47 Telecommunications) on the subject of recording calls. I was rewarded by finding what is most likely the source of the language of subsection (a) paragraphs (1), (2), and (3) of Substitute SB 455 and as a reinforcement even that portion that was struck under the Schedule A amendment is present. The source is HeinOnline **1989 edition** of 47CFR64.501 in relevant parts reads:

§ 64.501 Recording of telephone conversations with telephone companies.

No telephone common carrier, subject in whole or in part to the Communications Act of 1934, as amended, **may use any recording device** in connection with any interstate or foreign telephone conversation **between any member of the public, on the one hand, and any officer, agent or other person acting for or employed by any such telephone common carrier, on the other hand,** except under the following conditions:

(a) Where such use shall be preceded by verbal or written consent of all parties to the telephone conversation, or

(b) Where such use shall be preceded by verbal notification which is recorded at the beginning, and as part of the call, by the recording party, or

(c) Where such use shall be accompanied by an automatic tone warning device, which will automatically produce a distinct signal that is repeated at regular intervals during the course of the telephone conversation when the recording device is in use.

...

(e) That no recording device shall be used unless it can be physically connected to and disconnected from the telephone line or switched on and off.

[NOTES: 1. It is significant to fix the date of the regulation, which is **before** any of the events that transpired as outlined in Steps 1-3. **2.** An Acrobat pdf file of the original material is available upon request. **3.** Emphasis was added to the regulation's text].

Conclusions: A fair reading of the regulation must lead one to conclude that the intent was to fix a **singular sequential event scenario**. It is made clear that there was **one recorder**, the "telephone common carrier." It is clear that the regulation does not anticipate the "member of the public" to make any recording and in fact does not even address the issue. It was not foreseen that Connecticut's lawmakers would make use of the regulation's language to put into effect **a second time** (See §§53a-187-(a)(1)'s last sentence.) the FCC regulation as a change to Connecticut law to include an every-party consent concept before recording of telephonic communication would be permitted. The proof of the existence of the **singular sequential event scenario** is not debatable and that **singular sequential event scenario** language was unwittingly or not transferred into Substitute SB 455 as amended, which is the existing subsection (a) paragraph (1) of section 52-570d of the General Statutes of Connecticut. **The shortfall is there and should be corrected so that the section ensures**

that all parties consent before any party is permitted to record AND; if one party has obtained consent, then all have consent because the consent must be “documented and reciprocal” as set out in the proposed change above for paragraph (1) of subsection (a) of section 52-570d. Be fair and be efficient, incorporate the proposed changes to paragraph 1 to effect a reasonable resolution.

Shortfall-(2): I make the **assumption** that most of the language of subsection (a) was copied from 47CFR64.501 1989 edition or from the tariff language that was/is on file with the Connecticut Department of Public Utility Control. Shortfall-(1): above presents evidence to substantiate my belief that the language of subsection (a) paragraph (1) operates in a **singular sequential event scenario**, which is based on the FCC’s understanding that there would be one recorder, the “telephone common carrier.” By copying that language, the Connecticut Lawmakers carried forward that operation. As a result, a fair reading of subsection (a) paragraph (2) must lead one to conclude that if there is more than one recorder to any given telephonic communication – say from two to five, then there must be an equal number of recorded “**verbal notifications**,” which are required by the inclusion of the phrase “by the recording party.” Why be so inefficient? Why be so redundant? By virtue of any party staying on the line once any verbal notification is provided it must be a given that said party consents, i.e., every-party consent pursuant to an implied or informed consent. And, if every-party consent, why not let anyone record provided the verbal notification is present? Let one notification stand for any number of notifications per recorded call. If I place a call and know in advance that the receiving point will generate the verbal notification, why is there a need for two or more? I would record their verbal notification and that would be fair, efficient, and the end of it.

Additionally, compare Subsection (a)(2) to (a)(3). The language of (a)(3) **does not** include the phrase “by the recording party.” What is the conceptual difference between a verbal notification and an automatic tone warning? The answer is **none**. Both serve the intended function – conveying knowledge that the communication is being recorded. If one were to demonstrate to lawmakers what a recording would sound like with say five tone warnings at the same time, in or out of sync, it is most likely that the lawmakers would ensure that the phrase “by the recording party” was not included in a law’s language. If requiring multiple tone warnings within one telephonic communication is not reasonable, why are multiple verbal notifications reasonable?

Please remember that the FCC crafted the language specifically knowing that there was only **one recorder**, the “telephone compan[y].”

² **Rationale:** By striking the word “person” the original purpose of enacting 52-570d – protecting privacy rights – is enhanced by confining the action of recording to the purview of the parties thus eliminating an unintended potential for a person other than a party to breach their privacy through modern technological means. Example, an induction-digital transmit device could be surreptitiously placed to intercept telephonic communications. The signal could be received and converted by a software application that included the required tone. The result would be a “legal” recording. The proposed language “**No party, active or otherwise, in a telephonic communication shall, by any means, record or cause to be recorded that communication...**” makes it unlawful for a “person” to record as set out in the example.

By striking the word “person” and substituting the words “**party, active or otherwise, in a telephonic communication**,” the section would encompass each individual into a grouping rather than operating on each party separately. In other words, before any party is permitted to record or cause to be recorded, the telephonic communication must be viewed as a group event that includes the consent of every party and **not** viewed as a distinct set or sets of parties operating sequentially. Additionally, it should be noted that, to the best of my knowledge, no jurisdiction – U. S. Code, one of the 50 state’s law or D.C. law – has defined the term “party” even though the word is included in their statutory language. Therefore, the word’s use is governed by the principle of “common every day meaning.” And specifically in the General Statutes of Connecticut at Vol. 1, Title 1, Chapter 1, Sec. 1-1 that reads:

Sec. 1-1. Words and phrases. Construction of statutes. (a) In the construction of the statutes, words and phrases shall be construed according to the commonly approved usage of the language; and technical words and phrases, and such as have acquired a peculiar and appropriate meaning in the law, shall be construed and understood accordingly.

The only offering is set out in the legislative history for U. S. Congress’s Public Law 90-351 that reads: (Cite as: 1968 U.S.C.C.A.N. 2112, 2177 and 2182.)

Because of the complexity in the area of wiretapping and electronic surveillance, the committee believes that a comprehensive and in-depth analysis of Title III would be appropriate in order to make explicit congressional intent in this area.

***2182**

Paragraph (2)(c) provides that it shall not be unlawful for a party to any wire or oral communication or a persons [sic] given prior authority by a party to a communication to intercept such communication. It largely reflects existing law. Where one of the parties consents, it is not unlawful. (*Lopez v. United States*, 83 S.Ct. 1381, 373 U.S. 427 (1963); *Rathbun v. United States*, 78 S.Ct. 161, 355 U.S. 107 (1957); *On Lee v. United States*, 72 S.Ct. 967, 343 U.S. 747 (1952)). **Consent may be expressed or implied.** Surveillance devices in banks or apartment houses for institutional or personal protection would be impliedly consented to. Retroactive authorization, however, would not be possible. (*Weiss v. United States*, 60 S.Ct. 269, 308 U.S. 321 (1939)) **and 'party' would mean the person actually participating in the communication.** (*United States v. Pasha*, 332 F. 193 (7th), certiorari denied, 85 S.Ct. 75, 379 U.S. 839 (1964)). [Emphasis added.]

To assist in the understanding of the proposal please review the definition of the terms:

party. 1. One who takes part in a transaction <a party to the contract> (Black's Law Dictionary, Abridged Seventh Edition, page 917.) And as an example, also note that US Code 18USC2511(2)(d). Interception and disclosure of wire, oral, or electronic communications prohibited demonstrates that it is more efficient and more clear to just use "party" rather than "person" because to get where the lawmakers want to go, the section's language reads in part: "...where such person is a party to the communication or where one of the parties to the communication..." It should also be noted that at least 26 states pattern state law on 18USC2511(2)(d) and use the same or similar language. It is a matter of style since the federal legislators chose to define the term "person" under 18USC2510. However, the proposed change herein seeks to eliminate the "non-party-person" as the recorder unless every party has given prior consent. Compare this concept to that of CT's §§53a-187(a)(1) that, in part, reads "(1) **"Wiretapping"** means the intentional overhearing or recording of a telephonic or telegraphic communication or a communication made by cellular radio telephone **by a person other than a sender or receiver thereof**, without the consent of either the sender or receiver, by means of any instrument, device or equipment" where the non-party-person must be the one doing the recording. [Emphasis added.] Below, within a proposed addition for a defined set of terms, there is included a defined term "party" that mirrors the defined term "person" as set out in CT §§54-41a(4)..

person. 1. A human being. **2.** An entity (such as a corporation) that is recognized by law as having the rights and duties of a human being. **3.** The living body of a human being <contraband found on the smuggler's person>. Black's Law Dictionary, Abridged Seventh Edition, page 932.

NOTE: For Black's Law Dictionary under the Guide to the Dictionary at page x the following is set out: **5. Angle Brackets** Contextual illustrations of a headword are given in angle brackets: ... (See the terms defined above.)

Additionally, as documented above, the existing §52-570d's language **does not** include any definition, which would assist in clarifying legislative intent and reduce the possibility of unintended caselaw because of ambiguity. It should also be noted that the maintenance of the annotations to the General Statutes of Connecticut uncharacteristically did not and does not take full advantage of that technique to improve clarity. The only example is found in Volume 13, Title 53a, Chapter 952, **Sec. 53a-189. Eavesdropping: Class D felony.** The annotation reads: "See Sec. 52-570d re prohibition on recording private telephonic communications and civil remedies for violation thereof." that must be edited when these proposed changes are adopted.

By striking the words use any instrument, device or equipment to, and other associated words, and substituting the words "**by any means record or cause to be recorded that,**" the section would contain less verbiage and would inherit more clarity in that there is no limiting factor and no list or abstract method to contend with. It was **NOT** the legislators' intent to focus on or limit the scope or details of how the recording was actually done. Refer

to the legislative history of the House Proceedings at tcc 245 and tcc 246, which is CT State Library copy at pages 10125 and 10526:

REP. O'NEILL: (69th)

Thank you, mr. [sic] Speaker. Just very briefly. A question for Representative Mintz. My understanding of this is that you're talking about tape recording devices. Is that correct? Is that all we're talking about in this bill?

REP. MINTZ: (140th)

Through you, Mr. Speaker, the bill states no person shall use any instrument, device or equipment to record an oral private telephone communication. If there's anything other than a tape recorder that does that, that would fall under these provisions. I am not aware of any others, but I'm sure technology is moving along quite rapidly that sooner or later they're going to come up with some instrument besides a tape recorder to do that and this bill is trying to take that into account now.

The proposed substitute words “**any means**” address the manual and technical methods and the words “**cause to**” addresses which party will be responsible for its being recorded. As an example, the words “**any means**” would naturally encompass any existing or future technologies as well as stenographic methods and the words “**cause to**” would naturally encompass anyone acting on the instructions of another, e.g., a hired hand that uses shorthand (as in a court's or legislature's recorder). As a matter of fact, these issues were addressed at the federal level with the enactment of Public Law 90-351 in 1968. And, Connecticut's companion legislation was the enactment of 1968 P. A. 828 Sec. 189 as amended and 1971 P. A. 68 Sec. 1 as amended. Each set out definitions – see **Sec. 53a-187. Definitions. Applicability.** and **Sec. 54-41a. Definitions.** Both were **before** SB 455, which was enacted in 1990.

I also point out that inclusion of “cause to be recorded” is not original or unique in legislative language. See Montana's §§45-8-213(1)(c) that, in part, reads: “**(1)** Except as provided in 69-6-104, a person commits the offense of violating privacy in communications if the person knowingly or purposely:

(c) records or causes to be recorded a conversation ...”

Because the proposed language clearly speaks of a party, the use of the words “**cause to be recorded**” provides the direct link to that party. In other words, the substitute text places the responsibility exactly on the party who made the decision to record regardless of the circumstances of how or by whom the actual recording was made. It eliminates any superficial argument, such as; another person in another location initiated the device or when the recording will be set in motion by some as yet unknown technology, etc. Additionally, this set of substitutions produces a singular high order thought by being consistent with the section's caption that reads: “Action for illegal recording... .” Redundant use of the root word “record” keeps the intent of the section on point and discourages spurious arguments in an effort to defeat that intent. Why allow focusing on instruments, devices or equipment when the sole intent is to answer the question whether or not the recording of any given telephonic communication, regardless of the means be it by pencil or a computer software application, was illegal or the opposite was it lawful or permitted under the section?

There are a multitude of scenarios or statutory examples that offer evidence that a non-party-person's recording should be taken into account. See legislative history, House of Representatives, May 9, 1990 at tcc 246-247 or CT Library page 10526-10527 reads:

REP. O'NEILL: (69th) Well, a second question. There is a device that I would think can effectively record a conversation. It's been in existence for at least 100 years. It's an individual with a pencil and a piece of paper that takes stenography. Would this cover a stenographic transcription of a tape recorder where a third person was on the line at the request of one of the other parties? Through you, Mr. Speaker. **SPEAKER BALDUCCI:** Representative Mintz.

REP. O'NEILL: (69th) Well, I guess I would echo Representative Rennie's sentiments. I'm not quite sure what it is we're protecting here. It sounds like we're protecting the sound of somebody's voice from being recorded without their permission and not the content of the conversation, since apparently you can take down the entire conversation, both sides of it, transcribe it, have a court stenographer certify that it's an accurate transcription, have a complete copy of that conversation, all the information contained there, and not violate this provision. So I'm not quite sure what we're trying to achieve here. Thank you, Mr. Speaker.

See 18USC2511(1)(a) and (b) that reads: [Emphasis added.]

§ 2511. Interception and disclosure of wire, oral, or electronic communications prohibited

(1) Except as otherwise specifically provided in this chapter any person who—

(a) intentionally intercepts, endeavors to intercept, or **procures any other person to intercept or endeavor to intercept**, any wire, oral, or electronic communication;

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

By striking the sets of words “...to the communication and such...” and “all parties” and “consent either is obtained in writing or is part of, and obtained at...” and the comma and the word ... “, the” ... and substituting the set of words “**documented and reciprocal**” and “**every other party**” and “**to or as part of**” and “**any**” in subsection (a) paragraph (1), the paragraph not only inherits clarity the language ensures that there is no **singular sequential event scenario** as adopted from the FCC 47CFR64.501 or the CT DPUC on file tariff by explicitly requiring that all parties are in agreement before any party is permitted to record. Additionally, by substituting the words “**every other party**” for the words “all parties” in the set of words “...consent of all parties...” so that the set reads “...consent of **every other party**...” will unequivocally delineate the recorder from any non-recorder. And, the substitution of “party” for “parties” eliminates the grammatical style of using the plural “parties” because, in fact, the ratio of two-party calls to three or more party calls is most likely higher than 10 : 1. The words “every other party” apply to any telephonic communication regardless of the number of parties involved.

Please review Maryland’s §§10-402(c)(3) that reads: (3) It is lawful under this subtitle for a person to intercept a wire... communication where the person is a party to the communication and where all of the [other] parties to the communication have given prior consent to the interception unless the communication is intercepted for the purpose of committing any criminal or tortious

To assist in the understanding of the proposal please review the definition of the terms:

document, *vb.* [documented, *past tense*] **1.** to support with *records*, instruments, or other evidentiary authorities <document the chain of custody>. **2.** to record; to create a written record of <document a file>. >. Black’s Law Dictionary, Abridged Seventh Edition, page 394.

record, *n.* [records, plural] **1.** A documentary account of past events, usu. designed to memorialize those events; information that is inscribed on a tangible medium or that, having been stored in an electronic or other medium, is retrievable in perceivable form. UCC § 2A-102(a)(34). Black’s Law Dictionary, Abridged Seventh Edition, page 1023. (Note: As the term “record” supports the term “document.”)

reciprocal, *adj.* **1.** Directed by each toward the other or others; MUTUAL. **2.** BILATERAL <a reciprocal contract>. **3.** Corresponding; equivalent. Black’s Law Dictionary, Abridged Seventh Edition, page 1021.

NOTE: If one were to peruse the legislative history of the House’s proceeding for this section’s enactment, one may gain a better understanding why it would be beneficial to “tighten-up” the section’s language. Most if not all of the questions during that debate would have been answered or would have been made moot if the proposed text were to have been adopted. (See House of Representatives on Wednesday, May 9, 1990, Page 3, Calendar 533, Substitute for Senate Bill 455, AN ACT CONCERNING THE RECORDING OF TELEPHONE CONVERSATIONS, as amended by Senate Amendment Schedule “A”. Favorable Report of the Committee on Judiciary. [pages 10,514 – 10,536.]) A computer .pdf file is available on request.

By striking the phrase “by the recording party” in subsection (a) paragraph (2), the section would become more efficient in its operation. That is to say eliminate redundant recorded verbal notifications. That is to say, update one’s mindset from one party to record to every party to record. Once any verbal notification is given and is part of any given recorded telephonic communication for any given number of parties that record such telephonic communication consent has been given by each party because each party chose to remain on the line. See implied and informed consent at ⁶ below (proposed subsection c. Definitions.)

See Washington's §§9.73.030 (3) that reads: (3) **Where consent by all parties is needed** pursuant to this chapter, **consent shall be considered obtained whenever one party has announced to all other parties** engaged in the communication or conversation, in any reasonably effective manner, that such communication or conversation is about to be recorded or transmitted: **PROVIDED, That if the conversation is to be recorded that said announcement shall also be recorded.** [Emphasis added.]

By striking the two set of words "... ~~device which automatically~~ ..." and "... ~~such instrument, device or equipment is in use~~ ..." in subsection (a) paragraph (3), the section would contain less verbiage and would inherit more clarity in that there is no limiting factor and no list or abstract method to contend with. Substituting the word "**that**" for the set of struck words "... ~~device which automatically~~ ..." simply connects the language that remains so that it is a coherent thought. Note that by striking the set of words "... ~~device which automatically~~ ...", the paragraph, which was written some twenty years ago for Connecticut law and most likely some forty plus years ago for the FCC regulation, gets updated into the present where it is more likely than not that any automatic tone warning produced today is done by software in a digital environment as opposed to a mechanical or electrical device. Substituting the word "**recording**" for the set of struck words "... ~~such instrument, device or equipment is in use~~ ..." simply connects the language that remains so that it is a coherent thought.

^{2a} **Rationale:** By adding the words "**and if one party provides verbal notification, any party may record provided that verbal notification or another is recorded**" in paragraph (2) and the words "**and if one party provides the automatic tone warning, any party may record**" in paragraph (3) places each party on an even footing where any party may record. That is to say, **the fairness concept** is set out and the language of each paragraph becomes an efficient and effective procedure. Acceptance of these two proposals would improve the statute's intent considerably. I repeat - each elected official of the Connecticut State Legislature should avail themselves of this opportunity to provide their constituents with an increased measure of fairness and a set of efficient procedures for recording telephonic communications **while at the same time preserving and protecting their right to privacy.**

^{2 and 2a} **Rationale:** Please make note of the following. I have observed that of the jurisdictions' laws that I have researched on the subject of recording telephonic communications only Connecticut, Montana, and Washington appear to have incorporated into law parts of the language as set out in 47CFR64.501 that reads as follows: (See highlighting as emphasis. Connecticut did make more extensive use of the FCC language.)

§ 64.501 Recording of telephone conversations with telephone companies.

No telephone common carrier, subject in whole or in part to the Communications Act of 1934, as amended, may use any recording device in connection with any interstate or foreign telephone conversation between any member of the public, on the one hand, and any officer, agent or other person acting for or employed by any such telephone common carrier, on the other hand, except under the following conditions:

- (a) Where such use shall be preceded by verbal or written consent of all parties to the telephone conversation, or
- (b) Where such use shall be preceded by verbal notification which is recorded at the beginning, and as part of the call, by the recording party, or
- (c) Where such use shall be accompanied by an automatic tone warning device, which will automatically produce a distinct signal that is repeated at regular intervals during the course of the telephone conversation when the recording device is in use.

Although the following jurisdictions have not incorporated the specific language of 47CFR64.501, they have codified into their laws the service providers' tariffs by reference, which in effect, makes such language the law of the jurisdiction: Arizona §§13-3012 2., California §§631(b)(2), Colorado §§18-9-305 2., Connecticut §§53a-187(a)(1), New York §§250.00 1. (Appears to be identical to CT's. Each has made an amendment.), South Dakota §§23A-35A-21(2) and Washington §§9.73.070(1).

Please note that there are no proposed changes to the section's existing language for subsection (b) paragraphs (1) through (8), which have not been repeated herein. However, I would strongly encourage that the word "lawful" in (b)(1), (2), and (5) be struck to eliminate the oxymoron where "performance of his duties" would of necessity preclude having unlawful duties to perform.

(b) [Unless otherwise specified, t]³he provisions of subsection (a) of this section shall not apply to:

...

(9) Any party who records a telephonic communication provided:

(A) any party under this State's jurisdiction has complied with subsection (a) of this section and, every other party is operating under the authority of and/or contract with the United States regardless of location; or,

(B) any party under this State's jurisdiction has complied with subsection (a) of this section and has given consideration to laws, if any, that apply within any given termination point's jurisdiction and every other party is not under this State's jurisdiction.³

³ Adding the words "Unless otherwise specified" and replacing the capital "T" with "t" as a technical change are necessary because subsection (a) must be complied with within the new paragraph 9's subparagraphs (A) and (B).

The purpose of this paragraph is to permit any party under Connecticut's jurisdiction who complies with any paragraph of subsection (a) of this section to lawfully record any telephonic communication being conducted:

a. with the U. S. Government, actual or contracted, including any U. S. Government entity physically within Connecticut's jurisdiction. The premise is to bestow the U. S. Code's Congressional consent on a party within Connecticut's jurisdiction, which is enumerated in 18USC2511(2)(d) and reads in part: "(d) It shall not be unlawful under this chapter for a person not acting under color of law to intercept a wire, oral, or electronic communication where such person is a party to the communication" This is a facet of the fairness concept. If the federal party is permitted to record under Congressionally bestowed consent, then it would only be fair that any other party be permitted to record under the same standard of Connecticut General Assembly's bestowed consent.

b. where the point of origin/reception is outside of Connecticut and that the party under Connecticut's jurisdiction has completed due diligence with regard to the laws that affect recording of a telephonic communication within any jurisdiction outside of Connecticut's jurisdiction. The intent is to put any party under Connecticut's jurisdiction on an **equal footing** with any party who is permitted to record and is not under Connecticut's jurisdiction or when the party under Connecticut's jurisdiction has defended against any specific element of another jurisdiction's law that would otherwise preclude recording the communication. The most significant illustration of the **fairness – equal footing** concept pertains to the set of legislatively bestowed consent jurisdictions, i.e., at least 26 states, US Code and DC Code. By virtue of being silent or incorporating the legislatively bestowed party consent requirement into each jurisdiction's laws or caselaw, it is clear that each legislature has given due diligence to the degree in which privacy is to be expected when any party so chooses to communicate via telephonic communication. **Simply put, there is no invasion of a party's right to privacy when in law and in fact, none is expected.**

By adopting clause (B) Connecticut's statute would be unique and preeminent in that it (a) provides guidance to any party acting under Connecticut's jurisdiction of their social and legal obligation to be respectful of and responsible for having knowledge of privacy rights in other jurisdictions; and, (b) recognizes that parties under Connecticut's jurisdiction have an obligation to respect the relevant laws in other jurisdictions. Most likely, any officer of any court would point to Connecticut statute as being a fair and comprehensive model for any jurisdiction considering legislation with regard to recording of telephonic communication.

As a general rule, calls that cross state lines become complicated legal issues especially when one state is a legislatively bestowed consent state and the other state is an all-party consent state. What may happen is that one didn't violate the law in the legislatively bestowed consent state and violated the law in the all-party consent state. This proposal intends to be pro-active with regard to "conflict of law" and/or "choice of law" issues. Caselaw seems to be unsettled however; there is at least one case of significance (KELLY KEARNEY et al., v. SOLOMON BROTHERS BARNEY, INC. cited 137 P3d 314 or 39 Cal. 4th 95.) An Adobe .pdf file is available on request. See also 54 New York Law School Law Review 147 authored by C. M. Cast.

Adoption of this proposed paragraph would make clear to any officer of a court that parties under Connecticut's jurisdiction are directed to be lawful when recording across a state line when any party in that state is operating under a legislatively bestowed consent statute or all party consent statute provided the due diligence requirement has been met.

Additionally, if any party outside of Connecticut's jurisdiction is operating under an all-party consent law, intends to record, and is complying with that law, then the Connecticut party must be canvassed for consent before the communication can legally continue. At that point, the Connecticut party can get reciprocal consent and record.

(10) Any party in a telephonic communication provided the intent of the recording is to memorialize evidence of a crime before, during, or after the fact and the unaltered and undisclosed recording must be submitted to law enforcement within a reasonable amount of time.⁴

⁴ Self explanatory. But take into account that the existing section's language includes lesser offences (See (b)(3) and (4).) so it is only reasonable to include offences of a higher degree. There are on record very tragic instances where evidence in the form of a recording of a crime such as of one's own murder have been thrown out of the court proceeding because there was no consent given for the recording. (See CT's Sec. 52-184a.) Most jurisdictions include such a provision and Connecticut should join.

The Judiciary Committee has set out (Raised) HB6367 AN ACT CONCERNING THE FAILURE OF A WITNESS TO REPORT A SERIOUS CRIME, which, if enacted, would operate more efficiently if this proposed change were to be enacted.

(11) Any recording that results from any automatic or automated system that may be reasonably categorized as a voice mail, call center, phone answering or such similar system and where the calling party was acting under informed consent in the telephonic communication.⁵

⁵ Adoption of this proposed paragraph would make it clear that any recorded message that resulted from an automatic/automated answering system such as one inherent in many existing telephone models or from a common carrier's voice mail service or a business's directed voice box program would be exempt/excluded. This paragraph is included because automatic/automated answering systems generally DO NOT include the announcement as part of the recording as required under subsection (a) paragraph (2) of section 52-570d. This paragraph falls under the proposed subsection (c), Definitions, where "consent" includes the variations, implied and informed. That is to say when a message is recorded, the calling party's conduct is carried out with full knowledge that a recording will result. This paragraph falls under the concept of efficiency as outlined in the Preface section above. Technological features associated with contemporary telephones have made digital answering systems ubiquitous. It is most likely that each legislator's good office/s employs such technology and yet, under the existing section 52-570d of the Gen. Stat. of Connecticut, its use and resulting recording is most likely illegal because its operation does not incorporate its verbal notification as "part of the communication by the recording party." That is to say the **"use of such instrument, device or equipment is [not] preceded by verbal**

notification which is recorded at the beginning and is part of the communication by the recording party.
See subsection (a) paragraph (2) of section 52-570d.

(c) Definitions. The following words, as used in this section, shall have the following meaning:⁶

(1) "party" any officer, agent or employee of the state of Connecticut or any political subdivision thereof, an individual acting for or on behalf of the United States Government, and any individual, partnership, association, joint stock company, trust, limited liability company, corporation or other legal entity;⁶

(2) "consent" any instance of an expressed, implied, and/or informed agreement, approval, or permission that is directly linked to a specific recorded telephonic communication;⁶

(3) "jurisdiction" any entity denoted as an authority of or under contract with the United States Government or any of the States of the United States.⁶

⁶ For (c), self explanatory.

For the word "party" and for informational purposes see Gen. Stat. of CT §1-1(k) and §54-41a(4).

For the word "consent" the definition makes it clear that any form – express, implied or informed – qualifies to the effect that permission has been/was given for that recording. Example: By giving notification of the intent to record, the notification itself implies that the party doing the recording consents to the recording, i.e., express consent is NOT required.

express consent. Consent that is clearly and unmistakably stated.

Implied consent. Consent inferred from one's conduct rather than from one's direct expression.

Informed consent. 1. A person's agreement to allow something to happen, made with full knowledge of the risks involved and the alternatives.

Black's Law Dictionary, Abridged Seventh Edition, page 244.

For the word "jurisdiction" the definition makes it clear that there is a limitation where international jurisdictions and governmental subdivisions of any State are not included.

(d) Regardless of jurisdiction, where consent by all parties to any given telephonic communication is required, consent shall be considered obtained whenever any party has given verbal notification to all other parties in the communication and that such notification is recorded at the beginning and is part of the recorded communication.⁷

⁷ Inclusion of this subsection makes it clear that consent is deemed to have been given when any party elects to remain a party to the communication. Any party who decides to withhold consent is obligated to terminate the communication. The main purpose for this subsection is to make it clear that Connecticut's law has standing when there is a conflict of law situation. Jurisdictions such as Maryland do not define consent as being inclusive of the variants, implied or informed. Should conflict of law become a factor in any given proceeding, this subsection's language will support the party that operated under Connecticut's jurisdiction.

(e) It shall be unlawful for any person or persons to record any telephonic communication if such recording is for the purpose of committing any criminal or tortious act.⁸

⁸ Self explanatory. The language is patterned after the U. S. Code (18USC §2511(2)(d)) and other states' statute(s) that were reviewed. The language also complements the existing language of subsection (b) paragraph (3) of this section but is more encompassing. (NOTE: I recommend that if this provision is adopted, then the word "lawful" be struck from paragraphs (1), (2), and (5) of subsection (b) of this section. As a matter of fact the use of "lawful" in those paragraphs is an oxymoron in that it is unreasonable that any duties assigned to those individuals

would be unlawful or marginally lawful. As an example, review subsection (b)'s paragraph 7 where a "duty" of an individual of the Secret Service is the "safety and security of the President." Does one believe there is any duty within those individuals' performance standards that would be unlawful? Said individual may do something that is unlawful but it certainly would not be a "duty" that that individual would be performing.)

(e) (f)⁹ Any person aggrieved by a violation of subsection (a) **[and/or (e)]** of this section may bring a civil action in the Superior Court to recover damages, together with costs and a reasonable attorney's fee.

⁹ Subsection (c) is proposed to be designated as subsection (f) with because a "new" subsection (c) and (d) and (e) are proposed to be added to this section. The words "and/or (e)" would be inserted to provide a penalty for violation of the new subsection (e) provided the new (e) is enacted.

(P.A. 90-305.)

Cited. 238 C. 692.

Does not apply to rerecording of illegally taped telephone conversation. 47 CA 764.