



State of Connecticut  
DIVISION OF CRIMINAL JUSTICE

**Testimony of the Division of Criminal Justice  
Joint Committee on Judiciary**

**March 19, 2012**

**In Opposition to:**

**H.B. No. 5503: An Act Concerning the Recording of Telephonic Communications**

The Division of Criminal Justice opposes H.B. No. 5503, An Act Concerning the Recording of Telephonic Communications, and would respectfully recommend that the Committee take NO ACTION on this bill. The Division of Criminal Justice has carefully reviewed this bill, including having discussed the matter in detail with one of its proponents, and can find no justification or need for passage of this seriously flawed legislation. Specifically, our objections include:

- There is no need to change "person" to "party," which the bill defines. Connecticut General Statutes section 1-1 (k), "person" already applies to the listed non-human entities.
- What does "documented and reciprocal consent" mean, and how is that obtained on a telephone, which you cannot use to record anything until you get the documented and reciprocal consent in the first place? Why mandate reciprocal consent when, in most instances, the recording is being done by one participant?
- The newly proposed "and if any party provides verbal notification, any party may record provided verbal notification or another is recorded" language is rife with problems: (1) it contains an apparent typographical error - the word "or" obviously should be "of;" (2) even correcting for this typographical error, the two uses of "any party" is unclear because, as written, this could be two different parties, and (3) it merely repeats - and poorly at that - the phrase which proceeds it - "is preceded by verbal notification which is recorded ...."
- The same two criticisms, minus the typographical error, hold for the newly proposed "and if any party provides the automatic tone warning, any party may record."
- The new exception (9) (A) is senseless because any party who has complied with subsection (a) falls outside of the reach of the law anyway and, therefore, is already excepted from its reach.
- The phrase "given consideration to laws" as used in new exception (9) (B) is too vague to meaningfully apply.

- What does “acting under informed consent” mean in new exception (11), which applies to voice mail? How does one obtain informed consent in such a context, when the called party is not there?
- The word “consent” needs no definition. See new section (C)(2).
- The definition of “jurisdiction” in new subsection (c)(3) makes no sense, and does not correspond to the well-established legal meaning of the word jurisdiction. This definition is inconsistent with other traditional uses of the word “jurisdiction” in the statute.

When this or similar legislation was introduced last year the Division of Criminal Justice carefully examined the issue and communicated with a proponent of the bill in an effort to address his concerns that resulted in the introduction of the bill. We appreciate the spirit of public interest that prompted the introduction of this legislation, however, upon thorough and careful examination of the questions and concerns presented, the Division finds no justification or need for H.B. No. 5503.