



State of Connecticut  
DIVISION OF CRIMINAL JUSTICE

**TESTIMONY OF THE DIVISION OF CRIMINAL JUSTICE**

IN OPPOSITION TO:

**S.B. NO. 487: AN ACT CONCERNING THE RECORDING OF TELEPHONIC COMMUNICATIONS**

JOINT COMMITTEE ON JUDICIARY  
March 24, 2014

The Division of Criminal Justice opposes S.B. No. 487, An Act Concerning the Recording of Telephonic Communications, and would respectfully recommend the Committee take NO ACTION on this legislation. The bill is unnecessary because the statute it seeks to repeal, General Statutes Section 52-570d, is easily understood, applied, and by all accounts effective. To the Division's knowledge, the existing law has not been the subject of confusion, misapplication, or concern. The existing law, moreover, is drafted broadly enough to remain technologically relevant.

In short, there is no need for this legislation, but our opposition to the bill does not stop there since to enact it would create problems where none now exist. Some parts of the bill are legally dubious, it not incorrect. Take for example, the proposed definition of "consent," which includes the language that "[w]hen a party gives consent, it is to another, never to oneself...." No need exists to say this, and doing so creates a potential for confusion, because consent has never been understood in any context as being granted to one's self. With respect to no aspect of life does one require his or her own consent to act, nor is consent ever granted by one's self to him or herself.

The definition of "consent" also provides that "when consent is received, it is deemed to be reciprocal ...." The meaning of this provision is unclear. Presumably, it means that a person who receives the consent of another grants the same consent in return. The law has never recognized such reciprocity and has always described consent as uniquely personal.

Another example of the problems this bill would create is found in the bill's proposed definition of a "party", which it describes, among other things, as "(A) A caller or a sender; (B) called [sic] or a receiver.... 'Party' does not include any person other than a sender or receiver as set out in subdivision (1) of subsection (a) of section 53a-187...." Assuming that the word "called" in (B) is a typographical error and should be "caller," the three definitions appear intended to say exactly the same thing in three different ways. Presumably, sender and receiver mean the same thing. It is not clear why the reference to Section 53a-187 (a)(1) is included in the definition of "party." That provision provides a definition of "wiretapping," within which the phrase "sender or receiver" is used.

Further, the bill apparently applies only to "intrastate" telephonic communications. The reason for such a limitation, which does not appear in the present version of Section 52-570d, is unknown and not obvious. Later, the bill provides that any "party in a telephonic communication who is outside of this state and who records any party within this state is expected to comply with this section." The legal effect of this provision is dubious and the term "expected" is utterly meaningless in a legal sense.

Finally, subsection (d)(5) of the bill exempts its application to "[a]ny party who records a telephonic communication, provided such party under this state's jurisdiction has complied with subsection (b) of this section, and every other party is acting as an agent of the United States pursuant to 18 USC 2510 et seq., regardless of location[.]" The emphasized language has no clear meaning. Section 2510 is a definitional section, the application of which in this context is anyone's guess. It is also not clear how or why every other party need be acting as an agent of the United States.

In conclusion, the Division of Criminal Justice opposes this legislation and would respectfully request the Committee take NO ACTION on S.B. No. 487. While the Division certainly does not question the intent of the proponents or the strength with which they hold to their beliefs, we believe an objective assessment of the existing law simply shows that this legislation is not only unnecessary, but would do more harm than good if enacted. We would be happy to provide any additional information or answer any questions the Committee might have.