

Written Testimony in Favor of Raised Bill No. 487

by Lawrence S. Jezouit

WHAT DOES AN ACT CONCERNING THE RECORDING OF TELEPHONIC COMMUNICATIONS. "FIX?"

Conventions: Each "fix," the proposed language that is in blue font and underlined, and the associated explanation is prefixed by a number in red bolded font and enclosed within a set of red bolded brackets e.g., **[1]**. Each bracketed number is located immediately **after** the proposed language that is in blue font and underlined. (Note: See Appendix 1 where the existing language of §52-570d is set out in the left column and the new is set out in the right column.)

SUMMARY:

[1] Definitions Subsection: The term "Consent" eliminates any potential for ambiguity by ensuring that an appropriate form of consent will be applied to a given recorded telephonic communication based on the circumstances surrounding the event, e.g., see (b)(1) documented consent, (d)(6) §§53a-187(a)(1) sender or receiver consent and (d)(7) voice mail. Empirical research of state's law and caselaw reveals that there is significant ambiguity with regard to the meaning of terms such as "one-party consent" and "all-party consent" and whether or not one gives oneself consent. The language included herein eliminates any possibility for ambiguous interpretation where one never gives oneself consent. The term promotes efficiency throughout the section by ensuring that consent is reciprocal thus permitting any party to record provided it is documented as set out within the provisions of the section.

[1] The term "Party" synchronizes the CGA's purpose and intent of §§53a-187(a)(1) Wiretapping, §52-184a. Evidence obtained illegally and §52-570d(b) Action for illegal recording. In 1990 passage of P.A.90-305, codified as §52-570d, caused a lawful act to become unlawful, which in turn caused legally obtained evidence to become inadmissible.

[1] The term "Telephonic Communication" eliminates any potential for ambiguity by ensuring that the "universe" of phone calls is limited to voice communication that is consistent with the CGA's original intent. Digital transfers of data such as faxes, financial transactions, etc. are excluded. The scope of any given telephonic communication is set from end-to-end between and among devices, including the devices. Every technology used to transmit voice and the provider of the service is captured.

[2] Privacy Protected and Permitted Conduct Subsection: Prefatory clause clearly sets the scope of its subdivisions as intrastate but works in harmony with subsection (f) that encompasses a CT citizen's privacy rights into extraterritorial telephonic communications. Prefatory clause is modernized to simplify, to account for technology advances, and to eliminate ambiguity. Revised language cures the absurd and unworkable existing language of subdivisions (1) and (2) with regard to verbal consent and verbal notification. The language of the first two subdivisions was revised to ensure that any real time verbal component is part of the recording and the language of the third subdivision was revised to promote efficiency when conference calls are recorded. A new subsection was added to ensure that a recording party conforms to a subdivision with regard to an intrastate party joining during or after the beginning of an ongoing recording.

[3] Exceptions Subsection: Eliminates two subdivisions that permitted the recording of evidence of a "harassment" crime – §53a-182b and §53a-183. However, each will be covered under a "new" subdivision (4) that expands the memorializing of evidence for the Penal Code. Eliminates three subdivisions that were obsolete before passage. One existing subdivision updated to include service providers in addition to common carriers. Adds four subdivisions where (4) provides a CT party to memorialize evidence of crimes; where (5) promotes transparency between a CT party and any agent of the U.S.; where (6) harmonizes the existing conduct permitted pursuant to the 1969 provision §§53a-187(a)(1); and where (7) permits the recording of the ubiquitous voice mail to a message answering system or other similar technology either self recorded or recorded by a service provider.

[4] This new subsection makes it unlawful for a party to record or cause to be recorded any telephonic communication if the recording is for the purpose of committing any criminal or tortious act of this State and provides that such recording is admissible evidence. The provision is patterned after 18USC2511(2)(d) that at least 25 other states have adopted and other states' law.

[5] CGA Scope of CT Privacy Right: This new subsection recognizes the limitation of CT's jurisdictional reach but at the same time takes into account that the use of modern day telecommunications makes interstate telephonic communications a common occurrence. Research of choice of law/conflict of law opinions reveals that the legislature that does not express extraterritorial privacy rights of its citizens may in fact jeopardize those rights. Expressing an expectation of privacy rights for CT citizens within an interstate telephonic communication would be viewed favorably in such cases.

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

Section 1. Section 52-570d of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2014*):

(a) As used in this section:

(1) "Consent" means any instance of an express, implied or informed agreement, approval or permission that is directly linked to a specific recorded telephonic communication and in every case: (A) when a party gives consent, it is to another, never to oneself, (B) when consent is received, it is deemed to be reciprocal;

[1] Rationale: Inclusion of this definition removes any ambiguity by expressly incorporating any of its forms – express, implied, and informed – as warranted by the circumstances of any given telephonic communication.

This definition – subparagraph (A) – removes any potential that one could misconstrue consent as being asked for and then in turn receiving consent from oneself. Empirical research found that a U.S. District Court opinion (precedent) set out ambiguity. See 541 F.Supp. 694, 703 (1982). [Pertinent facts of the case are (1) the recording party in Texas and (2) the recorded party in California and (3) the California party did not give consent and (4) the Texas law prevailed.] (See also *Lord v Lord* 33 Conn L Rptr 3, 88, 91 (2002) “Connecticut’s legislature, ..., [civil suit] for recording phone conversations ... without the **consent of both parties.**”)

The Texas statute exempts for [sic] its coverage, however, communications which are intercepted **with the consent of one of the parties to the communication.** [Emphasis added.]

Taken together, the facts and the court’s statement, one must conclude that the Texas party asked for and gave consent to himself. If only two parties in the call and if the California party did not give consent, then who else but the Texas party could have consented?

This definition – subparagraph (B) – expressly states that any consent received is mutual, i.e., reciprocal, which promotes efficiency when parties record each other or multiple parties record each other within a conference call. See *Alaska Airlines v. U.S.* 399 F. Supp. 906, 910; (1975)

A waiver is different than a consent. A waiver, as defined by Webster as well as Black’s Law Dictionary and others, constitutes an *abandonment* of a right, with no reservations for future use, which is a unilateral thing. *Panoualias v. National Equipment Co.*, 269 F. 630 (2nd Cir. 1920). **A consent, on the other hand, is not unilateral but requires two parties, the one giving the consent and the one to whom the consent is given.** [Emphasis added.]

Research indicates that a subsection of the Revised Code of Washington (RCW), §§9.73.030(3) may be construed as one giving consent to oneself and this definition precludes that possibility. [NOTE: The RCW subsection’s language may require language changes to make it workable and it is not clear if the word “conversation” includes communication.]

(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.]

The concept of reciprocal consent makes the section more efficient where multiple parties record the telephonic communication. The concept is not unique as set out in Montana Code Annotated 2011, §45-8-213. Privacy in communications., §§(1)(c)(iii):

(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 by use of a hidden electronic or mechanical device that reproduces a human conversation without the knowledge of all parties to the conversation. **This subsection (1)(c) does not apply to;** [Emphasis added.]

...

(iii) persons given warning of the transcription or recording, **and if one person provides the warning, either party may record;** [Emphasis added.]

The concept of **deemed** reciprocal consent is inherent in the federal law by virtue of legislatively bestowed consent to any party to a wire communication, i.e., in CT, a “telephonic communication,” and in those states’ laws (at least 25 states) that have adopted the federal law. See 18USC2511(2)(d) [Emphasis added.]

(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**...

(2) "Party" includes, but is not limited to, any of those enumerated in subsection (k) of section 1-1 or subdivision (1) of section 53a-3 who is or was: (A) A caller or a sender, (B) called or a receiver, or (C) a participant in any given telephonic communication. "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; and

[1] Time Line: (1967, P.A. 871.) §52-184a. **Evidence obtained illegally by electronic device inadmissible.** No evidence obtained illegally by the use of any electronic device is admissible in any court of this state.

(1969, P.A. 828, S. 189.) §§53a-187(a)(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. [Emphasis added.]

(1990, P.A. 90-305) §52-570d. **Action for illegal recording of private telephonic communications.** [Language omitted. See CT Statutes Rev. 1/1/2013.] In effect §§52-570d(a) requires disclosure **prior to or as part of the recording,** which is substantiated by extrinsic authorities, by a “**person**” even if the recording is by consent of a sender or receiver pursuant to §§53a-187(a)(1).

Purpose: The definition sets up a “firewall” between §§53a-187(a)(1) and the proposed §§52-570d(b) where the former governs the permitted conduct of any given recording “**Person**” who is a **non-party**. The latter governs the permitted conduct of any given recording “**Party**.” The two categories are separate and distinct because the term “**Party**” includes a second element of being or having been a sender/receiver and alternatively calling/called but the definition expressly excludes a “**Person**” who is or was acting **by consent** under §§53a-187(a)(1). The result is that the discord between the two sections will be eliminated and each will operate as the CGA intended, i.e., completely separate but in harmony. Thus, a “**Person’s**” recording is legal and would be admissible evidence without regard to the provisions of §§52-570d(b) below.

Scenario: Responsible citizens, pursuant to either law, will have the opportunity record evidence of crimes before, during, or after the fact and then present the recording to law enforcement. That is §§53a-187(a)(1) will operate as intended allowing a non-party to, by consent, record a telephonic communication before the effective date of §52-570d. And, §52-570d is being amended by adding a coordinating subdivision (6) within the exceptions subsection, §§(d).

(3) "Telephonic communication" means the transfer of the human voice, real or synthesized, in whole or in any part by any means through facilities used for the transmission of communications furnished or

operated by any person engaged in providing or operating such facilities including, but not limited to, common carriers, wide area telephone service providers, wireless communications providers, personal communications services providers and voice over Internet protocol providers for the transmission of intrastate, interstate, or foreign message toll telephone service and where the point of origin is deemed to be and includes the device used by a sender thereof and where the point of reception is deemed to be and includes the device used by a receiver thereof.

[1] Rationale: Inclusion of this definition removes any ambiguity by ensuring that any given telephonic communication encompasses the **end-to-end thread from one device to one or more other devices**. In the event adjudication is required, the possibility of reference to one of more “outdated” definitions (see §§54-41a) is removed and “overlooked” updates that should have been assimilated into the CT code are mitigated. See also OLR Research Reports 2000-R-0119 CELL PHONES AND THE RIGHT TO PRIVACY and 2001-R-0770 LAWS REGULATING SURVEILLANCE under “New Technologies.” As an example, many states updated definitions based on P.L. 99-508 the Electronic Communications Privacy Act of 1986 passed by the U. S. Congress. CT did not. Additionally, over time findings were made with regard to a “cellular radio telephone,” that was added some twenty years after original passage in 1969 (see §§53a- 187(a)(3) and P.A. 89-103. The Gen. Statutes of CT are not updated to address Broadband or Narrowband Personal Communication Services. The elements of the term, “transfer of the human voice, ...” exclude telephonic communications such as faxes, digital transfer of financial transactions, or GPS tracking data. Compare this definition, (3) “Telephonic communication” with the definitions set out in 18USC2510(1) “wire communication,” (12) “electronic communication,” and (18) “aural transfer.”

(b) No party in an intrastate telephonic communication shall, by any means, record or cause to be recorded such telephonic communication unless:

(1) Consent is received from every other party and such consent is either documented: (A) Before the fact, or (B) at the beginning and as part of the recording; or

(2) It contains an unambiguous verbal notification at the beginning and as part of the recording; or

(3) It is accompanied by an automatic tone warning that produces a distinct signal that is repeated at intervals of approximately fifteen seconds during such telephonic communication.

(c) While a telephonic communication is being recorded and any intrastate party joins during or after the beginning, the recording party must then ensure compliance with subdivision (1), (2) or (3) of subsection (b) with regard to the joined party.

[2] Prefatory clause: Language unambiguously sets the subsection within the State, i.e., “intrastate telephonic communication” but see subsection (f) below for “extraterritorial” expectation of privacy. Language “by any means” expands to encompass new and existing technologies as was the intent of the CGA. See House Proceedings Wednesday, May 9, 1990, page 245 – 246* (CT State Library data marked **10525** and **10526***) as follows: (Note: This legislative history is also applicable to the new (d)(7) below at **Subdivision (7):.**)

SPEAKER BALDUCCI:

Will you remark further? Representative O'Neill of the 69th.

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?** [Emphasis added.]

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 [246* or 10526*] trying to take that into account now.** [Emphasis added.]

[2] Analysis of existing: §§52-570d(a)(1) verbal consent; (2) verbal notification – Absurd and Unworkable Result!

CT Gen Statutes - Sec. 1-2z. Plain meaning rule. The meaning of a statute shall, in the first instance, be ascertained from the text of the statute itself and its relationship to other statutes. If, after examining such text and considering such relationship, the meaning of such text is plain and unambiguous **and does not yield absurd or unworkable results**, extratextual evidence of the meaning of the statute shall not be considered. [Emphasis added.]

I. For the reader's convenience, I have set out in full and then reformatted (parsed) §§52-570d(a) [Gen Statutes of CT Rvsd to 1/1/2013] and its subdivisions. The purpose of parsing the language is to make it easier to recognize and/or comprehend that of the four options that were intended to permit the lawful recording of a telephonic communication **two of them as set out are absurd and unworkable**. That is to say the syntax of the language produces an absurd result thus rendering the two options inoperable. By using "extratextual evidence," one may verify that, over time, the intent of the language was to provide a recording party with four methods listed in order are as follows:

1. Use of an automatic tone warning. (From June 30, 1948 through May 17, 1981, the tone warning was the exclusive method. See 12 FCC 1008, 1009 (1948). See also 32 FR 2384 (1967) and 32 FR 11274 and 11275 (1967) that codified 47CFR64.501 effective September 5, 1967, which required common carriers to conform to the automatic tone warning requirement.)

2 and 3. Consent by every other party received and documented beforehand or consent by every other party **received in real time as part of and at the start of the recording**. (From May 18, 1981 through March 11, 1987, the documented consent was added to the tone warning. For brevity, see 46 FR 29474 through 29480.)

4. Verbal notification is given to every other party **in real time as part of and at the start of the recording**. (From March 12, 1987 and forward the verbal notification was added to the first three methods. For brevity, see 52 FR 3653 through 3654.)

Copied from the General Statutes of Connecticut Revised to January 1, 2013

Sec. 52-570d. Action for illegal recording of private telephonic communications. (a) **No person shall use any instrument, device or equipment to record an oral private telephonic communication unless the use of such instrument, device or equipment (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 (2) is preceded by verbal notification which is recorded at the beginning and is part of the communication by the recording party, or (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.** [Emphasis added.]

(1st iteration): (a) **No person shall record unless the [recording] (1) is preceded** by consent obtained in writing

...
(2nd iteration): (a) **No person shall record unless the [recording] (1) is preceded** by [verbal] consent obtained at the start of, the recording ... (This is an absurd outcome. It is impossible **not** to record in the first instance when in the second instance in real time; the verbal consent must be part of the recording!)

(3rd iteration): (a) **No person shall record unless the [recording] (2) is preceded** by verbal notification which is recorded at the beginning and is part of the communication ... (This is an absurd outcome. It is impossible **not** to record in the first instance when in the second instance in real time; the verbal notification must be part of the recording!)

(4th iteration): (a) **No person shall record unless the [recording] (3) is accompanied** by an automatic tone warning device ...

II. §§52-570d(a)(1) verbal consent; (2) verbal notification – Absurd and Unworkable Result **Resolved** (Note: §52-570d will be reformatted. Therefore, the "old" §§52-570d(a) is replaced by the "new" §§52-570d(b).)

(1st iteration) §§52-570d(b)(1) with the prefatory clause and with the **consent as documented** and **verbal** elements.

(b) No party in an intrastate telephonic communication shall, by any means, record or cause to be recorded such telephonic communication unless:

(1) consent is received from every other party and such consent is either documented: (A) before the fact or (B) at the beginning and as part of the recording, or

(2nd iteration) §§52-570d(b)(2) with the prefatory clause and with the **verbal notification** elements.

(b) No party in an intrastate telephonic communication shall, by any means, record or cause to be recorded such telephonic communication unless:

(2) it contains an unambiguous verbal notification at the beginning and as part of the recording,

[2] Rationale for subdivision (c): This subdivision was added to unambiguously state that every CT citizen's privacy rights must be ensured. It accounts for a CT party who joins a telephonic communication that is being recorded in real time but joins after the beginning of the recording. In such case, **when a recording party becomes aware or is made aware of the joining**, a recording party must then ensure compliance of one of the subdivisions.

(d) Unless otherwise specified in this subsection, the provisions of subsection (b) of this section shall not apply to:

(1) Any federal, state or local criminal law enforcement official who in the performance of his duties records telephonic communications;

(2) Any officer, employee or agent of a public or private safety agency, as defined in section 28-25, who in the performance of his duties records telephonic communications of an emergency nature;

(3) Any officer, employee or agent of any telephonic communications provider who in the performance of his duties records telephonic communications or provides facilities to an investigative officer or criminal law enforcement official authorized pursuant to chapter 959a to intercept a wire communication;

(4) Any party who records 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 have been submitted to law enforcement within a reasonable amount of time;

(5) Any 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;

(6) Any party who, by consent, caused and the person who recorded such telephonic communication pursuant to subdivision (1) of subsection (a) of section 53a-187; and

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

[3] Existing exceptions: See Appendix 1: The existing subdivisions (3) harassment (§53a-182b and §53a-183) and (4) harassment (§53a-182b and §53a-183) **of the existing subsection (b)** are eliminated because each was made redundant by a new all-inclusive redesignated subdivision (4) that permits the memorializing of evidence for crimes set out in Title 53a Penal Code. See Hartford Courant, May 21, 2013, B4 Police Briefs: "AVON – A

New York man was charged Monday with making threatening phone calls to a state official ... [The man] ... faces charges of second degree harassment [§53a-183].”

[3] Existing obsolete exceptions: See Appendix 1: Subdivisions (6) FCC licensed broadcast station, (7), Secret Service, and (8) FCC licensed broadcast station network or cooperative programming **of the existing subsection (b)** are eliminated because each was obsolete some years **before** the language of sSB455 was adopted from a 1987 SNET tariff that was **not** updated to comport with an order of the FCC. The FCC summarized its position regarding exceptions in their MEMORANDUM OPINION AND ORDER (Adopted: May 7, 1981; Released: May 18, 1981): 86 FCC 2d 313, 314-315 (1981)

4. ... Since the termination of Docket 6787 in 1948, the Commission has recognized five limited exceptions to the beep tone requirement.⁵

⁵ These exceptions are: 1) where the recording equipment is used by a Commission licensed broadcast station to record two-way conversations solely for broadcast purposes; 2) where conversations are recorded solely for broadcast purposes by a broadcast network or by a cooperative programming entity composed exclusively of Commission broadcast licensees; 3) where the recording equipment is used by the United States Secret Service to record conversations that concern the safety and security of the President of the United States, members of his immediate family, or the White House and its grounds; 4) where the recording equipment is being used at the United States Department of Defense Command Centers to record emergency communications transmitted in part over the Command Center's private line network; and 5) where the recording equipment is used at the Operations Center of the Nuclear Regulatory Commission to record conversations involving or relating to nuclear emergencies.

86 FCC 2d 313, 321-322 (1981)

C. Exceptions to the Revised Tariff Provision

19. We have decided to allow three exceptions to the revised tariff requirement which will supersede the five current exceptions.²⁰ The first exception is for incoming calls made to telephone numbers publicized for emergencies and outgoing calls made in immediate response. In many types of emergency situations, such as those involving fire, health care, and police, it is infeasible to obtain consent, and use of the beep tone could confuse callers or obliterate important portions of the message. Therefore we will not require the beep tone or prior consent for the recording of calls reporting or made in immediate response to these emergencies. Recordings made at the Department of Defense Command Centers and the Operations Center of the Nuclear Regulatory Commission will be included under this exception. See 59 FCC 2d 538 (1976) and Mimeo No. 06482 (January 29, 1981).

20. The second exception is for the recording of calls made for patently unlawful purposes, such as bomb threats, kidnap ransom requests, and obscene telephone calls. Outgoing calls made in immediate response to such a call will also be excepted. **Under this exception the U.S. Secret Service will still be allowed to record calls referred to it which threaten the safety and security of the President, his immediate family, and the White House.**

21. The third exception is for recordings made pursuant to an explicit and lawful order of a court issued pursuant to 18 U.S.C. §2516. We adopt this exception so that our requirement will not hinder law enforcement efforts or conflict with Title III of the *Omnibus Act*. [Emphasis added.]

...

²⁰ **The present exceptions for the Secret Service, Department of Defense, and the Nuclear Regulatory Commission are included in the new exceptions noted below. Broadcasters and broadcast organizations will not require an exception under the revised policy (see e.g. 38 FCC 2d 579 (1972) and *Broadcast of Telephone Conversation*, Docket 18601, 23 FCC 2d 1 (1970)) since they are required to obtain prior consent before a conversation can be recorded for broadcast. See e.g., 47 C.F.R. §73.1206. Moreover, since Section 73.1206 excepts from the prior-consent rule for broadcasters, conversations where the caller is aware, or is presumed to be aware, that the call is likely to be broadcast, we will construe that prior consent for recording these calls has been given for purposes of the tariff requirement.** [Emphasis added.]

...

86 FCC 2d 313, 321-322 (1981)

25. In view of the foregoing and pursuant to the authority granted in Sections 2(a), 4(i), 4(j), 201, 205, 303(r) and 403 of the Communications Act, 47 U.S.C. §§152(a), 154(i), 154(j), 201, 205, 303(r) and 403, **IT IS ORDERED, That all common carriers subject to Title II of the Communications Act, 47 U.S.C. 151 et seq. shall revise such tariff regulations on file with this Commission which provide for the use of recording devices in connection with interstate and foreign message toll telephone service and wide area telephone service, to comport with this Order.** [Emphasis added.] (This was in 1981 and SNET did not comport. See Appendix 2. SNET Tariff.

[3] Existing subdivision updated: See Appendix 1: Existing subdivision (5) redesignated (3) that provides for a common carrier to assist law enforcement was updated to be more inclusive by replacing the words “any common carrier” with “any telephonic communications provider,” which in turn ties into the definition of “Telephonic communication” where providers are enumerated.

[3] New proposed exceptions: See Appendix 1:

Subdivision (4): Self explanatory. But take into account that the existing subsection’s language includes criminal harassment offences at (b)(3) and (4) that are being deleted since each will be covered here.

The CT General Assembly did not adequately perform its responsibility of “due diligence” when it developed the language used in final passage of sSB455 AN ACT CONCERNING THE RECORDING OF TELEPHONE CONVERSATIONS and signed into law as P.A. 90-305. As an example, consider the following: In 1969 the CT General Assembly passed legislation that was signed into law as (a) P.A. 828, Sec. 189 and codified as §53a-187. Definitions. Applicability. where §§ (a) 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.”

Earlier, in 1967 the CT General Assembly passed “related” legislation that was signed into law as (a) P.A. 871 where it reinforced a person’s right from unreasonable search and seizure as follows:

Sec. 52-184a. Evidence obtained illegally by electronic device inadmissible. No evidence obtained illegally by the use of any electronic device is admissible in any court of this state.

(1967, P.A. 871.)

See Sec. 53a-187 et seq. re tampering with private communications and eavesdropping. Cited.

211 C. 555. Cited. 15 CA 529. Cited. 39 CS 392.

The facts here are that (1) under §§53a-187(a) a “party” to a telephonic communications, at will, may record that telephonic communication – no consent is required from any other party. (See State of Connecticut v. Charles DeMartin, 171 Conn 524, 544 at FN 13 (1976)) and (2) any recording made by a party that memorialized evidence of a crime was admissible in any CT court of law. When the CT General Assembly passed sSB455 in 1990 without including an exception whereby a party would be permitted to memorialize evidence of a crime by an undisclosed recording, the legislators failed to maintain the integrity of the goals of the statutes as a whole. Instead, the legislators focused on less significant offenses by including exceptions as follows:

(3) Any person who, as the recipient of a telephonic communication which conveys threats of extortion, bodily harm or other unlawful requests or demands, records such telephonic communication;

(4) Any person who, as the recipient of a telephonic communication which occurs repeatedly or at an extremely inconvenient hour, records such telephonic communication;

By the opening statement – “The CT General Assembly did not adequately perform its responsibility of “due diligence” when it developed the language used in final passage of sSB455 ... and signed into law as P.A. 90-305.” – I refer to the fact that preceding the vote on sSB455 there was an exchange between the manager of the bill and another representative where it was made known and agreed to that the language of sSB455 would be detrimental to the State’s Attorney’s Office. In spite of that colloquy, the House took no action to offer any amendment that would eliminate the unintended detrimental consequence. See the legislative record for the

House session dated Wednesday, May 9, 1990, 239 through 241 that reads:

[239] Representative Farr. REP.

FARR: (19th)

Just one other question, one concern I have on this. Somebody calls me, I realize that there are certain things that are excluded. Those are basically threat type of conversations. Somebody calls me and says, offers, for example to bribe me, to buy my vote in the Legislature, and I tape record that. Is that excluded from this, through you, Mr. Speaker, to Representative Mintz.

SPEAKER BALDUCCI:

Representative Farr. Excuse me, Representative Mintz.

REP. MINTZ: (140th)

Through you, Mr. Speaker, if the bill states for blackmail calls, that would be excluded. The purchase of a vote I'm not quite sure falls under that kind of provision, so it might be excluded in this.

REP. FARR: (19th)

Well, through you, Mr. Speaker, to Representative Mintz, I'm not talking about blackmail. If somebody calls me up in my office and says, there's an important vote coming up, I'd like to offer you \$10,000 to change your vote, as I read the bill, if I recorded that conversation, went to somebody suggested, take the [240] money, and I went to the State's attorney's office and said I have a tape recording, somebody called me offered me \$10,000, this is a recording. They listen to the recording and then they arrest me. Isn't that the way the bill works, because I illegally recorded that telephone conversation. Through you, Mr. Speaker, to Representative Mintz .

REP. MINTZ: (140th)

Through you, Mr. Speaker, I don't believe that you'll be arrested for that. I think the only penalty under this is, they may bring a civil rights action against you, the person who you recorded the telephone conversation.

REP. FARR: (19th)

There are no criminal penalties whatsoever in this bill?

REP. MINTZ: (140th)

Through you, Mr. Speaker, none that I see.

REP. FARR: (19th)

Would that tape recording then be illegal for purposes of admission in a criminal proceeding? Through you, Mr. Speaker, to Representative Mintz.

SPEAKER BALDUCCI:

Representative Mintz.

REP. MINTZ: (140th)

[241] Through you, Mr. Speaker, **I believe that that tape recording probably would be suppressible in a criminal case.** [Emphasis added.]

REP. FARR: (19th)

Well, I'd just suggest to the Chamber that if that's the case, this may be a serious problem here. We're not talking about somebody, law enforcement officials going out and doing illegal tapes. I mean, somebody calls me on my phone and I happen to have the answering machine there, I leave it on because they're making what I think to be an illegal offer. We pass the bill. **Apparently that doesn't, now is suppressible. I'm not sure I like the bill.** Thank you. [Emphasis added.]

The concept is set out within other states' code that have preceded CT's §52-570d and where each example's law, embraces the concept of memorializing evidence of criminal offences. For example:

2012 PENAL CODE OF CALIFORNIA, Part 1, Title 15, CHAPTER 1.5. INVASION OF PRIVACY, §§633.5. **Nothing** in Section 631, 632, 632.5, 632.6, or 632.7 **prohibits one party to a confidential communication from recording the communication for the purpose of obtaining evidence reasonably believed to relate to the commission by another party to the communication of the**

crime of extortion, kidnapping, bribery, any felony involving violence against the person, or a violation of Section 653m. **Nothing in Section 631, 632, 632.5, 632.6, or 632.7 renders any evidence so obtained inadmissible in a prosecution for** extortion, kidnapping, bribery, any felony involving violence against the person, a violation of Section 653m, or any crime in connection therewith. [Emphasis added.]

2012 Florida Statutes, TITLE XLVII CRIMINAL PROCEDURE AND CORRECTIONS, Chapter 934 SECURITY OF COMMUNICATIONS §934.06 Prohibition of use as evidence of intercepted wire or oral communications; exception.—... **The prohibition of use as evidence provided in this section does not apply in cases of prosecution for criminal interception in violation of the provisions of this chapter.** [Emphasis added.]

The “the lights partially came on” for the Pennsylvania legislature in 2012.

Consolidated Statutes of Pennsylvania, Title 18 CRIMES AND OFFENSES, PART II. DEFINITION OF SPECIFIC OFFENSES, ARTICLE F. OFFENSES AGAINST PUBLIC ORDER AND DECENCY, Chapter 57. Wiretapping and Electronic Surveillance, Subchapter B. Wire, Electronic or Oral Communication, § 5704. Exceptions to prohibition of interception and disclosure of communications.

§§5704 It shall not be unlawful and no prior court approval shall be required under this chapter for:

...
(17) **Any victim, witness** or private detective licensed under the act of August 21, 1953 (P.L.1273, No.361), known as The Private Detective Act of 1953, **to intercept the contents of any wire**, electronic or oral **communication, if that person is under a reasonable suspicion that the intercepted party is committing, about to commit or has committed a crime of violence and there is reason to believe that evidence of the crime of violence may be obtained from the interception.**

2012 Amendment. Act 202 amended pars. (2)(ii), (12)(ii), (13) (i)(B) and (14)(i)(B) and **added par. (17).** [Emphasis added.]

Subdivision (5): The purpose of the new subdivision (5) is to permit any party under Connecticut’s jurisdiction to lawfully record any telephonic communication being conducted with the U. S. Government including any U. S. Government agent whether the agent is physically within Connecticut’s jurisdiction or is located extraterritorially. 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) that in part reads:

(d) It shall not be unlawful under this chapter for a person not acting under color of law to intercept a [telephonic] communication where such person is a party to the communication

The subdivision’s language captures a facet of a concept for fairness, i.e., “a level playing field”. If the federal party, at will, is permitted to record under Congress’s legislatively bestowed consent, then it would only be fair that any other party be permitted to record under the same rule. The language of subdivision (5) sets out the Connecticut General Assembly’s bestowed consent. **Additionally, this provision promotes transparency in government.**

The language of subdivision (5) uses the term “agent” to define a U.S. Government party. The term was adopted from 18USC2510(6):

(6) “person” means any employee, or **agent of the United States or any State or political subdivision thereof**, and any individual, partnership, association, joint stock company, trust, or corporation; [Emphasis added.]

Note: Any recording CT party must comply with subsection (b) if there is another CT party who is not an agent of the U.S.

Subdivision (6): The purpose of the new subdivision (6) is to complete the harmonizing of §§52-570d(b) with §§53a-187(a)(1). For a more detailed explanation and understanding, refer to the text under **[1] Time Line;** **Purpose;** and **Scenario:** above for the term **"Party."**

Subdivision (7): Adoption of the language of this proposed subdivision 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 telephonic communications provider's voice mail service or a business's directed voice mailbox program would be an exception. This subdivision's language is included because automatic/automated answering systems generally **DO NOT** include the announcement, i.e., verbal notification, as part of the recording as required under the existing subdivision (2) of subsection (a) of section 52-570d, which is carried forward as modified by the proposed (b)(2). This subdivision's language is consistent with the proposed subsection (a)(1), 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. See Vol. 2 No. 2 FCC Rcd 502, 504, 506 FN24 (1987)

21. As noted, however, we are adding a one-party notification option to the present beep tone and mutual consent options. The purpose of Commission regulation in this area is to assure notification to the parties that their conversations are being recorded. Notification at the beginning of the call will meet that objective as well as beep tone or mutual consent.²⁴ Notification must be made in a clear, unambiguous manner at the beginning, ...

²⁴ It is, of course, obvious that any party not wishing to be recorded can, upon so being notified, prevent that recording by merely terminating the call.

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 the device's operation does not incorporate its verbal notification as "part of the communication by the recording party." The legislative history verifies that a voice mail capable telephone is subject to §§52-570d. See House Proceedings Wednesday, May 9, 1990, page 245 – 246* (CT State Library data marked **10525** and **10526***) that is set out under **[2] Prefatory clause:** above at page 4.

(e) Notwithstanding subsections (c) and (d) of this section, it shall be unlawful for any party to a telephonic communication to record such telephonic communication if such recording is for the purpose of committing any criminal or tortious act of this state. Such recording is admissible as evidence in any court of this state without regard to section 52-184a.

[4] Rationale: Self-explanatory but see the language as set out in the U. S. Code (18USC §§2511(2)(d)) and Florida's law. (Note: By example of §§53a-187(b), the authority justifying (e)'s second sentence is 15 Conn. App. 529.)

18USC2511(2)(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 or where one of the parties to the communication has given prior consent to such interception **unless such communication is intercepted for the purpose of committing any criminal or tortious act in violation of the Constitution or laws of the United States or of any State.** [Emphasis added.]

2012 Florida Statutes, CHAPTER 934 SECURITY OF COMMUNICATIONS §§934.03(2)(e) It is unlawful to intercept any wire, oral, or electronic communication for the purpose of committing any criminal act.

(f) 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.

[5] Purpose: This subsection reinforces that a CT party's expectation that their privacy rights will be maintained when being recorded by any extraterritorial party. This provision points a conflict of law or choice of law court in the direction of the CT party's privacy rights. Such courts have focused on the fact that a legislature's lack of emphasis in regard to extending a citizen's expectation of privacy rights beyond the state's borders harms the citizen's prayer for relief and may result in an unfavorable decision.

Supporting Authorities (Note that the span of cases ranges from 1982 to and including 2006.): See *PAUL PENDELL, ET AL., V. AMS/OIL, INC., V. NORMAND LALIBERTE*, Lexis 26089 1, 5 (1986) U.S. Dist. Ct. for the district of MA., Civil Action No. 84-4108-N. Summary: A Massachusetts plaintiff lost this case in part because the legislature wrote language that "restricted" privacy rights within MA only and was mute for instances outside of the state. See excerpt below:

The third factor which the Court in the Bushkin case indicated should be considered is the impact of the choice-of-law on the interstate system as a whole. This consideration merges with AMS/OIL's contention that M.G.L.A. Ch. 272 § 99 is purely a local statute to be given intrastate effect only. As such, that law would be inapplicable to Laliberte's conduct which occurred outside Massachusetts. An examination of the language in the preamble to M.G.L.A. Ch. 272 § 99 demonstrates that the legislation resulted from and was a response to activity "within the commonwealth" with the purpose of protecting "the privacy of all citizens of the commonwealth." The warrant provisions of the statute are replete with references to local authorities and jurisdiction. There is no language whatsoever to indicate that the [*13] statute was intended to be given extraterritorial effect. As a general rule, [HN7] when no such intention is clearly expressed, it is presumed that the statute was intended to be applicable only within the territorial jurisdiction of the enacting governmental body. 73 Am Jur. 2d, Statutes § 359. Considering the interstate system as a whole, the better rule is that a local statute should not be given extraterritorial effect so as to regulate conduct in another jurisdiction. Further, it should be recognized that by applying Rhode Island law the interests of both states are furthered in that the privacy rights of citizens are protected, albeit to a lesser degree than perhaps they would be under Massachusetts law. [Emphasis added.]

Any measure that will support a CT party's privacy rights should help in diminishing the unpredictability of the outcome of conflict of law or choice of law cases. The inclusion of a legislature's tangible support is demonstrated by a review of such cases by the California Supreme Court case *KEARNEY et al. v. SALOMON SMITH BARNEY, INC.* 39 Cal. 4th 95, 129-130 (2006):

Although SSB would have reached that conclusion had it undertaken the extended choice-of-law analysis set forth above, we recognize that at the time of SSB's past actions the few lower court decisions that had considered a legal challenge to the recording of an interstate telephone conversation had reached differing conclusions as to which state's law should apply -- the law of the state where the person who recorded the conversation was situated, or instead the law of the state where the person whose words were being recorded was located.¹⁶ Although none of the prior cases involved the type of repeated recording of customer telephone calls by a business entity that is involved here, we nonetheless believe that prior to our resolution of the issue in this case a business entity reasonably might have been uncertain as to which state's law was applicable and reasonably might have relied upon the law of the state in which its employee was located. Under these circumstances, we believe Georgia has a legitimate interest in not having SSB subjected to liability on the basis of its employees' past actions in Georgia. ...

¹⁶ The prior cases involved the application of the law of four jurisdictions: Florida, Massachusetts, New York, and Texas, although not all of the cases analyzed the issue under choice-of-law principles. In Florida, an intermediate state appellate court held that Florida law--which, like California law, prohibits the recording of a telephone call **without the consent of all parties**--applied and rendered unlawful the recording in Georgia of a telephone call between the defendant in Georgia and the plaintiff in Florida. (*Koch v. Kimball* (Fla. Dist. Ct. App. 1998) 710 So.2d 5.) In Massachusetts, a number of federal district court decisions applying Massachusetts law ruled that the law of the state in which the person is doing the recording should apply, and therefore rejected actions brought by Massachusetts residents (whose law--like California law--requires the **consent of all parties**) against the defendants who recorded the calls in states where the **consent of only one party is required. (MacNeill Engineering Co. v. Trisport, Ltd. (D.Mass. 1999) 59 F.Supp.2d 199, 202; Pendell v. AMS/Oil, Inc. (D.Mass. 1986) 1986 U.S. Dist. Lexis 26089.)** In New York, a federal district court applying New York law held that where the party whose conversation was secretly recorded was located in a state that permitted the recording of a conversation with the **consent of one party**, that party could not maintain an action even though the defendant who **recorded the conversation was located in a state that required the consent of all parties to the conversation.** (*Wehringer v. Brannigan* (S.D.N.Y. 1990) 1990 U.S. Dist. Lexis 16447; see also *Locke v. Aston* (2006) 814 N.Y.S.2d 38.) In Texas, a federal district court applying Texas's "most significant relationship" choice-of-law test concluded that Texas law (which required the **consent of only one party to the conversation**), rather than California law, should apply when a company employee in Texas recorded telephone conversations with other company employees in California. (*Becker v. Computer Sciences Corp.* (S.D.Tex. 1982) 541 F.Supp. 694, 703-705.) [Emphasis added.]

(g) Any party aggrieved by a violation of this section may bring a civil action in the Superior Court to recover damages, nominal or otherwise, together with costs and a reasonable attorney's fee.

Appendix 1 for Raised Bill 487

Prefatory Data Follows:

Note: Within the proposed language, the column to the right below, for the relabeled §§52-570d(c) subdivisions (1), (2), and (3), the word “lawful” has been struck from the original because it is redundant to “performance of his duties.” The personnel identified are not assigned unlawful duties.

Supporting definitions for the inserted word:

document, *vb.*(18c) [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, Ninth Edition, page 555.

record, *n.* (13c) **1.** A documentary account of past events, usu. designed to memorialize those events. **2.** Information that is inscribed on a tangible medium or that, having been stored in an electronic or other medium, is retrievable in perceivable form. Black’s Law Dictionary, Ninth Edition, page 1387. (Note: As the term “record” supports the term “document.”)

(NOTE: Because the term “Person” affected the operation of both §§53a-187(a)(1) and §52-570d, i.e., a “common” definition, it was necessary to create a “firewall” between the two. This was accomplished by defining the term “Party” to include a second element of being or having been a sender/receiver and alternatively calling/called but expressly excluding a “person” who is or was acting by consent under §§53a-187(a)(1).

party. (13c) **1.** One who takes part in a transaction <a party to the contract>. Black’s Law Dictionary, Ninth Edition, page 1231.

person. (13c) **1.** A human being. ... **2.** The living body of a human being <contraband found on the smuggler’s person>. **3.** An entity (such as a corporation) that is recognized by law as having the rights and duties of a human being. Black’s Law Dictionary, Ninth Edition, page 1257.

reciprocal, *adj.* (16c) **1.** Directed by each toward the other or others; MUTUAL <reciprocal trusts>, **2.** BILATERAL <a reciprocal contract>. **3.** Corresponding; equivalent. Black’s Law Dictionary, Ninth Edition, page 1384.

Consent, *n.* (14c) ...

express consent. (16) Consent that is clearly and unmistakably stated.

implied consent. (17c) Consent inferred from one’s conduct rather than from one’s direct expression. **2.** Consent imputed as a result of circumstances that arise, as when a surgeon removing a gall bladder discovers and removes colon cancer.

informed consent. (1938) **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, Ninth Edition, page 346

NOTE: For Black’s Law Dictionary under the **Guide to the Dictionary** at page xxvi the following is set out: **6. Angle Brackets** Contextual illustrations of a headword are given in angle brackets: ...

NOTE: Text in red font and enclosed in red brackets and located in either column below are explanatory comments only and must not be considered as part of either the existing or proposed language.

Compare CT Gen Stat Section 52-570d on the left to the proposed on the right.

EXISTING:

Sec. 52-570d. Action for illegal recording of private telephonic communications.

(New definitions subsection.)

(New definition.)

(New definition.)

(New definition.)

(a) No person shall use any instrument, device or equipment to record an oral private telephonic communication unless the use of such instrument, device or equipment

(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 (Verbal consent is absurd and unworkable.)

(2) is preceded by verbal notification which is recorded at the beginning and is part of the communication by the recording party, or (Verbal notification is absurd and unworkable.)

PROPOSED:

Sec. 52-570d. Action for illegal recording of telephonic communications.

(a) As used in this section:

(1) "Consent" means any instance of an express, implied or informed agreement, approval or permission that is directly linked to a specific recorded telephonic communication and in every case: (A) When a party gives consent, it is to another, never to oneself, (B) when consent is received, it is deemed to be reciprocal;

(2) "Party" includes, but is not limited to, any of those enumerated in subsection (k) of section 1-1 or subdivision (1) of section 53a-3 who is or was: (A) A caller or a sender, (B) called or a receiver, or (C) a participant in any given telephonic communication. "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; and

(3) "Telephonic communication" means the transfer of the human voice, real or synthesized, in whole or in any part by any means through facilities used for the transmission of communications furnished or operated by any person engaged in providing or operating such facilities including, but not limited to, common carriers, wide area telephone service providers, wireless communications providers, personal communications services providers and voice over Internet protocol providers for the transmission of intrastate, interstate, or foreign message toll telephone service and where the point of origin is deemed to be and includes the device used by a sender thereof and where the point of reception is deemed to be and includes the device used by a receiver thereof.

(b) No party in an intrastate telephonic communication shall, by any means, record or cause to be recorded such telephonic communication unless:

(1) Consent is received from every other party and such consent is either documented: (A) Before the fact, or (B) at the beginning and as part of the recording; or

(2) It contains an unambiguous verbal notification at the beginning and as part of the recording; or

(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.

(New subdivision.)

(b) The provisions of subsection (a) of this section shall not apply to:

(1) Any federal, state or local criminal law enforcement official who in the lawful performance of his duties records telephonic communications;

(2) Any officer, employee or agent of a public or private safety agency, as defined in section 28-25, who in the lawful performance of his duties records telephonic communications of an emergency nature;

(3) Any officer, employee or agent of any communication common carrier who in the lawful performance of his duties records telephonic communications or provides facilities to an investigative officer or criminal law enforcement official authorized pursuant to chapter 959a to intercept a wire communication;

(4) Any person who, as the recipient of a telephonic communication which conveys threats of extortion, bodily harm or other unlawful requests or demands, records such telephonic communication;

(5) Any person who, as the recipient of a telephonic communication which occurs repeatedly or at an extremely inconvenient hour, records such telephonic communication;

(6) Any officer, employee or agent of a Federal Communications Commission licensed broadcast station who records a telephonic communication solely for broadcast over the air;

(7) Any officer, employee or agent of the United States Secret Service who records telephonic communications which concern the safety and security of the President of the United States, members of his immediate family or the White House and its grounds; and

(3) It is accompanied by an automatic tone warning that produces a distinct signal that is repeated at intervals of approximately fifteen seconds during such telephonic communication.

(c) While a telephonic communication is being recorded and any intrastate party joins during or after the beginning, the recording party must then ensure compliance with subdivision (1), (2) or (3) of subsection (b) with regard to the joined party.

(d) Unless otherwise specified in this subsection, the provisions of subsection (b) of this section shall not apply to:

(1) Any federal, state or local criminal law enforcement official who in the performance of his duties records telephonic communications;
(The only change is that the word "lawful" was deleted.)

(2) Any officer, employee or agent of a public or private safety agency, as defined in section 28-25, who in the performance of his duties records telephonic communications of an emergency nature;
(The only change is that the word "lawful" was deleted.)

(3) Any officer, employee or agent of any telephonic communications provider who in the performance of his duties records telephonic communications or provides facilities to an investigative officer or criminal law enforcement official authorized pursuant to chapter 959a to intercept a wire communication;

(The exceptions (4) and (5) permitted the gathering of evidence of a "harassment" crime in real time. See §53a-182b. Harassment in the first degree: and §53a-183. Harassment in the second degree otherwise such evidence would be inadmissible pursuant to 52-184a. Evidence obtained illegally by electronic device inadmissible. The "new" subdivision (5) that is set out below not only includes the offenses within the existing exceptions but also expands the evidence gathering to Title 53a Penal Code.

(The exception was obsolete several years prior to being adopted in sSB455. See 86 FCC 2d 313, 321 ¶19 and FN 20 (1981).)

(The exception was obsolete several years prior to being adopted in sSB455. See 86 FCC 2d 313, 321 ¶19 and FN 20 (1981).)

(8) Any officer, employee or agent of a Federal Communications Commission broadcast licensee who records a telephonic communication as part of a broadcast network or cooperative programming effort solely for broadcast over the air by a licensed broadcast station.

(New exception subdivision.)

(New exception subdivision.)

(New exception subdivision.)

(New exception subdivision.)

(New subsection, see 18 USC 2511(2)(d). "...unless such communication is intercepted for the purpose of committing any criminal or tortious act in violation of the Constitution or laws of the United States or of any State.)

(New subsection.)

(c) Any person aggrieved by a violation of subsection (a) of this section may bring a civil action in the Superior Court to recover damages, together with costs and a reasonable attorney's fee.

(P.A. 90-305.)

Cited. 238 C. 692.

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

(The exception was obsolete several years prior to being adopted in SSB455. See 86 FCC 2d 313, 321 ¶19 and FN 20 (1981).)

(4) Any party who records 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 have been submitted to law enforcement within a reasonable amount of time;

(5) Any 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;

(6) Any party who, by consent, caused and the person who recorded such telephonic communication pursuant to subdivision (1) of subsection (a) of section 53a-187; and

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

(e) Notwithstanding subsections (c) and (d) of this section, it shall be unlawful for any party to a telephonic communication to record such telephonic communication if such recording is for the purpose of committing any criminal or tortious act of this state. Such recording is admissible as evidence in any court of this state without regard to section 52-184a.

(e) 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.

(f) 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.

(P.A. 90-305.)

Cited. 238 C. 692.

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

Appendix 2 for Raised Bill 487

GENERAL EXCHANGE TARIFF

The Southern
New England
Telephone Company

Tariffs Part II
Section 25
Contents Sheet 1

CONTENTS	Sheet
A. General Provisions.....	1
1. General.....	1
2. Responsibility of the Customer.....	1
3. Responsibility of the Telephone Company.....	1
4. Recording of Two-Way Telephone Conversations.....	2
5. Violation of Regulations.....	3
6. Definitions.....	3
B. Connections of Registered Equipment.....	7
1. Registered Terminal Equipment, Registered Protective Circuitry and Registered Communications Systems.....	7
2. F.....	9
3. C.....	10
C. Connections of Customer-Provided Communications Systems.....	10A
1. D.....	10A
2. a.....	10A
3. k.....	11
3. Minimum Protection Criteria for Electrical Connections.....	15
4. Attested Equipment Connected Prior to January 1, 1980.....	16
5. Conforming Answering Devices Connected Prior to July 1, 1979.....	17
D. Acoustic or Inductive Connections.....	18
1. General.....	18
2. Minimum Protection Criteria.....	18
E. Accessories.....	19
G. Connections of Customer-Provided Communications Systems Not Subject to Part 68 of the Federal Communications Commission's Rules and Regulations.....	20
H. Connections of Customer-Provided Terminal Equipment to Services Specifically Exempted from the Federal Communications Commission's Registration Program.....	20
I. Connections of Certain Facilities of Power, Pipe Line and Railroad Companies.....	20
1. General.....	20
J. Connections of Certain Facilities of the U.S. Army, Navy and Air Force.....	22
1. General.....	22
K. United States Coast Guard.....	23
L. Federal Aviation Administration.....	23
M. Police and Fire Departments.....	23
N. Connections of Service Station Lines and Facilities Furnished by the Customer Which Involve Hazardous or Inaccessible Locations.....	24
O. Telecommunications System Priority (TSP).....	25

See page 2 below for the tariff: A. 4. highlighted in yellow and note the date located at the lower right, Effective December 31, 1987, which is some two years and nine months before the effective date of P.A. 90-305 that was codified as §52-570d of the General Statutes of Connecticut.

GENERAL EXCHANGE TARIFF

The Southern
New England
Telephone Company

Tariffs Part II
Section 25
Sheet 2

Customer-Provided Terminal Equipment

A. General Provisions (Continued)

3. Responsibility of The Telephone Company (Continued)

- b. The Telephone Company will, at the Customer's request, provide information concerning interface parameters, including the number of ringers which may be connected to a particular telephone line, needed to permit Customer-provided terminal equipment to operate in a manner compatible with telecommunications services.
- c. The Telephone Company may make changes in its telecommunications services, equipment, operations or procedures, where such action is not inconsistent with Part 68 of the Federal Communications Commission's Rules and Regulations. If such changes can be reasonably expected to render any Customer's terminal equipment or communications system incompatible with telecommunications services, or require modification or alteration of such Customer-provided terminal equipment or communications systems, or otherwise materially affect its use or performance, the Customer will be given adequate notice, in writing, to allow the Customer an opportunity to maintain uninterrupted service.

4. Recording of Two-Way Telephone Conversations

Telecommunications services are not represented as adapted to the recording of two-way telephone conversations. However, Customer-provided voice recording equipment may be directly, acoustically or inductively connected with telecommunications services. When such connections are made, the Customer-provided voice recording equipment shall be so arranged that at the will of the user it can be activated or deactivated. In addition, one of the following conditions must apply:

- All parties to the telephone conversation must give their prior consent to the recording of the conversation, and the prior consent must be obtained in writing or be part of, and obtained at the start of, the recording;
 - A distinctive recorder tone, repeated at intervals of approximately fifteen seconds, is required to alert all parties when the recording equipment is in use. The distinctive recording tone can be provided as part of (1) the recording equipment, or (2) Customer-provided registered or grandfathered protective circuitry or
 - 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.
- a. The FCC has established the following exceptions to the foregoing requirements:
- (1) When used by a Federal Communications Commission licensed broadcast station Customer for recording of two-way telephone conversations solely for broadcast over the air.
 - (2) When used by the United States Secret Service of the Department of Treasury for recording of two-way telephone conversations which concern the safety and security of the person of the President of the United States, members of his immediate family, or the White House and its grounds.
 - (3) When used by a broadcast network or by a cooperative programming effort composed exclusively of Federal Communications Commission broadcast licensees to record two-way telephone conversations solely for broadcast over the air by a licensed broadcast station.

GENERAL EXCHANGE TARIFF

The Southern
New England
Telephone Company

Tariffs Part II
Section 25
Sheet 3

Customer-Provided Terminal Equipment

A. General Provisions (Continued)

4. Recording of Two-Way Telephone Conversations (Continued)

(4) When used for recording at United States Department of Defense Command Centers of emergency communications transmitted over the Department of Defense's private line system when connected to telecommunications service.

(5) When used by a municipal fire or police department for recording on central office lines assigned exclusively for the receipt of fire calls or police emergency calls and attended at all times for such purpose, provided, further, that the Fire Department or Police Department certifies these conditions will be observed.

* * * *

5. Violation of Regulations

When any Customer-provided terminal equipment or communications system is used with telecommunications services in violation of any of the provisions in this Section 25 Paragraph A., the Telephone Company will take such immediate action as necessary for the protection of the telecommunications network and Telephone Company employees, and will promptly notify the Customer of the violation. The Customer shall discontinue such use of the terminal equipment or communications system or correct the violation and shall confirm in writing to the Company within 10 days, following the receipt of written notice from the Company, that such use has ceased or that the violation has been corrected. Failure of the Customer to discontinue such use or to correct the violation and to give the required written confirmation to the Telephone Company within the time stated above shall result in suspension of the Customer's service until such time as the Customer complies with the provisions of this tariff.

6. Definitions

Accessories

The term "Accessories" denotes devices which are mechanically attached to, or used with, the facilities furnished by the Telephone Company and which are independent of, and not electrically, acoustically or inductively connected to the communications path of the telecommunications system.

Acoustic Connection

The term "Acoustic Connection" denotes a connection made by sound and involved no physical connection of the electrical conductors in the communications path.