Legislative History for Connecticut Act

SB 455	(PA 305)	FAX	1990
Senate	1413-1418, 1441		(7p)
House	10514-10536		(23p)
Judiciary	1091-1092, 1199-1200		(4p)

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CONNECTICUT
GEN. ASSEMBLY
SENATE

PROCEEDINGS
1990

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session for state and local policemen to update police managers on the rapidly changing laws, governing investigation, detection and prosecution of criminal matters.

THE CHAIR:

Further remarks on the bill? Senator Herbst.

SENATOR HERBST:

If there are no further remarks, I ask that it be placed on the Consent Calendar.

THE CHAIR:

Without objection, so ordered.

THE CLERK:

Calendar 329, File 523, Substitute SB455, AN ACT CONCERNING THE RECORDING OF TELEPHONE CONVERSATIONS. Favorable Report of the Committee on JUDICIARY.

THE CHAIR:

Senator Blumenthal.

SENATOR BLUMENTHAL:

Thank you, Mr. President. I move adoption of the Joint Favorable report and passage of the bill.

THE CHAIR:

Are there any amendments?

SENATOR BLUMENTHAL:

There is one amendment.

THE CHAIR:

There is one amendment. The Senate will stand at ease.

THE CLERK:

I stand corrected, Mr. President, there is an amendment. LCO4114 designated Senate Amendment Schedule "A" offered by Senator Blumenthal of the 27th District et al.

THE CHAIR:

Senator Blumenthal.

SENATOR BLUMENTHAL:

I move adoption of the amendment, Mr. President.

THE CHAIR:

Do you wish to remark on the amendment?

SENATOR BLUMENTHAL:

Yes. The amendment is a technical one. It simply eliminates a portion of the bill that is already covered by federal law.

THE CHAIR:

Further remarks on the amendment? All those in favor of the amendment signify by saying aye.

SENATORS:

Aye.

THE CHAIR:

Opposed? The amendment is adopted. We are now on the bill as amended. Senator Blumenthal.

SENATOR BLUMENTHAL:

Thank you, Mr. President. The effect of this bill if passed by the General Assembly would be to prohibit tape recorded conversations unless done by the knowledge of all parties to those telephonic conversations. Currently, under law, the telephone conversation can be taped with the knowledge of one party, the conversation.

This would provide exceptions of the general rule that both parties or both sides of the conversation must be aware that the taping was occurring. For example, under conditions where law enforcement officers were using it. Where 911 conversations were being recorded and similar kinds of situations involving either law enforcement as specified by the bill or emergency situations.

THE CHAIR:

Further remarks? Senator O'Leary.

SENATOR O'LEARY:

Thank you, Mr. President. I would just like to add my voice in support of the bill. 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 and if one individual decides he is going to tape the conversation over a telephone or however it is done, really has an obligation to inform the other party that the taping has occurred and then that party has the option to continue the conversation or not continue it.

I think it's a good bill and it's one that we all ought to get behind.

THE CHAIR:

Further remarks? Senator Upson.

SENATOR UPSON:

If I may, Mr. President, ask, through you, Senator Blumenthal a question.

THE CHAIR:

You may proceed.

SENATOR UPSON:

Senator Blumenthal, would this take care of the incident where the State Police were taping conversations that were had by the attorneys and their clients in jail cells, etc.? Through you, Mr. President.

THE CHAIR:

Senator Blumenthal.

SENATOR BLUMENTHAL:

Through you, Mr. President. The bill makes an exception, specifically makes an exception for federal, state or local law enforcement officials in the lawful performance of his duties. The bill would cover that situation because my assumption is those kinds of tappings would not be lawful and therefore would be prohibited by or the prohibition against those kinds of tappings would remain in effect.

SENATOR UPSON:

Okay. And then one more question. There is no question in the criminal area, but through you, Senator Blumenthal, in the civil area, is there any way that a telephonic communication such as this can be kept out as evidence in a civil matter?

THE CHAIR:

Senator Blumenthal.

SENATOR BLUMENTHAL:

The bill does not change existing law as to the admissibility of evidence. It does provide as a remedy, however, the provision that the party that is damaged can seek civil damages, including attorney costs.

SENATOR UPSON:

Thank you.

THE CHAIR:

Further remarks? Senator Blumenthal.

SENATOR BLUMENTHAL:

If there is no objection, Mr. President, may this be placed on the Consent Calendar.

THE CHAIR:

Without objection, so ordered.

THE CLERK:

Calendar Page 10, Calendar 331, File 518, Substitute SB307, AN ACT CONCERNING THE RESPONSIBILITIES OF OWNERS OF FIREARMS WITH RESPECT TO CHILDREN. Favorable Report of the Committee on JUDICIARY. Clerk is in possession of two amendments.

THE CHAIR:

Senator Herbst. PT that. Thank you, Senator Benvenuto.

THE CLERK:

Calendar Page 11, Calendar 343, File 538, SB316, AN ACT ESTABLISHING A SHARED ENERGY SAVINGS PROGRAM. Favorable Report of the Committee on APPROPRIATIONS. Clerk is in possession of one amendment.

THE CHAIR:

Senator Hale.

SENATOR HALE:

Calendar.

THE CHAIR:

The first Consent Calendar begins on Calendar Page 5, Calendar 248, Substitute SB184. Calendar Page 8, Calendar 314, Substitute SB513. Calendar 316, Substitute SB523. Calendar Page 9, Calendar 318, Substitute SB212. Calendar 329, Substitute SB455. Calendar Page 10, Calendar 332, Substitute SB237.

Calendar Page 11, Calendar 343, SB316. Calendar Page 30, Calendar 91, Substitute SB332. Calendar 159, SB432. Calendar Page 31, Calendar 241, Substitute SB470. Calendar Page 32, Calendar 80, Substitute SB252. Mr. President, that completes the first Consent Calendar.

THE CHAIR:

Are there any changes or omissions. We are ready to vote on Consent Calendar #1. The machine is open. Please record your vote. Has everyone voted? The machine is closed. Clerk please tally the vote.

The result of the vote.

35 Yea

0 Nay

The Consent Calendar is adopted.

The Senate will stand at ease. Senator O'Leary.

SENATOR O'LEARY:

H-583

CONNECTICUT
GEN. ASSEMBLY
HOUSE

PROCEEDINGS
1990

VOL. 33
PART 30
10329-10680

contributions to our State.

NOW THEREFORE, BE IT RESOLVED, that We, the members of this General Assembly join in expressing our sorrow on his passing and extending our deepest sympathy to his family and,

BE IT FURTHER RESOLVED, that the Clerk of the Senate and the House cause copies of this Resolution to be sent to his mother, Wanda Lumpkin of Rangeley, Colorado as an expression of the high regard in which he was held.

REP. LAVINE: (100th)

Mr. Speaker.

SPEAKER BALDUCCI:

Representative Lavine.

REP. LAVINE: (100th)

I move adoption.

SPEAKER BALDUCCI:

The question is on adoption. Will you remark? Members please rise. Guests. A moment of silence.

Thank you. The Clerk please return to the Call of the Calendar.

CLERK:

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.

SPEAKER BALDUCCI:

Representative Mintz of the 140th.

REP. MINTZ: (140th)

Thank you, Mr. Speaker. I move acceptance of the Joint Committee's Favorable Report and passage of the bill in concurrence with the Senate.

SPEAKER BALDUCCI:

The question is on passage. Will you remark, Sir?

REP. MINTZ: (140th)

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.

It also makes exceptions to that prohibition for 911 calls, harassment calls, and other law enforcement purposes.

We do have one amendment. I would have the Clerk call and I be allowed to summarize, LCO4114.

SPEAKER BALDUCCI:

The Clerk please call LCO4114 designate Senate Schedule "A".

CLERK:

LCO4114 designated Senate Amendment Schedule "A" offered by Senator Larson et al.

SPEAKER BALDUCCI:

The question is on summarization. Is there objection? Representative Mintz.

REP. MINTZ: (140th)

Yes, Mr. Speaker. What this amendment does is it deletes the provision in the original file copy that says that the recording devices cannot be, can be physically connected to or disconnected from the telephone line or switched on or off.

I move adoption.

SPEAKER BALDUCCI:

The question is on adoption. Will you remark? Representative Nania.

REP. NANIA: (63rd)

I would just like an opportunity to see the amendment first, Mr. Speaker.

SPEAKER BALDUCCI:

Will you remark further on the amendment? If not, we'll try your minds. All those in favor signify by saying aye.

REPRESENTATIVES:

Aye.

SPEAKER BALDUCCI:

Opposed, nay. The ayes have it. The amendment is adopted.

Will you remark further on the bill? If not, Representative Farr of the 19th.

REP. FARR: (19th)

Yes. Just through you, a couple of questions. Representative Mintz, I'm sorry on the amendment, we deleted section 1. I'm not sure why we did that. The talk about the physical connection to a telephone was deleted, as I understand it. Why did we delete that from the file copy, through you.

SPEAKER BALDUCCI:

Representative Mintz.

REP. MINTZ: (140th)

Through you, Mr. Speaker, I believe it's a technical problem of putting something in the legislation that would really be almost impossible to enforce and I think just for practical purposes it was deleted in the Senate.

REP. FARR: (19th)

Through you, Mr. Speaker, to Representative Mintz. Doesn't this mean now if you happen to have a tape recorder in the background and it picked up any of this conversation, that would be illegal, even though you didn't connect anything to the phone to do the recording. Through you, Mr. Speaker, to Representative Mintz.

SPEAKER BALDUCCI:

Representative Mintz.

REP. MINTZ: (140th)

If the tape recorder in the background in terms that it's connected to the recording, connected to the telephone and it picks up the recording and you have no knowledge of it? Through you, Mr. Speaker.

REP. FARR: (19th)

Through you, no. I'm talking about situation when there's a tape recorder in the background, you may know it's on, but it's not connected to the telephone and it picks up the conversation. It happens to be, you're dictating a letter, somebody calls, you put the thing down, it tapes, and it's not connected to the phone, that would now be illegal, even though as I understand it, there's no intent, there's no connection. Is that correct?

SPEAKER BALDUCCI:

Representative Mintz.

REP. MINTZ: (140th)

Through you, Mr. Speaker, I believe in that fact pattern you'd be only picking up your end of the telephone conversation. I'm not quite sure that that would fall under this circumstance.

SPEAKER BALDUCCI:

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

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)

Through you, Mr. Speaker, I believe that that tape recording probably would be suppressible in a criminal case.

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.

SPEAKER BALDUCCI:

Will you remark further? Representative Rennie of the 14th.

REP. RENNIE: (14th)

Thank you, Mr. Speaker. Just to comment on one of the remarks. This bill provides a civil action to someone who has been wronged, although I'm not certain where the wrong is, and I think we ought to bear in mind that the fact that there aren't criminal penalties, and rather that a civil one has been included, may bring some troubles also because a

criminal action is more easily disposed of than a civil action. A civil action can keep someone tied up for many years and can indeed brings all sorts of woes on the defendant.

So that there can still be some, although this may appear to be a mild penalty, it can end up being quite severe.

To Representative Mintz, through you, Mr. Speaker, in line 36, there is a reference to "an extremely inconvenient hour". We could probably come up with 151 definitions of that right now, and that is not drafted with very much precision and I think I'm being that this is an extremely inconvenient hour.

And what I'm wondering is, one of the federal collections act, I think sets out with some precision, precisely what times a bill collector runs a foul of the law when he or she makes calls to collect on debts, and my question to you, Representative Mintz is, what is an extremely inconvenient hour and how are we going to define that in a civil action?

REP. MINTZ: (140th)

Through you, Mr. Speaker, Representative Rennie, I think you might have a phone call right now, I'm not sure, but I think that's a question of fact that would have to be determined in the cause of action and it

looks as if Representative Nania has asked me to yield. Maybe he has a better answer.

At this time I yield to Representative Nania to further my answer.

SPEAKER BALDUCCI:

Representative Nania, do you accept the yield, Sir?

REP. NANIA: (63rd)

I find myself in a strange position of carrying somebody else's water, but Mr. Speaker, I think that the points made by both Representative Farr and Rennie have easy answers.

As regards to extremely inconvenient hour, I would give for example someone that works at night and sleeps in the day. What we are talking about here is a civil action and what we are attempting to prove is whether there are damages in a civil action.

Someone who is repeatedly awakened by someone else who knows that that is the other person's time to sleep, even if he doesn't know or should know, is damaging him at an extremely inconvenient hour. You're taking your victim as you find him, and I think that's what the amendment, or excuse me, the bill is attempting to do.

Representative Farr had asked a question about the demand made for a payoff.

REP. RENNIE: (14th)

Mr. Speaker. Mr. Speaker, I think the question had to do with the definition of an inconvenient hour.

REP. NANIA: (63rd)

I yield back to Representative Mintz, Mr. Speaker.

REP. MINTZ: (140th)

And I think Representative Nania answered that question just fine.

SPEAKER BALDUCCI:

Representative Rennie, you still have the floor.

REP. RENNIE: (14th)

Another question to Representative Mintz, and that is, perhaps something has alluded me in reading this bill, but I was wondering, what great wrong is it we're trying to correct with this today? Through you, Mr. Speaker.

REP. MINTZ: (140th)

Through you, Mr. Speaker, 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.

REP. RENNIE: (14th)

Well, I know that Connecticut has many problems as we have attested to in the last several months. I don't think this is one of them and I think this is a bill that ought to be rejected clearly on its own merits or lack of them.

SPEAKER BALDUCCI:

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

REP. O'NEILL: (69th)

Thank you, mr. 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.

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. MINTZ: (140th)

Through you, Mr. Speaker, I do not believe that's the intent of this bill.

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.

REP. JAEKLE: (122nd)

Mr. Speaker.

SPEAKER BALDUCCI:

Representative Jaekle.

REP. JAEKLE: (122nd)

Thank you, Mr. Speaker. Frankly, I'll say at the outset, I don't like the bill. I'm not going to support the bill. I've got a newspaper article against the bill. I'm not going to get into all of that.

But in case it passes, I guess I want to know what it might do. A couple of things and I don't think they've been asked before.

The term telephone communication, that is repeated throughout this, in the OLR bill analysis, the seem to talk about telephone conversations. I guess I want to know, if I'm making a telephone call from my car cellular phone to somebody else, would it be unlawful for somebody at the other end of that line, maybe cellular phone to cellular phone, so I get it at least straight, would it be unlawful to have that telephone conversation recorded? Is that a telephone

communication? Through you.

REP. MINTZ: (140th)

Through you, Mr. Speaker, I believe it is.

REP. JAEKLE: (122nd)

Through you, Mr. Speaker, if I were out on a boat and I was using a hand held ship to shore communications device to talk to somebody on the shore with a similar unit, ship to shore, basically, is that a telephonic communication that would be unlawful to record? Through you, Mr. Speaker, to the proponent.

SPEAKER BALDUCCI:

Representative Mintz.

REP. MINTZ: (140th)

Through you, Mr. Speaker, just to clarify the last comment. We did a bill last year that includes cellular phones as telephone communications.

The ship to shore, if they fall under the definition of cellular, then I'd say yes. If they don't, it's a more interesting question that I don't know the answer to.

REP. JAEKLE: (122nd)

And through you, Mr. Speaker, the captain of an airline pilot, again, using a hand held set to communicate with an airport tower, would that be a telephonic communication that it would be unlawful to

record? Through you, Mr. Speaker, to the proponent?

REP. MINTZ: (140th)

Through you, Mr. Speaker, on that one, I think the A may pre-empt this legislation and it may not fall under it, but I'm not sure.

REP. JAEKLE: (122nd)

Mr. Speaker, where in the legislation does some sort of federal preemption come into play for the private recording of any sort of telephone communication?

REP. MINTZ: (140th)

Through you, Mr. Speaker, I don't think that it has to say anything in this piece of legislation for federal preemption. I think that's under the federal laws and the Federal Constitution, that that kind of law would pre-empt this kind of statute.

REP. JAEKLE: (122nd)

Through you, Mr. Speaker, if there is federal preemption in this area, would this law be constitutional under the federal preemption doctrine?

REP. MINTZ: (140th)

Through you, Mr. Speaker, it only would be, it would not apply to those areas in which the federal government has pre-empted it. Otherwise, it would be perfectly constitutional.

REP. JAEKLE: (122nd)

Through you, Mr. Speaker, I want to get clear the recording of these conversations. Representative Mintz, through you, Mr. Speaker to Representative Mintz, if you were sitting at your desk talking on the telephone to somebody else, and I held a microphone up to you or maybe in kind of keeping with this, I had next to you a hidden tape recorder. I'd only be able to record what you were saying into the telephone. But I would be recording your conversation that you were making on the telephone. Would that be the recording of a telephonic communication, or telephone communication that is unlawful under this. Through you, Mr. Speaker.

REP. MINTZ: (140th)

Through you, Mr. Speaker, I believe the intent of this legislation is to protect the parties to the conversation. It talks about the consent of the parties to the conversation. If you may be invading the privacy of the person that you're recording, but I don't think that that situation falls under this bill.

REP. JAEKLE: (122nd)

Mr. Speaker, I don't see that language. I see that no person shall use any, to the previous questioning, I would say use some sort of a tape recording device to

record an oral, private telephonic communication.

I guess I'll say this. If you're in a room all alone, and I had a tape recorder in that room and you made a telephone call and in that case I was recording what you were saying orally, I assume in private, through the telephone, would that be the unlawful recording of an oral, private telephone conversation? Through you.

SPEAKER BALDUCCI:

Representative Mintz.

REP. MINTZ: (140th)

Through you, again I'll say, the intent of the legislation is to protect the parties to conversation, not a person who is making a phone call from a third party recording therein to the conversation.

REP. JAEKLE: (122nd)

Then is it fair to say that the intent of the legislation is only to protect one of the two parties of a telephone conversation when the recording is being done by the other party to that telephone conversation? Through you, Mr. Speaker.

REP. MINTZ: (140th)

Through you, Mr. Speaker, there may be situations where the conference calls where there's more than one party on the line, and it would be to protect all the

parties that are not the recorder of the conversation.

REP. JAEKLE: (122nd)

But through you, Mr. Speaker, is that when one at least one of the parties to the telephone call is making the recording? Through you, Mr. Speaker.

SPEAKER BALDUCCI:

Representative Mintz.

REP. MINTZ: (140th)

Through you, Mr. Speaker, yes, I believe that's true.

REP. JAEKLE: (122nd)

Thank you. And at that point I gather, it's to protect somebody saying something that I gather they don't want somebody else to know about, even though they're saying it to the party that's recording the telephone call? Is that correct? Through you, Mr. Speaker.

SPEAKER BALDUCCI:

Representative Mintz.

REP. MINTZ: (140th)

Through you, Mr. Speaker, the intent of the legislation is to make private phone conversations private.

REP. JAEKLE: (122nd)

Mr. Speaker, I assume the person who is recording

the telephone conversation is the intended recipient of the oral communications from the other party on the telephone line? I'll repeat that.

I assume, since you just said previously that it will be one of the parties to the telephone call that has to make the recording, to be unlawful. That the other person on the end of the telephone line or others, are clearly intending that person that's recording the telephone call to hear what is being said. Is that correct?

REP. MINTZ: (140th)

Through you, Mr. Speaker, that's correct, but the conversation, the intent of the legislation is to make sure that the conversation remains private. If somebody is recording the conversation, that conversation can be disseminated to other people who were not parties to that conversation through that recording. And if somebody wants to have that ability to disseminate that conversation to other parties that weren't a party to the telephone conversation, this bill says that that party must get the consent or warn the people through the announcement or beeps that that conversation is being recorded.

REP. JAEKLE: (122nd)

If I could just say that you and I were having this

exchange on a telephone, maybe I could understand why you wouldn't want it recorded, but would the next step be to prohibit me to tell, let's say, Representative Krawiecki what you just told me on the telephone, to protect your privacy for what you told me? Is that a logical extension of this legislation, for the protection of your privacy?

REP. MINTZ: (140th)

Through you, no.

REP. JAEKLE: (122nd)

Well, thank you. I don't quite understand why we're not talking about the same principle.

Madam Speaker, again I rise in opposition to the legislation. I happen to think this is rather foolish legislation. I've read through a variety of the exemptions. I'm not even sure that a psychiatrist could be recording incoming calls of patients maybe in distress without annoying them with the 15 second beeper, or something like that, in order to maintain a record of what has been said by possibly a disturbed individual.

I think the legislation itself is an intrusion and in invasion of what has been handled as kind of a private matter between people. I find this legislation to be the intrusion and violation of the privacy of

citizens in the State under the guise of, I gather, trying to protect what clearly are not private telephone calls at all.

If you intend somebody to hear what you are saying, you've got to believe they can tell somebody else what you said. And if they decide to use a recording device to convey that information rather than pen and paper, as was indicated with the previous question, or just telling somebody what was said, what I suppose it does. If I were having that phone call with Representative Mintz and I told somebody what he said, he could accuse me of lying and I would not lawfully be able to have a tape recording of what he said to show that what I was relating to be his content was correct and accurate, and maybe even to defend myself against some claims of libel or slander brought by one party to the telephone conversation when I wouldn't be able to lawfully record, and I imagine couldn't even introduce into evidence, a tape recording to show that what I had claimed he had said was true and accurate and I wouldn't be guilty of libel and slander.

This is truly to me, totally unnecessary legislation that really intrudes into our private lives where the government doesn't belong.

DEPUTY SPEAKER POLINSKY:

Thank you, Sir. Will you remark further on the bill as amended? Will you remark further? If not, will all members please take their seats. Staff and guests to the well of the House. The machine will be opened.

CLERK:

The House of Representatives is voting by roll call. Members to the Chamber. The House is taking a roll call vote. Members to the Chamber, please.

DEPUTY SPEAKER POLINSKY:

Have all members voted? Have all members voted and is your vote properly recorded? Have all members voted? If all members have voted, the machine will be locked and the Clerk will take a tally.

The Clerk please announce the tally.

CLERK:

Senate Bill 455 as amended by Senate Amendment Schedule "A".

Total number voting	148
Necessary for passage	75
Those voting yea	81
Those voting nay	67
Those absent and not voting	3

DEPUTY SPEAKER POLINSKY:

The bill as amended is passed.

The Clerk please return to the Call of the

JOINT
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JUDICIARY
PART 4
1090-1355

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goes along with the HB5376 also dealing with criminals for using, to prevent criminals, alleged drug dealers, sorry, from using these funds for legal defense consistent with the federal government's proposals.

We're also looking for an increase in the cost of analysis in the substance testing for drug abuse from, to $75 for one convicted and this is an increase over the proposed bill which we have which is $50.

In addition to other unique aspects deal with rewarding those whose information results in the conviction of a drug offender. We have two bills, one which would provide $1,000 reward to a person whose information leads to that conviction and the other would yield a percentage to such a person whose information resulted in the conviction of a drug dealer which percentage came from the amounts of the assets forfeited and the intention here is to encourage every citizen to take an active role and participate in the drug war. Any questions? Thank you.

CHIEF STATE'S ATTY. JACK KELLY: Senator Avallone, other members of the Committee. First, and most importantly, happy St. Patrick's Day. I will be as brief as possible concerning the many bills on the agenda that the Division of Criminal Justice has an interest in.

First would be SB435, AN ACT CONCERNING THE DISCLOSURE OF INFORMATION RELATIVE TO CRIMINAL CONVICTIONS. The Division is in support of that proposal.

The second would be SB455, AN ACT CONCERNING THE RECORDING OF TELEPHONE CONVERSATIONS. We realize the backdrop under which this proposal is before you. However, I think some of the language here is very imprecise and is going to lead to substantial litigation in court.

For example, in section b (1) we have the term criminal law enforcement official. That's really ill-defined. Would it include prosecutors, would it include inspectors under the Division of Criminal Justice?

Secondly, in section 4, we have the word repeatedly used, is that to mean more than once, several times? We have the terminology of extremely inconvenient hour used, again, that's quite imprecise. We believe that the law as it is currently interpreted by the courts is sufficient with the safeguards now in place, so we'll not have that problem again.

We just think this bill creates more problems that it would solve and there would be an awful lot of litigation involved, so we would oppose it.

Next would be AN ACT CONCERNING PAYMENT OF COMPENSATION TO VICTIMS OF CRIME, Raised HB6019. This would permit the Commission on Victim Services, in effect for a good cause, to waive the statutory periods of time when any of these conditions were present. We support this proposal.

Next would be Raised SB463, AN ACT CONCERNING CRIMINAL POSSESSION OF FIREARMS DURING LEGAL DRUG ACTIVITIES. As noted in the statement of purpose, this would criminalize the act of having a firearm while committing any type of drug offense. The Division supports that proposal.

Raised SB464, AN ACT CONCERNING MULTIPLE DRUG OFFENSES. This would impose a minimum mandatory consecutive five-year term for any person who during a 90 day period of time commits three sales of drugs. We see this repeatedly. Undercover officers now are running into the same people committing repeated crimes and we believe this would be a very effective deterrent and punishment for those people in that situation.

Next would be Raised SB465, AN ACT CONCERNING COMMUNITY SERVICE ALTERNATIVES. We believe that the concept is sound in this sense, and I want to be very precise here as to what I say. As I understand it, a person who, without prior record for the first offense of possession of drugs, rather than being incarcerated, would have, if the court saw fit, the option of having to do community service. We're not opposed to that concept.

ATTY. JACK SITARZ: Would this be assuming that the sole proximate doctrine is abolished or not?

REP. RADCLIFFE: No. Sole proximate cause exists. There are three defendants. Two of them partially responsible, the state partially responsible. The state's not the sole proximate cause. The other two are responsible. Do the other two defendants and does the plaintiff have a setoff in terms of the amount that can be recovered, because of the state's partial responsibility, even though there can be no recovery against the state?

ATTY. JACK SITARZ: I don't believe so.

REP. RADCLIFFE: Alright thank you.

ATTY. JACK SITARZ: I haven't seen any reported.

REP. TULISANO: Thank you. Sherri Haller. Betty Gallo here? Is Henry Bissonette still here?

BETTY GALLO: My name's Betty Gallo. I'm Chairman of the competition for the UConn game, but I'm here to testify on behalf of the Civil Liberties Union for different bills. We are testifying in opposition to HB5992, I mean in support of HB5992, AN ACT CONCERNING EMPLOYEE TESTING AND PERSONAL PRIVACY. We support the direction of this bill that would regulate the use of written employment test which unreasonably intrude upon employees' personal privacy. Too often firms use questions in employment tests which invade the employee's right to privacy.

We've received complaints from employees who have been asked questions relating to their religious beliefs and their sexual orientation. While employers may have a right to request information that's relative to a particular occupation, such personal information should fall into the area of personal privacy and not be allowed.

We're also supporting SB455, AN ACT CONCERNING THE RECORDING OF TELEPHONE CONVERSATIONS. CCLU supports this bill which prohibits the recording of a telephone conversation without consent of all parties to the conversation. Under present state

and federal criminal laws, at least one part to a telephone conversation must provide consent, otherwise it's not a violation of the criminal statutes. The Federal Communication Commission does have a tariff requirement on telephone companies which provides that both parties to a telephone conversation much consent. However, this requirement is seldom voiced by the telephone company and does not carry significant sanctions.

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. It's SB455. We also testify in against HB6028, AN ACT CONCERNING BAIL DECISIONS IN CONDITIONS OF RELEASE. Basically we do not believe this bill would survive a Constitution test. Everybody here knows the Connecticut Constitution, Article 1, Section 8 states that the accused shall have a right to be released on bail, upon sufficient security, except in capital cases. Therefore, we think it is obviously a very strong principle that people are innocent, presumed innocent in this country. It's the basis on which we, until they're found guilty. I know. We have to keep talking about it so they remember.

The last bill that we would like to speak against is HB5376. This bill allows the state to seize property in forfeiture, drug property decisions, that would be used for attorney's fees. It doesn't take much to figure it would be very hard to find an attorney to take a case on forfeiture of property. If they lost the case, there would be no property in order to pay them. You heard today, Jack Kelly testified that this would not be something that public defenders could take, so we're basically leaving these people with inability to get counsel. Again, that's another Constitutional guaranteed right, which is a right to counsel. We feel very, very strongly that this is not Constitutional and basically not justice, when people cannot get a counsel to defend them. Again, the minute you mention drugs, particularly in this building, we all want to do whatever we can do, but we have to remember the principle that these people are presumed innocent until proven guilty, and have a right to an attorney. It's