

## Call Recording and the Law

### Notice

This guide is meant as a general introduction to electronic recording and its implications. This information does not constitute legal advice and we recommend you contact a lawyer within your state when you have a particular question or concern.

### General Overview

Federal law allows recording of phone calls and other electronic communications with the consent of at least one party to the call. A majority of the states and territories have adopted wiretapping statutes based on the federal law. Thirty-eight states and the District of Columbia permit individuals to record conversations to which they are a party without informing the other parties that they are doing so. These laws are referred to as "one-party consent" statutes, and as long as you are a party to the conversation, it is legal for you to record it.

Twelve states require, under most circumstances, the consent of all parties to a conversation. Be aware that you will sometimes hear these referred to inaccurately as "two-party consent" laws. If there are more than two people involved in the conversation, all must consent to the taping. Florida has an exception when both parties are businesses.

This guide provides a quick reference to the specific provisions of each jurisdiction's wiretap law. It outlines whether one-party or all-party consent is required to permit recording of a conversation.

### Federal Law

It is permissible to intercept and record a telephone conversation if one or both of the parties to the call consents. Consent means authorization by only one participant in the call; single-party consent is provided for by specific statutory exemption under federal law. 18 U.S.C. Sec. 2511(2)(a) (i), b, and d).

*2)(a)(i) It shall not be unlawful under this chapter for an operator of a switchboard, or an officer, employee, or agent of a provider of wire or electronic communication service, whose facilities are used in the transmission of a wire or electronic communication, to intercept, disclose, or use that communication in the normal course of his employment while engaged in any activity which is a necessary incident to the rendition of his service or to the protection of the rights or property of the provider of that service, except that a provider of wire communication service to the public shall not utilize service observing or random monitoring except for mechanical or service quality control checks.*

This is also referred to as the "Business telephone" exception, which generally allows monitoring of calls and taping over an extension phone which is both provided to a subscriber in the ordinary course of a telephone company's business and is being used by that subscriber in the ordinary course of its business. This provision generally permits businesses to monitor the conversations of their employees, including personal conversations. Most states recognize the recording of phone calls by businesses as part of the business operation. A case was tried on this as wiretapping and it went all the way to the S.Court. The court ruled that wiretapping was the surreptitious (gad- what spelling) recording of a phone call (simply put) for possible illegal purposes, etc., while the recording of a phone call by a business was a normal course of events in this day of rapid communications, etc.

*2)(c) It shall not be unlawful under this chapter for a person acting under color of law to intercept a wire, oral, or electronic communication, where such person is a party to the communication or one of the parties to the communication has given prior consent to such interception.*

*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.*

State Law

As to the individual states, each can be grouped in one of two categories. Specific statute citations for each state follow:

<u>One Party Consent States</u>		<u>Two or More Party Consent States</u>
Alabama	Nebraska	California
Alaska	New Jersey	Connecticut
Arizona	New Mexico	Delaware
Arkansas	New York	Florida
Colorado	North Carolina	Maryland
District of Columbia	North Dakota	Massachusetts
Georgia	Ohio	Nevada
Hawaii	Oklahoma	New Hampshire
Idaho	Oregon	Pennsylvania
Indiana	Rhode Island	Vermont

Iowa	South Carolina	Washington
Kansas	South Dakota	Illinois
Kentucky	Tennessee	
Louisiana	Texas	
Maine	Utah	
Michigan	Virginia	
Minnesota	West Virginia	
Mississippi	Wisconsin	
Missouri	Wyoming	
Montana		

A further explication of the relevant law is as follows:

Alabama	Ala. Code § 13A-11-30(1)	The Statutory definition of eavesdropping excludes the recording of a conversation with the consent of one party. Thus, the citizen has a right to record his own conversations.
Alaska	Alaska Stat. §§ 42.40.300(a) & 42.20.310(a)(1)	Statute does not prohibit the use of an eavesdropping device to record a private conversation when there is the consent of "a party to the conversation." <i>Accord Palmer v. State</i> , 604 P. 2d 1106, 1108 n. 5 (Alaska 1976)(finding the statute was clearly intended to prohibit third-party eavesdropping and is not applicable to a situation where one of the participants recorded the conversation.)
Arizona	Ariz. Rev. Stat. Ann. § 13-3005	A party is not prohibited from intercepting oral communications.
Arkansas	Ark. Code Ann. § 5-80-120(a)	It is lawful to record a communication if one is a party to the communication or has received the prior consent of a party to the communication.
California	Cal. Penal Code § 632(a)	Statute prohibits the recording of confidential communications without "the consent of all parties." Evidence obtained in violation of this section may not be used in any judicial proceeding. This prohibition is confined to confidential communications, defined by statute as "any communication carried on in circumstances as may reasonably indicate that any party to the communication desires it to be confined to the parties there to," but does not include communications made under any "circumstance in which the parties to the communication may reasonably expect that the communication may be overheard or recorded."

Colorado	Colo. Rev. Stat. § 18-9-303(1)	Statute does not prohibit the recording of a conversation by either a "sender or intended receiver" of a telephone communication.
Connecticut	Conn. Gen. Stat. Ann. § 52-570d(a)	Statute creates a civil cause of action for any person whose telephone conversation is recorded unless the person recording the conversation received the "consent of all parties to the communication." Consent must be obtained either in writing or at the beginning of the recorded conversation."
Delaware	Del. Code. Ann. tit. 11, § 1335(a)(4)	It is a violation of privacy (both a criminal misdemeanor and civilly actionable) to intercept a telephone conversation without the consent of all parties.
District of Columbia	D.C. Code. Ann. § 23-542(b)(3)	It is lawful to intercept a communication if one is a party to the communication or has received the prior consent of a party to the communication.
Georgia	Ga. Code Ann. §§ 16-11-62	Statute allows a party to a communication to record the communication. <i>Accord Sheppard v. 16-11-66(a)Reid</i> , 402 S.E.2d 793,793-94 (Ga. Ct. App. 1991)
Hawaii	Haw. Rev. Stat. §§803-42(b)(3) & 711-1111(1)(d)	It is neither invasion of privacy nor eavesdropping to record a telephone conversation if a party to the conversation.
Illinois	720 ILS 5/14-2"(a)	Statute prohibits recording a telephone conversation without the consent of "all parties to [the] conversation." But, Illinois courts have found that the recording of a conversation by a party to the conversation is not a violation of the statute even if another party to the conversation is unaware of the recording. <i>People v. Jansen</i> , 561 N.E.2d 312, 314 (Ill. App. Ct. 1990).
Indiana	Ind. Code Ann. § 35-33.5-1-5(2)	Statute allows the recording of a telephone conversation by either the sender or receiver of the communication
Iowa	Iowa Code Ann. §§ 727.8 & 808B.2(2)(c)	Statute allows a sender or receiver to record a telephone conversation
Kansas	Kan. Stat. Ann. §§ 21-4001(a)(3) & 21-4002(a)(1)	It is neither invasion of privacy nor eavesdropping to record a telephone conversation if the recording is accomplished with the consent of either the sender or receiver of the communication. <i>Accord State v. Norris</i> , 502 P .2d 817, 823 (Kan. 1972)
Kentucky	Ky. Rev. Stat. Ann. §	To avoid falling under the eavesdropping statute the consent of at least

	526.010	one party to the telephone conversation must be received
Minnesota	Minn. Stat. Ann §626A.D2 subd. 2(d)	It is lawful to intercept a communication if one is a party to the communication or has received the prior consent of a party to the communication
Mississippi	Miss. Code Ann. §41-29-531(e)	Statute exempts from civil liability the interception of a communication if the interceptor is a party to the communication or has received the prior consent of a party to the communication
Missouri	Mo. Ann. Stat. § 542.402(2)(3)(Supp.)	It is lawful to intercept a communication if one is a party to the communication or has received the prior consent of a party to the communication
Montana	Mont. Code Ann. § 45-8-213	It is a violation of privacy in communications to record a conversation "without the knowledge of all parties to the conversation." But, Montana case law indicates, at least in a criminal setting, that recording a telephone conversation when one of the participants consents is permissible. <i>State v. Coleman</i> , 616 P.2d 1090, 1096 (Mont. 1980). see also <i>State v. Brown</i> 755 P.2d 1364, 1368 (Mont. 1988); <i>State v. Cannon</i> , 687 P .2d 705, 708 (Mont. 1984).
Nebraska	Neb. Rev. Stat. § 86-702(2)(c)	It is lawful to intercept a communication if one is a party to the communication or has received the prior consent of a party to the communication.
Nevada	Nev. Rev. Stat. §§200.620 & 48.077	It is unlawful to intercept a telephone conversation unless one party to the communication consents and an emergency situation exists making it impractical to get a court order permitting the interception. But, Nevada statutorily allows the admission in its courts of the contents of anycommunication lawfully intercepted under the laws of another jurisdiction if the interception occurred in the other jurisdiction.
New Hampshire	N.H. Rev. Stat. Ann. §570-A:2(1-a)	It is unlawful to record a telephone conversation without the consent of all parties to the conversation.
New Jersey	N.J. Rev. Stat. §2A:156A-4(d)	It is lawful to intercept a communication if one is a party to the communication or has received the prior consent of a party to the communication.
New Mexico	N.M. Stat. Ann §30-12-1(C)&(E)	It is lawful to record a telephone conversation with the consent of a "sender or intended recipient" of the conversation.

New York	N.Y. Penal Law §250.00(1)	It is lawful to record a telephone conversation if one is a party to the conversation or has received the consent of a party to the communication. <i>Accord People v. Lasher</i> , 447 N.E.2d. 70, 71 (N.Y. 1983).
North Carolina	N.C. Gen Stat. §15A-287(a)	It is lawful to intercept a communication with the consent of one party to the communication.
North Dakota	N.D. Cent. Code §12.1-15-02(3)(c)	It is a defense to prosecution for interception of wire communications that one was a party to the communication or one of the parties to the communication gave prior consent to the interception
Ohio	Ohio Rev. Code Ann. §2933.52(B)(4)	It is lawful to intercept a communication if one is a party to the communication or has received the prior consent of a party to the communication.
Oklahoma	Okla. Stat. Ann. tit. 13, §176.4(5)	It is lawful to intercept a communication if one is a party to the communication or has received the prior consent of a party to the communication.
Pennsylvania	18 Pa. Cons. Stat Ann. §5704(4)	It is unlawful to intercept a telephone conversation unless all parties to the conversation give prior consent to the interception. <i>Accord Commonwealth v. McCoy</i> 275 A. 2d 28, 30 (Pa. 1971); <i>Commonwealth v. Jung</i> , 531 A.2d 498, 502-04 (Pa. Super. Ct. 1987).
Rhode Island	R.I. Gen. Laws §11-35-21(c)(3)	It is lawful to intercept a communication if one is a party to the communication or has received the prior consent of a party to the communication.
South Carolina	S.C. Gen. Laws §17-30-30(b)	It is lawful to intercept a communication if one is a party to the communication or has received the prior consent of a party to the communication.
South Dakota	S.D. Codified Laws Ann. §23A-35A-20(1)	It is lawful to record a telephone communication if one is a sender or receiver of the communication or has received the consent of a sender or receiver of the communication.
Tennessee	Tenn. Code Ann. §39-13-601(b)(5)	It is lawful to intercept a communication if one is a party to the communication or has received the prior consent of a party to the communication.
Texas	Tex. Penal Code Ann. §16.D2(c)(4)	It is an affirmative defense to prosecution for interception of wire communications that one was a party to the communication or one of the parties to the communication gave prior consent to the

		interception.
Utah	Utah Code Ann. §§76-9-401(2), 76-9-403(1)(a), & 77-23a-4(7)(b)	It is lawful to intercept a communication if one is a party to the communication or has received the prior consent of a party to the communication.
Vermont	No state statute	There is no state statute on the books regulating the interception of telephone conversations. The case law is sparse in this area and has not yielded a clear indication of whether Vermont is a one-party or two-party consent state. In one case, the court indicated, without deciding the issue, that the federal statute on interception and disclosure of wire communications (18 U.S.C. §2511) was applicable in the state setting. <i>State v. Fuller</i> , 503 A. 2d 550, 551 (Vt. 1985) . The federal statute permits one party to a communication to intercept the communication. Another Vermont case indicates that, in a criminal setting , challenges to recorded conversations may be made on Fourth, Fifth, and Sixth Amendment grounds. <i>State v. Kasper</i> , 404 A.2d 85, 92-93 (Vt. 1979).
Washington	Wash. Rev. Code Ann. §9.73.030(1)(a)	It is unlawful to record a telephone conversation without the consent of all the participants in the conversation.
West Virginia	W. Va. Code §62-1D-3(c)(2)	It is lawful to intercept a communication if one is a party to the communication or has received the prior consent of a party to the communication.
Wisconsin	Wis. Stat Ann. §§968.31(c) & 885.365(1)	It is lawful to intercept a communication if one is a party to the communication or has received the prior consent of a party to the communication. But, another section of the Wisconsin code states that evidence obtained by recording telephone conversations shall be totally inadmissible in civil actions in the courts of Wisconsin.
Wyoming	Wyo. Stat. §7-3-602(b)(iv)	It is lawful to intercept a communication if one is a party to the communication or has received the prior consent of a party to the communication.

A complete state-by-state set of regulations regarding telephone call recording may be obtained in the following report: <http://www.rcfp.org/taping/states.html>

Recording Telephone Calls with Parties in Different Jurisdictions

Typically Federal law overrides state law when the conversation is between parties who are in different states, although it is unsettled whether a court will hold in a given case that federal law "pre-empts" state law. Either state may choose to enforce its own laws.

#### References

1 - 18 U.S.C. § 2510 and "The Electronic Communications Privacy Act of 1986", amending 18 U.S.C. § 2510

2 - "Recording Telephone Conversations" The Reporters Committee for Freedom of the Press: A Practical Guide to Taping Phone Calls and In-Person Conversations in the 50 States and D.C. <http://www.rcfp.org/taping/>

3 - Pingram Software - <http://www.callcorder.com/faq.htm>

4 - Telephone Tape Recording Law. Ralph Thomas. National Association Of Investigative Specialists. <http://www.pimall.com/nais/n.tel.tape.law.html>