



A Practical Guide to Taping Phone Calls and In-Person Conversations in the 12 "all-party consent" States.

Introduction

At first, the question of whether or not to tape record a phone call seems like a matter of personal preference. Some journalists see taping as an indispensable tool, while others don't like the formality it may impose during an interview. Some would not consider taping a call without the subject's consent, others do it routinely.

However, there are important questions of law that must be addressed first. There are both federal and state statutes governing the use of electronic recording equipment. The unlawful use of such equipment can give rise not only to a civil suit by the "injured" party, but also criminal prosecution.

Accordingly, it is critical that journalists know the statutes that apply and what their rights and responsibilities are when recording and disclosing communications.

Although most of these statutes address wiretapping and eavesdropping -- listening in on conversations of others without their knowledge -- they usually apply to electronic recording of any conversations, including phone calls and in-person interviews.

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, although most have also extended the law to cover in-person conversations.

Twelve states require, under most circumstances, the consent of all parties to a conversation. Those jurisdictions are California, Connecticut, Florida, Illinois, Maryland, Massachusetts, Michigan, Montana, Nevada, New Hampshire, Pennsylvania and Washington. 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.

It shouldn't need to be said, but it is illegal in all states to record a conversation to which you are not a party, do not have consent to tape, and could not naturally overhear.

Federal law and most state laws also make it illegal to disclose the contents of an illegally intercepted call or communication.

At least fifteen states have laws outlawing the use of hidden cameras in private places. Be warned, however, that the audio portion of a videotape will be treated under the regular wiretapping laws in any state. Also, many of the statutes concern unattended hidden cameras, not cameras hidden on a person engaged in

a conversation. And regardless of whether a state has a criminal law regarding cameras, undercover recording in a private place can prompt civil lawsuits for invasion of privacy.

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, and provides the legal citations for wiretap statutes. Some references to case law have been provided in instances where courts have provided further guidance on the law. Penalties for violations of the law are described, including criminal penalties (jail and fines) and civil damages (money that a court may order the violator to pay to the subject of the taping). Instances where the law specifically includes cellular calls and the wireless portion of cordless phone calls are also noted, but many laws are purposely broad enough to encompass such calls without specifically mentioning them.

Note that these are general discussions, and you will have to consult the state entries to see how these issues apply in particular states.

Still have questions about how the laws affect you? Journalists can always call the Reporters Committee's hotline at 800-336-4243 for further information.

Tape-recording laws at a glance

| | Is consent of all parties required? | Are there criminal penalties? | Does the statute allow for civil suits? | Is there a specific hidden camera law? | Are there additional penalties for disclosing or publishing information? |
|----------------|-------------------------------------|-------------------------------|---|--|--|
| <i>Federal</i> | | ✓ | ✓ | | ✓ |
| California | ✓ | ✓ | ✓ | ✓ | ✓ |
| Connecticut | ✓ | ✓ | ✓ | | |
| Florida | ✓ | ✓ | ✓ | | |
| Illinois | ✓ | ✓ | ✓ | ✓ | ✓ |
| Maryland | ✓ | ✓ | ✓ | | ✓ |
| Massachusetts | ✓ | ✓ | ✓ | | ✓ |
| Michigan | ✓ | ✓ | ✓ | | ✓ |
| Montana | ✓ | ✓ | | | ✓ |
| Nevada | ✓ | ✓ | ✓ | | ✓ |
| New Hampshire | ✓ | ✓ | ✓ | ✓ | ✓ |
| Pennsylvania | ✓ | ✓ | ✓ | | ✓ |
| Washington | ✓ | ✓ | ✓ | | |

Interstate phone calls

In light of the differing state laws governing electronic recording of conversations between private parties, journalists are advised to err on the side of caution when recording or disclosing an interstate telephone call. The safest strategy is to assume that the stricter state law will apply.

For example, a reporter located in the District of Columbia who records a telephone conversation without the consent of a party located in Maryland would not violate District of Columbia law, but could be liable under Maryland law. A court located in the District of Columbia may apply Maryland law, depending on its "conflict of laws" rules. Therefore, an aggrieved party may choose to file suit in either jurisdiction, depending on which law is more favorable to the party's claim.

Federal law may apply 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.

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