



MATTHIESEN, WICKERT & LEHRER, S.C.
Hartford, WI ❖ New Orleans, LA ❖ Orange County, CA
❖ Austin, TX ❖ Jacksonville, FL ❖ Boston, MA
Phone: (800) 637-9176
gwickert@mwl-law.com
www.mwl-law.com

LAWS ON RECORDING CONVERSATIONS IN ALL 50 STATES

Individuals, businesses, and the government often have a need to record telephone conversations that relate to their business, customers, or business dealings. The U.S. Congress and most states' legislatures have passed telephone call recording statutes and regulations that may require the person wanting to record the conversation to provide notice and obtain consent before doing so. Most states require one-party consent, which can come from the person recording if present on the call. However, some states require that all parties to a call consent to recording.

Laws governing telephone call recording are typically found within state criminal statutes and codes because most states frame call recording as *eavesdropping*, *wiretapping*, or as a type of *intercepted communication*. State laws may not explicitly mention telephone call recording because of these technical definitions. Accordingly, counsel may need to infer when and under what circumstances a state permits telephone call recording by reviewing prohibited actions.

The big issue when it comes to recording someone is whether the jurisdiction you are in requires that you get the consent of the person or persons being recorded. This begs the question of which jurisdiction governs when you are talking to a person in another state. Some states require the consent of all parties to the conversation, while others require only the consent of one party. It is not always clear whether federal or state law applies, and if state law applies which of the two (or more) relevant state laws controls. A good rule of thumb is that the law of the jurisdiction in which the recording device is located will apply. Some jurisdictions, however, take a different approach when addressing this issue and apply the law of the state in which the person being recorded is located. Therefore, when recording a call with parties in multiple states, it is best to comply with the strictest laws that may apply or get the consent of all parties. It is generally legal to record a conversation where all the parties to it consent.

One-Party Consent

If the consent of one party is required, you can record a conversation if you're a party to the conversation. If you're not a party to the conversation, you can record a conversation or phone call provided one party consents to it after having full knowledge and notice that the conversation will be recorded. Under Federal law, 18 U.S.C. § 2511(2)(d) requires only that one party give consent. In addition to this Federal statute, **thirty-eight (38) states and the District of Columbia** have adopted a "one-party" consent requirement. **Nevada** has a one-party consent law, but Nevada's Supreme Court has interpreted it as an all-party consent law.

All-Party Consent

Eleven (11) states require the consent of everybody involved in a conversation or phone call before the conversation can be recorded. Those states are: California, Delaware, Florida, Illinois, Maryland, Massachusetts, Montana, Nevada, New Hampshire, Pennsylvania and Washington. These laws are sometimes referred to as “two-party” consent laws but, technically, require that all parties to a conversation must give consent before the conversation can be recorded.

Wiretapping vs. Eavesdropping

Electronic “**eavesdropping**” means to overhear, record, amplify, or transmit any part of the private communication of others without the consent of at least one of the persons engaged in the communication. It may involve the placement of a “bug” inside private premises to secretly record conversations, or the use of a “wired” government informant to record conversations that occur within the informant’s earshot. At common law, “eavesdroppers, or such as listen under walls or windows, or the eaves of a house, to hearken after discourse, and thereupon to frame slanderous and mischievous tales, are a common nuisance and presentable at the court-leet; or are indictable at the sessions, and punishable by fine and finding of sureties for [their] good behavior,” 4 Blackstone, *Commentaries on the Laws of England*, 169 (1769).

“**Wiretapping**” involves the use of covert means to intercept, monitor, and record telephone conversations of individuals. It is an unauthorized physical connection with a communication system at a point between the sender and receiver of a message. However, where a message is overheard by a third person during its transmission and there has been no disturbance of the physical integrity of the communication system, it is less clear that an illegal “interception” has taken place. Wiretapping is a form of electronic eavesdropping accomplished by seizing or overhearing communications by means of a concealed recording or listening device connected to the transmission line. In the infamous *Olmstead v. United States* decision, the court held that the Fourth Amendment’s search and seizure commands did not apply to government wiretapping accomplished without a trespass onto private property. *Olmstead v. U.S.*, 277 U.S. 43 (1928). This decision stood for 40 years.

“**Intercepted communication**” generally means the aural acquisition of the contents of any wire, electronic, or oral communication through the use of any electronic, mechanical, or other device.

Consent

What constitutes “consent” is also an issue of contention when you are considering recording a conversation. In some states, “consent” is given if the parties to the call are clearly notified that the conversation will be recorded, and they engage in the conversation anyway. Their consent is implied. For example, we have all experienced calling a customer service department only to hear a recorded voice warning, “*This call may be recorded for quality assurance or training purposes.*” It is usually a good practice for practitioners to let the witness know they are recording the conversation to accurately recall and commemorate the testimony being given – such as during the taking of a witness’ statement.

Exceptions

Nearly all states include an extensive list of exceptions to their consent requirements. Common exceptions found in a majority of states' laws include recordings captured by police, court order, communication service providers, emergency services, etc. Generally, it is permissible to record conversations if all parties to the conversation are aware and consent to the interception of the communication. There are certain limited exceptions to the general prohibition against electronic surveillance. For example, so-called "providers of wire or electronic communication service" (e.g., telephone companies and the like) and law enforcement in the furtherance of criminal investigative activities have certain abilities to eavesdrop.

Interstate/Multi-State Phone Calls

Telephone calls are routinely originated in one state and participated in by residents of another state. In conference call settings, multiple states (and even countries) could be participating in a telephone call which is subject to being recorded by one or more parties to the call. This presents some rather challenging legal scenarios when trying to evaluate whether a call may legally be recorded. A call from Pennsylvania to a person in New York involves the laws of both states. Which state's laws apply and/or whether the law of each state must be adhered to are questions parties to a call are routinely faced with.

In the **New York** Supreme Court case of *Michael Krauss v. Globe International, Inc.*, No. 18008-92 (N.Y. Sup. Ct. Sept. 11, 1995), reporters for *The Globe* recorded a telephone conversation between a prostitute in **Pennsylvania** and Krauss, the former husband of television personality Joan Lunden, who was in **New York**. Pennsylvania law requires two-party consent to record a telephone conversation, while New York law requires only one-party consent. The court noted that in cases where New York law is in conflict with the laws of other states, New York courts usually apply the law of the place of the tort, or more specifically, the place where the injury occurred. The Court held that under such circumstances the New York wiretap law should apply, because any injury that was suffered by Krauss occurred in New York. Therefore, the Court found that Krauss did not have a claim under New York law because the prostitute consented to having the phone conversation recorded.

In *Kearney v. Salomon Smith Barney, Inc.*, 137 P.3d 914 (Cal. 2006), the **California** Supreme Court applied California wiretap law to a company located in **Georgia** that routinely recorded business phone calls with its clients in California. California law requires all party consent to record any telephone calls, while Georgia law requires only one-party consent. Applying California choice-of-law rules, the Court reasoned that the failure to apply California law would "impair California's interest in protecting the degree of privacy afforded to California residents by California law more severely than the application of California law would impair any interests of the State of Georgia."

When a telephone conversation is between parties who are in different states, it also increases the chance that federal law might apply.

Federal Law

In most cases, both state and federal laws may apply. State laws are enforced by your local police department and the state's attorney office. Federal wiretapping laws are enforced by the FBI and U.S. Attorney's office. It is a federal crime to wiretap or to use a machine to capture the communications of others without court approval, unless one of the parties has given their prior consent. It is likewise a federal crime to use or disclose any information acquired by illegal wiretapping or electronic eavesdropping. Violations can result in imprisonment for not more

than five years; fines up to \$250,000 (up to \$500,000 for organizations); in civil liability for damages, attorney's fees and possibly punitive damages; in disciplinary action against any attorneys involved; and in suppression of any derivative evidence. Congress has created separate, but comparable, protective schemes for electronic mail (e-mail) and against the surreptitious use of telephone call monitoring practices such as pen registers and trap and trace devices.

The Federal Communications Act of 1934 (47 U.S.C.A. §§ 151, *et seq.*) provides that no person "not being authorized by the sender shall intercept any communication and divulge or publish the existence, contents, substance, purport, effect or meaning of such intercepted communication to any person." 47 U.S.C.A. § 605. In *Nardone v. United States*, 308 U.S. 338 (1939), it was held that this section prohibits divulging such communications in federal criminal prosecutions and prohibits the use of information thus obtained in such prosecutions (the "fruits of the poisonous tree" doctrine).

Evidence obtained by wiretapping in violation of § 605, is rendered inadmissible in a state court solely because its admission in evidence would also constitute a violation of 47 U.S.C.A. § 605. *Lee v. State of Fla.*, 392 U.S. 378 (1968). The mere interception of a telephone communication by an unauthorized person does not in and of itself constitute a violation of § 605. Only where the interception is followed by the divulging of the communication, as by introducing it into evidence, would there be a violation of § 605.

The Federal Wiretap Act, found at 18 U.S.C. § 2520, protects individual privacy in communications with other people by imposing civil and criminal liability for intentionally intercepting communications using a device, unless that interception falls within one of the exceptions in the statute. Although the Federal Wiretap Act originally covered only wire and oral conversations (*e.g.*, using a device to listen in on telephone conversations), it was amended in 1986 to cover electronic communications as well (*e.g.*, emails or other messages sent via the Internet).

The Electronic Communications Privacy Act of 1986 (ECPA) is found at 18 U.S.C. § 2510 *et seq.* It prohibits the intentional actual or attempted interception, use, disclosure, or "procure[ment] [of] any other person to intercept or endeavor to intercept any wire, oral, or electronic communication." The ECPA allows employers to listen to "job-related" conversations. It protects the privacy of wire, oral, and electronic communications including telephone conversations (18 U.S.C. §§ 2510 to 2522). The ECPA gives employers almost total freedom to listen to any phone conversation, since it can be argued that it takes a few minutes to decide if a call is personal or job-related. However, this exception applies only to the employer, not the employee. This law only permits telephone call recording if at least one-party consents. However, call recording is unlawful if the party consents with the intent to use the recording to commit a criminal or tortious act.

Exceptions to the Federal Wiretap Act's one-party consent requirement include call recordings captured by:

- Law enforcement;
- Communication service providers, if the recording is necessary to deliver service, or protect property or rights;
- Federal Communications Commission (FCC) personnel for enforcement purposes;
- Surveillance activities under the Foreign Intelligence Surveillance Act (50 U.S.C. §§ 1801 to 1813);
- Individuals, if they record telephone calls to identify the source of harmful radio or other electronic interference with lawful telephone calls or electronic equipment; or
- Court order.

The chart below sets forth the various wiretapping/electronic surveillance statutes and case decisions, for all 50 states. It does not address the specifics of federal law.

STATE	CONSENT	AUTHORITY	EXPLANATION/ADDITIONAL INFORMATION
Federal	One Party	18 USC § 2511(2)(d) Electronic Communications Privacy Act	“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 to commit any criminal or tortious act in violation of the Constitution or laws of the U.S. or of any State.”
Alabama	One Party	Ala. Code § 13A-11-30(1) and § 13A-11-31	Alabama statute defines eavesdropping as to “overhear, record, amplify or transmit any part of the private communication of others without the consent of at least one of the persons engaged in the communication.”
Alaska	One Party	Alaska Stat. Ann. § 42.20.300(a); Alaska Stat. Ann. § 42.20.310(a)(1); Palmer v. Alaska, 604 P.2d 1106 (Alaska 1979).	Alaska law prohibits the use of an electronic device to hear or records private conversations without the consent of at least one party to the conversation. Alaska’s highest court has held that the eavesdropping statute was intended to prohibit third-party inception of communications only; does not apply to participants in a conversation.
Arizona	One Party	Ariz. Rev. Stat. Ann. § 13-3012(9); § 13-3012(5)(c)	An individual not involved in or present during a communication must have the consent of at least one party to record an electronic or oral communication. Arizona also permits a telephone “subscriber” (the person who orders the phone service and whose name is on the bill) to tape (intercept) calls without being a party to the conversation and without requiring any notification to any parties to the call.
Arkansas	One Party	Ark. Code Ann. § 5-60-120	An individual must have the consent of at least one party to a conversation, whether it is in person or electronic.
California	All Parties	Cal. Penal Code § 632(a)-(d); <i>Kearney v. Salomon Smith Barney Inc.</i> , 39 Cal.4 th 95 (Cal. 2006); <i>Kight v. CashCall, Inc.</i> , 200 Cal. App. 4 th 1377 (2011); <i>Cal. Pub. Util. Code Gen. Order 107-B(II)(A)</i> ; <i>Air Transp. Ass’n of Am. v. Pub. Utilities Comm’n of State of Cal.</i> , 833 F.2d 200 (9 th Cir. 1987).	California has very specific laws regulating the recording of oral and electronic communications. All parties must give their consent to be recorded. However, The California Supreme Court has ruled that if a caller in a one-party state records a conversation with someone in California, that one-party state caller is subject to the stricter of the laws and must have consent from all callers. Although California is a two-party state, it is also legal to record a conversation if an audible beep is included on the recorder and for the parties to hear.
Colorado	Mixed	Colo. Rev. Stat. Ann. § 18-9-303 (1)	An individual not involved in or present during a communication must have the consent of at least one party to record an electronic or oral communication.

STATE	CONSENT	AUTHORITY	EXPLANATION/ADDITIONAL INFORMATION
Connecticut	Mixed	C.G.S.A. §§ 53a-187, -89; C.G.S.A. § 52-570d	Connecticut is “mixed” because criminally, under Connecticut General Statutes § 53a-187, it’s a one-party consent state. It is against the law to record a telephone communication or a communication made by a person other than a sender or receiver, without the consent of either the sender or receiver. For civil cases, however, it is not a one-party consent state. Pursuant to C.G.S.A. § 52-570d, you are not allowed to record an oral private telephone conversation without consent from all parties to the conversation. So, it’s impermissible in a civil context, meaning there’s civil, not criminal, liability. You can sue the recorder for damages (that is, if there are any damages, such as when someone who puts your phone call on the internet or sends it to your employer). You can also get attorneys’ fees from the eavesdropper.
Delaware	All Parties	Del. Code Ann. tit. 11, § 2402(c)(4) Del. Code Ann. tit. 11, § 1335(a)(4); <i>U.S. v. Vespe</i> , 389 F. Supp. 1359 (1975).	State privacy laws state that all parties must consent to the recording of oral or electronic conversations. <i>U.S. v. Vespe</i> holds that even under the privacy laws an individual has the right to record their own conversations. Section 1335 says it is a class G felony to intercept without the consent of all parties thereto a message by telephone or other means of communication, except as authorized by law. Section 2402 provides that it is “authorized by law” for a person communication where the person is a party to the communication or where one of the parties to the communication has given prior consent, unless the communication is intercepted for the purpose of a criminal act.
District of Columbia	One Party	D.C. Code § 23-542(b)(3)	An individual may record or disclose the contents of an electronic or oral communication if they are a party to said communication or if they have received prior consent from one of the parties.
Florida	All Parties	Fla. Stat. Ann. § 93A.03(3)(d)	All parties must consent to the recording and or disclosure of the contents of and electronic, oral or wire communication.
Georgia	One Party	Ga. Code Ann. § 16-11-66(a); Ga. Code Ann. § 16-11-62	An individual has the right to record or disclose the contents of an electronic, oral or wire communication that they are a party to or if one of the parties has given prior consent to the recording of said communications.
Hawaii	One Party	Haw. Rev. Stat. § 803-42(3)(A)	An individual has the right to record or disclose the contents of an electronic, oral or wire communication that they are a party to or if one of the parties has given prior consent to the recording of said communications.
Idaho	One Party	Idaho Code Ann. § 18-6702(2)(d)	An individual has the right to record or disclose the contents of an electronic, oral or wire communication that they are a party to or if one of the parties has given prior consent to the recording of said communications.

STATE	CONSENT	AUTHORITY	EXPLANATION/ADDITIONAL INFORMATION
Illinois	All Parties (One-Party for “private electronic communications”)	<p>720 I.L.C.S. § 5/14-2(a) (Illinois Eavesdropping Law); <i>People v. Beardsley</i>, 503 N.E.2d 346 (Ill. 1986); <i>People v. Clark</i>, 6 N.E.3d 154 (Ill. 2014).</p> <p>Section 5/14-2(a)(1)(2) was amended in 2014 to make “eavesdropping” a felony if a person:</p> <p>(1) Uses an eavesdropping device, in a surreptitious manner, for the purpose of overhearing, transmitting, or recording all or any part of any private conversation to which he or she is not a party unless he or she does so with the <u>consent of all of the parties</u> to the private conversation; or</p> <p>(2) Uses an eavesdropping device, in a surreptitious manner, for the purpose of transmitting or recording all or any part of any private conversation to which he or she is a party unless he or she does so with the <u>consent of all other parties</u> to the private conversation.</p> <p>(3) Intercepts, records, or transcribes, in a surreptitious manner, any private electronic communication to which he or she is not a party unless he or she does so with the consent of all parties to the private electronic communication;</p> <p>Section 5/14-1 defines “eavesdropping” (a felony) as using any device capable hearing or recording oral conversation or intercept or transcribe electronic communications whether such conversation or electronic communication is conducted in person, by telephone, or by any other means.</p> <p>The use of an eavesdropping device is surreptitious if it is done with stealth, deception, secrecy, or concealment. Therefore, it permits recording of conversations in public places, such as courtrooms, that no person could expect to be private.</p>	<p>The law in Illinois is confusing and in flux. For years, § 5/14-2(a) made it a crime to use an “eavesdropping device” to overhear or record a phone call or conversation without the consent of <u>all parties</u> to the conversation, regardless of whether the parties had an expectation of privacy. All parties had to consent to the recording of telephonic, electronic, or in person oral conversation. Illinois courts had ruled that “eavesdropping” only applied to conversations that the party otherwise would not have been able to hear, thereby effectively making it a one-party consent state. However, there still appears to be confusion and debate over the law. The statute had repeatedly and controversially been used to arrest people who have video-taped police. In <i>People v. Clark</i>, 6 N.E.3d 154 (Ill. 2014) and <i>People v. Melongo</i>, 6 N.E.3d 120 (Ill. 2014), the Supreme Court held that § 5/14-2 made it a crime to knowingly and intentionally use eavesdropping devices to hear or record all or any part of any conversation, unless done with consent of all parties to conversation or authorized by court order, was unconstitutionally overbroad on its face, declaring it unconstitutional.</p> <p>On December 30, 2014, the statute was amended to permit recording of conversations in public places, such as in courtrooms, where no person reasonably would expect it to be private. The new statute draws a distinction between a “private” conversation and other public communications. The new statute includes language indicating that in order to commit a criminal offense, a person must be recording “in a surreptitious manner.” It addressed a number of circumstances where there were no legitimate privacy interests. The statute provides no guidelines or factors with regard to when an expectation of privacy is reasonable. While the statute leaves open to debate whether a particular “private conversation” falls within the purview of the revised law, some argue that the new statute leaves no doubt that Illinois remains firmly within the minority of “all-party” consent states. The amended statute requires that <u>all parties</u> to an oral communication consent to the use of an eavesdropping device for that use to be lawful.</p> <p>On the other hand, by negative implication, the amended statute also appears to establish a “one-party” consent rule for private electronic communications, by <u>prohibiting only someone who is not a party to a conversation</u> from surreptitiously using an eavesdropping device to intercept, record or transcribe such a communication (e.g., telephone, video conference, etc.). A <i>private electronic communication</i> is defined as “any transfer of signs, signals, writing, images, sounds, data, or intelligence ... transmitted in whole or part by a wire, radio, pager, computer, electromagnetic, photo or optical system, when the sending or receiving party intends the electronic communication to be private under circumstances reasonably justifying that expectation. <u>Therefore, by negative implication, the revised statute appears to permit someone who is a party to a telephone or a video conference to electronically record the call without notifying any other party to the call or obtaining their consent.</u></p> <p>A first offense is a Class 3 felony (maximum 2-5 years and \$25,000 fine) and a subsequent offense is a Class 2 felony (maximum 3-7 years and \$25,000 fine).</p>

STATE	CONSENT	AUTHORITY	EXPLANATION/ADDITIONAL INFORMATION
Indiana	One Party	Ind. Code Ann. § 35-31.5-2-176	An individual has the right to record or disclose the contents of an electronic or telephonic communication that they are a party to or if one of the parties has given prior consent to the recording of said communications.
Iowa	One Party	Iowa Code Ann. § 808B.2 (2)(c); Iowa Code Ann. § 727.8	An individual has the right to record or disclose the contents of an oral, electronic or telephonic communication that they are a party to or if one of the parties has given prior consent to the recording of said communications.
Kansas	One Party	Kan. Stat. Ann. § 21-6101(1); Kan. Stat. Ann. § 21-6101(4)	Kansas law bars the interception, recording and or disclosure of any oral or telephonic communication by the means of an electronic recording device without the consent of at least one party or if they are a party to said communication.
Kentucky	One Party	Ky. Rev. Stat. Ann. § 526.020; Ky. Rev. Stat. Ann. § 526.010	Kentucky law bars the interception, recording and or disclosure of any oral or telephonic communication by the means of an electronic recording device without the consent of at least one party or if they are a party to said communication.
Louisiana	One Party	La. Rev. Stat. Ann. § 15:1303(c)(4)	The Electric Surveillance Act bars the inception, recording or disclosure of and oral or telephonic communication by the means of an electronic recording device without the consent of at least one party or if they are a party to said communication.
Maine	One Party	Me. Rev. Stat. Ann. tit. 15, § 710	Maine law bars the interception, recording and or disclosure of any oral or telephonic communication by the means of an electronic recording device without the consent of at least one party or if they are a party to said communication.
Maryland	All Parties	Md. Code Ann., Cts. & Jud. Proc. § 10-402 (c)(3)	<p>The Wiretapping and Electronic Surveillance Act holds that it is unlawful to:</p> <ol style="list-style-type: none"> (1) Willfully intercept, endeavor to intercept, or procure any other person to intercept or endeavor to intercept, any wire, oral, or electronic communication; (2) Willfully disclose, or endeavor to disclose, to any other person the contents of any wire, oral, or electronic communication, knowing or having reason to know that the information was obtained through the interception of a wire, oral, or electronic communication in violation of this subtitle; or (3) Willfully use, or endeavor to use, the contents of any wire, oral, or electronic communication, knowing or having reason to know that the information was obtained through the interception of a wire, oral, or electronic communication in violation of this subtitle. <p>However, it is lawful to intercept a wire, oral, or electronic communication where the person is a party to the communication and where all of the parties to the communication have given prior consent.</p>

STATE	CONSENT	AUTHORITY	EXPLANATION/ADDITIONAL INFORMATION
Massachusetts	All Parties	Mass. Gen. Laws Ann. ch. 272, § 99(B)(4); Mass. Gen. Ann. Laws ch. 272, § 99(C)(1)	The recording, interception, use or disclosure of any conversation, whether in person or via wire or telephone, without the consent of all the parties is prohibited. However, telephone equipment, which is furnished to a phone company subscriber and used in the ordinary course of business, as well as office intercommunication systems used in the ordinary course of business, is excluded from the definition of unlawful interception devices.
Michigan	One Party**	Mich. Comp. Laws Ann. § 750.539(c); <i>Sullivan v. Gray</i> , 117 Mich. App. 476, 324 N.W.2d 58 (1982).	The recording, interception, use or disclosure of any conversation, whether in person or electronic or computer-based system, without the consent of all the parties is prohibited. **This looks like an “all party consent” law, but one Michigan court has ruled that a participant in a private conversation may record it without violating the statute because the statutory term “eavesdrop” refers only to overhearing or recording the private conversations of others. The Michigan Court of Appeals interpreted that the eavesdropping statute only applied to third-party inception of a conversation; a participant in a communication does have the right to record the same. Michigan law is often misinterpreted as requiring the consent of all parties to a conversation.
Minnesota	One Party	Minn. Stat. Ann. § 626A.02(d)	An individual has the right to record or disclose the contents of an oral, electronic or telephonic communication that they are a party to or if one of the parties has given prior consent to the recording of said communications.
Mississippi	One Party	Miss. Code. Ann. § 41-29-531(e)	An individual has the right to record or disclose the contents of an oral, telephonic, or other communication that they are a party to or if one of the parties has given prior consent to the recording of said communications.
Missouri	One Party	Mo. Ann. Stat. § 542.402(2)(3)	An individual has the right to record or disclose the contents of an oral or electronic communication that they are a party to or if one of the parties has given prior consent to the recording of said communications.
Montana	All Parties	Mont. Code Ann. § 45-8-213	It is unlawful to record an in person or electronic communication without the consent of all parties except under certain circumstances namely elected or appointed public officials or public employees when the recording occurs in the performance of an official duty; individuals speaking at public meetings; and individuals given warning of or consenting to the recording.

STATE	CONSENT	AUTHORITY	EXPLANATION/ADDITIONAL INFORMATION
Nebraska	One Party	Neb. Rev. Stat. § 86-290(2)(c); Neb. Rev. Stat. § 86-276	It is not unlawful for an individual who is a party to or has consent from a party of an in-person or electronic communication to record and or disclose the content of said communication unless the person is doing so for the purpose of committing a tortious or criminal act. It is also lawful for an individual to record electronic communications that are accessible to the general public.
Nevada	Mixed	Nev. Rev. Stat. § 200.620; Nev. Rev. Stat. § 200.650; <i>Lane v. Allstate Ins. Co.</i> , 114 Nev. 1176, 969 P.2d 938 (1998).	It is unlawful to surreptitiously record any private in-person communication without the consent of one of the parties to the conversation. The consent of all parties is required to record or disclose the content of a telephonic communication. The Nevada Supreme Court held in <i>Lane v. Allstate</i> that an individual must have the consent of all parties in order to lawful record a telephonic communication even if they are a party to said communication.
New Hampshire	All Parties	N.H. Rev. Stat. Ann. § 570-A:2(l-a); <i>New Hampshire v. Locke</i> , 761 A.2d 376 (N.H. 1999).	It is unlawful to record or disclose the contents of any electronic or in-person communication without the consent of all parties. The New Hampshire Supreme Court held that an individual efficaciously consented to the recording of a communication when surrounding circumstances demonstrate that they knew said communication was being recorded.
New Jersey	One Party	N.J. Stat. Ann. § 2A:156A-4(d); N.J. Stat. Ann. § 2A:156A-2	It is not unlawful for an individual who is a party to or has consent from a party of an in-person or electronic communication to record and or disclose the content of said communication unless the person is doing so for the purpose of committing a tortious or criminal act. It is also lawful for an individual to record electronic communications that are accessible to the general public.
New Mexico	One Party	N.M. Stat. Ann. § 30-12-1(C)	The reading, interrupting, taking or copying of any message, communication or report is unlawful without the consent of one of the parties to said communication.
New York	One Party	N.Y. Penal Law § 250.00(1); N.Y. Penal Law § 250.05	It is not unlawful for an individual who is a party to or has consent from a party of an in-person or electronic communication to record and or disclose the content of said communication.
North Carolina	One Party	N.C. Gen. Stat. Ann. § 15A-287(a)	It is not unlawful for an individual who is a party to or has consent from a party of an in-person or electronic communication to record and or disclose the content of said communication.
North Dakota	One Party	N.D. Cent. Code § 12.1-15-02	It is not unlawful for an individual who is a party to or has consent from a party of an in-person or electronic communication to record and or disclose the content of said communication unless the person is doing so for the purpose of committing a tortious or criminal act.

STATE	CONSENT	AUTHORITY	EXPLANATION/ADDITIONAL INFORMATION
Ohio	One Party	Ohio Rev. Code Ann. § 2933.52(B)(4); Ohio Rev. Code Ann. § 2933.51	It is not unlawful for an individual who is a party to or has consent from a party of an in-person or electronic communication to record and or disclose the content of said communication unless the person is doing so for the purpose of committing a tortious or criminal act.
Oklahoma	One Party	Okla. Stat. Ann. tit. 13, § 176.4; Okla. Stat. Ann. tit. 13, § 176.2	Pursuant to the Security of Communications Act, it is not unlawful for an individual who is a party to or has consent from a party of an in-person or electronic communication to record and or disclose the content of said communication unless the person is doing so for the purpose of committing a tortious or criminal act.
Oregon	Mixed	Or. Rev. Stat. Ann. § 165.540; Or. Rev. Stat. Ann. § 165.535	It is not unlawful for an individual who is a party to or has consent from a party of an electronic communication to record or disclose the contents of said communication. It is unlawful to record an in-person communication without the consent of all parties involved.
Pennsylvania	All Parties	18 Pa. Cons. Stat. § 5702 to § 5704; <i>Com. v. Smith</i> , 136 A.3d 170, 171 (Pa. Super. 2016); <i>Com. v. Spence</i> , 91 A.3d 44, 44–45 (Pa. 2014).	It is unlawful to record an electronic or in-person communication without the consent of all parties. However, “interception” of or mere listening in to a call using a telephone is not prohibited because the term “electronic, mechanical or other device” does not include a telephone. Using a cell phone’s “voice memo” application would be considered a “device” and would be prohibited.
Rhode Island	One Party	R.I. Gen. Laws Ann. § 11-35-21; R.I. Gen. Laws Ann. § 12-5.1-1	It is not unlawful for an individual who is a party to or has consent from a party of an in-person or electronic communication to record and or disclose the content of said communication unless the person is doing so for the purpose of committing a tortious or criminal act. An individual may also disclose the content of any electronic or in-person communication that is common knowledge or public information.
South Carolina	One Party	S.C. Code Ann. § 17-30-30; S.C. Code Ann. § 17-30-15	It is not unlawful for an individual who is a party to or has consent from a party of an in-person or electronic communication to record and or disclose the content of said communication.
South Dakota	One Party	S.D. Codified Laws § 23A-35A-20; S.D. Codified Laws § 23A-35A-1	It is not unlawful for an individual who is a party to or has consent from a party of an in-person or electronic communication to record and or disclose the content of said communication.
Tennessee	One Party	Tenn. Code Ann. § 39-13-601; Tenn. Code Ann. § 39-13-604; Tenn. Code Ann. § 40-6-303	It is not unlawful for an individual who is a party to or has consent from a party of an in-person or electronic communication to record and or disclose the content of said communication unless the person is doing so for the purpose of committing a tortious or criminal act. An individual may also disclose the content of any electronic communication that is readily accessible to the general public.

STATE	CONSENT	AUTHORITY	EXPLANATION/ADDITIONAL INFORMATION
Texas	One Party	Tex. Penal Code Ann. § 16.02; Tex. Code Crim. Proc. Ann. art. 18.20	It is not unlawful for an individual who is a party to or has consent from a party of an in-person or electronic communication to record and or disclose the content of said communication unless the person is doing so for the purpose of committing a tortious or criminal act. An individual may also disclose the content of any electronic communication that is readily accessible to the general public.
Utah	One Party	Utah Code Ann. § 77-23a-4; Utah Code Ann. § 77-23a-3	It is not unlawful for an individual who is a party to or has consent from a party of an in-person or electronic communication to record and or disclose the content of said communication unless the person is doing so for the purpose of committing a tortious or criminal act. An individual may also disclose the content of any electronic communication that is readily accessible to the general public.
Vermont	No Statute or Definitive Case Law	<i>Vermont v. Geraw</i> , 795 A.2d 1219 (Vt. 2002); <i>Vermont v. Brooks</i> , 601 A.2d 963 (Vt. 1991).	There is no state statute that regulates the interception of telephone conversations. The case law is also lacking in this area and there has been no clear indication as to if Vermont is a one-party or all-party consent state. The state's highest court has held that surreptitious electronic monitoring of communications in a person's home is an unlawful invasion of privacy. <i>Vermont v. Geraw</i> , 795 A.2d 1219 (Vt. 2002). On the other hand, the state's highest court also has refused to find the overhearing of a conversation in a parking lot unlawful because that conversation was "subject to the eyes and ears of passersby." <i>Vermont v. Brooks</i> , 601 A.2d 963 (Vt. 1991).
Virginia	One Party	Va. Code Ann. § 19.2-62	It is not unlawful for an individual who is a party to or has consent from a party of an in-person or electronic communication to record and or disclose the content of said communication.
Washington	All Parties	Wash. Rev. Code Ann. § 9.73.030	It is unlawful for an individual to record and or disclose the content of any electronic of in-person communication without the consent of all parties.
West Virginia	One Party	W. Va. Code Ann. § 62-1D-3	It is not unlawful for an individual who is a party to or has consent from a party of an in-person or electronic communication to record and or disclose the content of said communication unless the person is doing so for the purpose of committing a tortious or criminal act.
Wisconsin	One Party**	Wis. Stat. Ann. § 968.31; Wis. Stat. Ann. § 968.27; **Wis. Stat. Ann. § 885.365(1)	It is not unlawful for an individual who is a party to or has consent from a party of an in-person or electronic communication to record and or disclose the content of said communication unless the person is doing so for the purpose of committing a tortious or criminal act. **Evidence obtained as the result of the recording a communication is "totally inadmissible" in civil cases, except when the party is informed that the conversation is being recorded and that evidence from said recording may be used in a court of law.

STATE	CONSENT	AUTHORITY	EXPLANATION/ADDITIONAL INFORMATION
Wyoming	One Party	Wyo. Stat. Ann. § 7-3-702	It is not unlawful for an individual who is a party to or has consent from a party of an in-person or electronic communication to record and or disclose the content of said communication unless the person is doing so for the purpose of committing a tortious or criminal act.

These materials and other materials promulgated by Matthiesen, Wickert & Lehrer, S.C. may become outdated or superseded as time goes by. If you should have questions regarding the current applicability of any topics contained in this publication or any of the publications distributed by Matthiesen, Wickert & Lehrer, S.C., please contact Gary Wickert at gwickert@mwl-law.com. This publication is intended for the clients and friends of Matthiesen, Wickert & Lehrer, S.C. This information should not be construed as legal advice concerning any factual situation and representation of insurance companies and/or individuals by Matthiesen, Wickert & Lehrer, S.C. on specific facts disclosed within the attorney\client relationship. These materials should not be used in lieu thereof in anyway.