

Reporter's Recording Guide

A state-by-state guide
to taping phone calls and
in-person conversations

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. Both federal and state statutes govern 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 also have extended the law to cover in-person conversations. 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. (Nevada also has a one-party consent statute, but the state Supreme Court has interpreted it as an all-party rule.)

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.

Regardless of the state, it is almost always illegal 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 24 states have laws outlawing certain uses of hidden cameras in private places, although many of the laws are specifically limited to attempts to record nudity. Also, many of the statutes concern *unattended* hidden cameras, not cameras hidden on a person engaged in a conversation. Journalists should be aware, however, that the audio portion of a videotape will be treated under the regular wiretapping laws in any state. 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 also are noted, but many laws are purposely broad enough to encompass such calls without specifically mentioning them.

Sidebar articles throughout the guide address specific issues related to taping. Note that these are general discussions, and you will have to consult the state entries to see how these issues apply in particular states.

Important notice

This guide is meant as a general introduction for journalists to the state of the law concerning electronic recording and its implications. It does not take the place of legal advice from a lawyer in your state when you are confronted with a legal problem. Journalists who have additional questions or who need to find a lawyer can contact the Reporters Committee at (800) 336-4243.

Because this guide was written with the needs of journalists in mind, it does not address all aspects of electronic recording laws, including the issues of taping family members' calls and using a tape recording as evidence in a lawsuit or prosecution. Non-journalists who have questions about taping should contact an attorney in their state.

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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>		✓	✓		✓
Alabama		✓		✓	✓
Alaska		✓		✓	✓
Arizona		✓	✓	✓	✓
Arkansas		✓		✓	✓
California	✓	✓	✓	✓	✓
Colorado		✓		✓	✓
Connecticut	✓	✓	✓	✓	✓
Delaware		✓	✓	✓	✓
District of Columbia		✓	✓	✓	✓
Florida	✓	✓	✓	✓	✓
Georgia		✓		✓	✓
Hawaii		✓	✓	✓	✓
Idaho		✓	✓	✓	✓
Illinois	✓	✓	✓	✓	✓
Indiana		✓	✓	✓	✓
Iowa		✓	✓	✓	✓
Kansas		✓	✓	✓	✓
Kentucky		✓		✓	✓
Louisiana		✓	✓	✓	✓
Maine		✓	✓	✓	✓
Maryland	✓	✓	✓	✓	✓
Massachusetts	✓	✓	✓	✓	✓
Michigan	✓	✓	✓	✓	✓
Minnesota		✓	✓	✓	✓
Mississippi		✓	✓	✓	✓
Missouri		✓	✓	✓	✓
Montana	✓	✓		✓	✓
Nebraska		✓	✓	✓	✓
Nevada	✓	✓	✓	✓	✓
New Hampshire	✓	✓	✓	✓	✓
New Jersey		✓	✓	✓	✓
New Mexico		✓	✓	✓	✓
New York		✓		✓	✓
North Carolina		✓	✓	✓	✓
North Dakota		✓		✓	✓
Ohio		✓	✓	✓	✓
Oklahoma		✓		✓	✓
Oregon		✓	✓	✓	✓
Pennsylvania	✓	✓	✓	✓	✓
Rhode Island		✓	✓	✓	✓
South Carolina		✓	✓	✓	✓
South Dakota		✓		✓	✓
Tennessee		✓	✓	✓	✓
Texas		✓	✓	✓	✓
Utah		✓	✓	✓	✓
Vermont				✓	
Virginia		✓	✓	✓	✓
Washington	✓	✓	✓	✓	
West Virginia		✓	✓	✓	✓
Wisconsin		✓	✓	✓	✓
Wyoming		✓	✓	✓	✓

State-by-state guide

Alabama

Summary of statute(s): Alabama law sets criminal penalties for recording or disclosing private communication of others without the consent of at least one of the persons involved. The statute also bans secret observations while trespassing on private property. Those divulging illegally obtained communications also face criminal penalties.

In-person conversations: The consent of at least one party to a communication is needed to record a private conversation. Ala. Code §13A-11-30. This means a reporter's

tape-recorded conversation with a source would be permissible. However, there is no need to obtain consent to record conversations held in public places, where there is no reasonable expectation of privacy. See definition of "private place," Ala. Code § 13A-11-30(2).

Electronic communications: Alabama's criminal eavesdropping law prohibits the use of "any device" to overhear or record communications without the consent of at least one party engaged in the communication being recorded. Ala. Code §13A-11-31.

Hidden cameras: Intentionally engaging in secret observation or photography while trespassing on private property is considered unlawful "criminal surveillance." Ala. Code § 13A-11-32. The law, however, does not criminalize the use of any such recording devices positioned in areas to which the public has access (i.e., filming conversations on public streets or a hotel lobby).

Criminal penalties: Unlawful eavesdropping is a misdemeanor carrying a maximum penalty of one year in jail. Ala. Code § 13A-5-7. Criminal surveillance and disclosing

Consent and its limits

Generally, you may record, film, broadcast or amplify any conversation where all the parties to it consent. It is always legal to tape or film a face-to-face interview when your recorder or camera is in plain view. The consent of all parties is presumed in these instances.

The use of hidden cameras is only covered by the wiretap and eavesdropping laws if the camera also records an audio track. However, a number of states have adopted laws specifically banning the use of video and still cameras where the subject has an expectation of privacy although some of the laws are much more specific. Maryland's law, for example, bans the use of hidden cameras in bathrooms and dressing rooms.

Whether using an audiotape recorder or a hidden camera, journalists need to know about the limits to their use.

Criminal purpose. Federal law requires only one-party consent to the recording and disclosure of a telephone conversation, but explicitly does not protect the taping if it is done for a criminal or tortious purpose. Many states have similar exceptions. Employees of a "psychic hotline" who were secretly recorded by an undercover reporter working for "Primetime Live" sued ABC for violation of the federal wiretapping statute, arguing that the taping was done for the illegal purposes of invading the employees' privacy. The federal appellate court in Pasadena (9th Cir.) affirmed the dismissal of the employees' claim in September 1999. According to the court, an otherwise legal taping that is done to achieve a "further impropriety, such as blackmail," becomes a violation of the law. But even if ABC's means of taping were illegal because the act violated the employee's privacy, that does not make

the taping illegal under the wiretap act, the court held. Because the employees "produced no probative evidence that ABC had an illegal or tortious purpose" when it made the tape, the reporter did not violate the federal statute. (*Sussman v. American Broadcasting Co.*)

In another case, an ophthalmologist who agreed to be interviewed for "Primetime Live" sued ABC under the federal wiretapping statute for videotaping consultations between the doctor and individuals posing as patients who were equipped with hidden cameras. The U.S. Court of Appeals in Chicago (7th Cir.) rejected the doctor's wiretapping claim because the federal statute requires only one-party consent, and the undercover patients had consented to the taping. The court further held that the network did not send the testers to the doctor for the purpose of defaming the doctor, and that therefore ABC did not engage in the taping for a criminal or tortious purpose. (*Desnick v. ABC*)

These cases make two points journalists should remember when they think about taping a conversation: consent requirements under state and federal laws must always be met, and even then taping can be illegal if it is done in furtherance of a crime.

Trespass. A party whose conversation is surreptitiously recorded, whether with a tape recorder or a hidden camera, may also raise such newsgathering claims as trespass and intrusion, examining the issue of the scope of a party's consent. For example, in *Desnick*, the doctor sued the network for trespass because he did not know of the taping. But the court stated that consent to an entry is "often given legal effect" even though the entrant "has intentions that if known to the owner of the property would cause him ... to revoke his consent."

On the other hand, the U.S. Court of

Appeals in Richmond (4th Cir.) ruled in October 1999 that ABC reporters—again with "Primetime Live"—who obtained jobs with a Food Lion grocery store and therefore had legal permission to be in nonpublic areas of the store nonetheless exceeded the scope of that permission by using hidden cameras on the job. Food Lion had not consented to their presence for the purpose of recording footage that would be televised, the court held, and therefore the reporters' presence in the nonpublic areas constituted trespass.

However, Food Lion could not prove it was damaged by the trespass, the court found. Damage to its reputation caused by the resulting story was due to the facts reported in the story that alarmed consumers, not due to the trespass, the court held. As a result, Food Lion was only able to recover nominal damages of one dollar for the trespass claim. (*Food Lion Inc. v. Capital Cities/ABC Inc.*)

Expectations of privacy. The other issue that courts address in evaluating these cases is whether or not the plaintiffs had a reasonable expectation of privacy in the area where the filming took place. In *Desnick*, the court held that the doctor did not have such an expectation of privacy in an area where he brought his patients.

A medical testing lab in Arizona sued ABC over another "Primetime Live" segment, which focused on error rates among laboratories that analyze women's Pap smears for cancer. Producers from ABC posed as lab technicians and filmed the inside of the lab with a hidden camera. The U.S. Court of Appeals in San Francisco (9th Cir.) dismissed the lab's privacy claim. The undercover journalists filmed portions of the lab that were open to the public and were escorted by the lab's owners into a conference room. The court said the lab and its workers did

information obtained through these methods are misdemeanors carrying a maximum jail sentence of six months. Ala. Code § 13A-5-7. Installing an eavesdropping device on private property is considered a felony offense carrying a prison sentence between one and 10 years. Ala. Code § 13A-11-33.

Disclosing recordings: A person cannot knowingly or recklessly divulge information obtained through illegal eavesdropping or surveillance. Ala. Code § 13A-11-35.

Alaska

Summary of statute(s): Alaska's eavesdropping laws prohibit the use of any electronic devices to hear or record private conversations without the consent of at least

one party to the conversation. Further, the state criminalizes the disclosure of information obtained without such consent. The state's hidden camera law only applies to taking nude or partially nude pictures of subjects without their consent.

In-person conversations: A reporter may tape any in-person conversation with a subject, as the state requires the consent of just one party to the conversation. Alaska Stat. Ann. § 42.20.310. The state's highest court has long held that the eavesdropping statute was intended to prohibit only third-party interception of communications and thus doesn't apply to a participant in a conversation. *Palmer v. Alaska*, 604 P.2d 1106 (Alaska 1979).

Electronic communications: Similarly, using a device to record conversations over electronic communications such as telephones is allowed with the consent of at least one party to the conversation. Alaska Stat. Ann. § 42.20.310(b). That consent includes that of the reporter initiating such electronic communication. Because the provision of the statute dealing with wireless communications applies to "any transfer of signs, signals, writing, images, sounds, data or intelligence" of any nature, consent likewise is required to disclose the contents of text or e-mail messages sent between wireless devices. Alaska Stat. Ann. § 42.20.390.

Hidden cameras: The state law applies only to images — whether film or photo-

not have a reasonable expectation of privacy, because the areas filmed were open to the journalists, and none of the discussions caught on tape were of a personal nature. (*Medical Laboratory Management Consultants v. ABC, Inc.*)

In yet another case against ABC, a court ruled that police officers who were secretly videotaped while they were searching a car did not have a claim under New Jersey's wiretapping law. The officers had no reasonable expectation of privacy in a conversation that occurred in a car on the shoulder of a busy highway, the New Jersey appeals court ruled. Moreover, police officers have a diminished expectation of privacy because they hold a position of trust. Thus, the taping, done for a show on racial profiling, was legal. (*Hornberger v. ABC, Inc.*)

In California, when conservative activists James O'Keefe III and Hanna Giles secretly recorded an ACORN employee in an ACORN office for the purpose of expose journalism, the Supreme Court of California rejected a First Amendment challenge to the expectations of privacy standard created under California's wiretapping statute. Under California law, tape recording can be found unlawful when it violates "objectively reasonable expectations" that a conversation will not be recorded. Notably, the reporters had created the impression with the ACORN employee whom they recorded that they were seeking a confidential discussion. The court held that the privacy standard of California's wiretapping law did not violate the First Amendment by working a chilling effect on expose journalism, as defendant O'Keefe argued. Instead, the court found O'Keefe and Giles could both be charged under the California wiretapping law for their surreptitious recording. (*Vera v. O'Keefe*)

Filming individuals in their homes is always a more risky venture. In a Minnesota case, a veterinarian making a house call obtained permission to bring a student with

him, but failed to inform the homeowners that the student was an employee of a television station. The student surreptitiously videotaped the doctor's treatment of the family cat in their home. The state Court of Appeals upheld the trespass claim because, unlike cases where the taping took place in an office, the family had a reasonable expectation of privacy in their home. (*Copeland v. Hubbard Broadcasting, Inc.*)

But in *Alcarado v. KOB-TV*, the U.S. Court of Appeals in Denver (10th Cir.) ruled that reporters did not intrude upon the seclusion of undercover officers in filming them when they came to the doors of their residences to decline to talk to news media, because this conduct would not be highly offensive to a "reasonable person."

Journalists should be aware that privacy standards vary state by state, and that these cases serve as general examples to how states view reasonable expectations of privacy when taping.

Other consent issues. The validity of consent has also been upheld where the party was mistaken about the terms. In a California case, a woman sued CBS for trespass and intrusion when a camera crew accompanied a crisis intervention team into her home in response to a domestic violence call. The woman conceded that she had consented to the videotaping, but stated that she was led to believe that the camera crew was affiliated with the district attorney's office. The court held that the state statutes governing trespass and intrusion did not require that the individual's consent be "knowing or meaningful," even if the consent was "fraudulently induced," and that the camera crew had acted within the scope of the woman's consent. (*Baugh v. CBS*)

In recent years the widespread availability of handheld cell phone cameras and other digital recording devices have tested the limits of the freedom to tape when a device is in plain view. Use of these devices by reporters or citizen journalists to record

police — even when they are thought to be in plain view — may carry the risk of arrest. For example, in Massachusetts, an all-party consent state, individuals have been arrested when using publicly visible digital recording devices to record police. Massachusetts recording law makes any secretive recording unlawful, and arrests have been made of those recording the police with devices such as cell phone cameras, under the argument that these recordings were secretive. In 2007, Simon Glik was arrested under the Massachusetts wiretapping law for openly recording with his cell phone what he believed to be an unlawful arrest on the Boston Common. Though the charges were dropped and the U.S. Court of Appeals in Boston (1st Cir.) later affirmed Glik's First Amendment right to record police in public (*Glik v. Cunniffe*), recording in Massachusetts may still carry risks.

Illinois is another all-party consent state whose broad eavesdropping statute might be used against journalists recording police activity with devices in plain view. The state's eavesdropping statute bans any taping without the consent of all parties, regardless of whether there is an expectation of privacy. In a recent case, the American Civil Liberties Union of Illinois successfully challenged the law and won a decision which halted the statute being applied against the ACLU's recording of official police activity, when that police activity is audible and public. (*ACLU v. Alvarez*) However, the Illinois statute, which the *Alvarez* court described as "the broadest of its kind," has not been overturned. The risk of being charged under the statute may still exist for reporters or citizen journalists who record police activity in Illinois, even when they use recording devices that are in plain view.

graph, in print or electronic — that include nudity. A person who views or produces a picture of a nude or partially nude person without consent commits the crime of “indecent viewing or photography.” Alaska Stat. Ann. § 11.61.123.

Criminal penalties: Violation of the eavesdropping statute is a misdemeanor carrying a penalty of up to a year in jail. Alaska Stat. Ann. § 42.20.330. Additionally, those convicted of the statute face a fine of up to \$10,000. Alaska Stat. Ann. § 12.55.035. The crime of indecent viewing or photography is a misdemeanor if the subject viewed is an adult, and a felony if the subject is a minor. Alaska Stat. Ann. § 11.61.123(f).

Disclosing recordings: A person who intercepts a private conversation cannot legally divulge or publish the information without consent of at least one party. Alaska Stat. Ann. § 42.20.300. Similarly, any private communication a person knows or reasonably should know was obtained illegally cannot be divulged or used for anyone’s benefit. Alaska Stat. Ann. § 42.20.310.

Arizona

Summary of statute(s): An individual not involved or present at a conversation must have the consent of at least one party in order to legally record either an oral or electronic communication. Intercepting such conversations without consent is a felony under Arizona law. This excludes situations where the person does not have a reasonable expectation of privacy. The state allows for civil suits for violations of its eavesdropping laws.

In-person conversations: Consent is required for the taping of a conversation spoken by a person who has a justified expectation that the conversation will not be intercepted. *See* definition of “oral communication,” Ariz. Rev. Stat. Ann. § 13-3001. Absent that expectation, no consent is required. For example, a state appellate court has held that a criminal defendant’s contention that police officers violated the state’s eavesdropping law by recording a conversation between him and his girlfriend without his consent was meritless because the pair had no reasonable expectation of privacy in a police interrogation room. *Arizona v. Hauss*, 688 P.2d 1051 (Ariz. Ct. App. 1984). Therefore, recording in public places such as streets or parks is allowed absent any consent.

Electronic communications: A person cannot use any device to overhear or record a wire or electronic communication, including wireless or cellular calls, without the consent of at least one party to the conversation, unless the person recording is a party to the conversation. Ariz. Rev. Stat. Ann. § 13-3005. Because the provision of the statute dealing with wireless communications applies to “any transfer of signs,

signals, writing, images, sounds, data or intelligence” of any nature, consent likewise is required to disclose the contents of text or e-mail messages sent between wireless devices. Ariz. Rev. Stat. Ann. § 13-3001.

Hidden cameras: It is unlawful for an individual to photograph, videotape or secretly view a person without consent while the person is in a restroom, locker room, bathroom or bedroom or is undressed or involved in sexual activity, unless the surveillance is for security purposes and notice is posted. Ariz. Rev. Stat. Ann. § 13-3019.

Criminal penalties: Intercepting the contents of any oral or electronic communication without the consent of at least one party is a felony. Ariz. Rev. Stat. Ann. § 13-3005. Violation of the state’s hidden camera law is also a felony. Ariz. Rev. Stat. Ann. § 13-3019(D). Punishment can range from court fines to sentences of anywhere from six months to more than two years in prison. *See* Ariz. Rev. Stat. Ann. §§ 13-702, 13-801.

Civil suits: Any person whose communications are illegally intercepted in violation of the state’s eavesdropping laws may bring a civil suit within one year of the discovery of the violation to recover for damages, attorney fees, and any profits made by the person disclosing the information. Ariz. Rev. Stat. Ann. § 12-731. In some cases, the court can also assess punitive damages.

Disclosing recordings: Arizona prohibits disclosure or publication of photographs, videotapes or recordings made in violation of the state’s hidden camera law. Ariz. Rev. Stat. Ann. § 13-3019(B).

Arkansas

Summary of statute(s): An individual must have the consent of at least one party to a conversation in order to legally record either an oral or electronic communication. Intercepting such conversations without consent is a misdemeanor under Arizona law. State law makes it a felony to use any camera to secretly view a person in a private area without consent.

In-person conversations: At least one party must give consent in order to record an in-person conversation, unless the person recording is a party to the conversation. Ark. Code Ann. § 5-60-120. In some instances, the court may find implied consent. For example, in 1999, the U.S. Court of Appeals (8th Cir.) held that a mother of a mentally retarded son could not hold a care facility at which her son had been a patient liable for invasion of privacy under Arkansas law, since the mother knew some of her conversations with the facility’s employees were being recorded. *Alexander v. Pathfinder, Inc.*, 189 F.3d 735 (8th Cir. 1999).

Electronic communications: Similarly, intercepting any wire, landline, cellular or cordless phone conversation is illegal unless

the person recording is a party to the conversation or at least one of the parties has given consent. Ark. Code Ann. § 5-60-120. Arkansas law also criminalizes the “interception” of a message transmitted by telephone in its public utility laws. Ark. Code Ann. § 23-17-107. However, the statute does not prohibit or restrict a Federal Communications Commission licensed amateur radio operator or anyone operating a police scanner from intercepting a communication for pleasure. Ark. Code § 5-60-120(e).

Hidden cameras: The state’s video voyeurism laws prohibits the use of any camera or “image recording device” to secretly view or videotape a person in any place where that person “is in a private area out of public view, has a reasonable expectation of privacy, and has not consented to the observation.” Ark. Code Ann. § 5-16-101.

Criminal penalties: Intercepting oral or electronic communications without consent is a misdemeanor punishable by up to a year in jail. Ark. Code Ann. § 5-4-401. In addition, the court may impose fines of up to \$2,500. Ark. Code Ann. § 5-4-201. Violation of the state’s video voyeurism law is a felony punishable by up to six years in prison. Ark. Code Ann. § 5-4-401.

Disclosing recordings: Arkansas prohibits the distribution or posting to the Internet of video recordings, film or photograph in violation of its video voyeurism laws. Ark. Code Ann. § 5-16-101.

California

Summary of statute(s): In California, all parties to any confidential conversation must give their consent to be recorded. This applies whether the recording is done face-to-face or intercepted through some electronic communication such as a cell phone call or series of e-mail or text messages. Both civil and criminal penalties are available to victims of illegal recordings. Further, the state’s so-called “anti-paparazzi” legislation sets fines for, among other things, trespassing on private property with the intent of capturing photos. The state’s vehicle code similarly penalizes those who interfere with drivers of vehicles in pursuit of images or sound recordings.

In-person conversations: All parties to any confidential communication must give permission to be recorded, according to California’s eavesdropping law. Cal. Penal Code § 632. The statute, however, specifically excludes from its application any conversations made in public places, government proceedings, or in circumstances where the participants of the conversation could reasonably expect to be overheard or recorded. Cal. Penal Code § 632(c). Additionally, California’s so-called “anti-paparazzi” law prohibits trespassing with the intent of capturing photographic images or sound recordings of people in “personal or

familial activity.” Cal. Civil Code § 1708.8. Committing an assault or falsely imprisoning subjects of a photo or sound recording can also lead to violations of the statute. Cal. Civil Code § 1708.8(c). Similarly, the state’s vehicle code was recently amended to include penalties for anyone who interferes with the driver of a vehicle, follows too closely or drives recklessly “with the intent to capture any type of visual image, sound recording, or other physical impressions of another person for a commercial purpose.” Cal. Veh. Code § 40008.

Electronic communications: The state’s wiretapping law makes it a crime to intentionally tap or make any unauthorized connection to intercept telephone conversations or to read the contents of any messages without the consent of all parties involved in such communications. See Cal. Penal Code §§ 631, -7.2.

Hidden cameras: The state’s disorderly conduct statute prohibits the use of “a concealed camcorder, motion picture camera, or photographic camera of any type” to secretly record a person while in a dressing room, tanning booth or while in any area where the person has a reasonable expectation of privacy. Cal. Penal Code § 647(j). Two appellate courts have come to opposite conclusions as to whether using a hidden camera in a private place also violates the state’s eavesdropping statute. See *California v. Gibbons*, 215 Cal. App. 3d 1204 (Cal. Ct. App. 1989)(a video recorder can be considered a recording device under the statute); *People v. Drennan*, 84 Cal. App. 4th 1349 (Cal. Ct. App. 2000)(eavesdropping statute protects only sound-based or symbol-based communication).

Criminal penalties: A first offense of eavesdropping or wiretapping is punishable by a fine of up to \$2,500 or imprisonment for no more than one year. Cal. Penal Code §§ 631, 632. Subsequent offenses carry a maximum fine of \$10,000 and jail sentence of up to one year. Disclosing the contents of intercepted telephone conversations could lead to fines of up to \$5,000 and one year in jail. Cal. Penal Code § 637. Violation of the state’s hidden camera statute is a misdemeanor punishable by up to a year in jail and fines of up to \$1,000. Cal. Penal Code § 19. The state’s vehicle code provides for penalties of up to a year in jail and fines of up to \$2,500. Cal. Veh. Code § 40008(a).

Civil suits: Anyone injured by a violation of the laws against disclosure of telephonic messages can recover civil damages of \$5,000 or three times actual damages, whichever is greater. Cal. Penal Code § 637.2. The court may also impose injunctions preventing the use of illegally obtained information. Cal. Penal Code § 637.2(b). The state’s civil code provides for fines of up to \$50,000, three times the amount of actual or special damages, and punitive damages for committing

an assault or trespassing to capture a visual image or sound recording. Cal. Civil Code § 1708.8(d).

Disclosing recordings: The state prohibits the intentional disclosure of the contents of private communications obtained by wiretapping. Cal. Penal Code § 631. Those who publish, sell or otherwise transmit images or sound recordings while knowingly trespassing on private property are subject to fines. Cal. Civil Code § 1708.8(f).

Colorado

Summary of statute(s): An individual not involved or present at a conversation must have the consent of at least one party in order to legally record either an oral or electronic communication. Intercepting in-person conversations without consent is a misdemeanor, although the state makes an allowance for recording by news media in some situations. Intercepting electronic communications without at least one party’s consent and disclosing information gained through such means are both felony crimes under the state’s wiretapping law.

In-person conversations: The consent of at least one participant to a conversation is required before any recording can take place under the state’s eavesdropping law. Colo. Rev. Stat. § 18-9-304. Colorado specifically carves out an exemption for news media from its eavesdropping and wiretapping statutes, stating that its laws are not to be “interpreted to prevent a news agency, or an employee thereof, from using the accepted tools and equipment of that news medium in the course of reporting or investigating a public and newsworthy event.” Colo. Rev. Stat. § 18-9-305.

Electronic communications: The consent of at least one party is required to record or intercept a telephone conversation or any electronic communication, according to the state’s wiretapping statute. Colo. Rev. Stat. § 18-9-303. Because the provision of the statute dealing with wireless communications applies to “any transfer of signs, signals, writing, images, sounds, data or intelligence” of any nature, consent likewise is required to disclose the contents of text or e-mail messages sent between wireless devices. Colo. Rev. Stat. § 18-9-301.

Hidden cameras: The state prohibits under its privacy laws anyone from knowingly observing or taking any visual images of another person’s body without consent in situations where the subject of the filming or photography has a reasonable expectation of privacy. Colo. Rev. Stat. § 18-7-801.

Criminal penalties: Disclosing information obtained illegally, as well as violations of the state’s wiretapping statute are both felonies punishable by a fine of between \$1,000 and \$100,000 and one year to 18 months in jail. Colo. Rev. Stat. § 18-1.3-401. Recording communication from a cordless

telephone, however, is a misdemeanor punishable by a fine of up to \$5,000 and six to 18 months in jail. Colo. Rev. Stat. § 18-1.3-501. Violations of the eavesdropping statute carry similar penalties, while violators of the state’s hidden camera law can face misdemeanor charges carrying a sentence of up to one year in jail and fines up to \$1,000. Colo. Rev. Stat. § 18-9-304.

Disclosing recordings: Using or disclosing information obtained through illegal wiretapping is a felony, if there is reason to know the information was obtained illegally. Colo. Rev. Stat. § 18-9-304.

Connecticut

Summary of statute(s): Connecticut requires at least one party’s consent to record an in-person conversation, and the consent of all parties to a telephonic conversation. The state’s voyeurism law prohibits taking visual images of another person without that person’s consent or knowledge when there is an expectation of privacy.

In-person conversations: A person not present at a conversation must obtain the consent of at least one participant before any recording can take place under the state’s eavesdropping law. Conn. Gen. Stat. §§ 53a-187, -89.

Electronic communications: It is illegal to record a telephone conversation in Connecticut without the consent of all parties to the call. Consent should be given prior to the recording, and should either be in writing or recorded verbally, or a warning that the conversation is being taped should be recorded. Conn. Gen. Stat. § 52-570d.

Hidden cameras: The state’s voyeurism law prohibits knowingly photographing, filming or recording in any way another person’s image without consent in situations where the person is unaware of the filming, not in plain view and has a reasonable expectation of privacy. Conn. Gen. Stat. § 53a-189a.

Criminal penalties: Violation of the state’s eavesdropping and voyeurism laws, as well as the dissemination of images in violation of the law, are all felonies punishable by imprisonment for one to five years. Conn. Gen. Stat. § 53a-35a.

Civil suits: Recording a telephone conversation without the consent of all parties subjects an individual to liability for damages, as well as litigation costs and attorney fees. Conn. Gen. Stat. § 52-570d(c).

Disclosing recordings: Connecticut prohibits disseminating recorded images of another person in violation of the state’s voyeurism law. Conn. Gen. Stat. § 53a-189b.

Delaware

Summary of statute(s): Delaware’s wiretapping and surveillance laws require at least one party’s consent to record both in-person conversations and electronic communica-

tions. However, there is some conflict in the laws. A state privacy law makes it illegal to intercept private conversations without the consent of all parties. Del. Code Ann. tit. 11, § 1335(a)(4). The wiretapping law is much more recent, though, and at least one federal court has held that, even under the privacy law, an individual can record his own conversations. *United States v. Vespe*, 389 F. Supp. 1359 (1975).

In-person conversations: An individual can record oral conversations where either the person is a party to the conversation or at least one of the participants has consented to the recording, so long as the recording or interception is not done for the purpose of committing a criminal or tortious act. Del. Code Ann. tit. 11, § 2402(c)(4).

Electronic communications: Similarly, absent any criminal or tortious intent, a person is allowed to record or intercept any electronic communication such as a telephone call with the consent of at least one party to the conversation. Del. Code Ann. tit. 11, § 2402(c)(4). And because the provision of the statute dealing with wireless communications applies to “any transfer of signs, signals, writing, images, sounds, data or intelligence” of any nature, consent likewise is required to disclose the contents of text or e-mail messages sent between wireless devices. Del. Code Ann. tit. 11, § 2401(a).

Hidden cameras: The state’s privacy statute prohibits installing a camera or other recording device “in any private place, without consent of the person or persons entitled to privacy there.” Del. Code Ann. tit. 11, § 1335(2). The law also bars the use of hidden cameras to record individuals dressing or undressing in a private place. Del. Code Ann. tit. 11, § 1335(a)(6), -(7).

Criminal penalties: Communications intercepted illegally, or the disclosure of the contents of illegally recorded communications is a felony punishable by up to five years in prison and a fine of up to \$10,000. Del. Code Ann. tit. 11, § 2402(b). Installing a hidden recording device in any private place is a misdemeanor punishable by up to one year in jail and fines of up to \$2,300. Del. Code Ann. tit. 11, § 4206. The provision barring the taking of photo images of individuals undressing in a private place is a felony punishable by up to two years in prison. Del. Code Ann. tit. 11, § 4205(a).

Civil suits: Any person whose communications are illegally intercepted, disclosed or used in violation of the state’s eavesdropping laws may bring a suit to recover for both actual and punitive damages, as well as attorney fees and litigation costs. Del. Code Ann. tit. 11, § 2409(a). However, a good faith reliance on a court order or legislative authorization constitutes a complete defense.

Disclosing recordings: The state pro-

hibits the disclosure of any intercepted oral or electronic communication if that person knows or has reason to know the information was obtained in violation of the state’s wiretapping and eavesdropping statutes. Del. Code Ann. tit. 11, § 2402(a)(2).

District of Columbia

Summary of statute(s): In the District of Columbia, an individual may record or disclose the contents of a wire or oral communication if he or she is a party to the communication, or has received prior consent from one of the parties. The District’s voyeurism law prohibits secretly taking images of people in private settings and distributing them without consent. The District also contains several obscure city rules regulating the activities of commercial street photographers.

In-person conversations: The consent of at least one participant to a conversation is required before any recording can take place under the District’s wiretapping law. D.C. Code § 23-542. This means a reporter’s tape-recorded conversation with a source would be permissible, since that reporter is a party to the conversation. The District’s municipal regulations also contain a set of obscure rules requiring street photographers selling their wares to tourists on public spaces to become licensed. *See* D.C. Mun. Regs. § 24-521, -22. The District

Possession and publication

Journalists should be aware that wiretap laws raise issues beyond just whether they have met consent requirements. The federal law and many state laws explicitly make it illegal to possess — and particularly to publish — the contents of an illegal wiretap, even if it is made by someone else. Some states that allow recordings make the distribution or publication of those otherwise legal recordings a crime.

The 1986 Electronic Communications Privacy Act (amending the federal wiretap law) makes it illegal to possess or divulge the contents of any illegally intercepted communication.

The U.S. Supreme Court ruled in May 2001 that several media defendants could not be held liable for damages under the federal statute for publishing and broadcasting information obtained through an illegal interception of a private conversation.

The case arose from a cell-phone conversation in Pennsylvania about contract negotiations for local school teachers.

During the conversation, Anthony F. Kane, Jr., president of the local teachers’ union, told Gloria Bartnicki, a union negotiator, that if teachers’ demands were not met, “we’re gonna have to go to their, their homes . . . to blow off their front porches, we’ll have to do some work on some of those guys.” While Bartnicki and Kane spoke, an unknown person illegally intercepted the call, and a tape recording was left in the mailbox of a local association leader. The association leader gave a copy of the tape to two radio talk show hosts, who broadcast the tape as a part of a news show. Local television stations also aired the tape, and newspapers published transcripts of the conversation.

Bartnicki and Kane sued some of the stations and newspapers that had disclosed the contents of the tape. The case made its way to the Supreme Court, which found that First Amendment principles, which support a commitment “that debate on public issues should be uninhibited, robust, and wide-open,” trumped the privacy concerns of the union leaders.

In ruling that disclosure of a matter in

the public interest outweighed claims of privacy, the majority of the Court supported “a profound national commitment to the principle that debate on public issues should be uninhibited, robust and wide-open.” The majority explained that those who participate in public affairs have a diminished expectation of privacy, especially when they propose to carry out wrongful conduct.

The case was a significant win for the media, but its implications for newsgatherers are still not entirely clear. The Court’s decision was premised on three factors: the media did not engage in or encourage the illegal recording, the topic of the intercepted conversation was of public concern and the conversation involved proposed criminal acts. The Court did not indicate whether disclosure by the media under different circumstances would be considered legal. (*Bartnicki v. Vopper*)

The U.S. Court of Appeals in Boston (1st Cir.) decided in 2007 in *Jean v. Massachusetts State Police* that the First

imposes several rules governing the conduct of such photographers, including prohibiting them from impeding traffic and limiting the time spent in any one place to five minutes. D.C. Mun. Regs. § 24-523.3. Concerns over these rules and their potential for abuse prompted promises from District officials to clarify that the rule would apply only to street vendors who take photos of people to sell to them. See Mike DeBonis, *D.C. Will Revisit Street Photography Regulations*, Wash. Post, Nov. 28, 2011, http://www.washingtonpost.com/blogs/mike-debonis/post/dc-will-revisit-street-photography-regulations/2011/11/28/gIQAbxqX5N_blog.html.

Electronic communications: Similarly, intercepting any wire or landline conversation is illegal unless the person recording is a party to the conversation or at least one of the parties has given consent. D.C. Code § 23-542.

Hidden cameras: The District's voyeurism law prohibits stationing oneself in a "hidden observation post" or installing any electronic device to secretly record another person using a restroom, undressing or engaging in sexual activity. D.C. Code § 23-3531.

Criminal penalties: Recording or distributing the contents of any recordings of communications made without proper consent can be punished criminally by a fine of

no more than \$10,000 or imprisonment for no more than five years, or both. D.C. Code § 23-542. Violating the District's voyeurism law is a misdemeanor punishable by up to a year in prison and fines of up to \$1,000. D.C. Code § 23-3531(f). Distribution of images in violation of the District's voyeurism law is a felony punishable by up to five years imprisonment and fines not more than \$5,000. D.C. Code § 23-3531(f)(2).

Civil suits: Anyone who illegally records or discloses the contents of a communication is also subject to civil liability for the greater of actual damages, damages in the amount of \$100 per day for each day of violation, or \$1,000, along with punitive damages, attorney fees and litigation costs. D.C. Code § 23-554.

Disclosing recordings: The District prohibits disclosure of the contents of an illegally recorded communication. However, such disclosure cannot be punished criminally if the contents of the communication have "become common knowledge or public information." D.C. Code § 23-542.

Florida

Summary of statute(s): All parties must consent to the recording or the disclosure of the contents of any wire, oral or electronic communication in Florida. Disclosing communications in violation of the state's statute is prohibited. Both criminal and civil pen-

alties exist for such infractions. The state's video voyeurism law bans the secret recording underneath or through the clothing of individuals without their consent, or in areas where they have a reasonable expectation of privacy.

In-person conversations: All parties to any confidential communication must give permission to be recorded, according to Florida's eavesdropping law. Fla. Stat. § 934.03(2)(d). Under the statute, consent is not required for the taping of an oral communication spoken by a person who does not have a reasonable expectation of privacy in that communication. See definition of "oral communication," Fla. Stat. § 934.02. For example, a speech made by the mayor at the grand opening of a new city park would not create a reasonable expectation of privacy in the contents of that communication.

Electronic communications: It is illegal to tape or overhear a telephone conversation in Florida without the consent of all parties to the conversation. Fla. Stat. § 934.03(2)(d). Because the provision of the statute dealing with wireless communications applies to "any transfer of signs, signals, writing, images, sounds, data or intelligence of any nature," consent likewise is required to disclose the contents of text or e-mail messages sent between wireless devices. Fla. Stat. § 934.02(a)(12). Either the parties alleging violation of the wiretap law must be Florida

Amendment prevented Massachusetts law enforcement officials from interfering with an individual's Internet posting of an audio and video recording of an arrest and warrantless search of a private residence, even though the poster had reason to know at the time she accepted the recording that it was illegally recorded.

The Court applied *Bartnicki* and determined that the state's interest in protecting the privacy of its citizens — encouraging uninhibited exchange of ideas and information among private parties and avoiding suspicion that one's speech is being monitored by a stranger — was less compelling in this case than in *Bartnicki*, in which it was not given much weight.

The Court of Appeals in *Jean* also considered two factors that it found weighed in favor of First Amendment protection for the publisher: the identity of the interceptor was known, providing less justification to punish the publisher than in *Bartnicki* where the interceptor was unknown, and the publisher of the tape was a private citizen.

In another case to follow *Bartnicki*, decided in 2011, a federal court in Illinois held that

publishing a tape of a woman being arrested without her consent is protected under the First Amendment. Eran Best, who was filmed being arrested during a traffic stop, did not consent to the tape appearing on the reality show *Female Forces*.

Best sued the officer and media companies responsible for the taping and broadcast of her arrest under the Illinois right of publicity statute, arguing that her identity had been used commercially without her consent. The court, relying in part on *Bartnicki*, held that because a tape of an arrest involved a "truthful matter of public concern," the First Amendment-based right to broadcast it outweighed Best's privacy rights. (*Best v. Berard*)

The Illinois court partly relied on an important First Amendment decision from 2011, the Supreme Court case *Snyder v. Phelps*, to support its argument that the tape had captured a matter of public concern. In *Snyder*, the father of a deceased marine sued the Westboro Baptist Church for intentional infliction of emotional distress, after the church picketed his son Matthew Snyder's funeral.

The Supreme Court held that because

the Westboro Baptist Church's protest involved speech about a matter of public concern, it was protected by the First Amendment, and Snyder's father would need to prove actual malice in his lawsuit for intentional infliction of emotional distress against the Westboro Baptists, making it much hard for Snyder's father to succeed.

Taken together, *Bartnicki* and *Snyder* may suggest broad protection for the press against laws that prohibit publishing the contents of an illegal wiretap. *Bartnicki* held that when broadcasting the tape of an illegally recorded conversation, the First Amendment right to publish a matter of public concern could outweigh the privacy rights of those recorded. *Snyder*, in turn, demonstrated that a very broad range of content can be considered to be of public concern—including even a highly offensive protest directed at a private funeral. But until more such controversies work their way through the courts, the boundaries of the right to publish the contents of an illegal recording will remain unclear.

residents or the words of any intercepted private conversation must be spoken in Florida for the all-party consent provision in the statute to apply. See *Cohen Brothers, LLC v. ME Corp., S.A.*, 872 So.2d 321, 324 (Fla. 3d Dist. Ct. App. 2004).

Hidden cameras: The state's video voyeurism laws prohibit the installation of any imaging devices "to secretly view, broadcast, or record a person, without that person's knowledge and consent" in circumstances where the person is privately exposing the body in an area where there is a reasonable expectation of privacy. Fla. Stat. § 810.145. The law also bans secretly videotaping underneath or through clothing without the subject's consent. *Id.*

Criminal penalties: Recording, disclosing, or endeavoring to disclose without the consent of all parties is a felony punishable by up to five years in prison and \$5,000 in fines, unless the interception is a first offense committed without any illegal purpose, and not for commercial gain. Fla. Stat. § 934.03(4)(a). In those circumstances, then, such an infraction is a misdemeanor punishable by up to a year in jail and fines of up to \$1,000. Fla. Stat. § 934.03(4)(b). Adults taking or distributing images in violation of the state's video voyeurism law could face felony charges of up to five years in prison and \$5,000 in fines. Fla. Stat. § 810.145.

Civil suits: Anyone whose communications have been illegally intercepted or disclosed may recover actual damages of up to \$1,000 for each day of the violation, along with punitive damages, attorney fees and litigation costs. Fla. Stat. § 934.10.

Disclosing recordings: The state prohibits the disclosure of any intercepted oral or electronic communication if that person knows or has reason to know the information was obtained in violation of the state's wiretapping statutes. Fla. Stat. § 934.03(1)(c). Similar bars exist for individuals who distribute images in violation of the state's video voyeurism law. Fla. Stat. § 810.145(3), (4).

Georgia

Summary of statute(s): An individual may record or disclose the contents of a wire, oral or electronic communication if he or she is a party to the communication or has received prior consent from one of the parties. The state prohibits the use of cameras to observe private activities without the consent of all parties involved, and also prohibits disclosure of the contents of illegally obtained recordings. However, Georgia carves out an exception, allowing the parents of minor children to intercept private telephonic and electronic communications without consent.

In-person conversations: An individual can record oral conversations where either the person is a party to the conversation or at least one of the participants has consented

to the recording. Ga. Code Ann. § 16-11-66(a). The Georgia Court of Appeals, however, interpreted the statute to require the consent of all parties with respect to video recording in private circumstances. See *Gavin v. State*, 664 S.E.2d 797 (Ga. Ct. App. 2008). State law also prohibits trespassing on private property to eavesdrop or secretly observe activities of another. Ga. Code Ann. § 16-11-62(3).

Electronic communications: Similarly, a person who is either a participant in a telephone or other electronic communication, or with consent from one of the participants, is allowed to record or intercept any such communication. Ga. Code Ann. § 16-11-66(a). The state's wiretapping and eavesdropping statutes specifically allow for the secret recording or listening to telephone conversations of minor children without consent for the purpose of ensuring their welfare. Ga. Code Ann. § 16-11-66(d).

Hidden cameras: The state prohibits the use of a camera "without the consent of all persons observed, to observe, photograph, or record the activities of another which occur in any private place and out of public view." Ga. Code Ann. § 16-11-62(2).

Criminal penalties: Violation of any provisions of the wiretapping statute carries a penalty of imprisonment between one and five years or a fine of up to \$10,000. Ga. Code Ann. § 16-11-69.

Disclosing recordings: It is illegal for any person to divulge or distribute to any person the content or substance of any private message, photograph or communication without the consent of all parties involved. Ga. Code Ann. § 16-11-62(6). However, Georgia specifically allows the parents of minor children to disclose the contents of secretly intercepted telephone conversations or any electronic communication to a district attorney or law enforcement officer if the parent has a good faith belief that the communication is evidence of criminal conduct involving the child as a victim. Ga. Code Ann. § 16-11-66(d).

Hawaii

Summary of statute(s): An individual may record or disclose the contents of a wire, oral or electronic communication if he or she is a party to the communication, or has received prior consent from one of the parties. In addition, the state's hidden camera law prohibits recording images of a person in private areas while in any stage of undress. The state provides both civil and criminal penalties for violators.

In-person conversations: An individual can record oral conversations where either the person is a party to the conversation or at least one of the participants has consented to the recording. Haw. Rev. Stat. § 803-42.

Electronic communications: Similarly, a person who is either a participant in a tele-

phone or other electronic communication, or with consent from one of the participants, is allowed to record or intercept any such communication. Haw. Rev. Stat. § 803-42. Because the provision of the statute dealing with wireless communications applies to "any transfer of signs, signals, writing, images, sounds, data or intelligence of any nature," consent likewise is required to disclose the contents of text or e-mail messages sent between wireless devices. Haw. Rev. Stat. § 803-41. The one-party consent rule does not apply, however, to the installation of a recording device in a "private place" that will amplify or broadcast conversations outside that private place. All parties who have a reasonable expectation of privacy in that place must consent to the installation of a recording device. Haw. Rev. Stat. § 711-1111.

Hidden cameras: It is a felony to install or use a surveillance device in a private area to view a person in a "stage of undress or sexual activity" without the person's consent. Haw. Rev. Stat. § 711-1110.9. Secretly taking images of another underneath their clothing while in public is a misdemeanor. Haw. Rev. Stat. § 711-1111. A person can also be charged with a misdemeanor sexual assault for trespassing on private property to secretly observe somebody for the purpose of sexual gratification. Haw. Rev. Stat. § 707-733(c).

Criminal penalties: Unlawful interceptions or disclosures of private communications are felonies punishable by up to five years imprisonment and a fine of up to \$10,000. Haw. Rev. Stat. §§ 706-640, -60. Similar penalties are in place for the installation of hidden cameras. Further, the court may order the destruction of such recordings. Haw. Rev. Stat. § 711-1110.9. Violators of the state's sexual assault law and those secretly taking images of individuals underneath their clothing can be punished by up to a year in jail and a fine of up to \$2,000. Rev. Stat. §§ 706-640, -63.

Civil suits: Anyone whose communications have been illegally intercepted, disclosed or used may recover actual and punitive damages and any profits made by the violator, along with attorney fees and litigation costs. Haw. Rev. Stat. § 803-48.

Disclosing recordings: It is illegal to use or disclose the contents of any private oral or electronic conversation, message or photographic image without the consent of at least one party to the conversation if the accused knew or had reason to know that the message was unlawfully intercepted. Haw. Rev. Stat. § 803-42(a)(3), -(a)(4).

Idaho

Summary of statute(s): An individual may record or disclose the contents of a wire, oral or electronic communication if he or she is a party to the communication,

or has received prior consent from one of the parties. The state provides both civil and criminal penalties for violators.

In-person conversations: At least one party must give consent in order to record an in-person conversation. Idaho Code Ann. § 18-6702.

Electronic communications: Similarly, using a device to record conversations over electronic communications such as telephones is allowed with the consent of at least one party to the conversation. Idaho Code Ann. § 18-6702. Because the provision of the statute dealing with wireless communications applies to “any transfer of signs, signals, writing, images, sounds, data or intelligence of any nature,” consent likewise is required to disclose the contents of text or e-mail messages sent between wireless devices. Idaho Code Ann. § 18-6701(10).

Hidden cameras: The state’s video voyeurism laws prohibit the installation of any devices capable of recording, storing or transmitting visual images to secretly view, broadcast or record a person, without that person’s knowledge and consent in an area where there is a reasonable expectation of privacy. Idaho Code Ann. § 18-6609(2). The use of such cameras and publication or dissemination of images captured are felonies.

Criminal penalties: Punishment for the felony of an illegal interception or disclosure can include up to five years in prison and as much as \$5,000 in fines. Idaho Code Ann. § 18-6702. Violation of the state’s video voyeurism laws carry penalties of up to five years imprisonment and \$50,000 in fines. Idaho Code Ann. § 18-112.

Civil suits: Anyone whose communications have been illegally intercepted, disclosed or used may recover actual and punitive damages, along with attorney fees and litigation costs. Idaho Code Ann. § 18-6709.

Disclosing recordings: A person who intercepts a private conversation cannot knowingly disclose or use the information without consent of at least one party. Idaho Code Ann. §§ 18-6702(c), (d). u

Illinois

Summary of statute(s): In Illinois, an eavesdropping device cannot be used to record or overhear a conversation or intercept, retain or transcribe a telephone or electronic communication without the consent of all parties involved. While the all-party consent requirement does not apply to police officers acting within the scope of their duties, the law provides for harsher penalties for anyone caught recording police activities while in public. The U.S. Court of Appeals in Chicago (7th Cir.) put the constitutionality of the state’s eavesdropping law into question in May 2012.

In-person conversations: The state requires all parties to a conversation to give consent before one can record “all or any

part of any” oral conversation. 720 Ill. Compiled Stat. 5/14-2(a)(1). The eavesdropping provisions apply regardless of whether any of the participants intended the conversation to be private. 720 Ill. Compiled Stat. 5/14-1(d). The eavesdropping statute, however, exempts the all-party consent requirement for police officers acting in the scope of their law enforcement duties. 720 Ill. Compiled Stat. 5/14-3(g).

Electronic communications: Similarly, the statute makes it a felony to intercept any telephone or electronic communication unless all parties give their consent. 720 Ill. Compiled Stat. 5/14-1, -2. Because the provision of the statute dealing with electronic communications applies to “any transfer of signs, signals, writing, images, sounds, data or intelligence of any nature,” consent likewise is required to disclose the contents of text or e-mail messages sent between wireless devices. 720 Ill. Compiled Stat. 5/14-1(e).

Hidden cameras: A person cannot “videotape, photograph, or film another person without that person’s consent in a restroom, tanning bed or tanning salon, locker room, changing room or hotel bedroom,” or in their residence without their consent. 720 Ill. Compiled Stat. 5/26-4. The law also prohibits the concealed photography and video recordings of an individual’s body either under or through that person’s clothing without that person’s knowledge or consent. *Id.* 5/26-4(a-10).

Criminal penalties: Violations of the eavesdropping law are punishable as felonies, with first offenses categorized as lesser, Class 4 felonies than subsequent offenses. 720 Ill. Compiled Stat. 5/14-4. Violations are elevated to a Class 1 felony with a possible prison term of up to 15 years if one of the recorded individuals is a law enforcement officer, assistant state’s attorney or judge “while in the performance of his or her official duties.” 720 Ill. Compiled Stat. 5/14-4(b). The U.S. Court of Appeals in Chicago (7th Cir.), however, put the constitutionality of this provision into question by concluding that portions of the Illinois Eavesdropping Act are “likely unconstitutional” and could not be applied to the American Civil Liberties Union of Illinois when it records conversations of police officers openly engaged in their public duties. *ACLU of Illinois v. Alvarez*, 679 F.3d 583 (7th Cir. 2012).

Civil suits: Participants to any communication intercepted or recorded in violation of the state’s eavesdropping statute have civil remedies that include injunctive relief prohibiting any further eavesdropping, as well as actual and punitive damages against the eavesdropper. 720 Ill. Compiled Stat. 5/14-6.

Disclosing recordings: The eavesdropping law makes it illegal to use or informa-

tion one knows or should have known was obtained with an eavesdropping device. 720 Ill. Compiled Stat. 5/14-2(a)(3). However, not disclosing the contents of the illegally obtained communication is an affirmative defense to the charge. 720 Ill. Compiled Stat. 5/14-2(b)(4). Further, disclosing video images taken in violation of the state’s voyeurism law is a felony. 720 Ill. Compiled Stat. 5/26-4(a-25).

Indiana

Summary of statute(s): Indiana bars the recording or interception of any telephonic or electronic communication by means of any mechanical or electronic device without the consent of at least one party to the conversation. The state also prohibits disclosure of images intercepted in violation of its video voyeurism law. Violators can face both civil and criminal penalties.

Electronic communications: The statute makes it a felony to intercept any telephone or electronic communication unless at least one party gives their consent. Ind. Code Ann. § 35-31.5-2-176. Because the provision of the statute dealing with electronic communications applies to “any transfer of signs, signals, writing, images, sounds, data or intelligence of any nature,” consent likewise is required to disclose the contents of text or e-mail messages sent between wireless devices. Ind. Code Ann. § 35-31.5-2-110.

Hidden cameras: The state’s video voyeurism law makes it a misdemeanor to photograph the private bodily areas of a person without consent. Ind. Code Ann. § 35-45-4-5(d). The penalty escalates to a felony if the photo is taken in a private area such as a restroom, shower or dressing room. Ind. Code Ann. § 35-45-4-5(b)(2).

Criminal penalties: Knowingly or intentionally intercepting a communication in violation of Indiana’s wiretap laws is a felony punishable by up to eight years in prison and a \$10,000 fine. Ind. Code Ann. § 35-33.5-5-5(b). Misdemeanor violations of the state’s video voyeurism law are punishable by one year in jail and up to \$5,000 in fines. Ind. Code Ann. § 35-50-3-2. A felony charge of the voyeurism law carries penalties of up to six years imprisonment and a \$10,000 fine. Ind. Code Ann. § 35-50-2-7.

Civil suits: Civil liability for intercepting, disclosing or using the contents of a confidential communication in violation of the state’s wiretapping law may require the payment of actual and punitive damages, court costs and attorney fees. Ind. Code Ann. § 35-33.5-5-4.

Disclosing recordings: The state’s video voyeurism law makes it a Class D felony offense to publish, transmit or make images captured without the subject’s consent available on the Internet. Ind. Code Ann. § 35-45-4-5(e).

Iowa

Summary of statute(s): Iowa has two sets of similar statutes dealing with the interception of oral, telephonic or electronic communications. Both laws bar the recording or interception of such communications by means of any mechanical or electronic device without the consent of at least one party. The state prohibits disclosure of the illegally intercepted contents of such communications. Violators can face both civil and criminal penalties.

In-person conversations: Iowa's electronic and mechanical eavesdropping statute makes it a serious misdemeanor for a person to overhear or tape a private conversation to which that person is not openly present and participating or listening, unless consent to record is given by at least one of the parties. Iowa Code Ann. § 727.8. Under the state's "Interception of Communications" statute, it is a Class D felony to willfully intercept the contents of a confidential oral conversation. The statute, however, expressly permits the recording through the use of any device by either a party to the conversation, or with the consent of at least one party, so long as the recording is done absent any criminal or tortious intent. Iowa Code Ann. § 808B.2.

Electronic communications: Similarly, under the state's electronic and mechanical

eavesdropping statute, a person may record a telephone or communication of any kind if the person listening or recording is a sender or recipient. Failure to get consent is a serious misdemeanor. Iowa Code Ann. § 727.8. Under the state's "Interception of Communications" statute, it is a Class D felony to willfully intercept any wire or electronic communication absent the consent of at least one party to the communication. Because the provision of the statute dealing with electronic communications applies to "any transfer of signals, signs, writing, images, sounds, data or intelligence of any nature," consent of at least one party likewise is required to disclose the contents of text or e-mail messages sent between wireless devices. Iowa Code Ann. § 808B.1.

Hidden cameras: The state's privacy law makes it a serious misdemeanor to secretly view, photograph or film a person who is either fully or partially nude without consent, so long as that subject has a reasonable expectation of privacy. Iowa Code Ann. § 709.21.

Criminal penalties: Felony charges under the state's Interception of Communications statute carry penalties of up to five years imprisonment and a \$7,500 fine. Iowa Code Ann. § 902.9. Serious misdemeanor charges under both the eavesdropping and hidden camera privacy laws carry penalties of up to

one year in jail and a \$1,875 fine. Iowa Code Ann. § 903.1.

Civil suits: Anyone whose confidential communications are intercepted, disclosed or used in violation of the state's wiretapping and eavesdropping laws may seek injunctive relief from the court and recover in a civil suit the payment of actual and punitive damages, attorney fees and other litigation costs. Iowa Code Ann. § 808B.8.

Disclosing recordings: Iowa prohibits the disclosure of the contents of any oral, telephonic or other electronic communication if the person knows or has reason to believe the communications were intercepted in violation of the state's eavesdropping laws. Iowa Code Ann. § 808B.2.

Kansas

Summary of statute(s): Kansas bars the recording, interception, use or disclosure of any oral or telephonic communication by means of any mechanical or electronic device without the consent of at least one party to the conversation. The state also prohibits the recording and disclosure of images intercepted in violation of its hidden camera law. Violators can face both civil and criminal penalties.

In-person conversations: The state's breach of privacy law makes it a misde-

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.

In one case, a New York trial court was asked to apply the Pennsylvania wiretap law — which requires consent of all parties — to a call placed by a prostitute in Pennsylvania to a man in New York. Unlike the Pennsylvania wiretap statute, the New York and federal statutes require the consent of only one party. The call

was recorded with the woman's consent by reporters for *The Globe*, a national tabloid newspaper. The court ruled that the law of the state where the injury occurred, New York, should apply. (*Krauss v. Globe International*)

The Supreme Court of California in *Kearney v. Salomon Smith Barney* 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. The state's high court, applying choice of law principles, 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."

In another case involving Pennsylvania law, four employees of *The Times Leader*, a newspaper in Wilkes-Barre, were arrested after they printed a transcript of a telephone conversation between a columnist in Pennsylvania and a murder suspect living

in Virginia that was recorded without the suspect's permission. The Virginia and federal statutes allow one party to record a conversation, while Pennsylvania, as discussed above, requires the consent of all parties. The man asked prosecutors to charge the journalists under the Pennsylvania law. The court eventually dismissed the charges against the newspaper staff — but on the unrelated ground that the suspect had no expectation of privacy during his telephone interview with the columnist. (*Pennsylvania v. Duncan*)

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. In *Duncan*, the newspaper argued that the federal law should pre-empt the state statutes, because the telephone call crossed state lines, placing it under federal jurisdiction. However, in that case, the court did not address the pre-emption issue. Moreover, as noted above, either state may choose to enforce its own laws.

meanor to secretly use any device to listen to, record or amplify a private conversation in a private place without the consent of at least one party. Kan. Stat. Ann. § 21-6101(4).

Electronic communications: Similarly, the state law makes it a misdemeanor “to intercept by telephone, telegraph, letter or other means of private communication” the contents of any message sent without the consent of either the sender or receiver. Kan. Stat. Ann. § 21-6101(1).

Hidden cameras: It is a felony to use a hidden camera to film or photograph a person who is nude or in a state of undress without the person’s consent in a place where the person has a reasonable expectation such filming would not take place. Kan. Stat. Ann. § 21-6101(6). The law also prohibits the concealed photography and video recordings of an individual’s body either under or through that person’s clothing without that person’s knowledge or consent. *Id.*

Criminal penalties: Recording, intercepting or divulging the contents of any private communications without the consent of at least one party is a misdemeanor punishable by up to a year in jail and a court fine. Kan. Stat. Ann. § 21-6602. Secretly taking or disseminating video images in violation of the state’s hidden camera laws are felonies. Kan. Stat. Ann. § 21-6101.

Civil suits: Anyone whose confidential communications are intercepted, disclosed or used in violation of the state’s wiretapping and eavesdropping laws may recover in a civil suit the payment of actual and punitive damages, attorney fees and other litigation costs. Kan. Stat. Ann. § 22-2518.

Disclosing recordings: Divulging the existence or contents of any type of private communication is a misdemeanor if the person knows the message was intercepted illegally. Kan. Stat. Ann. § 21-6101(2). Disseminating any videotape, photo or film image taken with a concealed camcorder used to take nude images of another person without consent is a felony. Kan. Stat. Ann. §§ 21-6101(a)(7), -(b)(3).

Kentucky

Summary of statute(s): Kentucky bars the recording, interception, use or disclosure of any oral or telephonic communication by means of any mechanical or electronic device without the consent of at least one party to the conversation. The state also prohibits the recording and disclosure of images intercepted in violation of its voyeurism laws. Violators can face criminal penalties.

In-person conversations: It is a felony to overhear or record, through use of an electronic or mechanical device, an oral communication without the consent of at least one party to that communication. Ky. Rev. Stat. Ann. § 526.020. A conversation which

is loud enough to be heard through the wall or through the heating system without the use of any device is not protected by the statute, since a person who desires privacy can take the steps necessary to ensure that his conversation cannot be overheard by the ordinary ear. *Id.*

Electronic communications: Similarly, the statute makes it a felony to intercept any telephone communication without the consent of at least one party. Ky. Rev. Stat. Ann. § 526.010.

Hidden cameras: It is a misdemeanor to use a hidden camera or any image-recording device to view, photograph or film a person who is nude or performing sexual conduct without the person’s consent in a place where the person has a reasonable expectation such filming would not take place. Ky. Rev. Stat. Ann. § 531.090.

Criminal penalties: Recording or intercepting private communications in violation of the state’s eavesdropping law, or distributing images in violation of the state’s video voyeurism law are felony offenses punishable by up to five years in prison and a \$5,000 fine. Ky. Rev. Stat. Ann. §§ 532.060, 534.030. Violations of the state’s hidden camera laws or distributing information obtained illegally through eavesdropping are misdemeanors punishable by up to a year in jail and a \$500 fine. Ky. Rev. Stat. Ann. §§ 532.090, 534.040.

Disclosing recordings: Using or divulging information obtained in violation of the state’s eavesdropping law is a misdemeanor. Ky. Rev. Stat. Ann. § 526.060. Further, it is a felony to take visual images of a person while in the nude and either divulging or distributing the images via e-mail, the Internet or a commercial online service. Ky. Rev. Stat. Ann. § 531.100. Anyone who inadvertently hears a conversation transmitted through a wireless telephone and proceeds to pass the contents of the communication onto others without the consent of a party to the original conversation violates the eavesdropping statute. Ky. Att’y Gen. Op. 84-310 (1984).

Louisiana

Summary of statute(s): Louisiana’s Electronic Surveillance Act bars the recording, interception, use or disclosure of any oral or telephonic communication by means of any mechanical or electronic device without the consent of at least one party to the conversation. The state also prohibits the recording and disclosure of images intercepted in violation of its video voyeurism laws. Violators can face both civil and criminal penalties.

In-person conversations: A person cannot overhear or tape a private conversation to which that person is not openly present and participating or listening, unless consent to record is given by at least one of the parties to the conversation. La. Rev. Stat.

Ann. § 15:1303.

Electronic communications: Similarly, the statute prohibits the willful interception of any telephone or wire communication absent the consent of at least one party to the communication. La. Rev. Stat. Ann. § 15:1303.

Hidden cameras: The state’s video voyeurism law bars the use of any type of hidden camera to observe or record a person where that person has not consented if the recording “is for a lewd or lascivious purpose.” La. Rev. Stat. Ann. § 14:283.

Criminal penalties: A violation of the state’s eavesdropping law, whether by recording or disclosing the contents of a communication without proper consent, carries a prison sentence of up to 10 years of hard labor and a \$10,000 fine. La. Rev. Stat. Ann. § 15:1303. Violation of the state’s video voyeurism law can be punishable by a prison sentence anywhere from two to 10 years of hard labor and a court fine. La. Rev. Stat. Ann. § 14:283(B).

Civil suits: Anyone whose confidential communications are intercepted, disclosed or used in violation of the state’s eavesdropping law may recover in a civil suit the payment of actual and punitive damages, attorney fees and other litigation costs. La. Rev. Stat. Ann. § 15:1312.

Disclosing recordings: Louisiana bars the transfer by e-mail, the Internet or a commercial online service any photo or film images obtained in violation of the state’s video voyeurism law. La. Rev. Stat. Ann. § 14:283(A). The state also bars the disclosure or use of the contents of any oral or electronic communication either knowing or having reason to know it was intercepted in violation of the state’s eavesdropping laws. La. Rev. Stat. Ann. § 15:1303.

Maine

Summary of statute(s): Maine bars the recording, interception, use or disclosure of any oral or telephonic communication by means of any mechanical or electronic device without the consent of at least one party to the conversation. The state also prohibits the recording and disclosure of images intercepted in violation of its privacy laws. Violators can face both civil and criminal penalties.

In-person conversations: A person cannot tape a private conversation with any device unless he is in the range of normal unaided hearing, a participant in the conversation or consent to record was given by at least one of the parties to the conversation. Me. Rev. Stat. Ann. tit. 15, § 710.

Electronic communications: Similarly, the statute prohibits the willful or intentional interception of any telephone or wire communication absent the consent of at least one party to the communication. Me. Rev. Stat. Ann. tit. 15, § 710.

Hidden cameras: The state's privacy law makes it a Class D crime to use a camera in areas where one may reasonably expect to be safe from video surveillance, "including, but not limited to, changing or dressing rooms, bathrooms and similar places." Me. Rev. Stat. Ann. tit. 17-A, §511. The law also prohibits the concealed visual surveillance in public areas of an individual's body either under or through that person's clothing without that person's knowledge or consent. Me. Rev. Stat. Ann. tit. 17-A, §511(D).

Criminal penalties: Illegally recording or disclosing the contents of an oral or telephone conversation is a Class C crime punishable by up to five years in prison and a \$5,000 fine. Me. Rev. Stat. Ann. tit. 17-A, §§ 1251, 1301. Violation of the state's privacy law is a Class D crime punishable by a jail sentence of less than one year and a \$2,000 fine. *Id.*

Civil suits: Anyone whose communications have been intercepted can sue for civil damages and recover the greater of \$100 a day for each day of violation or actual damages, and also attorney fees and litigation costs. Me. Rev. Stat. Ann. tit. 15, § 711.

Disclosing recordings: Disclosure of the contents of intercepted communications, knowing the information was obtained by interception, is a Class C violation of the criminal code. Me. Rev. Stat. Ann. tit. 15, § 710.

Maryland

Summary of statute(s): Under Maryland's Wiretapping and Electronic Surveillance Act, it is unlawful to tape record a conversation without the permission of all the parties. Additionally, recording with criminal or tortious purpose is illegal, regardless of consent. The state also prohibits the recording and disclosure of images intercepted in violation of its privacy laws. Violators can face both civil and criminal penalties.

In-person conversations: The state requires all parties to a conversation to give consent before one can record any private oral conversation. Md. Code Ann., Cts. & Jud. Proc. § 10-402. State courts have interpreted the laws to protect communications only when the parties have a reasonable expectation of privacy, and thus, where a person in a private apartment was speaking so loudly that residents of an adjoining apartment could hear without any sound enhancing device, recording without the speaker's consent did not violate the wiretapping law. *Malpas v. Maryland*, 695 A.2d 588 (Md. Ct. Spec. App. 1997).

Electronic communications: Similarly, the statute makes it a felony to intercept any telephone or electronic communication unless all parties give their consent. Md. Code Ann., Cts. & Jud. Proc. § 10-402. Because the provision of the statute dealing with electronic communications applies

to "any transfer of signs, signals, writing, images, sounds, data or intelligence of any nature," consent likewise is required to disclose the contents of text or e-mail messages sent between wireless devices. Md. Code Ann., Cts. & Jud. Proc. § 10-401.

Hidden cameras: It is a misdemeanor to use a hidden camera in a bathroom, dressing room or any area where it would be reasonable to believe the person would not be visible to the public. Md. Crim. Law §§ 3-901, -02. The state's surveillance and privacy law also prohibits using a camera on private property to secretly record or observe those inside. Md. Crim. Law §§ 3-903. A person who is viewed in violation of these statutes can also file a civil suit to recover damages.

Criminal penalties: Violations of the wiretapping law are felonies punishable by imprisonment for not more than five years and a fine of not more than \$10,000. Md. Code Ann., Cts. & Jud. Proc. § 10-402(b). Violators of the hidden camera law can face misdemeanor charges with penalties that include up to one year in jail and a \$2,500 fine. Md. Crim. Law §§ 3-901, -902, -903.

Civil suits: The court may award actual and punitive damages, as well as reasonable attorney fees and litigation costs, to anyone whose private communications were recorded or disclosed in violation of the state's eavesdropping law. MD. Code Ann., Cts. & Jud. Proc. § 10-410.

Disclosing recordings: The state bars the disclosure or use of the contents of any oral, telephone or electronic communication either knowing or having reason to know it was intercepted in violation of the state's eavesdropping laws. Md. Code Ann., Cts. & Jud. Proc. § 10-402.

Massachusetts

Summary of statute(s): Massachusetts prohibits the recording, interception, use or disclosure of any conversation, whether in person or via wire or telephone, without the permission of all the parties. The state also prohibits the recording and disclosure of images intercepted in violation of its hidden camera laws. Violators can face both civil and criminal penalties.

In-person conversations: The state requires all parties to a conversation to give consent before one can record any private oral conversation. Mass. Ann. Laws ch. 272, § 99(C). An appellate court has also held that the recorded conversation of poor audio quality with at least some audible words can potentially violate the wiretapping statute. *Commonwealth v. Wright*, 814 N.E.2d 741 (Mass. App. Ct. 2004). The all-party consent rule seemingly applies whether the conversation is held in private or a public location. See *Commonwealth v. Manzelli*, 864 N.E.2d 566 (Mass. App. Ct. 2007)(protester arrested for secretly audio taping conversation with police officer at a publicly held

political rally).

Electronic communications: Similarly, the statute makes it a felony to intercept or record any telephone or wire communication using any device unless all parties give their consent. Mass. Gen. Laws ch. 272, § 99(C).

Hidden cameras: A person cannot photograph, videotape or use any electronic device to secretly observe another person in the nude without consent in areas where the subject would have a reasonable expectation of privacy. Mass. Gen. Laws ch. 272, § 105.

Criminal penalties: Illegally eavesdropping on an oral or telephone conversation is punishable by a fine of up to \$10,000 and a jail sentence of up to five years. Mass. Gen. Laws ch. 272, § 99(C). Disclosing or using the contents of such communications is a misdemeanor punishable with a fine of up to \$5,000 and imprisonment for up to two years. *Id.* Secretly videotaping or taking photos of another person in the nude without consent is punishable by imprisonment of up to two-and-a-half years and a \$5,000 fine. Mass. Gen. Laws ch. 272, § 105(b). Distribution of such photos is punishable by up to five years in prison and a \$10,000 fine. Mass. Gen. Laws ch. 272, § 105(c).

Civil suits: The court may award actual and punitive damages, as well as reasonable attorney fees and litigation costs, to anyone whose private communications were recorded or disclosed in violation of the state's eavesdropping law. Mass. Gen. Laws ch. 272, § 99(Q).

Disclosing recordings: The state also prohibits the disclosure or use of the contents of an illegally recorded conversation, when accompanied by the knowledge that it was obtained illegally. Mass. Gen. Laws ch. 272, § 99(C). Distributing videos or photos in violation of the state's hidden camera laws is also prohibited. Mass. Gen. Laws ch. 272, § 105(c).

Michigan

Summary of statute(s): Michigan prohibits the recording, interception, use or disclosure of any conversation, whether in person, telephone or via any electronic or computer-based communication system, without the permission of all the parties. The state also prohibits the recording and disclosure of images intercepted in violation of its hidden camera laws. Violators can face both civil and criminal penalties.

In-person conversations: The state requires all parties to give consent before one can record any private oral conversation. Mich. Comp. Laws § 750.539c. The eavesdropping statute has been interpreted by one court as applying only to situations in which a third party has intercepted a communication. This interpretation allows a participant in a conversation to record that conversation without the permission of

other parties. *Sullivan v. Gray*, 324 N.W.2d 58 (Mich. Ct. App. 1982).

Electronic communications: Similarly, the statute makes it a felony to “make any unauthorized connection with any telephone or electronic communication using any device unless all parties give their consent.” Mich. Comp. Laws § 750.540. Because the statute dealing with electronic communications applies to the Internet or computer-based communication system, consent likewise is likely required to disclose the contents of text or e-mail messages sent between wireless devices. *Id.*

Hidden cameras: It is a felony to observe, photograph, record or eavesdrop on a person in a private place where one may reasonably expect to be safe from surveillance or intrusion without the person’s consent. Mich. Comp. Laws § 750.539d. Filming on public streets and parks, for instance, would not subject a person to liability under this law. Neither would recording in an area where access is granted to a substantial portion of the public, such as a hotel lobby. See definition “Private place,” Mich. Comp. Laws § 750.539a.

Criminal penalties: Illegal eavesdropping can be punished as a felony carrying a jail term of up to two years and a fine of up to \$2,000. Mich. Comp. Laws § 750.539c. Anyone who divulges information they know or reasonably should know was obtained through illegal eavesdropping or video surveillance is guilty of a felony punishable by imprisonment for up to five years and a fine of up to \$2,000. Mich. Comp. Laws §§ 750.539c, -d.

Civil suits: The court may award injunctive relief, as well as actual and punitive damages to anyone whose private communications were recorded or disclosed in violation of the state’s eavesdropping law. Mich. Comp. Laws § 750.539h.

Disclosing recordings: It is illegal to distribute, disseminate or transmit a recording, photograph or visual image — as well as the contents of any intercepted oral or electronic communication — which a person knows or reasonably should know was obtained through illegal eavesdropping. Mich. Comp. Laws § 750.539d, -e.

Minnesota

Summary of statute(s): Minnesota bars the recording, interception, use or disclosure of any oral, telephonic or electronic communication by means of any mechanical or electronic device without the consent of at least one party to the conversation. The state also prohibits the recording and disclosure of images intercepted in violation of its hidden camera laws. Violators can face both civil and criminal penalties.

In-person conversations: It is legal for a person to record an oral conversation if that person is a party to the communica-

tion, or if one of the parties has consented to the recording — so long as no criminal or tortious intent accompanies the recording. Minn. Stat. § 626A.02.

Electronic communications: A person cannot willfully intercept or record any telephone, wire or electronic communication unless that person is either a participant or has the consent of at least one party to the communication. Minn. Stat. § 626A.02. Because the provision of the statute dealing with electronic communications applies to “any transfer of signs, signals, writing, images, sounds, data or intelligence of any nature,” consent likewise is required to disclose the contents of text or e-mail messages sent between wireless devices. *Id.*

Hidden cameras: The state’s privacy law prohibits trespassing on private property to secretly install or use any type of device for “observing, photographing, recording, amplifying or broadcasting sounds or events” either another person’s home, a hotel room, tanning booth or any location where a person would have a reasonable expectation of privacy and either has undressed or will likely expose some part of the naked body. Minn. Stat. § 609.746.

Criminal penalties: Unlawful recordings, or disclosure of their contents when there is reason to know the information was obtained illegally, carry maximum penalties of imprisonment for five years and fines of \$20,000. Minn. Stat. § 626A.02. Violation of the state’s hidden camera law is a felony punishable by up to two years imprisonment and a \$5,000 fine. Minn. Stat. § 609.746.

Civil suits: In addition, civil liability for violations statutorily can include three times the amount of actual damages or statutory damages of up to \$10,000, as well as punitive damages, litigation costs and attorney fees. Minn. Stat. § 626A.13.

Disclosing recordings: A person may not disclose or use the contents of any intercepted communication if that person either knows or has reason to know it was obtained in violation of the state’s wiretapping laws. Minn. Stat. § 626A.02.

Mississippi

Summary of statute(s): Mississippi bars the recording, interception, use or disclosure of any oral, telephonic or other communication by means of any mechanical or electronic device without the consent of at least one party to the conversation. The state also prohibits the recording and disclosure of images intercepted in violation of its hidden camera laws. Violators can face both civil and criminal penalties.

In-person conversations: A person can record an oral communication to which that person is present and participating, or in circumstances where consent to record is given by at least one of the parties, unless the interception was accompanied by a

criminal or tortious intent. Miss. Code Ann. § 41-29-531(e).

Electronic communications: The statute prohibits the willful interception of any wire or other communication unless that person is either a participant or has the consent of at least one party to the communication. Miss. Code Ann. § 41-29-531(e). Because the provision of the statute dealing with “wire communications” specifically includes within its definition not only traditional landline telephones, but also “cellular telephones, any mobile telephone, or any communication conducted through the facilities of a provider of communication services,” consent may likewise be required to disclose the contents of text or e-mail messages sent between wireless devices. Miss. Code Ann. § 41-29-501.

Hidden cameras: The state prohibits secretly photographing, filming or producing any images of another person “with lewd, licentious or indecent intent” without that person’s consent while in a fitting room, tanning booth or area where there would be a reasonable expectation of privacy. Miss. Code Ann. § 97-29-63.

Criminal penalties: Illegally intercepting communications can be punished as misdemeanors with jail sentences up to one year and fines of up to \$10,000. Miss. Code Ann. § 41-29-533. Disclosing the contents of such intercepted communications is a felony punishable by up to five years imprisonment and up to \$10,000 in fines. *Id.* Filming a person in violation of the state’s hidden camera law carries a penalty of up to five years imprisonment and a \$5,000 fine, but the maximum jail sentence doubles if the subject being recorded is a child less than 16 years of age. Miss. Code Ann. § 97-29-63.

Civil suits: Anyone whose communications were intercepted, disclosed or used in violation of the state’s wiretapping law can seek damages through a civil suit and may recover both actual and punitive damages, attorney fees and litigation costs. Miss. Code Ann. § 41-29-529.

Disclosing recordings: It is a felony for anyone who is not a law-enforcement officer to disclose the contents of intercepted communications for any reason other than testifying under oath in a governmental or court proceeding. Miss. Code Ann. § 41-29-511.

Missouri

Summary of statute(s): An individual who is a party to an electronic communication or who has the consent of one of the parties to the communication, can lawfully record it or disclose its contents, unless the person is doing so for the purpose of committing a criminal or tortious act. But a lawful recording of an in-person conversation requires the consent of all parties. Mo. Ann. Stat. § 542.402 (West 2012).

In-person conversations: It is unlawful to record an “oral communication,” which is defined as “any communication uttered by a person exhibiting an expectation that such communication is not subject to interception under circumstances justifying such expectation.” Mo. Ann. Stat. § 542.400. Thus, a journalist does not need consent to record conversations in public where there is no reasonable expectation of privacy.

Electronic communications: A “wire communication” is one that is transmitted wholly or partly by the aid of “wire, cable, or other like connection between the point of origin and the point of reception.” *Id.* Because a telephone conversation between a person using a cellular phone and one using a regular wire phone was made in part through a regular wire telephone, the conversation was protected by the wiretap law, a Missouri appellate court held. *Lee v. Lee*, 967 S.W.2d 82 (Mo. Ct. App. 1998). Another state appellate court held that radio broadcasts from cordless telephones are not wire communications subject to the eavesdropping statute. *Missouri v. King*, 873 S.W.2d 905 (Mo. Ct. App. 1994). Thus, a journalist does not need consent to record conversations between two people using cell phones or other wireless devices. And because the statute does not differentiate between oral and written communications transmitted electronically, consent likewise is not required to disclose the contents of text messages sent between wireless devices.

Hidden cameras: It is a misdemeanor to photograph or record a fully or partially nude person in a place where the person has a reasonable expectation of privacy, and to use a hidden camera, regardless of whether a person has a reasonable expectation of privacy, to “up-skirt” or “down-blouse,” or secretly photograph or record that person under or through his or her clothing. Mo. Ann. Stat. § 565.253. The law, however, does not criminalize the use of recording devices for other purposes in areas to which the public has access or there is no reasonable expectation of privacy (i.e., filming conversations on public streets or a hotel lobby).

Criminal penalties: Illegally recording an in-person conversation or electronic communication is a felony offense. Mo. Ann. Stat. § 542.402.

Civil suits: Anyone whose wire communication has been recorded or disclosed in violation of the law can bring a civil suit to recover the greater of actual damages, \$100 a day for each day of violation or \$10,000, and can recover punitive damages, attorney’s fees and court costs as well. Mo. Ann. Stat. § 542.418.

Disclosing recordings: Disclosing the contents of a wire communication obtained through illegal recording is a felony. Mo. Ann. Stat. § 542.402.

Montana

Summary of statute(s): It is a violation of “privacy in communications” to record either an in-person conversation or electronic communication without the consent of all parties, except under certain circumstances. Mont. Code Ann. § 45-8-213 (2011).

In-person conversations: It is unlawful to record a conversation “by use of a hidden electronic or mechanical device” without the knowledge of all parties to the conversation. The prohibition does not apply, however, to the recording of: 1) elected or appointed public officials or public employees when the recording occurs in the performance of an official duty; 2) individuals speaking at public meetings; and 3) individuals given warning of the recording. Under this final exception, if one party provides the warning, then either party may record the conversation. Because the statute explicitly applies only to hidden recording devices, a journalist does not need consent to record conversations in public where there is no reasonable expectation of privacy. *Id.*

Electronic communications: It likewise is unlawful to record a telephone conversation without the knowledge of all parties, except when the communication is of an elected or appointed public official or public employee and occurs in the performance of an official duty or warning of the recording has been provided. *Id.* The Montana Supreme Court held that a prison’s notification to inmates that their telephone conversations were subject to recording satisfied this warning requirement and thus recordings of a criminal defendant’s telephone conversations with others did not violate the state wiretap law. *Montana v. DuBray*, 77 P.3d 247 (Mont. 2003).

Hidden cameras: It is a misdemeanor to surreptitiously photograph or record any occupant of a home, apartment or other residence. Mont. Code Ann. § 45-5-223. The law, however, does not criminalize the use of recording devices in areas to which the public has access or there is no reasonable expectation of privacy (i.e., filming conversations on public streets or a hotel lobby).

Criminal penalties: Illegally recording an in-person conversation or electronic communication is a misdemeanor offense, and penalties increase with each conviction of the law. Mont. Code Ann. § 45-8-213.

Nebraska

Summary of statute(s): An individual who is a party to either an in-person conversation or electronic communication, or who has the consent of one of the parties to the communication, can lawfully record it or disclose its contents, unless the person is doing so for the purpose of committing a criminal or tortious act. A person also can lawfully record electronic communications

that are readily accessible to the general public. Neb. Rev. Stat. § 86-290 (2011).

In-person conversations: The consent of at least one party to a conversation is required to record an “oral communication,” which is defined as “any oral communication uttered by a person exhibiting an expectation that such communication is not subject to interception under circumstances justifying such expectation but does not include any electronic communication.” Neb. Rev. Stat. § 86-283. Thus, a journalist does not need consent to record conversations in public where there is no reasonable expectation of privacy.

Electronic communications: The consent of at least one party to any telephone communication is required to record it. And because the provision of the statute dealing with wireless communications applies to “any transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature,” consent likewise is required to disclose the contents of text messages sent between wireless devices. Neb. Rev. Stat. § 86-276.

Hidden cameras: It is a felony to photograph or record a person “in a state of undress” in a place where the person has a reasonable expectation of privacy. Neb. Rev. Stat. § 28-311.08. The law, however, does not criminalize the use of recording devices for other purposes in areas to which the public has access or there is no reasonable expectation of privacy (i.e., filming conversations on public streets or a hotel lobby).

Criminal penalties: Illegally recording an in-person conversation or electronic communication is a felony, but the unlawful recording of certain types of statutorily designated communications is only a misdemeanor offense if the recording is the violator’s first violation of the law. Neb. Rev. Stat. § 86-290.

Civil suits: Anyone whose wire, electronic or oral communication has been recorded or disclosed in violation of the law can bring a civil suit for such relief as a judge deems appropriate, including actual damages, attorney’s fees and court costs. Neb. Rev. Stat. § 86-297.

Disclosing recordings: Disclosing the contents of a wire, electronic or oral communication obtained through illegal recording is a felony. Neb. Rev. Stat. § 86-290.

Nevada

Summary of statute(s): An individual who has the consent of at least one party to an in-person conversation can lawfully record it or disclose its contents, but the consent of all parties is required to record a telephone conversation. An exception may exist, however, for a telephone recording made with the prior consent of only one of the parties to the communication in an emergency situation in which it is impractic-

cal to obtain a court order. Nev. Rev. Stat. §§ 200.620, 200.650 (2011).

In-person conversations: It is unlawful to surreptitiously record “any private conversation engaged in by ... other persons” unless authorized to do so by one of the parties to the conversation. Because the statute explicitly applies only to surreptitiously recordings, a journalist does not need consent to record conversations in public where there is no reasonable expectation of privacy. Nev. Rev. Stat. § 200.650.

Electronic communications: The consent of all parties to a telephone communication is required to record it. But because the prohibition is limited to “wire communications,” a journalist does not need consent to record conversations between two people using cell phones or other wireless devices, or to disclose the contents of text messages sent between wireless devices. Nev. Rev. Stat. § 200.620.

The Nevada Supreme Court held that the consent requirement is not met when an individual records his or her own telephone calls without the consent of all other participants, noting that “if the legislature had wanted to [authorize the recording of telephone conversations made with the consent of only one of the parties], it would have done so. It seems apparent that the legislature believed that intrusion upon Nevadans’ privacy by nonconsensual recording of telephone conversations was a greater intrusion

than the recording of conversations in person.” *Lane v. Allstate Ins. Co.*, 969 P.2d 938 (Nev. 1998). That same court stated that the one-party-consent recording authorized in emergency situations applies mainly to law enforcement officers who proceed without a warrant. *Id.* at 939–40. Thus, it is unlikely to serve as a defense for journalists who record phone conversations without the required all-party consent.

Hidden cameras: It is a misdemeanor to photograph or record “the private area” of a person in a place where the person has a reasonable expectation of privacy, to use a hidden camera, regardless of whether a person is in a public or private place, to “up-skirt” or “down-blouse,” or secretly photograph or record that person under or through his or her clothing, and to disclose any images obtained by these means. Nev. Rev. Stat. § 200.604. The law, however, does not criminalize the use of recording devices for other purposes in areas to which the public has access or there is no reasonable expectation of privacy (i.e., filming conversations on public streets or a hotel lobby).

Criminal penalties: Illegally recording an in-person conversation or electronic communication is a felony offense. Nev. Rev. Stat. § 200.690.

Civil suits: Anyone whose wire or oral communication has been recorded in violation of the law can bring a civil suit to recover the greater of actual damages, \$100

a day for each day of violation or \$1,000, and can recover punitive damages, attorney’s fees and court costs as well. Note that unlike most other states’ wiretap statutes, only the unlawful recording and not the unlawful disclosure may give rise to a civil cause of action. *Id.*

Disclosing recordings: Disclosing the contents of a wire communication without either the sender or receiver’s authority to do so, or an oral communication without the consent of at least one party to the conversation is a felony. Nev. Rev. Stat. §§ 200.630, 200.650, 200.690.

New Hampshire

Summary of statute(s): It is unlawful to record either an in-person conversation or electronic communication or disclose its contents without the consent of all parties. But the violation is decreased from a felony to a misdemeanor offense if the violator was a party to the communication or had one party’s prior consent to record it. N.H. Rev. Stat. Ann. § 570-A:2 (2012).

In-person conversations: It is unlawful to record “any verbal communication uttered by a person who has a reasonable expectation that the communication is not subject to interception, under circumstances justifying such expectation” without first obtaining the consent of all parties engaged in the conversation. N.H. Rev. Stat. Ann. § 570-A:1. Thus, a journalist does not need

The FCC’s role

In addition to state and federal laws governing the taping of phone calls, the Federal Communications Commission has its own requirements concerning such taping.

The FCC requires that an individual notify other parties to a call before using a tape recorder in an interstate call. The rule requires that the individual either get consent from all parties before making the call, notify the participants at the beginning of the recording, or use a “beep tone” that is repeated regularly throughout the call.

The FCC rule only applies directly to local telephone companies, but those companies are required to impose similar rules on the public through their customer agreements. The only penalty that can be enforced by the local carrier is revocation of telephone service. (*In the Matter of Use of Recording Devices in Connection with Telephone Service*)

Broadcasters and the Phone Rule. Broadcasting a telephone conversation without notifying the other party

involved in the conversation is subject to monetary fines or an admonition under an FCC regulation.

The “Phone Rule” states that a person who intends to broadcast a conversation or record a conversation for later broadcast with another party on the telephone must, at the beginning of the telephone call, inform the party that the conversation will be broadcast. No consent from the party is required.

The Phone Rule is enforced primarily against radio “shock jocks,” especially those who call people while on the air as part of a practical joke, but the rule has been applied to all kinds of broadcasters, including news gatherers.

FCC rulings make clear that when a person originates a call to a “call-in” talk show, it is presumed the person knows of the possibility of his or her voice being aired. (*In the Matter of Entercom New Orleans License, LLC*)

The FCC is authorized by Congress to issue fines up to \$27,500 for a single offense and no more than \$300,000 for continuing violations, but may issue only admonitions

on a first offense. (*Broadcast of Telephone Conversations*)

The Phone Rule extends to broadcasting previously recorded messages. The FCC has recently imposed fines for both for broadcasting a recorded voicemail greetings of an individual (*In the matter of Courier Communications Corp.*) as well as voicemail messages left on radio personality’s personal cell phones (*In the matter of Capstar TX Limited Partnership*)

Even if the recording is not subsequently aired, a station can still be fined under the rule; it is applied wherever the recording is made with the intent to broadcast (*In the matter of Nassau Broadcasting III, LLC*). However, deciding to not broadcast a recording after it has become clear the party does not consent may become a basis for a reduction of fines. If a program host calls and identifies himself and his station, the FCC has found that this does not inform the other party that their conversation will be broadcast (*In the matter of REJOYNET-WORK, LLC*)

consent to record conversations in public where there is no reasonable expectation of privacy.

Electronic communications: It is unlawful to record any telephone communication without first obtaining the consent of the participants to the communication. And because the statute applies to “any form of information,” oral or written, transmitted electronically, the consent of all parties likewise is required to disclose the contents of text messages sent between wireless devices. *Id.*

The New Hampshire Supreme Court has held that a party effectively consented to the recording of a communication when the surrounding circumstances demonstrated that the party knew the communication was being recorded. *New Hampshire v. Locke*, 761 A.2d 376 (N.H. 1999); *see also Fischer v. Hooper*, 732 A.2d 396 (N.H. 1999) (upholding the sufficiency of an instruction that the jury could consider, under the standard for implied consent, not only a defendant’s words but also her actions in determining whether she consented to the recording of her conversation), *superseded by statute on other grounds*. More recently, the state high court ruled that a criminal defendant consented to the recording of a real-time online conversation because he knew that the recording on the other party’s computer of the instant message was necessary for its recipient to read the communication. *New Hampshire v. Lott*, 879 A.2d 1167 (N.H. 2005).

Hidden cameras: It is a misdemeanor to install or use any device to: 1) photograph or record “images or sounds” in a place where there is a reasonable expectation of privacy; 2) “up-skirt” or “down-blouse,” or secretly photograph or record a person, regardless of whether the person has a reasonable expectation of privacy, under or through his or her clothing; and 3) photograph or record “images, location, movement, or sounds” originating in areas to which the public has access or there is no reasonable expectation of privacy that would not ordinarily be audible, visible or comprehensible in this public area. N.H. Rev. Stat. Ann. § 644:9. The law, however, does not criminalize the use of recording devices for other purposes in areas in which there is no reasonable expectation of privacy (i.e., filming conversations on public streets or a hotel lobby). The state Supreme Court found that a classroom was not a private place where a school custodian could reasonably expect to be safe from video surveillance. *New Hampshire v. McLellan*, 744 A.2d 611 (N.H. 1999).

Criminal penalties: Illegally recording an in-person conversation or electronic communication is a felony offense. N.H. Rev. Stat. Ann. § 570-A:2.

Civil suits: Anyone whose in-person conversation or electronic communication

has been recorded or disclosed in violation of the law can bring a civil suit to recover the greater of actual damages, \$100 a day for each day of violation or \$1,000, and can recover punitive damages, attorney’s fees and court costs as well. N.H. Rev. Stat. Ann. § 570-A:11.

Disclosing recordings: Disclosing the contents of a wire communication obtained through illegal recording is a felony. N.H. Rev. Stat. Ann. § 570-A:2. Last December, Manchester, N.H., blogger and police-accountability activist Adam Mueller was indicted on three felony wiretapping charges after he allegedly publicly disclosed the contents of recorded telephone conversations he had without the other parties’ consent to the recording. A video Mueller allegedly posted on CopBlock.org, a website he co-founded that features videos and blogs about police activity, depicts his telephone interviews with a local police official and two school employees about an incident at the local high school but contains no indication that Mueller requested the parties’ consent to record the conversation and post it online. Mueller is scheduled to stand trial next month in Hillsborough County Superior Court and faces 21 years imprisonment if convicted of all three illegal-disclosure charges and sentenced to the maximum of seven years on each count. It does not appear that he faces any charges related solely to the actual recording rather than its public disclosure.

New Jersey

Summary of statute(s): An individual who is a party to either an in-person conversation or electronic communication, or who has the consent of one of the parties to the communication, can lawfully record it or disclose its contents, unless the person is doing so for the purpose of committing a criminal or tortious act. A person also can lawfully record electronic communications that are readily accessible to the general public. N.J. Stat. Ann. § 2A:156A-4 (West 2012).

In-person conversations: The consent of at least one party to a conversation is required to record an “oral communication,” which is defined as “any oral communication uttered by a person exhibiting an expectation that such communication is not subject to interception under circumstances justifying such expectation, but does not include any electronic communication.” N.J. Stat. Ann. § 2A:156A-2. Thus, a journalist does not need consent to record conversations in public where there is no reasonable expectation of privacy.

A state appellate court held that if the news media’s videotaping of events in a hospital emergency room for a television program recorded any oral communication between the plaintiff and other people, such as his

family members, the state wiretap statute would not apply to criminalize the activity because there was no indication that the plaintiff or any other person had a reasonable expectation of privacy in their conversations in the hospital. “The record does not suggest that any of [the news media’s] videotaping was done surreptitiously. In fact, the footage in the two programs produced from the videotaping at [the hospital] appear to have been taken with hand-held cameras that would have been evident to any person who was being videotaped. Therefore, there is no basis for concluding that [the news organization] violated the Wiretapping Act in videotaping plaintiff,” according to the court in *Kinsella v. Welch*, 827 A.2d 325 (N.J. Super. Ct. App. Div. 2003).

Electronic communications: The consent of at least one party to any telephone communication is required to record it. And because the provision of the statute dealing with wireless communications applies to “any transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature,” consent likewise is required to disclose the contents of text messages sent between wireless devices. N.J. Stat. Ann. § 2A:156A-2.

Hidden cameras: It is a crime of the third degree to photograph or record the “intimate parts” of a person or one engaged in a sexual act in a place where the person has a reasonable expectation of privacy, and to disclose any images obtained by these means. N.J. Stat. Ann. § 2C:14-9. The law, however, does not criminalize the use of recording devices for other purposes in areas to which the public has access or there is no reasonable expectation of privacy (i.e., filming conversations on public streets or a hotel lobby).

Criminal penalties: Illegally recording an in-person conversation or electronic communication is a crime of the third degree. N.J. Stat. Ann. § 2A:156A-3.

Civil suits: Anyone whose wire, electronic or oral communication has been recorded or disclosed in violation of the law can bring a civil suit to recover the greater of actual damages, \$100 a day for each day of violation or \$1,000, and can recover punitive damages, attorney’s fees and court costs as well. N.J. Stat. Ann. § 2A:156A-24.

Disclosing recordings: Disclosing the contents of a wire, electronic or oral communication obtained through illegal recording is a crime of the third degree. N.J. Stat. Ann. § 2A:156A-3.

New Mexico

Summary of statute(s): It is an unlawful “interference with communications” to record a telephone conversation without the consent of one of the parties to the communication. But the statute does not prohibit recording an in-person conversation with-

out such consent. N.M. Stat. Ann. § 30-12-1 (West 2012).

In-person conversations: Because the statute defines the unlawful recording activity as the “cutting, breaking, tapping or making any connection with any telegraph or telephone line, wire, cable or instrument belonging to or in the lawful possession or control of another, without the consent of such person owning, possessing or controlling such property” or “reading, interrupting, taking or copying any message, communication or report intended for another by telegraph or telephone without the consent of a sender or intended recipient thereof,” it does not apply to conversations not held over a telegraph or telephone wire. *Id.* And a state appellate court held that the transmittal of the contents of a face-to-face conversation recorded through a device concealed on one of the participants to the conversation was not the type of eavesdropping activity criminalized by the state wiretap statute. *New Mexico v. Hogervorst*, 566 P.2d 828 (N.M. Ct. App. 1977).

Electronic communications: The consent of at least one party to a telephone communication is required to record it. But because the prohibition is limited to communications via “telegraph or telephone line, wire, cable,” a journalist does not need consent to record conversations between two people using cell phones or other wireless devices, or to disclose the contents of text messages sent between wireless devices. N.M. Stat. Ann. § 30-12-1.

Hidden cameras: It is a misdemeanor to photograph or record “the intimate areas” of a person in a place where the person has a reasonable expectation of privacy, and to use a hidden camera, regardless of whether a person is in a public or private place, to “up-skirt” or “down-blouse,” or secretly photograph or record that person under or through his or her clothing. N.M. Stat. Ann. § 30-9-20. The law, however, does not criminalize the use of recording devices for other purposes in areas to which the public has access or there is no reasonable expectation of privacy (i.e., filming conversations on public streets or a hotel lobby).

Criminal penalties: Illegally recording an electronic communication is a misdemeanor offense. N.M. Stat. Ann. § 30-12-1.

Civil suits: Anyone whose wire communication has been recorded or disclosed in violation of the law can bring a civil suit to recover the greater of actual damages, \$100 a day for each day of violation or \$1,000, and can recover punitive damages, attorney’s fees and court costs as well. N.M. Stat. Ann. § 30-12-11.

Disclosing recordings: The statute does not specifically criminalize the disclosure of the contents of a wire communication obtained through illegal recording. However, the New Mexico Supreme Court held

that the statute’s consent requirement refers to consent to the sending of the communication. *Arnold v. New Mexico*, 610 P.2d 1210 (N.M. 1980). Thus, based on this authority, a journalist should be sure to get consent to publish the contents of a recorded conversation.

New York

Summary of statute(s): An individual who is a party to either an in-person conversation or electronic communication, or who has the consent of one of the parties to the communication, can lawfully record it or disclose its contents. N.Y. Penal Law §§ 250.00, 250.05 (McKinney 2012).

In-person conversations: The “mechanical overhearing of a conversation,” or the “intentional overhearing or recording of a conversation or discussion, without the consent of at least one party thereto, by a person not present” is illegal. N.Y. Penal Law § 250.00. A state appellate court held that individuals who talk in a manner such that a non-participating third party may freely overhear the conversation may have no reasonable expectation of privacy in it. *New York v. Kirsh*, 575 N.Y.S.2d 306 (N.Y. App. Div. 1991). Thus, a journalist does not need consent to record conversations in public where there is no reasonable expectation of privacy.

Electronic communications: The consent of at least one party to any telephone communication, including a cellular telephone communication, is required to record it. *Sharon v. Sharon*, 558 N.Y.S.2d 468 (N.Y. Sup. Ct. 1990). And because the provision of the statute dealing with wireless communications applies to “any transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature,” consent likewise is required to disclose the contents of text messages sent between wireless devices. N.Y. Penal Law § 250.00.

Hidden cameras: It is a felony to photograph or record “the sexual or other intimate parts” of a person in a place where the person has a reasonable expectation of privacy, and to use a hidden camera, regardless of whether a person has a reasonable expectation of privacy, to “up-skirt” or “down-blouse,” or secretly photograph or record that person under or through his or her clothing. N.Y. Penal Law § 250.45. The law, however, does not criminalize the use of recording devices for other purposes in areas to which the public has access or there is no reasonable expectation of privacy (i.e., filming conversations on public streets or a hotel lobby).

Criminal penalties: Illegally recording an in-person conversation or electronic communication is a felony offense. N.Y. Penal Law § 250.05.

Disclosing recordings: Disclosing the contents of a sealed communication that has

been opened or read in violation of the wiretap law without the consent of the communication’s sender or receiver is considered “tampering with private communications,” a misdemeanor. N.Y. Penal Law § 250.25.

North Carolina

Summary of statute(s): An individual who has the consent of one of the parties to either an in-person conversation or electronic communication can lawfully record it or disclose its contents. N.C. Gen. Stat. Ann. § 15A-287 (West 2012).

In-person conversations: The consent of at least one party to a conversation is required to record an “oral communication,” which is defined as “any oral communication uttered by a person exhibiting an expectation that such communication is not subject to interception under circumstances justifying such expectation, but the term does not include any electronic communication.” N.C. Gen. Stat. Ann. § 15A-286. Thus, a journalist does not need consent to record conversations in public where there is no reasonable expectation of privacy.

Electronic communications: The consent of at least one party to any telephone communication is required to record it. And because the provision of the statute dealing with wireless communications applies to “any transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature,” consent likewise is required to disclose the contents of text messages sent between wireless devices. *Id.*

Interpreting the definition of “consent,” a state appellate court held that implied consent to a recording occurs when a party is warned of the monitoring and still continues with the conversation. *North Carolina v. Price*, 611 S.E.2d 891 (N.C. Ct. App. 2005).

Hidden cameras: It is a felony to photograph or record, “for the purpose of arousing or gratifying the sexual desire of any person,” a person in a room where the person has a reasonable expectation of privacy, to use a hidden camera, regardless of whether a person has a reasonable expectation of privacy, to “up-skirt” or “down-blouse,” or secretly photograph or record that person under or through his or her clothing, and to disclose any images obtained by these means. N.C. Gen. Stat. Ann. § 14-202. The law, however, does not criminalize the use of recording devices for other purposes in areas to which the public has access or there is no reasonable expectation of privacy (i.e., filming conversations on public streets or a hotel lobby).

Criminal penalties: Illegally recording an in-person conversation or electronic communication is a felony offense. N.C. Gen. Stat. Ann. § 15A-287.

Civil suits: Anyone whose wire, oral or electronic communication has been recorded or disclosed in violation of the law

can bring a civil suit to recover the greater of actual damages, \$100 a day for each day of violation or \$1,000, and can recover punitive damages, attorney's fees and court costs as well. N.C. Gen. Stat. Ann. § 15A-296.

Disclosing recordings: Disclosing the contents of a wire, oral or electronic communication obtained through illegal recording is a felony. N.C. Gen. Stat. Ann. § 15A-287.

North Dakota

Summary of statute(s): An individual who is a party to either an in-person conversation or electronic communication, or who has the consent of one of the parties to the communication, can lawfully record it or disclose its contents, unless the person is doing so for the purpose of committing a criminal or tortious act. N.D. Cent. Code § 12.1-15-02 (2011).

In-person conversations: The consent of at least one party to a conversation is required to record an "oral communication," which is defined as "any oral communication uttered by a person exhibiting an expectation that such communication is not subject to interception under circumstances justifying such expectation." N.D. Cent. Code § 12.1-15-04. Thus, a journalist does not need consent to record conversations in public where there is no reasonable expectation of privacy. The statute also criminalizes the secret loitering around any building

with the intent to overhear a discussion or conversation therein. N.D. Cent. Code § 12.1-15-02.

Electronic communications: The consent of at least one party to a telephone communication is required to record it. But because the prohibition is limited to communications transmitted wholly or partially through "wire, cable, or other like connection between the point of origin and the point of reception," a journalist does not need consent to record conversations between two people using cell phones or other wireless devices, or to disclose the contents of text messages sent between wireless devices. N.D. Cent. Code § 12.1-15-04.

Hidden cameras: It is a misdemeanor to enter another person's property to photograph or record "sounds or events" from a residence, and from a place where a person has a reasonable expectation of privacy and has exposed his or her "intimate parts." N.D. Cent. Code § 12.1-20-12.2. The law, however, does not criminalize the use of recording devices for other purposes in areas to which the public has access or there is no reasonable expectation of privacy (i.e., filming conversations on public streets or a hotel lobby).

Criminal penalties: Illegally recording an in-person conversation or electronic communication is a felony offense. N.D. Cent. Code § 12.1-15-02.

Disclosing recordings: Disclosing the

contents of a wire or oral communication obtained through illegal recording is a felony. And repeating or publishing with the intent to "vex, annoy, or injure others" the contents of a discussion or conversation overheard while unlawfully loitering around a building is a misdemeanor. *Id.*

Ohio

Summary of statute(s): An individual who is a party to either an in-person conversation or electronic communication, or who has the consent of one of the parties to the communication, can lawfully record it or disclose its contents, unless the person is doing so for the purpose of committing a criminal or tortious act. Ohio Rev. Code Ann. § 2933.52 (West 2012).

In-person conversations: The consent of at least one party to a conversation is required to record an "oral communication," which is defined as "an oral communication uttered by a person exhibiting an expectation that the communication is not subject to interception under circumstances justifying that expectation." Ohio Rev. Code Ann. § 2933.51. Thus, a journalist does not need consent to record conversations in public where there is no reasonable expectation of privacy.

Electronic communications: The consent of at least one party to any telephone communication is required to record it. And because the provision of the statute deal-

Copyright and taped interviews

Under the federal Copyright Act, to be copyrightable, a work must possess originality and be fixed in a tangible medium. Ideas cannot be copyrighted, but the particular expression of an idea may be. Because of these requirements, much interview material often has a weaker claim to copyright.

Reporter as copyright owner

Journalists can own a copyright interest in an interview. Still, the nature of a journalist's copyright interest in interview material is not well-defined.

For example, in 1983 Italian journalist Oriana Fallaci won a lawsuit in the U.S. District Court in New York City against the *Washington Post* for publishing a translation of a published interview she conducted with the deputy prime minister of Poland, Mieczysław Rakowski, without Fallaci's permission. The court accepted that Fallaci was a copyright owner of the interview article, but did not describe the nature of her copy-

right interest, perhaps because the case was a default judgment. (*Fallaci v. New Gazette Literary Corp.*).

In some contexts, journalists may have copyrights to published interviews if the work they put into assembling the material creates a "compilation," which is a specific type of artistic work recognized by the copyright act.

In 1981 law student David Quinto published an article containing interview material about his friends' summer legal positions. Quinto sued a paper that republished his article for copyright infringement, and he was recognized to own the material from the interviews. The U.S. District Court in Washington, D.C., said that even if Quinto did not own the underlying quotations, his "selection, arrangement, and ordering" of them gave Quinto an ownership interest in the resulting work. The court held the work to be a "compilation." (*Quinto v. Legal Times*)

Interviewee as copyright owner

Interviewees may potentially be copyright owners in an interview, and courts have

accepted transfers of copyright interest in an interview from an interviewee to an interviewer as valid. For that reason, a journalist is best protected when they can secure a written promise from an interviewee, assigning the interviewee's copyright interest in the interview material to the reporter.

In 2000, a prisoner and convicted child molester sued an NBC affiliate for copyright infringement when it broadcast an interview with him, without his permission. The prisoner, Arthur Taggart, argued that the interview was a "performance" to which Taggart owned rights.

However, the U.S. District Court in East St. Louis, Ill., did not accept Taggart's arguments—it held that, because ownership of a copyright can only belong to the individual who fixes an expressive work in tangible form, Taggart could not claim ownership, among other reasons. (*Taggart v. WMAQ Channel 5*)

The case is a reminder of the importance of the "fixation" requirement in copyright. For that reason, where a journalist *is not*

ing with wireless communications applies to “a transfer of a sign, signal, writing, image, sound, datum, or intelligence of any nature,” consent likewise is required to disclose the contents of text messages sent between wireless devices. *Id.*

Hidden cameras: It is a misdemeanor to trespass or “otherwise surreptitiously invade the privacy of another” to photograph or record the person “in a state of nudity,” and to use a hidden camera, regardless of whether a person has a reasonable expectation of privacy, to “up-skirt” or “down-blouse,” or secretly photograph or record that person under or through his or her clothing. Ohio Rev. Code Ann. § 2907.08. The law, however, does not criminalize the use of recording devices for other purposes in areas to which the public has access or there is no reasonable expectation of privacy (i.e., filming conversations on public streets or a hotel lobby).

Criminal penalties: Illegally recording an in-person conversation or electronic communication is a felony offense. Ohio Rev. Code Ann. § 2933.52.

Civil suits: Anyone whose wire, oral or electronic communication has been recorded or disclosed in violation of the law can bring a civil suit to recover the greater of actual damages, \$200 a day for each day of violation or \$10,000, punitive damages, attorney’s fees, court costs and other relief a judge deems appropriate. Ohio Rev. Code

Ann. § 2933.65.

Disclosing recordings: The statute does not explicitly criminalize the disclosure of the contents of a wire, oral or electronic communication obtained through illegal recording, although “use” of such contents, knowing or having reason to know that they were obtained unlawfully, is a felony. Ohio Rev. Code Ann. § 2933.52.

Oklahoma

Summary of statute(s): An individual who is a party to either an in-person conversation or electronic communication, or who has the consent of one of the parties to the communication, can lawfully record it or disclose its contents, unless the person is doing so for the purpose of committing a criminal or tortious act. Okla. Stat. Ann. tit. 13, § 176.4 (West 2012).

In-person conversations: The consent of at least one party to a conversation is required to record an “oral communication,” which is defined as “any communication uttered by a person exhibiting an expectation that such communication is not subject to interception under circumstance justifying such expectation.” Okla. Stat. Ann. tit. 13, § 176.2. Thus, a journalist does not need consent to record conversations in public where there is no reasonable expectation of privacy. The statute also criminalizes the secret loitering around any building with the intent to overhear a discussion or

conversation therein. Okla. Stat. Ann. tit. 21, § 1202.

Electronic communications: The consent of at least one party to any telephone communication is required to record it. And because the provision of the statute dealing with wireless communications applies to “any transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature,” consent likewise is required to disclose the contents of text messages sent between wireless devices. Okla. Stat. Ann. tit. 13, § 176.2.

Hidden cameras: It is a felony to photograph or record, “in a clandestine manner for any illegal, illegitimate, prurient, lewd or lascivious purpose,” a person in a place where there is a reasonable expectation of privacy and to disclose any images obtained by these means, and a misdemeanor to clandestinely photograph or record the “private area” of a person, regardless of whether the person is in a public or private place. Okla. Stat. Ann. tit. 21, § 1171. The law, however, does not criminalize the use of recording devices for other purposes in areas to which the public has access or there is no reasonable expectation of privacy (i.e., filming conversations on public streets or a hotel lobby).

Criminal penalties: Illegally recording an in-person conversation or electronic communication is a felony offense. Okla. Stat. Ann. tit. 13, § 176.3.

Disclosing recordings: Disclosing the

responsible for recording an interview, but instead receives a taped interview from a third party, they do not own the copyright in the material when they use it.

For example, in a 2012 case heard by the U.S. District Court in New York City, a conference call between Swatch executives and securities analysts, recorded by Swatch, was obtained from a third party and published by Bloomberg L.P. Swatch sued Bloomberg, arguing that Bloomberg had infringed its copyright interest in the conversation. The court, though noting that “[t]he comments and questions of the securities analysts are not copyrightable,” assumed that Swatch could own a copyright in their own tape-recorded conversation — but said that Bloomberg’s publication would be authorized under the fair use doctrine. Because of the largely factual nature of the tape-recording, the court described Swatch as possessing only a “thin copyright.” (*Swatch Management v. Bloomberg L.P.*)

First Amendment and fair use defenses

If an interviewee or other entity sues a journalist for copyright infringement for

using material from a taped conversation, a journalist is likely to have a strong argument that they are entitled to use the material, because of First Amendment principles and the “fair use” doctrine.

For example, a 1981 Jerry Falwell lawsuit against *Penthouse Magazine* for copyright infringement shows that courts may find an interviewee’s claim to copyright ownership offensive to the First Amendment. Falwell sued *Penthouse* for publishing material from a Falwell interview without his consent. The U.S. District Court in Lynchburg, Va., rejected his common-law copyright claim, and called the argument a “broad-based attack on . . . principles of freedom of speech and press which are essential to a free society.” (*Falwell v. Penthouse International Ltd.*)

In addition, journalists will often be able to use interview material under the fair use doctrine. In 1986 author Katrina Maxtone-Graham sued a conservative minister who published excerpts from her work *Pregnant by Mistake* in his own scholarly work. *Pregnant by Mistake* is a book of interviews with women in unwanted pregnancies.

Although Maxtone-Graham owned the

interview copyrights, the minister’s use was held to be protected as a fair use. According to U.S. District Court in New York City, the four fair use factors weighed in the minister’s favor. The court found, in addition to the conservative minister’s use being transformative, his using only minimal content, and his not interfering with the market value of Maxtone-Graham’s out-of-print book, that the interview material itself should be more available for the public’s use than other copyrighted work. The court described the work as “essentially reportorial” and “source material,” which should be available for “liberal, but fair, use.” (*Katrina Maxtone-Graham v. James Tunstead Burchtaell*).

This case illustrates that fair use, while always a context-sensitive decision, often favors reporters’ rights to use material they tape-record for reporting. Interview material, which contain facts and ideas, is considered more available for fair use than other copyrighted material under the second factor of fair use doctrine, which examines the nature of the copyrighted work.

contents of a wire, oral or electronic communication obtained through illegal recording is a felony. Okla. Stat. Ann. tit. 13, § 176.3. And repeating or publishing with the intent to “vex, annoy, or injure others” the contents of a discussion or conversation overheard while unlawfully loitering around a building is a misdemeanor. Okla. Stat. Ann. tit. 21, § 1202.

Oregon

Summary of statute(s): An individual who is a party to an electronic communication, or who has the consent of one of the parties to the communication, can lawfully record it or disclose its contents. But a lawful recording of an in-person conversation requires that all parties be informed, except under certain circumstances. A person also can lawfully record electronic communications that are readily accessible to the general public. Or. Rev. Stat. Ann. § 165.540 (West 2012).

In-person conversations: It is unlawful to record a “conversation,” which is defined as “the transmission between two or more persons of an oral communication which is not a telecommunication or a radio communication,” unless all participants to the conversation are specifically informed that it is being recorded. Or. Rev. Stat. Ann. §§ 165.535, 165.540. The prohibition does not apply, however, to individuals who record with an unconcealed recording device statements that are part of any of the following proceedings: 1) public or semipublic meetings, such as hearings before governmental or quasi-governmental bodies, trials, press conferences, public speeches, rallies and sporting or other events; 2) regularly scheduled classes or similar educational activities in public or private institutions; or 3) private meetings or conferences if all others involved knew or reasonably should have known that the recording was being made. Or. Rev. Stat. Ann. § 165.540. A state appellate court held that the all-party notification required to record an in-person conversation did not impermissibly burden the news media in violation of the First Amendment because it did not restrict a journalist’s right to communicate with individuals or gather news. *Oregon v. Knobel*, 777 P.2d 985 (Or. Ct. App. 1989).

Electronic communications: The consent of at least one party to any telephone communication is required to record it. And because the provision of the statute dealing with wireless communications applies to the transmission of “writing, signs, signals, pictures and sounds of all kinds,” consent likewise is required to disclose the contents of text messages sent between wireless devices. Or. Rev. Stat. Ann. §§ 165.535, 165.540.

Hidden cameras: It is a misdemeanor to photograph or record a person “in a state of nudity” in a place where there is a reason-

able expectation of privacy. Or. Rev. Stat. Ann. § 163.700. The law, however, does not criminalize the use of recording devices for other purposes in areas to which the public has access or there is no reasonable expectation of privacy (i.e., filming conversations on public streets or a hotel lobby).

Criminal penalties: Illegally recording an in-person conversation or electronic communication is a misdemeanor offense. Or. Rev. Stat. Ann. § 165.540.

Civil suits: Anyone whose wire, electronic or oral communication has been recorded or disclosed in violation of the law can bring a civil suit to recover the greater of actual damages, \$100 a day for each day of violation or \$1,000, and can recover punitive damages and attorney’s fees as well. Or. Rev. Stat. Ann. § 133.739.

Disclosing recordings: Disclosing the contents of an in-person conversation or electronic communication obtained through illegal recording is a misdemeanor. Or. Rev. Stat. Ann. § 165.540.

Pennsylvania

Summary of statute(s): It is unlawful to record either an in-person conversation or electronic communication without the consent of all parties. 18 Pa. Cons. Stat. Ann. § 5704 (West 2012).

In-person conversations: It is unlawful to record an “oral communication,” which is defined as “any oral communication uttered by a person possessing an expectation that such communication is not subject to interception under circumstances justifying such expectation” without first obtaining the consent of all parties engaged in the conversation. 18 Pa. Cons. Stat. Ann. § 5702. Thus, a journalist does not need consent to record conversations in public where there is no reasonable expectation of privacy.

Electronic communications: It is unlawful to record any telephone communication without first obtaining the consent of the participants to the communication. And because the provision of the statute dealing with wireless communications applies to “any transfer of signs, signals, writing, images, sounds, data or intelligence of any nature,” consent likewise is required to disclose the contents of text messages sent between wireless devices. *Id.*

Hidden cameras: It is a misdemeanor to photograph or record a fully or partially nude person in a place where the person has a reasonable expectation of privacy, to use a hidden camera, regardless of whether a person has a reasonable expectation of privacy, to “up-skirt” or “down-blouse,” or secretly photograph or record that person under or through his or her clothing, and to transmit any images obtained by these means. 18 Pa. Cons. Stat. Ann. § 7507.1. The law, however, does not criminalize the use of recording devices for other purposes in areas to

which the public has access or there is no reasonable expectation of privacy (i.e., filming conversations on public streets or a hotel lobby).

Criminal penalties: Illegally recording an in-person conversation or electronic communication is a felony offense. 18 Pa. Cons. Stat. Ann. § 5703.

Civil suits: Anyone whose wire, electronic or oral communication has been recorded or disclosed in violation of the law can bring a civil suit to recover the greater of actual damages, \$100 a day for each day of violation, or \$1,000, and can recover punitive damages, attorney’s fees and court costs as well. 18 Pa. Cons. Stat. Ann. § 5725. The statute also allows any provider of an electronic communication service, subscriber or customer aggrieved by a violation of the law to sue and recover such relief as may be appropriate, including damages, attorney’s fees and court costs. 18 Pa. Cons. Stat. Ann. § 5747.

Disclosing recordings: Disclosing the contents of a wire, electronic or oral communication obtained through illegal recording is a felony. 18 Pa. Cons. Stat. Ann. § 5703.

Rhode Island

Summary of statute(s): An individual who is a party to either an in-person conversation or electronic communication, or who has the consent of one of the parties to the communication, can lawfully record it, unless the person is doing so for the purpose of committing a criminal or tortious act. A person also can lawfully disclose the contents of face-to-face conversations or electronic communications that have become common knowledge or public information. R.I. Gen. Laws § 11-35-21 (2012).

In-person conversations: The consent of at least one party to a conversation is required to record an “oral communication,” which is defined as “any oral communication uttered by a person exhibiting an expectation that the communication is not subject to interception under circumstances justifying that expectation, but the term does not include any electronic communication.” R.I. Gen. Laws § 12-5.1-1. Thus, a journalist does not need consent to record conversations in public where there is no reasonable expectation of privacy.

Electronic communications: The consent of at least one party to any telephone communication is required to record it. And because the provision of the statute dealing with wireless communications applies to “any transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature,” consent likewise is required to disclose the contents of text messages sent between wireless devices. *Id.*

Hidden cameras: It is a crime to photograph or record the “intimate areas” of

a person in a place where the person has a reasonable expectation of privacy, to disclose any images obtained by these means, and to look into and take images of, “for the purpose of sexual arousal, gratification or stimulation,” the interior of an occupied dwelling. R.I. Gen. Laws § 11-64-2. The law, however, does not criminalize the use of recording devices for other purposes in areas to which the public has access or there is no reasonable expectation of privacy (i.e., filming conversations on public streets or a hotel lobby).

Criminal penalties: One who illegally records an in-person conversation or electronic communication faces a maximum of five years imprisonment. R.I. Gen. Laws § 11-35-21.

Civil suits: Anyone whose wire, electronic or oral communication has been recorded or disclosed in violation of the law can bring a civil suit to recover the greater of actual damages, \$100 a day for each day of violation or \$1,000, and can recover punitive damages, attorney’s fees and court costs as well. R.I. Gen. Laws § 12-5-1-13.

Disclosing recordings: One who discloses the contents of a wire, electronic or oral communication obtained through illegal recording faces a maximum of five years imprisonment. R.I. Gen. Laws § 11-35-21.

South Carolina

Summary of statute(s): An individual who is a party to either an in-person conversation or electronic communication, or who has the consent of one of the parties to the communication, can lawfully record it. S.C. Code Ann. § 17-30-30 (2011).

In-person conversations: The consent of at least one party to a conversation is required to record an “oral communication,” which is defined as “any oral communication uttered by a person exhibiting an expectation that the communication is not subject to interception under circumstances justifying the expectation and does not mean any public oral communication uttered at a public meeting or any electronic communication.” S.C. Code Ann. § 17-30-15. Thus, a journalist does not need consent to record conversations in public where there is no reasonable expectation of privacy.

Electronic communications: The consent of at least one party to any telephone communication is required to record it. And because the provision of the statute dealing with wireless communications applies to “any transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature,” consent likewise is required to disclose the contents of text messages sent between wireless devices. *Id.*

Hidden cameras: It is a misdemeanor to eavesdrop or be a “peeping tom” on the premises of another. A “peeping tom” is one who uses audio or video equipment to spy on

or invade the privacy of others. The statute does not apply, however, to “any bona fide news gathering activities.” S.C. Code Ann. § 16-17-470. A state appellate court found the “peeping tom” statute inapplicable to the conduct of newspaper reporters who tried to overhear city council proceedings during a closed executive session because the reporters were on public property — not the premises of another — and did nothing “to enable them to overhear what was going on in the executive session other than to wait in the place provided as a waiting room for reporters and other members of the public.” Neither the overhearing nor the publication of anything overheard violated the statute, according to the court in *Herald Publishing Co., Inc. v. Barnwell*, 351 S.E.2d 878 (S.C. Ct. App. 1986).

Criminal penalties: Illegally recording an in-person conversation or electronic communication is a felony offense. S.C. Code Ann. § 17-30-20.

Civil suits: Anyone whose wire, oral or electronic communication has been recorded or disclosed in violation of the law can bring a civil suit to recover the greater of actual damages, \$500 a day for each day of violation or \$25,000, punitive damages, attorney’s fees, court costs and other relief a judge deems appropriate. S.C. Code Ann. § 17-30-135.

Disclosing recordings: Disclosing the contents of a wire, oral or electronic communication obtained through illegal recording is a felony. S.C. Code Ann. § 17-30-20.

South Dakota

Summary of statute(s): An individual who is a party to either an in-person conversation or electronic communication, or who has the consent of one of the parties to the communication, can lawfully record it. S.D. Codified Laws § 23A-35A-20 (2012).

In-person conversations: The consent of at least one party to a conversation is required to record an “oral communication,” which is defined as “any oral communication uttered by a person exhibiting an expectation that such communication is not subject to interception under circumstances justifying such expectation.” S.D. Codified Laws § 23A-35A-1. Thus, a journalist does not need consent to record conversations in public where there is no reasonable expectation of privacy.

Electronic communications: The consent of at least one party to a telephone communication is required to record it. But because the prohibition is limited to “wire communications,” a journalist does not need consent to record conversations between two people using cell phones or other wireless devices, or to disclose the contents of text messages sent between wireless devices. *Id.*

The state Supreme Court has held that the consent of one participant to any communi-

cation, whether in person or by telephone, to the recording removes it from the type of interception prohibited by the state wiretap statute. *South Dakota v. Braddock*, 452 N.W.2d 785 (S.D. 1990).

Hidden cameras: It is a misdemeanor to use a hidden camera in a place where one may reasonably expect to be safe from intrusion or surveillance. S.D. Codified Laws §§ 22-21-1, 22-1-2. The law, however, does not criminalize the use of such recording devices in areas to which the public has access or there is no reasonable expectation of privacy (i.e., filming conversations on public streets or a hotel lobby).

Criminal penalties: Illegally recording an in-person conversation or electronic communication is a felony offense. S.D. Codified Laws § 23A-35A-20.

Tennessee

Summary of statute(s): An individual who is a party to either an in-person conversation or electronic communication, or who has the consent of one of the parties to the communication, can lawfully record it, unless the person is doing so for the purpose of committing a criminal or tortious act. A person also can lawfully record electronic communications that are readily accessible to the general public. Tenn. Code Ann. § 39-13-601 (West 2012).

In-person conversations: The consent of at least one party to a conversation is required to record an “oral communication,” which is defined as “any oral communication uttered by a person exhibiting an expectation that the communication is not subject to interception under circumstances justifying that expectation.” Tenn. Code Ann. § 40-6-303. Thus, a journalist does not need consent to record conversations in public where there is no reasonable expectation of privacy.

Electronic communications: The consent of at least one party to any telephone communication, including one transmitted wholly or partly by a cellular telephone, is required to record it. And because the provision of the statute dealing with wireless communications applies to “any transfer of signs, signals, writing, images, sounds, data or intelligence of any nature,” consent likewise is required to disclose the contents of text messages sent between wireless devices. Tenn. Code Ann. §§ 40-6-303, 39-13-604.

Hidden cameras: It is a misdemeanor to photograph or record, “for the purpose of sexual arousal or gratification,” a person when the person has a reasonable expectation of privacy if the image “would offend or embarrass an ordinary person” who appeared in the photograph, and a felony to disclose to any person the image obtained by these means. Tenn. Code Ann. § 39-13-605. The law, however, does not criminalize the use of recording devices for other purposes

in areas to which the public has access or there is no reasonable expectation of privacy (i.e., filming conversations on public streets or a hotel lobby).

Criminal penalties: Illegally recording an in-person conversation or electronic communication is a felony offense. Tenn. Code Ann. § 39-13-602.

Civil suits: Anyone whose wire, oral or electronic communication has been recorded or disclosed in violation of the law can bring a civil suit to recover the greater of actual damages, \$100 a day for each day of violation or \$10,000, and can recover punitive damages, attorney's fees and court costs as well. The statute also allows anyone whose wire, oral or electronic communication is or is about to be recorded or disclosed in violation of the law to seek to enjoin and restrain the violation in addition to suing for damages. Tenn. Code Ann. § 39-13-603.

Disclosing recordings: Disclosing the contents of a wire, oral or electronic communication obtained through illegal recording is a felony. Tenn. Code Ann. § 39-13-602.

Texas

Summary of statute(s): An individual who is a party to either an in-person conversation or electronic communication, or who has the consent of one of the parties to the communication, can lawfully record it, unless the person is doing so for the purpose of committing a criminal or tortious act. A person also can lawfully record electronic communications that are readily accessible to the general public. Tex. Penal Code Ann. § 16.02 (Vernon 2011).

In-person conversations: The consent of at least one party to a conversation is required to record an "oral communication," which is defined as "any oral communication uttered by a person exhibiting an expectation that the communication is not subject to interception under circumstances justifying that expectation." Tex. Code Crim. Proc. Ann. art. 18.20. Thus, a journalist does not need consent to record conversations in public where there is no reasonable expectation of privacy.

Electronic communications: The consent of at least one party to any telephone communication is required to record it. And because the provision of the statute dealing with wireless communications applies to "a transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature," consent likewise is required to disclose the contents of text messages sent between wireless devices. *Id.*

Hidden cameras: It is a felony to photograph or record a person without the person's consent in a public place "with the intent to arouse or gratify the sexual desire of any person," or in a bathroom or private dressing room "with the intent to invade the privacy of the person, or arouse

or gratify the sexual desire of any person," and to disclose any images obtained by these means. Tex. Penal Code Ann. § 21.15. The law, however, does not criminalize the use of recording devices for other purposes in areas to which the public has access or there is no reasonable expectation of privacy (i.e., filming conversations on public streets or a hotel lobby). The state's highest court for criminal cases recently held that the statutory prohibition on photographing or videotaping a person in public without that person's consent with the intent to arouse or gratify a sexual desire did not implicate, much less violate, a defendant's free-speech rights because the statute was not a regulation of speech or the contents of a visual image but rather a regulation of the photographer's or videographer's intent in creating the image. *Ex parte Nyabwa*, 366 S.W.3d 710 (Tex. Crim. App. 2012).

Criminal penalties: Illegally recording an in-person conversation or electronic communication is a felony offense. Tex. Penal Code Ann. § 16.02.

Civil suits: Anyone whose wire, oral or electronic communication has been recorded or disclosed in violation of the law can bring a civil suit to recover \$10,000 for each occurrence, actual damages in excess of \$10,000, punitive damages, attorney's fees and court costs. Under the statute, an aggrieved person also is entitled to an injunction prohibiting further unlawful interception or disclosure. Tex. Civ. Prac. & Rem. Code Ann. § 123.004.

The U.S. Court of Appeals in New Orleans (5th Cir.) held in 2000 that a television station and reporter who obtained illegally recorded tapes of telephone conversations, but who had not participated in the illegal recording, could nonetheless be held civilly liable under the federal and Texas wiretap statutes. *Peavy v. WFAA-TV, Inc.*, 221 F.3d 158 (5th Cir. 2000). The case was appealed to the U.S. Supreme Court, along with two other cases raising similar issues. The Supreme Court refused to hear the Texas case but decided in one of the other cases, *Bartnicki v. Vopper*, 532 U.S. 514 (2001), that media defendants could not be held liable for publishing information of public concern that was obtained unlawfully by a source where the media were blameless in the illegal interception. Following the *Bartnicki* decision, the parties in the *Peavy* case settled out of court.

Disclosing recordings: Disclosing the contents of a wire, oral or electronic communication obtained through illegal recording is a felony. Tex. Penal Code Ann. § 16.02.

Utah

Summary of statute(s): An individual who is a party to either an in-person conversation or electronic communication, or who has the consent of one of the parties to

the communication, can lawfully record it, unless the person is doing so for the purpose of committing a criminal or tortious act. A person also can lawfully record electronic communications that are readily accessible to the general public. Utah Code Ann. § 77-23a-4 (West 2012).

In-person conversations: The consent of at least one party to a conversation is required to record an "oral communication," which is defined as "any oral communication uttered by a person exhibiting an expectation that the communication is not subject to interception, under circumstances justifying that expectation." Utah Code Ann. § 77-23a-3. Thus, a journalist does not need consent to record conversations in public where there is no reasonable expectation of privacy.

Electronic communications: The consent of at least one party to any telephone communication is required to record it. And because the provision of the statute dealing with wireless communications applies to "any transfer of signs, signals, writings, images, sounds, data, or intelligence of any nature," consent likewise is required to disclose the contents of text messages sent between wireless devices. *Id.*

Hidden cameras: It is a misdemeanor to install or use a hidden camera or audio recorder in a place where one may reasonably expect to be safe from intrusion or surveillance, and to use a device for recording sounds originating in the place that would not ordinarily be audible or comprehensible outside. Utah Code Ann. §§ 76-9-402, 76-9-401. The law, however, does not criminalize the use of recording devices for other purposes in areas to which the public has access or there is no reasonable expectation of privacy (i.e., filming conversations on public streets or a hotel lobby).

Criminal penalties: Illegally recording an in-person conversation or electronic communication is a felony, except where the communication is the radio portion of a cellular telephone communication. In those cases, the violation is only a misdemeanor offense. Utah Code Ann. § 77-23a-4.

Civil suits: Anyone whose wire, electronic or oral communication has been recorded or disclosed in violation of the law, or any electronic communications service, subscriber or customer aggrieved by a violation of the law, can bring a civil suit to recover such relief as may be appropriate, including damages, attorney's fees and court costs. Utah Code Ann. §§ 77-23a-11, 77-23b-8.

Disclosing recordings: Disclosing the contents of a wire, electronic or oral communication obtained through illegal recording is a felony. Utah Code Ann. § 77-23a-4.

Vermont

There are no specific statutes in Vermont addressing the interception of audio

communications, but the state Supreme Court has held that surreptitious electronic monitoring of communications in a person's home is an unlawful invasion of privacy. *Vermont v. Geraw*, 795 A.2d 1219 (Vt. 2002). On the other hand, there is no objective, reasonable expectation of privacy in a hospital's emergency treatment area, through which medical personnel, hospital staff, patients and their families and emergency workers, including police officers, "frequently, and not unexpectedly" freely move, the state high court later held in *Vermont v. Rheaume*, 889 A.2d 711 (Vt. 2005). Similarly, the recording of a conversation in a parking lot is not unlawful because the conversation was "subject to the eyes and ears of passersby." *Vermont v. Brooks*, 601 A.2d 963 (Vt. 1991).

Vermont has a voyeurism statute that criminalizes photographing or recording the "intimate areas" of a person or one engaged in a sexual act in a place where the person has a reasonable expectation of privacy, and secretly photographing or recording a person in a place where the person has a reasonable expectation of privacy within a residence, and disclosing any images obtained

by these means. Vt. Stat. Ann. tit. 13, § 2605 (2012). The law, however, does not criminalize the use of recording devices for other purposes in areas to which the public has access or there is no reasonable expectation of privacy (i.e., filming conversations on public streets or a hotel lobby).

Virginia

Summary of statute(s): An individual who is a party to either an in-person conversation or electronic communication, or who has the consent of one of the parties to the communication, can lawfully record it or disclose its contents. Va. Code Ann. § 19.2-62 (West 2012).

In-person conversations: The consent of at least one party to a conversation is required to record an "oral communication," which is defined as "any oral communication uttered by a person exhibiting an expectation that such communication is not subject to interception under circumstances justifying such expectations but does not include any electronic communication." Va. Code Ann. § 19.2-61. Thus, a journalist does not need consent to record conversations in public where there is no reasonable

expectation of privacy.

Electronic communications: The consent of at least one party to any telephone communication is required to record it. And because the provision of the statute dealing with wireless communications applies to "any transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature," consent likewise is required to disclose the contents of text messages sent between wireless devices. *Id.*

Hidden cameras: It is a misdemeanor to photograph or record a fully or partially nude person, and to "up-skirt" or "down-blouse," or secretly photograph or record a person under or through his or her clothing, in a place where the person has a reasonable expectation of privacy. Va. Code Ann. § 18.2-386.1. The law, however, does not criminalize the use of recording devices for other purposes in areas to which the public has access or there is no reasonable expectation of privacy (i.e., filming conversations on public streets or a hotel lobby).

Criminal penalties: Illegally recording an in-person conversation or electronic communication is a felony offense. Va. Code Ann. § 19.2-62.

An extreme example: The California anti-paparazzi laws

In 1999 California passed into law an invasion of privacy statute directed specifically at paparazzi activity. The anti-paparazzi statute, Cal. Civ. Code § 1708.8, has a broader reach in the activity that it targets than other state's privacy laws — and tape-recording activities can create risks under this statute.

The statute prohibits trespass onto another's property "with the intent to capture any type of visual image, sound recording, or other physical impression of the plaintiff engaging in a personal or familial activity" where it would be "offensive to a reasonable person." The California standard is stricter than the traditional standard in privacy law, which protects individuals from actions that are "highly offensive to a reasonable person."

The law also creates the right to sue for "constructive invasion of privacy," or for engaging in the same activity described above under the statute, but without physically trespassing. Constructive invasion of privacy occurs when a defendant uses technology to capture images or sounds that would not have been otherwise accessible to them without trespassing.

Also under the statute, one provision makes committing an assault or false imprisonment to obtain the same images

or recordings, described by the statute, also subject to the statute's penalties — to target the behavior of paparazzi when they surround a celebrity and prevent them from moving.

In addition, any "person who directs, solicits, actually induces, or actually causes another person" to engage in the activity prohibited by the paparazzi statute can also be held liable. The paparazzi statute imposes stiff penalties on violators — for example, after the court calculates a monetary award for the harm caused by the infringing activity, the court may then impose a judgment of up to three times that amount on a violator of the statute.

In 2002, R. Shaun Carter, who was filmed in the emergency room at a hospital in San Diego where he was being treated, sued the New York Times Co. and Discovery Communications Inc. under the anti-paparazzi law. The California state court said that the two companies could not use California's anti-SLAPP statute as a defense against Carter's claim.

Carter argued that although he had signed a consent form with the *New York Times* reporter who videotaped him, he had been deliberately misled by the reporter. The reporter had been dressed like hospital staff, and Carter argued that he had been deceived into thinking that the video was for hospi-

tal training purposes (*Carter v. Superior Court*).

In another case in 2004, the owners of casting workshops in the Hollywood community sued ABC News for broadcasting an expose of their workshop practices. (*Turnbull v. ABC*)

ABC secretly recorded and broadcast one of the workshop sessions by sending a reporter undercover, and the workshop sued ABC under the anti-paparazzi statute. The court found that charges could be brought against ABC under the statute, because ABC might have trespassed when they recorded the workshop without permission, and ABC's activity was offensive to a reasonable person — though a jury later ruled in favor of ABC.

In addition, California Vehicle Code § 40008 allows longer jail sentences of up to 6 months, and steeper fines of up to \$2,500, for reckless driving "with the intent to capture any type of visual image, sound recording, or other physical impression of another person for a commercial purpose." Following a 2012 car chase involving Justin Bieber and a paparazzo, a Los Angeles prosecutor invoked the statute for the first time against the paparazzo, according to news reports.

Civil suits: Anyone whose wire, electronic or oral communication has been recorded or disclosed in violation of the law can bring a civil suit to recover the greater of actual damages, \$400 a day for each day of violation or \$4,000, and can recover punitive damages, attorney's fees and court costs as well. Va. Code Ann. § 19.2-69.

Disclosing recordings: Disclosing the contents of a wire, electronic or oral communication obtained through illegal recording is a felony. Va. Code Ann. § 19.2-62.

Washington

Summary of statute(s): All parties to either an in-person conversation or electronic communication generally must consent to its recording — a requirement that is satisfied by one party's reasonably effective announcement, which also must be recorded, to all other parties that the conversation is about to be recorded. Wash. Rev. Code Ann. § 9.73.030 (West 2012).

In-person conversations: It is unlawful to record a "private conversation" without first obtaining the consent of all parties engaged in the conversation. *Id.* Courts consider three main factors in deciding whether a conversation is considered private and thus protected under the wiretap law: 1) the duration and subject matter of the conversation; 2) the location of the conversation and presence or potential presence of a third party; and 3) the role of the non-consenting party and his or her relationship to the consenting party. *Lewis v. Washington*, 139 P.3d 1078 (Wash. 2006). And the state Supreme Court has held that the presence of another person during a conversation generally means the matter is not secret or confidential such that it would qualify as private. *Washington v. Clark*, 916 P.2d 384 (Wash. 1996). Thus, a journalist does not need consent to record conversations in public where there is no reasonable expectation of privacy.

Electronic communications: It is unlawful to record a "private communication transmitted by telephone, telegraph, radio, or other device between two or more individuals" without first obtaining the consent of all participants in the communication. And because the statute does not differentiate between oral and written private communications transmitted electronically, the consent of all parties likewise is required to disclose the contents of text messages sent between wireless devices. Wash. Rev. Code Ann. § 9.73.030.

Under the statute, a journalist employed by "any regularly published newspaper, magazine, wire service, radio station, or television station acting in the course of bona fide news gathering duties on a full-time or contractual or part-time basis" is deemed to have the requisite consent to record and divulge the contents of in-person conversations or electronic communications "if the consent is

expressly given or if the recording or transmitting device is readily apparent or obvious to the speakers." Anyone speaking to such a journalist who has consented cannot withdraw that consent after the communication is made. *Id.* A Washington appellate court held that a party has consented to a recording if he or she is aware that the recording is taking place. *Washington v. Modica*, 149 P.3d 446 (Wash. Ct. App. 2006). And another state appellate court ruled that consent to the recording of a real-time conversation using online discussion software is implicit because participants know the conversations will be recorded on the other party's computer. *Washington v. Townsend*, 20 P.3d 1027 (Wash. Ct. App. 2001).

Hidden cameras: It is a felony to photograph or record, "for the purpose of arousing or gratifying the sexual desire of any person," another person in a place where he or she has a reasonable expectation of privacy, and to "up-skirt" or "down-blouse," or secretly photograph or record a person, regardless of whether the person has a reasonable expectation of privacy, under or through his or her clothing. Wash. Rev. Code Ann. § 9A.44.115. The law, however, does not criminalize the use of recording devices for other purposes in areas to which the public has access or there is no reasonable expectation of privacy (i.e., filming conversations on public streets or a hotel lobby).

Criminal penalties: Illegally recording an in-person conversation or electronic communication is a gross misdemeanor. Wash. Rev. Code Ann. § 9.73.080.

Civil suits: Anyone whose in-person conversation or electronic communication has been recorded in violation of the law can bring a civil suit to recover the greater of actual damages, \$100 a day for each day of violation or \$1,000, and can recover attorney's fees and court costs as well. Wash. Rev. Code Ann. § 9.73.060.

West Virginia

Summary of statute(s): An individual who is a party to either an in-person conversation or electronic communication, or who has the consent of one of the parties to the communication, can lawfully record it or disclose its contents, unless the person is doing so for the purpose of committing a criminal or tortious act. W. Va. Code § 62-1D-3 (2012).

In-person conversations: The consent of at least one party to a conversation is required to record an "oral communication," which is defined as "any oral communication uttered by a person exhibiting an expectation that such communication is not subject to interception under circumstances justifying such expectation, but such term does not include any electronic communication." W. Va. Code § 62-1D-2. Thus, a journalist does not need consent to record

conversations in public where there is no reasonable expectation of privacy.

The state Supreme Court held that a woman whose children's screams could be heard by neighbors nonetheless had a reasonable expectation of privacy in her home and thus her conversations with her children were protected by the wiretap law. *W. Va. Dep't of Health & Human Res. ex rel. Wright v. David L.*, 453 S.E.2d 646 (W. Va. 1994).

Electronic communications: The consent of at least one party to any telephone communication is required to record it. And because the provision of the statute dealing with wireless communications applies to "any transfer of signs, signals, writing, images, sounds, data or intelligence of any nature," consent likewise is required to disclose the contents of text messages sent between wireless devices. W. Va. Code § 62-1D-2.

Hidden cameras: It is a misdemeanor to photograph or record a fully or partially nude person in a place where the person has a reasonable expectation of privacy. W. Va. Code § 61-8-28. The law, however, does not criminalize the use of recording devices for other purposes in areas to which the public has access or there is no reasonable expectation of privacy (i.e., filming conversations on public streets or a hotel lobby).

Criminal penalties: Illegally recording an in-person conversation or electronic communication is a felony offense. W. Va. Code § 62-1D-3.

Civil suits: Anyone whose wire, oral or electronic communication has been recorded or disclosed in violation of the law can bring a civil suit to recover the greater of actual damages or \$100 a day for each day of violation, and can recover punitive damages, attorney's fees and court costs as well. W. Va. Code § 62-1D-12.

Disclosing recordings: Disclosing the contents of a communication obtained through illegal recording is a felony. W. Va. Code § 62-1D-3.

Wisconsin

Summary of statute(s): An individual who is a party to either an in-person conversation or electronic communication, or who has the consent of one of the parties to the communication, can lawfully record it or disclose its contents, unless the person is doing so for the purpose of committing a criminal or tortious act. Wis. Stat. Ann. § 968.31 (West 2011).

In-person conversations: The consent of at least one party to a conversation is required to record an "oral communication," which is defined as "any oral communication uttered by a person exhibiting an expectation that the communication is not subject to interception under circumstances justifying the expectation." Wis. Stat. Ann. § 968.27. Thus, a journalist does not need consent to record

conversations in public where there is no reasonable expectation of privacy.

Courts consider several factors in deciding whether an individual's expectation of privacy in his or her oral statements is objectively reasonable and thus protected under the wiretap law: 1) the volume of the statements; 2) the proximity of other individuals to the speaker, or the potential for others to overhear the speaker; 3) the potential for the communications to be reported; 4) the actions taken by the speaker to ensure his or her privacy; 5) the need to employ technological enhancements for one to hear the speaker's statements; and 6) the place or location where the statements are made. *Wisconsin v. Duchow*, 749 N.W.2d 913 (Wis. 2008). In that case, the state Supreme Court held that, under the totality of the circumstances, a school-bus driver did not have a reasonable expectation of privacy in threatening statements he made to a grade-school student who recorded the comments. The school bus was public property, being operated for a public purpose, and because the statements sought to be protected were threats directed at a child being transported to school, the type of speech likely to be reported, the bus driver assumed the risk of disclosure, the court ruled. Wis. Stat. Ann. at 924-25.

Electronic communications: The consent of at least one party to any telephone communication is required to record it. And because the provision of the statute dealing with wireless communications applies to "any transfer of signs, signals, writing, images, sounds, data or intelligence of any nature," consent likewise is required to disclose the contents of text messages sent between wireless devices. Wis. Stat. Ann. § 968.27.

Hidden cameras: It is a misdemeanor to install a surveillance device or use a sur-

veillance device that has been installed in a private place to view a nude or partially nude person. Wis. Stat. Ann. § 942.08. The law, however, does not criminalize the use of recording devices for other purposes in areas to which the public has access or there is no reasonable expectation of privacy (i.e., filming conversations on public streets or a hotel lobby).

Criminal penalties: Illegally recording an in-person conversation or electronic communication is a felony offense. Wis. Stat. Ann. § 968.31.

Civil suits: Anyone whose wire, electronic or oral communication has been recorded or disclosed in violation of the law can bring a civil suit to recover the greater of actual damages, \$100 a day for each day of violation or \$1,000, and can recover punitive damages, attorney's fees and court costs as well. *Id.*

Disclosing recordings: Disclosing the contents of a communication obtained through illegal recording is a felony. *Id.*

Wyoming

Summary of statute(s): An individual who is a party to either an in-person conversation or electronic communication, or who has the consent of one of the parties to the communication, can lawfully record it or disclose its contents, unless the person is doing so for the purpose of committing a criminal or tortious act. Wyo. Stat. Ann. § 7-3-702 (2012).

In-person conversations: The consent of at least one party to a conversation is required to record an "oral communication," which is defined as "any oral communication uttered by a person who reasonably expects and circumstances justify the expectation that the communication is not subject to interception but does not include any electronic communication." Wis. Stat. Ann.

§ 7-3-701. Thus, a journalist does not need consent to record conversations in public where there is no reasonable expectation of privacy.

Electronic communications: The consent of at least one party to any telephone communication is required to record it. And because the provision of the statute dealing with wireless communications applies to "any transfer of signs, signals, writing, images, sounds, data or intelligence of any nature," consent likewise is required to disclose the contents of text messages sent between wireless devices. *Id.*

Hidden cameras: It is a felony to photograph or record, in a "clandestine, surreptitious, prying or secretive nature," a person in an enclosed place where the person has a reasonable expectation of privacy, and to use a camera or any other recording device, regardless of whether a person has a reasonable expectation of privacy, to "up-skirt" or "down-blouse," or secretly photograph or record that person under or through his or her clothing. Wis. Stat. Ann. § 6-4-304. The law, however, does not criminalize the use of such recording devices for other purposes in areas to which the public has access or there is no reasonable expectation of privacy (i.e., filming conversations on public streets or a hotel lobby).

Criminal penalties: Illegally recording an in-person conversation or electronic communication is a felony offense. Wis. Stat. Ann. § 7-3-702.

Civil suits: Civil suits to recover damages are available only against individuals who, authorized by court order to record communications, disclose to anyone the existence of that recording or surveillance or device used to accomplish it. *Id.*

Disclosing recordings: Disclosing the contents of a communication obtained through illegal recording is a felony. *Id.*

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