

# **A Practical Guide to Taping Conversations in the 50 States and D.C.**

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## Introduction

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

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

A majority of the states and territories have adopted wiretapping statutes based on the federal law. Thirty-eight states and the District of Columbia permit an individual to record a conversation to which they are a party without informing the other party that they are doing so. These laws are referred to as "one-party consent" statutes, and as long as you are a party to the conversation, it is legal for you to record it.

Twelve states require, under most circumstances, the consent of all parties to a conversation. Those jurisdictions are California, Connecticut, Delaware, Florida, Illinois, Maryland, Massachusetts, Michigan, Montana, 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.

Twelve states have laws outlawing the use of hidden cameras in private places: Alabama, California, Delaware, Georgia, Hawaii, Kansas, Maine, Michigan, Minnesota, New Hampshire, South Dakota, and Utah.

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 each wiretap statute. 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 and civil damages -- money that a violator must pay to the subject of the taping. Instances where the law includes cellular calls and the wireless portion of cordless phone calls are also noted.

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

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